Washington State Bar News
Vol. 47, No. 1, January 1993

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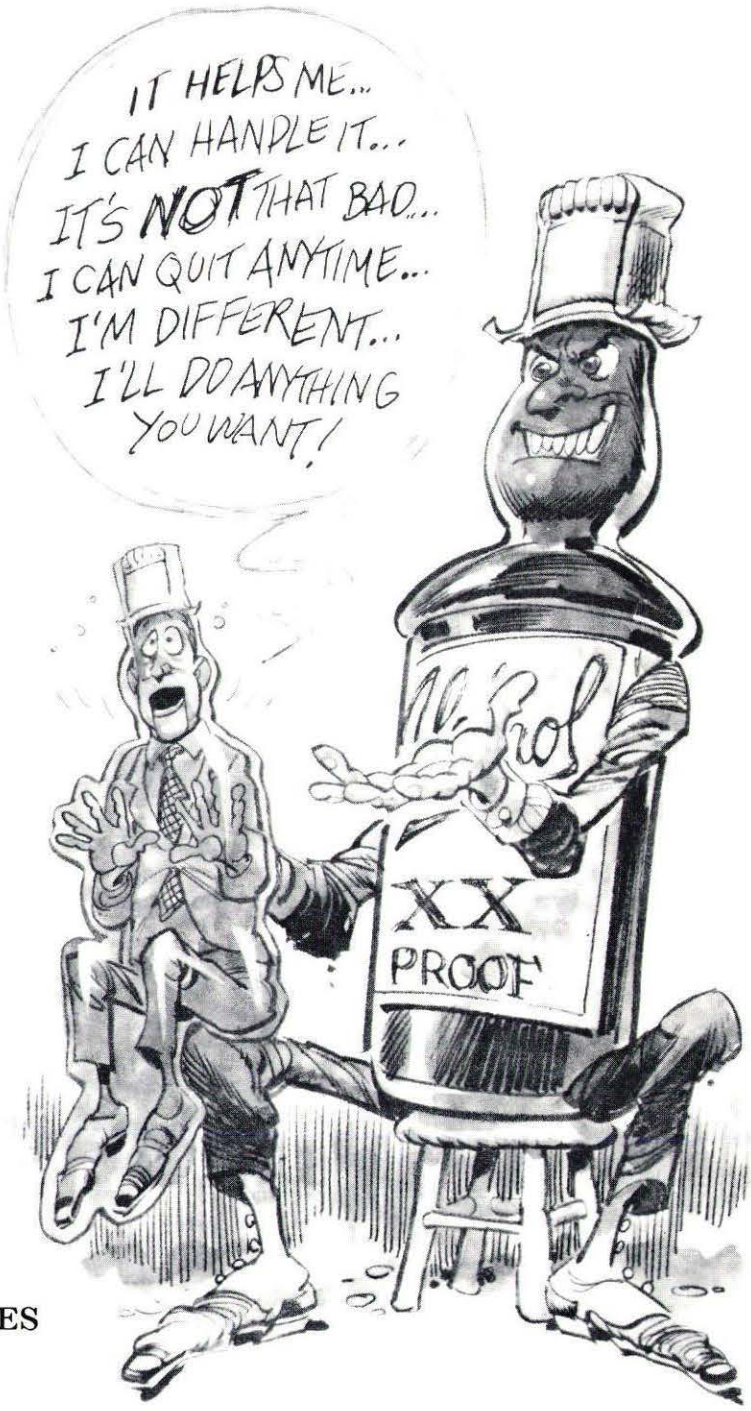

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- DRUNK DRIVING LAW REFORM
- DRIVING CONTRACT
- LAWYER BASHIN' BLUES
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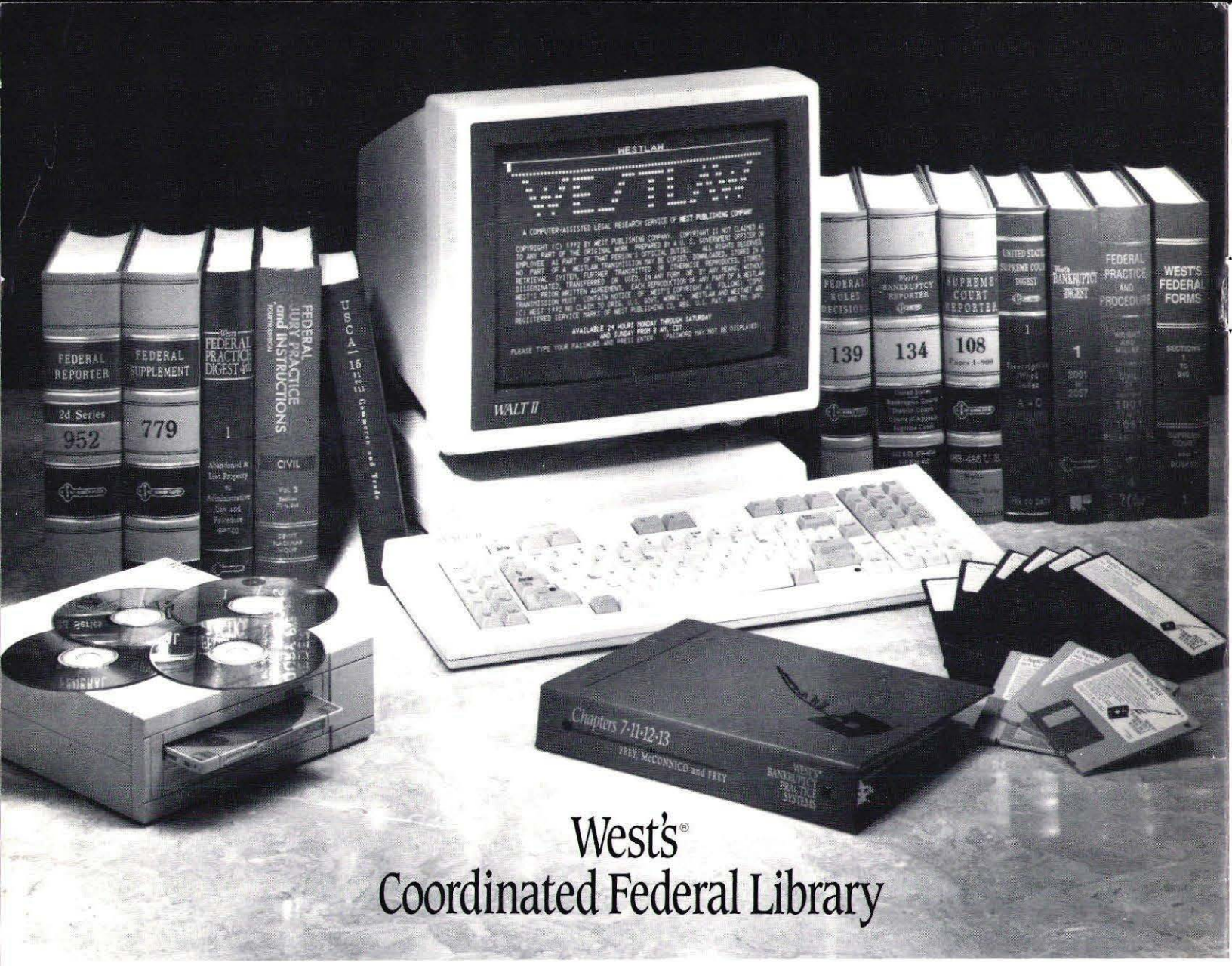

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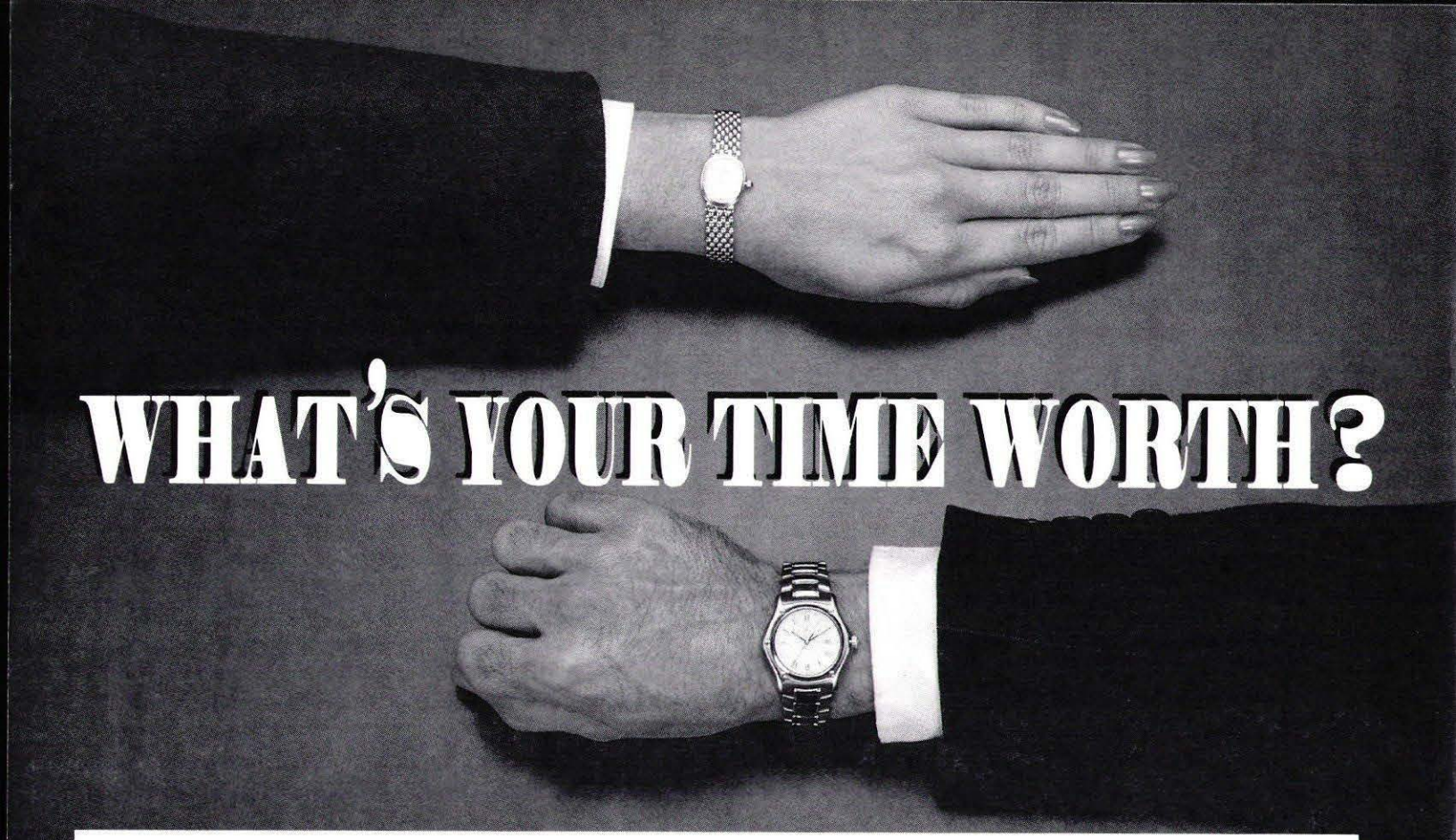

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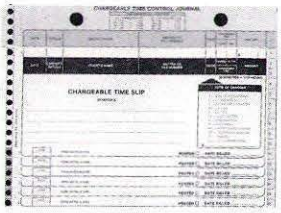

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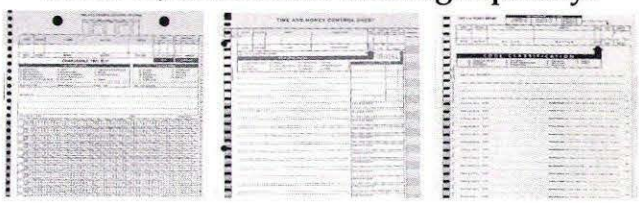

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Vol. 47, No. 1, January 1993

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Features

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

An Honor Well-Deserved

Editor:

The Washington State Bar Association has seldom done a finer thing than its selection of the Honorable Marshall Forrest as the Outstanding Judge of the Year. Having practiced for many years in his court, I can say that he is the very model of a scholarly, decisive, fair, and courteous judge.

PHILIP H. BRANDT
Judge, U.S. Bankuptcy Court,
Western District of Washington
Tacoma

Banning Sex With Clients

Editor:

Awhile back I read about members of the Oregon Bar Association voting to ban sex with clients. I just read a recent issue of the *American Bar Association (ABA) Journal*, which included several articles on the subject, including one, as I recall, which concluded that sex with clients is harmful to the lawyer-client relationship. Really! I am truly amazed it took this long to verify such an obvious conclusion.

Well, lo and behold! It now seems that this "controversial" issue remains a hot topic in the profession. Let's be real! Sex with clients should never be the subject of any debate, as it makes common sense that abstinence is the best policy just as honesty has its own rewards.

If prospective law students are still taught that lawyers assume many roles in their confidential relationships with clients (e.g., counselor, psychiatrist, etc.), why not act as other counseling professions? Establish ethical rules prohibiting such conduct as long as the lawyer-client relationship exists.

If members of this bar association, and the ABA for that matter, are really interested in improving the image of lawyers, then prohibiting sex with clients is certainly another significant step in the right direction.

JAMES M. MURRAY
Spokane

On Selecting Federal Judges

Editor:

I want to bring to your attention two inaccuracies in your summary of "The Board's Work" for the September 16, 1992, Vancouver, B.C. Board of Governors meeting. I refer to your description of the proposal that the WSBA develop a mechanism to impact the federal judicial appointment process. First, the proposal you described as being adopted by the Board was a concept involving ad hoc committees which was withdrawn several months ago. The proposal which was considered and adopted by the Board in Vancouver expanded the jurisdiction of the WSBA Judicial Recommendation Committee to include federal judicial positions. WSBA Bylaw Article VIII Section 1(g) was amended as follows:

> Judicial Recommendation. This Committee shall establish standards for basic qualifications for offices of the Court of Appeals, Justices of the State Supreme Court, and the United States District Court Judges for the Eastern and Western Districts of Washington. Whenever a vacancy occurs in such courts, the Committee shall screen candidates for the vacancy and make recommendations to the Board of Governors.

Second, you describe the proposal as "several times killed." While this may be a matter of interpretation, the proposal was tabled from the 1990-1991 bar year to the 1991-1992 agenda. Due to scheduling conflicts, its consideration was delayed to the last meeting of the year. However, it was never "killed."

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Washington State Bar Association Continuing Legal Education

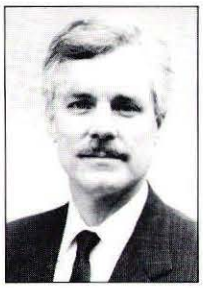
The proposal to involve the WSBA in the federal judicial appointment process arose out of a concern that the WSBA had no mechanism in place to assist with the evaluation of potential candidates. The proposal began as a companion to a resolution adopted by the Board last year which called for increased diversity on the state and federal benches. Now, the WSBA's Judicial Recommendation Committee has the ability to become involved in the federal judicial appointment process. Perhaps broader input will result in a wider spectrum of candidates for our federal judgeships.

ROBERT F. BAKEMEIER
Seattle

The first point is a distinction without a difference—or, at best, a small one—in my view. As for the second, sentiment expressed toward the proposal each time it came up on the agenda was that it was, in fact, DOA. Thus, my descriptions of its revival—and ultimate passage—is due, in no small part, to Mr. Bakemeier's persistence.—Editor.

Michael C. Jordan, Ph.D.

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



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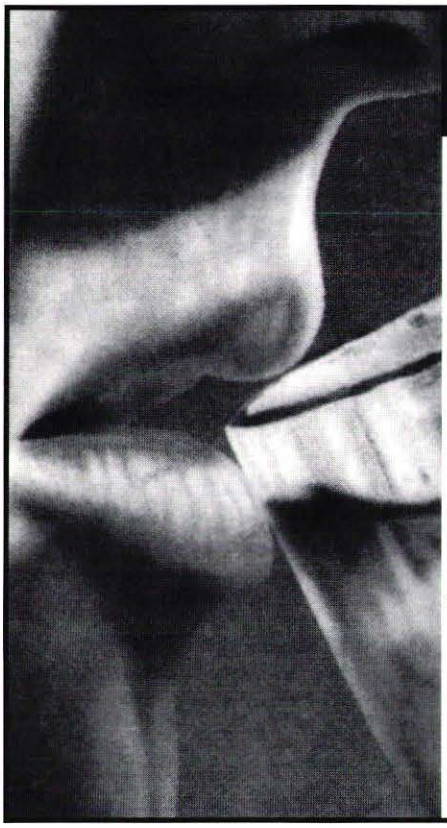

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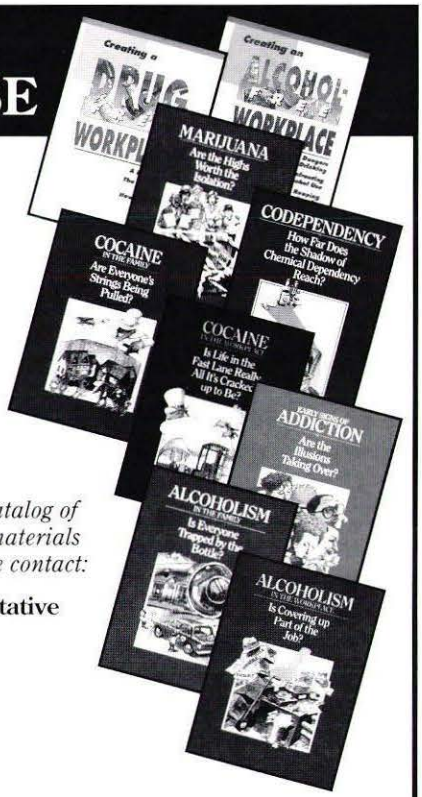

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Editor:

THE BIG SELL-OUT!!!

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LEM HOWELL
Seattle

SHOULD THE SYSTEM OF GOVERNANCE BE MODIFIED?

by **Steve DeForest**
WSBA President

The Long-range Planning Committee of the Board of Governors, chaired by Wayne Blair of Seattle, has under review the organization, structure and governance of the WSBA. It is considering whether the structure should be revised to allow more and diverse people to serve on the Board. An expansion of the Board, with designated positions for specialty bars, minority organizations, young lawyers and lay persons, is among the possibilities. As the discussion continues over the ensuing months, and specific recommendations are made and debated, it may be useful to keep in focus the existing structure as you consider various alternatives.

