

Washington State **Bar
News**

Vol. 46, No. 5, May 1992



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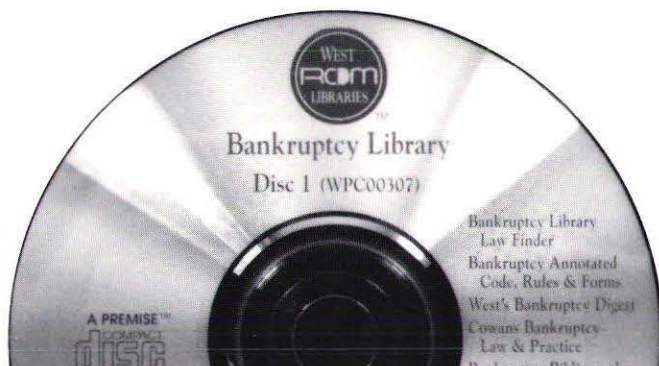
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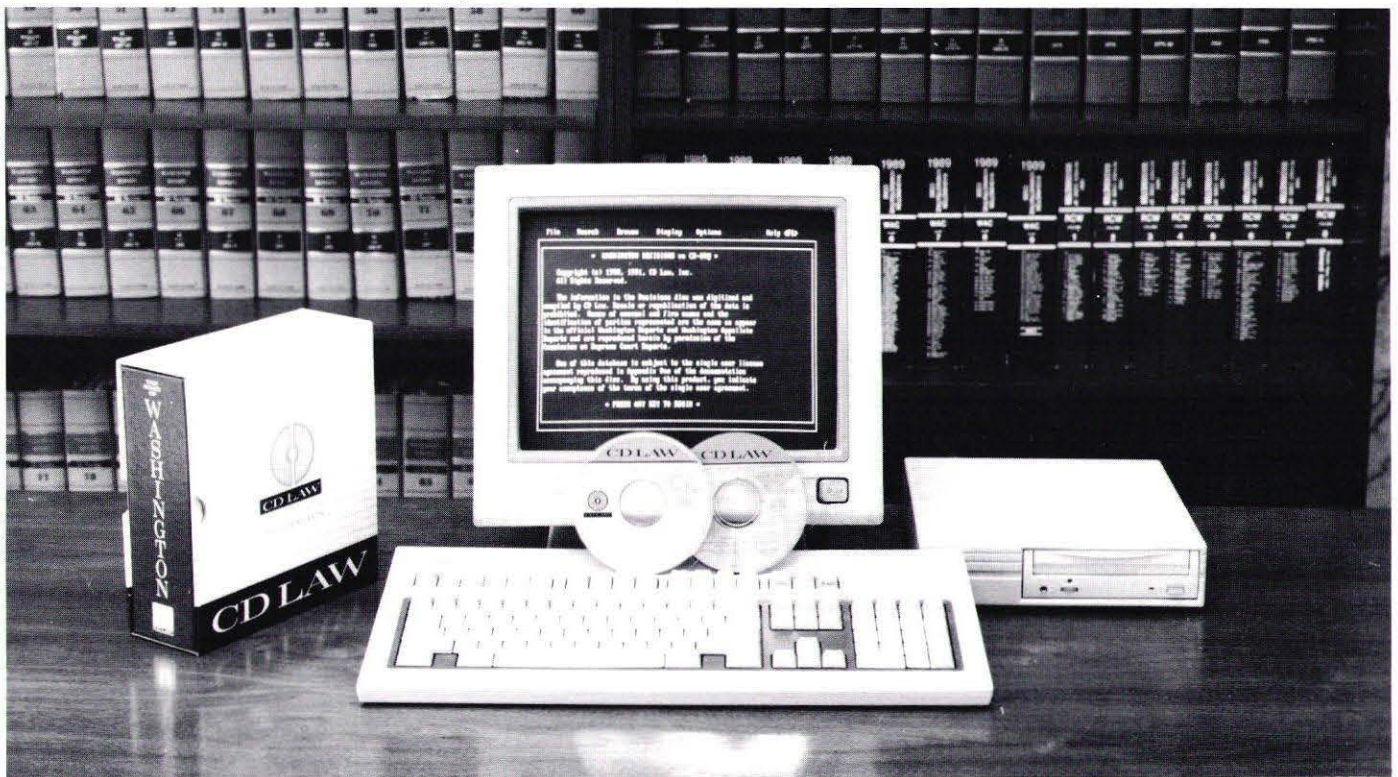
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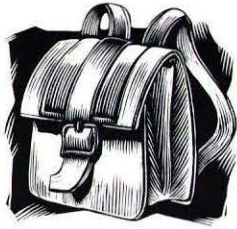
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WSBA PHONE NUMBERS

O.K., so voice mail seems to combine and multiply all the worst features of phoning and sending a letter. But bear with it—it's much easier to get to the person you need to talk to than being passed through the switchboard. A roster of the new WSBA phone numbers is in the January 1992 *Bar News*, pp. 11-12.



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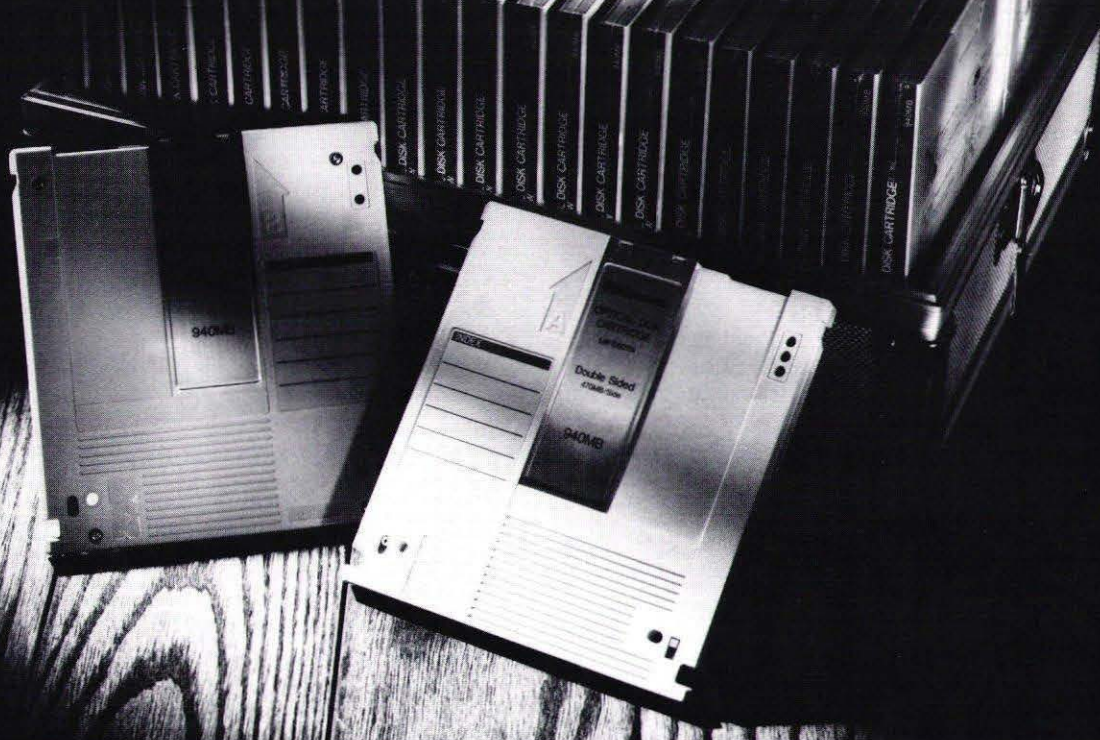
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T H E A R T O F S U C C E S S



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.

BBS Isn't the Solution; It's Part of the Problem

Editor:

Your recent article concerning the Bar Association's new computer bulletin board ("It's C.O.L.D. and It's Hot," February 1992) left me very cold indeed.

Specifically, I am referring to the statement that there is "no current charge to access the system except the cost of the long-distance telephone call."

Once again, Eastside lawyers are being treated as if they do not exist, and are not "dues-paying members" of this Bar Association. The purpose of the Bar Association Computer Bulletin Board is so that people in the state of Washington—attorneys or otherwise—can have low-cost and/or free access to legal materials. The fact that Eastside residents must pay long-distance phone bills in order to access this information

exposes the fallacy in this mission statement.

In all fairness, all of this information should be available to residents of the eastern side of the state. We may not have quite the population that the Westside has, but I guarantee you that the need for low-cost and/or free legal services is just as great.

ROBERT W. CRITCHLOW
Spokane

Gee, Toto, I Don't Think We're in Seattle Any More

Editor:

As an attorney and frequent computer user in rural southwestern Washington, I read with great interest the article on computers, "It's C.O.L.D. and It's Hot." Not only is the new LAW BBS telecommunications system "HOT," it is also another fine example of the elitist attitude of the State Bar Association. You see, the only cost of using this new program (besides a \$10 set-up fee) is the cost of the long distance charges. Hey, that's great! If you live in King County the system is

virtually free! If, on the other hand, you live in eastern Washington or southwestern Washington, the long-distance costs make the setup virtually worthless. Hey, what a great system. How thoughtful of the WSBA to implement such a process.

Since we all pay the same dues, it is blatantly unjust for some members to have free access to a system while others have to pay up the kazoo to use it. Does Alva Long know about this? Maybe what we need is a CLE for WSBA administrators. They could learn that Bar members actually exist outside King County and that they don't like being discriminated against.

O.K., I'm done venting. Here's a solution to the problem. First off, get an "800" number for access to the computer. The costs of the "800" can be shared by *all* users of the computer. Second, get a few more access lines to the WSBA. I've called the number listed in the *Bar News* three times; every time it was busy. Third, have someone wake up the WSBA administrators and enlighten them to the fact that WSBA members practice law throughout the

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JAMES P. FOLEY
Raymond

Executive director's note:

Messrs. Critchlow and Foley both raise the issue of access to the WSBA's electronic bulletin board (BBS), more specifically, the problem of balancing the expense of operating the BBS vis-a-vis the cost of long-distance telephone charges. The Computerization of Law Division (COLD), a joint project of the General Practice Section and the Law Office Economics and Management Section, has struggled with this issue. Steve Crossland, chair of COLD (and a sole practitioner in Cashmere), presented that group's recommendation to the Board of Governors recently, to-wit:

COLD recommends that the BBS be centrally located in the WSBA office and that '800' or some other means of providing "equal" access to all lawyers be considered, but that initially the long-distance charge inequity be allowed to continue until we can be more certain of our revenues.

COLD has recommended that user fees be implemented (\$120 per year/\$10

per month) for use of the BBS. Once the BBS has a track record for generating revenue, other options for access (such as an "800" number or a "900" number) will be considered. A quick review of the WSBA's financial health reveals that making an "800" number available (costing tens of thousands of dollars annually) is not currently an option.

...And A Correction

Editor:

I would like to make a correction to Mark Kuffel's article ("It's C.O.L.D. and It's HOT," *Bar News*, February 1992). At page 34, he states, "Timeslips III is the only program that features a memory resident stopwatch timer module to time activities." Currently, most of the major vendors of time and billing systems, Timeslips III from Timeslips Corporation ((800) 338-5314), TABS III, TABS III Jr., Profit Source and Profit Source Plus from Software Technology, Inc. ((402) 423-1440), Juris from Juris, Inc. ((615) 242-2870), Libra Legal from Libra Legal Systems, Inc. ((800) 323-0714), and Verdict from Microcraft, Inc. ((800) 225-3147) offer this feature.

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What? It's Not Like "L.A. Law"?

Editor:

Enclosed is a copy of a non-scientific fax poll taken by *California Lawyer*, the counterpart to the *Washington State Bar News*. I think members might be interested in how their brethren (and sisters) in the "Land of Milk and Money" enjoy their profession (copied from the March 1992 *California Lawyer*, to which all rights belong).

MICHAEL A. ARONOFF
Federal Way

(Editor's Note: Here is the text of the January, 1992 fax poll sent by Aronoff):

**The Results From
January
"It's Become a
Miserable Profession"**

We received an overwhelming response to our January Fax Poll asking if you like being a lawyer—mostly from those who don't.

How would you rate your personal career satisfaction?
Totally satisfied: 9%
Reasonably satisfied: 31%
Indifferent: 8%
Unhappy but inert: 16%
So unhappy I'd change careers: 36%

Do you enjoy practicing law less now than you did when you first began?
Yes: 72%
No: 28%

If you had an opportunity to start a new career now, would you take it?
Yes: 70%
No: 30%

Do you find the use of hardball tactics and uncivil behavior is growing among lawyers?
Yes: 81%
No: 19%

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Would you advise your children to become lawyers?

Yes: 27%

No: 73%

Confidentiality: All Is Not Lost

Editor:

I found J. Scott Miller's article, "Confidential— Listen: Do You Want to Know A Secret?" in the February *Bar News* interesting and informative. As to Mr. Miller's practical advice concerning the wisdom of conducting confidential conversations over cordless and cellular telephones, I concur this may be dangerous as well as unwise.

But as to his analysis of the privacy guarantees under the law for users of such telephone devices, he is much too quick to reach for the judgment that the law affords little or no protection. I find it rather amazing that Mr. Miller can deal at length with diverse privacy topics affecting Washington citizens, and, particularly, Washington lawyers, and never once mention Article I, section 7 of the Washington Constitution, the chief protector of our "private affairs," or cite such cases as *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986), protecting the integrity of telephone communications.

Mr. Miller would have us believe that legal protection of cordless telephone communications is a dead letter and cellular phone communications are similarly bereft of confidentiality by law. However, the United States Supreme Court has not yet spoken to either issue and recently rejected the opportunity to review the matter of privacy or cordless telephone conversation. Mr. Miller cites *People v. Fata*, 529 N.Y.S.2d 683 (1988) for the proposition that there is no federal statutory protection for cordless telephone conversations. What he fails to recognize is that while a higher New York court approved that proposition, it also expressly held the New York Constitution and statutes *do* protect the privacy of cordless phone communications (and surely, by extension,

cellular phone communications), *People v. Fata*, 559 N.Y.S.2d 348 (1990).

Washington, no less progressive than New York, may very well hold that a user of a cordless telephone is engaging in a protected "private communication transmitted by telephone,...radio, or other device... regardless of how such device is powered or actuated, under RCW 9.73.030, which is also a protected "private affair" under Article I, section 7. There is even more reason to believe this will occur with regard to cellular phone communications.

Rather than resigned acquiescence to technology's inexorable tendency to make privacy law obsolete, I would have preferred a ringing call to action dialed to Washington lawyers urging vigorous defense of what little communicative privacy we have left— while we still have it. Let's not slam the phone down on our legal right to exclude the nosy neighbor, the technologically proficient meddler and, of course, our friends the police, quite yet.

TOM P. CONOM
Edmonds

In re: Response to Tom P. Conom

Editor:

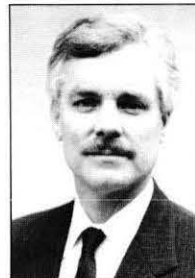
Mr. Conom's criticisms seem to be more directed to the perspective of the article, rather than its substance. I do not share his apparent suspicion of the police, although I certainly agree privacy rights are well worth protection.

Contrary to Mr. Conom's implication, the article did address the strong protective language in RCW 9.73.030 (see page 13). Even assuming those state statutes do provide greater protection than equivalent federal law, there still must be a reasonable expectation of privacy before a shield is recognized under either scheme. It seems evident that even despite strict statutory language, it would be nearly impossible to argue any such expectation is reasonable when the conversation is broadcast by radio.

Mr. Conom's optimistic reliance on the potential privacy protection that *might* be afforded by the Washington Constitution in the context of phone calls broadcast by radio is admirable. However, Art. I, Sec. 7 protects only "private affairs." It would be strained to

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argue that such broadcasts are imbued with a reasonable expectation of privacy (under the state constitution, or otherwise) merely because the radio is shaped like a telephone. He cites *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986), as proof that our courts will protect the integrity of phone conversations. Unfortunately, that case merely involved a warrantless seizure of telephone company dialing records (*i.e.* a "pen register"). Interception of conversations broadcast by radio presents an entirely different issue.

Precisely *because* there are no state cases directly on point, it is impossible to predict precisely where the line of confidentiality for "private" conversations will be drawn when both phones are not wired together. What is clear is that the trend in *federal* law is to reject privacy claims when calls are broadcast (in whole or in part) by portable or cellular phone. Clearly, discretion demands that until broadcasts are scrambled, we must utilize portable and/or cellular telephone technology with extreme caution.

Actually, I share many of Mr.

Conom's sentiments and hope he is right; I would prefer to believe that all my calls are private. But until a court adopts his rationale, the only *ethical* thing to do is assume radio broadcasts are in the public domain, and NOT PRIVATE. Every attorney should assume that someone is listening to every portable or cellular call. It is unethical to gamble with our *client's* privacy for the sake of our own convenience. (At least until our Supreme Court renders a definitive ruling to the contrary).

SCOTT MILLER
Spokane

Some Thoughts On Saving Money

Editor:

My thanks to Joseph P. Delay for his "President's Corner" explanation of Bar activities in the February *Bar News*. With the Bar Association running in red ink I'd like to offer the following potential cost-savers.

Charge for *Resources*. I suspect that many fewer are needed. In my office of

12 lawyers one *Resources* directory would suffice. I suspect many more offices are like mine in this regard. Charging for the publication might ferret out the waste.

I understand that the president's appreciation dinner is paid for in full by the Bar. I would certainly concur that the president's dinner be paid, but I can't imagine other guests being unwilling to contribute to their own meals. Perhaps there are other examples of perks which were the product of a largesse we no longer enjoy.

I'd like to see more information on budgetary items on a monthly basis as a regular feature of the *Bar News*. How about it?

JAMES R. HARDMAN
Seattle

More On Insurance

Editor:

To correct an erroneous statement made in a letter to the editor in the February issue of the *Bar News*, the rating of the Home Insurance Company with Standard & Poors is A-. The Home enjoys a similar rating from Best's.



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JAMES D. CONANT
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Poet's Corner

(Editor's Note: Even though I once edited the Oregon State Poetry Association Newsletter, as Bar News editor I have rejected both a short poem sent by a lawyer (early on in my tenure, when I still had arbitrary standards), and, later, a very long mock-epic which I filed under Vendetta Verse because of its subject matter. I once told Vancouver lawyer Terry Lee I wouldn't print a bit of occasional verse he'd sent over because I didn't want to become besieged by verse. American Rowing magazine once printed a haiku on rowing, and the next thing they knew they were listed in Poet's Market as carrying Japanese verse and getting it by the bale from poets who didn't know a coxswain from a gunwhale. But, as Arizona senator Henry Fountain Ashhurst once told his constituents, "The clammy hand of consistency has never rested long on my shoulder." Since then, I find I've let slip in two versified "Around the State" county reports by judges, as well as another letter to the editor with a jury-service poem. This time, since it holds a mirror up to us from a juror's perspective, I agreed with the writer of the letter below. The score is now 4-3.)

Editor:

A lady, Mrs. Helen McCann by name, was called as and selected to serve as a juror in a lengthy criminal case. As usual, there were motions and arguments during the course of the trial when the jurors were sent to the jury room, and the trial took many days. She found the entire experience enlightening and ended her term with confidence in our system.

But she was a talented woman and did not waste her time when she was waiting or when she was riding to and from court on the bus. She composed a

poem which I found completely enchanting and realistic as well. I am enclosing a copy of it, with her permission, and suggest that you might find it suitable for printing in our bar journal.

FRANK AUGUST PETERS
Tacoma

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And also, will you spell?

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Current Issues Before the Board of Governors

Editor:

Skagit County Bar Association president Ken Evans has elicited my comments on current issues before the Board.

I believe the answer to each issue should be a resounding "NO." I think that these issues are a lot like the so-called need for healthcare reform. They sound good; they make good "public relations"; but when you get right down to it, the system "ain't broke, so don't fix it!"

Briefly I will now comment on each issue.

The number of required CLE credit hours should not be increased from 15 to 30 hours. The ongoing educational requirements for other professionals is simply not relevant to the ongoing educational requirements for attorneys. Some of the CLE seminars I've attended have been expensive and a waste of time. The most useful and educational seminars I've attended recently have been given locally by the Skagit County Bar Association and by Paul Luvera. Increasing the number of hours required just lines the pockets of the CLE industry with no known benefit to the members of the bar or to the public.

The aspirational guidelines for pro bono services should not be increased from 30 to 50 hours. Why am I, as an attorney, expected to provide free services to any member of the public? In fact, this is a disguised sort of tax; as a taxpayer, I already provide food stamps, medical coupons, subsidized housing, and a host of other services for "poor people"; I am on the Skagit County Community Action Panel of Attorneys, and any more free services should be spread out evenly among all businesses and professions. Medical doctors, dentists, accountants, retail stores, contractors, et al.—everybody should be required to give away some of their goods or services if this is required for attorneys!

Malpractice insurance should not be required. This is best left to the personal choice of each attorney. Forcing all attorneys to buy this expensive insurance will only drive up premium rates.

The annual membership dues should

not be increased. Instead, the Board should narrow the goals and aspirations of the Bar Association and live within its means.

The WSBA staff should not be unionized. The executive director is being paid by our association to make this type of decision; he's decided not to bargain with the union, and that's fine with me. If the union is recognized, you can be sure a dues increase will be forced on us by the union's wage-and-benefit demands.

More lay members should not be added to the disciplinary board. As reported in the *Bar News*, most attorneys who are subject to discipline seem to stipulate to discipline and give up "without a fight," so it appears that the present system is functioning well in its present form.

In summary, the burden for showing a need for these proposed changes should be on the proposers. Not one member of the public nor one member of the Bar Association has ever raised any of these questions to me. If enacted, each one of these proposals would cost me time and money, without any measurable benefit to me or to the public.

The Bar Association should stand up for the attorneys in this state just like WSTLA does. The best response to these "reform proposals" is to vote a resounding and unanimous "NO" on each one.

Thank you for considering my thoughts on this.

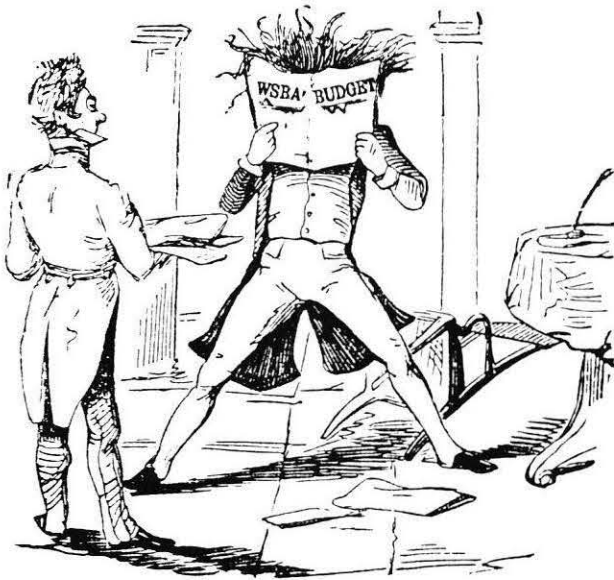
GERALD T. OSBORN
Anacortes

Editorials, Damned Editorials and Boring Charts

Editor

In re: Dennis Harwick's column "Lies, Damn Lies and Statistics" and Joe Delay's column "Budget Deficit" (March 1992, pp. 9, 7).

The message of Harwick's and Delay's columns is that we, the members of the Washington Bar Association, MUST pay more bar dues to continue receiving the current level of services. I, for one, would be quite happy to pay less for fewer services, most of which I didn't request, don't want to pay for and never



use. If some members feel that it is necessary to have such services as out-of-state bar conventions, bar-supported law-related education for the public (whatever THAT means), public affairs, legislative work, lobbying and the other services that Harwick describes by the use of *etc.*, let those members pay for such services.

