Washington State Bar News

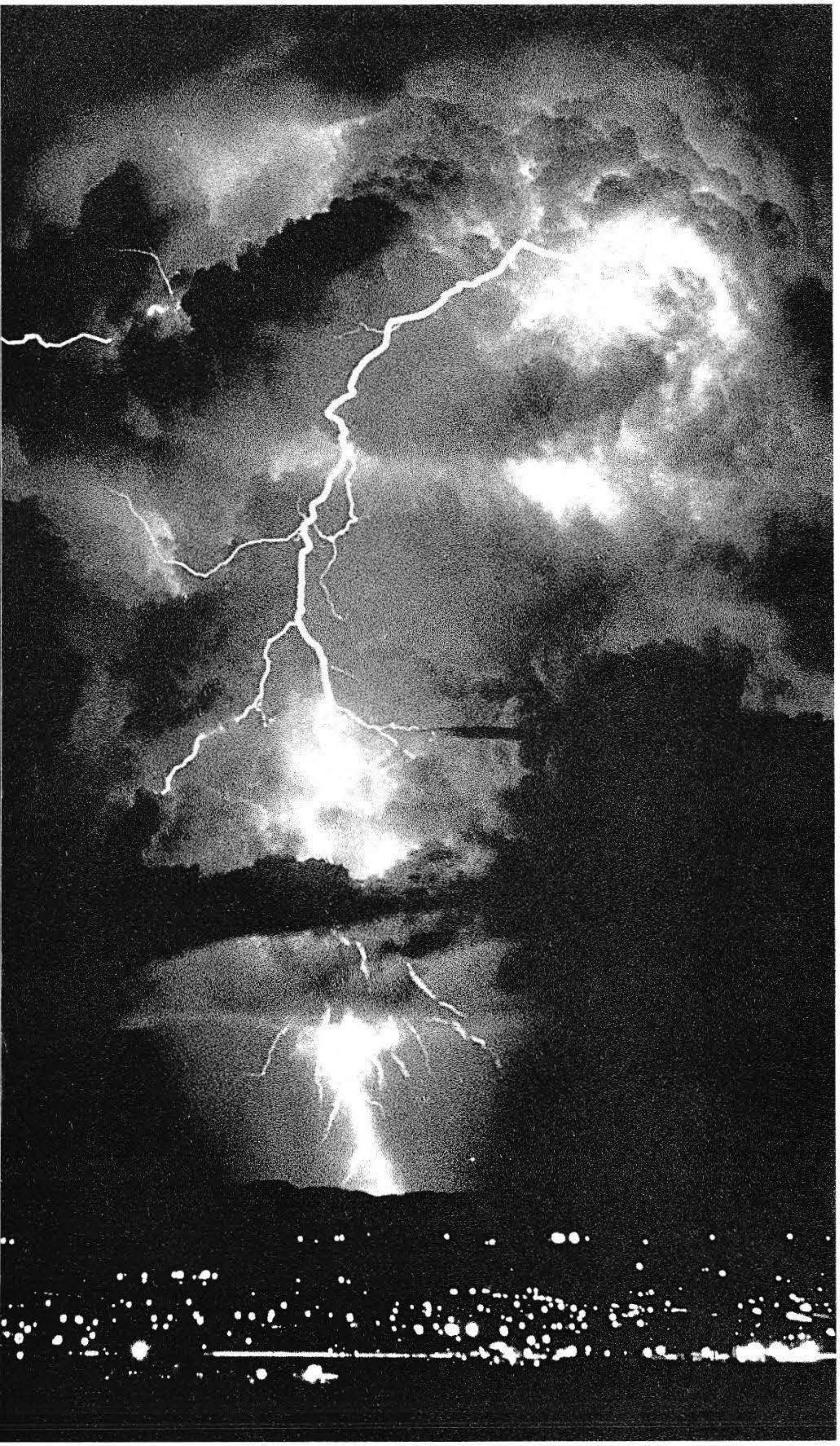
Vol. 47, No. 4, April 1993

Special Alternative Dispute Resolution Issue

ADR Comes of Age • What Attorneys Need to Know About ADR
Predispute Planning for Business • When Mediation Won't Work
ADR Glossary • Consumer-Business Dispute Resolution at the AG's Office
Using Dispute Resolution to Collect • Public-policy Mediation
Getting Away From Maybe . . . in Russia • Land Use Mediation
New Developments • The Role of the Advocate in Mediation
Settlement Now • Real Lawyers Do Not Mediate . . .
Caesar Would Have Arbitrated! and more . . .

Computers this month:
Macintosh Law & a review
of Lotus Organizer 1.0

Invest In The Directory That Can Make It Rain.



"We often use legal directories to find outside counsel to represent our corporation. That's why West's Legal Directory has become such a valuable online directory resource for us," says

Kaethryn Luetkemeyer, J.C. Penney Legal Department Librarian.

"If a firm has the credentials we're looking for, our online WLD search will locate them in seconds. Even better, if their listing includes professional profiles, we can usually tell which attorney is probably best suited for our project."

"With over 1,250 stores in 858 markets, asking around for referrals just isn't efficient for us. And everyone's time is too precious for long interviews and endless lunches that usually go nowhere. With WLD we search very current listings and get a printout of prospective firms instantly."

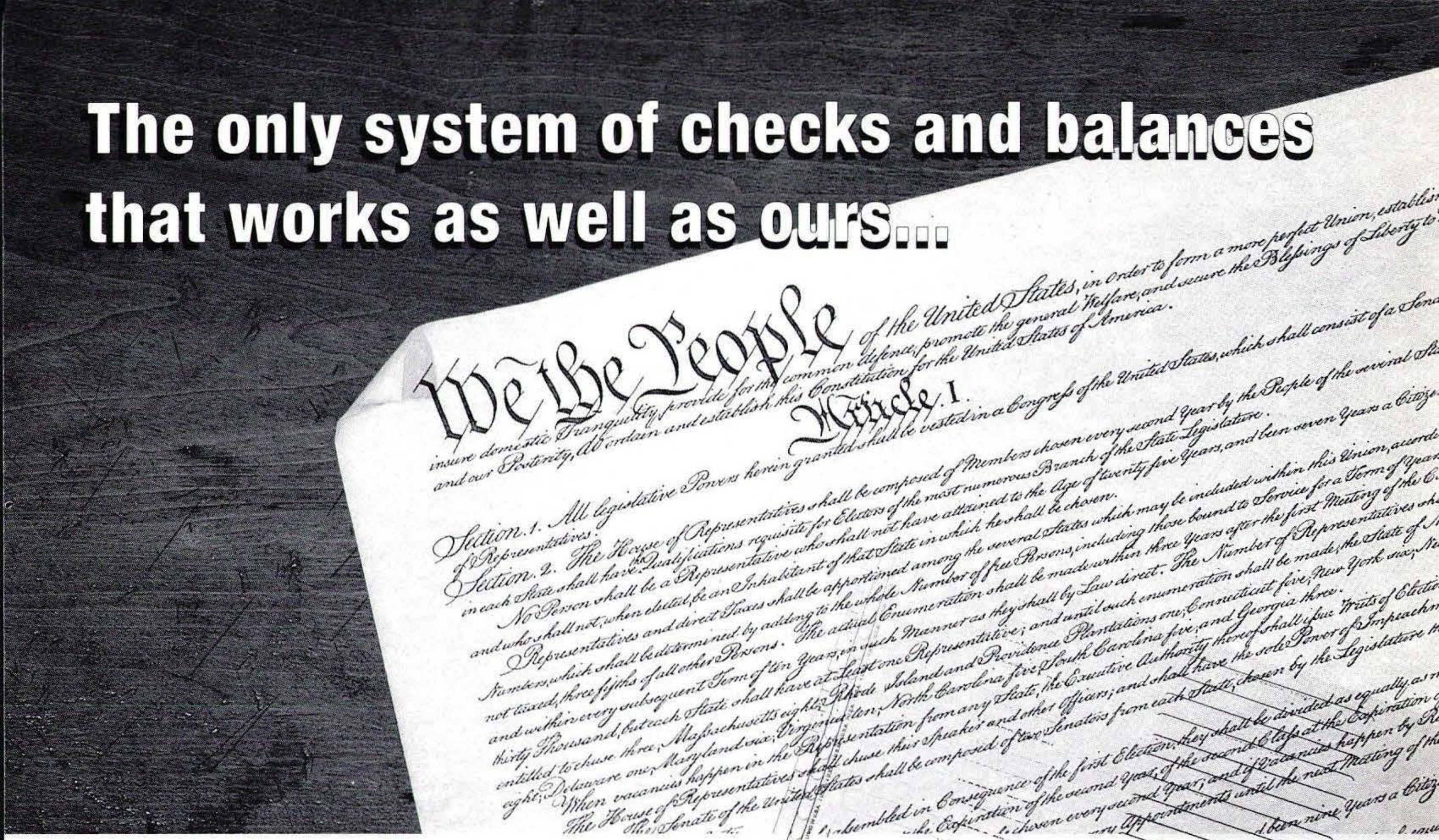
"It's easy to see why WLD is becoming known as the Rainmaker."

Become part of the rainmaking referral network by listing your Professional Profile on West's Legal Directory. Call 1-800-777-7089 today.

WESTLAW® **WEST'S LEGAL DIRECTORY**

More ways to win

The only system of checks and balances that works as well as ours...



...guaranteed!

The system of checks and balances set forth by the U.S. Constitution has been the cornerstone of effective government for over two centuries. Your law firm's system of checks must perform equally well to maintain balanced operations. No matter what your checkwriting needs may be, a Wilmer one-write pegboard system means performance...plus! In fact, our systems are so incredibly accurate, each is *guaranteed* compatible with the one-write pegboard system you might be using now. And if you're not completely satisfied, simply return any unused checks for a full refund--no questions asked. For more efficient bookkeeping, you can count on Wilmer's one-write checkwriting systems. Guaranteed!

We carry
the most complete
line of replacement checks
and forms that are designed to be
compatible with these popular one-write systems:

- **SAFEGUARD® ***
- **NBS**
- **Deluxe**
- **McBee**
- **Post-Rite**

*Safeguard® is a registered trademark of Safeguard Business Systems, Inc.

AVAILABLE LOCALLY FROM THESE SUPPLIERS...

Chehalis, WA
Cascade Stationery
800-327-2322

Kennewick, WA
Brutzman's, Inc.
509-735-0300

Lynden, WA
Regal Office Supply
206-354-2699

Seattle, WA
A to Z Business Forms, Inc.
206-363-8170

Sound Business Forms
206-527-8733

Spokane, WA
Lancer LTD
800-541-2232

Tacoma, WA
Morford's Office Supply
206-531-9796

Yakima, WA
Yakima Bindery
509-453-7115

wilmer service line®

FORMS YOU CAN COUNT ON!

PLEASE REFER TO THIS AD WHEN ORDERING.

As an introduction to our high quality checkwriting systems, order 300 one-write checks and receive 325 more...FREE ! Or buy 625 one-write checks and get 625 more...FREE ! This is a limited time offer that applies to new systems or checks designed to be compatible with systems produced by Safeguard ®, McBee, NBS, Reynolds and Reynolds Post-Rite or Deluxe.

FREE CHECKS!

Washington State Bar News
Vol. 47, No. 4, April 1993

SPECIAL ISSUE: ALTERNATIVE DISPUTE RESOLUTION

FEATURES

WSBA PHONE NUMBERS

General Information	**(206) 727-8200**	**Fax**	**(206) 727-8320**
Administration	(206) 727-8200	CLE	(206) 727-8202
Licensing	(206) 727-8210	Admissions	(206) 727-8209
Legal	(206) 727-8207	Public Affairs	(206) 727-8203

Lawyers' Assistance Program .... (206) 727-8268

Published by
WASHINGTON STATE BAR ASSOCIATION
500 WESTIN BUILDING 2001 SIXTH AVENUE
SEATTLE, WA 98121-2599

LINDSAY THOMPSON, *Editor*
JENNIFER KLAMM, *Managing Editor*
JACK YOUNG, *Advertising Director*
KRISTY KING, *Editorial Assistant*

DENNIS P. HARWICK
Executive Director

Printed by United Graphics, Seattle

PUBLISHED monthly and mailed second class. Editorial deadline 15th day of month for second issue following. Direct correspondence to Washington State Bar News, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599, telephone (206) 727-8215. All editorial material, including editorial comment, appearing herein represents the views of the respective authors and does not necessarily carry the endorsement of the Association or the Board of Governors. Likewise, the publication of any advertisement is not to be construed as an endorsement of the product or service offered unless it is specifically stated in the ad that there is such approval or endorsement. SUBSCRIPTION, included in active membership, is $12 a year for inactive members (WA state residents add $0.98 WA state sales tax), and $24 a year for nonmembers (WA state residents add $1.97 WA state sales tax).

TWO SPECIAL ARTICLES

DEPARTMENTS

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

More From Somalia

Editor:

Here is an update on developments here in Somalia. I am serving as the staff judge advocate (senior legal advisor) for Operation Restore Hope. We currently have 14 judge advocates in the area of operations; the number is diminishing now as the number of U.S personnel is reduced. We have judge advocates here from Belgium, Canada, Australia and Turkey, and we consider them part of our international "law firm."

Questions on rules of engagement and weapons confiscation policy continue to occupy a substantial part of our time. In addition, we are working with officials at the Port of Mogadishu to resolve a number of questions concerning the administration of the port. When we arrived here two months ago, the port was destroyed, port officials had fled, and bandits controlled the piers. Now we have a functioning port under U.S administration, an Army colonel is "port commissioner," and a Navy commander is "harbor master." We have recently developed a plan to begin charging commercial vessels tug and pilot fees. The Unified Task Force has assumed many of the functions traditionally performed by the sovereign.

You may be interested in the state of the Somali Bar. In the early 1980s there were about 100 attorneys engaged in the private practice of law in this country. The majority were here in the capital, Mogadishu. By January of 1991, when the Siad Barre government fell, the court and legal system had stopped functioning and the nation went into a state of anarchy and civil war. Many of the attorneys left the country, and those who remained closed their offices and tried their best to safeguard their homes and families. Most law offices were downtown in an area that was devastated by fighting and shelling; it became known as the "Green Line."

Last week we had our first contact from a Somali attorney. It took him more than a week to make contact with us. There is no phone system in town, and he had to walk more than a mile and pass notes through the security gate. Dr. Abdulquadir Haji Mohammed is a graduate of the Odessa Military Academy (that is NOT Odessa, Texas) and the University of Somalia Law School. He is representing shopkeepers in the central market in a petition to the Commander, Unified Task Force. The shopkeepers desire to retain a limited number of weapons for self-defense. Many weapons have been confiscated in the sweeps conducted by U.S. forces.

Dr. Mohammed is operating out of his home on a small, manual typewriter, and he is apparently the only remaining Somali attorney who is fluent in English. I have been assisting him in finding work with the U.S.-published Somali-language newspaper, *Rajo* ("Hope"). Legal work is not otherwise available in this country, and he seems to be satisfied with part-time work as a journalist until conditions improve.

We have made progress recently in resurrecting the Somali Police Force. Funding will be provided through the United Nations for uniforms and equipment. Former police officers have appeared on the street recently, and more than 2,000 officers have been selected for the new force. This week we will be meeting with a committee of former judges to discuss the reconstitution of a court system. Since we will be here for only a limited amount of time, we are anxious to pass the "nation-building" responsibilities over to the U.N.

Life in Mogadishu is still difficult for most Somalis, but it is much safer than it was two months ago. The U.S mission is largely completed, and we await word from New York on the transition to UNOSOM II, the force that will take over when we leave.

F.M. LORENZ
Colonel, U.S. Marine Corps
SJA-Combined Task Force Somalia

Another Satisfied Customer

Editor:

I am distressed to see the precious resources of this Association consumed

WSBA CLE Stands for Answers and Information

"The right topics at the right time."

Each Year, WSBA CLE Brings You Nearly 500 Hours of CLE. This year we are offering 60 different seminars and taking them to locations around the state, including Seattle, Olympia, Wenatchee, Vancouver and Spokane.

"WSBA CLE Course Books are the best."

We Hear that from People Whose Business It Is to Know. Indexers who review our course books and those of other CLE providers consistently comment that our books are the most comprehensive and provide the best analysis.

"Typically well-organized, interesting program."

We Work Hard to Earn Your Praise. We give you a wide range of choices including employment law, trusts and estates, environmental law, growth management, litigation, and negotiation. And unlike other providers, we don't neglect those narrower practice areas like intellectual property, international business law, health law and antitrust.

"What do you have on irrevocable trusts?"
"I need anything you've got on maritime liens."

Every Day, WSBA CLE Staff Answers Your Research Questions. We answer dozens of calls every day from attorneys and paralegals looking for a research lead. With the help of CLEDEX, a comprehensive index covering hundreds of WSBA CLE course books and those of other providers, we will help you track down the elusive reference work... whether or not we published it.

Washington State Bar Association
Continuing Legal Education
Call us at 206 727-8202

Upcoming Seminars

APRIL

- ☐ **Negotiation and Settlement Advocacy**
  Seattle – Washington Athletic Club – 4/1/93
  Olympia – Westwater Inn – 4/2/93
  7.0 CLE Credits $165
- ☐ **Employee and Employer Rights and Responsibilities: Advising the Business Owner or Professional Firm**
  Seattle – Washington Athletic Club – 4/16/93
  7.0 CLE Credits $135
- ☐ **Adoption Law**
  Seattle – Washington Athletic Club – 4/23/93
  Moderated Video Replays:
  Wenatchee – The Chieftain – 4/25/93
  Olympia – Law Offices of Hanemann, Bateman & Jones – 6/11/93
  6.5 CLE Credits $125
- ☐ **Essentials of Evidence**
  Seattle – Washington Athletic Club – 4/30/93
  Spokane – Cavanaugh's River Inn – 4/30/93
  7.25 CLE Credits $135
- ☐ **Family Law Skills Institute**
  Seattle – King County Courthouse – 4/30-5/1/93
  11.5 CLE Credits $155

MAY

- ☐ **Current Issues in Criminal Law**
  Seattle – Washington Athletic Club – 5/5, 5/12, 5/19/93
  3.0 CLE Credits each $60 each; $155 series
- ☐ **1993 Environmental and Land Use Law Section Midyear**
  Stevenson – Skamania Lodge – 5/6-8/93
  12.5 CLE Credits $225
- ☐ **1993 Public Procurement and Private Construction Law Section Midyear**
  Seattle – Washington Athletic Club – 5/7/93
  6.5 CLE Credits $100
- ☐ **Staying Out of Hot Water: Managing Client Trust Accounts**
  Seattle – Washington State Convention & Trade Center – 5/14/93
  3.25 CLE Credits $75
- ☐ **1993 Business Law Section Midyear**
  Richland – Red Lion Inn Hanford House – 5/14-16/93
  12.5 CLE Credits $195 by April 30; $225 thereafter
- ☐ **Meeting the Needs of the Elderly and Their Caregivers**
  Seattle – WA State Convention & Trade Center – 5/21/93
  Spokane – Sheraton Spokane Hotel – 5/25/93
  7.25 CLE Credits $135
- ☐ **Promoting World Peace Through Law**
  Seattle – Washington Athletic Club – 5/27/93
  6.0 CLE Credits $125
- ☐ **Partnership Law in Washington**
  Seattle – Stouffer Madison Hotel – 5/27/93
  6.0 CLE Credits $155

in the printing of dribble such as that which consumed 20 slick and expensive pages of the December, 1992 *Bar News* (and most *Bar News* printings). Let the aspiring authors promote and pursue their avocation at their own expense.

GEORGE I. DIANA
Spokane

More on The Harassment Rule

Editor:

Apparently there is a proposal that "professional misconduct," which can result in disciplinary proceedings, will now include not only violations of statutory law but perceptions of what constitutes "harassment" of a person upon the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status. The misconduct can be committed at any place and time in connection with the "lawyer's professional activities."

What constitutes "harassment" to one person seems to be "free speech" to another. The proposed rule leaves us wondering what sort of problems the Bar Association is generating for itself. From what we can tell, a lawyer's professional activities include the time he or she is at an office and the time spent away from the office involved in community and social activities, advising these organizations, pro bono or otherwise. Without being very exhaustive, we can think of all sorts of activities someone, especially a group like ACT UP, will perceive as harassment by a lawyer any time that lawyer takes a position contrary to that group's viewpoint. We need not go far to find a lot of other groups that are overly sensitive to perceived acts of discrimination.

Under the guidelines of the proposed changes, will a lawyer commit professional misconduct in any of the following circumstances?

1. Cross-examining a person in prosecution or defense of a case based upon sex, race, creed, religion, etc.?

2. Advising an abortion rights group as to how it can prevent a religious organization from protesting abortion?

3. Suing a church or its staff upon intangible torts arising out of perceived disagreements in counseling, teaching or doctrine?

4. Assisting a religious organization in preparing organizational documents which, based on biblical beliefs, exclude homosexuals?

5. Advising a religious organization that it is perfectly legal to discriminate against homosexuals in their organization?

6. Telling a joke at a service club luncheon that might, by chance, "harass a person" in one of the protected classes?

It seems to us that if the Bar Association is going to attempt to legislate the morality of its members, it better figure out whose morality is going to be legislated. When the Bar Association takes upon itself to establish what it currently perceives to be "harassment," then that standard is equally subject to change each time a new individual of a different persuasion is elected to the Board. Such a standard is no standard at all. Doesn't it make sense that the only rule that the Bar Association can reasonably enact is that it is professional misconduct if a lawyer is "convicted" of a discriminatory act which is prohibited by law? The standard to be applied as to what the current committee considers "harassment" is going to be very thin if the "judge and jury" is part of the "protected class."

The current draft of Proposed Rule 8.4(g) appears to me an example of the tail wagging the dog. I am sure that there are some perceived injustices by individuals who want to right those wrongs, but enacting a rule that clearly violates the constitutional rights of a lawyer, both in and out of his or her law office, is not the solution.

ODINE H. HUSEMOEN
CRAIG W. WESTON
Longview

Historical Notes

Editor:

What is "The First Duty" and whose is it? "The First Duty" was perceived by Alexander Hamilton, an American lawyer, in 1795. It was recently adopted as the title for the first-of-its-kind hardback book on the 100-year history of the U.S. District Court for the District of Oregon, published in March by the court's Historical Society. To find out what "The First Duty" is, and to whom it belongs, I recommend that you order a copy of the book by sending $33 to Kirk Hall, Oregon State Bar, P.O. Box 1600, Lake Oswego, Oregon 97035.

The Historical Society of the U.S. District Court for Oregon is the second such society of its kind; the first was established in 1984 at San Francisco. It is amazing what states can learn about their court systems when someone explores the trials and tribulations encountered by the first judge to sit on their U.S. District Court.

WILLIAM F. WHITE
Lake Oswego, Oregon

ADR Comes of Age

by **Ted Hunter**, *Guest Editor*

It's truly a pleasure to introduce this issue of the *Bar News* that's devoted to Alternative Dispute Resolution and prepared by members of the WSBA ADR Section, established just over two years ago. It is by far our fastest-growing section. This reflects the increasing interest in finding appropriate ways to resolve disputes. The quality of the articles presented in this issue of the *Bar News* reveals how far ADR has come in the past few years.

Of course, ADR is nothing new. We attorneys have always tried to settle a case using alternatives to litigation. We'll negotiate, go to settlement conferences, and participate in mandatory arbitrations. Some of us have even tried out the private mediation services that seem to flourish all around. We settle over 90 percent of our cases before we go to trial. So we attorneys already know about all about ADR, don't we?

Think again. ADR starts with a new way of looking at disputes. The legal *rights* of the client are still important, but an experienced ADR practitioner will carefully consider the alternative dispute resolution processes to best satisfy the *interests* of the client as well. As Michael Gillie's article points out, efforts to enforce a client's rights in litigation may sometimes interfere with that client's interests. Keeping informed about the variety of ADR methods available and when best to use them is quickly becoming a practice requirement.

This knowledge of ADR options can often be put to the best use in what Richard Keefe and Warren Rheaume call "predispute planning." They suggest that an attorney fails in his duty to his client by waiting until disputes arise and then looking at ADR techniques to resolve them. It is the duty of an attorney to advise clients of the variety of ADR techniques available and actively help the client avoid disputes.

Mediation is the ADR technique currently favored by many ADR practitioners. Among the benefits claimed are quicker resolution of disputes, preservation of relationships between parties, and longer-lasting settlement agreements. But mediation is not for everyone or for every dispute. Nonna Skumanich and Denise Lach—one an attorney/mediator and the other a sociologist—make a strong case for the need to prescreen disputes and disputants before suggesting the mediation process to resolve a dispute. They identify some important process and content features of mediation that have consequences for all those considering mediation as a way to resolve a dispute.

Several examples of the successful use of ADR methods are summarized by those with experience in specific substantive areas of law and policy. Rob Manifold shares the experience of the AG's office with conciliation of business/consumer disputes; multi-party public policy mediations are discussed by Jim Arthur, et al.; Jim Goché presents some valuable insights based on his international experience with ADR; Peter Marchel gives us an overview of "Settlement Now"; and Jim Driscoll tells us how one city has institutionalized the mediation process to help resolve land use disputes. These examples and more offer solid proof to what seems to be happening all around us: ADR is growing by leaps and bounds. We hope this issue of the *Bar News* offers some help in understanding what ADR is all about.

Special thanks to ADR Section members ***Jane North*** *and* ***Peter Marchel****, who gave time and talent as editorial board members for this issue.*

WSBA Discipline System:

by **Steve DeForest**, *WSBA President*

In February, Governor Alva Long and I attended (at our own expense) the Western States Bar Conference in Carmel Valley, California. This annual meeting of bar representatives from the 14 western states provides a forum for panel presentations on current issues affecting lawyers and bar associations, and it includes a roll call of the states. The latter is a brief presentation by the president or president-elect of each state describing issues, programs and other developments in that state. The information offers a yardstick by which to measure the performance of the WSBA, including lawyer discipline. While the discipline of lawyers is common to all states, the administration of it may differ.

