Washington State Bar News
Vol. 46, No. 8, August 1992

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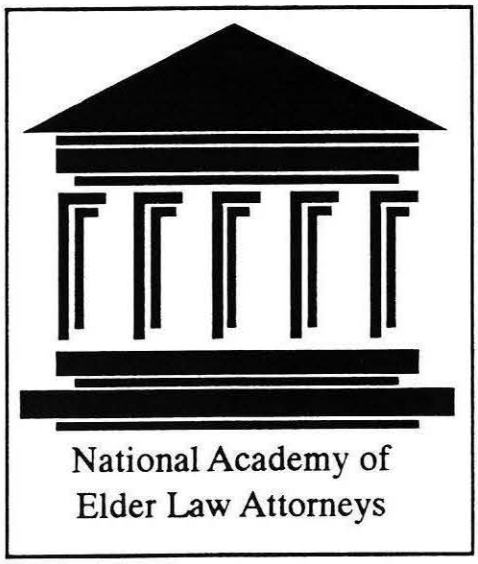

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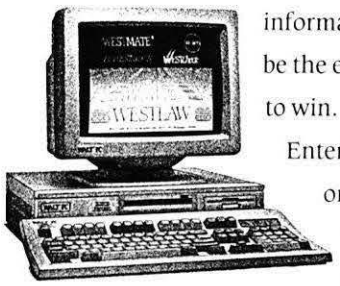

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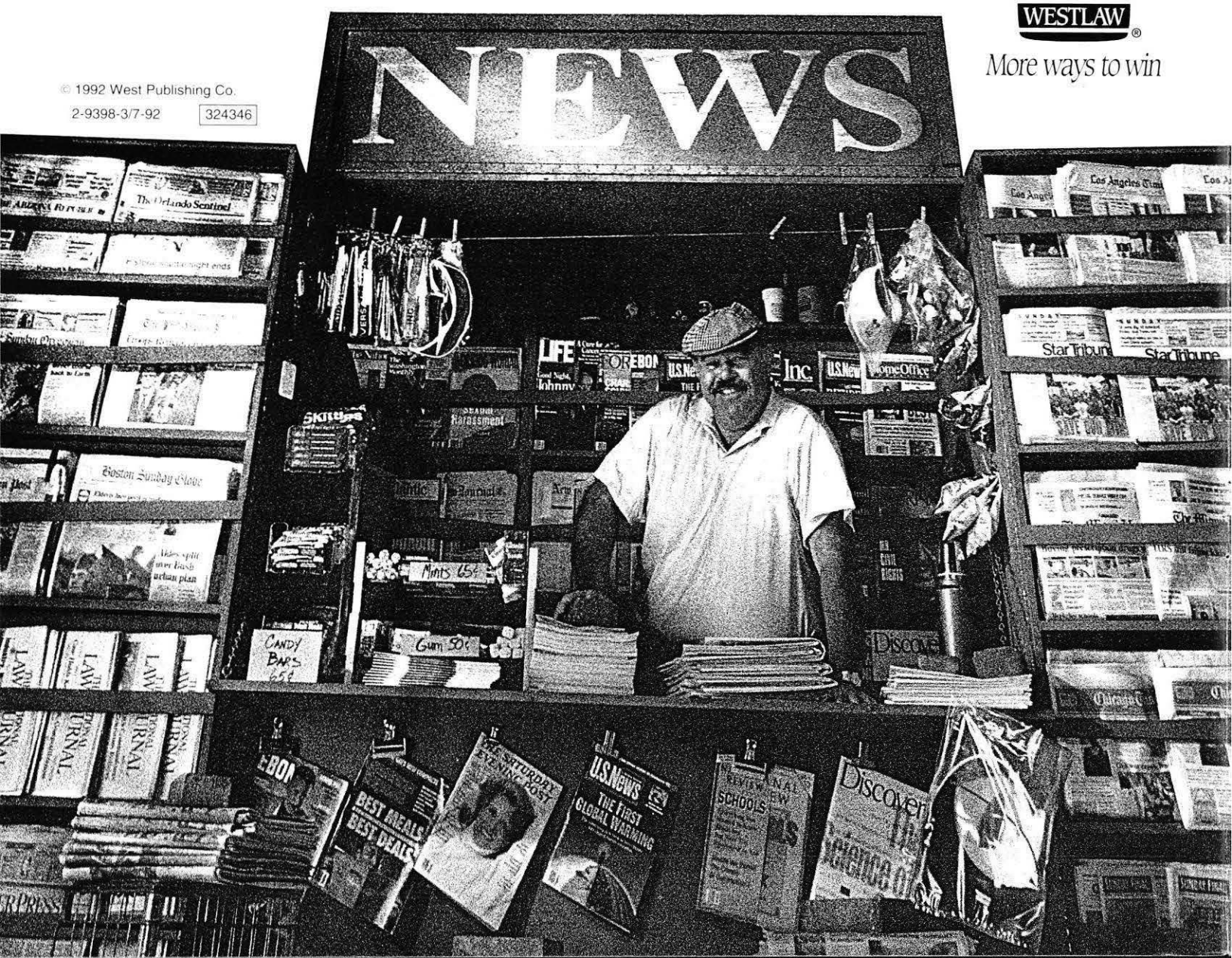

Washington State Bar News
Vol. 46, No. 8, August 1992

Focus on Elder Law

Features

Special Convention Section

WSBA PHONE NUMBERS

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WSBA PHONE NUMBERS, THE SEQUEL

Alive today, Henry David Thoreau would likely proclaim, "Avoid any venture that requires the learning of new telephone numbers." H.D. could be a bit of a hair shirt at times. For a detailed directory of the new WSBA phone numbers, see the *Bar News*, January 1992, pp. 11-12.

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An Evening Program

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Washington State Bar Association Continuing Legal Education

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.

Wrapping Up the Story

Editor:

June's *Bar News* contains an article on professional portfolio management by one Dean S. Bennion, an employee of Shearson Lehman Brothers, recommending portfolio management purchased via a "wraparound fee" (also known as a wrap fee).

I thought you (and the readership of the *Bar News*) might be interested in the enclosed article from the June 22, 1992 issue of *Forbes* on the subject of wrap fees. According to *Forbes*, account executives such as Mr. Bennion apparently receive as much compensation from wrap fees as the manager who actually manages the client's funds, and Shearson receives more. The *Bar News* article might have had more credibility were the author's direct financial interest in the advice given disclosed.

In the interest of evenhanded journalism, may I request that the *Bar News* obtain permission to reprint the *Forbes* article? After all, the subheading of Mr. Bennion's article in the table of contents warned, "You don't want to get sued the next time the market trips." Were an attorney so rash as to refer clients to Mr. Bennion on the strength of the limited information in this article, he or she might be sued when the clients discovered that no-load mutual funds would have equal or greater benefit at less cost.

The readers of the *Bar News* deserve better than advertisements which resemble articles.

RUTH LAURA EDLUND
Bellevue

(The *Bar News* article was an overview of one type of financial product out of thousands in the marketplace. To act upon it in the manner suggested would be like investing in a fund on the basis of the newspaper ad, without having read the prospectus. Any lawyer who would do that with client funds probably deserves to be sued. The *Bar News* makes no representations about the accuracy of any information presented in its pages on any subject; readers—and their clients—have to make their own investigations and decisions to act if something presented in the magazine attracts their interest. What may not seem an appropriate investment choice for one person may be ideal for another, depending upon many variables, including the level of services they wish to receive and what they think those services are worth. It does not seem appropriate to draw from the general comments of the *Forbes* article conclusions about the compensation, if any, derived by the author of the article. The tag line on the article in the table of contents was written by me. Readers interested in the article referred to in the letter above may wish to consult the article, "Rip Account" at page 128 of the June 22, 1992 issue of *Forbes*.—*The Editor).*

Another Foot Put Wrong in the PC Minefield

Editor:

It is, of course, ironic that in Joe Delay's attempt to set Dan Quayle straight on the subject of lawyers, Mr. Delay perpetuates a dangerous fiction on the subject of "pit bulls." In the May *Bar News*, Mr. Delay did us all a service by citing facts and figures to prove what we all suspected was true: Vice President Quayle has been distorting the truth about the legal system to serve his (and his president's) own political ends. Unfortunately, Mr. Delay ends his argument with the following statement:

> Nor should the legal profession be the Vice President's punching bag so he can develop his image as the political "pit bull".

The irony is that the "pit bull" of Mr. Delay's metaphor is an entirely fictitious creature—an immensely strong and aggressive dog with a Jekyll/Hyde capacity to mask viciousness with pleasantness. These dogs, as reported in an hysterical press, have double-locking jaws and other fantastical features. If you read carefully the accounts of these creatures (and the highly suspect remedies, such as breed bans), you will notice a high incidence of such terms as: black, Hispanic, alleyway, poor,

urban—indicating that what we're dealing with is in fact urban legend, insidious racism, class bias and displaced fear.

There are lots of problems with the purported pit bull problem. Among them is that very few people are competent to identify the American Pit Bull Terrier, often confusing the breed with others such as boxers, bulldogs, hounds and all the mongrels of these and other breeds. Also, there is little agreement about what is actually a dog bite. Add these basic definitional problems to the fear of crime and the generally unstable and insecure nature of our current urban centers, and you get fertile ground for mythmaking. The simple truth is that the "pit bull" problem has little to do with dogs and everything to do with human fears.

This would all be merely interesting if not for the fact that many dogs have been killed and many dog owners separated from a beloved animal because the public seems always to need hobgoblins and scapegoats. As lawyers, as Mr. Delay so correctly demonstrates, we are called upon to strive for both accuracy and truth. The truth is that dogs are not vicious, though they can be difficult to train. As one prominent dog trainer, Vicki Hearne, notes, "The difference between difficult dogs and vicious human beings is that difficult dogs do not rise to positions of prominence in the community." I, for one, would feel much more at ease if Mr. Quayle were a pit bull.

PATRICIA NOVOTNY
Seattle

And It Was Geographically Incorrect, Too

Editor:

Shame, shame, that the president of the Bar Association does not know his geography. Professor Marc Galanter is from the University of Wisconsin-Madison, not the University of Minnesota-Madison.

NANCY L. SAPIRO
Born 'n Raised in Wisconsin
Seattle

We Are Not Amused

Editor:

Your inclusion of the poem "Juries and Justice" is exactly what gives poetry a bad name. Unless you can come up with better work than that, please do us (and poetry) a favor, and don't put it in the *Washington State Bar News*.

MARVIN MARGOLIS
Seattle

More on Battered Women

Editor:

I recently obtained a copy of your January 1992 issue, "Focus on Family Law." I'm writing to correct an error in the article, "The Battered Woman Syndrome and the Admissibility of Expert Testimony," by Hugh Joel Breyer.

The author states, "Oregon [has] held that expert testimony on the battered-woman syndrome is inadmissible," citing *State v. Moore*, 72 Or.App. 454 (1985). In fact, *State v. Moore* held that the trial court did not abuse its discretion in rejecting a witness'

qualifications to testify as an expert. Specifically, the court said, "We are not faced here with the availability of the defense, but *only* with the qualifications of the witness as an expert." *Id.*, at 459 (emphasis in the original).

A concurring opinion would have made it explicit that Oregon allows the battered woman syndrome defense. In fact, I am unaware of any difficulty with the introduction of battered woman syndrome testimony in Oregon's trial courts.

Practitioners should also be aware that Dr. Walker has updated and refined her theory of Learned Helplessness since the work cited by Prof. Breyer (Lenore E. Walker, "A Response to Elizabeth M. Schneider's Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering," 9 *Women's Rights Law Reporter*, Fall 1986, at 223). She explains that battered-woman syndrome does not connote mental illness, but an understandable response to a situation without easy answers. In effect, battered-woman syndrome testimony should be used to explain why the standard of self-defense that reflects men's reality is inappropriate in cases of long-term woman abuse. Sociologist Edward Gondolf's research shows that it is not battered women but social institutions in their wholly inadequate response to pleas for help (Edward W. Gondolf, with Ellen R. Fisher, *Battered Women as Survivors*, Washington, D.C.: Lexington Books, 1988).

JUDITH ARMATTA
Oregon Coalition Against
Domestic and Sexual Violence
2336 S.E. Belmont St
Portland, OR 97214

More on PC Speech

Editor:

I object to proposed Rule of Professional Conduct 8.4(g), which regulates statements by lawyers on subjects such as age, religion, disability, "sexual orientation" and race.

First, the rule violates the freedom of speech clause of the Constitution. The first amendment contains no exception for speech which is concerned with age, religion, disability or race. The first amendment forbids government, including the Washington State Bar Association, from regulating speech. The word "harass" in the rule does not disguise the censorship.

One of the reasons for the first amendment is to allow unpopular or offensive speech in order to obtain maximum communication of ideas. No government can separate good ideas from bad.The first amendment does not allow the Bar to limit lawyers to politically correct speech.

Second, the rule violates the concept of a market system. The consumer (client) should be able to make an independent choice of an attorney. The rule has an antitrust overtone in that the government and some lawyers have decided for the public not only that they should not have aggressive lawyers, but also that these lawyers should not advocate certain unidentified positions! Aggressive lawyers use rhetorical excesses and they often offend others. Even mild-mannered lawyers use rhetorical devices which will offend someone in the long list of protected "groups." The WSBA should not be in the business of repressing lawyers.

Third, the rule is overbroad. It covers everything. "Disability" applies to all personal injury litigation, perhaps making all defense lawyers harassers; "sexual orientation" applies to sex predators, making prosecutors ethical violators; "sexual orientation" applies, too, to divorce lawyers, who might "harass" their sexually promiscuous opposites; "race" means you can't defend discrimination or employment litigation, and you can't bring it either, because you'd be harassing the white race.

The rule gives vast power to the Bar to punish lawyers for having clients.. This "ethics" rule will intimidate lawyers. Remember, anyone with a stamp can file a bar complaint.

Fourth, vague rules do not work to govern complex legal relationships. One of the problems in the legal system is that too many lawyers think the solution to a problem is to make more laws. As an example, the ten recently enacted King County guidelines encourage lawyers to be courteous (even though you are supposed to report other lawyers who make politically incorrect remarks). Law and human behavior are too complex for ten guidelines, or for one massive "harassment" rule.

We do not need another CR 11.

Last, these RPCs are a little civil rights act in disguise. The Supreme Court does not have authority to enact legislation. Per our constitution, the Supreme Court decides cases and controversies. It does not legislate.

This rule is part of a currently popular attempt to censor expression of ideas which are not politically correct. It is similar to attempts by universities to prevent students from expressing objectionable ideas. It is bad for the

university, and it is bad for us. The Supreme Court should reject this rule.

ROGER B. LEY
Seattle

The Way They See Us

Editor:

I want to comment on the current bar dues controversy raised by bar association members Edward V. Hiskes of Richland and Howard K. Todd of Seattle.

As a recent admittee to the Washington bar, after having practiced for many years in another state, I am continually surprised (if not amazed) at the generally high esteem that lawyers are held in by the general public in Washington. I believe this high esteem is a direct result of a strong bar association with a very tough bar exam, rigorous standards for licensing, and vigorous enforcement of those standards by executive director Dennis P. Harwick and his staff, including general counsel Robert D. Welden.

Lower bar dues in the states of Missouri and Georgia ($135 per year) are used to justify the conclusion that bar dues in Washington ($195 per year) should not be raised. However, I have little doubt that the general reputation of lawyers in Missouri and Georgia is substantially lower than in Washington (and the incidents of lawyer bashing substantially higher). I wonder if there are studies or polls of the general public in the three states which confirm this.

I believe that Washington Bar Association is fortunate to have courageous, cost-conscious lawyers such as Mr. Hicks and Mr. Todd. However, I am absolutely convinced that bar dues in Washington should be raised if necessary to maintain the high standards to which the Washington bar and public have grown accustomed, and, to some extent, take for granted. Further, I would bet a dime to a dollar that if the lawyers of Georgia and Missouri knew of the generally higher esteem that the people of Washington hold the law profession, those lawyers would gladly raise their own dues to match ours, if the results in their states could be the same.

GORDON LINCOLN CUMMINGS
Seattle

Why There Is

by **Cheryl C. Mitchell**
and **Ferd H. Mitchell, Jr.**

The number of elderly in the United States is growing rapidly and for a variety of reasons the legal needs of the elderly are often distinctive. If complex Elder Law cases are approached using the same methods that are used for other clients, the result often may not be satisfactory for the client.

As discussed elsewhere (see pages 14, 19, 22, and 49 of this issue), the needs of the elderly often require coordinated legal, financial and care management services. The attorney who practices in this area is (in one way or another) forced to become a multi-disciplinary practitioner. Whether these services are all provided within the practice or developed through linkages, these extended services place new demands on

National

In 1985 a group of about 20 enthusiastic attorneys met at the California State Bar office in San Francisco to talk about the legal problems of the elderly. The meeting was convened by Nancy Coleman, the director of the American Bar Association Commission on Legal Problems of the Elderly. Attorneys from California, New York, Illinois, Oregon, Washington, the District of Columbia and Arizona were present. It was a spontaneous and spirited gathering, and we all wanted to repeat the experience. Six months later we gathered at the ABA conference; the group had grown to about 30.

The group met and determined that elder law had sufficient differences from the trust and probate area to require its own identity. After much discussion, it

Need for an Elder Law Section

the attorney in terms of the knowledge that is necessary and the management methods that must be applied to make the practice work.

Based on experience, we believe that it is difficult to operate an elder-law practice that meets the needs of clients and is financially viable for the attorney. Customizing of the practice is necessary in order to meet the needs of clients in such a way that the attorney can make a living. If the needed level of efficiency and effectiveness cannot be achieved, then either the elderly do not receive the services they need or the attorney finds himself or herself going broke. Neither is an attractive alternative.

We believe that an elder-law section of the Bar is necessary and appropriate, because of the growing need for elder-law services and the customized features that are required for a successful practice. Elder law is rapidly developing its own body of knowledge that is quite distinct from the materials developed by other sections of the Bar. As more pressures for elder-law services develop, and as more attorneys attempt to respond to these needs, a common forum is needed through which elder-law attorneys can share learning experiences, exchange information, identify problems and seek possible solutions.

The time is right to establish an elder-law section of the Washington State Bar. Such a section will be of assistance to both the public and practitioners, and will serve to help attorneys serve the needs of the public.

Academy of Elder Law Attorneys

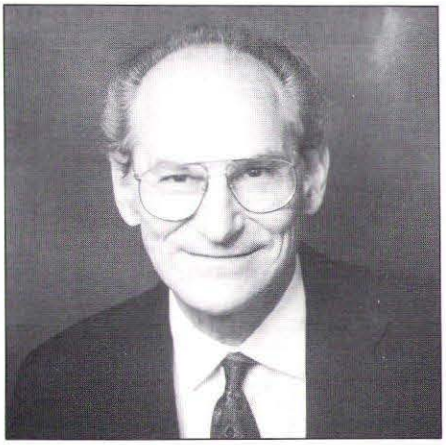
was decided to form the National Academy of Elder Law Attorneys. The academy was incorporated in Oregon; Tim Nay, a Portland attorney was the first president; Patricia Smith of Tacoma, Washington was elected as secretary; Vincent Russo of New York was the first treasurer. From a small beginning, the academy has grown to its present size of nearly 2,000 members.

The purpose of the academy is to set standards in the practice of elder law, to provide education on elder-law issues to the legal profession and to advocate for the interests and rights of our older population.

To accomplish this, the academy sponsors two annual programs: A symposium with a wide range of continuing-legal-education offerings is held every spring. The most recent was held in San Francisco in April of this year. In the autumn, the academy offers an institute for those experienced in specific areas of elder-law practice. The first institute dealt with estate and tax planning for the elderly client with emphasis on planning for the costs of long-term care needs for those in declining health. The academy also publishes a quarterly newsletter and a journal.

Membership is open to anyone in the legal profession who is interested in the legal issues confronting our growing population of elderly. Information and membership applications may be obtained from the National Academy of Elder Law Attorneys (NAELA), 655 Alvernon Way, Suite 108, Tucson, Arizona 85711; (602) 881-4005.

THE PRESIDENT'S CORNER



Joseph P. Delay

Board of Governors to Consider Court Rules

The purpose of this article is to inform the members of the Washington State Bar Association of the pending recommended amendments to the court rules. It is the intent of this article to give the members an overview of the proposed recommended changes to certain court rules. This article does not include all proposed rule changes. It is anticipated that the Board of Governors will act on the proposed amendments to the court rules at the September 1992 Board meeting.

1. **CR 11:** The proposed amendment to Rule 11 restores the language that existed prior to 1985, by eliminating the "appropriate sanctions" language. This proposal will directly affect the decision of *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210 (1992). The Court Rules and Procedure Committee perceived Rule 11 to have resulted in increased incivility and hostility that marks current litigation. The committee was of the opinion that "frivolous" litigation can be discouraged by RCW 4.84.185.

2. **CR 19:** The proposed amendment requires joinder of non-parties at fault in actions under the Tort Reform Act. A majority of the Committee agreed that as a matter of fairness, if a defendant truly believes there is another entity sharing responsibility for plaintiff's injury, the defendant should bring that entity before the Court.

3. **CR 26:** In addition to the proposed amendments regarding discovery of documents relating to insurance coverage and discovery under International Conventions, an amendment is proposed allowing access to discovery materials in cases of "broad public import." This proposal was adopted by the committee by a vote of 11-5. This is probably the most controversial proposal currently pending. This proposal makes it clear that a party may not only discover "the existence and contents" of an insurance agreement but may obtain production of a copy of such an agreement. Settlements made in secrecy may be subject to disclosure unless the Court finds that private harm outweighs the adverse public impact.

4. **CR 30:** The proposed amendments to this rule address the attorney's conduct at depositions. One proposal allows judges (or special masters, if proposed new CR 53.3 is adopted) to make telephonic rulings of objections at depositions. The new section sets forth standards for conduct at depositions. These standards of conduct are based upon an order issued routinely by Federal District Court Judge William Dwyer and others.

5. **CR 32:** The two amendments proposed to this rule modify the procedures for using depositions at trial. One addresses a possible "trap" when a party takes a discovery deposition of an opponent's out-of-state witness. The other attempts to address the high cost of litigation by allowing the use of deposition testimony of "health care professionals" regardless of availability for trial, if certain conditions are satisfied.

6. **CR 33:** The proposed amendment to CR 33 is designed to adapt to computer usage by authorizing the use of separate sheets to answer interrogatories, as long as separate pages are properly referenced.

7. **CR 34** and **45:** These proposed amendments would allow subpoena of a non-party to compel production of documents without necessity of appearing at a deposition or trial. The proposed amendment to Rule 45 also sets forth certain protection for a person being subpoenaed. The intent is to simplify and reduce cost of litigation.

8. **CR 35:** One of the amendments to this rule would allow a party being examined under Court Order to have an observer present and to make an audio recording of the examination. The committee believed that an "independent medical examination" can be a stressful and intimidating experience for a party, and a person being examined should be able to have a representative present. A party causing the examination must, if requested, provide a copy of the report to the other party.

9. **CR 50:** The proposed amendment is designed to revamp existing motions for "directed verdict" and "judgment notwithstanding the verdict" into a single motion for "judgment as a matter of law".

10. **CR 53.3:** This proposed new rule allows the appointment of a special master (lawyer) to preside at depositions or to adjudicate disputes arising out of discovery upon a showing of good cause.

11. **GR 17:** A proposed new GR 17, allows filing of court documents by facsimile machine upon certain conditions.

The Court Rules and Procedures Committee headed by Duane Lansverk, after many hours of hard work, recommend adoption of all of the aforesaid proposed amendments. The committee's recommendations are made directly to the Board of Governors. The Board of Governors thereafter acts upon the proposed rules and either recommends the passage or rejection of the proposed rules. The Board's recommendations are transmitted to the Washington Supreme Court. The Supreme Court will publish the amendments for further comment prior to passage.

Please express your opinions to your respective governor or governors of your district. Your input is important to the process.

Joseph P Delay

Is a Fee Increase Justified and/or Necessary?

Dennis P. Harwick

I'm taking a calculated risk in writing this column now. It is premised on the assumption that the Board of Governors approved a fee increase at its meeting on July 31/August 1, 1992. The Budget Committee voted 3-0-1 yesterday (July 10) to recommend that the Board approve a fiscal year 1993 budget that includes a fee increase. The Budget Committee and Board have been trimming expenses and raising user fees for over a year knowing that when they approved a fee increase they would have to justify it to the members of the WSBA.

