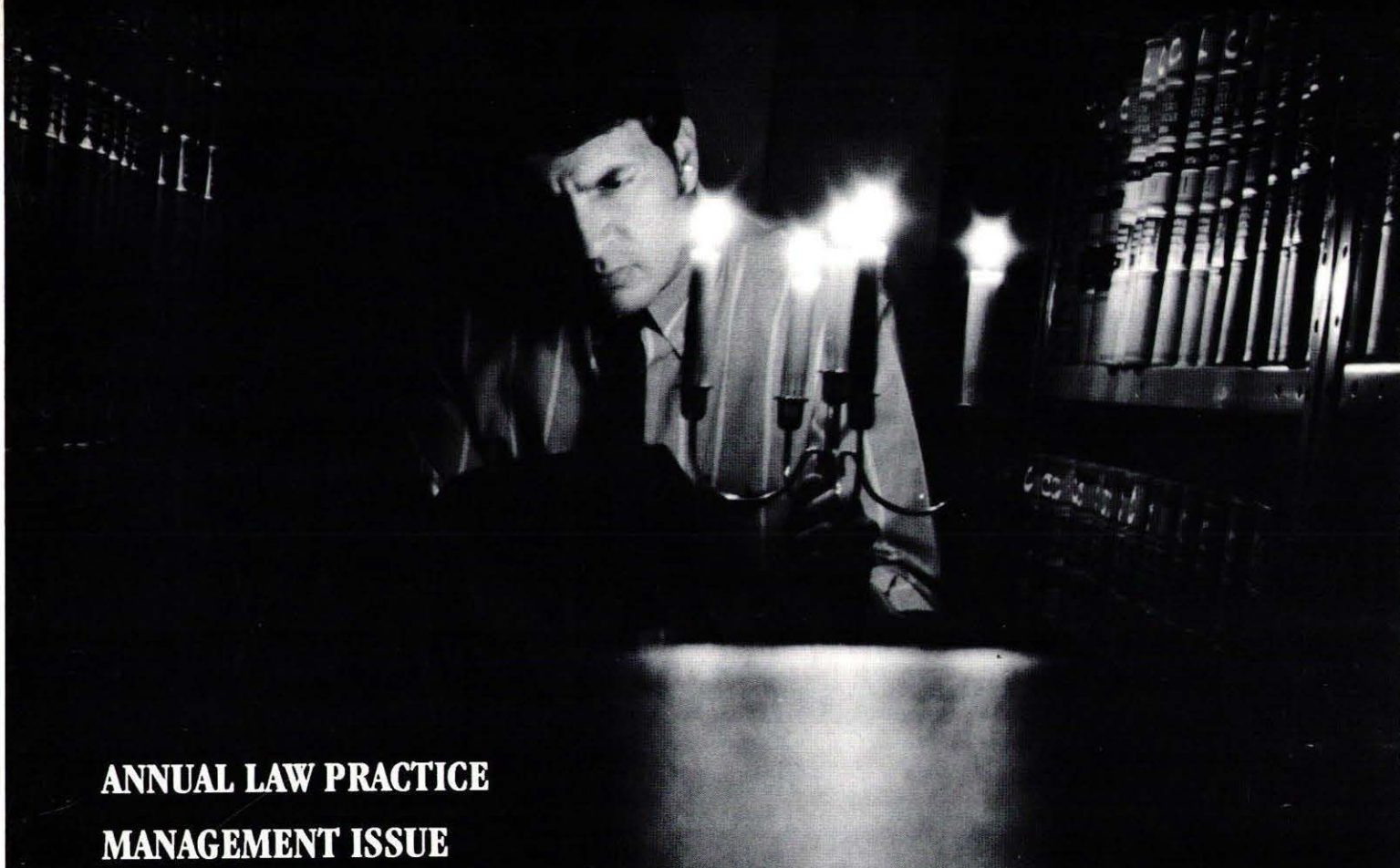


Washington State **Bar** **News**

Vol. 46, No. 9, September 1992



ANNUAL LAW PRACTICE MANAGEMENT ISSUE

- Lawyers in the Dark —**
- How to Survive a Power Outage**
- Hidden Costs of Automation**
- The Computer Detective**
- Survey of Trends in Law Office Management**
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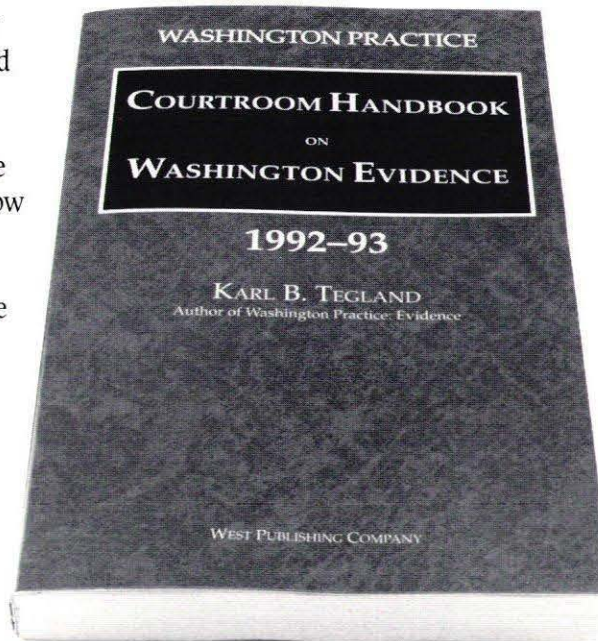
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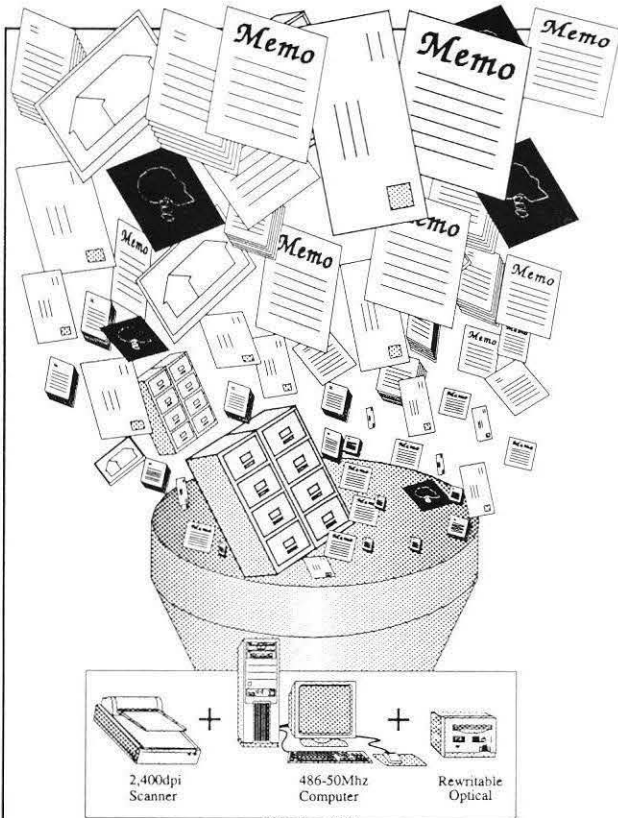
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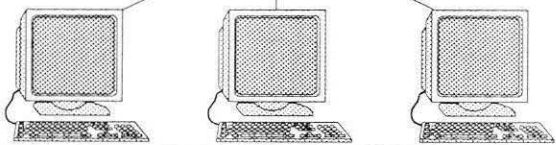
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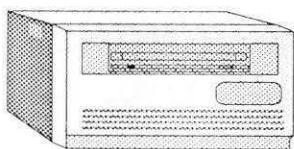
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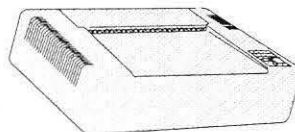


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ANNUAL LAW PRACTICE MANAGEMENT ISSUE

Modern Workplace Terrors and Other Happy Thoughts

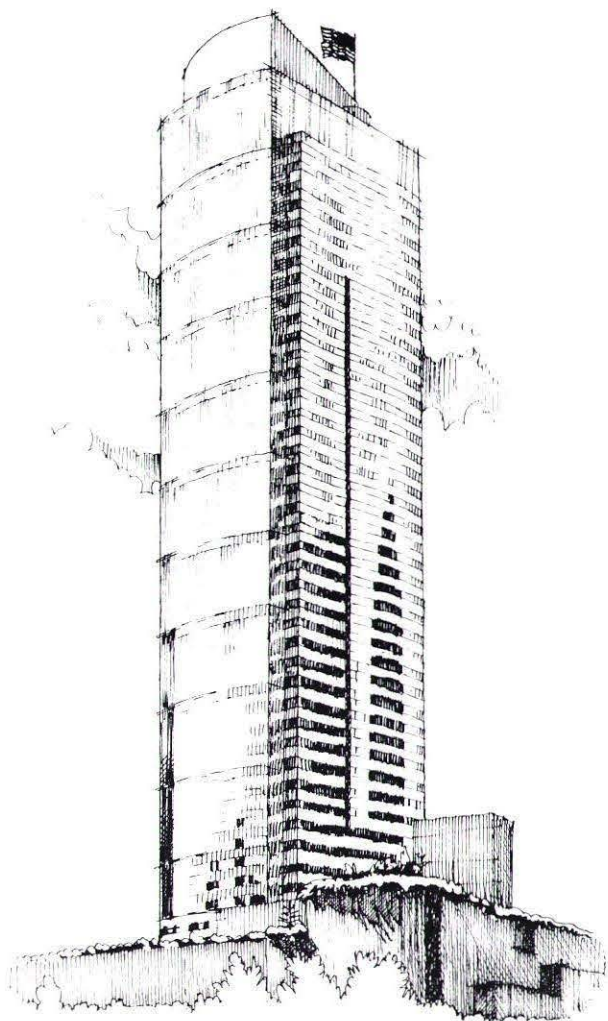
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In Craig Raine's poem, "A Martian Sends a Postcard Home" (Oxford University Press, 1979), he observes, "In homes, a haunted apparatus sleeps / that snores when you pick it up. / If the ghost cries, they carry it / to their lips and soothe it to sleep / with sounds. And yet, they wake it up / deliberately, by tickling with a finger." For a list of the WSBA's haunted apparati, see January 1992's *Bar News*, pp. 11-12.

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

Yeah, But the Food Will Be the Same

Editor:

I will appreciate your assistance in informing your readers of recent developments in a national consumer class action settlement.

On July 13, 1992, Senior United States District Judge Marvin H. Shoob of the Northern District of Georgia gave preliminary approval to settlements in the Domestic Air Transportation Antitrust Litigation—one of the largest class action antitrust cases ever brought. The terms of the settlement include cash and discount certificates for future flights. The settlements total \$458 million: \$408 million in flight certificates and \$50 million in cash. The defendants have also agreed to establish and/or maintain a formal antitrust compliance program to be administered with, and approved by, legal counsel. A hearing on final approval of the settlement agreement has now been scheduled for October 19, 1992 at 10:30 a.m. in Atlanta.

This consumer class action lawsuit involves allegations that several defendant airlines, including American Airlines, Inc.; Continental Airlines, Inc.; Delta Airlines, Inc.; Northwest Airlines, Inc.; Trans World Air Lines, Inc.; United Airlines, Inc.; USAir, Inc.; and the Airline Tariff Publishing Company, violated the antitrust laws by engaging in an unlawful conspiracy to fix prices and to allocate certain markets and airports. As a result of this alleged price fixing and market allocation conspiracy, the prices for airline tickets for certain flights during 1988-92 were higher than they otherwise would have been. The defendants have not admitted liability but claim they are settling to avoid a lengthy and costly court battle.

Keller Rohrbach is one of the lead law firms representing the plaintiff class in this case. As a member of the plaintiffs' steering committee, we have received hundreds of inquiries about the

settlements and the process by which purchasers can file claims. A formal notice to class members was to be mailed on or about July 22, 1992, and a summary notice was published in national newspapers on or about July 30, 1992 under an order of the court. I thought this information would be useful to your readers.

To obtain a claim form, readers should immediately write to the following address: Airline Antitrust Litigation, P.O. Box 209, Philadelphia, PA 19107-9711.

To date, nearly 100,000 people have registered to request part of the \$458 settlement fund. It has been estimated that up to 10 million people may file claims. There has not been any settlement distribution to date, but it is anticipated that flight certificates will be distributed in early or mid-1993.


The persons or businesses who are eligible to file claims must have purchased a domestic airline passenger ticket between January 1, 1988 and June 30, 1992 from the above-mentioned defendant airlines. However, only those purchasers who flew on a single airline to or from or that connects at one of the following airports are eligible: Atlanta, Baltimore, Boston, Charlotte, Chicago (O'Hare or Midway), Cincinnati, Cleveland, Dallas/Ft. Worth, Dayton, Denver, Detroit, Houston (IAH),

Indianapolis, Kansas City (Missouri), Los Angeles, Memphis, Miami, Minneapolis/St. Paul, Nashville, Newark, New York (JFK and LaGuardia), Orlando, Philadelphia, Pittsburgh, Raleigh/Durham, St. Louis, Salt Lake City, San Francisco, San Jose, Syracuse, and Washington, D.C. (National and Dulles).


The claim process for individuals and businesses will differ slightly. Individuals must file in their own behalf. Business travelers must submit their claims through their companies—who will receive the refund. There will be a "short" and a "long" claim form. To submit a "short" claim, a class member need only certify the purchase of one ticket for a flight within the definition of the class. The "long" claim form is for those with purchases of at least five round trip, or ten one-way trips, within the class definition. There has not been a final determination as to the reward or return a successful claimant will receive, and the total award will depend greatly on the number of claims actually received. However, to qualify for an award, a claim form must be completed and postmarked on or before February 15, 1993.

Flight certificates from American, Continental, Delta, TWA, United, and USAir may be used interchangeably at full face value as credit against the price

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for Alaskan and Hawaiian flights does not apply to residents of Alaska flying to or from cities in Alaska or residents of Hawaii flying to or from cities in Hawaii. Consumers should send in their names and addresses so they will receive claims forms and additional information concerning the settlements.

LYNN LINCOLN SARKO
Managing Partner, Keller Rohrbach
Seattle

Philosopher's Corner

Editor:

Having litigated against Uncle Sam in a wide variety of jurisdictions for some 25 years now, I thought I would share with your readers "Holcomb's Theorems of Probable Outcome for Individuals Having Claims Against the Federal Government in the Federal Court and Administrative Law Systems." I would suggest these to C. Northcote Parkinson, if he were still alive, as the judicial counterparts to his "Laws" as to governmental administrative behavior.

It goes something like this: without regard to logic, the merits, judicial philosophy, or justice in a given case or group of cases, and where the forum is forced to rely on continuing caseloads of individual claims for its existence, individuals will win against the U.S. Government somewhere between 45% and 60% of the time. Conversely, where the forum has no reliance for its existence on continuing caseloads of individual claims for its existence, individuals will win against the U.S. Government somewhere between 45% and 60% of the time. Conversely, where the forum has no reliance for its existence on continuing caseloads of individual claims, individuals will win against the U.S. Government in only a fraction of 1% of the cases.

The reasons for this theorem are not self-evidence but can be proven: Since the forum's very existence depends on Congressional appropriations, including impressive libraries (with all regional reporters), well-appointed offices, tasteful furniture, state-of-the-art electronic widgetry, at least two law clerks per judge, and a number of clerks, bailiffs, and secretaries, and further depends for those appropriations on a steady, indeed, growing, caseload which justifies the forum statistically, the forum, whether the Judges like it or not, must *allow* individuals to win against the U.S. somewhere around half the time at least, so that the word gets out that individuals have a chance by filing. (Statistics are the salvation of the individual). As to the fractions of 1% forums, their statistics graciously come from elsewhere, and, besides, their view is that these claims should be settled administratively anyway with no need to "burden" (as if other statistics do not burden but these do) the court system

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Open letter to Washington's legal community about courtroom video

From one experimental video-only courtroom in Washington state in 1987, the number has increased to 20! Yet no statewide objective and comprehensive analysis of courtroom video has been done. **Call or write the supreme court, your appellate court and/or your county council and demand such an analysis before counties replace more court reporters with courtroom video.** If you do nothing, video-only courtrooms will become a reality for all state superior courts.

WHY SHOULD YOU WORRY ABOUT THE REALITY OF VIDEO-ONLY COURTS IN WASHINGTON? HERE'S WHY!

Problems with Videotaped Proceedings

"The problem is that the (courtroom video) results are not based on a solid enough foundation to use them with sufficient confidence to make such important decisions."

National Center for State Courts' (NCSC)
Technical Review, November 10, 1991

Stipulations, reconstructions and retrials of videotaped court proceedings due to inaudibles, gaps, faulty equipment, blank and/or unlabeled tapes cost hundreds of thousands of dollars in judicial, legal, administrative and clerical time. Just one example is reconstruction of 1400-plus hours of videotaped proceedings in one of King County Superior Court during 1991-1992.

Action of Other States Against Video-Only Courts

California defeats 10 to 1, in committee, Assembly Bill 2937, which would have replaced court reporters by audio/videotape in all court proceedings.

April 1, 1991

69% of Kentucky trial lawyers, after six years of video-only courtrooms, favor court reporters in courtrooms and oppose further video-only courtrooms.

August 1, 1991, Independent Survey

New Jersey Bar Association opposes resolution to replace court reporters with video in criminal proceedings.

December 31, 1989

Board of Governors, Washington Association of Criminal Defense Lawyers (WACDL), unanimously passes resolution opposing videotaping of criminal trials.

December 2, 1989

Certification and Integrity of Video Court Record

All court reporters must be certified in making a "verbatim record of any oral court proceeding" and "producing a transcript from the proceedings." RCW 18.145 imposes strict court reporter standards and provides for monitoring them. The numerous personnel involved with video are not certified, nor are their performance standards monitored.

Videotaped Court Proceedings and the Trial/Appellate Process

It takes at least 50% longer to review videotaped court proceedings without a transcript.

National Center for State Courts' (NCSC) Technical Review, November 10, 1991

Open letter to Washington's legal community about courtroom video (continued)

It takes five to seven times longer for a typist to prepare a manuscript from videotaped proceedings than when done by court reporters using computer-aided transcription (CAT).

All Studies

Accountability

The court reporter is accountable for all aspects of the court record: making the word-for-word in-court record, in-court readbacks, computer translation and transcription, indexing, paper and disk storage, and oral and written communication with lawyers and litigants. The reporter pays for all equipment, maintenance and supplies.

Who is accountable for the video court record? Is it the clerk, the monitor, the archiver, the record producer, the typist or administrative staff? Who pays for video equipment, maintenance and supplies? Litigants and taxpayers!

The Time to Act is Now!

Are video-only courtrooms cost-effective through the appellate process? Do they protect a litigant's constitutional rights? Do they maintain integrity of the court record? Are they a practical option in today's world of changing technology?

Do you want answers to these questions? If you do, we urge you to **call or write the Supreme Court Video Pilot Project Coordinator, Temple of Justice, Olympia, WA 98504-0511** (206-753-3365), your appellate court and/or your county council and demand an objective and comprehensive analysis of video in all state superior courts, available for scrutiny by members of the Bar and the public at large. Without such analysis, further expansion of video-only courts is ill-conceived and shifts enormous time and expense to litigants who seek their "day in court."

Video's Limited Technological Applications

Courtroom video is not computer-based, but instead a limited-vision technology. What does this mean to you, the trial lawyer? It means wading through a bureaucracy to order and receive video cassettes. Securing specialized one-vendor-controlled equipment. Spending valuable time viewing court proceedings on a TV screen. Starting and stopping the sound so you can take notes. Or hunting down a typist who can try to prepare a manuscript from the video cassettes.

Court reporters, in computer-integrated courtrooms, with CAT as their base, as demonstrated at the court technology conference in Dallas in March of 1992, provide the broadest and cheapest use of present technology. They safeguard all technological options and enhancement for litigants such as real-time, daily, copy, search-and-retrieval, verbatim libraries and ASCII disks.

Washington Shorthand Reporters Association

by Lonna K. Baugher

**Lonna K. Baugher
President**

(Statistics are the bane of the individual).

The 45-60% category includes the Claims Court, the Court of Appeals for the Federal Circuit, Merit Systems Protection Board, Court of Military Appeals, Court of Veterans Appeals, Social Security Appeals, the various contract appeals forums, and the various Tax Boards and Courts—there may be others. The fraction of 1% category includes *all* U.S. District Courts and *all* Circuit Courts of Appeal without peradventure—there may be others.

However, a limiting corollary to the 45-60% group is: again, without regard to the logic, merits, judicial philosophy, or justice, the greater the federal deficit, the lesser the likelihood that the individual with a monetary claim *over* a judicially predetermined but unarticulated amount will prevail. Today, a billion dollar claim, ordinarily summary judgment, has absolutely no chance of success. (But, sometimes a helpful judge may tip his or her hand as to the outside and upper limit the judge has in mind by stating in the case that the dollar amount claimed "amounts to a raid on the federal treasury.")

So much for the forum. Now, as to the individual's chances before a given judge of the forum, the theorem is simple: If a judge has aspirations for higher judicial office, the judge will *allow* individuals to prevail in maybe 10% to 25% of the cases, at least enough to argue either way as to his or her qualifications for the office, and never when the personal decision or discretion of a cabinet-level secretary is at issue (the risk is too great that the secretary will "blackball" that judge) or when the FBI is the agency, since the FBI does the background investigations. If a judge has no such aspirations, more often than not the judge will rule in favor of the individual, except for the fraction of 1% category and the limiting corollary above.