Washington has the second largest bar among the 14 states, but is a dwarf by comparison to California. The latter has approximately 140,000 lawyers, a state bar budget of $90 million and a bar staff of 809 employees. Our numbers are 17,800, 6.3 million, and 63, respectively. California now has a separate discipline system, with nine full-time judges, and assorted prosecutors, investigators and administrative staff. This system, which was created by the state legislature to cure a significant backlog, is working reasonably well, but it is expensive. The president of the State Bar of California, Harvey Saferstein, estimates the cost to be $50 million per year. That translates into $357 per lawyer. When the new system was introduced, annual bar dues were boosted $200, and they are now approaching $500 per year.

The California example emphasizes the debt we owe to the many volunteer lawyers who make our system work with far fewer dollars. The estimated cost of our lawyer discipline system for fiscal 1993 is $1,146,257, or $64.40 per lawyer. The California: Washington cost differential alone should be an incentive to work hard to maintain our system of self-regulation. It should also send a warning about the potential financial consequences if a separate agency, either under the direct jurisdiction of the Supreme Court or the Division of Professional Licensing, were to administer bar discipline in this state.

California may be explained away on the basis of sheer numbers, but at least one other western state has experienced problems because of delay in the processing of disciplinary complaints. In Wyoming, significant additional bar resources have recently been required to reduce a backlog that was threatening the credibility of the system.

Lawyer discipline continues to be a "growth industry." Lee Ripley, chief disciplinary counsel for the WSBA, has prepared a comprehensive report for calendar year 1992. Grievances filed were up by 5 percent, from 2,213 to 2,324. Grievances per 100 active in-state lawyers increased from 15.26 to 15.37.

Good Value for the Dollar

Strictly on a percentage basis, that means the odds are slightly less than one in seven that you will be the target of a grievance this year. That is the price we all pay for having a system without any entry barriers. Any aggrieved individual may complete and file a grievance form. A large number of the filings do not reach the investigation stage because, on their face, they do not allege facts that could constitute a violation of the Rules of Professional Conduct. In 1992 41 percent of the grievances were dismissed by staff without an investigation. Another 37 percent were dismissed after investigation. Thus, only about one out of five advanced to the next stage, the filing of a formal complaint. Another 9 percent were dismissed by a review committee. Complaints arising out of the family law practice area continue to lead the pack: about 25 percent of the total, followed by criminal law at 16 percent. The most common source of a grievance is a client or former client (54 percent). Six lawyers were suspended in 1992, and 11 were disbarred.

The high dismissal rate of grievances might suggest that there should be a stricter filter on the intake. This would spare many lawyers from the irritation and/or trauma of having a grievance filed against them. However, any denial of access could easily lead the public to demand that lawyer discipline be removed from the control of the bar. Further, the disposition cannot be so cursory or speedy that the system will be perceived by the public as a whitewash.

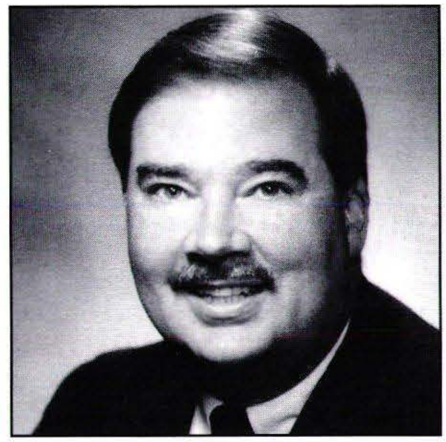
Not every lawyer who becomes an involuntary participant is going to have a favorable opinion of the disciplinary process. The challenge is to keep that number to a minimum. Courteous, professional handling by staff, together with prompt, efficient administration, are essential. Better tracking systems have been instituted in the last two years to improve case management. The Board of Governors, while not a direct participant in the process, reviews the status of all pending formal complaints at each of its meetings, and frequently raises questions as to why a case appears to be stalled. Competency issues and lack of cooperation by the lawyer are often the explanation. Nevertheless, there is subtle pressure to improve the time lines. Overall, more grievances were closed in 1992 than were opened.

So long as the present system results in a fair disposition of grievances—fair to the complainant and fair to the lawyer, it remains the most cost-effective method to protect the public from those few lawyers who violate their trust.

If you are interested in additional information about Washington lawyer discipline, a copy of the 1992 annual report may be obtained from Lee Ripley at (206) 727-8207.

The Public Image of Lawyers

by **Dennis P. Harwick**
WSBA Executive Director



Dennis P. Harwick

More has probably been written in bar magazine columns on this subject than any other. I have visited the topic with regularity over the years—but bear with me. Some weeks ago I was in Boston attending the conglomerate of meetings known as the ABA Midyear and had the chance to meet the new ABA "communication czar" (I understand he hates that term)—Michael Scanlon.

Scanlon was on the circuit to meet all the ABA constituencies, so he spent a few minutes with the executive committee of the National Association of Bar Executives on which I sit as a state bar delegate. In his short time on the job, he had concluded that at least part of the problem with the public image of lawyers lay in the following syllogism:

The Syllogism

1. The legal system isn't working.
2. The legal profession makes money from the legal system.
3. The legal profession has a vested interest in preserving the current system.
4. Therefore, the legal profession is corrupt and can't be trusted to change the system.

Simple, straightforward, and devastating. But is it true?

The Analysis

1. *The legal system isn't working:* Hardly anyone would claim that the legal system is functioning the way we want it to. Litigation is expensive. Court systems are clogged and slow. Granted, the American civil and criminal justice systems may be better than most of the alternatives in the world; but everyone agrees that there is plenty of room for improvement — just in funding and efficiency, if nothing else.
2. *The legal profession makes money from the legal system:* It's true. Lawyers make their living representing clients in the system. There's no use arguing that this premise is false—just as there is no use arguing that surgeons make money by cutting into people and that teachers make money by teaching students.
3. *The legal profession has a vested interest in preserving the current system.* **Wrong!** Here's where the syllogism breaks down. No one signs up to be the dance band on the Titanic (though I was introduced before delivering a dinner speech the other night as a direct descendant of the captain of the Titanic).

   If the system is failing, the legal profession has both an interest and a duty to fix it. The legal profession helped pioneer alternative dispute resolution (ADR). The legal profession has pushed for greater funding for both the criminal and civil justice systems. The legal profession has sought greater efficiencies in the justice system through case management and automation.

   The economics of law practice are subject to the same market forces as are other products or services. They evolved from flat fees to hourly billings, and now may be moving back to "value billing." Consumers of legal services are demanding more efficient and economic delivery of high quality legal services. Whether it is the laws of economics or the law of the jungle, it's a jungle out there.
4. *Therefore, the legal profession is*

corrupt and can't be trusted to change the system. This conclusion only works if step three of the syllogism works. The simple fact is that both the organized bar and individual lawyers have a vested interest in improving the system. We know from experience that some "inefficiencies" must be tolerated and defended to achieve justice, e.g., rules of evidence, presumption of innocence, etc. But if the system doesn't work, it doesn't matter what part you play in it. Lawyers have a special place in the system and, hence, a special duty to improve the system.

* * * * *

Lawyer Jokes and the recent issue of *De Novo* :

I need to issue the obligatory "I have a good sense of humor, so don't get me wrong" disclaimer—but I'm sick and tired of lawyer jokes. Imagine, then, my surprise and horror at finding a series of lawyer jokes in the editor's column of *De Novo*, the Washington Young Lawyers Division tabloid. I agree with those who called to express their dismay at both the concept of running such material in a bar-sponsored publication and at the lewd, tasteless nature of many of the jokes (and have shared my thoughts with Ted De Groff, the editor, and the leaders of the WYLD).

Just to show that I don't find all humor about lawyers objectionable, let me contrast two skits that aired recently on Seattle's "Almost Live" comedy show. The first was about the new sport of "lawyer tossing" and was replete with flying bodies in three-piece suits and attaché cases. The second was about two lawyers peddling their wares, e.g., a simple will, an uncontested dissolution, etc., to the driver of a car on Seattle's Aurora Avenue, better known for other kinds of street walking peddlers. The first skit I found unimaginative and offensive; the second I thought to be an amusing twist on challenges of practicing law.

I'm not sure why I've grown increasingly weary of lawyer jokes. Perhaps it's the fact that part of a bar executive's job seems to be listening to nonlawyers tell the latest lawyer joke. I believe, however, that my weariness has more to do with the fact that most lawyer jokes aren't very creative or imaginative. Rather, they seem to concentrate on one issue—demeaning a group of people. In this regard, I have come to the conclusion that lawyer jokes are every bit as insidious and prejudiced as racist and sexist jokes.

Enough of the soap box. I feel better now.

WHY ATTORNEYS NEED

by **Michael S. Gillie**

Alternative Dispute Resolution ("ADR") is bringing about a basic change in the advice an attorney should give to a client. Traditionally, attorneys had two methods available to resolve a client's dispute: direct settlement negotiations, and litigation. With the advent of ADR—which is widely supported by the legal and business communities—dispute resolution is now a matter of selecting from a wide variety of ADR options rather than automatically filing a lawsuit. This is making the practice of law more complex and sophisticated, but also more responsive to a client's needs.

Attorneys with expertise in alternative dispute resolution will view a case differently from those who don't. To illustrate the point, consider the following examples:

A partnership is dissolving and the parties have reached agreement on everything but the interpretation of contract language relating to a $10,000 debt. One of the partners is moving permanently to Florida in three weeks.

A business and one of its suppliers has a dispute over the quality of goods furnished. The parties have had a long and successful relationship, but they are angry at one another.

Twenty homes in a recently-built housing development experience severe basement flooding in heavy rains. Some of the homeowners have had to move out as a result.

If asked to categorize the above situations, most attorneys would say that they are: a partnership dispute, a commercial contract (UCC) matter, and a construction defect case. Those answers are correct when analyzing what law applies; but they are irrelevant when considering dispute resolution options. Someone skilled in alternative dispute resolution would categorize them as: a case needing an immediate resolution, an emotional dispute between parties who have a continuing relationship, and a multiparty negotiation where a creative solution may be possible.

In each of the above examples, the traditional response would have been a direct settlement discussion or a demand letter which, if unsuccessful, would be followed by a lawsuit. Today, that approach would be too limited. The first example probably calls for a quick, binding arbitration. The second, because of the continuing relationship and the need to diffuse the emotions, calls for mediation; as does the third because of the large number of parties involved and the opportunity for creative settlements.

In any of these examples litigation may be a necessary, but it should not be pursued automatically. An adversarial adjudication, by its nature, can create barriers to settlement. The simple act of filing a lawsuit, with the typical aggressive language and causes of action in the complaint, can polarize the parties and severely impair the chances for a quick settlement. And the steps of litigation, each with its lengthy timelines, can delay serious settlement discussions. It is seldom in the client's best interests to have expensive and stressful litigation drag on for years, and thus it is the attorney's role to help the client avoid that situation if a reasonable alternative is available. ADR often can provide that alternative.

The two major alternatives to litigation are mediation and arbitration, but the field of ADR also consists of a large and growing number of "hybrid" processes such as mini-trials, summary jury trials, referees, and settlement days. Each of these categories also contains its own subset of options, such as what the role of the neutral will be, the extent of confidentiality, and the scope of presession activities. These processes are constantly evolving and each of these alternatives has its advantages and disadvantages. No one ADR method is appropriate for every dispute, but some ADR process is sensible for most cases.

As a result of the effectiveness of these alternatives, ADR enjoys broad-based support within the legal community.

TO KNOW ABOUT ADR

Courts around the country have implemented ADR programs, and several hundred law firms have signed an ADR Pledge to advise their clients about ADR where appropriate (a similar pledge is being considered by the ADR Section of the Washington State Bar Association). There is a growing movement towards making advice about ADR an ethical requirement for attorneys. For example, the Colorado Supreme Court recently enacted the following Ethical Rule:

> In a matter involving or expected to involve litigation, a lawyer should advise the client of alternative forms of dispute resolution which might reasonably be pursued to attempt to resolve the legal dispute or to reach the legal objective sought.
>
> [Colorado Model Rule 2.1]

There are also practical and legal concerns for the practitioner. As to the former, it is obvious that developing and maintaining a client base is critical to the success of a legal practice. In today's marketplace the competition for clients is fierce, and more than ever clients are demanding quick, cost-effective results. For example, ADR is a very hot topic in commercial circles, where more than 500 major corporations have signed a pledge in favor of the increased use of ADR. Many law firms have recognized the inevitability of the change towards ADR, and they are scrambling to gain ADR expertise so as to be able to satisfy their clients' demands that these alternatives be used. Those commercial attorneys and firms that haven't taken these steps are already at a significant competitive disadvantage.

There is also the subject of legal malpractice. The law is constantly evolving—not only substantively, but procedurally as well. In the same way that an attorney must keep up with new statutes and court decisions, attorneys must be familiar with new procedures that have been shown to produce quick and efficient resolutions of disputes. If a client tells an attorney that a dispute must be resolved immediately or a valuable business will be ruined, is the attorney being negligent if he fails to tell the client about alternatives to litigation? Clearly an argument can be made that he has.

As the above discussion points out, there are now two basic steps that an attorney should take prior to advising a client on a course of action: (1) the traditional considerations of legal rights and responsibilities; and (2) an analysis of the circumstances of the case to determine the best dispute resolution approach.

To accomplish the latter task, attorneys need to familiarize themselves with the details of various alternative dispute resolution techniques. Attorneys need to know how to identify the case characteristics that call for mediation, arbitration or some other form of ADR. They need to understand the legalities, and the advantages and disadvantages of each process.

Besides the theory, attorneys need to be familiar with the resources in their communities. For instance, most communities will have a Dispute Resolution Center for landlord-tenant, neighborhood, and family disputes; and there is a wide variety of other public and private ADR services, each with its own approach.

There is no magic to these ADR processes—they are simply common sense ways to resolve disputes as effectively as possible. Common sense has a way of spreading quickly, and today some form of ADR is being used in virtually every area of law. Yet ADR has only scratched the surface—the major applications are yet to come.

Attorneys need to keep up.

Michael S. Gillie is the founder and Executive Director of Washington Arbitration & Mediation Service and United States Arbitration & Mediation. He is a nationally-recognized speaker and author on ADR topics.

OFFICE PRACTICE TIPS

SPONSORED BY THE LAW OFFICE MANAGEMENT AND ECONOMICS COMMITTEE

Cellular Phones: Are They Right for You?

by **Gregory S. Morrison**

Like the desktop computers and fax machines that came before them, cellular phones are yet another improvement in the way we deliver legal services. And, also like their predecessors, there is a certain amount of uncertainty associated with the decision to buy or not to buy one.

The threshold question is not whether cellular phones are good or bad, but whether a cellular phone is right for you. Depending on the nature of your practice, you may obtain tremendous benefits from a cellular phone.

Freedom and convenience are the two most popular reasons for using a cellular phone, which enhance the user's ability to go anywhere within the cell network and still be accessible. This feature is of particular importance to new clients, who might need to talk to you right away.

Another important advantage is the ability to convert "down" time into billable hours. Have you ever been stuck in traffic? Have you ever been caught endlessly waiting for your turn on the docket? Enough said.

You may also be surprised to learn that there are fax machines currently available that work off cellular phones.

Personal safety is another good reason to invest in cellular service. Men and women lawyers alike can enjoy increased peace of mind knowing that police, medical or roadside assistance is as near as their cellular phone.

A cellular phone transmits and receives radio waves. The strength of the signal is maintained by constant monitoring and switching through different "cells." This maintains a clear signal, even while you are driving.

Some companies in major population centers offer service with ranges extended up to several thousand miles. However, reception virtually disappears once you travel out of your cellular-service network.

But, as any good lawyer-business person knows, cost is an important factor. There are two basic costs associated with cellular service. The first is that of the cellular phone itself. Generally speaking, the smaller the unit, the bigger the price. (Also note that smaller units have shorter battery lives.)

The second cost, monthly service, is the one that can really add up. The usual billing format consists of a monthly service charge that includes a preset number of "free" minutes. Thereafter, the more minutes used, the less expensive they become. The catch here seems to be that most cellular users spend much more time than they realize.

Unfortunately, cellular phone users can have no expectation of privacy as to the unauthorized monitoring of their conversations. Although unauthorized monitoring is very difficult, it is still possible.

So, if a cellular phone sounds like a good idea to you, be sure to research which phones and service companies fit your requirements best.

This column is a clearinghouse for better ways to run the law office. Contributions are solicited from all members of the Bar and should be sent to: Gregory S. Morrison, Tips Editor, The Flour Mill Penthouse, W. 621 Mallon, Spokane, WA 99201.

Predispute Planning for Business

by **Richard E. Keefe** *and* **Warren J. Rheaume**

It is axiomatic that a new business requires a business plan, if for no other reason than neither equity capital nor debt financing can be obtained without one. Successful management of an existing business also requires a continuing planning process. To plan to succeed, a business must continuously assess its strengths and weaknesses, analyze its market position, develop new products, predict future sales and staff requirements, and budget and assess capital and debt needs. Indeed, new business planning is not all that much different than managing an ongoing enterprise.

As lawyers, we play an important role in the process by helping our clients determine the proper structure for their business, conducting tax planning, drafting shareholder agreements, providing advice and documentation on business relationships with others, counseling with regard to employment matters and more. But historically, we have done very little to help our clients avoid disputes and to plan for the prompt, fair, cost-effective and predictable resolution of disputes. In today's business environment, lawyers have not only an opportunity but also a duty to advise clients of the potpourri of ADR techniques available and to help them plan both to avoid disputes and to resolve them in the best possible manner.

In our experience, most thoughtful counsel do advise clients to deal fairly in good faith in order to avoid disputes. However, waiting until disputes arise and letting them be resolved by traditional litigation methods or attempting to craft appropriate ADR procedures postdispute is not nearly enough. By then the client has little or no control over the dispute. Our profession's failure in this arena makes our clients—who run "on-line" in this Information Age—return to the Dark Ages to resolve their disputes. Predispute planning brings dispute resolution into the modern age by permitting businesses to create processes *they* control and which will be more efficient, predictable and ultimately, more "businesslike."

The Planning Process

The first step in creating a dispute resolution plan for a business is to learn about the various ADR techniques and how they can be used singly or in concert to resolve disputes more quickly and predictably. Second—and of critical importance—one needs to identify and analyze the disputes likely to arise in the particular business. Third, a reasoned determination should be made as to how best to structure a process for each type of dispute likely to arise. Fourth, a written plan should be prepared containing: (1) a policy statement articulating the company's goal to resolve all disputes promptly and fairly; (2) a set of processes for resolving all anticipated disputes; and (3) the appropriate *predispute* provisions to be inserted in contracts, employment manuals, leases, loan documents and the like. Fifth, management, employees and counsel commit to work together to implement the policy and plan.

In their excellent book, *Getting Disputes Resolved*, Ury, Brett and Goldberg[1] identify three basic methods of dispute resolution. First, and most preferable, the parties may resolve their dispute by identifying and reconciling their *interests*. Or they may determine who is *right*, based on some independent standard of legitimacy or fairness. Finally, disputes may be resolved in favor of the most *powerful*. They suggest that the most efficient dispute resolution system encourages the parties to reconcile their interests through negotiation or mediation, saving the more expensive rights determination by arbitration or litigation as the moving force for prompt interests-based resolution. And they counsel "loop-backs" to negotiate interest reconciliation even if it becomes necessary to proceed with rights determination.

While the foregoing may sound utopian, some industries have proven otherwise. For example, the construction industry has proven that effectively managed dispute resolution is both practical and wise. Changes in our dispute resolution system will mirror the dynamic change experienced by most businesses and will come at an accelerating pace in the next several years. Thus, whatever solutions we adopt today must be reviewed tomorrow and possibly changed the next day.

What Are the Options?

The three most popular alternate dispute resolution techniques presently are mediation, evaluation and arbitration:

Mediation - a process where a neutral serves as an intermediary to facilitate a settlement acceptable to the parties.

Evaluation - a neutral, often a retired judge, evaluates the case and opines on the likely result to facilitate settlement.

Arbitration - an adjudication by

a neutral conducted pursuant to pre-agreed rules and procedures.

Typically, neither mediation nor evaluation is binding, but the parties are free to create a process in which either can become binding. Arbitration also may be binding or advisory, but as used in this article, the term "arbitration" implies a binding result.

There are numerous other techniques and variations on their themes, such as minitrials, "baseball" or high-low arbitration. One of the advantages of the evolving privatization of dispute resolution is that under both Washington and federal law, parties can create almost any process that suits their needs—and which they can control!

The Process —Deadlines

Experience tells us that 90-95 percent of all disputes settle, most often "on the courthouse steps." Why? Because on the brink of trial the parties face a deadline—the case will be tried and a final result obtained.

The key point in designing an effective process is to create the earliest possible deadline for resolution of the dispute, consistent with logistic and fairness concerns. Once the deadline is established, mediation, evaluation or other techniques to promote settlement become significantly more effective. Thus, prompt arbitration is the foundation of successful predispute planning. That being said, some (clients and lawyers) will say: "Great, just put an arbitration clause in the contract and move on." That approach almost assures the creation of a poorly functioning system. To achieve the desired results, the dispute resolution clause should:

- Mandate the earliest possible dead line for ending the dispute;
- Encourage optional mediation or evaluation without extending the deadline;
- Severely limit discovery and motions;
- Streamline the hearing by relaxing evidentiary rules;
- Limit the length of the hearing;
- Provide for arbitrator(s) with the appropriate expertise; and
- Restrict appeal rights.

An article of this scope cannot discuss in detail all of the ways to help businesses achieve prompt resolution of disputes outside of the courthouse. For example, there exists a host of techniques useful to settle disputes already in litigation through the *early* use of mediation and evaluation. However, if all practitioners who advise businesses develop a working knowledge of ADR and then *use* that knowledge, the result will be better agreements, fewer lawsuits and, ultimately, happier clients.

---

[1] Ury, Brett and Goldberg, *Getting Disputes Resolved* (1988).

Seattle attorneys ***Richard E. Keefe and Warren J. Rheaume*** *practice with Foster Pepper & Shefelmen.*

When Mediation Won't Work

by **Nonna Skumanich** *and* **Denise Lach**

Mediation is increasingly popular as a method to resolve family, environmental, and community disputes. This move away from adjudication, however, is accompanied by little critical analysis of dispute features, disputant characteristics, or mediation mechanics. This brief article reviews several of those features which may make disputes less amenable to mediation.

Mediators know that many features can limit the usefulness of mediation. *If* identified, they can serve as red flags for questioning whether mediation is an appropriate approach to resolve a particular dispute. Some of them may even suggest termination of a mediation process. The first section of this article reviews three content features of disputes—rights of the disputants, BATNA (Best Alternative To a Negotiated Agreement), and single-issue disputes—which may make disputes less likely to be successfully mediated. The second section of the article reviews four process features of disputes—participants' ability to negotiate, the role of the neutral, power dynamics, and the mechanics of mediation—which are likely to make effective mediation more difficult. Finally, we review the implications for mediators and disputants who select to mediate their disputes.

While other process and content features of mediation may affect the successful resolution of specific disputes, the features we selected to discuss have been empirically tested and/or discussed in the literature. Empirical research on mediation is sparse. The most rigorous empirical work focuses on family and divorce mediation, although even in this area the research is quite limited.[1] Research in environmental and community dispute resolution is still in the anecdotal "war story" or case study phase, although exceptions exist.[2] As we discuss the content and process features which may limit the usefulness of mediation, we provide examples from the family mediation and environmental dispute resolution literature.

Content Features That May Limit the Usefulness of Mediation

The ideology of mediation strongly suggests that if disputes center on the *rights* of individuals or groups, mediation is probably not an appropriate dispute resolution mechanism. Disputes over rights belong in the court system. It is more likely that disputes over *interests* will be effectively mediated. The difficulty for mediators and disputants, however, arises in untangling rights from interests and even distinguishing rights from interests in certain disputes.

Rights embody both public and private interests. As substantive legal standards, rights protect those specific interests the polity believes must be protected. What becomes problematic for disputants is determining whether their rights and interests are coterminous or disparate. In the former, rights will likely become a focus of mediation. In the latter, disputants, with the assistance of neutrals, will need to determine and articulate their interests to begin the negotiation. For example, disputants in family mediation often try to determine children's residence schedules. Both the parents and children have "rights" to a parent-child relationship but that relationship must be negotiated as the parents' "interest" in the custody of the children. In this example, the rights and interests of the parents are coterminous and must be negotiated as interests.

One of the ways that disputants are taught to untangle their interests and rights is through analysis of their BATNA or Best Alternative To a Negotiated Agreement.[3] The reason disputants enter mediation is to produce a better settlement than they can produce without mediation. The BATNA becomes the standard against which disputants measure any proposals or agreements. If disputants realize that their BATNA is a lawsuit in which they are highly likely to be successful, they may be in a conflict over a right.

The analysis of BATNA also helps disputants think about the "ripeness" of the conflict they are engaged in. Many mediators believe that disputes need a certain level of "ripeness," like good wine or cheese, before they can be effectively mediated. A BATNA analysis may point out to disputants that at this point other options are more likely to successfully resolve a conflict. A good example of how dispute "ripeness" may be necessary for successful mediation is the current conflict over national forest management in the Pacific Northwest. While this conflict has been raging for decades,[4] and various dispute methods have been tried,[5] we may just now be coming to a point where the dispute is "ripe" for resolution. The Clinton administration promised a "forest summit" during the 1992 campaign season, and veterans of the forest wars—elected officials, natural-resource agencies, timber companies, and environmental groups—seem ready to sit down and talk. Prior to this point, disputants may have believed that their BATNA involved some other type of dispute resolution such as litigation, administrative-agency action, or legislative decision-making. If the forest management dispute is "ripe," all disputants will realize that continuing litigation, legislative riders, and agency management plans will not bring a resolution. Thus, they should be willing to come to the bargaining table.

One final content feature of disputes that may limit the effectiveness of mediation is the number of issues under dispute. Traditionally, dispute resolution theory suggests that when one primary issue exists in a dispute, each disputant believes that in order to get more, the other party must get less.[6] These "zero-sum" disputes are unlikely to be effectively mediated. Disputants have no incentive to continue with negotiations once they recognize that no possible compromise exists to satisfy their minimum demands.[7] Recent empirical work[8] suggests that single-issue disputes are much less likely to be effectively mediated than multiple issue disputes.

When disputants or practitioners are determining whether mediation would be an effective dispute resolution technique, three characteristics of dispute content may suggest whether the dispute is amenable to mediation. If the dispute centers on the rights rather than the interests of individuals or groups, if the dispute is not ready or "ripe" for dispute resolution, or if the dispute focuses on a single issue, mediation is likely to be ineffective in resolving the dispute.