The story is relatively simple. Expenses have kept going up. Fees have only increased once since 1981. They were increased 18% at the beginning of 1987. At that time, the plan was for that fee structure to last five years. It has lasted seven. As Governor Steve Tubbs of Vancouver points out, it's hard for anyone to argue that he/she operates on the same income or hourly rate he/she charged in 1987, let alone only an 18% increase since 1981.

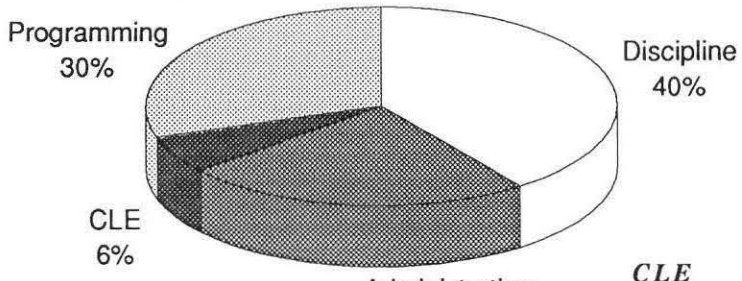
So what have the Board of Governors and I done to justify a fee increase?

1. *We installed a new financial reporting system that reveals the total cost of every function.* As a result, we have been able to make meaningful decisions on what to keep and what to cut. For example, the Lawyer Referral Service that the WSBA operated for all the counties outside of King, Spokane, Pierce, and Thurston (where local bars operate referral services) has been eliminated.
2. *We eliminated many programs and expenses.* We eliminated funding for a King County Swearing In Ceremony and various "appreciation" dinners, reduced the number of meetings of the Board of Governors, imposed tighter reimbursement policies for committees, sections, ABA delegates, and CLE speakers; and we reduced printing and mailing expenses by consolidating annual licensing/CLE/trust account certifications.
3. *We increased non-dues revenues.* We increased fees for fee arbitration, convention registration, and bar exam applicants. We created new fees for Letters of Good Standing, Rule 9 Interns, and participants in the Law Clerk Program.

There are a couple of other significant changes. **The financial records of the WSBA are open to its members.** Copies of the audited financial statement are available on request, as are any of the monthly financial reports provided to the Board of Governors (a 30-page document detailing both direct and indirect expenses in 26 "functions," along with summary sheets and a balance sheet).

Where does the money go? Last October, we started a financial reporting system where indirect expenses (salaries and overhead) are allocated to each function based on actual time records of staff. Consequently, I can, with reasonable accuracy, project for you how your dues money is spent. To do this, I have taken the projected "net" result of each category, i.e., user fee income less both direct and indirect expenses. The remainder, obviously, must be paid for with your license fees. For example, the advertising revenue of *Bar News* covers the printing and mailing costs, but not the salaries or rent. Similarly, bar exam and admission fees cover virtually all of the direct and indirect expenses attributable to that function. On the other hand, a function like lawyer discipline has no other source of revenue. In general terms—here's where your money goes:

(Percentage of license fees only; excludes reigistration/user fees.)



Here's what went into each category:

Discipline
Client's Security Program
Discipline
Fee Arbitration
Lawyers' Assistance Program (preventative discipline)
Audits

Administration
General Administration (including committees)
Bar Exam Admissions
Leadership Expenses (Board, ABA, etc.)
Licensing, Membership Records
Mandatory CLE Administration

CLE
CLE - Seminars
CLE - Publications

Programming
Bar News
Convention
Court Rules Development
Law Related Education for the Public
Lawyer Referral Service
Legislative Office
Local Bar Support
Pro Bono Support
Public Affairs (media relations, pamphlets, Lawyer to Lawyer, etc.)
Resources
Sections
Young Lawyers Division

In previous columns I have belabored the fact that Washington has the lowest fees of any state bar association in the western U.S. and the "leanest" ratio of staff to members for that group.

So I return to the original premise—**is a fee increase justified and/or necessary?** If the WSBA is to remain a unified bar association, i.e., willing to regulate itself rather than turning that privilege and responsibility over to a separate licensing board, the indisputable answer is yes.

At the risk of sounding like a pessimist, I am reminded of the story about Benjamin Franklin leaving the Constitutional Convention in Philadelphia. A woman on the street asked him what kind of government he had given the country. "A republic, Madam, if we can keep it," he replied.

IMPORTANT NOTICE TO ALL ACTIVE MEMBERS: NEW CLE REPORTING CYCLE

All active members of the WSBA are required to report compliance with the Mandatory Continuing Legal Education requirements. APR 11.6. Previously, every active lawyer was required to report a minimum of 15 credit hours each year.

By order of the Supreme Court, beginning this January, ***every active lawyer will be required to file a report only every third year, but must report a minimum of 45 credit hours during that three year period.***

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

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

1994: Group 2 will be required to report 30 credits for 1992 - 1993. That group will next report 45 credits in 1997 for the years 1994 - 1996.

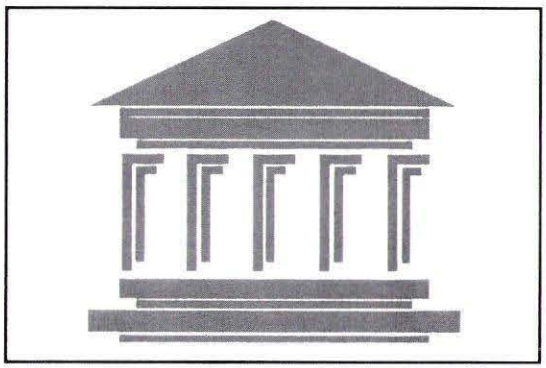
1995: Group 3 will be required to report 45 credits for 1992 - 1994. That group will next report 45 credits in 1998 for the years 1995 - 1997.

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

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

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

You will receive further information regarding this revised CLE reporting procedure with your 1993 licensing information. If you have questions, please call the WSBA Licensing Department at (206) 727-8222 or (206) 727-8252.



The Use of an Elder

by **Patricia A. Smith**, *M. A., J.D.*

One of the greatest concerns expressed by our elderly clients is the fear of losing control. Some are concerned about the control of estate assets; some concerned about health care choices; some are worried about the indignities of the infirmities of aging. The purpose of long-term planning and the use of advance directives is to allow the client to retain as much control as possible even in the event of a disabling illness or accident.

Two Types of Advance Directives

Advance directives are usually grouped in two categories: (1) those dealing with health care issues, such as directives to physicians (commonly called "living wills") and health care powers of attorney; and, (2) those dealing with management of estate assets, such as durable powers of attorney. Trusts can also be considered as an advanced directive for estate management, although they are not usually discussed in this context.

Recent Legislation

Recent federal and state legislation has brought increased attention to advanced directives. *The Patient Self-Determination Act* P.L. 101-508; 42 U.S.C. 1395 cc(a)(1)(f) and 42 U.S.C. 1396a (w)(1) is the federal statute which applies to all healthcare facilities and health maintenance organizations (HMOs) that participate in Medicare and Medicaid. The law requires healthcare providers, at the time of a patient's admission, to:

1. Inform the patient of his right to make healthcare decisions and to execute advance directives;
2. Provide information to patients concerning the types of advance directives available under state law;
3. Determine if the patient has signed an advance directive and document this in the patient's medical record;
4. Advise the patient of the policies of the facility concerning the implementation of the advance directives or to accept or reject treatment.

The law further requires that a healthcare facility educate staff and the community on the issues involved in advance directives. Healthcare providers are forbidden to discriminate against an individual on the basis of the existence or nonexistence of an advance directive. The penalty for failure to comply is the threat of loss of Medicare and Medicaid certification.

With the advent of this legislation, the publicity surrounding the 1990 United States Supreme Court decision in *Cruzan v. Director, Missouri Department of Health* (U.S. Supreme Court, No. 88-1503, June 25, 1990, 58 U.S.L.W. 4916) and the Natural Death Referendum here in the state of Washington, clients have been asking more questions about advance directives and which is the appropriate form for their particular needs. It is important to distinguish for the client the legal differences between the "living will" and a durable power of attorney for healthcare.

The Living Will

The living will (directive to physicians) is the client's unilateral instruction or direction to the healthcare provider; it is effective only when the client is terminally ill. Under the new Washington amendment to the Natural Death Act, effective on June 11, 1992, the directive must specifically state that a comatose state or a persistent vegetative state are to be construed as terminal illnesses. Likewise, if the client does not want life to be maintained by artificial or surgically induced nutrition or hydration, the document must clearly state that intent as well. It is necessary to explain to the client the range of treatment issues involved in the document and encourage the client to ask questions of a physician in order that all options may be explored. There is no penalty provided by statute if the healthcare provider elects not to follow the directive. Therefore, it is imperative that the attorney explain that the client must discuss his or her wishes with the physician. Only when doctor and patient understand each other's positions can the legal document be truly effective. There are several approaches to drafting a directive to physicians. Most attorneys use the statutory language and append a general statement expanding on the type of care which is requested (medication to relieve pain) or detailing those treatments which are definitely not wanted (no surgically induced nutrition or hydration, no antibiotic therapy if in a persistent vegetative state). There are also living will forms from some organizations which use a "check the box" or "fill in the blank" form. Usually these are self-help documents and can cause more problems than they resolve because neither the healthcare provider nor the designated agent can determine from the general nature of these documents exactly what the principal wants. I have seen such forms, signed and witnessed, but with none of the boxes checked or

Advance Directives in Law Practice

blanks filled in.

The Healthcare Power of Attorney

A Healthcare power of attorney must be a durable power which remains in full force and effect despite any subsequent incapacity of the principal. The Healthcare power of attorney establishes the agency power of the surrogate decisionmaker or attorney-in-fact. The power often becomes effective only in the event that the principal is unable to provide informed consent to medical treatment or has become incompetent. The healthcare power is not linked to a terminal condition. It can be used, for example, by an Alzheimer's patient or a stroke victim; patients who are clearly not in a terminal state, but who lack the necessary competency to consent to medical treatment. When used under these circumstances, the healthcare power of attorney usually makes a guardianship of the person unnecessary. Washington does not have a time limit on the healthcare power of attorney, although some states, such as California, limit the power to a period of seven years.

It is important to obtain the consent of the proposed attorney-in-fact before appointing the attorney-in-fact in the document. In nominating an attorney-in-fact for healthcare, it is important to designate an individual who shares similar values with the principal or who can carry out the principal's instructions without undue emotional conflicts. For example, if the principal does not want to be kept alive by artificial nutrition and hydration, it does not make sense to nominate an attorney-in-fact who believes that life should be maintained at all costs. The attorney-in-fact should be someone stable, who is in close contact with the principal and who understands exactly what the responsibilities and duties will be.

The documents tend to take two basic forms. One form commonly seen is a broad power which simply states, "my attorney-in fact shall have powers to make decisions with regard to my medical care," or "my attorney-in-fact shall have authority to arrange and contract for, consent to, or approve on my behalf any necessary medical or other professional care, treatment or service provided by licensed or certified professional persons or institutions engaged in the practice of healthcare, including admission to hospitals, nursing homes, or other health or residential care facility." I often see this approach in a durable power of attorney designed primarily for the management of financial assets. While it appears to meet the statutory guidelines, it is a dangerous approach because the attorney is given exceptionally broad powers, but little or no guidance as to the principal's wishes.

A better approach is to provide a more detailed document which covers a series of distinct issues and allows the client to express his or her views concerning specific healthcare procedures. The drafter can also tailor the document to the personal care needs and wishes of the principal. Specific care providers can be nominated, and the personal beliefs and values of the principal can be expressed to provide guidance to the attorney-in-fact. One provision that I include in the documents which I draft is the authority to review medical and dental records as necessary to make informed decisions on behalf of the principal. This does not guarantee access to the records, but it does relieve the healthcare provider from the burden of protecting the confidentiality of the patient.

The power of attorney for healthcare and the directive to physicians are used to supplement each other and to show a history of the principal's values and wishes concerning personal and health care services.

"Code" v. "No Code"

Another form of healthcare advance directive is encountered in healthcare facilities at the time of admission. The patient or the patient's surrogate is generally asked whether they wish to be "code" or "no code" or "do not resuscitate orders." I routinely receive calls from distraught family members asking what to do with this form. If the principal has a healthcare power of attorney or a directive to physicians, the answer is readily available. Otherwise, the patient or his or her representative must decide whether all heroic measures are to be used in case of cardiac arrest or respiratory failure or whether the patient is to be made comfortable without heroic measures being used.

Statutory Changes

All attorneys are familiar with the law of agency, but a surprising number are not aware of the statutory changes affecting the drafting of powers of attorney. The statute, RCW 11.94, now provides that certain powers may not be exercised by a power of attorney unless those powers are specifically set forth in the document. These powers include, among others, the power to make gifts from the principal's assets, the power to disclaim; the power to change any estate plan, including the power to change ownership of a life

insurance policy or to revoke a community property agreement. The power of attorney will terminate on the incapacity of the principal unless there is language stating that the power shall remain in full force and effect despite the subsequent incapacity of the principal. Such language makes the power a durable power of attorney.

In drafting durable powers of attorney for my older clients, I find that it is helpful to break the powers of the attorney-in-fact down into categories, rather than using the run-on narrative found in the printed forms. This allows the client to see exactly what powers are being given to the attorney-in-fact and also gives clear instructions to the attorney-in-fact. The powers can be tailored to meet the client's individual needs and can be made as general or as specific as necessary. I always include a provision for accountability in the document and identify those who may require an accounting from the attorney-in-fact. If the attorney-in-fact and the principal are not related, I may suggest that there be a contract to define the responsibilities of both parties and any payment which is to be made for the services performed by the attorney-in-fact. I also spell out the process for revoking the power of attorney so that the principal and the attorney-in-fact have a clear statement of policy for revocation.

The use of durable powers of attorney are a flexible and effective way of delegating authority if the client has absolute trust in the nominated agent. If there are questions as to the reliability or the honesty of the proposed attorney-in-fact the document should not be executed. The other benefit of the durable power of attorney is to avoid the necessity for a guardianship. The document is most important when the client has a debilitating long-term illness, such as Alzheimer's, ALS, multiple sclerosis or a history of stroke or TIAs. If there is the prospect of a long-term illness, it is wise to nominate successor attorneys-in-fact. The client presently has capacity to execute the documents; if the spouse, who is the usual attorney-in-fact, were to become ill or pre-decease the victim of the long term illness, there should be someone else who can assume the responsibility

of the attorney-in-fact. This is especially important in light of the new guardianship statute, which makes guardianships much more cumbersome and extremely expensive.

"Springing Power of Attorney"

Powers of attorney may be effective when signed or may become effective at some future time (known as a "springing power of attorney"). If you are using a springing power, be certain that the triggering mechanism is effective. If a written statement from a physician is the triggering device, I strongly suggest that you contact the physician and determine whether or not (s)he is willing to activate such power when or if the time arrives. Powers of attorney may be terminated by the principal, by an act of law, by a termination date specified in the document or on the death of the principal.

Seasonal Clients

In advising any clients about advance directives, the attorney should ask if the client spends a significant amount of time in another state. We do have many people who spend summers in Washington and winter in Southern California or Arizona. If that is the case, I generally advise my clients to contact an attorney in the second state and show that attorney the documents which we have executed. It may be appropriate for the client to have state-specific documents to facilitate their effective use.

The primary purpose for advance directives is to give the client the power to appoint the individual or individuals who are to act for the client in the event the client can no longer direct his or her own affairs. The secondary purpose is to make a difficult time easier for the family by having the legal documents needed to manage the affairs of the principal and instructions as to the direction of the management.

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*Tacoma attorney **Patricia A. Smith** received her M.A. in public services, with an emphasis in gerontological programs, from Ball State University's European Campus, and her J.D. from the University of Puget Sound School of Law. She is a past co-president of Washington Women Lawyers, a founder and director of the National Academy of Elder Law Attorneys, and a member of the WSBA Guardianship Task Force.*

FROM THE ARCHIVES

Thirty Years Ago: Washington State Bar News, August 1962:

Benton-Franklin County reporter Ed McKinlay took a break from the long-running feud with Olympia reporter Stanberry Foster (not so Foster, who dubbed McKinlay the "sagebrush Socrates" in the same issue), to report that "an unusual feat of derring-do was accomplished recently in Franklin County when a judgement debtor, whose equipment had been taken into execution, stole the property back from the Sheriff, secreted it in another county, and refused to divulge its whereabouts. It's not a course of action that we could conscientiously recommend to a client, but you've got to admit that it's something you don't see every day. Bail was set at $2,500.00."

Fifteen Years Ago: Washington State Bar News, August/September 1977:

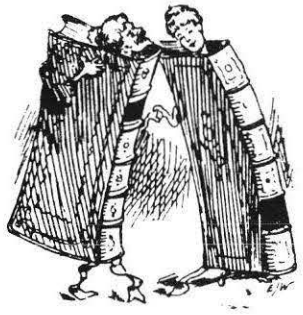
Six WSBA members, Croil Anderson, Timothy Bradbury, Terrence A. Carroll, Timothy R. Fishel, Charles A. Goldmark, and Lawrence L. Longfelder, proposed a resolution for consideration at the 1977 Annual meeting in Vancouver, B.C. It would have the Board of Governors appoint two lay members to the Board, the first to serve a one year term and all thereafter to serve two year terms. The President would be directed to report to the Association in 1979 on the experience and any changes that needed to be made.

Citing increasing criticism of the legal profession that "we are a closed profession indifferent to the needs and best interests of our society", as well as the "disproportionately low percentage of women and minorities amongst our membership", the proponents felt adding lay members with full rights to participate but not vote would help allay such charges. It was hoped that the experiment would broaden the diversity of perspectives brought to the work of the Board and lessen the image of an insulated profession; provide the addition of women and minorities to the Board; and forestall legislative imposition of lay members. They argued that California's experience with lay members had not worked well because it was legislatively imposed rather than developed by the lawyers themselves, and cited the experience of the Disciplinary Board as an example of how lay members could contribute well.

Yakima County Around the State reporter Gary G. McGlothen included a stirring nomination speech from the meeting of the county bar association, so readers could "realize the suffering of the Yakima County Bar Association.

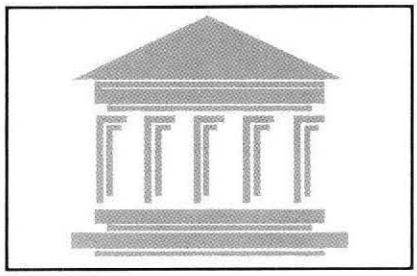
"Mr. John Gavin speaking: `Mr. President, I rise to fulfill my role, which must be to furnish a nominee for a position to which any lawyer would be proud: Secretary of the Yakima County Bar Association. I have in mind G. Scott Beyer. Mr. Beyer labors in a remote, dark, musty corner as assistant to Walt Robinson. He is not a partner. He is not an associate. As a matter of fact, he is not even an employee. He works under a document which Walter prepared known as an Indenture in Bondage. It may be of historic interest that this document is one of the first of these that has been executed since President Abraham Lincoln frowned on them in 1862. I am frank to admit that I personally have never met this gentleman, but I have seen him at a distance. They tell me fine things about him. I have only heard one adverse comment that said he is not a man of good breeding. I say to you, Mr. President, he can breed with the best of them. He being the recent father of twins, we may have amongst us, unrecognized, a young George Martin. Mr. President, I suppose someone is going to ask me whether he is qualified, and I would say to you that he can read and write and he is a Notary Public and those are far better qualifications than possessed by anyone who has held the office of secretary for the last forty years. What we should do is rescue this man each Wednesday, let him come out of his squalid quarters, come out into the sunlight, where he can get some color into his cheek, come out here and join us, if only for lunch and an afternoon before he has to return, I think we will all feel better, so I nominate for secretary, G. Scott Beyer.'

"There not being a second for the nomination, the vote was formally called for by the acting President, the minutes duefully reflected G. Scott Breyer to being the only individual to vote against his election, he was then carried into office."



Five Years Ago: Washington State Bar News, August, 1987:

"The Board of Governors accepted the resignation of Carole Grayson as Bar News editor effective March 1, 1988. Grayson, editor since March, 1985, had previously indicated her desire to step down at the conclusion of serving three years as editor."



Is There Money in Elder Law ?

by **Cheryl C. Mitchell** *and* **F.H. Mitchell, Jr.**

Is there money in elder law? Is it possible to develop and run a practice that is partially or completely oriented towards elder law? What are the financial implications of trying to operate this kind of practice?

These are important questions. If an elder-law practice cannot be made financially viable, then elder law must remain the province of attorneys with public sector or grant funded support. The ability of private attorneys to work in elder law depends on financial success.

Where does the money come from?

In personal injury cases, the money generally comes from insurance companies. In real estate, it comes from the buyers and sellers of property. In corporate law, the money comes from the corporation. The public often has the perception that elder-law attorneys provide free legal services. Sometimes it is difficult for the elderly to grasp the fact that private elder-law attorneys must make a living from the practice of law.

For the most part, fees come from the elderly themselves. There are exceptions to this, but in general the money must come from elderly clients and their families. Clearly, there are not enough grant funds available to serve all of the needs of the elderly.

The elderly and their families who seek out private elder-law attorneys must be able to pay for the services they receive. For those elderly who are not able to pay, referrals can be made to either publicly supported legal programs for the elderly and/or to pro bono programs.

Many elderly have accumulated sufficient resources to pay a reasonable amount for services that they need. As a group, however, the elderly have grown sensitive to possible exploitation and are extremely cautious about committing their funds. In many cases, funds are potentially available to pay for services, but *at the same time* the owners of these funds are rightfully cautious in spending them.

Why Should Clients Be Willing To Pay?

Through a lifetime of hard experience, the elderly have learned to be cautious of those who would help them spend their money. Many elderly individuals are "savers," who lived through the Depression—and have never forgotten it. They have done without many of the things that younger individuals would not have foregone. Most are reluctant to purchase goods or services they do not think they need. They will "shop" for a bargain, for example, for a $25 will, a $25 power of attorney, a "free" living will. Does this mean that only those who offer discount legal services can practice elder law? It does not. If the elderly are such careful and frugal shoppers of legal services, then why are they willing to pay for legal services? The reason is that many times elderly clients are facing personal crises due to illness. The elderly often seek out elder-law services when either they need essential help, or a spouse is ill. Alternatively, family members (often children) may seek out elder-law services when a parent is ill.

In offering legal services, the issue of legal fees then becomes one of value. Can the elder-law attorney provide services that are of sufficient value to the elderly person, for that person to be willing to pay for those services? An extended preliminary discussion is usually necessary between the client and the attorney to determine whether the services and knowledge of the attorney have sufficient value to be worth the cost. A decision to retain the attorney is often based on what the client believes will be the ultimate value. Other factors, including how well the attorney communicates with clients, also enter into the client's hiring decision.

If the client's crisis is associated with a high potential cost (for example, nursing home care for an undefined period of time), then payment for elder-law services can be accepted by the client—if the client believes that the attorney's services will probably lead to a significantly improved financial situation.

What Services Do Clients Need?

When the elderly consult elder-law attorneys, what kind of services do they want? This is a difficult question, since the answer depends on client circumstances and preferences. In some cases, the elderly will want narrowly defined consulting services from the attorney. In this case, the client (perhaps with the family) meets with the attorney, lays out the problem, and hears the proposed solution. The client and family are then able to implement the solution with a limited amount of help from the attorney. This leads to what can be characterized as a "consulting" elder-law practice, in which the client sees the attorney for a particular problem. This type of practice operates like a referral medical practice in which a physician treats only a particular illness or injury and does not see that patient again until there is a subsequent need.

This type of practice may be suitable as one part of a private practice that includes elder law and a variety of other

services. The volume of business generated for elder-law consulting practices depends on location, referral patterns and the general characteristics of the population being served.

There is a greater need for "primary-care" elder-law services. In this type of practice, the client arrives at the office with a complex mix of legal, financial, housing and care management problems.

This kind of legal practice is like a primary-care medical practice, in which the physician attempts to treat the whole person and his or her problems: there is an ongoing relationship between the physician and the patient. Primary-care physicians become involved with not only the patient, but also with the patient's family.

Clients often need a broad involvement by the attorney over an extended period of time in order to solve pressing problems most successfully. The result is a different type of elder-law practice.

The elderly who need "primary-care" elder-law services often are unable to accomplish detailed actions on their own. They may be overwhelmed when faced by complex financial records and requirements that are placed on them to obtain assistance from available programs (such as Medicaid or Medicare). Clients in such situations usually need close help by the attorney and staff at every stage of problem-solving—from the initial meeting through problem resolution.

