

Washington State **Bar**
News

Vol. 46, No. 6, June 1992



**ANNUAL
FINANCIAL
ISSUE**

— • —
Update on RICO

•
**Professional Port-
folio Management
and Your Clients**

•
**Disability Income
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Not to worry; they did fine.

Art Credits

Cover: Editor Lindsay Thompson shamelessly purloined this (public domain) portrait of Harry Truman, whose timeless description of the Oval Office is spoofed in our cover line, from the 1980 Democratic National Convention book, *The Democrats*.

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WSBA Phone Numbers

A new phone system has been installed at Intergalactic Headquarters. Though different from the old one, it's not as hard as deciding which long-distance carrier to choose. A list of all the new numbers is in the January 1992 *Bar News*, pages 11-12.

The new fax number is (206) 727-8320.



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.

Vasectomies Aren't the Cure for AIDS

Editor:

J.B. Holcomb's April letter (*Bar News*, page 6) cites a medical expert who purportedly testified in the case of *United States v. Perez*. Supposedly the expert claimed that the defendant could not transmit HIV to sex partners because a vasectomy had rendered his semen acellular and therefore non-contagious. The notion that HIV is always a cellularly associated virus was refuted in studies published by Ho (1) and Coombs (2) in 1989. As HIV infection progresses cell free virus is common and may be present in over 20 percent of asymptomatic HIV-infected people. In these instances a vasectomy would not protect from HIV infection. In addition, a vasectomy does not prevent cells other than sperm from entering the ejaculate since urethral exudates are common.

Many factors are associated with the probability of HIV transmission, such as the type of sexual activity, the stage of disease of the HIV source contact, the frequency of contact, and the use of barrier contraceptives. Until additional data are available, any HIV-antibody positive person must be assumed capable of HIV transmission to a partner if an exchange of blood, semen or vaginal fluid occurs. We cannot predict at this time which HIV positive people are contagious and which are not based on currently available medical data. To suggest that a vasectomy alters this very important public health message is incorrect.

WILLIAM E. LAFFERTY, M.D.
Chief, HIV/AIDS Epidemiology &
Surveillance

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P.O. Box 550501
Seattle 98155-9701

More on Wacky Appellate Publication Choices

Editor:

I was amused by the comments of Barton L. Jones in the April *Bar News* decrying the publication of *Puget Sound Power & Light Co. v. Strong*, 117

Wn.2d 400 (1991) because the amount in controversy was \$169.39. Actually, the amount in dispute was a whopping \$207.04, or the difference between a new power pole and a depreciated pole.

As Case Review Chair for the Seattle Claims Adjusters Association, I present two cases to that organization each month. My review of *Strong* made the front page of their newsletter in February. For many years, claims managers and adjusters have argued with utilities about the "power pole controversy." It is staggering how many errant vehicles seem to come to rest through the stalwart efforts of a utility pole. As I stated in my review, "With this new, definitive ruling, thousands of dollars in claims can now be resolved without controversy, and we can concentrate on other areas of liability and damages."

Ironically, in a recent presentation to the adjusters on the current state of slip-and-fall opinions, I complained that Division I of the Court of Appeals had decided *not* to publish *Hanna v. Fred Meyer, Inc.* (21245-1-I, filed January 5, 1992). The court upheld a summary judgment dismissal of plaintiff's slip-

and-fall claim in an opinion that would be very helpful to my fellow insurance defense attorneys.

While I share in his frustration as I attempt to decipher the Court's rules on which cases to review and publish, I disagree with Mr. Jones' conclusion that *Strong* did not warrant the paper used. Several trees will be spared now that the controversy has been resolved and, after all, trees *are* a renewable, recyclable resource, particularly when used as paper in an adjuster's file and not as a power pole/errant vehicle target.

JAMES E. MACPHERSON
Seattle

Struck Jury System Can Be Improved

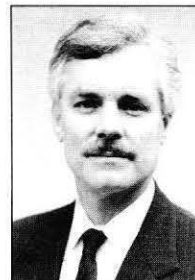
Editor:

One of the main advantages of the struck jury system is that it helps avoid the boring repetition of the same or similar questions being asked to the jurors one by one, as in the traditional system.

However, there are also disadvantages. I feel that one of the main disadvantages is the necessity of having to voir dire a

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large number of potential jurors who have not been chosen as part of the beginning panel of 12 jurors. It is a waste of a time to be engaging in dialogue with people who probably will not be on the jury. This also increases the difficulty for counsel to keep track of information being provided not just by the original panel of 12, but also by an even greater number of individuals in the back of the courtroom.

It is for that reasons that I advocate a modified struck jury system. The original 12 jurors in the jury box are questioned by the struck jury method, but the jurors in the back of the room are not involved in this questioning. Then, as challenges are made, the jurors from the back of the room that take the place of those that are excused can be questioned one by one, in the traditional way.

I have only had one opportunity to use this modified struck jury system, but I thought it worked well in that trial. The jury was picked in less than half a day. We avoided the tedium of the questions being repeated so many times that they lose their meaning. But it was much easier for me to manage the information being given to me by 12 jurors in the box, than trying to handle information coming from 30 or more in the entire courtroom.

DAVID R. HEVEL
Kennewick

On Dues and Disclosures

Editor:

On the last day of 1991, I had the dubious distinction of making out checks totaling \$870 to cover my various bar dues. In addition to my \$195 for the WSBA, I paid \$200 to the California Board of Legal Specialization for my Certification in Immigration Law and \$475 for the California State Bar.

In response, I received my 1992 California Bar card and a slick brochure purporting to justify the amount of the membership dues. Furthermore, the February and March issues of the *Washington State Bar News* contained several items justifying the amount of the WSBA dues.

As a member of both the Washington and California bars, I do not find the level of the WSBA dues painful. However, I would like to thank Dennis Harwick for his comparison chart which justifies much of the anger our

California colleagues feel toward the California Bar [In justice to the California Bar, Mr. Harwick failed to note the availability of the Keller deduction of \$3 for a mandatory fee of only \$475].

However, the WSBA has taken one measure which may decrease my annual payments. I have been certified by the *California State Bar* as a "Certified Specialist" in Immigration law and can hold myself out as such. However, the WSBA has proposed an amendment to

RPC 7.4 that any statement of certification (such as my card or stationery) contain a disclosure of the obvious proposition that a California certification is not recognized in Washington or required for practice of law in Washington. If this measure is approved, the value of certification will be diminished to nothing, thereby saving me an incentive to pay my annual certification dues.

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25 Years Ago:

Washington State Bar News, May-June 1967: The eight pages of the *Bar News* find a number of bench and bar leaders in the early stages of their ascents. Gerard M. Shellan was elected president of the South King County Bar Association. Robert J. Bryan, 32, was appointed Kitsap County's third superior court judge by Governor Evans. Edmund B. Raftis joined Pacific Northwest Bell's legal staff and took up writing the Seattle-King County Report for the *Bar News*. Robert F. Utter was the reporter of Superior Court News. And John N. Rupp, having managed to put his past life as first *Bar News* editor behind him, had become president of the Washington State Bar. Helen Graham Greear reported that, on President's Day, May 5—the annual meeting with local bar presidents, there was "a call to order by John Rupp, who can throw velvet rocks better than anybody."

15 Years Ago:

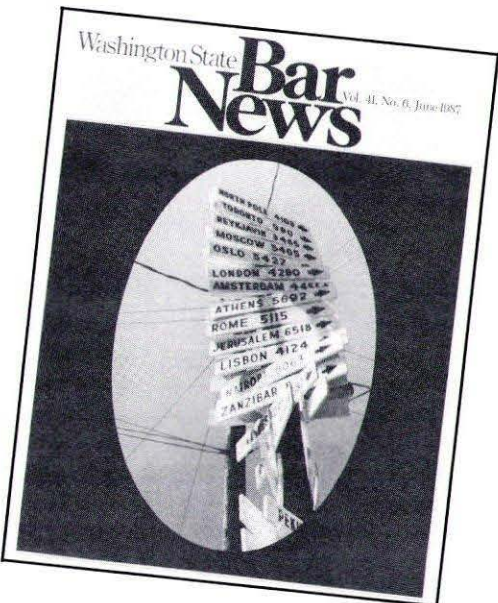
Washington State Bar News, June 1977: "By a 9-to-1 vote, the Board of Governors have gone on record in favor of the principle of compulsory self-insurance sponsored by the bar association as a solution to the problem of obtaining economical professional liability insurance," *Bar News* editor Jay White reported. "It was stressed that such a program should be implemented only in the event there is no competitive program available from the private insurance industry.... Board



member Bradley T. Jones suggested that a mandatory self-insurance program might encompass exemptions for house counsel or government lawyers. Board member Betty B. Fletcher agreed. Robert W. Burns, ex officio member of the Board representing the Young Lawyers Section, urged the Board to make a minimum amount of self-insurance, such as \$25,000 in coverage, mandatory to lessen the impact of premium costs upon younger members of the bar.... Board member Michael Hemovich expressed reservations about any mandatory insurance program, but inquired whether certain specialists might be subjected to higher premiums than other members of the bar in the event a mandatory program becomes necessary. Board member Willard Walker stressed that the context of his motion was one in which there is no other insurance available, and stated that he is 'offended by compulsory requirements, but more offended by a lack of insurance.' The consensus of the Board was that the details of a compulsory self-insurance program, including possible exemptions, need to be defined only in the event such a program becomes necessary. Ultimately, in a voice vote, the Board approved Walker's motion with only Hemovich being heard to vote 'no.'

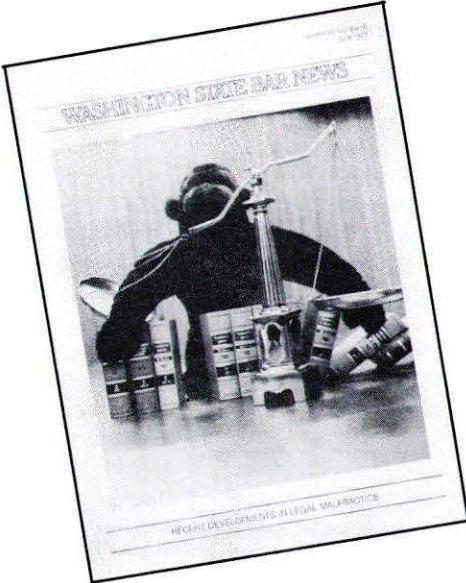
Once upon a time the WSBA had a travel committee. S. Dean Arnold reported on its "Splendors of Ancient Egypt" tour, in which "Paul Clausen drew first blood by photographing" a Saudi prince arriving in his hotel "before the latter could remonstrate. As

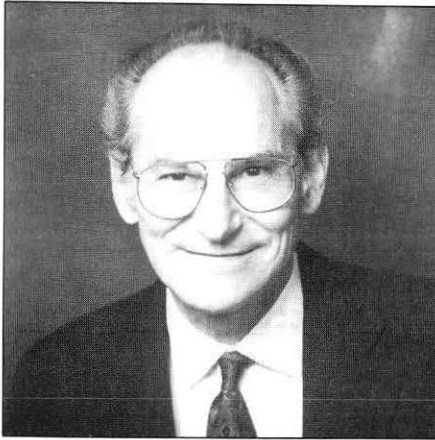
the Prince started up the red carpet, he mistook spectators for the official receiving line and vigorously shook the hand of Willard Skeel." Among other events, Paul Stritmatter, "by rising early in the morning and greasing a few palms, accomplished the difficult and prohibited act of climbing the exterior of the Great Pyramid," and it was predicted, "Kathleen Taft will shortly introduce the sport of camel riding to Spokane—she already has the saddle."



5 Years Ago:

Washington State Bar News, June, 1987: Whether to end the 40-year practice of having a practicing lawyer edit the *Bar News* was a contentious issue for the Board of Governors, editor Carole Grayson reported in "The Board's Work." Proposals by the Editorial Advisory Board to increase and improve its *Bar News* supervisory role triggered a debate on whether to bring the editorship "in-house" as a WSBA staff position. Some governors thought an in-house editor could do a better job, having more time, while others argued the independence of the editor, and the perspective that gave the publication, would be forever lost. On a motion by Governor and former *Bar News* editor Steve Reisler to accept the EAB recommendation that the editor remain independent, the Board split in a 5-5 vote, President William Gates voting to create a tie. The matter was put over to the July, 1987 meeting for resolution.





Joseph P. Delay

Should Lawyers Be Required to Disclose Whether or Not They Have Professional Liability Insurance?

Although no formal surveys have been undertaken, it is estimated that approximately 20 to 25 percent of the practicing attorneys in Washington state may be uninsured for malpractice claims. This reality raises the serious issue of whether the legal profession has an obligation to protect the public against legal malpractice. We can all agree that a lawyer should be responsible if he or she is negligent. The appropriate method of establishing or verifying financial responsibility, however, is subject to debate and justifies further consideration.

One method of disclosing financial responsibility is to require that each lawyer file an affidavit that the lawyer is financially responsible through one of the following procedures:

- (a) certificate of malpractice insurance coverage;
- (b) letter of credit;
- (c) certificate of net worth; or
- (d) deposit of securities.

Yet another alternative is requiring that each lawyer make a written disclosure to his client at the time of his or her employment if he or she has no malpractice coverage. This written disclosure would only be required if the lawyer has no malpractice coverage.

Another alternative is to require each lawyer to be bonded, similar to escrow agents. This additional coverage could be accomplished by an endorsement to the malpractice coverage. In 1990, there were two lawyers that embezzled funds of over \$100,000 each. The Clients' Security Program is incapable of reimbursing the victims for all their losses, as there is a \$50,000 per lawyer ceiling in addition to the limitation from pro-rating all claims made during the fiscal year. Lawyers must maintain the integrity of the profession and the confidence of the public. Is a bonded lawyer a necessity?

Please let your governors hear from you concerning your views on this issue, as it will be discussed at the July 1992 Board of Governors meeting. Without your input, your governor will be unable to properly exercise the advice of his constituents.



Dennis P. Harwick

The Old "80/20" Rule

Everyone has his or her favorite application of the "80/20" rule, e.g., 20 percent of the fishermen catch 80 percent of the fish, 20 percent of the lawyers make 80 percent of the money, etc. I've got a new one: *80 percent of the WSBA's resources* (as a percentage of our budget) *go for programs/services that get 20 percent of the attention.* Conversely, only 20 percent of our resources go to the discretionary programs that seem to get 80 percent of the attention.

At a recent priority-setting retreat for the Board of Governors, one of the key revelations was that 80 percent of our resources go to the regulatory functions and the infrastructure to support those functions. (77 percent to be precise, but "The Old 77/23 Rule" wouldn't have made as good a title for this story.)

The following programs/services combined only take up 23 percent of our budget as a percentage of total expenses, including the overhead and staff to run them:

- Annual Convention
- Public Affairs (including Tel-Law, pamphlets, media relations, etc.)
- Law-related Education for the Public/MENTOR Programs
- Lawyers' Assistance Program
- Resources Membership Directory/Reference Book
- Clients' Security Program
- Lawyer Referral Service
- Fee Arbitration
- Pro Bono Coordination
- Local Bar Support
- Electronic Bulletin Board

The lion's share of our budget goes to discipline, licensing, admissions, CLE, *Bar News*, and the committees and staff to support those functions.

At its retreat, the Board of Governors identified trends and issues facing the legal profession and the WSBA. Then it discussed strengths and weaknesses of the WSBA and analyzed the various tensions within the bar, e.g., rural v. urban, public lawyers v. private lawyers, solo/small firms v. big firms, general practitioners v. specialists, and "ins" v. "outs."

Finally, the Board engaged in a group decision-making process to prioritize the critical issues facing the WSBA.

When the dust settled, the top three priorities enjoyed virtual unanimity. They were:

1. *Improving the attorney discipline system*
2. *Addressing the WSBA's chronic funding problem*
3. *Improving communications with members and various constituencies*

One consensus that emerged quickly was the sense that we haven't done a very good job lately of communicating the fact that the vast majority of our work involves the regulatory functions inherent in serving as an extension of the Supreme Court to administer the legal profession in the State of Washington. *We are not a big SKCBA or a little ABA.* Our primary role is very different than theirs.

So why are you getting this "soap box" speech from me? Primarily, because our members need to understand what drives the association and its funding needs. We have been very candid about the imminent need for a fee increase. That need is driven largely by the fact that we have little choice about 80 percent of what we do—and the costs of doing that 80 percent has risen inexorably over the past decade just like everything else.

Which makes a nice segue to my response to a another letter from Ed Hiskes and Howard Todd in the "Letters to the Editor" section of this issue. As Ronald Reagan would say, "There you go again," comparing apples and oranges. First, I'll stand by my list of comparable state bars. It consists of every

unified state bar in the western United States that administers the same functions we do. (See table below.)

Next, Ed and Howard cite Missouri and Georgia as comparable state bars. They are comparable in size, but, as noted in my earlier article, eastern state bars differ in significant ways from western state bars. Neither Missouri nor Georgia handles the admission or licensing function. Also, Missouri's fees for discipline have doubled since the figure cited by Ed and Howard and will be going up again (so advises the executive director of the Missouri Bar).

Ed and Howard come closer to the core issue (and, I presume, their core concern) in raising the question about voluntary v. mandatory bar associations. One can argue that issue either way. In fact, the diverse Long-range Planning Task Force appointed by immediate past president Lowell Halverson did exactly that and concluded that a unified state bar association was in the best interests of Washington's lawyers. The trend, such as it is, has been from voluntary to unified (Hawaii a couple of years ago, Wisconsin within the last year).

One fact is undeniable. If you think your license fee will go down if some entity other than your elected representatives (the Board of Governors) regulates the practice of law in Washington, I've got some bridges to sell you (and I promise they're still floating.)

p.s. Kudos to Ed and Howard for the reference to red ink. I couldn't agree more. Speaking of ink by the barrel, here's a reprise:

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

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Making Civil RICO Work

by Frederick D. Huebner
& Richard E. Spoonmore

Enacted in 1970 amid concern over the increasing power of organized crime, the Racketeer Influenced and Corrupt Organization Act (RICO) has been criticized for its widespread use in civil cases. Judicial hostility to civil RICO claims has resulted in many restrictions on RICO's civil application, creating one of our most obtuse and confusing areas of law. One court noted that a "RICO cause of action, by definition, involves complex litigation and high legal costs."¹ Practitioners must share the blame. RICO claims have been overused as bargaining chips in ordinary commercial cases, and badly pleaded with little attention to statutory requirements.

Yet for all its complexity, RICO remains a powerful tool for redressing the harms of business fraud. It has a relatively generous four-year statute of limitations, is flexible enough to be adapted to many fact situations, and carries the strong sanction of treble damages. With these advantages, and with Congress' repeated failure to amend the statute, RICO will remain a fact of life in civil litigation. Counsel pleading commercial fraud cases must, in light of Rule 11, consider whether RICO claims can be properly brought.

Defense counsel, on the other hand, should carefully analyze RICO complaints to determine if the RICO claim may be quickly dismissed.

This article attempts to clarify the proper presentation of civil RICO claims. First, we briefly overview the critical sections of the RICO statute. Second, we discuss the methods courts have historically employed to limit the use of civil RICO. Third, we focus on the proper presentation of the critical "enterprise" and "pattern" requirements of a successful RICO claim.

The RICO Statute

RICO, codified in 18 U.S.C. § 1961 through § 1968, provides for criminal penalties (§ 1963) and civil remedies (§ 1964) for expressly prohibited conduct (§ 1962). In a civil RICO claim, §§ 1961, 1962 and 1964 form the core of a plaintiff's case.

The heart of RICO is the relationship between "racketeering activity"—two or more violations of federal law specified in § 1961(1)—and the "RICO enterprise." These relationships can take a number of distinct forms. The "enterprise"—defined, essentially, as an association in fact—can be the perpetrator of the racketeering activity, the victim of racketeering, or simply an

instrument in which money derived from racketeering activity is invested.² Each subsection of § 1962 prohibits these different relationships.

