

Washington State **Bar News**

Vol. 47, No. 2, February 1993



An International Economy at Home: International Legal Practice in Washington State

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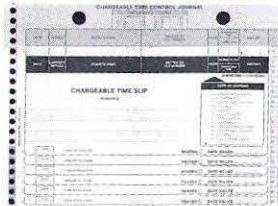
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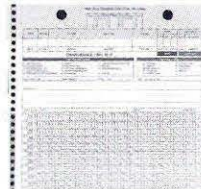
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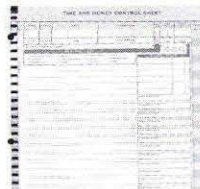
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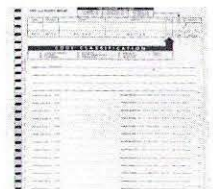
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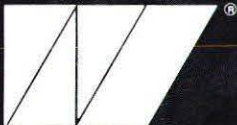


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(Marc Lampson)

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Lawyers Do a Fine Job at Seminars

Editor:

Recently, the Washington State Environmental Health Association, along with the State Department of Health, Office of Community Environmental Health Programs (OCEHP), sponsored a series of statewide seminars titled "Partnerships for School Children's Health and Safety." The presentations were given by recognized specialists in eight different areas of concern in schools.

The first presentation in each city was on the legal issues governing school children's health and safety. The presenters were Steven Fury and William Bailey in Olympia; Terry Abeyta in Yakima; and Ed Dawson in Spokane. These presentations were rated among the top three sessions in the participants' response sheets in every city. There are frequent written requests for more on this topic. The attorneys' seminar handouts and briefs on the issues have been in high demand by county environmental health departments across the state.

Each of these presenters' high marks were due to a number of consistent qualities. The depth of knowledge and experience directly related to this issue was one. They punctuated their experiences with local examples of injury litigation. But this was not the total of their presentations. They spoke from the heart, professionally and as parents, that their main objective is to reduce the number of children who are needlessly injured. The audience was impressed with a new awareness that attorneys are also parents with children in school, and that the safety of our children is everyone's hope. Litigation occurs only when we have failed to meet that hope with appropriate, preventive actions.

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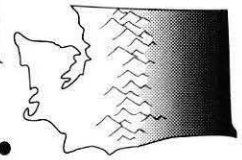
generally understood by laymen. They demonstrated caring and promoted injury prevention throughout Washington.

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The VANPORT Bar—An Idea Whose Time Has Come

Editor:

In May of last year, I attended a seminar devoted to Northwest trade problems and the new international economy which was sponsored by the competition sections of the Washington and Oregon bars in conjunction with representatives of the BC Law Society. At a session on the subject of barriers to the international practice, there ensued a lively debate on the efficient delivery of cross-border legal services in the VANPORT (Vancouver to Portland) corridor, often referred to as the nucleus of the mythical region of Cascadia. I want to bring this debate to the attention of the Bar because of my firm belief that VANPORT's lawyers must do their part to insure that our region's goods and services remain competitive in the new world economy.

First of all, a few salient facts set forth in no particular order:

- The population of the VANPORT corridor is expected to more than double to 10,000,000 by 2010.

- During the next few years, barriers to the delivery of legal services across international borders should be reduced as a result of agreements still under negotiation in the GATT; this should facilitate qualification by Washington and Oregon practitioners in British Columbia and vice versa.

- VANPORT's economy is much more dependent on international export trade than the U.S. is as a whole; this means that our exports must compete in price and quality with foreign-produced goods in order to retain and, we hope, increase our producers' world-wide market shares.

- Our major trading partners' legal systems (defined broadly as the system for the resolution of business transactions and civil disputes) are much less expensive than our nation's system, measured as a percentage of gross national product; this means that the legal cost burden on each widget (or airplane) produced in this region is significantly higher than the legal cost burden borne by our region's foreign competition.

- The high cost of legal services does

not imply that hourly or fixed fees charged are out of line. On the contrary, lawyers in London and other European capitals commonly charge the equivalent of \$300 to \$500 per hour for their time, much more than local rates. I believe that the foreign advantage lies in the fact that this region (and our nation as a whole) has many more lawyers per capita than our major trading partners.

Where is all of this leading? To a suggestion that our Bar, in coordination with its Oregon counterpart and the B.C. Law Society, take the lead in addressing the efficient cross-border delivery of legal services in the VANPORT corridor. Although some will argue that we need all of our lawyers in order to enforce all of the legal rights of our citizens, there is a perception that there are too many lawyers chasing too little work. To the extent this perception is correct, the consequences, as in the case of physician over-population, may be reflected in unnecessary and needlessly protracted litigation as well as "over-lawyered" transactions.

I propose that a cross-border task force be established to address these issues and explore possible solutions on a regional level. Cascadia's isolation from major markets has made it a favorite testing ground for new products. Our area has a well-deserved reputation for leading the nation in innovative solutions to difficult problems. Here is a chance to "take the pulse" of our profession as an integral part of the regional economy.

If VANPORT's legal profession, working with major consumers of legal services, can achieve real progress in controlling the overall cost burdens imposed by our legal system, we will have done our part to assure that our region continues to grow and prosper. Otherwise, I fear that elected officials will eventually address this issue from the standpoint of national competitiveness. If we take our future into our own hands now, our region's trade will be enhanced to our mutual benefit. If we, as a profession, do nothing, we not only forfeit our chance to control our economic destiny; our international trade suffers as a result.

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WILL YOU BE COLLECTING SALES TAX IN 1993?

by **Steve DeForest**
WSBA President

Suggested solutions to the well publicized state budget shortfall began to surface prior to last November's gubernatorial election. Extension of the retail sales tax to professional services was an early and obvious candidate. This potential revenue source was targeted in 1982 and again in 1987, when legislation was introduced to impose such a tax. It was not a good idea before, and it is not a good idea now.

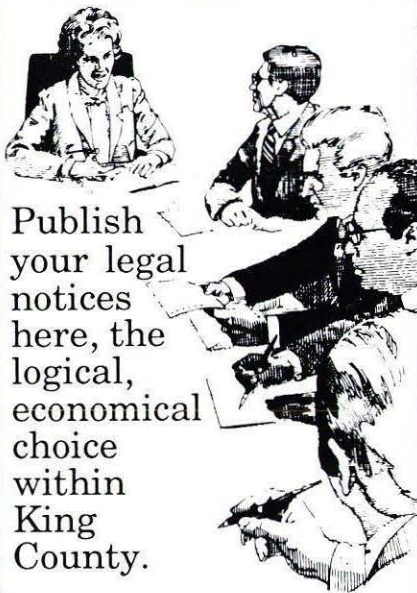
Governor Mike Lowry was quoted in the *Washington Journal* as stating that since tax increases may be inevitable, "I want to get taxes at a higher income level. That's the reason I mentioned taxes on accounting and legal services." True, there are individuals at higher income levels who are consumers of legal

services, and who can afford to pay a retail sales tax on that consumption. There are also profitable businesses that can absorb an 8% increase in their legal costs. However, the Governor's statement is wide of the mark, because as we all know, many, many consumers of legal services do not fall into either category. They are consumers not by choice but by necessity. For most persons charged with criminal wrongdoing, or parties in a no asset or low asset dissolution, or tenants resisting evictions, or injured persons seeking recovery of lost wages and other benefits, or victims of physical and emotional abuse, or first time home buyers scraping together the down payment, or persons seeking redress from discrimination in employ-

ment, a sales tax on legal services would be a significant burden, and might deter them from seeking legal help.

The sales tax is universally regarded as a regressive tax. Traditionally it has been imposed on the sale of tangible items and is a relatively easy tax to administer, because both the measure of the tax and the time of liability are clear. The tax is measured by the price, and becomes due when any personal property changes hands at the retail level. If applied to legal services, the retail sales tax would result in severe inequities as well as burdensome and costly administration. As to the former, larger businesses could avoid the tax entirely by having such services performed by employees or by employing out-of-state

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lawyers. Small businesses and individuals would be at a competitive disadvantage. As a matter of sound tax policy, how can it be said that a sales tax imposed on the consumer of a private practitioner's services would be fair when there is no tax on those services when rendered by an employee of a business?

The local sales taxes added on by cities and counties to the base rate set by the state (currently 6.5%), would require lawyers to maintain record keeping systems based on the place where the services were rendered. For example, while the time attending a deposition might be allocated to the location of the deposition, how would travel time be apportioned if city or county boundaries were crossed? If a lawyer lives in one city and offices in another, would billable hours spent at home be reported separately from those spent at the office? In a contingent fee case, including especially those in which no time records were kept, how would the fee be split among the various counties and cities in which the services were rendered? Even if the locus of the tax was the office location of the lawyer, firms with branch offices would be faced with a need to establish a system for identifying the place of delivery of the services.

In its prior incarnations, a sales tax on professional services would have been payable at the time the services were billed, not paid. This follows from the fact that the sales tax on tangible products is payable at the time of sale and not on the receipt of payment unless it is an all-cash transaction. It would mean that lawyers would be funding the sales tax whenever there was a delay between billing and payment, a common occurrence. Interim informational billings would carry a costly price to the lawyer. Uncollected accounts receivable would mean not only a write off, but an 8% "fee" to the state. RCW 82.08.050 makes the seller personally liable in every case, even where the failure to collect from the purchaser is due to conditions beyond the seller's control. The application of the sales tax to fees awarded by a court, but then appealed, would have an unpleasant jolt, to say the least, if the fee became due upon the entry of judgment by the trial court. A further inequity would be the double taxation. A

lawyer's hourly rate is not simply a charge for an individual's time. It reflects many overhead costs (e.g., telephone, supplies) on which the sales tax is paid. The application of the tax to pro bono services is unclear. Would the Department of Revenue require that such services be "billed" and the sales tax paid, even though no fees were received? Presumably amounts paid by counties and cities for public defender services would be subject to tax.

Lawyers pay taxes on the legal fees which they receive, through the business and occupation tax. B&O taxes have long been recognized as an unfair tax, because they are based on gross revenues rather than net income. Along with other professionals, lawyers pay a B&O tax at the highest rate (.015%, plus a surtax). Most businesses pay this tax at a lower rate (.0044%). Thus, it cannot be said that lawyers have not already stepped up to the plate to contribute to the cost of state and local government.

Extending the retail sales tax to consumers of legal services in other states has had limited success. Currently three states tax such services (Hawaii, New Mexico and South Dakota). In 1987 Florida enacted a 5% tax on almost all services. It was expected to raise \$193 million from legal services. Florida does not have an income tax. However, businesses and the public so vehemently opposed the tax that it was repealed six months after it was passed. Massachusetts enacted a 5% tax on business and professional services that was repealed two days after it went into effect in March 1991.

Around the corner may be efforts to tax the professional rather than the professional's services

- Lawyers in Tennessee pay a \$200 a year "professional tax" to the state's Department of Revenue, in addition to payments to the state's lawyer disciplinary agency and annual dues if they decide to join the state bar.
- Last June, Texas lawyers began paying a \$200 a year "occupation tax." In that state law-

yers who have been practicing for five or more years pay \$235 a year in dues to the mandatory state bar.

- Beginning July 1, 1992, all members of the mandatory District of Columbia bar began to pay the District's Department of Finance and Revenue a \$250 annual "nonregulatory professional license fee." This fee is on top of a \$100 annual license fee on all business partners, including law firm partners. Lawyers there pay the bar \$89 a year in dues.
- Last year the Maryland legislature proposed requiring lawyers to pay a \$250 "renewal-of-admission" (to the bar) fee every other year, but the measure did not pass.

Anticipating that the sales tax issue would require the building of coalitions of consumers and providers of professional services, as well as a need to respond quickly to fast changing developments, the Board of Governors in October established a special sales tax committee. Its members are Governors Tom Chambers and Jan Peterson, Pete Middlebrooks and Dick Manning, the Chair and immediate past Chair of the WSBA Legislative Committee, Jim Bush, Chair of the Tax Section, and yours truly. John Fattorini, the WSBA legislative representative, has been assisting the Committee. It has been actively working on this issue.

The state budget deficit is a fact. The challenge to the Bar is not merely to resist the extension of the tax to consumers of legal services, but to investigate and support other sources of additional tax revenues.

If you conclude that taxing your clients should be resisted, then it is your clients from whom legislators must hear. Lawyers comprise a very small part of their constituency. The people who ultimately pay the bill have the most at stake. Encourage them to write and call their legislators [toll-free: (800) 562-6000]. Otherwise, be prepared to become a tax collector.



PRACTICING LAW WITHOUT TAKING THE BAR EXAM?

Now that I have everyone's attention, I'd like to float a couple of trial balloons about two WSBA membership categories that I am encouraging the Board of Governors to consider: a "house counsel" category and an "emeritus" category. The most unique and controversial element of both is the possibility of obtaining a limited license to practice law in Washington without taking the Washington bar exam.

Before anyone accuses me of total heresy, it's important to point out the limitations of both categories:

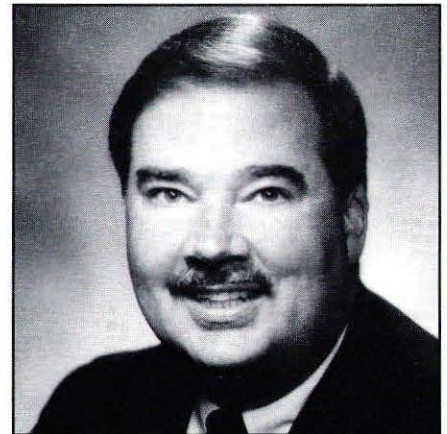
House Counsel Status: The concept of allowing a lawyer to practice in an in-house counsel capacity without taking the resident state's bar exam is not new or untried elsewhere (Kansas and Idaho to name two). The basic elements of house counsel membership are:

- the lawyer must be admitted by way of a bar exam in some other jurisdiction and be a member in good standing of that jurisdiction,
- the lawyer must be employed pursuant to an exclusive services contract by a company or association (but not a governmental entity), i.e., the lawyer can have only one client and cannot have a private practice on the side,
- the lawyer must submit to the jurisdiction of the WSBA, including jurisdiction for disciplinary matters and must pay active membership fees to the WSBA, and
- the lawyer cannot appear in Washington courts without association of fully licensed counsel.

The reality of today's practice includes a mobile corporate society. So long as a lawyer restricts his or her practice exclusively to one client (presumably a knowledgeable and sophisticated client

—at least to the degree that the client is sizeable enough to have in-house counsel), the public protection and competence functions of the bar exam are alleviated. Another reality is that many people in this situation simply go "underground," i.e., that they move into the state and work for their client, but never bother to take the bar exam.

A significant side benefit of house counsel status—and one I can testify to, having seen it operate in Idaho—is that many of these in house lawyers become active in various aspects of local and state bar association work, including both practice "specialties" (like corporate, in-



Dennis P. Harwick

tellectual property, or procurement law) and public service programming like pro bono programs.

Emeritus Status: Originally, emeritus status was used in sunbelt states to allow retired attorneys from other states to engage in supervised pro bono services. Emeritus status would allow retired attorneys from both Washington

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and other states to provide limited pro bono services under the supervision or aegis of an approved program such as the three legal service providers (Evergreen Legal Services, Spokane Legal Services, and Puget Sound Legal Assistance Foundation) or the various local bar pro bono programs. Emeritus members would pay the same fees as inactive members, but would be exempt from mandatory CLE requirements. The kicker is, of course, that *only pro bono work is allowed*, so this membership status doesn't suit anyone who wants to earn money for providing legal services. The other benefit of creating an emeritus status is that it allows a graceful way for members of the Washington State Bar Association to retire without going "cold turkey" on their membership status. It sounds a lot better than "inactive member" and allows retired lawyers to help with various community and public service programs.

Why new membership categories?

Simple—to accommodate reality and the needs of our members. The existing categories of "active" and "inactive" simply don't accommodate all of those needs.