Process Features That May Limit the Usefulness of Mediation

Often, participants to mediation are unable to negotiate because (1) their emotional state or other factors impair their ability to negotiate; (2) they have limited information and limited understanding of their legal rights and cannot clearly identify their alternatives to a negotiated agreement; (3) they are unable to articulate their positions and interests; or (4) they simply do not have negotiation skills. One role of the mediator is to guide the inexperienced disputant through negotiation: helping define the best alternative to a negotiated agreement (BATNA) and helping understand and respond to offers and counteroffers. However, sometimes the inability to negotiate cannot be corrected. In this latter case, the role of the mediator is to identify individuals for whom mediation is inappropriate.

Recent empirical studies in family mediation are beginning to identify disputant characteristics that contraindicate mediation. In one study, researchers found a strong empirical relationship between a dysfunctional family profile and unsuccessful mediation.[9] In a second study,[10] researchers identified certain disputant characteristics such as high levels of anger of conflict that are correlated with unsuccessful mediation.

How can practitioners prescreen for inappropriate disputants? One method is to interview them. Two private mediators found that a six-hour assessment stage was necessary to detect individuals who either were not appropriate for mediation or needed premediation therapy.[11] A second method is by written questionnaire. A written assessment tool called the Divorce Mediation Assessment Instrument (DMAI) was recently evaluated. Researchers found that the tool has high reliability and reasonable validity.[12]

Taken together, all of these studies demonstrate that it is possible to identify couples who are not appropriate for mediation. As experimentation and research increase, we should be able to expand the use of tools like the DMAI. Alternatively, we should be able to develop appropriate intervention techniques to ready disputants for mediation.

Psychological factors are not the only ones that affect a participant's ability to negotiate. This ability is further impaired when a disputant lacks legal and substantive information regarding the dispute.[13] The disputant is then in danger of reaching agreement without informed consent. Without enough information to fully identify the available alternatives, disputants are unable to determine the costs and benefits of reaching a negotiated settlement. Having a BATNA allows the less powerful disputants "to set limits and understandings of when [they are] likely to be taken advantage of"[14] and to decide when to cease negotiations.

Finally, a disputant's ability to negotiate is affected by verbal skills. It is important to recognize that mediation is a verbal process and is inappropriate for individuals who do not have the necessary communication skills or the ability to put positions and interests into words.

An additional process feature that may make mediation less effective as a dispute resolution technique is the presence of entrenched power imbalances. Mediation cannot correct for social imbalances of power, and some critics suggest that mediation perpetuates the *status quo*, creating a kind of second-class justice for the less-powerful.[15]

Environmental action groups, especially grass roots groups, consider themselves relatively powerless in the face of government agencies and large corporations. To redress the imbalances of power, environmental groups often form coalitions or consortia of national and local groups, bringing together a large constituency. For example, during the conflict over management of Pacific Northwest forests, Senator Mark Hatfield of Oregon called a "Timber Summit" in 1989 to consolidate a resolution to the dispute before the spotted owl was listed as a threatened or endangered species.[16] Forty-three local and national groups, working together as "The Ancient Forest Alliance," created a more-powerful disputant than any single environmental group.

Women are also reacting critically to ADR, suggesting that social inequities for women are reproduced and perpetuated in mediation and other ADR forums.[17] There is a body of literature which asserts that irremediable power imbalances exist between women and men, and that social inequities are perpetuated in mediation.[18] For these reasons, many question the usefulness of mediation for women. Women may have less negotiating power and be at a serious disadvantage as a result of socialization factors that make them less able to articulate their needs and more willing to compromise their needs in order to maintain relationships.[19] As a result, women in mediation tend to expect less and settle for less. Other authors argue, however, that the empirical studies do not support the contention that mediation is harmful for women[20] They suggest that these factors can be a result of fewer basic negotiation skills, not gender socialization.[21] While this debate is ongoing, if mediators are aware of the concerns voiced by those criticizing mediation for women, they can incorporate such awareness into the judgments they make when analyzing power imbalances or disputants' ability to negotiate.

In addition to identifying and managing disputant characteristics and power imbalances, the mediator must also manage the mechanics of mediation. One aspect of mediation mechanics that can limit its usefulness is the inability to identify all affected parties.[22] Obviously this is much more of a problem for environmental and community disputes than for family or labor disputes. Some affected parties are obvious and will clamor to participate as soon as the dispute resolution is announced. Other parties are less noticeable and need to be actively sought by dispute resolution organizers. If affected parties are not identified as completely as possible before mediation, there is the danger that important points of view or data will be missed during decision-making. Excluded parties may even act to sabotage any mediated settlement. If practitioners cannot identify affected parties (and individuals empowered to speak for these parties), mediation is likely to be less effective in reaching a final settlement.

A second aspect of mediation mechanics that affects its usefulness is who speaks first. Researchers have shown that the first disputant to speak in a mediation session more often than not sets the tone for a mediation session.[23] Through "discursive analysis," researchers identified how the first mediation "story" dominates, and in the end the settlement is written using the semantic and moral structure of the dominant story.[24] Because mediators are not trained to look at mediation as a narrative processes, they tend to focus on the individuals rather than on the dynamics of storytelling as they manage the session. As a result, the mediation process supports the domination of the first disputant's story and the marginalization of the second disputant.[25]

The tendency to define success by the number of settlements reached is a third feature of mediation mechanics that limits its usefulness. As a result of this definition of success, mediators have a bias to achieve settlement whether or not it is appropriate for the disputants. This bias may be internal (based on a mediator's sense of self-worth), or it may be imposed on mediation programs by funding or sponsoring agencies that tie support to the percentage of cases settled. One effect of such bias is that mediators may ignore the red flags which cast the appropriateness of mediation into doubt. Mediators may also actively guide the discussions in order to arrive at a particular mediator determined settlement.[26] Dealing with these problems requires a rethinking of how success in mediation should be defined. Such a definition should incorporate an understanding of the limitations of mediation and a realistic estimate of the percent of disputes that can reasonably be settled.

It is acknowledged that mediators must constantly be aware of red flags and continually make judgments on whether to intervene or terminate the mediation. A mediator who lacks the necessary skills cannot make those judgments. On the other hand, little empirical research exists that identifies effective mediation techniques and the skills of a good mediator.[27] In his study of mediation-training programs, Cruickshank argues that to be effective, mediators must have an understanding of mediation technique and theories, have a certain degree of context knowledge, such as knowledge of legal, technical, and other information pertinent to a specific dispute area[28] and have an understanding of a code of professional conduct. Specific skills include listening, questioning, fact-finding and interpreting and translating discourse.

The most-controversial skill is the degree of context knowledge required by the mediator. As is true with disputants, mediators need to know enough to know there is an issue, so they can identify when someone is giving false or incomplete information. For example, in a divorce case where the parties are negotiating a property settlement, a mediator should understand community property law enough to realize that one spouse may be entitled to part of the retirement pension. Mediators must also have enough knowledge to adequately test reality. In reality-testing, a mediator must make a judgment about how realistic a certain goal is, and this requires some understanding of the subject area.

Summary

While many features exist that limit the usefulness of mediation, some of them can be corrected through mediator awareness of the problems. This article provides some process and content features that mediators should be aware of in order to monitor and alter their practices. One of the most powerful features to recognize and orchestrate is the narrative quality of mediation—storytelling. For those features that cannot be corrected, mediators must learn to build into the mediation session points of exit. Finally, as our understanding of the profiles of disputes, disputants and mediators grows, the ability to prescreen disputes and disputants should become possible. Unfortunately at this time, empirical research is still limited and full of unanswered questions. The hope is that with time, mediation techniques can be adjusted in an attempt to address the limitations described herein.

Endnotes

[1] While family mediation services have proliferated over the last decade, research has increased only marginally. H.H. Irving and M. Benjamin, "An evaluation of process and outcome in a private family mediation service," 19 *Mediation Quarterly* 35, 50 (Fall 1992).

[2] In a review of 162 environmental disputes documented by the Conservation Foundation, the author concludes "there are few absolutes in predicting whether parties involved in any specific dispute will be successful in reaching agreement, or whether they will be successful in implementing an agreement." G. Bingham, *Environmental Disputes: A Decade of Experience* at 44 (1986).

[3] R. Fisher and W. Ury, *Getting to Yes: Negotiating Agreement Without Giving In* (1981).

[4] V. Sher and A. Stahl, "Spotted owls, ancient forests, courts and congress: An overview of citizens' efforts to protect

old-growth forests and the species that live in them," 6 *The Northwest Environmental Journal* 361.

[5]G. Meyers, " Old-growth forests, the owl, and yew: Environmental ethics versus traditional dispute resolution under the Endangered Species Act and other public lands and resources laws," 18 *Boston College Environmental Affairs Law Review* 623.

[6]H. Raiffa, *The Art and Science of Negotiation* (1982).

[7]J. Stulberg, "Negotiation concepts and advocacy skills: The ADR challenge," 48 *Albany Law Review* 719.

[8]R. Whiting, "The single-issue, multiple-issue debate and the effect of issue number on mediated outcomes," 10 *Mediation Quarterly* 57.

[9]R.D. Mathis and L.C. Yingling, "Family functioning level and divorce mediation outcome," 8 *Mediation Quarterly* 3 (Fall 1990). These researchers used the "circumplex model" that is used in family psychotherapy to profile family functioning.

[10]H.H. Irving and M. Benjamin, *supra*. These researchers used specially designed questionnaires.

[11]P.E. Bryan, "Killing us softly: divorce mediation and the politics of power," 40 *Buffalo Law Rev*. 441, 501-2 (1992).

[12]N.T. Tan & D.M. Dennis, "Implications of the divorce mediation assessment instrument for mediation," 29 *Family & Conciliation Courts Rev*. 26 (1991).

[13]Substantive legal rules are often the embodiment of publicly determined interests—both individual or societal interests, and rights and interests cannot necessarily be separated. For a discussion of the importance of substantive legal standards, *see* E. Brunet, "Questioning the quality of alternate dispute resolution," 59 *Tulane Law Rev*. 1 (1987).

[14]C. Menkel-Meadow, "Toward another view of legal negotiation," 31 *UCLA Law Rev*. 754, 834.

[15]D. Amy, *The Politics of Environmental Mediation* (1987).

[16]Ironically, the northern spotted owl was listed by the U.S. Fish and Wildlife Service as a threatened species on June 23, 1989, the day before the 1989 Oregon Timber Summit.

[17]M. Fineman, "Dominant Discourse, Professional Language, and Legal Change in Child Custody Decision-Making." 101 *Harvard Law Review* 727 (1988).

[18]T. Grillo, "The mediation alternative: process dangers for women," 100 *Yale Law J*. 1545 (1991). It is important to recognize that this article focuses on a process of mediation/evaluation which is distinct from mediation. P.E. Bryan, "Killing us softly," *supra*. M. Fineman, *supra*.

[19]J. Stockard and M. Johnson, *Sex and Gender in Society* 2nd ed (1992).

[20]H.H. Irving and M. Benjamin, "An evaluation of process and outcome in a private family mediation service," 10(1) *Mediation Quarterly* 35, 50 (Fall 1992).

[21]J.D. Rosenberg, "In defense of mediation," 33 *Arizona Law Rev*. 467, 492 (1991). This article provides a critique and response to the article by Grillo, *supra* .

[22]*See, generally*, L. Susskind and A. Weinstein, "Towards a Theory of Environmental Dispute Resolution." 9 *Boston College Environmental Affairs Law Review* 311 (1980-1981).

[23]S. Cobb & J. Rifkin, "Neutrality as a discursive practice: the construction and transformation of narratives in community mediation," 11 *Studies in Law, Politics, and Society* 69, 1991 (S. Cobb & J. Rifkin, "Neutrality"); S. Cobb & J. Rifkin, "Practice and paradox: deconstructing neutrality in mediation," 16 *Law and Social Inquiry* 35 (1991) (S. Cobb & J. Rifkin, "Practice and paradox"). Cobb and Rifkin describe mediation as a narrative process in which conflicts are described through stories that have plot, theme and characters.

[24]In their analysis of 34 mediation cases, they found that in 80 percent of them the settlement is based on the initial narrative; or, in other words, 80 percent of the time the second party is never able to tell a story that is not colonized by the dominant story. S. Cobb & J. Rifkin, "Practice and paradox," *supra*, at 61.

[25]S. Cobb & J. Rifkin, "Practice and paradox," *supra*, at 60.

[26]See D. Greatbatch & R. Dingwall, "Selective Facilitation: some preliminary observations on a strategy used by divorce mediators," 23(4) *Law & Society Rev*., 613, 637-8 (1989). Selective facilitation is a means by which the mediator encourages or discourages discussion of certain issues during mediation.

[27]D.A. Cruickshank, "Training mediators: moving towards competency-based training," in K.J. Mackie, ed., *A Handbook of Dispute Resolution: ADR in action*, 248, 249 (1991).

[28]Some consider the mediator's role to include that of a "resource expander," someone who directs parties to outside information sources such as lawyers, technical experts and specific information such as valuation of property etc. Cruickshank, *supra*, at 263.

Nonna Skumanich *is a private attorney and volunteer mediator with the Snohomish Dispute Resolution Center.*

Denise Lach *is a sociologist with Battelle Research Center in Seattle. All questions about this paper may be addressed to her at P.O. Box 5395, Seattle, WA 98105-5428.*

Alternative Dispute Resolution (ADR) Glossary of Terms

by **Patrick Mead** *and* **Ed Newcomer, Jr.**

Arbitration:

Arbitration occurs when parties to a dispute enter into a written agreement providing for a binding decision by a neutral third party. The parties either mutually agree upon either an arbitrator or a method for selecting an arbitrator. Occasionally, parties agree to use a panel of several arbitrators. The parties may agree upon either a pre-established set of rules of arbitration or their own format and procedures. Generally, rules of evidence do not apply, making the process less formal, less complex, less expensive and faster than court proceedings. After accepting the parties' final argument and evidence, the arbitrator issues a written award that is enforceable in the courts. By law, the arbitrator's decision can be challenged only under limited circumstances.

Several Washington counties have adopted mandatory arbitration programs. Unlike private arbitration, court referred cases are nonbinding. Parties have a right to request a de novo review before the court; however, the party requesting review may be subject to costs and attorney fees if they do not improve their position. A high percentage of disputants accept the arbitrator's decision and do not request de novo review. Last year, the federal courts in western Washington began a pilot program for court-annexed arbitration.

Mediation:

A nonbinding settlement process where a neutral mediator meets with the parties involved in a dispute to help them reach a mutually agreeable settlement. Mediators do not impose a decision on the parties and generally do not give opinions. Mediation is preferred by parties who wish to use a voluntary process in which they receive the assistance of a skilled neutral to overcome barriers to settlement. ADR providers from various fields report that a high percentage of mediated cases result in settlement.

Courts frequently refer parties to mediation. Some mediations are conducted through court procedures, such as under FRCP 39.1 (b) in the federal courts, and others are referred by judges to independent mediators and mediation services.

Med-Arb:

In some cases parties may wish to use both mediation and arbitration. Under a med-arb agreement, parties to a dispute try to resolve the case through mediation first and agree that any issues not resolved in mediation are subject to arbitration. Most ADR experts concur that it is inappropriate for the same individual to serve as mediator and arbitrator on the same case. Therefore, a med-arb agreement should provide for selecting both an independent mediator and an independent arbitrator.

Fact-finding:

A nonbinding process in which the parties invite the services of a neutral who investigates their disagreement over certain facts. The fact-finder considers the positions of each side and may conduct an independent investigation before presenting his or her conclusions to the parties. The parties will generally agree to adopt those findings as they continue with negotiations. This method of dispute resolution is very common in labor-management negotiations but may be useful in a wide variety of disputes.

Mini-trial:

Generally, mini-trial is an abbreviated simulation of a court trial in which party representatives present their case to a panel composed of decision-making executives from the organizations involved in the dispute. Usually, the parties select a neutral advisor who attends and provides guidance to the proceedings. Following the presentations, the executives, having observed first-hand the strengths and weaknesses of each party's position, enter into settlement negotiations with the assistance of the neutral advisor. This process is most commonly used by large corporations and governmental organizations.

Facilitation:

In facilitation a neutral helps disputants resolve problems, evaluate positions, and proceed toward settlement. Unlike mediation, where a mediator is involved only after a dispute has arisen, a facilitator's task is broader. A facilitator often works among multiple parties with complex relationships and attempts to anticipate and prevent disputes before they arise. Facilitation can be useful where public works or other projects will potentially affect numerous and diverse interests. Situations well-suited to facilitation include proposals to build new prisons, landfills, and power plants.

Partnering:

A new and innovative ADR technique

where a neutral works with the decision makers on a particular project. Partnering was developed, and is primarily used by, the construction industry. As in facilitation, the partnering neutral is involved throughout the project to identify potential problems and to help resolve them quickly. Partnering is enjoying growing acceptance for projects of all types and sizes.

Court-annexed Procedures:

The court system is increasingly turning to ADR to more effectively process the large volume of disputes that might otherwise proceed to trial.

Other ADR Options:

Other forms of ADR are available, such as summary jury trial and settlement conference. In summary jury trial a group of jurors delivers an advisory verdict after hearing a streamlined presentation from each party to a dispute. Although summary jury trial can be used as a private method of dispute resolution, it is often difficult to arrange for a panel of jurors. In a settlement conference, the judge assigned to the case meets with counsel in an effort to promote settlement. Often the judge will express an initial view as to the probable outcome of the trial. This type of conference now occasionally appears as a variant of mediation in the private sector. Conciliation is another very informal variant of mediation. The conciliation process generally occurs very early in a dispute and involves a neutral, who communicates with each party and explains the positions each side has taken. The neutral conveys settlement positions between the parties involved in the dispute. This process is commonly used by nonprofit and public agencies that deal with consumer or citizen complaints. Neutrals are usually agency employees or volunteers from the community.

***Patrick Mead** is the assistant regional director for the Northwest Regional Office of the American Arbitration Association in Seattle.*

***Ed Newcomer, Jr.** is an in house attorney for Seattle-based Washington Arbitration & Mediation Service, Inc.*

Consumer-Business Dispute Resolution at the Attorney General's Office Consumer Protection Section

by **Robert F. Manifold**

For more than 20 years, the Washington State Attorney General's office has been resolving disputes between consumers and businesses. This article briefly explores the scope, methods and results of this program.

The primary mission of the AG's Consumer Protection Section is to enforce the State Consumer Protection Act, RCW 19.86, which provides that "unfair or deceptive" trade practices are unlawful. AG staff, including seven attorneys and ten investigators, investigates and brings enforcement actions to obtain injunctions to stop illegal activity, make restitution to consumers and enforce civil penalties.

Since the Consumer Protection Act was adopted in 1961, our office has received numerous complaints from consumers alleging unfair or deceptive trade practices. Many of these complaints cannot or should not be the subject of full investigation or litigation. In contrast to many law enforcement agencies which receive complaints and simply use them for their internal consideration of law enforcement objectives, the office feels that it is an important public service to attempt to resolve these complaints. This resolution is accomplished through facilitating communication between the disputing parties with education on relevant law.

In 1992, the four Consumer Protection offices (Olympia, Seattle, Spokane, Tacoma) received 18,407 written complaints, an increase of 47 percent over 1981. Complaints are initially analyzed to determine whether they fall within the jurisdiction of the AG; if not, they are referred to the appropriate agency or back to the complainant. Some complaints are filed for informational purposes only. The remaining complaints, 11,293 in 1992, are normally sent to the firm complained of in order to receive its side of the story. The complaint and response are analyzed to determine whether the matter merits referral to the investigative section either because of an apparent law violation or because of a pattern of practices that may indicate a problem.

The firm's response is provided to the complainant and, depending upon the situation, further letters or telephone calls are conducted with both parties. This informal mediation or conciliation process resolved 54 percent of disputes in 1992: 46 percent obtained full relief and eight percent obtained partial relief. Total consumer restitution through conciliation was $3,214,239.

An important and unique aspect of the dispute resolution program is that it is staffed almost entirely by volunteers and work-study students. Washington has been a national leader in the use of nonstate resources to provide conciliation and educational services to consumers and businesses. For instance, in 1992, the AG Consumer Resource Centers had approximately ten paid staff and over 70 part-time volunteers and work-study students. The latter contributed the equivalent of 22 full-time positions. The volunteers come from all walks of life, predominantly students and retirees. Some volunteers have been with the office for more than five years. All of the interns receive training in consumer protection law and telephone conciliation techniques.

In addition to receiving complaints for law enforcement and conciliation purposes, the AG's office provides numerous consumer education brochures. It responded to over 227,000 telephone inquiries and referrals in 1992. People wishing to file a complaint or get information can call toll-free to (800) 551-4636.

Robert F. Manifold *is in charge of the Attorney General's Consumer Protection Division.*

Using Dispute Resolution to Collect

The National Association of Credit Management (NACM), a national organization with over 40,000 members, recently adopted a dispute resolution program. It has proven to be very effective for its members. In a survey conducted in the fall of 1992, 88 percent of the NACM member respondents agreed: "Arbitration takes less time than litigation to resolve a dispute."

Under the programs, parties are offered an opportunity to voluntarily agree to arbitrate. The parties may include an arbitration clause in a contract or in a separate arbitration agreement. The following is an example of an arbitration clause:

> *All disputes, claims, or controversies arising from or relating to this agreement or transaction or the relationship which results from this agreement or transaction, the validity of this arbitration clause or the entire agreement, shall be resolved by binding arbitration in accord with the Code of Procedure of ____________ in effect at the time the claim is filed with ________________ located at ________________.*
> *Judgment upon the award rendered may be entered in any court having jurisdiction.*

The standard arbitration clause serves several purposes: it describes a broad scope of disputes, identifies the arbitration organization, specifies the arbitration rules under which the proceedings will be governed, and includes a statement regarding entry of judgment upon the award in any court having jurisdiction.

A creditor may include in a contract a pre-dispute binding arbitration clause which, when accepted by the debtor, becomes an enforceable contract provision. Any resulting dispute between the creditor and debtor would be resolved through arbitration. For example, if the debtor fails to pay an account, the creditor could serve and file an arbitration claim with Equilaw in an effort to stimulate collection of the amount due. And the debtor could respond and raise any available defenses or claims.

Arbitration holds people accountable to their contractual agreements. Litigation and its excessive costs and delays allow people to avoid their obligations because they know obtaining a judgment against them will be expensive and time-consuming. By the effective use of arbitration, the credit executive can totally eliminate the need to go to court in collection matters. The use of arbitration has shown it can stimulate the collection of delinquent accounts once the debtors realize they can no longer rely on lengthy court delays.

***Roger S. Haydock** is senior vice president and general counsel, Equilaw International, Minneapolis, Minnesota. Equilaw provides dispute resolution services for all types of disputes throughout the country and overseas. He has authored and co-authored more than twelve books, including Negotiation Practice, Trialbook, Discovery Practice, and Motion Practice.*

Public-Policy Mediation

by **Jim Arthur**, **Frank Gaffney**, **Elaine Hallmark** *and* **Alice Shorett**

Beginning about 20 years ago, in Washington state, mediation techniques developed for labor management disputes were first applied to public disputes involving environmental/economic issues. Since then mediation has extended nationally from site-specific disputes to a wide range of public-policy issues and now includes dialogues that lead to legislative action, agency rule-making (called "regulatory negotiation" or "reg-neg"), and the establishment of guidelines for administrative decision-making.

In the Northwest, public-policy mediation processes have, for the most part, been ad hoc, the exception being several preliminary efforts under Washington's new Citizen/Proponent Negotiation process. Parties to mediated negotiations have included local, state, federal and tribal governments, business interests and environmental and community organizations. Attorneys have been involved as negotiators at the table and as advisors within interest caucuses, reviewing the details of agreements before final negotiations to say yea or nay. Attorneys often comprise one part of groups that draft legislation or regulation language to implement an agreement. Several public-policy mediators in the Northwest are also members of the bar.

Examples of public-policy mediations include the recent agreement among airlines, the Port of Seattle, the Federal Aviation Administration, pilots, and central Puget Sound communities over noise at SeaTac, whereby noise will be reduced by 50 percent by the end of the decade; tribal/state cooperative management of the salmon fishery that has replaced the annual deluge of lawsuits; an accord on management of old growth on state trust lands on the Olympic Peninsula that has brought peace to at least that portion of the ancient-forest controversy; an agreement in Oregon to phase out commercial gravel removal from several coastal rivers, a move state biologists hope will help local chum salmon runs stay off the threatened- and endangered-species lists; interim annexation policies for Snohomish County during growth management planning; the Chelan Agreement, a statewide water allocation process designed by consensus and using cooperative planning that is being field tested in two Washington state locations; an agreement between irrigation districts, tribal councils and government agencies on water rights permits and implementation of water exchanges that allowed a federally funded pumping project to proceed toward the goal of restoring native fish runs in the Umatilla River, from which they have been extinct for many years; and agreement among environmental groups, industry groups and the U.S. Forest Service which permitted the lifting of an injunction that had prevented the use of any herbicides for vegetation management in the Northwest Region.

In many of these situations, it can take a long time to implement the terms of these agreements. Implementation can be harder than the negotiations. Money may not be available. Relationships require tending. Implementers are frequently not the parties who negotiated the agreement. In many instances, reaching agreement does not of itself solve the problem; it often establishes a more effective and responsive way of managing it. Even when settlement terms prescribe a tangible object, implementation can take years. The I-90 bridge over Lake Washington is the result of a mediated agreement reached in 1975 between the state and local governments. Construction is only now nearing completion, and that's if you don't count the part of the agreement that sank in 1990.

What all these agreements have in common is that they arose out of alternative or perhaps more correctly, supplementary, decision-making processes that included the people who had the most at stake, people who had dealt with one another in conventional administrative, legislative or judicial procedures, but had come to believe that those conventional procedures were not leading to a suitable outcome. With the help of mediators, these interests mutually explored the prospects for face-to-face discussions, then jointly designed a process to fit their circumstances and agreed to procedural terms before they attempted to negotiate the always difficult substantive issues. The conditions that persuaded them to proceed with mediated negotiations are also those that must be considered for future applications of mediation and related collaborative processes:

1. The parties or the interests can be identified and are dissatisfied enough with their prospects under the status quo to consider face-to-face discussions, and they are or can become sufficiently organized to participate and to support an agreement if one is reached; public-policy negotiations are typically representative processes.