Section 1962(a) states,

It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of unlawful debt in which such person was a principal . . . to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of, any enterprise which it is engaged in, or the activities of which effect, interstate foreign commerce. . .

This section serves to prevent persons from investing assets acquired through racketeering activities in otherwise legitimate enterprises.

Section 1962(b) prohibits attempts to take over, control or maintain an interest in an otherwise legitimate business through racketeering activity. To fall within the coverage of this section, a plaintiff must show that the defendant used assets derived from racketeering activity to operate the enterprise.

Section 1962(c) is the provision most often pleaded in civil cases. It is unlawful "for any person employed by or associated with any enterprise. . .to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity. . ." Section 1962(c) is pleaded in many actions where a fraud has been perpetrated through the use of an enterprise. The defendant, however, *must* be distinct from the "enterprise." Liability is imposed upon the culpable person, and not the enterprise itself.³

Section 1962(d) independently prohibits conspiracies to violate § 1962(a-c). Conspiracy liability is not dependent upon proof of the other substantive offenses. A RICO conspiracy requires three elements: the existence of an enterprise, an agreement to directly or indirectly participate in the enterprise's affairs and an agreement to participate in a pattern of racketeering activity.⁴

Section 1964 empowers plaintiffs to act as private attorneys general to eliminate enterprise-related racketeering.

Any person injured in his business or property by reason of a violation of § 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." § 1964(c). Treble damages and attorneys' fees are awarded to a prevailing plaintiff.

Judicial Attempts to Limit Civil RICO

Despite the relatively specific organized crime problem which prompted passage of RICO, the statute extends far beyond La Cosa Nostra. Its broad language, combined with the charge to interpret the provisions liberally, has propelled the statute into obscure areas "quite different from the original conception of its enactors."⁵ *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479 (1985) (hereinafter *Sedima*). One circuit court judge was less than diplomatic in his opinion of RICO's broad application:

RICO is a recurring nightmare for federal courts across the country. Like the Flying Dutchman, the statute refuses to be put to rest. Beating against the wind, it has jettisoned an effusion of opinions which bobble in its wake. . . RICO is just. . . a rather sloppy thought out kind of way to get the Mafia that everybody jumps on so they can have more fun with fraud.⁶

Early attempts to limit civil RICO claims tended to require that a plaintiff tie the activity, the harm, or the actors to organized crime.⁷ Other courts required that the defendant have a prior criminal conviction or that the injury suffered was a "racketeering injury."

The Supreme Court addressed, and rejected, these external, court imposed attempts to artificially limit the use of RICO in *Sedima*:

It is true that private civil actions under the statute are being brought almost solely against such defendants, rather than against the

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archetypal, intimidating mobster. Yet this defect—if defect it is—is inherent in the statute as written, and its correction must lie with Congress. It is not for the judiciary to eliminate the private action in situations where Congress has provided it simply because plaintiffs are not taking advantage of it in its more difficult applications.⁸

The Court did, however, suggest *in dicta* that the statute could be limited by the application of the "pattern" requirement:

[T]he implication is that while two acts are necessary, they may not be sufficient. Indeed, in common parlance two of anything do not generally form a 'pattern.' The legislative history supports the view that two isolated acts of racketeering activity do not constitute a pattern. . .⁹

Current judicial limits on RICO's application thus center on the pattern and enterprise requirements. Between 1985 and 1989 many courts, prompted

by the *Sedima* footnote 14, began to require that a pattern be proved beyond the two statutory predicate acts.¹⁰ This view was officially accepted and further defined by the Court in *H.J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229 (1989) (hereinafter *H.J.*). The enterprise requirement has also been given a more exacting definition by the Third, Fourth and Eight Circuits.

Proper Presentation of RICO Claims

To state a claim under §1961 (c) a plaintiff must allege "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity (5) that results in an injury to business or property."¹¹

The Injury Requirement

We begin with the injury requirement, because that is often the first hurdle on which a RICO claim stumbles. In order to have standing under the statute, a plaintiff must be able to demonstrate injury to its business or property because of the predicate acts committed by the defendant. Damages arising from

personal injuries, emotional distress or wrongful death are not within the scope of the statute. The "by reason of" language further requires proof that the violation actually and proximately caused the injury.¹² The statute does not require, however, that the injury arise from all of the predicate acts, or even from a pattern of acts.

Indeed, it has been held that where the plaintiff proves the violation, a civil RICO judgment may be sustained where only one predicate act caused the plaintiff proprietary injury. The plaintiff would recover damages for whatever proprietary injury is caused by any predicate act that helps constitute the pattern.¹³

The Enterprise Requirement

The plaintiff must be able to link the injury, and the defendant, to an enterprise. The enterprise requirement gives the statute its unique application.

[Without] the inclusion of the enterprise element [which] requires proof of some structure separate

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from the racketeering activity and distinct from the organization which is a necessary incident to the racketeering, the Act simply punishes the commission of two of the specified crimes within a 10-year period. Congress clearly did not intend such an application of the Act.¹⁴

The enterprise component contains two

distinct relationships. On one level the enterprise must have some connection, or "nexus", with the defendant. On a second level, the enterprise itself must be composed of certain entities that bear a sufficient relation to each other.

Enterprise-Defendant Relationship

Under the statute, the enterprise may

be the perpetrator, victim, instrument or prize of the defendant.¹⁵ RICO does not require that the enterprise itself conduct the racketeering activity.¹⁶ But the racketeering activity and the enterprise must be related in some form. A nexus exists when "(1) one is enabled to commit the predicate offenses solely by virtue of his position in the enterprise or involvement in or control over the affairs of the enterprise, or (2) the predicate offenses are related to the activities of that enterprise."¹⁷

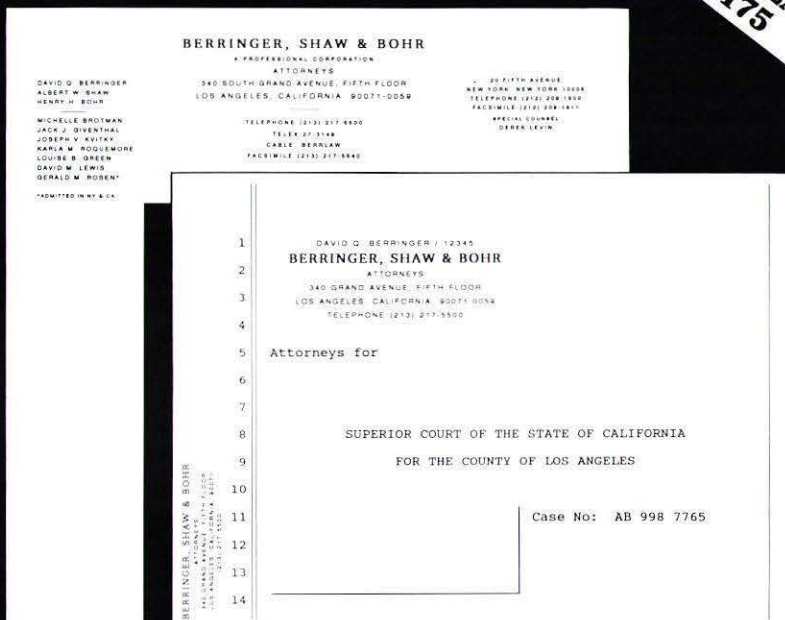
Composition of Enterprise—Entity Relationship

Due in part to the lack of a clear enterprise definition in §1961, the nature of the relationship that must exist between the various entities that comprise an enterprise is the subject of extensive dispute. An enterprise "includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity. . . ." 18 U.S.C. § 1961(4) (1988). This nonexclusive list, however, only describes the various forms an enterprise may take. It does not shed any light upon what type of relationships must exist between entities to form an enterprise. Recognizing this problem, the Supreme Court, in *U.S. v. Turkette*, 452 U.S. 576 (1981), attempted to fashion a test for defining a RICO enterprise. It held that a RICO enterprise must be "proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit. . . . The existence of an enterprise at all times remains a separate element which must be proved" *Id.* at 583. From this vague language, the various circuits have spawned two radically different and conflicting tests.¹⁸

The narrow view,¹⁹ embraced by the Third, Fourth and Eighth Circuits, has its roots in *United States v. Bledsoe*, 674 F.2d 647 (8th Cir.), *cert. denied*, 459 U.S. 1040 (1982). It requires that the enterprise have structure, continuity and an existence distinct from the pattern of racketeering activity. The broad view, espoused by the Second,

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Eleventh and Fifth Circuits, has its origin with *United States v. Hewes*, 729 F.2d 1302 (11th Cir. 1984), *cert. denied*, 469 U.S. 1110 (1985). Under this view, an enterprise need only have a common purpose, some type of formal or informal organization and continuity to be with the statute's coverage. The Ninth Circuit Court of Appeals has yet to adopt either view.

The Narrow Enterprise Definition

Under the narrow view a plaintiff must prove that an enterprise has structure, continuity and an existence distinct from its illegal activity.

To establish the existence of a RICO enterprise, plaintiff must prove (1) there is an ongoing organization, which has a structure or framework for making decisions and a mechanism to control the affairs of the group on an ongoing basis; (2) that the various associates function as a continuing unit, that is each individual component perform a role consistent within the organized structure, which furthers the activities of the organization; and (3) that the enterprise is separate and distinct from, but not necessarily wholly unrelated to, the pattern of activity in which it engages, but has an existence beyond that which is necessary to merely commit each of the acts charged as predicate offenses.²⁰

The first element, that of structure, simply asks whether a system of authority exists within the enterprise. This test is designed to exclude from the definition of enterprise loose associations of criminals who simply band together to commit distinct crimes. "Structure is the element that distinguishes an enterprise from the minimal level of planning and coordination that is necessary to any criminal conduct—conduct RICO was undoubtedly not intended to reach."²¹ This requirement is met in associations of corporations or persons in which a mode of decision-making exists and chains of authority are evident.

The second requirement of the narrow

school asks whether the enterprise maintains its structure over time. Continuity is found where the structure of the enterprise is not altered as personnel change. Where "an unchanging pattern of roles is necessary and is utilized to carry out the predicate acts of racketeering," continuity exists.²² Each member must perform a role that is consistent with the overall structure of

the enterprise. This component, like the structure requirement, is aimed at distinguishing between groups of petty criminals who commit crimes without an ongoing operative structure and true enterprise criminality.

The final prong in the narrow school's analysis requires that the enterprise have an existence that is distinct from the predicate acts. The enterprise must be

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more than the sum of its predicate acts. Evidence of some management function outside the commission of the predicate acts should be pleaded to meet this test.

The Broad Enterprise Definition

This definition requires that an enterprise be established through evidence of a common purpose, organi-

zation and continuity. The difference between the broad and narrow views lie both in (1) the organization requirement, and (2) the requirement that an enterprise have a separate existence apart from the pattern. Under the broad view the enterprise does not need to have an ascertainable structure. As long as the entities acting together have some common

purpose or goal, the definition can be satisfied.

"Thus courts adopting the broad view of enterprise will not look to the organizational pattern or system of authority of the alleged enterprise. They will not inquire into the specific roles played by the participants. Rather, so long as the court can find an informal association of individuals banded together for the purpose of conducting activities that constitute predicate acts, the organizational requirement is satisfied."²³

The Ninth Circuit's Enterprise Definition

Although the Ninth Circuit Court of Appeals has not yet ruled on the issue, the district courts within the Ninth Circuit appear to have accepted the narrow enterprise position. *Wolfe v. Langford*, 1991 Lexis 5581 (D.N. Cal. 1991), and *Medallion T.V. Enterprises v. SelecTV of Cal.*, 627 F.Supp. 1290 (C.D. Cal. 1986), *aff'd*, 833 F.2d 1360 (9th Cir. 1987), *cert. denied*, 492 U.S. 917 (1988) demonstrate how the application of the narrow enterprise requirement determines whether the RICO claim succeeds or fails.

Medallion concerned the telecast of a prize fight. Plaintiff Medallion and defendant SelecTV formed a joint venture termed "Medsel." Medsel lost money. Medallion sued, asserting that SelecTV had fraudulently induced Medallion to enter the agreement. The court noted that the defendant SelecTV could not be both a defendant and the RICO enterprise. The court dismissed for failure to meet the pattern requirement, but found that the joint venture between Medallion and SelecTV could be the RICO enterprise.

Nevertheless, plaintiffs could contend that Medsel, the joint enterprise entered into by Medallion and SelecTV to broadcast the . . . fight, was the "enterprise" for purposes of RICO. Medsel is not a named defendant in this case . . . [I]t had an existence and purpose apart from those of the predicate acts alleged by plaintiffs; it was . . . more than the sum of the

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predicate acts. The Court therefore assumes that the "enterprise" requirement of RICO is satisfied for purposes of this summary judgment motion.²⁴

In *Wolfe*, the plaintiff failed to establish an enterprise because the pleading failed to "aver that the enterprise had an existence prior to or separate from the predicate acts." *Wolfe* at 13. The plaintiff had alleged that a group of individuals and corporations had "associated in fact" in order to kidnap and defraud the plaintiff. The basis of the enterprise, however, was nothing more than the alleged predicate acts committed against the plaintiff. The court concluded that the plaintiff had "not identified any ascertainable structure distinct from the alleged racketeering activity itself. Thus the Court finds that plaintiffs have not pled the existence of a RICO enterprise."²⁵

Pattern Requirement

As with the enterprise element, the pattern requirement is in a state of flux. The statute provides that a "pattern of

racketeering activity' requires at least two acts of racketeering activity. . ." 18 U.S.C. § 1961 (5) (1988). Racketeering activity is defined as the violation of one or more of a long list of criminal offenses. 18 U.S.C. § 1961 (1). These provisos do not, however, provide any guidance as to what is required to establish a pattern beyond the minimum of two predicate acts. It was within this area that the post-*Sedima* courts attempted to limit the perceived abuses of the RICO statute by narrowing the definition of a "pattern." The Supreme Court, in *H.J., Inc. v. Northwestern Bell Telephone Co.*, accepted these limits.

In *H.J.*, the court drew on the legislative history of RICO to find that a "pattern" of racketeering activity often requires more than two predicate acts. Congress, the Court concluded, intended that in order to prove the existence of a pattern, the racketeering predicates must be related *and* they must amount to, or pose a threat of, continued criminal activity. "RICO's legislative history reveals Congress' intent that to prove a

pattern of racketeering activity a plaintiff or prosecutor must show that the racketeering predicates are related, *and* that they amount to or pose a threat of continued criminal activity. For analytic purposes these two constitutes of RICO's pattern requirement must be stated separately. . ." ²⁶ After *H.J.* the two predicate act requirement in the RICO statute must be seen only as a floor below which no RICO act can be maintained. Plaintiffs with clear evidence of two statutory predicate acts must now be concerned with meeting the two prong test established by the court to maintain a *prima facie* case.

Relationship of Predicate Acts Requirement

The first factor, that of relatedness, was derived by the court from Title X of the Organized Crime Control Act of 1970. Congress shed light on the meaning of the word "pattern" by specifying that "criminal conduct forms a pattern if it embraces criminal acts that have the same or similar purposes,



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results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events."²⁷ The definition casts a broad net through its use of the disjunctive "or." As a result, most of the controversy between parties takes place over the second element, continuity.

Continuity Requirement

The requirement of continuity, the second prong of the court's pattern definition, is much more nebulous.

'Continuity' is both a closed- and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition. . . . It is, in either case, centrally a temporal concept—and particularly so in the RICO context, where what must be continuous, RICO's predicate acts or offenses, and the relationship these predicates must bear one to another, are distinct requirements. A party alleging a RICO violation may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time. Predicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement: Congress was concerned in RICO with long-term criminal conduct. Often a RICO action will be brought before continuity can be established in this way. In such cases, liability depends on whether the threat of continuity is demonstrated.²⁸

Under this analysis, continuity is most easily established through evidence of related predicate acts occurring over a substantial period of time. Where fewer acts have occurred, or where the time period is more limited, the plaintiff must show that a specific threat of future repetition exists.

Ninth Circuit Law—Post-H.J.

Although this "continuity plus

relationship" test significantly clarified the elements of proof implicit in the pattern requirement, the flexible nature of the two factors, especially the continuity requirement, left substantial discretion in the hands of the circuit courts. The Ninth Circuit's post-*H.J.* decisions are illustrative of the varied applications of the "continuity plus relationship" requirement.

Open-Ended Continuity: A Pattern Exists Because of the Threat of Future Racketeering

In *Ikuno v. Yip*, 912 F.2d 306 (9th Cir. 1990), plaintiff alleged that defendant, an attorney, violated RICO in a gold investment scheme. The predicate acts were based solely upon the attorney's filing of two allegedly fraudulent annual reports for a phantom corporation. Judge Zilly granted defendant's summary judgment motion based upon the defendant's lack of intent to defraud and control the fraudulent scheme. On appeal, the defendant also asserted that the plaintiff had failed to allege sufficient facts to evidence a pattern of racketeering activity. Although acknowledging that it was a "close question," the court, by Judge Wright, concluded that filing of two allegedly fraudulent annual reports was enough of a pattern to survive a summary judgment motion.

The *Ikuno* decision exemplifies an open-ended pattern. Despite only two predicate acts over two years, the court found a pattern because the nature of the act projected into the future.²⁹

Closed-Ended Continuity: Did The Racketeering Acts Occur Over A Sufficient Period Of Time?

Where no evidence of forward-looking racketeering has been alleged, a court must look to the number of predicate acts and the period of time over which the acts occurred. In *Richmark Co. v. Timber Falling Consultants, Inc.*, 730 F.Supp. 1525 (D. Or. 1990), the court was faced with the question of whether seven months was long enough to establish a "pattern" of racketeering where between eight and eighteen related predicate acts had been pleaded. The court noted that in *H.J.* the Supreme

Court "did not specify what would constitute the minimum period for a pattern of racketeering activity, but stated that predicate acts extending over a few weeks or months would not meet the continuity requirement."³⁰ The court concluded that the question of whether seven months is more than "a few" is a question that should properly be left to a jury. "Whether seven months is more than a few months under the facts and circumstances of this case is a question of fact for the jury. The court finds that [the RICO plaintiff] has adequately alleged a pattern of racketeering activity."³¹ Although this conclusion is questionable in the sense that the question is one of law, not fact, the court seemed satisfied that seven months was a legally adequate period.

A third case, and the first post-*H.J.* RICO case in the Ninth Circuit to address the pattern issue, found that the plaintiffs had failed to allege facts sufficient to withstand a motion for summary judgment where the predicate acts, false size certifications to the U.S. Small Business Administration, occurred over a period of several weeks. *Service Engineering Co. v. Southwest Marine, Inc.*, 719 F.Supp. 1500, 1508 (N.D. Cal. 1989). Since the predicate acts occurred in the "context of an SBA size determination" which "by its nature" was designed to resolve a single discrete controversy, the conduct was closed-ended, and the short time period made the incident "isolated."³²

The Necessary Predicate Acts

The violations that constitute "racketeering activity" are clearly spelled out in § 1961(1). It is important to note, however, that the acts upon which a plaintiff is basing a RICO violation must be plead with particularity. Under Fed. R. Civ. P.9(b), "the circumstances constituting fraud or mistake shall be stated with particularity." In the Ninth Circuit, a plaintiff must plead the time, place and nature of the fraud. "In order to comply with 9(b), plaintiff must provide enough information so that defendants can answer the specific allegations of fraud. Mere conclusory allegations of fraud will not suffice; the complaint must contain statements of the time, place and nature of the alleged fraudulent activities." *Bosse v. Crowell Collier and MacMillan*, 565 F.2d 602,

611 (9th Cir. 1977). A plaintiff cannot make statements based upon "information and belief" in pleading allegations of fraud. *Occupational-Urgent Care H. Sys. v. Sutro & Co.*, 711 F. Supp. 1016 (E.D. Cal. 1989). Consequently, plaintiff's counsel may well want to depart from usual notice pleading practices and present a detailed statement of facts in the complaint.

