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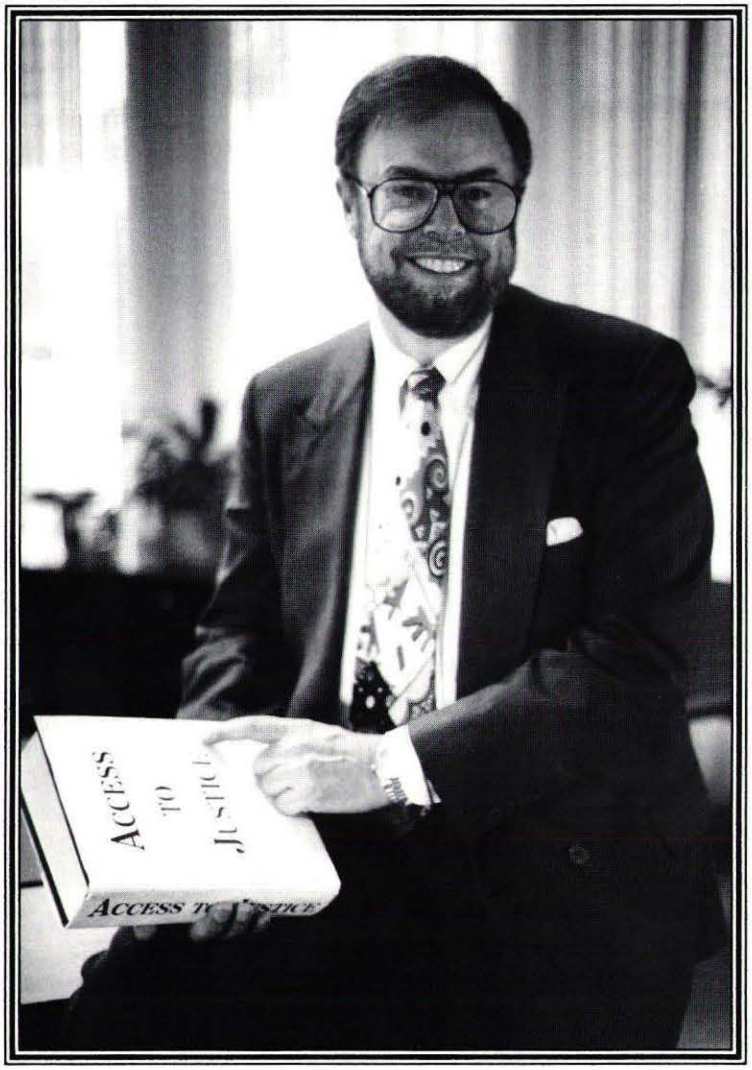
Vol. 47, No. 10, October 1993



PAUL L. STRITMATTER
WSBA PRESIDENT, 1993-1994

ISSUES IN ENVIRONMENTAL LAW:
SICK-BUILDING SYNDROME PROBLEMS AND HOW THEY CAN BE SOLVED • THE USE OF HISTORICAL RECORDS IN HAZARDOUS-WASTE CLEANUP PROJECTS • TIMBER SALE & LOGGING AGREEMENTS • RECENT ENVIRONMENTAL LAW PUBLICATIONS: A REVIEW • PRACTICE ALERT: WASHINGTON'S NEW AGISTER LAW

ALSO: HEDONIC DAMAGES: HOW FAR CAN ECONOMICS GO? A REPLY • NEW PRESIDENT, FOUR GOVERNORS ASSUME POSTS

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Issues in Environmental Law

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DEPARTMENTS

ACCESS TO JUSTICE IN THE 21ST CENTURY

by **Paul L. Stritmatter**
WSBA President

Paul L. Stritmatter

Justice Robert Brachtenbach wrote for the Court that the right of access to the courts is a fundamental principle essential to the security of individual rights in this state. *John Doe v. Blood Center*, 117 Wn.2d 772, 819 P.2d 370 (1991).

In 1991, the Bar Association's Long-range Planning Task Force identified access to justice as the number one challenge facing the Bar. This priority was highlighted by the massive and growing unmet civil legal needs among low-income people in Washington. Three federally funded civil legal-service programs serving the poor, as well as extensive pro bono efforts by local bar associations throughout our state, struggle daily to provide access to justice to a poverty population that has risen from 550,000 in 1980 to more than 702,000 by 1990; this number does not even reflect an additional 185,000 migrant workers and over 88,000 poor people who are institutionalized in state long-term care, mental-health, juvenile, and correction facilities.

If jurisprudence is to work in a meaningful way, then people who need justice must have access to the system. State and federal constitutional guarantees have helped to assure access to justice in the criminal system, requiring that government in many instances fund lawyers to properly provide legal counsel to the indigent. The civil justice system continues to have huge hurdles for many people in our society to secure access to our courts.

The public and lawyers alike have a vested interest in making sure that the system works properly. If the legal needs of all people are not being addressed by our legal system, then the system is not what it should be to all segments of our society.

There is one attorney for every 300 middle-class and wealthy people in our state. For the poor, there is one civil legal-service attorney for every 10,843 people. For the poor, access to justice means the ability to enforce and protect essential legal rights despite one's indigence; and all too often, it means access to food, shelter, necessary health care, the protection of basic human and civil rights, education and the means to survive.

As billing rates for legal services delivered by the private bar have generally risen, more and more moderate-income people find that their budgets cannot afford the services of a lawyer. While courthouses find their resources shrinking, more and more pro se litigants pursue their cases in our courts without the guidance either to comply with fundamental rules or to protect fundamental rights.

Those who have been intimately involved with the issues of access to justice in the state of Washington have become all too familiar with the famous Ada Shen-Jaffe circles chart which illustrates the many different organizations, agencies and private attorneys that have been involved in providing services to low and moderate income citizens. The chart has keenly demonstrated the lack of coordination between diffuse programs. Unnecessary and expensive competition for grants or budget dollars has occurred. A lack of continuity, coordination and organization has been identified by the circles chart. The Long-range Planning Task Force recommended that there be a "traffic cop" entity to assist in coordinating all of these activities.

The need certainly exists for an institutionalized entity to provide a forum to address the difficult problems of access to justice, to develop and implement strategies and solutions and to provide a centralized place where access to justice activity could be coordinated, grow and thrive. Past presidents Joe Delay and Steve DeForest and the Board of Governors established the 1992-1993 Access to Justice Task Force. It was created not to study access to justice problems, but to plan for the coordination of services and resources, establish a standing entity, develop a directory of services and review the financial impact of these issues.

Under the leadership of Tom Chambers, many different groups and organizations were represented by bright, talented, articulate and dedicated individuals to forge a solution that will aggressively address the issue of access to justice in the future. Recently, the Task Force presented its suggestions to the Board of Governors. The organizational model is an independent Board modeled after the Bar's Board of Continuing Legal Education. The purpose of this Access to Justice Board would be to assure access for low- and moderate-income residents of the state of Washington to the civil justice system through the delivery of quality legal services. The Board would develop activities and implement policies that improve civil access to justice for our poorer citizens.

The Access to Justice Board is to be an autonomous body operating under the auspices of the Bar in accordance with authority granted by the Supreme Court. The Board would consist of nine members. There would be one representative each from the Board of Judicial Administration, the WSBA Board of Governors, the Legal Foundation of Washington, the federally funded legal-service programs and the Washington pro bono community. The other four members would be appointed on the basis of a demonstrated commitment to, and familiarity with, civil access to justice issues. At least two would be lay persons of low or moderate income.

A key structure of the organization would be the establishment of committees (with membership outside of those on the Access to Justice Board) whose specific functions will include civil legal services for the poor, volunteer attorney involvement, alternate dispute resolution, resource development, overcoming impediments to access to the justice system, lawyer referral activities and law school clinical legal program development. Funding of the Board would be provided by the Bar Association which will seek co-sponsorship from the Legal Foundation of Washington. An initial budget of $110,000 is contemplated. $60,000 of this budget would come from other programs previously in place that will be eliminated by the creation of the Access to Justice Board. The Board's offices would be located in the offices of the Washington State Bar Association. Bar Association staff, meeting rooms and equipment would be used to support the activities of the Board.

The WSBA Board of Governors has sent to the Supreme Court a proposed amendment to GR 12 to establish the Access to Justice Board. In its rule making capacity, the Supreme Court will be publicizing this proposal and seeking input from interested parties.

I urge you to review the proposal and add your voice to those who believe that our profession must stand for access to justice for all in the 21st century.

How WSBA Dues Are Spent

I have, on many occasions, used this column to talk about WSBA finances. Usually that discourse has been on the "macro" level, i.e., how many thousands of dollars go here and how many thousands of dollars go there. Today I'd like to talk about how WSBA dues are spent on the "micro" level, i.e., how an individual's annual dues are spent. I realize now that I probably should have written this column first, but what can you expect from someone who accidentally took the second semester of a two semester economics course without ever taking the first semester? [The first couple of weeks I wondered whether I—a political science major—was numerically impaired or whether those business majors were smarter than we poli sci majors suspected.]

What follows below is a chart—in alphabetical order—of the various categories within the WSBA budget. I took the net profit or loss of every category in the FY 93 budget and determined how much of the standard $195 annual dues was used to pay for that category.

Budget Category	**Net Expese**	**% of Member Dues**	**Dollar Proportion of $195.00**
Access to Justice/Pro Bono Support	57,778	1.71%	**3.33**
Administration	627,175	18.53%	**36.13**
Admissions/Bar Exam	41,497	1.23%	**2.40**
Audits (For Cause and Random)	99,466	2.94%	**5.73**
Bar News	114,920	3.40%	**6.63**
Clients' Security Program	105,453	3.12%	**6.08**
CLE - Publications	(50,189)	(1.48%)	**(2.89)**
CLE - Seminars	27,144	0.80%	**1.56**
Communications/Public Affairs	240,923	7.12%	**13.88**
Court Rules Review	22,980	0.68%	**1.33**
Discipline	1,123,257	33.19%	**64.73**
Fee Arbitration	20,015	0.59%	**1.15**
Law BBS (electronic bulletin board)	(1,742)	(0.05%)	**(.10)**
Lawyers' Assistance Program	197,084	5.82%	**11.35**
Leadership	180,345	5.33%	**10.39**
Legislative Program	166,425	4.92%	**9.59**
Local Bar Support	23,560	0.70%	**1.37**
Mandatory CLE Compliance	43,728	1.29%	**2.52**
Membership Records/Licensing	135,848	4.01%	**7.82**
Resources Directory	3,753	0.11%	**.21**
Sections	72,916	2.15%	**4.19**
Young Lawyers Division	95,866	2.83%	**5.52**
Contingency Budget	29,505	0.87%	**1.71**
Reserve Allocation	(25,609)	(0.76%)	**(1.50)**
Convention (discontinued)	17,800	0.53%	**1.03**
Law-related Education (discontinued)	14,602	0.43%	**.84**
Totals	3,384,500	100.00%	**195.00**

Individuals can draw their own conclusions from the information shown above. Using a conservative standard, 70 percent of more of an individual's dues is used for "mandatory" programs. If one throws in the Clients' Security Program, the Lawyers' Assistance Program, and *Bar News*, that number jumps to over 80 percent.

A couple of observations: CLE is a net contributor to bar revenues, *Bar News* is a bargain at $6.63 per year, and $9.59 a year for the WSBA's legislative presence is good insurance. Just food for thought.

Sick-Building Syndrome Problems and How They Can Be Solved

by **Elia M. Sterling** *and* **Chris Collett**

There are more and more reported incidents of "sick" office buildings. This problem was first recognized and studied in Scandinavia in the early 1970s and has subsequently been widely studied throughout Western Europe and North America. The most common symptoms reported by occupants of sick buildings include mucous-membrane irritation, eye irritation, headaches, lethargy, fatigue, nausea, dizziness and skin rash or itchiness. These symptoms are accompanied by complaints of a lack of fresh air, stuffiness, inadequate temperature control and unpleasant odors. A building is defined to be sick when more than 20 percent of the occupants report symptoms on a regular basis.

An office building that does not achieve adequate environmental conditions can affect not only the health of occupants but also office productivity. If building occupants are satisfied with their indoor environs, the prevalence of health complaints is lower, absenteeism is decreased, and the work place is generally more productive. This has been demonstrated in one study shown, in Figure 1, of Vancouver office workers before and after their company relocated to a modern-type office building (Sterling, 1983). The graph of absenteeism demonstrates a dramatic increase related to the prevalence of health and comfort complaints after relocation. Both health and comfort problems reduced office productivity.

It has been estimated that up to 90 percent of the currently available office building stock has potential for becoming a sick building. An article in the *American Institute of Architecture Journal* warns that the single most important area of liability litigation facing architects and engineers is that of public health hazards associated with the environmental performance of buildings (LePatner, 1987). Examples of such litigation to date include materials such as asbestos and formaldehyde. Other recent examples are carpets, radon-generating components of buildings, microbial contamination of air conditioning systems and exposure to toxic construction materials during remodeling.

Fortunately, such problems can be limited. To avoid sick buildings, architects and engineers need to understand the health and comfort problems that can be created by poor building design, construction, operation and maintenance.

Table 1 provides a summary of what is now known about specific causes of sick building syndrome. The table presents the results of 529 investigations undertaken by the U.S. National Institute for Occupational Safety and Health (NIOSH, 1989) and 1362 investigations undertaken by Health and Welfare Canada (Kirkbride et al., 1990). (See Table 1, page 10.)

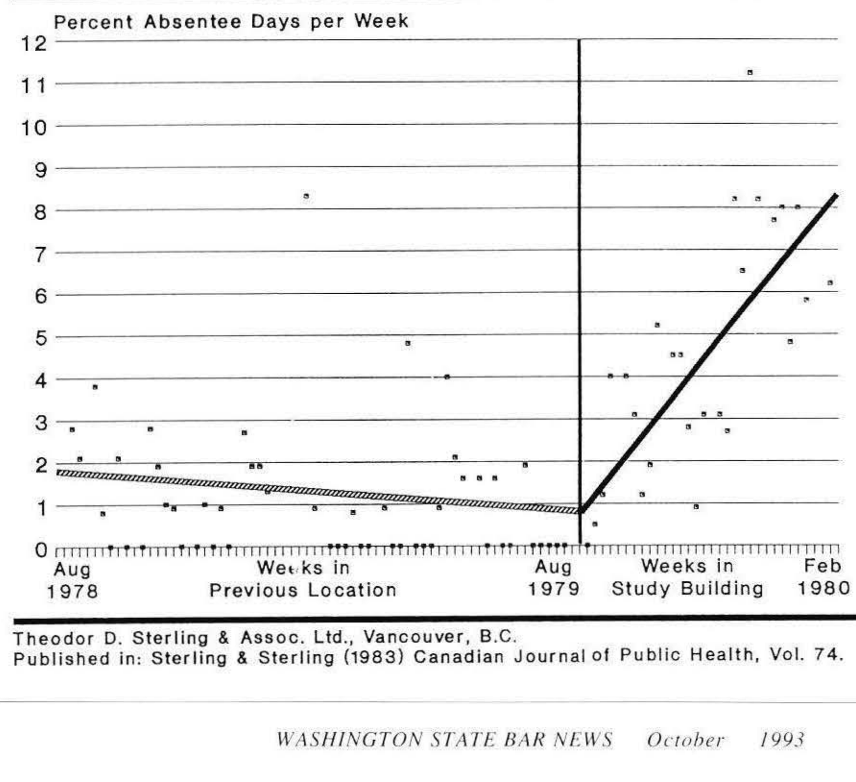
The findings of the U.S. and Canadian agencies are remarkably similar. In over 50 percent of investigated buildings, inadequate ventilation was identified as the primary cause of IAQ problems. The term "inadequate ventilation" refers to a range of HVAC-related inadequacies such as lack of outside air, poor air distribution, poor thermal control and inadequate maintenance procedures (Collett and Sterling, 1988a).

Other identified causes include contamination from specific indoor sources (12 to 15 percent of investigated buildings), infiltration of outdoor contaminants (9-10 percent), contaminants from building materials and interior furnishings (2-4 percent) and microbial contamination (1-5 percent).

An illustration of the complexity of

FIGURE 1

Absentee Rate of Office Workers Before and After Relocation



Theodor D. Sterling & Assoc. Ltd., Vancouver, B.C.
Published in: Sterling & Sterling (1983) Canadian Journal of Public Health, Vol. 74.

investigating IAQ problems is the finding that the cause could not be determined by the investigators in between 13 and 24 percent of the buildings being investigated.

The experience of other researchers has been similar, with inadequate ventilation consistently having been identified as the major cause of IAQ-related problems in offices and other nonindustrial work environments (Robertson, 1988. Rask and Lane, 1989; Nathanson, 1990).

While the reported findings from NIOSH and Health and Welfare Canada provide an important insight into the causes of IAQ problems, the summary tables may oversimplify the field situation. The data in Table 1 summarizes one primary problem for each investigated building. However, our own field experience rarely identifies a single problem in a building. Typically, several inadequacies are identified within a building which contribute to occupant discomfort and ill-health.

Table 2 summarizes our research groups' findings of 85 buildings in Canada, the United States and South America. The table shows specific causes that have been identified as contributing to IAQ-related problems.

Our findings are generally similar to those of government agencies and private-sector researchers. The identified causes of IAQ-related problems can be broadly categorized into two types: design and operational inadequacies of HVAC systems and the presence of specific contaminants from a variety of sources. These two categories are not mutually exclusive. For example, the presence of elevated formaldehyde concentrations resulting from off-gassing from interior furnishings may be diluted by adequate ventilation or intensified by a lack of outside air or poor air distribution. From our experience, occupants most often complain of discomfort (e.g., too hot, too cold, stuffiness, lack of fresh air) and a series of short-term acute symptoms (headache, fatigue, mucous-membrane irritation) which are typical of the sick building syndrome, rather than chronic health impairment.

In our experience, the single most frequent cause of occupant complaint is inadequate control of the indoor environment by the mechanical ventilation system (36 percent of all identified causes). Problems of an inadequate outside air supply and poor air distribution within a space can be related to both the design and operational characteristics of the HVAC system. Design problems may be a function of the design parameters of a building with low outside air ventilation rates desired for optimum energy efficiency or minimum code requirements. Operational deficiencies include building operators' closing of outside air dampers (again for energy efficiency) inappropriate minimum damper settings (particularly in variable-air-volume systems), unbalanced air distribution systems and the presence of barriers to effective air distribution, such as partitioning of a space or occupant blocking of diffusers.

A dramatic reduction in ventilation standards may be the major reason that inadequate ventilation has been shown to be the predominant cause of sick buildings in North America. In 1975, the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) reduced the recommended level of outside air ventilation from 25 cubic feet per minute per person to 5 cubic feet per minute per person (ASHRAE 1975). 1975 is when the epidemic of sick buildings first came to the attention of public-health authorities in North America. Figure 2, a graph that relates occupant satisfaction to indoor conditions with the outside air ventilation rate, clearly demonstrates why this epidemic occurred. When outside air is reduced to 5 cfm per person the percent of satisfied occupants is less than 50 percent. When outside air is increased to 20 cfm per person, nearly 90 percent of occupants are satisfied. Increasing the ventilation rate further has little effect. As a result of occupant complaints of

Table 1

CAUSES OF IAQ PROBLEMS IN 1891 WHITE-COLLAR WORKPLACES INVESTIGATED BY NORTH AMERICAN GOVERNMENT AGENCIES

	NIOSH 529 Buildings (1971-88) NIOSH, 1989		HWC 1362 Buildings (1984-89) Kirkbride, 1990	
Problem Type	Number	Percent	Number	Percent
Inadequate Ventilation	280	53	710	52
Indoor Contaminants	80	15	165	12
Outdoor Contaminants	53	10	125	9
Building Fabric	21	4	27	2
Biological Contamination	27	5	6	0.4
Unknown	68	13	329	24

poor ventilation, ASHRAE increased the recommended outside air ventilation rate for offices to 20 cfm per person in 1989 (ASHRAE, 1989a). (See Figure 2, page 12.)

Solutions to the Sick-building Problem

The following sections of this article will deal with solutions to the sick building problem both in existing buildings and in the design and construction of new buildings.

Retrofit of Existing Buildings

Ninety percent of buildings that are going to exist in the year 2000 have already been built. Many of these buildings were constructed between 1975 and 1989, and are likely to experience IAQ problems The State of Washington Department of Labor and Industries is about to implement regulations for "Indoor Air Quality in Non-Industrial Work Environments." These regulations will have a tremendous impact on buildings constructed between 1975 and 1989, precisely the population of buildings that are likely to experience IAQ problems. The regulations will require both proactive monitoring of potential IAQ problems and timely response to complaints.

The approach that Theodor D. Sterling and Associates (TDSA) Ltd. currently uses to conduct, and recommend for, IAQ evaluations consists of the following seven stages:

1. Initial assessment.
2. Assessment of health and comfort

Table 2

SPECIFIC CAUSES IDENTIFIED AS CONTRIBUTING TO IAQ-RELATED PROBLEMS IN 85 BUILDINGS

Cause of Problem	# of Times Cause was Identified	% of Times Cause was Identified
Ventilation Control • lack of outside air • poor air distribution	57	36
Thermal Control • inadequate capacity • operational deficiencies	30	19
Ventilation Infiltration • outside air intake location	16	10
Cross- contamination • parking garage • print shop • smoking lounge	18	11
Indoor Sources • interior furnishings • fibrous insulation	14	9
Microbial Contamination • poor maintenance • water leakage	11	7
Site Infiltration • adjacent industry • underlying soil	4	2
Undetermined Cause	9	6

concerns.

3. IAQ and thermal comfort monitoring.
4. Follow-up IAQ measurements.
5. Ventilation measurements.
6. Development and implementation of mitigation strategies.
7. Post-implementation assessment.

Each of the first five stages does not necessarily have to be completed before conclusions are drawn and Stage 6 (development and implementation of mitigation strategies) is implemented. For example, if the cause of IAQ-related problems is determined at Stage 1 (initial assessment), the investigation would immediately proceed to Stage 6.

Stage One: Initial Assessment

Our investigations are normally instigated by a building owner, manager or tenant in response to occupant complaints of discomfort or ill-health which are suspected to be related to indoor environmental conditions.

The first stage of investigation is an initial assessment in which information about occupant concerns and the physical building are gathered from the following sources:

1. Meetings with the building operator and occupant representatives, e.g., an Occupational Safety and Health Committee or individual who coordinates complaint procedures.