2. The parties can agree on the issues to be addressed and believe there is room for accommodating each other's needs. The parties are concerned with more than simply determining their rights with regard to something that happened in the past.

3. The process can be suitably adapted to existing jurisdictional responsibilities and mandates and to the broader publics. Affected government agencies are supportive and have given reasonable assurances that they will cooperate in implementing an agreement. It is clear who will have responsibility for communicating with any interests not at the table and with the press.

4. The roles of all participants, including mediator, are defined as are deadlines and any other constraints.

5. Expectations for the effort are defined, and it is understood what form of agreement is being sought and how the parties will know they have reached agreement. Ratification, when necessary, is accomplished through each of the negotiating parties' own decision-making procedures. This process is agreed to at the beginning of the negotiation. Virtually all agreements must go through a public adoption process. Some have to go through as many as three such processes (policy legislation, appropriation legislation, regulation and adoption).

These considerations and the importance of addressing them at the outset make public-policy mediation in essence a two-stage process. It has been our experience that if parties can successfully negotiate the "how," public policy mediation and related collaborative processes promise better decisions. When used appropriately, these approaches enable parties with conflicting values to deal with their real concerns and reach satisfactory and workable solutions.

The authors mediate public-policy disputes.

by **Lindsay Thompson**

La Conner, March 26-27, 1993

Highlights:

ABA Matters: Seattle lawyer Tom Fitzpatrick defeated Microsoft counsel William Neukom, 1,293-1,259 in an election for American Bar Association delegate from Washington. Fitzpatrick will succeed William Gates. The Board also instructed Washington ABA State Bar delegates to support the creation of an ABA State Bar Caucus, but took no position on an ABA sections proposal to restructure the ABA House of Delegates.

Appointments: The Board deferred action on the expiring terms of Richard Hemstad and Anne Redman on the Washington Statute Law Committee (RCW Chapter 1.08), and on the vacancy created by the resignation of Karen Tall from the Disciplinary Board.

Attorney Discipline: Two recent Supreme Court opinions have created confusion over whether manic-depressive disorders are a defense to attorney misconduct. An ABA team has visited Washington to study and evaluate the Bar's disciplinary system. The Board directed staff to meet with UPS School of Law Dean Bond about a UPS proposal for a clinical program in ethics and attorney discipline.

Bar Bylaws: The Board considered its Bylaws Committee's report, which would create some new membership categories and tidy up the existing bylaws.

Bar Committees: The Board removed three members of the Civil Rights Committee who missed lots of meetings, and streamlined the removal process for the future. The Board also adopted a plan, to go into effect this year, that will open most WSBA committees to all who want to serve on them. The Board heard a proposal from the Group & Prepaid Legal Services Committee to rename and re-focus it as the Access to Legal Services Committee, but decided the idea was premature while the Board's Access to Justice Task Force is at work.

Court Actions: The Supreme Court rejected a King County Prosecutor's Office proposal to waive Rule 9 intern fees for interns working in prosecutors' offices. The Court also rejected appointments of former Chief Justice Fred Dore to the CLE Board and Disciplinary Board, and affirmed WSBA nominations Dore had rejected.

Deaths: The Board approved a resolution in honor of Jack R. Dean, president of the Bar in 1987-1988, who died Saturday morning, March 27.

Endorsements: The Board re-affirmed its policy of not endorsing or sponsoring commercial products and services.

Law Libraries: The Board approved Bar task force recommended standards for upgrading county law libraries and a proposal to provide small, rural counties with a traveling law librarian.

Legal-aid Services: The Board endorsed a plan to amend Supreme Court rules and Department of Licensing regulations to make trust accounts of title companies using Limited Practice Officers subject to IOLTA.

Legislation: The Board voted to support an increase in the B&O tax as an alternative to a sales tax on legal services. The bill to unionize the Bar staff has been amended to leave it up to the Supreme Court to decide. The Board heard an update on legislation it has taken positions on and voted to oppose a new estate and transfer tax.

Meetings: The Board will meet with WSBA section leaders April 2 in Seattle. Heading the agenda will be proposals to give the sections more control over their funds, including maintaining running, year-to-year balances, and charging a per capita fee to recover WSBA costs of staff support for section activities. The Access to Justice Task Force headed by Governor Tom Chambers will meet the afternoon of April 2 to continue planning an umbrella group to oversee and coordinate statewide legal-aid services.

The next Board of Governors meeting will be in Spokane, May 7-8. Among matters on the agenda is a meeting with the dean of the Gonzaga University School of Law, John Clute; an attorney reprimand; consideration of a new APR 15 creating a court-mandated Client's Security Program fund; the report of the CLE consultant and, possibly, the ABA disciplinary review team; and a partial report from the Judicial Recommendations Committee on candidates for appointment to the Court of Appeals, Division II.

Planning Retreat: The Board will hold its annual planning/priority-setting meeting April 3, 1993 at the WSBA office in Seattle, starting at 8 a.m. Board liaisons and observers will attend. Former WSBA Governor Ed Shea, Pasco, will lead the session.

Staff Changes: Karen Tall has been hired as a WSBA staff attorney in the Legal Department.

Sunset Review: The Board discussed the Sunset Review Committee's recommendation that the Client's Security Program is not working and needs to be replaced, but not until something else can be found to put in its place.

Survey of Members: The Board considered, but deferred action on, hiring a survey firm to conduct a thorough, statistically valid survey of WSBA members to find out what we want and what we're willing to pay for it.

Report of the Meeting:

Present: The president and the governors. Governor Monte Hester was absent on Friday, and Governors West Campbell and Mike Larson were absent Saturday, on other business.

Also present: Judge Mary Brucker, Superior Court Judges' Association (Saturday); Robert Cole, WSBA General Practice Section; Rosemary Daszkiewicz, WSBA Young Lawyers Division president-elect; Mary Gallagher Dilley (Administrative Law Judges' Association; Victor Flatt, Lesbian & Gay Legal Society of Puget Sound; John Moffett, Washington Association of Prosecuting Attorneys (Friday); Judge Larry Moller, District & Municipal Court Judges' Association; Linda Moran, Washington Women Lawyers president; Dave Needy, Washington Association of Prosecuting Attorneys (Saturday); Narda Pierce, Solicitor General, Attorney General's Office; Judge Carol A. Schapira, Superior Court Judges' Association (Friday); Mark Shepherd, King County Bar Young Lawyers Division president; Lindsay Thompson, *Bar News* editor; Morton M. Tytler, Government Lawyers' Association liaison; Mary H. Wechsler, King County Bar trustee; Dennis Harwick, WSBA executive director and Robert D. Welden, WSBA general counsel.

President's Report: The president summarized his meetings over the last month, and provided a written report on the Western States Bar Conference, a gathering of bar presidents and board members held every year. The president, executive director Dennis Harwick, and Governor Alva Long attended. Long commented, "When I came on the Board I thought, 'Ah, here's another boondoggle.' But I've found it's worthwhile going. There's a lot of interplay between leaders, lots of differences between ways bars run, lots of things in common. It's an expanding meeting. Good band, too."

Executive Director's Report: Dennis Harwick announced the

results of the hotly contested ABA delegate election (above). He reported contested elections look certain for WSBA Board of Governors seats in the third, sixth, eighth and King-County-at-large seats being vacated, respectively, by Steve Tubbs, Monte Hester, Tom Chambers and Alva Long.

Harwick reported that Karen Tall, who's been a WSBA member since 1978, has joined the bar as a staff attorney.

When the Board added a fee to recover the cost of processing legal-intern applications under Rule 9, the King County Prosecutor's office asked the Supreme Court to waive the fee as to interns working in prosecutor's offices. By letter of February 19, 1993 Washington Supreme Court Clerk C.J. Merritt announced the Court had rejected the idea. By letter dated March 16, Merritt announced that the Court had confirmed the nominations of Laurie Boyd of Yakima to the CLE Board and Malcolm Lindquist of Tacoma and nonlawyer Kathryn Culpepper of Yakima to the Disciplinary Board. While noting that the court's ruling was "not to be understood as any reflection whatsoever on them or their capacities, the nominations and appointments of Mike Peterson and Martha J. Konsgaard to the Board of Continuing Legal Education and the appointment of Dorothy Niemer to the Disciplinary Board by former Chief Justice Dore were not made as required by the Rules of Court and are therefore ultra vires and void."

Harwick also asked the Board to act on a request from the Civil Rights Committee chair. With three members having missed five meetings, the committee could not muster a quorum. The Board voted to remove John Galbraith, Guadalupe Gamboa and Paul Williams from the committee. On Saturday the Board voted to allow committee chairs to remove nonparticipating members after consultation with Harwick and the WSBA governor for the members' district(s).

Attorney Discipline: A New Safe Harbor? WSBA disciplinary counsel Lee Ripley discussed the Supreme Court's recent decisions, *In re Discipline of McLendon*, 120 Wn.2d 761 (filed February 18, 1993) and *In re Discipline of Peterson*, 120 Wn.2d 833 (filed February 25, 1993). In *McLendon*, an attorney admitted in 1964 had stipulated to 11 ethical violations, most involving the conversion of client funds. The attorney was found to be suffering from bipolar disorder, commonly known as a manic-depressive disorder, and characterized by wide mood swings. The Disciplinary Board recommended disbarment, 10-2. In a plurality opinion written by Justice James Dolliver, the Supreme Court suspended him for two years, with credit for time already spent suspended.

In *Peterson*, the attorney, admitted in 1978, converted county funds paid to him for payment of criminal- defense witnesses, and filed false trust account declarations. The Disciplinary Board voted 10-2 to recommend a two-year suspension; the Supreme Court, in an opinion by Justice Charles Smith, disbarred Peterson. The court held that the attorney's depression did not constitute an extraordinary mitigating circumstance warranting a departure from the presumptive sanction of disbarment.

Ripley told the Board he hoped *McLendon* proved to be a "speed bump on the road to uniformity in disciplinary decisions." He said these two highlight how hard it is to figure out what the law is from trying to follow the Supreme Court's disciplinary decisions. Ripley concluded that since *McLendon* was supported by only four justices (newly-elected Justice Barbara Madsen did not participate, and Justice Richard Guy recused himself), the Bar will take the position that having a bipolar disorder is not a defense to attorney misconduct.

Ripley also described the visit of the ABA task force evaluating the Bar's disciplinary system. He said they expressed concern over insufficient funding for discipline, the funding and problems with the Client's Security Program, the lack of independent counsel for the Disciplinary Board, and the lack of relationship between state and federal court discipline. A report from the task force is expected in early summer.

The Board expressed some interest in a proposal by University of Puget Sound School of Law Dean James Bond to establish a clinical program in legal ethics and disciplinary law. Ripley was asked to meet with Bond and see if the idea could be developed without compromising confidentiality of disciplinary proceedings.

Law Library Standards: The Board heard a report from Patrick Comfort, chair of the Bar Task Force on County Law Libraries, and task force members Deborah Norwood, State Law Librarian, and Janet Gildenhar, Pierce County Law Librarian. The task force, created in January, 1992, held eight meetings to develop a comprehensive set of minimum standards for what county law libraries ought to be.

"The Task Force concluded that county law libraries do not have sufficient collections to meet reasonable standards based upon public need, lack adequate staff and decent pay and benefits, and have insufficient equipment," the task force report said. "Counties have been unable or unwilling to spend funds to provide adequate materials, staffing and facilities to meet the needs for legal materials."

The task force also unveiled a proposal for a traveling law librarian to visit counties with fewer than three judicial officers on a regular basis, to provide technical assistance with providing and upgrading law library services. The position will be the subject of a grant, will be tried for a year if funded, and requires no WSBA money, Comfort said. The task force intends to ask the state Board for Judicial Administration to adopt the law library standards, then, in a year or two, when state finances improve, ask the Legislature for a one-time appropriation to bring all county law libraries up to the minimum standards in the report.

Governor Joe Nappi expressed some concern about adopting a set of standards no county law library in the state now meets, but others countered that the inability of any to meet all of them (some of the big counties come close, Gildenhar said, and mainly fall short in terms of space) shows how badly neglected county law libraries have been. On motions by Governor Steve Tubbs, the Board approved both the standards and the traveling librarian proposal.

ABA Matters: On a motion by Governor Joe Nappi, the Board voted 9-1 (Chambers, nay) to instruct the state's ABA delegates to support a proposal to create an ABA State Bar Caucus. Apparently there's a tug of war going on between representatives of state bars in the ABA House of Delegates and representatives of ABA sections. The state bars want to create a caucus to focus on matters of interest and form common positions. The Board decided not to instruct the delegates on a section proposal to restructure the ABA House of Delegates in a way some feel will give the sections effective control of the House.

Bylaws Changes: Governor Wayne Blair presented the report of the Board's Bylaws Committee, which has been reviewing the Bar's bylaws for some time. He said the committee did not concern itself with policy questions, like whether there should be unelected seats on the Board for one interest group or another, but had worked to bring the bylaws into line with current practice and the needs of the times. The proposals include creating membership categories for house counsel in businesses, judicial officers, and retired lawyers. Nomination deadlines for the Board of Governors would be moved up to March 30 so the *Bar News* can better cover candidates. The informally recognized position of WSBA president-elect would be institutionalized. The role of the president would be clarified: the president would serve as the (spokesperson) chief policy-making officer of the Bar, and the executive director would be the chief executive officer.

The long-standing practice of rotating the presidency between eastern Washington, King County, and western Washington would be formalized. Resolutions would be voted on directly at the annual meeting. This would eliminate the current rule, which requires voting on the Resolutions Committee's recommendation on resolutions, and results in odd, confusing outcomes, like having to vote "no" when you support a resolution but the committee opposes it.

The bylaws descriptions of standing committees would be eliminated as unnecessary. Disclosure of Client's Security Program information will be clarified.

Some members of the Board said they hadn't had enough time to think about all of this. "Ten more days for comment," Blair replied. Action was therefore deferred.

Local News: The Board heard from John Meyer, vice president of the Skagit County Bar, as well as Prosecutor Dave Needy, both of whom reported and commented on the activities of the county bar association. Meyer said younger lawyers find membership in a larger bar association increasingly less relevant to their practice.

They're Listening. Tell Them Something. A Board committee made up of governors Jan Peterson, Jim Handmacher and executive director Dennis Harwick has been studying the question of doing a member survey to find out what members want from the Bar. "We all come into these meetings with our own perceptions of what the Bar thinks, affected by what we think, and what we hear from people we talk with regularly. What we need to know is, what will it take for members to fund the Bar, and what sort of governance structure do they want?"

Governor Steve Tubbs, looking at estimates placing the cost of surveys between $15,000 and $50,000, wondered where the money will come from. He thought the Board should wait until later in the year to see if there'd be a sufficient surplus to pay for a survey. Dennis Harwick said he thought it was important enough to invade WSBA fund balances now in order to get the results in time to make plans for next year. In the end, the Board decided to talk about it some more at their retreat in a week's time.

Former Legal Foundation of Washington president Paul Bastine, Thurston County Pro Bono Coordinator Marla Elliott and Legal Aid committee member Mary Ruth Mann urged the Board to endorse a plan to "level the playing field" between lawyers who do trust account work and whose interest is paid to the Legal Foundation under the IOLTA program, and title companies who have officers licensed to practice law to the extent necessary to handle property transactions, and who aren't subject to IOLTA. The additional interest on those trust accounts would offset, to some extent, losses in income at the Foundation caused by low interest rates. On a motion by Governor Tom Chambers, the proposal was passed. Governor Alva Long abstained.

Legislative Affairs: The Board heard a telephoned report from WSBA lobbyist John Fattorini on what's doing in Olympia. The bill to declare the Bar subject to collective bargaining has been amended; the compromise makes it, in effect, a declaration that the Supreme Court can accomplish that end by court rule. The Board confirmed a fax conference they had before the meeting, in which they endorsed an increase in the Business & Occupations Tax as an alternative to Governor Mike Lowry's planned sales tax on legal services. The current version of that plan seeks to break up the coalition of professional groups opposing it by exempting—for now—all medical and dental services, as well as "consumer" services, mainly used by individuals. Fattorini also went over the status of 19 other bills the Bar has taken a position on. Saturday, the Board also voted to let the Real Property & Probate and Tax sections oppose a new Estate and Transfer Tax proposed by the Governor. By doubling rates and ending deductions for federal tax, in an example given by the plan drafters, a single person's estate worth $710,000, less $600,000 in gifts in the three years prior to death, would be taxed $160 under the current plan. Under the new law the tax bill would be $42,720. The plan would also apply to estates of people who died before its effective date of July 1, 1993, but who hadn't filed estate tax returns yet. Governor Joe Nappi thought it an ex post facto law.

The Board also decided, 8-1, Tubbs opposed, to let the Litigation Section comment to the Supreme Court on proposed changes to CR 11 and 19. A long wrangle developed over whether the section had met the requirement that 75 percent of the section's leadership support the proposed position. Tubbs denounced the requirement as "the most repugnant thing we've ever done. How the Board thought we could restrict members' right of speech is beyond me." The Board decided not to consider the underlying validity of the 75 percent requirement for now.

Finances: As part of the Budget & Audit Committee report, the Board considered the Sunset Review Committee's recommendation that the Client's Security Program be replaced. "It is part and parcel of our regulatory functions," treasurer Steve Tubbs said. "It doesn't perform its functions well; it's subject to the vagaries of our finances for funding; and its results are unpredictable, since how much a claim gets is dependent not on the merits of the claim but on how many claims there are at a given time vs. how much money is left." Tubbs noted the bonding requirements for other professions in RCW Chapters 18 and 19, and he predicted the Bar can't go on forever not protecting its clients the way other professions are required to.

The discussion then rounded some familiar turns: should there be a Supreme Court mandated assessment? If not, what? Governor Jan Peterson thought the former the better. "Our taxing power is somewhat suspect," he remarked.

The Board also considered a plan from the Budget Committee to give WSBA sections more control over—and responsibility for—their funds from year to year, which would allow them to accumulate funds. The trade-off is a charge per section member of $5 to cover the cost of WSBA staff support for section activities. It will be discussed at an April 2 Board meeting with section heads.

Long-range Planning: Wayne Blair told the Board the Long-range Planning Committee was still divided over whether to recommend giving the Young Lawyers Division an unelected seat on the Board of Governors, and has no recommendation yet. They will try to reach one, circulate it for comment, and try to present it in May. Young Lawyers Division president Rosemary Daszkiewicz said that June would work better, so lots of young lawyers can be present. Presumably they'll be prepared to explain, for example, what the proposal does to improve the lot of the average young lawyer; how, if one can be a young lawyer in one's fifties, a Board of Governors whose average age is mid-forties can't represent their interests; why a few ambitious YLD leaders should be able to avoid the annoying process of assembling support from lawyers in their districts to get elected by this plan, which would allow them to serve a year, then come back later and run for a full, three-year term; how to objectively determine which of the other interest groups who will flock through this door—once opened—should be evaluated; and what it says about democratic governance when we go from a system in which interests combine to elect representatives who are to look out for the whole, to a system in which representatives are selected by a handful of people to look out for their own interests. Doubtless, it will be an interesting discussion.

The Long-range Planning Committee also proposed a plan to revise committee appointments to open them up. Under the plan, each governor would appoint one representative to each committee who'd be reimbursed for expenses as is done now. Beyond that, anyone who wants to serve on a committee can do so. Use of telephone conferences and other means of bridging economic and geographic differences will be encouraged, but the plan did not make detailed recommendations. The committee's preference was to leave it to the committees to decide how to best structure themselves.

Some committees would be excluded from "open" membership: Judicial Evaluation, Court Rules, and Legislation would have 22 funded openings, and the Disciplinary Board and Committee of Law Examiners would continue at their current sizes. The distinction is based on their unique functions.

Blair said reaction of committee chairs was generally that it was a great idea as long as it applied to someone else's committee. The Board seemed to react the same way. They went into a long discussion of things that needed to be defined for the committee: what to do about a quorum, whether those who fill the unfunded positions could be, or should be, allowed to vote, how evil combines and cabals will form and stack the voting, and how committee chairs can use the power to purge nonattending members, in the most Stalinesque ways, to work their wills.

Governor Tom Chambers moved to add the Court Rules Committee to those retaining smaller memberships, fearing stacking would occur. One governor replied that his observation of this year's Court Rules Committee recommendations suggested that had already occurred. Governor Alva Long dismissed the problem: "We are the funnel all committee action goes through. If we think there's been a stacked result, we can reject it." The *Bar News* editor said the debate reminded him of a teenager trying to get the car from his parents—well, yes, you *do* have a license; the question is whether you can do anything with it. And what happens if you have a flat tire? And who can ride with you? And if you're going to the grocery, which streets will you take? "You're saying, in effect, this is a great idea but we don't think the membership can be trusted with it, so let's niggle it to death. Sections do these things—some are big, some are small. Lawyers fix problems. These people are lawyers, not idiot children. Why not just pass it and let them figure out how to make it work?"

In the end, that's what they did. Chambers' motion failed 5-4, Chambers, Hester, Peterson and Tubbs voting for it. The motion to adopt the committee proposal passed 8-1, Tubbs opposed.

The Board also heard from Susan Daniel, a member of the Group & Prepaid Legal Services Committee. It proposed that it be restyled the Access to Legal Services Committee and given a new mandate. Basically, it wants to study access to justice for the working poor and others not covered by legal-service programs. Governor Tom Chambers said he thought the idea premature until the Access to Justice Task Force sorts out who is to coordinate legal-services program.

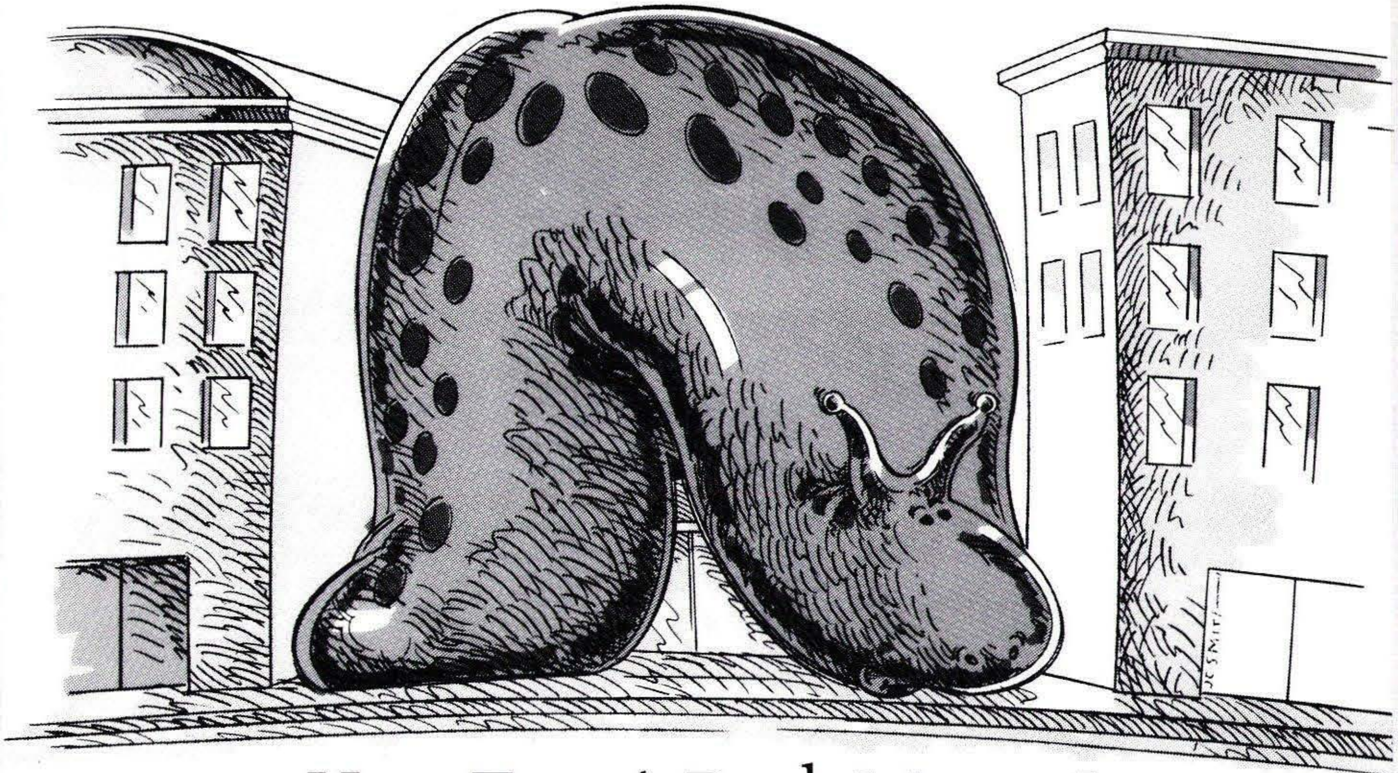
The Committee didn't know about the task force, it developed. Alva Long said this pointed out "Something we should look at—work of committees is not being gotten out there." The Communications Committee eagerly suggested this was something to look into. That it might also just indicate people don't read what's sent to them in the *Bar News*, governors' newsletters, observers' and liaisons' reports, section newsletters and the like, was not, apparently, a factor to be considered. Is news like castor oil? Can it be forced on people because it's good for them?

Remembering Jack Dean: During the meeting, the Board received periodic reports on the condition of former Board member and WSBA president Jack Dean of Spokane, who died the morning of March 27 after a long illness. The Board unanimously approved a resolution "that the Washington State Bar Association Board of Governors recognizes and commends the memory of Jack R. Dean, a former member of the Board of Governors and past president, as an example of extraordinary dedication and leadership for the benefit of the legal profession and the citizens of the State of Washington.

"Be it further resolved, that the Board of Governors extends its condolences to the family of Jack R. Dean. He will be sorely missed by those who have known, respected, and admired him. His spirit and tenacity remain as an inspiration for those who follow."

The Board adjourned Saturday at 11 a.m.