If tasks that must be performed as part of problem-solving are delegated to clients, these tasks may not be completed. The overall impact may be that the case does not proceed in the desired manner, and the client becomes frustrated. The result is a dissatisfied client, which doesn't bode good for the future of the practice. Many elder-law clients are in a time of personal crisis. For those clients with a spouse in a nursing home, the client's attention is not on solving legal problems—it is on the ill spouse. In addition, many elderly individuals experience some degree of confusion but may be reluctant to admit it. Complex problem-solving may be beyond their abilities.

A variety of different types of elder-law practices can be developed, depending on attorney preferences and client needs. Based on our experience, we can say that many elderly (especially those who have complex needs) seek out primary-care elder-law services. Elderly clients in such situations may be unable to "take assignments" and complete them independently; they require step-by-step assistance. Many want to turn over the responsibility for completion of all the necessary tasks to the attorney, even if all of the tasks may not be purely "legal." In this way, the client can focus on taking care of his or her ill spouse. For many clients, the legal fees are worth the cost because the attorney assumes the responsibility of carrying out complex tasks.

As noted above, elder-law problems often involve mixed legal, financial and care management activities. If the practice focus is only on legal problems (as is the case for a "consulting" practice), then the client may be at a loss as to how to obtain needed financial and care management assistance. Delegating this type of problem-solving to accountants and geriatric-care managers outside the office may be an option, but this may be difficult because these outside persons often do not understand the legal implications of decision-making and may not be able to provide integrated problem-solving activities.

"Clients often need a broad involvement by the attorney over an extended period of time . . ."

A primary-care elder-law practice requires the merging of a broad range of capabilities. If they exist within the practice, it becomes necessary for the attorney to run a multi-disciplinary practice in a financially viable manner. If some of the capabilities exist outside the practice, it becomes necessary for the attorney to decide how to use these external agencies or services to form effective problem-solving linkages. In either case, it is necessary for the attorney to develop the skills that are necessary for such an office to run successfully.

What Are the Problems In Providing Services?

The consulting elder-law practice uses management techniques that are widely applied in other areas of the law. The primary-care elder-law practice, however, leads to some unique variations in providing services.

The features of a primary-care practice are determined by the needs of the clients. If clients need mixed legal,

financial and care management services, then the attorney should help find a way to provide these services. This results in a type of management and organizational structure that is different from the typical law practice. In addition, procedures must be developed to make sure that the best mix of services is made available in a financially viable way. Not only must the needs of the client be met, but office operations must be efficient and effective.

Office operations for this type of primary practice can be very demanding. As an office begins to provide a broad range of detailed, step-by-step services to clients, case files and the activities undertaken become increasingly complex. New types of in-office operations may be required in order to make sure that all needed information is being collected; decision-making is taking place in an appropriate way; and the cases are moving along. The administrative operations of elder-law practice must be highly attuned to the specific nature of the practice in order to produce an economically viable result. Some elder-law attorneys have financial analysts, geriatric-care managers or social workers as a part of the office staff in order to provide comprehensive services.

The Good News and The Bad News

As may be concluded from the above, there is both good news and bad news in elder law. The good news is that many elder-law clients have money to pay for the services they need, and they can have high levels of need for the services of elder-law attorneys. Given the rapid growth in the numbers of elderly in this country, this constitutes a rapidly growing market for many private practices.

In addition, the elderly can be extremely rewarding clients, in the sense that a high degree of satisfaction can be obtained from assisting clients and solving the problems they face. Elderly clients rarely "stiff" attorneys for legal services. They generally pay their bills on time. Elder-law attorneys rarely have collection problems. Primary-care elder-law practices have more interaction with clients than other kinds of practices.

"The practice of elder law can be very satisfying . . . the clients generally 'win.'"

Relationships with clients tend to extend over years and frequently span generations of family members. Satisfied clients will tell others, resulting in new business.

The practice of elder law can be very satisfactory (satisfying) when the attorney represents the client in obtaining governmental benefits. Unlike other types of law, the clients generally "win," and the attorney receives a substantial amount of appreciation for his or her work.

The bad news is that for clients who need a broad range of primary-care elder-law services, the providing of such services can make unique demands on the practice. For those who are attempting to work part-time in elder law, it may be difficult to merge it with existing operations. Careful planning must go into the design of administrative operations to ensure that the result will be both financially viable and sustainable by the attorney and office staff.

In primary-care elder law, the practice must be designed to efficiently and effectively handle the broad range of needs that is typical of elderly clients. With great care and the introduction of operational procedures that are customized specifically for elder law, it is possible to develop and operate such a practice in a financially viable way. If this is done correctly, there are sufficient funds available from clients to make an adequate living, It is unlikely, however, that an elder-law attorney will ever reach the goal of a high-income practice in comparison to other legal areas. Unlike cases in personal-injury practice, there are few opportunities to earn large sums of money. An established elder-law practice generally has a steady flow of clients who pay for services.

The good news *and* the bad news are

that for those who are highly motivated to work with the elderly; who are willing to build practices customized to this end; and who are willing to work on difficult, multi-disciplinary cases and settle for modest rewards, elder law can be highly rewarding. In fact, many private elder-law attorneys are former legal-service attorneys. Elder law is a growing area that will be steadily more important in the years to come and provide a great deal of personal satisfaction, not only to the clients but to the attorney.

• ***The American Bar Association*** publishes a variety of materials on law practice management. A copy of the 1992 Law Practice Management Catalog (product code: 5119023) may be obtained free by calling (312) 988-5555.

• ***The National Association of Elder-law Attorneys*** has available proceedings of annual symposia and other information. Typically, the annual proceedings include papers that address elder-law practice management issues. Order forms may be obtained on request by phone at (602) 881-4005.

• For those who are interested in exploring broader care management issues, a brochure is available from the ***National Association of Private Geriatric Care Managers*** upon request at (602) 881-8008.

• In addition to the above, ***Mitchell Law Office*** has written and published books on elder-law practice management and paying for nursing home care in Washington state. A free flyer describing these books is available by phone at (509) 327-5181.

ADA/Elder Law Update

The avalanche of litigation expected to follow the first implementation dates in the Americans With Disabilities Act hasn't occurred—yet. Substantial coverage of the act continues in the press and trade journals as the Act phases into full force. As many of its provisions benefit the elderly as well as the disabled, this update considers some resources available to assist in an elder-law practice:

Planning for a health crisis isn't easy. But the natural tendency to put off discussions and difficult decisions can increase the stress and pressure experienced by family and other loved ones during such times

The recent Patient Self-determination Act opens up a Pandora's Box of healthcare decisions and expands the need to be informed about and make advance medical directives via a living will or power of attorney for health care.

Basic information on such topics is contained in the new 18-minute video produced by the state Bar of Wisconsin, "Responsible Planning: Your Power of Attorney for Health Care and Living Will." Available to non-profit groups for $99 and $129 to others, the tape can be obtained from the state Bar of Wisconsin, (800) 728-7788 or (608) 257-3838, P.O. Box 7158, Madison, WI 53707-7158.

Worried about Social Security? You can obtain a record of your account from the Social Security Administration. Call them at (800) 772-1213, and ask for a Personal Earnings and Benefits Estimate Statement, Form 7004. You will be sent a questionnaire; fill it out and return it, and you will receive a listing of your annual earnings and estimate of benefits you are entitled to receive. For a booklet on how benefits are calculated, send $4 to William M. Mercer, Inc., Social Security Division, 1500 Meidinger Tower, Louisville, KY 40202-3415.

The old saying, "Lawyers never retire; they can't afford to," is addressed in an ABA publication, *The Lawyer's Guide to Retirement: Strategies for Attorneys and Their Firms*. Published by the ABA Senior Lawyers Division, the guide contains 25 articles on how to continue a practice after retirement, achieving financial security, minimizing estate taxes, structuring retirement plans for law firms and offices, choices among health care and insurance options, and the like. It's available for $69.96 ($59.95 for Senior Lawyers Division Members) from ABA Order Fulfillment No. 546, 750 North Lake Shore Drive, Chicago, IL 60611, (312) 988-5555.

The Older Women's League has developed the Lawyers packet on COBRA Health Insurance Continuation, to show lawyers how they can help their clients hold onto group health insurance under Title X of the Consolidated Omnibus Budget Reconciliation Act. It allows individuals to retain group coverage for up to three years even if they were covered as a spouse. Available for $15 from the Older Women's League, 730 Eleventh Street NW, Suite 300, Washington, D.C. 20001.

Shepard's/McGraw-Hill is publishing *Shepard's Elder Care/Law*, a monthly newsletter. It's $115 a year, from 555 Middle Creek Parkway, Colorado Springs, CO 80921-3630.

Legal Counsel for the Elderly offers numerous publications for making one's way through the maze of benefits and concerns facing older people. These include *Life Changes and Their Effects on Public Benefits* ($45 for nonprofits, $60 for others), a comprehensive guide to public benefit programs arranged by important life events that may affect a client's entitlement. *Medicare Practice Manual* ($39.95 nonprofits, $49.95 others) is designed for practitioners with

coverage-of-eligibility criteria, appeals, administrative hearings, litigation, provider issues, forms and checklists. To order, contact Legal Counsel for the Elderly, P.O. Box 19269-K, Washington, D.C. 20036, (202) 434-2120.

Elder Law Advisory is a monthly newsletter published by Clark Boardman Callaghan. It's $99.50 per year. (800) 221-9428.

What to Do When Your Spouse Dies is a useful, 40-page booklet published by Commerce Clearing House, Inc., 4025 W. Peterson Avenue, Chicago, IL 60646.

How To Protect Your Life Savings From Catastrophic Illness and Nursing Homes (Financial Planning Institute, Inc., P.O. Box 135, Boston, MA 02258, (617) 965-8120, 1991), 281 pp., $19.95, by Harley Gordon, a member of the National Academy of Elder Law Attorneys, is a useful guide to the complexities of obtaining long-term care for the elderly without reducing them to poverty in the process, with state-by-state information on programs and requirements.

To help local and state courts comply with the provisions of the Americans With Disabilities Act, the National Center for State Courts has been awarded a grant by the Office of the Americans With Disabilities Act, U.S. Department of Justice, to establish a national clearinghouse and resource center for state and local courts. Under this grant, the National Center will gather and disseminate information on ADA compliance, methods and strategies.

All courts are covered by the ADA. Employment within the courts is covered by Titles I and II of the act. All other programs, services and activities of the courts are covered by Title II. The effective date of the act's court-related provisions was January 26, 1992.

The act requires that courts perform a self-assessment of their facilities within six months of the effective date of the act to determine compliance with its requirements. The plan must have been completed by July 26, 1992. Any structural changes identified to be made must be completed by January 26, 1995.

Courts must provide a continuous, unobstructed route from the points where public transportation serves the court facility and from where accessible parking is available to and between the places where the main court services are conducted. This includes access to corridors, restrooms, drinking fountains, telephones; clear interior signage; and the elimination of architectural barriers.

Courts must also perform a self-assessment of all current services, policies and practices, and the effects of them, within one year of the act's effective date, providing interested parties—including individuals and groups representing the disabled—opportunity to submit comments. Grievance procedures and an ADA compliance person must be designated.

Additional, more-detailed information, about the ADA and the courts can be obtained by contacting Nancy London or Gary Wolfe the National Center for State Courts' Northeastern Regional Office, at (508) 470-1881.

The Firm Meeting

by **Gregory S. Morrison**

According to studies on employer/employee relations, the most important benefit that employers can give their employees is the feeling of "being in the know." In other words, your employees want to know what is going on. They want to feel as though they are a part of the organizational decision-making structure.

A simple and effective way to satisfy this need is by having regular firm meetings. Keep in mind that they are intended to include all employees. Depending on the size of the firm, these meetings may necessarily be broken out by departments in larger firms or include the entire office if the firm is small.

The firm meeting is most productive if it occurs on a weekly basis. This level of frequency enhances continuity of purpose and information, contrary to meetings that are held on an irregular or infrequent basis

The agenda should encompass two objectives: 1) conveying relevant information about matters concerning the firm, and 2) providing a forum for effective, team-oriented planning and problem-solving. These objectives allow the agenda to be tailored to fit the issues for discussion, which may be either broad or specific. Also, try to keep the discussions focused so that time isn't wasted.

It is important for lawyers and staff alike to understand their responsibility and authority within the context of the firm meeting. Be up front as to who makes what decisions. If a vote or recommendation is only advisory, then explain that at the outset. Remember that facilitation of input into the workings of the firm is the ultimate goal.

Discussions at the firm meeting should be positive rather than critical. Attendees should leave the meeting with a feeling of accomplishment and involvement. Every one should feel a part of the team and, consequently, encouraged to work for the success of the firm.

The benefits of regular firm or department meetings should manifest themselves in the form of increased productivity, lower absenteeism, lower attrition and reduced stress. Another key benefit is positive employee morale, which tends to be an invisible but very powerful force within organizational structures.

Try this, and—who knows?—you might be surprised at all the great ideas that have been there all along.

This column is a clearing house 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.

THE 1992 BAR CONVENTION

Many lawyers continue to find practicing law an intellectually challenging and rewarding career. Yet, as a profession, lawyers are battling to recapture the professionalism that should characterize their daily exchanges with other attorneys, to regain their stature with the lay community and to adapt their law firms to the economics of the 1990s. As individuals, attorneys struggle daily to balance their private lives and careers, and to manage the stress imposed by a very demanding profession.

The Bar Convention remains one of the best forums for coming to grips with this evolving profession. This year's Bar Convention, September 16 -19 in Vancouver, B.C., is aimed directly at many of the questions facing lawyers, while celebrating the profession's accomplishments and recharging spirits and ambitions for the coming year. It is a convention "Designed with Everything on Your Mind in Mind."

THE CONVENTION ENCOURAGES LAWYERS TO EXAMINE HOW THEY AFFECT THE WORLD AROUND THEM

The Convention will bring debate and discussion on how the legal profession affects and is affetted by global, national and personal issues, such as the 1980s insider trading scandals and prosecution, ethics and professionalism in America—as seen by those in politics, business, media and the law, the role of the media in affecting worlds events, access by women and minorities to the profession, managing the two-career family, and stress management.

Discussions will be led by a remarkable line up of compelling speakers—people like CNN News anchor Catherine Crier, Pulitzer Prize journalist James B. Stewart, Cornell Law professor Faust Rossi, former Harvard Law professor Derrick A. Bell, State Supreme Court Justice Barbara Durham, former chair of the National Endowment for the Arts, John Frohnmayer and others.

THE CONVENTION MAKES GOOD BUSINESS SENSE

For those trying to expand and improve their practice, the Convention offers 10 different CLE programs on an array of topics. Faculty has been drawn from leading Washington attorneys who will share their knowledge on the ins and outs and trends in their fields These are the people attorneys want to listen to and meet. It's also a tremendous bargain—a chance to earn 15 credits for less than $16 per credit. For firms that are carefully budgeting CLE dollars this year, the Convention gives them more than their money's worth.

The Bar Convention is an unparalleled opportunity for attorneys to meet with former colleagues, make new contacts and promote themselves and their firms among Washington's lawyers. It is a great chance to meet attorneys from across the state and across practice area, both in more formal seminar settings or at any of the many and varied social activities--from the traditional events like the golf tournament and dinner dance, to the not-so-traditional—a dance with a local rock band and an improvisational workshop.

THE CONVENTION IS A LEADERSHIP OPPORTUNITY AND CHALLENGE

At the Convention, attorneys will have ready access to the Annual Business Meeting—never a ho-hum affair. The last two business meetings have brought before the membership such issues as: the audio-video CLE Rule, the withdrawal of the 1995 Bar Convention from Hawaii, retention, disclosure and destruction of Bar Association records, direct election of the WSBA president, random audits of trust accounts, open meetings, and validation of referendums.

Each of these issues was debated and the recommendations were instrumental in framing the WSBA's direction.

A lot of planning and thought has gone in to making this year's Convention one that deals with the question lawyers face in a changing profession, while providing the traditional educational and collegial spirit that has characterized all of WSBA Conventions.

In this *Bar News*, we've highlighted a number of our special Convention guests: see the interview with guest speaker Catherine Crier, the book review of James Stewart's *Den of Thieves*, and an article on Derrick Bell and the controversy brewing at Harvard Law School. If you haven't yet registered, a complete agenda and registration form are also included. See you in Vancouver!

Designed With Everything On Your Mind... In Mind

THE 1992 WASHINGTON STATE BAR CONVENTION

September 16-19, 1992
Vancouver, B.C.

Debating Politics, Business, Media And Law

A re-emerging force or a "good old days" myth?

This year's CLE Finale will be a provocative exchange among those in law, politics, the media and business.

Panelists include U.S. **Senator Slade Gorton** (schedule permitting), outgoing Chair of the National Endowment for the Arts **John Frohnmayer**, U.S. District Court **Judge Barbara Rothstein**, *Den of Thieves* author **James B. Stewart**, KOMO News Consumer Editor **Connie Thompson**, and others. Discussion will be moderated by **Irvin W. Sandman** and **Daniel Caine**, two leading attorneys from the Creditor-Debtor Section, this year's Finale sponsor.

Standing Out From the Crowd

At age 16, she entered the University of Texas; by 20 she had her degree. At 23, with J.D. in hand, she joined the Dallas County District Attorney's office to become their youngest felony chief prosecutor. At 28, she ran for judge against an incumbent of 22 years—and won. In 1989, **Catherine Crier** traded the bench for an anchor chair on CNN's evening news.

As our special guest at Thursday's luncheon, Ms. Crier will trace the growth of the media's power in relation to world events.

As a reporter for the Wall Street Journal, attorney turned journalist **James B. Stewart** covered the Milken and Boesky scandals, the mergers and acquisitions boom, and the 1987 stock market crash. In 1988, he won a Pulitzer Prize.

Now in best-selling *Den of Thieves*, Mr. Stewart chronicles the intrigue, corruption and crime of Wall Street in the 80s, and tells of government investigators and prosecutors facing the most awesome defense organization ever mustered in a criminal case.

Mr. Stewart will address the Convention at Friday's Luncheon and will also participate in Saturday's finale: Ethics and Professionalism in America.

Keeping Up With the Law

The first three days you can choose programs from three distinct tracks: **Trial Practice and Dispute Resolution**, **Updates on the Law**, and **Technology and the Law**. On the last day, attend an unforgettable CLE Finale.

As always, you can earn **15 full credits** and take advantage of one of the best CLE bargains around.

Finding Time For Spouses, Friends, Family

Practicing law takes more than just learning the law. A fourth track features non-CLE programs on stress management and managing the two-career couple.

Advancing In Your Profession

Friday's program on access by women and minorities to the profession features Harvard Law **Professor Derrick A. Bell, Jr.** who has discontinued teaching at Harvard until the Law School improves its record on hiring minority faculty. Professor Bell will be joined by **Justice Barbara Durham**, University of Washington Law School **Dean Wallace Loh**, attorney and president of the National Asian Pacific American Bar Association **Peggy Nagae Lum**, and attorney **Sheryl Willert**.

Agenda

Wednesday, September 16, 1992

10:30 - 5:00 pm — Registration and Exhibit Hall Open

CLE Seminars

1:00 - 5:00 pm — Trial Practice/ADR Track: Sentencing in Washington-From State District Court to Federal District Court. Sponsor: Criminal Law Section

Update Track: The Changing Rules of Doing Business with State and Municipal Agencies-New Risks, New Contracts and New Cooperation. *Sponsor*: Public Procurement and Private Construction Law Section

Technology Track: Starting a New High Tech International Business. *Sponsor*: International Law and Practice Section

1:00 - 3:00 pm — Career and Life Management Track

The Trials of Life-Managing Stress in the Practice of Law. *Sponsor*: General Practice and Creditor-Debtor Sections

3:00 - 4:30 pm — General Practice Section Business Meeting

5:00 - 6:30 pm — Judicial Arbitration and Mediation Services Reception

6:30 - 8:00 pm — Welcoming Reception Honoring Our 50 Year Members - Special Thanks to Microsoft Corporation for its generosity in underwriting this event.

Thursday, September 17, 1992

7:00 - 2:30 pm — Registration/Information Desk and Exhibit Hall Open

CLE Seminars

8:00 - noon — Trial Practice/ADR Track: International Business and Alternate Dispute Resolution. *Sponsor*: Alternate Dispute Resolution Section in Cooperation with the International Law and Practice Section as an Adjunct to its Wednesday seminar

Updates Track: Meeting the Challenges of the New Americans with Disabilities Act. *Sponsor*: CLE Committee

Technology Track: Protecting Ideas and Creativity. *Sponsor*: Intellectual and Industrial Property Section

10:00 - noon — Career and Life Management Track

Double Your Challenge, Double Your Fun-Managing the Two Career Family. *Sponsor*: Lawyers Assistance Program

12:15 - 1:45 pm — Awards Luncheon Featuring Catherine Crier

1:30 - 8:00 pm — Golf Tournament

continued...

Agenda (continued)

2:30 - 6:00 pm Tennis Tournament, Salmon Fishing Trip, Tour of the Law Courts, Improv Workshop

5:00 - 6:00 pm Creditor-Debtor Section Meeting

6:00 - 7:30 pm Reception at the B.C. International Commercial Arbitration Centre. *Sponsors*: BCICAC and the American Arbitration Association.

Creditor-Debtor Section and Vancouver Law Society Reception

University of Puget Sound Law School Alumni Reception

Reception Sponsored by Washington Women Lawyers, Northwest Woemn's Law Center and WSBA Opportunities for Minorities in the Legal Profession Committee

8:00 - midnight Dance the Night Away - Featuring Bufflehead

Friday, September 18, 1992

7:00 - 3:00 pm Registration/Information Desk and Exhibit Hall Open

7:00 - 8:30 am Gonzaga University School of Law Alumni Breakfast

8:30 - 11:45 am Spouses/Guests: Tour and Breakfast on Grouse Mountain

CLE Seminars

8:00 - noon Trial Practice/ADR Track: Cornell Law Professor Faust Rossi- Evidence for the Trial Lawyer with Washington Case Law Review. *Sponsor*: Litigation Section

Updates Track: Current Developments and Tax Traps for the Unwary, with Emphasis on the General Practitioner. *Sponsor*: Taxation Section

Technology Track: Technology Driving Regulation. *Sponsor*: Administrative Law Section

10:00 - noon Career and Life Management Track

Access by Women and Minorities to the Legal Profession. *Sponsors*: WSBA Opportunities for Minorities in the Legal Profession Committee, Washington Young Lawyers Division, and Washington Women Lawyers

12:15 - 1:45 pm Awards Luncheon Featuring James B. Stewart

2:00 - 2:30 pm Book Autographing with James B. Stewart

2:15 - 5:00 pm Annual Business Meeting of the WSBA

5:30 - 7:00 pm University of Washington Law School Alumni Reception

6:00 - 7:00 pm Sports Award and Exhibitor Prizes Reception

7:00 - midnight You Must Remember This: An Evening in Casablanca

Saturday, September 19, 1992

8:00 - noon Registration and Information Desk Open

9:00 - noon CLE Finale: Ethics and Professionalism in America—Has the Pendulum Swung too Far? *Sponsor*: Creditor-Debtor Section

Hotel Reservations

All Convention activities will be held at the Hyatt Regency Vancouver, close to downtown dining, shopping and cultural attractions. Call 1-800-233-1234 to reserve your room. Identify yourself as a Bar Convention registrant to obtain our special rates: $152 Cdn. (sgl occ), $167 Cdn. (dbl occ). For other lodging, call Vancouver Travel Info Centre: 1-800-888-8835.

Travel

From Seattle, take I-5 across the border: expect a 30 minute wait. Follow 99 to the Granville Street Bridge, follow Seymour to Dunsmuir, left on Dunsmuir and left on Burrard to the Hyatt Regency, 655 Burrard. From the Vancouver Airport, take 99 to the Granville Street Bridge and follow the directions above

REGISTRATION FORM

Complete the information below. Mail with your your check payable to the WSBA. If you are a disabled individual requiring reasonable accommodation, contact the WSBA.