Conclusion

Civil RICO is a complex and dynamic statute. The confusion that surrounds the law is centered on the enterprise and pattern elements. *H.J.*'s two-part test clarified, to a large extent, the requirements to establish a pattern. The enterprise element, however, still awaits clarification from the Supreme Court. Until the court gives further direction or Congress revises the RICO Act, counsel must take great care to plead their cases with strict attention to RICO's inherently complex provisions, or face a quick dismissal.

Endnotes

¹*Chapman & Cole v. Itel Container Intl. B.V.*, 865 F.2d 676, 685 (5th Cir.), cert. denied, 493 U.S. 872 (1989). The Ninth Circuit Court referred to RICO cases as "pesky." *Sun Sav. and Loan Ass. v. Dierdorff*, 825 F.2d 187, 194 (9th Cir. 1987). Many federal district courts, including the United State District Court for the Eastern District of Washington, have adopted special restrictive pleading rules for RICO cases. See, e.g., the Eastern District Court's Local Rule 8.

²*Prudential Ins. Co. of America v. U.S. Gypsum*, 711 F.Supp. 1244, 1260 n.5 (D.N.J. 1989).

³It is possible, however, that the enterprise may be liable as an aider and abettor. *United States v. Qaoud*, 777 F.2d 1105, 1117 (6th Cir. 1985); see comment, *Aiding and Abetting Liability for Civil Violations of RICO*, 61 Temp. L. Rev. 1481 (1988).

⁴Analysis of federal conspiracy law is outside the scope of this article.

⁵Such as the blockading of abortion clinics. *Northeast Women's Center, Inc. v. McMonagle*, 868 F.2d 1342 (3d Cir.), cert. denied, 493 U.S. 901 (1989).

⁶*In re Dow Co. "Sarabond" Products*

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⁷*Lopez v. Dean Witter Reynolds, Inc.*, 591 F.Supp. 581 (N.D. Cal. 1984), *aff'd*, 805 F.2d 880 (9th Cir. 1986).

⁸*Sedima*, 473 U.S. at 499.

⁹*Id.* at 496 n.14.

¹⁰The exact requirements, however, varied considerably among the different circuits. Justice Scalia wrote that the pattern issue had created "the widest and most persistent circuit split on an issue of federal law in recent memory." *H.J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 252 (1989) (Scalia, J., concurring).

¹¹*Sedima*, 473 U.S. at 496.

¹²The Seventh, Fifth, Fourth and Second Circuits specifically require proof of proximate cause.

¹³*Abrams, The Law of Civil RICO*, § 3.2 (1991).

¹⁴*United States v. Bledsoe*, 674 F.2d 647, 664 (8th Cir.), *cert. denied*, 459 U.S. 1040 (1982).

¹⁵*Prudential Ins. Co. of America v. U.S. Gypsum*, 711 F. Supp. 1244, 1260 n.5 (D.N.J. 1989).

¹⁶*Sun Sav. and Loan Ass. v. Dierdorff*, 825 F.2d 187, 194 (9th Cir. 1987). "This connection or nexus requirement entails a relationship between the enterprise and the racketeering activity. This does not require some benefit to accrue to the enterprise because of the racketeering activity." *Id.*

¹⁷*United States v. Scotto*, 641 F.2d 47, 54 (2d Cir. 1980), *cert. denied*, 452 U.S. 961 (1981).

¹⁸After *Sedima's* footnote 14, some commentators argued that the most logical way to internally restrict the use of RICO to its intended purposes was through a narrow reading of the enterprise requirement. Note, *The Enterprise Requirement: Getting to the Heart of Civil RICO*, Wisconsin L.R., page 663 (1988). This movement has, however, lost some of its momentum in the wake of the court's decision in *H.J.* to allow the statute to be limited through the use of the pattern requirement.

¹⁹A narrow reading of the enterprise element is consistent with the court's charge in *Sedima* that limits to the availability of civil RICO must be internal. To the extent the enterprise requirement is an internal definitional matter, restrictions and narrowing interpretations would appear to pass muster. Due in part to the fact that the statute does not specify any characteristics of an enterprise, courts are left with wide discretion to fashion definitions.

²⁰*Prudential Ins. Co. of America v. U.S. Gypsum*, 711 F.Supp. 1244, 1260 n.5 (D.N.J. 1989).

²¹Note, *The Enterprise Requirement: Getting to the Heart of Civil RICO*, 1988 Wis. L. Rev. 663, 679.

²²*United States v. Lemm*, 680 F.2d 1193, 1199 (8th Cir.), *cert. denied*, 459 U.S. 1110 (1982).

²³Note, *The Enterprise Requirement: Getting to the Heart of Civil RICO*, 1988 Wis. L. Rev. 663, 687. Where the narrow school rejects claims based upon enterprises created solely through the existence of predicate acts, the broad view has "upheld application of RICO to situations where the enterprise was, in effect, no more than the sum of the

predicate racketeering acts." *United States v. Bagaric*, 706 F.2d 4255 (2d Cir.), *cert. denied*, 464 U.S. 840 (1983).

²⁴627 F. Supp. at 1295.

²⁵The scope of possible entities that comprise an enterprise is broad. Both domestic and international entities may comprise an enterprise.

[RICO's] legislative history leaves no room for doubt that Congress intended to deal generally with the influences of organized crime on the American economy and not merely with its infiltration into domestic enterprises. . . we have held that, where there is substantial United States activity and Americans are hurt, it is immaterial that the corporation is foreign.

United States v. Parness, 503 F.2d 430, 439-40 (2d Cir. 1974), *cert. denied*, 419 U.S. 1105 (1975). The existence of an enterprise and the relationship of its component parts may be proven through the use of circumstantial evidence. *United States v. Elliot*, 571 F.2d 880, 898 (5th Cir.), *cert. denied*, 439 U.S. 953 (1978).

²⁶*H.J.* at 239.

²⁷*H.J.*, 492 U.S. at 240.

²⁸*H.J.*, 492 U.S. at 241-42.

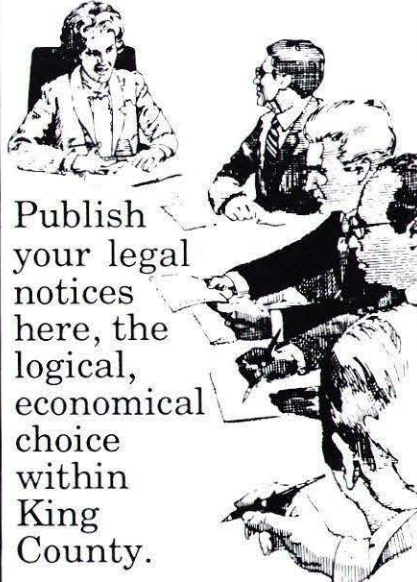
²⁹*Ikuno*, 912 F.2d at 309.

³⁰*Richmark*, 730 F.Supp. at 1533.

³¹*Id.*

³²Implicit within the Ninth Circuit's post-*H.J.* decisions is an apparent willingness to rely upon pre-*H.J.* case law and rules. In *Ikuno v. Yip*, 912 F.2d 306 (9th Cir. 1990), the first Ninth Circuit Appellate case to address the pattern requirement after *H.J.*, the court implied that its pre-*H.J.* decisions regarding the pattern element remain a proper framework under which to analyze a RICO claim. After reviewing the *H.J.* decision the court noted that "[w]e have adopted a test for pattern which inquires whether the predicate acts are sporadic or isolated." *Id.* at 309. The language in *Ikuno* implies that this test, found in *Sun Savings & Loan v. Dierdorff*, 825 F.2d 187, 194 (9th Cir. 1987), is a reasonable interpretation of elements required for a pattern and is consistent with the analysis and test articulated by the Supreme Court in *H.J.*

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Although *Sun Savings* explicitly rejected the notion that *Sedima's* "continuity plus relationship" dicta should be used as a determinative two-part test, an analysis that is clearly erroneous after *H.J.*, it did focus upon the thesis behind the test. The court reasoned that Congress did not intend for the statute to reach "isolated or sporadic" criminal acts. "[W]e prefer simply to examine the predicate acts to see whether they are in fact isolated or sporadic. If the acts are not isolated or sporadic, then the racketeering activity is continuous. . . . [T]he test for establishing whether acts are isolated is whether the acts posed a threat of continuing activity." *Id.* at 194. In light of the Supreme Court's language in *H.J.* that widely separated and isolated criminal offenses would not form a pattern, this underlying theory is still sound law. *Sun Savings* further clarified its definition of continuity in a footnote: "The fact that the last of a series of predicate acts may have completed the criminal scheme does not necessarily preclude a finding of continuity. As long as a threat of continuing activity exists at some point during the racketeering activity, the continuity requirement is satisfied." *Id.* at 194 n.5. Although more concrete, this analysis is entirely consistent with *H.J.'s* "closed-end continuity" analysis. This consistency, combined with the Ninth Circuit's allusion to its pre-*H.J.* test in *Ikuno*, leads to the conclusion that, in all probability, cases decided after *Sedima* but before *H.J.* are still determinative. These cases include: *Scheiber Distribution Co. v. Serv-Well Co.*, 806 F.2d 1393 (9th Cir. 1986) (no pattern because acts were isolated—claim involved only a single fraudulent scheme arising out of a single diversion of a shipment of goods); *Medallion Television Ent. v. SelecTV of Cal., Inc.*, 833 F.2d 1360 (9th Cir. 1987), *cert. denied*, 492 U.S. 917 (1989) (no pattern because fraudulent scheme was isolated—single scheme, single victim and no threat of future fraud); *Televideo Sys., Inc., v. Heidenthal*, 826 F.2d 915 (9th Cir. 1987) (pattern found in scheme where 13 acts alleged over extended period of time); *Cal. Architectural Bldg. Prods., Inc., v. Franciscan Ceramics, Inc.*, 818 F.2d 1466 (9th Cir. 1987),

cert. denied, 484 U.S. 1006 (1988) (pattern found—multiple fraudulent sales made to numerous victims over five month period); *Sun Savings and Loan Ass. v. Dierdorff*, 825 F.2d 187 (9th Cir. 1987) (pattern found—four predicate acts in part of ongoing scheme).

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Richard E. Spoonmore is a third-year law student at the University of Washington. He will join Helsell, Fetterman in the fall of 1992.

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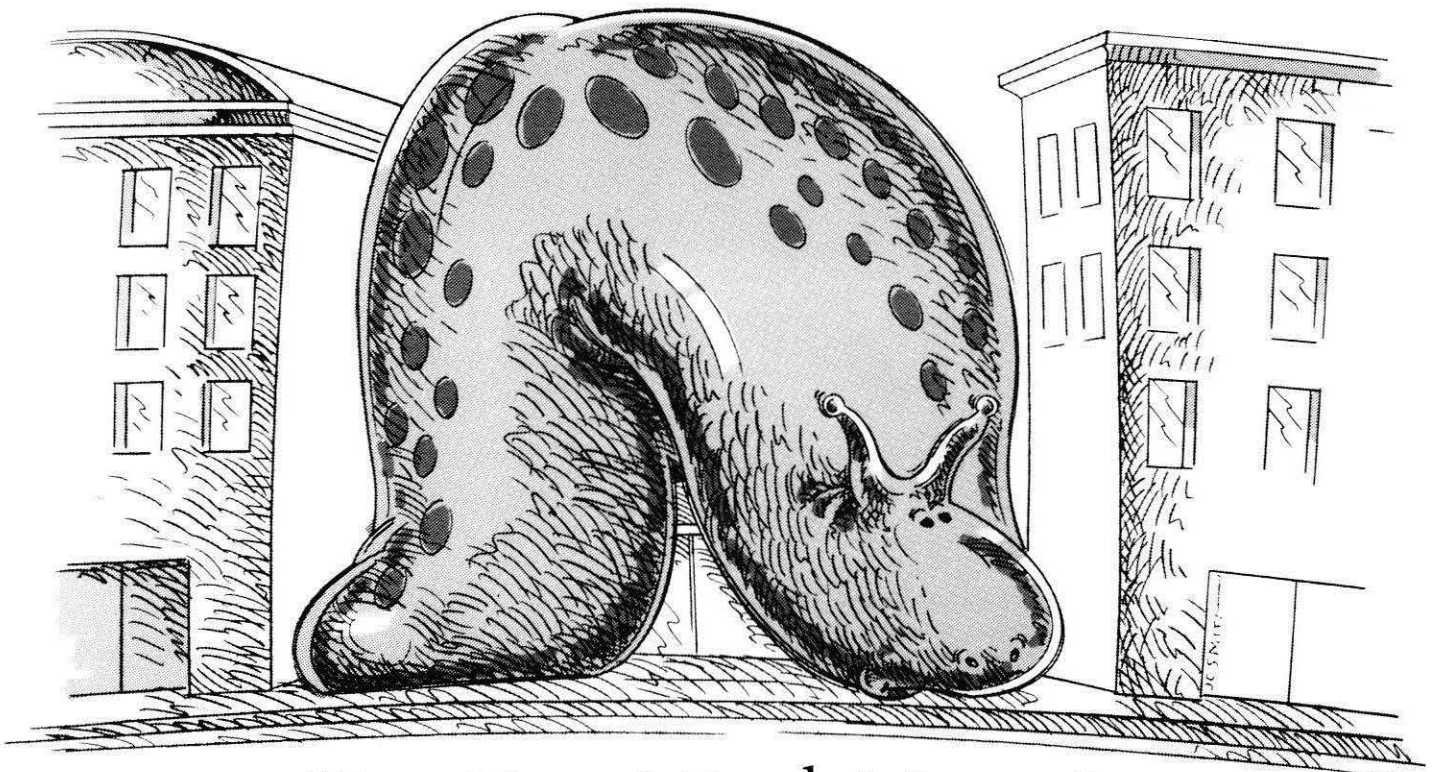
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Professional Portfolio Management and Your Clients

by Dean S. Bennion

The world is getting more complex.

This statement is true, has always been true and probably will always be true. Not only is the world constantly getting more complex, but every aspect of our lives is also growing more complicated year by year.

One area of your clients' lives in which they rely upon and value your services is financial planning. Many of their decisions regarding the disposition of their assets can have a significant impact on their lives, now and in the future. But the process of deciding how and with whom to invest has become so complicated that it requires professional advice.

Professional portfolio management has emerged as one of the most efficient and effective ways of investing for many clients. Once available to only extremely wealthy individuals and institutions, the services of professional investment managers are now accessible to investors at levels as low as \$25,000, with the entire spectrum of investment counseling services frequently offered under a single "wraparound" fee.

Because there are tens of thousands of registered investment advisors, the research required to make an informed choice among them is too complex and time-consuming for most investors. Many of them find that the advice of a financial consultant contributes

significantly to the success of such a search. Again, there are many firms which offer financial consultancy service programs, some of which are designed to complement the services of attorneys, estate planners, and accountants.

The best of these consulting programs offer a three-step approach to the investment process: 1) setting objectives, 2) choosing a manager, and 3) monitoring performance. In the first step, a financial consultant works with your client to define and clarify the objectives of the investing program. This involves defining the return expectation, the time horizon and, perhaps most important, the individual client's risk tolerance.

In the second step, a consultant researches the tens of thousands of investment management firms now in existence, looking for those with the style which most closely matches the investor's needs as defined by his or her established objectives. Because there is so much information to be digested and interpreted, it's almost impossible for an individual investor—or you, for that matter—to keep current on who the best managers working today are. Firms which offer financial consultancy maintain extensive databases and dedicate significant personnel to gathering and evaluating data on the best money managers.

Finally, after your client places money with a manager, the financial

consultant will continue to monitor the performance of that manager. Meeting regularly with your client, he or she will review the manager's performance and the client's objectives to be sure the initial match remains valid. While most investment management relationships tend to be long-term, events in a client's life may change his or her goals, time horizon, or level of acceptable risk. A change in any of these elements of the investor's profile could indicate the need for a change of manager. In an investment consultancy relationship, the needs of the client drive the process. As those needs change, the financial consultant can help you and your client adapt his or her investment program to meet them.

The particular expertise of a financial consultant can be an excellent fit in a team of financial advisors. It can provide detailed knowledge of investment alternatives in a plan that includes the input of attorneys, estate planners, and accountants. For the client, the result is an enhanced level of service and an increased probability that his or her investment goals will be realized.

Dean S. Bennion is a financial consultant with Shearson Lehman Brother's Federal Way office. He can be reached at (800) 533-5660 or in Seattle at 874-9967.



Quality? What a Concept!



by Lindsay T. Thompson

Richard H. Weise, *Representing the Corporate Client: Designs for Quality* (Englewood Cliffs, N.J.: Prentice Hall Law and Business, 1991). Binder format with annual supplementation, 700 pp., \$95.

One thing I've found interesting, but not surprising, in traveling around Washington looking at law firms, is how oblivious most are to the ram-paging popularity of instilling quality in service businesses. Sure, lawyers have heard of, or read about, Tom Peters or the Japanese system developed by the American W. Edwards Deming: some even urge such concepts on their business clients. But it's interesting how few law firms have tried to adopt the quality focus themselves. Richard H. Weise is one of the hardy front line of

quality enthusiasts, here storming the beach with a well-put-together work on making corporate counsel operations work better.

General counsel (among other titles) to Motorola, Inc., Weise thinks the "zero defects" model of quality control used in manufacturing has a place in legal-service provision, and he offers a comprehensive guide on how to take an existing department, jerk a few knots in it, and come out with a group that produces a genuinely better product: designing management systems, setting

priorities, making full use of client (company nonattorney staff) resources, computerization, budgeting and control, staff development, and outside counsel relationships. He's current on the buzzwords of the day, treating issues like the use of alternative dispute resolution, balancing quality goals and methods with rules of professional conduct, increasing and retaining women and minorities in law departments, pro bono contributions and corporate ethics issues management.

Though at first glance the book appears padded with duplicated materials, there's a method to the approach: here, says Weise, are the documents from the front lines, where these ideas have been tried and where they've been found to work.

Weise is blunt: without revolutionary change in the way corporate law departments deliver services to their clients, they won't see the millennium. There are many lessons here which could just as easily be learned by law firm administrators and managing partners, lawyers representing corporate clients, corporate chiefs, consultants, auditors and accounting firms. *Representing the Corporate Client* is the sort of book one might be tempted, by its title, to pass by. It's worth taking time over.

Lindsay T. Thompson is editor of the Bar News. He was a business and corporate lawyer from 1985 to 1991.