* * * * *



Notices of Interest to WSBA Members

WSBA Disciplinary Notices

Disbarred: Mill Creek lawyer **Mary Jarvis Cornaby** (WSBA #11639, admitted 1981) has been ordered disbarred from the practice of law in the State of Washington pursuant to an order of the Supreme Court filed January 7, 1993. The discipline is based upon her misappropriation of trust funds; her misrepresentation to clients about the status of their cases; and her presentation of a pleading which contained a false signature of opposing counsel. [January 28, 1993]

Reprimanded: Deer Park lawyer **Dale L. Russell** (WSBA #7941, admitted 1977) has been ordered reprimanded pursuant to a stipulation for discipline, based upon his disclosing confidences and secrets of his client to opposing counsel in the course of preparing his defense to his client's disciplinary grievance. [February 5, 1993]

Public Notices

In re RCW 19.52.020(1): Legal Interest Rate ("Usury Rate"):

The average coupon equivalent yield from the first auction of 26-week treasury bills in March 1993 is 3.14 percent. The maximum allowable interest permissible for **April 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.

WSBA Judicial Recommendation Committee to Schedule Interviews:

The WSBA Judicial Recommendation Committee is currently accepting applications from attorneys and judges seeking consideration for appointment to fill potential appellate court vacancies. Interested candidates will be interviewed by the Committee at its Spring meetings as follows:

Washington Court of Appeals, Division II applicants—April 30. *(Deadline for receipt of questionnaires by the WSBA office is 5 p.m., Friday, April 16)*;

Washington Supreme Court and Court of Appeals, Divisions I and III applicants—May 20 and 21 *(deadline for receipt of questionnaires by the WSBA office is 5 p.m., Friday, April 30).*

The Committee's recommendations are reviewed by the Board of Governors of the WSBA and are then referred to the Governor for review when appointments are made to fill vacancies on the Court of Appeals and Supreme Court.

If you are interested in scheduling an interview, please contact the WSBA at 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599, telephone (206) 727-8200, to obtain a questionnaire. Please specify whether you need the questionnaire designed for a judge or an attorney.

Vietnam Trade and Service Mark Registration alert:

The U.S. Government recently announced the first modifications of the U.S. embargo on the Socialist Republic of Vietnam. Among other things, American businesses may now take actions to preserve their rights in Vietnam in preparation for the day when the embargo will be eased further or lifted. Permissible protective actions include filing for protection of trademarks and service marks.

Marks registered before the embargo was imposed are no longer valid. American companies need to register their marks in Vietnam immediately to avoid having them registered by trademark "pirates."

The window of opportunity for foreign companies to file registration of their marks expired March 19. Effective March 20, Vietnam will implement a "first to file" registration system for trademarks and service marks under Ordinance No. 84. Registrations under that ordinance cannot be cancelled by foreign companies that use the same marks in other countries.

The Chamber of Commerce and Industry of the Socialist Republic of Vietnam has disclosed that several non-U.S. companies have approached it about registering American marks.

[The Bar News *thanks Perkins Coie for this update.]*

Note:

Information telephone numbers for regular CLE providers and other groups presenting listed events are listed on page 40. Contact them for further information.

April 1993

1 Seattle: Negotiation and Settlement Advocacy. *Sponsored by* WSBA CLE.

1 SeaTac: Rules as Tools/Civil Procedure. *Sponsored by* WSTLA.

2 Spokane: Family Law Update. *Sponsored by* Spokane BA.

2 Olympia: Negotiation and Settlement Advocacy. *Sponsored by* WSBA CLE.

2 Washington Labor and Employment Law. *Sponsored by* National Business Institute, Inc.

2 Boise: Environmental Law. *Sponsored by* Idaho Law Foundation.

2-3 Yakima: WSBA Young Lawyers Division Board/Fellows meeting. *For information:* Sheri Borgford, (206) 727-8200.

7 Seattle: Successful Judgment Collections in Washington: How to Get Your Money. *Sponsored by* National Business Institute, Inc.

8 Spokane: Successful Judgment Collections in Washington: How to Get Your Money. *Sponsored by* National Business Institute, Inc.

9 Boise: Idaho Administrative Procedures Act. Also presented 4/16 in Lewiston and 4/30 in Idaho Falls. *Sponsored by* Idaho Law Foundation.

14 Seattle: Judicial Selection in the Clinton era. *Sponsored by* Seattle Lawyers Chapter, Federalist Society for Law and Public Policy. Panel moderated by David Boerner; panelists include Sen. Slade Gorton and federal judges Diarmuid O'Scannlain and Barbara Rothstein. Registration limited to first 100. For information: Linda Foley, (206) 223-7109.

15 Lewiston: How to Try a Family Law Case (video). *Sponsored by* Idaho Law Foundation.

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

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

16 Seattle: Employee and Employer Rights and Responsibilities: Advising the Business Owner or Professional Firm. *Sponsored by* WSBA CLE.

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

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

23 Seattle: Auto Cases. *Sponsored by* WSTLA.

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

23 Seattle: Fourth Annual Pacific Northwest Credit Managers' Seminar. *Sponsored by* five associations and coordinated by Gateway Seminars. *For in-*

Business Advisory Services, Inc. (206) 223-5400
CLE International (206) 621-1938
Idaho Bar Foundation (208) 342-8958
National Business Institute, Inc. (715) 835-7909
Lewis & Clark Law School (503) 768-6642
Spokane County Bar Association (Spokane BA) (509) 623-2665
Tacoma-Pierce County Bar Association (TPCBA) (206) 383-3432
University of Washington School of Law (UW CLE) (206) 543-0059
Washington Assn of Prosecuting Attorneys (WAPA) (206) 753-2175
Washington State Bar Association (WSBA CLE) (206) 727-8202
Washington State Trial Lawyers Assn (WSTLA) (206) 464-1011, (800) 732-9251

formation (206) 628-5858.

23 Spokane: Ethics & Professionalism. *Sponsored by* Spokane BA. [WA & ID approved.]

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

27 Seattle: Insurance Litigation in Washington. *Sponsored by* National Business Institute, Inc.

30 Jantzen Beach, Portland, Yakima, Bellingham: Video Road Show: Preparing & Trying the Soft Tissue Injury Case. *Sponsored by* WSTLA.

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

30 Spokane: Law Day Program. *Sponsored by* Spokane BA.

30 Spokane: Pro Bono dinner and awards. *Sponsored by* Spokane BA.

30-May 1 Seattle: Family Skills Institute. *Sponsored by* WSBA CLE.

May 1993

1 Law Day USA. The theme for the event is "Justice For All—All for Justice."

5 Seattle: Evening Criminal Law Series I. *Sponsored by* WSBA CLE.

6-8 Stevenson: Environmental/Land Use Section Midyear Meeting. *Sponsored by* WSBA.

6-8 Winthrop: WSBA Young Lawyers Division Midyear Meeting. *For information:* Sheri Borgford, (206) 727-8200.

7 Boise: Ethics. Also presented 5/14 in Idaho Falls and 5/21 in Coeur d'Alene. *Sponsored by* Idaho Bar Foundation.

7 Seattle: Construction Law Midyear Meeting. *Sponsored by* Idaho Bar Association.

7-8 Spokane: WSBA Board of Governors meeting.

12 Seattle: Evening Criminal Law Series II. *Sponsored by* WSBA CLE.

13 Idaho Falls: Health Care Proxies, Powers of Attorney and Living Wills (video). Also presented 5/20 in Coeur d'Alene. *Sponsored by* Idaho Bar Foundation.

14 Seattle: Managing Client Trust Accounts. *Sponsored by* WSBA CLE.

14-16 Richland: Business Law Midyear Meeting. *Sponsored by* WSBA.

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

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

19 Evening Criminal Law Series III. WSBA CLE.

21 Seattle: Elder Law. *Sponsored by* WSBA CLE.

21 Seattle: Northwest Women's Law Center annual gala dinner and presentation of Florence Merrick and Founder's awards. *For information:* Tracy Foltz, (206) 682-9552.

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

22 Portland: Regional Legal Writing Conference. *Sponsored by* Northwestern School of Law and Legal Writing Institute. *For information*: (503) 768-6711.

22-23 Seattle: National Lawyers' Guild regional conference: Resisting the Police State in the 1990s. *For information:* (206) 622-5144/622-5151 (messages).

24-25 Seattle: Third Midyear Environmental Law & Management Conference—New Directions at EPA. *Sponsored by* Northwestern School of Law. *For information:* (503) 768-6629.

25 Spokane: Elder Law. *Sponsored by* WSBA CLE.

25 Wenatchee: Adoption Law (moderated video replay. *Sponsored by* WSBA CLE.

27 Seattle: WSBA World Peace Through Law Section CLE.

26-27 Portland: Third Midyear Environmental Law & Management Conference—New Directions at EPA. *Sponsored by* Northwestern School of Law. *For information:* (503) 768-6629.

28 Seattle: Partnership/Limited Liability Companies. *Sponsored by* WSBA CLE.

28 Seattle: Employee Benefits. *Sponsored by* WSBA CLE.

* * * * *

Getting Away from Maybe[1]

Adapting American ADR Principles in Russia

by **James Goché**

Moshibueets *is perhaps the most common answer to questions asked in Russia today.*

Will there be meat to buy today? *Nyet!* (no) says the store employee, but later that day meat is put out for sale and potential buyers who disbelieved the answer are rewarded with an opportunity to buy.

"Will my bags arrive this afternoon?" asks a visitor from the west, who has been living in the same clothes that he arrived in, four days before. *Da!* (yes) says the airline official on the telephone, but when the visitor takes a cab to the airport, he finds that there are no flights from the west arriving that day.

During my visits to Russia last year, I came to learn what the people there have known for centuries; that "yes" and "no" in Russia may actually mean *moshibueets*. Maybe. Perhaps. This "maybe syndrome" is one of the greatest challenges to Russians who are seeking to build a functional government and a new nation. It was also a significant challenge to a group of Americans who traveled to St. Petersburg, Russia, during the spring, summer, and fall of 1992 to teach western alternative dispute resolution (ADR) techniques.

I was the team leader for a group which worked collaboratively with Russian colleagues to adapt American ADR methods and create professional training courses for senior Russian local government officials. The project was originally conceived by internationally known mediator Bill Lincoln and was sponsored by the Conflict Resolution Institute (CRI) of Tacoma and the Russian/American Program for Conflictology (RAPC). We had been invited to St. Petersburg by Mayor Anton Sobchak to work collaboratively with our Russian colleagues and create professional development programs for senior city officials there in the areas of negotiation, mediation, and cross-cultural communications. We designed the courses during visits in the spring and summer and received excellent evaluations on our first training, which was offered in the fall. Despite our success, we found that cultural factors affected our presentations and guided the outcomes of our exercises. The "maybe syndrome" was one of those factors.

"One can never be certain about things here, you know," explained Alexander Klochkov, a friend and co-director of our project. "We have historically emphasized collective, rather than individual responsibility, and as a result, there is often no responsibility at all. You must also realize," Alexander continued, "that people here have traditionally had so little control over the things which affect their daily lives that they have learned to distrust their institutions and, too often, themselves. They have been taught that 'yes' and 'no' more often than not, mean 'maybe'."

With this brief statement, Alexander identified two cultural assumptions which Americans take for granted when discussing alternative dispute resolution (ADR); that is, acceptance of individual responsibility and the existence of a sense of trust and certainty by disputants in our dispute resolution processes and institutions.

In Russia, it historically has been dangerous to accept responsibility or take a position on an issue, because doing so can result in criticism and retribution. Therefore, Russians culturally tend to be more process-oriented than their ends-oriented American colleagues. Our class of Russian officials illustrated this fact during a two-day exercise designed to teach them how to identify interests, define issues and take negotiating positions, both individually and as a group. We had split the class into two halves; the first group came to no agreement, but the second declared that they had solved the problem because they had agreed to meet again and negotiate further. They had created a process rather that which Westerners would consider to be a solution, and while their solution may seem frustrating and inefficient to us, it was functional given its cultural context.

Russians and Americans also have had different experiences with the issue of personal accountability. Americans tend to subscribe to Richard Bach's adage in *Jonathan Livingston Seagull*, "the gull who flies the highest, sees the most," believing that personal achievement is the fruit of individual effort and responsibility. But, in response, Russians offer their own time-tested proverb which says that "the tallest blade of grass is the first one cut." Russia has a cultural tradition of personal effort for collective gain and has historically disapproved of persons who seek individual gain. But personal accountability and a willingness to state one's interests are key factors in interest-based negotiation and, during our time in Russia, we found more than one of our Russian colleagues struggling with these principles as we discussed how ADR works in America.

So *moshibueets* is often the true meaning of answers given to questions asked in Russia. Despite this fact, there are many dedicated Russians who are working to change things there for the better and to get away from "maybe." In their private lives, Russians tend to be warm, giving and garrulous in ways which Americans find very familiar. Many want to develop new traditions which will create more certainty in their society, encourage individual initiative, and support a commercial economy, meaningful forms of democracy, and closer relations with the west. Nevertheless, cultural traditions change slowly and Westerners who teach, mediate, or do business in Russia will eventually notice the cultural differences.

The lesson (one of many) which I brought home from these experiences is that American ADR practitioners are well advised to occasionally review their paradigms and assumptions and to be sensitive to the culture which their disputants bring to a mediation. The American melting pot contains a rich mixture of ethnic, religious, regional and other cultural traditions and if disputants are having a difficult time reaching agreement, cultural factors may be one of the reasons. In such cases, mediators should investigate this possibility and be flexible in their approaches help disputants "get beyond maybe" and develop workable solutions.

[1] With apologies to Roger Fisher and William Ury, authors of *Getting to Yes.*

*Attorney **James Goché** is the strategic plan project manager for the Port of Olympia and its legislative representative.*

ARBITRATION, MEDIATION DEVELOPING IN NEW WAY

Once considered the exclusive province of enthusiasts, like proselytizers for Esperanto, mandatory jurisdiction for the World Court, or a Nobel Prize for Graham Greene, arbitration and mediation have begun to flower into something else entirely—a profitable business opportunity.

The great, grey lady of arbitration, the American Arbitration Association, has been on the beat since 1913, but it faces growing competition, the *Wall Street Journal* reported February 25, 1993. It has announced a new program to help businesses sort out complicated cases short of litigation. Thirty-six regional panels of lawyers, retired judges and business leaders have been constituted: heavyweights taking part include former U.S. Attorney General Griffin Bell; ubiquitous television pitchman and Remington Products Co. president Victor Kiam; and Geoffrey Hazzard of Yale Law School. The AAA panels will be available for disputes exceeding $1 million.

Perhaps the best-known local player in the big leagues is JAMS, Judicial Arbitration & Mediation Services, Inc. The California company, headed by a former judge, has attracted a number of former King County Superior Court judges to its ranks, and it has looked at cases valued in the millions of dollars.

Equilaw International, headquartered in Minneapolis, bills itself as one of the world's largest private dispute resolution companies and it will tackle "any dispute involving individuals, national and international companies, organizations and government agencies." It opened more than 9,000 files in 1991 alone, Equilaw reports. The Equilaw view of the world is presented in a paperback book by president/CEO Stephen Patrick Doyle and general counsel Roger Silve Haycock. *Without the Punches: Resolving Disputes without Litigation* (Equilaw, Inc., 2124 Dupont Avenue South, Minneapolis MN 55405, 182 pp., $12.95, 1991).

The American Bar Association has been active in the field, publishing *A Drafter's Guide to Alternative Dispute Resolution* (ABA Order Fulfillment, 750 North Lake Shore Drive, Chicago, IL 60611, 82 pp., $19.95, 1991). The book outlines ways in which lawyers can help their clients resolve disputes with ADR provisions in agreements.

West Publishing's *Effective Negotiation and Mediation: A Lawyer's Guide*, by Paul Lisnek, (1992) seeks to give practical and theoretical guidance to attorneys trying to use negotiation and mediation more. For information on pricing and ordering, call (800) 328-9362.

Finally, any list of up-and-comers has to include the Center for Public Resources in New York. CPR's Judicial Project published a newsletter, *Alternatives to the High Cost of Litigation*, (monthly, $175, 366 Madison Avenue, New York NY 10017-2311), and an interesting book, *Court ADR: Elements in Program Design*, by Elizabeth Plapinger and Margaret Shaw, both lawyers (157 pp., softcover, $35, 1992). The book is a comprehensive review of federal and state court ADR programs: how they are being structured, a synopsis of fundamental issues in integrating ADR into judicial practice, and assessments of current ADR policies, programs and disputes. "Thorny issues such as confidentiality, matching cases to ADR processes and selecting, training and compensating neutrals can turn out to be major stumbling blocks to courts who have not had adequate time to consider them," says author Plapinger. "We would like nothing better than for this document to serve as a catalyst whereby federal and state courts talk together to share information and benefit from lessons each has learned."

The CPR Judicial Project is part of CPR's Legal Program, underwritten by 500 major corporations, leading law firms, academics and judges; and it seeks the full integration of ADR into legal, business and judicial practice. Among recent agreements announced has been one among ten major insurance companies to resolve conflicts with homeowners and others suffering losses in hurricanes Andrew and Iniki by the use of ADR whenever requested by victims. In February, CPR announced that ten major food companies—CPC International, Frito-Lay, General Mills, Gerber Products, Hershey Foods Corporation, Kellogg, PepsiCo, The Pillsbury Company, Ralston Purina Company and Universal Foods, with total sales of some $54 billion—have accepted a CPR Legal Program plan for resolution of costly legal disputes by the use of mediation and negotiation.

They've also published "Dispute Resolution Clauses for Business Agreements" (1992), a set of forms that drafters can put in place when preparing documents in which ADR is to play a part.

LAND USE MEDIATION

by **Jim Driscoll**

The land use review process, established in the state of Washington required by statutes and ordinances, has traditionally been conducted in an adversarial arena. The hearings, which are conducted in a quasi-judicial forum, include presentation of facts and law before an unbiased decision maker (planning commission, city council or hearing examiner). While this system may be necessary for complicated and complex issues that have an impact on the community as a whole, there are cases in which an alternative dispute resolution process can be beneficially used to resolve a land use issue.

Land use development disputes that directly impact only a few can be mediated outside the traditional hearing. Issues such as variances, zoning code violations, zoning code enforcements, nonconforming uses and, to some extent, conditional use permits, all can be the subject of mediation. Likewise, SEPA appeals, including threshold decisions, have the potential for being mediated.

Washington courts and statutes are silent about the use of mediation as a method of resolving land use disputes. Some communities, however, are now taking the lead by enacting ordinances that permit and encourage mediation in this administrative forum. Lake Stevens is the first community in the state of Washington to adopt this innovative approach.

For effective mediation of land use issues, certain procedural guidelines must be satisfied in order to meet due-process considerations. Notice must be given to all who have an active interest in the resolution of the issue. After this, those who desire to must be allowed to participate in the process. If the action involves a city permit, the city must participate so that the city's policies and development standards are consistent with the resolution. Finally, in the permit mediation process, the mediator (usually the hearing examiner) must review the agreement to ensure that it is consistent with the zoning laws and development standards of the community.

In mediations involving zoning code enforcement, the city government is an active party in the process. In such situations, the city brings an action against the property owner for violating some particular segment of a zoning code or a condition of development from a previously issued permit. The parties are readily identifiable in these cases. If both parties are agreeable, the mediation process can be conducted in a simple and efficient manner.

Still in its infancy, mediation of land use disputes provides greater citizen involvement in land use matters. The use of mediation, under a strict and controlled process, ensures equal protection and due process for all. Residents of a neighborhood can actively work to resolve their own disputes. Compromises, innovative approaches and other benefits of an interest-based approach can be utilized. If the resolution is within the parameters of the community's zoning code, mediation of these disputes becomes a win-win situation for the community and the parties.

For the last 14 years, ***Jim Driscoll*** *has been a land use hearing examiner for many cities. He has been involved as a decision maker in land development disputes of great magnitude and public concern, as well as those that involve the interests of only a few.*

THE ROLE

by **Charles Burdell**

Most lawyers are aware of the public's disenchantment with litigation as a means of resolving conflict. It's too expensive, too risky and too scary. Increasingly, lawyers are choosing other ways to solve their clients' problems. One of the ways most frequently chosen is mediation.

Mediation has fast become the most popular of the various forms of alternative dispute resolution. The main reason for its popularity is that there is no "down side." All other forms of alternative dispute resolution hand the decision- making power to some third party. Not mediation. The parties do not give up this important power, and they agree only to have the mediator facilitate their negotiations. The process allows the parties to solve their problems themselves, often creatively, in an atmosphere of negotiation rather than the contentious and anxiety-ridden atmosphere of litigation. Even if the dispute does not settle, something good usually happens. The parties have a better understanding of the other side's point of view, or the gap in their settlement position has narrowed.

Lawyers are expected to advocate, diligently and competently, the interests of their clients. Does the zealous advocate have a place in mediation? The answer is clearly, yes, but the tone and focus of the advocacy are different in mediation from those in litigation.

Effective advocacy in mediation begins when the matter comes into your office. No longer is the courthouse the only place in town where a dispute can be resolved. It is appropriate and professional for the attorney to explain the various options for resolution that are available. As the foremost experts of dispute resolution in the country, it is incumbent upon lawyers to educate their clients on the various methods of resolving the dispute. If mediation is appropriate, the selection of the mediator is a decision crucial to effective settlement of the case. There is a plethora of

OF THE ADVOCATE IN MEDIATION

mediators who can provide a wide range of types of mediation: everything from the mediator who refuses to state an opinion or get involved in the decision-making process to those who gleefully twist arms until the closing documents are signed. The attorney must understand the client's personality well enough to decide which type of mediator will be most effective.

In litigation, the focus is to defeat the other side. You look for every shred of evidence that will support your case or weaken the opposition. In mediation, the focus should be on resolution and upon the mediator. Your job is to assist the mediator in reaching a settlement. In order to do so, the mediator needs to understand your position and gain the impression that you and your clients are really interested in resolving the case.

Most mediators start the process with a joint session in which each side is afforded the opportunity to explain its position. This is an important time for the parties because it usually the first opportunity for them to hear about their opponent's case directly from their opponent's attorney. This is a wonderful chance for attorneys to give a well-reasoned, business-like presentation and impress the other side with the veracity of the client's position. It is not a time for threats, name-calling or other verbal abuse. The idea is to remember that the process is informal, confidential and business-like. The goal is to settle, and pejorative comments do not usually lead rational persons to agreement easily.

Often, attorneys drilled in rules of uncompromising litigation think everything must be resisted, that an attorney should never reveal weakness. The problem with this strategy is that the client can begin to believe it. We all know that every case has its problems. (If not, a summary judgment order would have been entered.) The effective advocate in mediation explains, in private caucus, a case's weaknesses clearly to the client; or, often, the effective advocate will not intercede as the mediator and the client discuss the weaknesses. In order for settlement to be reached, it is important that everyone involved in the process accept that taking the case to the courthouse is an uncertain, expensive and anxiety-ridden choice.

In mediation, threats of what will happen in the courtroom are of little assistance to the process. "The jury will agree with my expert's opinion" often is countered with the exact same statement from the other lawyer.

Rather than threats, try persuasion through logic and facts. If the facts are disputed, bring along the objective evidence which tends to support your version of the facts. Nothing is better in mediation, or in litigation, for that matter, than solid preparation on the law and facts. Threats are never as persuasive as a clear analysis of facts which undeniably support your arguments. The idea is to create uncertainty in the other side's perceptions and conclusions, and thereby make those parties want to settle. Yelling at them will only get them mad. Reasoning with them will get them to settle.

Counsel your client on what to expect from the process. Mediation is a process of compromise, not capitulation. Work on proposing objective and reasonable settlement offers. Be creative; think of ways other than the payment of money to resolve the dispute. The disgruntled employee can be retrained for another position or transferred to a different location. The partners can agree to sell their jointly owned property and split the proceeds rather than fight over every last piece. The feuding neighbors can agree to create an open green space along the disputed boundary line rather than fight over its exact location. The bounds of creative settlements are limited only by the creativity of attorneys and their clients.

After the case is settled, try to get your client to look into the future rather than concentrating on the past. Often, clients feel they were wronged and that the trial of the case would punish the other side. Work on getting the client to focus on the actual amount of money that will go into the client's bank account, or the new job that will be available or the beauty of the open green space, rather than on forcing the other side to its knees through litigation.

Clients often lose track of the actual cost of litigation. They are generally aware of attorney fees and costs, but they frequently overlook how much they could be making by doing their business rather than fighting. The true cost of the suit is the out-of-pocket dollars *plus* what the client could be earning in his business along with the intangible cost of the end of the anxiety and risk. Usually, a careful calculation of the actual cost of litigation is staggering.

Don't be afraid to be frank and realistic with your client. One of the basic purposes for mediators is to be an agent of reality. Lawyers can attempt to convince their clients to be reasonable only a few times before the clients begin to wonder whose side the lawyer is on. Many mediators are good "reality checks" for clients and, sometimes, for lawyers. They provide an experienced, impartial look as the strengths and weaknesses of a case.

Lawyers can meet their professional obligations to their clients in mediation by focusing their efforts on resolving the dispute. The tone of the representation is toward settlement, rather than victory. The means to get there are a rational and realistic discussion with the other side on various ways which might be used to resolve the dispute.

Mediation is a problem-solving technique which is fast becoming many lawyers' preferred method of resolving their cases to their clients' satisfaction.

***Charles Burdell**, formerly a judge with the King County Superior Court, is a mediator/arbitrator with J.A.M.S.*

REAL LAWYERS DO THEY

by **Peter Marchel**

Once upon a time, there lived a young associate who, after spending hours reviewing a very thick file, approached the partner to inquire why the client was in litigation when mediation or arbitration appeared the better forum. "What?" cried the partner . . . "Why, why, real lawyers do not mediate; they litigate."

This brief article discusses the current trend among the courts and state bar associations to recognize alternate dispute resolution, through rule, resolution or creed. In the Spring of 1992, Colorado became the first state to modify Rule 2.1 of its Rules of Professional Conduct to read:

In representing a client, a Lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations, such as moral, economic, social and political factors, that may be relevant to the client's situation. *In a matter involving, or expected to involve litigation, a lawyer should advise the client of alternative forms of dispute resolution which might reasonably be pursued to attempt to resolve the legal dispute, or to reach the legal objective sought.*

In 1990, the New Jersey State Bar Association's Board of Trustees approved a resolution endorsing early and appropriate use of alternative dispute resolution:

WHEREAS, the diverse nature of the disputes among citizens of the State of New Jersey has clearly demonstrated a critical need for those involved in the dispute resolution process to utilize creative techniques to bring about the prompt, expeditious and quality resolution of disputes both within and outside the customary forum of New Jersey's Courts; and

WHEREAS, the utilization of techniques, known as ADR (Alternative Dispute Resolution) or CDR (Complementary Dispute Resolution) may be determined by attorneys in consultation with their clients to serve the public need in some matters; and

WHEREAS, ADR techniques are most effectively utilized under the guidance of skilled legal practitioners for an informed and willing public who voluntarily elect to participate in such procedures; and

WHEREAS, the employment of ADR and CDR techniques under the guidance of skilled legal practitioners complements our system of formal adjudication;

NOW, THEREFORE, it is resolved by the Trustees of

NOT MEDIATE. LITIGATE.

the New Jersey Bar Association that:

1. The New Jersey State Bar Association is committed to the earliest meaningful implementation of voluntary ADR and CDR procedures by New Jersey's lawyers in matters in which they regard ADR and CDR as an appropriate technique for resolving a particular client's problem.