To be absolutely objective, however, there may be another equally valid factor affecting federal forum decision-making. It may be that the decision-making is directly proportional to the quality of eating establishments in the vicinity of the forum. The eating establishments located around the 45-60% category are, by any measure, outstanding—e.g., the

deli at the street-level entrance to the Court of Veterans' Appeals on Indiana Avenue is a must for any gourmet visiting Washington, D.C. By contrast, the food around the fraction of 1% category is notoriously bad. Congress needs to amend 28 U.S.C. 1391 to provide for change of venue on the ground of rotten, greasy food served in the vicinity of the forum. Against this

necessary reform, however, it may be impossible to find a U.S. District Court to which venue may be changed on this ground.

But there are still those of us who do not allow cynicism to govern our actions, and we, nevertheless, fight on, firmly believing what we read about impartiality and separation of powers—that the justice, logic and merits of our

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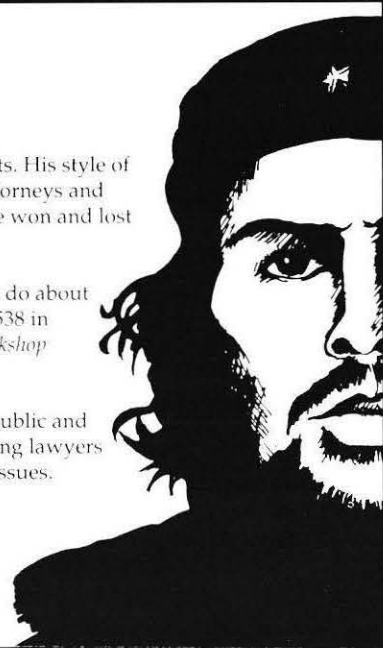
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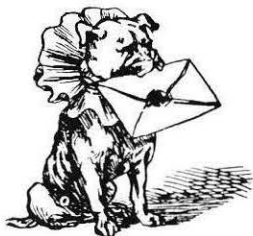
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client's claim against Uncle Sam will prevail no matter what forum we are before; and, most important, that we will receive fair consideration as well as full recovery based on sound legal principles.

Now, to be serious, I both respect and like most federal forum decision-makers. The country is blessed for the most part on the quality of the people who serve in these forums. I do like to poke fun at the system, however, both for the grain of truth the above expresses as to the system, and if for no other reason than to remind them, first, that statistics, deficits, and politics have absolutely no place in their decision-making, *or*, if such are factors, let them at least be honest about it, and second, to remind them that their proper role is precisely the opposite—the people of this country vitally need them. Government does not.

J. BYRON HOLCOMB
Bainbridge Island



A Lesson from the Courts

Editor:

In early 1989, a client came to me with a small personal injury claim arising out of an automobile accident. After notifying the tortfeasor's insurance carrier of our claim, we learned the tortfeasor had no coverage. We then made a claim for underinsured motorist coverage under our client's own policy. Our initial settlement demand on the underinsured motorist claim was \$18,000. We hoped to settle the case for \$10,000-\$12,000.

Our client's insurance company denied the claim, so we filed a lawsuit for breach of contract, bad faith, and violation of the Consumer Protection Act. After depositions were taken, the insurance company moved for summary judgment. The trial court granted the motion and our case was dismissed.

We were terribly disappointed by the court's decision. Nevertheless, my client and I decided not to appeal because of

the relatively small size of the claim. Then we received the insurance company's motion for attorney fees. The insurer claimed our lawsuit was frivolous and sought an award of approximately \$9,000 under RCW 4.84.185.

Fortunately, the judge denied the motion for attorney's fees. However, my client and I were incensed that the insurance company would accuse us of filing a frivolous claim. Since my client was probably judgment-proof, the insurance company's motion had to have been motivated by sheer vindictiveness.

We were so angry at the insurance company that we decided to go ahead and appeal the case. The Court of Appeals reversed the dismissal in a unanimous opinion and sent the case back for trial. The case was vigorously litigated. Literally dozens of pretrial motions were heard. Even though the trial was only expected to take three days, we went through more than two days of pretrial hearings on legal issues and jury instructions. Finally, a week before trial, we settled.

By the terms of the settlement, I cannot reveal the amount the insurance company paid. However, I can reveal that the insurance company paid the original underinsured motorist claim, plus damages for bad faith and violation of the Consumer Protection Act. The insurance company also paid our attorney fees. In addition, the insurance company probably spent at least \$50,000 on defense costs.

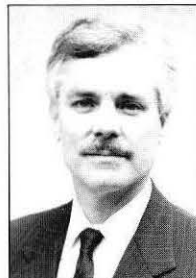
Most attorneys can accept a losing case now and then, but they take great offense at being accused of filing a frivolous lawsuit. A spiteful winner only motivates the opponent to continue the fight. If the insurance company had simply accepted the benefit of the court's initial ruling and had not tried to crush my client with a claim for attorney's fees, we would not have appealed and the insurance company would have saved a tremendous amount of money.

Sometimes it is best to be a gracious winner.

BLAINE G. GIBSON
Yakima

Michael C. Jordan, Ph.D.

formerly Director, Practice Development, Perkins Coie
and Senior Manager, Arthur Andersen & Co.



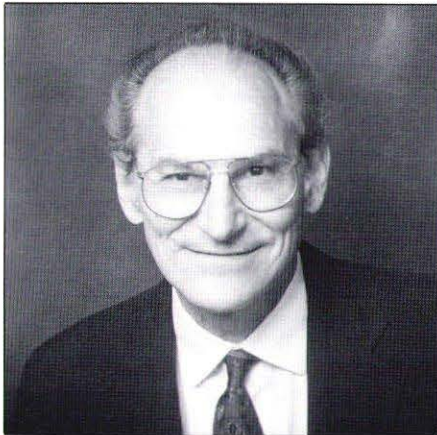
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An Invitation to the



Joseph P. Delay

I encourage all of you to attend this year's Bar Convention to be held September 16 - 19, 1992 in Vancouver, B.C. The Board, section members and Bar Association staff have put together a program that combines the best of the traditional convention with some new and innovative programs. It is truly a program "Designed with Everything on your Mind In Mind."

Following a tradition that has brought

thought-provoking speakers to every convention, we are pleased to welcome as this year's featured luncheon speakers Catherine Crier, anchor for CNN News, and James B. Stewart, author of *Den of Thieves* and front page editor for the *Wall Street Journal*.

Ms. Crier took a fast track through college and law school to become a successful felony prosecutor and then a judge, before joining CNN as anchor. She will address the Convention at Thursday's luncheon and trace the growth of the media's power in relation to world events, posing the question: Is television news a source for entertainment, information or telediplomacy?

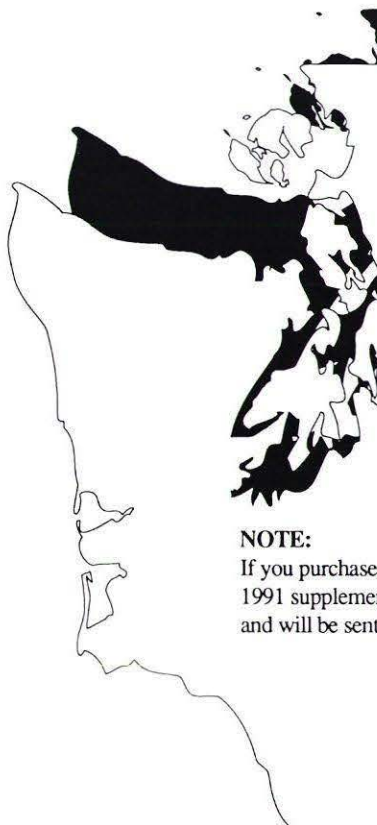
James Stewart will be featured at Friday's luncheon. Taking a page from his best selling book *Den of Thieves*, Mr. Stewart will describe the role of government investigators and prosecutors facing the most awesome defense

organization ever mustered in a criminal case: the prosecution of Michael Milken and others involved in the insider trading scandals that rocked Wall Street in the '80s. Mr. Stewart brings to the convention his background as a lawyer and as a Pulitzer Prize-winning reporter covering the mergers and acquisitions boom, 1987 stock market crash, and insider trading.

Also at this year's convention, you will again be able to choose from a wide array of CLE programs and earn 15 full credits. In addition to the Saturday CLE Finale, nine different programs are available. Register for the convention on Wednesday morning, and that afternoon you can choose from among three CLE seminars: "Criminal Law Sentencing," "Doing Business with Government Agencies," and "Starting a High Tech Business." Six more programs are offered on Thursday and

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To make it easier to find a current rule, and due to the increasing volume of agency rule-making activity, the Code Reviser's office has changed the WAC to a biennial schedule of total republication after even-numbered years, with a supplement published for odd-numbered years.

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

The price of the 1991 WAC Supplement is \$100.00 and 7.9% sales tax applies to all sales other than to state agencies. State law also requires prepayment on all orders.

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WSBA Annual Convention

Friday mornings. Those seminars run the range from an update on the Americans with Disabilities Act to an evidence program featuring Cornell Law Professor Faust Rossi. A complete program schedule listing all CLE seminars is included in the convention brochure mailed to you in early June.

Rounding out the CLE selections is a not-to-be-missed finale on Saturday morning, a lively debate on "Ethics in American Society." A distinguished panel will bring to the debate their perspectives from the law, the media, business and politics. Our guests include, among others, former chair of the NEA John Frohnmayer, U.S. District Court Judge Barbara Rothstein, James Stewart, and, schedule permitting, Senator Slade Gorton.

While the mainstay of the Convention remains the CLE seminars and luncheon speakers, this year we've

added three special programs addressing some of the tough career and family questions facing many of us: "The Trials of Life-Managing Stress in the Practice of Law," "Double Your Challenge, Double Your Fun—Managing the Two Career Family," and "Access by Women and Minorities to the Legal Profession." These programs are open to all lawyers who register for the convention and may be attended by spouses or guests.

On the lighter side, and once again combining great traditions with some delightful new choices, there will be a variety of social activities and events. Participate in the annual golf and tennis tournaments, or try salmon fishing, or the Tour of the Law Courts—a chance to visit an architectural gem and see the solicitor barrister system in action, or a fun filled afternoon at an improvisational workshop. Friday evening will

conclude with a dinner dance, a tribute to "Casablanca" with floor shows and dancing to the music of the '40s. And, for the first time in WSBA history, rock and roll comes to the convention. For those of you who truly like the music made after 1960, Thursday night's dance features the popular local rock group Bufflehead (with the lead singer and the guitarist from Bogle & Gates).

Throughout the convention, there will be receptions and breakfasts sponsored by different organizations in the legal community: the Vancouver Law Society, the WSBA Creditor/Debtor Section, Judicial Arbitration and Mediation Services, the B.C. International Commercial Arbitration Centre, American Arbitration Association, UPS School of Law Alumni Association, Gonzaga Law School Alumni Association, and the University of Washington School of Law

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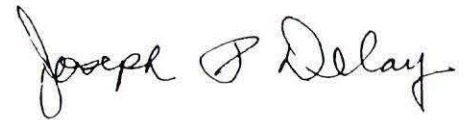
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\$150. The registration fee entitles you to 15 CLE credits, the course materials, all receptions, the nonCLE seminars, the Tour of the Law Courts, and entrance to the Exhibit Hall. Other events, such as the luncheons, dances and recreational events, are separately ticketed, but reasonably priced.

If you regularly attend the convention, this year will be among the best you have attended. If you've never attended before, you should take advantage of this excellent program and networking opportunity. If you are a partner in a firm, take an associate or junior partner with you and introduce him or her to a fine educational opportunity and one of the best ways of promoting professionalism and camaraderie among lawyers.

I look forward to seeing you there.



Alumni Association.

Finally, the Annual Business Meeting of the WSBA will be held at the convention on Friday, September 18, 1992 from 2:15 to 5:00 p.m.

All convention activities will be held at the Hyatt Regency located in the heart of downtown Vancouver, near the art museum, Law Courts, Robeson Street for shopping and dining, and Stanley Park. For your convenience, a block of rooms has been set aside at the hotel.

Reserve your room by calling (800) 233-1234. If you'd like to stay at another location, call the Vancouver Travel Information Centre: (800) 888-8835. (Please note that this number is different from that printed in the Convention brochure. The number shown here is correct).

The registration fee this year, like last year, is \$235. Attorneys over 70 and those admitted to the Bar after September 1, 1990 can register for only

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Regulation of the Legal Profession: Different Things to Different People

How can one resist an article that contains the observation, "British lawyers are no more conservative or genteel than Americans. They just have better grammar." So sayeth an article published recently in the English magazine *The Economist*, which is, according to Lindsay Thompson (editor of this esteemed publication and thoughtful person who sent me a copy of said article) "the best magazine in the world." That article—actually a survey of various legal systems throughout the world—addresses the concept of regulation of the legal profession.

Admittedly, my concept of regulating the legal profession is skewed to a narrow perspective by some years of hands-on experience in supervising the admissions, licensing, and discipline functions at the state bar level. That, at its purest and most ministerial level, is one form of regulating the legal profession—micro-regulation, if you will.

The Economist article took a broader view. Its view focused on the delivery of legal services, the advantages, and disadvantages of various systems. It observed:

"To reduce the costs of America's alleged 'litigation explosion,' Mr. Quayle proposed to re-regulate the most free-market legal system in the world. To cut the costs of legal services to consumers, Britain's Lord Chancellor wages a campaign to introduce competition and improve access to a legal system that excludes all but the richest and poorest. Protectionist barriers erected by local lawyers in France and elsewhere to keep out foreign ones are under fire. And in Japan, a quiet movement is afoot to prise open a classic cartel: high barriers to entry, restrictive practices, monopoly pricing. Some Japanese suspect the cost of their happily non-litigious system is a deficiency

of justice."

The article continues, "Reformers everywhere refer to how much better things are in other countries. [I'll bet you've heard that before.] Usually they have little idea what they are talking about. Before charging ahead with ideas borrowed from abroad, they should take a closer look. This is not because (say) Germany has nothing to learn from (say) Canada. Quite the contrary. **But regulating lawyers is a tricky business.** The law may be a business, but the legal profession is not, as Harvard's Pound put it, 'the same sort of thing as a retail grocer's association.' Lawyers are most people's only way to use the civil-justice system."



Dennis P. Harwick

The American system probably is "the most free market legal system in the world"—and with it comes the opportunity for excess on both sides. It is a system where "the little guy" has a chance to take on the mega-corporation because our legal system provides an economic tool—the contingent fee—that makes it possible for a lawyer to undertake representation. It also allows abuse, i.e., using the contingent-fee

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arrangement to obtain a nuisance value settlement.

Does it strike you as ironic that the Lord Chancellor of England seeks a more American-like system by breaking down the overlapping monopolies of barristers and solicitors on the premise that "consumers of legal services would benefit from competition among suppliers"? And that, "the costs of

hiring a lawyer have made some Japanese turn to less laudable methods of alternative dispute resolution. Japan's notorious gangsters, the *yakuza*, provide services performed elsewhere by lawyers: debt collection, contract negotiations, help with corporate restructuring. 'In Britain, solicitors send a letter in these matters,' says Hamada. 'Japanese send *yakuza*. They are

lawyers' biggest competition.'" Makes our "unauthorized practice of law" problems sound mild.

Each society is grappling with the right balance between free-market delivery of legal services and the regulation of those services to meet societal standards. Many of the issues facing the Washington State Bar Association can be viewed in this context. *The Economist* is wise in counseling, "Before charging ahead with ideas borrowed from abroad, (we) should take a closer look." We pay a price for a relatively free market approach to the delivery of legal services, but it may be worth it considering the alternatives.

Note: Reprints of the survey from *The Economist* are available for \$3.50 from The Economist Newspaper Group, Inc., Reprints Department, 111 W. 57th St., New York, NY 10019.

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Lawyers in the Dark

How to Survive a Power Outage

"Power comes from the barrel of a gun."—Mao Tse Tung
"Mao never tried operating a computer with a gun.—John C. Peick

by Jane Larimer

The road blocks were the first clue. But road construction isn't that unusual on this stretch of pavement in Bellevue. Taking the long way into the parking ramp, I noticed the crowd of confused-looking business men and women wandering aimlessly around outside of the U.S. Bank Plaza building. This was a sure sign of trouble; although, I hoped, it was probably just a fire drill. But when I passed several firemen decked out in full fire-fighting garb, my spirits began to sink.

As I joined the crowd of confusion, my mind raced. How would all of this affect our law firm, Trujillo & Peick, P.S.? Were we prepared? Did I remember to back up my computer last night? What if the back-up tapes didn't survive the flames? Are the phones down? Do we have any power at all? How do we explain all of this to our clients? What about my 9 o'clock appointment?

I ask a fireman and the building manager for an explanation. They inform me that there was a fire, that we can go up to our office now, and that power is completely out for the day, and quite possibly for three to four days.

Three to four days ???! Taking a deep breath, I climb up the stairwell, aware of the smell of smoke. Elevators sure do make life easier. I start to calculate what a power outage like this will cost our law firm.

Our reception area is a mixture of chaos and relief. Information bombards me from all directions as I hear fragments of sentences--yes, the fire has been extinguished . . . it was on the ninth floor . . . not a fire, an electrical explosion . . . so strong it blew a woman across the room . . . what do we do????? Several employees sit in the darkness talking about the exciting events of the morning. It hits me . . . what do we do with our staff? No computers, no phones, no light, no fax, no copy machine, *NO COFFEE*. There is not a manual typewriter in the place.

The phones. Even our latest investment in a sophisticated voicemail system couldn't save us now. The reality of how dependent we have become on high technology was sobering.

As a survivor of such a disaster, here is how one Bellevue law firm handled the situation. We hope these suggestions may be helpful to you should you one day find your office in the midst of a power outage.

1) Handling Phone Calls

Our first objective was to find a phone that worked. Even though our multi-line phone system was down, we discovered that a handset on the fax machine *did* work. In this case, it was a lifesaver.

We then called our phone company, MetroNet. We contacted the customer

service department for business accounts and requested a call-forwarding service. This service forwarded all of our incoming calls to the phone company, where a voice mailbox was set up to receive messages. We were then able to record an outgoing greeting to callers, which explained our predicament and thanked them for their patience. Within the hour, we were able to retrieve our messages using a password.

(Another option available to us was to route our calls through an answering service, after the call forwarding feature had been activated with our phone company.)

Next we contacted a cellular phone company about daily rentals. They delivered several cellular phones to our office in 45 minutes.

2) Clients

We then contacted any clients who had appointments at our office that day to forewarn them of the situation. Because we utilize a computer calendar system, irretrievable in a power outage, we now realize the importance of printing out a hard copy of each attorney's appointment schedule.

3) Administrative Assistance

Without power, we found ourselves frantic without access to our computers. We called an administrative support office which is located in the next

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building. We were relieved to find we could give them our dictation tapes and receive completed work for our high-priority work by the next day. We also utilized the fax and copier services of a nearby copy center.

4) Lights

We tapped into our emergency survival kit right away. We had a supply of flashlights and batteries which helped tremendously.

5) Staff

This is a good opportunity to get work to be done that *doesn't* require electrical power done. But, under the circumstances, we thought it made more sense to send most of our employees home. Our receptionist did stay to greet any confused clients who were brave enough to wander into our office despite the chaos, and we were prepared to handle incoming calls just in case our power was restored.

As it turned out, it was restored six hours later. As our managing partner Steven Lingenbrink commented, "It was one of the few times we could all honestly say we were totally in the dark regarding any specific client's problem." Firm co-founder John Peick remarked, "One day I was revelling in our high-tech law office. The next day I was sitting in the dark watching shadows on the wall. 'Vulnerable' doesn't do justice to the feeling."

Overall, the experience taught us how to be better prepared for the next time. Below are some suggestions to prepare your office such a crisis.

- 1) Consider setting up a separate phone line, independent of your multi-line main phone system. The independent line will be powered while your private system is shut down.
- 2) Back-up your computer system on a daily basis. Keep a hard copy print-out of calendars, etc. that you need to function for the day without power.
- 3) Store back-up tapes or disks in a fire-proof safe.
- 4) Give some thought to water damage from overhead sprinklers going off.
- 5) Have an emergency survival kit on hand, and make sure all employees

know where it is. This should include a first aid kit, several flashlights, batteries, blankets, spare change, a water supply and non-perishable food items.

6) Have an emergency plan, including evacuation procedures, for fire, earthquake or power outages and make sure all employees know it. Have an emergency plan for alternative communications, secretarial service

and meeting space if power outage becomes prolonged.

7) Have a list of resources to contact in an emergency. For a power outage, include the phone number and contact person of:

- a) your phone company
- b) outside sources of administrative assistance
- c) outside sources for fax and copier service

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"Back in Business" shows employees at every level how important a good plan is for saving the company. It tells the dramatic and frightening story of a company that barely survives a local disaster and demonstrates how flaws in the company disaster plan almost killed it. The video covers prevention of everyday emergencies, such as power failures and water damage, as well as major disasters; data processing recovery; recovery of critical records on paper and other media backups; off-site storage; salvage operations; security; public and customer relations and more.

The 19-minute video costs \$475. Contact Commonwealth Films, 223 Commonwealth Avenue, Boston, MA 02116, (617) 262-5634.