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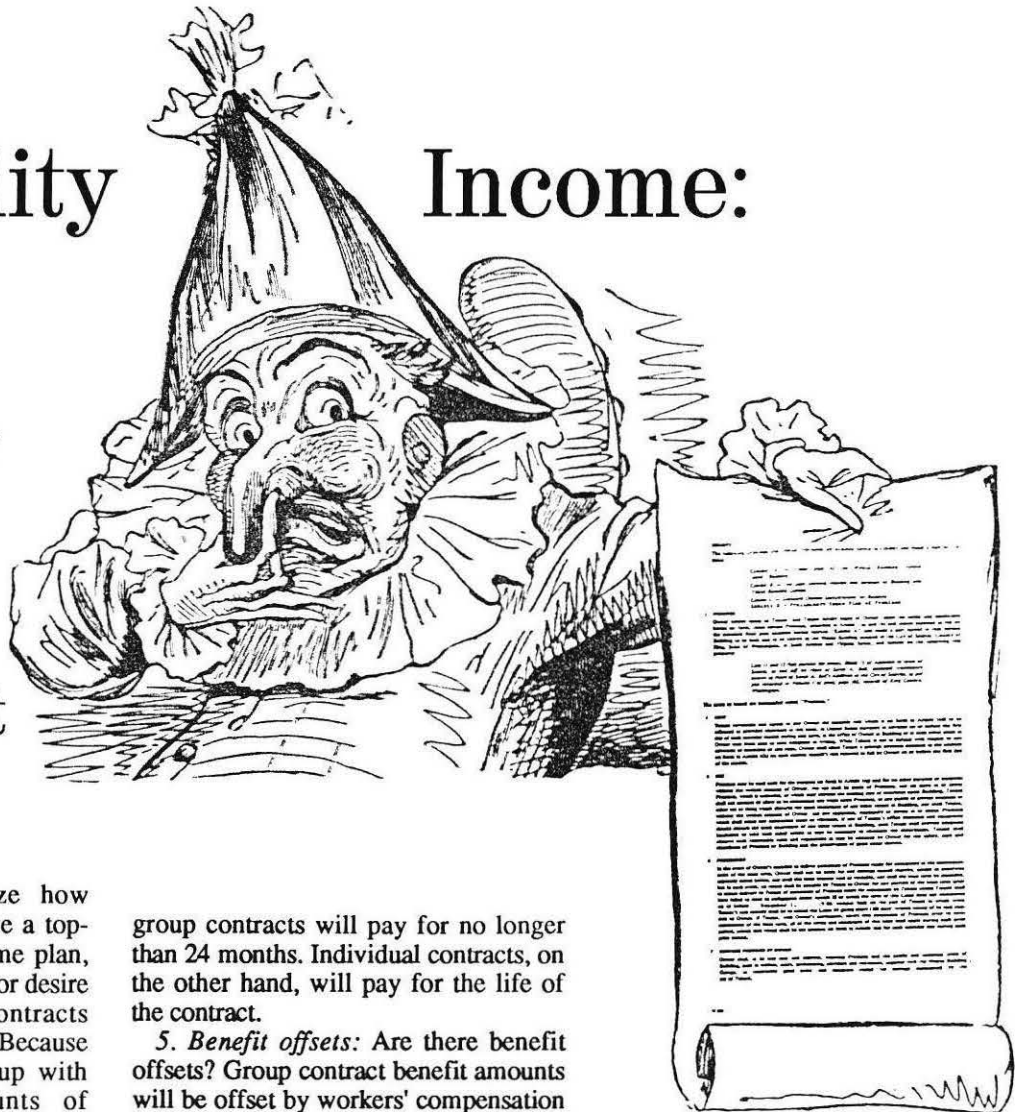
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Disability

Income:

What to Look for In a Quality Contract



by Gregory P. Roark

Most attorneys realize how important it is to have a top-notch disability income plan, but few have the time or desire to compare the various contracts available on the market today. Because of this, many attorneys end up with inadequate types or amounts of coverage. Group Long-term Disability, for example, is often the coverage of choice for law firms, but it can leave most of the attorneys with very inadequate protection.

Here are some key contractual features to look for when purchasing disability income protection:

1. *Noncancelable, guaranteed continuous coverage:* this will prevent the insurer from raising your premiums or canceling coverage for any reason other than nonpayment of premiums.

2. *Lifetime benefits:* Lifetime benefit periods are available on individual contracts. Group contracts will typically pay only to age 65.

3. *Portable coverage:* If you move from one employer to another, can you take the coverage with you? Individual, noncancelable coverage is portable. Group Long-term Disability is not portable.

4. *Duration of payment:* How long will benefits be payable for mental (stress) or nervous disorders? Most

group contracts will pay for no longer than 24 months. Individual contracts, on the other hand, will pay for the life of the contract.

5. *Benefit offsets:* Are there benefit offsets? Group contract benefit amounts will be offset by workers' compensation and social security benefits. Individual, noncancelable contracts will not have such offset provisions.

In addition, anyone in an occupation with accounts receivable income should have disability policies with these features:

1. *Own Occupation Residual (Partial):* The benefit means that only income generated in the insured's regular occupation, when the insured is residually disabled, will count as current income. If the insured is earning money in a different occupation, the amount earned will not count against him or her.

2. *Cash Modified Accounting:* This is a method of determining current monthly income. Cash modified accounting means that income generated after the disability has started and received in cash counts as current income. Money received now from work done prior to disability and future, billed-out income do not count.

3. *Full Recovery Benefit:* The recovery benefit is payable to an insured when the insured returns to work on a full-time basis *and is fully recovered*, but, because of a lengthy disability (and consequent loss of clients), his or her practice is suffering to an extent that the lawyer shows a loss of income compared to pre-disability income.

(Be sure that the contract includes a full-recovery benefit definition in the specimen policy. Some carriers will not specify this in writing).

Finally, be certain that your disability income protection is evaluated every year or two. As your income rises, you'll want to protect that income increase. Your ability to earn that income is the one asset you should *definitely* want to insure.

Gregory P. Roark is a life and disability agent with Northwest Financial Group in Seattle.



From the Heart

I was *so lonely*. I tried hard to be warm and caring and giving with people, but I didn't connect with anyone. I was always there for my friends and colleagues, but when I was home at night, my phone never rang.

I worked hard in my law practice. I wanted to excel, both to prove my own worth and serve my clients. The people in my firm asked for my help, but they rarely invited me to dinner.

I didn't date very often. I wasn't having sex. (One potential partner begged off because of "these migraine headaches." (I remember thinking, "God, you could at least have given me a better excuse.")

I was winning a lot of cases, but not having any fun. I hated my life. I often went home and drowned myself in a bottle. I longed to meet people who would love and appreciate me, instead of demand more of the services I provided. I felt as if I were parenting the world. I hated my work and my office, and I decided that I needed to change jobs.

In 1985, I saw a career counselor for a few months to investigate other

options. The process was only minimally helpful. I was desperate, so I began seeing a therapist and addressing some personal issues. I continued to do laundry on the weekends and to hate my job.

In 1987, I read about "Lawyers In Transition" ("LIT"), a group organized by lawyer Deborah Arron. It was a confidential service for lawyers who wanted to change jobs or even get out of the practice altogether. I needed to find out what law jobs were out there and how to avoid getting a worse one than I had. I got on the LIT mailing list. Shortly thereafter, I participated in one of the 10-week career assessment groups.

In 1991, the WSBA LAP adopted Deborah's program into Career Services. I have now been a "lawyer in transition" for over five years: a public defender, a prosecutor, a family law guardian ad litem, a legal supervisor, a teacher, and a pro tem judge. I have explored a myriad of interests and job possibilities.

I am currently on a one-year "sabbatical," devoting it to intensive "play" and the exploration of my passions. I am practicing law part-time

in the areas I like the best, and I am also exploring some nonlegal dreams. (I'm also practicing my dating skills).

In my opinion, the most helpful focus of LAP's Career Services is self-assessment in a safe and confidential environment. If you don't know who you are and what you love, it is impossible to successfully look for and find a job with which you will be happy. Career Services has also provided me with a supportive group of lawyers who are engaged in the same transition process. I can discuss my own doubts, fears, and career change process with people who know what I am talking about.

It has been really important to take time in exploring career options. Perhaps it is the process of transition, not the result, which is the most valuable. If I'm lucky, I will always be in a place of growth and change.

The more I investigate the "jobs of my heart," the more easily money comes my way to help support the transition process. I feel like I am "free-flying" just now because my sabbatical is the most risky financial decision I have ever made. But, I am pleased to report that I'm the happiest I have ever been. It is scary but exciting. I'll let you know in a couple of months how I am doing.

NOTA BENE:

The Job Hunters' Support Group (sponsored by LAP Career Services) provides an opportunity for lawyers who are actively seeking new employment to share their frustrations and exchange job search tips and leads. The group meets every Tuesday at noon in the Presidents' Room, WSBA, 400 Westin Building, 2001 Sixth Avenue, Seattle.

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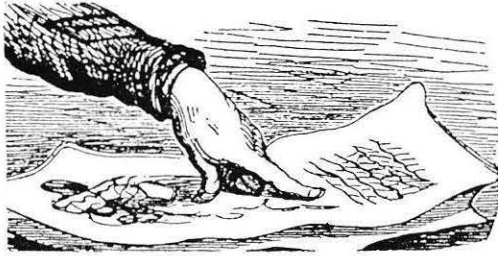
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Preventing Foreclosure of an FHA-insured Mortgage

by Norman R. McNulty, Jr.

The Assignment Program allows reduction or suspension of house payments on FHA-insured loans when the homeowner is in default. Attorneys can enforce this right in federal district court through the federal Administrative Procedures Act and be awarded reasonable attorney's fees under the Equal Access to Justice Act.

Joe and Virginia Smith have defaulted in payments on their home mortgage. He has been looking for work since his sawmill shut down due to limits on logging in old-growth forests. She has a job, but her earnings are low. They cannot make the current house payment. The lender has told them that their mortgage is in serious jeopardy. They have lived in the house for ten years. Until recently, they were always current in their payments. They now fear that if they lose their home, they may have trouble finding another place to live and thus become homeless. They come to you for advice.

It might not be easy, but you can help the Smiths. The lender originated the purchase loan for their home under the National Housing Act and is insured against risk of loss by the Federal Housing Administration (FHA), an office of the Department of Housing and Urban Development (HUD).¹ The Smiths may be eligible for forbearance relief under HUD's Assignment Program. See 12 U.S.C. § 1715u.²

The Assignment Program allows HUD to acquire the mortgage from the lender and reduce or suspend house payments for up to 36 months if a homeowner is unable to make full payments. 24 C.F.R. § 203.647. During this period, HUD cannot require the homeowner to pay more than 35 percent of net effective income for housing expenses. 24 C.F.R. §

203.646. Following the assignment period, the homeowner must commence making the full monthly payment under the mortgage; depending on the homeowner's ability to begin paying on the arrearages, HUD may extend the maturity date of the mortgage up to 10 years. 24 C.F.R. § 203.649.

However, acceptance into the program requires that (1) the default in house payments was the result of circumstances beyond the homeowner's control and (2) there is a reasonable prospect that the homeowner can resume full mortgage payments after a period of reduced or suspended payments. 24 C.F.R. § 203.640.³

The assignment process starts with the homeowner being at least three months in arrears. The lender, pursuant to strict federal guidelines, must inform the homeowner of the Assignment Program and whether it believes the homeowner meets the program's eligibility criteria. If the lender decides the homeowner does qualify, it asks HUD to accept assignment. If the lender concludes that the homeowner does not qualify, it tells the homeowner that he/she has 15 days to apply directly to HUD; it also informs the homeowner of any HUD-sponsored organization which provides homeownership counseling. 24 C.F.R. §§ 203.650-203.652.

When HUD denies an assignment request (called a preliminary decision), it must tell the homeowner that he/she has 15 days to seek a conference with the agency. 24 C.F.R. § 203.652. The conference is informal, and testimony is not recorded or transcribed. Because the record developed at the conference is what a court reviews on appeal, the attorney should submit a carefully drafted affidavit explaining the reasons for the homeowner's default and the prospects for future income. The homeowner should also submit evidence of his/her equity in the house. See 24 C.F.R. § 203.653.⁴

If, following the conference, HUD rejects assignment, it notifies the lender that it may proceed with foreclosure. 24 C.F.R. § 203.658. It is not too late, however, for the homeowner to contact the lender to see about working out a forbearance plan.

The homeowner may decide to file an appeal of HUD's final decision denying assignment in U.S. District Court under the federal Administrative Procedures Act, 5 U.S.C. § 701 et seq.⁵ The homeowner may seek to enjoin the foreclosure pending the court's review of the merits.⁶

A court reversal of a decision denying assignment entitles the homeowner to reasonable attorney's fees under the Equal Access to Justice Act, unless the position of the United States was substantially justified or special circumstances make an award of fees unjust. 28 U.S.C. § 2412(d)(1)(A).

The Smiths are good candidates for the Assignment Program because they have something to lose. They have lived in their home and made payments for ten years. Moreover, the fair market value of their home may have increased significantly.⁷

The Smiths seem to meet the eligibility requirements for the program. His loss of his sawmill job was the circumstance which caused the default, and will almost certainly be determined a circumstance beyond his control. Further, he will undoubtedly find work in the future, fulfilling the requirement that he will resume payments after the assignment period.

The Assignment Program is an important tool for homeowners who have an FHA-insured loan and have fallen on hard times. It may be their best option for preventing loss of their home to foreclosure. As the court in *In re Huderson*, 96 B.R. 541, 547 (Bankr.E.D.P.A. 1989), said with regard to the Assignment Program, "In the aura of the present times, with homelessness a pervasive social

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problem, HUD would appear to be under a mandate to interpret these regulations liberally."

Endnotes

¹See 12 U.S.C. § 1701 et seq. In 1989 holdings of FHA-insured home loans totaled \$295,000,000,000.00. Table 823, Statistical Abstract of the United States 1991 (111th ed.).

²There may be other ways to assist a family in this situation. For example, a Chapter 13 wage earner plan to cure the default would help a family able to make the current house payment. This article, however, is limited to discussing the Assignment Program.

³For a discussion of these criteria, see *Cronkhite v. Kemp*, 741 F.Supp. 822 (E.D. Wash.), subsequent decision, 741 F.Supp. 828 (1990); *Brown v. Kemp*, 714 F.Supp. 445 (W.D. Wash. 1989). See also chapter 2 of HUD Handbook no. 4330.2 REV-1 (1991).

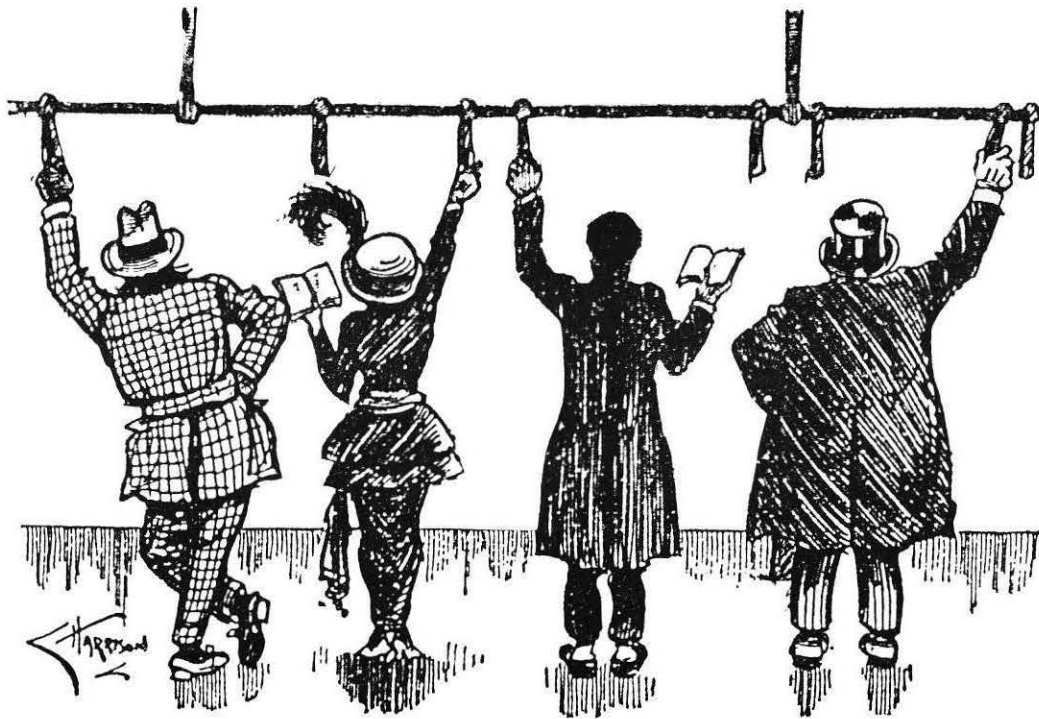
⁴You may want to request HUD to reconsider its decision where the homeowner attended a conference before consulting with you. You could use the reconsideration as an opportunity to more adequately develop the record. You might even ask for reconsideration where you attended the conference with the homeowner, but have new evidence supporting assignment.

⁵An appeal might also be possible as an adversary proceeding in a bankruptcy. See *In re Madison*, 42 B.R. 302 (Bankr. E.D.Pa. 1984), aff'd 60 B.R. 837 (E.D.Pa. 1986).

⁶See *Cronkhite v. Kemp*, 741 F.Supp. at 824-825.

⁷In *In re Armstead*, 97 B.R. 798, 799 (Bankr. E.D. Pa. 1989) the court ruled that HUD's decision denying assignment was particularly "egregious" in light of the significant equity of the homeowner. In *Cronkhite v. Kemp*, 741 F.Supp. at 825, the court stated that the impending loss of significant equity met the irreparable injury test for the granting of a preliminary injunction.

Norman R. McNulty, Jr. is a staff attorney with Spokane Legal Services Center. He is a 1973 graduate of the University of Washington School of Law.



Commentary: On the Need for Diversity

(Editor's Note: Faced with economic pressure to tighten legal practice, firms can little afford to squander their recruiting successes. Yet firms most successful in recruiting talented minority lawyers too often are unable to retain that talent.)

"A Firm Commitment", produced by the Bar Association of San Francisco and the National Association for Law Placement, confronts obstacles law firms create that undermine their ability to retain minority lawyers, attacking the notion that the issue of minority retention is one minority lawyers in the firm can solve, by putting the burden of stopping the revolving door squarely on the shoulders of law firm leadership. Purchased by WSBA last fall and available on request for viewing, "A Firm Commitment"'s endorsement by WSBA Executive Director Dennis Harwick last fall prompted the following commentary from Ricardo A. Guarnero, an attorney with Preston, Thorgrimson, Shidler, Gates & Ellis in Seattle.)

by **Ricardo A. Guarnero**

As a Hispanic attorney in a large commercial law firm, I was heartened to read Dennis Harwick's *Bar News* article, "A Firm Commitment," and had an opportunity to view the video by the same title. I wish to add my voice to those who are distressed by the problem of retention of minority lawyers. In Seattle alone, a community of generally progressive-minded people, the diversity of large law firms remains pitifully inadequate. Outside of the occasional attorneys of color that came up in the push for equality of the 1970s, the law firms remain largely devoid of minority attorneys in the upper ranks. A large part of the problem is the lack of any retention policy by large and medium-sized firms.

In most commercial law firms the

only effort to diversify is in the hiring process. Large law firms will make extra efforts to search for qualified minority candidates. Having made the occasional offer to a person of color, the law firm thinks its obligation to diversity has been fulfilled. It is no surprise, then, to find that when it comes to partnership choices, the law firms are still without minority candidates.

The absence of retention programs at commercial law firms stems from a combination of institutional pressures and a lack of consciousness of the problem.

Most members of large and medium-sized law firms view themselves as meritocracies where only the best and most fit survive to become partners. When young associates are hired, they are expected to conform to the firm culture and to understand the firm's unwritten rules. These rules range from the momentous (winning a big case or

wooing a large client) to the trivial (never call Partner X by his first name). Those who quickly assimilate and understand these rules, who perform well, and who work hard are rewarded with good work, advancement and, ultimately, partnership.

In the case of people of color, whether African-American, Asian or Hispanic, fitting into the firm culture can be a daunting task. Many minorities come from nonprofessional families. In addition, there are often cultural differences which the majoritarian culture, let alone the highly rarified law firm culture, does not take into account. People of color often do not have the professional connections of a father who is a businessman or corporate attorney; nor do they have a network of buddies from collegiate organizations. Any understanding of the professional world is often based on intuition and hard-earned experience.

The dynamics of firm culture and

organization exacerbate this alienation problem. Many people of color find that when they start at the law firm, they function pretty much the same as their colleagues: after all, they, like their colleagues, survived and did well at law school. But as time goes by, many minority attorneys find themselves working on fewer quality cases, feeling alienated from their superiors, getting

mixed messages about their status and generally feeling there is a lack of a good "fit." At that point, many attorneys opt to leave the large commercial law firms for public service or other jobs.

Although some minority attorneys may fail to "make the grade," what actually happens is that many of them hit the glass ceiling, an invisible barrier

of institutional prejudices, unspoken norms and long-standing but secret rites of passage. Only a "firm commitment," consisting of *programmatic efforts* which seek to incorporate a diverse range of attorneys can overcome this barrier.