2. The New Jersey State Bar Association urges New Jersey lawyers to become familiar with ADR and CDR techniques which may be utilized in the area of law in which they practice, by participating in continuing legal education programs or utilizing other resources available to them and, where they deem it appropriate, to inform their clients of the nature, value and risks of those techniques and guide their clients as to whether or not to participate in appropriate ADR and CDR opportunities.

The Texas Bar Association has adopted a creed supporting ADR similar to that of the New Jersey Bar resolution. Other states, such as Missouri, have adopted court rules requiring attorneys to take an affirmative action.

On November 1, 1990, Jackson County, Missouri, adopted Supreme Court Rule 17. This rule requires that within 30 days of filing a petition, motion for modification, or answer, the attorneys signing such actions shall file a certificate with the court stating that the attorneys have provided or mailed to their client(s) a preprinted Notice of Dispute Resolution Services.

The preprinted Notice contains a brief description of mediation, arbitration, early neutral evaluation and neutral fact-finding. The notice also contains information on selecting an ADR process or provider. In addition, the Kansas City Metropolitan Bar Association will provide a list comprised of individuals and organizations that provide ADR services.

The WSBA Alternate Dispute Resolution Section proposed an amendment to Washington's RPC 2.1 which was nearly identical to Colorado's amendment:

In representing a client, a Lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other consid-

Counterintelligence

The Northwest (Washington) Chapter of Army Counterintelligence Corps Veterans is looking for people who served during World War II, Korea and Vietnam.

Full membership is available to any United States citizen who served in the Corps of Intelligence Police or the Counterintelligence Corps and who were honorably discharged or retired from the service.

Contact Ely Kastenbaum, Chairman, Washington Chapter, Army Counterintelligence Corps Veterans, Inc., (ACICV), 535 Dock Street, Suite 108, Tacoma, WA 98402, (206) 383-3437.

erations such as moral, economic, social and political factors, that may be relevant to the client's situation. *In a matter involving, or expected to involve litigation, a lawyer* ***shall*** *advise the client of alternative forms of dispute resolution which might reasonably be pursued to attempt to resolve the legal dispute, or to reach the legal objective sought.*

Many attorneys believe that competent representation of a client within the litigation context requires some discussion with the client concerning alternate forms of dispute resolution. However, many attorneys do not routinely discuss such options with their clients. Amending RPC 2.1 would make disclosure very clear. It would also serve to raise lawyers' sensitivity to and increase compliance with this ethical standard, which many feel currently exists. For example, The American College of Trial Lawyers recently issued a handbook on Alternatives for Dispute Resolution which concludes that the Model Rules of Professional Conduct "suggests that the lawyer has a responsibility to counsel clients about ADR options."

It is argued that putting this obligation in the text of RPC 2.1 will not lead to significant disciplinary action or additional grievance proceedings against lawyers. Further, it will not lead to any significant additional malpractice liability, because this obligation may already exist under a common law "reasonable lawyer" standard. The rules of professional conduct are not to establish liability, but to act as a governing device, as guidelines for attorneys.

From a practical standpoint it would be very hard to prove liability. A party claiming injury under RPC 2.1 would have to 1) show causation link between the verdict and lack of it; 2) show that client would have wanted to use an ADR mechanism; 3) prove that the other side would have agreed to use the same ADR mechanism; and 4) show that the ADR mechanism would have been successful.

As court congestion increases, and more statutes and codes provide for alternate forms of resolving disputes, the implicit duty of an attorney to inform clients about ADR options increases. By amending RPC 2.1 and making the duty of attorney more explicit, we would encourage compliance and, we hope, put an end to the "real-attorneys-do-not-mediate. . . they-litigate" mentality.

Peter Marchel *is an attorney at SAFECO Insurance Companies. He is the chair of the ABA YLD Alternative Dispute Resolution executive committee.*

"PRACTICE TIP"

Suggested by **Bob Mannheimer**

Dear Client:

You have retained this law firm to represent you with regard to a legal dispute. I want to inform you now of options available to you that might help resolve this matter.

Legal disputes may be resolved in many ways. Often, the parties simply agree to settle the dispute without going to court. Other times, the parties do go to court.

More and more parties, however, are now considering alternatives to going to court when they cannot agree between themselves.

Two of the most common alternatives are arbitration and mediation.

I have enclosed for your consideration a pamphlet prepared by the Washington State Bar Association which explains what arbitration and mediation are and how they work.

As the pamphlet states, "Most people find arbitration less costly, faster and less stressful than a formal trial."

As for mediation, the pamphlet states, "Many people report a higher degree of satisfaction with mediation than with court, because they can control the result and be part of the solution. And agreed-to settlements are much more likely to be voluntarily complied with by all sides." In addition, mediation sessions are confidential and private.

I ask that you read the enclosed pamphlet and afterwards call me if you are interested in using either alternative to resolve your dispute.

Yours truly, . . .

Caesar Would

by **Hugh D. Spitzer**

With the recent increase in mandatory arbitration for small civil disputes and voluntary arbitration for much larger cases, it is easy to suppose that dispute resolution by someone other than a government-appointed judge is a novel, imaginative creation of the modern legal system.

But for the Romans who lived in Julius Caesar's time, indeed from several hundred years B.C. to at least 300 A.D., most civil matters never went to an official "judge." Instead, almost all such disputes were resolved by a lay arbitrator under a remarkably flexible and enduring system of civil procedure that worked as effectively as ours and, perhaps, more so.

By the time Caesar was conquering Gaul (58 B.C.), the Romans had developed a sophisticated legal system with both procedure and substantive law to match the complex "common market" economy that existed throughout the Mediterranean they ruled. At the center of that legal system for noncriminal matters were three key players: the praetor, an elected magistrate who functioned like a combination attorney general and presiding judge; the individual iudex, or lay arbitrator appointed to a case; and the iurisconsultus (jurisconsult) the legal scholar to whom a praetor or a iudex would turn when the legal going got tough.

The Romans had lawyers, too. Lots of them. But the creativity and responsiveness of their law came from the interplay between the prateor, the iudex and the jurisconsult, and the way that system worked, might give us a few useful ideas.

The Praetor's "Pretrial Order"

The urban praetor, elected annually in Rome by a citizen assembly, was the most significant legal official when Caesar was alive and for several hundred years thereafter. A "peregrine praetor" managed the Roman legal system outside Italy, although non-Roman citizens within the Empire were governed by their own laws. But for those under Roman law there were no permanent judges on government salary, no sheriffs or marshals, no clerks and no permanent courtrooms for civil disputes. If "Gaius," let us say, had a contractual dispute with "Sextus," and Gaius believed the two were unlikely to resolve it themselves, Gaius could have a draft "formula" drawn up, a document something like a demand for arbitration or a pretrial order. If Gaius knew something about law, he might draft the formula himself. Or, he might retain a lawyer or talk with a jurisconsult before delivering a summons to Sextus and submitting the draft formula to the praetor.

The praetor or his assistants would review the proposed formula with the defendant Sextus, and then would work with the parties to gain agreement on the wording of that pretrial order and the designation of an individual to serve as iudex, or arbitrator. We can review each piece of the formula to see how it worked.

1. The demonstratio, or first paragraph, said something like: "Whereas Gaius alleges that Sextus owes him 1,000 sesterces (the main Roman currency unit) under a contract for the sale of a horse and has neither paid the money nor returned the horse . . . ."

2. The assignment, or next paragraph, would read, "Let so-and-so (we'll call him Quintus) be iudex."

3. The condemnatio would then outline Quintus' assignment as iudex: "If it appears to you that Sextus is obligated to pay 1,000 sesterces to Gaius, then condemn Sextus to do so." The condemnatio could have in it a provision called a "taxatio," which was an upper limit on the plaintiff's recovery. This was important in matters such as personal injury, where the sum at issue was not readily obvious. The condemnation could also have a provision called a clausa arbitraria, which in essence gave a losing defendant the option of paying money or performing a specific act, e.g.: "If Sextus does not return the horse, then condemn Sextus to pay Gaius 1,000 Sesterces." This type of choice made sense to the Romans because, in their system, everything was reducible to money, and there were no equitable remedies.

4. The next section of the formula was the exceptio, a device developed by successive praetors to provide defenses that originally had not been available under Roman statutes. For example, an exceptio in our case might read, "If you find, as Sextus alleges, that Gaius had agreed not to collect within one year of delivery of the horse, then rule that Sextus shall not be required to pay until the agreed-upon time." This was known as an "exceptio pactum," or defense based on a prior agreement such as an agreement not to collect or not to sue. The praetors even developed exceptios against exceptios, such as, "If you find that the parties' pact was unlawful, then disregard that agreement in reaching your decision."

5. Finally, there could be a paragraph called a praescriptio, or restriction on the scope or timing of the case. For example, this section might delay the iudex's consideration of a matter until after the completion of a related criminal proceeding.

The point of detailing the components of this elaborate pre-trial formula is to show how it gave the praetor, who was usually well-trained in law, the ability to structure his submission to the lay arbitrator. Many upper-class Romans, the sort of men (never women) who served as iudex, had some legal education, but that was not always the case. The formula also gave the praetor the ability to shape law by shaping remedies, usually in accordance with an edict that each new praetor published upon assuming office. For example, the edict could declare that the praetor would provide an exceptio, or defense, for fraud, whenever he felt it was appropriate in a

HAVE ARBITRATED!

contract dispute formula that he issued to a iudex. The praetors used their annual edicts incrementally to adjust and add to remedies and civil procedure. Each praetor's edict looked pretty much like his predecessor's, so much alike that it became known as the "perpetual edict." But each year, one thing or another was changed, often based on public concerns and election promises, and this gave Roman law tremendous flexibility and an ability to change without relying on formally enacted statutes.

The Iudex and the Jurisconsult

Once the praetor handed a dispute over to the iudex agreed to by the parties, that arbitrator was responsible for determining the facts and applying the law, all within the confines of the formula given to him. That formula usually contained sufficient guidance for him to render a decision, much like good jury instructions that don't leave the factfinders worrying about what the law is or what it should be.

But the iudex was more than a juror, and it was not uncommon for him to discover something during the trial that needed further legal analysis. The praetor was far too busy to have every iudex run to him with a question about some fine legal point. Instead, the arbitrator seeking elucidation would often go to a jurisconsult, a man with the training, experience and time to consider the problem and render a solution. A jurisconsult would have been taught the law at the feet of a master lawyer or jurisconsult who belonged to one of the "schools" of legal theory in Rome. These were not schools in our sense, but rather separate and occasionally competing traditions of legal analysis handed down by generations of independent teachers. Aspiring lawyers would train with these teachers and work under attorneys within the same "school," much as nineteenth-century American barristers learned all they needed to know from a long clerkship under an older lawyer or judge.

In addition to teaching students, jurisconsults wrote textbooks and treatises on fields of law, published short statements of the law for practitioners and students (akin to "Secured Transactions in a Nutshell"), wrote massive commentaries on existing statutes, praetorian edicts or opinions, and rendered their own formal opinions on questions of law submitted to them by practitioners. The most-respected jurisconsultants had more than enough to do and, if they needed the money, could earn a decent living on the honoraria they received. Lawyers and jurisconsults were not "paid" for their work; since they were professionals, they performed their tasks for free, but they fully expected to receive a "voluntary" honorarium for their trouble. Many advocates and jurisconsults came from wealthy families and practiced law solely for community service or prestige. Others, like Cicero, started out with no independent wealth and relied on their work for a livelihood.

The iudex system of arbitration provided a fairly swift method of getting a case to trial, requiring very little time before governmental officials. A few standing juries were established to fix damages for certain types of injuries and penalties for various crimes, but the referral of disputes to lay arbitrators under a pretrial order remained the workhorse of the Roman civil law system until the late Empire. At the same time, the use of jurisconsults provided a way for a body of learned, and often creative, legal thinkers to develop novel approaches to problems. For example, at some time in the early development of Roman law, a father sought a way to emancipate his son, but found nothing in the statutes permitting it. A jurisconsult had the bright idea of applying an existing law to the effect that if a father sold his son into indentured servitude three times, the offspring would be free of parental power because three sales were cruel and unusual. Thus the clever jurisconsult had the father "sell" his son to a straw man three times consecutively, achieving the desired emancipation. This solution caught on, and over hundreds of years jurisconsults were responsible for many other useful developments in Roman law.

During the "principate," the early empire in the 200 years after Caesar's death, emperors began to designate certain favorite jurisconsults to speak with an imperial stamp of approval. This did not put the others out of business, but it may have led to greater consistency. At the same time, it gradually led to greater government control over what had been a remarkably independent legal system. But the tradition of independence lived on, and its strength (and the attack on that strength) is reflected in the fact that Papinian, one of the most famous jurisconsults, was killed by the Emperor Caracalla in 212 A.D., allegedly for refusing to compose a legal justification for the Emperor's murder of his own brother.

So it appears that arbitration by people other than full-time judges is not a new invention. And the Roman arbitration system had two features that might merit modern consideration: first, the use of a pretrial formula to officially delineate the scope of the arbitrator's task, and second, the arbitrator's referral of difficult points of law to an independent and learned specialist so that the arbitrator wasn't left guessing, or fabricating, legal theories about legal issues which he knew little about. There is something for us to learn in virtually every system of law that exists today or that existed in the past, but the Roman system, with a sophistication and flexibility that helped sustain the most advanced economy in the ancient western world, has some particularly useful notions.

__Hugh D. Spitzer__ is a Seattle lawyer who teaches Roman Law at the University of Washington School of Law.

SETTLEMENT NOW:

AN

by **Peter Marchel**

Superior Court
History

Settlement Now originated from Settlement Month, a cooperative effort among attorneys to help relieve court congestion by providing free-of-charge mediation services to those who filed civil cases in King County Superior Court. At the inception of Settlement Month, a civil jury trial in King County would take 29.5 months from the date of filing until trial, while a nonjury case would take 18.5 months.

Approximately 190 attorneys took part in Settlement Month. Initially, 442 cases were submitted for mediation; 278 settled (63 percent) for a dollar value of *$10,153,643.58*. This does not include the savings to the court, the parties or the attorneys in time, money and emotion. Because of the success of Settlement Month, a decision was made to create a permanent pro bono mediation program called Settlement Now.

Today, over 400 attorneys participate in the Settlement Now program in King, Kitsap, Pierce and Snohomish Counties. Between 1988 and 1992, 1,766 cases were submitted to Settlement Now, with 931 cases settling (67 percent) for a dollar value of *$37,860,099.20*. The settlement rate for the program has also increased from 63 percent in 1988 to 75 percent in 1992.

Settlement Now received national recognition when the American Bar Association Young Lawyers Division presented it as an Affiliate Outreach Program (AOP) during its 1992 Spring AOP Conference. Settlement Now is unique because neither administrative fees nor mediator fees are charged to those submitting cases to the program. In addition, the Internal Revenue Service has recognized Settlement Now as a tax-exempt organization under 501(c)(3).

Submission of a Case to Settlement Now

Once a law suit has been filed and both represented parties agree to mediate, either party may fill out the Settlement Now Mediation Request Form and send it to Settlement Now, where a mediator is assigned. In King County, Kenneth L. LeMaster assigns the mediators; Kitsap County, Christopher Bell; in Pierce County, F. Ross Burgess; and in Snohomish County, Vickie Norris.

The mediator contacts the parties and arranges for a mutually agreeable time and location (usually the mediator's office) for the mediation. Upon completion of the mediation, both parties and the mediator fill out a brief questionnaire regarding the mediation. The questionnaire is returned to Settlement Now and recorded; it also serves a quality control function regarding the Settlement Now program.

Court of Appeals Program
History

As of January 1, 1992, mandatory settlement conferences in Division I of

EXPANSION OF ALTERNATIVES

the Court of Appeals were discontinued as a result of budget cuts. Shortly thereafter, Settlement Now was asked to evaluate and make recommendations about instituting a voluntary pro bono mediation program on the appellate level.

As part of the evaluation phase, Settlement Now contacted several different programs around the country to discuss their appellate-level programs. Without exception, all the programs were administered by the courts and relied on some level of court financing. Most of the programs employed court personnel to act as either conference attorneys or settlement conference facilitators, a procedure similar to that in Division I.

Why Settlement Now?

Settlement Now has helped to reduce case backlogs in the trial courts, without the use of tax dollars or judicial resources. Because the mediators and administrators serve without compensation no cost is incurred by either party.

The purpose of establishing a Settlement Now pro bono mediation program is to provide a forum for settling or eliminating cases on the appellate docket prior to substantial costs or judicial involvement.

How Will the Program Function?

As of September 1992, a similar program to that of the Settlement Now superior court program was adopted. At the time an appeal is filed, the clerk's office sends the parties a mediation packet which contains background information on the appellate mediation program and forms for the program. All parties are supposed to fill out a case classification form (even those who do not wish to mediate). Either party may submit its case to Settlement Now for mediation by indicating a desire to mediate the case, and both parties must be willing to mediate before a mediator is assigned.

As soon as a case classification form is received from both parties, a mediator is selected. The mediator then sends out a Confidential Appeal Statement form to both parties and schedules a time and location for the mediation. The parties complete the confidential appeal statement and provide it to their mediator prior to the mediation, along with any other materials requested by the mediator.

After the mediation, both parties and the mediator complete a court of appeals mediation questionnaire and submit it to Settlement Now.

For more information regarding the Settlement Now Mediation program, write to 1208 NE 43rd Street, Seattle, WA 98105 or call (206) 545-5343.

Peter Marchel *is an attorney at SAFECO Insurance Companies. He is the chair of the ABA/YLD Alternative Dispute Resolution Executive Committee.*

NOTES FROM THE ACADEMY

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

Evidence.

In prosecution for possession of stolen property and other alleged crimes, trial court excluded testimony recounting out-of-court statements by defendant's wife, tending to demonstrate defendant's guilt. Trial court held testimony was barred by RCW 5.60.060(1), which prohibits one spouse from testifying against the other. On appeal, supreme court reversed, holding that statute did not, by its terms, prohibit third person from repeating a spouse's out-of-court statements. In any event, court said, purpose of statute was to preserve marital harmony, which purpose would not be served by applying statute to marriage that had already deteriorated. Court disapproved of language in some earlier Washington decisions, language that might have been interpreted as suggesting opposite result. ***State v. Burden***, 120 Wn.2d 371, 841 P.2d 758 (12/10/92).

—*K. B. Tegland*

Real property.

Subdivider of land showed roadway easement on plat across three lots, dedicated to these lot owners. This roadway was never actually put in. All three lots were conveyed to one person. She then built her home over route of easement as shown on plat, blocking that route, and established and used a roadway in another location. In rather obscure opinion, majority says that she "evidenced an intent to abandon the right to use a roadway in the platted location," that her blocking the route was also adverse possession, and that she "shifted" roadway to route she actually used. Dissent agrees original easement was extinguished, but argues this occurred by doctrine of merger when dominant and servient tenements came into common ownership. (*Comment.* Dissent seems to have better ground. - W.B.S.) Later, this owner conveyed all three lots back to original subdivider, who reconveyed them to different persons, purporting to create new roadway easement. Majority and dissent agree that new easement was created but, upon differing reading of facts, disagree upon location of new easement. Not a decision of great precedential value. ***Barnhart v. Gold Run, Inc.***, __ Wn.App. ___, 843 P.2d 545 (Div. 3, 1/12/93).

—*W. B. Stoebuck*

Lotus Organizer 1.0
Lotus Development Corporation
55 Cambridge Pkwy.
Cambridge, MA 02142
Contact: Barbara Baird (800) 343-5414

List Price: $149
Requires: Windows 3.x and DOS 3.11 or higher; 286, 386, or 486 processor and 3MB of hard disk space.
In Brief: *Organizer* is an inexpensive, easy-to-use and attractive PIM program that will help any attorney to get control of his or her daily appointment calendar, track important phone calls, manage pertinent client information, and tie together disparate litigation notes into a usable practice system. *Organizer* does sacrifice some flexibility in its quest for ease-of-use, but users will tend to overlook that shortcoming because of its overall, good performance. This is a recommended product..

by **David M. Sandhaus**

Background

The life of an attorney is the constant pursuit of avoiding a disaster due to some missed legal deadline, forgotten appointment, or loss of some seemingly innocuous but later important tidbit of information. For that reason, attorneys (and administrators) are prime candidates for a category of software commonly referred to as PIMs (Personal Information Managers).

Organizer from Lotus Development Corporation is a PIM that is going to meet the management and ease the out-of-control needs of many attorneys and legal administrators . *Organizer* tracks information in six different modules; calendar, note pad, anniversary, addresses, to-do, and planner. In addition, users can create their own customized modules.

Ease of Use

The six modules are arranged in a "notebook" that mimics the look of a paper based pocket organizer including "pages" with "tabs" on them for flipping through *Organizer*. In fact, *Organizer* allows a user to print out a calendar in *Day-Timer, Filofax, Franklin Day Planner, Time Manager* and other formats so that the computer calendar can be incorporated into the pocket calendar carried in a briefcase.

The notebook look of *Organizer* is not a trivial matter because otherwise computer-shy users are going to be working in an environment that is instantly familiar and comfortable to them. The look and feel of *Organizer* makes it considerably easier to learn than comparable PIMs.

Although *Organizer* is easy-to-learn it is not necessarily intuitive and you will have to spend some time with the user manual (an hour or so) to really understand the program. That is because *Organizer* relies heavily on icons (pictorial representations) to perform key program functions. *Organizers* reliance on icons means that a user need not memorize or know any particular keyboard strokes or commands to use it.

For example, to reschedule an appointment, the user must mouse click on the "magnet" icon, then pick up the appointment with the magnet and drag it to another day. Once you understand the purpose of the magnet icon (by reading the manual), it is easy to reschedule an appointment by clicking and dragging it.

Unfortunately, *Organizer* only allows you to reschedule an appointment by using the magnet icon. A better system would provide the user with a choice of rescheduling by use of the magnet icon or by calling up a dialog box where the user could manually enter the time and date of the new appointment. This criticism aside, most users will find *Organizer* an extremely easy-to-use program.

Performance

There are too many features in *Organizer* to cover them all in a brief review, but we have attempted to highlight the most important ones. *Organizer* allows a user to set up appointments in the calendar module for any time interval and length by clicking and dragging on the "time-tracker" icon. To delete an appointment simply drag it to the "wastebasket" icon and watch it "burn up." To resurrect the appointment click on the "undo" icon.

Appointments can be preset to go off with an audible alarm at a user defined time. I selected the French national anthem, "Marseilles," as my alarm tune and set it to go off 10 minutes prior to any appointment.

Costs can also be associated with any appointment, assigned to a client and later billed out. Appointments can be locked by a password to prevent their accidental deletion.

One of the nicer touches to the calendar module is the powerful and flexible recurring appointment scheduling feature. For example, you can schedule an event that occurs on the first Tuesday of every month for any given time period (say all of 1993) and then changes can be made to individual or group appointments as the need arises.

The calendar module does not allow you to schedule two appointments for the same time period. In some calendar programs that can be a problem if you use the calendar to also keep track of to-do items during otherwise filled appointment slots. However, since *Organizer* has a separate to-do module that can overlay the calendar, that shouldn't pose a problem unless you like to schedule two events for the same time.

Organizer doesn't have an option for printing out your calendar graphically either with blank information or with your appointments. It appears from the documentation that you could set-up such a printout on your own, but it should come pre-loaded with the software. You can print out your appointments in many non-graphic formats.

While the calendar module will handily and easily keep track of appointments and meetings, I wouldn't recommend this product as your legal calendar. It doesn't have the reporting or the required critical date tracking capabilities of a full fledged legal calendar.

The to-do module allows a user to rank to-do tasks by priority. The tasks are color coded to indicate their status i.e.; green for current, red for overdue, and blue for future. You also get the satisfaction of seeing a red line drawn through a to-do task when it is completed by you.

The address module tracks typical information such as client phone numbers, fax number, secretary's name and a note section where you can enter any text.

You can then search or sort on client addresses by categories such as "last name" or "company name" as well as any words contained in the address and note sections. The addresses can be printed out on standard Rolodex cards or other formats

The address module is accompanied by a powerful auto-dialer feature that works with a Hayes compatible 2400 baud modem. Simply dragging a client's address to the "phone" icon will cause *Organizer* to dial the phone number and run a clock on how long the call lasts.

There is a "link" icon that allows you to associate the different modules in *Organizer*. For example, you can link an appointment for "Betty Smith" in the calendar module with her telephone number in the address module. Clicking on the link icon while in the calendar module will then bring up Betty Smith's phone number from the address module.

The "notepad" module of *Organizer* is really slick. It automatically sets up a table of contents for any entry you make in the notepad. Separate sections and subheadings in the table of contents can then be created for subsequent information entered into the note pad.

For example, you could create a notepad heading entitled, "Smith file." Then, as you take additional notes on the Smith case, they can be associated with the "Smith file" heading in the table of contents but listed in separate sections. I think some attorneys are going to become very creative with this automatic indexing feature and create entire practice systems (e.g., a section on the special statute of limitation rules for medical malpractice) and litigation management systems with the note pad feature.

The notepad, like other *Organizer* modules, can be linked together. For example, clicking on the link icon in the calendar module for an appointment with "Betty Smith" will bring up all the linked Smith case information that has been entered in the notebook module.

Searching for information in the notepad module is easy. Click on the "flashlight" icon, enter the description of what you are looking for and *Organizer* finds the relevant information.

Organizer comes with some nice security features too. *Organizer* can be set to automatically save itself at user-defined intervals as well as well back itself up to a *.bak file. There are other powerful features as well as some lesser modules to *Organizer*.