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Postscript:

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Jane Larimer is marketing Director and office manager for the Law Offices of Trujillo & Peick, P.S. in Seattle.

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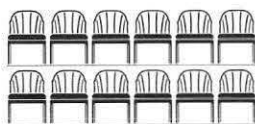
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Hidden Costs of Automation

by Tom Krippaehne

Is your firm looking for more "bang for the buck" with automation? It should be. But what should firms get from computers when considering the amount of capital expended on both an initial and ongoing basis?

The automation payback equation has two parts: (1) What capabilities should the firm acquire? (2) What should be spent to acquire these capabilities? This article focuses on the second part of the payback equation, that is, the costs spent on automation. Several factors make this a difficult area to assess:

- Not knowing where money is being spent.
- Not being able to measure or track expenditures.
- Not knowing how to effectively manage systems.
- Not fully understanding what it takes to bring systems up to a fully operational status.

Typically, firms lack a comprehensive grasp of the number and types of costs involved in automation. They need a better understanding of how to fully and effectively implement systems. This article discusses:

- Identifying the major costs involved in system automation.
- Recognizing the importance of spending money and managing the capital spent.
- Formulating conclusions regarding the costs of systems.
- Providing straightforward recommendations to effectively plan for expenditures.

Assessing automation costs rests on analyzing the need for payback, and then implementing and managing systems accordingly. Firms must identify the strict costs and benefits of computerization and then spend the appropriate amount of money for the "right" systems.

Costs of Automation

The costs involved in automation are manifold. System costs can be categorized into three types: (1) acquisition (2) implementation and (3) ongoing operation. It is a common mistake for firms to focus only on the obvious initial costs of procurement. However, significant costs are, or should be, spent to correctly implement and manage systems on a continuing basis.

Acquisition. These costs are typically paid to vendors for hardware, software, communications and cabling. A couple of points are worth noting: First, they're easy to predict. Hard dollars are expended up front for tangible products and services. Second, increasing amounts of the acquisition costs are being spent in the new areas of "connectivity" and "system integration," including communications.

Implementation: These costs are often not fully identified by either the firm or the vendor. They entail implementation support, training, data conversion, project management and sometimes programming or customization of software. Keep in mind it is the firm's responsibility to identify these costs—not the vendor's.

Many of these costs have both a hard-dollar and soft-dollar component. Soft-dollar costs are those that are difficult to estimate and/or assess, often associated with time or other intangible, internal items and may be widely variable. They are often not adequately identified and may be major "hidden costs" of automation.

Operations and maintenance. These costs, expended on a recurring basis, are also difficult to identify and assess. They involve ongoing support, training, and system management in addition to maintenance and upgrades to both hardware and software.

Definition of Costs

The following lists the major costs associated with automation (*see Exhibit I for a table of these costs*). It should be noted that these costs are spent external to the firm as opposed to direct internal expenditures (e.g., personnel and depreciation) or as other overhead (e.g., utilities, supplies, etc.).

Hardware - physical equipment.

Software - programs used to operate a system.

Cabling - the physical cable and services required to connect components of the system.

Documentation - technical and user manuals.

Installation - hardware and software setup.

Implementation Support - assistance for operators and users during implementation.

Training - equipment and software

AUTOMATION COST MATRIX

ASSOCIATED COSTS	CATEGORIES OF COSTS			TYPES OF COSTS		
	Acquisition	System Implementation	Ongoing Operations	Soft Dollar	Hard Dollar	Not Often Recognized
Hardware	✓				✓	
Software	✓				✓	
Cabling	✓				✓	
Documentation	✓				✓	✓
Installation	✓				✓	✓
Implementation Support		✓		✓		✓
Training		✓		✓	✓	✓
Freight	✓				✓	
Taxes	✓				✓	
Conversion		✓		✓	✓	✓
Project Management		✓		✓		✓
Programming		✓		✓		✓
Ongoing Support			✓	✓		✓
Maintenance			✓		✓	
System Management			✓	✓		✓
Upgrades			✓		✓	✓

instruction.

Freight and Taxes - shipping and state and local sales tax.

Conversion - manual or automated conversion of information from one system to another.

Project Management - project oversight for the installation and implementation of systems.

Programming - software customization (initial and ongoing).

Ongoing Support - vendor assistance after implementation.

Maintenance - hardware and software repair or enhancement.

System Management - ongoing planning, organization, monitoring and control of systems.

Upgrades - additional enhanced system components and capabilities.

Conclusions

The complexity of automation calls for better system training, planning, understanding and management. The

bottom line is that if firms focus more on system costs, specifically on the "hidden costs" of automation, they will make better decisions regarding acquisition, implementation and financial payback.

- Most firms do not fully recognize the comprehensive set of costs associated with automation.

- Where firms conduct direct cost-benefit analysis, automation decisions are often redirected toward better payback and enhanced system productivity.

- Those firms which do not comprehensively plan for costs end up spending far more capital than necessary, especially over the long term.

- Firms which spend more money up front on components such as planning, training and implementation management spend significantly less down the road.

- When identified before acquisition, many costs may be absorbed by the vendor or eliminated altogether.

Recommendations

Following is a succinct set of recommendations to deal with the "hidden costs" of automation:

- Make automation decisions based upon the comprehensive set of costs identified in this article.

- Plan to spend the "correct" amount on computers, but not to under- or overspend significantly.

- Aggressively negotiate with vendors, especially in the soft-cost areas of implementation and ongoing support.

- Obtain adequate amounts of training and support to fully utilize systems.

By adopting these recommendations, firms will undoubtedly make better automation decisions!

Tom Krippaehne is senior manager of Moss Adams' MDA Consulting Division. He concentrates on information technology, feasibility studies and transportation issues, including telecommuting.

P R O F I L E

THE COMPUTER DETECTIVE

by Ellen Wright

John Jessen, a Seattle computer expert, is pioneering a new path in American detective work that his lawyer clients say is becoming critically important to successful litigation in a variety of fields.

Jessen, managing director of Seattle-based Electronic Evidence Discovery, Inc., is helping trial lawyers recover missing, erased and deleted evidence hidden in the deepest recesses of opponents' computer systems and helping them understand how to use computerized information to their maximum benefit at trial.

Clients say he is fast becoming the nation's leading expert in using the computer to obtain evidence. "I've never seen anybody as good as John Jessen in using the computer to find evidence in litigation," says Ken Shear, a Seattle lawyer who has worked with Jessen on two cases.

"He's the computer super-sleuth extraordinaire, and he's invaluable to trial lawyers like me. Jessen's skills can be applied to a remarkable number of cases simply because everyone is using computers to store information electronically."

In fact, Jessen has been so successful in his work for trial lawyers that a number of large corporations and organizations have hired him to teach them how to clean up and secure their computer system against unwanted probes.

"It doesn't really matter whether John sells his services to the white hats or the black hats. They both need it," said Bob Cannon, executive director of Graham & Dunn. The Seattle law firm hired Jessen to evaluate the firm's security system to insure clients' information was fully protected from investigators or hackers.

While Jessen's defensive work for banks, insurance companies and large corporations may ultimately provide the bulk of his business, it is his investigatory work that has trial lawyers lining up for his services.

Not long ago, Jessen was hired by a Seattle lawyer for investigation of what seemed a nearly unwinnable employment discrimination case filed by a woman against a former employer. The company's termination letter to the woman was picture-perfect by Human Resources standards; it said she was a wonderful employee who was being laid off only for financial reasons. Discovery in the case had produced little to contradict the letter. Enter Jessen.

The lawyer subpoenaed the company's computer system and Jessen went to work. Within two hours, he had found an E-mail (electronic mail) memo from the company's president to the head of the personnel department. "Get rid of that tight-assed bitch," it read. The company's attorney, who viewed the case as a nuisance suit, agreed—reluctantly—to meet with the woman's lawyer and with Jessen. They laid the termination letter and the E-mail side-by-side on his desk and asked for an explanation. Within an hour they

walked out of the office with a settlement check for \$250,000.

In another case, in which a fire had destroyed a business, Jessen was called in to investigate fifteen fire-damaged diskettes from which no one could retrieve any information. His computer sleuthing turned up electronic files that provided his client the information necessary to win a civil case. Later, the business owner was convicted of arson.

Like the work of his illustrious predecessors, Phillip Marlowe and Sam Spade, Jessen's sleuthing looks easy. Erased or deleted computer files don't just disappear; many are saved, in various places, and those who know where to look can find them.

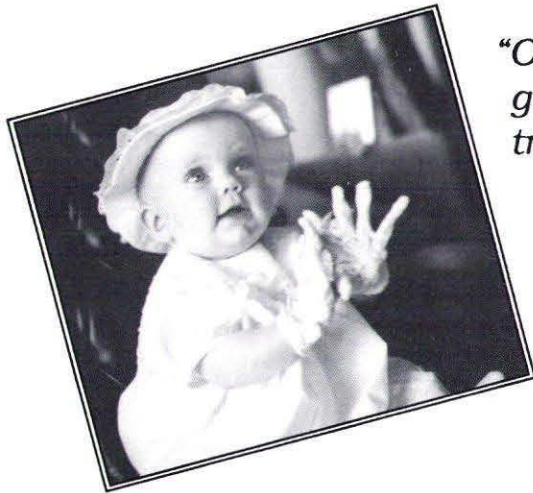
But like his fictional counterparts, Jessen's success seemed keyed less to his use of the tools of his arcane trade than to his understanding of the habits of people who use computers. Before focussing on computer investigations, Jessen spent twelve years setting up computer systems for business and law firms through his company, Micro Management, Inc. Out of that experience he learned a lot about how people make use of computers day-to-day.

"John's got a real macro-view of how businesses and offices work. He knows how people use computers and that gives him an edge," said Joan Feldman, WSBA assistant CLE director.

Time and time again, Jessen has been called in after other computer experts have failed to uncover data in systems they were investigating.

Ken Shear, with Seattle's Endriss &

John Jessen, Electronic Evidence Discovery, and David H. Binney, Preston, Thorgrimson, Shidler, Gates & Ellis, will be featured speakers at the upcoming WSBA CLE seminar, "High-tech Discovery: Electronic Data Discovery Issues," December 18 at the Washington Athletic Club in Seattle. Call (206) 727-8202 for more information.



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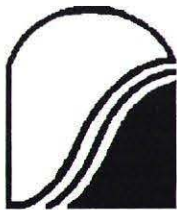
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Sheer, spent a substantial amount of money with a major computer company, using the mainframe computer at the University of Washington, in a vain effort to find the data he needed. When he hired Jessen in another case, Jessen spent a few days before discovering evidence that, Shear says, enabled him to settle the case for \$1.3 million, about 20% more than he would have otherwise expected.

In the arson case, many different computer experts examined the fifteen damaged diskettes without finding the evidence Jessen was able to find in two days.

In another case, he used his opponents' own Lotus spreadsheet program to show how they had set a particularly high damage claim by selecting the highest possible variable in the spreadsheet. Based on prudent business figures, Jessen determined, the damage claim should have been much lower.

In other cases, Jessen has shown clients how to use E-mail and multiple revisions of the same document to find the truth of issues in litigation.

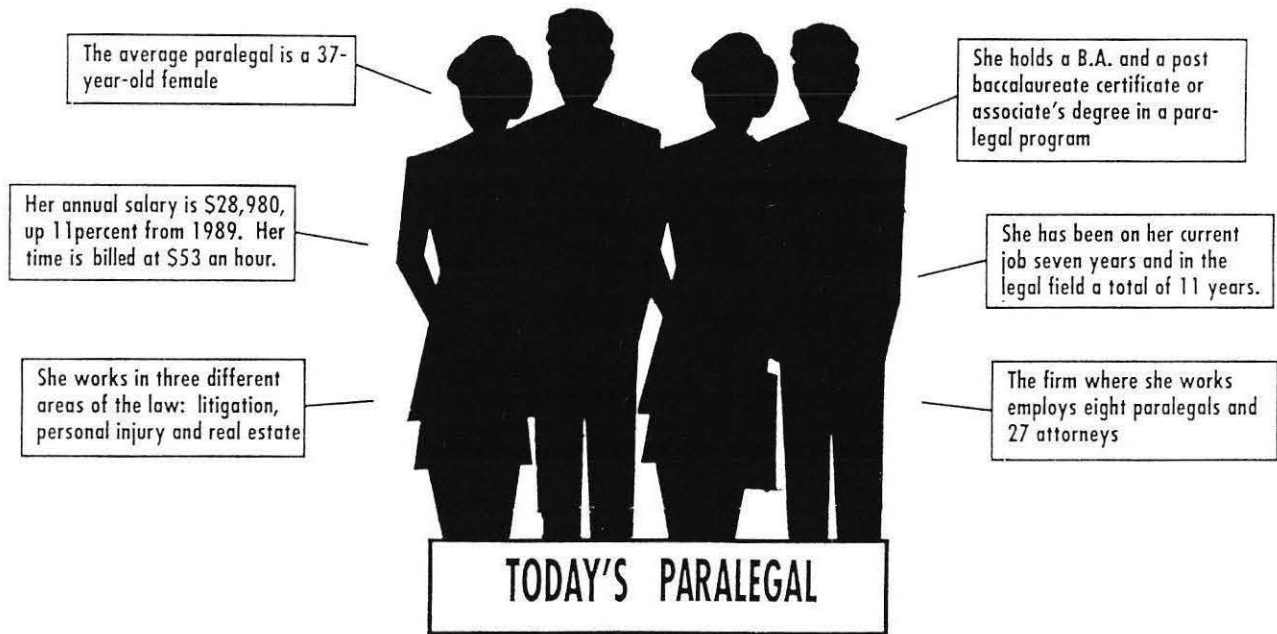
"Official paper documents are becoming less and less valuable in finding the truth. The underlying first second or third versions, stored in the computer, reflect the author's original thoughts... because the truth hasn't been crafted out of them," Jessen said.

And E-mail is a particularly powerful litigation weapon, because more than any other kind of written communication, E-mails reflect the real, unedited thoughts of the writers.

"E-mail is probably the most dangerous time bomb in every corporation that uses it," Jessen remarked. Feldman thinks his computer sleuthing is certain to become increasingly important to lawyers and their clients. "Oliver North wasn't the first to try to cover his tracks by erasing computer files."

*Ellen Wright is with Polk
Communications in Los Angeles.*

Survey of Trends in Law Office Management



SOURCE: 1990-91 NALA Utilization & Compensation Survey

summarized by Lindsay Thompson

Paralegals: Has Pandora's Box Been Opened?

More and more people are finding that an understanding of the law is a valuable job skill for opening doors to business and government opportunities. But they are becoming paralegals, not lawyers.

"When paralegal training programs began back in the 1970s, there was really one type of employer—the law firm," says Betsy Covington, director of the Denver Paralegal Institute. "While law firms are still the principal paralegal employers, the employment field has definitely changed."

Driving an increased demand for paralegals in corporate settings, for example, is increased government regulation and the desire of businesses to cut costs in addressing routine legal issues where the services of a lawyer aren't necessarily required. Enforcement and compliance issues can be monitored in the workplace by paralegals, too, businesses are learning.

Some paralegals are finding work in the business sector less confining, in that businesses are less likely to try to define paralegals, and what they can do, narrowly.

Increasing demand for paralegals is also reflected in higher pay. The 1991 biannual survey of the National Association of Legal Assistants found paralegals nationwide were significantly better-paid, better-educated, and used by more attorneys than they were in the 1989 survey period.

The NALA survey found the national average compensation of legal assistants increased 11 percent between 1989 and 1991, from \$26,023 to \$28,980. Individual billing rates were up by an average of \$8 per hour at an average billing rate of \$53 per hour. Across all law firms, NALA found that 70 percent bill legal assistant time.

A 1992 *Legal Assistant Today* Salary Survey found, not surprisingly, that the lingering effects of recession have hampered growth in legal-assistant

earnings. Pay for legal assistants working in bankruptcy and environmental law beat the trend, rising eight percent. Environmental law is one of the best-paying fields for a legal assistant, the survey found, paying an average salary of \$31,378. The highly specialized intellectual-property field topped the chart, paying legal assistants an average of \$34,210. Corporate law dropped to third (\$30,932), and consumer law--1991's highest paying field in the publication's survey--fell 11 percent to \$27,695.

Legal Assistant Today found that type of employer is a significant factor in pay differentiation. Public sector employees' earnings dropped .6 percent in the 1992 survey, and corporate legal assistants earned only 1.3 percent more than last year. Private firms were the most generous, increasing compensation an average of 5.6 percent.

Closer to home, the Inland Empire Chapter of the Association of Legal Administrators' annual survey of legal

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secretary and paralegal salaries showed pay levels lagging behind the NALA averages. The survey, released last winter, queried 44 firms in Spokane, Yakima, Tri-Cities and Coeur d'Alene.

Reported median salaries were higher in Yakima than Spokane, and were generally lower in Coeur d'Alene. Smaller Spokane firms (12 or fewer lawyers) were found to pay legal secretaries more (\$1,725 to \$1,750 per month) than larger firms (\$1,650), a trend attributed to secretaries in smaller firms carrying greater responsibilities. However, the same survey found bigger firms paid paralegals more (\$1,950 per month median) than smaller ones (\$1,800).

Increased use of legal assistants was also marked by the survey results. 84 percent of respondents in 1991 said they were accompanying lawyers to court hearings or trials, up from 65 percent two years earlier.

The ratio of legal assistants to lawyers remained fairly stable, NALA reported, up to the level of firms of 90 or more lawyers, where it began to drop. NALA president Connie Kretchmer says, "Future employment opportunities appear to be strongest in the larger law firms, where there is a huge, untapped market for new legal assistants. At a time when cost control is critical in the legal field, increased utilization of legal assistants is a viable solution for firms of all sizes."

But around the country, another trend is that of paralegals and legal assistants striking out on their own. With this trend has come an increasing debate over whether independent paralegals should be regulated by some licensing authority.

A paralegal membership group active in the debate, the National Federation of Paralegal Associations, reports that a number of states are actively considering paralegal regulation and licensing.

The Florida Bar Association's Legal Technician Study Committee has recommended that the Supreme Court of Florida impose minimal regulation of legal technicians, as they would be called, and that the state bar should not be the regulatory authority. In May, the board of directors of the Texas State Bar accepted a report from the Task Force For The Delivery of Legal Services to

the Poor, which recommended that paralegals and legal assistants be used to help with the delivery of legal services to the poor. Legislative hearings on similar proposals were set for mid-July 1992.

The Oregon State Bar Bulletin devoted its July 1992 issue to the question, "Who Will Practice Law?" featuring the recommendations of the Bar's Legal Technician Task Force. Idaho is also studying the regulation of paralegals.

Driving this movement has been a raft of studies showing lawyers, as a group, are unable to meet the legal needs of the poor, who, because of their increasing dependence upon government assistance, are caught in seas of red tape and rules. Consumer advocates, who once applauded the glut of lawyers being turned out by law schools as a way to increase competition and lower fees, are now saying that licensing paralegals will benefit even middle-class persons who are precluded from hiring a lawyer by high fees.

In Washington, a succession of task force and committee reports on subjects ranging from civil legal services for the poor to long-range planning for the WSBA have all recommended some form of paralegal licensure. At the WSBA Board of Governors level, the issue has been hotly debated off and on for several years as membership on the Board changes. But pulling the other way are the complaints of lawyers about paralegals who engage in the unauthorized practice of law to the detriment of the public. What to do about UPL, as unauthorized practice has been shorthanded, has been an annual topic at state bar meetings since at least the 1930s. WSBA's UPL Committee, renamed the Consumer Protection Committee last year, is working on new ideas, emboldened to some extent by a successful UPL prosecution in Kitsap County earlier this year.

The Oregon plan would allow anyone 18 or older and of good moral character to become a "limited law advisor." Admission would be by exam; disbarred or suspended lawyers or other legal-service providers would not be allowed to become LLAs. A model statute drafted to implement the plan would allow LLAs to advise consumers only in the following areas: residential

landlord/tenant law; changes of name; wills for estates of \$300,000 or less; summary dissolutions of marriage; no-asset chapter 7 bankruptcies, subject to all federal laws and regulations; and powers of attorney for health care and directives to physicians. After 1996, the LLA regulatory board could expand this list.

To be created at the same time as the LLA Board would be a Law Practice Board, appointed by the Oregon Supreme Court, and authorized to investigate and seek injunctive relief against unauthorized practice of law. A similar proposal by the WSBA UPL Committee foundered two years ago when the Supreme Court, looking at the \$200,000 annual pricetag attached, offered to run it if the state bar would pay for it.

While opponents of limited licensure dislike it, among other reasons, for its potential to suck away business from lawyers, contests over access to practice have been going on for centuries. From the now-forgotten Serjeants of Law in the English courts, to current plans to allow solicitors access to courts where once only barristers held sway, to paralegal licensing efforts in this country, change is the only constant.

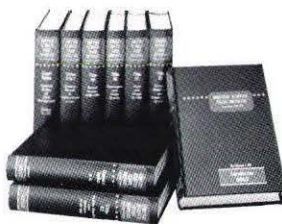


CD Technology: Solving the Chicken/Egg Problem

Widely thought of as a clever, if overpriced, way to hear music, compact discs (CDs) are making inroads in the legal-research field. CD-ROMs, as they are known when they carry words, not notes, have been hampered by access hurdles: a lack of useful databases for potential users, the lack of built-in slots to use them in personal computers, and the cost of buying devices to run them. All of that is changing, and at an accelerating pace.