The law firms will never become diverse until they make such efforts to retain attorneys of color and break up that glass ceiling. Among the problems that need to be addressed are the lack of mentors and a laissez-faire philosophy of "sink or swim."

Firm advancement is based on a great range of intangibles separate and apart from the quality of one's work. Among these are client contacts, choice of assignments, choice of supervising attorneys and access to the right people inside and outside of the firm. Unless such a programmatic effort is made, chances are that minority attorneys will fall through the cracks and eventually leave the firm. It must provide a surrogate for the mentors which flow naturally for other counterparts.

The firms must move away from the notion that if a person of color leaves the firm, then he or she has failed to become a part of the organization. More likely, the firm has failed in its efforts to *incorporate* that person into the firm culture. Accordingly, efforts must be made early to see that the work and partner assignments of young associates are monitored and that the attorneys are not being shuffled off into a work ghetto with little chance of advancement. Partners must take the range of intangibles discussed above into account in gauging the progress of a minority associate.

Most difficulties will arise from partners who refuse to distribute their work or expose the minority lawyers to their clients. These partners must be made to understand that a diverse work force is in the firm's long-term interest and that the goal of diversity can be attained only by starting, now, to expose minority attorneys to their clients and their work. Partnerships have ways of exercising leverage over their members. It should be used to establish such programmatic efforts. Until this is done, law firms will continue to suffer woefully high attrition rates for persons of color.

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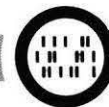
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A New Look at 12 Time-honored Organizational Principles

by Gregory S. Morrison

Every now and then I come across pieces of information that have the quality of timeless importance. These are the few simple gems of management wisdom that tend to make all the other theories or ideas seem inconsequential. I found one the other day, and I would like to share it with you. It has been slightly "tailored" to fit the law office organization, but it could have just as easily been left alone. Maybe you'll recognize the source, but if you don't, I reveal it at the end of this article.

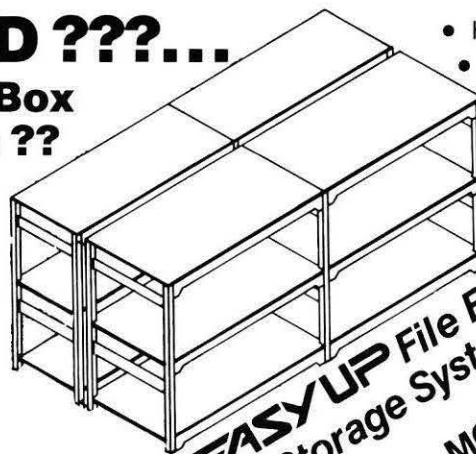
1. Each necessary function involved in the objectives of the law office should be assigned to a person or department thereof.
2. Assigned responsibilities should be clear and understood.
3. The same tasks should never be assigned to more than one independent person or department.
4. Methods of organizational structure should be consistent at each level of the organization.
5. All persons within the firm should know who they are accountable to and who is accountable to them.
6. No one should have more than one supervisor.
7. Responsibility and authority should be equal.
8. Individuals and/or departments reporting directly to a supervisor should not exceed the number which can be feasibly directed.
9. The chain of command should be strictly followed.
10. Authority and responsibility for action should be delegated to those responsible for actual performance to the greatest extent possible.
11. Executive control should be based on the exception principle rather than on the review of routine procedures of subordinates.
12. The organization should never be allowed to grow so elaborate as to hinder work accomplishment.

The source of these excellent organizational principles won't be found in the management section of your local bookstore. They are from the United States Army Service Forces Control Manual. I suppose that if they work under the pressures of a war, they also work under truly extreme circumstances: the day-to-day operation of a typical law office.

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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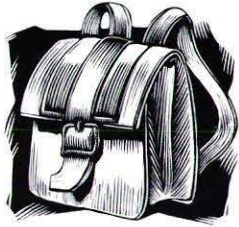
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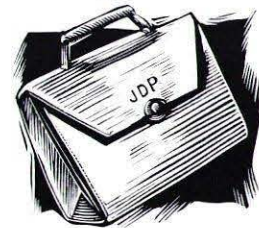
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by Lindsay T. Thompson

Spokane, May 8-9, 1992

Present: The president, president-elect Steve DeForest, and the governors. Also present: Judith Eiler (SKCBA Trustees); Sheryl Garland (Washington Women Lawyers); David Hansen, Sr. (Administrative Law Judges' Assn.); Dennis Harwick, WSBA executive director; Frank Johnson (Legal Foundation of Washington); Grant Johnson (WYLD, Friday); Jim Kaufman (WAPA); Lisa Lowe (WYLD, Saturday); Judge James McCutcheon (Superior Court Judges' Assn.); Donna McNamara (SKCBA/YLD); Bill Phillips (WDTLA); Judge Dan Phillips (District/Municipal Court Judges' Assn.); Lindsay Thompson, *Bar News* editor; Morton Tytler (Government Lawyers' Assn); and Robert Welden, WSBA general counsel.

[*Reporter's Note:* This account of the Board's Spokane meeting focuses on the debate over an amendment to Supreme Court General Rule 12 proposed by Local 1001 of the United Food and Commercial Workers' Union, and referred to the Board of Governors for comment by the Supreme Court. The amendment reads: "(d) Specific Activities Required. Among the specific Bar Association activities authorized and required by this rule and these stated purposes are to confer and negotiate in good faith with the bargaining representative of the appropriate bargaining unit or units of Bar Association employees, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions.

"To implement this rule, the Bar Association shall request, pursuant to RCW 41.06.080(1), that the department of personnel make its services available, on a reimbursable basis, to administer the provisions of RCW 41.06.150(11) through (14) and the rules promulgated thereunder."

The Association is not covered by any existing state or federal collective-bargaining law. Because of the intense interest and feeling the issue has generated, as much space as possible is devoted to the debate on the rule change, to give readers as full a flavor as possible of positions advanced and points made. This necessarily requires a cursory treatment of other issues considered by the board. Copies of the official minutes, detailing those matters, can be obtained from the Bar office.]

Unionization: Randy Beitel, a lawyer in the WSBA Legal Department, and Suzanne Moreau, a business representative of Local 1001, United Food and Commercial Workers, addressed the board.

Moreau told the Board the local had taken the high road in the discussion so far, and she expressed regret the board had not come around to the local's way of thinking. "It would be a major mistake to claim the bar is above the

law or deny workers their rights," she said. "We will do everything possible to make the rule change. We won't be going away."

Beitel told the board the issue has been around for 13 months, but while there has been a lot of discussion by the board, there has been no dialogue between the board and WSBA staff. He said informal polls conducted by governors at county bar meetings "have little value in decision-making" because the decision is one for WSBA employees alone. "The Supreme Court is not asking for your opinion of unions, or whether you think it will cost the bar more money to have one," Beitel continued. "It's not your place to decide for us if we belong to a union."

Beitel said comparisons with the only other unionized bar, California, were misplaced. He said Local 1001 had only called two strikes in the last 15 years. He understood that governors would oppose unionization: "No directors in their right mind would want one. If I were on the Board, I probably wouldn't want it, either." But that's not the issue, he continued. The issue is whether employees of the bar get an adequate say in determining workplace conditions, including hours, pay, workloads and discipline/termination matters.

Governor Lem Howell told Beitel he "had a problem with your philosophy. We appoint the executive director to run the association. We can't undercut him by communicating directly with you on specific issues. As a board, we set policy, and I think unionization is a policy matter." Howell objected to a statement in some of the correspondence the board had received from the organizers that claimed the WSBA budget had been balanced for years on the backs of employees (not!, he said), and the idea of lawyers in the bar's employ unionizing. "I can't close my eyes to the idea of disciplinary counsel going on strike," Howell continued, referring to a recent specter raised at the California State Bar. Besides, lawyers already belong to a union, and a pretty powerful one, he said.

"I have no intention of going on strike," Beitel replied, noting that Local 1001 had only called two strikes in the last 15 years. On the question of unionized lawyers, he told the board that King County Prosecutor's Office attorneys are unionized, and that he had helped unionize Evergreen Legal Services' lawyers when he worked there. They get along just fine, Beitel concluded.

Governor Mike Larson posed a question: Are there alternatives to the GR 12 amendment? If the problem is the workplace issues staff feel they lack input into, couldn't those just be addressed by management and staff? Beitel replied that he saw nothing to prevent the bar addressing issues of concern to staff. He highlighted two: that a "just cause" termination policy be adopted, and that any increase in working hours should be compensated.

Governor John Slater then returned to the question of discipline and wondered if a progressive discipline system, like that often employed in school systems, would be a workable, if costly, alternative. Beitel said he thought that might work, but he couldn't address what its budget impact might be.

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Governor Steve Tubbs wondered what the harm is in employees using the present grievance process. Beitel said staff lack confidence in it. "That's like saying, 'I'll never learn to ride that bicycle because I might fall off and hurt myself,'" Tubbs responded.

Governor Monte Hester told Beitel some of his comments about the rights of workers might be more persuasive if the issue were a political, not a legal, one. "Lots of the private sector isn't covered by the NLRB."

Lem Howell then moved to amend the rule to delete professional staff in the disciplinary department. Steve Tubbs wanted to hear more of "the sentiments of the board" before proceeding to a vote. A round of comments followed.

Lem Howell said he had gotten bales of mail from legal groups urging him to vote for unionization, from people who don't realize the conflict BOG members feel. "On the one hand, many of us believe workers can and should organize and collectively bargain. On the other hand, we have a fiduciary responsibility to the lawyers who elect us. We take our duties seriously. I don't think people appreciate that."

"I'm also concerned about the public perception. Should we be like Congress and exempt ourselves from the laws?" He said the legislature will almost certainly act on this matter if the bar doesn't. Howell concluded the reasonable approach was to let staff—but not WSBA lawyers—vote on unionization.

Governor Mike Larson said his "impression of the issue is that it is not one for the Supreme Court. The buck stops here. Whether this is appropriate rule-making is something I have real concerns about. I will oppose amending GR 12, but think the Board should address the policy issue staff have raised."

Governor John Schultz told the board he opposed both Howell's amendment and the underlying rule. "I am chilled by the thought that WSBA dues are the subject of collective bargaining," he continued, referring to a suggestion in correspondence from the union-organizing committee that they would be if unionization goes through.

Governor Alva Long said the board was continuing to ignore the dead horse in the living room, and he worried

about the PR consequences. "Shall we sneak through a crack in the wall? I'm not comfortable with this proposal (the rule change), but that's not the issue. It's an up or down—shall we let them organize or not? Our inability to resolve that question is how we got here."

Governor Wayne Blair commented that this was the most difficult issue he'd faced as a governor. "My conflict is that we wear different hats on the board—what's in the best interests of the public on one hand, the profession on the other. I see a clash between these two roles. If I look at the profession, I look at California and shudder. It's a possibility down the road" that the bar could have the sort of labor strife California's bar is having.

Blair continued that he had been on the board of Evergreen Legal Services when they unionized, and he found "it changes the employee-employer relationship forever. We didn't have a strike, but the negotiations were very long and very difficult."

"The lawyers don't want this," Blair said. "But that will not guide me. I think it is fundamental public policy in this state to let people organize. But I will vote in the interests of the legal profession, and to oppose the rule change. I second the idea of a board committee to look into the employees' concerns."

Governor Tom Chambers shared Blair's view. "I believe trade unionism and women's suffrage and civil rights have brought the poor and powerless up in this country. Should we deny them the right to organize?" He disagreed with the idea of a personnel committee.

Governor Steve Tubbs agreed the issue presented a range of competing interests. "It's inherent in being a lawyer to be sympathetic to such a request. We'd be foolish to

ignore the public-relations impact of our deliberations."

"At least one sage individual remarked that no board in its right mind would adopt this rule change. I don't think we can ignore the adversarial effect of taking this action. We'd be institutionalizing" a new employer/employee relationship. While accepting that "this is an empowerment issue," Tubbs told the board the rule change was not in the best interests of the association, and that resolving such issues should stay with the executive director of the association. Maybe a better-drafted rule will come to us in future, he concluded.

Governor Monte Hester said he agreed with Tubbs. "I am here as the representative of my district's lawyers. I am concerned that this is really a management decision. While I am an advocate of the right to collectively bargain—no one should be punished for doing so, or trying to do so—we made a decision to leave this matter in the hands of the executive director. Since 'the guard has changed,' there's been a reaction at the bar office. They'll smooth it out there, or we'll deal with them." In the meantime, he was comfortable sticking with letting the executive director handle the matter. "I have confidence in Dennis Harwick," he concluded.

Governor Joe Nappi was persuaded by the comments of Blair and Larsen. "I take note of the responses of lawyers in my district as well: there are lawyers on both sides of the issue. But the rule change would mandate that we negotiate. It gives us no choice."

Governor John Slater thought some of the employees' concerns expressed by Beitel warranted further review, especially the grievance policy. He also noted the views of his constituents in polls taken around the district. "No

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union has a policy of striking," he observed, "but it happens. When it does, it is very divisive, both on a short- and long-term basis."

Asked for comments, executive director Dennis Harwick said he appreciated the lightning rod function of his job more now, and he knew that members of the board had agonized over the issue.

"I didn't agonize at all," interrupted Alva Long. "I want it damn clear my vote is part of my general belief in unionization, and it has nothing at all to do with who's executive director. In my view, it's a fundamental right of mankind."

On Howell's motion to amend the proposed amendment of GR 12 to exclude WSBA lawyers from unionization, the vote was unanimous in favor. The board then moved to a vote on the proposed amendment to GR 12 (as amended), and defeated it, 3-7, governors Chambers, Howell and Long voting aye. Governor Tubbs then moved that the president write a letter to the Supreme Court telling them the board felt the rule was not in the best interests of the WSBA and did not otherwise further a more compelling public interest in the labor-management issues between the association and its employees. After some haggling over the wording, the motion passed, 7-3, Chambers, Howell and Long voting against.

Beitel told the board "This is not a personality issue. Employees still have confidence in Harwick" and "can work with him on these issues."

Wrap-up in Spokane: In other action, the board considered several competing proposals to increase the

recommended number of pro bono hours WSBA members should contribute to legal services for the poor each year. In the end, they adopted a resolution encouraging every lawyer to perform pro bono work (without defining any aspirational hourly goal) and calling on the Legal Aid Committee "to develop an action plan for implementation." They considered, and deferred for a month, a new proposal to recognize specialists in fields of practice of law. They appointed Dan Hannula to the Commission on Judicial Conduct and Harold Clarke 3d as an alternate, elected Jeff Tolman to replace Pat Comfort as an ABA delegate, re-elected delegates Ed Shea and Margaret McKeown, and appointed Karen Klein to the Judicial Council. They deferred action on creating a new BOG seat to match the new ninth congressional district seat until the U.S. Supreme Court rules on a Massachusetts challenge to the allocation of the seat to Washington, and they authorized Governor Tubbs to develop his idea for adding lay members to the board, for discussion at a future meeting. They set closing dates for this year's Board of Governors' elections in three districts. They heard a report from Harry Schneider and representatives of KVI, brokers for the WSBA-sponsored insurance plan, that the plan is working better than publicized complaints about it would suggest. They approved a technical amendment to RLD 4.1(a), and they heard from president-elect Steve DeForest on the work of his Professionalism Committee. They voted to exempt law students working in legal clinics which serve the poor from paying registration fees for Admission to Practice Rule 9 status. They next meet June 19-20 in Bellingham.

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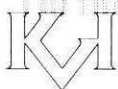


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15 Deadline for copy for August *Bar News*. Contact Lindsay Thompson, editor, (206) 577-3080.

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17 Spokane: Extraordinary Collection Procedures in Bankruptcy Practice in Washington. *Sponsored by:* National Business Institute, Inc. *For information:* (714) 835-7909.

19 Vancouver: Foreclosure and Repossession in Washington: How to Do It Right. *Sponsored by:* National Business Institute, Inc. *For information:* (715) 835-7909.

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

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

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

19 Seattle: Elder Law Practice. *Sponsored by:* WSBA/CLE. *For information:* (206) 727-8202.

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

19-20 Bellingham: WYLD Board of Trustees meeting. *For information:* Sheri Borgford, (206) 727-8239.

19-29 Seattle: National Institute for Trial Advocacy Northwest Regional. *Sponsored by:* NITA. *For information:* (800) 225-6482; fax (219) 282-1263.

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

25 Seattle: OSHA/WISHA Compliance Update in Washington. *Sponsored by:* National Business Institute, Inc. *For information:* (715) 835-7909.

26-27 Chelan: WSBA Litigation Section Midyear. *For information:* (206) 727-8202.

July 1992

1 Deadline for filing for WYLD trustees from the second and third congressional districts and King County at large, and for WYLD president-elect, terms to commence October 1, 1992. *For information or filing,* contact Alicia Lowe, 5414 N.E. 81st Avenue, Vancouver, WA 98662, (206) 892-1705.

2-5 Sunriver, OR: WSTLA Annual Convention. *For information:* (206) 464-1011; fax (206) 464-0703.

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

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

18 Everett: WYLD Board of Trustees meeting. *For information:* Sheri Borgford, (206) 727-8239.

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

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

August 1992

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

22-28 Seattle: Advanced Constitutional Criminal Procedure. *Sponsored by:* American Academy of Judicial Education. *For information:* (205) 391-9055.

22-28 Seattle: Literature and Law. *Sponsored by:* American Academy of Judicial Education. *For information:* (205) 391-9055.

23-27 Vancouver, B.C.: Appellate Judges' Seminar. *Sponsored by:* National Center for State Courts. *For information:* Marie Owens or Sandra Roos, (#12) 988-5696.

29 Winthrop: WYLD Board of Trustees meeting. *For information:* Sheri Borgford, (206) 727-8239.

September 1992

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

16-19 Vancouver, B.C.: WSBA Convention and Annual Meeting. *For information:* (206) 727-8200. For CLE information (15 credits offered) contact (206) 727-8202.

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



Notices of Interest to WSBA Members

WSBA Disciplinary Notices

Disbarred: Seattle attorney **Kimberlee A. McDonald** (WSBA #11897, admitted 1981) was ordered disbarred by the Washington State Supreme Court on April 3, 1992 for misappropriation and mishandling of client funds, for defrauding a bank by depositing into her trust account checks known to be drawn on closed or otherwise insufficient accounts, for failing to abide by a client's decision with respect to representation, and for neglecting client matters. April 7, 1992. **PLEASE NOTE WELL:** The disbarred attorney named above is not Renton attorney Kimberly A. McDonald, (WSBA #17602), who is an active member in good standing.

Disbarred: Wenatchee attorney **William M. Hamilton** (WSBA #1637, admitted 1954) has been ordered disbarred by the Washington State Supreme Court, effective April 3, 1992, pursuant to a stipulation to discipline in the form of disbarment. His disbarment is based on his conviction of 12 counts of first and second degree theft in violation of RCW Chap. 9A.56, all felonies.

Disbarred: Seattle attorney **Joseph H. Mitchell** (WSBA #1148, admitted 1966) has been ordered disbarred by the Washington State Supreme Court on April 3, 1992 for misappropriation of client funds which resulted in a felony conviction of first degree theft.

Disbarred: Oak Harbor attorney **Chris L. Custer** (WSBA #9619, admitted 1979), has been ordered disbarred by the Washington State Supreme Court effective April 3, 1992 pursuant to a stipulation to discipline in the form of disbarment. His disbarment is based on Custer's guilty plea to multiple counts of rape of a child in violation of RCW Chap. 9A.44, all felonies.