The proper work of a mandatory bar association should be restricted to regulatory/disciplinary matters and the frills of public affairs and lobby should be left to those who want them AND want to pay for them. Or, better still, we should go to a voluntary bar association with regulatory/disciplinary matters handled by the Supreme Court.

Delay, in the last paragraph of his March 1992 column, indicates that we have a democratic process (how can that be when the mandatory bar is, by its very nature, coercive) and that we should let our governor know our wishes. So, President Delay and all the governors: "Read my lips, no new dues."

MARY JENNY
Corvallis, Oregon

Apples and Oranges

Editor:

I have read with interest the ongoing debate published in your March 1992 *Bar News* concerning the budgetary woes of the Washington State Bar Association.

I was specifically interested in the column entitled "Budget Blues" written

by Edward V. Hiskes of Richland and Howard K. Todd of Seattle as opposed to the "Exec's Report" in the same issue, in which Dennis P. Harwick, our executive director, indicates that the Hiskes and Todd letter is a misrepresentation of the fact.

In reviewing the two pieces, I believe Harwick has missed the point of the Hiskes and Todd letter. Hiskes and Todd asked the question of why the fifteenth largest bar association in the country needs the fifth largest budget. Harwick's response does not address that issue at all but addresses the issue as to the amount of bar dues paid by selected groups of lawyers from selected states.

The fact that our bar dues may be lower than other states' bar dues does not necessarily equate to a lower or higher budget.

If, in fact, our budget is the fifth largest budget in the United States, and we are only the fifteenth largest bar association, the Hiskes and Todd position may require further investigation.

Harwick in his "Exec's Report" insinuated that Hiskes and Todd were using the old trick of "apples and oranges."

In my reading of the letter to the editor and his response, it would appear to me that, in fact, Harwick was using the old "apples and oranges" routine.

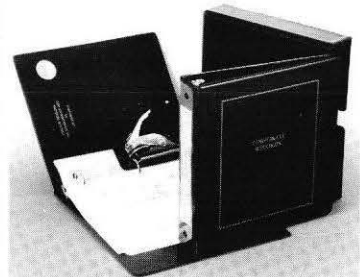
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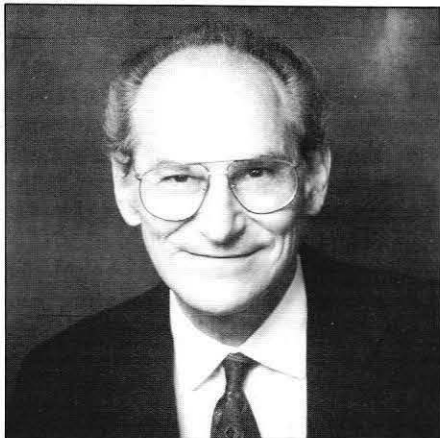
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Joseph P. Delay

Vice President Quayle Misstates the Facts

On October 1, 1991, Vice President Quayle attacked the legal profession in a speech to the American Business Conference. It is not the intent of this president of your Association to become involved politically through this article refuting Vice President Quayle's speech. I am not unmindful of the WSBA bylaws, which provide that the "President of the Bar Association during his or her term of office, shall not endorse or publicly support any candidate for any political office," and provide "Further, the President, during his or her term of office, shall not take a side publicly on any issue being submitted to the voters, pending before the legislature or otherwise in the public domain except he or she may do so when specifically authorized or instructed to do so by the Board of Governors on a matter relating to the working or to the function or the purposes of the Bar Association." Here I merely recognize that Vice President Quayle has attacked our profession armed with what appear to be statements of fact. However, after a little research it is clear that his allegations are unfounded.

The contents of my article are based principally upon the research of Mark Galanter, Professor of Law and Director, Institute of Legal Studies, University of Minnesota - Madison. In January, I had the pleasure of hearing him speak at the National Conference of Bar Presidents' meeting in Dallas, Texas. His research uncovered many misstatements by the Vice President.

The first misstatement by the Vice President is that the United States is home for 70 percent of the world's lawyers. Galanter could find no basis for this calculation by Quayle, and his research reveals that the 70 percent figure is very far from the mark. Galanter researched through various international directories to ascertain the number of lawyers in each country. He concluded there were 1,969,876 lawyers in the world. According to Galanter's research, American lawyers probably make up somewhere about 31.4 percent of all the world's "lawyers," using that term to refer to all those in jobs that American lawyers do, including judges, government lawyers, and in-house corporate lawyers.

Thus, you can see that Quayle's 70 percent is grossly overstated and probably intentionally so. He again misstated the facts when he told us, "The legal system now costs American's an estimated \$300 billion a year." As Galanter points out, "The Vice President obtained this figure from the Council on Competitiveness, whose agenda for civil justice reform borrows it from an article in *Forbes*, which in turn takes it from liability guru Peter Huber, who, it is fair to say, made it up."

As Galanter said, "the Vice President's cost estimate is not the product of any investigation or analysis by his Council, or by *Forbes*, or by Huber, but is a product of casual speculation."

The Vice President also blamed the escalating product liability litigation for discouraging innovation and under-

mining the competitiveness of American businesses. He indicated that "product liability litigation is increasing inexorably, driven by greed of entrepreneurial lawyers, the wrongheadedness of activist judges, and the rising litigiousness of ordinary Americans." The truth is, as Galanter pointed out, that filings in federal courts, which are the heartland of product liability litigation, have fallen substantially from their high point of 8,268 filings in 1985 to 5,236 filings in 1991, a decrease of some 36 percent. Further evidence of a decline in product liability suits is found in a recent report by the General Accounting Office, which reports that the number of claims per hundred thousand of product liability premiums dropped from 32.9 in 1984 to 17.1 in 1988, a 48 percent decrease.

Finally, as the professor points out, resentment of lawyers is not a fiction. Our system of civil justice is beset by many problems, particularly problems of securing justice cheaply and expeditiously for all Americans.

The Vice President supports reform of the American legal system. Undoubtedly things could be better. However, to incite and provoke public support through the use of exaggerations and misleading statements is not the right way to initiate reform. Nor should the legal profession be the Vice President's punching bag so he can develop his image as the political "pitbull."



WSBA Awards/Explanation of Financial Reports



Dennis P. Harwick

The Board of Governors invites members of the WSBA to make nominations for the annual WSBA Awards. The awards and their respective criteria are shown below. Please submit nominations **by June 8, 1992** to the Board of Governors Awards Committee by sending them to me at the WSBA office, to-wit: "Awards"—c/o WSBA Executive Director, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599.

Award of Merit:

This is the WSBA's highest honor. It was first given in 1957. In general, the Award of Merit is given for long-term service to the bar and/or the public, although it has also been presented in recognition of a single, extraordinary contribution or project. It is given to individuals only—both lawyers and nonlawyers.

The President's Award:

As the name implies, this award(s) is given for special accomplishment or service to the WSBA during the term of the current President.

Board of Governors' Award for Professionalism:

This honor is awarded to a member of the WSBA who exemplifies the spirit of professionalism in the practice of law. "Professionalism" is defined as the pursuit of a learned profession in the spirit of service to the public and in the sharing of values with other members of the profession.

The Angelo Petruss Award for Lawyers in Public Service:

This award is named in honor of the

late Angelo R. Petruss, a Senior Assistant Attorney General, who passed away during his term of service on the Board of Governors of the WSBA. The selection criteria look for a significant contribution by a lawyer in government service to the legal profession, the system of justice, and the public.

Outstanding Judge Award:

This award may be presented to a judge *from any level of court*. It is presented for outstanding service to the bench and for special contribution to the legal profession.

WSBA Pro Bono Award:

This award is presented to a lawyer, nonlawyer, law firm, or local bar association for outstanding efforts in providing pro bono services to the poor. This award is based on cumulative efforts, as opposed to a lawyer's or law firm's pro bono hours or financial contribution.

WSBA Courageous Award:

This award is presented to a lawyer who has demonstrated exceptional courage in the face of adversity, thus bringing credit to the legal profession.

The Affirmative Action Award:

This award is made to a lawyer or a law firm making a significant contribution to affirmative action in the employment of ethnic minorities, women, and the disabled in the legal profession within the State of Washington.

It is important to note that presentation of these awards is made only when there are truly deserving recipients. Some years no award is given in some categories.

Financial Reports

On the following pages, you will find summaries of the WSBA's financial statements for the fiscal year ending on 9-30-91. As has been regularly reported in these pages, 1991 was not a good year financially. More significantly, it was not unusual. The WSBA has operated at a deficit for four of the past six fiscal years.

Several major steps have been taken in recent months to address this problem. Procedurally, we have implemented a vastly more detailed accounting system that produces much more detailed financial reports (approximately 30 pages of management information for the board to review each month). Substantively, the board has cut expenses in dozens of areas, e.g., elimination of "appreciation" dinners, consolidated mailings, formalized expense reimbursement policies, fewer board meetings at less expensive locations, and so forth. The board has also created or raised many user fees, e.g., the law clerk program, bar exam applications fees, fee arbitrations, letters of good standing, etc.

At the time this was written, there had not been any decision about raising annual fees. As noted in an earlier "Exec's Report" column, the WSBA's fees are the lowest of any western unified bar association—by a con-

siderable margin. They have only been raised once since 1981—an 18 percent increase in 1988. One thing is inevitable; if the board decides to continue the same level of programming, including those functions that are mandated by rule, fees will have to go up soon.

A final word is needed to explain the deficit in 1991: \$150,000 of the deficit is attributable to one-time "book entries," i.e., accounting entries to recognize shifts in accounting practices, such as accruing employee vacation and sick leave as earned rather than at the end of the year. There was also an entry to write down the value of some obsolete assets, including the old phone system. The rest of the deficit is attributable to three other variances from budget:

1. A \$250,000 increase in CLE revenues was budgeted (even though revenues had actually dropped the previous year). In fact, CLE revenues for 1991 stayed the same.
2. Bar exam expenses were under-budgeted by \$80,000. Part of that figure is attributable to a well-earned increase in bar examiner payments. The rest was simply underbudgeted compared to actual bar expenses for 1989 and 1990.
3. \$30,000 was paid as contractual penalties for failing to fill enough hotel rooms at the San Diego convention. The clarity of hindsight tells us that San Diego isn't the right place for a WSBA convention.

The four items listed above total \$510,000—virtually the exact amount by which the budget was under income/over expenses.

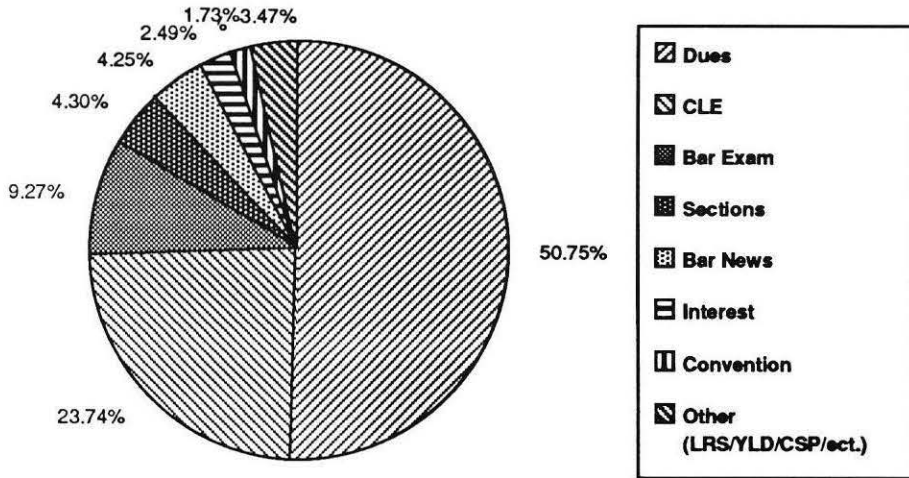
The better news is that we are within budget for fiscal year 1992. We simply can't afford another year like 1991. As the charts on the following page show, there isn't any fund balance left to absorb a loss like that.

The information on the following pages is in summary form for purposes of simplicity of presentation. It is based on the audited financial statement prepared by an outside CPA firm, BDO Seidman. If you would like a copy of the BDO Seidman-audited financial report for the fiscal year ending 9-30-91, please call Jan Jackson at the WSBA office at (206) 727-8244.

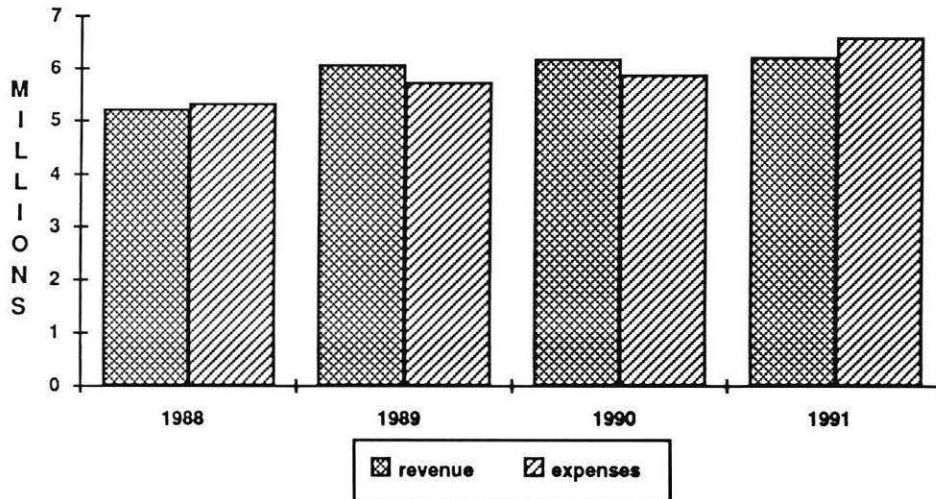
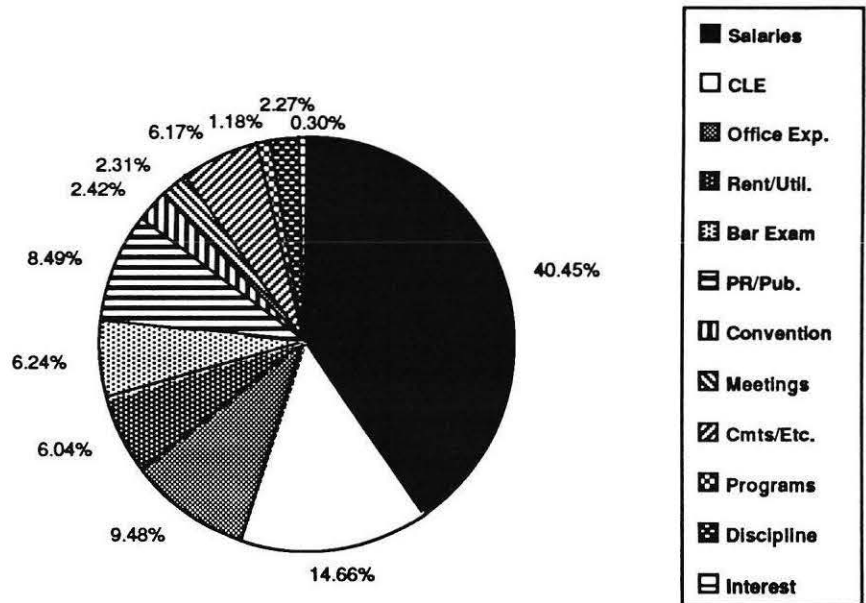
WSBA Revenues/Expenses/Fund Balance (1988-1991)

Revenues	1988	1989	1990	1991
Membership Dues	2,644,360	2,877,632	2,999,637	3,161,134
Continuing Legal Education	1,243,242	1,627,517	1,491,765	1,478,806
Bar Exam Fees	397,550	583,118	621,989	577,413
Sections	241,036	270,889	245,896	267,737
Bar News	265,572	255,525	246,590	264,908
Interest Earned	102,036	127,675	137,796	155,393
Convention	125,424	118,194	172,822	107,617
Other Income	217,643	220,575	263,300	216,019
Total Revenues	5,236,863	6,081,125	6,179,795	6,229,027
Expenses	1988	1989	1990	1991
Salaries	1,910,203	2,059,505	2,289,381	2,664,929
Continuing Legal Education	795,800	1,054,280	924,801	966,108
Office Expenses	416,393	412,965	460,811	624,482
Rent & Utilities	322,975	339,809	355,374	398,004
Bar Exam/Admissions	296,121	337,892	386,621	410,908
Public Affairs/Public Relations	501,174	558,910	508,997	559,465
Convention	232,916	163,817	192,590	159,484
Conferences and Meetings	164,861	139,802	146,367	152,210
Committees	444,869	455,856	401,576	406,259
Programs	90,623	78,637	74,512	77,417
Discipline	140,704	128,632	143,307	149,293
Interest	40,463	34,637	27,161	19,845
Total Expenses	5,357,102	5,764,742	5,911,498	6,588,404
Revenue Over Expenses	(120,239)	316,383	268,297	(359,377)
FUND BALANCE (beginning)	(43,796)	(164,035)	152,348	420,645
FUND BALANCE (ending)	(164,035)	152,348	420,645	61,268

1991 Revenues



1991 Expenses



Revenues and Expenses 1988-1991

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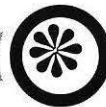
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Practicing Law: Just One !#*%&@ Thing After Another?

by Lindsay T. Thompson

Discontent with law practice grows apace. Long after this feature was set up for the *Bar News*, in came a letter to the editor from Michael Aronoff (Letters, page 8), pointing out the results of a *California Lawyer* fax poll that shows, if nothing else, there are a lot of really unhappy lawyers with fax machines down there. The *Bar News* has considered the topic from a number of angles over the years, from the results of survey studies by Lawyers' Assistance Program director Dr. G. Andrew Benjamin and others to the work of Seattle lawyer-author-counselor Deborah Arron, guiding lawyers to the

decisions they need to make to resolve questions of career angst. This month, another set of perspectives is considered.

Seattle lawyer Gene Brandzel ("Improving Collegial Relationships—A Proposal," p. 20), suggests the increase of objectionable manners and tactics—a tactful moniker for plain, garden variety rudeness—might be moderated if lawyers signed on to a set of commitments for dealing with opposing counsel. Tacoma lawyers Bill Bergsten and Elizabeth Pauli ("Rule 11 and Professionalism," p. 23) wonder if Civil Rule 11, designed to punish such behavior, doesn't in fact make it worse by creating lawsuits within lawyers and

the courts. Poulsbo lawyer Jeff Tolman, a frequent contributor to the *Bar News*, returns with his "Chronology of a Lawsuit": a real-life, maybe half-satirical look at life with clients and the courts (p. 27).

For a bit of perspective, another *Bar News* regular, Washington State University professor Charles Sheldon provides a glimpse of "the good old days" in "Frontier Lawyering: The Practice of Law in Territorial Days" (p. 39). And fans of *Bar News* founder John Rupp will look forward to his account of "Sam's Song" (p. 43)—the account of a lawsuit in which, he says, "everybody won."

1991 SUPPLEMENT

WASHINGTON ADMINISTRATIVE CODE

The 1991 Supplement to the WAC incorporates all changes in state agency rules filed in that year and is now available from the state Code Reviser. The 1991 Supplement consists of 3,000 pages in 3 volumes of the same format as the 1990 edition of the WAC.

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The Supplement contains about 8,000 sections filed by 176 rule-making state agencies. Half of these sections are new to this publication, and have not previously been available in codified form.

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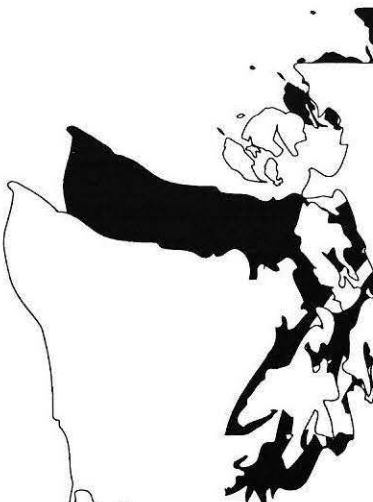
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Improving Collegial Relationships

by Gene B. Brandzel

Frequent griping about opposing counsel's manners and tactics has been recently heard in professional and nonprofessional conversation and press. Many colleagues have complained about the deteriorating state of lawyer-to-lawyer relationships, at least in a big city practice. Some of us have grown tired of simply listening to the complaints and decided to meet and discuss a proposal for at least starting to improve the collegial climate. With the encouragement and participation of many members of the William O. Douglas Inns of Court, a small group with a wide perspective took on the task.* We examined the codes of professional responsibility and proposed codes of professional relationships drafted by bar associations throughout the United States, including Seattle-King County. We concluded that there was room to supplement these codes. It

was decided that what we needed was grass roots commitment coming from lawyers themselves rather than coming from a formal organization's efforts to impose rules upon its membership.

In reminiscing about how instances of lawyers' bad manners and improper tactics had been dealt with in the past, we realized that when the Bar in the Seattle area was small enough, unremedied complaints were dealt with by contacting a colleague of the alleged offending lawyer. Often, a phone call to a partner or colleague of opposing counsel sufficed to keep the errant or potentially errant lawyer on the right track. No formal proceedings or even harsh words were necessary. As the Bar has grown so dramatically a willingness and ability to follow this practice and keep straying lawyers within reasonable bounds has effectively been eliminated. It was thought that if we were able to reinstitute this practice and couple it with a simply stated expected code of conduct, we might make at least a small

step toward beginning to improve collegial interaction.

Skeptics may criticize the proposal as not effectively dealing with habitual offenders. We concluded, however, that a system of voluntary commitments could never be expected to reach these people. Only disciplinary rules will work. It was also thought that the vast majority of lawyers practicing in the state of Washington wished that their day-to-day relationships with opposing counsel be as fair and open as is commensurate with protecting their client's rights.

Many other arguments were presented to justify the proposal. It has been said that we must start somewhere and that we must give a clear signal to young lawyers joining the Bar that the vast majority of lawyers in the state are committed to a practice of "fair dealing" between legal brethren and sistren.

We have now taken our best shot at dealing with this issue. The following is a proposed series of commitments which each lawyer in the state of Washington could be asked to consider signing on a voluntary basis each year. Before this request is made, however, we ask for your input. Have we covered your major concerns? Are the commitments consistent with reasonable expectations? Will you sign them?

It is also hoped that consideration will be given to indicating through a Bar publication the names of lawyers who have and have not subscribed each year. A regular renewal of the commitment will be an annual reminder of one's collegial responsibilities. What do you think?

**The drafting committee was composed of Gene B. Brandzel, Frank H. Retman, Jane I. Fantel, Mark Honeywell, Professor Robert Aronson, Richard Hansen, William Bailey and Robert Roche.*

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—A Proposal

COMMITMENTS FOR DEALING WITH OPPOSING COUNSEL

State of Washington

1991

PREAMBLE: In fulfilling my responsibility as a lawyer to foster a fair, effective, efficient and just legal system, and because I wish to encourage a high standard of professionalism among lawyers, I will adhere to the following Commitments in my professional dealing with other lawyers. I understand that the Examples following the Commitments are not intended to be all-inclusive or to limit the generality of a Commitment.

Commitment

I WILL TREAT OPPOSING COUNSEL WITH COURTESY AND FAIRNESS, AND WILL BE CONSIDERATE OF THEIR TIME.

Examples:

I will not engage in discourteous behavior or behavior intended to embarrass opposing counsel.

I will not, in any communication, ascribe to opposing counsel a position he or she has not taken or create a "record" of events that have not occurred.

I will not use any form of discovery, the scheduling of discovery, the timing or manner of service or any other procedural device as a means of harassing opposing counsel or impeding the timely, efficient and cost-effective resolution of a dispute.

I will not respond to requests for discovery or other information in a way that is intended to obscure the requested information.

I will attempt to schedule meetings, hearings and discovery at a mutually agreeable time.