Name _____ Bar No. _____

Address _____

_____

City _____ St_____ Zip _____

	Price	Qty	Total
Registration: 15 CLE credits, course materials, refreshments, exhibit hall entry and all non-ticketed programs/ social events.	$235 x	___	___
Special Registration: Attorneys aged 70+ or admitted to the WSBA after 9/1/90 (benefits listed above).	$150 x	___	___
Limited Registration: Non-attorney members of the WSBA ADR Section and Canadian attorneys for ADR Section seminar only.	$35 x	___	___
Thursday Luncheon – Crier	$35 x	___	___
Friday Luncheon – Stewart	$35 x	___	___
Golf Tournament: transportation, cart (min. 2 person), green fees	$55 x	___	___
Partner's name:			
Tennis Tournament: court fees, transportation	$35 x	___	___
Salmon Fishing: transportation, tackle, bait, license	$35 x	___	___
Tour of the Courts: limited space	free x	___	___
Improv Workshop	$35 x	___	___
Grouse Mtn. Breakfast/Tour	$35 x	___	___
An Evening in Casablanca	$55 x	___	___
Bufflehead Dance	$20 x	___	___
	Total amount		_____

On The Street Where They Looted

This book review first appeared in The New York Times Book Review, *October 13, 1991 and the excerpt below is reprinted with the permission of* The New York Times.

Den of Thieves

by James B. Stewart. Illustrated. 493 pp., New York: Simon & Schuster. $25.

reviewed by
Michael M. Thomas

This is an absolutely splendid book and a tremendously important book, as good a book on Wall Street as I have ever read. "Den of Thieves" ranks with the Adams brothers' "Chapters of Erie" (1871), Frederick Lewis Allen's "Lords of Creation" (1935), with which it perhaps bears closest comparison, and John Brooks' "Once in Golconda" (1969).

James B. Stewart, an attorney turned journalist who serves as front-page editor of The Wall Street Journal, has taken as his subject the Levine-Boesky-Milken financial scandals of the 1980's and laid out that story in telling and fascinating detail, with clarity, force and moral vividness. He charts the way through a virtual solar system of peculation, past planets large and small, from a metaphorical Mercury representing the penny-ante takings of Dennis B. Levine's small fry, past the middling ($10 million in inside-trading profits) Mars of Mr. Levine himself, along the multiple rings of Saturn—Ivan F. Boesky, his confederate Martin A. Siegel of Kidder, Peabody and Mr. Siegel's confederate Robert Freeman of Goldman, Sachs—and finally back to great Jupiter: Michael R. Milken, the greedy Beverly Hills manipulator who built a multibillion-dollar junkbond kingdom in which some of the nation's greatest names in industry and finance would find themselves entrapped and corrupted.

It is a fine, spicy tale. But to stop with that is to miss the book's immense importance: it at long last gives us a full and true record of systemic criminal behavior in the financial markets, behavior that powerful forces in the private sector—in the news media as well as the securities industry—have labored mightily (and, I regret to say, with great success) to obfuscate. As mightily, may I say, as they have striven to stonewall, discredit, demean and otherwise deter the attempts of Federal authorities to investigate and prosecute the miscreants and their crimes.

Mr. Stewart raises the issue at the outset: "The financial implications of these crimes, massive though they are, [should not] obscure the challenge they posed to the nation's law-enforcement capabilities, its judicial system, and ultimately, to the sense of justice and fair play that is a foundation of civilized society."

When such matters are at stake, the wagons are invariably circled, as Mr. Stewart observes: "In my reporting career," he writes in an important afternote, "I have never before encountered a story so shrouded in secrecy. —Many felt precluded from speaking on the record—General Electric even went so far as to threaten a former Kidder, Peabody employee with termination of his pension benefits if he told his story." It is clear Mr. Stewart has spoken with people whose legal testimony has been sealed as a condition of plea bargains, a number of whom showed "exceptional courage and a dedication to the truth" in speaking with him.

The genius of this book is that it lets the larger questions emerge entirely from the narrative. Mr. Stewart doesn't philosophize, he doesn't speculate (for example, on whether the junk-bond market received added impetus from large doses of laundered money, as many have long thought), he doesn't editorialize, he just gives the news.

And is it ever news! I thought there was little about the Age of Milken that could surprise me, but as I read this indecently readable account, my eyes grew wider and wider. So, I might add, did the eyes of quite a few people with whom I discussed the book, including at least two highly placed executives at the investment banking firm of Lazard Frères, who were astonished, and dismayed, to learn that—in a scene right out of the film "Wall Street"—the inside-trader Dennis Levine had been given the run of their firm's offices one dark Friday night by one of his co-conspirators. There, he came across (and photocopied) details of a planned offer by the French petrochemical giant Elf Aquitaine for the American company Kerr-McGee. That Mr. Milken was allowed to trade, as if they were his own, junk-bond accounts at Executive Life and Columbia Savings and Loan, two since-collapsed institutions playing with taxpayer money, also came as a shock. Even a hardened criminal attorney like Mr. Boesky's lawyer Harvey Pitt viewed his client's confessions

Attorney and Pulitizer Prize winning reporter James B. Stewart is a featured speaker at the Washington State Bar Convention in Vancouver, B.C. His book, *Den of Thieves*, number one on *The New York Times* Best-Selling Non-fiction list this winter, will be the focus of his speech, "Was Justice Served?" at the luncheon on Friday, September 18. Stewart will also participate in debate and discussion on "Ethics in American Society," the CLE Finale to be held Saturday, September 19. He will be joined by other panelists including U.S. Senator Slade Gorton (schedule permitting), former chair of the National Endowment for the Arts John Frohnmayer, U.S. District Court Judge Barbara Rothstein, and others. Stewart will also be available following his luncheon remarks for a book-signing.

to the Securities and Exchange Commission (S.E.C.) as "historic revelations of criminal misconduct broader than anything Pitt had ever believed possible."

It is one of the great stories in the whole history of human commerce, and I cannot imagine it being better told. Mr. Stewart stays with his narrative, letting the moral issues—and they are substantive and undismissible—glow like diamonds. Prospective readers need not fear, not for an instant, that they will be bogged down in financial mechanics or brought to a sharp halt by interminable discursive flashbacks or explanations. This is not a technical manual. (However, in financial chicanery, Satan is to be found in the details, and the reader should go slowly and carefully.)

The book is full of wonderful anecdotes, characterizations and revelations. Contrary to the skillfully manipulated view of Mr. Milken put forward by profilers for certain glossy magazines, it was clear from the outset that the man's personal greed defied belief if not description. In 1986, the year he earned *$550 million* for himself, he got into a knockdown, drag-out argument with Drexel Burnham's chief executive officer, Fred Joseph, over what he felt was a short-change on a prior year's compensation. "Joseph was amazed at the vehemence with which Milken argued the point," writes Mr. Stewart. "The amount at stake was $15,000." Indeed, that very same year, it was Mr. Milken's insistence on prompt payment by Mr. Boesky of a $5.3 million "invoice," representing Mr. Milken's share of under-the-counter trading profits, that started to unravel not merely the Boesky-Milken relationship, but the entire era.

Although the bad guys predominate, the book has its shining lights. Apart from the United States Attorney Rudolph Giuliani, whose personal political ambitions, Mr. Stewart says, frequently impeded investigations and prosecutions, Uncle Sam comes out well—especially in the persons of Gary Lynch, the chief of enforcement at the S.E.C., Charles Carberry, an Assistant United States Attorney, and all the other dogged fighters for truth who prevailed against forces incomparably better equipped with cash, friends in the press and the weapon of public sympathy. Often those men clung to the slipperiest of legalistic fingerholds, but cling they did. In the private sector, Martin Davis, the chairman of Gulf & Western, seems a rare light of probity. When invited by Mr. Boesky to participate in an insider leveraged buyout (LBO), he declined, believing that "too many managements were stealing companies through LBOs at scandalously low prices."

"The book is full of wonderful anecdotes, characterizations and revelations..."

One also feels sympathy for Drexel Burnham's chief executive, Fred Joseph, who I suspect has been a principal source for this book. Mr. Joseph was foolish to let Mr. Milken arrogate such independence to himself, but from Mr. Stewart's account it seems incontrovertible that he remained ignorant of, and innocent about, Mr. Milken's self-serving (hundreds of off-the-books partnerships) right up to the end.

Others do not come off well. Following Mr Milken's indictment, a massive public relations campaign was initiated to win in the court of public perception what clearly must have been felt to be at risk in a court of law. The architects of this policy (which Mr. Stewart says was disdained by Mr. Milken's original lawyer, Edward Bennett Williams, who died before the case was heard) were the Manhattan public relations executive Linda Robinson and the attorney Arthur Liman, who succeeded Williams as Mr. Milken's legal *chef d'equipe*. From the vantage point of what we know now, thanks to Mr. Stewart, the cynicism underlying this effort is nothing less than appalling.

It is also saddening to read of Goldman, Sachs' stonewalling in the face of mounting evidence of its arbitrage partner Robert Freeman's questionable activities. This will come as a surprise to those who regard Goldman, year-in, year-out, as a moral pillar of the Wall Street community. Mr. Stewart describes how Mr. Freeman, who eventually pleaded guilty to one count of insider trading, was virtually making a market in inside information. When Mr. Freeman finally copped a plea, "Goldman, Sachs tried to minimize the impact, seizing the opportunity to attack the prosecutors rather than a partner who had just admitted a felony." Readers will find themselves at first incredulous, and then infuriated, at the repeated willingness of the private sector to obstruct, obscure or complicate the workings of justice, even when confronted with incontrovertible evidence of malfeasance.

Those same readers may find it hard to believe, but there was a time on Wall Street when just the merest whiff of suspicion would have sufficed to sound the alarm and advise the private and public regulatory authorities. These are institutions whose bankability depended on their reputations, at least to hear them speak, and on public trust in the integrity of the markets from which they profited. By their continued stonewalling, they have shown a contempt for the moral foundation of the market process akin to that displayed by Mr. Milken, Mr. Boesky, Mr. Levine and their accomplices. They are no friends of capitalism.

The story Mr. Stewart tells is to some degree (as the British journalist Geoffrey Elliot has put it) about "second-rate business [done] with third-class people in a fourth-rate way." But this is not another gloat-inviting, trivializing compilation of high-finance "dish" like "Liar's Poker" and "Barbarians at the Gate." This book faces squarely the big issue: the wholesale, organized corruption of the markets that, we have been repeatedly assured by the public and private sector ideologues, are the glories of democratic capitalism. These crimes were not petty larcenies, although, along with Mr. Milken's hired guns, people with heavy ideological investments in the 1980's have moved semantic heaven and earth to make us think they were. Mr. Stewart's book gives the lie to the assertion that all that needs to be done to create paradise on earth is for the Government to get out of the way, that the markets can police themselves through their "efficiencies."

Some efficiencies! In the Age of Milken, self-regulation all but suc-

Publisher Wins ABA Silver Gavel Award

The Simon & Schuster Consumer Group, publisher of the #1 *New York Times* best-seller *Den of Thieves* by James B. Stewart was presented the Silver Gavel Award by the American Bar Association in San Francisco on August 11.

Author Stewart accepted the award on behalf of his publisher at a luncheon honoring the recipients. *Den of Thieves* was a *New York Times* best-seller for 33 weeks. It is based on Stewart's 1988 Pulitzer Prize-winning work for *The Wall Street Journal* on the stock market crash and Wall Street's insider-trading scandal.

The trade paperback edition from Touchstone Books will be published September 9 with an epilogue containing new information on Milken's and Boeskey's hidden wealth.

The ABA presents awards annually in recognition of outstanding public service by an American media organization. The Silver Gavel, the highest award presented, is considered by the legal profession to be the premier award for law-related publications and productions. It is given in recognition of media efforts which promote greater public understanding of the American legal system.

cumbed to the exertions of the crooks, and the efficiency to their manipulations. Thanks to Mr. Stewart, we now know, in lip-smacking detail, how much, where and by whom. For the first time, we understand how this world works. I suspect that what none of us could have guessed, until now, was how big the swindles were. In the light of what Mr. Stewart lays out, any American with half a conscience is going to have to think hard about the character of free-market capitalism; about the role, much denigrated in the 80's, of the Government in the functioning of the markets; and, most depressingly, about what happens when private and public interests cease to be in sync, as has been the case in the last decade, thanks in no small part to heated encouragement from the "bully pulpit."

"Den of Thieves" should, must be read by every American who gives a damn about this country. And in the end, those readers may well ask themselves: if this is how the money is made, does Wall Street—and its minions in law, accounting and public relations—deserve the money it makes? To put it differently: If this is free-market capitalism, why bother? There must be a better way.

***Michael M. Thomas**, a former investment banker, writes "The Midas Watch," a column for* The New York Observer *and is the author of five novels set in the world of high finance.*

Tensions that have simmered a year at Harvard Universit have boiled over this sprin with the appearance of a inflammatory flier and a parody of a article by a feminist legal scholar.

Black, female, and homosexu students have held rallies condemnin incidents that the students say hav created a hostile atmosphere on th campus.

"Everything just hit the fan th spring," said Ronald S. Sulliva president of the Harvard Black La Student Association. "There are ralli and demonstrations almost every da It's an extremely volatile atmosphere."

'Very Difficult Moments'

The fallout has prompted Harva administrators to hold broad discussio on the law school's efforts to hi minority and female professors and meet with black students to address the concerns. The controversies over th flier and the parody have also renewe age-old debates about what constitut protected speech.

"Some students have had very difficu and tense moments this spring, but w are working round the clock to mak progress on this campus," said Ne Rudenstine, president of Harvard. H added that "these problems won't b solved tomorrow."

Mr. Rudenstine said that "nothing higher on my priority list" tha diversifying the faculty in the Colleg of Arts and Sciences and the law scho and that he has held several discussio with faculty members to achieve h goal.

Those efforts have not satisfied ma students. Their concerns stem fro several incidents that have roiled th campus this spring:

Angry Protests Over Diversity and Free Speech Mark Contentious Spring Semester at Harvard

Tensions boil over after incidents that many say reflect a hostile atmosphere on the campus

(This article first appeared in The Chronicle of Higher Education, *May 6, 1992, and is reprinted with permission of* The Chronicle of Higher Education.*)*

by **Michelle N-K Collison**

-The *Harvard Law Review* published a parody of an article by a feminist professor at the New England College of Law on the anniversary of her murder. Many students and faculty members condemned the parody and said the law school had not moved swiftly enough to hire more minority and female faculty members.

-The editors of the conservative magazine *Peninsula* put up a flier last month that depicted a black woman doing a striptease before an audience of white men. The caption underneath the flier read, ". . . spade kicks, what other kicks are there?" The flier advertised a symposium on "Modernity and Negro as a Paradigm of Sexual Liberation." The Harvard-Radcliffe Black Student Association subsequently issued a flier condemning the flier for fostering a climate of harassment at the institution.

-The editors of *Peninsula* also published an issue condemning homosexuality last fall. The Rev. Peter J. Gomes, the popular chaplain of the Memorial Church at Harvard, was outraged and told a group of students who had rallied to condemn the magazine's characterization of homosexuality that he was gay. In response, a group of students called Concerned Christians for Christ demanded this spring that Mr. Gomes resign.

The focus of much of the controversy has been the law school. For several years, students have urged its administrators to hire more women and minority faculty members. The law school has 59 tenured professors, of whom three are black men and five are women.

Derrick Bell, a black tenured professor of law, took a leave of absence two years ago to protest the law school's failure to hire a black woman professor.

After Mr. Bell went on leave, a group of law-school students sued the school, charging that it had failed to diversify its faculty. A lower court dismissed the suit, saying that the students had no legal standing. An appeal is being reviewed by the Massachusetts Supreme Court.

Tensions at the law school were exacerbated by the parody in the *Harvard Law Review* of an article by Mary Joe Frug, a professor of law at the New England College of Law who was stabbed to death in April 1991.

"This Was an Outrage"

The *Review* published the article by Ms. Frug in March entitled, "A Postmodern Feminist Legal Manifesto," over the objections of some male editors.

In April, on the anniversary of Ms. Frug's death, the *Review* published a parody of her article by two editors, Craig Coben and Kenneth Fenyo, entitled "He-Manifesto of Post-Mortem Legal Feminism." The parody was signed, Mary Doe, Rigor-Mortis Professor of Law. The article was said to have been written "from beyond the grave."

Many students and faculty members said the lack of diversity at the law school insured that sexist incidents like the publication of the parody would continue.

"This was an outrage, not a sophomoric prank by schoolboys," said Claudia Salomon, a first-year law student and a member of the Women's Law Association.

Added Andrea Brenneke, a third-year law student: "This is a marginalization of women's issues. This is a blatant example of what happens when you don't have classes that focus on gender or race. It says we don't care about her or feminist legal scholarship."

The parody has provoked unprecedented debate among faculty members. Law school professors are engaged in a sort of paper war, with liberals and conservatives issuing daily statements

Professor Derrick A. Bell, Jr. is a featured speaker at this year's Convention program: "Access by Women and Minorities to the Profession." Bell is a constitutional law scholar who has been with Harvard for 23 years; he took an unpaid leave of absence to protest the law school's failure to hire a minority woman as a tenured professor. He has been on leave for two years and, according to an article in *The New York Times*, his decision to continue his leave of absence beyond the two years allowed by law school policy has been interpreted by the school as his decision to resign. He is challenging that interpretation.

Bell will open the Friday, September 18 program on "Access by Women and Minorities to the Profession." He will then be joined by co-panelists Supreme Court Justice Barbara Durham, University of Washington School of Law Dean Wallace Loh, president of the National Asian Pacific American Bar Association Peggy Nagae Lum, and Seattle attorney Sheryl Willert.

on the law school's hiring procedures.

Twenty-one professors signed a letter saying that the parody is a "symptom of the much wider problem" and that students had told them that "the *Review*, like much of the law school," has an environment that is hostile to women.

Other professors argued that students and faculty members should not condemn free speech. In a syndicated column last month, the law professor Alan M. Dershowitz wrote: "There is something very wrong at Harvard Law School, but it is not sexism or racism. What is wrong at Harvard is that for too many radical professors and students, freedom of speech for those who disagree with them is just not their thing."

Another professor, David Kennedy, urged the school's disciplinary body to punish the law-review editors for "maintaining a working and academic relationship hostile to women."

In a written statement, Mr. Clark said that the parody had "offended all standards of decency" but that it was unfair to say that many people at the law school shared its misogynist attitudes.

The law school's administrative board must decide whether to bring charges against the authors. The two editors have apologized, saying in a statement: "We realize that it was very wrong to write the parody." Mr. Clark said that the men were exercising their right to free speech and that he did not believe they should be punished.

While battles have raged at the law school, the situation at Harvard College has not been much better. "There have been several factors that have contributed to an anti-black atmosphere here," said Zaheer Ali, a senior and president of Harvard-Radcliffe Black Students Association.

The association recently produced a two-page flier entitled "On the Harvard Plantation." The flier listed "ignored injustices," that it said had been committed by the university police department, *Peninsula* magazine, the *Harvard Crimson*, and the law school.

Mr. Ali said the *Peninsula* flier depicting the black woman doing a striptease was the last straw. "Why should we have to walk around campus and see posters where black women are undressing before white men? It's degrading and humiliating to black women."

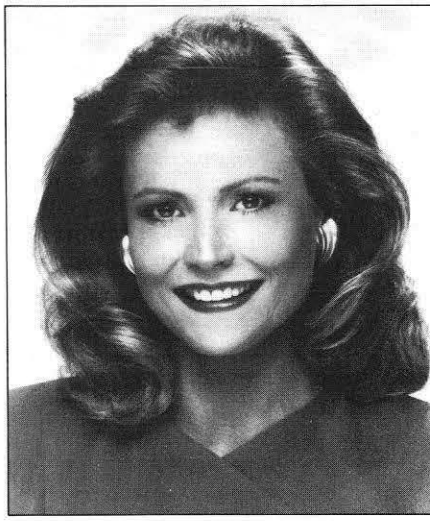
The flier repeatedly used the words "spade" and "Negro" and made references to the stereotype of the promiscuity of black men.

Staff members of the magazine said their actions had been misunderstood. "We made no attempt to offend anyone," said Roger Landry, a founder of *Peninsula*.

Mr. Landry said he was trying to "present points of view that aren't heard at Harvard." He added: "At this university, there are correct ways of looking at race, homosexuality, and abortion. Women, minorities, and homosexuals only want to discuss issues the way they want to discuss them."

L. Fred Jewett, the dean of the college, condemned the flier and he and several other administrators met with black students last week.

But students said Harvard must take action. "Meetings won't solve the problems," Mr. Ali said. "We need to come up with programs to solve these issues."



Catherine Crier

JR: I understand you'll be th
Thursday, September 17, luncheo
speaker at our annual convention i
Vancouver, B.C.
The issues we'll be discussing toda
will focus on your subject for tha
speech—"The World Is Watching
Media and the News."
So—here you are...a J.D. by 23,
judge by age 30...and now a CN
anchor with your own show, "Crier
Company." Seems to me you wan
to make a significant impact o
events through the media.
Lawyers have traditionally influence
national affairs by getting int
politics. Does your legal backgroun
affect your news coverage?

CC: Certainly, because I started ou
as a prosecutor with the Dalla
County D.A.'s office and went on t
do civil litigation before taking th
bench. And what does a trial lawye
do? Certainly as a litigator you h
the streets, you find your witnesse
you put together your story that yo
submit (not to an editor, but to th
court). You don't necessarily do stand
ups in front of the courthouse; you d
final arguments in front of a jury
Then of course as a judge, instead o
advocating one position or the othe
you're called upon to listen to all o
the information, determine what th

Fast-track Woman....

Q&A With CNN's Catherine Crier

by **Jo Rosner**, *WSBA*

facts are, sprinkle it with social or public policy. That's exactly what a journalist does. Exactly. So once you remove job titles and look at experience base, the parallels are quite dramatic.

I have simply incorporated all of that prior knowledge and activity as a litigator and a judge into what I'm doing now.

JR: OK. So like a judge, you are now the conduit by which comment is made?

CC: Exactly. In fact on the morning show (I'm doing three programs right now — I do "Crier & Company" in the morning, "Inside Politics" with Bernie Shaw in the afternoon, and then the evening news) that's exactly what I am—a moderator wherein I bring in positions from the left, right and center on issues of import both national and international and try and facilitate opinions. Then, certainly, if one side is being outweighed by another, you want to jump in and pull those positions out and you need to be able to play off either position. But you try and do so independently and in an unbiased fashion—so you're promoting dialogue and discussion rather than interjecting.

JR: Do you think that the increased media attention to court proceedings (the William Kennedy Smith and Rodney King trials, for example) was equalled by their news value?

CC: Yes I do, and I think ultimately the system benefits. Sometimes as attorneys or as judges we are concerned that people won't understand, and that they don't want to play by the rules that we're forced to play by—that the justice system might suffer by too much exposure. But I think the reverse is true. In a democracy, an open court system, a public system, it is critical to maintaining the freedoms that we have—the justice system that supports this nation's principles. So more exposure is not detrimental. Sometimes we have to work through the trauma of public exposure a little bit. But in the long run I think we benefit. William Kennedy Smith's trial was a good example. There were a lot of people who came away from watching it, and perhaps they didn't agree about his guilt or innocence. He was certainly found not guilty. They may not agree with the ultimate decision, but they agreed that justice was done. In other words, they may say he's not innocent of this crime, but he wasn't proven guilty beyond a reasonable doubt. So I think that you had a coalescing of opinion because they were allowed to peer into the courtroom procedure that might not have occurred had that exposure not been there. I also think, certainly in the Rodney King case, that those issues are something that the country desperately needs to deal with, and the exposure brought to light some critical points that not only a city or a state, but also the federal government must address to better conditions for people around the nation. Once again, that exposure to the legal system and the court process brought to the surface a lot of issues that desperately need our attention.

JR: So the light on these subjects brings truth?

CC: As painful as it can be, I think it's a benefit.

JR: With the shift toward 'politics by talk show' rather than the traditional network news and debates, would you say that there will be an important decrease in voter understanding of issues this fall?

CC: This is not a shift away from, but an inclusion of, a new avenue. . . you're getting plenty of exposure in the traditional format that the morning shows, political shows (morning shows meaning David Brinkley—the Sunday morning program, that sort of thing). But you've also now included access to a lot of people who might not pay attention to those other programs and who have the opportunity now to be heard themselves or listen to other voters express their opinions or converse with candidates. So we're just adding to the political process rather than removing something or substituting something.

JR: CNN has opened a new world of instant news. During the Gulf war, for example, there was little or no information gap between the event and the viewer. Do you feel that this has changed the complexion of war?