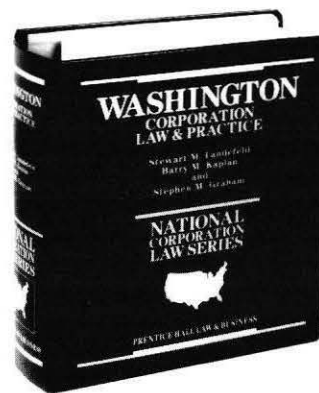
Suspended: Seattle Attorney **Stephen R. Thomas** (WSBA #2388, admitted 1968) has been ordered suspended for a period of ninety days, based upon neglect of several client

matters, misrepresentation to clients, and noncooperation in the investigation of these matters. Following his suspension, Thomas will be subject to

probation for a period of two years under a variety of conditions. [April 8, 1992]

Suspended: Tacoma attorney **Ivan D. Johnson** (WSBA #08824, admitted

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1979) was ordered suspended from the practice of law for sixty days effective March 19, 1992. The discipline was based upon Johnson's conduct in engaging in a loan transaction with a client without making adequate written disclosures relative to his ability to repay the loan. Additionally, Johnson is to be on probation for two years and is subject to a restitution requirement to

commence ninety days after his reinstatement. [April 9, 1992]

Washington Commission on Judicial Conduct

Reversal and Dismissal: The Washington Supreme Court has reversed and dismissed the decision of the Commission on Judicial Conduct

admonishing Clark County District Court Judge Fred J. Stoker for a violation of Canon 7 of the Code of Judicial Conduct (*In re the Honorable Fred J. Stoker*, CJC No. 90-981-F-22, June 25, 1991). Stoker was accused of campaigning for reelection and placing campaign literature within the booths of the Democratic and Republican parties at the Clark County Fair, and for paying the Democrats \$65 for access to their booth, in August 1990. The court held that the fair did not qualify as a political gathering, that the \$65 payment was for rent, and that his activities did not constitute partisan political activity, and that Stoker made "every reasonable and good faith effort to comply with the requirements of the Code of Judicial Conduct" in his campaign, and did not violate the Code of Judicial Conduct as charged by the Commission. The court therefore overruled the commission and dismissed the case. *In the Matter of Disciplinary Proceedings Against Fred J. Stoker, Judge of the District Court of Clark County*, No. J.D.7, 118 Wn.2d — April 9, 1992.

Stipulation, Agreement and Order of Admonishment: Pursuant to WAC 292-12-010(6), the Commission on Judicial Conduct (Commission) and Harry R. Slusher (Respondent), Family Law Commissioner of the King County Superior Court, do hereby stipulate and agree as provided herein:

STIPULATION

1. Respondent served as a full-time Court Commissioner for King County Superior Court on a contractual basis, effective August 30, 1990 to December 31, 1990. Effective January 1, 1991. Respondent served as a Family Law Commissioner on a full-time employee basis. Prior to serving in these capacities, Respondent was attorney of record for Diane Fanning in Cause No. 88-3-09032-1, *Diane Fanning v. Kenneth Fanning*.

2. As a result of the temporary, then the full, appointment, Respondent informed his client that she would be represented by a former partner, Pamela D.O. Larson. This client was consistently told that any questions or advice must be directed to Ms. Larson.

3 Thereafter, Respondent communicated with counsel for Kenneth

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Fanning on numerous occasions between December 13, 1990 and October 15, 1991. The nature of the communications involved efforts to secure funds for his former client from which Respondent would be compensated for fees earned prior to August 30, 1990.

4. Respondent has communicated with interested persons after his appointment as a superior court commissioner for the purpose of collecting professional fees owing in that matter. The commission has determined that such communications constitute conduct which is in violation of Canon 5(F) of the Code of Judicial Conduct.

AGREEMENT

5. Respondent accepts the Commission's determination that his described conduct constitutes the practice of law and agrees to not engage in such conduct in the future.

DATED this 25th day of March, 1992.

/s/ Harry R. Slusher, Respondent
/s/ Steven A. Reisler, Chair
Commission on Judicial Conduct

ORDER OR ADMONISHMENT

Based upon the above Stipulation, the Commission hereby orders, and Respondent is hereby admonished, for a violation of Canon 5(F) of the Code of Judicial Conduct.

DATED this 3d day of April, 1992.

/s/ Steven A. Reisler, Chair
Commission on Judicial Conduct

Court Rule Changes:

Ninth Circuit Court of Appeals: The court has adopted an appeals control program designed to improve service to the bar and to litigants through speedier resolution of appeals. The major elements of the program are as follows: (1) the clerk's office will begin a sweep of the court's docket with a view to identifying appeals that are not being moved forward in a timely manner; (2) to avoid delays, the procedural motions unit in the clerk's office will grant extensions of time *only* under the most compelling circumstances; and (3) starting June 1, 1992, the court will *automatically dismiss* any civil case that has failed to progress in conformity with strict time deadlines. In criminal cases, the court

will issue one warning before dismissal. For information about the new program, contact Cathy A. Catterson, Clerk of Court, U.S. Court of Appeals, P.O. Box 193939, San Francisco, CA 94119-3939; (415) 744-9810.

Court of Appeals, Division I:
General Order in the Matter of Supreme Court Order 25700-A-476 Establishing Temporary Procedures for Experimental

Use of Videotape Equipment to Record Court Proceedings: Pursuant to Supreme Court Order 25700-A-476, which authorizes the court to establish local rules regarding the use of videotape records on appeal, the following rule is hereby adopted:

In order to participate in the experimental project regarding the use of videotape as the record on appeal,

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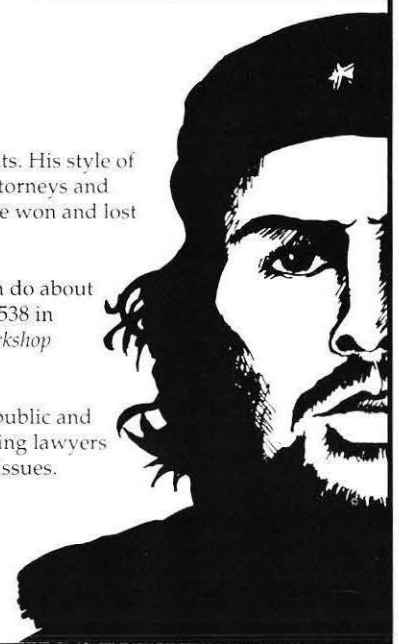
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Division I of the Court of Appeals will permit any case which meets the criteria of Paragraph 3(C) of the Supreme Court and in which trial commenced after June 1, 1992, to proceed pursuant to that order, except that indigent criminal appeals in which the Washington

Appellate Defender Association has been appointed as counsel on appeal will be provided a transcript.

DATED this 20th day of March,
1992.

/s/ Grosse, C.J.

**King County Superior
Court, Office of the
Presiding Judge:**

Pursuant to action taken at the March 20th King County District Court Judges' Executive Committee meeting the following policy regarding distribution of Presentence and review/revocation reports will be in effect as of *April 1, 1992*:

1. The King County District Court Probation Division will send the original and one copy of all presentence report and requests for review/revocation letters to the courts.

2. The extra review/revocation letter will be mailed to the defendant by the court when the summons is sent out.

3. The extra presentence copy will be provided to the court for the defendant's attorney. However, the attorney may obtain this copy of the presentence report *before* it is sent to the court. The procedure for this would be to submit a *written request along with a self-addressed, stamped envelope* to whichever of the probation offices listed below has been assigned to handle the case:

Federal Way Probation Office
District Court Probation Division
1025 S. 320th, Suite 101
Federal Way, WA 98003

Kent Probation Office
District Court Probation Division
1210 S. Central
Kent, WA 98032

Redmond Probation Office
District Court Probation Division
16770 N.E. 79th Street, Suite 101
Redmond, WA 98073

Seattle Probation Office
District Court Probation Division
E-310, King County Courthouse
Seattle, WA 98104

Shoreline Probation Office
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18050 Meridian Avenue N.
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Southwest Probation Office
District Court Probation Division
15111 8th Avenue S.W., Room 205
Seattle, WA 98166

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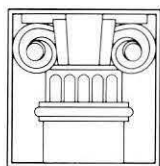
The most current and revised official Bankruptcy Forms are now available. All forms have been updated to meet the requirements of the Judicial Conference of the United States, *Committee on Rules of Practice Procedure*, effective August 1, 1991.

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Public Notices:

WSBA Rules Committee Seeks Comments:

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

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 May, 1992 is 3.91%. The maximum allowable interest permissible for June 1992 is therefore 12%.

Compilations of the average coupon equivalent yields from past auctions of 26-week treasury bills, and past maximum interest rates, appear in the *Bar News* on page 39 in October, 1987 for 1982-84; page 37 in June 1989 for 1984-85; page 55 in June 1991 for 1985-91 and on page 47 of this issue.

Award Nominations:

The American Bar Association is seeking nominations for its annual Harrison Tweed Award, created in 1956 to honor extraordinary achievements of state and local bar associations that develop or significantly expand projects or programs to provide access to civil legal services to poor persons or criminal defense services to indigents. Awards for 1992 will recognize work done in the year beginning May 1, 1991. The awards will be presented August 7 during the ABA Annual Meeting in San Francisco. Nominations must be postmarked by June 5, 1992. For information, contact Dorothy Jackson, (312) 988-5766.

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

Civil procedure. In medical malpractice action against physician and hospital, defendants moved for summary judgment. Plaintiff filed no response to defendants' motion and instead moved, one day prior to summary judgment hearing, for voluntary dismissal under CR 41. Trial court disallowed plaintiff's voluntary dismissal and granted defendants summary judgment. Court of Appeals reversed, holding that CR 41 gave plaintiff unqualified right to voluntary dismissal at that stage of proceeding. Appellate court rejected defense argument that plaintiff forfeited her right to voluntary dismissal by failing to file formal response to defendants' motion for summary judgment. Court likewise rejected defense argument that plaintiff had failed to give 5 days' notice of her motion pursuant to CR 6. No advance notice is required for motion for voluntary dismissal. *Greenlaw v. Renn*, ___ Wn.App. ___, 824 P.2d 1263 (Div. 2, 3/2/92).

—K. B. Tegland

Planning and zoning. Seattle Shorelines Hearing Board approved city's grant of permit for office building on shores of Lake Union. In so doing, board reached its decision by granting motion for summary judgment and also refused to follow one of its own former decisions. Challengers appealed to superior court, which affirmed hearing board. *Held*, affirmed by court of appeal. (1) Review proceedings of shorelines hearing boards are subject to state Administrative Procedures Act,

RCW Chapter 34.05. While that chapter does not specifically authorize use of summary judgment procedure, state supreme court has held that legislatively created agency, when acting in quasi-judicial capacity, may make summary judgments. (2) Shorelines hearing boards may overturn their own prior decisions. *Eastlake Community Council v. City of Seattle*, 64 Wn.App. 273, 823 P.2d 1132 (Div. 2, 2/10/92).

—W. B. Stoebuck

Real property. Subdivision restrictive covenants limited use to "single family residential purposes only." Defendants remodeled their home in this subdivision and began using home licensed residential care home for four unrelated elderly persons. State statute adopted in 1989 provides, that "an adult family home shall be considered a residential use of property for zoning purposes." Defendants argue, that while that statute applies directly to zoning and not to restrictive covenants, it declares a public policy that adult homes are "residential use." *Held*, judgment for plaintiff affirmed. Defendant's use is clearly in violation of language of restrictive covenant. Statutory definition of residential use for zoning purposes does not apply to restrictive covenants because zoning and covenants are two separate kinds of land-use controls. *Mains Farm Homeowners Association v. Worthington*, 64 Wn.App. 171, 824 P.2d 495 (Div. 2, 2/5/92).

—W. B. Stoebuck

Launching the LAW



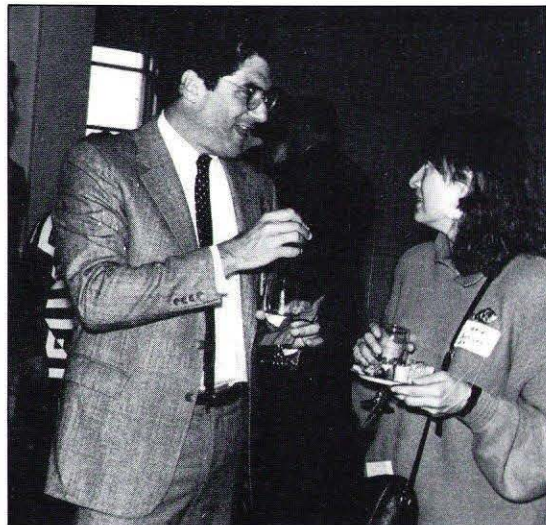
John Purbaugh, Sal Mungla, Cliff Foster

April 20, attorneys and judges gathered in the Dome Room of Seattle's Arctic Building for the kickoff celebration of the first annual campaign for Washington's LAW Fund.

During his speech at the reception, ABA president Sandy D'Alemberte said that "Equal Justice Under Law," which is inscribed above the steps of the highest court in our country, is meaningless if all do not have access to our nation's justice system. He recalled Alexis De Toqueville's assertion that lawyers are a connecting link between the classes of society. "Access to justice is possible It is not some distant ideal," said D'Alemberte.



Elizabeth Thomas, Hon. Roselle Pekelis, Kirk Dublin



Ken Jaffee, Deborah Juntunen



Ada Shen-Jaffe, Hon. Michael Fox



Jennifer Brown, Dan Ford, Paul Stritmatter, Hon. Edward Heavey, Ken Jaffee, Elizabeth Thomas, Bob Stalker

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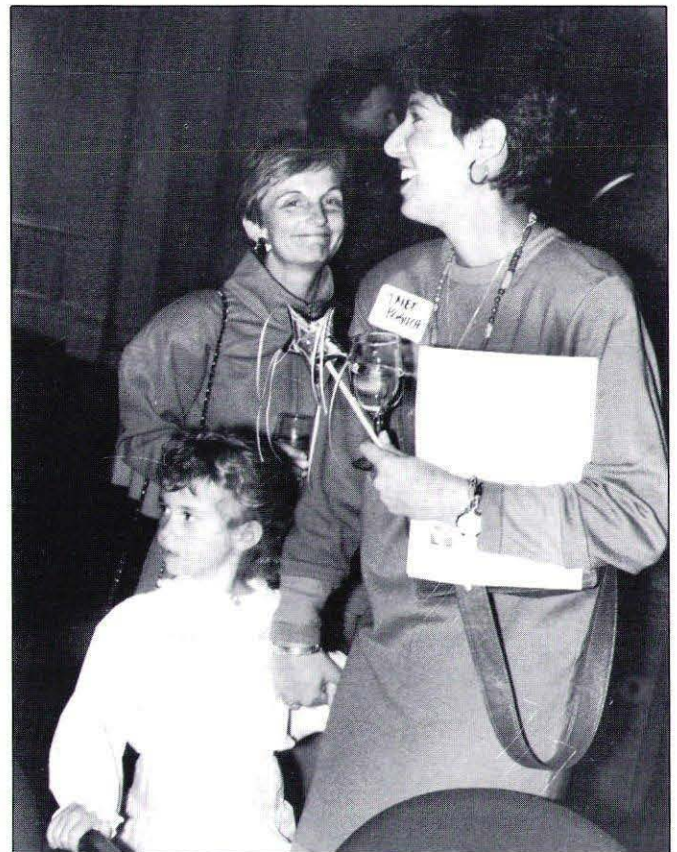


Speakers: William H. Gates, Hon. Susan Agid, Sandy D'Alemberte, Mark Hutcheson, Paul Stritmatter

Lembhard Howell, Sandy D'Alemberte



Randy Beltel, Hon. Steve Scott, Leas Carpuz



Hon. Bobbe Bridge, Janet Boguch, Kalen Fletcher

Law Fund vice president Mark Hutcheson reminded listeners that law is what separates the jungle from civilized society, and that many people do not have access to the law. Unless we ensure their participation, he said, we will not continue to live in a civilized society.

The LAW Fund is a stand-alone organization designed to solicit, receive and distribute money for the civil legal justice system. It puts cash on the table to fund legal services from those who are professionals in the field.

Contributions may be sent to Legal Aid For Washington, 1326 Fifth Avenue, Suite 815, Seattle, WA 98101. [Phone: (206) 623-5261.]

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Average Coupon Equivalent Yields from the Auction of 26-week Treasury Bills: 1986 to Date

These are the average coupon equivalent yields from the auction of 26-week treasury bills from January 1986 to date. The highest rate of interest permissible under RCW 19.52.020(1) is computed by the addition of four percentage points or is 12% per annum, whichever is higher.

The yields shown on the chart are those applied to the month shown, computed on the coupon equivalent

from the first market auction average in the month preceding, as specified in the statute.

These limits apply to loans which are made during the designated month. Note: Any loan made pursuant to a commitment to lend at an interest rate permitted when the commitment is made is lawful.

The average coupon equivalent yield from the first May 1992 auction of

26-week treasury bills applicable to the computation of the maximum allowable interest rate for June 1992 is 3.91%. According to the state treasurer's office, the maximum allowable interest rate for June 1991 is 12%. Note that when the equivalent bond yield is below 8%, the maximum interest allowable remains at 12%.

January 1986	7.64%	12.00%	January 1989	8.73%	12.73%
February 1986	7.48%	12.00%	February 1989	8.86%	12.86%
March 1986	7.42%	12.00%	March 1989	9.04%	13.04%
April 1986	7.22%	12.00%	April 1989	9.18%	13.18%
May 1986	6.46%	12.00%	May 1989	9.38%	13.38%
June 1986	6.37%	12.00%	June 1989	9.16%	13.96%
July 1986	6.72%	12.00%	July 1989	8.44%	12.44%
August 1986	6.11%	12.00%	August 1989	8.05%	12.05%
September 1986	5.98%	12.00%	September 1989	8.12%	12.12%
October 1986	5.38%	12.00%	October 1989	8.31%	12.31%
November 1986	5.34%	12.00%	November 1989	8.36%	12.36%
December 1986	5.52%	12.00%	December 1989	7.89%	12.00%
January 1987	5.69%	12.00%	January 1990	7.69%	12.00%
February 1987	5.79%	12.00%	February 1990	7.93%	12.00%
March 1987	5.83%	12.00%	March 1990	8.15%	12.15%
April 1987	5.76%	12.00%	April 1990	8.22%	12.22%
May 1987	6.07%	12.00%	May 1990	8.24%	12.24%
June 1987	6.46%	12.00%	June 1990	8.28%	12.28%
July 1987	6.40%	12.00%	July 1990	8.03%	12.03%
August 1987	5.95%	12.00%	August 1990	8.01%	12.01%
September 1987	6.45%	12.00%	September 1990	7.56%	12.00%
October 1987	6.66%	12.00%	October 1990	7.75%	12.00%
November 1987	7.33%	12.00%	November 1990	7.59%	12.00%
December 1987	6.55%	12.00%	December 1990	7.41%	12.00%
January 1988	6.42%	12.00%	January 1991	7.31%	12.00%
February 1988	6.67%	12.00%	February 1991	6.82%	12.99%
March 1988	6.41%	12.00%	March 1991	6.91%	12.00%
April 1988	6.20%	12.00%	April 1991	6.36%	12.00%
May 1988	6.21%	12.00%	May 1991	6.06%	12.00%
June 1988	6.41%	12.00%	June 1991	5.87%	12.00%
July 1988	7.05%	12.00%	July 1991	5.98%	12.00%
August 1988	7.04%	12.00%	August 1991	5.98%	12.00%
September 1988	7.52%	12.00%	September 1991	5.85%	12.00%
October 1988	7.79%	12.00%	October 1991	5.63%	12.00%
November 1988	7.86%	12.00%	November 1991	5.30%	12.00%
December 1988	8.13%	12.83%	December 1991	5.00%	12.00%
			January 1992	4.56%	12.00%
			February 1992	4.00%	12.00%
			March 1992	4.08%	12.00%
			April 1992	4.28%	12.00%
			May 1992	4.16%	12.00%
			June 1992	3.91%	12.00%

"They're going to eat my babies . . ."

by Keelin Flynn

The panicky thought ran through the mind of New Century High School teacher Brenda Owings-Klimek as she watched her students ready themselves for the first round of YMCA mock trial championship play.