I will grant opposing counsel's reasonable requests for extensions of time or continuance without requiring motions or other formalities.

I will clearly identify for other counsel or parties all changes that I have made in documents submitted to me for review.

I will honor reasonable requests made by opposing counsel during trial which do not prejudice my client's rights or sacrifice tactical advantage.

I will not engage in conduct during a deposition that would not be allowed in the presence of a judicial officer, such as coaching the deponent, making self-serving speeches, making improper objections, or directing the deponent to refuse to answer unless the question seeks privileged information or is manifestly irrelevant.

I will object to discovery only when I have a good faith belief in the merit of the objection and not solely for the purpose of withholding relevant information.

Commitment

I WILL ENDEAVOR TO HONOR MY COMMITMENTS TO OPPOSING COUNSEL.

Commitment

I WILL SEEK AGREEMENT OF OPPOSING COUNSEL IN ALL MATTERS OF POTENTIAL CONTROVERSY BEFORE TAKING FORMAL ACTION UNLESS MY CLIENT'S LEGITIMATE INTERESTS WOULD BE PREJUDICED BY DOING SO.

Examples:

I will at an appropriate time explore meaningful settlement discussions with opposing counsel in every case except when my client instructs me otherwise or where strong and overriding issues of principle exist.

I will, upon proper request, stipulate to facts/matters in civil cases where no genuine issue exists.

I will engage in meaningful discussions with opposing counsel to attempt to resolve issues before filing or resisting a motion, other than a dispositive one.

Commitment

I WILL NOT SPEND INORDINATE TIME ON MINOR OR INSIGNIFICANT ITEMS IN DEALING WITH OPPOSING COUNSEL.

Commitment

I ASK OPPOSING COUNSEL TO DISCUSS WITH ME ANY FAILURE TO HONOR THESE COMMITMENTS. IF WE CANNOT RESOLVE OUR DIFFERENCES, I UNDERSTAND OPPOSING COUNSEL MAY CHOOSE TO DISCUSS THE ISSUE WITH AN APPROPRIATE COLLEAGUE OF MINE.

Date: _____, 19____.

Signature

Name

Telephone Number

Address



Five Years Ago: Washington State Bar News:

May 1987: In "The Board's Work," *Bar News* editor Carole Grayson reported that the Board of Governors, meeting in Spokane, heard a report from David Boerner of Tacoma, chair of the Rules of Professional Conduct Committee, presenting the committee's recommendations on lawyer advertising. "Boerner's committee recommended retaining standards for discipline and creating a second committee—'purely advisory without the force of law,' in Boerner's

words—to advise lawyers on guidelines. "If the Bar is going to tell us what not to do," said SKCBA trustee Fred Butterworth, "then it had better be prepared to tell me what to do. To set up a committee with a disclaimer is to do a disservice to lawyers....The Bar seems more interested in disclaiming than in providing information."

Governor [Ed] Shea termed the ban on lawyer solicitation one-sided. "No one regulates the insurance company or

airline company. How come no one talks about how the innocent victim is taken advantage of by them?"

False and misleading ads are subject to the Consumer Protection Act, opined Young Lawyer chair [Tom] Fitzpatrick. President [William] Gates wondered, "Why isn't the Bar bringing actions against lawyers with misleading advertisements?" Responded Governor [Julie] Weston, "Because the Bar would lose."

Ten Years Ago: Washington State Bar News:

May 1982: Deane W. Parker of Seattle wrote the editor that he had no quarrel with holding the WSBA convention in Vancouver, B.C., since it was apparently necessary due to the number of likely participants outstripping facilities at in-state venues. "However," he continued, "I do find

completely unprofessional and unnecessary all of the hoopla and hype which in recent years has grown all out of proportion to the dignity of earlier years associated with our yearly gatherings.

"The convention has become a sideshow, what with theatrical type

speakers, hired at no mean expense to the members, footraces, tennis and golf events, all of which detract from the principal business of the convention, which should be education and the conduct of the affairs of the Association.

What's next," Parker wondered, "strippers?"

Fifteen Years Ago: Washington State Bar News

May 1977: "King County Report" author James L. Varnell, Dean of *Bar*

News "Around the State" reporters, was doing his apprenticeship writing the

"South King County Report." Already, The Style was apparent: "Justice James M. Dolliver of the Supreme Court, attending his fourth meeting of the South King County Bar Association within the past year, was the guest speaker at the April meeting. Justice Dolliver enlightened the dinner gathering regarding his experiences in the executive, legislative and judicial branches of government. Having savored the experience of a recent electoral victory, Justice Dolliver, not surprisingly, indicated his belief that all members of the judiciary should be subject to election by the public."

Two hundred thirty-eight people passed the February 1977 bar exam, 68 percent of the 350 who took it. Turnout was the largest in history for a midyear exam.

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CR Showdown in the Works?

Big changes seem in the works for CR 11, at both the federal and state levels. Trouble is, change seems to be pulling the rule in diametrically opposing directions, challenging Washington's long-standing practice of closely following the text and interpretation of federal rules of practice.

At their March 27-28 meeting, the WSBA Board of Governors approved the text of a letter opposing proposed changes to CR 11 in the federal rules from president Joe Delay to the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States.

The proposed revisions would allow courts to sanction an attorney not just for filing groundless motions or other documents, but for refusing to amend or withdraw them once their lack of legal or factual merit becomes apparent. Second, before such sanctions could be imposed, a "safe harbor" provision would require the aggrieved party to give the offending party written notice of the apparent violation, after which the offender would still have to refuse to amend or withdraw the documents in question.

Next, the amendments would allow sanctions to be imposed not just on the signing lawyer or his client, but on the lawyer's firm, other lawyers in it, or co-counsel. A successful Rule 11 litigant would be allowed to recover reasonable attorney fees and costs. Sanctions could also be levied in nonmonetary terms, and claims or defenses based on arguments for a change in the law or the determination of new law would have to be identified and argued as such, as would arguments not grounded in known facts but thought to be provable through discovery.

The advisory committee considering the proposed federal rule changes met April 13-15 to review them in light of written comment and testimony taken

Rule 11 and Professionalism

by William P. Bergsten
and Elizabeth A. Pauli

The application of Rule 11 has recently become one of the hottest topics in the legal profession. In addition to numerous decisions within the state, there are literally hundreds of cases in the Federal system, including U.S. Supreme Court cases specifically addressing the issue of Rule 11 applications.

Washington Superior Court Civil Rule 11 states as follows:

RULE 11. Signing of Pleadings, Motions and Legal Memoranda Sanctions

"Every pleading, motion, and legal memorandum of a party represented by an attorney shall be dated and signed by at least one attorney of record in the attorney's individual name, whose address and Washington State Bar Association membership number shall be stated. A party who is not represented by an attorney shall sign and date the party's pleading, motion, or legal memorandum and state the party's address. Petitions for dissolution of marriage, separation, declarations concerning the validity of marriage, custody, and modification of decrees issued as a result of any of the foregoing petitions shall be verified. Other pleadings need not,

over the last year. If approved, the changes will go to the Judicial Conference, then to the U.S. Supreme Court, then to Congress. The earliest potential implementation date is December 1, 1993.

Meanwhile, at the state level, WSBA Court Rules and Procedures Committee chair Duane Lansverk of Vancouver told the WSBA Board of Governors his committee had voted 13-4 to recommend amendment of CR 11—the state version—back to its pre-1985 text. In 1985, the last sentence of the current rule was added, reflecting the addition of provision for sanctions in the federal rule two years earlier.

"We found it is not working as intended, is applied inconsistently, is increasing satellite litigation, is perceived to be the cause of increased incivility between lawyers and is often most aggressively employed by the kind of lawyers against whom it was intended to be applied," Lansverk said in a March 27 appearance before the board.

Relying on a law review article (Cochran, "Rule 11: The Road to Amendment," 61 Mississippi Law Journal 5 (1991)) as well as experience in Washington courts, the committee noted in its recommendations that the source of most CR-11-related problems is not frivolous filings but abusive litigation practices which can be addressed by courts under other rules and statutes. Many documents giving rise to problems in litigation are not, in fact, "pleadings, motions or legal memoranda" subject to CR 11, anyway. Those, the committee said, can be addressed under sanctions and pretrial conference and order procedures set out in CR 16 and 37. To the extent a matter is, in fact, frivolous, RCW 4.84.185 allows litigants defending against a frivolous claim to be awarded reasonable expenses, including attorney fees.

The WSBA Board of Governors will consider the recommendation to repeal the last sentence of CR 11 at their May meeting in Spokane. They invite comments from members on the proposal.

but may be, verified or accompanied by affidavit. The signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion, or legal memorandum; that to the best of the party's or attorney's knowledge, information, and belief, formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or legal memorandum is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or legal memorandum is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented

party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee."

The increased number of decisions and corresponding increased interest level in Rule 11 and its application comes about as a consequence of amendments which became effective under the Federal Rules of Civil Procedure in 1983 and under the State of Washington Rules of Civil Procedure on September 1, 1985. The purposes expressed by the drafters for the amendments under both judicial systems can be summarized as follows: 1) discourage groundless litigation, 2) impose on counsel a duty of reasonable inquiry of both the facts and law, 3) control needless increase in the cost of litigation, 4) eliminate harassment filings, 5) reduce unnecessary delay, and 6) mandate sanctions. A surface analysis of the rule reasonably supports the conclusion that Rule 11 as amended

would and should improve the administration of justice and the level of "professionalism" of all attorneys.

While there are numerous aspects and definitions applicable to the term "professionalism," it is generally agreed that civility in the manner in which one treats his or her adversary is an essential aspect of "professionalism." The increasing lack of civility between counsel was explicitly addressed in the Report by the Washington State Bar Association Task Force on Professionalism as one of the contributing factors to the decline in lawyer professionalism. In dealing with the acknowledged problem of declining civility within the profession, several local bar associations, including Seattle-King County, Spokane County, and Pierce County bars, have adopted codes of conduct as guidelines to encourage a more civil environment among adversaries.

There has been considerable discussion and speculation as to the cause of the lack of civility, including use of abusive tactics within the profession. It has been suggested that severe economic pressures, self- or firm-imposed pressures to obtain positive results, and even the television program L.A. Law have contributed to the problem. Could it be that Rule 11 is also a factor?

A look at the current applications of Rule 11 may provide some insight to that question. In the more populous areas of the state it appears to be a common practice for counsel to automatically assert a Rule 11 allegation prior to or immediately upon receiving a complaint or in responsive pleadings. This application of Rule 11 as a negotiating lever, or in an apparent attempt to intimidate opposing counsel, results in counsel being forced to confront what amounts to a personal attack on his or her competence or integrity as a lawyer in the early stages of litigation. This focus has led to numerous cases where opposing counsel counters such an attack by asserting that the Rule 11 allegation was frivolous, done for harassment purposes, and therefore that its use was itself a Rule 11 violation. In view of this, and other scenarios involving the use of Rule 11, is it realistic to expect that opposing

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counsel will treat each other with mutual respect and civility?

When a Rule 11 allegation is asserted, in addition to the inherent animosity, there is thrust into the case a new substantive issue which, in most cases, is totally unrelated to the client's interest. When counsel is forced to deal with an issue which may have personal financial ramifications, it is not difficult to imagine that civility and the issues of interest of the client are at risk of being placed on the back burner. In other words, counsel now begin to represent themselves in avoiding sanctions.

These applications and ramifications of Rule 11 are taking place against a backdrop of developing substantive law both locally and nationally, wherein Rule 11 sanctions are becoming widespread. The Ninth Circuit has held that sanctions can be applied to a party whenever a claim in a pleading is frivolous, even if the pleading when taken as a whole is not frivolous. *Townsend v. Holman Consulting Corp.* 914 F.2d 1349 (9th Cir. 1990). The application of Rule 11 has been extended to the appellate courts both in the Ninth Circuit and the state courts of Washington. See *Partington v. Gedan*, 914 F.2d 1349 (9th Cir 1990); *Layne v. Hyde* 54 Wash. App. 125, 773 P.2d 83 (1989). The Supreme Court has also recently expanded application of the Rule to parties who sign pleadings (including affidavits) even though the party is represented by counsel, see *Business Guides, Inc. v. Chromatic Communications*, 279 U.S. 112 L.Ed 2d 1140 (1991).

Generally, a complaint is subject to Rule 11 sanctions if three conditions exist; namely, if it is 1) not well grounded in fact, 2) not warranted by existing law, and 3) the signing attorney failed to conduct reasonable inquiry into the factual or legal basis of the complaint. In *Pavelic and LeFlore v. Marvel Group* 493 US, 107 L.Ed.2d 438 (1989), the U.S. Supreme Court held that the duty of a signing attorney is a non-delegable responsibility. Therefore, the responsibility is personal and cannot be left to a subordinate or partner to evaluate. The impact of this holding is substantial, especially on local counsel in federal cases. Local counsel can no longer routinely sign

pleadings when they did not participate in the pre-complaint investigation or the drafting of the pleadings. All signing attorneys must satisfy themselves that the pleadings are not frivolous! See also, *Cooter and Gell v. Hatmarx Corp.* 496 US, 110 L.Ed.2d 359 (1990); *Business Guides, Inc.*; *supra*.

Given the legitimate concern that the present use of Rule 11 exacerbates the problems of lack of civility and professionalism within the profession, is it appropriate to amend Rule 11? Do the positive aspects of Rule 11 overshadow the problems with its present and expanding application? Is it possible to amend Rule 11 to eliminate some of the apparent misapplications and abuses? The results of a national poll regarding Rule 11 published in the June 1991 edition of *The Litigation News* reveal that only twenty-two percent (22 percent) of the responding attorneys support the retention of Rule 11 in its present form, twenty-five percent (25 percent) believe Rule 11 should be repealed, forty-eight percent (48 percent) believe Rule 11 should be

amended and five percent (5 percent) expressed no opinion.

While Rule 11 imposes appropriate responsibilities upon the legal community, its current applications have caused a deterioration of professionalism and probably have had an effect on the rising costs of litigation. Amendment of the Rule must be seriously considered by the bar.

William P. Bergsten is a partner/ shareholder in McGavic Graves, a Tacoma professional service corporation. Admitted in state and federal courts, he is a graduate of Washington State University (B.A. 1962) and the University of Oregon School of Law (J.D. 1967). He served on the WSBA Board of Governors from 1987 to 1990 and as the Association's treasurer in 1989-1990.

Elizabeth A. Pauli holds honors undergraduate and law degrees from the University of Wisconsin (B.S. 1981, J.D. 1987) and is an associate in McGavick Graves.

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Sharing the Full Cycle

One of the most important events of my life was sharing my mother's dying last year. She died of cancer after a long battle, and she allowed the family to learn from her, not only about death and grieving, but about living to the fullest in the face of the end.

It was lucky for me that her death did not happen before I got sober and learned a new way to live. Six years ago, I would not have allowed myself to cry. I would have been in control, and my mother and our family would have looked to me to be strong and make all of the decisions.

In the months after I knew they could no longer treat the cancer with surgery and when the chemotherapy had been stopped, there were times when my pain seemed unbearable and when I needed someone to talk to. Six years ago I would not have talked to anyone; that would have been a sign of weakness, and I was afraid that if I became vulnerable it would somehow be used against me.

Because of my recovery program and the friends I have made in Alcoholics

Anonymous, this is not a problem today. I spent time with people who understood how I felt. I was able to talk about it at closed AA meetings where several recovering alcoholics shared their experiences, strength and hope. From that sharing I gained the strength that allowed me to find the time and words to tell my mother those things that I needed to say. It was the strength of my friends that made it okay to cry with her rather than remaining stoic. It was the strength I have gained from my program that allowed me to listen to my family and not insist on being the one to make all of the decisions. It was even okay when my suggestions were not followed.

I had the opportunity and the ability to say everything to my mother that needed to be said: how much I loved her and how much I appreciated her as my mother and as one of my best friends. My sisters and I wrote a letter to her saying how much she meant to each of us and recalling some of our special thoughts. We read this letter at her funeral; but more important than that, we got to read it to Mom while she

lived. We got to hold her, turn her and bathe her when she was no longer able to do those things for herself. We were even able to discuss her funeral plans with her as a family. We also joined hands with her on her last day with us and recited the Lord's Prayer together. She did not die alone. We were all with her, and we shared in the experience. What a gift she gave us!

Today it seems terribly important to discuss dying with those we love before it is too late. Most who face death want to talk about it, not to avoid it. Because I am sober, and because I no longer have to appear strong, I have learned about a whole new kind of strength—that which comes from turning life and death over to God and concentrating on what I can do to share it all with my loved ones.

My children have a whole new outlook on death from sharing this experience. My children were with me when my mom died. All ten of her grandchildren discussed her impending death and what it meant to them and all saw their parents cry, hug, laugh, console each other and say goodbye. I did not get this as a child. We were protected from death, funerals and grief.

Death is no longer as horrible as it once seemed. Grief is an important process that should not be avoided. Today I can cry more easily than before. I can grieve in front of others. Because I do not have to appear strong, I am far stronger than I ever thought I was. Getting sober by itself did not result in my new way of acting. It did not take away my urge to be strong, to control, to be stoic—it merely made it possible to change. Getting involved in an ongoing recovery program is what helped me to change.

The moment of birth is a special time. We celebrate it and recelebrate it each year during life. I think the moment of death is just as important. Someone going on that journey should not do so alone. I am glad that I got to share it with my mother. I hope to give my children the same opportunity to learn about dying, caring and loving. It can be a beautiful experience.

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Chronology of a Lawsuit

by Jeff Tolman

Day 1: A new client enters the office. She is clearly burdened. In the interview she presents an interesting legal problem which, based on the facts she has given you, is a clear winner. She says she understands that you are an extraordinary lawyer and that this litigation will not be free. From your standpoint this is the "hook 'em" stage. Unfortunately, egos sometimes blur who is being hooked. You are exuberant with your new client.

Day 5: After a modest amount of legal research assures that you will win the lawsuit based on the facts your client conveyed to you, you file a Summons and Complaint. The Complaint states facts that make your client look kinder and more honorable than Mother Theresa. It alleges that not only did the defendant take your client's

money but that he also is, or at least may be, responsible for most famine, pestilence, international mistrust and the planet's environmental condition. This is called "notice pleading."

Day 20: You receive a notice of appearance from a wily, veteran lawyer. You are unconcerned. Even good lawyers can't change the facts.

Day 35: Still no answer. You call the other lawyer's office. He is on vacation. To show your client that you are aggressively pursuing her matter, you file a Motion for Default, knowing your opponent will answer before the hearing date.

Day 38: Having received copies of your Motion, your client calls. She really shouldn't pay for this document, should she? After all, it is based on something the defendant didn't do, not anything she did. You wonder why you only required a \$500 retainer. For the first time you cut your time billed.

You are concerned that her "I don't care what this costs; it is the principle of the thing" speech may no longer be completely accurate.

Day 46: You receive the Defendant's Answer and Counter-claims. It mirrors Racehorse Haynes' famous answer in a dogbite case:

1. I don't own a dog;
2. If I own a dog it didn't bite your child;
3. If I own a dog and it bit your child it was your child's fault;
4. If I own a dog and it bit your child and it wasn't your child's fault she wasn't injured.

The 47 counter-claims seem contrary to your client's version of the facts. They allege that, not only did she steal the defendant's money, but she is, or may be, the cause of the Original Sin and every bad thing thereafter. You are slightly concerned and write your client to come in and go over the allegations

CR11: The Story in the Courts

"Signing a lawsuit is no trifling thing," Court of Appeals Division (Division II) Chief Judge Stanley Worswick wrote in *Cascade Brigade v. Economic Development Board*, 61 Wn. App. 615, 517, 811 P. 2d 697 (1991). "By the simple act of signing a pleading, an attorney sets in motion a chain of events that surely will hurt someone. Because of CR11, that someone may be the attorney."

Updated from a 1990 WSBA Convention presentation by Judge Philip J. Thompson, Court of Appeals, Division III, here's a rundown of Washington appellate and U.S. Supreme Court decisions on CR 11 sanctions:

U.S. Supreme Court

Pavelic & LeFlore v. Marvel Entertainment Group, -U.S.-, 107 L.Ed.2d 438, 110 S.Ct.456 (1989).

Cooter & Gell v. Hartmarx Corp., -U.S.-, 110 L.Ed.2d 359, 110 S.Ct. 2447 (1990).

Business Guides, Inc., v. Chromatic Communications Enterprises, Inc., -U.S.-, 112 L.Ed.2d 1140, 111 S.Ct. 922 (1991).

Willy v. Coastal Corporation, Case No. 90-1150 (March 3, 1992).

Washington Cases

Wilson v. Henkle, 45 Wn.App. 162, 724 P.2d 1069 (1986).

Miller v. Badgley, 51 Wn. App. 285, 753 P.2d 530, *rev. den.* 111 Wn.2d 1007 (1988).

Rhinehart v. Seattle Times Co., 51 Wn.App. 561, 754 P.2d 1243, *rev. den.* 111 Wn. 2d 1025 (1988), *cert. den.*, 490 U.S. 1015, 104 L.Ed.2d 174, 109 S.Ct. 1736 (1989).

Galladora v. Richter, 52 Wn.App.778, 764 P.2d 647 (1988).

Pearson v. Schubach, 52 Wn.App. 716, 763 P.2d 834 (1988), *rev. den.* 112 Wn.2d 1008 (1989).

Layne V. Hyde, 54 Wn.App. 125, 773 P.2d 83, *rev. den.* 113 Wn.2d 1016 (1989).

Clipse v. State, 61 Wn.App. 94, 808 P.2d 777 (1991).

Cooper v. Viking Ventures, 53 Wn.App. 739, 770 P.2d 659 (1989).

Clarke v. Equinox Holdings, Ltd., 56 Wn.App. 125, 783 P.2d 82, *rev. den.* 113 Wn.2d 1001 (1989).

Moorman v. Walker, 54 Wn.App. 461, 773 P.2d 887. *rev. den.* 113 Wn.2d 1012 (1989).

In re Guardianship of Lasky, 54 Wn.App. 841, 776 P.2d 695 (1989).

Doe v. Sno-Isle Community Blood Bank, 55 Wn.App. 106, 780 P.2d 853 (1989).

Peoples State Bank v. Hickey, 55 Wn.App. 367,777 P.2d 1056, *rev. den.* 113 Wn.2d 1029 (1989).

Bryant v. Joseph Tree, Inc., 57 Wn.App. 107, 791 P.2d 537, *rev. granted*, 115 Wn.2d 1027 (1990).

Bliss v. Newport, 58 Wn.App. 238, 792 P.2d 184 (1990).

Rhinehart v. Seattle Times Co., 59 Wn.App. 332, 798 P.2d 1155 (1990).

Nichols v. Hanson, 59 Wn.App. 520, 798 P.2d 1184 (1990).

Clipse v. State, 61 Wn.App. 94 SOS P.2d 777 (1991).

Cascade Brigade v. Economic Development Board, 61 Wn.,App. 615, 811 P.2d 697 (1991).

in the Answer.

Day 61: After several contacts from you the client comes in to respond to the counter claims. Her memory recalls a couple of the indiscretions alleged. You are distraught. Another client has failed to tell you the truth, the whole truth and nothing but the truth. You consider putting your clients under oath hereafter.

You file a general denial and ask for

CR 11 sanctions against the other party, thankful they didn't do the same in their Answer and Counter-claims.

Day 70: You send your usual set of Interrogatories. They ask for some relevant information but mostly for "evidence that may lead to relevant evidence." Somehow, who the defendant's best friend in elementary school was seems important. You smile. You have sent your Inter-

rogatories off first. The defendant will learn that litigation can be hell. Maybe they will try to settle.

Day 73: You receive the Defense Interrogatories. They ask for irrelevant jibberish. The defense is fishing. You feel good until you realize that they have simply sent your Interrogatories back to you. You forward the Interrogatories to your client with a letter explaining that they should be answered within a couple of weeks.