CC: Very much. I think it has changed the complexion of the *world* in many respects, and of course that will be a great deal of what I'll be talking about to the Bar. The ramifications of that kind of instant access are both good and bad, because as a camera's eye portrays something you don't have the past and you don't have the future, and you don't necessarily have a lot of context as you're receiving pictures of something happening instantaneously. So I think it's necessary to understand the sort of impact those pictures can have and to be sure that the news organization puts it in context and offers evaluation and analysis and all of the necessary information to understand what's going on. For example, in the Gulf war there was much of it that almost seemed as if it were played out in a video arcade as we watched that sterile cross-haired environment. I

very necessary to show that the other end is death and destruction and war at it's ugliest. There was almost a sense of that video environment in our living room. So you have to be very careful to understand circumstances and not be misled by pictures, even though we tend to think of them as the truest form of communication—to be able to see with our own eyes. But that's not always a complete picture.

JR: Would you talk about your most memorable moment at CNN?

CC: I'm going to change the words from "most memorable" to "most dramatic" because they may be similar, but "memorable" has a kinder connotation. It was that the bombing of Baghdad broke out during my shift on the 6 o'clock news. My co-anchor, Bernie Shaw, was at the Al Rashid Hotel in Baghdad, and David French was filling in for him—and in fact doing an interview with former Secretary of Defense Casper Weinberger. We had all been on such a high state of alert with the adrenalin pumping and worrying about our people who were still in Baghdad and watching the clock and concerned about the war, and all of a sudden when Bernie broke into that dialog and said, "Something is happening here"—and, of course, the network completely explodes in an event like that to try and bring it to our viewers as quickly as possible. You went to the newsroom and you heard the senior executive producer going, "Get me the Pentagon, get me the White House, get me the State Department, get me Riyadh, get me Baghdad, get me Tel Aviv..." Boom, boom, boom and all of our correspondents popping up and the world was immediately in a part of our coverage as we scanned the globe to bring that information to the viewers. It was an extraordinary, extraordinary moment . . .

THE BOARD'S WORK

by **Lindsay Thompson**

Coupeville, July 31-August 1, 1992

Present: The president and president-elect; the governors and governors-elect.

Also present: Barbara Clark (Legal Foundation of Washington, Saturday); Mary Gallagher Dilley (Administrative Law Judges' Assn.); Dave Edwards (District & Municipal Court Judges' Assn.); Victor Flatt (Lesbian & Gay Legal Society of Puget Sound); Grant Johnson (WSBA Young Lawyers); Dennis Harwick (WSBA executive director); Brian Kelly (WSBA Budget Committee, Saturday); Jim Kaufman (Washington Association of Prosecuting Attorneys); Linda Moran (Washington Women Lawyers); Richard Pitt (Superior Court Judges' Assn.); Larry Shannon (Washington Association of Trial Lawyers); Mark Shepherd (SKCBA Young Lawyers); Scott Smith (SKCBA Trustees); Lindsay Thompson (*Bar News* Editor); Morton Tytler (Government Lawyers' Assn.); Robert D. Welden (WSBA general counsel).

The Board met in executive session Friday morning, July 31, to consider waiving APR 3 to let a Dutch national with law degrees from U.S. and Dutch schools take the bar exam. They administered a reprimand to William L. Hanson and considered the recommendations of president-elect Steve DeForest for chairs of WSBA standing committees.

Called to order in open session at 8:45 a.m., the Board heard reports from the president, president-elect, and executive director on recent meetings and the like. The president said his travel schedule had lightened up with the summer recess of most county bar associations; he also reported he'd be meeting September 18 with heads of the Bar's sections as part of their ongoing relations-repair effort.

Quo Vadis? Harwick then presented the meeting schedule for 1992-93. Governor Tom Chambers objected to its being presented as a done deal. He felt the Board should approve these things. Harwick replied the schedule was final only in the sense that you have to start somewhere, and the dates and places listed had all been confirmed as available. Chambers then expressed concern that some of the dates might conflict with his schedule. Saturday he reported they didn't, but by then others had looked at their calendars and found conflicts.

An observer objected, "as a dues-paying member," to the Board's listing its December 1992 meeting in Seattle at the Westin Hotel when the offices of the WSBA are right next door in the Westin Building, and surely the conference rooms there are big enough. They are, and we do meet in the WSBA offices, several governors replied. The Westin is simply where people from out of town stay. Oh. Governor Alva Long wanted to move the December meeting to Bellevue. Since the Board reduced its meeting schedule 25% this year to save money, there are fewer meetings with big local bar associations available. Someone fretted that the Seattle-King County Bar Association might perceive a slight in the moving of the December meeting from

downtown Seattle all the way to Bellevue. We'll invite them to make the trek over the bridge and meet with us, someone else said. And we'll invite the South King County Bar Association, too. Why the Board bothers to meet around the state, given that no one, not even the WSBA's worst critics, show up to see what the Board does in its meetings—no matter where they are—is an interesting question. Anyway, they decided to go to Bellevue. The meeting schedule, approved Saturday, is listed at the end of this report.

Never Mind That They Always Destroy Rather Than Improve, These Resolutions Are Such Fun to Debate: Governor Alva Long told the Board he would be offering a fun-filled plate of resolutions at the Annual Meeting in September. Long, who feels WSBA leadership is too entrenched, has decided he wants a second term on the Board of Governors, and he will offer a resolution to abolish the rule that Governors can only serve one three-year term.

Still peeved at having been the subject of a random audit of his trust account, Long wants to abolish them, too; and he will again offer a resolution to do so. He'll offer a resolution to end funding of the WSBA continuing legal education program, the law-related education program, the Young Lawyers Division, the use of dues to fund anything other than the regulation of the practice of law, and to prevent the raising of WSBA dues unless approved by the membership.

Oh, Joy Abounding: 854 people sat the summer bar exam.

More Belt-tightening: Dennis Harwick told the Board four staff positions have gone vacant at the Bar office and have not been filled: two in the CLE department, one in public affairs, and the coordinator of the Lawyer Referral Service, which has been terminated as a WSBA program.

And Then There Were Nine: The U.S. Supreme Court having confirmed Washington's acquisition of a ninth congressional seat after the 1990 census, the Board amended the bylaws to recognize the existence of a ninth Board seat. An advisory election will be held for the election of a governor for that district, to serve through the 1995 Annual Meeting; the winner will be appointed by the Board to fill the now-vacant seat. An election notice is carried following this report (page 40).

Where You Stand Depends On Where You Sit: The Board considered what to do about Bar sections and committees taking legislative positions. Reviewing reports from standing committees in their work in 1991-1992, Governor Monte Hester noted the corrections committee had done so, and the Board hadn't known about it. A 1986 policy statement adopted by the Board was unearthed, requiring sections and committees not to take positions independently unless at least 75% of the leadership/governing body of the section or committee approved it, and requiring that the WSBA Legislative Committee and Olympia lobbyist be notified when they did so. After some discussion of amending the policy to include notice to the Board of Governors, the matter was put over until October to give the Board time to consult with section and committee heads about their views.

"The Clammy Hand of Consistency Has Never Rested Long on My Shoulder," Arizona Senator Henry Fountain Ashhurst told his constituents in the 1930s. July Board action on changes to CR 5, 11, 19 and 26, passed in July in what has been called, in the general press, a move by Washington trial lawyers to end-run the Tort Reform Act, was rescinded when Governor Wayne Blair offered motions to reconsider and table further

action until September. Blair was outspoken after the last meeting in his view that there had been insufficient time for interested persons and bar groups to comment. Action on amendments to CR 26(b)(2), 34, 35(a), 37 and 45 were also put off until September.

"This Reminds Me of the Tale of the Blind—Ah, Not Sighted—Men and the Elephant," Governor Lem Howell told the Board after they heard a report from a Board committee studying how WSBA's CLE department can be whipped into profit-making shape. The committee—and executive director Dennis Harwick—noted that CLE is running a current deficit in part because of two practices—paying speakers their expenses of attending, and sharing revenues with WSBA sections. Though section members have been vociferous, as have other Bar members, about the need to cut expenses, Harwick said, they have been equally vociferous that these payments should be maintained.

A debate ensued over whether CLE should adopt a "business" model—taking the cream of topics, jettisoning out-of-way geographical areas and topics that draw small crowds in favor of big-name speakers and highest-common-denominator topics that'll fill the house every time, or a "service" model that continues to try to serve as many Washington lawyers as possible, offsetting losses on smaller topics with profits from the more-popular ones. Lem Howell and Alva Long led the charge for hiring a consultant to come in and evaluate CLE, noting the Seattle-King County Bar Association had done so and was running 50-plus CLEs a year with 2.5 staff. Others noted that SKCBA has a big audience pool at its doorstep, doesn't have to present CLE all over the state, doesn't pay its speakers, and doesn't share its revenue. The CLE committee will come back with more recommendations in September.

Friday Housekeeping: In other action, the Board took notice of state Supreme Court approval of the anti-harassment amendment of RPC 8.4 for publication in the January, 1993 proposed rules of court; approval of a $35 fee for APR 9 ("Rule 9") legal interns (except those working in law school programs providing free services to the poor); and approval of amending RLD 4.1 to clarify that summary judgment-type motions are not available in lawyer disciplinary matters.

The Board approved conferring the following awards at the Annual Meeting in September: the Award of Merit to William H. Gates, Jr.; the President's Award to Rep. Marlin Appelwick and Sen. Jeanette Hayner for their work in passing the Legal Services/Law Library Finding Bill; the Professionalism Award to Fred Campbell; the Angelo Petruss Award for Lawyers in Public Service to Steve Lundin; the Outstanding Judge Award to Whatcom County Superior Court Judge Marshall Forrest; the Pro Bono Award to Marla Elliott, the Spokane County Bar Association and the East King County Bar Association; the Courageous Award to Edward V. Hiskes for his pioneering work in low-cost lawyer access to computer databases in the face of considerable adversity; the Affirmative Action Award to the Seattle/Portland law firm Lane Powell Spears Lubersky, and a posthumous Lifetime Service Award to Mike Hemovitch.

The Board renewed appointments to the state Law Revision

Commission and the Board of Evergreen Legal Services, approved officers for the Disciplinary Board, and approved the nominations of president-elect Steve DeForest to chair WSBA standing committees. They put over to October consideration of a policy change requiring clearance of bar exam applicants by the Character & Fitness Committee before taking the exam. They voted to complete action approved last May to abolish the largely moribund WSBA Insurance Trust and transfer ownership of remaining policies from the Trust to the WSBA. They declined to take action, largely for budgetary reasons, on a proposal by Seattle lawyer Christopher Kane to create a task force to study elimination of barriers to the delivery of legal services across state and national boundaries in the Pacific Northwest.

The Board also approved a resolution to be presented to the ABA calling for judges to be given time, consistent with their judicial duties, to participate in public-education programs about the law. "With the Rodney King case, I think we all need to be out among the public as much as possible," Governor Tom Chambers commented in supporting the resolution. Cashmere lawyer Steve Crossland gave an update on the work of the Computerization of Law Division.

1991-1992 Finances: Economies Are Paying Off: Executive director Dennis Harwick told the Board economies he has imposed are working, and he was "cautiously optimistic" the current fiscal-year budget will come in without a deficit. The big maybe affecting that optimism is the bar convention in September, for which registration is presently low. If turnout is poor, money will be lost, and a deficit will follow. Governor Lem Howell, donning his WSBA treasurer's hat, commended Harwick for an excellent job in reducing expenditures.

Bullet-biting Time: Whose Bullet, and How Many of Us Have to Bite? Saturday the Board took up the report of the Budget & Audit Committee, consisting of governors Steve Tubbs, Mike Larson, WSBA Treasurer Lem Howell, and Chehalis lawyer Brian Kelly.

The committee's report noted they had approved section budgets with some adjustments, denied funding to the Lawyer Referral Service as part of its shutdown; approved a $50 late fee for bar exam applications; and denied a request from the state attorney general's office for funding a pamphlet they wanted to distribute. On a vote of 2-1-1 (Tubbs/Kelly aye; Larson nay; Howell abstaining) they cut a proposed CLE department deficit from over $200,000 to $100,000, approved a contingency fund of $100,000 in direct expenses and $20,000 in indirect (overhead) expenses, and approved a scaled increase in dues which would not raise dues for lawyers admitted two years or less (no change at $115); would raise dues $30 for lawyers in practice three to five years (to $225), and would raise dues $70 for lawyers in practice over five years (to $260). The committee then agreed to award $5,000 from the contingency fund budget to a SKCBA Young Lawyers' Division pamphlet project and Governor Larson switched his vote from nay to aye. Howell abstained on the amended budget vote.

After introducing the committee report, prepared July 10, Howell then attacked it with a July 20 letter he'd sent to the President and Board, reading it aloud. It said the Bar was

operating under incorrect assumptions, among which were that the Bar has a good staff-to-members ratio; that we never consider cutting staff, even if they are unproductive or inefficient; that we have to give staff raises; and that the CLE department works well. He then proposed $520,000 in expense reductions, mainly comprised of taking non-round numbers and turning them into lower, round ones. He proposed eliminating paying proctors at bar exams; reducing the *Bar News* promotion budget (That's how we generate advertising to make the *Bar News* pay all its direct expenses, and we recover the cost of promotion in increased ad sales, editor Lindsay Thompson replied); reducing CLE brochures cost ("too fancy," Howell said), catering and facility costs, and payment of staff and speakers to attend and run CLEs (We're already cutting those things, Harwick answered), reducing CLE speaker honoraria and indirect expenses (You'll eliminate most of the staff, leaving a program and no one to run it, and CLE's share of WSBA overhead will just have to be shifted to other departments, pushing them into deficits, Harwick responded); reducing Disciplinary Board costs (after Governor John Slater explained the operation of the Disciplinary Board, Howell conceded he'd cut too much), reducing the cost of the *Olympia Report*, a legislative session mailing to lawyers; and reducing Public Affairs overhead (read: staff) by $88,000 (Who do we cut? Where do we shift surviving operations of the department? How do I make cuts of this magnitude and not make program priority judgments? Harwick asked).

Budget & Audit Committee member Brian Kelly said he thought the proposed dues increases were proposed with younger lawyers in mind, and that the Board should not simply hack off limbs from the WSBA in a panic of budget-cutting. Governor Steve Tubbs said the Board had known the crunch was coming for some time and hadn't chosen to address rational, organized program reductions, or if those were needed. He called for the Budget & Audit Committee to continue its work, setting up a "sunset" program for Bar departments and programs to justify their continued operation, with CLE first on the block over the next couple of months.

Governor Alva Long said he wanted to abolish funding for random trust account audits, and all of the Public Affairs Department except the *Bar News*. He said it was the only Public Affairs program that was effective, and it was universally valued by members.

After a motion to adopt the budget as proposed, Board observers were invited to comment. Judge Dave Edwards said he thought the Board did a better job than people realized controlling expenses, and that they needed to review the programs of the Bar to concentrate on which ones work best. He praised the Board for its work in getting resolution of disciplinary cases sped up.

Morton Tytler said most government lawyers oppose a dues increase, and they always have. "People vote their pocket books," he said. "There's nothing startling to that." But, he said, he is telling his constituents what they don't want to hear—that the Board has been prudent in its management of the Bar's financial affairs and vigilant in avoiding needless expenditures. "I think the increase is justified."

Judge Richard Pitt said the Superior Court Judges' Association has the same problem: judges don't like paying dues, either. But they are necessary, and "I don't see how someone in practice can complain about the dues charged. I think they are cheap."

Mark Shepherd said he'd not talked to anyone who wanted to see dues increased. "To be frank, I haven't talked with anyone who wants to pay dues at all." He thought the graduated dues structure looked out for the interest of young lawyers with big

loans to pay off on starting or public-sector salaries, and that the Board should embrace the idea of sunset review of programs at once.

Barbara Clark said she supported the dues proposal. Jim Kaufman said most young prosecutors oppose any increase in dues. "Most people I've talked to would be willing to support half the proposed increase." He felt increasing dues would make it harder to get prosecutors to support things like increased pro bono hours. Victor Flatt was disappointed the Board was considering increasing dues before going through an exhaustive program review. Scott Smith, speaking for himself, said the real question was not one of money but the perceived effectiveness of some bar programs. Governor Mike Larson said he agreed with governors Howell and Long that big changes need to be made.

Young Lawyers chair Grant Johnson said the Board shouldn't be afraid of a referendum. "You've been making cuts in operations all year. You've been going around the state explaining the situation to bar members. Constituents are not saying they are unalterably opposed to a dues increase if its necessary.

Governor-elect Jan Peterson noted that fewer than half the lawyers in his district voted in the election he won, and that a mailing by Lem Howell to his 4,000 constituents asking for comments on the budget and dues got about 200 replies. "When people complain about dues, I think I'd say, `Where the hell were you? You didn't write, you didn't speak up, you didn't volunteer. Send me your money.'" He thought, as a practical matter, the budget and dues would be a hard sell without some sacrificial cuts.

After some more discussion, the Board voted 6-4 to approve the budget and dues, Governors Howell, Long, Schultz and Slater opposed. Slater noted for the record that he wasn't necessarily opposed to a dues increase, just the one proposed.

The Board then voted to allocate funds from the new budget for an ABA study of the Bar's disciplinary system to find ways to improve its operation and cost, and, on a motion by Governor Tom Chambers, to fund a task force to find ways to coordinate the operations of the state's legal-service organizations to make them more efficient and cost-effective.

Governor Tubbs then moved that the Budget & Audit Committee begin an immediate sunset review of Bar programs, and he suggested CLE and conventions come first. After some discussion, it was approved.

The Board then heard a report from Bob Boruchowitz on the need for support of legislative initiatives to increase state funding for indigent criminal defense at the trial and appellate levels, and they approved a resolution calling for it.

Coming Meetings: September 16, 1992 (Bar Convention, Vancouver, B.C.); October 30-31, 1992 (Pasco); December 4-5, 1992 (Bellevue); January 8-9, 1993 (Olympia); February 12-13, 1993 (Tacoma); March 26-27, 1993 (LaConner); May 7-8, 1993 (Spokane); June 18-19, 1993 (Leavenworth); July 30-31, 1993 (Winthrop); September 7, 1993 (Bar Convention, Victoria, B.C.); October 22-23, 1993 (TBA); December 3-4, 1993 (TBA).

DIGEST

Notices of Interest to WSBA Members

WSBA Disciplinary Notices:

Disbarred: Based upon his stipulation to disbarment, Newport attorney **Louis Musso, III** (admitted 1980, WSBA #11229) has been ordered disbarred effective May 29, 1992 by the Supreme Court of the State of Washington. He stipulated that based upon his first degree theft conviction a hearing would have resulted in a finding that he converted client trust finds to his own use and that he could not have shown sufficient mitigation to avoid disbarment. [June 3, 1992]

Suspended: Washington lawyer **Alan Lee Daugherty** (admitted 1979, WSBA #09114), has been ordered suspended from the practice of law for thirty days, by Stipulation approved by the Supreme Court of the State of Washington on June 4, 1992. This suspension was based upon Daugherty's actions in drafting and serving a defamation complaint on a person who had complained about him to the Washington State Bar Association, with the intent of using the defamation suit to affect visitation rights with his nephew, and, in another case, upon his actions in asserting claims for which there was no good-faith basis. The suspension shall begin upon Daugherty's return to active status from his current inactive status. [June 11, 1992]

Suspended: Sumner lawyer **Vernon L. Skeels** (admitted 1974, WSBA #5820) was ordered suspended for a period of five months based on a Stipulation to Discipline effective June 2, 1992. Skeels' discipline was based on negligent misuse of escrow funds and noncooperation in the investigation. Upon reinstatement, Skeels will be on probation under a variety of conditions for a period of two years. [June 16, 1992]

Censured: Renton attorney **Douglas J. Hansen** (admitted 1985, WSBA #15432) has been ordered censured pursuant to a Stipulation for Discipline, based upon his providing a client with specific answers and advice on how to answer the Washington Alcohol Screening Inventory Questionnaire so as to indicate that the client seldom drank alcohol and had no drinking problem. His action in telling the client how to answer the questions violated RPC 8.4(c), which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, and RPC 8.4(d), which prohibits conduct prejudicial to the administration of justice. [June 9, 1992]

WSBA Nondisciplinary Notices:

Interim Suspension: Effective June 8, 1992, Kirkland attorney **John M. Woodley** (admitted 1973, WSBA #04917) ordered suspended from the practice of law pursuant to RLD 3.1, based on his conviction of 44 felonies in the U.S. District Court for the Western District of Washington.

Interim suspension is pursuant to RLD Title 3 and is not a disciplinary sanction. [June 10, 1992]

Public Notices:

Ninth Circuit Electronic Bulletin Board:

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

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

In re RCW 19.52.120(1): Legal Interest Rate ("Usury Rate"):

The average coupon equivalent yield from the first auction of 26-week treasury bills in July 1992 is 3.42%. The maximum allowable interest permissible for **August 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; and on page 55 in June 1991 for 1985-91.

WSBA L.A.W. BBS Update:

[Also published on page 29 of the July 1992 *Bar News]*

To reduce busy signals, LAW B.B.S. has installed five Seattle lines. They are: Node 1: (206) 727-8312 (9600 v.32 modem); Node 2: (206) 728-2884 (9600 v.32 modem); Node 3 (206) 728-2885 (9600 v.32 modem); Node 4 (206) 728-2886 (2400 modem); Node 5 (206) 728-2887 (14400 HST/DS v.32 modem).

Legal databases can be searched for occurrence of words of phrases in combination with others. Current LAW B.B.S. full-text database offerings include:

Revised Code of Washington
(11/1991) [statutes]
Washington Administrative Code
(03/1992) [regs]
Washington Reports, 2d Series
(1977-91) [wa s ct]
Washington Appellate Decisions
(1977-91) [wa app ct]
Washington Court Rules
(09/1991) [procedure]
Federal Rules of Civil Procedure
(12/1991) [fed court]
Washington Administrative Law:
New
Dept. Revenue Excise Tax Bulletins
Board of Industrial Ins. Appeals
City and County Ordinances:
Pierce County Code
WSBA Ethics Opinions
(12/1991) [bar assn]
New
Washington Community Property
(1989) [deskbook]
UpdateWashington Corporation Listings
(05/1992) [state]

Court Rule Changes:

On June 4, 1992 the Supreme Court of the State of Washington approved a processing and administration fee of $35 to be charged to all Rule 9 Legal Intern applicants. That fee will be waived for Rule 9 interns enrolled in a law school clinical program that provides free legal services for low income clients, during the period of enrollment. The fee became effective on the date of the order.

New ABA Section in the Works

The American Bar Association's Standing Committee on Dispute Resolution chair Robert D. Raven announced that the committee has unanimously voted to begin the process of become an ABA section. Section status will open up the ABA to the burgeoning number of attorneys and professionals who have become involved in this approach to the resolution of disputes and wish to actively participate with the standing committee.

The timing is perfect for the ABA, since there is the fortuitous coincidence that a former ABA Dispute Resolution Committee chair, Sandy D'Alemberte is the current ABA president, and a former president, Bob Raven, is the current committee chair.

Since 1976, the ABA has been a national leader in guiding the dispute resolution field: first, as the Special Committee on Resolution of Minor Disputes and now, as the standing committee.

Creating and operating the National Dispute Resolution Resource Center and the Multi-door Courthouse (Dispute Resolution) Center Project have been the highlights. Activating law schools, bar associations, the ABA and government entities have been the committee's goals.

Attorneys interested in joining the new ABA section may call Larry Ray at (202) 331-2660 or write him at the American Bar Association, Standing Committee on Dispute Resolution, 1800 M Street N.W., Suite 200, Washington, D.C. 20036.

Coming in the September issue:

LAW PRACTICE MANAGEMENT

- Lawyers in the Dark
- Hidden Costs of Automation
- Profile: The Computer Detective
- The Cost of Collecting Fees
- Survey of Trends in Law Office Management
  - Paralegals: Has Pandora's Box Been Opened?
  - CD Technology: Solving the Chicken/Egg Problem
  - Keeping Lawyers Happy
  - You Can Let Your Fingers Do the Walking, But Do You Know Where They Are Going?
  - Law Firm Economics: Not the Best of Times, or the Worst

Notice of Board of Governors Special Advisory Election For Ninth Congressional District

As a result of the 1992 Congressional redistricting, Washington State now has nine congressional districts. The WSBA Bylaws provide for one Governor from each congressional district. The Bylaws also provide that the Board of Governors shall appoint a resident of a congressional district to serve in the event of a vacancy in that district.

As it has done before when a new congressional district was created, the Board of Governors will conduct an advisory election among the residents of the Ninth District to nominate a member to fill this vacancy.