The State Bar Act prescribes that the state bar shall be governed by a board of governors, to consist of not more than 15 members, to include the president, one member from each congressional district, and such additional members as provided by the bylaws. There are two such members from King County at large. The Board is charged with the executive functions of the state bar. The Governors are elected, not appointed. They come from a wide variety of backgrounds and types of law practice. There is no majority or minority group on the Board; there are neither political alignments nor caucuses.

The Governors do have many things in common. They have respect for each other's views. While they may disagree as to emphasis or means, they share a commitment to promoting respect and understanding for our legal system, fostering and maintaining high standards of competence, professionalism and ethics among members, and aiding in the effective administration of justice. They spend a lot of time together—about 30 days a year. During their three years of service many develop strong friendships without compromising their independence.

The Board meets every six weeks for about a day and a half on Fridays and Saturdays. Each Governor receives a "Board book," consisting of an agenda and background materials of 200 - 400 pages, to review in advance. The Board does much of its preparatory work through committees, with each Governor serving on three or four. While some committees are ongoing, others are formed for a specific task. The most time consuming committee is the Budget and Audit Committee, chaired by the treasurer. Other committees with a continuing agenda are the Discipline Committee, which acts as liaison between the Disciplinary Board and the WSBA Disciplinary Department, and the Long-range Planning Committee. Committees assigned specific projects are the Access to Justice, Bylaws Revision, Conventions and Communications committees. The Professionalism and the CLE Special Study committees include non-Board members. The Presidential Search Committee and the Awards Committee have annual responsibilities.

The Board is a renewable resource. Long before term limits became fashionable, the WSBA adopted a one-term limit for Governors. Whatever may be lost in experience is overshadowed by the fresh energy and insights brought by new members. The president serves a one-year term. One of the strengths of the WSBA is the turnover in the leadership, and the fact that there is an almost inexhaustible supply of dedicated lawyers who step forward to serve on the Board.

Some of our members perceive that the Board either is controlled by the large law firms or primarily serves the interests of such firms. I don't know how that impression originated, or why it persists. It is not the case. The current Board has only one "elevator" lawyer, and his firm has 26 attorneys. It is not one of the 25 largest law firms in the Puget Sound area. There are two sole practitioners on the current Board; the average size of the firm represented is 8.5 lawyers. This year's Board is not an aberration. Including the preceding four years, out of 17 Governors, only two have come from large law firms (more than 30 lawyers). If you go back seven years, there have been only three of 27 Governors from large law firms. Remarkably, considering the time demands, the five Presidents who preceded me came from law firms of six lawyers or less.

The Board of Governors often draws upon the advice and counsel of an "Advisory Committee." This is not a formalized group, but consists of representatives of organizations who attend each Board meeting. Most groups have the same individual attend throughout the year, while some rotate that assignment for budgetary and scheduling reasons. The organizations which send representatives include Washington Women Lawyers, Seattle-King County Bar Association, Washington State Trial Lawyers Association, Washington Defense Trial Lawyers Association, WSBA Young Lawyers Division, Washington Court of Appeals, Seattle-King County Young Lawyers, Superior Court Judges Association, District and Municipal Court Judges Association, Administrative Law Judges Association, Government Lawyers Bar Association, Washington Association of Prosecuting Attorneys, LEGALS P.S., and the Legal Foundation of Washington.

The Advisory Committee is extremely valuable, yet virtually unknown. Its members participate in the discussion at Board meetings. Each receives a Board book, which facilitates his or her liaison role between the Board and the organi-

zation. These representatives provide an informal sounding board for the Governors, as well as offering an immediate reaction to a proposal, suggestion or pending motion.

Sections and committees are also a part of the WSBA structure. The 20 sections are based upon areas of practice. They range in size from 265 members in the World Peace Through Law Section to 3,199 in the Litigation Section. Their total membership this year is 19,606, a number greater than the number of active lawyers (17,680) because of multiple section membership. Each elects its officers and an executive committee, and has its own bylaws. Sections are one of the best methods by which WSBA members can participate in the activities of the Association.

There are 25 WSBA committees and two boards, whose members are appointed by the Governors generally for a one-year term. They are usually reappointed for a second and third year, if they continue to show interest in the work of the committee and their attendance is good. Total committee membership, including Bar Examiners, is 512. The chair or co-chair serves a one- or two-year term. This year 10 of the 30 chairs and co-chairs are women. A limiting factor on the size of WSBA committees is the meeting cost, as reimbursement of travel is needed to assure geographical diversity.

All WSBA members under the age of 36 or admitted to any Bar within the past five years are automatically members of the Young Lawyers Division. That is 42 percent of our membership and the percentage is growing. The Division elects officers, has its own board, publishes a tabloid (*De Novo*), and has numerous committees, together with a statewide network. Over the years the Young Lawyers Division has been an extremely valuable resource and a leader on various issues, such as federal judicial appointments and merit selection of judges.

The WSBA staff provides support for the board, sections, committees, and the program services and activities of the Association. The 60 employees, under executive director Dennis Harwick, work in the Legal, Licensing, CLE, Administration, and Public Affairs departments, and in the Legislative and the LAP programs.

Any proposal for changes to the existing governance structure should include an evaluation of its cost and the benefits to be gained. If you have any suggestions or recommendations, please contact your Governor, or Wayne Blair or me. This is your Association, and your input is valued.

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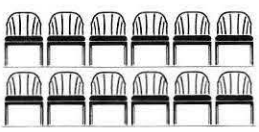

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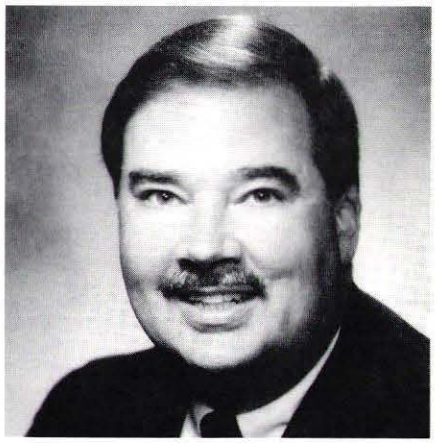


Dennis P. Harwick

Despite significant shortfalls in CLE revenues, the WSBA finished fiscal year '92 (October 1, 1991 to September 30, 1992) ***in the black!*** That's the proverbial good news. The bad news is that it was done by cutting programs, services, and committee work. First and foremost, credit needs to be given to the bar leaders — committee members, Board members —and to the staff who made the cuts necessary to avoid a deficit.

FY 92 was the WSBA's first year using "functional budgeting," i.e., breaking the WSBA's work into 28 different functions, such as discipline, convention, *Bar News*, etc., and then allocating both direct and overhead expenses to those functions. Functional budgeting has its painful aspects—the allocation of indirect expenses opens some programs up to criticism they would not otherwise receive, but management and leadership need to know the true costs of such programs before and during their existence. Proof positive of the value of functional budgeting was found in our ability to make mid-course corrections half way through the fiscal year.

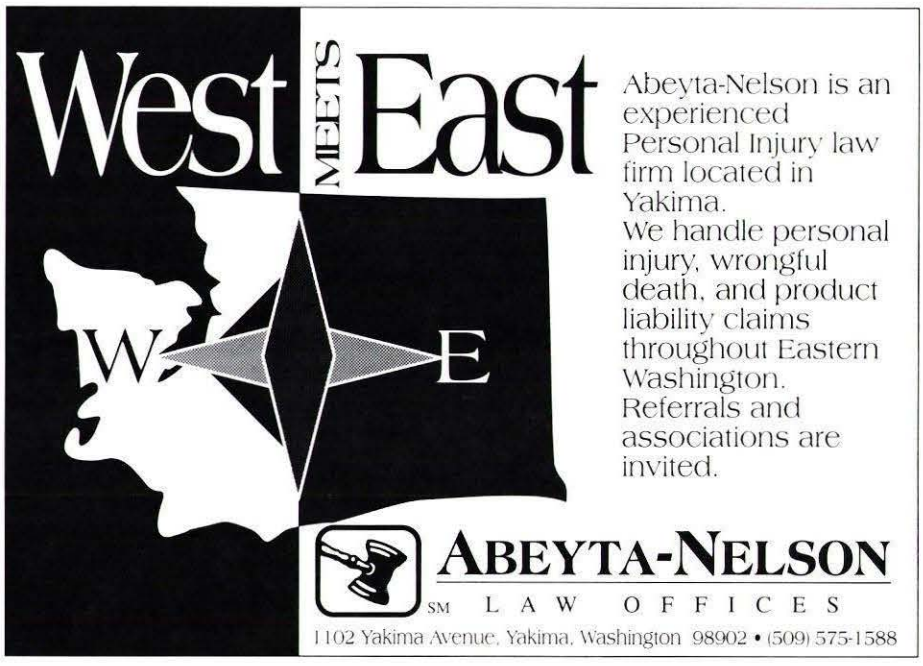
Here are the highlights of FY 92:

- total revenues increased over FY 91 by $177,000 (even though CLE revenues were down by 15.8%)
- total expenses decreased from FY 91 by $308,000 (if you take out fixed increases like rent, direct expenses were cut by more than $450,000)
- most of our committees did a magnificent job of cutting expenses
- our audit programs (for cause and random audits) cost substantially less than anticipated
- even though registrations were low, the convention made a "profit" of $26,907 before factoring in indirect expenses—this is the first time that the convention broke even in memory
- law-related education/MENTOR came in considerably under budget
- leadership (Board of Governors, etc.) came in 17% under budget
- the Young Lawyers Division worked hard to both exceed their direct revenue projection and to control their expenses

The proverbial bottom line is that we expect to end FY 92 with a surplus of approximately $100,000 of revenues over expenses. The external auditors are conducting their examination as this is written, but all the major accrual entries have already been made.

The Referendum: For those who haven't heard, the referendum to rollback the fee increase approved last July by the Board of Governors was successful. Of the validated ballots, 64.9% voted in favor of the rollback (on the unvalidated ballots, 61.3% voted for the rollback). A word of explanation about the "missing signature/address lines" on the return envelope: no conspiracy—or, for that matter, an intentional act — was involved. A miscommunication with the printer resulted in the deletion of those lines and since the whole mailing was printed, folded, stuffed, and mailed from the printer's plant, we didn't even know the lines were missing until we started getting phone calls. As suspected, the faux pas, however frustrating, had no impact on either the validity or result of the referendum.

Fiscal Year '93: The Board of Governors met in emergency session the week after the referendum was counted



to revise the FY 93 budget— a process complicated by the fact that the fiscal year started on October 1, 1992, so a quarter of the budget year was already gone. In order to operate within the revenues available, the Board of Governors had to make significant programmatic cuts. The following is a synopsis of the cuts made as a result of the referendum:

- reimbursements of CLE speakers' out-of-pocket expenses will be eliminated
- the 1993 convention in Victoria will be cancelled
- two budgeted staff positions in CLE will be eliminated
- complimentary books from CLE for law libraries will be eliminated
- reimbursement of state bar ABA delegates will be eliminated
- the Law-Related Education/MENTOR program will be eliminated in toto, including the Mock Trial Program and financial support for the National MENTOR program
- WSBA support for the Tel-Law program (via the *Seattle Times INFOLINE* will be eliminated
- funding for the booklet "On Your Own" distributed to high school seniors will be eliminated
- two staff positions in the Public Affairs department (in addition to the two staff positions for LRE/Mentor) will be eliminated
- publication of the WSBA's membership directory *Resources* will be eliminated for 1993
- funding for the local/specialty bar presidents' leaders conference will be eliminated
- all unbudgeted expenditures from the "contingency" budget for FY 93 will be eliminated
- miscellaneous cuts will be made throughout the remaining functional budgets
- funding of the Client's Security Program was preserved for the time being, but no gifts will be made until the end of the fiscal year

As noted above, six budgeted staff positions will be eliminated (though some have been unfilled for a number of months because of the FY 92 budget crisis.) The Board of Governors made these painful cuts in order to maintain the core functions of the WSBA of admissions, licensing, and discipline. Although each Governor would probably have made the cuts with slightly different priorities, the revised budget was passed with an overwhelming vote.

The schedule for "sunset" reveiw of programs will continue. The public hearing on the Lawyers' Assistance Program is scheduled for 3:00 p.m. on January 28, 1993, at the WSBA office, to be followed by a public hearing on the Client's Security Program at 2:30 p.m. on March 18, 1993, also at the WSBA office. Sunset review comment forms are available by phone from my office [(206) 727-8244] and should be submitted at least one week before the scheduled hearing.

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Drug Sentencing Law Reform?

by **Fred Diamondstone**

The Issues

One of the most important criminal-justice policy issues of the 1990s is how to deal with drug offenders. The era of rehabilitation has given way to the era of certainty of punishment, as reflected in the Sentencing Reform Act of 1983. RCW Ch. 9.94A. Substantially increased sentences for drug offenders have resulted under the Washington State Omnibus Drug Bill of 1989. See RCW 69.50.435 (a).

In recent years, the Department of Corrections and the criminal defense bar have suggested sentence reforms to allow for treatment options for drug offenders. Last year, the Sentencing Guidelines Commission joined the call and proposed a bill to allow certain drug offenders to be sentenced to reduced prison terms followed by mandatory substance abuse treatment. The proposed legislation passed the Senate Law and Justice Committee, but died in the Rules Committee. Another proposal will be submitted to the 1993 Legislature.

Current sentencing practices under the Sentencing Reform Act with respect to drug offenders will increasingly impact prison population through the 1990s. Social pressures to address the problems of drugs have, thus far, led to strict sentencing practices by both state and federal courts; whether they have had an impact on drug use is a much-debated topic. For example, Washington Department of Corrections Secretary Chase Riveland has challenged U. S. Attorney General William Barr on the issue of long prison terms for drug offenders.[1]

This debate is being waged mainly on two levels. First, the effectiveness, as well as the human costs, of long prison terms is a major element of the debate. How much good is accomplished by locking up offenders for long terms in institutions where limited treatment resources are available? What happens when these offenders return to the community? On the second level, the question being raised is how the economic costs of incarceration compare with the costs of treatment. One year of incarceration costs nearly $19,000 per individual in a minimum-security prison; county jail costs more than $16,000 annually per individual. A recent study commissioned by the Department of Corrections found:

> the cost of treatment plus regular supervision will always be less than the cost of even the least expensive form of confinement. Even the most expensive treatment alternative (treatment plus electronic monitoring) is less expensive than the least expensive confinement alternative (jail [as opposed to state work-release or prison] if the diversion is for eight months or longer.[2]

This conclusion takes into account a treatment failure rate of 30 percent.[3]

Sentence Enhancements and Race

Under 1989 legislation, enhanced sentences may be imposed where the prosecutor has filed charges to include the allegation of possessing, selling or manufacturing within 1,000 feet of a school, designated school bus route stop, in a public park, or on a public transit vehicle or in a public transit stop shelter. The enhancement may be up to double the term of imprisonment, as well as up to double the fine. RCW 69.50.435. The following tables provide racial backgrounds of those who did and did not receive the enhanced sentences for FY 1991 and for the last six months of 1991 (the first half of FY 1992).

Comparative charts may be found on pages 17 and 18.

Current Standard-range Sentences

Possession with intent to deliver or delivery of cocaine, heroin or methamphetamine is a Level VIII offense for which a first-time offender is sentenced to 21-27 months. This is mandatory and

INMATE POPULATION: ACTUAL AND FORECAST BY CRIME TYPE

FY	Actual	Forecast	Person	Nonperson	Drug
1971	2,888				
1972	2,761				
1973	2,670				
1974	2,825				
1975	3,147				
1976	3,589				
1977	4,001				
1978	4,244				
1979	4,524				
1980	4,453		2,529	1,786	138
1981	4,720		2,680	1,896	144
1982	5,814		3,175	2,427	212
1983	6,290		3,617	2,490	183
1984	6,994		4,355	2,431	208
1985	7,005		4,825	2,005	175
1986	6,982		5,163	1,634	185
1987	6,666		4,975	1,397	294
1988	6,047		4,413	1,166	469
1989	6,419		4,392	1,115	912
1990	7,446		4,873	1,251	1,322
1991		8,979	5,437	1,663	1,879
1992		10,321	6,089	1,880	2,352
1993		11,140	6,555	1,969	2,616
1994		11,682	6,877	2,051	2,574
1995		12,116	7,131	2,141	2,844
1996		12,587	7,396	2,261	2,930
1997		12,954	7,606	2,343	3,005
1998		13,232	7,799	2,417	3,016
1999		13,446	7,959	2,484	3,003
2000		13,651	8,113	2,552	2,986
2001		13,829	8,267	2,607	2,955
2002		13,966	8,386	2,656	2,924
2003		14,118	8,534	2,709	2,875
2004		14,253	8,687	2,749	2,817
2005		14,414	8,853	2,792	2,769

cannot be suspended to allow treatment, absent other narrowly defined mitigating circumstances. RCW 9.94A.310-.320.[4] Under an analysis performed by the Sentencing Guidelines Commission, 589 offenders fell into this no prior offense, Level VIII category in FY 1991, out of a total of 1,187 total sentenced drug offenders. (First-time offenders sentenced for delivery of possession with intent to deliver of other drugs face sentences ranging from one to three months for marijuana to three to nine months for schedule III, IV and V drugs and up to 12 to 14 months for other schedule I and II drugs.)

Impact on Prison Population

Drug offenders account for a significantly increasing portion of the prison population. In FY 1980, drug offenders accounted for three percent of the prison population. In FY 1990, drug offenders were nearly 18 percent of the prison population. The project for FY 2000 is nearly 22 percent. The raw numbers, according to the Office of Financial Management, are shown in the chart on the following page.

The Department of Corrections' forecasts are similar, although the raw numbers are slightly higher.