Day 173: A season and a half have passed since any real action has taken place on the file. You do not compel your opponent to answer your Interrogatories because your client is ignoring you. After discovering that you've been paid nothing since the original retainer, you note up the Motion for Trial Setting (to show your client you are still aggressively pursuing her matter) and write your client again to come see you.

Day 179: Your client comes in with her father, mother, a brother, two uncles and a friend who just completed reading *The Readers Digest Guide to Law*. They have 583 questions for you, most of which are stupid and irrelevant. Your client says nothing. She does not bring her Interrogatory answers. She finally tells you she lost the Interrogatories. Could she get another copy?

Day 190: No payment. No interrogatory answers. You consider withdrawing from the case. Your ego tells you this is improper. After all, what will the court think? You filed the Complaint, shouldn't you follow it through? You are depressed.

Day 195: Surprisingly, you receive your opponent's interrogatory answers. Skimming through the defendant's vague answers, you notice that he has a criminal conviction. This is good. It will show the court he is incredible and will embarrass him. Maybe they will try and settle. You are happy.

Day 200: You receive your trial date. It is so far in the future that it probably violates The Rule Against Perpetuities. You are happy. Maybe you'll be dead, and some other lawyer will try this case. Even better, you think of hiring an associate and giving this case to her.

Day 210: To your amazement, your client brings in her answers to the

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John J. Caldbick
Attorney at Law
(For the plaintiff)

"The mediator did an exceptional job of helping both parties reach a settlement. He got right to the heart of the matter and quickly brought the parties together for a settlement."

Elizabeth Christianson
Attorney at Law
(For the defendant)

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Interrogatories. As expected, her answers are vague, with one exception:

153. Please list your felony convictions in alphabetical order.

This was an interrogatory that you believed was irrelevant. Your client's answer is thicker than the Toys R Us Christmas catalogue. You are depressed. Hiring an associate looks better all the time. You discuss this answer with your client. She did not think it was important, so didn't tell you. The good news is that she knows the superior court judges better than you do. The bad news is that she knows the superior court judges better than you do.

Day 240: Your opponent sets your client's deposition. In response you set his client's. You flip a coin to see who deposes first. You win and choose to go second. The other lawyer can set the tone of the depositions—mean or civilized.

Day 241: You write your client to come see you about her deposition and to bring a payment with her.

Day 243: Your client's mother and father drop in to see you. For two hours and 45 minutes they dissect your handling of the case. Three paying clients who had appointments leave with their files to find new lawyers. Mom and Dad end the diatribe by saying they will not pay for the consultation because nothing was achieved. A familiar sense resurfaces—regret for taking the case. You now hope depositions will give someone grounds for Summary Judgment. You don't care who. You believe in euthanasia.

Day 252: Your client shows up at the deposition without money but looking very at ease. Your feelings are mixed. When you ask her about why she didn't come see you to discuss the deposition process you learn that she has been through more depositions than you. She wonders if you have any questions about the process.

You feel like Sybil. On one hand you are glad your client feels comfortable. On the other hand it strikes you as odd that you are more stressed than she is. A sneak attack of diarrhea sends you running from the room just as your client starts testifying.

When you return to the room the deposition begins. Your client looks calm. The attorney asks her to state her

name. It has been asked before in your depositions without incident. You are calm. When she answers "Which one?" you begin to get nervous and again flee to the restroom. When you return to the deposition your client is still running through aliases she has used. She is calm. You would sell your soul for a Pepto-Bismol.

The deposition continues. After awhile your nervousness turns to anger.

Your client has lied to you. Your anger soon turns to amazement. How has this person stayed out of prison so long? She must be quite clever. Your amazement turns to sadness. After years of practice, why couldn't you see that this client had told you nothing that remotely reflects the truth? Your sadness turns to concern. You realize that with the deposition costs you have out-of-pocket expenses greater than the

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retainer you charged, and the attorney is still questioning your client about her elementary-school years. Your concern turns to resignation.

After hours of shooting herself in the foot, your client's deposition ends. You decide to do a five-minute deposition of your opponent. If nothing else it may give your opponent a basis for Summary Judgment. CR 11 sanctions would be better than this agony. The

defendant is sworn in.

After saying his name you ask him if he took your client's money. On your notepad you have already written "denies taking the money." Your opposing counsel looks calm. Your client looks quite at ease. You would rather be at the proctologist than the deposition. Then something unexpected happens. The defendant answers, "yes."

The opposing counsel asks for a

recess and runs to the restroom. When he returns and discovers that you have no Pepto-Bismol, the deposition continues. The defendant admits almost everything that you have alleged. You are happy. Your stomach is still weak.

After the deposition, you and opposing counsel decide to go have a beer and unwind. To your amazement, he is going through the same thing with his client. You agree that you two will end up financing this litigation and never be paid. A settlement is struck if your clients will accept it.

Day 255: You talk to your client about settlement. Both parties should drop their lawsuits. No costs or attorney's fees will be awarded. Your client agrees on the condition that she doesn't have to pay you anything more. You agree. Being poor is better than being miserable. Your client says that she thinks you are a good lawyer and will refer all of her friends to you. You cringe and say thanks.

Day 285: The settlement documents are drafted, filed and entered. The matter is done. Though you are unpaid for hundreds of hours of work, you are happy. Your secretary is not. It is payday and she would prefer a check. You are, to your surprise, both poor and miserable.

A new client enters the office.

Day 1: He is clearly burdened. In the interview he presents an interesting legal problem which, based on the facts he has given you, is a sure winner. After your last experience, you are somewhat cynical. After all, you have been through college and law school. As a trial lawyer you live by your instincts. You simply will not make the same mistake again—ever! The client has \$500 and says that he understands you to be an extraordinary lawyer. Your ego and urge to pay staff become involved. How could someone who can so quickly evaluate lawyers not be honest? You tell him you will be happy to represent him. You are exuberant with your new client and, as always, begin doing some modest legal research.

Poulsbo attorney Jeff Tolman is a past member of the WSBA Board of Governors and a frequent contributor to the Bar News.

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by Lindsay Thompson

Portland, Oregon, March 27-28, 1992

Present: The president and the governors, save governors Nappi and Chambers, absent on other business. Governor Alva Long was absent part of Friday due to illness. President-elect Steve DeForest was present Saturday. **Also present:** Judge Milton Cox (Superior Court Judges' Assn.); Mary Gallagher Dilley (Administrative Law Judges' Assn.); Frank Edmondson (Government Lawyers' Assn.); Sheryl Garland (Washington Women Lawyers); Dennis P. Harwick (WSBA executive director); Grant Johnson (WYLD); Bill Phillips (WDTLA); Judge Daniel Phillips (District & Municipal Court Judges' Assn.); Mark Shepherd (SKCBA/YLD); Scott Smith (SKCBA Trustees); Lindsay Thompson (*Bar News* editor); Robert Welden (WSBA general counsel); and Curt Wyrick (WAPA).

Rather like the way London hotel rooms were declared territory of occupied European nations in World War II so their royals could be born in the homeland, this meeting was officially billed as a visit to Vancouver, Washington, but in fact was held at Jantzen Beach on the Oregon side of the Columbia River (everyone had dinner in Vancouver, though—twice). The president called the diminished board to order Friday morning; governors Nappi and Chambers were absent on business, and midmorning governor Alva Long declared a strategic retreat from the flu and retired to his room.

Alva Went Where? The president said he'd attended functions with the Whatcom, Spokane, and Snohomish County bar associations, the Washington Courts 2000 Commission, and the Western States Bar Conference, an annual gathering of bar leaders. This year governors Tubbs, Long and Chambers, and executive director Dennis Harwick attended the event, held on Maui in Hawaii. As part of the national campaign to root out perks at all levels, the gobs and pres paid their own way. As always, the event was reported to be very useful by those who attended. Several people noted they had discussed the question of unionization of bar staff with the former president of the California State Bar, whose staff is presently the only unionized bar staff in the country. His view? It's hell on wheels: strike threats by disciplinary counsel lawyers, problems with staff, and the like. The president noted that his informal polls of county bar associations continue to find general opposition to unionization. Monte Hester said the topic had started out as a report but was turning into "persuasive comments" without notice to those who might not agree. He suggested the matter not be discussed before the scheduled agenda item in May, and it wasn't.

Haul Out the Dunk Tank, Mavis, That Guy From Seattle's Coming to Talk About Our Dues: executive director Dennis Harwick said he went to the

Thurston County Bar's meeting to talk with them about WSBA finances. He said he's willing to "talk to anyone who'll have me" about what's going on at the Bar office.

Maui Wowie Update: Harwick told the board he'd seen the sales manager of the hotel the now-cancelled 1995 WSBA convention was booked into while he was in Hawaii, and he managed to slip the noose of WSBA's contract without penalty.

Meanwhile, At the '92 Convention: Harwick said speakers for this year's WSBA convention, in Vancouver, B.C., will include Texas judge-turned-CNN-newsreader Catherine Crier and James Stewart ("Not Harvey's friend," said Harwick, but rather the author of *Den of Thieves*). Both are reputed to be engaging speakers and unlikely to be contenders for the Most Boring Speaker Ever Trophy held since 1989 by newsman Marvin Kalb. ("Mrs. Kalb had two sons," former Governor Jeff Tolman quipped after he woke up from that luncheon, "and we picked the wrong one.")

Obligatory Section Continuing the Theme of This Issue: WSBA law-related education director Jo Rosner gave the board an overview of the work of her office, part of the Bar's Department of Public Affairs. The program is pretty fully described elsewhere in this issue.

Legislation: There was a generally triumphant feeling in the room as the president reported he and Dennis Harwick had been present March 26 when Governor Gardner signed ESHB 1378, "the filing-fee bill." The subject of three years' effort by WSBA members lobbying the Legislature, the bill hiked court filing and related fees as of April 1, 1992. Superior court initial action, probate and appeal from lower court filing fees go to \$110; 12-person jury demand fees go to \$100. The percentage of filing fee monies the counties get to keep was reduced from 68 percent to 54 percent. This differential—arising from the fee increase and allocation shift—will go into the Public Safety and Education Account for funding of civil legal services for the indigent in Washington. In addition, the amount of civil filing fees devoted to support of county law libraries under RCW Chapter 27.24 was raised from \$7 to \$12, with a local option for an increase to \$15. The bill's passage and signing will be a shot in the arm for state legal-service providers and law libraries, and much praise was heaped upon WSBA lobbyist John Fattorini, WSBA member and legislator Marlin Appelwick, Senate Majority Leader Jeanette Hayner, and WSBA president Joe Delay, who did some very effective lobbying to get the bill through the Senate.

We'll Be Back After A Message From Our Sponsor: The president and several board members stressed—

while looking in the direction of their unofficial scribe—that good work like the passage of the Indigent Defense Bill isn't possible without WSBA member support for Bar-Pac, the association's political action committee. Avoid needless Keller-bookkeeping headaches, they say; send a check for \$15 to Bar-Pac.

How To Be A Better Lawyer: The board heard a report from lawyers David Swartling and Lawrence Mills, who've been developing and trying out a skills-training course first recommended to the Bar in a 1985 WSBA task force report, and most recently called for in the 1991 Long-range Planning Committee report. It's a week-and-a-half course of intensive introduction into the nuts and bolts of law practice, from drafting pleadings to handling negotiations. About 250 people have participated in it, and Swartling and Mills asked the board to endorse its further study with a view toward adoption as a program for all new Washington lawyers.

"We've found, over these five years, that we can do this as well as anyone and better than most," Swartling told the board. "We've seen improvement in the skills of participants just in the time they are in the course."

"I like the idea of teaching lawyers how to set up a practice," Lem Howell interjected. Dennis Harwick reminded everyone that allowances would have to be made for experienced admittees from other states, or lawyers who contemplate a government practice. Swartling said the skills taught are both necessary and transferrable to various types of practice.

Governor John Schultz wondered if this course was anything like the British Columbia articling system (no) and the cost (that's something to be worked on); Governor John Slater wondered about lodging accommodations for participants (that's something else to work on) and Grant Johnson, WYLD chair, wondered why the state's law schools couldn't be required to teach this sort of thing (they don't want to; it's not "academic"). Judge Dan Phillips thought a market-driven incentive might be useful: "Give people who take it some points on the bar exam." Governor Monte Hester thought the matter should be studied by the Board of Continuing Legal Education. After some further discussion, the consensus seemed to be that the program works, is A Good Thing, and needs further study to sort out how, if at all, it can be made available to more of the 1,000 new admittees each year. They voted 7-0 to approve the report, ask the CLE Department to work up some ideas on how best to implement it, and ask the CLE board to evaluate the feasibility of requiring a skills training course of all lawyers within their first three years of practice.

Computerization: A curiosity when this reporter began his tenure in this space, computerization of the law has become a standing item, one, several governors remarked, in which the WSBA has done some remarkable and significant things to "level the playing field" among big firms and small firms and solo lawyers. This month, the report was from Steve Crossland of Cashmere, chair of the Computerization of Law Division (COLD). Since the establishment of the WSBA Bulletin Board System a year ago, Crossland said, there have been 20,000 "accesses" to the system by 2,000 users. Half of

all users are not WSBA members, so we are providing a valuable service to the public, he continued. Librarians are making inquiries about getting it into libraries around the state.

The issues now are getting the system to be self-supporting and working out a fee structure that meets the objections of non-Seattle lawyers that on-line long distance charges make the system (a) prohibitively expensive, and therefore (b) a member-subsidized plaything of King County lawyers (see, e.g., "Letters to the Editor," pages 7 and 8 of this issue). Crossland suggested a fee of \$120 a year, for which subscribers would be entitled to two hours of time every day. He said another alternative might be to set up "nodes"—in effect, branch computers—around the state to reduce the on-line charges. The Thurston County Bar is interested in doing that at their own expense, he reported.

Presently the Revised Code of Washington, Washington Administrative Code, state court of appeals decisions and Supreme Court reports since 1977 are on the system; coming soon are attorney general opinions and databases of the department of revenue and secretary of state. Work is also proceeding to get the Advance Sheets on line.

Another question Crossland posed, with state Reporter of Decisions Ray Krantz present, was whether WSBA should pay any sort of royalty to the Commission on State Law Reports to cover the cost of making the reports available in the future as new ones come out. Krantz pointed out there are errors in any kind of transfer of data to computer, and if people are going to start using reports on computer as an alternative to the official, corrected, printed reports, there's an obligation—and some cost—to be sure they are as accurate in computer form as they are in book form.

Governor Lem Howell, who earlier opposed the WSBA's entry into a contract with Mead Data Central/Lexis to provide computer research services to WSBA members because it would undercut the Seattle-King County Young Lawyers' offering of the same service by ten dollars a month, announced he wanted to "make as much information as possible available to our members for as little cost as possible." But Governor Alva Long was concerned that the suggested billing rate wouldn't cover costs, much less royalties. Dennis Harwick was concerned about the cost and mechanical requirements of monthly billings. Governor Mike Larson moved to table the billing rate question until it could be looked at some more, and the board agreed. They went on to approve the concept of developing a CD-ROM disk with the statutes and appellate reports on it, and resolutions calling on state agencies to gather and maintain their information in a common, computer-accessible format, and praised King County Superior Court Clerk Janice Michels for work to make local rules available on the BBS in the face of copyright claims by a compiler/publisher of court rules.

A Warning About Harassment: The Rules of Professional Conduct Committee presented a new rule, denominated RPC 8.4(g), which would declare it professional misconduct to "commit a discriminatory act prohibited by law or harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation,

or marital status, where the act of discrimination or harassment is committed in connection with the lawyer's professional activities." Proposed by Washington Women Lawyers last August, the rule was provisionally approved by the board of Governors then, but sent to the RPC Committee for review and fine-tuning. Discussion was mainly confined to endorsements of the rule (though some wished it would go further) by Opportunities for Minorities in the Legal Profession Committee co-chair Richard Jones, Court Congestion and Improvement Committee chair Mary Gallagher Dilley, Washington Women Lawyers president Sheryl Garland, SKCBA trustee Scott Smith, and most of the board. Governor John Slater expressed concern that the rule did not make clear whether it would be applied in cases where there was a pattern of harassing conduct or whether it could be applied in individual cases which could just as easily be unintentional or misunderstood acts or comments. He stressed that while he strongly supported the rule and the intent behind it, he was nevertheless worried that the rule could be used to draw lawyers into the disciplinary process on the basis of inadvertent, one-time matters, and that the bad press and damage to their community reputation arising from the complaint could far outweigh any vindication the lawyer might receive from a review in the disciplinary system.

The board voted 7-0-1 to approve the rule. Governor Slater abstained for the reasons given above. The board also voted, 6-2, to reconsider—in June—its approval of amendments to RPC 7.3 governing lawyer advertising after the RPC Committee recommended they do so. Governors Blair and Long voted against putting the matter off until then.

Wrap-up in Portland: In other action, the board approved a list of suggested CLE topics for 1992-1993; and heard a report from Court Rules and Procedures chair Duane Lansverk of Vancouver and approved recommended changes to CAR 16(c)(8) to eliminate a requirement that court

commissioners be law school graduates, since it prevents qualified lawyers who graduated from unaccredited law schools or through the clerking program from being considered; RAP 9.2(b) to change how much of a transcript on appeal would be available to indigent defendants at public expense; RAP 18.3 to amend requirements for withdrawal of defense counsel in *Anders* appeals to reflect appellate decisions in *State v. Folden*, 53 Wn.App. 426 and *State v. Porras*, 58 Wn.App. 389; RAP 18.4 to simplify disposition of exhibits after completion of an appeal; and CrR 4.2(g), clarifying wording in judgment and sentence forms.

The board also tabled a report and recommendations from WSBA general counsel Bob Welden on what, if anything, should be done to create a new Board of Governors seat to parallel Washington's new ninth congressional seat. Some wanted to make other changes to the board in addition to the additional seat's creation, while others thought the matter impossible to decide and implement given that the seat is in litigation before the U.S. Supreme Court and will be until mid-summer at the earliest. They approved the text of a letter to the Judicial Conference of the U.S. regarding changes to the federal rules (See, CR 11 article, this issue); approved case-processing standards recommended by the Court Congestion and Improvement Committee; voted to cover some section budget deficits arising from the sections' assumption that they had built up surpluses over past years which, in fact, were not there; approved a \$500 contribution to the holding of the National Conference of Task Forces and Commission on Ethnic Bias in Seattle, May 30; approved amendments to the Taxation Section's bylaws; and had lunch with the Clark County Bar Association..

Future meetings: 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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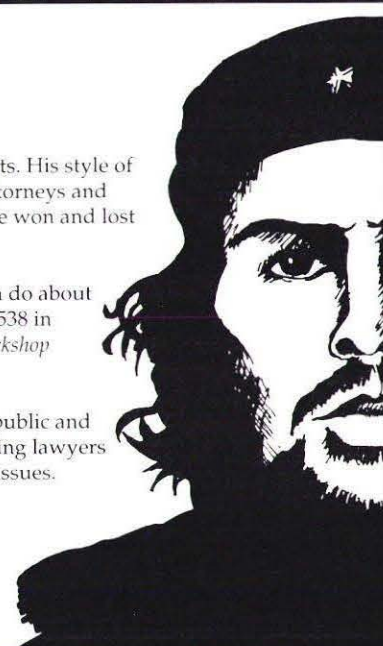
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1 Promoting World Peace Through Law, Seattle. *Sponsored by: WSBA CLE. For information: (206) 727-8202.*

5 Washington Land Use Law in a Slower Economy, Seattle. Also presented May 6 in Spokane. *Sponsored by: National Business Institute, Inc. For information: (715) 835-7909.*

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 Federal Tax Controversies, Seattle. *Sponsored by: WSBA CLE. For information: (206) 727-8202.*

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

8 Public Procurement & Private Construction Law Section Midyear Meeting, Seattle. *Sponsored by: Section and WSBA CLE. For information: (206) 727-8202.*

8-9 WSBA Board of Governors meeting, Spokane. *For information: (206) 727-8244 or contact your local governor.*

11 A Practical Guide to The Davis-Bacon Act, Seattle. *Sponsored by: Federal Publications, Inc. For information: J. K. Van Wycks, (202) 337-7000; fax (202) 775-9304.*

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

13 Administration of the Estate in Washington, Seattle. Also presented in Spokane May 14. *Sponsored by: National Business Institute. For information: (715) 835-7909.*

15 Construction Law Update: 1992 Revisions to Lien Statutes, Tacoma. *Sponsored by: Tacoma/Pierce County Bar Association. For information: Kit, (206) 383-3432.*

15 Bar News deadline, July 1992 issue.

15-17 Business Law 1992 Midyear—Liquidity Issues for Closely Held Corporations, Inn at the Mountain, Welches, Oregon. *Sponsored by: WSBA CLE. For information: (206) 727-8202.*

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

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

28-30 Environmental and Land Use Law Section Midyear Meeting, Vancouver, B.C. *Sponsored by: Section and WSBA CLE. For information: (206) 727-8202.*

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

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

6 WYLD Board Meeting, Everett.
5-6 Ninth Annual Pacific Rim Computer Law Institute, Vancouver, B.C. *Sponsored by: WSBA CLE et al. For information: (206) 727-8202.*

5-7 Family Law Section Midyear Meeting, Wenatchee. *Sponsored by: Section and WSBA CLE. For information: (206) 727-8202.*

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

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15 Bar News deadline, August 1992 issue.

19 The New Americans With Disabilities Act, Seattle. Sponsored by: WSBA CLE. For information: (206) 727-8202.

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

19 WSBA CLE Elder Law Practice seminar.. For information: (206) 727-8202.

19-20 WSBA Board of Governors meeting, Bellingham. For information: (206) 727-8244 or contact your local governor.

19-29 Northwest Regional Program, Intensive Skills Training, Seattle. Sponsored by: NITA. For information: (800) 225-6482, fax (219) 282-1263.

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.

26-27 Litigation Section Midyear Meeting: Voir Dire and the Art of Jury Persuasion. Lake Chelan. Sponsored by: Section and WSBA CLE. For information: (206) 727-8202.

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.

31-1 WSBA Board of Governors meeting, Oak Harbor. For information: (206) 727-8244 or contact your local governor.

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

August 1992

7-8 WYLD Board Meeting, Sun Mountain Lodge, Winthrop.

15 Bar News deadline, October 1992 issue.

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.

16 WSBA Board of Governors meeting at Annual Meeting and Convention. For information: (206) 727-8202 or contact your local governor.

16-19 Washington State Bar Convention and Annual Meeting, Vancouver, British Columbia. For information: (206) 727-8202.

26 Second Annual Northwest Alternative Dispute Resolution Conference, Seattle. Sponsored by: WSBA ADR Section and UW CLE. For information: (206) 543-0059.

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Disciplinary Notices

Reprimanded: Pasco attorney David W. Corkrum (Bar No. 13699, admitted 1983) has been ordered reprimanded pursuant to a stipulation for discipline, based upon his misrepresentations to his clients that an appeal had been filed and then that the appeal had been denied by the Superior Court when he knew that no such appeal had been filed. Mr. Corkrum will be placed on probation for two years under a variety of conditions.

Suspended: Attorney Craig D. White (admitted 1982) was ordered suspended from the practice of law in Washington for three years by Supreme Court Order entered and effective February 27, 1992. The Suspension is Reciprocal Discipline pursuant to RLD 12.6 and based on the Supreme Court of the State of Oregon Order suspending Craig D. White from the practice of law in Oregon for three years.

Disbarred: Lynden attorney Jerry L. Johnson (Bar No. 4645, admitted October 12, 1972) has been ordered disbarred effective February 21, 1992 by the Supreme Court of the State of Washington. He stipulated that, if a hearing were held, he would have been found to have converted client funds to his own use and that he would not have been able to show sufficient mitigation to avoid disbarment.