Is there a downside to House Counsel and Emeritus Membership Categories? Not that I can see. The safeguards on house counsel membership limit it to that narrow range of practitioners truly engaged in in-house legal practice and the pro bono limitation on emeritus status restricts it to those whose active legal careers are over or on hold. House counsel membership recognizes the realities of mobile America without compromising the WSBA's role to protect the public. Emeritus membership provides a graceful way to retire from active membership and help various pro bono and community service programs fill the need for volunteer legal services.

Comments? I anticipate that the Board of Governors will be considering house counsel and emeritus membership statuses sometime in the next couple of months as part of a reworking of the WSBA Bylaws. If you like the idea, let me know—and tell me why—so that I can share your observations with the Board. Send them to: Executive Director, WSBA, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599.



A GLOBAL ECONOMY AT HOME: INTERNATIONAL LEGAL PRACTICE IN WASHINGTON STATE

by **Stephen B. Davis**, *Guest Editor*
Chair, WSBA International Practice Section

From the cover of a recent issue of *Fortune* magazine to the back of traders' envelopes in Hong Kong, Washington State continues to gain the attention of a growing number of businesses working in the international marketplace. With this expanding international spotlight on our region, it is no surprise that a growing number of Washington lawyers — in big and small firms, in private practice, in-house or government positions, and on both sides of the mountains — are staking claims as international practitioners. While being an "international lawyer" or practicing "international law" still is fraught with ambiguity, more and more Washington lawyers are serving foreign clients, working on foreign trade and investment matters, or just seeking more information on international opportunities. As a corollary, many international business, trade and cultural organizations around our state, including the International Practice Section of the WSBA, are flourishing.

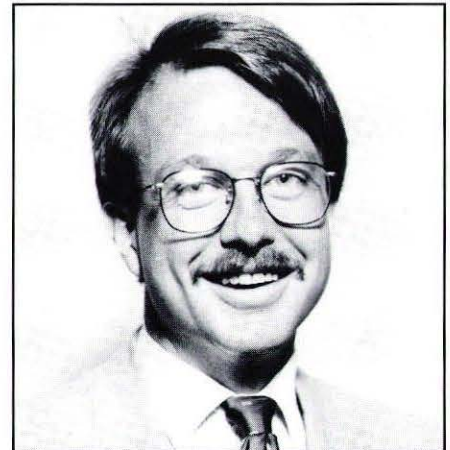
In light of the growth of international legal work, the WSBA International Practice Section is delighted to contribute several articles to this issue of the *WSBA Bar News*. With this issue, we hope to explain more about our mission and organization, highlight some of the international practices of members around the state, and offer some stories of interest pertaining to international legal work in our area.

Washington's International Economy

That Washington has long been a major international player is not news. With our uniquely situated ports, closer to Japan's than any other continental U.S. ports, our high volume export of airplanes, timber and technology products, our leading academic institutions focus-

ing on East Asian affairs, and our historical ties to Pacific Rim countries and cultures, it is only natural that people link Washington with East Asia. But few people realize how important that link is to our economic well-being. For instance, one out of every five jobs in this state can be directly attributed to export manufacturing. Washington ranks fourth among the states in the dollar value of its exports. With less than 2% of the U.S. population, Washington produces nearly 8% of total U.S. exports. In 1991, Washington state exported over \$36 billion in goods and services, primarily airplanes, timber, high technology and agricultural products. In the same year, the state imported approximately \$37 billion in goods and services, primarily motor vehicles and motor vehicle parts, airplane engines, games, equipment and clothing goods.

Even more surprising to many is the geographical scope of this international trade and investment. While Seattle touts itself as a Pacific Rim city and indeed is a gateway to Asia, considerable Washington business is also transacted with Canada, Western and Eastern Europe, Mexico, Central and South America, and elsewhere. The fact that the Port of Seattle is the closest continental U.S. port to Japan is important for the export of our timber, agricultural products and other raw goods. Nonetheless, a flight from Seattle to Tokyo remains twice as long as one from Seattle to London, and the connections with Europe, particularly related to finished goods, and technology products, appear to be growing. Washington state's trade with Europe in 1991 totaled over \$10 billion. As an example, Western Europe constitutes Microsoft's largest single regional market.



Stephen B. Davis

"I Wanna Be an International Lawyer"

With this increased international activity in our state, a demand for legal services follows. But exactly what "international lawyers" do, and who they are, may be a mystery to many. As anyone who has interviewed prospective lawyers on campuses knows, a lot of people want to practice "international law." In its narrow sense, international law may mean public international law which pertains to treaty or customary international law, or practicing in front of international commissions or adjudicatory bodies. Few Washington practitioners work full-time in public international law; such practices are more often found in Geneva, Washington, D.C., New York City, or the sites of international organizations or national capitals. Numerous Washington lawyers, however, engage in practices involving foreign clients, exports and imports, immigration, transnational litigation, establishing businesses abroad and a wide range of other work which also fall under the category of international practices.

The variety of these practices and practitioners is hard to describe. Few Washington lawyers bill themselves as exclusively international lawyers, except perhaps those in the immigration bar which, by definition, involves considerable cross-border work. Rather, the international aspects of a transaction often are interesting additional components of more traditional business, litigation, regulatory or family law work. Like-

wise, most Washington firms generally do not have international departments, but have cross-department practice groups which are comprised of business, litigation, environmental, intellectual property and others whose practices occasionally or frequently involve other countries or foreign clients. But there are also more and more solo practitioners or small firms, or attorneys in large firms, corporations or agencies, who do international work. Some attorneys in Washington work predominantly with clients of one country or region of the world, often related to their foreign language skills. Some corporations, such as Microsoft and Boeing, have separate international divisions of their in-house legal programs. And while the vast majority of Washington practitioners billing themselves as part of the international bar are from the Seattle-Tacoma region, an increasing number of practices around the state are gaining recognition. We have included in this issue brief descriptions of a variety of "international lawyers" in this state to help paint the picture of this diversity.

The work of international lawyers also has become increasingly complex and

varied, often linked to changing policies and political currents. International trade work is heavily regulatory, dealing with issues ranging from export licensing, duties, customs, food and drug import requirements, and the like. International investment concerns itself with numerous regulatory controls, including securities issues, reporting requirements, licensing approvals, registration, and immigration. Of course, most international business transactions also involve tax issues for foreign parties, foreign legal requirements, international dispute resolution and international intellectual property protection, to name just a few. A variety of bilateral or multilateral agreements affect subjects as broad as tax and copyright, to enforcements of judgment and service of process. International practitioners are keeping close track of emerging public issues such as the "most-favored nation" trading status, negotiations of North American Free Trade Agreement and the Uruguay Round of GATT, timber export bans, protectionist legislation, and a host of other concerns which may, directly or indirectly, influence foreign trade, investment or relations. Needless to say, the work of

international lawyers offers many options, many opportunities and a lot of challenges.

The International Practice Section

In this environment of heightened international interest, the International Practice Section of the WSBA, established less than ten years ago, is growing busier each year. In 1992, the section had approximately 450 dues-paying members, an increase of 100 over just two years ago.

The section's mission is to be the legal association providing recognized leadership throughout Washington State for continuing improvement of professional expertise in international practice.

One of the primary functions of the section is to produce high-quality continuing legal education programs related to international legal issues. The premiere event every year is the International Law Institute, combining a CLE program with the section's annual meeting/dinner, and annual update of important international legal developments over the past year. The Fourth Annual

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International Institute will be held March 25 and 26, 1993. (See page 19) The Section also presents a CLE at the Annual WSBA convention and at other times, often collaborating with other organizations such as the Seattle-King County Bar Association International Law and Practice Section, or the International Law Society of the British Columbia Law Association.

Other important events include the Foreign Lawyer Host Program, linking foreign LL.M. students at the University of Washington with Section members. This program is intended to assist visiting foreign legal scholars and students in their visit to our region and provide them the opportunity to witness the workings of U.S. law firms. This program culminates each spring with a tour of a local company and/or a luncheon with the justices of the Washington Supreme Court or the governor in Olympia.

The section is also proud to announce the publication of the second edition of "Doing Business in Washington State: Guide for Foreign Business Investment," a compilation of legal and business related articles for foreigners looking at working in our state. (See advertisement on page 39.) We also have three "World Councils"—Europe and Africa, the Americas, and Asia—in order to provide programs for, and to better link, lawyers who share common interests in a particular region of the world.

We also strive to serve its members by circulating a quarterly newsletter, and occasionally hosting receptions for visiting foreign judges or legal scholars. We tackle other issues on a case-by-case basis, such as the licensing of foreign lawyers in our state, Washington state legislative action related to foreign investment or trade, an international law question on the state bar exam and other special programs.

It is the section's hope that the articles in this issue help describe our work and our programs. If these articles spark interest, questions or comments, feel free to contact any members of the section, or me at 623-7580.

Stephen B. Davis practices general "international" business law at Preston Thorgrimson Shidler Gates & Ellis, and is the current Chair of the International Practice Section of the WSBA.

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Trade Development Alliance of Greater Seattle

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Tel: (206) 389-7401; fax: (206) 389-7288

American-Korea Trade Club of Washington

999 Third Avenue, Suite 4040, Seattle, WA 98104
Tel: (206) 583-2714; fax: (206) 583-2766

City of Seattle, Office of International Affairs

700 Third Avenue, Suite 440, Seattle, WA 98104
Tel: (206) 386-1511

City of Spokane, Department of International Development

W. 808 Spokane Falls Blvd., Spokane, WA 99201
Tel: (509) 456-3243; fax: (509) 458-2224

Columbia Basin World Trade Council

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Export Assistance Center of Washington

2001 Sixth Avenue, Suite 1700, Seattle, WA 98121
Tel: (206) 464-7123

French American Chamber of Commerce

400 East Pine Street, Seattle, WA 98122
Tel: (206) 860-4915; fax: (206) 329-7399

International Trade Institute

North Seattle Community College
9600 College Way North
Seattle, WA 98103
Tel: (206) 527-3732; fax: (206) 527-3734

Japan-America Society of the State of Washington

600 University Street, Suite 2420, Seattle, WA 98101-3163
Tel: (206) 623-7900; fax: (206) 623-7930

Olympia World Affairs Council

P.O. Box 10276, Olympia, WA 98502-0276
Tel: (206) 586-1084

Pacific Rim Business Information Service

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Tel: (206) 386-4677; fax: (206) 462-4636

Pacific Rim Institute

10900 N.E. 8th Street, Suite 900, Bellevue, WA 98004
Tel: (206) 451-1980; fax: (206) 820-6668

Seattle Translation Center

3123 Eastlake Avenue East, Seattle, WA 98102
Tel: (206) 324-7696, (800) 678-9STC; fax: (206) 726-0528

U.S. & Foreign Commercial Service

International Trade Administration
U.S. Department of Commerce
3131 Elliott Avenue, Suite 290, Seattle, WA 98121
Tel: (206) 553-5615; fax: (206) 553-7253

Washington State China Relations Council

Fourth and Vine Building
2601 Fourth Avenue, Suite 330, Seattle, WA 98121
Tel: (206) 441-4419; fax: (206) 443-3828

Washington State Department of Trade and Economic Development

2001 - 6th Avenue, Suite 2600, Seattle, WA 98121
Tel: (206) 464-7143; fax: (206) 464-7222

World Affairs Council

515 Madison Street, Suite 501
Stouffer Madison Hotel, Seattle, WA 98104
Tel: (206) 682-6986

World Affairs Council of Tacoma

827 Tacoma Avenue N., Tacoma, WA 98403
Tel: (206) 272-2216; fax: (206) 535-8331

World Trade Club

P.O. Box 21488, Seattle, WA 98111
Tel: (206) 624-9586

World Trade Committee of Greater Vancouver

Greater Vancouver Chamber of Commerce,
Vancouver, WA 98663
Tel: (206) 694-2588; fax: (206) 693-8279

This list represents only a few organizations listed in "Tools of Trade," published by the Washington Council on International Trade and The Trade Development Alliance of Greater Seattle. This list does not represent an endorsement by or an affiliation with the WSBA or its International Practice Section.

A SAMPLING OF INTERNATIONAL PRACTICES

by **Joslyn K.N. Donlin**

The global market for American legal services continues to grow in the '90s as mega-firms throughout the U.S. do increasingly more business with foreign clients and foreign countries. The integration of world markets and the removal of international trade barriers and economic trade agreements (NAFTA and GATT) have created new international business opportunities for lawyers who are government trade representatives, sole practitioners, corporate counsel, associates and partners.

Based upon the American Bar Association estimates, approximately 13,000 attorneys throughout the U.S. have international practices in one form or another in either a private or public setting. In Washington, the 500 members of the WSBA International Practice Section, practice in the areas of international law and international business.

Who are some of these practicing international attorneys within the state? What do they do? What kind of work are they involved with, and what kinds of transnational and cross-cultural issues confront them on a daily basis?

An international law practice may be defined generally as the practice of domestic law involving clients from other countries and/or involving clients from the U.S. doing business in foreign jurisdictions. International law practices within the Seattle-King County area handle either in-bound or out-bound international transactions covering foreign trade and investments, banking and finance, commercial real estate, exports

and imports and the maritime, forestry products and transportation industries. Lately, the thrust of international legal work has concentrated on outbound commercial transactions and investments as attorneys prepare for the implementation of the North American Free Trade Agreement with Canada and Mexico, the European Community GATT policy and the political and economic restructuring of eastern Europe.

Oftentimes, the scope of an international practice depends upon the legal institutional setting, the geographical environment and language and cultural background of the particular attorney. There are some whose practice involves the daily use of a language other than English, while others interact primarily in English, but represent clients with foreign investments overseas.

In order to provide an overview of international-practice attorneys throughout the state, we interviewed a group of attorneys who represent the growing diversity of international lawyers here.

This is a two-part article encompassing the legal practice, geographical, language and cultural diversity of the international legal profession. The first article profiles three international practicing attorneys within the Seattle-King County area: a native Chinese and multilingual sole practitioner, a corporate attorney for an international software company and an attorney at a major Seattle law firm. Each profile was based upon responses to a series of questions focusing on various issues including: the role of the attorney; the language and cross-cultural understanding and the skills required and the primary concern facing international practicing attorneys today.

Within Seattle—Selected Practitioners

Jimmy Wu

Jimmy Wu, although born in Beijing, PRC, grew up in New York City after moving there with his family when he was a teenager. Initially, he had hopes of entering the educational psychology field, but a chance meeting with some lawyers he interviewed for representation of his mother as a result of injuries sustained in a car accident, stirred his interest in the legal profession.

Upon graduating with his law degree from Columbia University, he headed to Seattle and was employed by a law firm there until deciding to go "solo" in 1980. Wu's desire to establish a law practice serving the Chinese community and his long-range goal of someday having an overseas office in China influenced his decision to become a sole practitioner. His language fluency in both Mandarin and Cantonese, together with his Chinese ethnic and cultural background have helped facilitate his international practice.

Today, Jimmy Wu is one of the few native Chinese attorneys with an international solo practice in Seattle. His practice spans the globe from England and Canada to Taiwan, Hong Kong and the Peoples Republic of China. He advises clients on a wide range of legal matters, including U.S. immigration law, foreign trade and investment regulations, international business transactions, joint ventures, purchase and sale agreements, distributor agreements, and U.S. business development.

As an attorney practicing internationally, Wu views his role as helping his

foreign business clients understand how business is conducted in the U.S. and how U. S. laws affect their business. For him, immigration and business law issues go hand-in-hand when he is advising clients on in-bound commercial transactions and investments. He advises clients on the significance and impact that the ever-changing immigration regulations and the various free-trade agreements (NAFTA and the GATT)

will have on their businesses, so they maintain their competitive edge within the global economy.

Although representing international clients has many rewards and benefits, there are some caveats. For example, as a consequence of being a sole practitioner, at times, Wu reluctantly has had to refer some of the time-consuming litigation cases to other international litigation attorneys. On the other hand, as a

sole practitioner, he is in the position to make the judgement call of which cases to pursue and which to refer out, a decision he might not be able to make within a large law firm or company.