2. Review of available architectural and engineering plans.

3. Walkthrough inspection to identify pollutant sources within and adjacent to the building (e.g., parking garages, print shops, kitchens); to inspect the design configuration and operational conditions of the building's heating, ventilation and air conditioning (HVAC) systems (e.g., local ions of air intakes and exhausts, presence of standing water); and to observe characteristics of the occupied space, particularly in those areas in which occupants report a high prevalence of health and comfort complaints (as determined in previous meetings).

Stage Two: Assessment of Occupant Concerns

Evaluation of the type and extent of reported discomfort and health may be accomplished by extensive questionnaire surveys, formal medical examination, or informal occupant interviews. Our field experience suggests that the investigative approach must be flexible, responding to the specific requirements of a particular project. A standardized questionnaire is of the greatest value in building complexes with large occupant populations. The results may be used to quantify the prevalence and type of health and comfort complaints, and also to determine the spatial distribution of complaints between and within floors. Identification of specific problem locations is important in the development of the sampling protocols used in Stages 3 and 4 (IAQ Assessment).

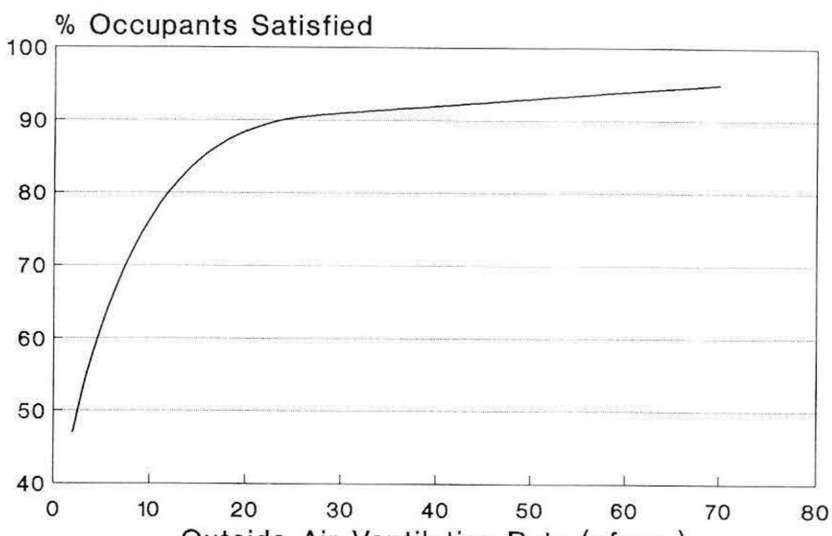
We have also used questionnaire surveys to evaluate the impact of demographic differences (age, sex) and psychosocial factors (stress, satisfactions) on the prevalence of occupant complaints (Klevin and Sterling, 1988).

In investigations of smaller workplaces, or of specific floors within larger complexes, our experience has shown direct interviews to be effective in gathering data regarding occupant concerns, either through a series of structured interviews or informal discussions during the walkthrough inspection.

Interview or examination by an occupational-health physician may be required in cases where specific and serious health impairment has been reported by occupants or diagnosed by their physicians. While this is not a common approach in "typical" building evaluations, it may be necessary in assessing a specific building-related illness in which a known etiologic agent such a microbial contaminant is suspected as the cause of the problem.

FIGURE 2

RELATIONSHIP BETWEEN VENTILATION RATE AND REPORTED OCCUPANT SATISFACTION



Source: Adapted from EEC Guidelines for Ventilation 1992

Stage Three: IAQ and Thermal Comfort Monitoring

The following two stages evaluate the chemical composition and thermal condition of the indoor air. In stage three, five parameters are monitored to indicate the general performance of the HVAC systems:

- carbon dioxide as an indicator of the adequacy of the outside air supply, determined with a nondispersive infrared analyzer;
- carbon monoxide as an indicator of the infiltration of combustion by-products, measured using an electrochemical analyzer;
- respirable suspended particles as an indicator of filtration effectiveness and the general dust loading of the indoor environment, determined using nephelometric monitors;
- temperature and relative humidity as indicators of thermal comforts mea-

sured with a quick-response electronic sensor.

The direct-reading instruments are used to gather data at sampling locations throughout the study area and an outdoor site adjacent to the HVAC system air intakes. Sampling locations are selected to reflect different uses of a space, to incorporate all HVAC zones, and to investigate "problem" locations identified in the previous stages. Multiple sampling passes through each site are undertaken throughout a working day to evaluate diurnal variations. In addition to the sampling passes through a building, one or more continuous monitoring stations are set up to record trends in carbon dioxide, temperature and relative humidity. The continuous monitors are typically placed into "worst case" locations as identified in the walkthrough inspection.

- other environmental parameters that are monitored at this stage, only if a problem is suspected from the walkthrough inspection and assessment of occupant concerns, include lighting and noise levels.

Stage Four: Follow-up IAQ Measurements

Additional IAQ sampling may be undertaken as dictated by the findings from the previous stages, in particular, if specific point sources of indoor pollution are identified in the walkthrough inspections, or the occupants' symptomology suggests the presence of a particular contaminant. Follow-up measurements may include sampling and analysis for formaldehyde, airborne fungi and bacteria, total and specific volatile organic compounds, ozone and nicotine. Evaluation of these substances typically requires integrated sampling techniques with a known volume of indoor air drawn through a collection medium and laboratory analyses of the collected sample. The results of the monitoring conducted during Stages 3 and 4 are compared to available standards and guidelines, such as those developed by the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) including Standard 62-1989: Ventilation for Acceptable Indoor Air Quality (ASHRAE; 1989a), and Standard 55-1992: Thermal Environmental Conditions for Human Occupancy (ASHRAE; 1992). Comparison is also made with IAQ consensus guidelines which identify IAQ concentrations "of concern" and "of limited or no concern" (WHO, 1984). In addition, we compare data gathered in a particular building with data from both problem and non-problem buildings archived into an in-house Building Performance Database (Collett et al., 1987).

Stage Five: Ventilation measurements

If inadequate HVAC system performance has been implicated as a cause of IAQ-related problems in the previous stages through comparison with existing standards and guidelines, but has not been fully confirmed, quantification of ventilation performance parameters maybe necessary. Actions include air flow measurement to determine flows through the duct work, and supply and exhaust vents, and tracer gas evaluation to determine air exchange rates on specific floors of the overall building. Sulfur Hexaflouride (SF_6) has been widely used as a tracer in office buildings. Some of the published protocols for IAQ investigation suggest the use of CO_2 as a tracer, as a simplified, less costly method than SF_6 (Goyer and Nguyen, 1989). However, while CO_2 provides a useful general indicator of the adequacy of the outdoor air supply and IAQ, the accuracy of the use of CO_2 as a tracer gas may be questionable due to the difficulty of achieving the assumptions associated with the CO_2 method under field conditions (Levine et, al., 1992).

Tracer gas, such as SF_6, may also be used to investigate the patterns of air flow within a building, for example, to determine whether air from a parking garage is infiltrating other areas within a building.

Stage Six: Development and Implementation of Mitigation Strategies

When conclusions have been drawn from the implementation of one or more of the preceding stages and the cause(s) of the IAQ problems have been determined, retrofit actions to mitigate design-related problems and recommendations to improve operational and maintenance parameters to rectify the problems and improve indoor environmental conditions must be developed and implemented.

Stage Seven: Post-implementation Assessment

A final, but important, stage is follow-up assessment to determine the effectiveness of the retrofit actions. Ideally, the assessment should include objective measurement of IAQ and thermal parameters. However, detailed follow-up assessment is rarely conducted. One exception was the reevaluation of two office buildings using a Standardized questionnaire (Collett and Sterling, 1988b). In this project, IAQ problems were identified in both buildings and retrofit actions were recommended. The retrofits were completed in one building, while changes were not implemented in the second building. Follow-up surveys of the two buildings' populations showed a significantly reduced prevalence of reported discomfort and ill-health in the retrofitted building and no change in the nonretrofitted building.

The Design of New Buildings

We have now described an approach for investigation and mitigating of IAQ problems in existing buildings. However, an alternative approach is to design and construct a building correctly the first time. TDSA Ltd. has been involved as the environmental quality consultant for a number of recent building projects and has developed a framework for design that, if followed, will help avoid environmental problems in new buildings.

The ideal strategy is for the environmental consultants to begin working with the design team at the program and conceptual stages of a project. Energy consultants are often included at this stage. However, environmental consultants are rarely called upon until well into the design process or, more often, until the building is constructed and problems are occurring.

The environmental consultant should be brought into the project early enough to assist development of the building program and to review design decisions that could influence the ultimate livability of the building. Specifically, the environmental consultants' roles are to:

1. Formulate a program of environmental goals and objectives for the design.
2. Review the design schematics to evaluate whether the environmental objectives have been reached.
3. Inspect the building after construction and test building performance relative to the environmental objectives.

A Design Brief should be prepared by the design team which includes detailed criteria for the building requirements. An integral part of these criteria should be environmental and performance goals. These goals encompass:

- Heating, Ventilation and Air Conditioning (HVAC)
- Illumination
- Architecture
- Commissioning and Operation

Heating, Ventilation and Air Conditioning

Inadequacies of HVAC systems have been identified as the primary cause of complaints in the majority of sick buildings. Because these systems play an integral role in creating a livable environment, goals should be established for ventilation, thermal control, indoor air quality and filtration.

Ventilation Goals should meet or exceed criteria specified in ASHRAE Standard 62-1989: Ventilation for Acceptable Air Quality (ASHRAE 1989a). For example, the standard recommends an outside air ventilation rate of 20 cubic feet per minute (cfm) per occupant for office space. In a recent project, the target was set to achieve a design ventilation rate of 40 cfm/occupant (Sterling, 1992). This target assumed that the configuration of the mechanical system results in a ventilation effectiveness of 70 percent. Ventilation effectiveness is the measure of the actual amount of outside air that reaches building occupants. Assuming a ventilation effectiveness of 70 percent at 40 cfm/occupant, the net result would be an actual ventilation rate of 28 cfm/occupant. This rate slightly exceeds the rate recommended by ASHRAE Standard 62-1989. The quality of outside air should also be considered, alongside the quantity of air. If the outside air is determined not to be of acceptable quality for ventilation purposes, designers should employ appropriate air cleaning technologies.

Thermal goals should be developed to maintain target ranges for temperature, based on ASHRAE Standard 55-1992: Thermal Environmental Conditions for Human Occupancy (ASHRAE 1992). In addition to temperature, humidity has a significant effect on how livable an environment is perceived by the occupants (Sterling et al., 1985). The humidity target for buildings should be established at 30-60 percent relative humidity. This target is based on recommendations contained in ASHRAE Standard 62-1989.

Indoor air quality goals should be established for carbon dioxide and formaldehyde. Carbon dioxide is an index of occupant generated contaminants and formaldehyde is and index of contaminants off-gassed from furniture, fixtures and building materials. Increased outside air ventilation should provide adequate dilution for most other indoor source contaminants. Appropriate goals for carbon dioxide are 600 ppm and for formaldehyde are 0.05 ppm.

Filtration goals should be established for filters to achieve a minimum 60 percent dust spot efficiency based on ASHRAE Standard 52-76: Gravimetric and Dust-Spot Procedures for Testing Air-Cleaning Devices Used in General Ventilation for Removing Particulate Matter (ASHRAE 1976).

Illumination

Goals for illuminance should be established based on the Illuminating Engineers Society (IESNA 1984). These goals are 50-70 footcandles for general office areas and 30-50 footcandles for Video Display Terminal workstations. Targets for spectral quality, day lighting, and task lighting should also be based on tenant use requirements.

Architecture

The overall architectural goal should be to meet or exceed the environmental goals wherever possible in the architectural design of the building through careful consideration of: envelope and glazing, configuration and massing, interior planning, materials and acoustics.

Commissioning

To ensure that environmental-quality targets have been met, a complete commissioning process of the building environmental and energy systems should also be undertaken upon completion and prior to final acceptance. Ongoing building commissioning should include seasonal monitoring of livability parameters such as ventilation, indoor air quality, temperature, humidity and illumination during the first year of operation along with all energy utilization. The commissioning process should be based on ASHRAE Guideline 1 1989: Guideline for Commissioning of HVAC Systems (ASHRAE 1989b).

Conclusions

Sick-building syndrome is a pervasive problem occurring primarily in buildings constructed between 1975 and 1989. It can be solved in existing buildings by implementing a phased program of evaluation leading to appropriate renovations or modified operating procedures.

New buildings can be designed and constructed in which occupants will not experience sick-building problems by following a design process that includes an environmental consultant.

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***Elia M. Sterling**, C.I.E., is president of Theodor D. Sterling and Associates, Ltd.*

***Chris Collett**, M.A., is director of environmental research with the company.*

The Use of Historical Records in

by **Lisa Mighetto** *and* **Gail Thompson**

Hazardous waste cleanup is a costly enterprise. In recent years the expense has increased the importance of determining responsibility for contamination. This can be a confusing and intimidating task; the historical records involved are voluminous, diverse, and sometimes obscure. The first section of this article outlines methods for locating and using historical records to identify potentially responsible parties (PRPs); the second provides examples of how Pacific Northwest historians have conducted these searches.

Attorneys often help corporate clients who are PRPs for cleaning up hazardous waste sites. Liability under Superfund legislation broadly encompasses present and past owners, operators and transporters, so companies that have leased land or industrial facilities, or purchased land that has since proven to contain contaminated soil or water, have found themselves at least partially responsible for cleanup of sites that they had little or no role in contaminating.

Information about past activities helps environmental engineers characterize the nature and extent of on-site contamination. Previous industrial use may be evident in many cases, but the buildings, tanks and other structures are sometimes eradicated before a property is sold. The current owner may not discover the contamination until development is started. Maps of former operations and descriptions of earlier industrial practices provide a basis for engineers to design and interpret their field-testing programs. Historical records also reveal past conditions and can help to determine resource values for natural-resource damage assessments.

Through historical research, attorneys can inventory and help identify other PRPs, so that their clients do not bear sole responsibility for cleanup costs. The age of the records is not as important as how they are located, corroborated, analyzed, presented and documented. Producing a history of operations and practices that is supported with copies of past records can identify a broad range of PRPs, provide a basis for favorable settlements with these parties, and furnish evidence and expert witnesses if litigation later is needed. PRP searches also can help determine practices in the vicinity of a contaminated site.

Investigation of the sites includes the documentation of hazardous waste production, transportation and disposal practices, as well as property ownership. A wide variety of documentation is available. Suggested steps in conducting research are:

1. Start with a regulatory history.

Narrow the scope of the research by examining the history of the use of the substance. If a substance was not available until the 1940s, for example, the search could begin with that decade. A preliminary step is to identify the paper trail likely left by the production, handling, and disposal of the substance. Many federal, state, and local agencies are involved in tracking hazardous materials. An effective research design traces the agencies responsible over time for recording pertinent data. Two primary factors determine the potential volume of documentation: the time period during which the site was contaminated, and how toxic the contaminant is.

The time period is crucial because regulation of hazardous substances has improved markedly in the last 20 years. Before 1970, regulation of most hazardous substances was weak and diffuse. The National Environmental Policy Act of 1969 and the subsequent establishment of the Environmental Protection Agency (EPA) were a watershed in the federal government's regulatory effort. As the environmental movement grew in the 1970s, it also spurred greater state and local regulation of hazardous substances. It is easier to compile regulatory information on hazardous waste sites that date from the 1970s or 1980s than it is on earlier sites.

The degree of toxicity of the material affects the volume of documentation, since regulatory agencies have gradually broadened their definitions of what is hazardous. Pesticides, for example, have been regulated more stringently and for a longer time than petroleum products. Moreover, different agencies have different definitions of what is hazardous: transportation agencies are concerned about flammable substances; worker health and safety organizations generally rank substances by their degree of toxicity; and environmental protection agencies are broadly concerned with potential environmental degradation.

A review of the regulatory history of a particular hazardous substance often shows which agencies assumed responsibility for monitoring production, transportation and disposal of the substance. Some substances, such as pesticides, are tracked by both federal and state agencies, whose records are more often complementary than duplicative. Records concerning the transportation of hazardous materials are found at the federal, state, or local level depending on whether the substance was imported from another state or was transported on federal or state highways.

2. Check agency records.

Many of the data collected by regulatory agencies are temporary and do not survive more than a few years. The schedule for holding such information is usually regulated and can be readily learned: sometimes documents survive in other forms after they are scheduled for destruction—in computer databases or printed studies by the agency, in microfilm collections or in litigation files.

The researcher must bear in mind the history of the agency. When regulatory functions are transferred from one agency to another, the files are moved too. For example, when EPA was established in 1970, it acquired many files generated by predecessor agencies. Initially, the regulation of pesticides was transferred from one agency to another, primarily within the Department of Agriculture, but in 1970, most extant records were consolidated in the EPA. In Washington, Idaho and Montana, the state departments of agriculture also regulate the pesticide industry; their records complement those of the EPA.

HAZARDOUS-WASTE CLEANUP PROJECTS

Most data collected by regulatory agencies are transferred to repositories for a specified number of years before being destroyed. Federal documents are sent to the regional Federal Records Center (FRC), whose northwest branch is located in Seattle. There the data remain in the custody of the originating agency and are available to the public only upon request under the Freedom of Information Act or with written permission by the agency. FRC retains the documents for a given time period, after which they are destroyed or accessioned into the regional branch of the National Archives. There, the records become available to the public. FRC are both part of the National Archives and the National Archives and Records Administration.

In Washington, documents generated by state and county agencies also move through a two-tiered system, going first to the state or county record center, after which they are destroyed or accessioned into the State Archives or one of its regional branches.

3. Check additional archival records.

In addition to regulatory agency documents, other sources of information for research on hazardous waste sites may include corporate records and histories accessible in local and state historical societies. Such records can contain a variety of information including a company's capital expenses, insurance coverage, historical photographs, and drawings and surveys of relevant features at a hazardous waste site, such as underground tanks, surface impoundments or discharge points.

Libraries often have newspaper indexes that are helpful in locating articles with information on past activities and practices. The Seattle Public Library, for example, has a newspaper index for Seattle area businesses; the Pacific Northwest Collection in the Allen Library at the University of Washington and the Washington State Historical Society in Tacoma have newspaper subject indexes for Northwest history.

Other sources that may prove useful in researching hazardous waste sites include city directories, historical maps and historical photographs. These are generally available at university, public and historical society libraries.

Examples of PRP Searches

Below are examples of PRP searches undertaken by historians throughout the Pacific Northwest.

Columbia River Port PRP Search

In a PRP search for a port on the Columbia River, which involved contamination of the ground water by petroleum products, historians examined the following sources:

- *Current and Inactive Lease Files*, for information on the port's leases, property transfers and development of facilities;
- *Sanborn Fire Insurance Maps*, for information on the location of historical buildings and structures, as well as information on how they were used;
- *Minutes of the Port Commissioner's Proceedings*, for an overview of the development of the port;
- *Security Log Books*, for daily notes of the security personnel (these could contain possible references to oil spills or other occurrences);
- *Employee Interviews*, from former and current workers from navigation companies;
- *Clipping File at Local Historical Museum*, for additional information.

Based on these sources, it was possible to inventory and trace the dates and locations for fuel oil bulk plant facilities in an area not documented in the port's lease files. Historians also conducted a file search at the Corporations Division of the Secretary of State's office in Olympia, in order to determine which businesses involved at the site were still active in the state of Washington. This project resulted in a list of 43 PRPs—nearly double the number provided initially by the client.

Pesticide laboratory PRP search

In another PRP search, historians researched and documented suppliers of chemicals that contaminated a former pesticide laboratory in central Washington. The study began with a review of public records maintained by the EPA Region 10 Hazardous Waste Division. EPA officials said that the agency's records of basic chemical suppliers was proprietary information and could not be obtained, so researchers then focused their efforts on developing a list of pesticides formulated at the site. State records gave the formulas and identified the active ingredients. References to annual agricultural handbooks allowed historians to identify the chemical manufacturers that supplied those ingredients.

These data enabled historians to identify some of the pesticide company's suppliers of basic chemicals. Their research revealed 61 pesticides produced at the site, 13 of which had only one apparent source of supply.

Because the company records of the company had been destroyed, researchers examined the history of pesticide regulation and the records of various federal and state agencies that regulated the company's operations. Finally, researchers analyzed the data collected on pesticides and compiled documentation on those companies which appeared to have supplied the company with chemicals. Historians compiled a list of PRPs that doubled the number of those previously identified.

PRP search for pole-treating site

In a third project involving hazardous waste, historians contracted with an Idaho company to investigate a pole-treating site in Montana. This property had been owned by a railroad company that maintained a roundhouse on the premises. Historians drew information from:

- *Mansfield Library, University of Montana*, for a collection of railroad company records, as well as secondary sources;
- *Montana Historical Society Library*, for historic maps and the annual reports for the railroad company;
- *Minnesota Historical Society*, for a variety of railroad files, including papers of the president and chief engineer, papers of the company's mechanical department, and engineering drawings;
- *National Archives*, for early aerial photographs of the site, showing the lo-

cation of the roundhouse and associated facilities.

Historians also conducted oral interviews with former railroad employees. As a result of this research, historians concluded that the railroad's limited activities at the site had little potential to produce soil contamination.

PRP search for tailings site

The Bureau of Reclamation contracted with researchers to provide information on past mining and/or milling activity at a tailings site in Montana. The Bureau requested an ownership/operations chart for the mining claims included in the site, as well as a list of contact names and addresses for all current owners and current and past operators. Historians located valuable information in the following repositories:

- *Mansfield Library, University of Montana, Missoula;*
- *Montana College of Mineral Science and Technology, Butte;*
- *Montana State Historical Society Archives, Helena;*
- *Bureau of Land Management, Billings;*
- *Yellowstone Park Archives, Wyoming.*

These sources included mining journals, local histories, mineral survey plats for patented claims, and state and federal publications. Historians also checked annual reports, Certificates of Authority and Certificates of Withdrawal in the corporate files for information on companies associated with the claims. Historians also traced a chain-of-title for the site, which revealed a number of owners.

As the cost of hazardous waste cleanup continues to increase, so does the importance of determining responsibility for contamination. Historians familiar with the voluminous and diverse records offer a valuable service to attorneys and engineers searching for potentially responsible parties.