Similar apprehensions may have run through the mind of New Century's coach while she waited more than 300 miles away to hear news of the team's progress. Called to Spokane on a family emergency, Olympia attorney Lori Lamb could only reflect on the many nights she had spent preparing her team for trial.

Lamb's team battled a set of obstacles different from those of most of their opponents. For one thing, there was a question of size. New Century's "non-traditional" has only 150 students. Other schools boasted talent pools ten times as large.

The students entered the mock trial competition later than their opponents and also had to juggle practice sessions with the day jobs and college courses several students attend. Could they withstand the pressure from the bigger schools?

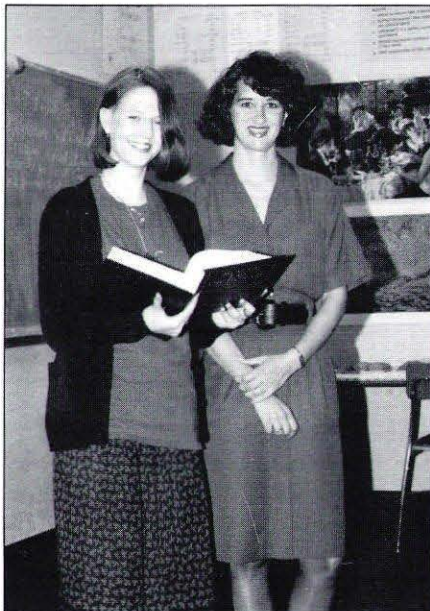
But the trial progressed; Owings-Klimek watched as her students rose to the occasion, meeting their opponents' objections with articulate rebuttals and countering with skilled objections of their own.

"I was so proud of them, tears came to my eyes," Owings-Klimek said. "I just wish Lori could have seen them. She was responsible for this."

A recent political science graduate of Washington State University, Keelin Flynn is currently serving a six-month term as a law/media fellowship student for the state office of the administrator of the courts.

"I thought about them all weekend, wondering if they were prepared enough," Lamb said later.

For two months, Lamb, an assistant attorney general by day, spent one or two evenings a week coaching the students for their debut. They discussed every aspect of the mock trial case, court system, criminal law and courtroom behavior.



*New Century student **Leanne Rowley** holds the *Black's Law Dictionary* given to the class by assistant attorney general **Lori Lamb**.*

New Century student Morgan Scherr said Lamb's coaching paid off.

"We acted professionally, and we were treated as professionals," Scherr said.

"We had more obstacles because of going to college or working during the day, but we achieved what we came to do: we survived," said student Tabitha Genn.

Lamb said the students gained an appreciation for lawyers and the court system through the mock trial.

"They've learned a lot more about lawyers and the court system—you

always learn better by going through it," she said.

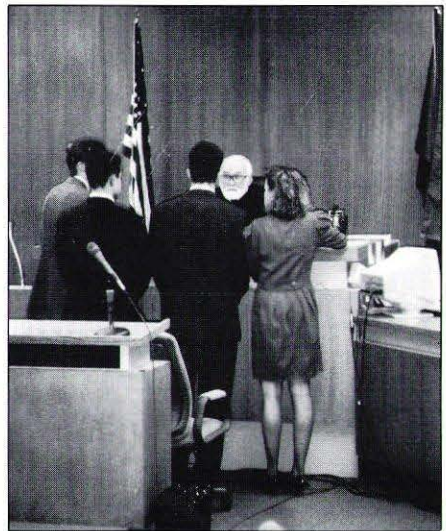
A "Real World" View

Coaching isn't the only way lawyers volunteer for mock trial service. Attorneys from across the state participated in this year's YMCA state mock trial championship, held in Olympia, March 27-28. All spoke to the important roles they played as mock trial coaches, raters or judges.

Olympia attorney George Darkenwald, a competition rater, said mock trials give students an opportunity to learn about cases through three sets of eyes: those of plaintiff, defendant and witness.

"It's role-playing in the best sense," said Darkenwald. "The kids learn to think on their feet, be conscious of their appearance, body language and voice—these things help across the board in life, not just with law."

Moses Lake High School attorney/coach Carl Warring said students are drawn to mock trials for the opportunity to learn about the "real world."



*Justice **James Dolliver** confers with both teams' counsel just before the championship round.*

"The competition gives them the opportunity to do something that has real application to life. Often, this isn't the case in the school environment," Warring said. "When we're done with them, they're more grown-up than they



Attorney **Craig Hanson** offers praise and suggestions to mock trial teams.

ever were."

"[The students] develop self-confidence and learn to look at problems analytically," said Seattle attorney Doug McBroom. His coaching of the Franklin High School team helped the group earn a place at the May national mock trial championships held in Madison, Wisconsin.

Larry Strickland, curriculum advisor for the state office of the superintendent for public instruction, said mock trials allow students to develop realistic insight. "Kids see things as black and white. When they see that a witness here might have a different view from the one across the room, they realize that 'facts' are subject to interpretation, and that's a healthy realization."

Assistant attorney general Trish Nightingale said students also learn to look at the Constitution as "a living document."

"I hope they don't see the

Constitution as a static thing after this trial, that they can see how it reflects society's values and what's going on in the world," she said.

Nightingale said the mock trial's impact on participating students will have long-lasting effects. "They'll have this in the back of their minds for years to come—it's not just about public speaking. It's about being a better citizen," she said.

Future Opinion Leaders

Some participants believe this learning experience may have long-range benefits in store for the law profession as well.

Several lawyers and judges believe mock trial competitions may be a step in the road toward diminishing the stigma.

In the April edition of the *Bar News*, executive director Dennis Harwick compiled a list of possible reasons lawyers may become involved in law-related education. One possibility, Harwick wrote, is "You believe (as most of us do) that the practice of law and our system of justice is consistently misrepresented in the media and the movies, and want to set the record straight."



Lori Lamb listens to students report on their experiences at the state mock trial championships.

"Most officers of the court are proud of their profession and frustrated when the profession is misunderstood, or when society takes pot-shots," said Thurston County District Court Judge Clifford Stilz, Jr.

King County District Court Judge Charles Delaurenti, II said some people base their assumptions about the court system on Judge Wapner and other television personalities. "With mock trials, they see that it is a very real system and that we're real people, too."

As Supreme Court Justice James M. Dolliver wrote in the April issue of the *Bar News*, "Those of us who believe in law-related education—and that should be every lawyer and judge in the state—have an obligation to teach the *why* of the legal system as well as the *how*."

Lamb said increasing activities that unite attorneys and communities could help to diminish stereotypes. "The more work we as attorneys do within the community, the more they're aware of what we do—what better place to start than with the education process."

Seattle attorney George Cleve Haynes, an audience rater at the competition, said the mock trial program demonstrates to students the democratic values of having an above-the-board legal system where all persons are treated with respect; mock trials offer bar members the opportunity to demonstrate the positive impact the legal profession places on society.

"The competition illustrates the place the rule of law has in our society and that is as important for a civil engineer to know as it is for a lawyer to know," Stilz said.

Warring said that participating in the mock trials brings officers of the court in contact with the opinion leaders of the future. "These kids are the leaders of their generation," he said. "If you can impact them, you are impacting a lot more indirectly."

"Prism of Failure"

While countering the undesirable stigma attached to lawyers, the mock trials may also rebut the stereotype society has placed on youth.

"[Lawyers and judges] see such a distorted side of our population. . . . It's



and didn't feel all that important or well-treated, which were fortunately rare; but because I do remember them, that reinforced for me the importance of what we were doing," said Haynes. "It's important for older people to reinforce the good and worth they see in young people."

← *New Century team (l to r): student **Leanne Rowley**, teacher **Brenda Owings-Klimek**, coach **Lori Lamb** and student **Candide Jackson**.*

↓ *Administrative judge **Judith Gebhardt** observes performance rating by attorneys **George Darkenwald** and **Craig Hanson** and OAC court information specialist **Patt Dronen**.*

definitely a prism of failure when most of the kids we see are drop-outs or bound for jail," said Thurston County Municipal Court Judge Christine Pomeroy, one of the sitting judges at the mock trial championships.

"It gave many of us a chance to reflect on what's good in society," she said.

"Mock trials reinforce the reality that the majority of the young people are good," said Warring, "and that's something you can forget when you're involved with the young people in trouble."

Haynes said attorneys who practice law long enough or serve as judges have seen more than their share of young people in trouble. "It brought back to mind times when I was young



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boards of the Fred Hutchinson Cancer Research Center and the Corporate Council for the Arts, as well as the boards of Seafirst Bank and U.S. West Communications.

Proceeds from the gala went to establish the Bruce Maines Cancer Research Fund at the City of Hope Medical Center and Beckman Research Institute in Duarte, California.

The Northwest Insurance Council for City of Hope Medical Center has named SAFECO board chair Bruce Maines its 1992 Achievement Award Recipient. Maines received the award at an award gala in Seattle May 2.

Maines joined SAFECO's legal department in 1950 after graduating from the University of Washington School of Law. He was named general counsel in 1966. In 1974 Maines was appointed chief operating officer of SAFECO's property/casualty companies. He was named president and CEO of SAFECO in 1989 and retired in 1991, but remains chair of the board.

In addition to his work, Maines has been active as president of the Washington Insurance Council, the Pacific Insurance and Survey Council, and as a director of the Insurance Information Institute. He's chaired the Washington Roundtable, Council for Corporate Responsibility, Leadership Tomorrow, and the Greater Seattle Chamber of Commerce, and was associate general chair of the United Way of King County. He serves on the

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NEWS FROM HOME

Kate Cashin and Jim Devine have opened their law practice in the Ericksen Avenue Office Park on Bainbridge Island. Formerly a Davis Wright Tremaine partner, Cashin practiced the last two years on South Madison in Seattle; her practice centers around construction contracts and disputes, real estate, and general business and individual representation. Devine practiced in southern California for 25 years before becoming of counsel to Garvey Schubert & Barer in 1990, a role he still plays. His practice concentrates in estate, trusts and related matters.

Gordon, Thomas, Honeywell et al. in Tacoma has added four new associates, the firm announced in March. Margaret Archer, a Gonzaga undergraduate and law alum, was formerly a financial analyst with Westinghouse; Timothy Lang, who graduated from Lewis & Clark, previously clerked for the Clackamas County, Oregon, District Attorney. Karen Lichtenberg, with degrees from UW, is a former member of the Office of Program Research of the Washington House of Representatives. Marilyn Taylor, a graduate of UW

and UPS School of Law, clerked for Court of Appeals Judge Joseph Coleman before joining the firm.

Kenneth Isserlis has been named a partner in Lee & Michaud, the Spokane law firm. A 1983 Gonzaga Law graduate, Isserlis was associated with Spokane Legal Services before joining the firm. He concentrates in the fields of special education, social security, workers' compensation, employment and administrative law.

Rial Moulton has joined a Colfax firm, now known as Hickman, Webster & Moulton. A CPA and UPS law graduate, Moulton has been associated with Coopers & Lybrand and Winston & Cashatt in Spokane, with Canadian Warehouse Club, over which he presided as president and CEO until its sale last year.

Joel I. Beerman has been appointed general counsel for Georgia Gulf Corporation in Atlanta. He was associate general counsel from the company's founding in 1985, and he previously served as senior counsel to Georgia-Pacific Corporation. Beerman is a graduate of UPS School of Law, and is admitted in Oregon, Washington and Georgia.

Seth Dawson, Snohomish County prosecuting attorney, has been named to the New York-based National Victim Center's committee of prosecutors

developing national guidelines for evaluating and prosecuting sexual assault cases.

Harry E. Ries of Moses Lake has been named a partner in the Dano Law Firm. He's a graduate of UW and Gonzaga School of Law.

Vern McCray has joined Poyfair & English in the firm's Camas office.

CLARK COUNTY REPORT

by JOHN F. NICHOLS

Transactions:

1. Last month's report failed to specify the present location of Alison Greene, late of Johnson & Vomacka. Alison has found a home with Weber & Gunn at their new, as yet undisclosed, location somewhere in beautiful downtown Hazel Dell. Ken Weber discovered Alison at the dissolution docket, somewhat confused and with all her labels missing. He did what any attorney would do: he offered her half the pay with twice the work.

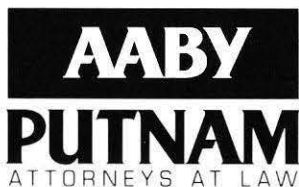
2. Another victim of a hostile bidding war was Lisa Lowe, former boss of the year, or was it bossy of the year? (It's sad how some people try to rest on withered laurels.) Lisa, a long-time member of Poyfair, English & Lowe, had apparently grown tired of practice in the beautiful downtown Camas branch office. Thus, she sought wealth, security and an office bigger than that of her husband, attorney Ernie Nicholson of Weber & Gunn. Fortunately, this was not hard to do. The good news was that Lisa's selection of the "wanna-be" mega-firm: Schwabe Williamson. The bad news—she will be in charge of the soon-to-be-opened Camas office. Next time, listen to your spouse.

Recycled briefs:

With the emphasis on the recycling business, it is not surprising that attorneys would jump in with both feet and mouth. Who hasn't used the same brief, pleadings, etc., in different cases? Well, quasi-local attorney Tom Foley (not the one who writes bad checks in D.C., but the one who writes bad checks in Portland/Vancouver), has put his garbage where his mouth is. In a recent exposé, a local TV news program

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was tracking down violators of the new garbage recycling program. While cruising Portland neighborhoods, they spotted Foley in bathrobe and tie apparently mixing in plastics with the colored cardboard bin. When confronted, Tom lamely attempted to palm the plastic milk container and slip it into his briefcase—as "evidence." When this failed, he stated he was confused about the different recycling procedures in Portland and Vancouver. I guess Tom thinks he can live in Oregon but bring his garbage into Clark County. That may work in court, Mr. Foley, but not in the garbage business.

EAST KING COUNTY REPORT

by MARIJEAN E. MOSCHETTO

My attitudes have certainly changed about what it is to be a lawyer. For all that I learned in law school about the basic concepts of the law, I don't think I truly realized that this is not a job but a profession, a continuing process of growing, learning and refining knowledge.

When I was fresh out of law school, I was sent to a deposition being conducted by Fred Betts. Fred, being a venerable member of the bar, talked about many things. The most important thing he wanted to convey to me, he said, was that if your word as a lawyer meant nothing, you as a lawyer were nothing.

I've thought often about what Fred told me, especially when drafting my umpteenth letter "This will confirm our conversation . . ." Are these letters the reflection of lawyers who have become suspicious of each other's word? Are they a symptom of those of us who are becoming so busy that we simply cannot remember it all and need the written word to tell us what happened?

I find one thing that reduces the amount of confirming letters written is a sense of trust between the lawyers. That often begins when they have gotten to know each other previously. At the EKCBA member luncheons and social events companionship and camaraderie are found. We get acquainted, make business contacts, maybe even get a referral out of it. More importantly, meeting each other on a social basis makes it easier to work with each other on a professional basis.

At the last EKCBA luncheon meeting, I sat near **Bob Kelley** of Oseran Hahn, Van Valin & Watts. Bob and I were on the same side of a case before, and it was an appreciated opportunity to get to know him better. At the luncheon, Senator **Phil Talmadge** spoke on what happened and didn't happen at the last legislative session.

In other comings and goings on the Eastside, others are going through transition. **Gordon Tobin** has moved to share space with **Steve Toole** in Bellevue. **Bruce Ries** has, regrettably, retired from the practice of law with his former firm. **Pete Jorgensen** has moved his practice from the Eastside to Seattle with Metz, Froll & Jorgensen, P.S. **Jim Phippard**, a long-time Eastsider, has also left his former firm in Kirkland.

And wherefore **Randy Gordon**, former columnist? Randy is the new editor-in-chief of the EKCBA newsletter and now writing his columns for those who are members of EKCBA. Fans of Randy's need only call the EKCBA office to join and receive the latest copy.

GOVERNMENT LAWYERS BAR ASSOCIATION REPORT

by EVELYN A. FIELDING

New officers have been elected: **Trish Nightingale**, president; **Evelyn Fielding**, first vice president; **Mary Jo Diaz**, second vice president; **Bert Paul**, secretary; **Nancy Kellogg**, treasurer; **Ed Dee** and **Kristal Wiitala Knutson**, CLE co-chairs; **Frank Edmondson** and **Mort Tytler**, bar liaisons; **Jean Marchioro**, membership chair; **Steve Buzzard** and **Kate Walsh**, program and social affairs co-chairs. In addition, **Mary Gallagher Dilley** will advise us as the immediate past-president, and a Seattle chapter liaison will be considered at a later date.

As far as news, the hot topic of the year continues to be questions about pro bono: Is it mandatory—what are aspirational goals—what constitutes pro bono activity—what about conflicts of interest—what about gifts of state funds—and what's with the buy-out option? Our questions have not been completely answered, although it is our

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understanding that the early discussions of "mandatory" or "required" pro bono activities have fallen by the wayside.

The government lawyer social scene may have peaked in April as that month contained lunch with WSBA executive director **Dennis Harwick** at La Petite Maison in Olympia. (The cuisine was marred only by the unappetizing discussion of bar fees—hardly a digestive aid.) Also in April was the not-to-be-missed GLBA Annual Meeting at Genoa's on Olympia's waterfront, an evening of cocktails and sophisticated chat with Mort and Frank about the shenanigans of the Board of Governors, and gossip from the Board's monthly meetings. And to think, we still have the summer's political campaigning to anticipate—life is good in Olympia.

PIERCE COUNTY REPORT

by **GEORGE S. KELLEY**

Larry Couture, manager of the "young lawyers" slowpitch baseball team announced the off season acquisition of **Mark Dietzler**, who

has sufficient hand-eye coordination not to hurt himself at the shortstop position. The rest of the team remains pretty much the same as it has been for the last 20 years. However, the trust department of Puget Sound National Bank ended a 15-year sponsorship, no doubt a cost-cutting measure caused by the impending merger with Key Bank of New York. Coach Couture, in an effort to find financial support, contacted several companies including Nintendo, which expressed interest if its deal in Seattle failed.

Norm Margullis happened to take his son to tryout for a part in a TV production in Seattle. It turned out that his son did not get a part but Norm did. Next time you see a "Crime Stoppers" public service television skit, look for Norm playing the part of a burglary suspect. Before accepting the part, Norm consulted his calendar to make sure he had an alibi for the date of the crime.

These things seem to happen in Puyallup around daffodil season. **Lee Pendergrass** represents one of the parties in a post-divorce proceeding involving a "new-age" religious group. This matter gets a lot of publicity as Lee's client is said to be able to communicate with a 35,000-year-old warrior spirit named "Ramtha." Lee, when asked by a newspaper reporter

about certain allegations contained in an affidavit, said that if he had a dollar for every lie told in an affidavit, he would be a rich man. On further reflection he observed that he was already a rich man and looked to become even richer. We are not making any of this up.

Gordon, Thomas, et al. announced that **Margaret Y. Archer**, **Timothy N. Lang** and **Kristen R. Lichtenberg** have joined their Tacoma office and that **Marilyn L. Taylor** is stationed at their Seattle outpost.

SEATTLE-KING REPORT

by **JAMES VARNELL**

Who's Minding the Store? Local criminal defense attorneys must have had a field day during the last two weeks of March, as many of the best representatives of the King County Prosecuting Attorney's office accompanied the Seattle Mariners to Arizona for a close-up look at spring training. Off cavorting in the sun were: **Norm Maleng**—taking time out from his campaign for state Attorney General; **Rebecca Roe**, **Jeff Smith**, **Barbara Linde**, **Ken Vereb**, **Otto Klein**, **Greg Hubbard**, **Tim Bradshaw** and **Terry Harvey**. Also migrating south were former prosecutors **Greg Canova**, **David Lord** and **José Gaitan**.