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

Nominating petitions can be obtained from Jo Morehouse at the WSBA office, 500 Westin Building, 2001 Sixth Avenue, Seattle, Washington 98121-2599; (206) 727-8244. Petitions must be received by the Executive Director of the WSBA by 5 p.m. on Friday, September 25, 1992. The Board of Governors will then determine the official date of the election.

August 1992

4-6 Seattle (8/4), Spokane (8/5) and Vancouver (8/6): Boundary Disputes in Washington. *Sponsored by*: National Business Institute, Inc. *For information*: (715) 835-7909.

7 Seattle: Essentials of Evidence I- video replay. *Sponsored by:* WSBA CLE. *For information:* (206) 727-8202.

7 Olympia: How to Draft Wills I- video replay. *Sponsored by:* WSBA CLE. *For information:* (206) 727-8202.

7 Tacoma: Family Law in the '90s I- video replay. *Sponsored by:* WSBA CLE. *For information:* (206) 727-8202.

11 Bellevue: Considerations in Buying or Selling a Business in Washington. *Sponsored by:* National Business Institute, Inc. *For information:* (715) 835-7909.

14 Seattle: Essentials of Evidence II- video replay. *Sponsored by:* WSBA CLE. *For information:* (206) 727-8202.

14 Olympia: How to Draft Wills II- video replay. *Sponsored by*: WSBA CLE. *For information:* (206) 727-8202.

14 Tacoma: Family Law in the '90s - video replay. *Sponsored by:* WSBA CLE. *For information:* (206) 727-8202.

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

18 Seattle: Construction Claims and Job Profitability in Washington. *Sponsored by:* National Business Institute, Inc. *For information:* (715) 835-7909.

21 Seattle: Million-Dollar Closing Arguments I- video replay. *Sponsored by:* WSBA CLE. *For information:* (206) 727-8202.

21 Tacoma: How to Probate an Estate I- video replay. *Sponsored by:* WSBA CLE. *For information:* (206) 727-8202.

21 Everett: Guardian Ad Litem Training: video replay. *Sponsored by:* WSBA CLE. *For information:* (206) 727-8202.

22-28 Seattle: Advanced Constitutional Criminal Procedure. *Sponsored by:* American Academy of Judicial Education. Reprinted from the National Center for State Courts Master Calendar. *For information:* (205) 391-9055.

22-28 Seattle: Literature and Law. *Sponsored by:* American Academy of Judicial Education. Reprinted from the National Center for State Courts Master Calendar. *For information:* (205) 391-9055.

23-27 Vancouver, B.C.: Appellate Judges' Seminar. *Sponsored by:* National Center for State Courts. Reprinted from the National Center for State Courts Master Calendar. *For information:* Marie Owens or Sandra Roos, (312) 988-5696.

27 Spokane: Estate Planning for the Elderly Client in Washington. *Sponsored by:* National Business Institute, Inc. *For information:* (715) 835-7909.

28 Seattle: Evidence. *Sponsored by:* WSTLA. *For information:* (206) 464-1011; fax (206) 464-0703.

28 Seattle: Million-Dollar Closing Arguments II- video replay. *Sponsored by:* WSBA CLE. *For information:* (206) 727-8202.

28 Tacoma: How to Probate an Estate II- video replay. *Sponsored by:* WSBA CLE. *For information:* (206) 727-8202.

28 Everett: Client Trust Accounts: IOLTA- video replay. *Sponsored by:* WSBA CLE. *For information:* (206) 727-8202.

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

September 1992

2 Seattle: Maritime Workers' Compensation in Washington: Issues and Answers. *Sponsored by:* National Business Institute, Inc. *For information:* (715) 835-7909.

9-11 Seattle: Taking and Defending Depositions. *Sponsored by:* National Institute for Trial Advocacy/UW School of Law. *For information:* Michael Reiss (206) 628-7750; John J. Sullivan (206) 543-7366.

11 Seattle: Litigating a Business Tort Case. *Sponsored by:* WSBA CLE. *For information:* (206) 727-8202.

11 Seattle: Criminal Defense. *Sponsored by:* WSTLA. *For information:* (206) 464-1011; fax (206) 464-0703.

11 Seattle: Private/Public Restraints on Free Speech and the Arts. *Sponsored by:* Washington Lawyers for the Arts. *For information:* (206) 547-6993.

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

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

16-19 Vancouver, B.C.: WSBA Convention and Annual Meeting, Hyatt Regency Hotel, Vancouver, B.C.

16 10:30-5:00 p.m.: Registration and Exhibit Hall open.

1:00-3:00 p.m.: CLE presentation: The Trials of Life- Managing Stress in the Practice of Law.

1:00-5:00 p.m.: CLE presentations: Sentencing in Washington- From State District Court to Federal District Court;

The Changing Rules of Doing Business with State and Municipal Agencies- New Risks, New Contracts and New Cooperation; Starting a New High-tech International Business.

3:00-4:30 p.m.: General Practice Business Section Meeting.

5:00-6:30 p.m.: Judicial Arbitration and Mediation Services Reception.

6:30-8:00 p.m.: Welcoming Reception, sponsored by Microsoft Corporation.

17 7:30 a.m.-2:30 p.m.: Registration/Information Desk and Exhibit Hall open.

8:00 a.m.-noon: CLE presentations: International Business and Alternative Dispute Resolution; Meeting the Challenges of the Americans with Disabilities Act; Protecting Ideas and Creativity.

10:00 a.m.-noon: CLE presentation: Double Your Challenge, Double Your Fun- Managing the Two Career Family.

12:15 p.m.-1:15 p.m.: WSBA Awards Luncheon, featuring CNN newsreader Catherine Crier.

1:30 p.m.-8:00 p.m.: Golf Tournament, Newlands course.

1:30 p.m.-6:00 p.m.: Tennis Tournament, Salmon Fishing Trip, Tour of the Law Courts, Improv Workshop.

6:00-7:30 p.m.: Reception, B.C. International Commercial Arbitration Centre, sponsored by BCICAC and American Arbitration Association.

6:00-7:30 p.m.: University of Puget Sound Alumni Reception.

8:00-midnight: Dance the Night Away, featuring the band Bufflehead, which in turn features two moonlighting Bogle & Gates lawyers.

18 7:00 a.m.-3:00 p.m.: Registration/Information Desk and Exhibit Hall open.

7:00 a.m.-8:30 a.m.: Gonzaga University School of Law Alumni Breakfast.

8:30 a.m.-11:45 a.m.: Spouses/ Guests: Tour and Breakfast on Grouse Mountain.

8:00 a.m.-noon: CLE presentations: Evidence for the Trial Lawyer/Washington Case law Review with Cornell Law Professor Faust Rossi; Current Developments and Tax Traps for the Unwary, with Emphasis on the General Practitioner; Technology Driving Regulation.

10:00 a.m.-noon: CLE presentation: Access by Women and Minorities to the Legal Profession.

12:45 p.m.-1:45 p.m.: WSBA Awards Luncheon featuring author James B. Stewart.

2:00 p.m.-2:30 p.m.: Book autographing with James B. Stewart.

2:15 p.m.-5:00 p.m.: WSBA Annual Business Meeting.

5:30 p.m.-7:00 p.m.: University of Washington School of Law Alumni Reception.

6:00 p.m.-7:00 p.m.: Sports Awards and Exhibitor Prizes Reception.

7:00 p.m.-midnight: You Must Remember This: An Evening in Casablanca, featuring the Mark

Hasselbach Orchestra.

19 8:00 a.m.-noon: Registration and Information Desk Open.

9:00 a.m.-noon: CLE Finale: Ethics and Professionalism in America—Has the Pendulum Swung Too Far? *For information:* (206) 727-8200.

For CLE information (15 credits offered): (206) 727-8202.

25 Seattle: Water Rights Law. *Sponsored by:* WSBA CLE. *For information:* (206) 727-8202.

25 Seattle: Living Trusts. *Sponsored by:* WSBA CLE. *For information:* (206) 727-8202.

25 Seattle: Evaluating P.I. Cases. *Sponsored by:* WSTLA. *For information:* (206) 464-1011; fax (206) 464-0703.

October 1992

2 Seattle: The Conflict of Law and Journalism. *Sponsored by:* WSBA Bench/Bar/Press Committee. *For information:* Pam Love, (206) 727-8250.

2 Seattle: Tort Law Update. *Sponsored by:* WSTLA. *For information:* (206) 464-1011; fax (206) 464-0703.

8-10 Seattle: 1993 Affirmative Action Briefing. *Sponsored by:* NELI. For information: (415) 924-3844; fax (415) 924-2908..

9 Seattle: Critical Employment Law Liability Issues. *Sponsored by:* WSBA CLE. *For information:* (206) 727-8202.

15 Seattle: Tax Issues and Bankruptcy. *Sponsored by:* WSBA CLE. *For information:* (206) 727-8202.

22 Seattle: Incorporating a Business. Sponsored by: WSBA CLE. For information: (206) 727-8202.

23 Mediation Skills and New Federal Local Rule CR 39.1. *Sponsored by:* Federal Bar Association. *For information:* Harold Vhugen, (206) 624-8844.

30 Seattle: Growth Management Conflicts. *Sponsored by:* WSBA CLE. *For information:* (206) 727-8202.

30 Seattle: Asset Forfeiture and Money Laundering. *Sponsored by:* WACDL. *For information:* (206) 623-1302; fax (206) 623-4257.

November 1992

13-14 Vancouver, B.C.: Hospital and Health Law Seminar. *Sponsored by:* Washington State Society of Hospital Attorneys. *For information:* Erik H. Rasmussen, (206) 552-1110.

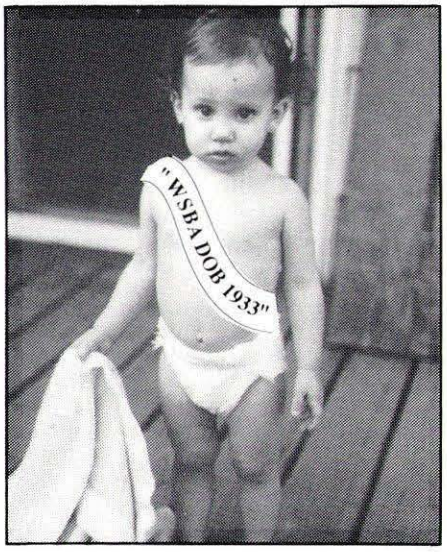
December 1992

11 Seattle: Criminal Law: The Year in Review. *Sponsored by:* WACDL. *For information:* (206) 623-1302; fax (206) 623-4257.

FEE DEBATE ☞

FOR GAWDS SAKES PAY ATTENTION

No one will change me unless you do.



AND HERE'S HOW!

On September 18th at Hyatt Regency from 2:15 p.m. to 5 p.m. in Vancouver, B.C. Attend the WSBA Annual Business Meeting & support the following resolutions that have been suggested to me as reflecting the view of majority membership.

Be it Resolved:

WSBA membership dues shall not be increased unless and until the increase has been approved by a vote of the membership.

Be it Resolved:

Effective October 1, 1993, revenue obtained from the mandatory dues assessments of the Washington State Bar Association shall not be used for purposes other than administering and carrying out those functions necessary to regulate the practice of law in Washington State.

Be it Resolved:

Effective October 1, 1993, the Continuing Legal Education Department of the Washington State Bar Association shall cease operations.

Be it Resolved:

Effective October 1, 1993, the Washington State Bar Association shall cease funding for the Law Related Education/Mentor program.

Be it Resolved:

Effective October 1, 1993, the Washington State Bar Association shall cease funding random audits of lawyers' books and records pursuant to RLD 13.1(a).

Be it Resolved:

Effective October 1, 1993, the Washington State Bar Association shall no longer subsidize direct expenses incurred by the Young Lawyers Division.

Be it Resolved:

Article II, Section A of the Bylaws of the Washington State Bar Association shall be amended to permit any active member of the Association to stand for election to its Board of Governors, except that no member shall be eligible to serve more than two terms.

The approval of these resolutions will substantially change WSBA bureaucracy. Dues could ONLY be spent on the licensing of lawyers (bar exams, etc.) and lawyer discipline. All other functions of the bar as they are now in place, would be funded by voluntary contribution from individual members only.

We in affect would bifurcate WSBA.

We CAN start over and design OUR participation individually and collectively in accordance wirh our perceived present needs.

We would give voice to the heretofore voiceless and power to the heretofore powerless.

BE THERE!!
VOTE THERE!!

We can do what will otherwise never be done.

Please mail this ad to an Out of County Lawyer who might support us. Let our people know.

"Sponsored by Alva Long individually, not paid for or endorsed by SKCBA or WSBA obviously."

As more fully described in "The Board's Work," the BOG adopted a budget for the 1992-1993 fiscal year which includes a scaled increase in bar fees. Below are pro and con arguments by members of the Board.

YES

The Board of Governors has voted to increase the annual licensing fee by $65 to $260 per year for members who have been in practice for more than five years. After six years without any increase in licensing fees, several factors have culminated in the elimination of any reserves, and a budget forecast of another deficit unless additional revenues are generated.

The principal factors contributing to the current zero fund balance are inflation, an upgrade of office equipment to current standards, increased demands for services by differing interests within the Bar, and a shortfall in CLE seminar revenues.

The Board has elected not to simply reduce the number of programs offered as the only solution to this problem. There are limited options available. Seventy to 80% of staff time is devoted to mandatory and critical functions of the Bar. Comparisons with our neighbors show that we run a very efficient operation—our fees *after* the increase will be the second-lowest among the eight western states of the western-states Bar conference. Our organization has one of the most favorable ratios of personnel to members within the conference. Each of the programs currently offered is the result of a demonstrated need. However, the value of each program and the objectives being served need to be reexamined. Therefore, in conjunction with the fee increase, the Board has approved the establishment of "sunset review" of every nonmandatory program. A special committee is already at work reviewing the WSBA CLE seminar program.

In addition, the Board has made significant cuts, including the Lawyer Referral Service (program eliminated); Bar leadership (budget for the Board was reduced by 20% this year, and a ceiling was imposed upon expense reimbursement for ABA delegates); and CLE seminars (expenses for next year's budget were reduced by $200,00.00, with direction to the director to determine where appropriate cuts are to be made).

Many lawyers have been critical of funding of any optional programs and have asked, "What has the Board done for me lately?" All members benefit from the work of certain committees. The Legislative Committee, for example, reviews pending legislative matters affecting the practice of law, the courts and the justice system. This year the WSBA successfully promoted a filing-fee increase, which will result in expenditure of $2.4 million in the biennium for legal services for the poor—thereby reducing substantially the pressure for mandatory pro bono. The WSBA has subsidized the efforts of the Computerization of Law Division (COLD) in developing the Bulletin Board System. This is a very promising development which should reduce costs for practicing lawyers as well as making information and data more accessible. The TEL-LAW program reaches over 100,000 callers having legal questions which might not otherwise have been answered, thereby reducing demand for low-cost access to justice. The Court Rules Committee has made extensive recommendations for changes in the Civil Rules, which the Board is currently considering. The use of volunteers has kept the budget for discipline down. As a result, the Bar has only one half the number of staff disciplinary attorneys recommended by the ABA for our caseload. A problem with ethical questions? Call the Bar office. Of course, all of this is not news, as the *Bar News* publishes the work of the Board and the Bar monthly. This is only a short list. The WSBA does lots, every day and all the time, for its members.

Another program which is often criticized is the Lawyer Assistance Program, or LAP. The benefits of this program are direct for those participating and indirect for the rest of us. The Bar benefits from any program which prevents the disciplinary system from getting involved and which keeps impaired attorneys out of the public eye. Oregon has a Professional Liability Fund (mandatory malpractice insurance) which has studied the correlation between claims and impairment due to addiction or mental disease. As a result, Oregon has decided to spend $40 per attorney on its LAP program, up from $13. Washington will spend $11 per attorney. Our low costs result from the extent of involvement by volunteer peer counselors, who conduct group therapy sessions. The question is, do we pay now, or pay more later for discipline and the client security fund.

The amount of the increase has also been questioned. However, when viewed in the context that no increase has occurred in the last six years, that increase is less than 5% per year. Second, the hole we're in is substantial. We need a contingency fund to pay unanticipated expenses. The Bar also has an obligation to sections, which had accumulated paper surpluses from prior activities, to approve projects which reflect their prior thrift. In addition, our independent accountants recommend a reserve fund of 10% of the annual operating budget. Contingency, reserve and section funds are all presently at zero. Fiscal prudence dictates that they be reestablished.

In addition, we need to project our needs into the reasonable future. Most bars typically experience a surplus for two to three years following an increase in fees, and then a year of level activity, followed by a year or two of deficits, prompting another increase. That is what occurred over the past six years. The alternative would be smaller, more frequent increases, with less flexibility to respond to changed conditions.

The bottom line is that we have an efficient bar. We pay substantially less then our most comparable sister states (Oregon and Arizona). The cost of licensing for a practitioner with five years' experience is fair, and it reflects our standing as members of a proud profession. No one on the Board has a vested interest in the amount of fees which the Bar assesses. Rather, this increase reflects its forecast of the requirements of the Association as a unified bar for the next five years.

The pro position was written by Governor Steve Tubbs

MORE ☞

As more fully described in "The Board's Work," the BOG adopted a budget for the 1992-1993 fiscal year which includes a scaled increase in bar fees. Below are pro and con arguments by members of the Board.

NO

Issue: Is a Bar Dues Increase of 30% Justified?

Answer: No

Facts:

The WSBA Board of Governors at its July 31 - August 1 meeting voted 6 to 4 (Howell, Long, Shulz and Slater opposed) to increase dues as follows:

0-2 years of practice	$115	(No increase)
3-5 years of practice	$225	($30 increase)
5 years plus of practice	$260	($70 increase)

The budget as adopted "limits" the deficit from CLE seminars to $100,000. On the CLE seminar section of the budget there is an item "Revenues Over (Under) Expenses (100,000)" and another item further up the page "deficit" $210,063. The idea is to tell the executive director that he is limited to a $100,000 deficit in CLE seminars and not $310,000. There is an attempt to justify this because there is a $90,000 profit in CLE publications. That will not wash. CLE publications has its own budget.

The Board continues to refuse to set policy. The executive director has classified CLE as "critical" and the Board merrily goes along. It is not critical. It is discretionary. It should not take 10 staff persons to put on 45 CLEs when SKCBA does more seminars with 2.5 staff.

God forbid that we start talking about cutting staff. That is the name of the game folks. Of course the executive director does not want to lay off people. You have to do what you must. There is no justification that CLE seminars should not break even when others like SKCBA and WSTLA make money. The Board has budgeted over $510,000 for CLE in seminar indirect expenses, which hopefully will be reduced. The CLE seminar budget includes $29,500 in honoraria. ATLA and WSTLA do not pay honoraria. The CLE seminar budget has allocated $135,240 for staff/speakers (travel/lodging/meals).

In Public Affairs we have a budget of $316,096, $238,319 of which is for indirect expenses. The major part of indirect expenses are salaries and benefits.

Lest I be misunderstood, let me make it clear that I believe that the executive director has done an outstanding job of cutting expenses, especially the cost of the Board of Governors meetings and also in recommending increases in user fees.

However, for some reason there is lethargy in the Board in setting priorities and being realistic, especially in CLE projections.

I started out by saying a 30% dues increase is unjustified. It is unjustified until we end inefficient operations, set priorities, and lay off staff, unpalatable though that may be.

The con position was written by Governor Lem Howell

An Overview of DSHS Process and Programs

by **Kathleen Shober**

The need to plan for long-term care is critical. In addition to medical costs, nursing home care can cost $6,000 per month. It is not unusual to see rates as high as $21,000 per month for exceptional care. Less-intensive care may cost $1,500 per month. Medicare pays a very small portion of necessary care, particularly if the need is chronic. An understanding of medical assistance is important in assisting clients in domestic relations, estate planning and personal injury claims.

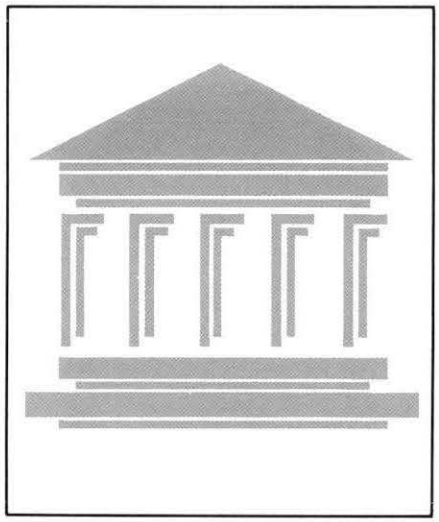
This article provides an overview of medical-assistance services available and offers strategies for accessing them. Washington Administration Code (WAC) references are provided so that the reader may research specific eligibility criteria.

DSHS Organization

Medical assistance is administered by the Department of Social and Health Services (DSHS), an umbrella state agency that administers a broad range of health and human services.

DSHS is divided into six major sections: Medical Assistance, Health and Rehabilitative Services, Economic Services, Aging and Adult Services, Children, Youth and Family Services, and Management Services. Fair hearings are administered through the Office of Administrative Hearings, a different organization from the DSHS. Office of Appeals, which is, however, a DSHS unit.

Medical assistance policy is developed by the Medical Assistance Administration, while income assistance policy is developed by the Division of Income Assistance in the Economic Services Administration. Both the income assistance programs and eligibility for the medical assistance programs are administered locally by the Community Service Offices (CSO) which report to the Director of the Economic and



Medical Field Services Division. Social-service policy for the aged, blind, or disabled population is developed by the Aging and Adult Services Administration, and its field services are administered within the administration.

The department field staff is organized into six geographic regions. Eligibility services for income and/or medical assistance are provided through CSOs, which have geographic boundaries and provide the full range of services. In Spokane, Seattle, and Tacoma, there are alternate-care offices each of which handles applications and maintenance for nursing homes, adult family home cases, COPES, and many of the hospital applications for the urban area.

Eligibility for income and/or medical assistance is determined by financial service specialists (FSS). Social services for the aged, blind, and disabled population are provided by Aging and Adult Field Services (AAFS). AAFS is usually collocated with the CSOs that serve the same population. The CSO social service staff provide family social services and incapacity determinations. The CSO social worker is also responsible for assisting a client who appears disabled—but has not received a Social Security determination of disability—in obtaining a disability determination from the Social Security Administration; this includes obtaining and forwarding the necessary medical and social documentation.

A CSO has an administrator, and the large urban offices sometimes have a deputy administrator. Staff are organized functionally, usually with one social-service unit, several financial units and clerical units. First-line supervisors usually report to the CSO administrator, who reports to a regional administrator. Each regional office has several program staff with a high level of expertise in their program area. AAFS has a regional administrator, and the first-line supervisors report directly to the regional administrator. The CSO and AAFS will coordinate services and make referrals to one another.

Manuals—Sources of Eligibility Information

The CSO uses the WAC (Manual A) to determine eligibility for assistance and procedural Manual F. If Manual A and Manual F conflict, Manual A controls. Manual F is usually updated before Manual A, so it is frequently necessary to find the rule-making order for a WAC revision to obtain a reference. These are posted in each CSO.

Manual A is developed by policy staff from state law, the Code of Federal Regulations (CFR), the federal Medicaid Manual and federal law. The Medicaid Manual primarily clarifies sections of the CFR, but it is incomplete in that it does not cover the entire CFR. The federal government provides a "pre-print" that states use to develop its requisite state plan. (Telephone interview, Kearns, Tom, program manager for Medical Assistance Administration, DSHS.)

You can purchase and subscribe to the following manuals: Manual A without binders, $33.99; Manual F without

binders, $62.31; Manual F with binders, $96.98. Order them from DSHS, Office of Financial Recovery, P. O. Box 45862, Olympia, WA 98504-5862. Include a note indicating which manual you want, your address, etc. You will automatically be mailed revisions and be billed for these at the end of the year. In 1991, revisions for Manual A cost $161.80, and revisions for Manual F were $115.27. (Telephone interview, Nottage, Marlene, office manager, Manuals Production and Distribution, DSHS.) You may ask to review manuals at any of the CSOs. A copy of the state plan can be purchased for about $30 through public disclosure procedures.

The Manual F counterpart for Aging and Adult Services is the Aging and Adult Services Field Manual. The CSO social services procedural manual is called the Social Service Manual.

Overview of Medical Care Programs

DSHS provides a medical-assistance program designed to meet the healthcare needs of those eligible according to categorical and need criteria. WAC 388-81-005. Medicaid is the federally funded medical-assistance program administered by DSHS. The cost of medicaid is matched by the federal government. From October 1990 to September 1991, the state paid 45.79% of the cost, and the federal government paid 54.21%. ("Briefing Book, 1991," Washington State DSHS.) The state also administers a state-funded medical program.