Though the basic CD-ROM player technology is the same as that of CD music players, the information players tend to cost more because of differences in sampling, a term describing error protection standards in the machines. Put another way, audio players are able to get by with fewer error checking

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routines in the reproduction of the music because the level of error in reproduction is too small for the human ear to detect. On the other hand, similar errors are very noticeable in a personal computer system, and to prevent them a CD player requires more-complex sampling circuitry.

becomes a factor in selection, though what you're going to do with those 550 extra milliseconds, waiting for your answer, is an open question.

Designed on parallel research tracks by Sony and Philips N.V. and introduced in 1979, CDs evolved into a common format in the 1980s. The



The mesmerizing aspect of CD-ROM technology is threefold:

1) the astonishing density of the 4 3/4-inch disc allows a single CD-ROM disc to store the equivalent of 270,000 pages of text. "This amount of text typically occupies more than 110 feet of shelf space and is roughly 125 volumes of text," says Matthew Bender's Pamela Lucia.

2) CD-ROM is a read-only medium: the information cannot be destroyed or altered. It is protected by a tough plastic shell and is not subject to data loss or damage through touch, moisture or magnetic fields.

3) CD-ROMs allow a person's personal computer to access huge databases of information previously available only in an on-line or hard-copy format.

The fastest CD drives--the guts that read the disc--have access times of 350 milliseconds. Cheaper models grind along at 900 milliseconds--three to four times slower. Cost vs. speed thus

general standard for file structure and retrieval is known as the High Sierra/ISO 9660 standard. By using it and Microsoft software, which usually comes with the CD player, a CD-ROM disc behaves like a personal computer hard disk drive, except for the larger storage capacity and the inability to store information on the disc. Every publisher making information available on CD-ROM provides users with a search software system enabling the user to access the information on the disc. Most, including Lexis, Westlaw and Dialog, use a common method called Boolean Logic.

In January 1986, the first mass-market CD-ROM disc was released--an edition of Grolier's Electronic Encyclopedia. By 1990 there were over 1,200 products commercially available; nowadays, marvels like a reasonably up-to-date dictionary are possible. Toronto lawyer and computer law expert Simon Chester says, "I have all the statutes of the State of Wisconsin on my desk and

they weigh one ounce." In Washington, the WSBA Computerization of Law Division (COLD) is test-producing a CD "to see just how much useful information we can get on a disc at the lowest cost," says Cashmere lawyer Steve Crossland.

Whither CDs? In 1988 there were about 85,000 CD-ROM drives in use. By the end of 1989 there were 159% more--some 220,000. Over 1.3 million are expected to be in use by the end of 1992. One driving force is expected to be the computer game industry. Sega of America and Redmond-based Nintendo of America plan new game systems involving CD-ROM discs. The attraction is that up to 100 times the information a game cartridge will hold can be put on a CD. To push the games, their creators are pushing cheap CD players: Sega's CD drive will cost \$299 when introduced in November. Nintendo plans a \$199 CD drive in January; Apple Computer plans a Macintosh with built-in CD drive by year's end. And Martindale-Hubbell, the legal directory giant, has reduced prices for its CD-ROM version up to 27 percent and is offering a free CD-ROM player with a three-year subscription.

You can always tell when a technology is becoming established: people start writing guidebooks on how to use it. Anderson Publishing is early off the blocks with Cary Griffith's *Griffith's Guide to Computer-assisted Legal Research* [2035 Reading Road, Cincinnati, OH 45202, (513) 421-4142, (800) 582-7295, fax (513) 562-8116; 460 pp. softcover, \$38.50]. It covers Lexis, Westlaw, Dialog, Veralex and other on-line services for an overview of computer-assisted legal research, when it should be used, whether there is a duty to use it, what is needed to use it, and the relative merits of services available. The book also highlights various CD-ROM products and broader-based news retrieval sources.

Matthew Bender, the legal publisher, made an early jump into the CD-ROM market and now has about a dozen libraries available. Their Search Master state library series includes legal forms, rules of pleading and practice, and other state materials for California, Texas and New York. Also available are CD versions of Bender's *Federal Tax*

Please turn to page 50

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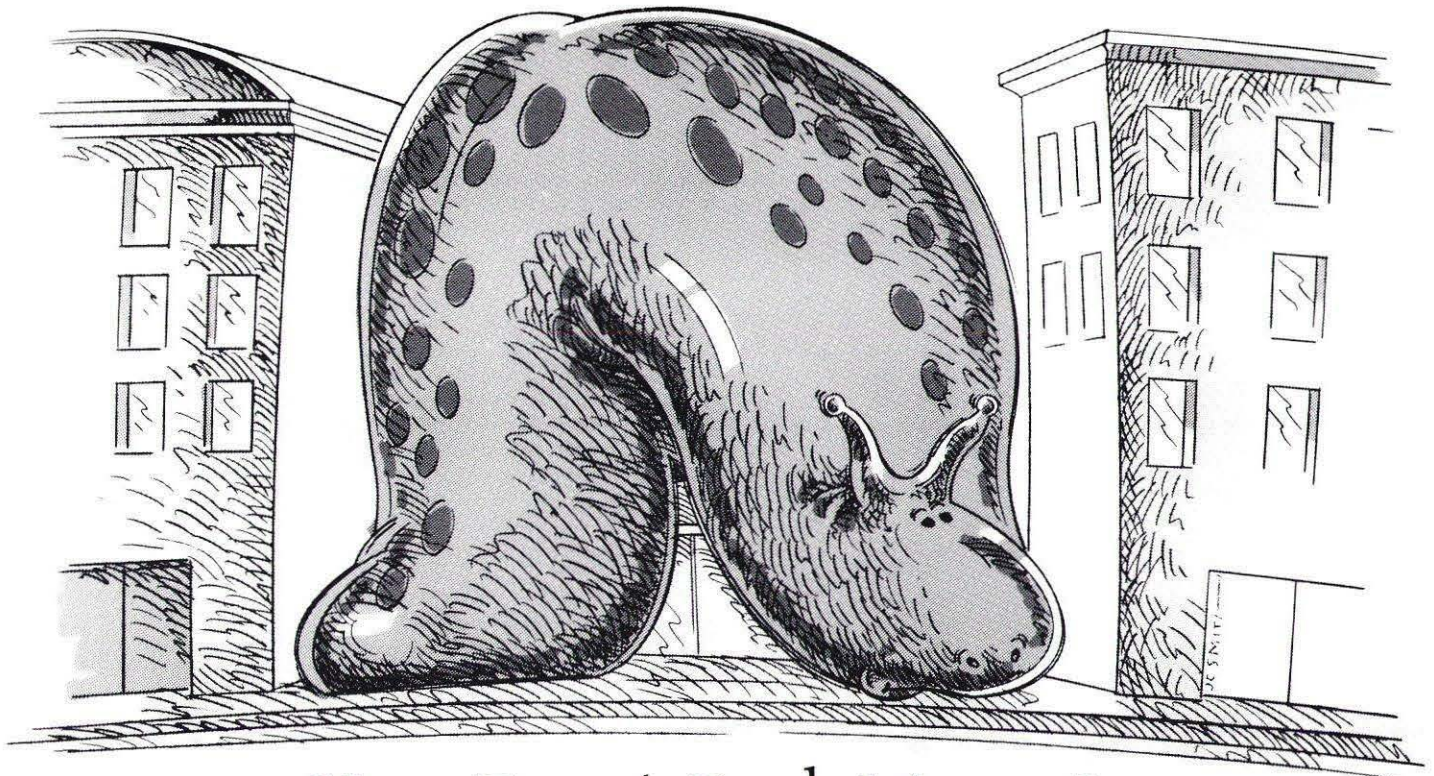
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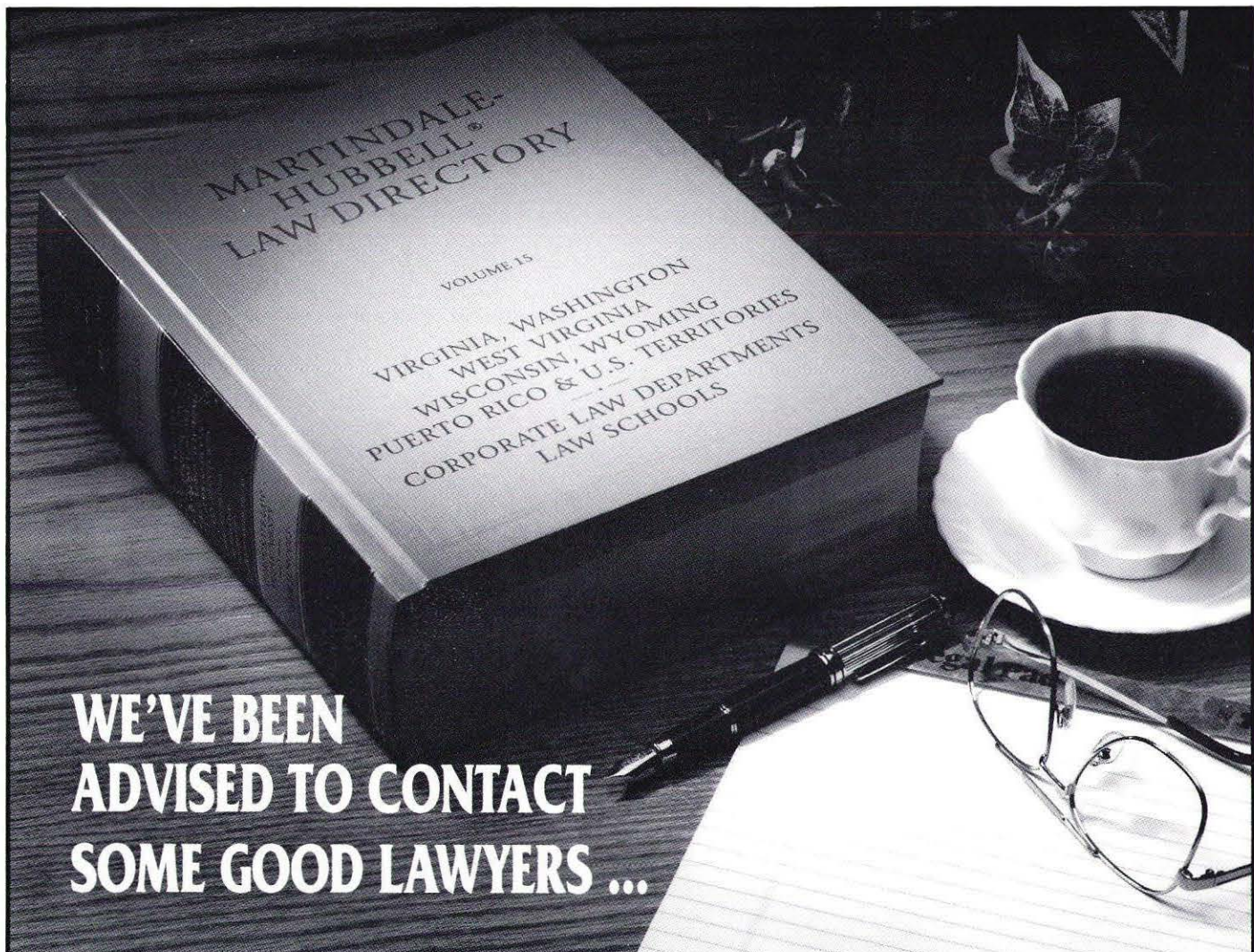
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Service, *Moore's Federal Practice*, *Collier on Bankruptcy*, *Nimmer's Copyright* and *Milgrim* on trade secrets and patents, the *Business Law Library* and the *Personal Injury Library*, reports Stephanie Rowden for Matthew Bender. All are packaged with other subject-related materials in support of the main reference library materials.

West Publishing Company, another

main player in the CD-ROM field, has a number of recent offerings for the practitioner. A one-disc *Military Justice Library*, including the *Military Justice Reporter* and *Military Digest*, was released earlier this year. A second release will include federal law and other reference works on military law. The extensive *Federal Securities Law Library* was released last year. West's California

Reporter and *California Reporter 2d* will be available this fall. In addition to its program of CD-ROM versions of its reporters, West offers *Federal Taxation*, *Government Contracts*, *Federal Practice*, *Bankruptcy*, *BNA*, and *Tax Management Portfolios*. The company has also recently announced its new WALT PC personal computer, which includes an optional CD-ROM drive.

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Keeping Lawyers Happy

True or false? A mass exodus of lawyers is leaving the profession. Young male attorneys are increasingly sensitive to sexual harassment. Financial rewards are the main reason law students chose their future profession. Gender bias is no longer a significant problem among lawyers. A negative work environment does not impact a law firm's bottom line.

All of these are false, according to a sweeping survey of job-related issues published last year by the American Bar Association's Young Lawyers Division.

"The State of the Legal Profession 1990" contains nearly 100 tables and charts, deflates some widely reported myths, and statistically confirms other trends, such as the "time famine," and declines in on-the-job satisfaction.

The survey, randomly administered to nearly 3,000 lawyers, both ABA members and nonmembers, updated a similar 1984 poll.

ABA YLD staff director Ronald Hirsch says one result of comparing the two polls is the realization that the problems lawyers feel are not new; they've just gotten worse.

"In the past six years, the extent of lawyer dissatisfaction has increased throughout the profession and is now present to the same extent among associates and partners," he says. "This is directly caused by a deterioration of the lawyer workplace and growing numbers of lawyers who have experienced negative work environments."

Environmental factors, such as lack of control, increased time pressures, office politics, and poor opportunities for advancement, lead to unhappiness at

work, mental and physical distress and a resulting decline in performance quality and productivity that hits the firm's bottom line.

So what's a firm to do, ask managing partners, baffled by what they perceive as an upwelling of unfocused whininess. Law firms are criticized for making the practice of law a business but, at the same time, are experiencing economic setbacks. And their clients are increasingly voicing unhappiness.

According to another study from those inquisitive folks at the American Bar Association, the firms' own "Neanderthal" management and personnel policies—both contrary to the practice of law as a profession and sound business management—are at the root of their troubles.

The report, "At the Breaking Point: The Emerging Crisis in the Quality of Lawyers' Health and Lives—Its Impact on Law Firms and Client Services," is the product of a conference which brought together law firm managers and upper management partners to address workplace issues confronting the profession.

Conference participants agreed that the management practices of law firms have contributed to an increasingly hostile working environment, which has an effect on firms' bottom lines.

That the law firm is an increasingly inhospitable place to work for many lawyers has been widely reported, as in the ABA/YLD study published last fall. Specific practices identified as contributing to the problem include encouraging lawyers to sacrifice, rather than dedicate, themselves to their firm by working ever-increasing billable hours; failure to share information regarding firm management with all its lawyers; failure to communicate practice and time expectations to all lawyers, and to measure performance against those communicated expectations; failure to provide adequate training, mentoring and feedback; compensating lawyers solely on the basis of hours worked rather than on such variables as the value of services to the clients and contribution to the firm; failure to provide equal opportunities for women and minorities and to provide an environment free of actions that demean, embarrass or harass them; failure to delegate work properly,

and failure to encourage lawyers to communicate openly their professional as well as personal needs and problems, and to develop collegiality, mutual support and institutional loyalty.

"These are all practices that 'demotivate' rather than motivate lawyers, and that create or contribute to a negative firm culture," the conference report observes.

The report goes on to suggest that in this case, the physician can heal himself. Ways to help the dysfunctional law firm include incorporating value billing and compensation procedures; working smarter (taking advantage of law firm technology and delegation of responsibility); improving communications within the law firm and with clients; improving training and

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Meanwhile, *The New York Times* reported in April that the spate of law firms charged with S&L crimes, collapsing in financial ruin, and

breaking up as partners fight it out is making partnership a less-desirable goal for law firm associates than was once the case. Ever-helpful, the ABA has published a booklet for those contemplating the shimmy up the greasy pole. "Making Partner" it's called.

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However, this form of client development also increases the flow of nuisance cases and heightens the need for effective screening. Generally, firms do not increase the number of their cases, and firms are not able to shape their practice in specific fields by use of the Yellow Pages.

There is, among the findings of "Yellow Pages Lawyer Advertising," a study published this summer by the ABA Commission on Advertising. The study reveals that Yellow Pages advertising is dominated by small firms. The average size of firms advertising in the Yellow Pages is 3.5 lawyers. Eighty-five percent of Yellow Pages advertisers are in firms of five or fewer lawyers. Half the firms using the Yellow Pages spend less than \$3,500 per year.

However, a small percentage of firms make major use of Yellow Pages advertising. About four percent spend more than \$60,000 per year. A similar percentage use full-page ads; and six percent advertise in six or more different directories.

Overall, the study found about two thirds to three quarters of lawyers are satisfied with their ads. While size and placement are important, those with smaller ads further back in the section seem satisfied with the results they get. Lawyers who include consumer information or photographs seem most satisfied. But do they get results?

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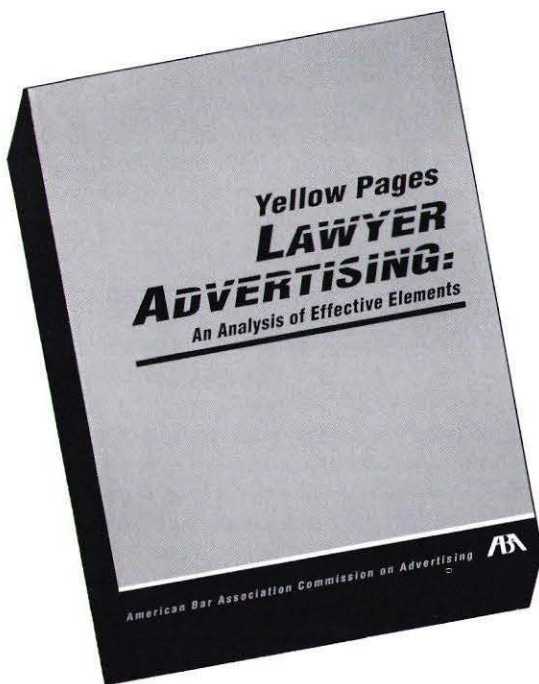
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Half the firms using Yellow Pages ads gross \$3.50 for every dollar they spend, but a third only break even, and nearly ten percent say they lose money on Yellow Pages ads. Nevertheless, because it's a broadly acceptable,

always-handy form of lawyer advertising, the report concludes it will play a prominent role in consumer choice among small to middle-sized firms.

Law Firm Economics: Not the Best of Times, or the Worst

Law firms continue to stand on unsteady ground financially, as they have for several years, say the nation's leading law consulting firms. After trailing inflation in 1990, according to Altman Weil Pensa, median income for lawyers rose 3.7 percent in 1991. Firms seem to have improved their bottom lines by downsizing and restructuring.

Fee revenue increased five percent last year to \$231,000 per lawyer, up 32 percent over 1986 and 90 percent over 1981.

However, overhead costs have increased by almost 41 percent in the last five years—from \$78,031 in 1986

to \$109,917 in 1991. Partners' average billing rates were \$172 per hour, up from \$159 in 1990. Associates' average rate remained unchanged from 1990 at \$110. Billable hours remained steady as well, the AWP survey found. Partners worked 1,719 hours in 1991, up eight hours from the previous year. Associates' hours declined seven hours over the year, from 1807 to 1800. Starting salaries for associates dropped slightly, from \$50,000 to \$49,000. The survey was generated from information obtained from 650 U.S. law firms.

A survey released in December by Hildebrandt Career Counseling for Professionals, a branch of Hildebrandt, Inc., the legal-consulting firm, confirmed the Altman Weil Pensa theory on how firms have improved their bottom lines. It said law firms were dismissing associates in "unprecedented numbers" and starting to ask partners to withdraw, a trend expected to continue into 1993. Of 105 firms consulted, over half expected to ask partners to leave by mid-1993, and nearly nine out of ten expected to show

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some associates the door in the same time period.

Most firms seem to be making up the process as they go. "Less than 25 percent have severance policies for partners, while 40 percent have established them for associates," reports

Carol Buckner, a Hildebrandt associate.

For those who remain, Hildebrandt has issued a report about a new, insufficiently appreciated problem. A substantial majority of the nation's largest law firms have unfunded retirement plans, many of which could

deal fatal or crippling blows to the firms when "baby boomers" retire in coming years. More than 70 percent of the 116 law firms that responded to the survey, publicized in March, have unfunded plans, in which the retired partners' benefits are financed by the earnings of younger workers.

Most of the respondents use "pay your own way" funded plans. But the majority of these plans are not being used to pay for the firms' future, unfunded obligations. Nearly one in five firms reporting were spending more than five percent of income on retired partners' benefits; this could swell to 25 percent as the crop of 30- to 45-year-old lawyers begin to retire.

Hildebrandt vice president Lawrence Bright, who directed the survey, said the situation among survey respondents is typical of large law firms. "Virtually every time we have run the numbers for a law firm, we've found that an unbelievable amount of sustained growth—over several decades—would be needed to fund its commitments to baby boomer retirees. And we don't see that kind of growth in the future. From a purely economic standpoint, it almost makes more sense in some cases to dissolve the firm right then and there than to continue its current level of obligations."

The few firms that have addressed the problem have tended to do so by scaling back on future unfunded benefits, although this has the potential for pitting older lawyers against younger ones.

The only practical alternative to scaling back future benefits is to start funding future obligations now, a choice many firms are unwilling, or unable, to make in the current economy. But given the cyclical nature of law firm work, Bright says. "Inevitably, one of these downturns will hit the generation responsible for paying up to 25 percent of net to support retired baby boomers. It's a train wreck waiting to happen, and nobody's at the switch."