Nondisciplinary Notice:

Interim Suspension: Tacoma attorney Kenneth Jennings, (Bar No. 15794, admitted June 2, 1986), has been ordered suspended from the practice of law pending the outcome of disciplinary proceedings by Supreme Court order effective February 5, 1992.

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

Public Notices

New Address for Historical Society

With the appointment of its former director, Chet Orloff, to the directorship of the Oregon Historical Society, the



Interest to Attorneys

Ninth Judicial Circuit Historical Society has a new director and address: Bradley Williams, Director, 125 South Grand Avenue, Pasadena, CA 91105, tel. (818) 405-7059.

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 April 1992 is 4.16%. The maximum allowable interest permissible for May 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; and on page 55 in June 1991 for 1985-1991.

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

Evidence. In prosecution for aggravated sexual assault against four-year-old child, United States Supreme Court held that child's out-of-court descriptions of assault could be recounted in court by child's mother, as well as by physician and nurse. Child's statements were admissible under hearsay exceptions for excited utterances and statements for purposes of medical diagnosis. Significantly, Court held that prosecutor could introduce child's

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statements without producing child for cross-examination and without convincing trial court that child should be considered unavailable to testify. Court retreated from earlier holdings requiring either production of witness or finding of unavailability, saying neither requirement would serve useful purpose in this case. Court hinted in dictum that requirement of unavailability would apply in future cases only when applicable under corresponding hearsay

exception, *i.e.*, only when prosecutor is relying upon hearsay exception codified in Rule 804, as opposed to Rule 803. *White v. Illinois*, ___ U.S. ___, 112 S.Ct. 736 (1/15/92).

—K. B. Tegland

Personal property security. In determining priorities in proceeds of sale of potato crop on questions certified by bankruptcy court, Washington Supreme Court held, *inter alia*: (1) Landlord's

crop lien claim against *Esparsa*, filed under that name, was effective to perfect lien, though debtor's name was *Esparsa* and normal Department of Licensing search methods would not find filing under correctly spelled name. Court relied in large part on common law doctrine of *idem sonans*, that is, incorrectly spelled name in documents in public records is acceptable if, when pronounced, it conveys sound "practically identical" to pronunciation of correct spelling. Decision probably also extends to validate similarly incorrect financing statement filings because court relied on UCC section 9-402(8) as establishing applicable standard (errors "not seriously misleading"). (2) Even though creditor bank did not acquire lien on growing potato crop under security agreement that did not include legal description of land where crop was growing, bank nevertheless had perfected security interest in crop after it was severed and in its proceeds from sale. Both financing statement and security agreement covered crops, proceeds, and after-acquired collateral, and legal description is not required for severed crops. (3) Landlord's crop lien was effective only from date of filing and therefore was not effective to establish priority against another previously filed crop lien and previously perfected security interest, notwithstanding statute providing that "a lien or security interest in crops otherwise entitled to priority" is subordinate to "a properly filed" landlord's lien, RCW 60.11.050(4). *In re Esparsa*, 118 Wn.2d 251, 821 P.2d 1216 (1/9/92).

—M.D. Rombauer

Real property security. Facts of case left some doubt whether purchaser of land that was subject to pre-existing mortgage ever assumed secured obligation. Trial judge found that purchaser had assumed obligation and so continued liable on it after purchaser had sold land to another purchaser. *Held*, reversed. Trial judge should not have found assumption because "Proof of assumption of an underlying mortgage debt must be clear and convincing." *First Interstate Bank of Washington v. Nelco Enterprises, Inc.*, ___ Wn.App. ___, 822 P.2d 1260 (2/4/92).

—W. B. Stoebuck

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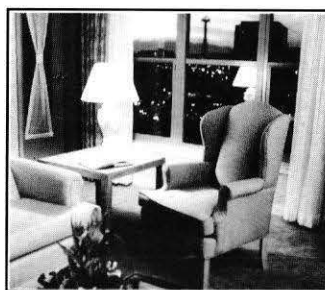
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Frontier Lawyering: The Practice of Law in Territorial Days

from Arthur S. Beardsley's *The Bench and Bar of Washington: The First Fifty Years*

edited by Charles H. Sheldon

[Beginning in the 1930s under a WPA. Program, Dr. Arthur S. Beardsley, then law librarian at the University of Washington, began collecting materials on the professional activities of judges and lawyers during Washington's territorial and early statehood years. The collection grew to include newspaper accounts, personal histories, memorabilia, correspondence, and hundreds of photographs gathered "from ten states, and the District of Columbia, and even from far away China." (University of Washington Bulletin, June 1941, p. 7) Relying on these materials, Beardsley, assisted initially by Superior Court Judge Donald A. McDonald, drafted an enormous manuscript (2,428 typed pages) entitled "The Bench and Bar of Washington: The First Fifty Years, 1849-1900." The worth of the manuscript has been acknowledged, but the work has not been published.

Professor Charles Sheldon, with permission from Beardsley's heirs, has taken on the task of editing the manuscript for publication in order to make available this invaluable source on the early lawyers and judges. The following excerpt is illustrative of the kinds of information contained in the manuscript. In the editing process every attempt was made to retain Beardsley's style and interpretation.]

Tnew territory had a fair, if not an excessive, supply of lawyers admitted to the practice of law before 1854. Colonel Isaac N. Ebey,¹ who came to Oregon in 1848, was the first to arrive, while John B. Chapman² was here in 1850. Daniel R. Bigelow,³ who had come on the "Exact" with the Dennys, later formed a partnership with Quincey A. Brooks.⁴ Their card appeared in the first issue of the *Columbian* (September 11, 1852). In November 1852, George N. McConaha⁵ and J.W. Wiley⁶ opened an office in Olympia and published a formal announcement in the *Columbian*, in which they referred their prospective clients to favorable recommendations from such notables as Senators Thomas H. Benton, John B. Miller and Thomas Corwin, and Governor Peter H. Burnett of California, as well as from all of the California newspapers.

Unlike today, lawyer advertising was unrestricted, and the practice of law presented challenges today's attorney can only imagine! It has been said that in the early days of the eastern part of the territory, the judge, in company with

several lawyers, would start out in a light wagon with a camping outfit, to hold sessions of court in the other other parts of his district. While these trips partook of the nature of an outing, they were far from being pleasure trips.

Describing one of these "judicial outings," John J. McGilvra,⁷ then United States Attorney, has related that in July 1862, Salucius Garfielde,⁸ Marshal Sheldon B. Fargo, Charley Allen and himself accompanied Judge Ethelbert P. Oliphant⁹ on his journey to hold the first term of court at Fort Colville:

The region between Walla Walla and Colville was uninhabited by white men, except the ferryman at the crossing of the Spokane River, about eighteen miles below the point where the city of Spokane is now located. It took from three to five days to traverse the distance of 210 miles, and the party had to camp out and cook their own food. Garfielde was said to have been a fine cook, as well as an orator, and our appetites were the best of sauce.

We carried our grub and slept under

two small fly tents. A frying pan and coffee pot composed our cooking outfit. We baked our bread in the frying pan, broiled our bacon before the fire on sharpened sticks, catching the drippings on our fresh baked bread, and settled our coffee with cold water. The bread, bacon and coffee on that trip had a relish that it had seldom been the good fortune of the writer to enjoy.

On the route, and somewhere near Medical Lake, we met the Colville garrison, consisting of regular troops ordered east, having been relieved by Oregon and Washington volunteers. The officers, of course, had some good commissary whiskey along of which we were invited to partake.

Shell Fargo was the teamster, and although it was not observed that he had ever appropriated more than his share from the commissary, it was not long before we had parted company with the soldiers before he upset the wagon and spilled out his passengers Judge Oliphant, Salucius Garfielde and myself.



ETHELBERT R. OLIPHANT 1861-1867

Garfielde was smoking at the time, and Fargo always insisted that he never lost his hold or ceased to puff on that old pipe; Garfielde was a man not easily disturbed; but not so with Oliphant. Although he was not hurt, his nerves were considerably shaken.

Upon arriving at Colville we were offered quarters at the military post. Park Winnans was appointed clerk of the court; the sheriff summoned a grand and petit jury and the business of the term commenced. No court having been before organized, and this being the first term, of course there were no cases on the docket. The people of Colville had looked forward to the first term of the court with a good deal of interest and were anxious to make a good showing with a view to regular terms thereafter. Consequently, the grand jury indicted every one suspected of doing wrong, and all the people who had disputes to settle came into court, waived the process of service, made up the issues in their causes and went to trial. The result was that several criminal and civil cases were tried, two or three divorces granted, and Garfielde and myself made about seven hundred and fifty dollars each.

Professor William D. Lyman writes that not only was the journey to court fraught with difficulties, but the practice before the territorial courts of the '60s was indeed an experience in frontier lawyering:

Court was held two or three times each year in each town, and usually lasted for two or three weeks. The judge was followed around the circuit by members of the bar. They took their chances of picking up some business associated with local counsel on one side or the other of each case. There was no preliminary law day, and the attorneys had to be ready on a moment's notice to argue the motions and demurrers, and get their cases ready for immediate trial. Stenographers and typewriters were unknown, and the lawyer prepared his amended pleadings at night with pen and ink, and in the morning proceeded with the trial of his case. Law books were few and far between; a good working library consisted of the session laws, *Bancroft's Forms*, *Estee's Pleadings*, and a few good textbooks. Supreme Court reports were unknown in this section of the country, and the case lawyer had not yet come into existence. In the argument of legal questions,



JAMES E. WYCHE 1861-1870

decisions of the court were seldom mentioned, but the lawyers depended upon their knowledge of the principles of law, and their ability to apply these principles to the facts of the case on trial. There were no specialists in different branches of the law in those days and the successful lawyer was able to take up in rapid succession, with only one night for preparation, first an important criminal case, then a complicated civil jury case, and then an intricate equity case. There may be at this time abler lawyers in some branch of their profession than were this pioneer bar, but for a general knowledge of all the branches of the law, and readiness in applying the fundamental principles of the law to their particular case, without having reference to the court reports, the pioneer lawyer was far in the lead of the modern practitioner. In those days, when there were no railroads, no daily papers, no moving picture shows, or other places of amusement, the people from far and near came to town during the court week and regularly attended its sessions, enjoying the funny incidents coming up during the trials and listening attentively to the eloquent speeches of the able lawyers.¹⁰



JOSEPH R. LEWIS 1873-1879



WILLIAM C. LANGFORD 1885-1889

At each place the cases would have accumulated for from four to six months, and the lawyers who followed in the train of the court had to get their pleadings and causes to issue in the short time allotted for that term of court. They had no time for dilatory practices, demurrers or motions if used to delay the proceedings. Sometimes as many as 30 or 40 cases had to be disposed of at that term. This necessitated night and day work on the part of the lawyers. All pleadings were in long-hand, on foolscap paper; they were short and to the point.

"There was a sturdy manliness in those days," says Lyman, ". . . that atoned for many shortcomings, and was distinguished by a sense of justice, untrammelled by precedents and hairsplitting legal distinctions." This trait, it is said, was strikingly illustrated in a familiar saying of Judge James E. Wyche,¹¹ who, whenever the distinction was between a close adherence to precedent and an unethical right, would decide in favor of the latter by the remark: "If I am not technically correct, I think I am giving you substantial justice."

Lyman's account further characterized lawyering in Washington's early days: "We cannot help contrasting [today 1910] with the days when Frank Dugan was wont to read citations to fit any case out of the sole book that comprised

his library, and Colonel George,¹² who carried his briefs in the top of his silk hat, and all the knowledge he needed in his spacious head. . . . Nor has there been in recent years such an exciting event as the running fight with six-shooters between Judge Langford¹³ and the Mullen Brothers, attorneys who practiced in Walla Walla fifteen or twenty years ago."

Nathan T. Caton¹⁴ also traveled these "weary miles" many times with judges James E. Wyche and Joseph R. Lewis.¹⁵ According to Caton,

Heat, dust and thirst were our undeserved, yet constant companions, and an occasional furious storm of wind, accompanied by heavy rains, was thrown in to break the monotony. The wind had no respect for the court nor the proprieties of the occasion. On one trip, the wind tore Judge Lewis' tent loose and blew it away. Judge Wyche was patient and sullen, while Judge Lewis was jolly and full of humor under the most trying circumstances.

Praising Lewis, whose companionship, he says, remained a cherished memory to him, Caton pictured Lewis as a more robust man than Wyche, but no less well-informed. "Judge Lewis,"

he says, "always aimed to give litigants the clear law, and having superior opportunities to know, I say pointedly that he was eminently just; and while he could exhibit the arrogance of a prince, he yet possessed the tender-heartedness of a child. He was unflinching in his devotion to his friends, but inclined to be implacable towards his foes."

Endnotes

¹ "Isaac N. Ebey was born in Missouri, 1818; came to Oregon, 1848; took claim on Whidbey Island, 1850; elected prosecutor for third judicial district, 1851; only member of Oregon legislature from region north of Columbia River, 1852; appointed collector of customs on Puget Sound, 1853; instrumental in organization of Washington Territory; murdered by Northern Indians on Whidbey Island, 1857."

² "John B. Chapman was born in Virginia, 1797; came to Grays Harbor, 1850; elected judge of county court of Lewis County, 1851; started a number of town sites; was instrumental in getting Washington Territory separated from Oregon; died in Indiana, 1878."

³ "Daniel was born in New York, 1824; came to Oregon by oxteam, 1851; settled in Olympia; member of first territorial legislature, first territorial auditor, acting treasurer, probate judge; died, 1905."

⁴“Quincey A. Brooks was born in Pennsylvania, 1826; came to Oregon, 1851; deputy collector of customs for Puget Sound district, 1851-52; first prosecuting attorney north of Columbia River, 1852; secretary to Superintendent of Indian Affairs of Oregon and Washington, 1856-60; customs collector for Puget Sound district, 1886-89; died 1908.”

⁵“George N. McConaha was born in Ohio, 1820; arrived in Seattle, 1852;

representative from King and Pierce counties in territorial legislature at Olympia, 1854; drowned while returning from Olympia to Seattle by canoe at the close of legislature, 1854.”

⁶“J.W. Wiley was born in Ohio; law partner of George McConaha in Olympia; served three years as member of the Territorial Council; editor of the *Pioneer and Democrat*; public printer in first territorial government; died 1860.”

⁷“John T. McGilvra was born in

New York, 1827; appointed U.S. Attorney for Washington Territory by President Lincoln, 1861; moved to Seattle, 1864; member of territorial legislature, 1866; city attorney of Seattle for two years; died 1903.

⁸ Salucius Garfield was born in Vermont, 1822; came to Washington Territory, 1857; receiver of public monies, 1857-60; surveyor general of territory, 1866-69; delegate to Congress, 1869-73; collector of customs on Puget Sound, 1873; died in Washington, D.C., 1881.”

⁹“Ethelbert P. Oliphant was born in Pennsylvania, 1803; admitted to Pennsylvania bar, 1823; appointed associate Justice of Supreme Court of Washington Territory, 1861; resigned second term, 1866; died in Washington, D.C., 1884.

¹⁰ William D. Lyman, *Illustrated History of Walla Walla County*, p. 207.

¹¹“James E. Wyche was born in Mississippi, 1828; appointed associate Justice of the Supreme Court of Washington Territory, 1861; resigned second term, 1866; died in Washington, D.C., 1884.”

¹² Colonel Wyatt A. George “was born in Indiana, 1819; settled in Walla Walla, 1860; left Walla Walla in 1878 to practice in Dayton, then in Pomeroy and later in Colfax, but returned to Walla Walla in 1869; died in Walla Walla.”

¹³“William C. Langford was born in Ohio, 1835; came to Oregon, 1850; moved to Vancouver, Washington 1862; prosecuting attorney of first judicial district, 1863; member of territorial council, 1864; appointed Associate Justice of Supreme Court of Washington Territory by President Cleveland, 1885-89; Superior Court judge, Spokane County, 1890; died, 1893.”

¹⁴“Nathan T. Caton was born in St. Louis, 1832; came to Oregon, 1850; admitted to bar in Oregon, 1861; moved to Walla Walla, 1867; elected to territorial legislature of Washington, 1869 and 1873; district attorney for one term; died, 1816.”

¹⁵“Joseph R. Lewis was a judge in Idaho prior to appointment as Associate Justice of the Supreme Court of Washington Territory, 1872; served as Chief Justice 1875; resigned court 1879.”

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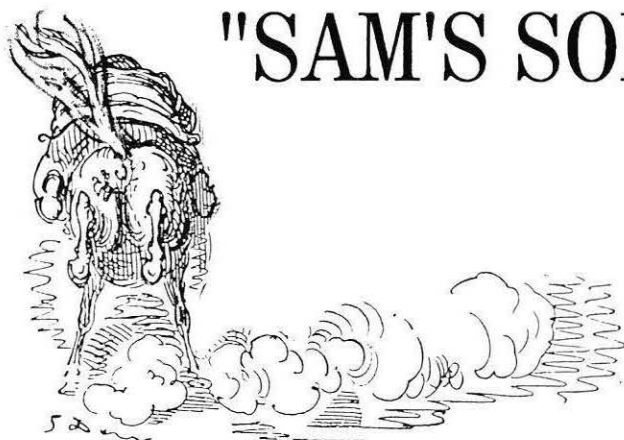
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"SAM'S SONG"



by John N. Rupp

This story about a lawsuit and a race horse troubles me a little because I cannot remember the name of the horse. That the events took place 50 years ago cannot have anything to do with that lapse of memory because I remember all the other names. Anyway, I have had to invent a name and I think that, under the circumstances, "Sam's Song" will do very nicely.

In 1933 the Legislature authorized horse-race betting in this state and provided that all betting should be by means of the pari-mutuel system. Betting through book makers, and all off-track betting, was not allowed. Soon thereafter, Joe Gottstein, a graduate of Brown University and a Seattle businessman, established the race track near Seattle called "Longacres." Before long, the Western Union Telegraph Company used its money transfer procedures to accommodate those who wished to bet at Longacres without going to the track. Western Union placed an agent at the track. You could go to a Western Union office anywhere in the state, pay the amount of your bet and send a message to the agent telling him to place your bet for you, in the pari-mutuel machine, just as if you were personally present at the track. Western Union was paid a flat fee for the service, and I gather that it was quite popular with horseplayers.

Sam Almoslino was a restaurateur in

Bremerton. One day, believing that Sam's Song would win the fifth race at Longacres, he went to the Western Union office in Bremerton and bet \$500 on Sam's Song to win. And, sure enough, the horse did win. (You knew he won, didn't you, because, if he hadn't, there wouldn't be any story.) The pari-mutuel odds against Sam Song's winning were quite long, and Almoslino was delighted. He had won big money.

Ah, but he hadn't. His bet had never been made! His message to Longacres had been delayed in the Seattle telegraph office by other traffic and did not arrive until the race was over. Naturally, he demanded the amount of his bet and his "winnings" from Western Union. The company offered to return his \$500 and the message charge, but it said the delay was just one of those things and it could not and would not guarantee the prompt delivery of a message. So Almoslino hastened to consult counsel in the person of Fred Cohen of the Bremerton Bar, and a lawsuit was promptly instituted against Western Union in the Superior Court for King County.

When Western Union employed our firm, then McMicken, Rupp & Scheppe, to defend it, its general attorney in New York told us that the company wanted not only to raise the ordinary defenses but also the defense that the arrangement with Almoslino was in furtherance of a gambling transaction and hence unenforceable in court.

J. Gordon Gose was then in our firm and normally Jack and I worked together on cases such as this. But he announced that he would have nothing to do with

that latter defense. He said Western Union had undertaken the business voluntarily, and it was unconscionable for it to claim it was illegal, and he wouldn't help it raise that defense. My father and Al Scheppe and I tried to "reason" with Jack. We pointed out that the defense had been invented by the courts in England and had been recognized as valid by courts in English-speaking countries for centuries. We said that, except in cases of cheating or overreaching, the refusal to pay a gambling debt was always unconscionable and would result in the reneger's being cashiered from his regiment and forced to resign from his clubs. Nevertheless, and uniformly, the courts would not assist in the collection of a gambling debt. Jack, however, hung tough, saying that a gentleman would have nothing to do with such a defense no matter how the courts looked at it.

Jack's view of the matter may have been colored a bit by his love of horses and horse racing, with an occasional bet on a likely colt. I, however, had no such affection and rather subscribed to the doctrine laid down by George V. Powell: "Horses are big ugly beasts that will probably bite."

Anyway, it ended up that I handled the case alone.

That was no big deal. In those days it hadn't occurred to us that a lawsuit had to be preceded by demands for admissions, demands for production of documents, interrogatory No. 1, interrogatory No. 2, and the depositions of any persons who by any stretch of imagination might conceivably have a small scrap of information which might

conceivably have something to do with the lawsuit. Do you know, by the way, that those interrogatories, which have resulted in the destruction of large forests to make the needed paper, were first used in the English Chancery practice and that it was known as "scraping the conscience of the defendant"?

Fred was prosecuting attorney of

Kitsap County, but that county was small enough that it wasn't a full-time job and he could and did conduct a private practice. He was a good lawyer and a good fellow. He was lean and fairly tall and had a sort of long-gearred aspect. Since he was dark and had a black mustache he reminded me of Groucho Marx, especially when he stalked about in the courtroom. Some

few years later Fred was murdered and, so far as I know, the murderer was never known.

I knew what Fred's case was, and he knew mine (that's what proper pleadings are for) so we were immediately ready for trial.

The case was called for trial and we were sent to the court of Judge Howard M. Findley. That was fine with me. I hadn't been practicing very long, but I had been before Findley a couple of times, and I knew he was a good lawyer and a no-nonsense judge.

Fred put on his case, largely through Almoslino's testimony, and a good case it was. He concluded and rested at about 11:30 in the morning. I promptly moved to dismiss on the ground that he had not proved the amount of plaintiff's damages. Oh, boy, Ol' Fred's Groucho eyebrows were just leaping! What the hell was I talking about? He had shown that the bet wasn't made and that Sam's Song had won and that he had paid a sum certain. Ah, yes, I said, but the court took judicial notice of the statute and the pari-mutuel system and knew that, if Almoslino's \$500 had been bet on Sam's Song to win, the odds would have changed and no one could say, on the record, what Almoslino would have won. So there was a failure of proof.

The point was quite obvious, and I felt pretty cocky because I'd thought it up all by myself. Findley said he was inclined to grant my motion, but it was nearly noon, so he'd defer ruling until after lunch. Longacres wasn't running at the time, and I didn't see how Fred could save his case. So I went to lunch feeling that I was, as Red Barber used to say on the radio, "in the catbird seat."

I guess Fred didn't get any lunch, but, by golly, at 1:30 he had another witness and, with my consent, reopened his case. Somehow he had located the accountant who did the track's accounting, and that worthy took the stand and testified from his records what the winning odds on Sam's Song would have been if Almoslino's \$500 had been bet into the machine. All very neat and precise.

So there went my classy motion for dismissal, with the judge smiling tolerantly at me, and I was reduced to arguing the defense of a transaction in

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furtherance of gambling. Fred and I went back and forth on that issue for awhile, and then the judge decided the case from the bench. He said my defense was valid and that he would dismiss the case on that ground. Then he went on to express his view that the pari-mutuel betting law was unconstitutional, as it was in violation of Article II, Section 24 of the state constitution: "The Legislature shall never authorize any lottery or grant any divorce."

The case was duly reported in the newspapers, and the next voice I hear is that of Joe Gottstein. What is all this, he asked, about "our law" being unconstitutional? I told him that Judge Findley had really decided that the court would not enforce a gambling transaction. "I understand that," said Gottstein. "That's the dirty-hands doctrine, and that's okay. But what about our law?" So I told him of the judge's remarks about the constitution. He thanked me, and we hung up.