Summary

There are better Windows calendar programs (*OnTime* from Campbell Services, MSRP $129.95) and there are more powerful Window PIM products (*PackRat* from Polaris Software, MSRP $395), but for all-around power, price and usability, Lotus Organizer is the one to beat.

***David Sandhaus** is an attorney and a member of the Washington and California state bars. He is nationally published and a frequent speaker on law office automation He can be reached at (509) 448-8757.*

Recovery is Not a Four-Letter Word

It's gotten so that recovery from drugs or alcohol is almost a cliché (Murphy Brown, Sam Malone) and certainly a source of great humor ("Saturday Night Live"'s Stuart Smalley). *Time* magazine even suggests that Bill Clinton will be the "recovery President," and Al Gore is a long-time exponent of The Program.

Convinced that the "In the LAP" column, though not the first to address this subject, need not be the last, I offer the following:

1. "Nobody's gonna tell me what to do with my life!" Well, maybe. The plain fact is that it takes some level of crisis to get someone into a drug and/or alcohol recovery program. No one I know was just wandering serenely through life and one day decided to duck into a twelve-step meeting.

When the door of my life was rudely kicked in over three years ago, my reaction was first rage and then revenge. I was hit between the eyes with a threat involving my children and my job, and it came from a particularly malevolent source. "How dare that #@*! have the audacity to criticize *my* life?"

My feeling today is one of thanks. How this transformation took place would take more telling that this space allows. For now, accept the fact that this reversal is not unique.

What happened is that I ended up telling *myself* what to do with *my* life. It was *my* misery and *my* powerlessness over drugs and alcohol that convinced me to try to make a change.

2. Being forced into recovery is not all bad: it could be worse. Some people die from alcohol or drug abuse. Some people kill others. Most people I know have hurt others around them and have treated themselves as badly or worse.

The decision to do something about the situation can be motivated by fear, desperation, pressure from family or friends, or a cop and a judge. Then, all that is suggested is that you give yourself a chance and listen to what's being said for a while. In my case, I decided that time was awastin' and that I deserved to give myself a break.

Compared to the lengths I went to and the time I spent obtaining, using, protecting, paying for, lying about, and suffering from mind-altering substances, the time learning about recovering from addiction has been small indeed.

3. Was it drugs, or alcohol, or both? Of course, recovery's not for everyone. People who drink aren't necessarily alcoholics. I do submit, however, that there is no such thing as a "casual" drug user.

The questions I eventually asked myself were (a) whether my life was being adversely affected by the things I was putting in my body on a regular basis, and (b) if I could stop if I wanted to.

For some time, I knew I hated what drugs and alcohol were doing to me and my family. For whatever reason, I couldn't quit, despite trying many times and making promises to myself. I kept breaking the promises, and I eventually grew depressed about setting myself up to fail.

4. "I failed, and I'm a loser because I ended up in treatment. Sure I've got a little problem, but the cure sounds worse than the disease." I don't trust statistics any more than the next person, but I can't help believing that as a class of business people, lawyers are particularly susceptible to drug and alcohol abuse, not to mention myriad other addictions out there. It seems to come with the territory.

Most of the people I have met in recovery are talented, assertive, fairly—to-very—bright, Type A folks. It's been like looking in a mirror, if you'll pardon the self-aggrandizement. Alcoholics I know include partners in large Seattle law firms, one of our Association presidents, doctors, business owners, entrepreneurs, authors, preachers, and just ordinary, wonderful folks. We share lots of laughter, a sense of personal spirituality and warm relationships.

It turns out that even lawyers can admit they are powerless over some things and live to tell about it. (By the way, the 1993 "International Lawyers in Alcoholics Anonymous" annual convention is in Cancun for four days.)

5. "Time to wind this up, Counsel." I know that if I had been reading this a few years ago, my prurient interest might have got me through to the end, but to apply it to *moi?!* No way. So what's my motive here? Just a little inside information for what it's worth. You may not have needed to hear all this, but somebody you know probably does. I have not known a person to fail in recovery once he or she decided the pain was bad enough and was honestly willing to change. My life has never been better, and I've never felt as comfortable in my own skin doing what we do for a living. I am always pleased to talk with anyone in absolute confidence about this subject, and so are others among your peers.

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.

Special programs for the Job Hunters' Support Group:

April 13, "How to Write a Resumé," Carol Vecchio, of Vecchio & Associates.

April 27, "From Law to Arts and Back Again?" Lauren Goldman Marshall, will continue to talk about her decision to leave the law for the theater.

May 11, "Successful Networking," Jim Latting.

Call Joyce Elven at (206) 727-8268 for information.

Macintosh Law

by **Bill Trippett**, *L.A.W. BBS Sysop*

As popular as the Macintosh computer has become for heavy graphics and desktop publishing applications, it has not made much of a dent in the law office market. Still, many of us have enjoyed the range of uses, flexibility and personal productivity enhancement offered by the Mac (only recently approached by the PC world with the advent of Windows). Although the Macintosh has generally cost more than an equivalent DOS-based PC, that advantage has faded in recent months as Windows has become more popular. The storage and memory requirements of a PC configured for Windows is considerably greater than for the equivalent Macintosh. In addition, the speed penalty caused by Windows has required PC users to upgrade to faster and faster models. Even so, it is the author's opinion that the multitasking flexibility of the PC does not approach that of the Mac, even with windows. It is ironic that the once well-worn complaint that the Macintosh did not have access to as many applications as the PC has now turned around with the advent of Windows, as software manufacturers scramble to produce versions of their applications that are Windows-compatible, they have had to find ways to compete with the sometimes-hostile world of the PC. That communication has been made simpler in recent years with the introduction of translators, some of which are now built into the word processing software. This article describes the use of the Macintosh in a small law office as a productivity tool.

When personal computers first started becoming popular, the marketplace needed a set of software called a "system" that was sufficiently flexible to permit software developers to put together new programs. Into this vacuum jumped Microsoft with a Disk Operating System (MS+DOS) that filled the bill and made Microsoft a household word. Still MS+DOS was complicated and difficult to learn and, in its initial form, had substantial limitations. But soon a number of significant "programs" were on the street, including WordPerfect and Lotus. The developers of the Macintosh saw a different way to handle the system issue. After several intermediate starts, Apple Computers put together an operating system based on what is now known as the

+Graphical+
+User+
+Interface+

(or GUI, pronounced [Goó • ey]). Using such a system the screen showed the user exactly what was to be printed on the page. This

+What +
+You +
+See +
+Is+
+What+
+You +
+Get+

(or WYSIWG, pronounced [wí•zee•wig]) feature opened the door to a number of opportunities for the Mac, including banks of font styles, graphics and, ultimately desktop publishing.

In the mid-'80s the development of the Mac promised much but still could not compete head on with the PC. Sellers of PCs noted, correctly, that the availability of software for the Mac was limited, most offices used PCs and thus the ability to move electronic media back and forth was limited, and hence that the Mac was just a toy. Now, ironically, the PC world is moving toward the GUI with the advent of Microsoft Windows and thus the argument about availability of software has reversed itself.

Neither of the original objections to the Macintosh hold true anymore. Even before the advent of networks that now permit the Mac and the PC to be connected together, Apple had released software that permitted the MAC to read disks created on a DOS-based machine. In my office, for example, I was able to "download" the state-mandated domestic-relations files that were created on a PC and convert them to use on the Macintosh with little effort (other than the effort involved in these horribly drafted documents themselves). Microsoft, having created the software that made the PC, did the same thing for the Mac by developing the leading word processing (Microsoft Word) and spread sheet (Microsoft Excel) programs, initially for the Mac. Other developers did the same, including Seattle' own Aldus Company, who gave us PageMaker, from the outset a truly outstanding desktop publishing package.

So what does the Mac have over the PC? From the very beginning, two things: ease of learning and use and flexibility. It has been said that the Mac can be taught to a new employee in an hour. That may be a bit optimistic depending on the training of the employee. But when compared with the original "line command" design of the original PC word processors, for example, the "point and click" design of the Mac is incredibly more user-friendly. (Thus the reason for Windows on the PC). And even with the advent of Windows, users of both PCs and Macs admit that Windows does not yet come close to the Mac in terms of what is known as "multitasking." Moreover, given the enormous appetite of Windows for memory (including both RAM and hard drive) and for speed, the cost of the Mac in comparison to an equivalently configured PC is now very competitive.

Well, what is this multitasking thing, you ask? Simply stated, it is the ability to have a number of software programs operating at the same time, to switch back and forth between them without quitting one and starting the other, and to copy information from one application to the other, again without quitting. In my office I will often have as many as four or five applications open at the same time. These include WordPerfect, Microsoft Excel, my electronic Rolodex, Aldus PageMaker and Time Slips. Other software on the system that can be opened on a moment's notice includes the office accounting software with all the records available, communication software (for connecting to the WSBA L.A.W. BBS, LEXIS/NEXIS, and other data sources, including CompuServe), graphics applications and scanning software. So, while I am drafting an agreement using stored provisions I have accumulated, I can immediately look up a client's phone number without losing my place in the draft, pull up his last bill, call him and return to the draft with no more than a few clicks of the mouse.

To make things even easier, Apple has now included all the hardware and software (except cables) to connect Macs together. This networking capability now allows me to review work done on other machines in the office (as long as the work is stored on the associated hard drive). No special systems are necessary to do this, and for the few computers that are found in a small law office, the system is quite satisfactory.

Next Month I will describe how the Mac is used in connecting with the Law BBS for purposes of obtaining materials stored there or communicating with others who use the BBS.

Using the L.A.W. BBS with a Macintosh Computer System

One of the resources available to the lawyer with the right equipment is the Legal Access in Washington Bulletin Board, (L.A.W. BBS). It's one of many tools that are available to the modern lawyer through the use of computers and peripheral hardware.

How does a Mac user take advantage of it? The short answer is the same way a PC user does: with a modem and some communication software. Access to the functions offered by the BBS are fully as complete for the Mac user as for PC user. Problems arise only when materials created on one platform are used on another. (More about that later.)

This article is limited to how to gain access to the L.A.W. BBS with a Macintosh Computer, how to use the primary functions of the BBS, and how to take advantage of some of its resources by downloading and uploading. It does not describe the full range of services available. For more complete information, refer to earlier versions of the *Bar News*.

Mac Plus (ca. 1986?)

All Macintosh models have come equipped with a socket on the back called a "modem port." This socket is used to connect the computer to a "modem," which is the acronym for

+MO+
+dulator+
+DEM+
+odulator

The purpose of a modem is to convert information contained in the memory of the computer into a stream of coded information that can be sent over a telephone line. Some of the earliest modems were built by Hayes and used a rather archaic coding system for sending messages. Trying to send messages using that system required considerable skill and learning, so they were not very popular for many non-techies who merely wanted to communicate, not learn a high-order mathematical language.

Fortunately, the software manufacturers came to our rescue fairly early. Hayes itself developed some software, known as Smartcom, that would permit Mac users to take advantage of the intuitive character of the Mac for setting up and operating a communications link. One still had to know a little about communicating between computers by telephone, but most of the difficult stuff was explained in the software manuals.

So the first step in communicating with another computer is to get a modem. There are a great number available on the market. Some are sold through computer distributors with packages permitting access to services such as Prodigy. The choice depends on how many bells an whistles you want. Many modems are being sold these days with fax capability, permitting the sending and receiving of faxes directly from the computer. Although I have used several such models, to date I have not found one that is any simpler than sending the fax the old-fashioned way so unless you simply want the fax capability without the cost of the fax machine, don't bother.

The more important issue for purposes of choosing a modem is its speed. The speed of a modem is measured in bits per second (bps), which translates to the time it takes to send a particular document over a telephone wire. Many modems are now reaching speeds of 14,400 bps, with 9600 bps becoming fairly common. High-speed modems also require specialized internal protocols that permit communication with other modems at high speeds. The nature of these protocols is beyond the scope of this article other than to urge caution before buying a high-speed modem.

The more commonly available modem has a transfer rate of 2400 bps, which is a perfectly adequate number unless you intend to do a lot of work over the telephone. The higher transfer rates are considerably more expensive, too, so start out slowly if you do not have a significant need for higher speed. The L.A.W. BBS fully supports 2400 bps and should be perfectly satisfactory for new users.

Software

The next issue is the software to use. The author has used several different software packages, including Smartcom, by Hayes, and White Knight by The FreeSoft Company. The latter is preferred by many Mac users and provides a great deal of flexibility in communicating by modem. The software package is like any other application on the Mac. It is opened by a double-click on its icon or any of the other standard methods. Setting up the software is well documented in the manual that comes with White Knight and will not be repeated here other than to confirm that the serial port settings to use for communicating with the Law BBS are: baud rate - 2400, parity + none, data bits - 8, stop bits - 1, and duplex - full. Other options are described in the White Knight manual and can be customized for your own needs.

Now that you are set up to connect to the L.A.W. BBS, how do you do it? Follow the instructions in your software manual to set up the call to the BBS. On the Mac that can be as simple as pulling down a menu and choosing an option that permits entry of a number. On White Knight that option appears under the Service menu with the listing "Dial or Redial." If you are in the Seattle area you can use (206) 727-8312. Once that number has been entered, hitting "return" or clicking on "ok" will start the process of dialing. The operator needs to be registered with the BBS. The procedure for registration appears on the screen.

Once connected, you are asked to log on using your first and last name and a password that you chose when you first signed up for the service.

Now that you are logged on, you have the full range of the services that are available to any other user. While the details of those services is beyond the scope of this article, some special idiosyncrasies to Mac users deserve special mention.

Mac v. PC environments

Many BBS users have taken the time to "upload" forms or documents they have prepared as templates for other users. I have used many of these documents for services ranging from wills to domestic-relations forms. Not all such documents are compatible with the Mac, although most test (e.g., word processing) and spreadsheet based products are. Still you need to know how the text has been stored.

Many of the more-routine documents have been converted to a ASCII text format that permits virtually any decent word processor to read them. The trouble with these documents is that a "hard return" (analogous to the carriage return on a typewriter) is placed at the end of each line. In order to fully use these documents as word processor documents, these hard returns must be removed, a time-consuming task for a large document. A better way is to convert the document to the word processor you are using, something which many later versions of word processing software will do for you automatically. An alternative is to run the document thorough a conversion program such as MacLink PC. I use MacLink a great deal for its flexibility in stripping out those returns and line feeds that are incorporated in ASCII text documents so that they are ready to use with Microsoft Word or WordPerfect for the Mac. Similar translations can be made with spreadsheets and desktop publishing applications.

Another problem that faces Mac users is the decompression of files that have been compressed using PC-based applications. Many of those files contain an extension of .ZIP. Users do not typically use extensions of this sort given the greater number of characters that may be used in filing Mac documents. If you intend to communicate back and forth between the Mac and a PC, however, it is wise to conform to the stricter PC file-naming conventions. In other words, limit your filenames to eight characters, and avoid using symbols which are forbidden in the PC filename environment.

These files have been compressed so that they do not take as much space in the library of the BBS and can be transferred quickly over the modem. Once they have been transferred, however, they must be decompressed. There are several of these utilities in Directory 43 of the BBS library which will permit you to "unzip" .ZIP files and then use them on your own word processor.

I have not described the actual process of downloading these documents. You will find it in your communication software manual, and you should follow those instructions. I suggest that you use the ZMODEM protocol, however, as I have used it without any problem. ZMODEM offers advantages over the older Xmodem and other protocols, such as Kermit, Q and Y. (See box at right.)

The L.A.W. BBS Library

One of the most useful tools on the L.A.W BBS is the library of case law, RCWs and other services that are hidden behind "Door 4." Searching for specific words or statutes can be done fairly easily. The BBS does not guarantee the up-to-date character of these materials, even though there is a lot of effort to keep them current. They are not "official sources" of the information, either, so you use them at your own risk. Still, I have found them to be very handy for most purposes and much cheaper (free) than the commercial services available.

Using these services can be obtained through the BBS itself.

In summary, you Mac users should not be intimidated by the fact that the L.A.W. BBS was set up by dinosaurs using PCs. The services available are fully accessible to the Macintosh environment and with a bit of work you, too, can draw on the incredible value of its features for the relatively small investment of from $0 to $30 per quarter, depending on how much you want to use it.

About modem protocols— that alphabet soup:

Most built-in "free" modem software offers Xmodem, the grandfather protocol. Since its development, significant improvements have been made.

Zmodem protocol offers three important advantages over others:

1) "Crash recovery" (upload/download restoration). If your connection is severed during file transfer, you can redial. When the connection is made again, you can ask for transfer of the same file, and Zmodem will continue from where it left off.

2) Speed. Depending on line noise, Zmodem averages about 230 characters per second with a 2400 baud modem compared, for example, to Xmodem which handles 80-160 characters per second.

3) Ease of use. Zmodem sends filenames to the receiver, who can just sit back and receive without typing them in. Other protocols require the recipient to specify filename(s).

Ymodem protocol has the same advantages, with the exception of crash recovery.

—Editor

L.A.W. BBS has updated the R.C.W.s through 1992

Addressing the Crisis in Legal-service Funding

by **Ken Davidson**

Imagine your caseload has increased by 30 percent over the last 12 years. Your staff salaries have nearly doubled, as have all your other costs, except malpractice insurance, which has quadrupled. Meanwhile, your revenue has increased by six percent less than the rate of inflation. Would you have difficulty serving your clients? Such is the dilemma facing directors of legal services programs for the poor here and across the nation.

According to census data, the poverty population in Washington increased from 550,000 in 1980 to 702,000 in 1990. Not counted in that data is our growing migrant worker population (fourth-largest in the nation) and institutionalized poor persons, who together would bring the state's poverty population to an estimated 950,000.

While the need has increased significantly, resources for legal services for low-income persons have seriously declined, after adjustments for inflation. Federal funding for legal services was cut by 25 percent in 1981 and has remained unchanged for 12 years. Increased costs of operation over the same period have cut deeply into the buying power of that funding. Loss of federal funding was somewhat offset by grants to legal-services programs from the Legal Foundation of Washington, which funds them and bar association pro bono projects from interest on lawyer trust accounts (IOLTA). However, recent declines in bank interest rates have resulted in a 12 percent drop in Legal Foundation income in 1991, an additional 27 percent drop in 1992 and yet another drop of 17 percent projected in 1993.

The American Bar Association, the Legal Services Corporation and Congress each set a standard in 1981 of providing two legal-service staff attorneys for every 10,000 persons living in poverty. In Washington, that ratio was obtained briefly in 1981, before the federal-funding cut. Today the state's ratio is two legal-service staff attorneys to 20,000 poverty population—50 percent below the standard.

Pro bono programs sponsored by bar associations have helped greatly in this crisis, but they cannot close the gap. A recent ABA study found that as many as three out of four low-income persons cannot get legal representation in civil matters when they need it.

To address this crisis, the WSBA Legal Aid Committee has recommended that the Board of Governors take three actions concerning funding for legal-service programs:

- urge our congressional delegation and the Clinton administration to restore federal funding;
- vigorously support reauthorization of the so-called Filing Fee Bill, which provides modest state funding of legal-service programs from part of the last increase in court filing fees; and
- request the Washington State Supreme Court to amend APR 12 to clarify that Limited Practice Officers (LPOs) must comply with the IOLTA rules.

The first two proposals are self-explanatory, but the third bears further explanation.

Shortly after ruling that handling a real estate closing is the practice of law, the Supreme Court adopted APR 12 to allow escrow officers the opportunity to be licensed for the limited purpose of closing real estate transactions. There are now 1,200 LPOs, many of whom run the escrow operations of title insurance and escrow companies. Like an attorney, an LPO must pass an examination and take an oath of office. They, like attorneys, can close routine real estate transactions. LPOs prepare documents, receive and disburse funds and generally oversee the closing.

While they function like attorneys, LPOs at title and escrow companies apparently do not believe that they are subject to IOLTA rules, since their banks make no payments to the Legal Foundation for interest on their pooled trust accounts. In order to land the LPOs' large noninterest-bearing trust accounts, some banks pay "accounting charges" which essentially finance the LPOs' computer systems through corporate affiliates. Other banks simply enjoy a huge windfall from these accounts.

The Legal Aid Committee has challenged this practice and asked why a person admitted to practice for *limited* purposes should not be subject to the same IOLTA rules as a *fully* licensed practitioner. Why should interest on monies deposited with any LPO in a closing produce a private windfall, while interest on monies deposited with a lawyer in a similar closing goes to the public good under IOLTA? To end this disparate treatment of lawyers and LPOs and to generate more revenues for the Legal Foundation, the Legal Aid Committee has recommended a simple amendment to APR 12, which expressly states that persons admitted under APR 12 must comply with RPC 1.14 (the IOLTA rules) in the same manner as a lawyer.

If we are serious about providing access to justice for all, then the Court, the Legislature, Congress, the president and the bar must make every legal effort to assure adequate funding of legal-service programs now.

Kenneth Davidson *is a member of the Legal Aid Committee, a co-founder and past president of the Eastside Legal Assistance Program and a private practitioner in Kirkland.*

NEWS FROM HOME

Chase, Haskell, Hayes & Kalamon, a Spokane firm, has announced that **Brent T. Stanyer**, 32, has become an associate of the firm. He's a graduate of Walla Walla College, Loma Linda University, Claremont Graduate School and Gonzaga University School of Law, where he was a Thomas More Scholar and associate editor of the law review.

Richard L. Griffith and **Michael P. O'Connell** have joined the environmental law group of Stoel Rives Boley Jones & Grey, Seattle office, in an of counsel capacity. Griffith is a former assistant U.S. Attorney in Denver and most recently practiced with Heller Ehrman White & McAuliffe in San Francisco. O'Connell is former general counsel to the Hopi Tribe, assistant reservation attorney to the Colville Confederate Tribes, and reservation attorney for the Quinault Indian Nation.

Bruce Kaser has left Barnard, Pauly, Kaser & Bellamy in Seattle to join the intellectual property department of Miller, Nash, Wiener, Hager & Carlsen's Seattle office.

Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim has announced that four new associates have joined the firm. **Sam Alberts**, **Matthew A. Reiber**, **Sandra J. Rovai** and **Annette Thompson** practice in the firm's Tacoma office.

West One Bank, Washington, has named two lawyers to its legal department staff. **Pamela Myers** is vice president, general counsel and corporate secretary and is responsible for managing the provision of legal services to the bank's Washington operations. **Peter Mucklestone** has joined the bank as a legal counsel, having served in the legal departments of various Washington banks over the past nine years.

Richard G. Hill has been elected secretary and a member of the executive committee of the Urban, State and Local Government Law Section of the American Bar Association, and has been appointed to the Affordable Housing Forum for the ABA. Hill is chair of the land use practice group at Foster Pepper & Shefelman in Seattle.

Sharon Kloss, formerly with Gevurtz, Menashe, Larson, Kurshner & Yates, has been named planned-giving director for the Salvation Army's Cascade Division, headquartered in Portland.

Charles R. Wolfe has joined Schwabe, Williamson, Ferguson & Burdell as a partner and member of the firm's environmental and land use practice section. He has previously practiced with LeSourd & Patten in Seattle, and with Robinson & Cole, a large Connecticut firm. Later this year he will co-chair both the Western Wetlands Conference in San Francisco and a panel on management and protection of state wetlands at the American Planning Association's national conference in Chicago.

Bogle & Gates has announced that **Charles W. Lean**, former section chief and senior counsel of the Ecology Division of the Washington State Attorney General's office, has joined the firm's environment and land use practice group in Seattle.

Barbara Vining moved from the Wahkiakum to the Cowlitz County Prosecuting Attorney's office in January, succeeding **Tom Ladouceur**, who went into private practice.

Dan P. Danilov has been appointed legal adviser to the Consulate General of the Russian Federation in Washington, Consul General **Georgi Vlaskin** announced in December. Danilov practices in the immigration law field and is a former honorary consul general of the Republic of Honduras.

John C. Black, **Robert A. Dunn** and **Joel C. McCormick, III**, formerly principals in the Spokane firm of Winston & Cashatt, have opened the law office of McCormick, Dunn & Black, P.S. in suite 200 of the Fernwell Building, West 505 Riverside, Spokane 99201, (509) 455-8711. They continue to concentrate on the representation of contractors and construction clients, as well as on litigation in the fields of general business, commercial, environmental, employment and personal injury law in Washington, Idaho and Alaska.

After a two-year trip around the world, **Stephan J. Francks** has rejoined Short, Cressman & Burgess in Seattle. **Chris A. Legacki** and **Karen A. Gruen**, graduates of the University of Michigan School of Law, have also joined the firm. Legacki concentrates in the area of labor and employment law; Gruen in employment and labor law and general litigation.

Attorney General **Christine Gregoire** has named **Elaine Rose** assistant attorney general for governmental relations. Rose was previously a lobbyist for the City of Seattle, and lawyer for a state senate committee. **Narda Pierce**, former assistant director for waste programs at the Department of Ecology, has been named solicitor general. Her position is a new one in the Attorney General's office, and will oversee AG opinions, major appellate cases, and major litigation.

Foster Pepper & Shefelman has announced that **Grover E. Cleveland** and **Mary L. Beyer** have joined the firm's Seattle office. Cleveland emphasizes municipal law and litigation in his practice; Beyer's fields are litigation and technology business planning. The firm has also added **Anne W. Glazer** (litigation and trade regulation), and **Jeremy R. Larson** (litigation).

Schwabe Williamson Ferguson & Burdell in Seattle announced in February that **Robert F. Kehoe** and **Vincent T. Lombardi** have joined the firm. Both are former clerks to the firm. Kehoe practices in insurance defense, admiralty, maritime and environmental law. Lombardi's practice centers on commercial and business litigation.

Joel D. Cunningham, a partner in Williams, Kastner & Gibbs in Seattle, has been named a Fellow of the American College of Trial Lawyers. He was inducted into the 4,600-member organization at its annual meeting in London last October.

Heller Ehrman White & McAuliffe announced in January that **Timothy H. Butler** and **Polly L. McNeill** have become partners in the firm. Both work in the firm's Seattle office.

Perkins Coie, based in Seattle, announced the election of eight new partners in January. They are **Donald C. Baur**, **Bruce M. Brooks**, **Brentley M. Bullock**, **Gregory Gorder**, **Michael E. Kreger**, **Craig E. Shank**, **David R. Walton**, and **Colleen S. Yamaguchi**. **Edward G. Johnson** and **Deborah J. Phillips** have become of counsel to the firm.