Lisa Mighetto, Ph.D., is a public historian with Historical Research Associates (HRA)

Gail Thompson, Ph.D. is the program manager at HRA. The company has offices in Seattle, Albuquerque and Missoula.

TIMBER SALE

by **Roderick D. Johnston**

The increased value of timber has prompted landowners to consider logging their property. Unless a property owner has enormous land holdings or elects to partially cut over time, logging is usually not a repeat business. It is therefore crucial to build an agreement that protects your client's timber and land interest. Remember that properly written logging agreements should reference both logging and construction. Logging, yes. Why construction?

Construction expertise is essential because haul road and skid trail construction come with timber removal. Drainage, earthwork, erosion control and road surfacing must be considered. Fire control and emergency equipment include bulldozers and excavators. At times temporary bridges are needed. Other factors such as slash abatement, hydroseeding, site restoration, and street cleaning can be conditions of your client's permit to log. Construction factors supplement logging.

Timber removal involves linking competent representation to qualified contractors under an umbrella contract that best represents your client. If the timber has been evaluated and all permits are issued, the following items should be considered for inclusion into your logging or timber sale agreement:

1. Document only process addresses such as a business or resident location.

2. Attach a site map that is not only readable but up to date. Include meets and bounds. Delineate all wetlands clearly and note how they are field marked. Any other resource protection must be explained inclusive of any standards to be attained. Identify all skid trails and haul road locations. Note how the trails and roads are located or flagged in the field.

3. The legal description will establish jurisdiction and has precedence over any maps. This is important because varying

& Logging Agreements

jurisdictions require different slash removal techniques.

4. The product being cut and approximate volume being removed should be noted. Include how the timber is marked or by what means the logger will be directed to cut. Timber size (whether dead or alive) and species should also be included.

5. If you are selling standing timber and not paying a logger based on mill return, indicate the price per measure. Measure can be by the board foot, cubic foot, weight or lump sum. If your timber is in poor condition and marginal in value, it may make sense to sell by the acre. Identify how logs are to be graded and understand scaling procedures. Be sure to identify when ownership of logs passes from seller to purchaser. Remember, trees and logs are personal property. Land is real property.

6. Specifically identify the type of machinery expected to be used. Note equipment make, model, capacity, and size. Your client should be interested in consistent performance with minimal site impact. Include verbiage that will allow machinery substitutions only when your client is convinced that changing logging machinery will not compromise quality of work. Document the cutting prescription and type of logging system agreed upon to attain the desired cut. Note, for instance, when and where hand felling is to be used instead of mechanized harvesting. If you are protecting residual trees, include how they are to be protected and any penalties that will apply if they are destroyed.

7. If you have a preferred logging sequence and schedule, include these in narrative and graphic form. Hold all work to a specific timetable. Since events beyond the control of the owner or logger happen, it's wise to provide a vehicle for time extensions if needed.

8. Clearly delineate construction debris from logging debris while specifying how it is to be handled. It is better for the owner to ensure permit compliance than a state or local inspector.

9. Consider requiring a performance bond. In some cases, the owner may require that the logger make performance deposits or the owner may elect to hold a performance retainage from mill receipts. Generally, as the project continues, risk decreases. This should be reflected by requiring gradually decreased performance deposits of the logger. Clearly explain all mechanisms for releasing bonds and retainage.

10. Require the logger to submit copies of all records including mill receipts, time slips and potential change orders. Stay on top of this one. It's easy to lose track of records while logging.

11. Specify hours of work and any other constraints that must be adhered to.

12. Payments: How often do they come and to whom are they made? Payments should be made only in exchange for appropriate logger lien releases. For this reason alone, it's wise to pay one individual or company and let that person pay all trades and subcontractors within his operation. Require the logger to submit to your client copies of all subcontractor paid receipts. It is also good policy for all cash flow from the mill to go through the landowner. Do not rely on the logger to collect and transfer any mill payment to your client. Some contractors realize that a threshold exists beyond which most clients will not pursue fighting them for payment. Set up all cash flow to go from the mill through your client to the logger.

The other option is to trade a percentage of timber volume for performance. This avenue provides a clean method of payment and easy bookkeeping. It is also more speculative than paying the logger by the unit. Your client is dealing with a logging firm that knows its production capability and the current value of timber. They know what you don't know concerning haul and skid trail construction. As land parcel and value of timber increases, it makes more financial sense to avoid a percent split.

13. If the logger is to perform construction, specify exact quantities of import rock per ton, length and diameter of culverts and lineal footage of haul and skid road to be constructed. Tie all construction contract items together. Be exact in all quantities. If changes occur, your contract will have already included an established watermark on quantities.

14. Your client must remain free of unnecessary risk and damages resulting from logger activity. Cover responsibility of, and damage payment due to fire, negligent logging and personal injury on your client's property.

15. The logger must carry comprehensive general liability, auto, and property damage insurance.

16. Include clauses that allow the client to alter the terms of the contract at any time. Compose a clause that allows the owner the right to terminate the agreement if breach of contract or notice of intent to default occurs.

17. Provisions for disputes, arbitration, and related fees should be included.

18. If your client has agreed which mill(s) or log buyer(s) are to receive all timber, include this information in the contract with a provision that allows the haul destination to change, depending on market conditions and your client's satisfaction with mill or buyer policy.

19. If your client is developing a property and has other contractors and trades on site, it is sound management policy to contractually require the logger to attend weekly project meetings.

20. Specifically describe in addendum form what your client expects the result of this logging to look like. Insist that your client speak honestly and openly with the logger about this subject before you generate a statement of expectations. Landowner misconceptions concerning the visual result of logging are common and should be avoided. It is a good idea that your client support this addendum by periodically walking the site with the logger during working hours to discuss what's happened, what's happening and what's going to happen.

21. Agree upon, and include in the contract who will make bad weather calls and at what time of the day.

22. Define all flagging used on site, specifying what each color means.

23. Attach a list of definitions to the contract to keep you, your client and the logger tuned to the same language. I see this as especially important when dealing with leave trees, protective fencing and when specifying a cut, other than a clear cut.

These are general guidelines and may not specifically apply to all logging activity. One item does apply to all logging agreements and that is the need to invest in planning. Your clients may only get one shot at maximizing their return from selling timber. Keep on top of their contract and you will have earned a client.

***Rod Johnston**, a project management consultant, is president of Venture Scope, Inc. and editor of the newsletter,* Project Logic. *He specializes in land development and construction control. Venture Scope, Inc. is located in Fall City at (800) 291-2303.*

RECENT ENVIRONMENTAL LAW PUBLICATIONS: A REVIEW

by **Lindsay Thompson**
Bar News *Editor*

With an era of vastly increased environmental legislation in prospect, publishers are offering up a variety of books treating areas of the topic.

West Publishing Company released *Sustainable Environmental Law: Integrating Natural Resources and Pollution Abatement Law from Resources to Recovery* (hardcover, 1529 pp., 1993) early this year. It might be called the next-generation environmental-law text, following up on the "first generation" of texts from the 1970s. It provides the historical background of attitudes and social contexts leading into the current arena of environmental laws. It also explains how U.S. environmental law is practiced, how it operates, how it is managed and ways it can be improved.

Coordinated by the Environmental Law Institute and written by both ELI members and industry experts, *Sustainable Environmental Law* is the first book to organize environmental law in a proactive, systematic approach called "resource to recovery." The approach explains all the laws that apply to an activity from the time resources are allocated for extraction, through their manufacture into products, and on through their disposal and retrieval for recycled use. It tries to show how the laws actually govern human behavior and how they interrelate.

Chapters cover key economic sectors—agriculture, wildlife, fisheries, timber, energy production, chemicals and metals. The geographic scope and history of the harvesting, energy and feedstock industries are reviewed. Also included are the environmental laws applying to these industries, objectives and administration of laws governing them, and an evaluation of whether they are effective in achieving their goals.

The book will probably find its main market as a law school textbook, but it is still a useful treatise for the practicing lawyer. A number of contributors and advisors are old hands at Pacific Northwest environmental-law issues: Wilderness Society vice president and UW law graduate Karin P. Sheldon contributed the chapter on wildlife. Eldon V.C. Greenberg, a lawyer with Garvey Schubert & Barer's Washington, D.C. office, produced the chapter on Ocean Fisheries. "Timber," by Kenneth Rosenbaum, a former counsel and legislative director to Oregon congressman Ron Wyden and graduate of the Environmental Law program at Lewis & Clark Law School, is an excellent overview of the region's most vexing issue. Former Perkins Coie attorney Thomas Starrs considers solar, wind and geothermal energy. The work is printed on recycled paper.

The ABA General Practice Section seeks to lead lawyers through the maze of environmental regulations and liability issues in *Attorney's Guide to Environmental Liability in Transactions* (softcover, 318 pp., 1992). The book outlines the due-diligence process for assessing environmental risks associated with property, including examining the history of the property and past business practices. It also describes common environmental liability problems and the federal laws that apply to them.

Other topics of discussion include Superfund liability; state property transfer laws; general reporting requirements, SEC requirements and federal guidelines; structuring transactions, federal bankruptcy laws and how they interact with environmental laws; insurance coverage and how environmental liabilities influence it. Users will include real estate lawyers involved with property transactions; corporate counsel arranging the buying and selling of businesses; securities lawyers structuring stock and asset transactions; and lawyers called on to evaluate environmental regulations affecting business transactions.

Originally published by the Illinois Institute for Continuing Legal Education in 1991, the book is being distributed nationally by the ABA because of its comprehensive scope.

The ABA Section of Natural Resources, Energy and Environmental Law has weighed in with *The Environmental Law Manual* (softcover, 520 pp., 1992). It seeks to provide strategies for dealing with the Environmental Protection Agency and the 1990 Clean Air Act regulations. It is divided into seven subject areas: administrative procedure and judicial review, solid and hazardous waste, water quality, air quality, business transactions and compliance, enforcement and citizen suits and toxic torts.

A New Bureau of National Affairs book, *Clean Air Law and Regulation* (hardcover, 425 pp., 1992) seeks to interpret clean air law and anticipate and respond to new regulatory schemes. Congressman Henry Waxman, author of a statutory overview, says, "The fight for clean air is not over, but we have accomplished a great deal in mapping out a detailed and enforceable plan of attack."

Elements of that plan, detailed in the book's chapters, include the Clean Air Act of 1990, issues of science and technology, mobile source fuels and additives, regulation of stationary sources, ozone protection, acid rain, permits, compliance and judicial review, motor vehicles, air toxics and the like.

Meanwhile, Matthew Bender & Co. continues its program of building a library of practice helps on compact disc. *Environmental Law*, its newest collection, "takes both the novice and seasoned attorney through every aspect of environmental law in an electronic format."

The one-disc library includes the *Environmental Law Practice Guide*, named "best law book of the year" by the Association of American Publishers; *Treatise on Environmental Law*; *Environmental Law in Real Estate and Business Transactions*; *The Law of Hazardous Waste*; and *Zoning and Land Use Controls*. Treatises for California, New Jersey, New York and other special-interest state publications and newsletters are part of the system. Additional primary-source material is planned for addition in updates of the library.

Also included in the library are sample pleadings for toxic tort cases; step-by-step guidance for lenders about risk management and due diligence in commercial loan transactions; model contract language for use in allocating environmental risk and liability among parties to transactions; and consideration of the complexities of environmental insurance policies.

Bender plans to update the library quarterly. Each library includes the CD and a floppy disc containing the search software. Hardware recommended for stand-alone use is 480K base memory, a 286 computer or above; a CD-ROM drive and BJS adapter board, interface cable, SCSI terminator and setup software.

by **Lindsay T. Thompson**
Editor, Bar News

Seattle, September 9-10, 1993

Present: The president and Board of Governors, President-designate Paul Stritmatter, and Governors-elect Mary Fairhurst, Dan Hannula, and Steve Toole.

Also present: Mary Gallagher Dilley (Administrative Law Judges' Assn.); Evelyn Fielding (Government Lawyers Bar Assn.); Dennis Harwick (WSBA executive director); Jim Kaufman (Washington Assn. of Prosecuting Attorneys); Alicia Lowe (WSBA Young Lawyers Division); J. Richard Manning (King County Bar Assn. Trustees); Linda Moran (Washington Women Lawyers); Bill Phillips (Washington Defense Trial Lawyers Assn.); Larry Shannon (WSTLA); Rosemary Strunk (Legals P.S.); Lindsay Thompson *Bar News* (editor); Robert D. Welden (WSBA general counsel).

Preliminaries: The Board met in executive session for an hour, approved the minutes of the last meeting and heard outgoing president Steve DeForest report he was already getting letters titling him "Immediate Past President." President-designate Paul Stritmatter asked the Board to approve the appointment of a task force to review WSBA governance. Governor Wayne Blair offered a motion to create just that. He hastened to add that the task force's purpose will be to "take an objective look—it's not an implication that things will change in any particular, pre-ordained way. Governance just needs looking at." Governor Joe Nappi commented, "We're not necessarily wedded to the current structure," but expressed concern that a pre-ordained result might be what we'll get in the end as a result of who gets appointed to the Task Force. Stritmatter replied he didn't mean to suggest the Board opposes change. "Other people may think that. My intention is to seek recommendations from representative legal groups, but I don't plan to make appointments based solely on a preference for change or no change."

"Who will chair this task force?" Governor Jim Handmacher asked. "I think Wayne Blair is the logical choice," given his work on WSBA bylaws revision and organization over the last two years. Governor Alva Long, whose term ended the next day, thought "there's merit in a nongovernor chairman. The job will require travel around the state, and that's a burden for a sitting governor."

A lengthy discussion followed about whether there would be too many sitting governors on the task force, whether there should be a nongovernor co-chair, and where the money to pay for the task force would come from. The Board then approved the creation of the task force.

Stritmatter also told the Board he'd had a number of discussions with Chief Justice Andersen on a number of issues.

Dennis Harwick reported on attending the ABA meeting in New York, orientation of new governors, and a Board dinner set for January 11 with the Washington ABA delegation and ABA president William Ide.

Uh, Gee, Do We Have to Tell You What We Want? In 1992 the Washington Legal Foundation (D.C., that is), filed a petition with the WSBA to regulate contingent fee agreements. When Governor Tom Chambers ventured a mild expression of opinion about the rule, the Foundation promptly issued a paint-blistering *ad hominem* attack on him. The Rules of Professional Conduct Committee looked at the Foundation's brainstorm and decided current Washington rules adequately protect the public from contingent fee abuse. Ever helpful—if shy and generally clueless—the Foundation is back with a petition for changes in the Rules of Professional Conduct regarding advertising and solicitation by lawyers. "[W]e do not pretend to be experts on the precise extent and nature of attorney advertising," they allowed, and said they were "sincerely sorry" that their previous petition "generated some ill-feeling within the State Bar." They say they take a middle of the road approach to regulating attorney advertising. "The WLF members in Washington who requested that we file this petition have asked that their names not be used," the Foundation advised. But they were willing to supply the names of some nonmember lawyers in Washington who'd discussed the petition and whose "reaction has been generally favorable."

The Board referred the petition to the RPC Committee for consideration in the normal course of business.

And Rule 8.4(g) Begat 8.4(h): Word came out, during the meeting that the Supreme Court approved RPC 8.4(g), which bans sexual harassment. The Board turned to proposed RPC 8.4(h), which would ban sex with clients. Diane FitzGerald and Larry Mills appeared for the Rules of Professional Conduct Committee, which unanimously recommended passage. FitzGerald said the rule was based on the Oregon model rather than the California rule. The California rule "holds that attorneys may not demand or coerce sex from clients, nor may they enter into a sexual relationship that hampers representation. Sexual relationships that pre-date the attorney-client relationship are allowed unless bar prosecutors can prove the quality of representation was undermined." A September 13 *National Law Journal* article said that Oregon's rule, like the proposed Washington rule, makes the ban explicit. New York's Court of Appeals has imposed an absolute ban on matrimonial lawyers entering relationships with clients during representation, and it is considering covering other lawyers, FitzGerald said

A bright-line rule is the better choice, FitzGerald held

Governor Mike Larson wondered if there could be situations where there wouldn't be a problem, or where the parties could seek advice from bar disciplinary counsel. Disciplinary counsel Lee Ripley replied such a plan would take a lot of staff resources. Governor Steve Tubbs recalled discussion, at the last meeting, over whether there'd be a problem if the relationship had ended before the relationship began. FitzGerald said there were problems with figuring how much time is enough if you put a "when" into the rule. Governor Jim Handmacher said his thinking had moved and he now felt a bright line rule wasn't the best approach. There was more discussion of how you decide who a client is if, for example, you're an attorney general and your client is the State of Washington. After some more discussion of various ways to make the rule more or less restrictive, Governor Vickie Norris declared it ought to be plain such relationships are unprofessional. "Let's get on with it and not lawyer this to death." Young Lawyers president Lisa Lowe told the Board, "The more you analyze this, the more you lessen the force of the message you send. You should trust your disciplinary board." The Board approved the rule, 7-4.

A Break in the Action: The Board lunched with the boards of Washington Women Lawyers and the Legal Foundation of Washington. After lunch Legal Foundation president Bill Bergsten reported on the Foundation's year: again this year, declining interest rates are sharply reducing interest on lawyer trust accounts.

Reform is A Fine Thing, So Long As Someone Else Does It: Almost-president Paul Stritmatter unveiled his appointments to WSBA committees. Under the revised rules of the committee game, each governor gets to appoint one person to each committee (with a few exceptions) who gets reimbursed for mileage. After that, everyone who wanted to be on a committee gets appointed, but no mileage. Immediately, other governors started complaining that Stritmatter's choices didn't take into account *their* choices. Others complained that some of the committees are now too big. Other muttered, darkly, that this experiment in participation will cause all manner of problems. Stritmatter promised a round of consultations to smooth the ruffled gubernatorial feathers.

Ditto: The Board took up a proposal by WSBA disciplinary counsel Lee Ripley to amend the method of selecting citizen members of the Disciplinary Board. In the past, the four seats were rotated within the then eight congressional districts. With nine districts now, that division doesn't work. Ripley proposed a different rotation to take nine seats into account. Governor Mike Larson complained, at some length, that the two King County at-large governors weren't part of the rotation. That this sort of endless grasping for more by King County representatives, who already dominate so much of state bar affairs, might contribute to the alienation lawyers elsewhere feel, or that a little more magnanimity might go further—ah, never mind. You elected them. The Board approved the new rotation.

The Budget: Dennis Harwick told the Board revenue was running $490,000 ahead of last year as the fiscal year was closing. The CLE Department contributed much of the turn-

THE 104TH ANNUAL MEETING

Seattle, Washington, September 10, 1993

The Annual Meeting of the Washington State Bar Association was called to order by president Steve DeForest at 2:05 p.m. The minutes of the 1992 annual meeting were approved. Lem Howell of Seattle, who usually goes for the last word, leapt for the first on a point of order, wondering if there'd be a State of the Courts speech by the Chief Justice. Not this year, the president replied. The Chief Justice sends his regrets. Fifty-year members of the Association were honored. William P. Bergsten, president of the Legal Foundation of Washington, gave a report on the work of the Foundation. President DeForest made some closing remarks. Looking back over the past year, he noted it began with a full plate of problems: the dues increase and rollback referendum; cash flow problems; staff unionization; and $400,000 in budget cuts mandated in December by the referendum. Even though a major portion of the dues increase was intended to re-establish the WSBA financial reserves, thanks to prudent management a small contribution to reserves was still made after the dues were rolled back.

CLE experienced a revival, with revenues up by $375,000. The unionization bullet was dodged in the Legislature and is back before the Supreme Court. Meanwhile, the Board of Governors set up a personnel committee and administrative improvements in employee grievance procedures have been instituted.

DeForest reported on changes made to open up the WSBA committee membership—"a long-term benefit which will improve member access," he called them. An Elder Law Section was created and an Access to Justice Committee finalized to coordinate civil indigent legal-service funding. Efforts to raise professionalism continued. CLE will continue to be closely monitored, DeForest told the meeting. He concluded by predicting a referendum on Alva Long's resolution to break up the Association.

Executive director Dennis Harwick concentrated on the improvement in WSBA finances. In 1991, the Association finished $359,000 in the red; a year later there was a $122,000 surplus. He predicted another year in the black this year, and credited the WSBA staff, volunteer lawyers, and the Board of Governors with making the tough decisions that turned matters around. He concluded by contrasting his vision of the Association's future with that of Alva Long's: "He believes in nuclear winter, and I believe in evolution."

Resolutions Committee chair David Hoff reported his committee had a public hearing September 2 to consider Alva Long's resolution: "Resolved, effective October 1, 1994, the Washington State Bar Associa-

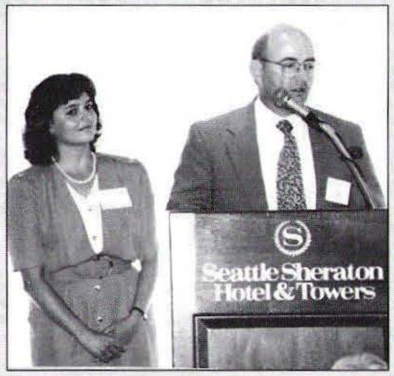
John Gavin: Award of Merit. *In presenting the award, WSBA President Stephen E. DeForest cited Gavin's nearly 60 years of service to the law, his profession and his professional association: "John is the kind of lawyer that exemplifies professionalism."*

Gavin was born in Spokane and attended the University of Washington where he received his law degree. A Bar member since 1935, he served on its Board of Governors from 1947 to 1950. In 1963, he was elected president and served through 1964. He has served as a member of the American Bar Association's House of Delegates, chair of the American Bar Foundation, and president of the Western States' Bar Conference. He is a Fellow of the American College of Trial Lawyers. Gavin is currently of counsel in Yakima to the firm Gavin, Robinson, Redman, Pratt & Crolland, with which he has practiced for 30 years.

A Washington Supreme Court Justice characterized Gavin as "one of the giants" of the WSBA. Gavin's legendary memory, personal integrity and reputation are so highly respected that, often, judges and opposing counsel have relied on his unbiased recollection of testimony of a witness in court, even though the testimony was given several days previously.

Given to either a lawyer or a nonlawyer, the Award of Merit is the Bar's highest honor. First given in 1957 for long-term service to the Bar, it has also been presented in recognition of a single extraordinary contribution.