Categorically Needy (CN) is a federally matched program that provides full-scope medical care at no cost for people who are blind, disabled, or aged. The Aid to the Blind program requires persons to meet the definition of statutory blindness (minimum of 20/200 or less in the better eye with the best correction). The Disability Program requires that a disability both be be severe enough to prevent employment and expected to last at least a year; the determination must be granted by the Social Security Administration to qualify. The Aged Program requires that the person be at least 65 years old. ("Medical Assistance Eligibility Overview," Medical Assistance Administration, February, 1992.) The CN client must also meet specific income and resource eligibility criteria.

The Limited Casualty Program (LCP) provides medical assistance to two types of people not eligible for CN: Medically Needy (MN) and Medically Indigent (MI). MN is a federally matched program that provides medical assistance to people who are categorically related to CN, but are over the CN income or resource standards. People with income above the MN standard can "spend down" or offset their excess income with medical expenses. ("Medical Assistance Eligibility Overview," Medical Assistance Administration, February, 1992.)

The MI program is state-funded and

provides medical assistance to people with an acute and emergent need but not eligible for any other medical program. There is an Emergency Medical Expense Requirement (EMER) in addition to spenddown. Persons are eligible for the duration of treatment, usually three months or less. RCW 70.170 prohibits hospitals from billing individuals whose income is at or below the Federal Poverty Level, regardless of resources. There are certain other restrictions placed on hospitals for billing this population. ("Medical Assistance Eligibility Overview," Medical Assistance Administration, February, 1992.)

The Medical Application Process

Each applicant must complete an application form designated by the department. WAC 388-84-105(2)(b). If the client is unable to complete the application form, a relative or representative may do it on the client's behalf. WAC 388-84-105(2)(c). To avoid a delay in the process, be sure that every question is answered, and that the application is signed. Somewhere on the application, notate who is handling the applicant's affairs. Lastly, # 7 of the application asks what assistance the person is applying for. Unless you are certain that your client is ineligible for needed services, request them on the client's behalf. Check "other" if your client is in need of social services.

The department conducts a face-to-face interview unless it has adequate information to determine eligibility for medical programs, or the client requests that the office interview be waived, or the client is unable to come into the CSO, has no representative to complete the interview or is unable to name one. WAC 388-84-105(3)(b). If the office interview is waived, the department may complete the application process through a home visit, a telephone interview or the mail. WAC 388-84-105(4).

Time limitations are imposed on both the department and the client for application completion: within 45 days for a medical applications except those based on an application pending disability determination, for which the department has 60 days. WAC 388-84-110 (1). These time standards may be extended for various reasons—including client delays—but not for administrative burdens. WAC 388-84-110(3). Day one is the date following the date of application. WAC 388-38-110(1).

The applicant is allowed a reasonable time of not fewer than 10 calendar days to provide statements in support of the application. This time can be extended by the department for a variety of reasons, including reasonable requests by the applicant, orally or in writing, for additional time to provide statements or verification in support of the application. WAC 388-38-045(2). Without an extension, an application will be denied punctually if there is no response within the 10 calendar days.

If an application is denied for failure to provide requested statements in

support of the application, and the client subsequently requests a fair hearing regarding the denial, the issue in such de novo hearing is whether the applicant can in fact establish his/her eligibility for assistance. WAC 388-38-110(2)(b)(i). The fair-hearing request must be timely.

The department may rescind a denial and approve assistance based on a denied application when the applicant, within 30 days from the date of denial, provides additional information needed to establish eligibility; or following this 30 day period, the applicant timely requests a fair hearing to appeal the denial and provides the additional information needed to establish eligibility. WAC 388-84-110(7). The department may also administratively rescind an erroneous denial that exceeds the manual and fair-hearing time limitations, but this normally requires supervisory or administrative approval.

All factors of eligibility must be verified unless the department determines that eligibility can be accurately determined without verifying one or more of the factors. WAC 388-38-200(4). An applicant is not required to provide a verification document for which a fee is charged unless the department authorizes the payment for such fee. WAC 388-38-200(10). Typical items of verification usually requested are: identification; marital status verification; current address verification; Social Security card; verification of the value of all liquid and nonliquid assets; income verification; guardianship or power of attorney documents.

Notice of the disposition of an application is required; those denied must include the reasons for denial and the rule that supports the action, date of the decision and the right to a fair hearing. WAC 388-38-172. The date an application is denied is the date that the notice of the decision is mailed or given to the client. WAC 388-38-129(4)(b).

The effective date of eligibility for CN is the first day of the month if the individual is eligible at any time during the month of application. WAC 388-84-115(2). The effective date of eligibility for MN cases is the first day that spenddown is met, except that, if the MN case meets spenddown while in a hospital, the effective date of eligibility is the first of the month in which spenddown is met. WAC 388-99-050(2). The effective date of eligibility for MI cases is the first day that spenddown and the EMER have been met. WAC 388-100-020(2). A person must, however, meet resource eligibility on the first day of the month.

Retroactive medical reimbursement is available for CN and MN back to the first of the third month preceding the month of application, provided that the medical services received were covered, and the individual would have been eligible had (s)he applied. WAC 388-84-115(1).

An MI client may be certified as eligible up to seven working days prior to the date of application if the medical condition was emergent, and the person was otherwise eligible. WAC 388-100-020. The CSO may waive the seven-day rule if the person failed to apply for medical reasons or other good cause. Man. F 33.45 C(1)(b).

Spenddown is applicable to the MN and MI programs, although spenddown for MI is often referred to as a medical expense. Spenddown is the excess income when income after exclusions and deductions is compared to the medically needy income level (MNIL). This excess income is available to pay medical expenses/obligations. Spenddown liability for MI also includes excess resources. Man. F 33.25 E(3)(b). Incurred expenses are deducted from the spenddown liability until the liability is reduced to zero. Man. F 31.27. Medical coupons (or card) are not authorized until the applicant has incurred medical expenses above the spenddown liability. Man. F 31.27(B)(1). Once medical bills are used for a calculation that results in an approval, the bills cannot be reused, even if unpaid, for subsequent applications.

A base period is for three or six months, and it normally begins the first of the month during which an application is made. Man. F 31.25(D). A client may choose between a three- or six-month prospective base period. Man. F 31.25(D)(1). A client with excess monthly income of $500 and a

short-term medical need would want a three-month base period that would keep his or her liability at $1,500 rather than $3,000. A client with excess income of $50 may want a base period of six months because his or her liability would be only $300 for a sixth-month period, which is likely less than the medical need for the same period. Once a base period is chosen, the client may not change it. Man. F 31.25(D)(1).

Social Services

Recipients of medical assistance who are aged, blind, or disabled are eligible if their income does not exceed 80% of the state median gross income for a family of four adjusted for family size, which is $13,224 annually for one person and $17,292 annually for a two-person family. WAC 388-15-020(2)(a). Information and referral, protective and chore services, when part of a protective service plan for 90 days, are provided regardless of income or categorical eligibility. WAC 388-15-020(1)(3)(iii).

Clients are entitled to notice when they are found eligible or ineligible for services. Action to reduce, suspend, or terminate services requires the department to give 10 days' notice. WAC 388-15-030(6).

Exception to Policy

The rules for determining eligibility and amount of payment are designed to meet the needs of individuals on a modest, reasonable basis; they are based on conditions considered to apply to the majority of situations. Individual circumstances may occur, however, where the application of the rules works in opposition to the desired objective. In these cases, exceptions may be considered. WAC 388-20-010 (1) and (2). An exception may not be granted to a specific provision of the law but may be granted to a policy. Exception decisions are *not* subject to the fair-hearing requirements. WAC 388-20-010 (3). Although the client or his or her representative may request that an exception to policy be written, the decision is at the discretion of the CSO. Man. F 5.10(B)(1).

Grievance Procedure

If a person is aggrieved by a decision, (s)he has the right to present a grievance, in written form, to the supervisor of the line worker with whom the client has previously been dealing. WAC 388-33-385(1). The supervisor must make a decision and notify the client in writing within 10 days of receipt of the grievance. WAC 388-33-385(2). If the client is not satisfied with the decision of the supervisor, (s)he has the right to present the grievance in writing to the CSO administrator. WAC 388-33-385(3). The CSO administrator must make a decision on the grievance and send the client written notice of the decision within 10 days of receipt of the grievance. This terminates the grievance procedure. WAC 388-33-385(4). The grievance procedure may be pursued simultaneous to the fair-hearing process. WAC 388-33-385(5).

Utilization of the grievance procedure is an effective means of resolving erroneous manual interpretations. During the grievance, the client/representative may ask the supervisor or administrator to seek clarification from policy staff that have access to the RCW and CFR. The grievance procedure is not limited to the fair-hearing time requirements. A client/representative may ask that a decision that exceeds the fair hearing 90-day time requirements be reviewed through the grievance procedure. The grievance procedure is underutilized; therefore, it may be helpful to label your letter requesting reconsideration as "Grievance," and include the WAC reference.

Fair Hearings

Any person or authorized representative may file an oral or written application for a fair hearing. WAC 388-08-413(1). The application for hearing does not need to be on a particular form, but it should specify the decision being appealed and the reasons the appellant is dissatisfied with the decision. WAC 388-08-413(2). A fair hearing must be requested within 90 days from receipt of the aggrieving decision. If the request is in response to a written decision, the 90-day period begins on the date of the client's receipt of the notice. The decision as to the

timeliness of a request for hearing is the responsibility of the administrative law judge (ALJ), not the CSO. Man. F 4.05 (B).

The department may be represented by a departmental employee or by the Office of the Attorney General. WAC 388-08-428(1)(c). Each CSO is required to appoint a fair-hearing coordinator who is an FSS with little or no legal training. The fair-hearing coordinator performs an administrative coordinating function and usually represents the department in fair hearings. Man. F 4.15. In urban offices, the fair-hearing coordinator does not usually have other duties, but in rural offices(s)he may be a lead worker or have a regularly assigned caseload to maintain in addition to fair-hearing responsibilities. The fair-hearing coordinator usually reports to a first-line financial-service supervisor.

A recipient who requests a fair hearing because of a decision to reduce, suspend, or terminate assistance is entitled to continued assistance pending the fair-hearing decision if the request is based solely on an issue other than a change in state or federal law requiring grant adjustment; or a change in state or federal law resulting in termination of a program. The date of the request for fair hearing must be within the advance notice period, or the request must be within 10 days after the mailing of a notice of adverse action if advance notice is not required. Man. F. 4.25 (B). Continued assistance is an overpayment if the department's decision is upheld. Man. F. 4.25 (D)(3).

The fair-hearing coordinator is responsible for coordinating a pre-hearing conference, the purpose of which is to identify issues and, if possible, to resolve them prior to hearing. Man. F. 4.30(A). A client need not participate in a pre-hearing conference at this point, but it does provide an opportunity for the client/representative to resolve erroneous actions and another opportunity to request that an exception to policy be written.

The ALJ is required to use the WAC as the first source of law governing an issue. WAC 388-08-425(2)(a). If there is no applicable WAC reference, the ALJ uses the best legal authority and reasoning available. WAC 388-08-425(2)(b). If the validity of a rule is raised as an issue at a fair hearing, the ALJ will permit arguments concerning that issue for subsequent review purposes, (WAC 388-08-425(2)(d)), but an ALJ may not declare a department rule invalid. WAC 388-08-425(2)(c). If the sole issue is one of federal or state law requiring automatic assistance, benefit, scope of program, or fee or regulation adjustments for classes of people the department serves or regulates, the ALJ will dismiss the application without permitting argument on the validity of the law. WAC 388-08-425(2)(e).

Chaplin v. Sugarman, No. 87-2-01239-2, held that an ALJ may permit equitable estoppel as a defense in a fair hearing when the issue is an overpayment. The department's position is that there must be five elements present: departmental error; reliance; injury; injustice if department repudiates; government powers not impaired.

Once the ALJ renders a decision, any party may file a petition for reconsideration within 10 days of service of a review order. WAC 388-08-470. Judicial review is obtained exclusively through RCW 34.05. WAC 388-08-575(1).

Computer Crossmatches and Fraud Detection

A variety of systems, including computer crossmatches, are implemented that prevent errors. These systems are effective when there is a medicaid or food stamp grant. They are ineffective if only social services are provided. Following is a listing of the major systems in the medical context.

The Office of Special Investigation provides criminal investigators to conduct investigations of applicants for assistance to prevent the authorization of benefits based on fraudulent applications and eligibility reviews. The FSS refers cases where there is questionable or inconsistent

information, suspected of being fraudulent that cannot be resolved without further investigation. Man. F. 12.02.

The department crossmatches the eligibility file with IRS 1099 filings. If income reported is above the income threshold established for the program, the department issues a subpoena to the payer of the 1099 income. The department does not usually request information if the income is received prior to assistance, but will if the income is a very large amount, such as that from a real estate transaction. (Telephone interview March 19, 1992, Graham, Mary, OSI.)

Conclusion

The strategies in this paper should work in all CSOs and regional offices. Nothing, however, substitutes for establishing a working relationship with the CSOs and regional office in your area. CSO staff are anxious to develop and maintain good working relationships with their community and clients.

Kathleen L. Shober *graduated from Gonzaga University Law School. She has worked for the Department of Social & Health Services for more than 20 years and is currently the Spokane Central Community Services Office Administrator.*

edited by Professor **William B. Stoebuck**
University of Washigton School of Law

Evidence.

In prosecution for attempted murder, defendant claimed to suffer from diminished mental capacity in form of "command delusions," precluding requisite intent to cause death. Defendant himself testified as to these delusions, but produced no expert testimony in support of his contention. Defendant sought to call lay witnesses to express their opinions on his mental capacity, but trial court limited witnesses' testimony to factual matters. Court of appeals affirmed, holding that lay witnesses had not satisfied foundation requirements for admitting lay opinion on mental condition, *ie.*, sufficient acquaintance with defendant and knowledge of his condition at or near time of offense. Moreover, court said, expert testimony is essential to establish defense of diminished capacity, and in absence of any expert testimony, opinions of lay witnesses were irrelevant. *State v. Stumpf*, 64 Wn.App. 522, 827 P.2d 294 (Div. 3, *3/3/92).*

—K B. Tegland

Planning and zoning.

(Case 1.) Railroad company, which had abandoned line, was considering removing several trestles across stream. Defendant, owner of land nearby, wishing to prevent use of former rail line as hiking trail, organized community effort and requested railroad to remove trestles. Railroad began to do so. Plaintiff environmental group, joined hurriedly by plaintiff Washington State Department of Ecology, wishing to keep former rail line open as hiking trail, sought to enjoin defendant and demolition contractors from removing trestles. No doubt realizing that, under *Lawson v. State*, 107 Wn.2d 444, 730 P.2d 1308 (1986), recreational trail is not within scope of railroad easement, plaintiffs' theory was that removal of trestles, by affecting access to stream via former rail line, was "development" under Shoreline Management Act, RCW Chapter 90.58 (SMA). Trial court held that private plaintiffs had no standing to bring SMA action, that SMA did not give cause of action, and that under SMA plaintiffs owed defendants attorneys' fees. *Held*, en banc, unanimously: (1) Private plaintiffs had no standing. (2) No cause of action existed under SMA because removal of trestles was not "development" and not "exterior alteration of a structure" under SMA. (3) Under SMA, RCW 90.58.230, attorneys' fees may be allowed to "prevailing party." This includes a defendant, as well as a plaintiff, who prevails. (4) Therefore, plaintiffs owe defendants attorneys fees.

Court suggested case was close to one in which attorneys' fees might have been awarded (as trial court did) under Rule 11. Court was critical of plaintiffs for bringing suit and especially critical of Department of Ecology for joining suit with little investigation of facts. *(Comment.* The award of attorneys' fees and the court's sharp criticism of the plaintiffs seems calculated to have a dampening effect upon environmental lawsuits that are brought upon weak or overly creative theories—*W.B.S.)* ***Cowiche Canyon Conservancy v. Bosley,*** 118 Wn.2d 801, 828 P.2d 549 (4/16/92).

(Case 2) Landowner who had discussed application for development permits with city and who, based upon city's wetlands ordinance and upon letters from city officials, believed permits would be denied, commenced action for regulatory "taking" without submitting formal application or without submitting environmental impact statement. *Held,* action was premature. Generally an owner must exhaust administrative remedies before appealing to a court. ***Bellevue 120th Associates v. City of Bellevue,*** ___Wn.App.____, 829 P.2d 182 (Div. 1, 5/13/92).

(Case 3.) Developer submitted plat for approval. County approved final plat, but added condition that developer pay fee in lieu of dedicating open space. Developer appealed to court beyond the 30-day period for appeal allowed by RCW 58.17.180 (subdivision statute) but less than 3-year period for appeal allowed by former RCW 82.02.020 (voluntary-fee statute). *Held,* 30-day period of RCW 58.17.180 applies. Therefore, plaintiff's action was not timely. ***Trimen Development Co. v. King County,*** ____Wn.App., 829 P.2d 226 (Div. 1, 5/18/92).

—W. B. Stoebuck

Real property.

Son, who assisted father with business matters, induced father to execute quitclaim deed to son. Father, though intelligent person, could not read English and did not know instrument was deed. Evidence showed son tricked father into believing he was signing something else. After son received deed, he gave bank, which had no knowledge of above circumstances, deed of trust on land to secure advance of credit. Bank claims that, even if deed is set aside as fraudulent, its security interest is good because deed was fraudulent in "inducement" and not fraudulent in "execution." *Held,* deed was fraudulent "in factum, also referred to as fraud in the execution." Fraud went to nature of instrument itself. Therefore, bank has no security interest. ***Pedersen v. Bibioff,*** 64 Wn.App. 710, 828 P.2d 1113 (Div. 1, 3/23/92).

—W. B. Stoebuck

Real property security.

Purchasers under real estate contract executed promissory note to lender, secured by deed of trust on their contract purchasers' interest. Later, vendor under contract forfeited contract. Lender admits that forfeiture extinguished its deed of trust, but contends that its note survived as personal obligation. *Held,* note survived as personal obligation. Deed of trust or mortgage that is given as security is separate from and ancillary to underlying obligation. Therefore, extinguishment of security does not destroy obligation. Lender may maintain personal action on obligation. ***Metropolitan Mortgage & Securities Co. v. Becker,*** 64 Wn.App. 626, 825 P.2d 360 (Div. 3, 3/10/92)

—W. B. Stoebuck

Summer Reading: How to Feel Less Guilty in the Hammock, II

Charles Dickinson, *Rumor Has It* (New York: Avon Books, 1991), 232 pp., softcover, $9.00.
John Welter, *Begin to Exit Here: A Novel of the Wayward Press* (Chapel Hill, N.C.: Algonquin Books of Chapel Hill, 1992), 299 pp., hardcover, $16.95.

by **Lindsay Thompson**

Charles Dickinson and John Welter have written rich, comic novels on journalism. In *Rumor Has It*, Danny Fain, assistant metropolitan editor of Chicago's second-drawer tabloid newspaper, takes the train to work on Halloween Day. En route he catches a glimpse of what he thinks is a costumed child hit by a car that didn't stop.

At work, he sends out a reporter to try and track down the story, thinking here's a chance for a scoop no one else will even know about when we break it. But Fain's soon distracted from his project: a meeting, called by management, reveals the imminent closure of the paper. The rest of the day- and the novel- is about his attempts to get the next day's paper put together in a newsroom full of people who are trashing equipment, fighting with each other, hatching hare-brained schemes to save the paper, planning their exits, being uncovered as spies for the other paper who now have jobs there, television news crews trying to get the story for the nightly broadcast, men from the salvage company planning the stripping of the building down to its foundations, expressway gridlock caused by a mysterious environmental gridlock threatening to force Fain's story from the front page even if he an get it, and a staff meeting that includes one of the funniest, most cynical summaries of world news ever written, a dead-on parody of the cliche news has become:

> "One is spoken for," Muff Greene said. "Tommy?"
>
> Tommy Boyd said,"The KLM jet is somewhere over Yugoslavia. Heading toward Greece. Beirut has told them they won't be allowed to land. The airline says it would be touch-and-go to make it to Teheran, if Iran'll taken them, which is questionable. Athens offered to take them, but the hijackers said no dice. Nancy Potter knows someone at United who looked in their computer and found the names of four people from Chicago who have connections on United for O'Hare out of Kennedy who are on KLM 404. We've got the usual ton o'wire copy on this. The international community in an uproar. Violated airspace and all. West Germany scrambled two fighters to escort 404 through their airspace and now everyone is showing off. Yugoslavia sent up four jets. This story could be growing when it's time for us to go home. Or it could end before this meeting. It feels long to me. Something that could go on for days. Then I've got rioting chefs in Paris because some godless souls are using the wrong kind of eggs in their soufflés. The pope named twenty-four new cardinals today. One a Native American Indian from Seattle now named Ignatius Cardinal Leaping Dog. We learn after the fact that a meteorite the size of Jacksonville, Florida—bigger than the one that is rumored to have extincted the dinosaurs, but which missed Abe Skinback—passed within the intergalactic equivalent of a split hair from Earth last month. NASA knew it was coming two weeks before the fact, but decided nothing would be solved by alerting the populace. I personally applaud their decision. I've got a gold miners' strike in the Transvaal, with violence and cracking of heads. Their demands include light in their huts after dark. Not electricity, just candles. A good reader on the most successful counterfeiter in Japan. He happens to be an American who did federal time for counterfeiting here and went to Japan because he was too well known to the G after he got out of prison. Couldn't get work in his chosen trade. Japan can't catch the guy and they're accusing the U.S. of helping him avoid detection because we want his counterfeiting to bring the Japanese economy to its knees. A very paranoid scenario. Next on the list is a family from upstate New York—a mom and her three kids—who are raising money to go to Peru to search for their husband and/or father who—from all indications—has simply abandoned the family to pursue his dream of being a soldier of fortune. She's held a cable TV telethon and rented billboard space to raise funds to pay for her crusade to Peru because a psychic has told her her husband is working in the foothills of the Andes with a cadre of Shining Path guerrillas as a military adviser . . . like they need one. Then I've got record prices paid for a portfolio of erotic Picasso sketches. Well-thumbed and damp wire art has been promised. Dale?'"

By the end of the day Danny Fain's story has broken, but not as he intended, and Danny himself has become the lead on the evening television news as a man who that morning was working for him is waiting outside Fain's house with a TV station camera crew. Mordant, funny, and sad all at once, *Rumor Has It* is an exceptional novel.

John Welter's journalist, Kurt

Clausen, is a toiler for a small paper in a small town in "the relentless woods that inundate nearly all of North Carolina, a state so crowded with trees that children in the public schools have to be shown movies of the sky or they'd never see it", after a brief stint as a telephone sales representative for a marital aids company necessitated by a generally stroppy attitude towards journalism as it is practiced which, in turn, has made each of his prior newspaper jobs tempestuous and brief.

Clausen is Groucho Marx in A Night at the Newspaper. You can imagine him with a garish painted moustache, leering and puffing a cigar. He simply wants to write stories that are interesting. Take DWI reports, "a tedious feature in newspapers that I despised, as if people genuinely wanted to read the freshest list of strangers who got drunk and drove somewhere." He wanted to rank them by blood-alcohol level, report them like box scores, and give an award to the week's most drunken DWI. A complaint by a parent to the district attorney that an exasperated school teacher had threatened to suck her charges' brains out through their ears if they didn't be quiet triggered a story, complete with medical opinions that it was unlikely. (Off the record, the DA said, I don't think you can do such a thing. Kids' ears are too small. "Well, if you *attempted* to suck their brains out, even though you knew it wasn't possible, is it illegal?" "Are you really doing a serious news story on this?") A vegetarian group's picnic was thrown into an uproar over Clausen's question whether hot dogs could be considered sentient beings verboten to vegans, as they denominate themselves.

Trying to write interesting, truthful and slightly irreverent stories (A shopping center conflagration: "There were no injuries from the explosion and fire, except a reporter who was cut by a flying ham from the grocery store.") turns out to be the surface of some deeper, more personal problems for Clausen, which get sorted out every third or fourth chapter as his relationship with a scientific researcher grows and she tries to sort him out. It's a task, but there are innumerable one-liners along the way. *Begin to Exit Here* is a rewarding book, if only by which to test theories on how the *Bar News* became the way it is.