Wu believes that it is important that any attorney in the international-practice arena be culturally sensitive to the perspectives of his or her foreign clients. He advises that those attorneys research the various social, cultural, economic, and business backgrounds of the potential clients and companies. According to Wu, not only will the attorney obtain a client for life, but in many cases, the research will result in a lucrative referral business. This has certainly proven to be the case for him. He was recently recognized by his peers in a book entitled *The Best Lawyers in America* for his practice in immigration law.

Ann Woodliff

Ann Woodliff is an associate general counsel for the Aldus Corporation, an international computer software company, based in Seattle. She began her international legal career as a Rotary International Fellow in Japan, where she studied the language while conducting research on Japanese commercial law. Upon returning to the U.S., she practiced with a large law firm in Seattle before entering the corporate world. As in-house counsel, Woodliff advises Aldus on the acquisition of products, license and distribution agreements, employment law and securities. In addition, she supervises the legal work for Aldus' international subsidiaries in Europe, Japan and Australia and the Aldus Corp in San Diego.

According to her, there is no debate about Aldus operating in a global economy. The internationalization of the computer software industry is not an issue; it is a way of life. Within this global environment, she sees her role as facilitating the large international transactions which typically take place throughout Aldus as it expands into foreign markets. Her job is to insure that transactions are structured to protect Aldus' interests and investments and corporate exposure to foreign markets.

Within the context of an international corporation, Woodliff believes it is essential for the attorney to be culturally

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sensitive to the customs and business etiquette of foreign clients and to be especially flexible in handling foreign business transactions. A case in point occurred recently when, in the process of drafting an amendment to a nonbinding agreement, the foreign party requested a letter of intent regarding one paragraph of the amendment. Although such a request is highly unusual in the U.S., it was honored, and a letter of intent on the amendment was signed prior to the completion of the formal amendment. She says that in order to maintain the goodwill and survival of U.S. companies, it is essential for any in-house attorney handling international transactions to be prepared and flexible.

As a corporate attorney, she enjoys the opportunity to be more actively involved with international business transactions than she might be as an associate with a large law firm. As a result, she has been able to handle a variety of international joint venture and distribution agreements.

With regard to drafting international agreements, one issue that Woodliff frequently encounters is the choice of governing law. Previously, in most cases, Washington law was the automatic choice in joint venture and distribution agreements. However, Aldus has been successful in utilizing, on a case-by-case basis, the U.N. Commission on International Trade Law as well as Washington law in drafting and negotiating international agreements.

Although she appreciates the opportunity to practice in a global market and to interact with people from other countries, she cautions that the international practice of law, particularly in Pacific Rim countries, rests largely upon the establishment of long-term and trusting relationships. Thus, while billable hours are a major indicator of an attorney's productivity, those involved with an overseas practice must allow for the business relationship to develop and grow before billable work is accomplished.

Woodliff's long-term commitment and investment in an international legal career has paid off well as she leads Aldus into the 1990s' global marketplace for the computer software industry.

David Spencer

David Spencer is a partner with Stoel

Rives Boley Jones and Grey, one of the major international law firms in Seattle. His practice consists of commercial real estate and international transactions, with in-bound transactions involving foreign-based clients doing business in the Pacific Northwest and outbound transactions for clients doing business in Mexico or Chile.

Prior to Spencer's legal career, he lived and studied in Mexico, and he

speaks Spanish fluently. He is knowledgeable about the business practices, culture and civil law legal system of Mexico; this has helped facilitate his practice.

As an international business lawyer, he sees his role as providing clients with the best possible legal advice on global business issues, including international business plans, export or import restrictions, patent and trademark protection,

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107 Wn.2d 181 (1986)

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41 Wn. App. 753 (1985)

Personal Injury

Jensen v. Beard, 40 Wn. App 1 (1985)

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licensing or local manufacturing requirements and tax consequences. Because some of Stoel Rives clients provide services rather than goods, he must keep abreast of developments in bilateral and multilateral agreements that affect services, such as Part Five of NAFTA.

Because of NAFTA and the fact that Mexico has opened its economy to imports and foreign investments, there has been a dramatic increase in interest by Pacific Northwest clients who want to do business in Mexico and in Latin America.

To practice effectively within the international arena, Spencer says that language skills are helpful; sensitivity to cultural differences is important, but becomes less of a factor where the parties are internationally attuned, as in the case of larger businesses. For example, according to Spencer, if one of the lawyer's roles is to assist with arranging for the advice of foreign counsel and defining the scope of work for such counsel, appropriate interpersonal skills are essential. This must be done efficiently and within the client's budgetary expectations, which, in some cases, require delicate conversations with the foreign counsel. He recommends that the international attorney be flexible in drafting written agreements with the foreign party who does not require a detailed contract and who believes an opportunity to negotiate the contract exists even after it has been signed.

Spencer says that an attorney contemplating an international law practice should realize at the outset that he or she is a Washington lawyer first, and that a strong international capability is based upon a domestic capability within her or his jurisdiction. The additional language and cultural skills, foreign contacts, overseas offices and experiences abroad are all overlays to the domestic practice and serve to enhance the skills of the lawyer's international practice.

Joslyn K.N. Donlin is a sole practitioner in Redmond. Her practice emphasizes international trade, imports and exports. She is a co-editor of the International Law and Practice Newsletter of the WSBA.

Edited by

Professor William B. Stoebuck

University of Washington School of Law

Evidence. In wrongful death action in which plaintiff claimed death was caused by negligent design of roadway, trial court allowed plaintiff's "human factors" expert to testify that decedent probably thought he had room to pull his truck to the right. Court, however, properly refused to allow expert to testify that decedent probably pulled to right to allow car behind him to pass. Appellate court said latter opinion was pure speculation and thus inadmissible. In same case, trial court properly allowed defense expert to testify that driver probably fell asleep at wheel. Appellate court said defense expert's opinion was based upon an "explanatory theory" (not explained by court), not simply upon speculation about "the decedent's thought processes at the time the truck left its lane of travel." *Walker v. State*, ___ Wn.App. ___, 837 P.2d 1023 (Div. 2, 8/6/92).

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- International insolvencies and workouts. When real estate and other empires crash, the consequences are often felt in a number of different countries. In the Northwest, several recent high-profile insolvencies in the garment and real estate industries have had transnational implications.

The institute will begin on Thursday, March 25 with a series of updates of interest to the transnational practitioner. In addition to the traditional presentations on recent developments in court decisions, federal and state law, and treaties, this year's institute will feature a series of practical presentations on new developments in federal income taxes, the overseas reach of U.S. antitrust laws and the impact of the *Quasar* decision on personnel policies of foreign-controlled companies.

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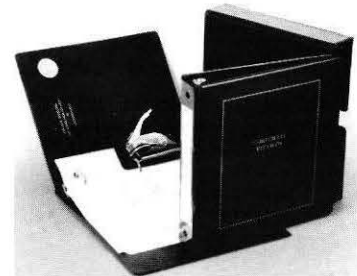
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INTERNATIONAL LAW PRACTICE BEYOND SEATTLE

by Michelle Hurley

The practice of international law outside of the Seattle metropolitan area is alive and thriving. Living in Bellingham, Spokane, Vancouver or Moses Lake is not an obstacle to having an international practice, as many practitioners in those places will tell you.

In Bellingham, international law comes hand in hand with its unique geographical location next to the Canadian border. Linda Nye, a practitioner there, expressed the view succinctly. Her interest in an international practice was piqued when she lived on Orcas Island. She looked out her north shore window and saw Canada next door. She envisioned creating a practice that included working with Canadians. Linda learned that international practice was almost a way of life for lawyers in Bellingham and moved there.

Most often international law is the practice of domestic law with clients from countries other than the United States. In Bellingham, geography impacts the lives of the residents and impacts law practice. Citizens of both countries mingle, marry and move across the borders. In addition to the usual family law issues, practitioners in Bellingham must face jurisdictional issues. Difficult cases arise, for instance, when there is a divorce decree entered in a Washington court, but custody issues remain. If a child is moved to Canada, when does Canadian jurisdiction become effective? What happens, as it so often does, if the parties have dual citizenship? These issues are everyday concerns for Bellingham family law practitioners.

Even a criminal law practice is impacted by cross-border issues. Criminal

defense lawyers deal daily with representing Canadians on criminal offenses such as shoplifting, driving while under the influence of alcohol or drugs, and vehicle seizures. These offenses may be misdemeanors on the law books, but careful handling is necessary since the outcome of the case may affect a Canadian's future ability to enter the country. The local lawyers recognized the need to share information and ideas on the handling of the cross-border matters. Greg Boos, a Bellingham immigration law lawyer, frequently lectures Whatcom County lawyers on the ramifications to Canadian clients if even minor offenses are not viewed with the bigger picture in mind.

Local young lawyers, such as Tom Lester and Debbe Lev have made a concerted effort to focus on a cross border practice. They both see the potential for developing an expertise in this area of law. They deal on a regular basis with immigration law issues. Sometimes they also deal with political asylum issues.

Long-time practitioners like John Anderson are more pragmatic. In his general practice, John Anderson has seen his representation of Canadians ebb and flow, in tune with the flux of the exchange rate. When the exchange rate is favorable for Canadians, his real estate and business practice with Canadian clients increases. He recalls that for much of the 1970s, fifty percent of all real estate closings involved Canadians. Now, with the reversal in the exchange rate, he sees much less of that practice. In his view, the 1989 Free Trade Act entered into by Canada and the United States has not impacted the cross border practice. While Canadians may see less need to form domestic U.S. corporations in Washington, practitioners are still

asked to give advice on doing business in Washington. There are also questions on the tax implications of cross-border trade. Bellingham practitioners work closely with accountants from both sides of the border in dealing with these issues.

Bellingham lawyers work on an informal referral basis with south mainland British Columbia lawyers. Lawyers on both sides have established informal associations. This practice has formalized with the enactment of the Foreign Law Consultants law in British Columbia. The law provides that for a fee, currently \$500, and a \$1,000,000-bond, a foreign lawyer can establish an office in B.C. for the purpose of advising Canadians on foreign law, without formally being admitted to the B.C. bar. While Seattle law firms have taken advantage of this new Canadian law, the Bellingham practitioners find the bond requirements too stiff for them to take immediate advantage of the opportunity.

If you cross the state to Spokane, you find a totally different atmosphere when it comes to an international law practice. In Spokane, the city and county governments have taken a very active role in encouraging international business. Spokane has formed an Inland Northwest World Trade Council and an Economic Development Council. The city of Spokane has a full-time salaried International development director whose primary responsibility is to bring international trade to Spokane. The city is alive and active with the pursuit of international business.

Opportunities to practice international law in the Spokane area, however, are still limited. Practitioners who have an international practice there developed a practice through their own interest. Rob-

INTERNATIONAL LAW ON THE WSBA BBS

by George Atwater

The International Practice Section hosts a computerized conference on the WSBA's computerized bulletin board (L.A.W. BBS) on a regular basis. The conference has been available for some months, but activity has been low. Almost any topic of international law and commerce is fair game for the conference. We shall also endeavor to answer questions concerning international law and commerce or provide the writer with resources which he or she can use to answer questions.

We also hope gradually to develop and put on-line a form bank for international law, as well as a resource bank of translators, consultants and other individuals with skills in international commerce. We welcome any contributions and invite you to log on by dialing (206) 727-8312. If you have any questions, please call George Atwater at (206) 621-0343.

ert Huneke is an example of one such local lawyer. He grew up in Spokane but developed an interest in international affairs during college.

Rob Huneke integrated this interest in Asia into his legal practice. He advises domestic companies on how to do business in Asian countries like China and Japan. He is a strong advocate in helping his community foster international trade. He helped the mayor of Spokane form a sister city relationship with Jilin, People's Republic of China. He also assisted Eastern Washington University to form a sister university relationship with the Shanghai Foreign Trade Institute.

Others in Spokane have also dealt with international law issues, but for the most part this has been incidental to their regular practice of law. Immigration matters typically are referred to Seattle law firms.

There is still a perception in Spokane, that the larger Seattle law firms have more resources making them better equipped to handle international law questions, if only because questions about immigration, for example, may lead to multi-country business or international tax questions. As one local practitioner said, it is really more of a comfort level for the clients than a lack of expertise in the Spokane area. Spokane law firms have traditionally affiliated with Seattle law firms on these matters. Local firms, on the other hand, are often asked by Seattle law firms to handle real estate and land use matters for foreign clients where knowledge of local law and practice is paramount.

Ronaldo Delgado practices law in the center of the state in Moses Lake. He is an example of a lawyer who has used his background and skills to develop an international practice in central Washington. He speaks Spanish fluently having originally come from Peru. Due to the large Hispanic population living and working in his area, Ronaldo has represented Spanish-speaking people involved in legal problems ranging from business transactions to family matters, immigration, administrative law, time-share condominium contracts and consular visa petitions.

Ronaldo's firm has established affili-

ations and initiated an exchange of attorneys with reputable law firms in several major cities in Mexico. As a result, they have handled litigation cases for individuals and exporters doing business in Mexico. While the Mexican attorneys are directly responsible for handling the case in Mexico, the firm here provides the necessary support in the USA.

The firm is also acting in encouraging large Mexican businesses into the area. Ronaldo believes the continuous growth of the Hispanic population in our state, together with the approval of NAFTA, will create a market here for the Mexican businesses which are already moving into California and Texas. He sees the export of Washington's agricultural products also experiencing substantial growth.

For Ronaldo and others like him around the state, this is a long-range investment rather than a short-term venture into the international arena. These lawyers are committed to dedicating the necessary time and money to open up a market to benefit not only their firm but also their communities.

To the south, in the city of Vancouver, Washington, the practice of international law differs again. Many foreign businesses have established a presence there as a response to active solicitation by

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the local government. Vancouver grows in high-tech industries in tandem with its larger neighbor, Portland, Oregon. The international practice in Vancouver, however, is not grass roots as it is in Bellingham.

Large Portland law firms, seeing the potential for expanding their international business, have established branch offices in Vancouver. Their resident attorneys are often dually admitted in Washington and Oregon. The firms have a local presence but at the same time offer their clients the full resources available through their main office in Portland. Lawyers in local firms who have an international practice are those who have developed a niche practice in a particular area of international law. The two types of practice work side by side.

Lawyers living outside the Seattle area have successfully developed thriving practices in international law. The potential is definitely there. One need only choose the right geographical area, be self-motivated and be aggressive in developing such a practice.

Michelle Hurley practices construction and business law when she is not out exploring esoteric issues. She is a trustee and the treasurer for the WSBA International Practice Section.

INTERNATIONAL LAW PRACTICE: AGRICULTURE

by **Chris Schlect**

Since 1980, I have served as president of the Northwest Horticultural Council. The NHC represents Idaho, Oregon and Washington growers and shippers of deciduous tree fruits on a variety of policy issues including those related to international trade.

The apple, pear and cherry industries of our region have large and growing markets overseas. While closely following such general issues as the Uruguay Round and the NAFTA, our office spends a good deal of time on bilateral technical negotiations involving horticultural products in targeted markets.

My role is to represent the best interests of our industry in both the areas of general trade policy and specific trade access. In addition, when our industry is faced with legal pro-

ceedings of a more formal nature such as anti-dumping allegations, I assist in the organization of the policy position of the industry and the supervision of any outside counsel as may be deemed necessary to the particular action involved.

My work brings me in constant contact with various officials and agencies in Washington, D.C. with international-trade responsibilities. These include the USDA's Foreign Agricultural Service, the Office of the U.S. Trade Representative and the Northwest's congressional delegation. I serve as a member of APAC, a private-sector trade advisory committee to government. Travel related to this committee has taken me to Brussels, Geneva and Washington, D.C. over the past few years.

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Tasks include obtaining information affecting state policies, helping prepare strategy concerning state legislation, speaking with legislators and, perhaps, presenting testimony to committees of the Legislature. Lobbying experience is desirable, but not mandatory. 

FROM OLYMPIA TO MOSCOW: JUSTICE ROBERT F. UTTER ADVISES NEW DEMOCRACIES ON CRUCIAL LEGAL ISSUES

by Leonard J. Rolfes, Jr.