CLARK COUNTY REPORT

by JOHN F. NICHOLS

Why ask why? or five unanswerable questions.

From day one, law students are drilled to never ask Why? on cross exam. Why? Because you don't want to hear the answer. Due to the lack of publishable scandalous material, I have compiled a list of questions that you don't want to hear as they are basically unanswerable. The most common example being, "When did you stop beating your wife?" These questions appear to be much more innocent than the above, and yet no matter how you answer them, you are going to be in trouble.

1. "Hon, do you think I need to lose some weight?"

While technically not a question that comes up in a legal context, the incorrect answer will invariably lead to a hefty retainer. The correct answer? Lie, especially if he/she says, "Be honest."

2. "Are you ready to go to trial?"

This is usually asked by the judge while you're complaining about the other side's procrastination. If you answer, "Yes, sir," you'd be lying and risk the chance of the judge giving you a quick setting. If you say "no," then there goes your argument about the other side.

3. "This is Joe Blow, what's going on with my case?"

This query is a two-parter. First, you don't remember Joe from Adam. So you have to engage in small talk to try to identify him. Then you have to locate the file; dictate a demand letter; then tell Joe that everything is tied up with the secretary. I suppose with computers at every desk this problem will soon be resolved. Until you get networked, learn to tread water while dictating.

4. "Is that counsel's best argument?"

This is invariably asked by the judge while defending against a summary judgment motion. If you answer honestly and say, "Yes and it's my only one"; you're dead meat. If, however, you respond with, "Heck no, your honor, I'm just getting started," you now have to make up something in a hurry and rely upon that universal authority, "as found in 15 Am. Jur. 2d."

5. "Got time for a quick question?"

This could be posed by almost anyone—client, secretary or partner. The only thing certain is there's no such thing as a quick question. If you answer, "Yes," better pour yourself another cup of coffee avec caffeine. If you say, "No way," you miss out on a potential paying client; billable hour; or a reciprocal query of your co-worker.

Obviously, these are not meant to be an exclusive list but merely the first response to question no. 6, "Is the Clark

County Report ready to be picked up?" Surely you have some pet question you dread hearing. If so, submit same at your convenience. In the meantime, ask your spouse, "Notice anything different about me?"

EAST KING COUNTY REPORT

by MARIANNE MOSCHETTO

Last month **Jane Rhodes**, the South King County Reporter, came to our monthly membership meeting to see us on the Eastside. In return, I climbed into my Volvo-mobile one February evening to travel to the Federal Way Executel with the mission of reporting on the doings in the south county.

Like the upwardly mobile yuppie I am, I was the only one to arrive on time. Soon, however, **Dick Jackson** joined me in the bar, followed by **Gary Faull**. Instead of his lawyerly three-piece suit, Gary was attired in black shirt. What did that mean, I wondered? His office-mate, **Ron Mattson**, made me feel more comfortable with the familiar and traditional exchange of business cards. Perhaps they did things here the way they do in Belle-vwah. Then along came the Southend's master of storytelling and jokes, **Andy Weiner**, and I soon knew that the evening was going to be different.

As more people arrived, South King County Bar president **Rod Stephens** herded the bar bunch into the banquet room. Of the 23 people who attended the membership meeting, I already knew about half of them. I saw my friends **Pat Burns** of Auburn and **Gail Crawford** of Enumclaw. I became reacquainted with **Mark Davis**, with whom I had cases many years (how many, Mark?) ago, and his new ponytail. Flanked by Mark and Gary during dinner, we spoke little of law but a lot about fishing, bicycling, groused about the judges (except for district court judges **Richard Thompson** and **Woody Leverette** of Southwest Division and Federal Way Division, respectively, who attended), the planned law and justice center to be located in Kent, *E. Coli* cases, and generally had a great time. I even got introduced as an "honored guest."

Lest you think that it was nothing but a big party, however, the featured speaker was **Tim Ford**, who spoke of the morality of the death penalty and his appellate representation of many on death row. The questions and comments from the floor, both pro and con, after his talk were thoughtful and thought-provoking.

The lesson? Nothing more than it was fun to see everyone. And I hope to see them again soon at the South King County Bar Association July golf tournament. Stay tuned to your South King County reporter for details.

What's happening on the Eastside? Social activities will be happening soon, including the annual cruise in June, the golf tournament in August, plans for EKCBA's 30th anniversary bash in the fall, and our annual holiday extravaganza in December. Monthly membership luncheons will be switched to the Bellevue Inn, formerly the Bellevue Holiday Inn, where we will be joined by **James H. Clark**, who has joined the Oseran Hahn firm here in Bellevue.

PIERCE COUNTY REPORT

***by* GEORGE S. KELLEY**

The 85th annual Lincoln Day Banquet took place at Sheraton's Tacoma Convention Center. It is said that Abe himself attended these banquets in the early days. The fact that there used to be an open bar at these gatherings may account for these reports. This year's speaker was **Paul M. Zall**, the author of *Lincoln Laughing*, which is a collection of humorous stories about Lincoln. We will not repeat his funniest lines for those who did not attend, but simply refer you to your local bookstore for a copy of his book.

The banquet is also a time when new bar officers are announced and old ones honored. **Mike McKasy** is the newly elected president. **George Kelley**, your humble correspondent, is the new vice president. Now we will be privy to the innermost secrets of the Bar Association and will report the interesting ones. New trustees are **A. Corrine Dixon**, **J. Patrick Duffy** and **Thomas Cena. Daryl Graves** will be the secretary-treasurer.

Outgoing president **Mike Smith** was honored with the usual plaque and thanks for a job well-done. Someone did some research and determined that Mike, at age 34, was the youngest bar president on record. No one reported on who was the oldest.

Official opening ceremonies and tours of the new federal court building were held on the day following the Lincoln Day Banquet. The court has been relocated to a renovated railroad station which has been designated as an historic monument. The renovation was at great expense to the General Services Administration of the federal government and may represent a major portion of the current federal budget deficit.

Another renovation is taking place in the Tacoma Municipal Court, where a new courtroom is being constructed for Judge Ralph Turco. The courtroom has the usual amenities such as benches, bars and desks. It also features a private bathroom with a shower large enough to hire out for small weddings.

Steve Fisher, **Robyn Koppe** and **Richard Hoefel** have opened a new office in Tacoma's fashionable West End.

SPOKANE COUNTY REPORT

***by* JOHN RODGERS**

Anyone reporting on the Spokane legal scene must sooner or later deal with the Rookery Building. It is here painted as a character in our local association only because it is. Like the skin of our flesh-and-blood members, its smooth stone conceals a surging interior, where idealistic social philosophies wrestle with monthly rent deadlines.

Local walking tour literature has it built in 1934 and named for the huddled "rookery" of older buildings it replaced. It's a three-story Art Deco structure. One wag observed that the Art Deco movement held sway in the 1920s, and that to build one in '34 may be so daring. So, like a lot of lawyers, the place presents some flair but actually has a fairly conservative origin. It has vertical stripes of contrasting stone, topped with powdery white barrister-like terra cotta.

It stands at the corner of Howard and Riverside; once the actual, and still the official, heart of the city. Bus lines drawn in an earlier age converge at its feet, washing upon its foundations a flood of minor human affairs forever needing adjustment.

In the front, a vacant "anchor" retail space is subject to short but hopeful fits of occupancy during fall political campaigns. But, times being what they are, some ideas must be kept inside and out of view. The interior here is gained through a fissure too tiny for the bulk of the building, tucked 'round on the side between a barred doughnut stand and a satellite "cop shop" abandoned during certain parts of the municipal cycle. Within is a multitude of tiny, secretary-less suites with names ending in "... Group" or "... Associates" or "...System." Crowding upon the narrow halls are faux-walnut doors covered with yellow sticky notes and scotch-taped scraps apologizing for being locked during business hours, or admonishing "Joe" to "call Mary at home." One gets a whiff of liberality in passing the offices of the city's great charity engine, Wampum, which one day a year outdoes the Reagan crowd with an opulent ball, and the rest of the time redistributes the wealth according to strict Rooseveltian principles.

Indeed, this interior is the subject of some speculation. Perhaps, like much of our membership, it is merely responding to the dimming atmosphere outside by becoming more bright and sanguine inside. Then again, some say an irregularity in the air supply is the only possible explanation for the lawyers of the Rookery Building being helplessly unable to resist an unpopular or unusual case.

The liberal heritage of the building was assured when **Carl Maxey** and the firm of Fredrickson, Maxey, Bell & Allison set up here in 1960. The '60s and '70s being what they were, and Maxey's six-foot frame and shock of hair being the beacon they were, the firm eventually took on some of the 1,500 draft evasion cases. And the air was heavy with domestic work; Maxey set the record by filing 23 divorce cases in one day. At that time, one had to show some unsavory bit of "cause" for the thing, and the air of implacable grit about the place surely came from the flood of dirty little dramas which swirled through these halls. One, involving a man of the cloth, erupted in a murder-suicide in the hallway.

Still resident therein in **Pat Stiley**, who interned when Maxey had the space, and now has his own name in three different places on the splotched felt directory. There is good authority for the story about the long-haired intern with the curious belt buckle, sent to the jail on official business. Even when the buckle was verified "not curious," he was held until Maxey could confirm that, indeed, such a fellow worked for him! Pat still seems most comfortable when the government is sitting at the other counsel table.

Presently, **Mark C. Prothero** practices with Pat and, in the very recent past, **Annie Cole**, **Jeff Finer** and **Robyn Pugsley** added to the cacophony.

Another corner of the building is illuminated by an erudite constellation; former district court judge **Charlie Dorn** and **Brian O'Brian**. When the latter was a public defender, his systematic dismantling of the city criminal code gave "technicalities" a bad name.

Spokane Legal Services has been here since 1978, trying indefatigably to prove that people with no money have legal needs, too. Some of the lawyers who build respect and a career without ever being in the yellow or white pages are **Robin Bale**, **Gail Hammer**, **Norm McNulty**, **Jon Mueller**, **Naznine Saifi**, **Richard Sola**, **Susan Wright** and **Tom Tremain**. Superior court commissioner **Joe Valente** also springs from these precincts. Director **Jim Bamberger** even makes the heating plant sound like a lawyer's heart; some days gushing unsolicited steam about the place, other times lying cold and indifferent to any plea.

Maxey eventually left the building, after stepping in something in the elevator, and Bamberger says Legal Services is moving on, too. But the Rookery remains, a process-proof witness to young souls with backwards baseball caps, pirouetting about the sidewalk saluting one another or maybe slapping palms briefly. Across the street, in a vacant suite of what was once a locally owned savings and loan, sit police officers, no doubt enamored of our photogenic backdrop, training video cameras on the youths. On the street between, attorneys drive to the newer adjacent buildings, idly wondering what they can do to get more business.

WASHINGTON DEFENSE TRIAL LAWYERS REPORT

***by* LAURIE D. KOHLI**

The Washington Defense Trial Lawyers will hold their Eastern Washington Judges receptions in Yakima on Thursday, May 6, at the Yakima Country Club, and on Friday, May 7, at Patsy Clark's in Spokane. Like the Seattle Judges Reception which WDTL holds each October, these hosted gatherings offer the opportunity for members of the bench and bar to mingle and share stories, cocktails and assorted hors d'oeuvres. All WDTL members in the area are invited to attend.

Monthly breakfast meetings for WDTL's "Eastside" members are held on the third Tuesday of each month from 7:30 a.m. to 9:00 a.m., and are usually held at Casey's Restaurant on North Monroe in Spokane. These meetings are chaired by WDTL Trustee **Pete Johnson**. Anyone wishing more information about these meetings should contact Pete at (509) 327-5591.

"WSBA— What next?" was the topic of the speech given by WSBA Executive Director **Dennis Harwick** at the March 9, 1993 WDTL membership dinner meeting. Dennis discussed the programs, services and committee work that the WSBA had to cut to finish its 1991-92 fiscal year in the black, and the implications for the WSBA resulting from the referendum to roll back the fee increase which was approved by the Board of Governors last July. President Clinton is not the only one calling for shared sacrifices in the years ahead.

On a less somber note, the WDTL June dinner meeting has been changed from a boat cruise to an evening on the "Spirit of Washington" dinner train. An entire car has been reserved for the event, which will be held on Friday evening, June 11. WDTL members, spouses, friends and others are all invited. Those interested in attending should contact WDTL's executive director, **Nora Tabler**, at (206) 233-2930.

WASHINGTON STATE TRIAL LAWYERS ASSOCIATION REPORT

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

A special treat is in store as an adjunct to this year's convention for lucky fly fisherman who act quickly. **Brian Harnetiaux** is organizing a very special fishing trip to the St. Joe River on Wednesday and Thursday July 21 and 22. The St. Joe is one of the country's top, most-pristine cutthroat trout fisheries, and Brian's group will be fishing in an area reserved for catch-and-release fishing. Gear is packed in on horseback, and the party will hike in through some of the most beautiful country in America. The cost is only $135, and only 15 spaces are available for this expedition. Contact WSTLA or Brian for more information as soon as possible.

The other hot news on the convention front is the announcement of the special guest. None other than 'The' **Jerry Spence**, premier trial lawyer and speaker extraordinaire. We can look forward to an excellent presentation from this lion of the plaintiff's bar. However, let us not forget lions of our own. **Paul Luvera** will be once again presenting his ever-popular Baker's Dozen of hot topics in a CLE session sure to bring out the cracks in our opponents' defenses.

If you have not yet registered for the convention in Coeur d'Alene, Idaho . . . What *are* you waiting for ?!!! The location is one of the most spectacular in the northwest; the accommodations are world class; and the program looks to be one of the most exciting in years. People have been known to come to the convention solely to see what outfit **Paul Stritmatter** will wear onto the golf course, but there are other reasons. The convention is in late July this year, July 22-24. Register immediately to assure your participation in what promises to be the convention of the decade.

WSTLA has sponsored the return of last year's overwhelmingly popular Small Business People's Law School (PLS), March 13 at the University Plaza Hotel in Seattle, and March 19 at the SeaTac Red Lion. Co-sponsored by the *North Seattle Press/Lake Union Review*, *Queen Anne News/Magnolia News*, KOMO Radio AM, NW Observer and nine local Chambers of Commerce, this specialized PLS provided the public with information on forming a business, collections, insurance issues, financing, tax questions, real estate leasing and employer/employee relations. Speakers volunteered their time, and there were discussion groups after the morning and afternoon sessions to handle questions. Thank yous and a well-deserved pat on the back to all who contributed to this program. PLSs are one of the most-effective outreach programs in the State and do much to heighten the public's awareness and opinion of trial lawyers. A special mention should be made of the WSTLA public affairs staff who work so hard to make the PLS work; their efforts make the program.

For more information and schedules of upcoming PLS classes, or for information on how to sponsor a PLS, contact the WSTLA Seattle office at (206) 464-1011 or (800) 732-9251.

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

WASHINGTON WOMEN LAWYERS

The January 20 Inaugural Reception—for **Jeanne Verville**, King County Chapter president, that is—triumphs over wind, power losses, and crashing trees, an auspicious beginning for Verville, in-house at Simpson Investment Co., Seattle, and her board. *The 16th Women's Legislative Reception* on February 1 in Olympia, with WWL as the prime sponsor and **Dina Yunker** of Vortman & Feinstein, Seattle, coordinating all logistics, assembles a record audience. *Record membership increases* fill the rolls for the Capitol Chapter under president **Kristal Knutson**, Olympia, and the Skagit Chapter under **Clair Reiner**, Mt. Vernon. Justice **Barbara Madsen** joins local judges and the Whatcom Chapter, led by Everson's **Patricia Woodall**, Shepherd, Abbott & Woodall, at dinner on February 1. *In the Chief Justice's Conference Room*, Temple of Justice, WWL salutes Madsen at a February 11 reception coordinated by **Mary Sue Wilson**, Olympia. State board president **Linda Moran**, Olympia, welcomes invited guests from the Loren Miller Bar Association, the Asian Bar Association and the Hispanic Bar Association and Madsen's colleagues from the Supreme Court. *Pierce Chapter's* **Susan Schreurs**, Tacoma, cheers WWL members on to a record attendance at the traditional Tacoma Lincoln Day dinner. *Admiration and congratulations* to **Mary Fairhurst**, Olympia, nominee for WSBA president. *WWL appreciates* the esteem expressed by the Board of Governors for Fairhurst's leadership and contributions to the Bar. *Felicitations* to **Karen Sayre**, State Board representative from Spokane, partner-in-charge at the newly formed Sayre & Sayre. Stay tuned for the selection of the guest speaker for the annual dinner on October 8. Will she be from *this* Washington or the *other* Washington?

IN MEMORIAM

Wesley W. Bergman, 72, died December 12, 1992 at his home in Longview. He had been semi-retired since undergoing heart surgery in 1985.

Born in 1920, Bergman received his undergraduate and law degrees from the University of Washington, and was admitted to practice in 1948. Except for a time when he practiced in Mt. Vernon, Bergman spent his career in Cowlitz County, in association with several law firms. From 1968 to his retirement he was in practice with Cowlitz County Superior Court Commissioner David Hallin, who described Bergman as a low-key, agreeable individual.

Bergman's wife died several years ago.

Robert J. McNichols, 70, died December 20, 1992 in Spokane. McNichols was appointed to the U.S District Court for the Eastern District of Washington by President Carter in 1979, and made a reputation for himself as a judge of considerable "legal scholarship, integrity and compassion," said colleague and Chief Judge Justin Quackenbush. McNichols had been in declining health since surgery for lung cancer in April. Survivors include a sister; his wife; three children and five grandchildren.

NOTICES ADVERTISING

Professional: WSBA members only. $40/inch. Billed at publication.
Classified: Members—$25 for 25 words, each add'l 25¢. Non-members—$35 for 25 words, each add'l 75¢. Box number service—add'l $6.
Advance payment required.

Deadline: 25th of each month for second issue following. No cancellations after deadline.

Note: State and federal law allow minimum, but prohibit maximum, qualifying experience for "positions available."

Submit double-spaced, typed copy on plain paper (no phone orders) to Bar News Classifieds, 2001 Sixth Avenue, Seattle, WA 98121-2599.

PROFESSIONAL

FOR SALE/WANTED

Used law books—bought, sold and appraised. Save on Washington Reports, RCWAs, Washington Digests, Pacific Reporters, Federal Reporters, etc.—complete law library acquisition and liquidation service—John C. Teskey, Law Books/Library Services. Seattle. Phone: (206) 325-1331.

Save 50% on law books. National Law. America's biggest law book dealer. We buy/sell. Huge inventories. Excellent quality. Your satisfaction guaranteed. Free quotes. (800) 279-7799.

William S. Hein & Co., Inc. World's largest law book dealer. Extensive collection of Washington Reports and Appellate Reports, WA Digest 2nd, WA Reports 1st & 2nd, WA Law Reporters and periodicals. Call (800) 828-7571 or fax (716) 883-8100.

Law Library: RCWA, Washington Digest 2d, Washington Reporter 2d (West's compilation of Washington cases from Pacific 2d, containing both Wa. App. and Wa. 2d cases), West Legal Forms (with tax commentary pocket parts), Shepard's (hard volumes); with bookcases, if wanted. Discount for cash payment, or negotiate terms. (206) 453-9390.

SPACE AVAILABLE

Downtown Seattle Office-sharing—$150 per month. Also full-time offices available on 32nd floor, 1001 Fourth Avenue Plaza. Close to courts. Furnished/unfurnished suites, short-long-term lease. Receptionist, legal word processing. Telephone answering, fax, law library, legal messenger and other services. Contact Phyllis Huber, (206) 624-9188.

Sweeping, unobstructed view of Puget Sound (First Interstate Building, Seattle, 41st floor). Elegant law offices near courthouse. Reasonable rates include receptionist, basic messenger service, mail delivery, fax, two conference rooms, law library, fully equipped kitchen. For more information, please call Sharon at (206) 624-9400.

Prestige office-sharing. Located in the unique Bellevue Place adjacent to the Hyatt Regency Hotel and many fine restaurants. Also on location is the Seattle Athletic Club. Only three of our 42 luxury suites remain available, exclusively for attorneys and CPAs. Furnished/unfurnished suites, short-/long-term leases. Conference rooms, kitchen, file and storage cabinets. Receptionist, personalized telephone answering, word processing, facsimile and photocopies. Private secretarial stations, on-site paralegal and bookkeeping/billing services available. Enormous full-service law library on premises. Call Ted Barr/Chris Gordon, (206) 451-3961.

Prestigious attorney office space, Columbia Center, 67th floor. One, two or three offices available in April. Conference room, receptionist, kitchen, storage included. Secretarial and telephone extra. (206) 340-1440.

POSITION WANTED

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

POSITION AVAILABLE

Notice: Seattle law firm of seven lawyers seeks associate with at least two years' experience in general business practice or commercial litigation. Excellent opportunity for bright, personable individual to find niche in firm with diverse civil-litigation, commercial and corporate-law practice. Superior credentials, recommendations, and writing skills required. All responses confidential. Submit resumé to Blair B. Burroughs, Mills Cogan Meyers Swartling, 1000 Second Avenue, 30th Floor, Seattle, WA 98104.

Attorney jobs—*National and Federal Legal Employment Report*, highly regarded monthly detailed listing of attorney and law-related jobs with the U.S. Government, other public/private employers in Washington, D.C., throughout the U.S. and abroad: 500-600 *new jobs each issue;* $34-three months; $58-six months. Federal Reports, 1010 Vermont Avenue, N.W. #408-WB, Washington D.C. 20005. (202) 393-3311. Visa/MC.

Bellingham firm looking for an associate with a minimum of one year's experience in litigation, real estate and commercial transactions. Reply to WSBA Box #384.

Sole practitioner needs associate to help manage active practice. Respond to Box 383, WSBA.

The nation's largest labor and employment law firm seeks to expand its Northwest presence in Portland and Seattle. Interested attorneys with proven skills representing management in labor and/or employment law matters should contact Robert E. Babcock at Littler, Mendelson, Fastiff & Tichy, 121 S.W. Salmon Street, Suite 1500, Portland, OR 97204-2925, telephone (503) 224-8553.

General counsel: HealthGuard Services, Inc., dba SelectCare, an HMO (70,000-plus membership) located in Eugene, Oregon, seeks an attorney with at least five years' health insurance/managed-care experience to be an in-house counsel to the organization. Must be a member of the Oregon State Bar Association or make suitable arrangements to be admitted. Competitive compensation and benefits program. Please send resumé in confidence to: Alice J. Becker, Associate General Counsel, Health & Hospital Services, 1715 114th Avenue SE, Suite #110, Bellevue, WA 98004. Equal Opportunity Employer.

WILL SEARCH

Edith M. (Rogers) Moore: The law office of Michael R. Pickett, 3030 W. Clearwater, Suite 205A, Kennewick, WA 99336, (509) 783-7366, is trying to locate the Last Will and Testament of Edith M. Moore aka Edith M. Rogers Moore, who passed away on January 2, 1993. We believe an attorney in either Prosser or Walla Walla may have prepared the will. I would appreciate it if you could check your will files to see if you have a will for her or even a copy of a will. If you have any information, kindly contact me at the address or telephone number listed above.

Jim E. Whiteman: Anyone with knowledge of a will for Jim E. Whiteman of 116040 Tilley Road, Tenino, WA 98589, please contact Gayer Dominick at (206) 352-5202.

Lyle L. Grant, Jr.: Last will written approximately 1993. Resident of Lakebay, Pierce County, WA. Employee of FAA. Please contact Tisa Kosbab, (206) 838-4861, Auburn, WA.

Robert B. Patrin: Seeking last will. Died 12/92. Please contact Phil Rehberg, (206) 246-8772, 2800 S. 192nd, Suite 104, Seattle, WA 98188.

LeRoy Ambrose: Died March 1, 1993 in Ballard. In Seattle 30 years. Lost will by Seattle attorney. Copy may be in unidentified bank safe deposit box. Contact LeRoy Ambrose, Jr. at 5350 Ballard Avenue, Seattle, WA 98107, (206) 781-8661.

SERVICES

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

Triple-board-certified: internal medicine, pulmonary disease, critical-care medicine; chart review/interpretation. Literature search/analysis. (503) 288-5201.

Quality contract work, at competitive rates, by experienced litigation attorney building new solo practice. Effective legal research, writing, document-drafting and litigation support, including investigation, discovery, motions practice and other court appearances. Steven E. Tilson, (206) 355-9620.

Total quality service begins with membership in Eastside Law & Tax Library. Offer your clients the best service at the best price when you control your information costs. One monthly payment covers all your library costs, including qualified library staff. No hidden costs for library updates or filing. State-of-the-art research including Westlaw at 9600 baud, CCH ACCESS and RIA OnPoint CD ROM tax service. Now 486/33 computer with laser printer. Fax, document retrieval, word processor, paralegal and conference room available on pay-as-used basis. Corporate, individual or student memberships for attorneys, CPAs and business people.

Attorney/client referral service provided free to members. Prime location in downtown Bellevue. Ask about our two-for-one special. For more information, call Margie Hawley or Ted Barr at (206) 646-3564.

Profit from our experience! We offer more than 50 experienced contract attorneys who will assist with drafting, research and trial preparation—at low hourly rates. With one call, you get the exact help you need. The Alexander & Thomas Group, Inc. (206) 361-2707.

Contract paralegals: More than 25 years' experience, state and federal courts; complex litigation specialists, all phases; probates and guardianships; downtown Seattle offices. G &A Legal Assistants, (206) 343-0505.

Gordon Kamisar, Esq., national legal search consultant. A Washington attorney placing and recruiting attorneys throughout Washington and nationwide. Member Washington State Bar, Call (206) 392-1969 in strict confidence.

Contract attorney. Eight years' experience with a major financial institution. Experience in commercial transactions, real estate, loan transactions, workouts, bankruptcy and commercial litigation. Reasonable rates. (206) 623-0844.

MISCELLANEOUS

Sunriver Oregon/Mt. Bachelor, executive-home rental. Lovely, custom-built, quality home. Large, three-bedroom, two-bath. Wonderful amenities. Health club privileges include pool, spa, tennis, saunas. (206) 588-4876.

Vol. 47, No. 4, April 1993

WASHINGTON STATE
BAR ASSOCIATION
500 Westin Building
2001 Sixth Avenue
Seattle, WA 98121-2599

Nonprofit Org.
U. S. POSTAGE
PAID
SEATTLE, WASH.
Permit No. 2204