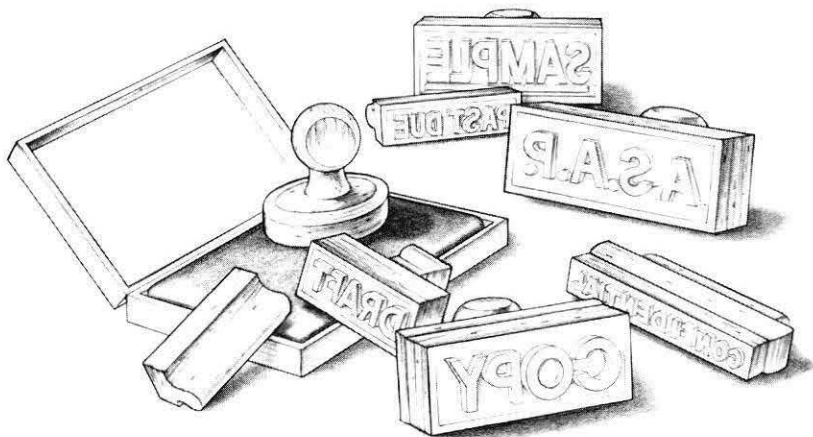
Meanwhile, an April survey by the National Association of Legal Search Consultants says the nation's law firms and corporations "appear to be hiring lawyers once again." NALSC's respondents think the upturn will continue through 1992.

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The Co\$t of Collecting Fee\$

by Thelma J. Tibbitts

A sure-fire way of attracting a counterclaim for malpractice is to sue a client for fees. Statistics show that the client's inability to pay and dissatisfaction with the fee amount account for the majority of unpaid legal fees. Suing a client who cannot pay a legal bill often results only in uncollectible judgments and dismissal of the fee in bankruptcy court. And suing a client who is unhappy with a legal bill draws a counterclaim for malpractice.

Although numerous counterclaims are groundless, they still can create serious problems for a law firm. Many

insurance companies see counterclaims as a sign of deficiencies in the firm's risk management procedures.

Also, counterclaims are considered to be malpractice claims for insurance underwriting purposes.

The cost of defending against counterclaims can be very high. In one case, a verdict was returned giving \$6.4 million in damages to a former client whose reaction to a suit for fees was to counterclaim for legal malpractice. The firm sued for \$35,000 in legal fees. The former client, a doctor, counter-claimed for legal malpractice alleging the firm negligently defended the doctor, resulting in the doctor's Medicare

privileges being withdrawn. The doctor's Medicare privileges were reinstated after three years, following an affirmative ruling by an administrative law judge. The firm was awarded \$25,000 in legal fees, and the doctor was awarded \$6.4 million on the legal malpractice claim.

Decisions! Decisions!

There are ways that you can avoid these problems by establishing collection procedures that do not include suing your client for fees. The use of a collection agency can be helpful, but it can also have disadvantages. The advantage is in collecting fees, without utilizing staff time, that might

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otherwise have been lost. The disadvantages are less evident, but worth considering. Turning an account over to a collection agency greatly increases the possibility of your being sued. According to the American Bar Association, approximately 10 percent of all malpractice claims are the result of a collection case being filed.

As an alternate method, have the collection agency make a telephone call or write a letter to attempt to collect unpaid fees. Negotiate with the collection agency to remove the clause which gives the agency the automatic authority to sue in your name. Require written permission before a suit can be filed.

If you have no choice but to sue . . .

Thoroughly review the file and come to a well-thought-out decision. Consider the following checklist before you sue a client for legal fees:

- How substantial is the fee?
- Did the case settle favorably for your

client?

- Was the file reviewed by an uninvolved partner or committee?
- If you obtain a favorable judgment, will it be collectible?

Look for any new facts that may change your decision to sue between the time you originally submit the fees for collection and the time the collection suit would be filed. Some attorneys recommend the prudent step of suing after the statute of limitations for a countersuit by the client has run out.

Loss Prevention Techniques

In order to avoid the high costs of collecting fees, handle your fee arrangements so that lawsuits are less likely to be necessary.

- Clearly communicate your fee structure and billing procedures at the first conference with a client.
- Document the agreement in writing, and give the client a copy. Payment terms and reimbursement of out-of-pocket costs should be included

in the agreement.

- Bill the client on a monthly basis, itemizing the services provided. Do not allow the billings to accumulate. Act immediately if the client falls behind on monthly payments. You may find it necessary to withdraw from the case if the client does not keep current in fee payments. This tactic is preferable to suing for a large amount of unpaid legal fees
- Keep a time log to support the fees billed, and keep receipts for all costs incurred on the client's behalf.
- Remain consistent with your billing procedures. Do not change methods in the middle of a case. If you wish to change your fee, advise your client to have independent counsel confirm the change.

Above all, communicate with your client

Thelma J. Tibbitts is a senior underwriter with the National Casualty Company

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Summary of Mandatory CLE Requirements

3-Year CLE Reporting Cycle

On June 4, 1992, the Supreme Court amended APR 11 and applicable regulations to change the CLE reporting cycle *from* reporting 15 credits every year *to* reporting 45 credits every three years. This allows WSBA members more flexibility in obtaining their credits and reduces the administrative cost of monitoring compliance. To implement this change, WSBA members have been broken into three reporting groups based on their year of admission to the WSBA.

Group 1 consists of everyone admitted in 1991 and before 1976

Group 2 consists of everyone admitted in 1992 and from 1976 through 1983

Group 3 consists of everyone admitted in 1993 and from 1984 through 1990

1. The CLE requirement applies, with very limited exceptions, to all active members of the WSBA. Members must file a CLE Compliance Report by January 31 of the year following the close of their reporting period. Credits must be acquired by December 31 of the final year in that reporting cycle.
2. Attorneys who fail to comply must pay a late filing fee/penalty of \$150 for the first period of non-compliance. That filing fee/penalty increases by \$300 for each consecutive period of non-compliance.
3. In 1991 the Supreme Court amended the rules to allow up to one-third of the required credits to be earned by self-study of approved audio or video tapes.
4. Any carry over credits earned in 1991 must be claimed in the reporting periods covering 1992 or 1993. For credits earned after January 1, 1992, you may carry over 15 credits to the subsequent reporting period.
5. Although newly admitted attorneys are exempt from mandatory CLE during the year of their admission and the following calendar year, they may earn and report any credits earned during that period as part of complying with their first reporting period.
6. Most sponsors of CLE programs obtain accreditation of the program from the CLE Board prior to the date of the program. However, if you want to request accreditation for a program that hasn't been accredited, use Form 1 printed on page F-1 of this book. It is also available from the WSBA.
7. Although a course may be accredited for a certain number of hours, only the hours actually attended qualify for credit and only those hours should be reported.

Additional Information

Although this summary provides general guidelines for complying with Admission to Practice Rule 11, other factors may affect an individual attorney's rights or obligations.

Direct all inquiries regarding **course accreditation** to:

Executive Secretary, Board of CLE
Washington State Bar Association
500 Westin Building
2001 Sixth Avenue
Seattle, WA 98121-2599
Telephone (206) 727-8202

Direct all inquiries regarding **compliance** with APR 11 and its regulations to:

Licensing Department
Washington State Bar Association
500 Westin Building
2001 Sixth Avenue
Seattle, WA 98121-2599
Telephone (206) 727-8222 or (206) 727-8252



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.

10-12 Coeur d'Alene Resort, Idaho: Sixth Annual Northwest Bankruptcy Conference. Sponsored by: American Bankruptcy Institute. For information:: Caroline Rossanda, (202) 543-1234.

11 Seattle: Private/Public Restraints on Free Speech and the Arts.

Sponsored by: Washington Lawyers for the Arts and Washington State Arts Alliance. For information:: (206) 547-6993.

11 Seattle: Criminal Defense: The DV Case. Sponsored by: WSTLA. For information:: (206) 464-1011.

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

11 Seattle: Sixth Annual Western Regional Indian Law Symposium. Sponsored by: UW CLE. For information: (206) 543-0059.

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

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

16 Seattle: Making a Record & Objections. Sponsored by: SKCBA. For information: Monique Gill, (206) 624-9365.

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

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; Creditor/Debtor Section and Vancouver Law Society 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;

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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 Caselaw 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) contact (206) 727-8202.

22 Seattle: Key Issues in Wetlands

Regulation in Washington. Sponsored by: National Business Institute, Inc. For information: (715) 835-7909.

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

25 Seattle: Living Trusts: The Consumer Controversy. Sponsored by: WSBA CLE and Real Property, Probate and Trust Section. For information:

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For more information, contact our office at 1208 NE 43rd Street, Seattle 98105 or call us at **206-545-5165**.

The *Settlement Now* Foundation is a Washington non-profit corporation.

(206) 727-8202.

26 Seattle: Second Annual Northwest Alternative Dispute Resolution Conference. *Sponsored by:* UW CLE. *For information:* (206) 543-0059.

26 Seattle: Representing Vessel Owners in the '90s: Issues in Business Planning and Litigation. *Sponsored by:* SKCBA. *For information:* Monique Gill, (206) 624-9365.

October 1992

1 Seattle: Legal Issues for Filmmakers. *Sponsored by:* Washington Lawyers for the Arts and 911 Media Arts Center. *For information:* (206) 547-6993.

1 Seattle: Basic Corporate Law in Washington. *Sponsored by:* National Business Institute, Inc. *For information:*

(715) 835-7909.

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

2 Seattle: Family Law Series I: 10 programs running through December 11. *Sponsored by:* UW CLE. *For information:* (206) 543-0059.

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

2 Seattle: Immigration Consequences of Criminal Convictions. *Sponsored by:* UW CLE. *For information:* (206) 543-0059.

2 Seattle: Commercial Leases: Disputes and Resolutions. *Sponsored by:* SKCBA. *For information:* Monique Gill, (206) 624-9365.

2-3 Priest Lake, Idaho: Macks and Tax - Gonzaga Law School/American Tax Institute. *For information:* John Maurice (509) 328-4220.

8 Seattle: Evidentiary Privilege. *Sponsored by:* SKCBA. *For information:* Monique Gill, (206) 624-9365.

8-10 Seattle: 1993 Affirmative Action Briefing. *Sponsored by:* National Employment Law Institute. *For information:* (415) 924-3844.

9 Seattle: Sexual Issues in the '90s. *Sponsored by:* Washington Women Lawyers. *For information:* (206) 622-5585.

9 Seattle: Washington Women Lawyers Annual Dinner. *For information:* (206) 622-5585.

9 Vancouver: Basic Drafting of Wills and Trusts in Washington. *Sponsored by:* National Business Institute, Inc. *For information:* (715) 835-7909.

9 Seattle: Evidentiary Issues. *Sponsored by:* UW CLE. *For information:* (206) 543-0059.

9 Richland: Evaluating Injury Cases. *Sponsored by:* WSTLA. *For information:* (206) 464-1011.

9 Seattle: Critical Employment Liability Law Issues. *Sponsored by:* WSBA CLE. *For information:* (206) 727-8207.

10 Seattle: The Fine Art of Filing: Tax Seminar for Artists and Arts Organizations. *Sponsored by:* Washington Lawyers for the Arts. *For*

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14 Seattle: Intellectual Property. *Sponsored by:* SKCBA. *For information:* Monique Gill, (206) 624-9365.

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

15 Seattle: Preparing a Parenting/Custody Case in Washington. *Sponsored by:* National Business Institute, Inc. *For information:* (715) 835-7909.

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

15-16 Seattle: Tenth Annual Fisheries Law Symposium. *Sponsored by:* UW/CLE. *For information:* (206) 543-0059.

16 Seattle: James McElhane: Mastering Evidence and Cross Examination. *Sponsored by:* SKCBA. *For information:* Monique Gill, (206) 624-9365.

16 Seattle: Experts: Why, When & How. *Sponsored by:* WSTLA. *For information:* (206) 464-1011.

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

22 Seattle: Incorporating a Business. *Sponsored by:* WSBA CLE. *For information:* (206) 727-8207.

23 Spokane: Evidence. *Sponsored by:* WSTLA. *For information:* (206) 464-1011.

29 Seattle: Family Law. *Sponsored by:* WSTLA. *For information:* (206) 464-1011.

29 Seattle: Nonmarital Relationships and the Law. *Sponsored by:* SKCBA. *For information:* Monique Gill, (206) 624-9365.

30 Seattle: Growth Management Conflicts. *Sponsored by:* WSBA CLE. *For information:* (206) 727-8207.

30 Seattle: Asset Forfeiture and Money Laundering. *Sponsored by:* Washington Association of Criminal Defense Lawyers (WACDL). *For information:* Teresa Mathis (206) 623-1302.

30 Seattle: Current Issues Affect-

ing Marine Insurance in the Pacific Northwest. *Sponsored by:* UW CLE. *For information:* (206) 543-0059.

30 Seattle: Drafting Construction Contracts. *Sponsored by:* SKCBA. *For information:* Monique Gill, (206) 624-9365.

30-31 Pasco: WSBA Board of Governors meeting. *For information:* (206) 727-8200 or contact your local governor.

November 1992

3 Seattle: Civil Procedure Deskbook. *Sponsored by:* WSBA CLE. *For information:* (206) 727-8202.

3 Seattle: Real Estate Tax-deferred Exchanges. *Sponsored by:* SKCBA. *For information:* Monique Gill, (206) 624-9365.

3 Seattle: Residential Landlord/Tenant Law. *Sponsored by:* SKCBA. *For*

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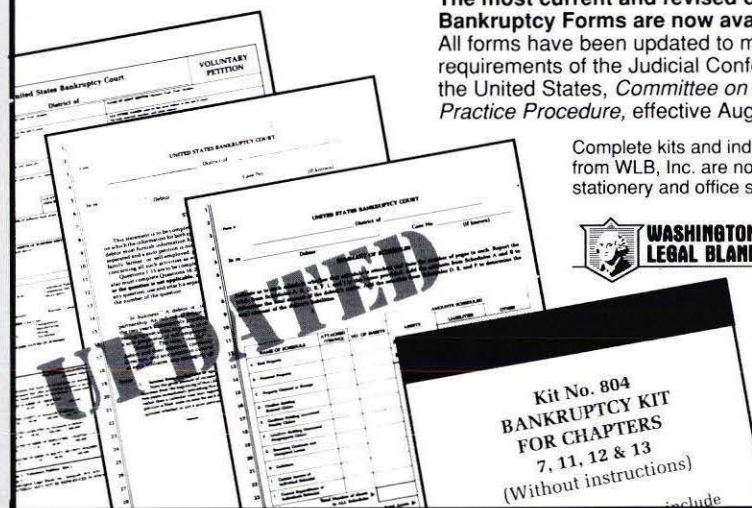
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information: Monique Gill, (206) 624-9365.

5 Seattle: View from the Bench. Sponsored by: WSTLA. For information: (206) 464-1011.

5 Seattle: Client Delight. Sponsored by: SKCBA. For information: Monique Gill, (206) 624-9365.

5-6 Seattle: Estate Planning.

Sponsored by: WSBA CLE. For information: (206) 727-8202.

5-7 Seattle: Negotiations Institute. Sponsored by: WSBA CLE. For information: (206) 727-8202.

6 Seattle: Constitutionality of Land Use Regulation. Sponsored by: UW CLE. For information: (206) 543-0059.

6 Seattle: Admiralty & Maritime

Litigation. Sponsored by: SKCBA. For information: Monique Gill, (206) 624-9365.

7 Seattle: Washington Legal Research Made Easy. Sponsored by: UW/CLE. For information: (206) 543-0059.

11 Seattle: Criminal Law: The Year in Review. Sponsored by: Washington Association of Criminal Defense Lawyers (WACDL). For information: Teresa Mathis (206) 623-1302.

12 Olympia: Civil Procedure Deskbook. Sponsored by: WSBA CLE. For information: (206) 727-8202.

13 Sea-Tac: Civil Procedure. Sponsored by: WSTLA. For information: (206) 464-1011.

13 Seattle: Communications Law. Sponsored by: UW/CLE. For information: (206) 543-0059.

13 Seattle: Dr. Gerald Williams: Negotiations and Settlement in the '90s. Sponsored by: SKCBA. For information: Monique Gill, (206) 624-9365.

14 Spokane: Annual Joseph Nappi, Sr. Community Property Seminar. Sponsored by: Gonzaga School of Law. For information: John Maurice (509) 328-4220.

15 Deadline for copy for January, 1993 *Bar News*. Contact Lindsay Thompson, editor, (206) 577-3080.

18 Seattle: Guardianship. Sponsored by: SKCBA. For information: Monique Gill, (206) 624-9365.

18 (tentative) Tukwila: The Public Trust Doctrine. Sponsored by: Washington Department of Ecology. For information: James Scott, (206) 459-6000.

19 Spokane: Civil Procedure Deskbook. Sponsored by: WSBA CLE. For information: (206) 727-8202.

19 Seattle: Insurance and Environmental Litigation. Sponsored by: SKCBA. For information: Monique Gill, (206) 624-9365.

19-21 Seattle: Real Estate Symposium. Sponsored by: WSBA CLE. For information: (206) 727-8202.

20 Seattle: Basic Principles of U.S. International Taxation. Sponsored by: UW/CLE. For information: (206) 543-0059.

20 Seattle: Damages Under Washington Law & Selected Federal Statutes.

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Sponsored by: SKCBA. For information: Monique Gill, (206) 624-9365.

December 1992

4 Seattle: Elder Care & Elder Law: Rules, Needs & Options. Sponsored by: UW/CLE. For information: (206) 543-0059.

4-5 Bellevue: WSBA Board of Governors meeting. For information: (206) 727-8200 or contact your local governor.

11 Seattle: Law, Literature and Film. Sponsored by: UW CLE. For information: (206) 543-0059.

15 Deadline for copy for February, 1993 *Bar News*. Contact Lindsay Thompson, editor, (206) 577-3080.

18 Seattle: Intellectual Property. Sponsored by: UW CLE. For information: (206) 543-0059.

January 1993

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

15 Deadline for copy for March, 1993 *Bar News*. Contact Lindsay Thompson, editor, (206) 577-3080.

February 1992

12-13 Tacoma: WSBA Board of Governors meeting. For information: (206) 727-8200 or contact your local governor.

15 Deadline for copy for April, 1993 *Bar News*. Contact Lindsay Thompson, editor, (206) 577-3080.

March 1993

15 Deadline for copy for May, 1993 *Bar News*. Contact Lindsay Thompson, editor, (206) 577-3080.

26-27 LaConner: WSBA Board of Governors meeting. For information: (206) 727-8200 or contact your local governor.

April 1993

15 Deadline for copy for June, 1993 *Bar News*. Contact Lindsay

Thompson, editor, (206) 577-3080.

May 1993

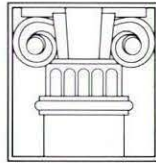
7-8 Spokane: WSBA Board of Governors meeting. For information: (206) 727-8200 or contact your local governor.

15 Deadline for copy for July, 1993 *Bar News*. Contact Lindsay Thompson, editor, (206) 577-3080.

June 1993

15 Deadline for copy for August, 1993 *Bar News*. Contact Lindsay Thompson, editor, (206) 577-3080.

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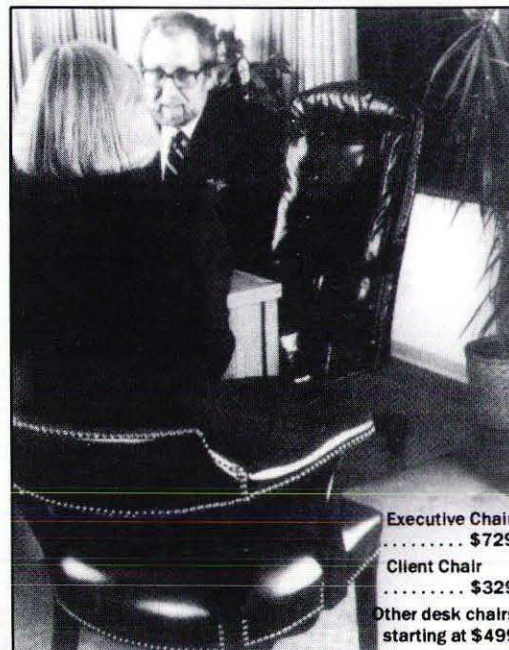
March 1993

15 Deadline for copy for May, 1993 *Bar News*. Contact Lindsay Thompson, editor, (206) 577-3080.

26-27 LaConner: WSBA Board of Governors meeting. For information: (206) 727-8200 or contact your local governor.

April 1993

15 Deadline for copy for June, 1993 *Bar News*. Contact Lindsay



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Notices of Interest to WSBA Members

18-19 Leavenworth: WSBA Board of Governors meeting. *For information:* (206) 727-8200 or contact your local governor.

July 1993

15 Deadline for copy for September, 1993 *Bar News*. Contact Lindsay Thompson, editor, (206) 577-3080.

30-31 Winthrop: WSBA Board of Governors meeting. *For information:* (206) 727-8200 or contact your local governor.

August 1993

15 Deadline for copy for October, 1993 *Bar News*. Contact Lindsay Thompson, editor, (206) 577-3080.

September 1993

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

7-11 Victoria, B.C.: WSBA Convention and Annual Meeting.