Over the last four years, the Soviet Union and Communist countries in Eastern Europe have undergone tremendous change. Germany has unified, and other Eastern European Communist countries have replaced authoritarian regimes with democracies of varying degrees of stability and freedom. Perhaps most significant, the Soviet Union, the power behind Eastern-European Communism, disintegrated into fifteen independent nations.

The collapse of the Iron Curtain revealed fragile democracies groping for guidance in constructing societies governed not by the omnipotent and omnipresent state but by bodies that would establish fair and even-handed rules for many types of relationships, from commercial transactions to individual rights. These countries requested advice from Western governments and institutions on how to construct a fair and just system.

The road to this system in the former

communist countries has led from Sophia, Riga, and Moscow to the halls of Olympia's Temple of Justice, home of the Supreme Court of Washington. Over the past three years, State Supreme Court Justice Robert F. Utter has been advising many East European and ex-Soviet republics on how to create such a system based upon democratic principles.

Utter's role as adviser stemmed from a trip he led under the People to People program to the Soviet cities of Moscow,

AARP Lobbyists, *cont.*

Present openings include representation of three groups of counties: Yakima-Klickitat; Asotin-Benton-Franklin-Columbia-Garfield-Walla Walla; and Skamania-Cowlitz-Clark-Pacific-part of Lewis. One volunteer will soon be needed to represent the group of Chelan-Douglas-Grant, Okanogan-Kittitas, and another to represent Pierce-Kitsap-south King.

Individuals of 50 or more years of age who are able to make the time commitment and would like more information on becoming a member of the 15-person AARP State Legislative Committee, please call Mark Stenson at (206) 746-3547, or write him at 504 - 146th Ave. N.E., Bellevue, WA 98007.

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Leningrad and Riga, Latvia, in the summer of 1989. The trip focused on comparative law and the interaction of judges and lawyers from the Soviet Union and the United States. He recalls, "I developed an appreciation for the [Soviet Union] and a fondness for the people."

In January of 1991, Utter travelled to Sophia, Bulgaria, at the request of the American Bar Association's Central and East European Law Initiative Program (CEELI) to work on instilling the concept of judicial independence in the new Bulgarian constitution. There, he and other judges and legal specialists worked on it with the Bulgarian Parliament, judges and lawyers.

Since the Bulgarian trip, he has continued to be involved in the ABA's CEELI program, regularly commenting on the draft constitutions of many countries in Europe and the former Soviet Union, including Albania, Romania, Lithuania, Russia, Ukraine, Belarus, Azerbaijan, Kazakhstan and Uzbekistan.

During September and October of 1991, the Justice was in the Soviet Union once again. The United States Information Agency (USIA) had started a program for establishing the rule of law in Russia and asked U.S. judges to assist in the program. Utter, United States District Court Judge John Coughenour of Seattle and other judges traveled to Mos-

cow to provide advice. While in Moscow, Utter gave lectures on American courts and constitutional adjudication at the Moscow Judicial Academy, a school for judges from throughout the Soviet Union. He also had extensive discussions with Soviet judges, comparing the Soviet and American legal systems.


In October and November of 1992, he traveled to Riga again at the USIA's request. The work there covered various aspects of the legal system and involved judges, law students, legislators and government officials who played various roles within the legal system. A wide variety of topics were discussed, such as judicial independence, the criminal code, standards of legal representation, the commercial-law system, legal education, and even the mundane—but essential—topic of how to acquire adequate library materials.

The two major subject areas where Utter has provided counsel are proposed constitutions and the development of an independent judiciary capable and respected enough to fairly interpret and enforce the law.

In commenting on proposed constitutions he has drawn upon his personal experience, Continental constitutional models, United Nations principles and International Bar Association standards. He notes that recommendations cannot

be made in a vacuum: they must be tailored to reflect political reality and the uniqueness of each country's historical and legal traditions. Advice is of little worth unless it will be seriously considered and, perhaps, accepted.

Examples of the questions appear in his comments on the draft constitution of the Republic of Uzbekistan. A newly created Central Asian republic, it contains many ethnic groups, including Uzbeks, Russians and Kazakhs. Different languages are spoken and different religions practiced. Ethnic conflict in Central Asia has often turned violent, so one of Utter's major concerns was to formulate doctrines ensuring that the government would support basic human rights. He criticized a draft provision allowing authorities to suspend or prohibit public gatherings out of "justified security considerations." He stated that the provision was too vague and would allow the state too much authority to squelch dissent. He proposed that allowing authorities to "regulate" rather than "suspend or prohibit" public gatherings would suffice to preserve an orderly society while at the same time allowing dissent. This right to dissent is, in his opinion, not only basic but "necessary to the continued existence of democracy." Other issues commented on in the draft constitution of Uzbekistan



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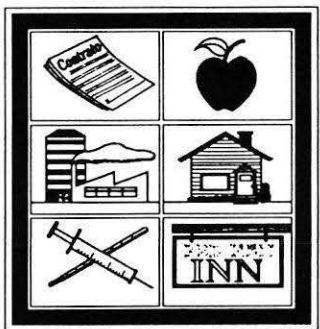
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include individual rights, checks and balances, property rights, and the capacity of the existing Uzbekistan Constitutional Court to interpret a highly detailed constitution.

It is in discussing the problems involved with developing an independent judiciary that the Justice's conviction and dedication to the rule of law clearly come forth. During our interview, he kept returning to the concept of an independent judiciary, stressing the need for impartial and trustworthy judges in new democracies. He explained that in the Soviet Union, in Tsarist Russia and in Communist Eastern Europe, "the courts were historically an arm of state policy." Citizens did not view judges as impartial interpreters and enforcers of the law, but as enforcers of state policy. By the same token, people in positions of power did not see judges as obstacles but as enforcers of their commands.

This legacy makes it extremely difficult to convince leaders and citizens that judges can, and must, be fair and impartial interpreters of the law. He advises that, in order to have effective judges, the judiciary must be seen by citizens as fair and impartial and seen by the government as having a role to play in interpreting and enforcing the law. To accomplish these goals he advocates a judiciary independent from influence other than that of the law, a judiciary that zealously defends the rule of law.

The question naturally arises whether the principles he has advocated in his work in the former Soviet Union and Eastern Europe, many of which have not existed in those countries historically, have now been accepted. He notes that, for example, Uzbekistan's draft constitution was recently created with the intent that it be the law of the land. It also provided for some personal, social and economic rights, many of which did not exist during the Soviet era. He says that the independent judiciary he argued for would be accepted only if it had the people's respect, a respect gained by defending the rule of law.

One example of the rule of law being defended by the courts occurred in Russia. In early 1992, the Russian Supreme Court ruled against Russian president Boris Yeltsin in a question involving a decree he had issued under his decree making power. Upon Yeltsin's protest

of the Russian Supreme Court's action, a Supreme Court justice explained to him that he had to accept the court's decision in the matter. The Russian Supreme Court's action was reminiscent of U.S. Justice John Marshall's action in the early nineteenth century case of *Marbury v. Madison*, in which he challenged executive authority and created judicial independence by stating "it is emphatically the province and duty of

the judiciary to say what the law is." Utter suggested that the need for public trust in the courts in the former Soviet Union is not altogether different from that in the United States. If people do not feel courts apply the law fairly, they will look elsewhere for justice, and the role the courts play will be damaged.

While improvements have been made, Utter views some current practices and proposals with skepticism. Many former

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Soviet republics are proposing to create a separate constitutional court similar to the German model. In his view, the constitutional court system provides a difficult vehicle to process individual rights claims and hinders the trial process because trials are stopped while constitutional claims are heard. Another problem he found was a tradition in both Eastern Europe and the former Soviet Union that allowed only the state to raise

individual rights questions, failing to see why citizens should be allowed to criticize the government.

Utter noted that his role as a constitutional and judicial adviser has required him to draw on his experience as a lawyer, teacher and jurist. He had early exposure to the role of a jurist in the legal system as a law clerk to Justice Matthew W. Hill of the Washington Supreme Court; this was followed by five

years in the traditional practice of law, first with the King County prosecutor's office and then with a private firm. He then became a King County Court commissioner, superior court judge, state appellate court judge and Washington Supreme Court Justice, a position which he has held for more than two decades. He teaches state constitutional law at the UPS law school. He also considers useful his current activities with the American Judicature Society, which addresses problems of administration of justice.

Utter's efforts to assist fledgling democracies naturally lead to the question of whether these societies will accept the fundamentals of democracy as their own. Most of the former Soviet Union has no tradition of democracy whatsoever, and those countries that do have only the limited experience between the world wars. The question whether democracy will be accepted, he says, must be answered by the people themselves, and will probably depend on the success of new democratic forms of government in reforming and reviving the economy. If the people conclude that authoritarian governments will best handle the economy, they may trade democracy for a chance at a guaranteed standard of living. The people are used to guaranteed jobs and pensions. Or, as he put it, "Life was easier [in the old regimes] if you didn't get killed for dissenting."

Despite the nature of the old judicial systems, Utter notes that there were some extremely talented individual jurists who are now adapting to new roles in a different and rapidly evolving legal system. He found the Judicial Academy in Moscow a well-run institution, providing excellent education. He was struck by the quality of judges he found in Moscow and Riga. They were bright and sophisticated, had extensive knowledge of domestic and international law, and "wanted to be the best judges they could be." They had pride and hope in the future and wanted to earn the respect of the people.

Utter reserved special praise for Gvido Zemribo, Chief Justice of the Latvian Supreme Court. Zemribo had been a justice on the Soviet Union Supreme Court by virtue of being Chief Justice of the Latvian Supreme Court while Latvia was still part of the Soviet Union. He

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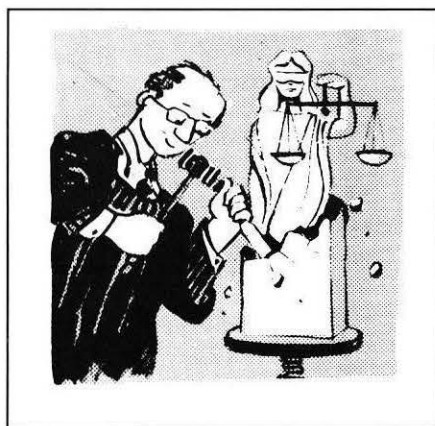


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speaks Latvian, Russian, German and English, and taught courses on the constitutional law of capitalist countries, he has broad knowledge of many legal systems and particularly admired that of the United States. He is also a patriotic Latvian, who worked hard for Latvian independence. He comes from a background of a somewhat democratic legal system, for his mother was a lawyer in Latvia before the Soviet occupation. Utter describes Zemribo as a "[brilliant] jurist of as high a caliber as any judge in the world."

Utter enjoys and values his experience assisting struggling democracies. He says, "[It is] a real privilege to do this work at this time in history," one "of great change in an important part of the world." While his professional career has been rewarding and satisfying to him, he says that, when graduating from law school, "[I] never saw my legal education being meaningful in a way as relevant as this."



Attorney Leonard J. Rolfes, Jr. is Deputy Director of the Rural Development Institute, a research and policy advice organization focusing on the issues of agrarian reform and rural development in countries with former centrally planned economies.

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Within the decade, international issues may become regular fare on many state bar exams. The American Bar Association is developing a proposal for bar testing of international subjects. Washington, which is highly dependent on trade and investment, will undoubtedly confront this issue sooner than other states.

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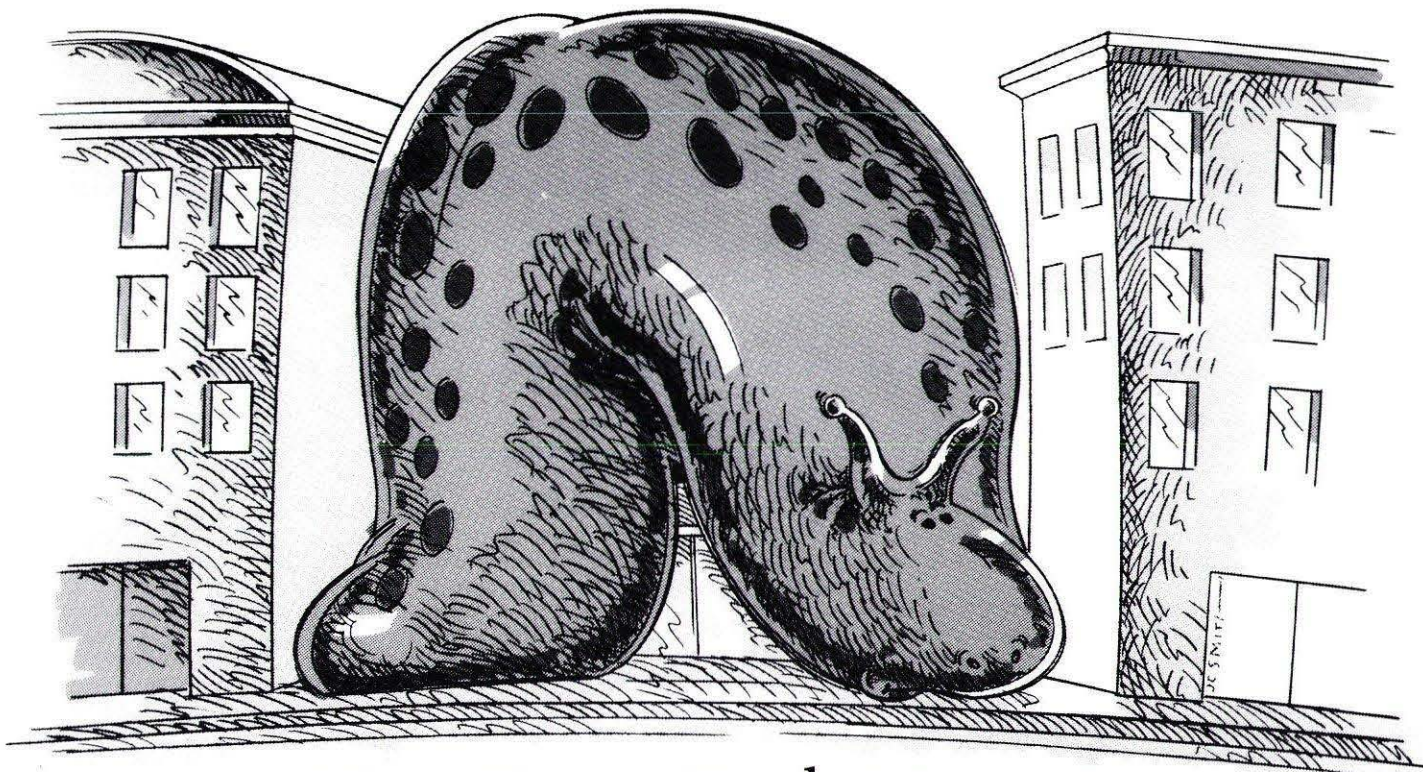
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by **Ronaldo Delgado**

Foreman & Arch, Moses Lake Office

While it is well known that the large Puget Sound firms handle most of the international legal work, it is not very well known that a select number of small firms also handle such matters. Foreman & Arch, P.S., based in Wenatchee, is one such firm.

Location, demographics, agriculture and cultural diversity have contributed to our foray into the international arena, specifically on matters related to Mexico.

Due to the large Hispanic population living and working in this area, we targeted our resources to solving their problems in Mexico. Our bilingual staff has helped to overcome the communication and cultural barriers faced by most firms. Most of the workers in the area still have families, property and businesses in Mexico. In addition, the number of individuals and companies doing business in Mexico has also grown. As such, we have been involved in legal problems ranging from business transactions to family matters, immigration, administrative law, time-share condominium contracts and consular visa petitions.

We have established affiliations and initiated an exchange of attorneys with reputable law firms in several major Mexican cities. We also have access to their resources. Because of our established relationships, we are practically a phone call away from a response to any given legal problem.

Moreover, these affiliations have enabled us to handle some litigation cases for individuals and exporters doing business in Mexico. While the Mexican attorneys are directly responsible for handling the case there, we provide the necessary support to obtain whatever is needed for the clients here. This arrangement has been very satisfactory to everyone.