Proposed Changes in Legislation

For the past two years, the Department of Corrections and the Sentencing Guidelines Commission have considered alternative sentence structures which would provide for a combination of incarceration and drug abuse treatment to certain drug offenders. The 1992 Legislature considered legislation proposed by the Sentencing Guidelines Commission which would have allowed the Department of Corrections to place eligible offenders into a treatment program in prison and would have allowed for release from prison following a minimum of six or twelve months' total confinement, with provision for active community supervision and an extended period of community supervision. Conditions of release would typically include transition through pre-release, work release and/or an in-patient treatment program.[5] The 1992 proposed legislation did not pass. Budgetary concerns in light of the deficit were a significant factor: both proponents and opponents of the legislation agreed on the need for adequate diagnostic services and treatment programs within the institutions, as well as adequate treatment and supervision in the community.[6] The bill was supported by the Washington Council on Crime and Delinquency, the Association of Washington Cities, the Washington State Association of Counties, the Washington Association of Sheriffs and Police Chiefs, Treatment Alternatives for Street Crime, the Loren Miller Bar Association, and the Superior Court Judges' Association. The opposition was led by the Washington Association of Prosecuting Attorneys and the Washington State

CRIMINAL JUSTICE SYSTEM: BASIC NUMBERS

	State Population (thousands)	Felony Filings	Total Convictions	Inmate Population		Inmate Drug Pupulation		Additional Penalties Since SRA
1980	4,132	14,743	8,200	4,453		138		
1981	4,250	15,442	9,086	4,690		143		
1982	4,264	15,852	10,059	5,814		212		
1983	4,285	15,647	10,601	6,311		184		
1984	4,328	15,469	10,217	6,994		208		
1985	4,384	17,885	10,429	7,005		175		
1986	4,419	19,693	12,453	7,008		186		51
1987	4,481	21,071	13,374	6,691		295		525
1988	4,565	25,476	14,362	6,053		469		656
1989	4,660	28,121	17,797	6,422		912		892
1990				7,635	71%	1,471	966%	1,477
1991	Change from 1980:			9,387		2,101		1,892
1992	15%	91%	117%	10,339		2,293		2,255
1993				11,125		2,464		2,652
1994				11,816		2,642		3,010
1995				12,460		2,803		3,658
1996				13,031		2,929		3,923
1997				13,670		3,023		
1998				13,941		3,094		
1999				14,192		3,147		
2000				14,438		3,194		

Source: Crime #3, Hse Capitol Comm, 28SEP90

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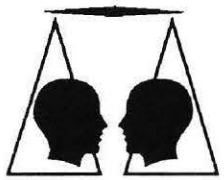

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Council of Police Officers. The Washington State Bar Association Corrections Committee supported the drug offender alternative provisions of the bill. The 1993 Legislature will have a recommendation from the Sentencing Guidelines Commission that will allow first-time offenders sentenced for drug trafficking to receive sentences of one-third of the standard range, followed by a period of community supervision and treatment. This proposal is based on new data that show a recidivism rate of only 14 percent over four years for first-time drug offenders who previously were eligible for a first time offender sentencing waiver. That study also showed that those who did re-offend did not commit serious or violent crimes.

Treatment Resources In Prison and the Community

In 1991, 1,593 inmates were admitted into drug or alcohol treatment programs in Washington's 15 prisons.[7] The estimated number of persons confined in state prisons with substance abuse treatment needs was 3,734 by one method of study and 7,278 by another method. The total prison population was 9,107.[8] These numbers may be compared with the number of drug offenders in prison —2,101 in 1991—with the caveat that some drug offenders may not have personal drug use problems and the additional caveat that many nondrug offenders are incarcerated due to drug-related criminal activity. More diverse publicly funded treatment opportunities exist in the community than in prison, including long- and short-term inpatient programs. There are 781 publicly funded in-patient beds statewide accommodating 5,593 admittees. Additionally, 2,366 publicly funded outpatient slots served 9,462 clients. Of those treated in the community, approximately 30 percent are treated for drug abuse.[9] However, the number of publicly funded community treatment slots does not meet the needs of those under state and local criminal-justice supervision. Bell and Murray estimate that 4,435 individuals under state supervision have chemical dependency treatment recommendations and that 32,964 individuals under local supervision have such recommendations.[10]

Conclusion

Criminal-justice policy related to sentencing is subject to many competing pressures and the political process. Many criminal-justice, corrections and drug treatment experts, as well as police chiefs and sheriffs seek a return to treatment-oriented alternatives in a limited class of cases involving those who are amenable to treatment. On the other side of the debate, prosecutors and police officer organizations call for certainty in punishment and question the effectiveness of court-ordered treatment programs. Legislators in the midst of this debate are concerned about the political downsides, as well as the policy-related issues of (1) costs versus benefits and (2) what rehabilitation programs are successful. Caught in the debate are many

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Sentences With a School Zone Enhancement
Fiscal Year 1991

The Omnibus Drug Bill of 1989 provided for an additional 24 months of enhancement for offenders convicted of manufacturing, delivering, or possessing with intent to deliver a controlled substance if the offense was committed on or within 1,000 feet of a school or school bus route stop. The statute was amended by the 1990 Legislature (Chapter 244) so that activity in public parks, public transit vehicles or public transit stop shelters was included. In a later amendment (Chapter 32, Section 4, Laws of 1991) selling for profit any controlled or counterfeit substance (except marijuana) was added to the list of offenses with enhanced penalties. In spite of these amendments, penalties specified in the statute (RCW 9.50.435(a)) are still loosely labeled "school zone enhancements." Below is a summary of these enhanced sentences by race.

County	Race						Total
	White	Black	Asian	Am. Indian	Hispanic	Unknown	
BENTON	0	0	0	0	1	0	1
FRANKLIN	1	1	0	0	2	0	4
KING	0	24	0	0	0	0	24
LEWIS	0	0	0	0	0	1	1
PIERCE	1	0	0	0	1	1	3
SPOKANE	3	0	0	0	0	0	3
YAKIMA	11	1	1	0	27	0	40
TOTAL	16	26	1	0	31	2	76

Source: Sentencing Guidelines Commission, April 17,1992

Sentences Without a School Zone Enhancement
July 1 to December 31, 1991

Displayed below are the number of persons who received a sentence for manufacturing, delivering, or possessing with intent to deliver a controlled substance (RCW 69.50.401 (a)) or selling for profit any controlled or counterfeit schedule I substance except marijuana (RCW 69.50.410). These persons were not convicted with a sentence enhancement under RCW 65.50.435(a). The data are preliminary and subject to change with further amendments and editing.

County	Race						Total
	White	Black	Asian	Am. Indian	Hispanic	Unknown	
BENTON	1	0	0	0	0	11	12
CLARK	24	0	0	1	8	2	35
GRANT	9	0	0	0	4	0	13
GRAYS H.	0	0	0	0	0	8	8
KING	110	100	0	4	5	127	346
LEWIS	3	0	0	0	1	7	11
PIERCE	47	31	1	3	33	4	119
STEVENS	1	0	0	0	0	0	
YAKIMA	20	3	0	1	36	0	60
OTHER	273	28	0	13	50	17	381
TOTAL	488	162	1	22	137	176	986

Source: Sentencing Guidelines Commission, March 18,1992

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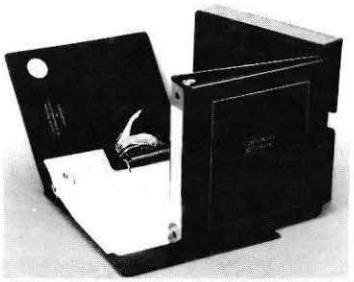

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Sentences Without School Zone Enhancement
Fiscal Year 1991

Displayed below are the number of persons who received a sentence for manufacturing, delivering, or possessing with intent to deliver a controlled substance (RCW 69.50.401 (a)) or selling for profit any controlled or counterfeit schedule 1 substance except marijuana (RCW 69.50.410).These persons were not convicted with a sentence enhancement under RCW 65.50.435(a).

County	Race						Total
	White	Black	Asian	Am. Indian	Hispanic	Unknown	
BENTON	14	0	0	0	10	6	30
FRANKLIN	17	21	0	0	76	4	118
KING	406	229	7	5	3	32	682
LEWIS	3	0	0	0	3	12	18
PIERCE	120	82	0	4	92	1	299
SPOKANE	115	9	1	3	7	0	135
YAKIMA	32	8	0	3	90	0	133
OTHER	528	22	2	13	94	51	710
TOTAL	1,235	371	10	28	375	106	2,125

Source: Sentencing Guidelines Commission, April 17,1992

Sentences With a School Zone Enhancement
July 1 to December 31,1991

The Omnibus Drug Bill of 1989 provided for an additional 24 months of enhancement for offenders convicted of manufacturing, delivering, or possessing with intent to deliver a controlled substance if the offense was committed on or within 1,000 feet of a school or school bus route stop. The statute was amended by the 1990 Legislature (Chapter 244) so that activity in public parks, public transit vehicles or public transit stop shelters was included. In an additional amendment (Chapter 32, Section 4, Laws of 1991), selling for profit any controlled or counterfeit substance (except marijuana) was added to the list of offenses with enhanced penalties. In spite of these amendments, penalties specified in the statute (RCW 69.50.435(a)) are still loosely labeled "school zone enhancements". Below is a summary of these enhanced sentences by race. The data is preliminary and subject to changes with further amendments and editing.

County	Race						Total
	White	Black	Asian	Am. Indian	Hispanic	Unknown	
BENTON	0	0	0	0	0	2	2
CLARK	1	0	0	0	0	0	1
GRANT	0	0	0	0	2	0	2
GRAYS H.	0	0	0	0	0	1	1
KING	3	23	0	0	3	3	32
LEWIS	1	0	0	0	0	0	1
PIERCE	1	0	0	0	0	0	1
STEVENS	2	0	0	0	0	0	2
YAKIMA	2	0	0	0	5	0	7
TOTAL	10	23	0	0	10	6	49

Source: Sentencing Guidelines Commission, April 17, 1992

← *Data on pages 17 and 18 show that the majority of those convicted for distribution, manufacture or possession with intent to deliver were white. However, minority offenders received nearly 80 percent of the enhanced sentences, the most glaring disparities are found in King County, where African Americans received nearly all of the enhanced sentences and in Yakima County, where Hispanics received a substantial majority of the enhanced sentences.*

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young people who begin experimenting with illegal drugs [and] are diverted from relatively conventional paths by being arrested for drug use. When arrested and punished through incarceration, their tenuous ties to the conventional world are severed. Their return routes are subsequently blocked by the stigma of being an ex-prisoner . . . When lower-class youths who experiment with illegal drugs, sell crack or grow marijuana are caught and incarcerated, they may become even more entrenched in deviant lifestyles and values. The recent increase in policing activities has failed to decrease crack cocaine use, but has succeeded in diverting thousands of marginal citizens into "deviant" lifestyles.[11] As the debate goes on, the courts will continue to impose sentences in the standard range in the vast majority of cases. Relatively few mitigated sentences will be imposed as the prosecution, defense and courts engage in separate discussions over the courts' authority to deviate from the SRA.

Endnotes

[1] *The Seattle Times*, "The Difference Between Tough and Smart," by Mindy Cameron, May 17, 1992.

[2] M.M. Bell and Christopher Murray, *Publicly Funded Substance Abuse Programs for Adult Offenders in Washington State*, at 12. (May 1992).

[3] *Ibid* at 13, 98. Even if the failure rate is increased to 50 percent, the financial break-even point merely shifts 15 days. *Id.*

[4] *See State v. Harper*, 62 Wn. App 69, 813 P.2d 593 (1991), rev. den. 118 Wn.2d 1117 (1992). *But see State v. Bernhard*, 108 Wn.2d 527, 741 P.2d 1 (1987) allowing departure from the standard range to allow treatment where the standard range is less than one year. *See also, State v. Gaines*, 65 Wn. App 790, 830 P.2d 367 (1991) allowing treatment as part of a sentence where the total jail time and inpatient treatment are equivalent to the standard range and where the record adequately justifies a sentence outside the standard range.

[5] The proposed legislation also provided for a Nonviolent Offender Option, an expanded version of the First-time Offender Waiver currently allowed. This portion of the bill allowed for alternative sentences for those who would serve county jail time of one year or less. Sentences would be recast in terms of "punishment units." One day of work release, electronic home detention, eight hours of community service or seven hours of work crew would be deemed equivalent to one "punishment unit" or one day in jail. One month of daily reporting, face to face, to a community corrections officer would be deemed equivalent to 15 "punishment units" or days in jail. Two months of intensive supervision would also be equivalent to 15 "punishment units." One completed outpatient or in-patient program for alcohol or substance abuse or other medical or emotional programs would be equivalent to 30 "punishment units". Completion of an in-patient program with completion of after-care requirements would be equivalent to 60 "punishment units."

[6] The 1992 Legislature did not have the benefit of the Bell and Murray study discussed above. See footnotes 1 and 2 and accompanying text.

[7] Bell and Murray study at 71-72.

[8] *Ibid.* at 58-59. 9. *Ibid.* at 72-74.

[10] *Ibid.* at 56.

[11] Marsha Rosenbaum, Ph.D., "Just Say What" (National Council on Crime and Delinquency, 1991), at 12.

Fred Diamondstone *practices in Seattle and thrives the WSBA Corrections Committee in 1991-1992. He acknowledges the assistance of current Corrections Committee chair John Midgley.*

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DRUNK DRIVING LAW REFORM

"Since 1900, over 2.6 million Americans have died in traffic crashes—1.5 million people more than were killed in all the wars in U.S. History." [1]

by **Neil C . Buren**

The Washington Traffic Safety Commission consistently confirms that nearly 50 percent of all fatal car crashes are alcohol-related. In 1991 alone, 335 deaths (49 percent of all traffic fatalities) were attributed to this cause.[2] Mandatory jail time of at least 24 hours on a first conviction [3] became law in 1980. However, the incidence of serious alcoholics who test high on the blood-alcohol count (BAC) and continue to drive has not been slowed. [4] The average BAC level of fatally injured drivers was .17 over the five-year period.

A person who weighs 165 pounds would need to consume eight beers, cocktails or glasses of wine in order to test at a .14.[5] Such drinking is not typically "social."

As an attorney doing DWI defense for more than 20 years, I have—with the noble purpose of doing my job to *defend* my client—helped people who have serious alcohol problems "beat the rap." Criminal-defense lawyers are to represent their clients so as to assure full defense .[6]

Is there now a higher social duty to *help* the client with obvious alcohol dependency? Is there a duty to protect society from the return of this person to the public highways? Is it time to endorse a legislative change?

Is it now time to identify the "serious" DWI drivers who test at a high BAC level, say .14 or higher, and cause their *privilege* to drive to be immediately suspended by administrative action?

Is it time to say to these people, "You have the *burden* of demonstrating that you have no significant alcohol problem"?[7] I propose a departure from existing law and procedure. It would require that the Legislature expand the policy of DWI legal intervention. It would require new administrative regulations which would shift the burden to the drinking driver to prove that he should be allowed to return to public highways. This class of driver may be considered to include the "more serious" drunk driver, who tests at .14 or above. In order to resume driving, members of this class would have to present an evaluation by a certified, state-approved assessment center[8] showing that they have no alcohol problem requiring treatment. In the meantime, from the moment such a driver tested at .14 or higher, the privilege to drive would be *withheld* (suspended by administrative action) pending the presentation of proof of no problem requiring treatment. The proof, a certified assessment or, alternately, proof of participation in treatment, could be presented right away so as to negate the loss of license to the driver who earns his livelihood from driving. Upon presentation of such proof, the privilege could be reinstated subject to criminal or administrative requirements which may, on other grounds, cause the privilege to be suspended. Existing law is summarized in *Burnett vs. Department of Licensing* at page 256:

> RCW 46.20.308(1) provides that a person arrested for DWI is deemed to have consented to a test of the alcohol content of his breath or blood. RCW 46.20.308(5) allows the arrested driver to withdraw this fictionalized consent and refuse to be tested. RCW 46 . 20 . 308 (6) and RCW 46 . 20 . 311 (2) state that refusal to take the test will result in license revocation for one year if it is the first refusal within five years, and for two years if it is the second refusal within five years.

RCW 46.20.308(2) requires an arresting officer to inform a driver of certain rights. It provides:

> The officer shall inform the person of his or her right to refuse the breath or blood test, and of his or her right to have additional tests administered by any qualified person of his or her choosing . . . . The officer shall warn the driver that (a) his or her privilege to drive will be revoked or denied if he or she refuses to submit to the test, and (b) that his or her refusal to take the test may be used in a criminal trial.

Refusal to take a breath test triggers an administrative process in which the Department of Licensing revokes the person's driver's license. RCW 46.20.308(6). However, the driver is afforded an opportunity for a hearing to determine whether the law enforcement officer had reasonable grounds to believe the licensee had been under the influence of intoxicating liquor, and whether the licensee: (a) was validly placed under arrest; (b) was fully advised and warned of his or her implied consent rights and consequences; and (c) refused the officer's request to submit to the test. RCW 46.20.308(7). If the revocation order is sustained, the licensee is entitled to a trial de novo in superior court. *Department of Motor Vehicles v. Andersen*, 84 W.2d 334, 340, 525 P.2d 739 (1974); RCW 46.20.308(8); RCW 46.20.334."[9]

Such Department of Licensing procedure is "separate from the criminal proceedings which might ensue following the arrest of an offending motorist."[10] The Legislature should expand the Department of Licensing's procedural authority to provide for a hearing no later than 60 days following the .14 or higher BAC test. If the separate criminal proceedings are abated for any reason, there would be no impact on the Department of Licensing procedure.

The Legislature should modify the law regarding hearings,[11] and, for this class of driver testing at .14 or higher, the "stay of suspension"[12] should be withdrawn.

If a problem requiring treatment was found to exist, then a deferred prosecution[13] could be offered in lieu of criminal charges. In short, the criminal option of deferred prosecution would not be affected by this proposed change in the administrative procedure.

Existing law confirms the approach suggested here. Persons who suffer from alcoholism are to be afforded a "continuum of treatment."[14] The Legislature agrees that alcoholism is a *disease*.[15] As a chemical dependency, it is a "disease and, as such, warrants the same attention from the health care industry as other similarly serious diseases warrant . . . ."[16]

When a driver is arrested for DWI, current practice and procedure are to take administrative action regarding a license only after conviction or after a hearing is requested on implied consent refusal.[17] I have found this frequently means months of delay: half a year is common. In the meantime, the alcoholic driver is driving unabated *with his license*. With no reason to change behavior in the interim, the client continues to drink and drive.

Should criminal defense lawyers and the bar as a whole join together to address this proposed change? Would it be in the interests of society to coerce the highly intoxicated driver into treatment? Can it be denied that persons declared by the Legislature to have a "serious disease" should be facilitated to get treatment? Is it debatable that the most fundamental symptom of alcoholism is the alcoholic's denial of the problem? On the issue of coerced treatment and a united effort to change our laws, should not the Bar take the lead? If not us, who? If not now, when?