Pro Bono Award: Spokane office of the Washington Attorney General and Deborra E. Garrett of Bellingham. *This award honors a person or agency for outstanding efforts in providing volunteer legal services to the poor.*



The Spokane Attorney General's Office has been recognized for initiating, in conjunction with the Spokane County Bar Association, an evening legal clinic for low-income residents dealing with family law issues. Starting with two attorneys, there are now over 20 from the Spokane AG's office who have inspired and enlisted volunteer service from secretaries, paralegals and law students, serving over 350 people in the program's first year. Recently, this energetic group has taken on a new pro bono project, offering its expertise on family law-related issues to inmates at Pine Lodge Correctional Facility, a minimum security prison.

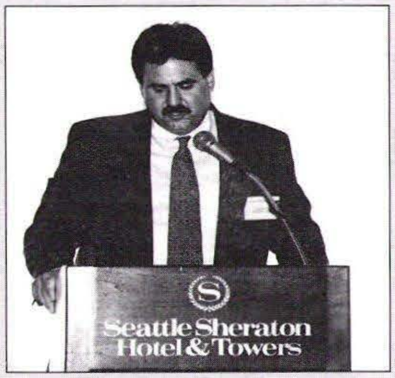
Deborra E. Garrett was also honored for her pro bono efforts. With a BA from Pennsylvania State University and her JD from George Washington University National Law Center, Garrett began her legal career in 1976. Her philosophy is "practicing law is a privilege that comes with an obligation to perform public service."

Garrett's practice has included trying unfair labor cases, serving as a housing attorney and providing legal representation for victims of domestic violence and sexual harassment. Appointed to the State Bar's Legal Aid Committee in 1989, she drafted a survey to determine the gaps between existing bar-sponsored pro bono resources and legal-

service programs and made significant recommendations to address the problem. A strong believer in law-related education, Garrett has taken legal awareness programs into middle, high school and college level classes.

Her skill, vision and advocacy have been invaluable to Whatcom County's Volunteer Lawyer Program. Her first efforts were to ensure that its clients would receive the same quality of excellence they would from a paid attorney.

Those at the Spokane Attorney General's Office and Deborra E. Garrett, who exemplify the dedication to providing pro bono services, are a credit to themselves and an honor to their profession.



Robert D. Wilson-Hoss: Courageous Award. *Recognized for demonstrating exceptional courage in the face of adversity, Wilson-Hoss, an attorney from Shelton, Washington, was involved in* Davis v. Mason County, *a federal civil rights claim arising out of several incidents of police brutality involving the Mason County Sheriff's Department. The claims, brought by five different men, resulted from questionable traffic stops, beatings and filing of "cover" charges by Mason County Deputies. Wilson-Hoss represented the plaintiffs in defense of criminal charges brought against them. All charges were dismissed, the defendants were found not guilty or there were mistrials, and a federal jury awarded the plaintiffs $528,500.*

During the course of the lawsuit, Wilson-Hoss was threatened and harassed many times. Even the court recognized that Wilson-Hoss "personally risked his stature in his community and demonstrated unusual courage and conviction" in trying the case.

"The Washington State Bar salutes Wilson-Hoss for his courage and conviction during very difficult circumstances," said Stephen DeForest during the award presentation.

A graduate of Willamette University in 1972 and the University of Washington School of Law in 1978, Wilson-Hoss, a sole practitioner, has served as president of the Mason County Bar Association, and Court Commissioner. He is active with the Mason County Shelter, Mason County Criminal Justice Advisory Working Team and is very involved in his community.

tion shall not use revenue it derives from mandatory dues assessments except to administer and carry out functions necessary to regulate the practice of law in Washington State, to wit, admissions (including the bar examination), licensing, discipline, monitoring compliance with continuing legal education and trust account regulations, and administering the Lawyers' Assistance Program." Long and Howard Todd spoke for the resolution; DeForest and Wayne Blair opposed it. The Resolutions Committee unanimously recommended rejection of the Long resolution. Alva Long, whose striking Dayglo purple and orange outfit, and term of office, recalled Orwell's remark that there are some things before which even Satire must stand mute, moved his resolution. It's not a matter of opposing or supporting it, he said, you either understand it or you don't. "I feel sorry for those of you who don't," he said. In a strikingly revisionist reading of *Keller v. State Bar of California*, he declared the U.S. Supreme Court has held "thou shalt not spend mandatory dues on nonmandatory functions." Unless, of course, you're the sponsor of the resolution, and fancy sliding the Lawyers' Assistance Program into the mandatory category because it's a pet favorite.

Long said the Washington, D.C. Bar Association passed a similar resolution some years ago, and nothing happened. "My vision is that volunteerism is going to be take over. Members will step in to fill voids created by the lack of funding. I don't think this is the death knell of the Association. We have a dynamic bar whose members can fill voids, if any are created."

Need a lobbyist in Olympia? The trial lawyers have one, Long said. "Where necessary things arise, necessary people will arise to do them." Every half century, we look at the whole structure of the thing," he concluded. Howard Todd seconded the resolution.

Lem Howell recalled he'd predicted spending cuts would be needed several years ago. Now they've been made. "I oppose the resolution. I don't even think the vote should be close. There's no way we should cut the *Bar News*, sections, court rules review, legislative lobbying. If it wasn't for our lobbying, we'd have all been saddled with a sales tax on our fees. You can't devastate the bar. It needs to slim down more, but the resolution goes too far. Don't vote for this crazy resolution."

Mike McKasy, president of the Tacoma-Pierce County Bar Association, said his board of trustees, speaking for themselves, voted 9-3 to oppose the resolution. He said one of the reason there are dynamic local bar associations, cited by Long, is because of the cohesiveness and support the state bar provides. He urged members to vote no.

Bill Bailey, chair of the Litigation Section, thought the resolution's timing ironic: "At a time when people feel disenfranchised, we're voting on killing the organization that can bring people in. The resolution will eliminate legislative lobbying, court rules, judicial selection review, the Young Lawyers Division, pro

Jack R. Dean: Lifetime Service Award. *Dean, of Spokane, was a Board member and WSBA president. The award was presented to his wife, Elise Dean, at the Association's annual meeting on September 10 in Seattle.*

Dean, who died earlier this year, served his profession in many ways during his 37 years as an attorney. After receiving his law degree in 1950 from the Gonzaga University Law School, he worked with attorney George W. Young of Spokane for four years. From 1954 to 1958, he was in partnership with William H. Williams, who later became Chief Justice of the Washington State Supreme Court. After a brief stint as a sole practitioner, Dean went into partnership with (now US District Court Judge) Justin L. Quackenbush. They practiced together until 1980, when Dean became a partner in Dean Keane, Smith and & Hemingway. At the time of his death, Dean was in sole practice.

Dean was on the WSBA Board of Governors (1979-1982) and WSBA president (1987-1988). He also served on the Legislative and Criminal Law Committees and on the Bar's Long-range Planning Task Force. Additionally, he was Trustee and President of the Legal Foundation of Washington and Trustee of the Spokane County Bar Association.

Dean served in the army in World War II for which he was decorated. At the time of his discharge he held the rank of Captain. He was twice president of the National Guard Association of Washington, and active in the Eagles Lodge, having served as President of the Spokane Lodge and State President of the Eagles.

Aside from his legal affiliations and contributions, Dean will be remembered as a "champion of the

WSBA MEMBERSHIP SURVEY

1-5

The Board of Governors of the Washington State Bar is asking your opinion. Only by going to you, the source, will we be able to make decisions that are in the best interest of Washington State attorneys. Working with the Gilmore Research Group, an independent market research company, we have developed a questionnaire that will help us understand the needs and priorities of attorneys across the state. We hope you will take a few minutes to complete the questionnaire and return it to Gilmore Research at 2324 Eastlake Avenue E. Suite 300, Seattle, WA, 98102. Rest assured, your answers will remain anonymous and that your input will be critical to our planning process.

Thank you.

Please rate how important it is that the state Bar provide each of the following discretionary services. (CHECK ONE BOX FOR EACH)

	Not at all Important						Very Important	
1. MEMBER SERVICES								
a. Assistance to lawyers impaired by drugs, alcohol or stress.	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	6
b. An ethics hotline and ethics opinions.	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	7
c. Fee arbitration for fee disputes with clients.	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	8
d. A client security fund to reimburse clients whose funds are stolen by attorneys.	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	9
e. Legislative activities and lobbying on issues of interest to the legal profession.	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	10
f. Committee for the development of court rules.	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	11
2. PARTICIPATION ACTIVITIES								
a. An opportunity to serve on various State Bar committees.	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	12
b. An annual convention of some kind.	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	13
c. Support and training for local bar and specialty bar associations.	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	14
d. An opportunity to participate in various practice Sections.	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	15
e. Young Lawyer's Division of the State Bar.	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	16
3. EDUCATION RESOURCE								
a. An electronic bulletin board/researchable database.	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	17
b. Newsletters for Sections and Divisions.	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	18
c. A membership directory with reference materials (Resources).	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	19
d. The Bar News magazine.	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	20
e. CLE publications and deskbooks on a break-even, no dues subsidy basis.	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	21

	Not at all Important						Very Important	
4. PUBLIC SERVICES								
a. A clearinghouse for press inquires and media relations.	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	22
b. A speakers bureau to coordinate attorneys to speak on specific topics for schools and civic organizations.	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	23
c. Improving the image of the legal profession.	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	24
d. Coordination of various pro bono and access to justice activities.	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	25
e. Public service and educational activities.	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	26

5. Do you think the State Bar should offer CLE Seminars . . . (CHECK ONE)

☐ 1 On a break even basis
☐ 2 On a subsidized basis
☐ 3 For a profit
☐ 4 Or not at all 27

6. Given that funding for discretionary programs is diminishing, which of the following would you prefer . . . (CHECK ONE)

☐ 1 A dues increase sufficient to fund additional discretionary programs
☐ 2 A dues increase sufficient to continue funding current discretionary programs
☐ 3 Hold dues constant and reduce discretionary programs
☐ 4 Reduce dues to a level that funds only mandatory regulatory and licensing functions 28

7. If you would consider a dues increase, what amount would you support? ____________________ 29-32

8. Overall, would you say your attitude towards the State Bar is: (CHECK ONE)

☐ 1 Very positive
☐ 2 Somewhat positive
☐ 3 Neither positive or negative
☐ 4 Somewhat negative
☐ 5 Very negative 33

9. Compared to two years ago, would you say your attitude towards the Bar has become . . . (CHECK ONE)

☐ 1 More positive
☐ 2 Less positive
☐ 3 Remained the same
☐ 4 Don't know 34

10. If your attitude has changed, could you please explain why?

____

____ 35-40

11. What one thing does the State Bar do that benefits you the most?

____

____ 41-46

12. What one thing do you dislike the most about the State Bar or its programs?

____

____ 47-52

GOVERNANCE

13. Are you satisfied with the form under which the Bar is currently governed?

☐ 1 Yes ☐ 2 No ☐ 3 Don't know 53

14. If no, why not?

____

____ 54-59

15. Members of the Board are currently elected geographically. Do you support this method of selecting governors?

☐ 1 Yes ☐ 2 No ☐ 3 Don't know 60

16. If no, why not?

____

____ 61-66

17. Should a governor position be added to the current Board for a representative of the Washington State Bar Association Young Lawyers Division?

☐ 1 Yes ☐ 2 No ☐ 3 Don't know 67

18. Do you think non-lawyers should be represented on the Board?

☐ 1 Yes ☐ 2 No ☐ 3 Don't know 68

19. Some state bars have a House of Delegates in addition to a board of governors. Would you favor a House of Delegates system where specialty bars, such as the Washington Women Lawyers, Asian Bar Association, and local bar associations meet to discuss major policy issues?

☐ 1 Yes ☐ 2 No ☐ 3 Don't know 69

ABOUT YOU

20. For how many years have you been a member of the Washington State Bar? ____________ 70-71

21. For how many years have you been a practicing attorney in Washington State, or any other state? __________ 72-73

22. What is the principal area of law you have practiced in the past five years? ____________________________ 74-75

80/1

23. Are you active or do you participate in. . .

	YES	NO	
Any WSBA Section?	☐ 1	☐ 2	6
A specialty bar?	☐ 1	☐ 2	7
A State Bar committee	☐ 1	☐ 2	8
State or local young lawyers?	☐ 1	☐ 2	9
A local bar?	☐ 1	☐ 2	10

24. Do you work for a ...

☐ 1 Private firm
☐ 2 Public agency
☐ 3 In-house attorney
☐ 4 As a sole practitioner
☐ 5 Other (SPECIFY:) ____________________________ 11

25. What is your position?

____ 12-13

26. In what county is your office located? ____________________________ 14-15

27. Are you male or female? ☐ 1 Male ☐ 2 Female 16

28. What is your age? ____________ 17-18

29. Thinking both of race and ethnic background, which of the following best describes you?

☐ 1 Caucasian
☐ 2 African American
☐ 3 American Indian/Alaskan Native
☐ 4 Hispanic or Latino
☐ 5 Asian or Pacific Islander
☐ 6 Or something else (SPECIFY:) ____________________ 19

30. What was your personal 1992 law-related income?

☐ 01 Under $20,000
☐ 02 $20,000 to just under $25,000
☐ 03 $25,000 to just under $30,000
☐ 04 $30,000 to just under $35,000
☐ 05 $35,000 to just under $40,000
☐ 06 $40,000 to just under $45,000
☐ 07 $45,000 to just under $50,000
☐ 08 $50,000 to just under $75,000
☐ 09 $75,000 to just under $100,000
☐ 10 $100,000 to just under $150,000
☐ 11 Or $150,000 and over 20-21

31. Finally, what one thing do you feel the Washington State Bar Association could do to improve?

____

____ 22-27

80/2

Thank you for your input. Please mail your completed questionnaire to:

Gilmore Research Group
WSBA Survey
2324 Eastlake Ave. E. #300
Seattle, WA 98102

disadvantaged," said Stephen E. Deforest, President of the Washington State Bar Association. "His tireless efforts on behalf of the poor and underprivileged will serve as a legacy within the legal community for years to come." The self-effacing, bow-tied gentleman left a trail of inspired attorneys and politicians who marveled at his commitment to justice for everyone.

"It is with gratitude and pride, that the Washington State Bar honors Jack R. Dean for his lifetime of service, leadership and commitment to his community," stated DeForest upon presenting the award to Mrs. Dean.

***Justice James M. Dolliver: Outstanding Judge Award** for outstanding service to the bench and for special contribution to the legal profession.*

A native of Fort Dodge, Iowa, Justice Dolliver was a music major from Swarthmore College, in Pennsylvania and received his law degree from the University of Washington in 1952. During World War II, he served in both the US Navy and Coast Guard.

A law clerk to Supreme Court Justice Fred Hamley, administrative assistant to former Congressman Jack Westland and chief of staff to former Governor Daniel J. Evans for 11 years, Dolliver was appointed to the Supreme Court in 1976. He served as Chief Justice from 1985 to 1987.

A friend to the Boy Scouts, the Nature Conservancy, Justice Dolliver is a member of the Judicial Council of the United Methodist Church and numerous boards. He is also active in many educational, historical and youth programs in addition to law and justice activities.

DeForest honored him as "a very distinguished jurist and for his commitment to his profession, the bench and his community."

***Dr. Sandra Madrid: Affirmative Action Award,** given to a person who has made significant contributions to furthering affirmative action in the employment of ethnic minorities,*

bono programs and access to justice efforts. Bailey said the Litigation Section board, "as diverse as any section in the bar," voted 10-0 to oppose the resolution. Noting the $20,000 cost of Long's annual referenda, Bailey said the bar could be spending money on more useful purposes: "The bar has better things to do."

Mary Alice Theiler, president of the King County Bar Association, refuted Long's claim that a new, volunteer bar will arise to take over all the functions he would de-fund. "A whole new WSBA would have to be formed to take over the deleted functions. Some people here may not like them, but the public sees them as mandatory.

"We'd have to pay dues to that other group, as well as to the regulatory WSBA. It would be harder for activists in the bar to influence policy in two separate bar groups." It's a false notion that people will put in twice as much effort, and spend more money than they do now, to get the same result they get now.

Governor Joe Nappi of Spokane reported the Spokane County Bar Association had voted on the resolution at its lunch meeting an hour earlier, and opposed it, 94-7. The Benton-Franklin County Bar Association meeting vote was 39-1 against the resolution. He urged proponents not to put the WSBA to the expense of a referendum in the face of such results.

Rick Ockerman of Kirkland told the meeting he was one of those who rarely comes to the annual meeting because he feels disenfranchised. "We don't want to have to wait 20 years to get appointed to a committee." Most small lawyers favor the resolution, he declared. "We want to reinvent the bar so it's meaningful. I've had more impact in other bar groups than the WSBA. Ockerman said the Washington State Trial Lawyers Association had major defections a few years ago because it got too high and mighty.

Don Wittenberger of Seattle saw nothing to prevent discretionary programs of the bar from being continued. "Why not let these programs meet a market test?" Many could take place in the bar's sections, he felt.

Mark Sullivan called the resolution "surgery with a cleaver, not a scalpel. We now have open committees. All we'll do with this resolution is create a *new* old boys' club. Let's keep the bar changing."

Brad Steiner, president-elect of the Young Lawyers Division, said his group is raising a new breed of lawyer to run the future WSBA. "We have an obligation to the public, as a profession, beyond simply admitting and disciplining people. The YLD provides avenues for hundreds of lawyers to be involved in WSBA work."

Tom Russell recalled when he heard Lem Howell and Alva Long had been elected to the Board of Governors, he thought the bar was in for interesting, and healthy, times. "We'll all be the poorer if the resolution passes," he warned. WSBA CLE programs go out to the state's lawyers, to places commercial programs won't go. CLE has greater buying power for things like books. If it goes, other CLEs will cost more.

women, and the disabled in the Washington legal profession.

She received her doctorate in Curriculum and Instruction from the University of Washington in 1985. Currently, she is the Assistant Dean of the University of Washington School of Law, where her responsibilities include serving as liaison to the various local minority bar associations with regard to admissions and recruitment.

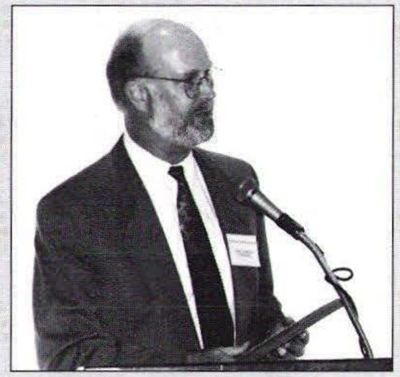
An educator by trade, Madrid began her career as an elementary teacher in Colorado, and received her MA in Reading and Language Arts from the University of Washington. Former Director of the Early Identification Program, she worked to increase the pool of competitive minority students for graduate and professional schools. As Director of the Instructional Center, she managed the instructional unit of the Office of Minority Affairs. Very involved in community organizations, she has received many honors for her efforts, including the 1990 IMAGE Award for her commitment to the advancement of Hispanic people, the 1992 Totem Girl Scout Woman of Distinction Award and the 1990 Community Award from the Washington State Hispanic Chamber of Commerce.

***Tom Hillier, Jr: Public Service Award.** The award, named in honor of the late Angelo Petruss, a Senior Assistant Attorney General and WSBA governor, is given to recognize law-*

yers in government service who have made significant contributions to the legal profession, the justice system and the public.

Hillier, the Federal Public Defender for the Western Washington District, is a graduate of St. Martins College in Olympia (1969) and Gonzaga University School of Law (1973). His public defense career began at the Spokane Public Defender's Office and continued at the Federal Public Defender's office in Seattle. In 1978, he joined the law firm of Franco, Asia, Benssusen Coe & Finegold. He accepted his current position in 1982. In 1991, he was appointed by Chief Justice Rehnquist to the Committee to Review the Criminal Justice Act (The Prado Commission). Their charge was to review and evaluate the 20-year-old system of furnishing legal counsel to those who are accused of a crime but cannot afford to hire a lawyer.

A vigorous advocate, Hillier has served on the Federal Public Defender's legislative committee since 1983 and has chaired it since 1989. Having participated in programs offered by the American Bar Association, the Federal Judicial Center and the Washington State Bar Association, he is committed to training attorneys in federal criminal matters. His office is one of the most highly regarded in the United States. Through his commitment to public service, he has well-served the public, Washington state and his profession.



Mark G. Honeywell: 1993 Award for Professionalism. *The award is given to the attorney who most exemplifies the spirit of professionalism ("pursuit of a learned profession in the spirit of public service and in the sharing of values"). Honeywell is a partner in Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim Law Offices.*

A graduate of the University of Puget Sound in 1966 and the University of Washington Law School in 1968, Honeywell has been with his current firm since 1969. He has clerked for the Washington Supreme Court and has taught legal writing at the University of Puget Sound. He is a very vocal leader in the campaign to raise the standards of professionalism in law, particularly in litigation. An author and lecturer on promoting civility and professionalism, he is devoted to improving his craft.

"In this day and age when the legal profession is often criticized, Mark Honeywell serves and an example of the highest standard of professionalism," Stephen E. DeForest said upon presenting the prestigious award.

Honeywell's primary areas of practice are personal injury, commercial litigation, product liability, and insurance--related litigation.

David Abercombie of Snoqualmie Pass accused those who oppose the resolution of being members of groups that enjoy "the largesse of mandatory dues. You have to hold the feet to the fire to get performance. If groups find functions necessary they will find a way to pay for them," he said.

Jim Raffa, a Young Lawyers Division trustee, read a letter from a constituent who works for the Attorney General's office noting that the annual meeting conflicted with the Attorney General's annual conference with her troops, and demanding that the Attorney General's office be consulted in future. (In years past, when there wasn't such a conflict, they didn't show up, either. The most popular reasons were: a) we don't get reimbursed for the expense of coming; b) none of the CLEs interest us; and c) we don't want to use up vacation time to attend a convention. But I digress.)

Raffa went on to recount the dismemberment of the Wisconsin State Bar a few years ago by a lawyer who sued to do it. The U.S. Supreme Court reversed. "We can't dig a hole and pull it in after us. People will look at what we've done and say—rightly—that we don't care about anything but the money in our pockets."