We have been involved in this arena

for about two years, now, and we are looking at the future when we may be able to attract large Mexican businesses into this area. We believe the continuous growth of the Hispanic population in our state, together with the approval of NAFTA, will eventually create a market for the Mexican businesses which are now moving into California and Texas. Naturally, we are working hard to be part of this growth.

On the other hand, we also expect that the export market, of agricultural products in particular, will also experience substantial growth. We are prepared to serve the client willing to enter the Mexican market by providing information and access to our network of Mexican firms. Understanding the idiosyncracies of the Mexican people and their legal system, allows us to better serve our clients' needs. In a country where personal relations and professional ability go hand in hand, the legal business usually goes to the firms that are "well connected." Our affiliations have overcome the first obstacle faced by all firms. For a small firm this is crucial. We expect that these relationships will flourish in the future.

Our experience can be of use to other small to medium-sized firms willing to take the risk. A point of caution, however, is in order. Unless the firm is prepared to act in terms of a long-range investment rather than a short-term profit, a venture into the international arena may not be in the best interest of the firm. Moreover, unless the partners are committed to dedicating time and money to open up a market for the firm, the experience can be a costly and frustrating one.

In terms of manpower and dollars, the large firms will continue to dominate this area. However, with some imagination, commitment and adequate resources, the small firm can succeed and even thrive in this exciting area.

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INTERNATIONAL BUSINESS DEVELOPMENT AND TAIWAN'S SIX-YEAR PLAN

by Amy Sommers

In recent months, Taiwan's Six-Year National Development Plan (the "Plan") has received increasing attention, in part because of the vast amounts involved (US\$300 billion over six years) and in part because of the continued slowdown in the U.S. economy. The Republic of China, Taiwan government (not to be confused with the People's Republic of China) has stated that it wishes to encourage foreign firms to participate in the Plan. Such work would help offset the current economic downturn we are currently experiencing.

What exactly is the Plan? It has as its stated goal the improvement and modernization of both the country's physical and social infrastructure, ensuring continued economic development, with better transportation, power and communication networks. To improve the quality of life, the Plan seeks to emphasize environmental protection, to develop land use plans consistent with social needs, construction of recreational facilities, and the improvement of cultural and educational facilities. The government is spearheading hundreds of projects which call for construction, environmental, transportation, and design expertise. The scope of the Plan is beyond the capacity of Taiwan's engineering, environmental and architecture firms.

This article examines the Plan, its operation and efforts by local firms to participate in Plan-related projects. Taiwan's Six-Year Plan can be seen as archetypal of international business challenges generally, and representative of the growing internationalization of our

economy.

To understand the history and significance of the Plan, it is necessary to know something about the history of Taiwan, once an island province of Imperial China. It was something of an outpost. Little attention was paid to anything but its natural resources. For 50 years, from 1895-1945, Japan ruled Taiwan as a colonial possession. After the war, Taiwan again became part of China and, for the first time, part of the Republic of China (R.O.C.). In 1949, the Nationalists retreated to the island. Because of their aim to return to the mainland, the Nationalist government did not engage in extensive development of Taiwan's infrastructure. This engendered a great deal of resentment on the part of the majority indigenous Taiwanese whose families have lived on the island for hundreds of years. They comment that "mainlander" Nationalists have treated Taiwan like a hotel rather than a home. The Plan is therefore significant in demonstrating the government's willingness to invest in Taiwan and its future. Arguably, its success will also serve as a model for what the government might accomplish elsewhere if given the chance.

In May 1992, the R.O.C. sent a delegation to five U.S. cities, including Seattle, to publicize the opportunities for American firms to participate in Plan projects. It has produced English-language materials to promote and explain the Plan. They list the projects allocated to various agencies and ministries, together with respective budgets and addresses for contacting the responsible agencies. However, bidding on projects,

or even obtaining information about bidding, is not simply a matter of writing a letter of inquiry. Discussions with local players make clear that, while the Plan does offer opportunities to American firms, taking advantage of those opportunities requires a strong commitment, expertise in one's field, and skill in navigating the bidding process.

How does one actually bid on the US\$140-million project to improve waste water treatment facilities at industrial parks that the Ministry of Economic Affairs is overseeing? Or the sewage system construction project the Kaohsiung City Government, whose budget is US\$430 million, is handling. Those who have worked in this area have found certain keys to developing a successful approach to Taiwan's Six-Year Plan. These methods can be extrapolated to success in international dealings generally.

Previous International Experience

Firms bidding on Plan projects often have worked overseas before. For example, over the last 20 years, the Seattle-based geotechnical and environmental consulting firm of Shannon & Wilson, Inc. has worked in the Dominican Republic, Indonesia, Mexico, mainland China, Saudi Arabia, Iran, Taiwan, and Colombia. This kind of previous international experience is useful in two ways: 1) successful projects help spread and strengthen one's reputation; and 2) past overseas success gives firms confidence and experience to explore new countries and regions where they might

not otherwise consider developing business.

Long-term Commitment

Linked to the benefit of past international experience is a long-term commitment to overseas expansion. Ray Miller, senior vice president of Shannon & Wilson, notes that the process of obtaining initial information, receiving the request for proposals, preparing the statement of qualification, meeting with the parties involved in the project, interviewing with the selection committee, and (one hopes) actually winning the contract takes a long time. He and another Seattle firm met with their counterparts handling tunnel construction for Kaohsiung's Mass Rapid Transit (MRT) system in November 1991. However, final decision as to whether they will receive the contract for the work still has not been made. Therefore, firms interested in pursuing this kind of work cannot expect to have a quick response and turnaround on their efforts, particularly if they have never done international work. For firms without international experience, steering through the whole process will probably require even more time because it will take such firms longer to familiarize themselves with it.

Cultural Expertise

A firm must either have someone internally who is conversant in the local language, customs, and appropriate forms of behavior; or it must affiliate with such a person. This person does not necessarily have to be of the same ethnic or national group as that of the locale of the potential project, although functionally speaking, this is generally the case. The CEO of Kramer, Chin & Mayo, Inc. (KCM), a local engineering and architecture firm doing considerable work in Taiwan, is Paul Liao, a native. In addition, the firm employs other Taiwanese, such as general manager S.S. Lin. Shannon & Wilson's vice president Jim Wu hails from Taiwan. Short Cressman & Burgess, a local law firm offering consulting services in this area, can rely on the expertise of counsel Paul Liu, who is originally from the island.

These individuals can communicate with their Taiwan counterparts, which

in turn enables them not only to obtain necessary information, but to create rapport. Moreover, they know how to behave in ways that make those they are dealing with feel comfortable and at ease which instills confidence in the American firm's ability to perform.

Proper etiquette in Chinese eyes is not something esoteric. For the non-Chinese visitor, it is simply a matter of being attuned to what it is one should be do-

ing, because proper behavior is critical to positive Chinese perceptions. For example, sharing multi-course meals is an integral part of conducting business, although business itself may not be discussed in great depth during the lengthy repasts. Indicating appreciation of these meals is important, as is demonstrating respect for those with whom one dines. Chinese show their consideration and respect for their companions by solici-

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tously filling the plate of the person seated next to them as the lazy Susan makes its rounds. In piano bars (a type of lounge), which are often destinations during business dealings, one does not sip on a drink as one would here, but must either wait for someone to offer a toast or offer a toast to another. One should never send a clock as a gift, because the phrase "send a clock" in Chinese sounds the same as "sending some-

one to his funeral!"

Awareness of these and other niceties helps smooth the way for successful business dealings. Clearly, social adeptness alone will not secure overseas contracts. However, it contributes to the overall ease with which parties deal with one another and, given two equally qualified firms, the one which is savvy about interpersonal dealings stands a far better chance of obtaining the work.

The Importance of Contacts

Taiwanese personnel and consultants have been important in pursuing projects under the Plan not only for the cultural and language expertise they offer, but also because of their contacts in government and industry. Gerry Jones, KCM's vice president of marketing states flatly, "Without Paul Liao's contacts, [KCM] couldn't have gotten the work."—to date, two projects. The first is the design and construction management of the US\$22 million aquarium on Penghu, an island off Taiwan. The firm will also handle the design and construction management for the \$108 million National Museum of Marine Biology, an aquarium with educational and research facilities along the lines of the Scripps Institute that will be located in southern Taiwan. KCM also has other projects in the works.

Jones observes that the actual bidding process is very similar to that employed in the U.S.: a statement of qualification is requested; a committee conducts interviews; the firm presents a proposal (which tends to be less detailed than would be required in the U.S.). He notes a marked difference however, in what occurs between the time the statement of qualification is provided and that when the interviews are conducted. Before the formal interview, applicants for a contract spend a great deal of time convincing committee members that their firm is capable of doing the work. This can be done directly if one knows people on the committee, or indirectly through an intermediary who is familiar both with the firm and committee members. Helping committee members gain familiarity with the firm and its personnel is critical to laying the groundwork for a productive interview. This is difficult to do without the right contacts.

Certainly, in the U.S., being well-connected can be crucial to success. However, according to Jones, "Relationships openly mean a lot more in Taiwan." There is no stigma attached to having—and pulling—ties with decision makers. In fact, they feel more comfortable relying on personal knowledge of the character of the individuals who make up the firm, rather than their objective professional qualifications. Therefore, for an American firm to succeed in Taiwan—or elsewhere in Asia—either they or

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their consultants must establish a network. It may be easier for a person originally from the country or region to accomplish this. Often they come to the U.S. for graduate study, stay to develop their careers and lose contact with their university classmates who have gone on to positions of responsibility. Simply because someone is from Taiwan, therefore, does not necessarily mean that they, in fact, have a strong network to help get things done.

Paul Liu notes that there is a definite strategy or etiquette in approaching people overseas. The impetus to pursue international work may come from a less-senior person in the firm, who may have recently studied overseas or is more-attuned to the growing trend toward internationalization in business. If a firm wishes to send personnel overseas on a reconnaissance mission, that person's knowledge can make a contribution, but Liu warns that senior members of the firm must also be part of the contingent. The rank of the person representing your firm conveys a great deal about how much you value the potential business and the people with whom you are dealing. Moreover, Liu observes that senior people are more likely to have ties to those with correspondingly high ranks in government or industry.

Local Presence

One way of cementing a network of contacts is to have a local presence in the market. This can be done in several ways. For example, open a branch office in Taipei, and staff it with those who can speak the language and move easily in the community. Ray Miller of Shannon & Wilson says that a common and preferred practice in the engineering field is to engage in a joint venture with other American engineering firms. Small firms can develop ties with large firms with an international reputation. When the large firm obtains international work, it can recommend the small firm as subcontractor. This helps the small firm develop its reputation and experience overseas.

Paul Liu believes that the key to success with bidding on Plan projects is joint-venturing with local Taiwan firms. Liu believes U.S. firms should form strategic alliances with Taiwan firms. For

Taiwan firms that lack the capacity to undertake a given project on their own, the American firm can contribute additional personnel and expertise. For the American firm, the Taiwan firm will provide access to an area that the Americans would not otherwise have. Liu feels that such alliances can be particularly successful where the American firm transfers technology and know-how.

Says Liu, "They (the Taiwan govern-

ment) don't want you to just do a project and then leave." American firms can gain an advantage by demonstrating that they wish to establish an ongoing relationship with Taiwan and that Taiwan firms will benefit from American participation. Liu notes that Japan is at a disadvantage in this regard because the Japanese shy away from technology-sharing. Moreover, the Taiwan government has stated that it wishes to use the

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Plan to balance trade. Liu observes that Japan already exports a considerable amount to Taiwan, whereas the U.S. runs a trade deficit there. Given the choice between equal Japanese and American candidates, Liu believes the technology-sharing and balance of payment issues will give the American candidate an advantage.

Liu also believes that local law, accounting and consulting firms have a

role to play in helping match up suitable joint-venture partners. For example, area law firms with Taiwan branches or affiliates can look to their client base in Taiwan for sources of possible joint-venture partners.

The Role of Attorneys

Is there a role for attorney intermediaries in helping their clients pursue

projects under the Plan? Neither Shannon & Wilson nor KCM has relied on attorneys as a conduit for information or as intermediaries in dealing with groups in Taiwan. Remarks Ray Miller of Shannon & Wilson, "Engineers normally prefer to avoid dealing with lawyers for marketing engineering services." This sentiment makes sense considering that engineers deal primarily with attorneys in the context of malpractice and contract disputes. Small wonder that they do not perceive them as sources of support in their efforts to expand into new markets.

Paul Liu believes that engineering or other firms have another reason for not turning to their attorneys as advisers in this area. "If you know as little as the engineering firms, why do they need you?" asks Liu. He believes that because few firms have attorneys knowledgeable about China in general, and Taiwan in particular, they are not well-positioned to advise engineers and others who may have far more international experience themselves. Liu again points to the need for senior people to be involved in pursuing international efforts. While a growing number of associates have international backgrounds, few Seattle firms have partners with the necessary experience and contacts. This hampers firms' efforts to take leading roles in international development.

Some might ask who cares whether clients develop work overseas and do so with the assistance of their law firm. However, when clients get work like that available under the Plan, they need more legal services in contract drafting, review and counseling. Moreover, firms who take an active role in this area, will raise their profile in Taiwan, which may lead to inquiries from Taiwan residents interested in investing or doing business in the U.S. Involvement in this area can thus be beneficial to local law firms.

Compensation

If a firm seeks out contacts and contracts on its clients' behalf, how will it be compensated? Liu believes there are several possible approaches. The most conventional is to wait to be compensated until after review of any agreements or documents related to the transaction. However, because much time may initially be required to pursue the

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project, this may not allow the firm to be fully compensated for the entire time spent. Moreover, at the early stages, the parties have no guarantee that any "legal work" will ensue. Therefore, this approach is not always satisfactory.

A second possibility is to adopt a payment method similar to that in the real estate field: receive a percentage of any deal the attorney helps the client to secure. However, this raises certain professional conduct issues. Under RPC 1.7(B), the attorney must not take any action whereby responsibility to the client might be materially limited by self-interest. The attorney is held to a standard of reasonable belief regarding adverse effect. Under RPC 1.8(A), an attorney is not supposed to enter into a potentially adverse business transaction with a client. If the attorney's compensation relies on securing a contract, the attorney's capacity to advise the client in an impartial manner might be affected. The attorney would need to make full disclosure in writing of these potential problems, and the issue of reasonable belief under RPC 1.7 might still pose a problem.

Liu observes that a third approach has been adopted by several Seattle firms: form a separate entity to handle international business. The same strictures would not apply to a consulting company as to a law firm, and this allows greater latitude.

Barriers

When asked what constituted the greatest barrier to working on Taiwan's Six-Year Plan, all responded "contacts." Establishing the necessary network is the hardest part of initiating international work. Gerry Jones and S. S. Lin of KCM concur that having the right credentials is the second greatest barrier. They state that the right educational background (such as an advanced degree), title, and position are required to obtain the respect needed to get in the door. In their view, once the firm is in the door, background and experience count for much more.

Gerry Jones added that one has to be flexible and aware of operating under a different system. This may sound obvious, yet Jones relates that on one project, the Taiwan government agency involved

stated that there was to be no contact between the bidding firms and the selection committee members. The decision was to be made solely on the statements of qualification and the formal interview. KCM followed this admonition, while its competitors did not. The competitors followed the usual practice of informally meeting with committee members to plead their case. Cautions Jones, "Even where they say they are

playing by Western rules, this is not always the case." He does not deplore this state of affairs, commenting that, "We must change our mentality" and learn to adapt to a different system.

When "relationships" and "personal ties" are mentioned in the context of international business, many envision requests for "gratuities" and potential violations of the Foreign Corrupt Practices Act. However, both Jones and Lin

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are quick to point out that KCM has never had any experience of this kind during its extensive dealings in Taiwan. Rather, the sort of adaptation they see as necessary is to operate in a way that takes into account the importance of personal ties and connections in Taiwan's business scene.

Networking

American firms, law or otherwise, should not overlook the alumni groups of American universities as sources of contacts overseas. For example, the University of Washington is well-known throughout Asia. Many students from Taiwan have attended the U.W. for graduate work in engineering, law and other fields. Its active alumni group in Taiwan is a good way for U.W. grads to meet people overseas. In Chinese society, having attended the same university forms a far more significant tie than it does in the U.S.