These proposals for change in treating the highly intoxicated driver are fundamental. They seek to address the social need to protect a vulnerable public from the wanton carnage produced by a "diseased" segment of drivers. The proposals provide the due process hearing—but *after* the suspension, and *the driver* must carry the burden to show "no disease."

Therefore I propose the following changes and solicit the Bar to urge the Legislature to enact them:

> The Legislature declares that all persons operating motor vehicles on the highways of the state of Wash-

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ington are exercising a privilege which is conditional upon safe and sober driving. Some persons use the highways who are suffering from the disease of alcoholism or chemical dependency and pose a risk to the safety of others. When these persons are tested for blood/breath alcohol pursuant to implied consent, and such test results are .14 or higher, this shall constitute prima facie evidence that a driver suffers from chemical dependency. Such a driver should not be permitted to exercise his privilege to operate a motor vehicle in this state until he has provided proof that he either has no alcohol problem requiring treatment or that he has entered into a treatment program.

A change to RCW 46.20.308 could be as follows: New Section (5) - 1 :

> Persons whose breath or blood tests at a .14 or higher shall be informed that their license or privilege to operate a motor vehicle on Washington State highways is suspended subject to a hearing which shall be held within 60 days following the test of breath or blood. At such hearing the driver may elect to contest whether there was probable cause for the request for the breath or blood alcohol test and the requirements of subsection (2) above; in any event the driver shall have the burden of demonstrating no significant problem requiring treatment. Upon such showing, the privilege or license shall be reinstated; if a problem requiring treatment exists, the driver may elect to provide proof of treatment or commencement of treatment, and the privilege to drive shall be reinstated on either showing, subject to continued treatment and/or any suspension for other statutory reasons, criminal or administrative.
>
> In order to prevent inappropriate preemptive cancellation by insurance companies, the following changes are suggested:
>
> The fact of an administrative suspension pursuant to these provisions shall be released to third parties by the Department of Licensing only at the expiration of 60 days; it shall not be released at any time if a person is in treatment for chemical dependency pursuant to the provisions of RCW 70.96A. Such program is to be separate and discrete[18] in order to protect the individual's confidentiality.[19] The abstract of the driver's driving record[20] shall not include the administrative suspension provided by this rule.

There is a statutory right to *refuse* to take the BAC test upon arrest for DWI.[21] A person exercising this right will slip through the cracks of this proposed action. However, such persons represent only about 20 percent of those arrested for DWI.[22] But it is time to begin to address the social problems of the problem drinker. This proposal is suggested as a beginning.

Endnotes

[1]*Surgeon General's Workshop on Drunk Driving; Background Papers*, U.S. Department of Health and Human Services, 1989.

[2]*1991 Traffic Collisions in Washington State, Data Summary and Problem Analysis;* Washington Traffic Safety Commission, July 1992.

[3]RCW 46.61.515.

[4]Washington Traffic Safety Commission, Data Summary, *supra*, Table 2-11.

[5]Washington Traffic Safety Commission, Pamphlet on DWI, June 1983.

[6]Rules of Professional Conduct, 3.1.

[7]According to WAC 275.19.770, there are two classes of drinking driver; those determined to have a significant problem requiring treatment and those determined to have no significant problem who are required to attend Alcohol and Drug Information School.

[8]WAC 275.19.580.

[9]*Burnett vs. Department of Licensing*, 66 W.App. 253 (1992), citing *Gonzales vs. Department of Licensing*, 112 W.2d 890, 774 P.2d 1187 (1989).

[10]*Ibid*, p. 260.

[11]RCW 46.20.308(7).

[12]RCW 46.20.329.

[13]RCW 10.05 .

[14]RCW 70.96A.010.

[15]RCW 70.96A.011.

[16]RCW 48.21.160.

[17]RCW 46.20.308, RCW 46.20.329. Challenges to valid arrest require *proof of probable cause* to stop, etc. Current attacks on BAC administration can require the presence of a toxicologist, a BAC technician and a qualified opera-

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IT'S YOUR CONCERN

by **Ellen G. Anderson**

You're an attorney.

You hear the jokes.

You read the bare-bones disciplinary notices.

You probably know of the perennial concern at all levels of the organized bar about the "public's perception of lawyers."

Maybe it's even gotten more personal a time or two.

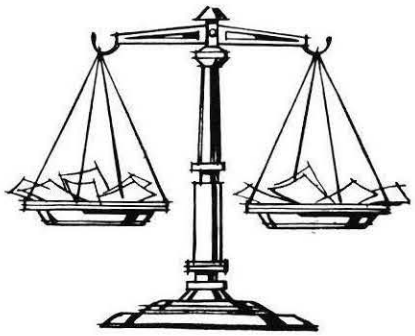
Attorneys, new or experienced, public and private, tend to be aware that their integrity and honesty are regular grist for the mill of negative public opinion. It's easy to slough it off, though, because concrete reasons for the distrust are seldom visible in busy lives of dedicated hard work on behalf of others. If you're like most practitioners, you may never have seen the trail of destruction behind some of those disbarment notices.

Consider the following:

Lawyer A sustained gambling losses and began using client trust funds to cover them. A personal injury action on behalf of one of his clients was settled for $20,000. The lawyer gave the client $800, stating that the suit had been settled for nuisance value. Only when bar counsel subpoenaed the attorney's trust account records did he admit that the remaining money had gone to pay off other clients whose funds had already been lost to gambling.

Lawyer B became addicted to cocaine and heroin. He suddenly abandoned his practice without any notification to clients. One of those clients had endorsed with the attorney a settlement check for $15,000. The client's portion of the of proceeds was never paid. The attorney later entered an "Alford" plea to charges of theft and forgery, taking advantage of a plea offer which barred

Attorney C deposited client funds into



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tor. *State v. Baker*, 56 W.2d 846, 355 P.2d 806 (1960). WAC 448.12 sets rules for operation of BAC, compliance with which must be shown by prosecution.

[18]RCW 70.96A.030.

[19]RCW 69.54.070; 42 CFR Part 2; WAC 275.19.075; WAC 275.19.170.

[20]RCW 46.52.130.

[21]RCW 46.20.308(2).

[22]Washington Traffic Safety Commission, Data Summary, Note 2, *supra*, Table 2-10.

A former King County deputy prosecutor and Army JAG lawyer, ***Neil C. Buren*** *has practiced in Yakima since 1970. He teaches a course on "Chemical Dependency and the Law" at Yakima Valley Community College.*

her trust account from transactions involving the payment of royalty fees, a defendant's lawsuit settlement, a real property transaction, a loan collection action, and a property tax payment. None of the funds were ever paid to the intended parties, but were all converted to the attorney's personal use. Total of converted funds: $121,126.79.

None of the losses in the three above cases was covered by malpractice insurance, and nore of the attorneys had assets sufficient to satisfy the claims.

Unjustifiable losses by people who trusted a dishonest or impaired attorney have evoked a response by the Washington State Bar Association. For some 33 years it has attempted to alleviate losses caused by a lawyer's dishonesty by making cash gifts from association monies to the victims when no other remedy is available. But the program is now at risk.

Why Dues Won't Do It— A Very Brief History

In 1960, this association created the "Client Indemnity Fund," which in 1970 became the "Client Security Fund." Both names were somewhat inaccurate, as no separate "fund" was ever really created. Disbursements to victims came from general-dues revenue which was held in earmarked savings accounts. In 1989, the concept of a separate "fund" disappeared altogether, the dedicated accounts were returned to the Bar's general fund, and the Client's Security Program emerged, now funded only as a line item in the general budget. (For a more detailed description of the purpose and functioning of the program, see "The Client's Security Program: Past, Present and Future," page 12, August 1989 *Bar News*.)

The change to a program competing for its funding with all other bar association programs and activities came at an inopportune time for the CSP. The Board of Governors was already requesting the Client's Security Program Committee to identify alternative sources of funding for the program. Meanwhile, in 1980, the maximum disbursement on behalf of any one lawyer had been increased to $50,000 (from $10,000 in 1960 and $25,000 in 1970). But by 1989, approved claims against an individual attorney had exceeded the limit four times. Those familiar with the committees's work observed a trend toward higher claims in general when a lawyer got into serious trouble, though the number of lawyers in such trouble has not been increasing in proportion to the number of lawyers in practice in Washington.

Fortunately, during the three budget cycles since 1989, awards made through the program did not exceed the amounts budgeted. But in the 1991-1992 fiscal year, the Client Security Program felt the pain of the general association budget shortfall. Even though the committee recommended payments through that entire fiscal year of less than $9,000, the Board gave no guarantee that any claim would be paid, and it delayed disbursement until the end of the fiscal year. Those few claims were finally paid after October 1, 1992.

The problem came into very sharp focus in the fall of 1992. At its September meeting, the CSP Committee reviewed some large claims that had been tabled pending the results of bar counsel's investigations. At that meeting the committee voted to recommend that the board make payments on these claims totallingmore than $100,000—that is, more than the committee's budget for fiscal year 1992-1993. That budget amount wass, in turn, dependent on the implementation of the much-debated increase in association dues. Claims still awaiting investigation and action amount to close to a million dollars. As a practical matter, many claims are denied or reduced in the committee's screening process. But even so, the demands of the CSP are moving beyond available resources.

Looking for a Solution

Over the past three years, committee members have spent increasing time considering the funding problems. The Board of Governors has rejected all alternative proposals, including fees or assessments on trust accounts, as impractical or politically unpalatable. The board twice tabled the suggestion that this association support a mandatory assessment via court rule, as is now done in other states such as New York and Minnesota.

The Client's Security Program, to be effective, must soon find a stable fund-

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ing source. The board has been unwilling to either set aside sufficient dues revenue or to impose a separate assessment for consistent coverage of anticipated claims. If the program continues to be funded only at the discretion of the Board, subject to all other association funding demands, it can only produce delays and frustration for the people it was intended to help and the committee.

A modest mandatory annual assessment, perhaps equal to the cost of section membership, imposed by rule of the state Supreme Court appears to be the best solution. The WSBA will retain control of the screening and disbursement, but a separate assessment will provide a stable and dependable fund. In years when disbursements are less than income, the remainder can accumulate to meet unexpectedly large claims in a later year. Decisions about how much may be paid out on individual claims or on behalf of individual attorneys can be made against a backdrop of known revenues. (As early as 1970, the committee recommended to the board that it consider raising the maximum amount payable on claims against a single attorney to $100,000.) For those claims meeting the rigorous screening criteria, the program would be able to make timely disbursements, avoiding the extensive delays occurring now.

A Personal Note

I was appointed to serve a three-year term on the Client's Security Program Committee in 1989. I have never been in private practice, and I will admit to wondering as I began my service what importance this program has for those of us who do not handle client funds. Over three years of patient education by other dedicated committee members, I have come to see how important and needed this program is to the people who receive direct benefit from it, as well as to those of us who don't. No professional association of lawyers should be indifferent to the plight of those who are wronged by one of its members. Although it cannot reimburse all worthy losses, the Client's Security Program still functions as the "heart" for this organization. Its work does help improve the image of lawyers for people who personally see those major problems which are less visible to the rest of us.

But beyond image, we are all in this together. Even in this highly competitive profession, we do have a common interest that is not pecuniary. As attorneys we all carry the weight of an extra public trust; it is the foundation for the respect anyone accords us. This program helps us discharge some of that trust. It is a resource of last resort, filling a need that goes unmet by other remedies. It should be funded in a manner that allows it to meet its goals. It's your concern, too.

Ellen G. Anderson *is an adiminstrative review judge for DSHS in Olympia.*

NOTE:

AS PART OF THE SUNSET REVIEW PROCESS, A PUBLIC HEARING ON THE CLIENT'S SECURITY PROGRAM WILL BE HELD THURSDAY, MARCH 18 AT 2:30 PM IN THE PRESIDENTS' ROOM OF THE WSBA OFFICE.

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ASC3

by **Lindsay T. Thompson**
Bellevue, December 4-5, 1992; Seattle, December 12, 1992

Present at Bellevue: President Steve DeForest, 59; and Governors Wayne Blair, 50; West Campbell, 40; Tom Chambers, 49; Monte Hester, 51; Mike Larson, 38; Joe Nappi, 50; Vickie Norris, 40; Jan Eric Peterson, 48; and Steve Tubbs, 46.

Also present: Mary Gallagher Dilley, 42, (Administrative Law Judges' Association); Frank Edmondson, 56, (Government Lawyers' Association); Victor Flatt, 29, (LEGALS PS); Dennis P. Harwick, 43 (WSBA executive director); Jim Kaufman, 39, (WAPA); Lisa Lowe 39, (WYLD); Kim McDonald, 37 (General Practice Section); Larry Moller, 43 (District & Municipal Court Judges' Association); Linda Moran, 31 (Washington Women Lawyers); William R. Phillips, 37 (WDTLA); Mark Shepherd, 37 (SKCBA/YLD); Scott Smith, 35, (SKCBA Trustees); Lindsay T. Thompson, 36, (*Bar News* editor); Robert D. Welden, 47, (WSBA general counsel).

The Board met in executive session Friday morning, December 4, and reviewed matters of attorney discipline, judicial recommendations for appellate appointments, and the annual review of the executive director.

The minutes of the last meeting were approved, Governor Tubbs abstaining, Governors Hester and Peterson absent on other business. They arrived later in the morning.

One Busy Guy: The Bar president reported he'd met with the Seattle-King County board of trustees and had a telephone conference with the Spokane County Bar Association trustees regarding the referendum on licensing fees. He and executive director Dennis Harwick met with the state Gender & Justice Task Force Implementation Committee to discuss WSBA action to implement the report of the Gender & Justice Task Force. He lunched with the Young Lawyers Division Trustees in November, and lunched other days with the Okanogan and Spokane County Bar Associations, as well as a representative of the Hispanic Bar Association and the board of the state prosecuting attorneys' association. He met with the board of Washington Women Lawyers, too. One thing he said he'd learned—out of many—was that the Association needed to "reach out" to government lawyers more. "They are a fast-growing sector of the bar," he commented.

Executive Director's Report: Dennis Harwick told the board the Association's Wisconsin-based general liability insurance company had been seized by the state insurance commissioner there for liquidation. New insurance has been obtained, Harwick said, and we will be shopping for a new broker as well, since we had no notice the company was in trouble.

The advisory election for the new Ninth Congressional District seat on the board was a four-way affair. Jerry Weidenkopf, 39, and Meredith Morton, 45, were eliminated to make way for a runoff between James Handmacher, 39, and Andrea Darvas, 36. The new governor will join the board in January 1993.

A hundred and sixty-five people applied to be WSBA public affairs director, Harwick told the board. They were winnowed down to seven finalists early this month.

May I Have the Envelope, Please? The board went in for a long discussion over the design of the envelopes used to return ballots in the licensing-fee increase referendum. Old referendum hands will recall past ones have had a red line in the front, upper-left-hand corner, which line voters were required by the

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SKCBA Young Lawyers Division

bylaws to sign in order to allow validation of the vote. A separate envelope containing the ballot was sealed and placed inside the other envelope by attentive voters.

Dennis Harwick told the board a staff member had learned from the printer that if the hitherto red line was printed in black, a savings of $1,800 could be realized. Do it, Harwick replied. But no one caught its absence from the proofs when they came over: the printer had forgotten to add the signature line in black. So, in the end, there was no signature line. No one caught it at the bar office, because once the proofs were approved, given the tight time line for the referendum, the materials were printed and mailed outside the bar office.

So what?, the attentive voter might well wonder. After all, there were instructions accompanying the ballot that said the outer envelope had to bear the voter's signature for validation purposes. Harwick told the board about forty percent of the ten thousand voters had failed to sign their ballot envelopes. Under the WSBA bylaws, those not validated were invalid and could not be counted.

Governor Alva Long moved to save all the ballots. We already do that, Harwick said. Governor Steve Tubbs, admitting to being one of the non-signers, said he felt cheated somehow. Why not count all the ballots? "We ought to tabulate how many that don't qualify, and find out how they voted."

Governor Joe Nappi moved that Harwick instruct the ballot counters—a group of lawyers and representatives of each side in the referendum, who were working even as the board talked, to count all ballots and categorize them as valid or invalid. "When you get this kind of turnout, statistically the invalid ballots shouldn't make a difference in the outcome."

Governor Wayne Blair countered that Nappi was, in effect, moving to amend the bylaws, which say, pretty plainly, that those ballots not signed are invalid. Tubbs acknowledged that those ballots wouldn't count, but thought the board should know what they said.

Governor Tom Chambers said the board should decide in advance, what to do if the invalid ballots were counted and they did—or didn't affect—the outcome. "If you get a different result, adding in the invalid ballots, you need a new election," he said.

Alva Long said he thought there was nothing wrong with amending the bylaws right then and there. WSBA General Counsel Bob Welden told the board counting the invalid ballots would be a violation of the bylaws and would give persons disgruntled by the results a big hook for a lawsuit.

Governor West Campbell, noting that he hadn't signed his ballot either, said he agreed with Welden's conclusion. "I'm unhappy I can't read directions, but I think we have to follow the bylaws." Governor Vickie Norris, commenting on the large number of invalid ballots, attributed them to "the only thing missing" on the ballot—"that Pavlovian line."

Tubbs said, "Saying we complied with the bylaws won't placate people." Nappi again reminded people that the invalid ballots didn't make a difference: "Statistically, the results in the invalid ballots should be almost identical to the valid ones."

"What do we do if they aren't the same?" Blair queried. "Let's wait and see," Nappi replied. Norris said she agreed with Campbell: "Statistically the likelihood the results will be changed

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by the invalid ballots is small. But if you count the invalid ones. you have to decide what to do with the results and be bound by that decision. Otherwise, we'll look manipulative as all get out."

The *Bar News* editor, indulging a penchant for lecturing the board from time to time, virtuously observed that he had read the directions and signed his ballot even without a line. He remarked that those arguing for counting the invalid ballots were holding lawyers to a lower standard than clients would. A client would expect his or her attorney to read the instructions, query the ambiguous situation, and get it right. Why should lawyers hold themselves to a lower standard? Invalid ballots are invalid ballots, and should stay that way.

Governor Mike Larson thought "for now, we should stick to the results." Blair said the motion (the Nappi motion, from way back) violated the bylaws. "It's Politically Correct, but we can't fix the problem that way."

LEGALS PS representative Victor Flatt agreed with Nappi's statistical analysis of the issue. Flatt told the board he'd been trained as a mathematician, and "the statistical likelihood of a different outcome is minuscule."