Roe vs. Trade. Mention of the Seattle Mariners brings to mind a blockbuster trade proposed by this correspondent in October 1990. A recent appearance on the King County Superior Court criminal motion calendar provided another opportunity to try it out *nunc pro tunc* on Roe, a long-time Mariner fan. (See reference to spring training, above.) It was suggested that the Mariners should trade **Ken Griffey Jr.** to the Baltimore Orioles for **Cal Ripken Jr.**, **Mickey Tettleton** and **Ben McDonald**. Roe seems to have spent too much time in the Arizona sun, as she expressed nothing but disdain for this **Frank Lane**- or **Bill Veeck**-style trade. Apparently, she has little use for: probably the best shortstop ever to play baseball; a catcher

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who hits 25 home runs per year (vs. a catcher who hits .125 some years); and a flame-throwing, future 20-game winner. And speaking of Griffey, Jr., did someone say "free agent," as in Mike Moore, Mark Langston, Bill Krueger, et al.? In any event, this discussion, aborted by the call of the criminal motions calendar, came to be known as *Roe vs. Trade*.

Office Moves. Graham & Dunn announces that Joel R. Junker and Mark D. Northrup have become members of the firm and that Robert G. Bergquist has become an associate. David Vance Marshall and Donald S. Kunze have become partners at Davis Wright Tremaine; Clifton L. Elliott is now counsel. New partners at Williams, Kastner & Gibbs are: Michael Jay Brown, Elizabeth A. Christianson, Robert C. Manlowe, Margaret A. Sundberg and Philip J. Vanderhoef; Paul C. Gibbs is now of counsel, and Jerry B. Edmonds has been elected managing partner. Robin Williams Phillips has become a partner at Lasher Holzapfel Sperry & Ebberson; Timothy J. Gavin, Lisa Ann Kokenge and Joseph P. Mentor, Jr. are new associates. Michael K. Murray is of counsel.

Five new partners at Foster Pepper & Shefelman are Beth A. Clark, Thomas E. Dixon, Roger D. Mellem, Mark J. Nielsen and Deborah S. Winter. Christine Gregoire, formerly director of the Washington Department of Ecology, is now of counsel to the firm. New associates include Cynthia F. Adkins, Robert I. Eaton, John A. Fandel, C. Christine Maloney, and Roger A. Pearce. New partners at Townsend & Townsend are Steven W. Parmelee and Richard L. Hughes; new associates are Jeanne C. Suchodolski and J. Steven Whitaker. David W. Merrill has opened his office at 83 South King Street. Jerry E. Thonn and Robert N. Gellatly have become partners at Helsell, Fetterman, Martin, Todd & Hokanson. New associates at other law firms include Stephen J. Hollomon with LeSourd & Patten and Karen M. Wetherell with Hendricks & Lewis. Caroline D. Davis has opened her

office in the IBM Building.

Of Note. Julie Weston was appointed secretary of the Seattle Goodwill Board of Trustees. Dillon E. Jackson has been appointed to the Board and Faculty of the American Board of Bankruptcy Certification. James L. Magee has become a Fellow of the American College of Trial Lawyers. Omar S. Parker, Jr., David W. Thorne, Jerry A. Creim and David E. Fennell have been elected to membership as Fellows in the American College of Mortgage Attorneys. Cheryl L. Duryea has been re-appointed to serve as a member of the Governor's Securities Advisory Committee. Paul N. Daigle has been elected managing partner of the newly merged law firm Schwabe Williamson Ferguson & Burdell. William R. Hickman has been elected an official for the 1992 Olympic Track and Field Trials. O. Yale Lewis Jr. was elected president of the Seattle Public Library Board of Trustees. Robert P. Karr has been re-elected as president of the Foundation

of the International Association of Defense Counsel.

SPOKANE COUNTY REPORT

by DON CURRAN

Speaker Tom Foley presents medals to Vietnam hero James R. Shively to replace those lost in a fire that destroyed the family home. The courtroom ceremony had federal judges standing in tribute and the self-effacing Shively turned an embarrassed crimson. . . Gregory B. Lipsker, contented in marriage and the practice of law, exults when his spouse's job transfer keeps her in Spokane. . . Advertising takes a new twist when a local newspaper pictures nurse/tort lawyer Marcia M. Meade bent over administering aid to an injured motorcyclist hit by a negligent driver a few seconds after it actually happened. . . Public-spirited symphony trustee Gregory J. Tripp urges Spokanites

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to enjoy their orchestra, thereby learning that an oboe is not an ill wind that nobody blows any good . . . **Daniel L. Hayes** and **Lewis C. Lee** hang their shingle and specialize in patent, trademark and copyright law . . . **Frank H. Johnson's** decades-long love affair with chocolate remains unsatiated. He is wild about it - craving its sublime flavors at all hours of the

day and night. It's not just for breakfast any more . . . **J. Gregory Casey**, celebrating one of life's richest rewards, jokes that if he had known grandchildren were so much fun, he would have had them first . . . **Donald D. Hackney** with two and **Richard F. Sperling** with three offices give evidence of blossoming law business in real estate closings and general practice . . .

Sonja L. Peterson, WWL's president, recoils to those making sexist remarks: If ignorance is bliss, then you must be in a constant state of euphoria . . . **Dennis H. Strand** joins the expanding law firm of **John Cooney & Associates** . . . Insurance fraud defense guru **Robert F. Ewing, Jr.** is the latest example that whatever can possibly go wrong will. While exiting the U.S. Supreme Court, he stumbled and injured himself. We now have **Ewing's Law**: The probability of anything happening is in inverse ratio to its desirability . . . **Robert D. Dellwo** is headlined as the local savior of those hairy mountain mice called marmots by digging holes under fences to allow them to roam unrestricted - to the consternation of park workers . . . Public defender **Edward Jay Ames's** spouse is the police dispatcher and overheard an officer say to a suspect: Are you going to come quietly, or do I have to use ear plugs? . . . **Steven W. Hughes** tells the Association of Paralegals and Legal Assistants that the more you study, the more you find out you don't know, but the more you study, the closer you come . . . **Stephen F. Faust**, the United Way Professional Division chair, makes giving easier by reminding that if you have much, give of your wealth; if you have little, give of your heart . . . **Richard B. Kayne**, chair of the SCBA District Court Liaison Committee, organizes a CLE "Deferred Prosecutions" for district court practitioners, ably assisted by **Brenda S. Snyder** . . . **Kathryn L. Wiser** wins Bloomsday T-shirt slogan contest: "The wheels of justice don't always move slowly" . . . **Tracey Prouty** orchestrates SCBA dinner party into a huge success and exhorts those reluctant to dance: Take a chance! All life is a chance. The person who goes farthest is generally the one who is willing to do and dare . . . In a live TV airing of a city council debate, **Marco T. Barbanti's** charisma is evident while pointing out inadequacies in a billboard ordinance . . . **Carl J. Oreskovich**, a youthful criminal defense attorney, models gentlemen's clothing and tells us to never underestimate the power of what you wear. After all, there's a small bit of yourself sticking out, at the

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Ralph Nader appears at a news conference with WSTLA president James S. Rogers to speak in support of the Right to Know bill, ESHB 1320.

WASHINGTON STATE TRIAL LAWYERS ASSOCIATION REPORT

by **LETHA J. OWENS**

As June passes and the 1992 annual convention in Sun River, Oregon, nears, current WSTLA president **James**

S. Rogers contemplates relinquishing his office to president-elect **Halleck Hodgins**. I spoke with Rogers about

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his term in office; what follows is a review of some of the high points he described.

Rogers made ESHB-1320 (the 'Right to Know' bill) his personal affirmative legislative goal this year. In support of this bill, which would forbid secrecy agreements and protective orders in any case where there was a threat to public health and safety, he testified before the Senate Law and Justice committee and, with other board members, visited editorial boards to encourage the

overwhelming print and electronic media support the bill gathered. This effort culminated in a press conference with **Ralph Nader** when he was in town in February and resulted in a deadlocked (24-24) senate voice vote. Though the bill has not passed as of yet, there is an effort underway to prohibit such protective orders by court rule.

Another of Rogers' goals in 1992 was to increase WSTLA membership to the 3,000 level. This was achieved in February, when **Colleen Harring-**

ton, a Pullman lawyer, became WSTLA's 3,000th member. She will be recognized as such at the annual convention in July. Rogers is encouraged that during his term, WSTLA saw a substantial increase in the number of active women members, including eight current board members.

Rogers is also encouraged by WSTLA's growing diversity and activism stimulated by and reflected in newly formed sections, task forces and committees. These include the new Commercial Litigation Section chaired by **Victoria Vreeland**, as well as the new Product Liability Section, the Healthcare Access Task Force headed by **Gene Moen**, and the Insurance Insolvency Task Force headed by **George Thornton**. In addition, the Constitutional Challenge Committee, headed by **Elaine Houghton** and **Mike Withey** was formed to look at the constitutional issues arising from the Tort Reform Act. The newly formed Appellate Review Committee, chaired by **Dick Kilpatrick**, is a member service which will provide informal consultation concerning cases on appeal. The Coalition Committee, led by **Tom Chambers**, is trying to reach out to active community groups to share resources and information on issues we have in common.

Rogers is also excited about the overwhelming response by the public to the expanded People's Law School program. Under the inexhaustible guidance of **Lori Haskell**, not only have the number of PLS sessions increased, but new special interest PLS directed at seniors, small-business owners, gays and lesbians, and nurses have been started.

Rogers says the most gratifying example of the quality of WSTLA's membership participation came when he became aware of proposed changes in the Federal Civil Rules being considered by a federal committee which would be detrimental to civil trial rights. This knowledge came less than a month before the deadline for comments, still a committee formed and, thanks to the efforts of its chair **John Budlong** and all its members—not in the least **Len Schroeter**, a letter and comment package were presented on time and were well-received by the committee.

Among his favorite memories Rogers also lists the 25th anniversary dinner, honoring NAACA and WSTLA

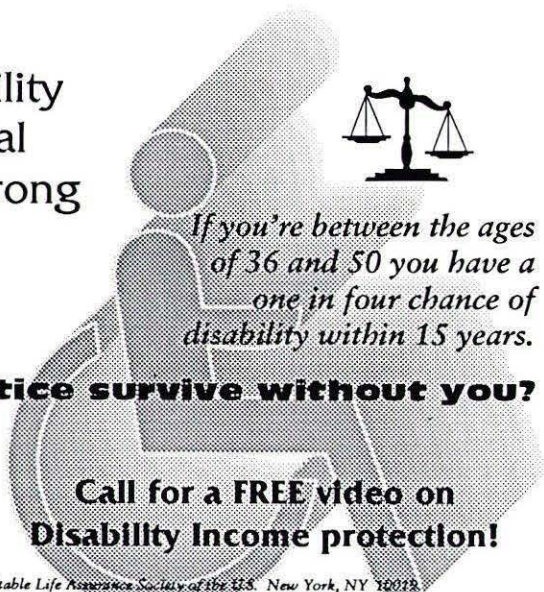
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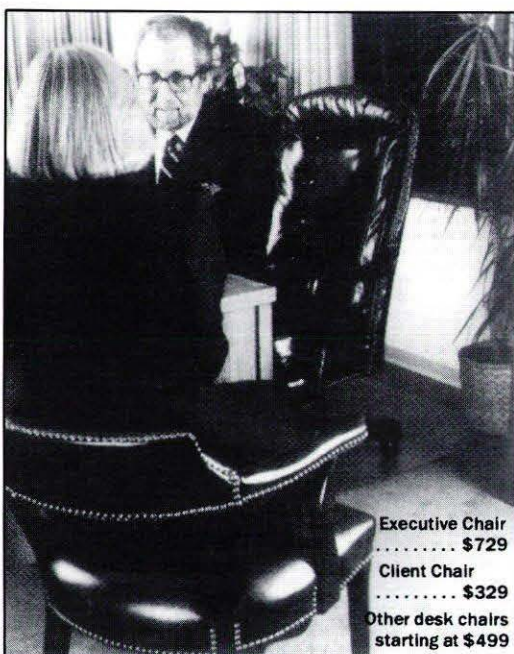
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founders, and the presentation of a replica constitutional flag to the Washington Supreme Court in an well-attended ceremony March 26. The flag was provided by **Paul Stritmatter** and **Dan Sullivan**; it was presented in honor of the 200th Anniversary of the Bill of Rights. This anniversary was also celebrated by WSTLA members going to classrooms to talk to students about the Bill of Rights and the importance of trial by jury.

Guided by **Judith Proller**, WSTLA's other judicial recognition activities continued this year with more honorees than ever. Rogers also stressed his gratitude that, thanks to the coordination of **Tony Russo**, a WSTLA member attended every meeting of the WSBA Board of Governors, keeping open important lines of communication.

With the conclusion of his term of office, Rogers returns to his Seattle practice in complex tort litigation, including product liability, highway design and medical negligence. Now is a good time to reflect that, although WSTLA has a strong backbone provided by its excellent staff, the meat of this organization is its members who volunteer their time and effort. Without this selfless participation, WSTLA would not stand out as a force in the fight to protect the rights of victims. Volunteers have made WSTLA an organization of which we all can be rightfully proud.

Due to an excellent article in *The Seattle Times*, public response to our small-business People's Law School has been overwhelming. The seminar held in Bellevue attracted over 100 people, and there are over 100 more on a waiting list. If you are interested in organizing a small-business PLS in your area, please contact **Lori Haskell** at 322-5200.

If you have any items you wish to appear in this column, or have any comments, please contact your columnist, **Letha Owen**, at John A. Henry and Associates, 17544 Midvale Avenue N., P.O. Box 7026, Seattle, WA 98133; (206) 542-3138.

IN MEMORIAM

Harry Henke, Jr., 86, died March

14, 1992 in Seattle. A builder of businesses, Henke graduated from Franklin High School in Seattle in 1922, and from the University of Washington School of Law in 1928. He joined the firm of Skeel, McKelvy, Henke, Evenson & Uhlmann and remained with it for his entire career, becoming senior partner in 1979 and of counsel in 1989.

During the Depression, Henke helped 11 independent, mainly self-employed

grocers form their own supply company; it grew into Associated Grocers, with sales of over \$2 billion. Later, Henke became legal counsel to Quality Foods Center and Western International Hotels, later known as Westin Hotels. Harry Henke, Jr. was active in the Seattle Rotary Club, the Rainier Club, and the Washington Athletic Club. Survivors include three children, ten grandchildren, and two great-grandchildren.

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

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WILL SEARCH

Arnold (Arnie) D. Miller, Jr. Any person with copy or knowledge of a will of Arnold (Arnie) D. Miller, Jr., resident of King County, died 9/20/91, please contact Howard Comfort at (206) 572-9070.

George O. McPherson (Date of Death: 2/21/92). Anyone with information regarding a will, contact Stephen P. Natwick, attorney, at P.O. Box 1106, Aberdeen, WA 98520; (206) 533-2865.

MISCELLANEOUS

Puerto Vallarta: Ocean-front three-bedroom home on the beach at Bucerias. Miles of white sand beach. Brochure/reservations: (206) 827-3938.

Sunriver, Oregon: Lovely, custom-built and furnished executive home. Three-bedroom, two-bath, sleeps ten. Large sundecks, BBQ, bicycles, microwave, washer/dryer, all amenities. Rental includes health/racquet club privileges. (206) 588-4876.

Yacht charter: 49' Gulfstar motoryacht, three double state rooms, three heads-showers. All amenities. Reserve now for best summer weeks. \$3,850.00/week including skipper. (206) 845-0577.

**Help Integrate the Un-Integrated
Integrated Bar.**

Change the structure,

Widen the powerbase that more and diverse views
can be represented.

**!!!HOW!!!
THAT'S UP TO YOU...
IF YOU DON'T
CHANGE IT NO
ONE ELSE WILL.**

Some problems stated this ad—
Suggested solutions next ad. **ONLY** you have to
write them in to me.

(Sexist Philosophy #1) "Do right and fear no man—
Don't write and not be heard."

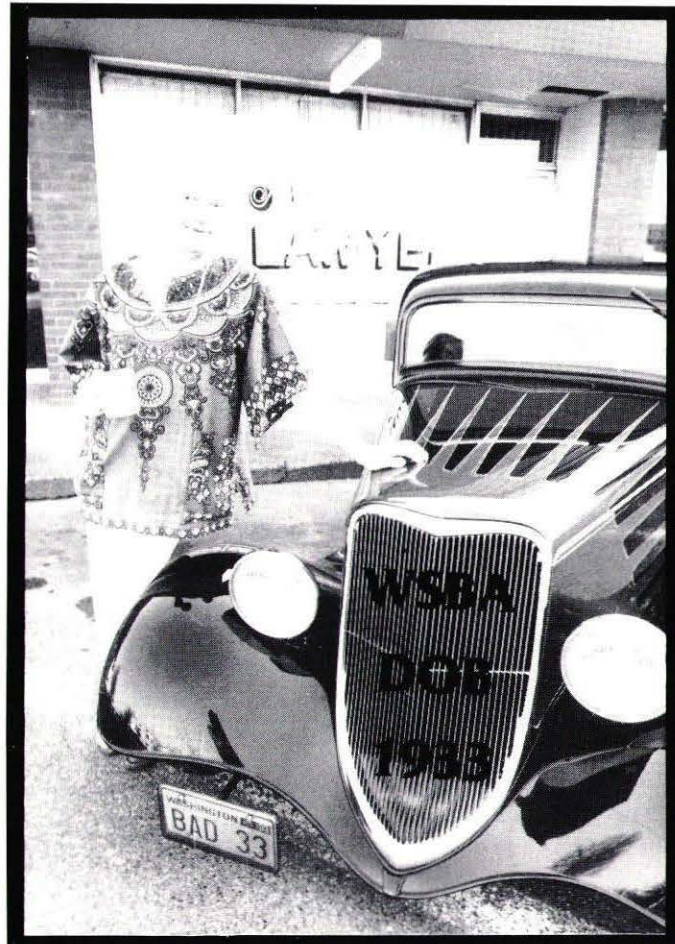
I see the Board of Governors as too small and too
geographically centralized to accommodate the
myriad of groups that make up the membership.
I feel we must expand the power structure so that
women—government lawyers—public defenders—
deputy prosecutors—trial lawyers—etc. have the
power of voice and debate and vote regarding
issues that particularly effect their group.

White males don't relate well to the issues of any
other race or gender. — We just think we do — and
it must be so because we are in general the ones
in power. There are some exceptional exceptions,
but not many.

FIRST KING COUNTY — THEN THE WORLD

Less than half of the state's lawyers reside in
King County (approx. 7,500 out of 17,500)
(accuracy non-certified). Half of the present
Governors office in King County. The bar office
is in King County. Most of everything is in King
County. If you in the cow counties feel left out,
this Governor thinks you are. Not by our intent,
but because of the Bar structure. The one man one
vote concept weighs in favor of King County.
Check out the numbers of attorneys and their
distribution. There are probably more lawyers in
Burien than in Walla Walla County.

Alva 1926 model
1990-'93 Governor



None of which are recommended
for use in the 21st century.

I see eastern Washington under-represented as well as
Southwest and virtually any distinctive geographical area
in the state.

Who of us really represents you, particularly if you are of
color, a woman, or of alternate sexual preference?

**What to do? You tell me,
Nobody is going to change it unless you do.**

Write your suggested changes to me:

Governor Alva Long
WSBA
500 Westin Building,
2001 6th Avenue
Seattle, WA 98121-2599

No one is going to change unless you do.

First Interstate Bank Trust and Investment Services— Committed to helping you serve your customers.

At First Interstate, we recognize the importance of working in partnership with professionals like you. We know you're concerned about providing high-quality local service to your clients, and we share that commitment to professional excellence. That's why we have our Trust and Investment Management offices located in communities throughout the Northwest.

As you help your clients make important decisions about trust and investment services, we want you to keep First Interstate

in mind and invite you to examine our track record on service and performance.

We look forward to helping you serve your clients and will continue to do whatever we can to earn your confidence. In the meantime, please don't hesitate to call us with your questions and ideas.



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