Pat Wagner then moved the previous question, prompting groans from those who wanted the debate to continue. The motion got the required 2/3 support, but by only two votes. Alva Long wrapped up the debate by telling the meeting he had grown up among activist lawyers, and told stories about each of them. He said everyone who opposed him had missed the point, and ran through a denunciation of the leading lights in his personal bar demonology: the CLE program, and the Young Lawyers Division. Surprisingly spot audits of trust accounts didn't make the cut.

On a division, the Long resolution was defeated, 48-195.

The president then recognized outgoing members of the Board of Governors, and praised senior WSBA staff members for their work over the past year. He then introduced the new president, Paul Stritmatter, saying "few lawyers are as qualified, or as dedicated, as Paul."

In brief remarks, Stritmatter recalled how he'd entered practice 23 years ago in Hoquiam with his father, Lester Stritmatter, a man who valued commitment to clients, faith in the law, and service to the community. He introduced his family, staff and law partners.

Praising Alva Long as a useful catalyst, Stritmatter nevertheless said he is going to work as hard as he can to defeat Long's promised referendum on his resolution. Stritmatter told the meeting he had gotten the Board's approval for a task force on governance, and promised it will have a broad membership. He called for greater inclusion in bar affairs, and more work on access to justice for the poor. The meeting was then adjourned.

Photos: Joel Robinson
Biographical research: Beth Greenhill

Mary Beth S. Nethercutt: President's Award, *given in recognition of "special accomplishment or service to the WSBA" during the term of the current president.*

Nethercutt has served on the Client's Security Program Committee of the Bar since 1988 and chaired it for the past two years. Under her leadership, the committee drafted and presented to the Board of Governors a court rule establishing a Lawyers Fund for Client Protection, the purpose of which is to be a "last resort" source to reimburse those who have lost money or property due to a lawyer's theft or inability to account for client funds. It would be funded by a mandatory assessment of $10 from every active lawyer in Washington. The Board has approved that proposed rule and submitted it to the Supreme Court with the recommendation that it be adopted. If it is adopted, it will become effective September 1, 1994, replacing the current Client's Security Program.

Nethercutt, of Nethercutt & Nethercutt in Spokane, graduated from the University of South Carolina in 1973 and from Gonzaga University School of Law in 1983. She has served as Congressional Caseworker to former Congressman Kenneth Holland and as Staff Assistant to former Congressman Charles Wilson. She is active with the Juvenile Diabetes Foundation in Spokane and the Deaconess Medical Center.

The award was presented "with gratitude and appreciation for her service to the Bar and the public."

around. Fee Arbitration: Last meeting the Board voted to increase the fee for fee arbitration—a voluntary program for resolving fee disputes between lawyers and their clients—to $100. They put off the decision on who will pay 'til this meeting. So far, it has been the person seeking the arbitration. Governor Joe Nappi moved the have the fee split between the client and the lawyer. He thought the real issue is whether to make it mandatory. Ripley wondered if the increased fee might create disincentives for clients to use the program. "Small claims court fees are only $38," he noted.

Governor Wayne Blair said the fee should be split initially, but that the arbitrator ought to have the authority to apportion it, or completely shift it to one side or the other. Nappi accepted that as a friendly amendment. Governor Jan Peterson moved to amend the motion to waive the fees where the amount in dispute is less than $500. Governor Alva Long said the bar needed to take into account that most fee disputes are over small amounts; certainly, he said, that is the case in his practice. Long's ability to argue for a program on Thursday that he wanted to kill off on at the Annual Meeting on Friday marks the flexibility for which he has been so justly noted.

Governor Joe Nappi worried that the Peterson amendment might go too far the other way, and overburden WSBA staff with a flood of "free" arbitration complaints worth less than the cost of the time it would take to process them. After some further discussion, Peterson withdrew his motion. The Nappi withdrew his support for Blair's amendment. Blair moved to add it back in. That passed, 5-4, Governor Tom Chambers not voting. Then the Board approved the main motion.

Wrap-up in Seattle: In other matters, the Board heard another report from the CLE Board on the feud with the sponsors of the "Year of the Woman" CLE. The Board approved some operating amendments to the Criminal Law Section's bylaws, and a membership fee increased requested by the Alternative Dispute Resolution Section. They heard a report on the status of the WSBA-sponsored malpractice insurance program, including a valedictory denunciation of it by Governor Tom Chambers. They withdrew Formal Ethics Opinion #58, which discussed a lawyer's duty to disclose misconduct by a client who is an executor, administrator, guardian or other appointee of the court. In 1959, confidentiality rules forbade a lawyer from making such a disclosure. In 1990 RPC 1.6 was amended to permit lawyers to make disclosures under such circumstances, so the conflicting opinion was withdrawn. They also approved Formal Ethics Opinion #190, clarifying the meaning of "apportionment" in RPC 1.10. The text will be published in the December *Bar News*.

They also reviewed the questions to be asked in the coming member survey, while some of the interest group representatives carped about how the questions, as worded, weren't likely enough to generate the answers they want to see (Question 9: If they're training tomorrow's bar leaders, why do they want the store today?)

104th Annual Meeting Report and WSBA Member Survey See Pullout Section, opposite.

Notices of Interest to Bar Members

WSBA Disciplinary Notices

Censured: Bellevue lawyer **Thomas S. Olmstead** (WSBA #8170, admitted 1978) has been ordered censured by the Disciplinary Board, pursuant to a Stipulation for Discipline approved July 30, 1993. The discipline is based upon Olmstead's conduct, in 1990, when he was found in contempt of court for negligently violating the court's restraining order in a dissolution matter.

Disbarred: Tacoma lawyer **William J. Siesseger** (WSBA #7853, admitted 1977) has been ordered disbarred pursuant to a stipulation for discipline, approved July 14, 1993, effective immediately. The discipline is based upon his misappropriation of client funds; knowing violation of court orders; misrepresentations to the court; use of trust account funds to pay personal and/or office expenses; and conduct demonstrating unfitness to practice law. Siesseger was also ordered to pay costs and expenses associated with the disciplinary proceedings, and restitution to injured clients.

WSBA Nondisciplinary Notices

Resigned: **Raymond Lebsack** (WSBA #5709, admitted 1974), was permitted to resign as a member of the Washington State Bar with discipline pending, effective April 5, 1993. [July 23, 1993]

Interim Suspension: Richmond, Virginia lawyer **Patrick D. Killebrew** (WSBA #14665, admitted 1984), was ordered suspended from the practice of law pending the outcome of disciplinary proceedings by Supreme Court order entered July 29, 1993. This suspension is the result of Killebrew's felony conviction, in the State of Virginia, for having in his possession, or under his control, a Schedule I controlled substance.

Interim suspension is pursuant to RLD Title 3 and is no a disciplinary sanction. [July 30, 1993]

Commission on Judicial Conduct Notices

Censured: In a decision released August 6, 1993, the Commission on Judicial Conduct adopted the recommendation of its hearing panel that King County District Court Judge **John G. Ritchie** be censured. Additionally, eight of the Commission members recommended that the Supreme Court of Washington remove Ritchie from his judicial office; two recommended a suspension of 60-90 days without pay, and one member recommended censure alone.

The hearing panel conducted a hearing January 25, 26 and 27, 1993 in Seattle. On March 1, 1993 the Commission issued a report and recommendation finding two violations of the Code of Judicial Conduct and recommending censure of Ritchie. On March 15, 1992 special counsel to the Commission filed objections to the report and recommendation of the Commission. Ritchie filed a response March 17, 1993. After consideration, a majority of the Commission proposed to modify the findings and conclusions and accept the proposed sanctions. Counsel were notified of the Commission's proposed modifications and filed briefs in lieu of oral argument.

The Commission's decision found that for each of the years 1987 to 1991, Ritchie submitted travel vouchers for reimbursement for travel claimed to be on King County District Court business, which statements contained false and misleading statements concerning the nature, purpose, duration and benefit of the court-related business allegedly conducted during the trips. The Commission found that between January, 1989 and December, 1991, Ritchie made 116 personal, long-distance telephone calls from his judicial office and did not, at the time, reimburse King County for them. During the course of the Commission proceedings, Ritchie paid King County $125 for the calls. The Commission found he owed another $46 to the county.

The Commission found a charge of improper use of postage stamps supplied by King County was not established by clear, cogent and convincing evidence.

The Commission found, as mitigating and aggravating factors, that Ritchie has served over 15 years as a district court judge; that other than make partial reimbursement for the telephone calls, "there is little else to indicate he has acknowledged or recognized that the acts occurred;" that he has received high ratings from King County lawyers in the King County Judicial Poll; and that Ritchie has received no prior discipline.

The Commission concluded that Ritchie violated Canons 1 and 2(A) with respect to the travel and telephone findings, by detrimentally affecting the integrity of the judiciary and undermining public confidence in the administration of justice.

Considering how to evaluate the aggravating and mitigating circumstances, the Commission decision relied upon criteria set forth in *In re Deming*, 108 Wn.2d 82, 736 P.2d 639 (1987), at 119-120: (a) whether the misconduct is an isolated instance or evidence of a pattern of conduct; (b) the nature, extent and frequency of occurrence of the acts of misconduct; (c) whether the misconduct occurred in or out of the courtroom; (d) whether the misconduct occurred in the judge's official capacity or his or her private life; (e) whether the judge has acknowledged that the acts occurred; (f) whether the judge has evidenced an effort to change or modify his or her conduct; (g) the length of service on the bench; (h) whether there have been prior complaints about the judge; (i); the effect of the misconduct upon respect for, and the integrity of the judiciary; and (j) the extent to which the judge exploited his or her position to satisfy personal desires.

The Commission found that the judge's misconduct was not isolated, but entailed multiple offenses occurring over a five-year period and evidencing a pattern of misconduct; that the nature of the misconduct "is extremely serious, involving dishonesty and conversion of public funds in the sum of approximately $2,750 for his private use or benefit in transactions over a five year period; that, while none of the misconduct occurred in the courtroom, the fact that Ritchie received high ratings and also violated the Code of Judicial Conduct "underscores the insidiousness of the misconduct found in this matter. Sustained and relatively furtive misconduct, once discovered, not only taints the reputation of the offending judge, but also the system which had neglected to identify and rectify the situation in a timely manner." Further, the decision found, by characterizing his trips—which were "mainly personal vacations"—Ritchie engaged in misconduct in both his official capacity and his private life. "A violation in either of these contexts is serious; misconduct in both is inexculpable based on this record."

The Commission decision noted that other than the reimbursement for calls, Ritchie's actions did not indicate any acknowledgment or recognition of anything wrongful about his charging for trips to Florida and Arizona, and that "there is little in the proceedings to indicate one way or the other whether Respondent will refrain from similar conduct in the future. Ritchie's length of service and "purported competence are minimized as mitigating conditions given the duration and nature of his conduct," and no prior complaints against him resulting in public discipline were brought to the Commission's attention.

"Respondent's misconduct involving dishonesty seriously impairs the integrity of the judiciary, substantially undermines public confidence in the administration of justice, and is considered by the Commission to be a serious violation of the Code of Judicial Conduct," and would not have been possible had he not been a judge or public official.

The Commission's order of censure directed him to make full restitution to King County for travel expenses claimed in 1987, 1988, 1989, 1990 and 1991 within 30 days from the date of the decision; make full restitution to King County for personal long distance telephone charges within 30 days from the date of the decision; and notify the Commission of the completion of the directed corrective actions.

Using the criteria described above, and considering the findings and conclusions, "it is the opinion of the Commission on Judicial Conduct that Respondent has demonstrated an absence of the personal and professional qualities which are necessary to hold judicial office in the State of Washington.

"Therefore, the Commission recommends to the Supreme Court that the Honorable John G. Ritchie be removed from office."

In a concurring and dissenting opinion, Commission members H. Joseph Coleman and Thomas Kelly concurred with the Commission's findings of misconduct and censure but recommended censure with suspension rather than removal from office. "Counsel for the Commission did not address the issue of sanctions in presenting the

Commission's case to the hearing panel," they wrote. "It was only after the panel issued its report and Judge Ritchie commented that he did not agree with the panel's conclusions that Commission counsel moved for reconsideration and argued that removal was the only appropriate penalty in view of respondent's comment. Respondent's comment is troubling, but it adds nothing to the record that was not apparent throughout the proceedings and it was consistent with his defense that he was entitled to partial reimbursement because he had conducted some judicial business on those trips." They continued that Ritchie's refusal to publicly acknowledge that his conduct was wrong is not the equivalent of declaring he will disregard the Commission's censure in future. He should be given the chance to show he can conduct himself in accordance with the Code of Judicial Conduct. "Without question, if there is a future finding of misconduct, he should be removed from office." In the meantime, they felt his long career and good reputation should have been taken more into account: ". . . removal is appropriate only when there is no reasonable alternative."

In a separate concurring and dissenting opinion, Commission member Daniel Hannula agreed with Kelly and Coleman's analysis and said he was troubled by suggestion, in the Commission's report, that Judge Ritchie had been less than honest and forthright in the course of the Commission hearings. He recalled having chaired the hearing panel, and noted that while Ritchie and his counsel and Commission counsel vigorously opposed each other, that suggestion, "which I believe was a factor in the majority's decision to recommend removal, is not, in my opinion, supported by the weight of the evidence." He questioned the Commission's change of recommendation of penalty without consideration of any additional evidence on the record. He felt Ritchie was entitled to a chance to "adhere to the Code of Judicial Conduct and redeem himself."

Ritchie was represented by his attorneys, Thomas Frey and Anne Bremner. The Commission was represented by special counsel Peter Byrnes and Paul Taylor. *In re the Matter of Honorable John G. Ritchie,* King County District Court, Seattle Division, Case No. 91-1110-F-33.

Admonition: In a decision released August 6, 1993, the Commission on Judicial Conduct admonished Judge **Jerry J. Moberg**, formerly judge of the Grant County Superior Court. From an agreed statement of the facts, the Commission and Moberg agreed that while serving as a judge, he contracted with Central Washington University, a public university, to teach a class for compensation, and that he discussed legal representation with persons while he was still a judge, but after he announced his resignation.

The stipulation noted that at the time Moberg entered into the contract, Ethics Advisory Opinion 89-1 advised that a full-time judge could accept compensation for teaching classes at a university. Before he began teaching, Ethics Advisory Opinion 91-21 was issued, prohibiting superior court judges from accepting compensation for teaching at public universities. Judge Moberg read, and was advised of, the second opinion, but accepted payment and adjusted his courtroom hours to accommodate his teaching schedule.

Moberg stipulated that while serving as Grant County Superior Court judge he violated Canons 1, 2(A), 2(B), and 5(A) of the Code of Judicial Conduct, and Article IV, Section 15 of the Washington State Constitution. In accepting an admonition, he agreed to make restitution of $2,000 to Central Washington University within 30 of the approval of the stipulation by the Commission; not to serve as a pro tem judge in any Washington court for four years; and that, if, within five years, he seeks appointment or election to a full-time judicial position in Washington, he shall first advise the Commission, and represent to the Commission, in writing, that he has read, and is familiar with, the provisions of the Code of Judicial Conduct and all Washington Ethics Advisory Opinions.

Moberg represented himself. The Commission was represented by special counsel Peter Byrnes and Paul Taylor. *In re the Matter of Honorable Jerry J. Moberg*, Grant County Superior Court, Case No. 92-1260-F-39.

Public Notices

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 September 1993 is 3.12%. **The maximum allowable interest permissible for October 1993 is therefore 12 %.**

Compilations of the average coupon equivalent yields from past auctions of 26-week treasury bills, and past maximum interest rates, appear in the Bar *News*, October, 1987, for 1982-84; in June, 1989, page 37, for 1984-85; in June, 1992, for 1985-87; and in June, 1993, for 1987-93.

In re Idaho Code 28-22-104: Legal Interest Rate

The legal interest rate on Idaho judgements is 8.50%. This rate went into effect July 1, 1993 and will remain in effect until June 30, 1994. The new rate will be announced by July 15 of each succeeding year. Previous rates are: July 1987—11.875%; July 1988—12.625%; July 1989—13.375%; July 1990—13.25%; July 1991—11.375%; July 1992—9.125%.

New Court Rule Database Announced

A new service, Washington Legal Text Database, became available on the Judicial Information System (JIS) in July. All current JIS subscribers will be able to access both state and local court rules from a variety of participating courts.

The service is free to JIS Link subscribers. JIS is administered by the Office of the Administrator of the Courts. Subscribers pay a $100 initiation fee and on-line charges of $25 per hour. For more information contact Suzanne Roseholt at OAC, P.O. Box 41170, Olympia, WA 98504; (206) 705-5277.

Judicial Notices

Notice in re Breast Implant Cases

By order of Chief Justice James Andersen, King County Superior Court Judge Robert Alsdorf has been named Liaison Judge for all breast implant cases in the State of Washington. He will provide trial judges in Washington a model case management order and information about a nationwide discovery program that can substantially simplify pretrial preparations in each case. "It is hoped that careful, early management of these cases will avoid some of the problems that arose with asbestos cases in the past decade," Andersen said.

Judges handling breast implant cases can contact Alsdorf in Seattle at (206) 296-9207.

CALENDAR

Business Advisory Services, Inc. (206) 223-5400
CLE International (206) 621-1938
Idaho Bar Foundation (208) 342-8958
King County Bar Association (206) 624-9365
Lewis & Clark Law School/Northwest School of Law (503) 768-6642
National Business Institute, Inc. (715) 835-7909
National Institute of Trial Advocacy (NITA) (800) 225-6482
Spokane County Bar Association (Spokane BA) (509) 623-2665
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) (206) 727-8202
Washington State Trial Lawyers Assn (WSTLA) (206) 464-1011, (800) 732-9251

Note: Telephone numbers for regular regional CLE providers and other groups presenting events are listed above. Individual contacts are listed with the specific entry.

October 1993

1 Seattle: Federal Tax Controversies. *Sponsored by* WSBA.

1 SeaTac: P.I. Defense. *Sponsored by* WSTLA.

1 Boise: Litigation CLE. Also presented October 8 in Coeur d'Alene and October 15 in Twin Falls. *Sponsored by* Idaho Bar Foundation.

1-2 Spokane: Macs and Tax, Gonzaga University School of Law's 20th Annual Tax Institute, Hills Resort, Priest Lake, Idaho. Program focus is estate planning in the Clinton Administration. Lake trout are reportedly excellent this time of year. *Contact:* John Maurice, (509) 328-4220.

4 Port Townsend: Washington Wills in the 1990s (video). *Sponsored by* WSBA.

5 Bellingham: Advising the Small Business Client (video). *Sponsored by* WSBA.

5-6 Seattle: Tenth Annual hazardous Waste Conference. *Sponsored by* UW CLE and Lewis & Clark Law School CLE. Also presented October 7-8 in Portland.

7 Seattle: Health Law Institute. Sponsored by UW CLE.

7 Coeur d'Alene: How to handle Basic Copyright and Trademark Problems (video). Also presented October 14 in Twin Falls. *Sponsored by* Idaho Bar Foundation.

7-8 Seattle: Affirmative Action Briefing. *Sponsored by* NELI, (415) 924-3844.

8 Seattle: Employment Law Advocacy. *Sponsored by* WSBA.

8 Seattle: Washington Women Lawyers' Annual Dinner, Washington Athletic Club. Keynote Speaker is Dr. Lillian Glass, author of *He Says, She Says: Closing the Communications Gap Between the Sexes. For information:* (206) 622-5585.

8-9 Pocatello: ISU Tax Institute. *For information:* Idaho Bar Foundation.

8-10 Seattle: Basic Mediation Skills Training. *Sponsored by* UW CLE. Also presented October 16--17.

9 Seattle: Annual Dinner of the Asian Bar Association. Guest speaker is Grace T. Campbell, President and CEO of U.S. Bank of Washington. *Contact* Grace T. Yuan, (206) 623-7580.

14-15 Seattle: 11th Annual Fisheries Symposium. Sponsored by UW CLE.

15 Seattle: Ergonomics & Tort Law. *Sponsored by* WSTLA.

15 Deadline for copy for the December, 1993 *Bar News.*

15 Seattle: Lawyer as Detective: Changes to Civil Rules. *Sponsored by* KCBA.

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

15 Spokane: Employment Law Advocacy. *Sponsored by* WSBA.

15 Seattle: Update on the Uniform Commercial Code. *Sponsored by* WSBA.

17 Seattle: Sunday Institutes on records management, micrographics standards and technologies, disaster preparedness, retention and disposition of business records. *Contact* Mary Hodges, ARMA, (800) 422-2762 (U.S.)/(800) 433-2762 (Canada).

17-20 Seattle: Linking the Past with the Future, 38th annual international conference of the Association of Records Managers and Administrators, Inc. *Contact* Mary Hodges, ARMA, (800) 422-2762 (U.S.)/ (800) 433-2762 (Canada).

19-20 Seattle: "Information and Imaging '93," expo of imaging systems, CD-ROM/WORM, OCR scanners, micrographics, CAR systems, bar-coding, etc. *(See Oct 17-20, above.)*

20 Marysville: Defending Misdemeanor Cases. *Sponsored by* Washington Association of Criminal Defense Lawyers. *For information:* (206) 623-1302. Also presented October 21 in Olympia, October 22 in SeaTac, October 29 in Spokane and October 30 in Pasco.

20 Seattle: Consumer Bankruptcy: Chapter 7 versus Chapter 13. *Sponsored by* Foster Pepper & Shefelman. *For information:* (206) 447-4400.

21 Lewiston: Appellate Advocacy (video). Also presented October 28 in Idaho Falls. *Sponsored by* Idaho Bar Foundation.

21-23 Seattle: International Biotechnology Conference. Sponsored by UW CLE.

22 Seattle: Nuts & Bolts of Insurance Law. *Sponsored by* WSTLA.

22 Lewiston: Trends in Real Estate. Also presented October 29 in Idaho Falls, and November 5 in Boise. *Sponsored by* Idaho Bar Foundation.

22 Seattle: The Marine Insurance Institute: Statutory and Regulatory Developments Affecting Vessel Operations, Insurance and Claims Adjusting. Sponsored by UW CLE.

22 Walla Walla: Video Seminar—Advising the Small Business Client. *Sponsored by* WSBA.

22 Seattle: Domestic Violence and Dissolutions/Dissolution of a Long-term Marriage. *Sponsored by* WSBA. Also presented October 28 in Olympia.