Alva Long, harking back to Blair's comment that sometimes not even PC thinking can salvage a situation, declared, "We have to be politically correct. If we depend on bar counsel's advice the political implications are so great we have to work it out." "You'd be violating the bylaws," Welden responded. Larson worried that a re-vote would cause major financial problems.

Administrative Law Judges' Association representative Mary Gallagher Dilley said the decision on what to do about the invalid ballots was a political issue. "The bar association is perceived by many as being all cloak-and-dagger. Either do the vote over or tally all the votes." She thought the license fees could be billed in segments—the current rate could be billed out now, and the rest later, if it was approved. "It's better than bankruptcy, but how do you certify to the Supreme Court who's a member and who isn't based on partial payment of licensing fees?" Harwick wondered. "If the increase passes and people don't pay it, they'd be decertified," Dilley said.

Chambers said discussion seemed to have coalesced around three options: (1) count all the ballots; (2) count the valid ballots, tally the invalid ones, and decide what to do once the results are in; (3) count the valid ones, tally the invalid ones, and re-vote if the invalid ones would have changed the result. He suggested a straw vote to see where the board's thinking was headed. As they went around the table, the governors were not of one mind. Tubbs called for retaining the invalid ballots; the president thought the invalid ones should be tallied. Nappi said if the invalid ones would have changed the result, there should be a new election.

On the original Nappi motion, amended, based on the straw vote, to just tally the invalid ballots and decide what to do with their result later, the board split 4-4, Chambers, Long, Nappi and Tubbs voting aye; Blair, Campbell, Larson, and Norris opposed. The president broke the tie by voting to tally the invalid ballots.

Chambers then moved that if the results of the invalid ballots changed the result of the vote, there would be a re-vote. That

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passed 7-1, Larson opposed.

At Last, A 900 Number the Whole Family Can Call: Buz Humphrey, 51, a member of the Oles Commission—a creation of Chief Justice Fred Dore, 67, to study improving access to justice for the poor—came to talk to the board about a commission idea to create a 900 telephone number people could call for legal advice. Based on calls to existing lawyer referral services, he thought the system could generate 75-100 calls per day. The genius of such a system is that the cost of the call would be billed directly to the caller's phone, eliminating the problems of collection. The commission thought it would be a great thing for the bar association to take on, including the hiring of a couple of lawyers to field the questions. That worried Governor Steve Tubbs, who thought it could lead to liability "for negligent referrals and conflicts of representation."

Governor Chambers, who heads the board's Access to Justice Committee, thought the idea deserved scrutiny. It could be a public relations plus, and the association wouldn't have to collect the fees. Governor Long wondered why the private sector wasn't already doing it if it was so wonderful. Chambers suggested referring it to his committee for examination, and that's what the board did.

After lunch with the board of the Seattle-King County and East King County Bar Associations, the board heard a report from the board of the Legal Foundation of Washington. They are still grappling with the decline in interest paid on lawyer trust accounts by banks, which is how they generate income to make grants for legal services to the poor. Income was $4 million in 1990, $3.6 million in 1991, and $2.6 million in 1992. Another 17 percent decline is expected for 1993. The foundation board singled out First Interstate Bank of Washington for agreeing to keep interest on trust accounts at four percent instead of cutting it, as other banks have done, to as little as 1.5 percent.

Hot Legislative Session Predicted: WSBA lobbyist John Fattorini, 50, and Legislative Committee chair Pete Middlebrooks, 50, told the board of efforts to head off Governor-elect Mike Lowry's plan to extend the sales tax to professional services. Governor Tom Chambers said the tax, presented as a hit on rich lawyers and other professionals, will, in fact, be a soak-the-poor tax, one that hits family law cases, personal injury awards and the like. It won't hurt big business; they'll just take their work away from law firms and hire in-house counsel, evading taxation for legal services.

Given the shortfall predicted in state revenue, competition for funds will be fierce. Law & Justice funding for counties is up for renewal, to name just one item. Bob Boruchowitz, 44, asked the Board to pass a resolution endorsing increased funding for criminal defense appellate legal services, to help its prospects in the legislative session. Governor Steve Tubbs moved to delay consideration a month, to give other interested

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groups, such as prosecutors, time to review and comment on the proposal, but the motion was defeated 3-5. The resolution endorsing increased appellate funding by the state passed 8-0-2, Campbell and Tubbs abstaining.

Elections Are Really Dull When You Don't Have Any Exit Polls to Speculate On While Waiting for the Results: Later in the afternoon Dennis Harwick told the board he had received a tally from the referendum canvassers. These were the results:

	Valid Ballots	%	Invalid Ballots	%
Ayes	3578	64.52	2783	61.34
Nays	1964	35.48*	1754	38.66

*There were three abstentions recorded as well.

Further consideration of the results was delayed until Saturday.

Wow, It Doesn't Take Many Years To Be Completely Out of It: Saturday morning the board took up a proposal from the Young Lawyers Division that they be granted a seat on the board of governors, Rosemary Daszkiewicz made the pitch. The Young Lawyers' Division president or a designee would hold the seat for one-year terms, apparently renewable. If the seat's occupant served two years or less, the occupant would be eligible to run for another, three-year, term on the board from one of the congressional districts once he or she was expelled, by the inexorable processes of aging, from Young Lawyerhood.

Reasons why this was a good idea fell into three general headings: (1) Dad—I've earned-the-right-to-take-the-car-out-tonight; (2) the Board of Governors (whose average age, including the president, is 48) is perceived as being too senior to younger lawyers; and (3) there're a lot of us now, and we want it. More particularly, it was argued that young lawyers are "notoriously under-represented" in appointments to WSBA standing committees and on the board of governors; that forty percent of WSBA members are young lawyers by their definition (in practice five years or less or less than 36 years of age); and that the Young Lawyers have been the public-service arm of the bar and deserve their payoff.

Governor Joe Nappi wondered why young lawyers didn't just organize and run for congressional district seats. It seemed to him if they are as numerous as they say, they could win all eleven. He also feared that giving a seat to one group would lead to more groups coming with similar arguments in the young lawyers' wake, demanding their place at the table.

Governor Monte Hester said, "Conceptually, I'm not opposed to this, but I don't understand something—you can be distinguished by numbers, and you may eventually become a majority of WSBA members. If we arrange for the Young Lawyers Division to have a designated seat, what are we to do if you become the majority and a bunch more young lawyers get elected to the regular seats on the board?" He also thought it would be a bad idea for the young lawyers president to serve on the board as well; the work load would be crushing.

Young Lawyers Division president Lisa Lowe said she didn't

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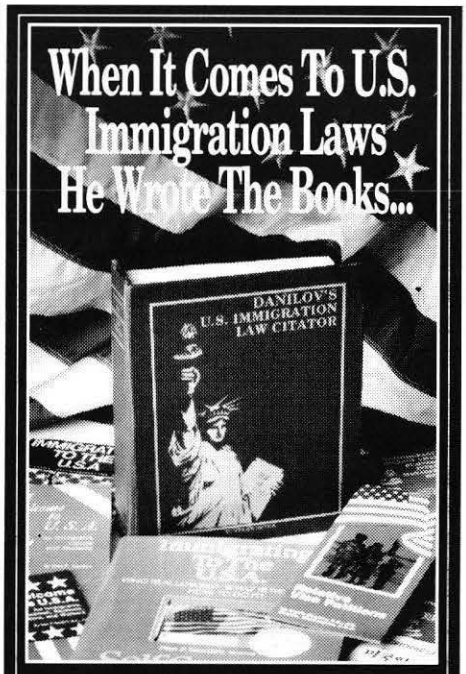

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think those really were problems. Governor Alva Long said not only would the young lawyers be given a seat on the board, so should others. "Women, gays, lesbians, Hispanics and blacks aren't being integrated into the bar. They deserve a vote, too. This board was set up in 1933. It's out of date." If giving the young lawyers a seat is a slippery slope, he concluded, "it should be greased."

Governor Vickie Norris commented, "We've all got roots in the Young Lawyers Division because we were all young lawyers once. We all have constituencies which include young lawyers. I, for one, don't see myself as a representative of Old Women Lawyers, or Tom Chambers serving Old Plaintiffs' Lawyers." She didn't think it fair that young lawyers be allowed to vote for every governor in congressional districts and then get their own governor, too—It's double representation."

Governor Steve Tubbs questioned whether there was any proof young lawyers are under-represented on WSBA committees; Daszkiewicz said there were none: "It's all anecdotal information." Tubbs replied that governors don't have information about who is a young lawyer and who isn't when they make committee appointments, and asked why the Young Lawyers Division didn't recommend people for appointment to committees to address the problem. Then he asked when, in the last two years, the Board had voted against the interests of the Young Lawyers Division. No examples were produced.

Governor Mike Larson who was president of the Seattle-King County Young Lawyers Division when he was elected to the board of governors, thought the idea of a dedicated seat was a good one. Governor Wayne Blair said the American Bar Association has a young lawyer seat, but preferred to see the idea considered as part of the Long-Range Planning Committee's current review of bar governance than acted on in isolation. "We need to look thoroughly at WSBA governance—that's the message of the referendum," Blair commented.

Governor Tom Chambers liked the idea in principle, and thought it should be expanded. He felt that when the Association reaches 25,000 members a House of Delegates on the ABA model should be created.

Daszkiewicz responded to Blair's idea of referring the idea to a committee by saying, "It's been there already. I'd want to see a definite date for it to come back so it doesn't get buried. I'd hate to have a referendum on this," she told the board.

Tubbs said he wasn't persuaded. Besides, he said, the biggest group of unrepresented lawyers in the Association would get nothing from this idea. He pointed out how 2,238 members live outside Washington and get no vote at all. Other than possibly in committee appointments, where the young lawyers had means to identify themselves as such

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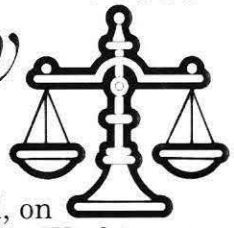

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when seeking appointments, he couldn't see how young lawyers have been ill-served by the board of governors. "The board tries hard to make diverse appointments and would certainly address the young lawyer representation issue if they had the information to do it. This is a political issue. We're being asked to do this not because it is a problem, but because it would be nice to have a seat on the board."

Larson said the board appoints and reappoints senior members to some important boards and committees with nary a thought. He had found it frustrating, but had been reluctant to bring it up. He said he'd run for the board of governors out of frustration with trying to get appointed to WSBA committees, and said it wasn't necessarily easy for young lawyers to run and win in the congressional districts because they are not well known and can't round up the funds. That tends to be how life works, on the whole, one observer commented. You have to work harder, or change your goals.

Governor West Campbell thought communication is a two-way street, and said young lawyers in his district had not communicated these problems to him. "I'm not that far removed from being a young lawyer," said Campbell. "I was frustrated about getting appointed to a committee when I was a young lawyer. I went to a partner in my firm who had experience of these things, and he told me to write some letters expressing interest in appointment. The next year I got appointed."

Governor Joe Nappi asked for the views of other groups. SKCBA Young Lawyers president Mark Shepherd said it wasn't conscious exclusion the board of governors was practicing, just a lack of sufficient inclusion. Young lawyers are reluctant to call up senior lawyers to seek appointments, or give advice on appointments. There's a feeling of disenfranchisement, he told the board.

Monte Hester said, yeah, it's a political decision, and a good one. "It can only be viewed by members as a positive move. It will give the board a new voice and vote. It's politically correct. If it's helpful in making us be perceived as being more responsive, that's a plus. "We should do it as early as possible."

Hester then proposed that the idea be approved in principle, with a referral to a committee to sort out the mechanics of implementation. Tubbs thought a large, less piecemeal approach was called for: "We should consider a constitutional convention of some sort."

Governor Jan Peterson told the board he was undecided on the principle of dedicated seats, but he was concerned the slope the board was being asked to look down was "quite slippery." He expressed concern about the one person, one vote principle. "I think inclusion is important. We need to change the law, but I don't think this is the way to do it, piecemeal. Tubbs' idea is better." "This is a first step," Wayne Blair commented.

The president observed that "I see what we need to do in response to the referendum is make some changes. This is one. The Long-range Planning Committee has a number of issues like this. We need to present the members a different bar association."

After some further observer comment, the motion to create the extra seat was defeated 4-6. Blair, Hester, Larson and Long voted aye; Campbell, Chambers, Nappi, Norris, Peterson and Tubbs were opposed.

More on Money: Dennis Harwick told the board it looks like fiscal year 1991-92 will come in between $100,000 and $125,000 in the black. Governor Monte Hester praised Harwick and the bar staff for the belt-tightening that made such a result possible.

"Now do it again," said Governor Wayne Blair.

Budget & Audit Committee chair Steve Tubbs told the board the licensing fees increase would have brought in about $872,000. With reserves at about $200,000 based on the '91-'92 numbers, about half a million in cuts would have to be made to balance the budget. The committee planned to meet after the board meeting adjourned. After some discussion of items the committee should consider, the board agreed to meet again in Seattle December 12 to approve the committee's recommendations for cutting the 1992-1993 budget, which the bar is already one quarter into.

Wrap-up in Bellevue: The Board also heard a report from University of Washington School of Law Dean Wallace Loh on the year at the law school; referred a

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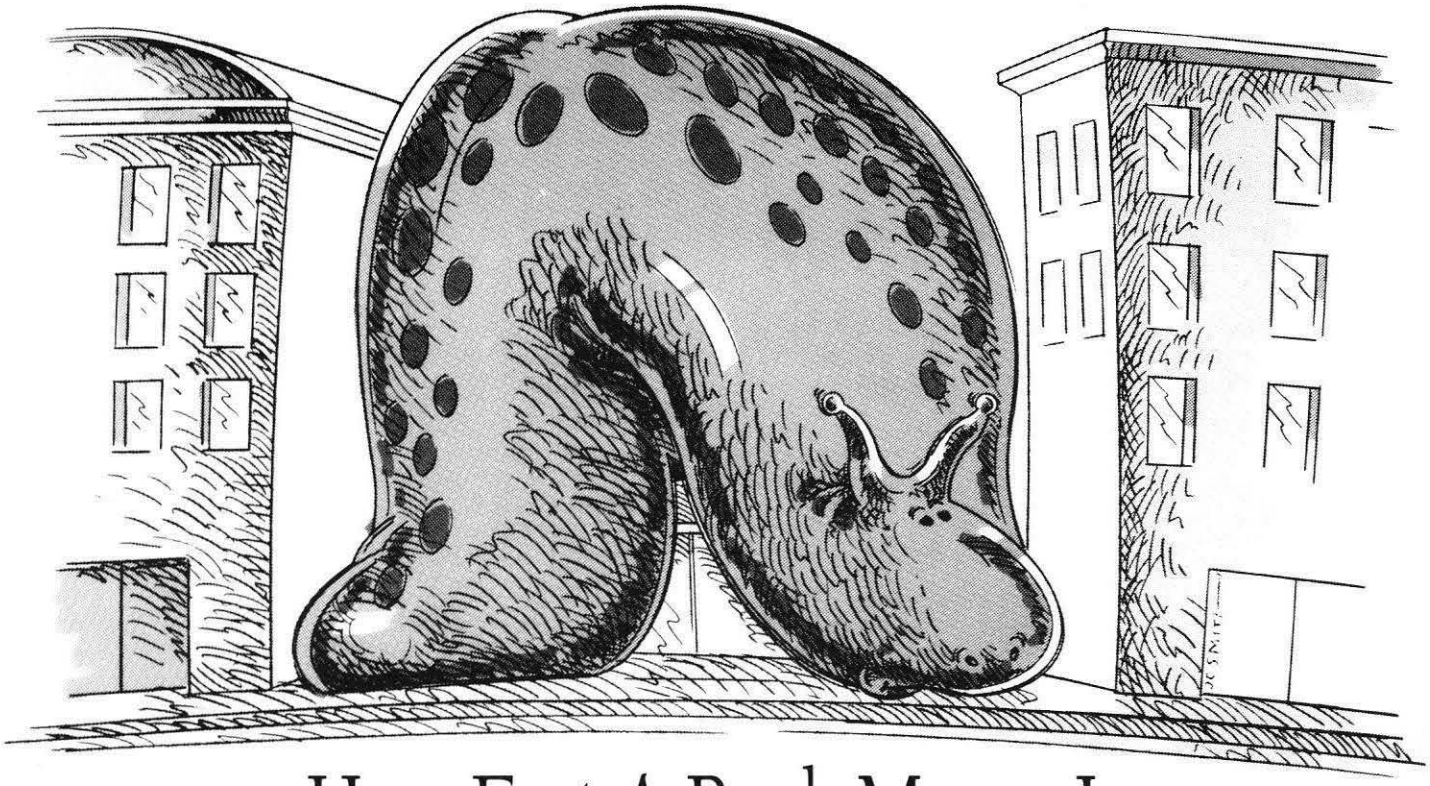

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proposal on the membership status of administrative law judges to the board's bylaws committee; reappointed former WSBA governor Ron Gould, 46, to the State Board for Judicial Administration; appointed Washington Women Lawyers' president Linda Moran to the Gender & Justice Implementation Committee; nominated Kathryn Culpeper to a citizen position on the Disciplinary Board; approved proposed amendments to the District Court Civil Rules to parallel those previously approved for their counterparts in the Superior Court Civil Rules; and voted to refer to the Court Rules Committee a proposal by Tom Chambers for a rule that would reduce court congestion and cost to clients by allowing more telephone conferences on motions instead of having to go to court.

* * * * *

Emergency meeting December 12, 1992

Present at Seattle: The president and governors Mike Larson and Steve Tubbs. All other governors participated by conference telephone call. Also present: Randy Beitel, 42, (WSBA disciplinary staff attorney); Dennis P. Harwick (WSBA executive director); Howard K. Todd, 43; Lindsay Thompson (*Bar News* editor); and Robert D. Welden (WSBA general counsel).

The president called the meeting to order at 9:10 a.m. Governor Steve Tubbs, speaking for the Budget & Audit Committee, said the meeting had been called because the committee felt it had to act promptly. The Association is already one-fourth of the way through the fiscal year. However, Tubbs, cautioned, the cuts we are proposing are in the nature of "field surgery"— not what we might have arrived at when we had more time. Those types of judgments can be made in the sunset review process getting underway to review the effectiveness and continuance of WSBA programs.