15 Deadline for copy for November, 1993 *Bar News*. Contact Lindsay Thompson, editor, (206) 577-3080.



WSBA Disciplinary Notices:

Disbarred: On June 25, 1992, the Washington State Supreme Court ordered Washington attorney Jay C. Immelt (WSBA #8281, admitted 1978) disbarred from the practice of law in Washington, based on his criminal conviction of mail fraud in the United States District Court for Northern Ohio, and on his prior discipline in the State of Washington. [July 13, 1992]

Public Notices:

Important Notice to All Active Members: New CLE Reporting Cycle

(Also published in the August 1992 *Bar News*, page 13.]

All active members of the WSBA are required to report their compliance with 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 in January, 1993, all active members of the WSBA will be divided into three reporting groups based upon year of admission:

GROUP 1: ADMITTED IN 1991* AND BEFORE 1976.

GROUP 2: ADMITTED IN 1992* AND BEFORE 1983.

GROUP 3: ADMITTED IN 1993* AND 1984 THROUGH 1990.

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 during the first three-year reporting period.

Members will receive further information regarding this revised CLE reporting procedure with 1993 licensing information. Questions may be directed to the WSBA Licensing Department, (206) 727-8222 or 727-8252.

Court Rules Committee Seeks Comments

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

Board of Governors Election Results:

The following results have been announced for elections to the WSBA Board of Governors:

2d District: Vickie K. Norris, Everett (unopposed).

4th District: West H. Campbell, Yakima (elected with 261 votes); Edward V. Hiskes, Richland (203 votes); John J. Sandlin, Yakima (43 votes).

7th District: Jan Eric Peterson, Seattle (elected with 809 votes); Lucy Isaki, Seattle (793 votes).

The new members of the Board of Governors will take office after the WSBA Annual Business Meeting in September, and will serve a term of three years.

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 August 1992 is 3.40%. The maximum allowable interest permissible for September 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 47 in June 1992 for 1986-92.

United States of America v. Gregory Lenn Brown:

United States District Court Eastern District of Louisiana, Criminal Number 91-445 "P": Please take notice that Gregory Lenn Brown, also known as G. Lenn Brown, doing business as Personal Injury Trial Lawyers Association, U.S.A. Incorporated, PITLA U.S.A., Inc.; PITLA; Promark, Inc.; Promark; DUI/DWI Defense League, Inc.; HealthLink, Inc.; Association of Accounting and Tax Professionals; AATP; and LawLink, Inc.; has pleaded guilty to various crimes arising out of a fraudulent investment scheme. Brown has admitted that he and his associates persuaded various individual and professional firms to invest in referral services which suggested that members of the public retain subscriber professionals through the use of commercial advertising and toll-free telephone numbers. Brown has agreed to forfeit his assets; these assets will be used to repay (in part) the losses of victims of his schemes

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Brown's crimes, and you want to know how to apply for partial repayment of your losses, you must furnish your name and full mailing address *in writing* immediately to: Ms. Mary Jane Lattie, Victim Witness Coordinator, United States Attorney's Office, Hale Boggs Federal Building, 501 Magazine Street, 2nd Floor, New Orleans, LA 70130.

Washington State Attorney General's Office, Corrections Division:

Effective October 1, 1992, all calls originating from inmates in Washington correctional facilities will be monitored and/or recorded. Pursuant to RCW 9.73.095, the contents of intercepted and recorded telephone conversations may be divulged as necessary to safeguard the orderly operation of the correctional facility, in response to a court order, or in the prosecution or investigation of any crime.

In order to safeguard the security of the attorney-client privilege, the

Department of Corrections has developed the following procedures to protect privileged telephone conversations:

1. Inmates must request access to telephone lines which are not monitored or recorded for calls to their attorney.
2. Staff members will verify that the telephone number is that of a bona fide attorney and will place the collect call.
3. Once charges have been accepted, the staff member will remove himself or herself from audible range of the conversation, but will retain visual contact with the inmate.
4. Staff members will maintain a log of all privileged phone calls placed at the request of inmates.

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The Engagement Letter

by Pamela Blake

An important aspect of a law firm's practice is to implement business management procedures, which reduce the likelihood that a law firm will face a malpractice suit. One important procedure to establish is the use of the engagement letter.

The purpose of the engagement letter is to confirm what transpired during an initial interview meeting. The letter should summarize the entire discussion between the attorney and the prospective client. The following elements should be included:

- The scope of representation. The firm should identify the professional services it intends to provide. Any services the firm will not provide, should be specified.

- Approximate fee schedule including factors which influence the cost.
- Billing procedures and terms of payment.
- A realistic presentation of the potential results. The client should be made aware of all aspects of the issue. (*NEVER, ever, guarantee the outcome of a case and/or financial result.*)
- The anticipated time frame to resolve the matter for which your services are required.

The original letter and a copy should be sent to the client by certified return receipt mail. A follow up should be diaried to insure return of the certified receipt from the postal service. To prevent misunderstanding, the client should be instructed to sign, date and

return the copy, which should include any changes, corrections or additions to the information.

The returned, signed and dated copy should be retained in the client file along with the interview profile. By following this procedure, the attorney can use the letter to avoid a malpractice claim involving lack of knowledge or "selective memory" about agreed-upon services.

The preceding tip was contributed by Pam Blake, an account executive for a major malpractice insurance company. Next month's Bar News will contain a companion article: "The Nonengagement Letter and The Disengagement Letter."—Gregory S. Morrison, Tips Editor.

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For All the Commitments You Make



edited by Professor William B. Stoebuck
University of Washington School of Law

Creditor-debtor law.

Bankruptcy debtor's interest in ERISA-qualified pension plan is excluded from bankruptcy estate under § 541(c)(2) of Bankruptcy Code. Anti-alienation provision required by ERISA for ERISA-qualification is "restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under nonbankruptcy law," within meaning of § 541(c)(2). Contrary to holdings of numerous courts, "nonbankruptcy law" as used in that section is not limited to state spendthrift trust law. *Patterson v. Shumate*, ___ U.S. ___, 112 S.Ct. 2242 (6/15/92).

—M. D. Rombauer

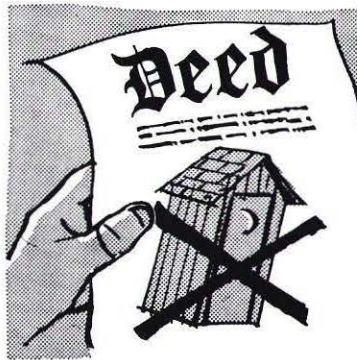
Evidence.

(Case 1.) In prosecution for rape, defense counsel sought to cross-examine victim's husband about whether husband approved or disapproved that victim occasionally went out drinking and dancing with other male friends. Court disallowed cross-examination, saying testimony was barred by rape-shield statute, RCW 9A.44.020. Court rejected defense argument that defendant had right to cross-examination in order to reveal possible motive for victim to fabricate story about alleged rape. Court hinted, however, that cross-examination might have been proper if defendant had been able to present any other evidence of fabrication. *State v. Gallegos*, 65 Wn.App. 230, 828 P.2d 37 (Div. 1, 4/20/92).

(Case 2.) In medical malpractice action in which plaintiff claimed her physician failed to diagnose Malathion poisoning, plaintiff sought to introduce promotional brochure for clinic that employed physician, as well as physician's employment contract with clinic. Court held evidence irrelevant, rejecting plaintiff's argument that language in brochure and contract established higher standard of care than would normally apply under RCW 7.70.040. Court said plaintiff was not

party to contract between employer and employee and that she did not qualify as third-party beneficiary because she had not shown that employer and employee intended contract to confer any benefit on her as patient. *Thomas v. Wilfac, Inc.*, 65 Wn.App. 255, 828 P.2d 597 (Div. 3, 4/2/92).

—K. B. Tegland



Planning and zoning.

On 14 May 1992, the Washington Supreme Court handed down three lengthy, complicated, important decisions on the validity of land-use regulations, *Sintra, Inc., v. City of Seattle*, 119 Wn.2d 1, 829 P.2d 765 (5/14/92); *Robinson v. City of Seattle*, 119 Wn.2d 34, 830 P.2d 318 (5/14/92); and *Lutheran Day Care v. Snohomish County*, 119 Wn.2d 91, 829 P.2d 746 (5/14/92). These decisions concerned three subjects of great current interest: the regulatory taking issue; denial of due process; and actions brought under section 1983 of the Federal Civil Rights Act, 42 U.S.C. § 1983. In addition, on 29 June 1992 the United States Supreme Court handed down its long-awaited, lengthy, and complex decision in *Lucas v. South Carolina Coastal Council*, ___ U.S. ___, ___ S.Ct. ___, 60 USLW 4842, 1992 Westlaw 142517 (6/29/92), which is an important addition to federal

regulatory takings law that has a special impact on Washington law. These decisions are so sweeping and complex that they cannot be treated individually within the space allotted to this column. Anyone who would fully understand these decisions must spend many hours studying them intensively. Therefore, the following is an outline of the highlights of the four decisions, that is intended to alert lawyers to their principal features.

(1) REGULATORY TAKINGS.

In *Presbytery of Seattle v. King County*, 114 Wn.2d 320, 787 P.2d 907 (1990), and *Orion Corp. v. State*, 109 Wn.2d 621, 747 P.2d 1062 (1987), the court worked out an elaborate regulatory taking doctrine. A particular feature of this doctrine is an "insulation doctrine," that a regulation that protects the public's interest in "health, safety, the environment, or fiscal integrity of an

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area" cannot cause a taking, even if it destroys all use and value of the regulated land. (Emphasis added.) However, a regulation is not insulated if it goes beyond preventing public harm and "enhances a publicly owned right in property." Washington's insulation doctrine is the most sweeping in the country and beyond anything sanctioned by the United States Supreme Court.

Lucas, among other things, rejected a South Carolina version of the "insulation doctrine" that was less sweeping than Washington's version; the Supreme Court held that a regulation that destroyed all use and value of regulated land was a taking, even though South Carolina held it was not a taking because it "prevents serious public harm." The Court appears to say

that a total deprivation of use will always be a taking unless the regulation actually abates what would be a common law nuisance. It remains unclear from *Lucas* how near total the deprivation must be to constitute a taking, but the suggestion is strong that the threshold is quite high; examples given by the Court hint at losses in the range of 90 per cent of value. Meantime, in Washington the holding in *Sintra* and similar dictum in *Robinson* seem to establish another undercutting of *Presbytery's* and *Orion's* "insulation doctrine." As stated above, those decisions stated that a regulation would not be insulated if it "enhanced a publicly owned right in property," by which the court appeared to mean that the regulation would confer some special benefit upon, and thus enhance the value and usefulness of, land to which a governmental entity held title. *Sintra* and *Robinson* have shifted the meaning of this phrase in a way that seemingly, if the court meant what it said, would allow the insulation doctrine to be widely circumvented. In both cases the city attempted to enforce against landowners its Housing Preservation Ordinance (HPO), which, as a condition to land development, would require the owners to contribute to the city's fund to provide low-income housing. A holding in *Sintra* and dictum in *Robinson* said that such a requirement was not insulated from being a taking, because it was a regulation that "enhance[d] public interests." (Emphasis added.) It is a much different thing for a regulation to enhance the value and usefulness of publicly owned land or to enhance, or promote, some interest of the public. All regulations presumably promote some public interest; if they do not, they deny due process and are void. The implications of *Lucas*, *Sintra*, and *Robinson*, though technical, are highly significant, because the Washington "insulation doctrine," as it seemed to be developed in *Presbytery* and *Orion*, made regulatory takings nearly impossible in Washington. In *Sintra*, which was remanded, the court held that the owners might establish a taking if they could show the economic burden of the HPO exaction was so great that "no viable use" could be made of the land.



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(2) **DENIAL OF SUBSTANTIVE DUE PROCESS.** Under *Presbytery* and *Orion*, a regulation on the use of land might deny due process, and thus be void, if it was "unduly oppressive" to the regulated owner. The court had said a regulation was unduly oppressive if it denied the owner "all profitable use." Importantly, the "insulation doctrine" described above did not bar due process claims. Washington's supreme court said frankly in *Presbytery* that it wanted to make due process claims easier to establish than takings claims because the former would result only in the regulation's being struck down, while the latter would require the governmental entity to pay compensation. *Sintra* and *Robinson* both hold that the contributions the city required under the HPO were "unduly oppressive" because they singled out landowners and imposed on them the burden of paying an undue share of the costs of alleviating a widespread public problem, the problem of lack of low-income housing. It seems likely that the court was also influenced by the fact that, in both cases, city officials persisted in attempting to enforce the HPO after it had twice been declared invalid in the decisions in *R/L Associates v. City of Seattle*, 113 Wn.2d 402, 780 P.2d 838 (1989), and *San Telmo Associates v. City of Seattle*, 108 Wn.2d 20, 735 P.2d 673 (1987). In *Lutheran Day Care*, the state supreme court based its conclusion that the county's denial of a conditional use permit denied substantive due process simply upon an uncontested finding of fact by the trial judge that the county's denial of the permit was "wilful and unreasonable" and "arbitrary, capricious and unlawful."

(3) **BASIS FOR SECTION 1983 ACTION.** 42 U.S.C. § 1983, a federal statute enforceable in either federal or state courts, allows money damages against "every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws" of the United States. It is established that

a defendant "person" may be either a public official or a governmental entity. Thus, a taking under the fifth amendment to the Federal Constitution or a denial of due process under the 14th amendment will open the door to a section-1983 claim. However, as has generally been established in other jurisdictions, and as established in *Sintra*, *Robinson*, and *Lutheran Day*

Care, when a section-1983 claim is based upon denial of due process, more than simply the denial must be shown. The Washington Supreme Court said in these decisions that it must be shown that the violation is "invidious or irrational." The phrases "deliberate flouting of the law," and "arbitrary or capricious" were also used. In *Sintra* and *Robinson*, depending somewhat

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upon what the plaintiffs can show on remand, this standard can be met if it can be shown (and the court suggests it can be) that city officials persisted in trying to enforce the HPO after they knew it had been judicially declared invalid in actions brought by other parties. *Lutheran Day Care* holds that the section-1983 standard was met by the trial judge's finding that the county acted arbitrarily and capriciously. *Robinson* holds that the statute of limitations for section-1983 actions in Washington is the 3-year limitations period on tort actions.

(4) IMMUNITY UNDER SECTION 1983. Individual public officials and also governmental entities that are sued under section 1983 frequently try to bar suit under a judicially developed doctrine that they are immune from such actions. Immunity, being not technically a defense but a bar to the court's jurisdiction, is to be determined by the court on summary judgment. *Sintra*. When the action complained of, final denial of a conditional use permit, was taken by the county's legislative body, the county itself had no immunity. *Lutheran Day Care*. Local officials who perform administrative tasks involving the exercise of discretion are entitled to "qualified" immunity. This means that their actions must have been "objectively reasonable." *Sintra*. However, an official who acts in knowing violation of an order of court, even an order in another case, has no immunity, *i.e.*, is not acting in an "objectively reasonable" way. *Robinson*. Because individual local officials who are judges or who are performing quasi-judicial functions have absolute immunity from section-1983 suits, *Lutheran Day Care* said it was "possible" that the hearing examiners and county council members who denied the plaintiff's conditional use permit were individually absolutely immune because they were acting in a quasi-judicial capacity; but, since the parties agreed these officers were immune, the court did not decide the issue.

CAVEAT: Any lawyer who is concerned with the subjects covered in these reported decisions must analyze and understand them on his or her own terms. Do not accept this summary as conclusive!

—W. B. Stoebuck

Grief is a pervasive and insidious reaction to loss. It saps energy and can cause depression. For those already suffering a depression from practice problems or a natural predisposition, grief can trigger a real downward spiral. It comes in many forms and results from different kinds of loss.

When my sister was murdered, I was just starting a new practice. During the previous six years my spouse had been in medical training, and we had moved four times in a vain attempt to find a place where I could practice law and she could finish her medical training. Unfortunately, the lack of reciprocity between states meant my taking a new bar exam in each new state. Medical schools and training programs showed no interest in helping to keep a married couple in the same place together.

After leaving three jobs in five years, I finally landed a very good practice opportunity in central Washington. I had a public defender contract; I was active on the Federal CJA panel, and I was getting some private clients. My spouse was able to practice medicine relatively nearby on a schedule that wasn't perfect, but it would do. We

started to feel some stability. We bought a home and had some money in the bank. Although I was angry and depressed about the losses that I had taken in order to keep our marriage together, I looked forward to the future with a lot of hope and enthusiasm.

Then on February 21, 1989, the bottom fell out of my life. My spouse tracked me by phone to a small town where I was interviewing clients. When the policeman stopped my car, I assumed it was for a traffic violation. Instead it was to tell me to call home.

My spouse told me the awful news.

My sister, a psychiatric social worker, had been stabbed to death in her office by a client, a homeless schizophrenic who refused to take his medication because it made him "feel funny."

As we drove back to the office, my partner tried to comfort me by telling me stories about the death of his father. I listened politely and numbly. Nothing he said made any sense. Since then I have learned that murder is different from all other kinds of death. It is not only sudden, but it is also the result of another person's deliberate effort to harm your loved one.

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Traumatic Loss

suffers a profound loss of trust, in self, in others and in the social system at large. The inability of friends and coworkers to understand the depth of grief is devastating. The tendency of people to walk away from conversations about the victim undermines social relations and isolates the survivor. The best attorneys operate on logic and analysis. The qualities that make them good attorneys drive away empathy for themselves and others and separate those suffering a serious loss.

As a prosecutor, I had been trained to maintain a "professional distance." As a homicide survivor, I found the legal system distant and cold. I wanted my sister's death to be treated like the tragedy it was, but the prosecutor wanted to use it as a training exercise, assigning a deputy who had never before handled a homicide. My family had to pull every string and follow up every contact and connection to have an experienced prosecutor assigned to the case. Following the conviction for first-degree murder, the public defender railed at my family in open court, accusing us of using "political influence" to thwart a plea to manslaughter. And the judge told us that we would feel better in a few weeks "because these things pass."

Although I returned to my practice, I could no longer practice criminal law. I visited clients in the jail and then came out and vomited in the parking lot. My practice partners noticed that I was depressed, but they made no move to help. The only note of sympathy or understanding that I received from my colleagues in the bar came, ironically, from the prosecutor's office.

I entered a downward spiral of depression. I could not concentrate; I could not sleep, or I slept too much; I went for days without eating and then stuffed myself.

We sold our house and moved to Seattle, where I had a job that had nothing to do with criminal law. It didn't last. The lawyers in the office were sympathetic, in a general sort of way, but made no efforts to help me find help. They just wanted me out.

I found a position with a prosecutor's

office. On the first anniversary of my sister's murder I was trying a child rape case. I have almost no memory of that trial. Miraculously, I got a conviction, but it was clear that things weren't working. I was getting more and more depressed. No one in the prosecutor's office, including the victim advocates, made any move to help. The only person who reached out was a police officer who frequently investigated child sex cases.

Finally, when I lost this job, my spouse insisted that I consult the LAP program. Two years later I have reached the point in recovery where I am able to make reasonable professional decisions again. Recovery is a very long process. It is not direct, and it is not always in a positive direction. LAP provided individual and group therapy and a relationship with a peer counselor. He is an experienced trial lawyer with a prior military background, who has experienced with traumatic losses; his stability and experience exactly meet my needs. LAP's resources have provided the structure to help me move through this process.

During the three and a half years since my sister's murder, there have been few

lawyers who reached out in more than a perfunctory way to provide support. My experience was that we are just cogs in a machine, and few of us are important as individuals. The people in the justice system who reached out to me were police officers, court clerks, bailiffs and court reporters.

As I gain objectivity about this experience, I want to communicate to my peers that there is a support system within the WSBA to help with even the most traumatic loss. What I hope is that when we see others suffering, we will help them get help. The possibility that someone might be offended by the expression of concern is more than offset by the benefits. Today, I face the prospect of a new practice with the knowledge that law is a profession, not a lifestyle. Recovery is a work in progress.

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NEWS FROM HOME

CORRECTION: June, 1992's column, page 52, erred in reporting recent changes involving Kate Cashin and Jim Devine. Cashin and Devine share office space, but are not partners. Also, Kate Cashin's former offices on South Madison were on Bainbridge Island, not in Seattle. The Bar News

regrets the error, called to our attention by Genevieve W. Tullis.

The Federalist Society for Law and Public Policy Studies has announced the formation of a Seattle Chapter of its Lawyers' Division. The Society reports having more than 70 members in the Seattle area; its executive committee is made up of Albert Gidari of Perkins Coie; Rando Wick and Bruce Hull of Lane Powell Spears Lubersky; Dan

York of Gibson Dunn & Crutcher; and Jim Nagle of Oles, Morrison & Rinker. The advisory board for the chapter has commitments to serve from Dean Jim Bond of the University of Puget Sound School of Law, Professor William Stoebuck of the University of Washington School of Law (and editor of "Notes from the Academy" for the Bar News); J. David Andrews of Perkins Coie; and Stephen C. Smith and Wayne Hansen of Lane Powell Spears Lubersky. Founded in 1982, the Federalist Society has Lawyers' Division chapters in some 40 cities and student chapters in all major U.S. law schools. It was formed to promote the principles that the state primarily exists to preserve freedom, that the separation of governmental powers is central to the Constitution, and that it is the province and duty of the judiciary to declare, rather than make, the law. The Seattle chapter aims to provide a forum in the Puget Sound area for lawyers to advance these principles, its organizers say. Its first event was a lecture by Ninth Circuit Court of Appeals Judge Alex Kozinski in June. Those interested in joining, or obtaining more information, should contact Linda Foley at (206) 223-7109 or any executive committee member.