Service organizations, such as Rotary, are also a good way to meet profes-

sional and overseas business people of good standing. Area banks involved in international work are sources of information, as are large accounting firms.

Conclusion

Taiwan's Six-Year Plan is the largest reconstruction and national development plan currently underway in the world.* Because of Seattle's geographic proximity to Taiwan, together with the strong Asian-American community here, this area is well-positioned to take advantage of the opportunities offered by the Plan. However, doing so requires an investment of time and money, even

though many firms are cautious about the slow economy. If, however, area businesses wish to take part in the globalization of the economy, such an investment must be made. This region does have professionals with the language and international experience necessary to pursue overseas opportunities. Local businesses should take advantage of these resources.

*Meyers, Neil L., *Taiwan's Six Year (sic) National Development Plan, Technology Transfer and Opportunities For American Business* at 1.

Amy Sommers is fluent in Mandarin Chinese. She is in-house counsel for Mega Pacific Investments Ltd., a company offering commercial real estate, financing, and trade consulting services to both Chinese and American clients.

She thanks the following people for their contributions in preparing this article: Gerry Jones and S. S. Lin of KCM; Ray Miller, Jim Wu, and Harvey Parker of Shannon & Wilson; Paul Liu, UW School of Law Adjunct Professor and of counsel to Short, Cressman & Burgess; Neil L. Meyers of Reliance Law Firm in Taipei, Taiwan.

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by **Lindsay Thompson**

Olympia, January 15-16, 1993

Present: The president and governors. Also present: Judge Bill Britton (Administrative Law Judges' Assn.); Judge Milton Cox (Superior Court Judges' Assn.); Dennis P. Harwick (WSBA executive director); Scott A.W. Johnson (SKCBA/YLD); Jim Kaufman (WAPA); Lisa Lowe (WSBA/YLD); Kim McDonald (General Practice Section); Judge Larry Moller (District & Municipal Court Judges' Assn.); Linda Moran (Washington Woman Lawyers); Bill Phillips (WDTLA); Scott Smith (SKCBA Trustees); Rosemary Strunk (Lesbian & Gay Legal Society of Puget Sound); Lindsay Thompson (*Bar News* editor); Morton D. Tytler (Government Lawyers' Assn.); Robert D. Welden (WSBA general counsel).

The Board made its annual New Year's pilgrimage to Olympia, this time to meet for a day in a windowless hotel basement storage area converted into a conference room. Once half the lightbulbs were replaced and enough chairs were rounded up, it made for passable meeting space, but it was so far away from everywhere beverage providers seemed to have either consumed their cargo en route to survive, then gave up and returned to base; or died en route, prompting anxious Observer forays onto the residential floors in search of pop machines as Friday afternoon wore on and the morning comestibles hardened into pot-hole filler.

Upstairs, in the Washington Room, the Washington State Trial Lawyers Association Board (who, incidentally, are encouraging their members to take their money out of state for a midyear meeting at Alva Long's chief boycott site, the island of Maui), sat in comparative splendor (they got the chandeliers and windows) and debated removing their main congress from Victoria, British Columbia, because of its incorrect sewage disposal practices (front page news, it was). It's hell being suddenly poor.

Tie-Breaker Gets Break from Breaking Ties: When the 1990 census results gave Washington an extra congressional seat, the Board of Governors, which is organized by congressional district with two extra at-large King County seats, grew by one as well—from ten members to 11. Following past practice, the Board scheduled an advisory election for the lawyers of the new district, which runs from South King County down into Thurston County, to see who they wanted to hold the seat. The Board accepted the certified results of a three-person canvassing team, who reported that James V. Handmacher was elected with 121 votes. Andrea A. Darvas was runner-up, with 108 votes. They then elected Handmacher to the Ninth District seat. Present for the occasion, Handmacher took office then and there; he will serve until September 1995. A biographical sketch of the new governor will appear in the March issue of the *Bar News*.

Ars Longa, Rex Breva: Several years ago the Board decided to choose its next president early in the current president's term, the better to get the president-elect (who, more often

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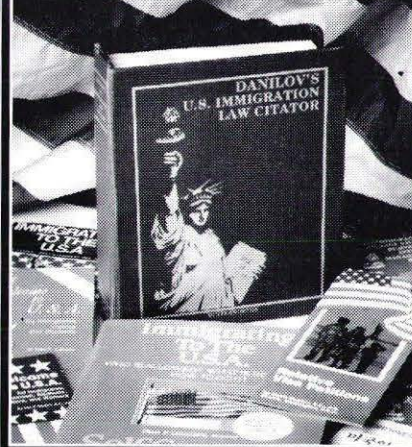
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than not, had been off the Board for a goodly long time) up to speed. Year before last, the Board voted to bring the process of selection (previously done in Sistine Chapel-like isolation) into the open by soliciting nominations for the presidency from bar-related groups (advertising, even!) and voting in open session. This year the Presidential Search Committee was chaired by Tom Chambers and peopled by governors Hester, Larson, Long, and Norris. Each gave a report on the nomination of, and the committee's interview with, five persons: Tacoma lawyer and former Board member William P. Bergsten; Olympia lawyer and former Washington Women Lawyers president Mary Fairhurst (nominated by WWL); Olympia lawyer and former Board member Edward G. Holm; Port Angeles lawyer Brooke Taylor (nominated by the Clallam County Bar Association); and Hoquiam lawyer and former Board member Paul L. Stritmatter. The merits and ideas of each were presented in some detail.

In a scene reminiscent of the old English practice of electors declaring their ballot for parliamentary candidates in the town square, the governors announced their choices and explained their reasoning. The discussion centered on balancing the desire to look for a "new face"—someone not a past Board member—with the need for a strong, unifying leader in a time some sense the organization is in crisis. The Board unanimously chose Stritmatter (described, by Governor Mike Larson, as the only man who can "combine the colors of Alva Long with the look of an elevator lawyer") as WSBA president for 1993-1994. He'll start hanging out with the Board after a

three-month trial concludes in the spring, and take office in September.

Looks Like Some Un-Conventional Thinking is Needed: With the WSBA conventions for 1993 and thereafter canceled for budgetary reasons, the Board had to decide when and where to hold the Annual Meeting of the Association. Dennis Harwick proposed holding the September Board meeting in Seattle Thursday and Friday, September 9-10, 1993, an award luncheon at noon on the 10th, and the annual meeting that afternoon. There was some talk of offering a major CLE program, as part of the event, but that's still under study.

Governor Alva Long asked that the annual meeting be held on Saturday, September 11. "The only people who can take off on Friday are the people in the office building next to wherever the meeting is held," Long opined, in one of those gloriously pejorative over-generalizations that make such good copy. Last year's annual meeting was not noted for an influx of British Columbia lawyers rushing over from adjoining office towers to attend the annual meeting in Vancouver, but it was noted for the presence of a number of lawyers who came very long distances to support Long's resolutions, which tends to show that in this, as with most things in life, most who want to participate find a way to do so. Long then launched into a soliloquy on the plight of public defenders, who can't come to the annual meeting because they are trapped in court. Why lawyers who are that overworked would want to give up a scarce day off to come debate the abolition of random trust account audits for the third or fourth year run-

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ning was not explained. But the question of busy trial lawyers led to a sidebar with the trial court judicial representatives at the meeting over whether judges would let them off to attend, as if they could singlehandedly commit the state judiciary.

Things got back on track when Harwick told Long WSBA has found with CLE programs that most lawyers are highly reluctant to give up a Satur-

day afternoon in mid-September for a CLE, so it seemed unlikely they'd be any more keen to come to the annual meeting on such a day. Governor Joe Nappi then moved approval of the September 9-10 schedule.

Governor Monte Hester said he thought the Board should look into teleconferencing, so people could take part without having to travel so far.

Responding to prior comments, Long

said having the annual meeting on Friday denied members access, hinting, without elaboration, that it was a deliberate ploy to make it hard for people with trial schedules to attend. He said he didn't think "people will stay at home on a Saturday to watch some football game or something."

No ploy, Harwick replied. Governor Jan Peterson wondered why the meeting couldn't be held a week later, to coincide with the state Judicial Conference, when there will be no judges available for trials anyway. That's Rosh Hashana, Harwick replied. We've been criticized in the past for having the annual meeting then because it denies access to others.

Governor Steve Tubbs said he was persuaded by Long's argument, and that the Board should remove as many attendance impedimenta as possible. The President suggested a bylaws change to allow the annual meeting resolutions to be printed in the *Bar News* and voted on by mail. Governor Wayne Blair agreed WSBA affairs need opening up, but disagreed that any more people would attend on a Saturday. "It depends on what the issues are," said Long, who's been putting provocative resolutions on the agenda for several years, predicting, wrongly, that they'd draw a big crowd. Resuming his comments, Blair thought the Board should try it for a year and see what happens. The question was called, and the staff proposal passed 7-4, Governors Handmacher, Long, Peterson and Tubbs opposed. The Annual Meeting will be held in Seattle, September 10, 1993, place TBA.

A Field Trip, Then Lunch: The Board and observers then recessed to walk to the Temple of Justice and attend the members of the Supreme Court in what has always previously been a private meeting. With Justices Dolliver, Durham and Smith absent, the Court heard reports from Board members on WSBA operations, discipline and other matters, and discussed them with the Board in the Chief Justice's reception room. Also present, in addition to the Court, was court administrator Mary Campbell McQueen.

The session ran into the noon hour, prompting a hectic trip in court vans and several justices' cars to a local restaurant, where an overflow crowd was

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present for the Thurston County Bar Association's monthly meeting. Mildly chaotic seating and dining arrangements, as the restaurant struggled valiantly to feed twice as many as were expected, did not diminish the traditional Thurston County hospitality toward visitors, nor enthusiasm for the remarks of the guest speaker, Attorney General Christine Gregoire. She outlined for her audience ambitious—and immediate—plans for reorganizing and refocusing the AG's office, and called for a new partnership with the private bar to deal with problem areas like consumer protection, as well as to restore the public standing of lawyers with the people of Washington. Responding to a question by Governor Long, she said she'd be delighted to designate a liaison to the Board of Governors; the Board on Saturday, approved an invitation to her to appoint one.

What Local Bar Associations Are Doing: After lunch, the Board heard a report from Government Lawyers' Association president Patricia Nightingale and president-elect Evelyn Fielding, and Thurston County Bar Association president Michael Hanbey on the work of their organizations. The Board quizzed them on local reactions to, and reasons for, the defeat of the licensing fee increase in the December referendum. Hanbey had a number of suggestions gleaned from members: sell tickets that can be used for any CLE (We're doing that, Harwick said; our members aren't finding out or remembering that, Hanbey replied; maybe it needs to be presented differently); sell the *Resources* directory to members to recoup more of its cost; keep the Lawyers' Assistance Program ("Our board feels it's one of the best things the Association does," he told the Board); don't go along with the idea of an assessment to support the Client's Security Program ("Why should lawyers be responsible for the ones who don't do their job right?"); improve ways of communicating to members ("the *Bar News* is very professionally done, but it would be nice if more space were devoted to what is going on in local bar associations; is there anyone who doesn't read the Clark County Report?"); consider having WSBA committees broken into regional committees which feed into statewide co-ordinating committees, so more members can participate.

Governor Steve Tubbs was concerned over how to deal with the constant complaints of estrangement from the Bar Association he hears from government lawyers; maybe a poll would tell you some things, Nightingale replied.

The Legislature's Back: Dick Manning of the WSBA Legislative Committee orchestrated a procession of representatives from WSBA sections and committees seeking support for proposed legislation. The scene was observed by Rep. Marlin Appelwick, chair of the House Judiciary Committee, and House Speaker pro tem Ron Meyers. In relatively short order, the Board approved several measures: revisions to the sentencing guidelines for certain criminal offenses, to divert more first-time offenders into nonprison alternatives, but only if the Legislature funds and defines those alternatives (unanimous); the "concept" of enactment of a limited liability company law which would create a hybrid form of partnership and corporation whose earnings would be taxed only once, but, of great anxiety to WSTLA's gubernatorial contingent, would limit liability to some persons formerly liable for their business activities (9-0-2, Handmacher and Long abstaining); legislation to implement increasing jury pools to include driver's license and state identicaid holders (unanimous); a streamlined process for collecting spou-

sal maintenance by garnishment (10-0-1, Long abstaining) and authorizing counties to adopt the CASA program of advocates for children in the courts, begun in Seattle and now spreading nationally (unanimous); and a plan for allowing recovery of reasonable, rather than limited, process server's costs (unanimous). At the request of the Family Law Section, the board opposed a bill to ban contact between sex offenders and children as too draconian, and opposed a bill to amend RCW 41.56.020 to declare the Bar Association a public employer, on separation of powers grounds.

The Board's Assessment of Assessments: Not Yet: John Hogle and Greg Dallaire of the Client's Security Program Board appeared to urge support for a court rule under which the Supreme Court would assess all WSBA members \$10 or so for several years to build up a fund to pay claims by lawyers who've stolen their clients' money. Malpractice insurance doesn't cover theft. A number of members and observers were concerned about including lawyers who don't use trust accounts, such as in-house counsel and government lawyers; Governor Tom Chambers thought an insurance pool should be set up to cover 100 percent of all claims, with the assessment each year based on the amount paid out. Government Lawyers' Asso-

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ciation representative Morton Tytler thought the idea of a court-mandated assessment would be unconstitutional as a judicial exercise of the taxing power. Though Governor Wayne Blair said he thought the votes were there to pass the rule, there were enough unresolved questions posed that, on a motion by Joe Nappi, the Board voted to delay action until after the Client's Security Program goes through sunset review in March. The motion carried, 8-2-1, Chambers and Peterson opposed and Tubbs abstaining.

Wrap-up in Olympia: In other ac-

tion, the Board clarified its policy on WSBA sections' and committees' taking public positions contrary to the Board's on pending legislation and court rules. The policy has been that the Board be notified when a committee or section intends taking a contrary position, so the Association doesn't look, to legislators and the Supreme Court, as if the left and right hands aren't talking. The clarification passed was that the notice has to be given *before* the position is taken, made necessary by the Family Law Section's action, recently telling the

Board it was opposing proposed RPC 8.4(g) (relating to sexual harassment, see Washington Reports Official Advance Sheets, 120 Wn.2d xvii, January 6, 1993) *after* it had communicated its opposition to the Supreme Court, which has the rule out for comment.

The Board also decided not to combine its annual planning retreat with a scheduled April 2 meeting with WSBA Section chairs; the retreat will be held at the July Board meeting so, at Governor Alva Long's suggestion, the three new governors who will be elected this spring can attend ("But this time, no \$6,000 facilitator," Governor Joe Nappi said, Tubbs agreeing).

Declining to act, the Board let die proposals to waive access fees for the LAW-BBS electronic bulletin board for the Department of Assigned Counsel, and a request by the King County Prosecutor's Office to waive the recently-imposed fee for Rule 9 interns (law students who can handle certain types of matters in court if so certified). Several governors said they thought the Rule 9 fee, imposed as a revenue-generating measure last year, ought to be reconsidered at a future meeting.

Acting on a request for guidance from the Legal Aid Committee (should it include free legal services for the poor in criminal matters in its working brief?), the Board assigned the topic of what needs to be done in that area to its Access to Justice Committee, chaired by Governor Tom Chambers.

At the request of Governor Joe Nappi, the Board delayed making any new appointments, or re-appointments, to the Limited Practice Board (which is involved in the regulation of title officers, see APR 12, Court Rules) so Board members could determine member interest in appointment from their districts. The Board also approved an amendment of the Creditor/Debtor Section's bylaws, and received a report from the Young Lawyers' Division on WSBA committee selection procedures, upon which more discussion will follow.

At the invitation of the local bar, the Board, observers and members of the Supreme Court also attended a festivity at the Westwater Inn Friday evening, at which newly retired Thurston County superior court judges Robert J. Doran and Carol A. Fuller were honored.

