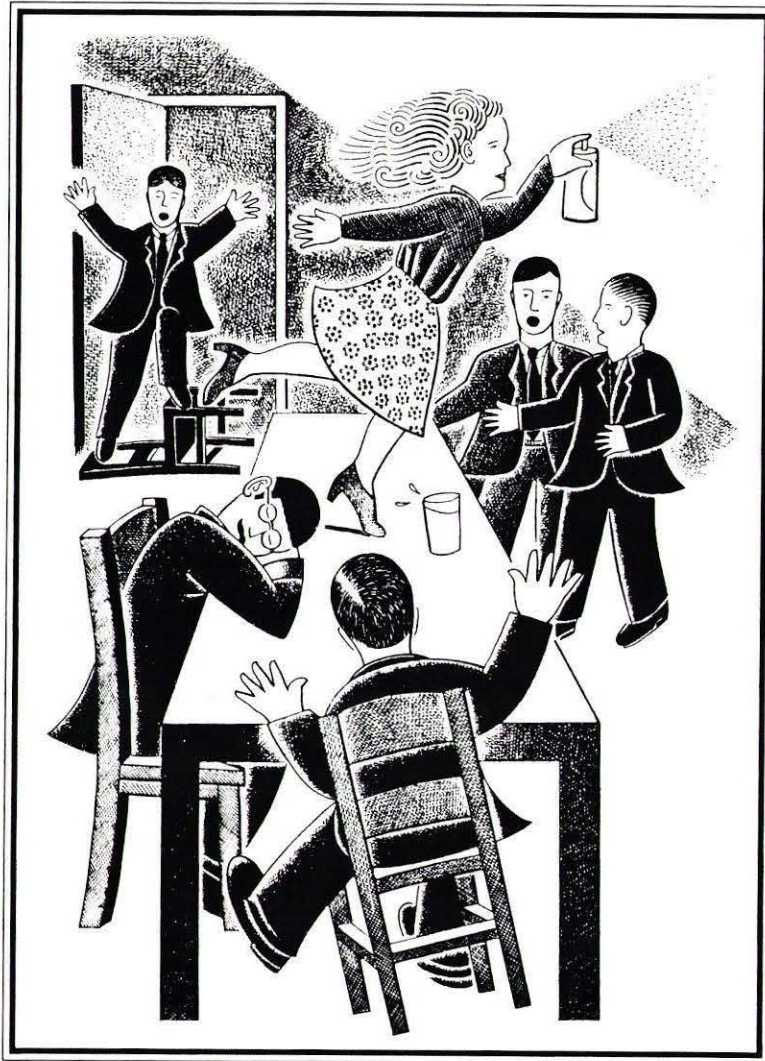


Washington State **Bar**  
**News**

Vol. 47, No. 9, September 1993



SCENE FROM *IL PARTNERSHIPIO* (SEE PAGE 40)

ANNUAL LAW PRACTICE MANAGEMENT ISSUE

- CUSTOMER SATISFACTION—THE SECRET WEAPON IN LAW FIRM MARKETING
- DISCOVERY OF ATTORNEY BILLS
- CONFLICTS: A TRUE LOVE / HATE STORY
- PARTNERSHIP

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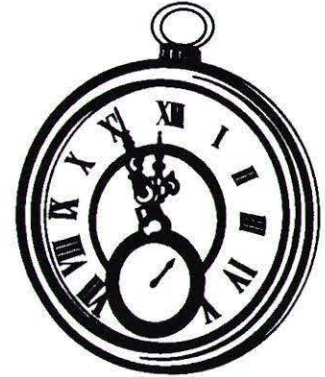
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# WSBA Membership Survey

## Time for Change?

**We need your help to  
put all the pieces together!**



- ☎ During the next few weeks, 400 of our members will be receiving a call from the Gilmore Research Group asking for opinions about the Washington State Bar Association, its activities, and its programs. Those opinions will help make the changes that you, the lawyers of Washington, feel are needed to serve the profession and the public. If you are called, please take a few minutes to answer the surveyor's questions.
- ✎ Those of you who are not surveyed by phone will be able to participate by completing a copy of the survey that will be inserted in an upcoming issue of *Bar News*. The results of both surveys will be published and made available to all members.
- ✓ The "puzzle" of what the WSBA should be and what it should do cannot be put together without your help.

Questions? Call the Washington State Bar Office, Department of Communications – 206-727-8212

## ANNUAL LAW PRACTICE MANAGEMENT ISSUE

### FEATURES

- CUSTOMER SATISFACTION—THE SECRET WEAPON IN LAW FIRM MARKETING**, by *James P. Schratz* **17**  
“Over the past thirteen years at Fireman’s Fund,” the author writes, “I’ve been subjected to hundreds of firm brochures and countless lunches and dinners.” His article distills what he thinks all those firms should have been concentrating on.
- DISCOVERY OF ATTORNEY BILLS**, by *Leonard J. Feldman* **22**  
“Cryptic billing statements may not be protected by the attorney-client privilege,” Feldman warns, thanks to a 1992 Ninth Circuit decision.
- CONFLICTS: A TRUE LOVE / HATE STORY**, by *Robert W. Goldsmith* **37**  
Sometimes, you’ll do anything to keep a client; others, anything to unload one. Neither course is easy.
- PARTNERSHIP**, by *Stanley J. Fairweather* **40**  
The octogenarian founder of Fairweather, Winters & Sommers reflects on what it takes to get to the top in this chapter from Arnold B. Kanter’s new book, *Advanced Law Firm Mis Management* [Catbird Press, 1993, New Haven, CT, (203) 230-2391].