NEWS FROM HOME

Stevens County lawyer **Patrick Monasmith**, Ferry County attorney **Rebecca Baker**, and **Hugh Kelly** of Pend Oreille County have been named "Attorney of the Year" by Rural Resources Northeast Washington Legal Aid Pro-gram and the Spokane County Bar Association. At an April dinner featuring ABA president **Sandy D'Alemberte**, they were honored for exceptional service to the poor in their areas.

Meade Emory, of counsel to Lane Powell Spears Lubersky in Seattle, was named Teacher of the Year by graduating students at Duke University School of Law this past school year. Emery was a visiting professor of taxation during the spring semester, and by virtue of his election was named commencement speaker at the Law School's spring graduation ceremonies.

Gerald Burke, of Burke & Meske in Tacoma, has accepted the task of recruiting people to participate in the American Heart Association's 1992 Heart Walk, a benefit for persons with heart disease. Burke plans to round up 100 attorneys to join hundreds of other citizens in pledging, or collecting pledges—of five dollars per mile for a five mile walk set for October 3, 1992 in Tacoma. He can be contacted at (206) 577-1200.

Harry E. Ries has joined the Dano Law Firm of Moses Lake and Othello, as a partner. Ries is a Moses Lake native. His practice is primarily devoted to preparation for and trial of personal injury, property damage, and agri-cultural-commercial matters.

Lynn Edelstein Du Bey has been named vice president, general counsel and secretary of ALPAC Corporation, Seattle's Pepsi-Cola/Seven-Up bottling company. She joined the firm in 1987.

David Soukup, a partner in Levinson, Friedman, Vhugen, Duggan, Bland & Horowitz, has been re-elected president of the National Court Appointed Special Advocate Asso-ciation. The organization, founded by Soukup while serving as a King County Superior Court judge in 1977, is an innovative program using trained community volunteers to speak up for the best interest of abused and neglected children in court.

THE JUDICIARY

Clark County Superior Court Judge **John N. Skimas** has announced his retirement after over twenty years on the bench.

Governor **Booth Gardner** has appointed Aberdeen lawyer **Gordon Godfrey** to the Grays Harbor County Superior Court seat being vacated by retiring Judge **Michael Spencer**.

George McIntosh of Anancortes has been appointed to the superior court bench in that county. He was previously the court commissioner there.

King County District Court Judge **Laura Inveen** and Renton lawyer **Deborah Fleck** have been appointed to superior court seats created by the Washington legislature.

Ninth Circuit Court of Appeals Judge **Betty Fletcher** was honored as a recipient of the 1992 Margaret Brent Women Lawyers of Achievement Award. The award was presented during the ABA's annual meeting in San Francisco August 9. Fletcher, now president of the Federal Judges' Association, was appointed to the Ninth Circuit Bench by President **Jimmy Carter** in 1979.

ASSOCIATION OF LEGAL ADMINISTRATORS PUGET SOUND CHAPTER

Kati Dunn, administrator for Rid-dell, Williams, Bullitt & Walkinshaw in Seattle, has become the new president of the 180-member Puget Sound Chapter of ALA. Other elected officers are: **Maureen O'Brien**, executive director; Stanislaw, Ashbaugh, Chism, Jacobson & Riper, president-elect; **Char Coulbert**, business manager, Cairncross & Hempelmann, secretary; **St. John Braund**, accounting man-ager, Foster Pepper & Shefelman, treasurer.

CLARK COUNTY REPORT

by JOHN F. NICHOLS

1. What goes around—goes around:

A few years back two esteemed CCBA litigates hooked up in a titanic P.I. clash. The trial culminated during plaintiff's attorney's (who shall remain nameless), summation wherein he mistakenly identified the victim's tracheotomy as an episiotomy. Defense attorney **Mike Mitchell**, was kind enough to supply this reporter with said information and as such reported same. Needless to say, **Bill Baumgartner** vowed vengeance. His patience was rewarded at a May 1992 trial where again these legal gladiators tangled. The following transcript finds Mitchell's cross-exam of the appropriately named Dr. Grimm:

Excerpt of Cross-examination of Dr. Grimm by Mr. Mitchell

Q. I just had another—You mentioned something of this Romberg test and you called it a Modified Romberg?

A. Yes.

Q. Mr. Romberg is obviously the guy that invented it?

A. Yes.

Q. Are you the person that modified it?

A. No. he did.

Q. He modified it?

A. Yes, he made it more difficult.

Q. Okay. What's the Modified Romberg, if you can explain it?

A. Put yourself back a hundred years. Romberg, in the nineteenth century was a student of Syphilis. Syphilis reigned in that century as the thing that involved the nervous system.

He demonstrated that if people with Syphilis stood with their feet together and closed their eyes, they would fall over.

When Syphilis disappeared then as a major disease, neurologists continued to use the Romberg test, and found it was more sensitive if you stood not with your feet together, which is a pretty stable position, but you made it a little more tricky if you have them stand with one foot in front of the other. That became known as the Modified Romberg because it forced people to balance a little more, took a little more effort.

Q. So let me—You stand——(Mr. Mitchell demonstrating.)

A. Put your feet together.

Q. Like this?

A. Now, just put one foot in front—

Q. Like this?

A. Now close them.

Q. Are you going for a diagnosis?

A. Just stand with your feet together.

Q. Okay.

A. Right together. Nice tight together. Now close your eyes. Now, can you stand without falling?

Q. Yep.

A. The attorney does not have Syphilis.

I am sure this was good news to Mike and all of his customers at the Greyhound depot cafeteria.

2. CCBA Elections:

As with lemmings, the CCBA has this primordial urge to self destruct every seven (7) years or so. Consequently, the annual CCBA elections saw the installation of the following: **Curtis Wyrick** as president; **Jill Kurtz** as vice president; **Elizabeth Perry** as secretary; and **William Robison** as treasurer.

For those looking for the nearest cliff, follow the attorney in front of you.

3. CLE—Old law is good law:

Where else but Clark County could you have a CLE and also learn something? At the recent real estate seminar, quotes were read from Shakespeare, Blackstone and the Twelve Tablets of Roman Law, and this was during the recent "Case Law Update" section!! The speaker was uncertain as to the precise cite of the above authorities, responding "I can't remember if that's in the greenies or the yellows." In the immortal words of Elvis (Circa 1957) Thank you, . . .Thank you very much.

EAST KING COUNTY REPORT

by MARIJEAN E. MOSCHETTO

In August, the big news on the Eastside is the EKCBA Golf Tournament scheduled for August 20, and you do not need to be a member to attend. At the tournament and dinner, you'll meet our own **Steve Hansen** of Woodinville wearing his Payne Stewart knickers, **Pat LePley** with his droll golf comments, and smooth **Barry Hasson** seeking to prove that golf is really a social game. Call **Chris Frost**, (206) 882-2929, for reservations, tee times and a chance at some great prizes.

The Eastside Legal Assistance Program will kick off its fundraiser raffle at the golf tournament. The grand prize remains a secret, but it will be announced at the tournament dinner.

In other Eastside news, **Phil Hubbard, Jr.** joined the firm of Revelle Hawkins P.S., leaving his former Seattle firm. The Eastside freely accepts immigrants from the city west of the lake or other environs and does not discriminate on the basis of former locale. Call **Randy Gordon**, EKCBA membership committee chair, for further details.

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WASHINGTON ASSOCIATION OF LEGAL SECREATARIES

Sally Favors, PLS, of the Tacoma-Pierce County Legal Secretaries Association, was elected president of the WALS for 1992-1993 at its 28th annual meeting in Portland.

Other officers elected at the meeting include **Arline Joyce**, PLS, Skagit County, president-elect; **Jan McDonough**, Thurston County, first vice president; **Bonnie Gerber**, Tacoma-Pierce County, second vice president; **Eleanor Johnson**, PLS, member-at-large, corporate secretary; **Roxanne Forrest**, East King County, treasurer; and **Virginia Delay**, Seattle, national director.

PIERCE COUNTY REPORT

by **GEORGE S. KELLEY**

There seems to be a lot of people retiring from the practice this month. First, **Mel Rubin** finally sold his Tacoma house and moved to Florida. The persistent rumors that the local divorce bar contributed to the closing costs or down payment in order to get rid of him are probably untrue. Next time you visit Mickey Mouse and Goofy at Disney World in Florida be sure to look up Mel.

Joe Betzendorfer announced his retirement several years ago. What he meant was that he would finish the cases in his office and then retire. Given court congestion and the delays normally attendant the divorce business, we expected Joe to be around well into the coming century. To everyone's surprise Joe recently tried his last case and his office mates planned a surprise retirement party. As expected, Joe's case got bumped. The judges reportedly got together, cleared a courtroom, and the case was concluded in time for the party. We don't know who won as the judge took the decision under advisement until after the festivities.

Superior court judge **Robert Peterson** announced his retirement effective the end of the year. He will open a Tacoma rent-a-judge office for JAMS. His announcement created another vacancy to be filled in this fall's election and **Grant Anderson** and **Larry Couture** said that they are running for it.

Margaret Bond has been selected by the Army to attend a graduate course at the Judge Advocate General's School at the University of Virginia at Charlottesville. If she studies hard, she will be awarded an LLM. What is noteworthy here is that Margaret was awarded one of only two openings available to reservist or national guard JAG personnel.

St. Charles School puts on a weird fund raiser where parents pay to play against the 8th-grade softball team. This may be some new form of athletic child abuse. In this year's game **Dan Hannula** playing for the parents found himself facing **John Miller**, who somehow never earned enough credits to graduate from the 8th grade—at least that's what the kids said. John managed to strike out the first three hitters including Hannula before he was removed from the game.

Mark Dynan has moved his practice to Dave Larson's office in Federal Way. **Bob Denomy** has left the friendly confines of house counsel to a local developer to once again try his hand at private practice.

SKAGIT COUNTY REPORT

by **KEN EVANS**

This is the 100-year anniversary of the Skagit County Bar Association and the 10-year anniversary of the last letter published in the *Bar News* from Skagit County. When I started practice in Skagit County in 1977, there were 34 lawyers. **Bud Gilbert** told me there might be room for one or two more hard-working lawyers in Skagit County. 15 years later there are 104 lawyers.

John Kamb, recent winner of the WSBA Award of Merit, is partly to blame. John receives the family law award for the decade, having brought **John Kamb, Jr.**, **Tom Kamb** and **Rosemary Kamb** into practice in Mount Vernon. All other lawyers have been evicted from the Legal Building, which is now known as the Kamb Family Law Center. John barely edges out **Bill Stiles** of Sedro Woolley, who now has his sons, **Brian Stiles** and **Brock Stiles**, practicing with him.

George McIntosh received Governor **Booth Gardner**'s appointment to the third superior court judge position, which just opened in Skagit County. He joins **Stanley K. Bruhn** and **Gilbert E. Mullen**, though Mullen recently announced his retirement. The new court commissioner succeeding McIntosh is **Susan Cook**, who leaves the offices of **Paul N. Luvera, Jr.**, to experience the joys of the juvenile court calendar every Tuesday.

Bill Nielsen recently received the Governor's appointment to the Growth Management Board, thereby joining the recently growing number of lawyers leaving private practice.

Having read about the 1948 Chelan County minimum-fee schedule, I felt that my last act as president this year should be a revision of Skagit County's own minimum-fee schedule. The schedule dates back to September 8, 1891, and it requires revision every 100 years, we were already one year late. Quite frankly, I was shocked to read of the exorbitant fees in Chelan County, considering the country was just coming out of WW2 as well as the depression of the previous decade. Even in the carefree times of the 1890s, when people had money to burn, Skagit County was attempting to hold the line on exorbitant legal fees. Skagit County's schedule in 1891 read:

No member of this association shall charge for professional services less than the following:

Retainer in Superior court	$25
Retainer in Probate Court	$10
Retainer in Justice court	$10
Retainer before the County Commissioners	$10
Consultation	$2
Consultation when amount involved is more than $50	$5
Passing on Abstracts	$7
Passing on Titles	$15
Drawing Deeds, Mortgages and Leases	$2.50

Drawing Contracts	$5
Drawing Chattel Mortgages and Bills of Sale	$2.50
Drawing Liens	$2.50
Drawing Wills and Articles of Incorporation	$10
Drawing Deeds of Co-partnership	$5
Drawing all other Instruments	not less than $2.50

In view of Chelan County's anticipated revision of the fee schedule, we doubled our fees at our latest meeting. Attorneys failing to charge the minimum fee are subject to Sedro Woolley Municipal Court Judge **Hugh Ridgway**'s infamous Writ of Banishment from Skagit County.*

**[On a serious note: the 1975 U.S. Supreme Court, in Goldfarb v. Virginia State Bar, 421 U.S. 773 L.Ed.2d 572, held that a bar association minimum-fee schedule constituted impermissible price-fixing in violation of the antitrust provisions of the Sherman Act.—Editor]]*

SOUTH KING COUNTY REPORT

by JANE C. RHODES.

News around South King County has been sparsely reported this past month. However, we would like to welcome **Heidi Peacock** to the law firm of Stead, Vogel & Eide and congratulate **Bob Stead** on becoming the new mayor of Federal Way. In addition to **Judith Eiler, William Murphy** is also running for the new judicial seat that has been funded in Federal Way—the race is on. Congratulations to **Jennifer White** for the new addition to her family. Kudos to **Deborah Fleck** (one of our own) for her appointment to the King County Superior Court by Governor **Booth Gardner**!

We are also looking forward to the South King County Bar Association's joint venture with the Tacoma-Pierce County Bar and the Tacoma City Club for the Attorney General Candidate Forum to be held on July 9 at the Executive Inn in Fife. Justice **Richard Guy** will moderate the debate between candidates **Christine Gregoire, John Landenburg** and **Norman Maleng.**

Another reminder to everyone to encourage their clients to vote for and support the bond issue in the fall election for the new Justice Center in Kent.

SPOKANE COUNTY REPORT

by JOHN RODGERS

How does your county schedule the increasingly popular criminal filings? Spokane has allowed a little procedure, originally intended to reduce early Friday crowding at golf courses and bars, to flower into the major festival of our week.

Each week the presiding judge and court administrator desperately juggle a hundred or so criminal jury settings. Since most won't actually go to trial, the idea is to get the parties together early, and get them talking

"disposition." On pain of an arrest warrant, criminal defendants are required to appear, as are the defense attorneys and prosecutors. When they call your case you're just supposed to say if its gonna be a *trial* or a *plea* or a *continuance*. Simple.

So the "docket call" at the Spokane County Courthouse at 1:30 on Friday afternoons, each week, every week. A pitiless market where you can legally trade secrets about your neighbor for years off your own sentence. Where defenses are test-marketed against the steely gaze of the prosecutor. Where codefendants enter arm-in-arm and leave bitter enemies. A veritable bazaar where sentencing recommendations and guilty pleas are publicly traded, and traffic in Speedy Trial Waivers flourishes.

At about 1:25 every Friday afternoon the public defenders leave their office in the back of the building to pick their way through the multitude of clients thronging their reception desk and, with one arm around the fattest stack of files of the week, slowly draw off clusters of clients and string their way down the hall to criminal presiding. An equal number of prosecutors swell the confluence. Already waiting are several huddles of defendants and private counsel. The mob crowding the courtroom door may include a watchful detective, or a uniformed deputy towing a prisoner, or a pro se defendant who doesn't really know what's going on but figures for once he'll go with the flow.

Inside, the bailiff offers seats to the hesitant, with a knack learned from summers spent stacking cordwood. A phalanx of prosecutors moves through the crowd and occupies the jury box. There is never, ever, enough room. When the mass inside turns to leave for lack of seats and meets the mass pushing from outside, the seething pattern freezes.

The utter impossibility of motion only heightens the din. Attorneys converse with clients several rows away, documents are signed and passed like peanuts at the ball park, plea bargains are offered in a whisper and turned down with a roar, heads shake or nod, eyebrows are raised and shoulders shrugged.

Only when the judge takes the bench does the noise briefly subside, leaving the eyes of the clients nervously sweeping the crowd for their public defenders.

This should just be a matter of reading a few names, and getting a quick one-word response. It begins with promise, then one lawyer answers by reciting a procedural history in which one glimpses prosecutors who left the office years ago, and legal theories which have long since burned to the ground...the judge interrupts to wonder if the case is ready for trial, the lawyer allows that she hasn't thought of that and asks to "report back next week..." Counsel on the next case is absent so the defendant, standing alone and trying to sound certain, starts to list the rights he's not waiving...the judge asks the prosecutor on this one to "remain after docket call."

The next five names are joined for a big trial, but the court administrator scurries to the bench to remind the judge of certain motions ahem possibility of pre-assignment and everyone has the good sense to avoid a decision on that one.

The next dozen names go quickly, 'till a prosecutor mildly asks if a given defendant is actually present. The defense attorney is up, a fountain of reasons why under the circumstances there's no reason to issue a warrant. The prosecutor mentions the "local rules," the defense lawyer conspicuously draws another breath, the scene starts to look like Wimbledon till the judge says we'll get back to that one.

This docket call yearns for rhythm, but that sonorous ideal is always marred by some irregularity. Maybe the prosecutor rises to deal with a messy robbery, and looks across the the room at four defense attorneys who plan to reveal nothing more than amiable grins this afternoon. "We'll report back, Your Honor." A leviathan homicide trial moves by like an invisible shadow, perhaps called once by name but then handled with a few quick nods among people at the front of the room. Tentative wit and one-liners fill the pauses according to judge and season. The racket might lull expectantly when a known continuance artist responds to a particular case, or a prosecutor with flimsy evidence is nudged closer to the "D" word, but otherwise the noise just gets louder as the people whose business is finished shuffle past those straining to hear their names yet.

Thus, our list of imminent crises is hammered into a line of lawyers with continuance orders. Waiting along the side wall of the courtroom, they chat amiably and study the few who approach the podium on matters which this crucible hasn't reduced. Prosecutors wave urinalysis reports and point to nervous defendants, bail bondsmen scoot about with meretricious forms, and civil lawyers wander around because someone left the door open.

The din softens to a gurgle as the room gradually drains out into the Friday afternoon. Form requires a congenial parting, and a promise to talk about the matter next week.

WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

Seattle's **Richard J. Troberman** WACDL founding member, has been elected the organization's president; his one-year term began in June. Other elected officers are **Jill Bernstein**, Bellingham, president-elect; **Steve Thayer**, Vancouver, vice president/west; **Roger Peven**, Spokane, vice president/east; **George Bowden**, Everett, secretary; and **Lenell Nussbaum**, Seattle, treasurer. Elected to two-year board of governor terms were: **Sheryl Gordon McCloud**, Seattle; **Marilyn McLean**, Mount Vernon; **Charlie Williams**, Olympia; **Victor Lara**, Yakima; **Jeff Finer**, Spokane; **Ron Ness**, Port Orchard; **Anne Harper**, Seattle; **John Scott Fox**, Bellevue; **Peter Mair**, Seattle; and **Kate Pflaumer**, Seattle.

Timothy K. Ford was awarded the 1992 **William O. Douglas** award, the highest presented by WACDL, given in recognition of extraordinary courage and commitment in the practice of criminal law. Ford is best known for his work on behalf of individuals under sentence of death, work he began as a law student in 1971. He later became one of three cooperating attorneys for the NAACP Legal Defense Fund and has represented death row prisoners in seven western states and Georgia. He has been counsel for either the defendant or amicus curiae in five death penalty cases before the U.S. Supreme Court, including **Warren McCleskey**'s case regarding racial discrimination in death-sentencing.

He is currently representing seven individuals facing death sentences and serving as a consultant for the Arizona Death Penalty Resource Center and the California Appellate Project. He has also handled a number of major search and seizure cases, represented plaintiffs whose civil rights have been violated by police officers and prisoners in cases challenging prison conditions and rights violations.

The President's Award was presented to **Murray Guterson** in recognition of his criminal defense work over many years. After five years in county and federal criminal work, in 1958 Guterson went into private practice, limiting his work to defense in criminal cases. He has been active in bar associations and was a founding member of the Public Defender Association.

Three certificates of appreciation were presented by the association: to **Karen Klein** for her work on the WACDL Legislative Committee, for which she chaired the Bill Review/Action Committee for the 1992 legislative session; to **Steve Dutton** for "dedication beyond the call of duty" for his efforts as an investigator, to defend a client under life-threatening conditions; and to **Nancy Talner** for her long and active involvement in WACDL amicus and brief bank work.

*Outgoing WSTLA president **James S. Rogers** presents University of Oklahoma School of Law Professor **Anita Hill** with a Special President's Award.*

WASHINGTON STATE TRIAL LAWYERS ASSOCIATION REPORT

by **LETHA J. OWENS**

Out-going WSTLA president, **James S. Rogers**, as one of the last official acts of his presidency has chosen to present Professor **Anita Hill** of the University of Oklahoma College of Law a Special President's Award. She accepted the award at a Special Awards Luncheon in the Grand Ballroom of the Westin Hotel in Seattle on June 29. Following the keynote address by Washington Supreme Court Justice **Robert F. Utter**, Hill addressed a capacity crowd at the luncheon chaired by WSTLA member, **Steven Fury**. Rogers presented the award to honor Hill, "for exceptional courage and for having heightened awareness and sensitivity to women in the work place."

* * * * *

With the conclusion of the 1992 Annual Convention in Sunriver, Oregon, the torch of WSTLA leadership passes from **James S. Rogers** to **Halleck H. Hodgins**, 1993 WSTLA president. Hodgins will lead an impressive board of governors which will include both newly elected and continuing members. The next year looks to be as exciting and productive a year for WSTLA as last year. Congratulations and good luck to the new board!

New officers are: **Judy Proller**, president-elect; **Ed Dawson**, vice president east; **Gene Moen**, vice president west; **Cheryl Robbins-Berg**, vice president CLE; **Laura Jaeger**, 2nd vice president CLE; **Mark Barber**, vice president development; **Dick Eymann**, 2nd vice president development; **Nic Corning**, vice president finance; **Steve Fury**, vice

president judicial relations; **Dick McDermott**, 2nd vice president judicial relations; **Janet Rice**, vice president legislative; **Tony Russo**, 2nd vice president legislative; **Steve Krafchick**, vice president membership; **Rod Ray**, 2nd vice president membership; **Lori Haskell**, vice president public affairs; **Wayne Lieb**, 2nd vice president public affairs; **Bob Dawson**, vice president publications; **David Heller**, secretary/treasurer; **Maria Diamond**, editor-in-chief; Jeff Donchez, 1st Cong. District; **Chris Otorowski, Sanford Kinzer**, 2nd Cong. District; **Doug Shepherd, Paul Henderson**, 3rd Cong. District; **Jim Sellers, Dale Foreman**, 4th Cong. District; **Jay Flynn, Bob Dunn**, 5th Cong. District; **Dan Hess, Dan Hannula**, 6th Cong. District; **Frank Ladenburg, Bill Bailey**, 7th Cong. District; **Judy Massong, Steve Toole**, 8th Cong. District; **Ron Ward, Elaine Houghton**. 9th Cong. District; **Andrea Darvas, George Thornton**, at-large; **Don Means, Dan Sullivan**, ATLA board; **Paul Stritmatter, Ted Willhite** and **Bob DiJulio** state delegates.

* * * * *

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

IN MEMORIAM

Bryant R. Dunn, 82, died May 26, 1992 in Seattle. Born in Denver and raised in Idaho, Dunn graduated cum laude from the University of Washington School of Law. He was a member of the Order of the Coif and the Board of Editors of the *Law Review*. In 1933 Dunn became a member of the Washington State Bar.

Upon admission, Dunn practiced with Tanner & Garvin from 1933 to 1937. That year he joined Graham & Howe, later known as Graham & Dunn. Dunn remained a member of the firm until his death. During World War II he served as a naval intelligence officer in the South Pacific Theater. During his career in law, Dunn had an extensive practice in corporate, business, taxation, banking, real estate and government regulation. A recognized expert in timber law and taxation, Dunn's work in those fields set national standards.

In addition to his law practice, Dunn was active in numerous arts and civic organizations. He was a trustee of the Seattle Art Museum, the Seattle Symphony, a supporter of the Seattle Opera, and a member of the National Council of the Metropolitan Opera. He also served as a Visitor in the University of Washington School of Medicine. Dunn was a director of the Fisher Companies and Rainier National Bank. An avid sportsman, he sailed regularly, and was an active skier through his 81st year.

Survivors include Dunn's wife, daughter, and five 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

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Janie Tucker Stuart, lost will: Anyone having copy or knowledge of will or codicil of Janie Tucker Stuart, former resident of King and Okanogan counties; Washington, who died March 30, 1992, please contact Roger D. Sherrard, (206) 779-5551.

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