The Southwest King County Chamber of Commerce has honored the law firm of Cromwell, Mendoza & Belur with its Small Business of the Year Award. Formed 12 years ago, the firm was noted for financial stability and growth in a time when many law firms are experiencing the opposite.

Perkins Coie, the region's largest law firm, announced in June that it has established its first overseas office in Taipei, Taiwan. The office, with a staff of 23, is headed by Peter C. Chen, a Taiwan national with fourteen years' experience in practice there.

Margaret McKeown, a partner in Perkins Coie, has been named Seattle-King County Bar Association's Lawyer of the Year. The award notes exemplary service to the legal profession and the community. McKeown has been with Perkins Coie since 1975. In 1980-1981 she was a White House Fellow, detailed to the Secretary of the Interior and the White House Office of Policy Development. She is a Washington member

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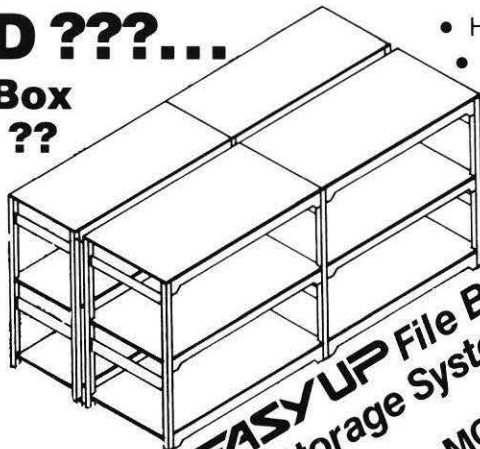
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of the ABA House of Delegates and a past trustee of the Seattle-King County Bar Association, past president of the Federal Bar Association of the Western District of Washington and president of the Legal Foundation of Washington. In 1993 she will be one of eight people named Japan Leadership Fellows by the Japan Society, and will travel in that country. McKeown is a graduate of the University of Wyoming and Georgetown University School of Law.

David R. Frankel, with Seattle's Talmadge & Cutler, has been elected president of the World Trade Club for 1992-93.

Gary W. East has joined the law firm of Sylvester Ruud Petrie & Cruzen as a partner. He's a former principal of East, Lagerquist, McConnell & McDonough, Inc. East will concentrate his practice in the areas of commercial and business-related litigation and real estate law.

Jeffrey A. Peterson, formerly with Bogle & Gates, and The Boeing Company, has been admitted as a solicitor in England and Wales. He continues to practice international banking law, emphasizing aircraft and project financing, with Allen & Overy in London.

Karen Glover, a partner in Preston Thorgrimson Shidler Gates & Ellis, has been appointed to the Board of the King County Library System Board of Trustees.

CLARK COUNTY REPORT

by JOHN F. NICHOLS

1. *Travels with the CCBA*

'Tis the time of year when I exchange my reporter's hat for Bermuda shorts, black nylon socks and wingtips. I grab all those fancy brochures at the local Motel 6 and head for the vacation capitals of the good ole US of A. This years sojourns started with out with a week's stay in Lodi, California, (I won't tell you what the second-place prize was). Among the *highlights* — a Texas barbecue hamburger stand run by a nice Vietnamese family; attorney's advertising on billboard, (names spelled

phonetically); and a good crop of raisins. *Low points* — world's worst Wendy's (Dave, get control); Lodi for one week; and who pulled the plug on Lake Shasta?

My next trip returned me to the friendly confines of the Central N.W. — for a weekend stay at Moses Lake. Lots of bugs and big 'uns too; plenty of air conditioning; and attorneys who think phonetically but don't speak the same. The biggest question, "How come, with 747s landing every 10 minutes, it cost more for a one-way ticket to Moses Lake then a round-trip ticket to Florida?"

Coming attractions — Greenwood, Indiana, home of the original roadside attraction and the "you are here" arrows.

(NOTICE: *The above trips were taken at no expense to the CCBA and the CCBA is not responsible for editorial comment contained herein. Please circulate at your own expense*)

2. *Yes, Shiela, There is an Elvis.*

True, not everyone can go to Lodi, but that doesn't mean one has to go around bragging about it either. Such advise was obviously ignored by one CCBA member, **Sheila Homechick**, who was anything but shy about her trip to Memphis. After her return from Tennessee, our brazen little Sheila showed up on the docket with miniature 45 record earrings (Love Me Tender), blue suede shoes, a white leisure suit

and the coup de grace — a "Graceland" briefcase.

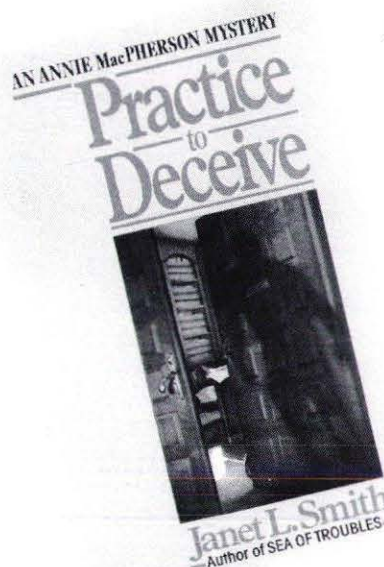
Unfortunately Judge **James Ladley** immediately mistaken her for **Minnie Pearl**. Must have been the pricetag. Sheila denied that the trip was taken at the expense of anyone but her husband, **Colonel Art Curtis**. She insisted that it was a personal pilgrimage to the shrine of the "King," with whom she had once been in the army. Needless to say, she had no kind words for Pricilla. Sheila, make an appointment with Dr. Nick.

EAST KING COUNTY REPORT

by MARIJEAN E. MOSCHETTO

Summer is over, but I'm still hanging on to a little summer whimsy. Thinking about my friends from the Seattle-King County Humane Society, a charitable organization located on the Eastside, I matched up dog breeds with lawyer-type breeds and came up with the following nominations (with apologies to animal lovers and lawyers everywhere):

1. *General practitioners*: German Shepherds. A versatile breed that can do most anything.



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2. *Personal Injury Attorneys:* Jack Russell Terriers. Feisty and tenacious little dogs that bark a lot and can bite.

3. *Criminal Defense Attorneys:* Bloodhounds. Will sniff out the least technicality in representing a client.

4. *Admiralty Lawyers:* Portuguese Water Spaniels (what else?).

5. *Prosecuting Attorneys:* Bulldogs. Mean, lean, fighting machines.

6. *Family Law Attorneys:* Irish Setters. Love to run around and plunge into the thick of it, fiercely defensive of their homes and owners (clients).

7. *Bankruptcy Practitioners:* American Breed (not recognized by the AKC). Gnawing at bones to get a little scrap of meat.

8. *Business Lawyers:* Standard Poodles. Always perfectly coiffed, smart, and a little aloof.

9. *Judges:* Irish Wolfhound. Dignified, watchful, and the biggest dogs on the block.

10. *Court Clerks:* Cats, not dogs. Friendly at times but can scratch you when you least expect it.

Other news: East King County Bar Association resumes its monthly luncheons September 17, 1992 at the Bellevue Athletic Club. Call program chair **Ted Watts** at (206) 455-3900 to reserve a place for yourself and your firm. Rumor has it that September's

speakers will be from the political scene, perhaps the governor's race. October will be the joint EKCBA-ELAP luncheon celebrating the contributions of EKCBA and its offspring, the Eastside Legal Assistance Program, providing legal services to low-income individuals in Eastside communities from Bothell to Renton.

Request for Donations: Eastside Legal Assistance Program needs your help. Due to IOLTA funding cuts experienced by all non-profit programs and budgetary crises in the local governmental organizations, ELAP finds itself facing a possible shortfall of one-half of its current budget. Please send your donation to President **Ted Barr** or the ELAP Office at 16225 N.E. 87th Suite A-5, Redmond, WA 98052.

WASHINGTON DEFENSE TRIAL LAWYERS

The Washington Defense Trial Lawyers announced the election of **Michael H. Runyan** as president of the organization for the coming year at their annual convention in Vancouver, B.C., May 29-31. Runyan is a partner



Michael H. Runyan

in the Seattle law firm of Lane, Powell, Spears, Lubersky.

Other elected officers include: **Jeffrey I. Tilden**, vice president; **Mary H. Spillane**, secretary; **William R. Phillips**, treasurer. The trustees are **Palmer Robinson**, Seattle; **Peter J. Johnson**, Spokane; **West H. Campbell**, Yakima; **Laurie Kohli**, Seattle; **Harry M. Johnson**, Seattle; **Edward S. Winskill**, Tacoma; **Thomas J. Collins**, Seattle; **James E. Macpherson**, Seattle; and **Timothy D. Blue**, Seattle.

The Washington Defense Trial Lawyers is a 600-member organization of attorneys who devote substantial time to the defense of persons and companies in civil litigation matters.

WASHINGTON STATE TRIAL LAWYERS ASSOCIATION REPORT

by **LETHA J. OWENS**
and **LORI D. HANSEN**

WSTLA Annual Convention and Awards.

WSTLA's annual convention was held in Sunriver, Oregon on July 2 through July 5, 1992. At the convention, Seattle attorney **Halleck H. Hodgins** was installed as president of the association for the coming year. He has been active in WSTLA for 12 years, serving as chair of the tort section and legislative steering committee. The association looks forward to another great year under his able leadership.

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Judith M. Proller of Bellingham stepped up to the WSTLA position of president-elect. Judith is the second woman to occupy this post in WSTLA's 25-year history. Her involvement in the association began with the development of the People's Law School in 1986. Since its inception, People's Law School has provided free or low-cost legal education to over 10,000 Washington state citizens on topics ranging from wills and estate planning to divorce law and consumers' rights. She has also given energetic leadership to WSTLA in her role as vice president of legal seminars, public affairs and judicial relations.

WSTLA's Trial Lawyer of the Year award was given to **Robert Whaley**, a Spokane attorney and candidate for the Spokane County Superior Court. A graduate of Princeton Law School, Whaley has had a long and distinguished career before the bar including prevailing on a 1990 antitrust suit before the before the U.S. Supreme Court. In presenting the award Spokane attorney **Brian Harnetiaux** stated, "Whaley has consistently and tirelessly worked for the protection of individual rights, especially the rights of the under-represented, disenfranchised and the oppressed."

The President's Award was given to **Phil Arnold** for his consistent hard work on the development committee and chairman of the court rules committee. **Gene Moen** was also presented with the President's Award for his dedication and work on the financial, legislative and health care access committees. Harnetiaux was given a special award, a 'hot-rod fly rod', for his ten years of hard work and dedication serving on WSTLA's amicus committee. Also of note, Tacoma attorney **Dick Benedetti** was nominated for the annual **Dan Hannula** 'making the wrong turn in the Race Judicata' award. And lastly, the recipient of the Legislator of the Year Award has yet to be announced.

Holly Ball.

It isn't too early to start planning for WSTLA's Holly Ball, the annual Christmas gala. This year's big event will be held at the Seattle Westin on December 4. The Third Annual Holly Ball East will be held in Spokane on

December 11 in a location to be announced.

If you have any items you wish to have appear in this column, or have any comments, please contact **Letha J. Owens** at (206) 542-3138 or **Lori D. Hansen** at (206) 637-3067.

WHATCOM COUNTY REPORT

by **MICK MOYNIHAN**

Carlos J. Martinez is the newest attorney in the public defender's office, having moved here from Miami, Florida. In addition to being a dead ringer for **Dave Nelson**, he is fluent in Spanish, which will cut down on the need for interpreters in many cases. Bueno.

Rod Moody is an associate with **Phil Rosellini** and enjoying the practice. The old firm of Smith, Rosellini, etc. is no more, and **Jake Smith** and **Greg Kosanke** are still together in Lynden. Since his car crash and recuperation, Jake Smith is more relaxed than ever. He recommends car crashes for everyone.

Linda Nye has recently moved into the legal center and would like others to

refer any paying clients her way. **J. Andrew Hoyal II** is now the 11th attorney in the Brett, Daugett firm—**John Slater** says that he remembers when there were only 11 attorneys in the entire county, and it's hard to believe that this is John's last year of his three-year term on the WSBA Board of Governors. Time flies when you're having fun.

Robert J. Och, formerly from the South (Seattle) is now with Tario, etc.

Kathleen Hathaway, another of our newer members, has settled in nicely and is doing a lot of guardian ad litem work.

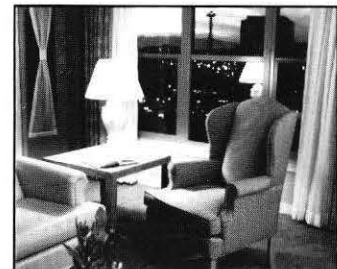
Karlene Wieland, the bar's social director, was in charge of signing up everyone to sign up for the annual July Whatcom-Skagit-Island golf tourney and banquet in July. She said she always has enjoyed the tourney, even before she learned to play terrible golf.

Justice **Charles Johnson** of the supremes was our speaker for April, and he says he likes his job—must be the pay. Judge **Marshall Forrest** was our speaker for May, and we know his likes his job.

The annual Bosses' Night dinner and awards have been rescheduled. Whoever has been chosen by the legal secretaries as "Boss of the Year" and as Member of the Year will remain a deep, dark secret for now. Stay tuned.

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IN MEMORIAM

W. Gordon Kelley, 64, died May 31, 1992 in Bellingham. Born in Spokane, Kelley graduated from the University of Washington and Gonzaga University School of Law. He also served in the U.S. Coast Guard.

Kelley opened a law office in East Wenatchee in 1953. Active in community affairs, including the construction of Rock Island Golf Course and the Valley North Mall, Kelley was also active in legal groups. He was a member of the Washington State Trial Lawyers' Association, and past president of the Chelan-Douglas County Bar Association. He moved to Bellingham in 1988. Survivors include his mother, stepmother, wife, two children and eight grandchildren.

Theodore S. Turner, 93, died June 14, 1992 in Seattle. A Seattle native, Turner graduated from the University of Washington School of Law in 1923. In the 1940s he served four terms in the State House of Representatives, rising to chair the Judiciary Committee. There, says retired King County Judge George Revelle, Turner was an unsung pioneer in the helping pass a 1948 law against discrimination in employment.

Turner worked as a deputy prosecuting attorney for King County, and was appointed a Superior Court judge in 1949. He served 24 years, until his retirement at 75 in 1973.

A painstaking jurist, Turner was noted for the thoroughness of his research and preparation in rendering decisions. Colleagues remembered him as a tireless, deeply thoughtful judge who wouldn't be rushed to get a decision out.

Turner was also noted as a violinist and violist, and played with several Seattle-area orchestras. Survivors include four children, ten grandchildren, and four great-grandchildren.



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

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Arline Fouts Dempster: Any person with knowledge of a 1986 will written for Arline Fouts Dempster

who resided in the Kirkland-Bothell area and who died in 1991, please contact Barbra Fouts, 3303 S. Garfield, Kennewick, WA 99337.

Donald Clinton Henderson, (DOD 6/22/92);

Lucille Maxine Sweet, (DOD 6/23/92): Anyone with information regarding heirs or wills of either of these persons, please contact Lawrence B. Lundberg, Attorney, 600 University Street, Suite 1625, Seattle, WA 98101; (206) 623-9051.

MISCELLANEOUS

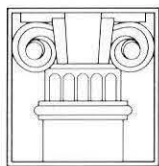
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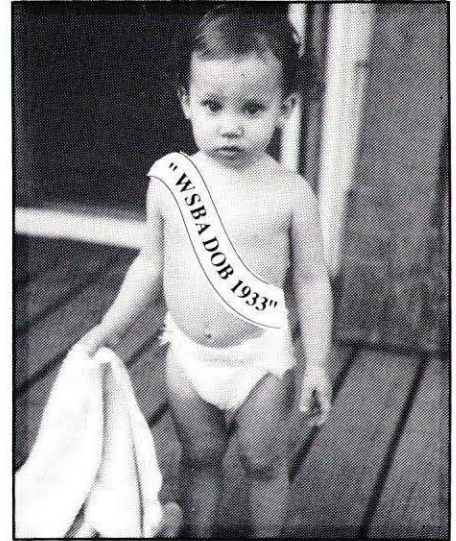
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AND HERE'S HOW!

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 with our perceived present needs.

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

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VOTE THERE!!**

We can do what will otherwise never be done.

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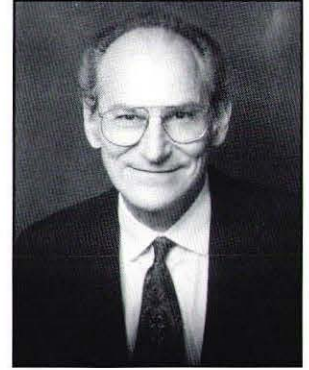
*Washington State
Bar Association*

*A*nnual Report

Inside Your 1992 Annual Report

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*P*resident's Report



Since September of 1991, I have presided over a vibrant, colorful Board of Governors where the exchange of ideas and philosophy has been like riding a "Tilt-a-Whirl" at a carnival. We have grappled with many controversial issues—most notably a financial crisis that has colored much of what we could, or more appropriately, could not, do. We struggled with the balance between representing the lawyers of Washington versus protecting the public. We studied the dissemination of information through technology—and how to pay for it. And we considered the appropriate response to a suggested rule change requiring the Bar to bargain with a union in the office of the WSBA.

I made a concerted effort to increase the aspirational pro bono commitment of lawyers in the state and revisited the idea of mandatory malpractice insurance (or other forms of demonstrated fiscal responsibility such as disclosure of malpractice insurance to clients). Consideration of the latter will not conclude before I leave office, but it deserved the wide-ranging discussion that has been initiated.

I spent much of my year criss-crossing the state meeting with local bar associations and any other group that would have me. In addition to being the "mouth piece" for the WSBA, I wanted to be its eyes and ears.

The Board held a priority setting retreat in April and identified improving the lawyer discipline system, fixing our chronic funding problem, and improving communications with our various constituencies as our top three priorities. Efforts on all three of these top priorities will continue after I leave the Board in September.

We will have squarely faced the need for the first fee increase in seven years. No one asks to be the President when fees have to be increased, but I would have been shirking my duties to both the members of the WSBA and the public if we had allowed the organization to weaken to the point where it serves no one. Those of you who know me, know that I am a fiscal conservative. I wouldn't support a fee increase unless I truly believed it necessary and appropriate.

It has been a pleasure and privilege to serve the members of our Association since September 1991 and your cooperation has been appreciated. I would hope that the members of the bar would like to continue to maintain for its members an association which in the past was noted for its progress, accomplishments, and esteem.

Being President of the Washington State Bar Association has been a high honor and the pinnacle of my professional career. I appreciate the opportunity to serve as President of the Association.

Sincerely,

A handwritten signature in cursive script that reads "Joseph P. Delay". The signature is written in dark ink and is positioned above the printed name.

Joseph P. Delay

Standing Committee and Section Chairs

STANDING COMMITTEES

Attorneys Professional Insurance
Harry H. Schneider, Jr.

Bench/Bar/Press
Kimberly Ann Boyce

Character and Fitness
Thomas J. Greenan

Civil Rights
Lonnie G. Davis

Client's Security Program
Mary Beth Nethercutt

Committee of Law Examiners
Frank V. Slak, Jr.