27 Bellevue: Contracts and Leases in Bankruptcy: How to Protect the Rights of Landlords and Lessors. *Sponsored by* Foster Pepper & Shefelman. *For information:* (206) 447-4400. Also presented November 17 in Seattle.

28 Spokane: The Core of Your Case: Opening Statements and Closing Arguments. *Sponsored by* WSBA.

29 Olympia: Video Seminar—Advising the Injured Worker. *Sponsored by* WSBA.

29 Seattle: Lawyer as Detective: Effective Depositions. *Sponsored by* KCBA.

29 Seattle: The Core of Your Case: Opening Statements and Closing Arguments. *Sponsored by* WSBA.

29-30 Seattle: Managing Perceptions & Avoiding Malpractice: The Proven Power of Nonverbal Communication Technologies. *Sponsored by* UW CLE.

30 Seattle: Nonliability Commercial Coverages: A Survey of Selected Problem Areas. *Sponsored by* UW CLE.

November 1993

4 Spokane: WDTL Annual Insurance Law Seminar. *Contact:* (206) 628-6600. Also presented November 5 in Seattle.

4-5 Seattle: 38th Annual Estate Planning Seminar. *Sponsored by* WSBA.

4-6 Seattle: National Defender Investigator Association National Conference. *For information:* Sidney Wright, (206) 726-3109.

5 Olympia: Washington Real Property Law. *Sponsored by* Thurston County Young Lawyers. *For information:* Jay Goldstein, (206) 943-6747.

6 Seattle: Hot Topics in Real Estate Development Law & Practice. *Sponsored by* UW CLE.

6 Seattle: Computers in the Law Office. *Sponsored by* UW CLE.

11 Vancouver, WA: Video Seminar: Advising the Small Business. *Sponsored by* WSBA.

11 Seattle: Essentials of Real Estate. *Sponsored by* WSBA.

12 Boise: Idaho Criminal Jury Instructions. Also presented November 19 in Moscow. *Sponsored by* Idaho Bar Foundation.

12 Seattle: Antitrust Law. *Sponsored by* WSBA.

12 Seattle: Takings/Growth Management. *Sponsored by* WSBA.

12-13 Vancouver, B.C.: Washington State Society of Hospital Attorneys 20th Annual Seminar on Hospital and Health Law. *Contact:* Erick Rasmussen, (206) 552-1110.

15 Deadline for copy for the January, 1994 *Bar News*.

18 Olympia: Essentials of Real Estate. *Sponsored by* WSBA.

18-20 Seattle: Negotiation and Settlement Advocacy Institute. *Sponsored by* WSBA.

19 Seattle: New Health Care Act/Critical Changes in Medicaid. *Sponsored by* WSBA.

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

20 Seattle: Criminal Law. *Sponsored by* WSBA.

24 Seattle: Inside the Business Law of America: A Morning with Lincoln Caplan. *Sponsored by* UW CLE.

WASHINGTON'S

What a horrible situation! The folks had a small pasture with a two-stall lean-to. They weren't in the business of renting pasture; in fact, the lean-to was there when they bought the property. However, from time to time someone would stop by and ask about boarding a horse for awhile. More of being a good neighbor than anything, the answer would be yes. It was a good deal for the horse owner, the rent was cheap and they, being the nice folks they were, would make sure the horse had water and feed. They were even known to add an apple, or corn from the garden, here and there.For years things went well. Then came the horrible situation.

A young lady stopped by. She was going to visit her folks out-of-state and maybe look for a job. She paid the first month's rent and stated that she would return in thirty days and reclaim her horse. It wasn't an expensive horse, probably a $400 sale if the buyer was right, but it was a good old horse that was easy to love.

A month went by, then another, and another, and still another. Summer was over, it was hay and grain time. There was only an occasional word from the young lady—and, as can be expected, no check in payment. She was going to be back soon and "would settle up." At least that is what she said.

Now what could folks do? They couldn't get the owner to come remove the horse, and even if she showed up she wouldn't have any money. They couldn't just turn the horse loose; after all, they lived in a suburban area, not the high desert. They couldn't let the poor animal starve (nor would they have)—animal control takes unkindly to this type of conduct. So, month after month, they cared for the horse at their expense.

So, the folks contacted their lawyer (me). The lawyer said that they had an agister's lien. But, if they wanted to foreclose that lien, they had to start a law suit (filing fee $110), serve the summons on the young lady (estimated fee $40), and, after sixty more days passed, the horse would then be sold by the sheriff (estimated sheriff fees and bond ($100). The lawyer also said his fee would be $250, which was a reduction in rate, but the lawyer knew that no one would come out. So, for $500 (if the case was not contested), the horse would be sold, and they would be entitled to recover two months rent ($300), plus

NEW AGISTER LAW *by* **Ken Weber**

court costs. If things went well, they could get back what the court case cost, but they would still be out several months' rent. And, they were selling a $400 horse!

It was this case, and one other, that caused me to draft proposed changes to the Agister Lien Law, and to inspire Senators Bauer and Sutherland to introduce the legislation as Senate Bill 5487.

Senate Bill 5487 was passed as introduced, with one exception. The banking industry influenced the Senate to amend the bill to add a provision to give them additional protection, even though they had no such protection under the existing law. The legislation then became Substitute Senate Bill 5487. The new law becomes effective July 25, 1993, and is know as Laws of 1993, Chapter 53.

The following are some details of the new legislation:

1. *Perfecting the Lien.* In order to perfect the lien, the agister must:

a. Post a notice of the lien in a conspicuous place where the lien holder is keeping the animal or animals;

b. Provide a copy of the posted notice to the owner of the animal or animals; and

c. Provide a copy of the posted notice to a secured creditor if the amount of the lien exceeds $1,500.

Steps a and b can easily be performed. Simply post a notice in a conspicuous place in the barn or stable, or if it is open pasture, on a post by the gate. The notice merely needs to say something simple, for example:

NOTICE. ANIMALS BOARDED ON THESE PREMISES
ARE SUBJECT TO THE AGISTER LIEN LAWS OF THE
STATE OF WASHINGTON, AND THE OWNER OF THESE
PREMISES WILL UTILIZE THESE LAWS TO ENFORCE
THE AGISTER'S LIEN AND TO ENFORCE PAYMENT

Have the owner of the animal sign a written agreement concerning the care of the horse (an obviously prudent step, anyway), and place this language in the agreement. Also, since the law requires that the *owner* of the animal be notified, care must be taken that the *owner* of the horse be determined. Giving notice to the lessee, or some other caretaker of the animal, is not sufficient.

Step c is only important if the amount the lien holder expects to collect exceeds $1,500. If the sum does exceed $1,500 then the lien holder must do an UCC (Uniform Commercial Code) search to determine if there is a secured creditor. If the search reveals no creditor, then there is nothing further to do in order to perfect the lien. On the other hand, if it does reveal a secured creditor, then the above needs to be sent. Unless the agreement concerns several animals, or some other type of expensive services (such as training, veterinary, etc., most of the time the amount of the lien would not be expected to exceed $1,500.

2. *Notice by a New Buyer.* One of the problems with the old law was that if the animal was sold before foreclosure, even if the sale was not bona fide, the purchaser of the animal took the title free and clear of the agister's lien. This unfair situation has been corrected.

The law requires that the owner of the animal:

a. Notify the agister lien holder of the potential sale of the animal or animals subject to the lien;

b. Notify the potential buyer of the existence of the unsatisfied lien against the animal or animals for sale; and

c. Notify any lien holder of record of the potential sale of the animal or animals and of the existence of the unsatisfied lien.

The law does not specify the form of notice, but common sense dictates that a written notice be given and that proof of the giving of the notice be kept.

It should be noted that the law does not expressly require that the person holding the agister lien do anything upon receipt of the notice; but again, common sense dictates that the agister send the above notice of the lien to the potential buyer. And, again, proof of giving such notice should be retained. As a practical matter, if there a new owner of the animal or animals, the agister is going to want to get a new written agreement with that new owner, and the written agreement will contain the notice.

Another thing that should be noted is that the owner of the horse being sold has the duty to notify the secured creditor; the burden is not placed on the agister. If the agister does not expect the transaction with the agister to produce a billing in excess of $1,500, the agister need not be concerned whether the notice was, or was not, given. But, as mentioned above, if the opposite is true, then prudence dictates the UCC search before a lot of services are rendered and then there is a three-way argument (agister, owner, and secured creditor). Don't forget that secured creditors are usually financial institutions with legal staffs trained to get the money from someone!

3. *Optional Methods of Foreclosure.* Whereas, the existing law only permitted foreclosure through a court proceeding, the new law allows foreclosure through two optional means, with the agister selecting the means: by court proceeding or by a sale under the provisions of the UCC.

a. A court proceeding, for the actual amount owed (not just two months), but court costs, attorney fees, and any other costs associated with satisfaction of the lien. Further, the court has the discretion to award *three times* the actual amount owed, and to even impose a *civil fine* of $1,000 to be paid to the agister.

Obviously, these provisions will make it possible for the small operation (such as the folks mentioned at the start of this article), to have full compensation, and maybe a little extra for their troubles.

If there is foreclosure through a court proceeding, the agister is entitled to have the animal or animals sold through sheriff's sale. The agister is to be paid the total court award by the sheriff, if the proceeds of sale are sufficient to pay them, and to also recover the costs of keeping the animal or animals until the sheriff's sale.

b. The UCC contains provisions which allows the agister to sell the animal or animals through a private or public sale, so long as the method of sale is commercially reasonable. Unless the agister has been fully informed of the provisions of the UCC concerning sale of the animal or animals, the agister should obtain legal advise about how to conduct the sale.

Whether one means or the other is the best choice depends on a number of factors. If the animal or animals are of considerable value, and/or if the owner of the animals has substantial assets which can be reached, then obtaining a judgment and proceeding through the sheriff's sale is probably the best option. Even if the sale does not produce enough to pay the judgment, the agister is still able to pursue the owner to collect the rest by garnishment or execution. On the other hand, as in the case given at the beginning of this article, there is no probability of collecting anything beyond what the sale brings, so the UCC sale would be the best choice.

4. *Duration of the Lien.* The new law has expanded the duration of the lien from two months to six months. This means that any unpaid sum which is more than six months' old is no longer subject to lien. Six months should be long enough for an agister to do some-

Changing Practice Areas

Attorneys reputedly long for the opportunity to practice in just one area of law—learn it thoroughly and not have to venture into the unfamiliar. But sometimes an attorney needs to break out of narrow expertise in order to build a client base that can support a respectable caseload. This seems particularly true in the case of those who first cut their teeth in the area of criminal law. Many are younger practitioners working in a public defender or prosecutor office or in a private firm with a public-defense contract.

Suppose this is your situation. How can you learn and become proficient in at least two or three facets of civil law?

First, if you now have a steady salary, you need to plan ahead for the uncertainties of an unguaranteed caseload. Let's face it: a second income helps. If this is not possible, you may want to save before you make the move. You may need to live on a more limited budget, at least for the first few months.

Several years ago, it became clear to me that I needed a broader professional area of knowledge in my practice. I knew I was in a rut. I was comfortable, professionally, with what I was doing, but bored and unhappy. Our office had had a public-defense contract for several years, and it had been easier to stay with the familiar than venture into something new.

So, what to do? First, it's important to realize that because you're an experienced criminal-law practitioner, familiar with trial procedure, rules of evidence and client relations, you can ease into other areas faster than you might suppose. After all, you've already mastered and have a practical working knowledge of facets of practice in a greater degree than most civil practition-ers. This shortens the learning curve with respect to the civil side. Also, no doubt, you have run across and have at least some knowledge of dissolution procedures, real estate forms and, possibly, landlord/tenant questions. I found that new areas of expertise could crystallize around the bits and pieces of experience in civil law picked up in my criminal practice.

You will, of course, need to obtain the forms used in civil practice. If you are sharing office space with other attorneys that have a civil practice, it's easy to borrow many legal forms from your comrades. A solo practitioner can draw on professional acquaintances to obtain the forms, many of which are computerized (such as those used in dissolution proceedings) and are available from your local superior court clerk's office. Some are available on the L.A.W. BBS. Another excellent source of forms is a two-volume set of practice manuals from the Washington Association of Legal Secretaries; it costs around $200. It contains tips on how to use the forms as well as the forms themselves. You can secure these books from any local chapter simply by calling a member. If no one in your office is a member, ask the association to locate one for you. These materials, coupled with material such as West's *Washington Practice*, available in most Washington law libraries, should be enough to guide you. They helped me a great deal.

(A note about the Association of Legal Secretaries—supporting your secretary in membership gives you networking opportunities all across the state for other court rules, process service, referrals, legal education, etc. This is an invaluable organization to your practice. I have reaped untold benefits by supporting my secretary's membership.)

Where can you get clients? Let your colleagues know that you are accepting civil cases. Ask your secretary to let other secretaries in the area know. (Referrals often come from secretaries before they ever get to the attorneys.) Let the clerk's office know. Talk to people in your church and civic organizations. Remember: the cold, hard fact is that you have to "sell" yourself. This is not always easy, but it's a very necessary part of changing practice areas. A small bit of local advertising also serves to get the word out. Don't worry; the clients will come.

Even before making the decision to change to a civil practice, you may find yourself unhappy in what you do. You may feel that this is the way it will always be. Take heart. It doesn't have to be so. Even if you've decided to change practice areas, know pretty much what you have to do, and want to do it, you may feel too paralyzed to make a move. The known is always more comfortable than the unknown, even if the known isn't good for you. This is where the Lawyers' Assistance Program comes into play.

Contacting the Lawyers' Assistance Program doesn't mean you're down and out; it means you've decided to take charge of an unacceptable situation. It doesn't mean you're helpless, it means you're empowered to make changes. The Lawyers' Assistance Program encouraged me to start a civil practice, and three and one-half years into my new venture, my practice is thriving, and I've never looked back.

Nota Bene

LAP is a confidential service providing assessment and referral for a broad range of problems confronting lawyers. These include stress, burnout, depression, career dissatisfaction, alcohol and drug abuse. Contact the Lawyers' Assistance Program at (206) 727-8268.

Every Tuesday at noon in the WSBA Presidents' Room, (4th floor, Westin Building), LAP sponsors a free job hunters' support group for WSBA members who are actively involved in the search for a new position. This is a drop-in group focusing on the exchange of ideas, job leads, and job finding ideas. Speakers are scheduled twice each month.

SEP 14 New Job-hunting Strategies, Phil Moore, Moore & Assoc.

SEP 21 From Law to Art Instructor, Cynthia Grace, Seattle Art Institute

OCT 5 Come With Your Questions, Carol Vecchio, Centerpoint

OCT 19 From Law to Stockbroker, David Wolfersdorf

NOV 2 Former PDA lawyer to UW Clinical Program, Jackie McMurtrie

NOV 16 From Solo Practice to Seattle Human Rights Dept., Shelly Cohen

NOV 30 How to Be True to Yourself in the Practice of Law, a videotape with Deborah Arron

DEC 14 To be announced; call LAP for information.

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thing.

The six-month period is measured by the time in which the foreclosure is commenced, whether by filing the court case or giving the UCC notices. The lien continues for such additional time as passes from that time until the date of the sale.

Ken Weber *raises Arabian horses and practices law in Vancouver, WA.*

WordPerfect and Word For Windows Updates

by **David M. Sandhaus**

Pleading Paper on WordPerfect

I was recently in a law office where a secretary was frantically searching through their supply area trying to locate some pleading paper for a complaint that had to go out that day. It seems that some "administrator" had neglected to reorder pleading paper.

This office was using WordPerfect 5.1 and wasn't aware that a pleading paper style sheet is included with WordPerfect. It then occurred to me that there might be other law offices out there that aren't aware that they already have numbered pleading paper loaded on their computer.

Take the following steps to load the pleading paper style sheet that is included in WordPerfect 5.1.

1. Press the ALT-F8 keys at the same time.
2. Use your arrow key to move down and select the pleading paper style sheet.
3. Press the ENTER key.
4. To view your pleading paper press SHIFT-F7, then 6.

That's all there is to it! You can now print out blank pleading paper to your printer, or you can type your pleading directly into a new document that is based on the pleading paper style sheet.

Microsoft Access 1.1 & Word For Windows

A couple of months ago, I wrote about Microsoft Access version 1.0 and some problems I saw with using this database program in a law office. I've since received Access version 1.1 and there is a major improvement in it that is truly noteworthy.

Access will now export its data directly to the Word For Windows "print merge" format. It doesn't create an actual merge table in Word For Windows, but sets up a file that Word For Windows can access when using the print merge function.

This vaults Access to the forefront as one of the most powerful database front ends for a word processing program that I know of. For example, a typical law office Access database might be a customized case management application.

The case management database would track all the plaintiffs, defendants, attorneys, witnesses, judges, claims adjustors, etc., involved in a lawsuit. This same data could then be used in a related Access conflict checking database.

Some of the data included in the above databases would be client names, addresses, phone numbers and similar information about other parties to the lawsuit. In Access version 1.1, all of this information can be sent directly to a Word For Windows document without the user having to rekey a single word. That document could be a demand letter, a fee agreement, a pleading, a contract, or any document that requires information contained in a database.

Hence, the one time entry of data into an Access database can now become the vehicle for an extensive litigation support system that can sort and select specific database information and then automatically place that information into a Word For Windows word document.

I have long felt that one of the shortcomings of database programs was their weak links to word processing programs. In a way, this weakness makes some sense.

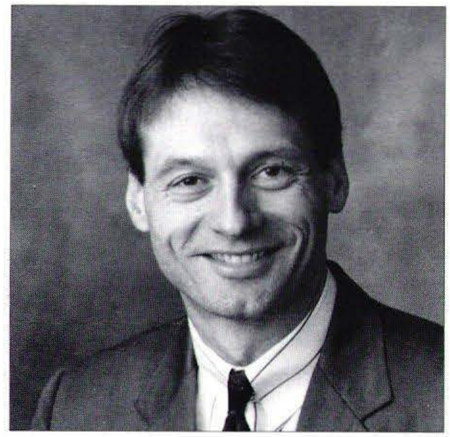
A company that makes widgets needs a database program to track inventory, suppliers, and customers. Document production is an aside to their business.

However, for a law office, document production *is* the business and the product. Therefore, a tightly integrated database front end to a word processing program is essential to efficiently manage the voluminous document and case information residing in a law office.

Access version 1.1 doesn't address all the concerns I mentioned in a previous article: i.e., security and ease of use issues. However, the ability to link a database to a document is so crucial to efficient law office operations, that I am going to be taking a more in-depth look at Access over the coming months to see how well it might work in some typical law office data and document assembly operations.

David Sandhaus *can be reached at (509) 448-8757*

Mary E. Fairhurst



Daniel L. Hannula

NEW PRESIDENT, FOUR

by **Lindsay Thompson**
Editor, Bar News

The increasingly youthful profile of Washington State Bar members continues to be reflected in its elected leadership. At the WSBA annual meeting in Seattle, outgoing president Stephen E. DeForest turned over the president's gavel to Hoquiam trial lawyer Paul L. Stritmattter for 1993-94; and four new members of the Board of Governors, elected by Association members last spring, assumed their seats for a three-year term. Two of them are women, increasing the number of women on the Board to three of 11. Women were candidates in three of the four races this spring, reflecting a growing trend in recent years.

Reflecting the generational shift last year's national elections produced, this year's WSBA elections have produced a markedly younger crop of leaders. In August, before the changeover, the average age of the Board of Governors was 48 (49, including the president, who is elected for a one-year term by the Board of Governors), spanning the decades between Alva Long (b.1926) and Mike Larson (b.1954). With the new intake in September, the average age of the Board fell to 43.6 (44.1 including the president), and six of the 11 members of the Board were born between 1952 and 1957.

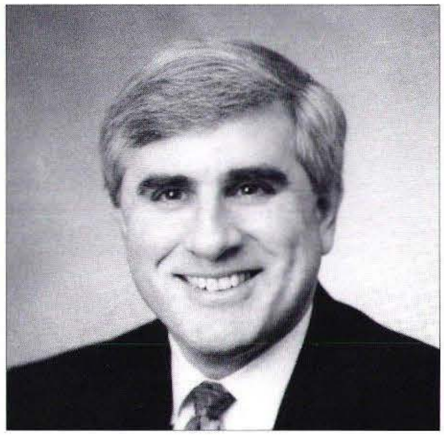
Leading the Board and the Bar Association in the coming year is one of the state's most successful trial lawyers, **Paul L. Stritmatter** (see photo, page 5). Born in Hoquiam in 1943, the son of a lawyer, Stritmatter graduated from the University of Washington in 1966, and *magna cum laude* from Willamette University's School of Law in 1969. He clerked for Washington Supreme Court Justices Matthew Hill and Charles Stafford in 1969-70 before returning to Hoquiam. He was a member of the firm of Stritmatter & Stritmatter until his father's death in 1982; the firm is now known as Stritmatter, Kessler & McCauley.

Stritmatter's service to the bar has been as kaleidoscopic—and ever-expanding—as is his celebrated collection of neckties. He served on the Supreme Court's Pattern Jury Instruction Committee from 1986 to 1990 and on the WSBA Board of Governors from 1987 to 1990. He is a past director, secretary, vice president and president (1984-85) of the Washington State Trial Lawyers' Association; a past state delegate and, since 1990, member of the Board of Governors, of the American Trial Lawyers' Association; and, for ten years, a board member of Trial Lawyers for Public Justice. His memberships include the American Bar Association, American Society of Hospital Attorneys, Damage Attorneys Round Table, American Board of Trial Advocates, International Society of Barristers, and the International Academy of Trial Lawyers. He has served on the board of the Washington Head Injury Foundation since 1990 and is one of the founders and directors of Law Fund, the Washington pro bono support group. In some ways, the post dearest to his heart is his role as *Judge* Stritmatter: since 1971, he has served as Municipal Court Judge for the City of Ocean Shores.

Stritmatter served on the Board of Governors from 1987 to 1990. The presidency rotates between eastern Washington, King County, and western Washington outside King County; most Board observers marked him—early in his term—as one who'd be back as president the first time the rotation came around to Hoquiam, a city of 10,000 in Grays Harbor County. He has attended meetings of the Board since they chose him early this year. His hit-the-ground-running style is reflected by his announcement, a month early in the September *Bar News*, of his program to bring more WSBA members into the fold . A galvanizing speaker, Stritmatter is, in many ways, closer to the issues concerning Washington lawyers today than any president in many years, given the Board's past tendency to reach back to former governors who'd been off the Board ten years or more.