In due course, I had a judgment of dismissal entered and soon received from Fred a Notice of Appeal to the State Supreme Court (no court of appeals in those days.)

Some weeks later, Fred came to call on me. He handed me a copy of his printed brief on appeal. Then he said, "I brought this for you so you could see that I was serious about this appeal and didn't take it for any frivolous reason. But we're dismissing the appeal." I asked him how come, and he explained that Gottstein had paid Almoslino all the money he would have won, plus all his expenses and Fred's fee, in order to have the appeal dismissed. On reflection, we both agreed that that was pretty wise on Gottstein's part. The Supreme Court had never had occasion to consider the constitutionality of the pari-mutuel horse race statute. Maybe it would uphold the statute, but maybe it wouldn't. If the statute was unconstitutional, there went Longacres! Why take a chance, especially when you could satisfy Almoslino with an amount of money that was tiny in comparison to the profit from Longacres?

That was nearly 50 years ago. Gottstein has been dead for quite awhile. I think that the Supreme Court has never yet passed on the constitutionality

of the pari-mutuel law. And what a pleasant result! Almoslino got all his money; Fred got his fee; Gottstein saved "his law"; I won a case (always a pleasure); Western Union won and, as I remember, soon terminated its betting service, which had been installed by some ambitious local employee, unbeknownst to the New York headquarters.

And maybe Sam's Song went on to win more races and was finally retired to a life of lustful ease. It ain't often, ladies and gentlemen, that you have a case in which everyone wins.

Seattle attorney John Rupp is the founder and served as the first editor of the Bar News.

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Fee-setting Alternatives

by Gregory S. Morrison

Recently, I was contacted by the 1992 marketing research class of the Department of Management and Marketing of the University of Wyoming for the purpose of responding to a survey regarding fee-setting strategies.

Accompanying the Survey was a document entitled, "Definitions of Common Fee-setting Approaches," which sets for the "common techniques attorneys use to set fees and a standard definition of each. Although some of these methods were entirely common, others were a bit more novel. I particularly enjoyed the "Punitive Approach," which is defined below.

As we all know, often times theory and reality are miles apart. However, our fee-setting methods are continually ripe for scrutiny. Therefore, I am submitting for your review the common Fee-setting Approaches as identified and defined by the University of Wyoming.

Contingency Approach: these fees are determined in whole or in part by the outcome of the case.

Hourly Approach: an hourly rate is determined and calibrated to the lawyer's experience.

Fixed Approach: an exact amount is set. A variation is the stairstep method where an amount would be set for preliminary work through the indictment; an amount is set through the initial stages of litigation; an amount is set through litigation trying to plea out; and another fee is set if taken to trial.

Leveraged Approach: one rate is set for all attorneys in the firm.

Cost-plus Approach: the total fee included the cost of the attorney's time plus overhead and a reasonable profit.

Equity Approach: the fee is determined at the end of the matter.

Punitive Approach: a fee is charged in an amount that punishes a client who

has fallen into the same legal problem after being previously advised on how to avoid such pitfalls.

Billing by Event: the bill lists categories such as brief, intermediate, extensive and exhaustive, and the attorney chooses the appropriate category.

Checklist Approach: the attorney simply checks the box that applies and tallies up the total.

Hybrid Approach: the fee is determined using a combination of the approaches discussed above.

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



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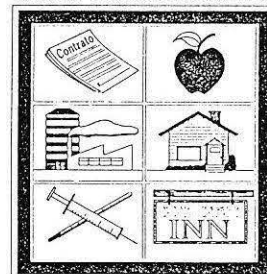
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by Lindsay T. Thompson

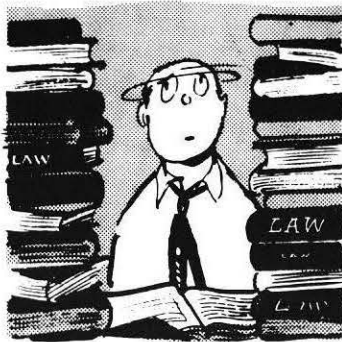
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Building the better mousetrap and waiting for the world to knock is no longer enough. Today's better mousetrap is a computer, and a host of specialized research services are seeking out lawyers as customers for the marvels their databases can dredge up, the spin they can put on stories, and a host of other services, faster—and cheaper—than you can do it yourself, they say.

For many, the reflex response to an imponderable is, "Ask the librarian." In Seattle, Susan Golden has taken 14 years' experience in the library into the Golden Information Group, a "freelance corporate library." No topic is apparently too obscure: "One local attorney, interested in Persian law, made use of my 'Arab Information Bank' to follow current events in the Arab press."

"A large body of work for law firms has involved historical research into topics of environmental interest, tracking the state of knowledge of specific issues during the past century and rumors of corporate mergers and acquisitions" as well as more familiar topics like preliminary patent and trademark searches and monitoring press coverage of issues "from Tulsa to Tunisia."

Got a jury coming up? Really contentious case? Metricus, a Palo Alto research firm, does jury research for trial attorneys on a case-specific basis. To back up their work, they survey jury-eligible Americans to see what populations think when they get a notice from court in the mail. Recent survey results on how jurors feel about lawyers in the specific context of a courtroom setting turned up some interesting findings. Presented with alternative scenarios in which male and female lawyers, acting for plaintiffs and defendants, were accused of lying, 62 percent of Metricus' survey group thought it at least "somewhat likely" the lawyer had, in fact, lied; 10 percent thought it highly unlikely. Gender, interestingly, made no difference.



However, a significant gap was found between the perceived honesty of plaintiff and defense attorneys. Given a scenario in which a plaintiff lawyer was accused of lying, 52 percent of respondents thought it at least somewhat likely the accusation could be true; they thought that of 74 percent of defense lawyers, though. A big differential was the education of the juror: the less the education, the more likely the juror was to think the lawyer could be lying. And significantly more men than women said that it was at least "somewhat likely" that the trial lawyer lied to the jury when the trial lawyer was a woman representing the plaintiff. There was no difference in the sexes' reactions, however, when the trial lawyer was a man or when the trial lawyer was a woman representing the defense.

Tailoring such findings to the needs of a lawyer in a particular case is the specialty of this California venture. A somewhat broader focus is taken by a Portland-based concern, Tsongas & Associates. They have even constructed a courtroom in their downtown offices

and can help lawyers run through all sorts of trial scenarios, from test juries to appellate arguments, from assisting in improving argument styles to helping prepare a party for tough cross-examination.

A Seattle firm, the Wiley Brooks Company, is one of many Seattle PR shops applying fairly traditional public relations and marketing resources to the needs of legal clients. Among the types of cases they've developed include analyzing whether a new practice area would be profitable to try to enter; helping a plaintiffs' lawyer reach Dalkon Shield clients to explain how to handle complex claim forms; and developing new marketing materials.

While the approach may be "traditional," firm principal Wiley Brooks says the market is not. Many law firms—and individual lawyers—don't realize a PR firm can do more than put out press releases or design a glossy firm brochure. Brooks says his firm has adopted a "niche" targeting law firms, and it is the only shop in the Northwest taking this tack.

"Attorneys need to be more sensitive to the nonlegal elements of the legal issues they handle for their clients," Brooks maintains, citing damage control operations clients increasingly need to offset the effects of media coverage of a legal problem. A company—or a person—accused of an illegal act, for example, can be wiped out by loss of business as a result of media coverage while winning the legal battle. "No comment," the traditional lawyer's reply, means no one is out there pitching the client's point of view. That leaves the field open to the accuser. Clients, growing increasingly accustomed to concepts like "total quality management," are expecting more comprehensive approaches from their service providers, be they lawyers or wholesalers. "We let the lawyer maintain control of the case, and we provide whatever level of service he or she determines a need for," Brooks says.

More specialized needs? Northwest Consultant Network, Inc., based in Seattle, is a clearinghouse for environmental needs. Spurred by growth management legislation and an increasing demand for services to save time and overhead costs, three women—Deborah Sawin, Anne Wager and Carol Webster—combined their backgrounds in environmental consulting, marketing and contracting with regional firms and governmental agencies.

The Northwest's "environmental business" is growing at more than 20 percent annually, the three say. There are already some 2,500 firms in Alaska, Idaho, Montana, Oregon, Washington and western Canada. With that sort of dispersed, diffuse talent, NCN found the average time spent trying to find a consultant ranges from four to eight hours, and that the seekers strongly prefer to shave several choices identified as quickly as possible. "NCN is the first and only consultant network in the Northwest to directly network environmental consultants," says Webster. "This is a people-finding business;

we troubleshoot and become the network through one phone call."

Reducing cost was a need Unisearch, a year-old firm with offices in Olympia and Salem, Oregon also responded to. Their basic service is corporate filing and information/document research and retrieval, including bread-and-butter items like UCC filings and getting rush incorporations to the Secretary of State's office, in whatever state one may need, through a nationwide referral network. "We've gone aggressively into computer access," says Jim Falk, one of Unisearch's principals. "We have a dozen states' databases immediately accessible and latch on to new ones as they become available. We're also the only such service in the region marketing on-line access to SCOMIS, the Washington superior courts' computer, making searches down to the county level fast and economical." Unisearch opened its second office, in Salem, last September, as a result of the increasing integration of the I-5 corridor as one legal and business market. "You can hear the hum of activity all up and

down the Interstate," says Falk.

There are even some "do-it-yourself" services coming into use. West Publishing Company's Dialog system allows computer terminal users to break out of the company's caselaw databases into a vast array of other information databases. Wandering idly through it one afternoon, I found I could call up President Bush's schedule for the day. And in Seattle, TCI Communications (whose video teleconferencing center was profiled in the February 1992 *Bar News*) has introduced X.PRESS Executive, a business cable service which provides subscribers with continuously updated international market and news information, via a coaxial and fiber optic cable network, through their personal computer with no on-line phone charges. "You can turn your PC into a global clipping service," says TCI account executive Randy Post of the new system. "You can even pull up to 128 stock ticker symbols for tracking on your own portfolio from the 30,000 available."



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American Disabilities Act Update

The American Disabilities Act has elicited not only the name change, but also the standardization of relay systems nationwide. Washington's DSHS 800 number will be replaced by a privately run long-distance company in July of this year.

An illustrated April 14 *Seattle Times* article by reporter Sherry Stripling (page F1) describes how the calls work. The service user types messages on a phone-connected keyboard with a display panel.

The conversation goes back and forth in ping-pong fashion just like a regular telephone call, except it's in slow motion and the "voice" belongs to the operator, a non-involved third party. . . . [I]t is your turn to talk each time the operator says, "go ahead."

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THE JUDICIARY

Duncan Bonjorni has been named judge of the newly created Auburn Municipal Court.

Richard L. Brosey has been named municipal court judge for Chehalis, succeeding District Court Judge **Mike Roewe**.

King County Superior Court Judge **Warren Chan** has announced he will retire in January, 1993 at the end of his term. Chan, the state's senior trial judge, was appointed to the bench in 1969.

Grant County Superior Court Judge **Jerry Moberg** resigned from his post April 1 to join the Spokane-based law firm **Lukins & Annis**. He has opened and will run the firm's Moses Lake office.

The King County Superior Court has announced its newly elected leadership. **Charles V. Johnson** was elected to a second two-year term as presiding judge. **Anne Ellington** was elected to her third one-year term as associate presiding judge. **Joan E. DuBuque**, **Michael J. Fox**, **Dale Ramerman**, **Frank L. Sullivan** and **R. Joseph Wesley** have been elected to one year terms on the court's executive council. Johnson, Ellington and presiding criminal court judge **Carmen Otero** also sit on the executive committee.

Toni Sheldon of Shelton has been named that city's first municipal court judge. She has been a Shelton attorney since 1981.

Bart Vandegrift of Wenatchee has been named Chelan County Superior Court Commissioner. Vandegrift replaces **Gay Cordell**, who resigned to return to full-time private practice in Wenatchee. Vandegrift, who has practiced in Wenatchee for 13 years, will handle domestic relations cases, including divorces, and the juvenile court calendar in the part-time position.

NEWS FROM HOME

Brohier & Wotipka of Seattle have announced that **Peter A. James** has joined their firm as an associate. Located in the Smith Tower, the firm

concentrates its practice in the areas of bankruptcy, real estate and civil litigation.

Robert C. Mussehl of Seattle has been elected a Fellow of the American Bar Association in recognition of professional attainments, distinguished service and commitment to the ABA and the law. Senior partner in the law firm of **Mussehl & Rosenberg**, he was a member of the ABA House of Delegates from 1979 to 1991.

Corinna D. Harn has joined the offices of **James S. Rogers** in Seattle. She practiced with **Velikanje, Moore & Shore** in Yakima from 1984 to 1989, and with **Bassett & Morrison** in Seattle from 1989 to 1991. Her practice will focus on product liability, medical negligence and general tort litigation.

Kevan Montoya has joined **Peters, Fowler & Inslee** in Yakima. He's a 1985 graduate of Eastern Washington University and a 1989 graduate of the University of Washington School of Law.

Charles Bates has been named to the 1992-93 editions of *Who's Who in the West* and *Who's Who in Finance and Industry*. Bates is director of human resources and employee relations counsel for **Royal Seafoods, Inc.** in Seattle. He is also active as a freelance writer, **Sammamish Community Council** member, and instructor in the personnel assistant certifications program at **Lake Washington Technical College** in Kirkland.

Brett N. Bender has joined **Horenstein & Duggan** in Vancouver, concentrating on family law cases. He is also at work editing two chapters on pleading for the **WSBA** civil procedure deskbook.

Ben Bettridge of Tacoma has been elected chair of the Washington State Republican Party. He was previously chair of the **Pierce County GOP Central Committee**.

Bogle & Gates has announced appointment of co-chairs of their litigation department. **Richard Clinton**, a 20-year veteran of the firm and former Department of Justice antitrust lawyer, and **Evan L. Schwab**, a former clerk to Supreme Court Justice **William O. Douglas**, will head the 115-lawyer litigation

department.

Vancouver's **Boyd & Gaffney** have announced that **Patricia L. Moran** has joined the firm.

Jean H. Campbell of Pullman has joined **Whitman County-based Nuxoll, Libey, Ensley & Esser**. The firm opened a Pullman office last year. Campbell has practiced in Pullman since graduating from the University of Idaho School of Law in 1982.

Clark County Prosecuting Attorney Art Curtis has been elected Washington's representative on the board of directors of the National District Attorneys' Association. He is past president of the Washington Association of Prosecuting Attorneys.

Joanne Comins Rick has entered a law partnership with **Dwight Halstead** in Prosser. She was previously senior environmental attorney for **Integrated Management Services, Inc.** of Rye, New Hampshire; **SRA Technologies, Inc.**; the U.S. Department of Energy, and in private practice. She is a 1980 **Gonzaga University School of Law** graduate.

Clifton L. Elliott has joined **Davis Wright Tremaine** as counsel. He was previously a partner with a Kansas City law firm, heading its employment practice group. Elliott has won annual listings in *The Best Lawyers in America* and is active in labor relations and employment law groups.

Foster Pepper & Shefelman has named five new partners. **Thomas E. Dixon** practices in real estate law; **Deborah S. Winter** works in municipal finance. **Beth A. Clark** is active in real estate, land use and environmental law. **Roger D. Mellem** is a former clerk to U.S. District Judge **Owen Panner** and handles securities law matters. **Mark J. Nielsen** works in trademark and copyright law matters.

Battle Ground attorney John Fox's law practice has been assumed by the Vancouver firm of **Boyd & Gaffney**. **Steven Sowards**, a Battle Ground native, will be the resident associate.

Pamela J. Garvie has been named managing partner of an affiliate of Seattle-based **Preston Thorgrimson Shidler Gates & Ellis**. Garvie will direct the operations of **Preston Gates Ellis & Rouvelas Meeds**, a Washington, D.C.

public policy law firm. Prior to joining the firm in 1988, Garvie was chief counsel to a U.S. Senate subcommittee on commerce, transportation and science.

Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim in Tacoma has announced two new partners in the firm. Eileen S. Peterson, a UPS law graduate, practices in the areas

of estate planning, probate and guardianship law. F. Mike Shaffer practiced in a Georgia law firm before joining Gordon, Thomas in 1989. He concentrates in civil litigation, including product liability and personal injury, securities litigation and immigration law.

Susan Harrel of Yakima has been named the first woman principal in the

Gavin, Robinson, Redman, Pratt & Crollard, Inc. firm. She has been with the 13-member firm since 1986.

Keller Rohrback in Seattle has announced a number of additions and changes in the firm. Stephen J. Henderson and Leonard B. Barson have become members of the firm; Rob Crichton, Juli E. Farris, John H. Wiegenstein and William A. Linton have joined the firm as associates. Henderson, a former dentist, concentrates in professional corporations law, retirement plans and estate planning. Barson is a former aide to Congressman Al Swift and staff counsel to the Washington State Senate committees on energy and utilities and the judiciary. He handles both trial and appellate matters in municipal, environmental and insurance matters, and is co-counsel to the Citizen's Alliance to Keep Pike Place Market Public. Crichton graduated from New York University School of Law in 1982 and practiced in New York before coming west to practice civil and commercial law. Farris is a former clerk to the Fifth Circuit Court of Appeals and practiced at Sidley & Austin in Washington, D.C. She practices in antitrust, wrongful discharge, employment discrimination, and related areas. Linton, a CPA since 1983, concentrates in commercial, accountants' malpractice and tax litigation cases. Wiegenstein is a UW law graduate and former Boeing engineer whose areas of practice include product liability defense, insurance law, and general civil litigation.

Shari and Rick McMenamin have opened their law practice in Forks. They were in practice together for six years before moving to the Peninsula last year.

Preston Thorgrimson Shidler Gates & Ellis has named Michael Newcity as counsel and Daniel Merkle as an associate. Martha J. Dawson, Scott A. Milburn and Beryl Simpson have become partners in the firm.

Quincy attorney Jim Kendall has joined the Grant County Prosecuting Attorney's Office. His law practice has been assumed by Carlson, Drewelow, Galbraith, Card & McMahan, a Wenatchee law firm. Nancy Hemberry will remain with the office as

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Seattle lawyer **Chi-Doooh "Skip" Li** has been named Alumnus of the Year by Seattle Pacific University. After graduating from SPU in 1966 and obtaining his law degree from the University of Washington, Li served as legal counsel to Governor **Dan Evans**; in 1983 he chaired the Governor's emergency commission on prison overcrowding. He is presently a partner in Ellis, Li & McKinstry in Seattle.

Walter M. Maas, 3d, a shareholder in the Seattle firm Karr Tuttle Campbell, has been elected to the Board of Trustees of Pacific Northwest Ballet.

Ronald E. McKinstry has retired from Bogle & Gates after 37 years. He will join his son in practice, and plans to expand his work as a mediator.

Frank B. Platt has retired from the Port Angeles firm of Platt, Irwin, Colley, Oliver & Wood. The firm has merged with another long-time Clallam County firm, Taylor & Taylor, to become Platt, Irwin, Taylor, Colley, Oliver & Wood.

Revelle Ries & Hawkins has named three new shareholders. **Sheryl Garland**, current president of Washington Women Lawyers, has been with the Bellevue firm since 1986, practicing real estate and commercial law. **Valerie Knecht Hoff** practices in family law, domestic relations and estate planning, and joined the firm in 1989. **Allan R. Sakai** also joined the firm in 1989 and works in real estate, business and corporate law.

Riddell, Williams, Bullitt & Walkinshaw have named **Daniel Nye** and **Amy Wayson** members of the firm. **Leif Udjus** has been named counsel/foreign law consultant.

Schwabe Williamson Ferguson & Burdell has named two new partners, **Alan Bornstein** and **Janet A. Irons**. **Michael D. Hoffman** has become a senior partner in the firm. Also joining the firm as associates are **Edith Bowler** (UW '87); **Dorothy J. Kelly** (UPS '81); **Lincoln D. Sieler** (UPS '91); **C. David Taylor** (UW '83); and **James M. Thomas** (Washington University, St. Louis '83).

Donald L. Shanks has joined Kansas City, Missouri-based Shook, Hardy & Bacon to chair its Asia practice

group. Shanks was most recently a partner in the Taipei office of Baker & McKenzie and a legal consultant to the Seoul law firm of Kim & Chang. Shanks has been in practice in Asia for the past seven years. From 1980 to 1984 he was in practice in Seattle and Alaska.

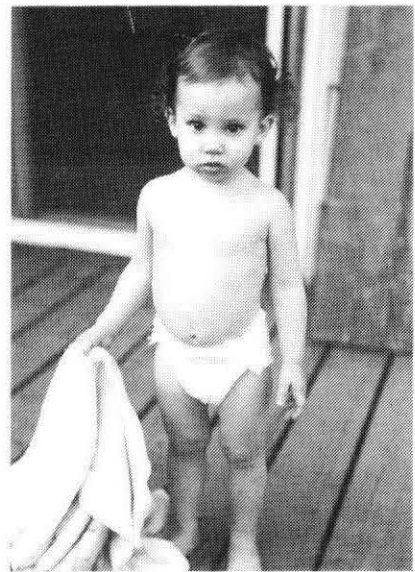
Laura Holdridge Treosti has joined Boyd & Gaffney in Vancouver.

Peter B. Tiller has joined Tiller, Fagerness & Wheeler in Centralia, whose partners include his father, **Laurel Tiller**. He is a graduate of the University of Washington and Willamette University School of Law.

Michael Weight, Everett City Prosecutor, has been appointed City Attorney. He succeeds **Bruce Jones**, who is returning to private practice.

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Weight, a graduate of the University of Washington and Lewis & Clark Law School, was city prosecutor for nine years.

Jill Raisler Wise has joined the Benton County Prosecuting Attorney's Office.

Annie M. Wong-Daly has been appointed a commissioner on the

Mukilteo Planning Commission.

Daniel C. Blom of Seattle has been appointed to chair the Historical Committee of the Tort & Insurance Practice Section of the ABA. He is also active as a member of the Long Range Planning Committee. Blom is of counsel to Ryan, Swanson & Cleveland in Seattle.

CLARK COUNTY REPORT

by JOHN F. NICHOLS

Mr. Ed's Playhouse: There are certain truisms in life that are actually true. Aside from "The ground cannot cause a fumble," there is my favorite, "The truth is stranger than fiction." The following report immediately reminds me of the famous line from Robert Service, "There's strange things done in the midnight sun . . ."

Well, the midnight sun was at 12 o'clock high over the palatial office/house of Gayle Ihringer and spouse, Ed Dunkerly. Ed's bloodhound nose detected an unpleasant aroma emanating from under said house. Donning his miner's helmet, he proceeded under the foundation. He discovered a herd (posse?) of deceased or apparently deceased opossums. His first inclination was that Gayle was going to have one big barbecue. His next notion was to get out from under the house ASAP. It was then that Ed's predicament became somewhat "sticky." While Ed's frame is large and his weight is disbursed more or less evenly, certain protuberances caused him to be stuck. How long would he have remained stuck is anyone's guess. Surely, his client would not miss him; Gayle was already checking the insurance policy for the opossum exclusion. Fortunately, that omni-faceted attorney, Mike Folster, happened by. Mike noticed Ed's legs and wondered why a house was resting on them. After extracting certain promises, Mike greased Ed up and slipped him out.

The final disposition of the opossums is unknown, although Folster did request a drumstick.

Nice Wheels, Ron: A certain Clark County health club was promoting its annual "'50s" sock hop by reproducing high school yearbook photos from a Vancouver high school. Who should appear, but our own Dorian Gray, Ron Greenen. Ron, who reminds one of Dick Clark, keeps up the image by not reading any advance sheets past 1958. This is in protest to the year Elvis got drafted, which reminds me of another truism, "Old law is good law."