Consumer Protection
Gerald Gray Tuttle

Continuing Legal Education
Gary C. Randall

Corrections
Fred Diamondstone

Court Congestion & Improvement
Mary Gallagher Dilley

Court Rules & Procedures
Duane Lansverk

Disciplinary Board
Henry Haas

Editorial Advisory Board
Constance Voorhies Lind

Group & Prepaid Legal Services
Kelly N. Brown

Interprofessional
Lucinda S. Whaley

Judicial Recommendation
John Steven Glassman

Law-Related Education
Betsy Brinson

Lawyers' Assistance Program
Patrick C. Comfort

Legal Aid
Bonnie Bayes-McDaniel

Legal Assistants
Thao A. Tiedt

Legal Services to the Armed Forces
John Douglas Morgan

Legislative
J. Richard Manning

Literacy
Mark McPherson

Opportunities for Minorities in the Legal Profession
Mary E. Fairhurst, Co-Chair
Richard A. Jones, Co-Chair

Public Relations
Michael J. McKasy

Resolutions
Edward F. Shea

Rules of Professional Conduct
Allan H. Baris

SECTIONS

Administrative Law
M. Laurie Flinn Connolly

Alternative Dispute Resolution
Diane G. Fitz-Gerald

Business Law
John A. Reed

Consumer Protection, Antitrust & Unfair Business Practices
Michael J. Casey

Corporate Law
Frederic F. Dorkin

Creditor/Debtor
Charles P. Helm

Criminal Law
Mark E. Vovos

Environmental & Land Use
Amy L. Kosterlitz

Family Law
Kimberly Prochnau

General Practice
Joseph P. Erickson

Health Law
K. Thomas Connolly

Indian Law
Joanne E. Foster

Intellectual & Industrial Property
Katherine Hendricks

International Law & Practice
Edward G. Hudson

Law Office Economics & Management
Gregory S. Morrison

Litigation
Cheryl Robbins Berg

Public Procurement & Private Construction
Bruce P. Babbitt

Real Property, Probate & Trust
Scott B. Osborne

Taxation
James H. Bush

World Peace Through Law
Terry Savery

1992 *B*oard of Governors

President

Joseph P. Delay
W. 601 Main Avenue - Ste. 1212
Spokane, WA 99201
(509) 455-9500

First District

M. Wayne Blair
58th Floor, Columbia Center
701 Fifth Avenue
Seattle, WA 98104
(206) 682-7090

Fifth District

Joseph Nappi, Jr.
700 Lincoln Bldg.
W. 818 Riverside Avenue
Spokane, WA 99201
(509) 624-3233

King County

Michael A. Larson
18th Floor Pacific Bldg.
720 Third Avenue
Seattle, WA 98104
(206) 623-3577

Second District

John T. Slater
418 Bellingham National Bank Bldg
Bellingham, WA 98225
(206) 734-5980

Sixth District

Monte E. Hester
1008 South Yakima Ave
Tacoma, WA 98405
(206) 272-2157

King County

Alva C. Long
26 B St N.E.
Auburn, WA 98002
(206) 833-0800

Third District

Steven B. Tubbs
515 West Fifteenth Street
Vancouver, WA 98660
(206) 694-7551

Seventh District

Lembhard G. Howell
700 Third Avenue - Penthouse Suite
Seattle, WA 98104
(206) 623-5296

Fourth District

John G. Schultz
117 South Third Street
Pasco, WA 99301-0891
(509) 545-1434

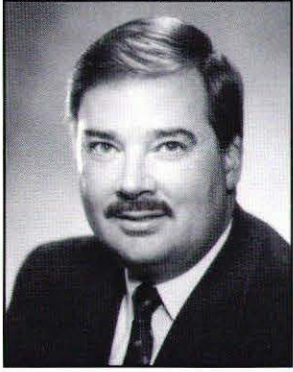
Eighth District

Thomas J. Chambers
1400 Broadway
Seattle, WA 98122
(206) 328-5561



Front: M. Wayne Blair (Seattle), Thomas J. Chambers (Seattle), Steven B. Tubbs (Vancouver), Joseph P. Delay - President (Spokane), Alva C. Long (Auburn), Monte E. Hester (Tacoma)

Back: Michael A. Larson (Seattle), Lembhard G. Howell (Seattle), John G. Schultz (Pasco), John T. Slater (Bellingham), Joseph Nappi, Jr. (Spokane)



xecutive Director's Report

If 1991 was a year of transition at the WSBA, 1992 was a year of reexamination. We reexamined fiscal policies. We reexamined programs. We reexamined priorities. All of this was helped along, of course, by fiscal crisis.

Fiscal year 1991 (ending September 30, 1991) was a shocker. We were \$509,000 short of budget (a deficit of \$359,000, plus abandonment of the \$150,000 we had hoped to add to the reserve). Not coincidentally, there were four major items that add up to \$510,000, to-wit:

- \$150,000 in book entries, i.e., accounting entries to recognize the true liability for employee vacation/sick leave and to write down the value of assets (primarily the old phone system and word processing equipment).
- \$250,000 in budgeted, but unrealized CLE income. CLE income was flat rather than growing as budgeted.
- \$80,000 in under-budgeted bar exam expenses.
- \$30,000 in contractual penalties for failing to fill enough hotel rooms at the San Diego convention.

Fiscal year 1992 (ending September 30, 1992) is notable for two reasons: 1) we installed a much more detailed "functional budgeting" reporting system that gives us a much more precise picture of where the money goes, and 2) we have experienced another revenue shortfall creating another fiscal crisis.

The biggest difference is that the dimensions of the crisis became apparent in May, not in October after the close of the fiscal year. Consequently, we have a fighting chance to avoid a deficit by making painful cuts now, e.g., withholding payments from the Client's Security Program, leaving staff vacancies unfilled, eliminating committee meetings, etc. In all, cuts of \$340,000 have been called for in the last four months of the fiscal year.

Fiscal year 1993 is still in the formative stage. The budget recommended by the Budget Committee to the Board of Governors calls for a fee increase—the first since 1987.

1992 was also a year for reexamining programs. One committee was eliminated and others are being reviewed. The WSBA is eliminating its Lawyer Referral Service. No new programs have been added and others are toeing the line at maintenance levels.

And 1992 was a year for defining priorities. For the first time in recent history, the Board of Governors held a priority setting retreat before establishing its budget—and defined as its top three priorities 1) improving the attorney discipline system, 2) fixing its chronic funding problem, and 3) enhancing communications with various constituencies. There was a growing awareness that 70-80% of the WSBA's spending is tied to its regulatory and critical functions rather than to its "discretionary" functions.

I have talked to a number of local bar associations and constituent groups throughout the state this past year and been encouraged by the reception I've gotten when talking about the fiscal crisis, the probability of a fee increase, and the work of the WSBA. It has been particularly striking at how poorly understood the "regulatory" role of the WSBA is among the membership. The simple truth is that someone, be it the WSBA or a licensing board, will perform that task. The question is whether we want to remain a unified bar association (as recommended by the Long Range Planning Task Force) or turn that responsibility over to someone else.

Even though I am basically an optimist, these are beleaguered times at the WSBA. In times of fiscal downturn, the demands for many of our services increase rather than decrease (attorney discipline, Lawyers' Assistance Program, Client's Security Program, etc.). We are struggling to meet our responsibilities to the Supreme Court and to the public to administer a timely and responsive attorney discipline system. And we are doing so on core funding (annual fees) that hasn't gone up since 1987. The fact that we have been able to do so is a tribute to the volunteer leaders of the Bar—the Board of Governors, Presidents, Section and Committee leaders, pro bono directors, local bar leaders—and to the hard work and dedication of the staff.

I hope several years from now to be able look back at this Annual Report and think that we persevered, that we made the right decisions, and that we lived up to the responsibilities that we owe to both our members and the public.

A handwritten signature in black ink that reads "Dennis P. Harwick". The signature is written in a cursive, flowing style with a large initial 'D'.

Dennis P. Harwick

Highlights of Activities

At the beginning of fiscal year 1992, the Board of Governors reduced its meeting schedule from monthly to every six weeks. Lest you think that they are slacking off, they still meet nine times a year for a day and a half each time (more than any other state bar association board in the United States)—not counting the endless hours of committee meetings and other board related responsibilities.

The Board of Governors considered a multitude of issues at each meeting. By reviewing the minutes for the past eight meetings, I have compiled a partial list of issues considered by the Board:

- | | |
|--|---|
| Improving the attorney discipline system | Eliminating the Law School Liaison Committee |
| Modifying policy issues concerning the bar exam | Pushing the filing fee bill in the legislature |
| Approving judicial recommendations | Adopting more restrictive budget policies |
| Using technology to share law-related information at the lowest possible cost | Addressing the FY 1991 budget deficit |
| Improving literacy and its effect on the justice system | Supporting reauthorization of the LSC |
| Approving Client's Security Program gifts | Adopting a management succession plan |
| Adopting in principle the Open Meetings Act and Records Disclosures & Preservation Act | Reviewing the experience of the KVI professional liability insurance endorsement |
| Changing the Unauthorized Practice of Law Committee to Consumer Protection Committee | Reviewing the state of lawyer discipline |
| The budget crisis | Considering a modification to RPC 7.3 on lawyer advertising |
| Endorsing the Washington State Lawyers Campaign for Hunger Relief | Reviewing the history of the Skills Training Program |
| Approving rebates for members objecting to certain kinds of legislative positions | Considering creation of a new seat on the Board to represent the 9th Congressional District |
| Upgrading the WSBA phone system | Considering creation of non-lawyer seats on the Board |
| More budget crisis | Considering the suggested rule change requiring mandatory bargaining with a union |
| Modifying the WSBA referendum process | Reviewing the work of Washington legal service programs |
| Creating a 40 Year Award | Finding ways to balance the FY 1993 budget |
| Enhancing the Electronic Bulletin Board | Considering the authority of WSBA Sections and Committees to comment on legislation and rules |
| Endorsing LAW Fund | Approving and rejecting various court rule changes |
| Reviewing legislation in the 1992 Session | Considering the WSBA's role in federal judicial selections |
| Reviewing the WSBA's role in Access to Justice Issues | |
| Approving an amendment to RPC 8.4 prohibiting harassment | |
| Considering the ABA McKay Commission's Report on Attorney Discipline Systems | |
| Modifying the CLE reporting cycle to a three year cycle | |

As mentioned previously, this has been a “maintenance level” year for programming. Nonetheless, there are a number of significant developments that bear mentioning.

Membership: Even as this is being written, 854 applicants are sitting for the summer bar exam—in addition to the 492 who took the exam in the spring, a total of 1,346. The result is approximately 800 new members since this time last year (17,129 active members vs. 16,368). In addition to the 17,129 active members, we have 374 judges, 206 honorary members, 1,828 inactive members, and over 2,500 legal interns—a total of over 22,000.

Legislation: They said it couldn’t be done, that is, pass the filing fee bill to fund county law libraries, new judges, and civil legal services for indigent. They didn’t count on Joe Delay, John Fattorini, Ada Shen Jaffe, and scores of others who marshalled the troops and arguments to carry the day. Special tribute goes to Representative Marlin Appelwick for his legislative leadership on this issue.

Attorney Discipline: Lee Ripley and his staff know how Sisyphus felt—rolling that heavy stone uphill every day only to have it roll back down again—and then the hill gets steeper. Grievances against lawyers have increased over 30% since 1987, with over 2,200 grievances received in 1991. The good news is that the Legal Department staff closed 300 more claims in 1991 that they opened. The trend, however, shows no sign of abating with estimates of 2,500 grievances in 1992.

The ABA Commission on Evaluation of Disciplinary Enforcement (the McKay Commission) made a number of recommendations for improving the lawyer discipline systems throughout the United States. Fortunately, Washington has many of the recommendations already in place. The Board of Governors has set aspirational time lines for handling grievances and is now studying the issue of staff and resource levels to meet those time lines.

Continuing Legal Education: No area has had more troubles than CLE. If misery loves company, it’s got plenty. CLE programs throughout the country, including such prestigious vendors as the Practising Law Institute, suffered losses this past year. Other professional associations in Washington report the same fall off in registrations. It is clear that change is in the wind. The tough part will be to balance what we want to be (most things to most people) with what we are willing to pay for. This is one of those issues that fits H.L. Mencken’s admonition—if there is a simple, obvious answer, it’s probably wrong.

*I*ndependent Auditors' Report



1300 Dexter Avenue N., Suite 200
Seattle, Washington 98109
Telephone: (206) 284-2044
Fax: (206) 286-3159

Accountants and Consultants

Independent Auditors' Report

Board of Governors
Washington State Bar Association
Seattle, Washington

We have audited the accompanying balance sheets of the Washington State Bar Association as of September 30, 1991 and 1990, and the related statements of revenues, expenses, and changes in fund balance, and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Washington State Bar Association, at September 30, 1991 and 1990, and the results of its operations and its cash flows for the years then ended in conformity with generally accepted accounting principles.

BDO Seidman

January 6, 1992

*B*alance Sheets

ASSETS

Current

	September 30,	
	1991	1990
Cash and cash equivalents	\$ 755 808	\$ 491 550
Certificates of deposit	200 000	900 000
Trust account deposits	13 441	5 464
Receivables		
Trade	47 802	31 248
Interest	12 881	17 177
Other	10 477	10 840
Inventory		
Supplies	43 248	52 908
Desk and course books	98 641	56 078
Deferred costs and prepaid expenses	<u>226 924</u>	<u>153 584</u>
TOTAL CURRENT ASSETS	1 409 222	1 718 849
Property and Equipment, net (Notes 1 and 2)	269 829	328 994
Inventory - Desk Books	<u>142 839</u>	<u>204 448</u>
	<u>\$ 1 821 890</u>	<u>\$ 2 252 291</u>

LIABILITIES AND FUND BALANCE

Current Liabilities

Accounts payable	\$ 257 145	\$ 420 675
Accrued expenses	231 872	131 588
Trust account liability	13 441	5 464
Current maturities of obligations under capital leases (Note 2)	3 706	29 138
Current portion of deferred compensation (Note 3)	32 934	30 095
Unearned seminar income	265 214	272 268
Deferred membership dues	<u>807 924</u>	<u>757 368</u>
TOTAL CURRENT LIABILITIES	1 612 236	1 646 596
Obligations Under Capital Leases, less current maturities (Note 2)	—	3 730
Deferred Compensation, less current portion (Note 3)	<u>148 386</u>	<u>181 320</u>
TOTAL LIABILITIES	1 760 622	1 831 646
Fund Balance	<u>61 268</u>	<u>420 645</u>
	<u>\$ 1 821 890</u>	<u>\$ 2 252 291</u>

See accompanying summary of accounting policies and notes to financial statements.

Statement of Revenues, Expenses, and Changes in Fund Balance

	September 30,	
	1991	1990
Revenues		
Membership dues	\$ 3 161 134	\$ 2 999 637
Continuing legal education	1 478 806	1 491 765
Bar examination fees	577 413	621 989
<i>Bar News</i>	267 737	246 590
Sections	264 908	245 896
Other income	155 393	121 401
Convention	107 617	172 822
Interest earned	106 357	137 796
Bar journal directory (<i>Resources</i>)	45 156	42 487
Lawyer Referral Service	38 415	49 415
Young Lawyers Division	24 453	18 587
Clients' security program recovery	1 638	31 410
Total revenues	6 229 027	6 179 795
Expenses		
Salaries	2 129 965	1 829 217
Continuing legal education	966 108	924 801
Payroll taxes and benefits	534 964	460 164
Bar examination and admissions	410 908	386 621
Rent and utilities	398 004	355 374
<i>Bar News</i>	292 612	257 575
Postage, printing, and office expense	263 378	207 065
Sections	253 238	237 765
Public affairs and public relations	200 297	191 038
Equipment rent and maintenance	164 716	127 050
Convention	159 484	192 590
Conferences and meetings	152 210	146 367
Depreciation and amortization	85 950	67 100
Young Lawyers Division	84 507	83 045
Committees	68 514	80 766
Bar journal directory (<i>Resources</i>)	66 556	60 384
Discipline	57 472	58 021
Professional fees	57 212	49 366
Write-down of fixed assets (Note 1)	48 175	—
Clients' security program	34 609	35 920
Legislative activities	31 407	32 619
Insurance	28 530	30 371
Lawyers Assistance Program	24 508	21 902
Lawyer Referral Service	21 502	19 991
Interest	19 845	27 161
Loss on asset dispositions	17 664	—
Provision for inventory obsolescence	—	29 225
Miscellaneous	16 069	—
Total expenses	6 588 404	5 911 498
Revenues Over (Under) Expenses	(359 377)	268 297
Fund Balance, beginning of year	420 645	152 348
Fund Balance, end of year	\$ 61 268	\$ 420 645

See accompanying summary of accounting policies and notes to financial statements.

Statements of Cash Flows

Increase (decrease) in cash and cash equivalents

	September 30,	
	1991	1990
Cash Flows from Operating Activities		
Cash received from membership dues and other activities	\$ 6 149 618	\$ 6 029 012
Cash paid to suppliers and employees	(6 524 287)	(5 908 781)
Interest paid	(19 845)	(27 161)
Interest received	110 653	146 266
Payments on deferred compensation	(30 095)	(27 500)
Net cash (used in) provided by operating activities	<u>(313 956)</u>	<u>211 836</u>
Net Cash from Investing Activities		
Acquisitions of property and equipment	(92 624)	(46 981)
Certificates of deposits	700 000	(300 000)
Net cash provided by (used in) investing activities	<u>607 376</u>	<u>(346 981)</u>
Cash Flows from Financing Activities		
Payments on capital leases	(29 162)	(46 906)
Net cash used in financing activities	<u>(29 162)</u>	<u>(46 906)</u>
Net Increase (Decrease) in Cash and Cash Equivalents	264 258	(182 051)
Cash and Cash Equivalents, beginning of year	<u>491 550</u>	<u>673 601</u>
Cash and Cash Equivalents, end of year	<u>\$ 755 808</u>	<u>\$ 491 550</u>
Reconciliation of Revenues Over Expenses to Net Cash (Used In) Provided by Operating Activities		
Revenue over (under) expenses	\$ (359 377)	\$ 268 297
Adjustments to reconcile revenues over expenses to net cash (used in) provided by operating activities:		
Depreciation and amortization	85 950	67 100
Provision for inventory obsolescence	—	29 225
Write-down of fixed assets	48 175	
Loss on asset dispositions	17 664	
Change in assets and liabilities:		
Decrease (increase) in -		
Receivables	(11 895)	10 186
Inventory	28 706	(147 942)
Deferred costs and prepaid expenses	(73 340)	(11 077)
Increase (decrease) in -		
Accounts payable and accrued expenses	(63 246)	35 245
Unearned seminar income	(7 054)	(55 892)
Deferred membership dues	50 556	44 194
Deferred compensation	(30 095)	(27 500)
Net cash (used in) provided by operating activities	<u>\$ (313 956)</u>	<u>\$ 211 836</u>

See accompanying summary of accounting policies and notes to financial statements.

Summary of Accounting Policies

Operations

The Washington State Bar Association is a not-for-profit entity. Operations consist of billing and collecting dues from members, administering the Bar Exam, and providing various services to the membership.

Deferred Costs

Deferred costs are primarily expenses associated with seminar planning and the production of materials. Recognition of these expenses is deferred until the related seminars are presented, usually in the subsequent year.

Inventory

Inventory primarily consists of desk books and course books to be sold. Any inventory quantities in excess of one year are classified as noncurrent assets.

Property, Equipment, and Depreciation

Property and equipment are stated at cost. Depreciation is computed over the estimated useful lives of the assets, generally five to ten years, using the straight-line method.

Unearned Seminar Income

Seminar registration fees are recognized as revenue in the year in which the related seminars are held. Unearned seminar income relates to fees collected for seminars to be conducted in the subsequent year.

Deferred Membership Dues

Membership dues are recognized by the Bar Association ratably over the applicable calendar year membership period. Accordingly, dues collected during the Bar Association's fiscal year that relate to the fourth quarter of the membership period are included as deferred revenue in the financial statements.

Income Taxes

The Bar Association is an organization exempt from federal income taxes.

Cash Flows

For purposes of reporting cash flows, the Bar Association considers all certificates of deposit with original maturities of 90 days or less to be cash equivalents.

Financial Statement Classifications

Certain amounts in the 1990 financial statements have been reclassified to conform to 1991 classifications.

Notes to Financial Statements

NOTE 1 - Property and Equipment

	September 30,	
	1991	1990
Property and equipment consists of the following:		
Furniture and equipment	\$ 702 099	\$ 687 626
Leasehold improvements	12 091	12 091
Automobiles	—	18 943
	<u>714 190</u>	<u>718 660</u>
Less accumulated depreciation and amortization	<u>(444 361)</u>	<u>(389 666)</u>
Property and equipment, net	<u>\$ 269 829</u>	<u>\$ 328 994</u>

The net book value of certain assets included in furniture and equipment were written down by a total of \$48,175 to their estimated salvage value at September 30, 1991.

NOTE 2 - Lease Commitments

The Bar Association is committed under various operating lease agreements for office space, equipment and an automobile, and under capital leases for equipment. The assets under capital leases, included with property and equipment on the accompanying balance sheet, have a net book value of \$34,666 and \$109,452 as of September 30, 1991 and 1990. Effective December 1, 1986, the Bar Association entered into a ten-year noncancellable lease with two five-year renewal options for the use of new office space in Seattle. The Bar Association also entered into a three year lease for office space in Olympia, effective March 1, 1990.

Subsequent to September 30, 1991, the Bar Association entered into a capital lease agreement for telephone equipment that will be recorded at a value of \$96,361. The lease has a five-year term and includes interest at 10.5%.

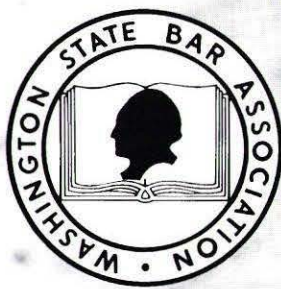
The future net minimum payments under capital leases, and future minimum rental payments required under operating leases with remaining lease terms of one year or more, are as follows:

Year Ending September 30,	Operating Leases	Capital Lease
1992	\$ 382 113	\$ 3 759
1993	373 849	—
1994	360 929	—
1995	359 272	—
1996	310 178	—
Thereafter	<u>50 953</u>	—
Total minimum payments	<u>\$1 837 294</u>	3 759
Less amount representing interest		(53)
Present value of net minimum payments		3 706
Less current maturities		<u>(3 706)</u>
Long-term portion		<u>\$ —</u>

Rent expense was \$319,473 and \$296,059 for the years ended September 30, 1991 and 1990.

NOTE 3 - Deferred Compensation

Effective January 16, 1978, the Bar Association entered into an Employment and Deferred Compensation Agreement with its then Executive Director, G. Edward Friar. The agreement requires monthly payments as a general obligation of the Bar Association upon termination of the employment of the said Executive Director. Mr. Friar retired as Executive Director on December 31, 1981. The estimated balance due under the agreement and its amendments has been computed on a present value basis using actuarially determined life expectancy tables and interest rates and is reflected as a liability of the Bar Association in the financial statements. The total amount to be paid to the former Executive Director will depend upon his actual life span. In the event that Mr. Friar lives beyond the original estimated life span, the Bar Association will incur an additional \$48,000 a year.



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