The four new governors of the Association are a varied lot. New Third Congressional District Governor **Mary E. Fairhurst**, 35, is an assistant state attorney general in Olympia. After earning her B.A. and J.D. at Gonzaga University, Fairhurst clerked for Washington Supreme Court Justices William H. Williams and William C. Goodloe. She joined the AG's office in 1986, and has worked in the Revenue and Transportation divisions. From 1989 to 1991 she

Linda J. Dunn



Steven G. Toole

Governors Assume Posts

was assistant to Attorney General Ken Eikenberry, responsible for attorney and clerk recruitment and hiring, and other projects. Active in a variety of bar groups, Fairhurst was legislative liaison, president-elect and president of Washington Women Lawyers between 1986 and 1990, racking up several years' worth of attendance at Board of Governors meetings. In 1990, she narrowly lost a race for the Third District seat on the Board to Vancouver lawyer Steve Tubbs, whom she now succeeds in office; earlier this year Washington Women Lawyers nominated her to the Board of Governors for the WSBA presidency. In 1990-92 she co-chaired the WSBA Committee on Opportunities for Minorities in the Legal Profession. She's a current member of the Bar's Character & Fitness Committee, which reviews applications for admission to practice in Washington.

Between professional activities, Fairhurst pursues volleyball, racquetball, kayaking, and hiking, among other sports. "Often I am able to combine the athletics with travel," she comments, recalling her June participation in the "8th Annual Women's Decadent Kayaking Trip, where a group of women friends get together for a weekend of kayaking and camping." Fairhurst is also a member of the Government Lawyers Bar Association and the Thurston County Bar Association.

Sixth Congressional District Governor **Daniel L. Hannula**, 41, is a Tacoma native. He holds B.A. and J.D. degrees from the University of Washington, and was admitted to practice in 1977. A member of Rush, Hannula & Harkins, an eight-member Tacoma firm, Hannula concentrates his practice in the areas of litigation, negligence law, health care, and insurance law. He's a past president of the Tacoma-Pierce County Bar Association, serves on the Board of the Washington State Trial Lawyers' Association, and is a member of the Washington Commission on Judicial Conduct. Hannula is an AAA arbitrator, and a member of the Washington State Association of Defense Counsel, as well as the Association of Trial Lawyers of America. He succeeds Tacoma lawyer Monte Hester on the Board of Governors.

Eighth District Governor **Linda J. Dunn**, 45, was born in Ephrata and is a graduate of Eastern Washington University and Gonzaga University School of Law. From 1979 to 1987 Dunn was an assistant attorney general for the Labor & Industries Division of the Attorney General's Office; from 1986 to 1987 she served as chief of the Consumer Protection Division.

Dunn is a past president of the King County chapter of Washington Women Lawyers, chair of the judicial evaluation committee, and later served as president of the statewide organization. She has been a member of the WSBA Lawyer Advertising Committee and a monitor for the WSBA Office of Disciplinary Counsel. She is a member of the Washington State Trial Lawyers' Association. Dunn is a member of Levinson, Friedman, Vhugen, Duggan & Bland, a Seattle firm, responsible for complex product liability cases, sexual abuse and harassment cases, maritime and personal injury law. She replaces Thomas J. Chambers on the Board.

Steven G. Toole, 44, holds the King County At Large seat vacated by Alva Long. A sole practitioner in Bellevue, he limits his practice to plaintiffs' personal-injury law. Toole was born in Cincinnati and graduated from Ohio State University before taking his law degree from the University of San Diego in 1975. He practiced in Port Orchard, working weekends as a whitewater river guide. In 1980, he took a sabbatical, traveling the country facilitating self-improvement seminars.

Toole returned to Washington in 1981 and refocused his practice in the personal injury arena. Over the years, he has been active in the Kitsap, King and East King County Bar Associations; he comes to the Board of Governors from the East King County Bar presidency. Since 1986 he has served on the Legal Secretary Advisory Committee at Lake Washington Technical College. He has been on the Washington State Trial Lawyers' Association Board of Governors since 1991, and is a member of the American Bar Association and the Association of Trial Lawyers of America.

Toole is a rollerblade enthusiast, and enjoys cross-country skiing and going to the movies with his family. On the Board of Governors, he sees the bar budget, streamlining services, increasing member participation, and improving pro bono services as priorities.

HEDONIC DAMAGES—HOW

by **Wolfgang W. Franz**

The June *Bar News*[1] published a number of comments by Robert Moss on my article, "Calculating Hedonic Damages in Personal Injury Cases."[2] His comments are primarily arguments against using economics in the computation of hedonic damages. I had previously summarized most of these arguments in an article which appeared in the January/February 1993 issue of the *Trial Diplomacy Journal*.[3] However, his proposal to use properly adjusted and interpreted prior jury verdicts deserves comment.

Moss appears to have misunderstood the thrust of my paper. His opening paragraph says that my article "described a proposed method for calculating the percent of enjoyment of life that has been lost as a result of injury."[4] However, the introduction says, "This article uses a credible range of the findings of the willingness-to-pay studies as a basis for calculating hedonic losses in an actual personal-injury case."[5] If he is reacting to having economists determine the *percent* of enjoyment of life lost, then some of his criticism is well-founded. To the contrary, I warned, "In no way should an economist tell the jury what the precise percent of loss is. This clearly lies outside the expertise of the economist."[6] "Ideally, psychologists or other mental-health professionals would determine and testify to the percent of the enjoyment of life that has been lost as result of the injury."[7] However, if such testimony is not available, the best an economist could do is to use tables developed by psychologists and based on them ". . . suggest a range in the percent of impairment and then compute the losses for it."[8]

Some of Moss's criticism seems to grow out of a misunderstanding of the theory of hedonic damages. Though he states that "Attempts to develop hedonic damage theories have focussed on the loss of positive values . . . ignoring these (negative) costs, hedonic-damage theory seriously undervalues the qualitative loss of persons with lifelong disabilities."[9] To clarify my point, hedonic losses include only the positive loss of enjoyment of life and not the negative aspects of pain and suffering that have been added by the injury. This is a separate loss. Perhaps this confusion arises because general damages include loss of both enjoyment of life and pain and suffering.

To make the wrongfully injured person legally whole requires compensation for economic and hedonic losses and for pain and suffering. This can, perhaps, be best illustrated by using positive and negative values as illustrated in Table A (page 43).

Economic and hedonic values are positive, while pain and suffering are negative. The whole-life value is derived by adding annual economic and hedonic values. This is illustrated by column one. The second column shows the reductions in hedonic and economic values and the increase in pain and suffering because of the injury. The third column adds the hedonic and economic losses to pain and suffering. This is the total loss incurred by the wrongfully injured person and the legal amount required to make the injured person whole.

As an alternative to using economics in computing hedonic losses, Moss proposes that "Prior jury verdicts, properly interpreted and adjusted for the severity of injury, age of the injured party, and perhaps regional differences, could become a valuable guide to a jury attempting to quantify its compassion for the injuries of the plaintiff."[10] While this is a possible approach, it is not without its problems.

One major problem is that prior jury awards for the loss of enjoyment of life were made solely on a subjective basis, since juries in the past have not received any guidance from experts to determine hedonic losses. This approach seems to be greatly misleading since juries would

FAR CAN ECONOMICS GO? A REPLY

probably view these prior subjectively set awards as objectively set parameters for future awards. Apparently Moss holds that guidance based on past subjective losses is superior to objective guidance that economics could provide.

Moss did not lay out the details of how he would make this approach operational. Would there be a category for every possible type of injury and its severity and resulting loss of enjoyment of life and degree of pain and suffering for each? Is sufficient data available to do this? Even if sufficient information concerning the degree of pain and suffering and loss of enjoyment of life for each case is available, it still needs to be interpreted, adjusted, apportioned and converted into dollar values. Who is qualified to make all of those evaluations? It seems that many criticisms are levied against the computations of hedonic damages and many new ones could be used against this approach as well.

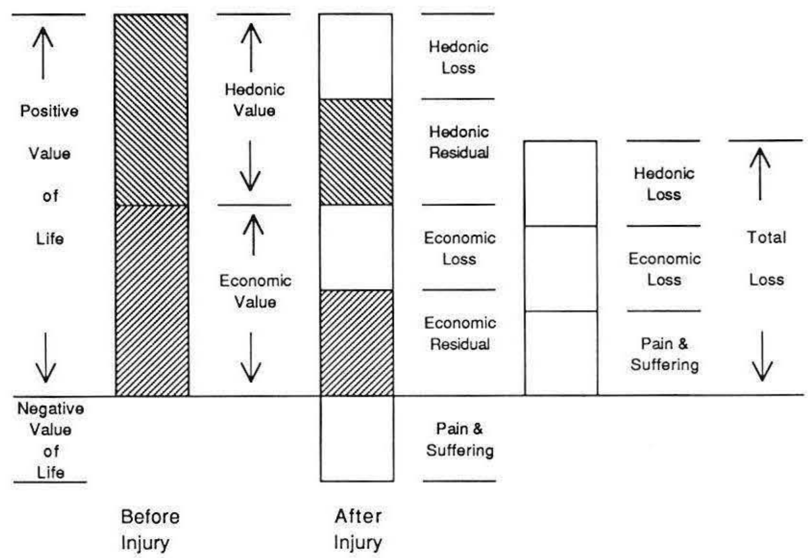
These problems are compounded by the fact that jury verdicts do not specify amounts awarded separately for hedonic losses and pain and suffering. They are both classified as general damages. Thus the adjustor also needs to disaggregate these losses. Many of the criticisms used against the computation of hedonic damages apply as well.

It is commonly known that the range of jury verdicts varies immensely for similar types of injuries and jurisdictions. Many awards have been held to be excessive by higher courts and thus reduced.

Many of these problems are very difficult, if not impossible, to overcome. In the meantime, we have an objective method to compute hedonic damages which gives a credible range of an annual value of the total enjoyment of life between $24,000 and $65,000, with a median of $44,000. These are reasonable values. How many of us would be willing to be totally paralyzed with the loss of seeing, hearing and smelling, while retaining a sound mind, for these annual amounts?

TABLE A

Total Loss in Personal Injury



Though the approach currently used to estimate the loss in the capacity to enjoy life is not perfect—virtually nothing in life is—it is currently the best method available, and it gives defensible results.

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[1] Moss, Robert W. "Hedonic Damages . . . How Far Can Economics Go?" *Washington State Bar News.* Vol. 47, No. 6, (June 1993). pp. 47-48.

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[3] Franz, Wolfgang W. "Hedonic Damages: Applying The Methodology, Examining The Pros and Cons." *Trial Diplomacy Journal.* Vol. 16, No.1, (January/February 1993). pp. 23-31.

[4] Moss p. 47.

[5] Franz, *supra* March 1993, p. 20.

[6] *Id.* p. 23.

[7] *Id.* p. 23.

[8] *Id.* p. 23.

[9] Moss, p. 48.

[10] *Id.* p. 48.

***Wolfgang W. Franz** is a Professor of Economics at Central Washington University. He has testified in numerous personal-injury cases.*

NEWS FROM HOME

James F. Whitehead, who has practiced maritime law since 1975, is a recent addition to the Seattle office of Faulkner, Banfield, Doogan & Holmes, an Anchorage firm. He is associate editor of *American Maritime Cases*, and concentrates his practice in personal injury litigation in the fisheries industry.

Gayle L. Troutwine is serving a two-year term on the Board of Governors of the Association of Trial Lawyers of America. Troutwine was elected to represent the Women Lawyers' Caucus. In September she completed a three-year term on the Board of Governors of the Oregon State Bar. Troutwine practices in Portland.

Recognizing two new partners, the Bellevue firm of Trujillo & Peick changed its name to Trujillo, Peick, Lingenbrink & Magladry, P.S., in the summer. **Steven G. Lingenbrink**, an attorney with the firm since 1984 and a principal since 1989, and **Jean Magladry**, who joined the firm in 1986 and became a principal in 1990, are the new folks on the letterhead.

J. Patrick Brown is a senior associate with Chism, Jacobson & Johnson in Seattle. His practice concentrates in the construction law area.

Gwen Griffin-Halliday, an assistant attorney general in Spokane, is the recipient of the WSBA Young Lawyers Division's second annual Thomas Neville Award for pro bono work.

Adam Moore of Yakima was honored in July with the second annual Michael J. Hemovich Award of the federal bar association in the Eastern District of Washington. The honor recognizes a member of the federal bar with a notable compassion for people, professional excellence, and zeal tempered by wit, good humor and a colorful personality. The award was presented by U.S. District Judge **Alan McDonald** and Supervisory Assistant U.S. Attorney **Robert Linnell**.

Michael Delabarre has been named a member of the Moses Lake Planning Commission. He practices with Danielson, Sonn & Aylward.

Keller W. Allen, formerly with Winston & Cashatt, has joined McCormick, Dunn & Black, P.S. in Spokane. He continues to practice in the areas of construction, and labor and employment litigation.

Serena M. Schourup has joined Bogle & Gates in the firm's real estate practice group. Formerly with Revelle Hawkins in Bellevue, she is a senior attorney focusing on real estate, secured transactions and brokerage law. **Clemens H. Barnes** and **Clifford D. Sethness**, formerly with Graham & Dunn, have joined Bogle & Gates' labor and employment practice group.

Jeffrey Arntzen has opened an office at 1321 South Second Street in Mount Vernon.

Ronald A. Hoyum, J.D., M.Div., and **Anne Cornish Leitch,** Ph.D., have announced they are offering mediation services in Yakima at 223 North Yakima Avenue.

Elaine Houghton of Tacoma accepted an appointment to the Court of Appeals, Division II, from Governor **Mike Lowry** this summer. She replaces retired Judge **John Petrich**, whose term expires in 1997.

David S. Engle has joined the Law Offices of **Leon Najman** in Seattle. He's a 1992 graduate of Thomas M. Cooley Law School.

David E. Grashin has announced he is on sabbatical for a year as of July, 1993. He and his family will be living in Jerusalem. Mail can be sent to him at his Seattle office: 3003 Bank of California Tower, 900 Fourth Avenue, Seattle, WA 98164-1003, from which it will be forwarded to him.

Susan J. Robinson is a Fellow of the American College of Mortgage Attorneys, joining fourteen other lawyers in the Pacific Northwest. She is head of Karr Tuttle Campbell's foreclosure department.

A. Reid Allison has returned to the Northwest. He left Seattle in late 1987 to join the Army Corps of Engineers in Los Angeles. In 1989 he moved to Washington, D.C. to become a senior civilian litigation attorney and deputy chief of the Environmental Litigation Branch of the Department of the Army. Allison is back in Seattle, heading the environmental practice section at Carney Badley

Smith & Spellman.

Four lawyers have been named partners by Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim in Tacoma and Seattle. **Stephanie A. Arend**, **Terry L. Brink**, **Bradley B. Jones**, and **Jackson Schmidt** are the latest additions.

Robert A. Free has returned to the practice of law, and to MacDonald Hoague & Bayless, after a stint in practice in Hawaii.

Tousley Brain and McGee & Reno announced a merger of the two firms in July. **Terence K. McGee** and **Vi Jean Reno** have become Tousley Brain partners, and **Diana M. Butler** is an associate. They concentrate their practice in the firm's maritime and international practice group.

Laura Treadgold Puckett has joined Riddell, Williams, Bullitt & Walkinshaw as a partner. She is a former member of Davis Wright Tremaine in Seattle.

Steven O. Rosen, a partner in the Portland office of Miller, Nash, Wiener, Hager & Carlsen, moderated an ABA Annual Meeting Program in New York in August. "How the Master Trial Lawyers Litigate Cases" was the topic. He is also completing three years as chair of the ABA Aviation Litigation Section.

Robert H. Douthitt of Lukins & Annis was appointed chair-elect of the Business Section of the WSBA this summer. The section has about 2,000 members. Douthitt practices in Spokane.

Kermit Rudolf has announced his retirement as Gonzaga University Corporation Counsel, effective January 1, 1994. He will be succeeded by **Leo Driscoll** of Spokane. Rudolf is a 1951 Gonzaga Law graduate who practiced in the Spokane firm of Dellwo & Rudolf from 1952 to 1987. Long associated with Gonzaga's legal work, Rudolf became counsel in 1988.

Rudolf graduated from Northwestern University with a journalism degree in 1939 and worked for the Spokane *Spokesman-Review* through his law school years. In the late 1980s, he served a term on the Editorial Advisory Board of the *Bar News*, and continues to be a valued editorial friend and advisor.

Driscoll, also a 1951 Gonzaga alumnus, was a deputy prosecuting attorney for Spokane County after entering the bar. Since 1956 he has been an attorney with Winston & Cashatt.

Loren R. Dunn was named a partner at Riddell, Williams, Bullitt & Walkinshaw, effective July 1, 1993. His practice is principally in the field of environmental law. **Barbara Alan Shickich**, former vice president and general counsel of Group Health Cooperative of Puget Sound, is of counsel to the firm, and practices in the health care law field.

Tom Warren, Chelan County District Court judge, is serving as president of the District and Municipal Court Judges' Association for 1993-94.

Heidi Gahler was honored earlier this year by Business and Professional Women. Gahler, who practices with Halverson & Applegate in Yakima, is the group's 1993 Young Careerist.

James B. Bristol, formerly in prac-

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Seattle Hilton

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tice in Dallas and Atlanta, is now practicing pension, employee benefit, and related law in Foster Pepper Shefelman's employment and labor group.

Schwabe Williamson Ferguson & Burdell's **Janet Irons** has been elected to the board of the National Association of Women in Construction Law.

CLARK COUNTY REPORT

by **JOHN F. NICHOLS**

SUMMER OF '93

The summer of '93 has come and gone. Okay, it showed up on Tuesday and was gone the next day. But this doesn't stop my review of the summer highlights.

1. First, one must put up with my verbal slide show of my own vacation. This year's destination, "Visalia, California," just southeast of Fresno—the raisin capital of the world. Not much to do in Visalia after 10 o'clock . . . a.m., but it is a great place to have breakfast. Fortunately, it was summer there although they suffered through somewhat of a cold snap in that it only got up to 93°F. *HIGHLIGHT*—numerous highway billboards promoting some law firm with the catchy telephone number, "1-800-4-INJURY." My reaction, "1-800-HOW-CUTE". *LOWLIGHT*—spending the weekend in Lodi thinking Visalia would be more fun. However, they do have excellent fresh fruit and raisins there.

2. Most disappointing trend of '93—More Violence. Just when you thought Clark County was shielded from this national trend, it hits you like a 2" x 4"

*Seattle attorney **Lawrence K. Cheung** (center-right), flanked by Eva Airways flight attendants and president **Frank Hsu** (center-left). As the one-millionth passenger to depart Taipei's Chaing Kai-Shek (CKS) international airport on Eva, he won unlimited business class tickets for one year. Eva, Taiwan's first privately owned international airline, is managed and operated by the diversified Evergreen Group.*

to the back of the head. While attempting to enjoy the pastoral setting of a slow-pitch softball contest involving local CCBAers, a brawl broke out. At the center of this melee was none other than **Greg** "Gonzo" **Gonzales**, previously known to turn his cheek as well as he turns a double play. Apparently, Greg took offense after an opponent slid into Greg at third base and asked, "Are you wearing a pillow or is that your stomach?" Greg checked himself for any optional equipment and, concluding that there wasn't any, ascertained that he was being insulted. This set off a bench-clearing row, in which the attorneys took about five minutes to get from their bench to third base. In the meantime, Gonzo tiring from his rope-a-dope strategy, resolved the fracas by offering to buy beer for everyone. Thus, the game came to a halt; the attorneys licked their wounds and drained their pockets at their sponsor's establishment. Thereat **Art Curtis** shocked his mates by announcing his retirement from competitive slow-pitch. Most expressed disbelief, as they thought Art hadn't been competitive for years.

3. **Terry Lee** captured the best ad of the summer with his entry in the Battle Ground *Reflector*. This summer replacement features Terry's smiling face with the admonishment, "Know your rights!" (Which is fine, but what if you are ambidextrous?) It then contains a footnote, "Not related to **Darrell Lee.**" This raises two questions: Has anyone told Darrell? And: Does Mom know?

So ends the summer of '93, and as the rain clouds fade on the horizon, one can look for a warm and happy winter.

EAST KING COUNTY REPORT
by MARIJEAN E. MOSCHETTO

The final leg of the Suburban King County Golf Challenge was held on August 19 at the EKCBA Golf Tournament at Carnation Golf Course. The course was in fine shape, unlike the previous month's leg at Enumclaw. Team EKCBA members on hand were myself, **Barry Hasson**, **Jim Dailey**, **Ted Barr** and **Allen Sakai**. They were nattily attired in team shirts and hats. Not as sartorially resplendent but ready to play were the South King County members **Andy Weiner**, **Paul Houser**, **Bob Kuvara**, and **Eric Aaserud**. Captain Weiner and the other South members had a great time and walked off with the trophy, as well as door prizes for each. Captain Weiner guaranteed that South's challenge next year would include prizes for each of the members of Team EKCBA. Rumor has it that this year's EKCBA tournament winner and director, **Chris Frost**, will win the trophy for the East next year.

The tournament also saw the kickoff of the annual Eastside Legal Assistance Program's raffle. This year's grand prize is a trip for two to Hawaii. At one dollar a chance, this is a heck of a raffle. The award of the grand prize and other prizes will be announced at the EKCBA annual Holiday Party in December. As we say, buy soon and buy often.

In other Eastside news, former Woodinville general practitioner **Steve Hansen** has relocated his office to Bellevue. **Lynn Pollock** and **Susan Millican O'Brian**, both emphasizing family law, have relocated their offices within Bellevue. Lots of noteworthy occurrences are taking place in the Bellevue firm of Revelle Hawkins. **Tom Hansen** has joined the firm as has my friend **Jean Kunz**. Tom practices in the firm's real estate division and Jean in the tax department. Firm principal **Hugh Hawkins, Jr.** is the recipient of the "Escrow Achiever of the Year" award presented by the Eastside Regional Escrow Association.

Last but certainly to be anticipated, October's EKCBA luncheon will feature a 30th Anniversary Celebration of the East King County Bar Association. If you want to know the answer to "Where Were We in '63?" this is your chance to find out. The luncheon will feature speakers from lawyers who have practiced on the Eastside since the '30s to present and exhibits showing the growth of the Eastside. It promises to be a special occasion, and all are welcome.