Next meeting: February 12-13, 1993 in Tacoma.

Lee Meyers Investigations

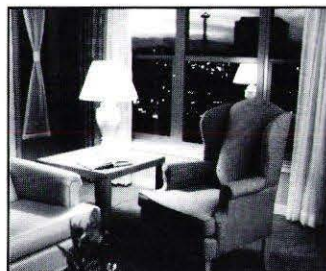
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Disciplinary Notices

Reprimanded: Renton lawyer **Vickie L. Crutchfield** (WSBA #14164, admitted 1984), has been ordered reprimanded pursuant to a stipulation for discipline, approved November 1992. The discipline is based upon her submission, in January, 1987, of a false prescription in an attempt to obtain a controlled substance. (November 19, 1992)

Censured: Pursuant to a stipulation for discipline, Tacoma lawyer **Larry J. Couture** (WSBA #3405, admitted 1971) has been ordered to receive two censures and has been placed on probation for two years. One censure is based upon his failure to diligently pursue several client matters. The other censure is based upon his failure to keep those clients advised of the status of their matters and to promptly respond to their reasonable requests for information. (December 5, 1992)

Public Notices

WSBA Board of Governors Advisory Election Results:

The results of the advisory election for appointment of a governor of the Bar Association to represent the newly created Ninth Congressional District were as follows: Andrea Darvas, 97 votes; James Handmacher, 72 votes, Meredith Morton, 66 votes, Jerry Weidenkopf, 42 votes. Darvas and Handmacher were in a runoff in which Darvas garnered 108 votes and Handmacher won with 121.

U.S. Bankruptcy Court Notice:

Bankruptcy Miscellaneous Administrative Fee in Lieu of Noticing Fee, effective December 1, 1992:

The recent action of the Judicial Conference amends the Fee Schedule to substitute—in Chapter 7 and Chapter 13 cases only—a miscellaneous administrative fee of \$30, assessed and collected at the time the case is filed.

In addition, the miscellaneous administrative fee is due at the time of filing and cannot be paid in installments, i.e., it is not subject to Bankruptcy Rules, 1006(b), which applies only to filing fees.

As of December 1, 1992, to file a Chapter 7 or Chapter 13, the fee is \$150 for each. To file in installments, a minimum of \$30 is required.

WSBA Snapshot:

Here's what the Association looked like—statistically—on December 1, 1992:

Active members:	17,707
Active members (WA)	15,609
Western WA:	13,368
King County:	8,953
Young Lawyers:	7,323
Eastern WA	2,241
Out of state:	2,238
Total admissions, 1992:	982

The top five other places with Washington lawyers are Oregon (642), California (356), the District of Columbia (102), Idaho (97) and Alaska (90). The five counties with the smallest lawyer populations are Garfield (2), Columbia (3), Wahkiakum (3), Skamania (7) and Lincoln (9).

State Law Library—Books Recently Cataloged:

Listed below are some of the new titles recently acquired by the State Law Library, and available for loan by phone from (206) 357-2136, or by mail from Washington State Law Library, Temple

of Justice, P. O. Box 40751, Olympia, WA 98504-0751. A quarterly *Books Recently Cataloged* list, generally containing 150-200 new titles, is also available. Copies may be obtained by mail from the above address.

On January 7, 1991, the State Law Library began circulating the video collection of the Office of the Administrator for the Courts (OAC), which has more than 150 titles and over 175 videos. A catalog of titles is available from OAC; call Judicial Education at (206) 753-3365, ext. 3248, for a copy.

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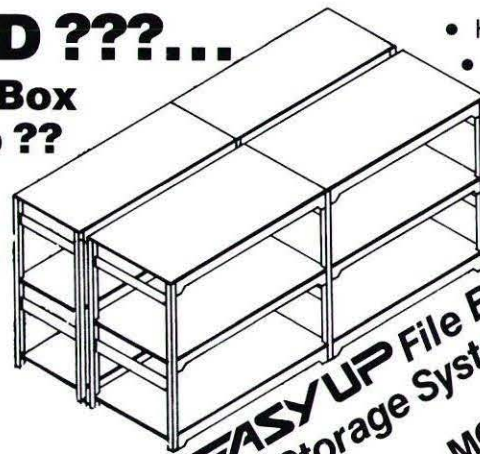
Dator, James Allen and Sharon J. Rogers. *Alternative futures for the State Courts of 2020*. [Washington, DC: State Justice Institute; Chicago, IL: American Judicature Society, c1991. Pp. 216. **KF8700.A17 1990**]

FORENSIC GENETICS

DNA technology in forensic science. Committee on DNA Technology in Forensic Science, Board on Biology, Commission on Life Sciences, National Research Council. Washington, DC: National Academy Press, 1992. Pp. 198.

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Manual of model criminal jury instructions for the Ninth Circuit. Prepared by Committee on Model Jury Instructions, Ninth Circuit. 1992 ed. St. Paul, MN: West Pub. Co., 1992. Pp. 326. **KF9682.A65M36 1992**

VETERANS

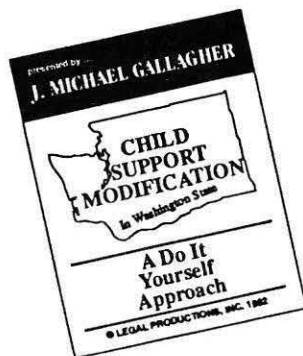
Veterans' benefits manual: an advocate's guide to representing veterans and their dependents. Michael E. Wildhaber, et al. Washington, DC: National Veterans Legal Services Project, c1991. 2 vol. **KF7709.V47 1991**

In re RCW 19.52.190(1): Legal Interest Rate ("Usury Rate"):

The average coupon equivalent yield from the first auction of 26-week treasury bills in January 1993 is 3.38 percent. The maximum allowable interest permissible for **February 1993** is therefore **12 percent**.

Compilations of the average coupon equivalent yields from past auctions of 26-week treasury bills and past maximum interest rates appear in the *Bar News* on page 39 in October 1987 for 1982-84; page 37 in June 1989 for 1984-85; and on page 47 in June 1992 for 1986-92.

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RIMS All-industry Conference

The Washington Chapter of Risk & Insurance Management Society, Inc. is sponsoring its 28th annual all-industry day conference Tuesday, March 9 at the Marriott Hotel (SeaTac) from 8:30 am to 3:55 pm (\$65 by Feb. 26; \$85 after Feb 26.) Contact Robert Guile, (206) 224-2231, fax (206) 382-7875.

Topics: Anatomy of a D&O claim; Challenges Faced in Managing the U.S. Olympic Committee's Risk Management Program; Funding for Post-retirement Benefits; Workers' Compensation Strategies/Cost Containment; Current Health of the Property/Casualty Market; Managing Your Claims Manager & Washington Workers' Compensation Fraud; How High is Up? Evaluating Limits; Environmental Insurance Recovery—The Decision Tree.



Note: Information telephone numbers for regular CLE providers and other groups presenting listed events are listed on page 46. Contact them for further information.

February 1993

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

5 Seattle: The Science Behind Environmental Law. *Sponsored by WSBA CLE.*

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

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

12-13 Tacoma: WSBA Board of Governors meeting.

14 Whistler, B.C.: WSTLA Skimender.

15-19 Whistler, BC: WSTLA Stressbreak.

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

17 Seattle: Planning Opportunities With Living Trusts in Washington. *Sponsored by National Business Institute, Inc.*

18 Spokane: Planning Opportunities with Living Trusts in Washington. *Sponsored by National Business Institute, Inc.*

19 Seattle: Irrevocable Trust Agreements. *Sponsored by WSBA CLE.*

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

19 Seattle: Premises & Product Liability. *Sponsored by WSTLA.*

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

March 1993

5 Seattle: Building & Running a Successful PI Practice. *Sponsored by WSTLA.*

10-13 Palm Springs, CA: Conference on Prepaid Legal Services. *Sponsored by Prepaid Legal Services Institute. For information—Alec Schwartz (312) 988-5752.*

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

15 Deadline for copy for May 1993

Bar News.

19 Seattle: What Every Practitioner Should Know About Intellectual Property. *Sponsored by WSBA CLE.*

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

19 Bellevue: Workers' Compensation. *Sponsored by: WSTLA.*

25-26 Seattle: Fourth Annual International Law Institute: Financings and

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

Workouts in the International Context—
 A Primer and Update. *Sponsored by*
 WSBA CLE.

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

29-31 Leavenworth: Support En-
 forcement Support Staff Training. *Spon-*
sored by WAPA.

31 Pullman: Negotiations and Settle-
 ment Advocacy. *Sponsored by WSBA*
CLE.

April 1993

1 Seattle: Negotiation and Settle-
 ment Advocacy. *Sponsored by WSBA*
CLE.

2 Olympia: Negotiation and Settle-
 ment Advocacy. *Sponsored by WSBA*
CLE.

15 Deadline for copy for June 1993
Bar News.

16 Tacoma: Growth Management.
Sponsored by TPCBA.

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

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

23 Seattle: Adoption. *Sponsored by*
WSBA CLE.

23 Spokane: Essentials of Evidence.
Sponsored by WSBA CLE.

30 Seattle: Essentials of Evidence.
Sponsored by WSBA CLE.

May 1993

7-8 Spokane: WSBA Board of Gov-
 ernors meeting.

15 Deadline for copy for July 1993
Bar News.

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

21 Tacoma: Commercial Litigation.
Sponsored by TPCBA.

22 Portland: Regional Legal Writing
 Conference. *Sponsored by Northwest-*
ern School of Law and Legal Writing
Institute. (Response form due January
25.) For information: (503) 768-6711.

June 1993

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

18-19 Leavenworth: WSBA Board
 of Governors meeting.

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

July 1993

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

30-31 Winthrop: WSBA Board of
 Governors meeting.

August 1993

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

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

September 1993

7 Seattle: WSBA Board of Gov-
 ernors meeting and Annual Meeting.

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

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

October 1993

15 Tacoma: Estate Planning. *Spon-*
sored by TPCBA.

November 1993

19 Tacoma: Appellate Practice.
Sponsored by TPCBA.

December 1993

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

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WHEN A LOVED ONE RETIRES

The man in my life for the last decade—my love, lover, significant other, best friend—I've lost him. Not to death. Not to another woman. But to retirement.

While he has left lawyering, I have not. He spends his weekdays reading novels on the couch, doing crosswords at the corner coffee shop, taking spontaneous road trips. I spend my weekdays hatching novel legal strategies and thinking cross words about unappreciative clients. My road trips are to outlying courthouses.

Back in the days when both of us earned our living as lawyers, I occasionally came across articles telling how retirement can affect both people in a committed romantic relationship. Reading the articles did not prepare me for the great sense of loss that I now feel.

For the past several years, we have practiced law in the same place. The other members of the office knew him and respected our ability not to let our personal lives affect that at the office. I found his presence comforting and his professional expertise welcome. So successfully did we establish separate personal and professional realms that we rarely discussed office business after hours. Whoever wanted to had to obtain permission from the other person. (Permission was never withheld.)

Then our office lease expired. He decided to close out his law practice rather than stay in with the rest of us as we embarked on the daunting task of finding new space that would meet our collective needs.

I, meanwhile, had great difficulty adjusting to the idea of the move. My ambivalence about the office move—the people, place—made me very emotionally needy. At almost all other times, my significant other has been a wonderful listener and very supportive. However, during the move, I sensed him withdrawing emotionally. That may have been his way of detaching himself from the office, and on that level, I can understand it. However, as his lover, I found

that my emotional need to talk about the office situation was not being met. To make things worse, immediately after the move, he became ill for two weeks and didn't want visitors (we don't live together) or care packages.

I was concerned about his health, but I have to admit to resenting his physical and emotional absence during my time of need.

He is now on the mend, and I am becoming accustomed to my new office. He has come by once to say hello to the gang. I was distant to him and found myself thinking that his appearance—sloppy, it seemed to me—took away from the professional appearance of our place of business. Was I jealous?

I am unsure how to relate to him. We do have a history of being able to work through difficult moments, and that may yet occur. In the meantime, I feel on untried soil.

Intellectually, I know that these changes in our lives—his retirement, my office move, his absence from my professional life—are opportunities for our mutual growth. Right now, though, it is

too early to tell the long-term impact of these changes on our personal relationship.

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. Call Joyce Elven at (206) 727-8268 for information on upcoming special programs to be held periodically in conjunction with these meetings.

NOTICE OF BANKRUPTCY JUDGESHIP

Western District of Washington

The U.S. Court of Appeals, Ninth Circuit, seeks highly qualified applicants for a vacancy in Seattle. This position will become available on April 1, 1993. Appointment is for a 14-year term. Current salary is \$122,912, including a 3.2% cost-of-living allowance for 1993. Full public notice with qualification standards is posted in the offices of the clerks of the U.S. District Court and U.S. Bankruptcy Court.

For further information and application forms (also available on computer disk), contact the Office of the Circuit Executive, U.S. Court of Appeals for the Ninth Circuit, P.O. Box 193846, San Francisco, CA 94119-3846, or call (415) 744-6150.

Deadline for receipt of applications is 5:00 p.m. PST Friday, February 19, 1993.
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MARKETING YOUR INTER

by **Joslyn K. N. Donlin**

The Global Marketplace is the marketing trend of the '90s. The decision to provide legal services in an international marketplace is no longer an optional marketing concept for law firms and practitioners. The race is on, yet the quest for an international legal practice remains both a mystery and an enigma for lawyers.

Why have some law firms dramatically opened overseas offices, only to have them close a few years later, while others have silently expanded their offices into the countries of the Pacific Rim, Europe, Eastern Europe, Canada and Mexico? The answer may be twofold: a calculated response to the "paradigm shifts" taking place in the marketing of the legal profession and the establishment of a well-researched, designed, and implemented international marketing plan and strategy.

"Paradigm shift" is discussed in Joel Arthur Barker's book, *Future Edge: Discovering the New Paradigms of Success*. He describes how the Swiss ruled the watchmaking industry for more than 60 years with a 65 percent share of the market, but by 1980, their share had dropped to less than 10 percent. The Swiss refined the self-winding mechanism and invented the electronic quartz movement of watches, but the Japanese foresaw the promise and application of electronics and watches. Today, Seiko, the largest Japanese company, holds a third of the world's watchmaking market.

How do paradigm shifts apply to the concept of marketing your international legal practice? Paradigm, in the business world, means a dominant pattern, a set of rules and regulations that establishes boundaries and behavior within them. As the paradigm changes, so does the set of rules, the environment and the people who operate within it. As the world becomes a competitive global economy, the demand and need for competitive international legal services become greater.

Today, it is commonplace for U.S. attorneys to represent U.S. corporations with foreign subsidiaries throughout the world and to represent foreign clients here with real estate and business investments. But it is rare for most law firms and practicing attorneys to strategically market their international legal services. Traditionally, because of ethical restrictions and professional biases, lawyers have refrained from overt and concentrated marketing efforts. In order to survive within the global legal marketplace, law firms cannot afford to miss the opportunity to attract and develop an international clientele.

Successful and perceptive law firms and attorneys who market their services internationally have long recognized that the traditional safeguards of seniority, technical expertise and institutional and personal loyalty and reputation are no longer proven assurances that the firm will continue to retain and attract clients, whether they are domestic or international. These same law firms and

practitioners have recognized that in order to survive in the '90s and beyond, they must be able to obtain and maintain a competitive edge in both the domestic and international legal communities. In addition to a state-of-the-art computerized legal system for management of all areas of practice, a highly competitive firm will institute a firm-wide international master marketing plan.

What is the marketing of legal services? It is not synonymous with advertising or selling. Advertising is a marketing technique, and selling is one of the last steps in marketing. Marketing is an ongoing process whereby 1) target markets and their needs are defined; 2) differentiated services to meet the needs of the target market are identified; 3) the prospects for these services are qualified and developed and 4) the sale is closed. (Advertising by lawyers has been relatively new since 1977, when the Supreme Court in *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977), permitted attorneys to advertise under certain conditions.)