Tubbs said after allocating $50,000 for a contribution to the financial reserve in '92-'93, the shortfall needed to be filed was $426,000. To do this, his committee proposed the following measures and savings: elimination of reimbursement of CLE speakers' expenses, including travel, meals, lodging and honoraria ($50,000); eliminate two CLE seminar staff positions ($50,000); eliminate the program of giving free copies of CLE books to county law libraries, judges and others ($4,000); eliminate payment of association leadership expenses for attending the Western States Bar Conference ($5,000), and for ABA delegates to ABA meetings ($13,800); elimination of the Law-Related Education/MENTOR programs ($70,000) and administration of the national MENTOR program ($20,000); eliminate the Tel-Law legal information program ($4,000) and the publication of the "On Your Own" booklets for newly graduated high school students ($5,000); eliminate two staff positions in the Public Affairs Department ($40,000); cancel publication of *Resources*, the WSBA membership directory, in 1993 ($20,000); cancel a planned membership survey ($19,000) and reduction of other Public Affairs budget items ($5,000); eliminate dinner and lodging for county bar association presidents at annual meeting with bar association leadership ($10,000);

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eliminate uncommitted portion of '92-'93 contingency budget item ($93,000); reduce Disciplinary Board expenses by $3,000; and eliminate the Client's Security Program ($100,000). These savings would total $516,000.

The committee also recommended considering canceling the 1993 and 1994 WSBA conventions (a $4,000 saving this year, taking into account possible penalties for cancellation); and, as an alternative to eliminating the Client's Security Program, eliminating the contribution of $50,000 to reserves and transferring that sum to the Client's Security Program, then adding a $10 voluntary contribution box for members who want to support the fund to do so in the license fee payment.

Steve Tubbs was skeptical of the Client's Security Program elimination. "If we just cancel it, the Supreme Court may well order a mandatory assessment, and that would make it look like we engineered a fee increase for members in spite of the referendum."

Governor Joe Nappi suggested putting the $50,000 from reserves into the Client's Security Program allocation, then waiting till the end of the year to see if there is money to fund any allocations from it. Alva Long and Monte Hester thought that just gave people false hope; the program does the bar no good and should be eliminated. Hester also thought the cut from the Disciplinary Board should be restored, since the board had determined, at its retreat earlier this year, that improvement of disciplinary proceedings is their top priority.

Alva Long wanted to expand the cuts to include the allocation to the WSBA Young Lawyers Division, for the same reasons he offered at the 1992 Annual Meeting (see "The Board's Work," October 1992, page 29). He finds it discriminatory, feeling if you give some money to one group, you ought to then give money to all similar groups that exist—"women, Asian lawyers, or whatnot," he itemized. "I don't know a single lawyer in South King County who gets anything from the Young Lawyers Division. Even if they are overridden with debt," said Long (who has often argued for consideration of WSBA financial breaks for debt-burdened young lawyers in the past), "they can afford $10 each."

Howard Todd said the Association was acting too fast in reducing staff. A more considerate method of making cuts, he said, is to leave the staff in place (past arguments that there are too many staff, apparently, notwithstanding) and cut off the Young Lawyers Division. "Why not let them come up with $10 each and support their own program?"

After some procedural discussions, the board decided to consider each proposal separately. A motion to restore the $3,000 Disciplinary Board cut, consider the Client's Security Program cut separately and approve the rest passed 7-3, Campbell, Peterson and Tubbs opposed.

The board then considered the recommendation to cancel the bar convention. "It generates a lot of mail, is of dubious significance or value to most lawyers, and should be eliminated until someone shows a need for it and a format that will work," Tubbs said. A motion to cancel the 1993 and 1994 conventions—the last ones scheduled—passed unanimously.

There was considerable debate over what to do with the Client's Security Program, and whether to add a voluntary contribution checkoff on the licensing fee statement. A motion to fund the Fund with the $50,000 reserve allocation and add the checkoff was amended to eliminate the checkoff (unlikely to work was the consensus). On a vote to fund the Program with the $50K, the board split, 5-5: Campbell, Hester, Norris, Peterson and Tubbs voting yes; Blair, Chambers, Larson, Long, and Nappi voting no. The president broke the tie by voting for the motion, saying it was only a reprieve. "The Client's Security Program is up for sunset review, and we can decide better then what to do with it. All we are doing now is committing to keep the Fund this year, and only to the extent funds are available."

Alva Long then announced he would move to cut off the Young Lawyers' funding and funding for random trust audits at the January meeting in Olympia. A motion to adjourn was approved at 10:35 a.m.

Notices of Interest to WSBA Members

WSBA Disciplinary Notices:

Censure: Shelton lawyer **Robert C. Brungardt** (WSBA #8214, admitted 1972) has been ordered censured pursuant to a Stipulation to Discipline, approved October 20, 1992. The discipline is based upon Brungardt's failure to have a written agreement regarding a business transaction with his client. [November 9, 1992]

Public Notices

Ninth Circuit Proposes New Rules in Death Penalty Cases:

The Ninth Circuit Court of Appeals has reviewed its rules regarding the handling of successive habeas corpus petitions in death penalty cases. The court has adopted, in principle, several modifications to its current rules to deal with cases where emergency petitions are filed shortly before a scheduled execution. The court has directed its Death Penalty Committee to prepare amended rules that implement these new procedures. Once drafted, the rules will be circulated for comment.

The basic principles provide that whenever a successive petition for habeas corpus or related civil proceeding is filed in the district court, the petitioner shall lodge copies with the clerk of the court of appeals at the same time. The clerk of the court of appeals shall draw judges for an en banc court upon receipt of copies of a successive petition. No automatic stay of execution will be granted upon the filing of a successive petition. All successive petitions or related civil proceedings will be determined by the same panel that heard the first petition. Temporary stays of execution issued by a single appellate judge shall last only until the designated panel has had a chance to grant or deny the request for a stay. The panel may vacate a temporary stay granted by a single judge, and the en banc court may vacate a stay granted by a panel. Any judge of the court may request that the en banc court review the panel's order. Requests for review must include a statement of specific reasons why the order should be vacated. The automatic seven-day stay of execution to permit voting for en banc consideration will be eliminated.

The court expects draft rules to be available early in 1993. To obtain copies upon release, contact the clerk of the court at (415) 744-9810.

Essay Contest Announced:

American Bar Association members are invited to submit entries to the 1993 Ross Essay Contest. "Political Correctness and the First Amendment" is the topic. Essays should not exceed 3,000 words, including citations and quotes, and should not have been published pre-

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viously. The winner will receive $7,500, roundtrip air fare and accommodations (up to five nights) for the ABA Annual Meeting in New York City. Deadline for applications is February 1, 1993. For contest entry and instruction forms, contact Vanessa Gardner, ABA Journal, 750 N. Lake Shore Drive, Chicago, IL 60611, (312) 988-6011.

ADA Update:

The American Bar Association now has two telecommunication devices for the deaf (TDD), one each in its Chicago and Washington, D.C. offices. The numbers are: Chicago—(312) 988-5168; Washington—(202) 331-3884.

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 December 1992 is 3.57 percent. The maximum allowable interest permissible for **January 1993** is therefore **12 percent.**

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.

Special Seminar:

The Asian, Hispanic, Loren Miller and Northwest Indian bar associations, the SKCBA, WSBA and the Washington State Minority and Justice Commission are cosponsoring a February 27 seminar at the UW School of Law: Pursuit of a Judicial Career for Attorneys of Color. It is designed to encourage attorneys of color to aspire to state and federal judicial positions throughout the state of Washington, thereby increasing the present racial and ethnic diversity of the judiciary.

Each participant is expected to:

- clearly envision a career path to the judiciary;
- chart a course to an appointment or election;
- understand the risks and rewards of a judicial career;
- prepare for ethical demands and standards of the judiciary;
- share a collegial experience with incumbent judges and other participants interested in increasing the diversity of the judiciary at all levels.

Seminar speakers and panel members will include judges serving at various levels of the bench, from State Supreme Court to administrative law judges, as well as representatives of screening committees and appointing bodies.

For information, call Gary Maehara, (206) 545-6437; Nia Cottrell, (206) 553-0532; or Ada Ko, (206) 684-8746.

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Note: Information telephone numbers for regular CLE providers and other groups presenting listed events are listed at the bottom of this column. *Contact them for further information on listed events. Where the contact is an individual, contact information is listed in the specific calendar entry.*

January 1993

8 Seattle: Persuasive Power: Advocacy Skills for Women. *Sponsored by:* WSTLA.

8 Olympia: How to Probate. *Sponsored by:* WSBA CLE.

13 Seattle: The Legal Issues of Problem Collections in Washington. *Sponsored by:* National Business Inst., Inc.

14 Spokane: The Legal Issues of Problem Collections in Washington. *Sponsored by:* National Business Institute, Inc.

14 Seattle: Bankruptcy Pitfalls. *Sponsored by:* WSBA CLE.

15 Tacoma: Computers and the Law Office. *Sponsored by:* TPCBA.

15 Deadline for copy for March 1993 *Bar News*.

15 Seattle: Family Law in Washington. *Sponsored by:* National Business Institute, Inc.

15-16 Olympia: WSBA Board of Governors meeting.

21 Seattle: How to Probate. *Sponsored by:* WSBA CLE.

21 Spokane: Bankruptcy Pitfalls. *Sponsored by:* WSBA CLE.

21 Spokane: Insurance Law. *Sponsored by:* WSTLA.

21 Tacoma: Lawyers and Medicine Symposium. *Sponsored by:* TPCBA/ Pierce Co. College of Medical Education. *For informtion:* Les McCallum (206) 627-7137.

22 Seattle: Insurance Law. *Sponsored by:* WSTLA.

22 Seattle: Law Office Management. *Sponsored by:* WSBA Law Office Economics & Management Section/ Association of Legal Administrators. Note: Registration increases $25 after January 11, 1993.

25 Response form due for Regional Legal Writing Conference (see May 22 entry).

28 Portland, Oregon: Bankruptcy Pitfalls. *Sponsored by:* WSBA CLE.

29 Seattle: Design Professionals and the Law. *Sponsored by:* WSBA CLE.

February 1993

4 Eugene: Bankruptcy Pitfalls. *Sponsored by:* WSBA CLE.

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CLE International (206) 621-1938
National Business Institute, Inc. (715) 835-7909
Lewis & Clark Law School (503) 768-6642
Tacoma-Pierce County Bar Association (TPCBA) (206) 383-3432
University of Washington School of Law (UW CLE) (206) 543-0059
Washington Assn of Prosecuting Attorneys (WAPA) (206) 753-2175
Washington State Bar Association (WSBA CLE) (206) 727-8202
Washington State Trial Lawyers Assn (WSTLA) (206) 464-1011, (800) 732-9251

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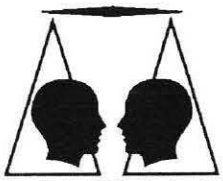

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206/233-2930

5 Seattle: Environmental Law. *Sponsored by:* WSBA CLE.

12 Tacoma: Union Station Courthouse Dedication Ceremony: 2 pm. *Sponsored by:* United States District Court. *For information:* Janet Thornton, (206) 593-6313.

12 Portland: Twenty-Second Annual Estate Planning Seminar. *Sponsored by:* Lewis & Clark Law School/Estate Planning Council of Portland.

12-13 Tacoma: WSBA Board of Governors meeting.

14-19 Whistler, B.C.: WSTLA Skimender.

19 The Law of Evidence made Useful. *Sponsored by:* TPCBA.

15 Deadline for copy for April 1993 *Bar News*.

26-27 Vancouver, B.C.: 13th Annual Northwest Securities Institute. *Sponsored by:* WSBA CLE.

March 1993

12-13 Seattle: 6th Annual Northwest Bankruptcy Institute. *Sponsored by:* WSBA CLE.

15 Deadline for copy for May 1993 *Bar News*.

19 Seattle: Intellectual Property Basics. *Sponsored by:* WSBA CLE.

19 Tacoma: Family Law. *Sponsored by:* TPCBA.

25-26 Seattle: International Law Midyear. *Sponsored by:* WSBA CLE.

26-27 La Conner: WSBA Board of Governors meeting.

29-31 Leavenworth: Support Enforcement Support Staff Training. *Sponsored by:* WAPA.

31 Pullman: Negotiations and Settlement Advocacy. *Sponsored by:* WSBA CLE.

April 1993

15 Deadline for copy for June 1993 *Bar News*.

16 Tacoma: Growth Management. *Sponsored by:* TPCBA.

19-21 Leavenworth: Support Enforcement Deputy Training. *Sponsored by:* WAPA.

21-23 Olympia: Spring Training Program. *Sponsored by:* WAPA.

May 1993

7-8 Spokane: WSBA Board of Governors meeting.

15 Deadline for copy for July 1993 *Bar News*.

17-19 Yakima: Support Staff Training Program. *Sponsored by:* WAPA.

21 Tacoma: Commercial Litigation. *Sponsored by:* TPCBA.

22 Portland: Regional Legal Writing Conference. *Sponsored by:* Northwest-

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ern School of Law and Legal Writing Institute. (Response form due January 25.) For information: (503) 768-6711.

June 1993

15 Deadline for copy for August 1993 *Bar News*.

18-19 Leavenworth: WSBA Board of Governors meeting.

23-25 Chelan: Summer Training Program. *Sponsored by:* WAPA.

July 1993

15 Deadline for copy for September 1993 *Bar News*.

30-31 Winthrop: WSBA Board of Governors meeting.

August 1993

15 Deadline for copy for October 1993 *Bar News*.

22-24 Leavenworth: Juvenile Training Program. *Sponsored by:* WAPA.

September 1993

7 Seattle: WSBA Board of Governors meeting and Annual Meeting.

15 Deadline for copy for November 1993 *Bar News*.

17 Tacoma: Effective Discovery—Planning/Implementation. *Sponsored by:* TPCBA.

October 1993

15 Tacoma: Estate Planning. *Sponsored by:* TPCBA.

November 1993

19 Tacoma: Appellate Practice. *Sponsored by:* TPCBA.

December 1993

4 Tacoma: Annual Year-end Potpourri. *Sponsored by:* TPCBA.

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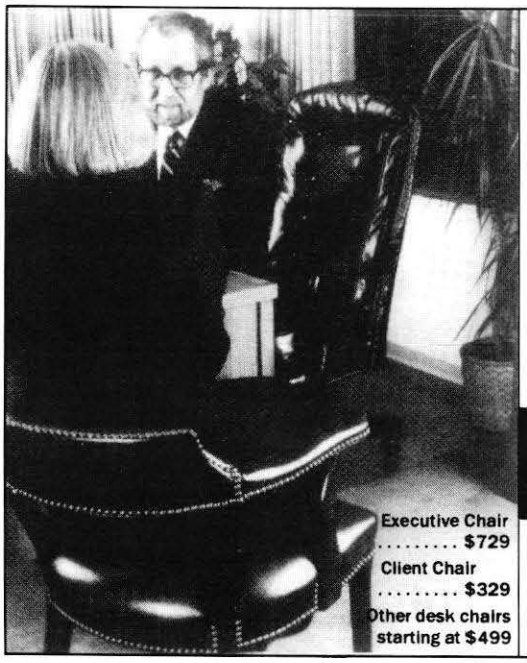

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LAW FIRM RANKINGS

Still Largely Out of It

If your goal in life is to work for one of America's biggest law firms, you'll be hard put to stay in the Northwest. That's the message in *The National Law Journal*'s 15th Annual Survey of the Nation's Largest Law Firms, published September 28. The survey ranks the nation's 250 largest firms by number of attorneys, and throws in information on numbers of partners and associates, branch offices, and starting salaries.

In fact, having called it a boom town last year, *NLJ* writers classed Seattle as a "Ghost Town" for having at least three firms in their top 250 where firms had the largest average decrease in the number of attorneys. The Emerald City was seventh of eight, with a decrease of 6.5 percent from the previous year's rankings, ahead of Atlanta (-7.8%) but behind Detroit (-4.5%. The big losers: Dallas (-12%) and Houston (-11.5%).

"Downsizing," it's called, and it has come as a nasty shock to many who thought the big firms could continue on their merry way, expanding as fast as the Brazilian inflation rate.

Washington's biggest firms are generally scattered through the middle of the *NLJ* 250. Perkins Coie, the region's biggest firm, is ranked No. 57 this year, up from 60th in 1991. Davis Wright Tremaine (81st), Lane Powell Spears Lubersky (109th), Preston Thorgrimson Shidler Gates & Ellis (119th) and Bogle & Gates (127th) round out the top five in Seattle.

Several higher-ranked national firms have a presence in the Northwest. No. 4 Gibson, Dunn & Crutcher of Los Angeles posts six of its 724 lawyers to Seattle. Newcomer Morrison & Foerster of San Francisco (No. 8, 651 lawyers) has an outpost of two. Heller, Ehrman, White & McAuliffe, also of San Francisco (No. 31, 403 lawyers) has 66 in Seattle, thirteen in Portland, eight in Anchorage and three in Tacoma. Number 73, Hyatt Legal Services, counts thir-

teen lawyers in six Seattle-area offices. Philadelphia's Cozen & O'Connor (No. 188, 167 lawyers) keeps fifteen in Seattle. Oregon's largest firm, Stoel Rives Boley Jones & Grey, was ranked No. 100 with 248 lawyers, 63 of whom work in the firm's Seattle office, with four more in Boise and three in Vancouver, Washington.

Here's the scoop on Washington's Big Players:

Rank '92	Rank '91	Firm Name and Main Office	# Lawyers '92	# Lawyers '91	Change (+/-)	P '92	A '92	Starting Salary'92
57	60	Perkins Coie, Seattle	339	327	+12	146	164	$52-70,000
81	83	Davis Wright Tremaine, Seattle	280	281	-1	146	11	$53,750
109	97	Lane Powell Spears Lubersky, Seattle	237	253	-16	122	98	$51,000
119	125	Preston Thorgrimson Shidler Gates & Ellis, Seattle	225	223	+2	116	101	$50,000
127	103	Bogle & Gates Seattle	217	246	-29	92	95	$52,000
233	227	Foster Pepper & Shefelman, Seattle	139	142	-3	74	43	$54,000

(Note: Information does not include changes in partner and associate numbers from 1991 to 1992, of counsel and other attorney classifications, or explanatory notes accompanying salary quotes, or other editorial analysis of the survey results. For full details, see "The *NLJ* 250: Fifteenth Annual Survey of the Nation's Largest Law Firms," *National Law Journal*, September 28, 1992, pages S1-28.)

ENTREPRENEURS

Student-run Company to Provide Memos and More

Fast, accurate and affordable are the watchwords of a new, law student-run Tacoma company, Legal Research Associates.