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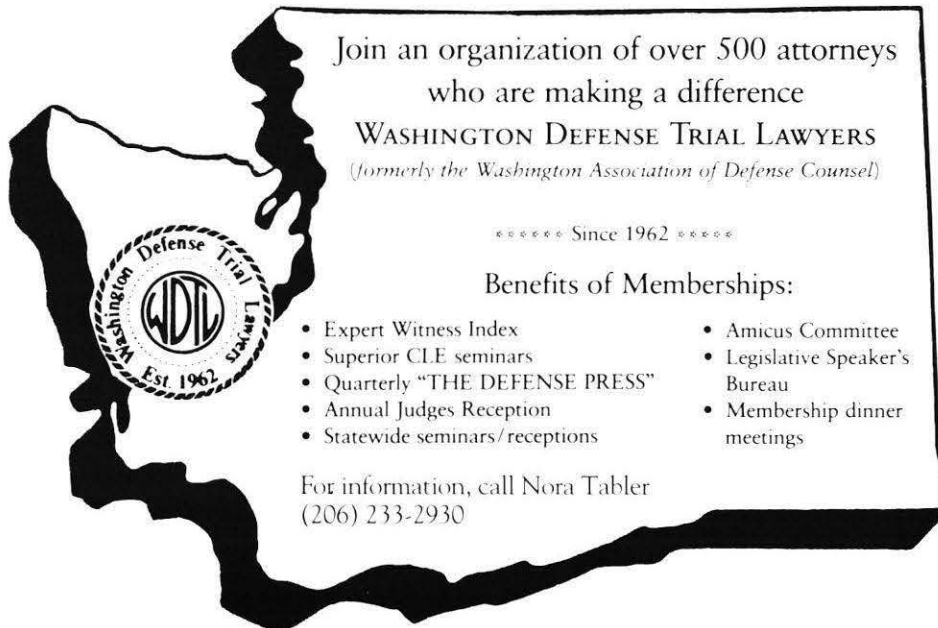
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EAST KING COUNTY REPORT

by MARIJEAN E. MOSCHETTO

Randy Gordon, your former reporter, exemplified some of the finest qualities of lawyers on the Eastside. Although I do not attempt to rank myself amongst the 1,500 attorneys who live or practice within our area, my meanderings will be considerably more plebian. Randy has been given a well-deserved rest from producing the monthly musings that made his column the first that many turned to read when they received their monthly *Bar News*. Note however, Randy, that this is a break only, and your fans expect to be treated to an occasional guest column.

Contrary to the beliefs of those outside our environs, the Eastside contains a wealth of diversity among its resources, citizens and lawyers. The East King County Bar Association's members range from the sole practitioner working part-time out of the home to offices of the largest firms in the Puget Sound area. Reflecting this diversity, EKCBA is involved in many projects and activities in the names of its members.

EKCBA sponsors many activities where members, new members and nonmembers who just want to socialize with other lawyers have a chance to meet each other. The monthly membership meeting is held at lunch on the third Thursday each month generally at the Bellevue Athletic Club. Speakers have touched upon a number of subjects, ranging from military strategy during the Persian Gulf War to malpractice insurance. At the last meeting, **Bob Weldon** and **Leland Ripley** of the WSBA talked about growth issues of the 90s, positive or negative depending upon your perspective: the number of lawyers practicing and the number of complaints and disciplinary proceedings against lawyers. EKCBA also holds a spring cruise in June, a golf tournament in August, and a holiday party in December. President **Ron Dickinson** heads up the Board of Trustees this year.

EKCBA is lobbying hard for a courthouse facility on the Eastside. Much of the growth in King County has occurred in the Eastside, and the

King County Council has adopted in principle the idea of regional justice centers. Judge **Brian Gain** of the Bellevue Division of the King County District Court serves on a committee to locate a site for the Eastside to propose to the Council. The EKCBA board is working hard to make it happen in fact.

EKCBA also was instrumental in starting the Eastside Legal Assistance

Program, which provides free legal services for low-income individuals. ELAP, celebrating its fourth year of operation, puts on citizen self-help seminars in areas such as probate and family law, provides clinics at which individuals can have a half-hour consultation with a volunteer lawyer, and finds pro bono attorneys for needy clients who are unable to pay for legal

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services. ELAP president **Ted Barr** plans a number of fund-raising activities this year and oversees the operation of the organization.

What else is happening on the Eastside? **Joel Green** truly has become an associate with Oseran, Hahn, Van Valin & Watts, P.S. Van Eaton, Thomas, Phippard & Gorud is

expanding with the addition of associates **R. James Pidduck** and **Kevin Tarvin**. Revelle, Ries & Hawkins, P.S. has new partners in **Sheryl Garland**, **Valerie Knecht Hoff** and **Allen R. Sakai**. **Doug Cruickshank** became a shareholder at Clark, Nuber & Co.

Not to be outdone, **Joe Koplin**

sponsors jazz music jams on his trumpet and espresso at our office every morning at 6 a.m. (Maybe we can get Randy to join us for poetry readings and start the Eastside Law Center and Coffee Shop.) How diverse can you get?

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KITSAP COUNTY REPORT

by KATHLEEN M.S. WRIGHT

Great Advertising Opportunity. If you are interested in having the state of Washington pick up your advertising costs, you need to position your office strategically. The office of **John Brody** is located on Highway 160 in Port Orchard, which suffered a series of ill-fated mud slides in February and March. The Department of Transportation kindly provided an electronic reader board noting that Brody's office was right down the road and access was available.

New Judiciary Face. A newly created position for a part-time judicial commissioner is to be filled by **Thurman Lowans**.

Moves up. **Ann Cook** is now a principal with Tracy, McDaniel, Buchholz & Cook.

Moves around. **Peter Olbertz** will be leaving the partnership of McCluskey, Sells, Ryan, Olbertz & Haberly to establish a solo practice in Pierce County. **Thomas Alpaugh** recently began practice as a sole practitioner on Bainbridge Island, sharing space with **Robert Conoley** and **Rhonda Rudman**.

Junior associates. Silverdale attorney **William Broughton** and his spouse, **Deborah Broughton**, are proud parents of baby boy **Michael**, born March 19. **Botkin & Memovich** associate **Barbara West** added baby **Sam** to her family on March 22.

PIERCE COUNTY REPORT

by GEORGE S. KELLEY

The following is a paragraph appearing in February's *Bar News*:

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

This item resulted in the following fan mail:

Dear George:

It surprises me that an attorney of your caliber would publicly criticize and ridicule a Maintenance Department employee for doing his job; especially when the involved employee was acting under the direction of the Safety Officer and in compliance with WAC 296-24-073, life safety codes and local fire codes to ensure the safety of all County-City Building occupants (including those in the office of the Tacoma Bar Association), as well as the structure, itself.

You must realize an unsafe Christmas tree in a building of this size and occupancy level creates an extreme fire hazard and the potential for a catastrophic loss of lives and property.

One can't help but to find humor in the obvious irony of a *plaintiff's* attorney criticizing a government agency for taking safety precautions. I would expect that you and any number of your esteemed colleagues would be more than eager to sue the County had it disregarded the mandated safety precautions and a fire ensued, causing injuries to the public.

Perhaps you consider this a trivial matter, but I feel you owe the Pierce

County Maintenance Department an apology.

Very truly yours,

RISK MANAGEMENT &
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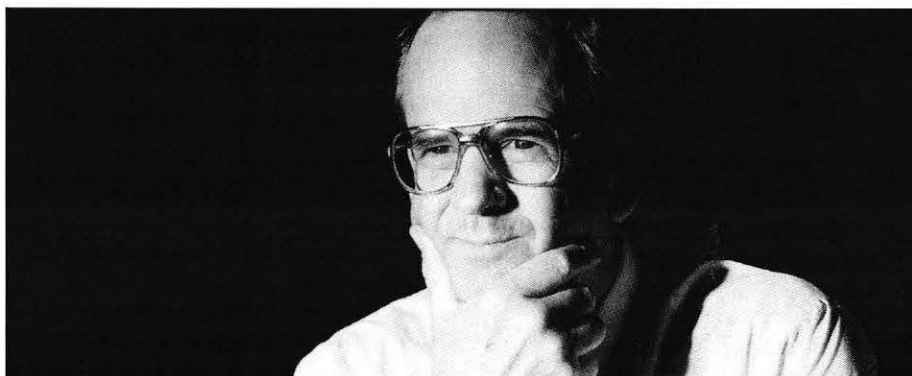
Mike Panagiotu, Risk Manager

After consultation with the bar

association's risk managers, the following reply was drafted and sent:

Dear Mike:

Thank you for your letter of February 24th. I am surprised and pleased to find that someone, especially a nonlawyer, actually reads the Pierce County Report



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to the *State Bar News*. As a nonlawyer, you may not be aware that the report often pokes fun at many groups including judges, bar association officials, large law firms, Puyallup lawyers and the Governor—yes, especially the Governor. Now the County-City Building Administration has joined this select group.

As Risk Manager for the County I am sure you are concerned about the possibility of the county being sued by the estates of attorneys killed in an office fire caused by an illegal Christmas tree. I suspect that, in such a suit, a properly instructed Pierce County jury would return a defense verdict on the basis that one less lawyer would not be a loss to anyone. The county might even be the recipient of a civic award for reducing the population of lawyers.

The fact that there is little liability exposure in damages to the county because of this situation is no excuse. An association of lawyers ought to be expected to follow the house rules. It should also not antagonize its landlord.

Therefore, apologies are tendered to the Maintenance Department for any harm, however unintentionally caused, arising out of the unfortunate Christmas tree incident and the report of it. In further recompense, you are invited to the bar office on the Friday morning preceding next Yuletide for Christmas cookies and nonalcoholic refreshments. We can then discuss the Constitutional implications of replacing the aforementioned Christmas tree with a Nativity scene and forthcoming litigation with the ACLU.

Very truly yours,

George S. Kelley

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**SOUTH KING COUNTY
REPORT**

by **ROY E. MATTERN, JR.**

On Thursday night, February 20, Judge **Robert E. McBeth** spoke to the members attending the monthly dinner meeting about legislative bills of concern to lawyers and judges and being considered in Olympia.

On Thursday, March 19, members went to Olympia to have dinner with the justices of the Washington Supreme Court. **Kenneth O. Eikenberry**, Washington's attorney general, spoke at the April dinner meeting.

The annual meeting in May will be held at Longacres, and the annual (Phil Biege) golf tournament will be played Friday, July 31.

SPOKANE COUNTY REPORT

by **DON CURRAN**

Grove & Morgan is the latest all-women law firm with **Leslie Ann Grove** and **Patricia B. Morgan** combining in general practice. The firm's philosophy is to mediate before litigating—to conciliate before doing battle. Guys should remember Kipling's admonition: A woman's guess is much more accurate than a man's certainty. . . . **James B. King** is quoted in the media as saying that injured parties are represented by attorneys who are "smart people" capable of finding ways to hold a manufacturer responsible for an injury, and there isn't much a manufacturer can do about it other than using common sense and make the product as safe as possible. I am reminded of a teacher's statement that common sense is the knack of seeing things as they are and doing things as they ought to be done. . . . **Michael F. Keyes** is featured in a local newspaper as a full-time construction litigator and appellate lawyer who spends his spare time writing manuals on construction law. Rumor has it that in reviewing an adversary's appellate brief, he concluded that it was the best ever written by any person on the wrong side of an issue of which s/he is profoundly ignorant. Wow! . . . Partners **Perrizo & Wetzel** (**Michael L. Perrizo** and **Phillip J. Wetzel**) and **Maryann C.**

Moreno are recognized for pro bono work. Charity is seeing the need and not the cause, and these attorneys exemplify professionalism where it counts! Kudos! . . . **W. Russell Van Camp** describes the life of a contingent fee lawyer as making horse racing seem like a solid, stable business. . . . **Dale L. Raugust** celebrates the relocation of his office with a champagne reception and a toast: Health to my body, wealth to my purse, Heaven to my soul, and I wish you no worse. . . . **Richard C. Eymann**, past prexy of the annual 7.6-mile fun run called Bloomsday, has taken up horse jumping, western dancing, and pistol shooting. His motto: Life is like playing a violin in public and learning the instrument as one goes on. . . . **James S. Craven** lectures attorneys on trial techniques, telling advocates that silence is one of the hardest things to refute—to say the right thing at the right time, keep still most of the time! . . . **James M. Parkins** investigates whether SKCBA members can be insured as a group for medical, disability and life at premium savings. . . . **Edgar L. "Ned" Annan** leaves Lukins & Annis for the solo practice, defending workers' compensation claims. . . . Retiree **Alan P. O'Kelly**, aged to perfection, once gave up golf. It was the most terrifying weekend of his life. . . . **John B. Hancock** satisfies his thirst for aerobic exercising and reading with hours vigorously pumping on a stationary bike thumbing through literature and advance sheets. . . . **Joseph P. Delay**, a tobacco prohibitionist, says smoking ranks higher on the list of social no-no's than drowning kittens. . . . Begosh and begorra! Winton & Cashatt's annual St. Patrick's bash, invitations to which are by subpoena ad testificandum, is a rollicking good time! . . . Spouses **Randall L. and Conni L. Stamper** have tested the marital knot by combining their personal and professional lives—and won! . . . Litigator **Julie A. Twyford**, noted for her common sense, urges her peers not to be theoretical centipedes. . . . **Joan L. Antonietti** gives special meaning to the saying that the way to fight a woman is with your hat. Grab it and run. . . . **Dan W. Keefe**, counseling his surgeon clients on discretion: Never say "oops" in the

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operating room. . . . **Cynthia L. Schwartz** warns her personal injury clients not to talk to adjusters and urges them to remember a closed mouth gathers no foot. . . . **Jerry R. Neal**, expert in legal issues facing airports, relaxes by attending conditioning classes at a health club and admiring the latest in workout clothes on finely tuned bodies.

**WASHINGTON STATE TRIAL
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by **LETHA J. OWENS**

Have you made your reservations for Sunriver? If not, you'd better put it on your list of things to do today. For those who haven't heard, the 1992

Washington State Trial Lawyers' Convention will be held in beautiful Sunriver, Oregon, on July 2 through 5. It looks to be one of the best annual conventions ever, and attendance is expected to be high.

Sunriver is a place of outstanding natural beauty. It is nestled in pine forests on the banks of the Deschutes River within sight of snow-capped Mount Bachelor. Its high desert air and warm sunny days are guaranteed to make even the hardest working trial lawyers relax and enjoy themselves. The activities of the resort take advantage of its natural beauty and can include anything from fly fishing for truly enormous trout to a field trip to the nearby lava tubes and a tour to the top of Lava Butte for a spectacular view over hundreds of miles of central Oregon countryside.

If your tastes run to more civilized pleasures, then there are two world class golf courses, a driving range, miniature golf, indoor and outdoor tennis and squash courts, swimming pools, bike rental, a stable, canoe rental, a nature center, an observatory, a daycare, and shopping at the Sunriver Mall. All of the resort's accommodations are first class and linked to the activities and convention center by 50 miles of paved bike trails.

Finally, let's not forget the reason for the visit. WSTLA's 1992 convention looks to be a special time for all, beginning with the president's reception all the way through to the president's ball. There will be exciting and informative programs for the members, and the always anticipated spouses' seminar. On Friday, July 3, the 20-acre high-desert museum has been reserved for a western barbecue complete with country music.

In short, there will be no lack of good times and fellowship for all members of the family attending the Sunriver convention. So pick up the phone and call Claire at the WSTLA office, (206) 464-1011 or (800) 732-9251, and make your reservations . . . NOW . . . Are you dialing?

On March 23, there was a reception at the Columbia Center Club for WSTLA's women members. It was held in honor of 1991 Brandeis Bust recipients: the Honorable **Faith**

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Have Become Shareholders of the Firm;

That
PETER B. CAMP
Has Joined the Firm as Special Counsel
Formerly with Oles, Morrison & Rinker
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and That
**BARBARA J. VANESS
JUDITH K. WILLIAMSON
CHRISTOPHER B. SHARP
CHRISTOPHER A. COLUCCIO**

Have Joined the Firm as Associates.

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Enyeart, Judge of the Year; **Elaine Houghton**, Trial Lawyer of the Year; and President's Award recipient, **Mary Ann Ottinger**. Present were more than 125 women, as well as more than 20 women judges. Each of the honorees spoke briefly on what it has meant to her to be a woman in the law or on the bench. Enyeart shared her reminiscences about the early years in WSTLA when the office of recording secretary had to be created on the board to ease her into participation in a nonvoting role. She compared this to today's board, which includes eight women, the hosts of the reception. She went on to welcome the growing number of women in the law and encourage their participation in organizations such as WSTLA, Women's Law Caucus and TLPJ. Houghton, who has lately received the highest Martindale-Hubble rating—av—encouraged all women trial lawyers to be themselves in court and to fight the pressure to project an image they are not comfortable with. As she pointed out, juries appreciate lawyers who are comfortable with themselves, and you can best control the courtroom by being just that. Finally, Ottinger spoke about giving back to other women whatever is necessary for them to make what they want to happen professionally. (She will be leaving WSTLA to join the bench in Issaquah District Court.) She went on to recommend women search in their practice for a path which other women have not yet trod and work there to create diversity.

A heart-felt thank-you to the board members who sponsored the reception. It was of great value and a well-appreciated opportunity for women WSTLA members to exchange and express their special perspectives.

WSTLA's Public Affairs Committee is excited about its new program of special focus People's Law School beginning this spring. These People's Law School courses are designed to focus on the needs of particular groups in the population and are co-sponsored by community organizations serving those groups. Currently underway is a People's Law School for Seniors, co-sponsored by the Mayor's Office for Seniors, for which costs have been kept to a minimum by the donation of all services. A Small-business People's

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Law School is planned and will be co-sponsored by the Small Business Administration. The King County Nurses Association is co-sponsoring a special-interest law school for nurses. And there is also a People's Law School planned to focus on the legal issues facing the gay and lesbian community, co-sponsored by the Greater Seattle Business Association (GSBA) and the

Privacy Fund. For more information, please contact **Pamela Pakker-Kozicki** at the Seattle WSTLA office, (206) 464-1011.

IN MEMORIAM

"**Patricia L. Leitch** died December 8, 1991 after a one-year battle with

cancer," writes her friend Brook Shumway. "Pat was a 1980 graduate of Gonzaga Law School. While at Gonzaga she was a member of the Women's Law Caucus, was published in the *Law Review*, and had her own column, "A Woman's Forum," in the law school newspaper. Pat was licensed in both Oregon and Washington. She worked as an attorney with Social Security's Office of Hearings and Appeals in Seattle from 1983 to 1989. She then worked in the Prosecuting Attorney's Office in Snohomish County in Everett until November, 1990, when she was diagnosed with advanced cancer."

Gordon S. Lower, 81, died January 30, 1991 in Spokane. Born, raised and educated there, Lower was admitted to the bar in 1939. He practiced in Spokane from 1945 to 1949, when he was appointed to the Justice Court. A year later Lower was elected justice of the peace; he later served as municipal court judge, a police court judge and district court judge for a total of 25 years. He retired in 1974. Survivors include his wife, one son and one grandson.

Richard N. Pratt, 55, died in December 1990. Born in Port Angeles, he moved to Everett as a child and graduated from Everett High School. After graduation from Gonzaga University School of Law in 1960, he worked a year and a half as a deputy prosecutor in Everett before going into a criminal defense practice. In 1973 Pratt was named director of the Snohomish County Public Defender's Office. Though he later resigned as director, he remained a public defender until shortly before his death.

Gail Valencia, chief deputy clerk of the Court of Appeals, Division I, died February 8 after a long struggle with cancer. She was with the court for more than six years.

Corwin P. Shank, 95, died March 2, 1992 in Seattle. Born there in 1896, the son of **Corwin S. Shank**, a lawyer who practiced with the late Governor **Arthur Langlie**, he met his wife, Esther, in high school, and knew right away she was the one for him. They married in 1918; Mrs. Shank died in 1990.

After military service in World War I, Shank returned home and entered the

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University of Washington, where he obtained a degree in forestry. After ten years working in Snohomish County logging camps, Shank returned to UW for his law degree.

In 1946 Shank was elected to the state senate and served two terms before returning to private life. He is remembered for his successful sponsorship of the Evergreen Point Bridge.

An active outdoorsman who kept up skiing through his mid-70s, Shank was a founder of Overlake Hospital in Bellevue, was president of the Bellevue Chamber of Commerce, and was active in the Congregational Church.

Survivors include two children, six grandchildren and ten great-grandchildren. A son, Corwin Shank, Jr., died in service in World War II.

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Attorney at Law
Formerly with Inslee, Best, Doezie and Ryder, P.S.

is pleased to announce
the formation of

Ross Radley, Inc., P.S.
April 13, 1992

4100 First Interstate Center
999 Third Avenue
Seattle, WA 98104
Telephone: (206) 624-9400
Facsimile: (206) 464-9559

Mr. Radley will continue his practice in land use, real estate-related matters and personal injury.

The Law Firm of

VAN EATON, THOMAS, PHIPPARD & GORUD
(a Partnership)

Announces, with regret, the withdrawal of

JAMES R. PHIPPARD

The name of the law firm has changed to

THOMAS, GORUD & GRAVES

and the firm is pleased to announce that

R. JAMES PIDDUCK

and

KEVIN TARVIN

have joined the firm as associates.

505 Market Street, #200
Kirkland, WA 98033

(206) 822-2288

Pence & Dawson

Bob Dawson announces his availability for trial of plaintiff's personal injury lawsuits.

624-5000

Family Law

Morris H. Rosenberg is available for association, consultation or referral of complex marital dissolution cases. He is also available to mediate or arbitrate family law disputes.

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

Morris H. Rosenberg
Mussehl & Rosenberg
1111 Third Avenue
Suite 1010
Seattle, WA 98101-3202
(206) 622-3000

Mark Alan Johnson
6500 Columbia Seafirst Center
701 Fifth Avenue
Seattle, Washington 98104
(206) 386-5566

Announces his availability for
consultation, association or referral
of substantial claims of legal
malpractice.

Appeals

Douglass A. North announces his
availability for referral, consultation,
or association on appellate
arguments and briefs.

Douglass A. North

Maltman, Weber, Reed,
North & Ahrens
1415 Norton Building
Seattle, Washington 98104
Telephone (206) 624-6271

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Trial Lawyer of the Year, is available
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Fury Bailey

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Seattle, WA 98101-3021
(206) 292-1700 or
(800) 732-5298

REVELLE HAWKINS P.S.

is pleased to announce
its name changed from Revelle, Ries & Hawkins, P.S.
to reflect the retirement of Bruce M. Ries
from the practice of law

and

takes pleasure in announcing that

SHERYL GARLAND,
whose practice emphasizes real estate
and commercial litigation;

VALERIE KNECHT HOFF,
whose practice emphasizes family law
and estate planning;

and

ALLEN R. SAKAI,
whose practice emphasizes real estate,
business and corporate law,

have become shareholders in the firm.

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Edward B. Ratcliffe, J.D., LL.M.

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Division in Washington, D.C.

Also available for
ERISA consultation and drafting.

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Terminations 401(k)
Mergers ESOPs
IRS Audits & QDROs

Appeals

Philip A. Talmadge announces
his availability for referral,
consultation or association on state
and federal appellate briefs and
arguments.

Philip A. Talmadge Talmadge and Cutler

3650 First Interstate Center
999 Third Avenue
Seattle, Washington 98104-
4009
(206) 340-4600

Appeals

Margaret K. Dore

former clerk to Chief Justice Vernon R. Pearson, of the Washington State Supreme Court, and former Clerk to Judge John A. Petrich, of the Washington State Court of Appeals, announces her availability for referral, consultation or association on appellate arguments and briefs.