And the marketing of international legal services? It is not hiring a bilingual attorney and sending him or her on a rain-making expedition to a foreign country to acquire foreign clients. It is not contacting all your overseas business acquaintances and asking for client referrals. It is not conducting overseas seminars once a year to attract new foreign clients. Finally, it is not handing out your business card at trade show

Joslyn K.N. Donlin is a sole practitioner in Redmond. She emphasizes international trade, imports and exports in her practice; she is co-editor of the WSBA International Law and Practice Section newsletter.

NATIONAL LAW PRACTICE

conventions.

Expansion Strategies

The marketing of international legal services involves a highly organized and well-researched data collection process of defining and expanding your target markets. There are various ways to augment a professional legal-service business, which include broadening:

1) the scope of services beyond the legal "specialties" traditionally offered by the firm,

2) the client and industry orientation (to new market segments), and

3) geographic focus to new markets. For some law firms with fiscally strong domestic clients interested in exporting their products or services overseas, this may encompass business development and foreign-investment advice.

The first step is to assess the market, itself. For a large firm which can afford the substantial cost this may involve conducting market research in cooperation with a foreign or U.S. corporation to determine the particular industry legal needs and trends. For a medium-sized firm, the compilation of an industry-specific market analysis may be in order. For individual practitioners, a review of the trade data provided by the particular industry and its trade associations is an efficient means of identifying target markets.

Alternative Expansion Strategies

Other expansion strategies include:

1) direct marketing to foreign-based clients by targeting corporate counsel of foreign-based multi-nationals, or foreign-based lawyers in private practice;

2) hiring a foreign lawyer together with a marketing specialist of the foreign market being targeted;

3) establishing exclusive referral arrangements with foreign-based law firms with whom the firm currently does business;

4) establishing a formal affiliation with one or more firms in a foreign jurisdiction;

5) joining an international network of law firms throughout a particular region or the world, some of which include: Pacific Rim Advisory Council (PRAC); Lex Mundi, Houston, Texas; Asia Pacific Legal Network, Honolulu, Hawaii; Commercial Law Affiliates, Minneapolis, Minnesota; Interlaw, Sydney, Australia; Multilaw, London, England; and Terralex, Miami, Florida;

6) establishing joint ventures with one or more law firms and focusing on a particular foreign marketplace; and

7) establishing branch offices in the foreign jurisdictions.

A Review of Law Firm International Expansion Strategies in Seattle

A brief review of the major law firms in Seattle reveals that a variety and a combination of international expansion and marketing strategies have been used. Only one firm, Perkins Coie, having re-

cently opened an office in Taiwan, has an overseas office in the Pacific Rim. Most law firms have taken the more economical and currently popular strategy of joining an established international network. In addition, many of the larger firms are members of PRAC.

Some firms have created full-time marketing director positions to handle all aspects of promotional and business development activities; others have hired part-time marketing directors. In some instances, a managing partner serves in the dual role of marketing and practice development director while maintaining a law practice.

A few law firms have developed firm brochures specifically targeted to the intended market population and had them translated into the target languages. Others have sponsored or co-sponsored overseas regional conferences on topics involving international transactions and investments.

When marketing your international law practice, it is the firm's and the attorney's understanding of the principle of a long-term financial investment that is key to successfully acquiring a niche within the international community and expanding legal services beyond domestic borders. To be a successful U.S. law firm in the year 2000 will involve substantial international business. The paradigm shift in the marketing of legal services has occurred. Developing an international marketing plan can be your best guide to your firm's international future and survival.



NEWS FROM HOME

James A. Trujillo, partner and co-founder of the Bellevue firm of Trujillo and Peick, was elected 1993 chair of the Washington State Hispanic Bar Association. He has been active in WSHBA since its founding in 1990, as well as in the East King County Bar Association, the Eastside Legal Assistance Program, the Washington Association and National Association of Criminal Defense Lawyers, the Washington State Trial Lawyers Association and the Association of Trial Lawyers of America.

CLARK COUNTY REPORT

by JOHN F. NICHOLS

BEAGLES X (AGAIN)

[Author's Note: Last year the awards were billed as the 10th annual Beagles, however, under a new democratic accounting system sponsored by the WSBA, it was discovered that in fact they were either the 8th or 9th annual awards. A pre-trial settlement resulted in a reduced Price Waterhouse payment].

The 10th Annual CCBA awards for

dubious achievement in the field of attorney yellow-page advertising (the Beagles) was a gala event for U.S. West, et al. Statistically, this year's attorney section in the yellow pages increased only from 36 to 39 pages. However, the full page ads went from 0-7 and 3/4 page ads from 0-3. While most of the country suffered through a recession, Ma Bell was too busy counting her checks to send out my yellow pages until December.

Price was the main topic at the awards ceremony—held at the site of the inaugural awards—the South Main Archway, Vancouver's version of the Trump Towers. The arch soars some 2 or 3 stories above ground giving a panoramic view of the city from Main Street all the way to Second Street, or on a clear day, to Fourth Street. As usual, the honorary presenter was Her Honor Judge Barbara Johnson bejeweled in a sequined evening warm up outfit with the customary string of freshwater pearls. The added touch this year was the price tag flowing from the simulated pewter or tin Beagle statuette as always contemplating a fire hydrant.

The board unanimously agreed upon the program's theme, "Let's Be Different." Other motions passed "Less Categories, Less Quality, More Quantity." The most hotly contested issue was deciding on things money can buy and

things money can't buy. The results:

Things Money Can Buy: cars, house, secretary, deluxe burger combo and an Oscar.

Things Money Can't Buy: love, happiness, replacement for those plastic things at the end of your shoelaces; and "a Beagle."

The Winners:

BEST SLOGAN

Runners Up:

"It doesn't hurt to call, (@ 1988)"—

Mike Hicks. (Maybe it does, maybe it doesn't Mike. It does to read this for five years, so let's get a new one next year.)

"Satisfaction is Your Right"—Stan Horak. For the uninformed, that is right after due process and just before self incrimination.)

"A Fair Settlement is no Accident"—Thayer & Muenster. (If it is not an accident, is it still a contingency fee?)

"We're on your Side" —Jerry Hall. (Thanks, Jerry, now I won't have to watch my back.)

"We Don't Get Paid Until You Do."—Paul Bruce. (I don't care, the rent's still due.)

"Quality Service with Respect"—Rob Russell. (Next thing you know, clients will want parking receipts validated.)

And the Winner is:

"Know your Rights—Avoid Nasty Surprises" —Gregg Schile. (A nasty surprise. Is this something like those nasty statute of limitations or a nasty unknown confession?)

PROBATE AWARD

Of all the "specialties," one would think that probate, as with funeral directors, would be somewhat sedate. Not any more (see the following):

Runners Up:

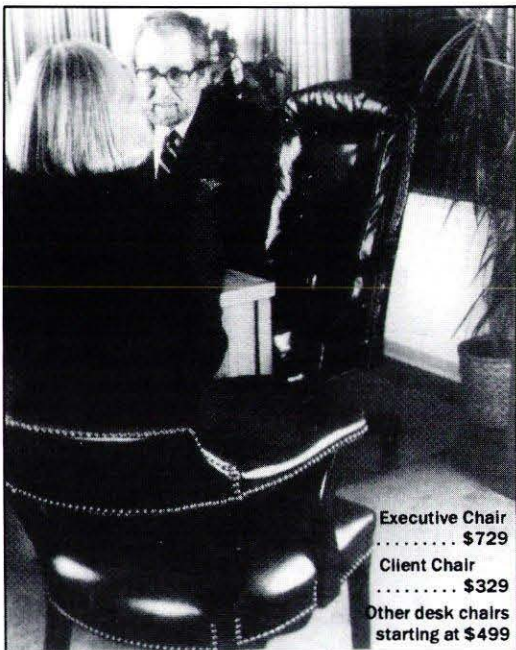
J. Marvin Benson, "Protect your Family." (Forget about the Pitbull and chain a living trust to the door.)

Bill Lacey, who proclaims to be "Member National Network of Loving @ Trust Attorneys." (Maybe not as much fun as the Shriners, but they do have their own cable channel.)

The Winner:

Chuck Cusack: "Probate Need not be Confusing, Lengthy or Costly." (Then what's the point, Chuck?)

BRAM STOKER AWARD (formerly known as the "ET TU" award)



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The Winner: Dunkerly & Yoseph, who, under the heading of "malpractice," lists doctors, dentists, nurses, etc., then concludes with those fatal words, "Even Other Attorneys." (Stock up on the garlic and crosses folks.)

MOST OBSCURE "SPECIALTY"

Todd Hutchinson: "Smoking Injury Cases." (Not to be confused with smoking-gun or burning-bed cases.)

Honorable Mention in the Non-Smoking Section:

Ken Weber: "Agricultural Livestock." (Hey, cows have rights too, and they are entitled to satisfaction.)

Dale Read: "Clearly Written Leases" (see Cusack, *supra*).

Now, for the award we have all been waiting for—the BOY (Beagle of the Year). This award has always been surrounded by controversy from whiny losers, charges of nepotism, and loans by and to the Beagle Boosters; this year was no different. But despite the charges and counter-charges, everyone agreed that there is a lot of this year's winner: **Art Miller!** Art stunned the field with a 1-3/4-page ad at the beginning of the attorneys' yellow-page section. He then rendered the field comatose with an unprecedented 8-1/2 x 11, two sided, semi-glossy, full, living color (not yellow-page color), fold-out complete with a Rolodex type tab; in his own separate category at the end of the white pages and before the index. Upon my viewing this pop-out, only one phrase came to my mind, "How much did it cost?"

Upon closer examination, I was struck with a strange sense that maybe Art was acting under the control of some dark, sinister personality. The evidence? His first "yellow" ad was entitled "Car Accidents" and identified him as "Art Miller" with a 6925 phone number. The ad right next door is entitled "Injury Accidents" with **Arthur D. Miller**, attorney and a 4320 number. Finally, in his glossy the name is Arthur Dustin Miller. The ads themselves state, "We will do this and we will answer phone calls, etc." Art, you're a sole practitioner; get a grip, or we will take back the Beagle.

Lastly, a Beagle ad must be more than just quantity; it must also be informative. Art's ads have handy definitions of such topics as "defective products,"

"accidental deaths" and my favorite—"dog bite," i.e., "injury caused by dog or other animal bite." Thank god, the statute has not run on my gerbil altercation.

Congratulations, Art, on a fine effort and I hope we enjoy the Beagle as much as we enjoy the giving of it. At last, as this year draws to an end, all attorneys must remember that bigger may not be better or more productive, but it is definitely more overhead.

**GOVERNMENT LAWYERS
BAR ASSOCIATION**

by **EVELYN A. FIELDING**

Ah, snow! The bane of government lawyers making the I-5 drive between Olympia and King County. And yet, inclement weather, along with the terrors of giant-mobile-home-moving day,

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is the spice of life for state attorneys. Practicing in every county, trying to decipher double-secret local rules known only to in-town counsel, and waiting until after 4 p.m. before finding out if you have to be in Spokane the next morning—all contribute to the pioneer spirit.

In celebration of that spirit, Gov Law members recently assembled at the Green Frog Wine Shop in Olympia to sample the vintages, compare varietals, and swap rumors about the effects of transition in the state house. January also marked the "Mother of All Retirement Parties" honoring **Ed Mackie**, Chief Deputy Attorney General. The Washington Center for the Performing Arts was the only venue in town large enough to hold all of Ed's well-wishers. Those who attended will never again be able to look at a short-sleeved pastel shirt without smiling.

Slated for February: keep your eyes open for the next Gov Law CLE (probably to do with ethical issues involved in representing the state and its government). Also watch for information about an as-yet-unscheduled lunch program with the new WSBA president, Steve DeForest, to chat about the concerns of government attorneys. As always, you can be guaranteed inclusion on our mailing list if you have renewed your membership for 1993.

Finally, on an organizational note: in March we will begin assembling a nominating committee to draft government attorneys who are interested in running for a position on the executive board (heady stuff I assure you). If you are interested, drop us a line: GLBA, P.O. Box 2341, Olympia, WA 98507.

PIERCE COUNTY REPORT

by **GEORGE S. KELLEY**

There should be a telephone company advice-of-rights form for attorney customers that statements made in yellow-page ads might be used against them in court. Consider the example of **Dennis LaPorte**, whose client was joined into a complicated injury case as a third-party defendant four months before trial. Dennis moved for a continuance on the grounds he was too busy to adequately prepare. Plaintiff's attorney **Joe Sinnitt**

opposed the continuance and showed the court the multi-colored, yellow-page ad of Thompson, Krilich, LaPorte, Tucci, Prather & West, P.S. proclaiming members of the firm to be "Successful, Experienced, Aggressive," along with other superlatives, and told Judge **Waldo Stone** that the ad proved there are many other lawyers available in the firm to handle the trial. Dennis' argument was that he was the only member of the firm qualified to handle the case, giving rise to the unspoken conclusion that his partners were klutzes. Stone, in granting the continuance, made an implied finding that LaPorte was correct in his description of his partners' abilities.

Jim Orlando has provided us with a copy of an affidavit of service wherein the server, in attempting to serve a Writ of Garnishment at a farm, stated he had left the writ "with someone in charge (woman) whose goat was trying very hard to butt me, and the name was not gotten." It could not be determined whether the affiant was referring to the name of the woman or the goat.

Retirement ceremonies were held for judges **James P. Healy**, **E. Albert Morrison** and **Robert H. Peterson**, and court commissioner **John B. Krilich**. They included a lunch, which produced a record turnout of the bar members and a courthouse reception. These folks are wished well on their retirement.

Burgess, Fitzer, Leighton & Phillips, P.S. had a combination Christmas party and open house for their new offices located in the new Pierce County Medical Insurance Building at the corner of 15th and Market streets. **Richard Levenson** has moved his practice to the One Pacific Building at 621 Pacific Avenue. **Larry Couture** has moved his practice into **David Tuell's** office, taking over the space vacated by **Grant Anderson**, who beat Larry in the recently concluded election for a superior court position. One might ask if Larry has his sights set on another one of Grant's offices in the next election.

Finally Gordon, Thomas, et al. announce that **Sam J. Alberts**, **Matthew A. Reiber**, **Sandra J. Rovai** and **Annette Thompson** have been named as associates. There is speculation that Sandra took her present employment because she could not afford to work for her father, **Robert Rovai**, for her old allowance plus cost of living. This speculation is not true—there was no cost of living offered.

IN MEMORIAM

Floyd V. Hicks, 77, died December 1, 1992 in Tacoma. Born in Prosser, he obtained a teaching degree from Central Washington State College in the early 1930s. He taught school and coached basketball in a high school for a time, then served in the Army Air Corps. He later entered and graduated from the University of Washington School of Law.

Hicks practiced law in Tacoma for 13 years before being appointed to the Pierce County Superior Court bench in 1961. In 1963, he returned to private practice. A year later, Hicks pulled off an upset campaign for Congress, and he served six terms in the House of Representatives.

In 1976, Hicks turned his sights to the State Supreme Court, leaving Congress to run successfully for a seat there. He served six years before resigning for health reasons. Governor John Spellman appointed Hicks to a Pierce county Superior court judgeship later that year, a post he held until he retired from public life in 1983.

Hicks' wife died in July 1992. Survivors include two daughters, a sister and five grandchildren.

(The following remembrance was submitted by Kirkland attorney Walter R. Krueger. "Don ably served the attorneys of the state of Washington and beyond, and it is fitting to recognize one of our helpers," he writes.)

Donald L. Drobnicki, 41, died November 12, 1992 from a heart attack after playing basketball at Holy Family School in Kirkland.

A salesman with Matthew Bender & Company for 13 years, Don served the northwest region for the past nine years. Don is survived by his wife, Fran, and five daughters.

Born February 14, 1951 in Brooklyn, New York, Don attended St. Francis College, where he received a bachelor's degree in business administration. He was devoted to his family and to community organizations, often attending meetings with his 1 1/2-year-old on his lap.

Memorial contributions may be made to the Drobnicki Children's Scholarship Fund, c/o Holy Family Catholic church, 7355 - 120th Avenue N.E., Kirkland, WA 98033.



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