Established by a group of students at the University of Puget Sound School of Law, Legal Research Associates represents an ambitious effort to provide much-needed research support to local attorneys, and, at the same time, to provide valuable, "real-world" experience in research and memo-writing. Eric Yeargan, a first year UPS law student and the company's founder, says he was initially attracted to the idea because of "the chance to be involved in a kind of mutually beneficial business project, one that really goes beyond the "service-for-hire" idea and offers something substantial to both sides. At $10-$12 per hour, our basic research and memo-writing service is more than affordable, even to lawyers who are just starting out. And the chance to work on real cases is an invaluable experience for upper-division law students who don't have time to get involved in a more formal internship position."

Yeargan says the company also draws on the diverse backgrounds and advanced degrees held by some UPS students, they can offer data and document analysis on a broad range of topics, including environmental impact questions and medical terminology.

Also on the drawing boards is a series of faxed newsletters drawn from a variety of popular, trade and academic publications, designed to help lawyers avoid "publication pile-up." Legal Research Associates is at 315 North J Street, #22, Tacoma, Washington 98403, (206) 272-1552.

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Why Most Law Practices Don't Look as Good as They Are

Virtually all major businesses are identified in part, by their logo, which may consist of words, images or a combination thereof. As the competition within our profession continually increases, it becomes more important to address methods of increasing our visibility and memorability. A well-designed logo is one way of doing that.

by **Rick Hosmer**

Your firm's logo is the "signature" of your practice. It's what clients and prospective clients see when they think of your firm. If your logo is inappropriate, your practice looks bad. If you have an average logo, your practice looks just that: average. If your practice has no logo at all, then it has no professional signature. Your firm is like a legal document, perhaps well prepared, but not visually valid without a signature.

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How that logo is used is critical to its ability to communicate the appropriate message. Is your business card, stationery, envelope and brochure professionally designed? Are the typeface, ink colors, paper stock and layout competent and well-thought out?

It's encouraging that more and more professional law practices are visually promoting themselves. The problem is that most of them do it so badly. These practices are visually "wearing a cheap suit" and are losing credibility with their clients, associates and judges.

Some law practice logos are so terrible that the represented firm should file a personal injury claim against whoever designed the image. An amateurish, inappropriate logo has no business representing your practice, just as an amateurish, unprepared attorney has no business representing a client in court.

Designing an effective logo takes experience, a thorough understanding of the firm's needs and the creative ability to produce something unique. It isn't to be taken lightly.

Today's legal professionals find themselves in a highly challenging practice environment. Attracting new clients and retaining existing clients is more competitive now than ever before. It is increasingly clear that "marketing" has entered the legal arena–and is here to stay.

A practice's visual image or identity is a vital part of any marketing effort. That identity is focused in the firm's stationery, envelope and business card, brochures, partner profile sheets, signage, and print advertising.

A well-designed, well-founded logo becomes the cornerstone of the entire visual image of your practice. What kind of practice you have or would like to have, the quality of your services, your background and expertise, all should be communicated accurately in your logo and collateral materials.

Since your logo is the signature of your practice, give the public something to remember. Many law firms already use a tongue-twisting collection of partner names that even the receptionist has a hard time pronouncing. It is certain that the name will be more memorable if it is used in an attractive, well designed graphic representation of the practice.

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So take another look at your business card. What do you see? It should be a reflection of you and your practice. Make it professional. The competition demands it.

Rick Hosmer *is a principal in in the firm of Klundt & Hosmer Design Associates Inc., which produces visual identity programs and collateral materials for professional services and corporations. Offices are located at 216 West Pacific, Suite 201, Spokane, WA 99204.; (509) 456-5576.*

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

Evidence.

In marriage dissolution proceeding, trial court allowed wife to introduce evidence that husband had abused her physically and psychologically before and during marriage. On appeal, husband argued that by admitting evidence of abuse, trial court based its decision partly upon fault, in violation of dissolution statutes. Court of appeals disagreed and affirmed. Court said evidence was relevant for at least two purposes allowed by dissolution statutes: (1) to prove that wife was coerced into signing prenuptial agreement, upon which husband relied; and (2) to prove that wife had diminished earning capacity due to post-traumatic stress disorder. ***In re Marriage of Foran***, 67 Wn.App. 242, 834 P.2d 1081 (Div. 1, 8/24/92).

—K. B. Tegland

Planning and zoning. Hearing examiner determined that home for six homeless low-income women recovering from alcohol dependency was regularly permitted "single-family residence" under Seattle zoning code, rather than "halfway house," for which conditional-use permit would have been required. Trial court reversed this determination. *Held on appeal*: Reversed. Trial court improperly substituted its interpretation of zoning code for that of hearing examiner. There were two plausible interpretations of code. Court should have given more deference to interpretation by those officials charged with its enforcement. ***Citizens for a Safe Neighborhood v. City of Seattle***, __ Wn.App. ___, 836 P.2d 235 (Div. 1, 7/27/92).

—W. B. Stoebuck

Real property.

Defendant's land lay higher than plaintiff's adjoining land. Defendant's land was naturally drained by a swale, which drained its western side, and a creek, which drained its eastern side. Both waterways then passed onto and over plaintiff's land. Defendant installed new drainage system for surface water, which allegedly caused surface water from both eastern and western sides to be discharged into swale. While this did not cause swale to overflow, it did cause some silting up of swale upon plaintiff's land. Plaintiff seeks both injunction under Shoreline Management Act, RCW Chapter 90.58, and injunction under common law of surface waters. *Held*: (1) Plaintiff cannot maintain action under Shoreline Management Act, because only a governmental entity, not a private person, may obtain an injunction under that Act. Private persons may maintain only actions for damages, and plaintiff showed no actual damage. (2) But plaintiff will be entitled to injunction under Washington's common law of surface water drainage if, upon remand, she can show defendant is continuing to discharge water into swale that would not naturally flow into that channel. Court reviews Washington's (tortured) law of surface water drainage. Washington follows "common-enemy" doctrine, whose basic premise is that an owner is privileged to use any method to discharge surface water. However, Washington has recognized a number of exceptions to that premise. One, applicable to this case, is that an owner may not divert surface water into a natural drainway which would have naturally drained into another natural drainway. So, if on remand it is shown defendant is draining water from eastern side of his land into swale that naturally drained western side, this will be a trespass. (*Comment*. This decision illustrates that Washington's supposed "common-enemy" doctrine is so riddled with exceptions that it approaches the "reasonable-use" doctrine. The state supreme court should re-examine the doctrine. - W.B.S.) ***Hedlund v. White***, __ Wn.App. ___, 836 P.2d 250 (Div. 2, 9/9/92).

—W. B. Stoebuck

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The oldest son of attorney Larry Feinstein has turned 16 and can't wait to get his driver's license. A number of Feinstein's friends have kids in the same age group, and they all thought that a driving contract would be a good idea, so that the teenager would have some guidelines as to what to expect in driving a car.

***Accordingly, Feinstein drafted the following document, which he intends to enforce with his three sons, and passed it on to the* Bar News.**

Driving Contract

Comes now a minor individual of such tender years and fragile sensibilities, being the individual to be known herein as the Driver, and thus designated and throughout this contract; and

Whereas Driver desires to drive a Motor Vehicle upon the streets and byways of the City of Bellevue, and its surrounds, including the roads, bridges, and highways thereupon; and

Whereas Driver is really just a pisher, who just thinks he has the skills, knowledge, and ability to drive a motor vehicle upon said streets and byways, but that the experience and ability to so drive comes only with time; and

Whereas: Reasonable restrictions may be had and imposed to insure the safety of said Driver and of any other persons who may be careless enough to venture into the seats of the said Motor Vehicle when Driver is behind the wheel; and

Whereas: Without said very reasonable, and unburdensome, and truly generous restrictions and guidelines, said Driver will be denied his not-god-given right to operate a motor vehicle upon the streets and byways;

Now, therefore, in consideration of the overly generous and easy-going nature of said Driver's parents (hereinafter referred to in this contract as "Soft Touch"), it is hereby

AGREED by and between Driver and Soft Touch to the following very reasonable and unburdensome Rules and Regulations in the operation of a motor vehicle by Driver:

1. Driver shall always operate the aforesaid Motor Vehicle in a safe and careful manner. Driver shall endeavor at all times to take into consideration and practice all of the rules of the road that Driver learned from Defensive Driving School.

2. Driver shall always wear a seat belt while operating a Motor Vehicle; and shall always wear a seat belt while a passenger in a Motor Vehicle operated by any friend (hereinafter collectively known as "Maniac Teenage Drivers.") In addition, Driver

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shall insist and require that any friend, while a passenger in Driver's Motor Vehicle, must also wear a seat belt while in Driver's Motor Vehicle.

3. Driver shall never operate a Motor Vehicle while in a mental/physical state that would render said operation as unsafe. To wit, Driver shall never "drink and drive." Further, Driver shall never be a passenger in Motor Vehicle in which the driver of said vehicle is in mental/physical state that would render the operation of said vehicle as unsafe. To wit, if a Maniac Teenage Driver has been drinking, then Driver shall not be a passenger in said Maniac Teenage Driver's car. Driver, if Driver is not in such state, may volunteer to drive said Maniac Teenage Driver's car for said Maniac Teenage Driver instead.

4. Soft Touch agrees that if Driver is unable to operate a Vehicle under the provisions and agreements of Paragraph 3, above, that Soft Touch shall, without question or recrimination, go and pick up Driver from Driver's location and bring Driver home; or shall provide necessary funds to allow Driver to obtain a hired vehicle (hereinafter known as "Taxi") to pick up Driver from Driver's location and bring Driver home. Said agreement shall also apply if Driver is "stranded" because Driver did not take Driver's own Motor Vehicle to Driver's destination, but rather that Driver rode as a passenger in a Maniac Teenage Driver's motor vehicle and said Maniac Teenage Driver is not in a condition to operate the vehicle safely.

5. In and for consideration of the privilege so graciously granted to Driver to operate a Motor Vehicle upon the streets and byways of this great land of ours, Driver agrees that Driver shall commit to one [round trip] willing to do anything to drive "Errand" per day on behalf of and at the request of Soft Touch. Said Errand shall be for the benefit of Soft Touch and may include the driving of Soft Touch's other children (Driver's siblings) (hereinafter referred to as "Loving and Adorable Children") to places of necessity and return. Soft Touch agrees not to unduly burden Driver with numerous and continuous Errands, but the quid pro quo to Driver is that Driver is estopped, prohibited and restrained from complaining or otherwise mumbling about doing one Errand per day, even if said Errand involves Loving and Adorable Children. "Round trip" means that if Driver is requested to take Loving and Adorable Children to a place designated by Soft Touch, that Driver shall be committed and be required thereto at a designated time and fetch Loving and Adorable Children and return them Home.

6. In consideration of Paragraph 5, above, that Soft Touch agrees to provide for and grant a Gasoline Allowance to Driver of the sum of $10.00 per week, to offset and reimburse Driver for the costs of aforesaid Gasoline in completing Driver's

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obligations contained herein.

7. Penalty. Stiff, burdensome and onerous penalties shall apply to Driver upon the tiniest violation of this Driving Contract. Hanging by Driver's big toes, upside down, with water slowly dripping onto Driver will be too good for Driver, for even a nominal, petty, technical violation of this Driving Contract:

a. For violation of Paragraph 1, meaning that Driver has operated a Motor Vehicle in an unsafe manner, and Driver receives a Ticket from a duly authorized Law Enforcement Officer of this great land of ours, then and thereafter, Driver shall be Restrained, Suspended and Prohibited from operating a Motor Vehicle upon the streets and byways for a period of days equal to one-half the dollar amount of said Ticket; in addition to paying the fine and levy required by said Ticket. To wit, as an example, if Driver receives a "speeding ticket," prima facie evidence indicating that Driver has operated Motor Vehicle in an unsafe manner, and that the "speeding ticket" has a fine or penalty of $30, then Driver's not-god-given right to operate a Motor Vehicle shall be suspended for a period of 15 days [1/2 x 30 = 15], in addition to any penalty or fine imposed upon Driver by the god-fearing Law Enforcement and/or Judicial System of this great land of ours. But, however, at Soft Touch's sole discretion, said Restraint and Suspension may not relieve Driver from fulfilling Driver's obligations under Paragraph 5, above, but shall apply only to the pleasure-driving of Driver.

b. For violation of Paragraph 3, above, regardless of whether or not Driver is "caught" by a duly authorized Law Enforcement Officer of this great land of ours, there shall be an automatic 30-day Restraint and Suspension (Drinking/Driving).

c. A second violation of Paragraph 1, above, within a 180-day period, shall automatically double the Restraint and Suspension contained in sub-paragraph (a) above, This shall be in addition to any penalty or fine imposed upon Driver by the god-fearing Law Enforcement and/or Judicial System of this great land of ours.

d. For a second violation of Paragraph 3, above, shall be an automatic 180-day Restraint and Suspension of Driver's not-god-given right to operate a Motor Vehicle upon the streets and byways of this great land of ours.

8. Grades. Driving is a privilege, and not a right. The privilege of driving will be wholly grade-dependent during the school year. If Driver maintains a GPA of 3.7 or above, no restrictions shall apply. If Driver maintains a GPA of 3.4-3.7, then School

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Days (during the school year, from Sunday evening through Friday afternoon) driving may be limited or curtailed in the sole, absolute and unreasonable discretion of Soft Touch, depending upon homework completion, school projects in progress and other factors to be determined. If Driver maintains a GPA of 3.0-3.4, then School Days driving shall be limited solely to Driver's obligations under Paragraph 5, above. If Driver maintains a GPA of less than 3.0, then in addition to the limitations provided directly aforesaid on School Days driving, weekend driving shall also be limited solely to Driver's obligations under Paragraph 5, above.

9. Curfew. There shall be a curfew imposed upon Driver. On School Days, curfew shall be 10:00 p.m. On weekends, and other nonschool days during Driver's 16th year, curfew shall be 10:00 a.m. As of Driver's 17th birthday, curfew on School Days shall remain the same, but that curfew on weekends and other nonschool days shall be 12:30 a.m.

10. Soft Touch reserves the right to impose additional burdensome and unreasonable restrictions upon Driver's not-god-given right to operate a Motor Vehicle upon the streets and byways of this great land of ours.

11. This Driving Contract shall be interpreted under the laws of the State of Washington. Time is of the essence in this Agreement. If any provision or part of this Contract be deemed unenforceable, it shall not effect the valid provisions of the Contract, and said valid and enforceable provisions shall survive.

Dated this _____ day of _____, 1993.

Soft Touch

_____

Driver

_____

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NEWS FROM HOME

Allan Bakalian concluded nearly seven years with the Environmental Protection Agency last fall. On October 1 he joined Univar Corporation as senior corporate counsel for environmental matters. Bakalian provides legal support to the environmental, regulatory and litigation departments at Univar on numerous matters involving Superfund, RCRA and other federal and state environmental laws. Univar is the parent of Van Waters & Rogers, the largest chemical distributor in the U.S. and Canada, and also does business in Mexico and Europe.

Jean M. McCoy has joined the Vancouver, Washington, firm of Landerholm, Memovich, Lansverk & Whitesides, as a commercial litigation attorney. She's a 1992 graduate of Northwestern School of Law of Lewis & Clark College.

Clifford K. B'Hymer has reopened his practice in Clarkston. B'Hymer practiced there from 1979 to 1990, then took a sabbatical to write a novel. He practiced in Bellingham for a short time before deciding he liked the old sod better. B'Hymer emphasizes disability law practice.

Vancouver, Washington attorney **Dick Howsley** has opened his own firm, concentrating in land use, environmental, municipal law and land use planning. **Lisa Graham** is an associate in the firm. Howsley was formerly associated with Landerholm, Memovich, Lansverk & Whitesides.

Preston Thorgrimson Shidler Gates & Ellis has opened an office in Coeur d'Alene, Idaho. The office will be staffed on a rotating basis by **Michael Ormsby** and **Craig Trueblood**.

Terry J. Lee has opened his own firm in Vancouver, Washington. Formerly with Landerholm, Memovich, Lansverk & Whitesides, Lee will continue to offer a full range of legal services, including family law, misdemeanor defense, simple state planning, real estate, collections and general civil matters.

George, Hull & Porter has changed its named to include another of the firm's partners, **Laurie D. Kohli**. The firm name is now George, Hull, Porter & Kohli, P.S.

M. Martha Ries of Bogle & Gates' Seattle office has been elected president of Washington Women in International

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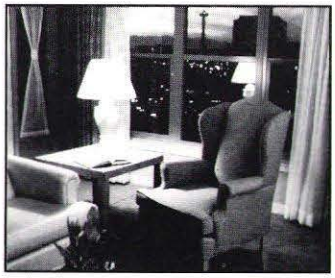

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Trade, an organization for women pursuing careers in that field. Ries has been with Bogle & Gates since 1990, and practices in the areas of international commercial law, customs and litigation.

quiry. Said inquiry consisted of a Thanksgiving feast, where at the merits of who deserved the drumstick were discussed.

Upon questioning concerning the flavor of the bird Paul stated, "It was very tasteful—something of a cross between a spotted owl and a bald eagle." Just think, Paul, two more species and the Audubon Society will make you an ace.

EAST KING COUNTY REPORT

by MARIANNE MOSCHETTO

Once again we've gotten through the holidays successfully. We're all looking forward to the college bowl games, the Superbowl, and other hallmarks of

CLARK COUNTY REPORT

by **JOHN F. NICHOLS**

Rumor Control:
On a Wing and a Prayer

It's strange how near tragedy can bring out the sickest humor from some people. Strange but still funny. A local aviator, hunter, and sometime attorney **Paul Henderson** combined all three obsessions on a recent venture into the "Fly Lite Zone."

Paul, while practicing his touch-and-go landings in his Cesna, flew directly into the flight path of a flock of Canada Geese. Since the geese had filed a flight plan and Paul hadn't, they obviously had the right of way. To add more fault to the situation, Mr. Henderson was going about 120 miles per hour and was not wearing his official Captain Midnight Bomber Jacket.

Needless to say the feathers flew with one goose crashing directly through the cockpit right were the stewardess would usually be. The impact or force thereof shattered Paul's aviator glasses. Fortunately, while he survived, Daffy did not. Upon landing, it was observed that Huey, Duey, and Louie had met a similar fate at the hands of Paul's deadly wings.