LOREN MILLER BAR ASSOCIATION

Lawrance A. Edwards, general litigation partner in the law firm of Lane Powell Spears Lubersky in Seattle, has been elected president of the Loren Miller Bar Association. His term of office will continue through June 1994. Edwards is a graduate of California State University/Long Beach and the UCLA School of Law.

The Association is the oldest specialty bar association in Washington, with some 200 African-American lawyers and judges as members.

PIERCE COUNTY REPORT

by **GEORGE S. KELLEY**

Mike McKasy, president of our bar association, had written a letter to **Hillary Rodham Clinton** to come to Tacoma to give a speech on any topic she felt might be of interest, such as health care reform. Months went by without reply, so he sent a second letter. Finally, on June 9, he received a letter from the Scheduling Director of the President's Task Force on National Health Care Reform thanking him for his interest, inviting his support, but politely declining the invitation. Mike felt pretty good about his effort and the response until he received a letter dated July 16 from the Deputy Assistant to the President, Media Affairs Director, also declining his invitation on behalf of the First Lady. Mike should have felt doubly good about this except for the fact that the second letter was word for word the same as the first, the product of computer generated goodwill. Maybe Mike can contact Hillary's voicemail.

Tim Coogan, who used to keep a neon shamrock in his office window as a sign of Irish good luck, reports that five close friends, associates or clients have won big prizes in the state lottery. Tim states that he is available to consult with anyone who is considering buying Lotto tickets in return for a share of any proceeds.

Chris Keay was pictured and quoted in the newspaper complaining about the Burlington Northern train whistles from the track bordering his office. Whenever a train passes, it is required to sound its whistle to warn motorists and pedestrians at a nearby crossing. All conversation stops in the adjacent offices whenever this happens. Chris asked that the engineers be a little less aggressive with the whistle. The railroad was quoted as saying this was a safety issue. The City Council said it would take the matter under advisement. The tide of public opinion seemed to be running with Chris until two days later when there was a train-pedestrian accident at the crossing. This put an end to the campaign for relief from the train whistles, and it appears that Chris is not even going to get the case of the injured pedestrian.

John Connelly returned from a 1,200-mile kayak trip down the Yukon river. He says he had better weather up north of the Arctic Circle then we did here.

Someone put on a brown bag luncheon at UPS School of Law featuring the pointed topic of "Acupuncture in the Criminal Justice System." The announcement stated that application had been made for CLE credit.

Ed McFerran opened a new office out by Costco. There has been no announcement of an office-warming party. McCarthy, Causseaux & Rourke, Inc. P.S. have added **Bruce F. Baxter** to the firm. **Everett Holum** has left the aforementioned firm to open his own office out by Costco. **Julie Weigand-Johnson,** thinking that the Costco area was a little crowded, has moved her practice from Vandeberg & Johnson to Gordon Thomas, et al. **Tom Dinwiddie**, not having enough to do in the practice of law, has opened a gun shop in Freight House Square, which is Tacoma's version of the Pike Place Market.

SOUTH KING COUNTY REPORT

by **THOMAS A. CAMPBELL**

The summer started with our induction ceremonies at the Kingdome prior to a Mariners' game with Minnesota. Presiding Judge **Charles Johnson** swore in new president **Michael Salazar**, vice president **Jane Rhodes**, treasurer **Bonnie Lindstrom** and secretary **Tom Campbell**. President Salazar has a full agenda of action items that he intends to accomplish during his term.

A membership committee and a court liaison committee will be proposed at our September meeting. **Jean Bouffard** will lead the membership committee while **Tom Campbell** will organize the court liaison committee. Anyone interested in involvement in these committees is encouraged to contact the committee heads.

Our Annual Golf Tournament was held on one of the few sunny days this summer at the Enumclaw Golf Course. **Eric Aaserud** led all golfers and **Phil Biege** led all others. Biege showed us the benefit of his years of experience as he sported his hip wader golf spikes on the soupy back nine. **Theresa Ahern** went to sleep in her car when her foursome made the turn.

Accepting the Suburban Gold Challenge from the East King County Bar, **Andy Weiner**, **Bob Kuvara**, **Paul Houser, Sr.**, and Aaserud traveled north to bring home the cup. We didn't even have to ask for strokes.

Meetings this year will be held at Anthony's Home Port in Des Moines. The speaker in September will be **Ann Rule**.

SPOKANE COUNTY REPORT

by **JOHN RODGERS**

The weather here being what is has, we're forced to seek other indicators of the progress of the seasons. One reliably annual event is the election of Spokane County Bar Association officers and trustees. With minimal house-to-house fighting, the 95th SCBA president was declared to be **Bill Etter**. That's "William F." for those of you stuffing congratulatory notes into your fax machines or writing to ask if the SCBA would be interested in a volume discount on casualty insurance, ballpoint pens or tours of Antarctica.

Also, for probably about the 80th or 90th time (we were founded in 1895 but didn't file articles of incorporation until 1908), other officers stood and slid one chair over into new positions without opposition: **Patrick E. Connelly** is the new vice president and **Greg A. Smith** is the secretary. Given this tacit progression through the chairs, the real politicking occurs at the treasurer position, where **Pamela J. DeRusha** obliterated all opposition. **C. Mark Casey**, **Frank J. Gebhardt** and **Terry M. Ryan** were elected to two-year terms as trustees, joining **Judith A. Butler**, **Michael C. Geraghty** and **Richard B. Kayne**

These flowers of our local bar will gather once a month in the offices of whoever has the neatest conference room and, guided by the iron fist of executive director **Judy Foster**, debate (and, in the case of weighty matters, form committees to continue the debate on) such issues as whether our regular luncheons should be moved to a different day or location, what aid to the community will also enhance our own image, what happens when county government finds out that we're not paying rent for our office space in the courthouse, and why **Joe Esposito** insists on spending good money for nine trays of "liver bits" at the annual holiday function.

This group inherits one of the healthiest local bar organizations in the state. There are 975 members, purportedly representing a higher percentage of the area's practicing attorneys than enjoyed by any other county. The SCBA provides CLE credits, a twice-monthly newsletter and a lawyer referral service for its members. Members also hear topical speakers, debate professional issues pending on the state level, and organize candidates' forums for state and local office. The 1992 Pro Bono Award from the state bar, as well as this year's Pro Bono Award to the Spokane office of the Washington State Attorney General, suggests our association's success in providing legal services to the needy among us.

One of the newly elected leaders was heard to muse aloud about the relevancy of such "general" bar associations in the face of the proliferating specialty groups. May the answer remain self-evident.

KING COUNTY BAR ASSOCIATION

For the first time in its hundred-year, many-monikered history, the King County Bar Association's president, president-elect, and executive director are all women. **Alice Paine** is completing her fourth year as the 4,500-member association's executive director.

Mary Alice Theiler, president for 1993-1994, is the third woman to hold the association's highest position.

Mary Wechsler will succeed Theiler as president in 1994-1995. And to make sure everyone's calendar is clear, the Associations has elected **J. Richard Manning** president-elect for 1995-1996.

Daniel Gottlieb has been elected secretary-treasurer of the Association for the coming year.

Due to a recent change in the bylaws, the Association's board of trustees now includes seven trustees from central King County, two from east King County, and one from south King County. New central-district trustees, elected to three-year terms, are **Thomas Kelly, Jr.** and **Palmer Robinson**. **Zanetta Fontes** is the south county trustee, and **Ronald Dickinson** joins **Kimberly Ellwanger** as east side trustees. Central district trustees continuing their terms are **Barbara Heavey, Scott Smith, Linda Strout, Ronald Roseman** and **Bruce Wieland**.

Founded in 1886 as the King County Bar Association, the group became the Seattle Bar Association in 1906, the Seattle-King County Bar Association in 1958, and the King County Bar Association again in 1993.

WASHINGTON DEFENSE TRIAL LAWYERS REPORT

***by* LAURIE D. KOHLI**

Summer news:

The boards of the Washington Defense Trial Lawyers and the Washington State Trial Lawyers Association have developed and adopted a Joint Statement on Professionalism, which has been circulated to all WDTL members through the organization's *Association News*, and which was published in the May 1993 issue of WSTLA's *Trial News*. The joint statement was the product of the efforts of WDTL's past president, **Mike Runyan** and WSTLA member **Kelby Fletcher**. Copies are available from WDTL's executive director, **Nora Tabler**, (206) 233-2930.

Sixty-four WDTL members enjoyed a journey to the Ste. Michelle Winery aboard the "Spirit of Washington" dinner train on June 11. The response from the members to the notice of the dinner meeting quickly filled the first car, which had been reserved for the event, and a second car was reserved and filled as well, still leaving disconsolate members on the waiting list.

The WDTL 1993 Eastern Washington Judges' Reception was held on Thursday, May 6, at the Yakima Country Club, and on Friday, May 7, at Patsy Clark's in Spokane. More than 65 people attended the Spokane event, including 16 members of the state and federal bench, including the Honorable Justice **Richard Guy** of the Washington Supreme Court. Three new trustees have been appointed to the WDTL Board for the 1993-1994 year: **Andy Cooley** of Seattle; **Bob Tenney**, of Yakima; and **Steve Stocker**, of Spokane. Their nominations to the Board were ratified by the membership at the WDTL Annual Convention, which was held this year at the Skamania Lodge in the Columbia River

Gorge, and which continued WDTL's tradition of holding truly memorable annual meetings. Those attending learned from speaker **Helen Thayer**, the only woman to solo to the magnetic North Pole on foot without being resupplied and without a dog sled team, that despite all its pressures, there are worse things to do than the practice of law.

Election results:

At their annual convention, held at the Skamania Lodge in the Columbia River Gorge, WDTL elected officers for 1993-1994: **Jeff Tilden**, Seattle, president; **Mary Spillane**, Seattle, vice-president; and **Bill Phillips**, Tacoma, secretary; **Pete Johnson**, Spokane, treasurer. On the Board of Trustees are: **Mike Runyan**, Seattle; **Laurie Kohli**, Seattle; **Ed Winskill**, Tacoma; **Tom Collins**, Seattle; **Jim Macpherson**, Seattle; **Tim Blue**, Seattle; **Steve Stocker**, Spokane; **Bob Tenney**, Yakima; and **Andy Cooley**, Seattle.

The annual WDTL Seattle Judges' Reception will be held on Friday, October 22 at the College Club. Cocktails and camaraderie will begin at 6 p.m. and last until the diehards leave. The Yakima and Spokane Judges' Receptions will be held in May 1994.

WDTL's Insurance Law Seminar, chaired this year by **Roy Umlauf**, will be held on November 4 at the West Coast Ridpath Hotel in Spokane and November 5 at the Westin Hotel in Seattle. Members and nonmembers alike are invited to sign up for this popular annual CLE program.

IN MEMORIAM

Gary W. House

Gary W. House, 52, died of cancer June 11, 1993 in Seattle. The Bainbridge Island resident was a trial attorney for Safeco Insurance.

Born in Seattle, House graduated from the University of Washington in 1964. After officers' candidate school, he was commissioned an ensign in the Navy and served three tours in the western Pacific during the Vietnam War. He graduated from the University of Puget Sound School of Law in 1974. House was an assistant district attorney in Lane County, Oregon for five years, and later practiced in the maritime law field for five years.

House served in the Naval Reserve, commanding four different reserve units, until he retired as a captain in 1988. He was a member of the Washington Defense Trial Lawyers Association, the Maritime Law Association, the Naval Reserve Association, the Naval Reserve Association, and the Reserve Officers Association. Survivors include his mother, wife, two daughters, a brother and a sister.

J. Tyler Hull

J. Tyler Hull, 77, died July 9, 1993 in Seattle. A Seattle native, Hull was a Phi Beta Kappa graduate of the University of Washington. He took his law degree from Yale, where he was an editor of the *Yale Law Journal*. In World War II Hull served as a U.S. Army counterintelligence officer in the Pacific.

Hull joined Bogle & Gates in 1946 and was of counsel to the firm from 1984 until his death. He chaired the firm's labor law department for many years and was noted for his expertise in the field of labor law.

Survivors include his wife, two daughters and two granddaughters.

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J.D.-C.P.A.-L.L.M. in tax: More than seven years of experience in tax, estate planning, probate, commercial litigation, real estate and bankruptcy. Desires to associate with small to mid-sized firm in Eastern Washington. Reply to Box 402, WSBA.

POSITION AVAILABLE

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 D.C. 20005. (206) 393-3311. Visa/MC.

Attorney position: The Suquamish Tribe currently has one opening for an assistant Tribal Attorney. The position will perform general civil legal services for the Tribe. Prefer 5 (five) or more years' experience in Indian Law, environmental law or litigation. Submit a resumé to Jon C. Bugher, Tribal Administrator, PO Box 498, Suquamish, WA 98392. The Suquamish Tribe is an Indian Preference Employer.

Litigation attorney: A 21-attorney law firm in Tacoma seeks an attorney with three years' litigation experience. Must have had case responsibility and be able to write and research effectively. Excellent academic credentials required. Replies will be kept strictly confidential. Send resumé to Recruiting Attorney, Vandeberg & Johnson, PO Box 1315, Tacoma, WA 98401.

Expanding Bellingham municipal law, litigation, commercial transaction firm seeks an associate with a minimum of one year's experience in litigation, real estate or commercial transactions. Reply to Box #401, WSBA.

Bond claim attorney needed to investigate and adjust surety and fidelity bond claims for the nation's largest privately owned property and casualty carrier. Requires law degree and three-plus years of performance or construction default experience. Excellent compensation package. Based in Seattle, WA; Walnut Creek, CA; or Orange, CA. Send resumé and salary history to HR Dept., The Great American Insurance Group, 580 Walnut Street, Ste. 775, Cincinnati, OH 45202. EOE M/F/D.

Southwest Washington four-lawyer firm seeks associate with trial experience for busy general civil practice. Excellent opportunity. Send resumé to Box 403, WSBA.

The Vancouver, Washington office of Williams, Kastner & Gibbs seeks a lateral attorney with five or more years of business, real estate, bankruptcy and/or transactional experience. Some level existing client base strongly preferred. Experience the benefits of a large firm with a small-office atmosphere. Potential to expand your client base through the strength and support of a regional law firm. Salary and benefits very competitive. Send resumé c/o Evelyn West, 1220 Main Street, Suite 510, Vancouver, WA 98660.

WILL SEARCH

Louis N. LaPlante: If you have any information regarding the will of Louis N. LaPlante, deceased June 4, 1993, please contact Julie Sarff, PO Box 5296, Tacoma, WA 98415; (206) 552-1556.

Gerald Lee Hammons: Date of death July 9, 1993. If you have any information regarding the will of Gerald Lee Hammons, a resident of the Kennewick area, please contact Steve Grenley at (206) 447-4400, 1111 Third Avenue, Suite 3400, Seattle, WA 98101.

SERVICES

Omega Attorney Placement: The Pacific Northwest's premier attorney placement firm, specializing in law firm and corporate attorney placement. Direct confidential inquiries to Omega. (206) 467-5547.

Urology forensic consultant: Experienced, boards, professor, M.D., J.D., plaintiff or defense. (314) 361-7780.

Legal Billing Services. Joan K. Rumrill. Professional, accurate, efficient and low-cost billing service for law firms. Call today for a free consultation. (206) 780-9727.

Contract attorney: experienced, accomplished trial and appellate attorney available; ten plus years' litigation emphasis. References on request. Reasonable rates. M. Scott Dutton, (206) 324-2306.

Insurance consultation—J.D., C.P.C.U. available for document review and production, coverage analysis, and insurance agents' errors and omissions cases. Call Research Services at (206) 649-1152.

Quality service + cost control = membership in the Eastside Law & Tax Library. Get the support services you need at a price you know in advance. Complete law library with fully qualified staff. Many services available on "use" basis. Comfortable, quiet workplace 24 hours a day, seven days a week. Come in for a free day's use, and see for yourself. Preparing your 1994 budget? Join the library; now, pay no dues until January; or, pay in full now, and get a 20 percent discount. For details and to arrange a free day's use, call Margie Hawley at (206) 646-3464.

Automated document production: Automate the production of all types of form documents, including family law forms, using your current word processor. Practicing attorney and computer consultant. Michael V. Fancher, (206) 462-0788.

Automated Forms Production. Legal Word Services, the creators of the *Win*Bankr™ Bankruptcy Forms System, will produce custom, fully automated Microsoft® Word for Windows forms to your specifications. Call (206) 937-6631.

Billing services. Confidential, cost-effective receivables management for small practices. Customized to your needs. Software sales, installation and training available. ACCOUNTS RECEIVABLE Professional Billing Services, (206) 774-5319.

Senior Support Services: Assistance to seniors accomplishing everyday tasks and errands—shopping, appointments, pet care, transportation, check-up calls, etc. Friendly, dependable, cost-effective service. Call (206) 232-6364 for more information. References on request.

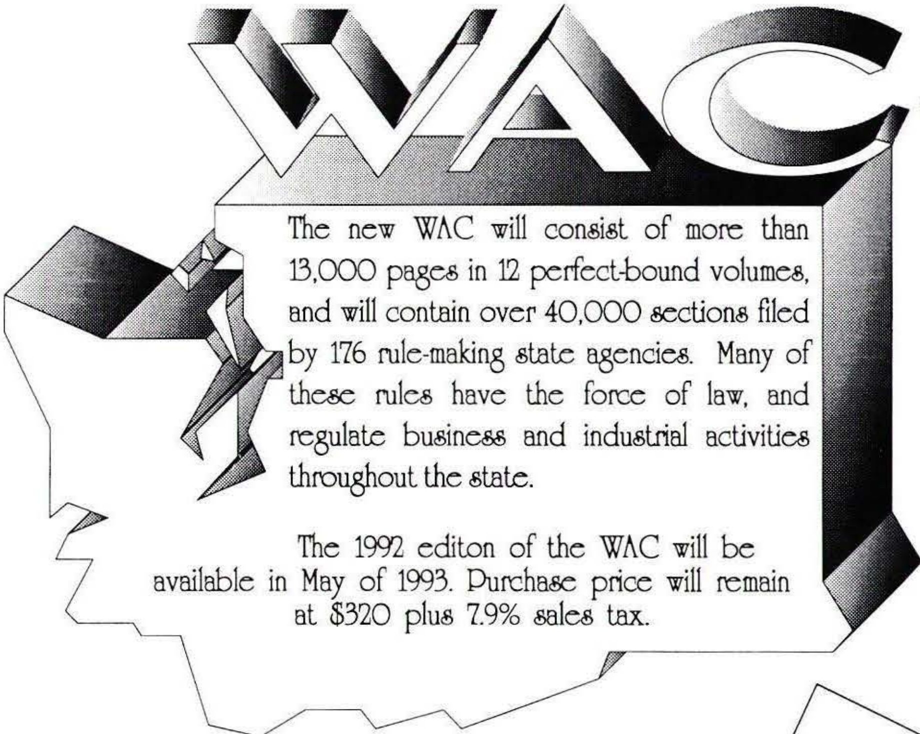
Cascade Climatology Consulting Corporation: Forensic Meteorologist offering low rates for expert testimony on weather-related problems. Contact Jordan Sutton at (206) 338-0943.

MISCELLANEOUS

Gearhart, OR (quiet village between Astoria and Seaside): Luxurious beachfront penthouse; panoramic ocean view. Two-bedroom, two-bath plus loft; sleeps eight. Deck, fireplace, laundry facilities. Indoor heated pool, Jacuzzi, golf, tennis. Fully equipped kitchen, maid service. Owner: (503) 221-4291.

Hood Canal—Waterfront home, Olympic mountain sunsets. Fireplaces, fully equipped, sleeps four or eight. Twenty minutes to Seattle ferry. (206) 282-4539.

WASHINGTON ADMINISTRATIVE CODE



The new WAC will consist of more than 13,000 pages in 12 perfect-bound volumes, and will contain over 40,000 sections filed by 176 rule-making state agencies. Many of these rules have the force of law, and regulate business and industrial activities throughout the state.

The 1992 editon of the WAC will be available in May of 1993. Purchase price will remain at $320 plus 7.9% sales tax.

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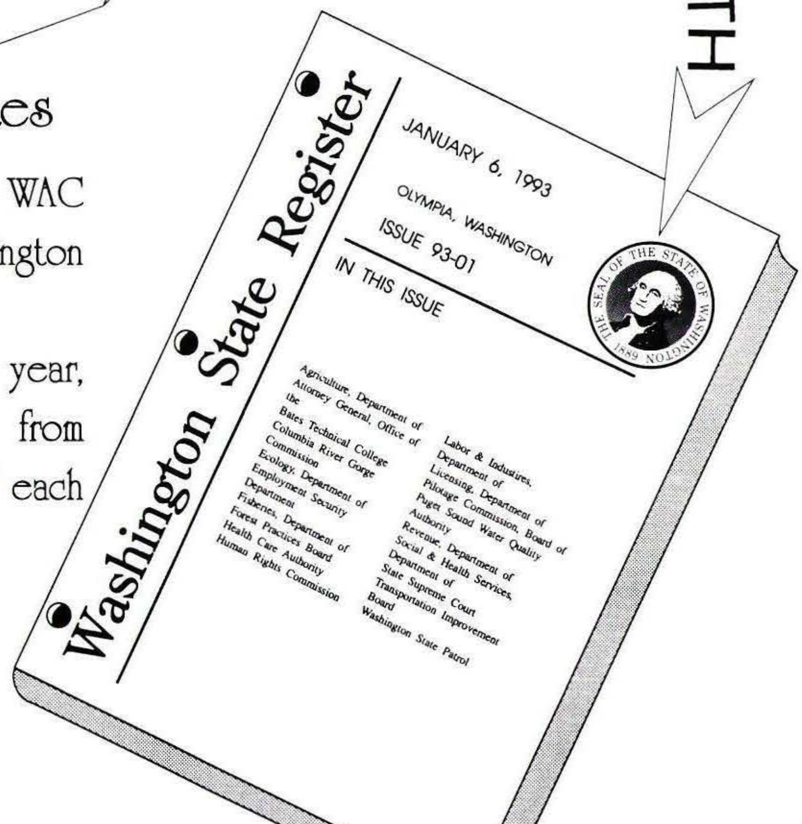

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