Margaret K. Dore

Lanz and Danielson
Seafirst Fifth Avenue Plaza
800 Fifth Avenue, Suite 4200
Seattle, WA 98104
Telephone (206) 382-1827
Fax (206) 628-0504

Available for Referrals
and Consultations
Social Security Disability/SSI

James A. Douglas Peter H.D. McKee

Theller Douglas
Drachler & McKee
1613 Smith Tower
Seattle, WA 98104
(206) 623-0900

Available for Referral and Consultations

Veterans' Disability
Workers' Compensation
Social Security Disability/SSI

Ray R. Whitlow, Member
U.S. Court of Veterans Appeals
U.S. Court of Military Appeals
Washington State Bar

Hames, Anderson
& Whitlow, P.S.
601 W. Kennewick Avenue
P.O. Box 5498
Kennewick, WA 99336
(509) 586-7797

Have Gavel, Will Travel

Thomas A. Gish, widely experienced, 50-year-old civil law practitioner, will mediate or arbitrate most civil disputes or suits.

(206) 742-9100

FOR SALE/WANTED

RCWA current set with pocket parts, best offer over \$1,300. Phone No. (206) 892-6680 or (503) 228-4375; ask for Mike.

Oceanfront acreage for sale — 324 feet of Pacific beach. Buy all or part of 9+ acres bordering state park. (206) 323-4854. Snohomish county lots — (3) Building lots 2.5+ acres each, by owner. (206) 323-4854.

SPACE AVAILABLE/WANTED

Beautiful view space with or without adjacent secretarial space available with Theiler Douglas Drachler & McKee in Seattle's historic Smith Tower. Rent includes receptionist, library, telephone, coffee service and use of photocopier, fax and postage meter. For more information call Elva Axelson at (206) 623-0900.

Prestige office-sharing. Located in the unique Bellevue Place adjacent to the Hyatt Regency Hotel and many fine restaurants. Also on location is the Seattle Athletic Club. Only three of our 42 luxury suites remain available, exclusively for attorneys and CPAs. Furnished/unfurnished suites, short-/long-term leases. Conference rooms, kitchen, file and storage cabinets. Receptionist, personalized telephone answering, word processing, facsimile and photocopies. Private secretarial stations, on-site paralegal and bookkeeping/billing services available. Enormous full-service law library on premises. Call Ted Barr/Chris Gordon. (206) 451-3961.

Eastside office space: excellent I-90/405 access, generous free park-

ing, beautiful build-outs, secretarial & temporary services in building, better rate than executive suites. Call Brian Finnegan, (206) 643-4300.

First month free. Office space available with congenial atmosphere in Seattle's Pioneer Square; many office amenities. Occasional overflow work. \$550 month. Call Dale or Steve, (206) 447-1560.

Office space — Two attorney and secretarial offices available in newer Federal Way eleven-attorney office building. Amenities include receptionist, library, fax, conference rooms, kitchen, swimming pool, sauna and showers. Contact Wm. Mike Foshaug at (206) 838-3710.

Olympia Trade Center executive suites, Olympia. Two blocks from the state capitol. Prestigious, befitting attorneys, accountants and professional consultants. Full-time receptionist, beautifully appointed lobby, telephone-answering, conference room, utilities/janitorial service. Short-/long-term lease. Additional services available: word processing, tape transcription, fax, photocopier, parking. \$450 to \$695 per month. Call Dan Puryear, (206) 754-6576, 924 Capitol Way South, Olympia, corner of 10th and Capitol.

Space-sharing. First Interstate Center, Seattle. Two offices available in space with full-service firm and other subtenants, 25th floor. Two conference rooms, library, receptionist. Fax, Lexis, PC Network. Negotiable terms. (206) 382-2600.

POSITION WANTED

Returning attorney, with 12 years' experience in business, real estate, estate planning and complex litigation, is looking for flexible arrangement with firm/solo practitioner in Western/Southern Puget Sound. Proven history of client development. Available 8/1. Reply: Box 357 WSBA.

Contract attorney available: Admitted to Washington Bar 1984. J.D., *U.P.S. Law Review*, former law clerk in King County Superior Court. Janice Campton, 5157 N.E. Latimer Pl., Seattle, WA 98105; (206) 525-9824.

SEEKS ASSOCIATION

Two-person Seattle general-practice firm with equity in law office building looking for one to three established, productive lawyers (or small firm) to merge practices with goal of improving quality and economics. Reply to Box 356 WSBA. All replies confidential. Please indicate areas of practice/interest.

POSITION AVAILABLE

Peery, Hiscock, Pierson & Ryder, a 10-person Seattle litigation firm, is seeking an associate with a minimum of three years' experience in litigation. Applicants should have trial experience, ability to handle cases with minimal supervision and excellent writing skills. Washington State Bar membership required; Oregon Bar membership desirable. Inquiries confidential. Salary and benefits negotiable. Send resumé and writing sample to Cathy Swanson, 505 Madison, Suite 300, Seattle, WA 98104.

Immediate opening for public-defense work in Silverdale area. Two to three years' experience required. Please call (206) 692-3612, and ask for Pat or Linda.

Small av-rated Tacoma law firm seeking additional partner. Excellent opportunity for established attorney with business insurance client base to gain control of overhead and enjoy a quality of life Seattle has not seen since the early 1960s. Reply to WSBA Box #354.

Craig L. Jones & Associates, Silverdale, seeks a real estate attorney with at least four years' experience in real estate development, transactions and land use. Clientele generally includes real estate development companies, realty and escrow companies, title insurance companies and banks. Send resumé to Craig L. Jones, 10049 Kitsap Mall Blvd., Suite 201, Silverdale, WA 98383.

Associate: Well established, av-rated, 14-attorney, Wenatchee law firm seeks business lawyer with at least one year of experience, familiar with

commercial and business transactions, experience in corporate, tax, estate planning and real estate desirable. Send resumé and cover letter to Garfield R. Jeffers, Jeffers, Danielson, Sonn & Aylward, P.S., P.O. Box 1688, Wenatchee, WA 98807. All inquiries will be held confidential; no phone calls, please.

Large Pacific Northwest law firm seeks federal tax attorney with minimum of three years of experience in domestic and international corporate and partnership taxation. L.L.M. or C.P.A. desired, but not required. Must have very strong academic credentials and work experience. Send resumé and cover letter to: Attorney Recruiter, Bogle & Gates, Two Union Square, 601 Union Street, Seattle, WA 98101-2346. EEO Employer.

Large Pacific Northwest law firm seeks an attorney highly skilled in all phases of international business to build a Pacific Rim practice. To be considered for this position, candidates must be fluent in spoken and written Japanese and have extensive experience providing legal services to Japanese businesses. Candidates licensed in Washington and Oregon preferred. Please reply to WSBA Box 358.

Landerholm, Memovich, Lansverk & Whitesides, Inc., P.S., a Vancouver, Washington law firm with 22 lawyers, is seeking an attorney with two or more years of experience in the areas of employee benefit planning, qualified retirement plans and ERISA matters. Strong academic background, excellent writing skills, and demonstrated ability to manage rapid practice growth are prerequisites. Please send resumé, law school transcript and short writing sample to Paulette Monsen, Landerholm, Memovich, Lansverk & Whitesides, Inc., P.S., 915 Broadway, Vancouver, WA 98660.

SERVICES

Stuck in the trenches? Get help from someone who's been there. Whether it's discovery, a trial, documentation for a business transaction, or legal research, our lawyers are putting their experience to work for firms like yours—at reasonable hourly rates. For

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Missing Heirs Located: Fast-action; amazing results. We like hopeless cases. Call for free evaluation, references, brochure. Locators, Inc. (800) 395-9131, toll-free. (800) 347-7639 fax. Find us in Martindale Hubbell.

WILL SEARCH

Nancy E. Meyer. Any person with a copy or knowledge of a will of Nancy E. Meyer, a resident of King County, who died March 17, 1992, please contact Walt Krueger, (206) 455-3607.

Fredrick A. MacDonald: Anyone having copy or knowledge of will or codicil of Fredrick A. MacDonald, contact Bruce Hand, (206) 747-0968.

Charles Frissell. Any person with knowledge of will of Charles Frissell, Spokane county resident, former Pend Oreille County resident, please contact Linda Mathis, (509) 447-5929.

MISCELLANEOUS

Pay no initiation fee for your summer associates! Join the Eastside Law and Tax Library, the Northwest's only membership law and tax library for attorneys, CPAs and other professionals. Over 10,000 volumes. Corporate, individual or student memberships. Open 24 hours/365 days per year. Deposition, research and conference rooms with video equipment. Full-service staff including law librarian, paralegal, and word processor. WESTLAW with custom printer. Facsimile, photocopier, and microfiche. *Free attorney/client referral service for members.* Located on the third floor of the MGM Building, in Bellevue Place. Please call Margie Hawley or Ted Barr for additional information or a tour, (206) 646-3464.

Sports Lawyers Association annual conference: Make your plans to attend—now! May 14-16, 1992 at the Sheraton Palace Hotel, San Francisco. Over 10 topics including: drug policies, ethics, tax laws, women and minorities in sports. Call SLA at (414) 632-4040 for more information.

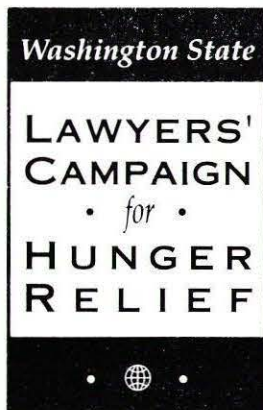
1992
**GUBERNATORIAL CANDIDATES
FORUM**

**"The Challenge Of Washington's Hungry Children:
The Role Of Our Government, Our Community, And The Individual In
Alleviating Childhood Hunger"**

The Following Candidates Have Been Invited To Address This Critical Community Issue:

*Attorney General Ken Eikenberry
House Speaker Joe King
Former Member of the U.S. House of Representatives Mike Lowry
State Senator Dan McDonald
U.S. Representative Sid Morrison*

Luncheon Sponsored By



**Washington State Lawyers Are Encouraged To Attend To Learn More About
The Candidates And Their Policy Positions On Childhood Hunger**

Time & Date: Monday, June 8, 1992
12:00 p.m. to 1:30 p.m.

Location: Plymouth Congregational Church
Sixth and University, Seattle

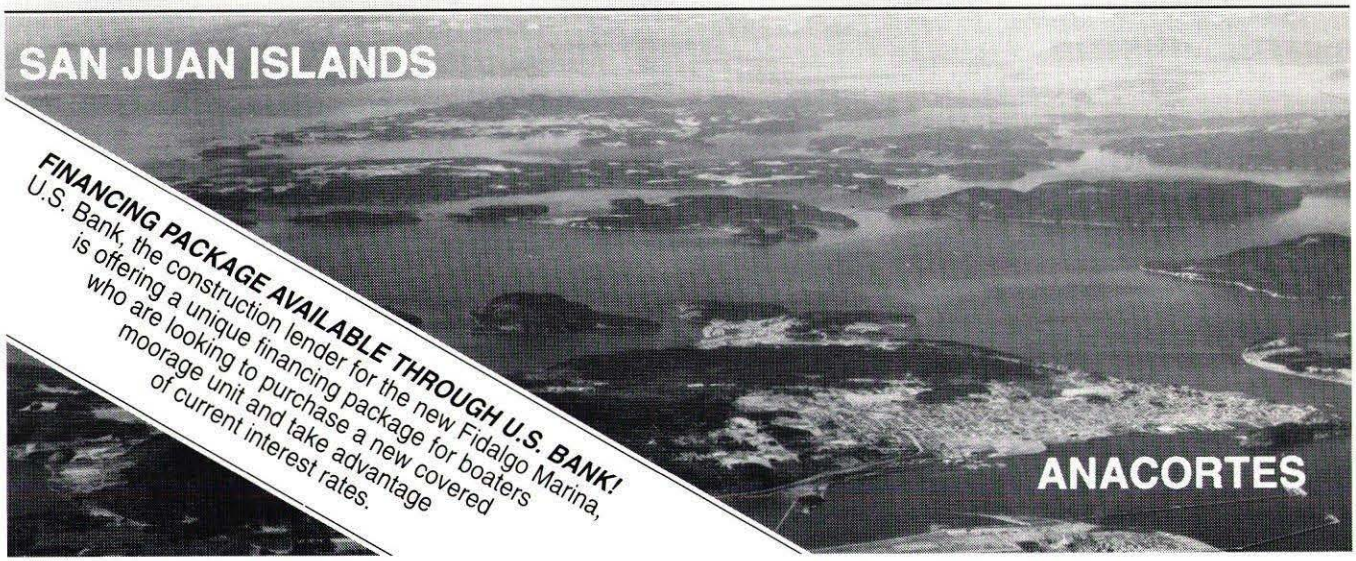
Reservations Must Be Received By June 5, 1992 For A Complimentary Lunch
(Limited Seating Available)

To R.S.V.P. Please call The Law Offices of Mussehl & Rosenberg at (206) 622-3000

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(Have not used tobacco in last 12 months)

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MONTHLY RATES

Issue Age	\$100,000		\$250,000		\$500,000		\$1,000,000	
	Male	Female	Male	Female	Male	Female	Male	Female
20	11.50	11.40	18.75	18.54	35.42	35.00	68.75	67.92
21	11.50	11.40	18.75	18.54	35.42	35.00	68.75	67.92
22	11.50	11.40	18.75	18.54	35.42	35.00	68.75	67.92
23	11.50	11.40	18.75	18.54	35.42	35.00	68.75	67.92
24	11.50	11.40	18.75	18.54	35.42	35.00	68.75	67.92
25	11.50	11.40	18.75	18.54	35.42	35.00	68.75	67.92
26	11.50	11.40	18.75	18.54	35.42	35.00	68.75	67.92
27	11.50	11.40	18.75	18.54	35.42	35.00	68.75	67.92
28	11.50	11.40	18.75	18.54	35.42	35.00	68.75	67.92
29	11.50	11.40	18.75	18.54	35.42	35.00	68.75	67.92
30	11.50	11.40	18.75	18.54	35.42	35.00	68.75	67.92
31	11.50	11.40	18.75	18.54	35.42	35.00	68.75	67.92
32	11.50	11.40	18.75	18.54	35.42	35.00	68.75	67.92
33	11.50	11.40	18.75	18.54	35.42	35.00	68.75	67.92
34	11.50	11.40	18.75	18.54	35.42	35.00	68.75	67.92
35	11.50	11.40	18.75	18.54	35.42	35.00	68.75	67.92
36	11.80	11.60	19.38	18.96	36.67	35.83	71.25	69.58
37	10.25	11.80	20.42	19.58	38.75	37.08	75.42	72.08
38	10.67	10.08	21.46	20.21	40.83	38.33	79.58	74.58
39	11.17	10.58	22.71	21.46	43.33	40.83	84.58	79.58
40	11.67	11.33	23.96	23.13	45.83	44.17	89.58	86.25
41	12.25	11.67	25.21	23.96	48.33	45.83	94.58	89.58
42	12.83	12.25	26.25	25.21	50.42	48.33	98.75	94.58
43	13.58	12.67	27.71	26.25	53.33	50.42	104.58	98.75
44	14.25	13.00	29.38	27.29	56.67	52.50	111.25	102.92
45	15.33	13.33	31.04	28.13	60.00	54.17	117.92	106.25
46	16.50	14.00	33.13	28.96	64.17	55.83	126.25	109.58
47	17.83	14.67	35.00	30.00	67.92	57.92	133.75	113.75

MONTHLY RATES

Issue Age	\$100,000		\$250,000		\$500,000		\$1,000,000	
	Male	Female	Male	Female	Male	Female	Male	Female
48	19.25	15.67	37.50	31.04	72.92	60.00	143.75	117.92
49	20.83	16.92	40.00	32.71	77.92	63.33	153.75	124.58
50	22.75	18.33	42.92	33.96	83.75	65.83	165.42	129.58
51	24.67	19.67	45.83	36.46	89.58	70.83	177.08	139.58
52	26.92	21.00	49.17	39.38	96.25	76.67	190.42	151.25
53	29.33	22.67	52.50	42.29	102.92	82.50	203.75	162.92
54	31.83	24.33	56.67	45.42	111.25	88.75	220.42	175.42
55	34.92	26.25	61.88	48.75	121.67	95.42	241.25	188.75
56	38.33	28.25	67.29	52.29	132.50	102.50	262.92	202.92
57	41.67	30.33	73.54	56.46	145.00	110.83	287.92	219.58
58	45.50	32.75	80.21	61.46	158.33	120.83	314.58	239.58
59	50.08	35.33	88.33	67.29	174.58	132.50	347.08	262.92
60	55.67	37.83	97.71	73.54	193.33	145.00	384.58	287.92
61	62.50	40.33	88.33	80.42	174.58	158.75	347.08	315.42
62	70.33	43.33	121.46	88.75	240.83	175.42	479.58	348.75
63	78.75	46.92	135.42	98.54	268.75	195.00	535.42	387.92
64	87.75	51.33	150.83	109.79	299.58	217.50	597.08	432.92
65	96.83	56.17	168.13	121.88	334.17	241.67	666.25	481.25
66	106.17	60.83	187.29	131.46	372.50	260.83	742.92	519.58
67	115.17	65.50	207.29	141.46	412.50	280.83	822.92	559.58
68	125.17	69.67	229.58	152.08	457.08	302.08	912.08	602.08
69	137.17	72.92	257.29	161.67	512.50	321.25	1,022.92	640.42
70	152.92	75.42	292.50	170.42	582.92	338.75	1,163.75	675.42
71	171.33	82.42	332.92	187.29	663.75	372.50	1,325.42	742.92
72	192.08	91.00	378.75	207.92	755.42	413.75	1,508.75	825.42
73	215.50	102.08	430.21	234.38	858.33	466.67	1,714.58	931.25
74	241.42	115.75	486.88	266.46	971.67	530.83	1,941.25	1,059.58
75	269.92	131.42	549.17	302.92	1,096.25	603.75	2,190.42	1,205.42

Other amounts available upon request. Premiums are standard rates based on applicant's age at issuance of policy. Premiums may be paid annually, semi-annually, and monthly bank draft only. (A No-cost Medical Exam may be required depending on age, health, or amount of coverage desired). Policies 100,000 and above, C.E.-82 Plus, Policy Form No. 80-RCT-79D, Graded Premium, Level Death Benefit to age 95. Premiums increase annually. (Brochure revised 10/90). Rates subject to change without notice. MPS Proposal Required.

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MONTHLY RATES

Issue Age	\$100,000		\$250,000		\$500,000		\$1,000,000	
	Male	Female	Male	Female	Male	Female	Male	Female
20	16.58	16.08	34.38	31.25	66.67	60.42	131.25	118.75
21	16.58	16.08	34.38	31.25	66.67	60.42	131.25	118.75
22	16.58	16.08	34.38	31.25	66.67	60.42	131.25	118.75
23	16.58	16.08	34.38	31.25	66.67	60.42	131.25	118.75
24	16.58	16.08	34.38	31.25	66.67	60.42	131.25	118.75
25	16.58	16.08	34.38	31.25	66.67	60.42	131.25	118.75
26	16.58	16.08	34.38	31.25	66.67	60.42	131.25	118.75
27	16.58	16.08	34.38	31.25	66.67	60.42	131.25	118.75
28	16.58	16.08	34.38	31.25	66.67	60.42	131.25	118.75
29	16.58	16.08	34.38	31.25	66.67	60.42	131.25	118.75
30	16.58	16.08	34.38	31.25	66.67	60.42	131.25	118.75
31	16.83	16.08	35.00	31.25	67.92	60.42	133.75	118.75
32	17.08	16.08	35.63	31.25	69.17	60.42	136.25	118.75
33	17.42	16.08	36.25	31.25	70.42	60.42	138.75	118.75
34	17.67	16.08	36.88	31.25	71.67	60.42	141.25	118.75
35	17.92	16.08	37.29	31.25	72.50	60.42	142.92	118.75
36	18.58	16.42	38.96	32.29	75.83	62.50	149.58	122.92
37	19.58	16.83	41.25	33.33	80.42	64.58	158.75	127.08
38	20.58	17.17	43.75	34.38	85.42	66.67	168.75	131.25
39	21.92	18.17	46.88	36.67	91.67	71.25	181.25	140.42
40	23.17	19.50	50.00	39.79	97.92	77.50	193.75	152.92
41	24.83	20.33	53.96	41.67	105.83	81.25	209.58	160.42
42	26.42	21.42	57.71	44.17	113.33	86.25	224.58	170.42
43	28.33	22.42	61.67	46.46	121.25	90.83	240.42	179.58
44	30.50	23.25	66.67	48.75	131.25	95.42	260.42	188.75
45	33.25	24.00	72.08	50.63	142.08	99.17	282.08	196.25
46	35.42	25.00	76.04	51.88	150.00	101.67	297.92	201.25
47	37.83	26.00	80.00	53.54	157.92	105.00	313.75	207.92

MONTHLY RATES

Issue Age	\$100,000		\$250,000		\$500,000		\$1,000,000	
	Male	Female	Male	Female	Male	Female	Male	Female
48	40.42	27.50	84.79	55.42	167.50	108.75	332.92	215.42
49	43.17	29.42	89.58	57.92	177.08	113.75	352.08	225.42
50	46.50	31.67	95.00	60.42	187.92	118.75	373.75	235.42
51	49.33	34.00	101.04	64.58	200.00	127.08	397.92	252.08
52	52.25	36.33	107.08	69.17	212.08	136.25	422.08	270.42
53	55.42	39.33	113.75	74.17	225.42	146.25	448.75	290.42
54	58.50	42.33	121.88	79.38	241.67	156.67	481.25	311.25
55	62.25	45.67	131.67	84.58	261.25	167.08	520.42	332.08
56	68.33	49.50	140.21	90.42	278.33	178.75	554.58	355.42
57	74.33	53.50	149.38	97.71	296.67	193.33	591.25	384.58
58	81.33	58.33	158.96	106.25	315.83	210.42	629.58	418.75
59	89.58	63.33	170.42	116.25	338.75	230.42	675.42	458.75
60	99.50	68.33	183.54	127.29	365.00	252.50	727.92	502.92
61	111.83	73.00	204.17	139.17	406.25	276.25	810.42	550.42
62	125.92	78.42	226.67	153.75	451.25	305.42	900.42	608.75
63	141.17	84.92	251.88	170.63	501.67	339.17	1,001.25	676.25
64	157.33	93.00	280.00	190.21	557.92	378.33	1,113.75	754.58
65	173.67	102.00	310.83	211.46	619.58	420.83	1,237.08	839.58
66	190.50	110.92	344.38	228.54	686.67	455.00	1,371.25	907.92
67	206.67	119.83	378.54	247.08	755.00	492.08	1,507.92	982.08
68	224.67	128.00	417.08	266.67	832.08	531.25	1,662.08	1,060.42
69	246.33	134.58	464.38	284.79	926.67	567.50	1,851.25	1,132.92
70	274.75	139.67	525.00	301.46	1,047.92	600.83	2,093.75	1,199.58
71	307.75	151.33	597.71	332.29	1,193.33	662.50	2,384.58	1,322.92
72	345.08	164.58	680.21	370.00	1,358.33	737.92	2,714.58	1,473.75
73	387.25	183.92	772.92	418.13	1,543.75	834.17	3,085.42	1,666.25
74	433.83	206.67	875.21	477.08	1,748.33	952.08	3,494.58	1,902.08
75	485.17	232.50	987.08	543.96	1,972.08	1,085.83	3,942.08	2,169.58

Other amounts available upon request. Premiums are standard rates based on applicant's age at issuance of policy. Premiums may be paid annually, semi-annually, and monthly bank draft only. (A No-cost Medical Exam may be required depending on age, health, or amount of coverage desired). Policies 100,000 and above, C.E.-82 Plus, Policy Form No. 80-RCT-79D, Graded Premium, Level Death Benefit to age 95. Premiums increase annually. (Brochure revised 10/90). Rates subject to change without notice. MPS Proposal Required.

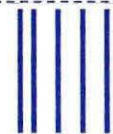
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