Henderson's initial defense was that he was engaged in "Flock Management." The fact that he was out of season and these were endangered species did not impress the Game Warden nor Daisy the widow. In the meantime, the goose in the cockpit (the dead one) was extricated at Paul's partners' and hunting buddies' **Bill Baumgartner** and **Joe Mercer** and preserved pending further in-

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the New Year.

It's time again for New Year's Resolutions. No one can really write a column on what one wants to accomplish for the next year, it's too personal. What we really want to do is tell others what we want them to do for this next year. Herewith, then, are the 1993 New Year's Resolutions for Other Lawyers:

From **Steve Toole**, 1993 EKCBA President: "Be generous with your time and money to those less fortunate than yourselves."

From **Stella Pitts**, of Keller Rohrback, a soon-to-be member of EKCBA: "Don't be so judgmental of others, be more understanding."

From **Jeff Jones** of McDermott & Jones: "Follow the spirit as well as the letter of the discovery rules. Don't try to hide the ball, it only causes delay and distrust."

From **Jean Magladry** of Trujillo & Peick: "Life is easier when we're courteous to each other. Keep your sense of humor alive."

From **Patty Willner**, solo practitioner, whose secretary made this resolution for her: "Stop using the daytimer and start relying exclusively on a computer calendar."

From a Family Law Court commissioner who did not wish to be identified: "I see so many cases where the parties are angry with each other. They are made more difficult when the attorneys treat each other in the same manner. Be good to each other."

Here's mine: "What we do is valuable to our individual clients and to society. Let's ban sarcastic lawyer jokes and be proud of our profession."

Congratulations to the 1993 EKCBA board of trustees and officers: **Steve Toole**, president, **Valerie Knecht Hoff**, vice president, **Ted Barr**, secretary, **Larry Gamroth**, treasurer, and **Ron Dickinson**, past president. This is EKCBA's 30th year, and we expect great things. Stay tuned to this column for announcement of events and happenings, and have a good 1993!

PIERCE COUNTY REPORT

by **GEORGE S. KELLEY**

Bar Association monthly luncheons can be boring and tedious affairs. In an effort to liven things up, at least for a month, program chair **Mike McKasy** devised a "war story" exchange, where lawyers would be invited to tell their favorite anecdotes. Each speaker was allowed five minutes or less and the stories had to be relatively clean as judges would be attending. The owner of the best story was to be awarded dinner for two at a waterfront restaurant.

Judge **Art Verharan** was the winner with this story about a murder trial in Judge **Donald Thompson**'s court. The victim's body was found in a graveyard. During the portion of voir dire conducted by Thompson, he asked anyone who had ever been in the graveyard to raise their hand. The defendant raised his hand. The judge added that he could not remember if he granted a mistrial at that time or later.

There was a promise of updates on the activities of Yuppiman, a.k.a. **Don Kelley**, who by daytime is disguised as a mild-mannered plaintiff's attorney. We can report that Yuppiman, using his cellular phone in his MBW 535i, came to the defense of former Husky quarterback **Billy Joe Hobart** on a radio sports talk show. Some may question whether listening to the "Sports Babe" on AM radio is the proper use of a quadrophonic car stereo system complete with hidden-in-the-trunk multidisk laser player. Others say that Yuppiman's momentary lapse of good taste in defense of Billy Joe should be forgiven.

Norm Margullis recently returned from trekking through Tibet where he went to attend the funeral of a second-level dali lama. We don't know if he brought home the probate.

Jim Henriot retired from the firm of Eisenhower Carlson. In his honor the conference room wall is adorned with a plaque commemorating his many climbs of Mt. Rainier and his leadership of the United States Alpine Club. The plaque has room on it for the names of the other firm members who successfully complete the climb. **James Hushagen**, who recently made the ascent, will have his name added. **Al Weaver** claims to have made the climb in his younger days, but

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the records of it have been lost and the younger members of the firm are skeptical.

David C. Hammermaster, son of Sumner's **Gene Hammermaster**, and **Bryan P. Stubbs**, son of **Frank Stubbs**, were welcomed to the bar at recent swearing in ceremonies. We didn't know that either Gene or Frank was old enough to have kids who had passed the bar.

Andrea Conklin has been made partner at Davies Pearson, and **Kristin E. Hickman** has been named as an associate.

LEGALS PS

The Lesbian and Gay Legal Society of Puget Sound has received $3,000 in seed money to conduct a legal rights seminar for gay men and lesbians at various locations in Washington.

The group competed with proposals from 18 other organizations to receive public-service grants from the Jordan-Blumstein Trust.

"This grant will allow LEGALS PS to achieve one of its goals in educating gay men and lesbians throughout the state on specific legal topics of importance to them," states **Jean Reitschel**, co-chair of LEGALS PS.

A day-long seminar will be prepared by attorney members. Topics will include family law and partnership issues, estate planning, discrimination and AIDS law as well as an introduction to the court system.

LEGALS PS intends to present the seminars in the summer of 1993 in Seattle, Everett, Tacoma, Olympia, Spokane, Tri-Cities and Yakima pending adequate funding.

The Jordan-Blumstein Trust was created by the respective estates of Dr. **Gerry D. Jordan**, past senior vice president of programming for SkyPix, and his partner, **Philip Blumstein**, University of Washington professor sociology. Both Jordan and Blumstein died in 1991 from complications caused by AIDS.

LEGALS PS is an organization open to lawyers, legal workers, judges, paralegals, legal secretaries, investigators, law students and professors. Any inquires should be sent to LEGALS PS, PO Box 21521, Seattle, WA 98111-3521.

SOUTH KING COUNTY REPORT

by **JANE C. RHODES**

The South King County Bar Association wants to welcome some new members who have recently joined law firms

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in the area: **Sean O'Neill** (previously **Zonetta Fontes**' campaign manager) has joined Anderson, Jackson & Stephens; **Van Collins** (a recent UPS Law School graduate) will be working primarily with **Bob West** at Edwards & West; **Eric Aaserud** (a UPS classmate of Collins) is working with **Larry Schrieter** and **Mel Kleweno** at Currann, Kleweno & Johnson, P.S.; **Ron Mattson** will be sharing offices with **Gary Faull** due to the departure of **Peter Banks** for "better weather" in Florida, where he will be taking the Florida bar exam and no doubt be practicing law Caribbean style. Ron knows Gary from their Renton High School days, went to Willamette Law School, and will have a general practice. Word has it that **Dick Conrad** is going to retire and move to Othello, making the comings and goings of the Renton bar fairly substantial.

At the November bar meeting, Tim Edwards reported that **Rod Stephens** passed the paternity test as one of the more active of the founding fathers of the Regional Justice Center. Thanks and kudos to Rod, and fellow founding father, **Tim Edwards**, for all their hard work. It looks like we will finally be seeing some of the other bar association members down in our neck of the woods for a change.

The South King County Bar is very interested in increasing the participation of the current two hundred plus members, and tapping into the other one hundred or more attorneys practicing or living in south King County. Anyone reading this column interested in joining us should contact one of the members of the new Membership Committee—**Mike Salazar**, **Ron Mattson**, **Jean Bouffard, Judy Eiler**, **Dick Jackson** or **Tom Campbell.**

One small travel note: **Mark Alexander** of Bonneville, Viert, et al., will be traveling in Tasmania with his wife and one-year-old daughter, which should be a memorable experience.

WHATCOM COUNTY REPORT

by MICK MOYNIHAN

Well, the campaign is finally over, and it took the absentee ballots to determine the winner, and so **Steve Mura** will be the next superior court judge. **Deborra Garrett** came in first in the primary and was ever so slightly ahead after the general election, but the absentees carried the day. As for retiring, Judge **Byron Swedberg**, all he has to say is, Don't call me; I'll call you." As with any retiring judge, some will be long-faced, and others will be dancing in the streets. Swedberg says that he doesn't care about anyone else, but he will be dancing in the streets.

Everyone knows that Judge **Dave Nichols** has the best chambers in the courthouse, but the worst courtroom. And now, it appears that he is going to change Dept.No. 3 up to the Swedberg courtroom, so that the incoming judge, Mura, will now have the best chambers in the courthouse. (RHIP). When judge-to-be Mura was told that he was getting the second-floor courtroom, he said he should have run for the other position. Maybe, after the courthouse remodel is finished, Dept. No. 2 will move to the newest courtroom.

President **Doug Shepherd** is now at the helm of the Whatcom County Bar Association, and **Jim Doran** is the vice-president, while the new secretary-treasurer is **Kathleen Bramwell**. the speakers that we had at the bar meetings this past year were outstanding, and, in particular, I recommend **Jeff Tolman**, Kitsap County, for a refreshing view on anything.

Since Mura is moving on, **Frank Chmelik** and **Will Johnson** will share duties on the legal talk show on KGMI Radio, in addition to forming the new partnership of Chmelik and Johnson.

Bob "publish or perish" **Hughes** has written a book for those who have wasted their time inventing foolish and useful things. The book is quite interesting, and, contrary to the written warning, I have not yet fallen asleep while reading it.

Dave Nelson has gone into the private practice of law after several years with the public defender's office. Just as in the story of Br'er Rabbit and the Briar Patch, he should do well in Ferndale.

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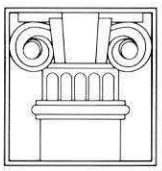

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ROBERT BARONSKY
formerly with Beresford, Booth, Baronsky & Trompeter
has joined the firm as a partner in the Seattle office.

BRADLEY D. FRESIA
formerly with Beresford Booth, Baronsky & Trompeter
has joined the firm as an associate in the Seattle office,
and
BARRY A. JOHNSRUD
and
BERNADETTE PRATT SADLER
have joined the firm as associates in the Tacoma office.

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

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(206) 622-8000

Family Law

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

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

Morris H. Rosenberg
Mussehl & Rosenberg
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and

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ment is now available. Cost is $22, with an additional mailing charge of $5.45. For further information, contact Linda Medley at (206) 591-3647.

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Smith Tower, Seattle, two attractive view offices, law library, conference room and other amenities. Spillover work is possible. Call (206) 282-8181.

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View offices, Seattle, available for immediate occupancy; 1,351 square feet, three large-window offices with exceptional Elliott Bay and Olympic Mountain view, large reception area, private storage, kitchen area with built-in sink. Contact Estelle Shives, SeaMark Properties, (206) 488-4111.

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Old Town professional office space, Tacoma. Moving and must sublease. Two large water view offices, reception area, large area for secretaries and small conference room. Free parking and security system. Phones, copier and furniture may be made available. Terms negotiable; 2102 N. 30th Street, Tacoma. Contact Ken Golden, (206) 627-7701.

SEEKS ASSOCIATION

Thinking of doing business in China? Pao Lin Ball, WSBA #14000, is available for association, consultation or referral in international trade and joint ventures in the People's Republic of China. Beijing # 011-861-2017531, ext. 2738. Beijing fax # 011-861-6012811.

POSITION WANTED

ERISA attorney seeks position. Experienced lead counsel for design, qualification and operation of group health, welfare, pension, profit-sharing, cafeteria, 401(k) plans; IRS and DOL investigations; ERISA litigation and arbitration. Author and speaker on federal and state law affecting employee benefit plans. Reply to Box 375, WSBA.

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Pacific Northwest regional firm seeks litigation associate for its Seattle office. Applicants must have superior academic credentials, excellent references, and a minimum of one to two years' experience. Washington Bar membership required. Excellent benefits and EOE. Submit cover letter, resumé and law school transcript to: Alyson Gilbertson, Recruitment Administrator, Schwabe Williamson & Wyatt, 1211 SW Fifth Avenue, Portland, OR 97204.

Attention attorneys and personnel directors: The National Academy for Paralegal Studies has qualified paralegals in your local area ready for employment in law offices and corporations. Our paralegal graduates are trained in areas of law such as family, real estate, torts, criminal, probate, and corporate law. Student interns are also available. There are NO fees for these services. For additional information, call Lisa Piperato at (800) 285-3425, ext. 3041.

POSITION AVAILABLE

United States Magistrate Judge Steven Mura is vacating the part-time Magistrate Judge position in Bellingham effective January 1993. The Judicial Conference of the United States has authorized the appointment of a new part-time United States Magistrate Judge for the Western District of Washington at Bellingham.

The duties of the part-time Magistrate Judge position include the following:

(1) conduct of regular calendars involving charges of traffic offenses and violations of park regulations;

(2) conduct of most preliminary proceedings in criminal cases.

The basic jurisdiction of the United States Magistrate Judge is specified in 28 U.S. C. § 636.

To be qualified for appointment an applicant must:

(1) be a member in good standing of the bar of the highest court of a state, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands of the United States, and have been engaged in the active practice of law for a period of at least five years (with some substitutions authorized);

(2) be competent to perform all the duties of the office; be of good moral character; be emotionally stable and mature; be committed to equal justice under the law; be in good health; be patient and courteous; and be capable of deliberation and decisiveness;

(3) be less than 70 years old; and

(4) not be related to a judge of the district court.

A merit selection panel composed of attorneys and other members of the community will review all applicants and recommend to the judges of the district court in confidence the persons it considers best qualified. The court will make the appointment following an FBI file check and IRS tax check of the appointee. An affirmative effort will be made to give due consideration to all qualified candidates, including women and members of minority groups. The current annual salary of the position is $5,000. The term of office is four years. Part-time magistrate judges are not normally tendered government-furnished chambers or office space They are reimbursed for the actual and necessary expenses incurred in the performance of their duties [28 U.S.C. § 635(b)].

Application forms and further information on a magistrate judge position may be obtained from Bruce Rifkin, Clerk of the U.S. District Court, 215 U.S. Courthouse, 1010 Fifth Avenue, Seattle, WA 98104, phone number (206) 553-5598. Applications must be submitted only by potential nominees personally and must be received by February 1, 1993.

All applications will be kept confidential, unless the applicant consents to disclosure, and all applications will be examined only by members of the merit selection panel and the judges of the district court. The panel's deliberations will remain confidential.

Attorney jobs: National and Federal Legal Employment Report—highly regarded monthly detailed listing of attorney and law-related jobs with the U.S. Government, other public/private employers in Washington, D.C., throughout the U.S. and abroad; *500-600 new jobs each issue*. $34-three months; $58-six months. Federal Reports, 1010 Vermont Avenue, N.W., #408-WB, Washington, DC 20005, (202) 391-3311. Visa/MC.

The Washington State Lawyers' Campaign for Hunger Relief is seeking applicants for the position of volunteer campaign manager. Job junctions and desired qualifications are as follows:

(1) provide management direction on a weekly basis;

(2) coordinate operating committees, projects, events and fund-raising;

(3) possess leadership and public-relations skills;

(4) maintain direction and focus of campaign efforts;

(5) possess a social conscience to help the less fortunate.

This position requires approximately 20 hours per week commitment. For further information regarding this position, please contact Robert C. Mussehl at the Law Offices of Mussehl & Rosenberg, 1111 Third Avenue, Suite 1010, Seattle, WA 98101-3210, or telephone (206) 623-3000.

Busy, three-attorney Ellensburg law firm seeks additional attorney with minimum of two years' experience. Must enjoy client contact, community involvement and rural, small-city lifestyle. Send resumé to P.O. Box 858, Ellensburg, WA 98926

Established Bellingham firm seeks associate with a minimum of one year's experience in general commercial practice. Strong academic credential and work experience required. Send resumé and references to Box 376, WSBA, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599.

Adelstein, Sharpe & Serka seeks lawyer with minimum of one year's experience in estate and tax planning, wills and probate. No telephone calls. Send resumé to Phil Sharpe, P.O. Box 5158, Bellingham, WA 98227-5158.

WILL SEARCH

Ray N. Sakamoto: Seeking last will of long-time resident of West Richland, Benton County, Washington. Please contact Brendan V. Monahan, (509) 248-6030.

Stephen S. Stefurak: Seattle, recently died November 1991. Anyone having copy or knowledge of will contact Joseph Stefurak, 113 East Cottage #4, Flagstaff, AZ 86001.

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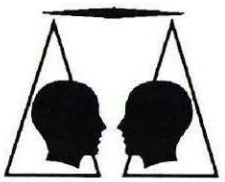

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LAWYER-BASHIN' BLUES

by **Ernest I. Nicholson**

As the law is, our chosen profession,
This is likely not a new lesson
And often I wonder if we'd otherwise choose,
Had we known 'bout lawyer-bashin' blues.

Started out eager, ready to do right,
Studied all day, and most of the night,
Paid tons of tuition, to all those schools,
And didn't believe 'bout lawyer-bashin' blues.

Entered the practice; sought clients to aid,
With great partner and colleagues, we had it made!
Together we all strive, never to lose,
And try not to think ' bout those lawyer-bashin' blues.

'Cause there's a troublesome thing, about our profession,
The public has got, a peculiar perception:
They want us to competently ply our trade.
And they want us to do it without getting paid!

The clients complain about "all those laws,"
"It's the fault of the lawyers and their flappin' jaws."
And never should a client have to cop a plea,
"'Cause, after all, they don't apply to me!"

Yes, it's the lawyer who is to save their necks.
Of course, when it's over, they're out of checks.
Send them a bill, and it's belly-achin',
About "all the money those lawyers are makin.'"

Ernest L. Nicholson *graduated from the University of Puget Sound School of Law and is a shareholder in the Vancouver firm of Weber, Gunn, Nicholson, Nordeen, Marshack & Gonzales.*

And why does it always make us step back,
And ponder if it's something we lack.
Well, let me advise you: Don't be confused.
Don't fall prey to those lawyer-bashin' blues.

I like the ones, whose case you just tried,
Who want to make plain, they're dissatisfied.
They want every penny, ever in Dad's vault,
'Cause their mother got half. It's the lawyer's fault.

They who want justice, as fair as can be,
Ask, "Why is this all done so ethically?"
They'd rather you bribed all those dark cloaks,
While they sit in reception and tell lawyer jokes.

How about those whom the jury convicts,
"I was innocent; my lawyer's derelict!"
Of course, upon inquiry, the chaff blown aside,
It's perfectly clear, to counsel they lied.

So do not despair, or succumb to stress.
Remember your skills, and your cleverness.
You don't need counseling, escape or booze,
Just to ignore, those lawyer-bashin' blues.

Remember that last case—You were a sensation!
Like bugs they were squashed, under your cross-examination.
And when they close, they all got the clue,
No one would be lawyer-bashin' you.

So, in summation, I'll give you the news:
You're good, and still got, all the right moves.
Keep your head up. You've paid your dues,
And you don't give a damn 'bout those lawyer-bashin' blues.

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