1993 ANNUAL REPORT

CENTER SECTION

### ART CREDITS

Cover: “Il Partnershipio” (see page 40). Artist **Paul Hoffman** lives in Southbury, CT. He has been illustrating Arnold B. Kanter’s legal humor since 1981; in fact, his first regular illustrating job was for Kanter’s monthly column in *Chicago Lawyer*, which is where nearly all the pieces included in *The Handbook of Law Firm Mis Management* originally appeared. Since the pieces included in *Advanced* were written expressly for the book, Hoffman’s illustrations for it were also all new. He will soon start work on illustrations for Kanter’s next book of humorous looks at law firm life from the point of view of nonlawyers, such as messengers, copyroom personnel and librarians.

When he’s not illustrating Kanter’s work, which is most of the time, Hoffman illustrates cookbooks and natural-history books; he also does free-lance jobs for such publications as the *New York Times* (food illustrations, primarily). He has also produced books for a university press in Chicago, where one of his assignments was to go to Egypt and draw many of the ancient sites.

Illustrating Kanter’s humor is now something of a departure for Hoffman. It is the only humorous illustration he does, and the somewhat surreal style he developed for Kanter’s monthly column is not something he uses elsewhere. It was a challenge to return to his old style in illustrating *Advanced*, but Hoffman ended up enjoying it a great deal.

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

### **WSBA Policy Prohibiting Meetings in Locations Which Discriminate**

At its regular meeting on June 19, 1993, the Board of Governors of the Washington State Bar Association adopted the following policy:

*Consistent with the Washington State Bar Association's commitment to diversity and nondiscrimination, it is the WSBA's policy that no functions, official actions or official meetings of sections, committees, governing board or staff shall be held in a facility—public or private—or political subdivision that has a policy, practice, or law that discriminates on the basis of race, color, national origin, religion, creed, sex, age, disability, sexual orientation or marital status. Nothing in this policy shall be construed to infringe upon the rights of individuals to associate freely in their private lives.*

Dated this 22nd day of June, 1993.

### **And Now, A Little Class Warfare**

Editor:

I received a copy of [WSBA Executive Director Dennis Harwick's] letter of June 22, 1993 together with a copy of the resolution passed by the Board of Governors regarding meeting locations. As an individual, I believe that the Spokane County Bar Association more carefully and completely addressed the issue by setting forth a criterion with which to determine their meeting sites, by specifically stating:

Consistent with the Spokane County Bar Association's commitment to openness, diversity and a spirit of inclusiveness, strong preference shall be given to facilities that are open and available to all members of the public, and which are not private membership-based organizations.

A copy of the complete criteria is enclosed. My biggest complaint about the location of the meetings in Spokane was the fact that with a singular exception, all CLEs were held at a private club. I understand that a number of CLEs are held in a private club in Seattle as well.

The reason preference must be given to public places is that the gravamen of this situation cannot be cured by an institution simply adopting empty proclamations to rid them of the possibility of *de jure* or *de facto* discrimination. It is pretty simple to determine if an organization espouses discriminatory beliefs: just look at the diversity of its membership. Such an attitude is detectable if you have three African-American and two Asian members out of a total membership of six thousand.

I first raised this issue in Spokane because of the economic elitism combined with the exclusionary nature of the private membership of a club where bar meetings and CLEs were being conducted. While some members of the bar might enjoy the idea of meeting at an "exclusive location", the fact that the club excludes persons for whatever reasons—race, sex, color or financial or

social position—makes it inappropriate for meetings of a bar association who are meeting for the public's benefit together with that of its members. Not all members of the bar could afford to belong to a private club and not all the members of the bar would want to join a private club, but one thing is certain: if a member of the bar wanted to go to the private club on a day when there was not a bar meeting, he or she would not be allowed to enter without being a member of the club. Nor are members of the general public allowed to enter and the appearance of openness and accessibility to the bar is destroyed. The private club's charter does not change when the bar comes and goes. "Private" means private and we should not hold meetings in private facilities. I am afraid [the letter of June 22] missed the whole spirit and intent of this issue.

Economic elitism is the basis of the whole concept of a private club, which costs more money than most lawyers can afford—whether the lawyer will admit that or not—but it is still discrimination.

If you are asking me if I am pleased with the resolution passed by the state

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### SEPTEMBER

- Washington Wills in the 1990s**  
A Half-Day Institute on Current Drafting Issues  
Moderated Video Replay:  
Olympia - Hanemann, Bateman, Jones & Randall - 9/1/93  
Vancouver - Horenstein & Duggan - 9/22/93  
Ellensburg - Cone, Gilreath, Ellis, Cole & Korte - 9/30/93  
4.25 CLE Credits \$85 video replay tuition
- Protecting Your Practice Against Malpractice Claims, Discipline and Litigation**  
Seattle - Sheraton Seattle Hotel & Towers - 9/10  
4.0 CLE Credits Free Tuition - Limited Enrollment
- Essentials of Evidence**  
Coupeville - Whidbey General Hospital - 9/15 & 9/29  
6.5 CLE Credits \$95 video replay tuition
- Water Law in Transition**  
Seattle - WA State Convention & Trade Center - 9/17  
6.5 CLE Credits \$150
- Advising the Small Business**  
Seattle - WA State Convention & Trade Center - 9/17  
Spokane - Ridpath - 9/24  
6.0 CLE Credits \$135
- Intellectual Property Law Advocacy**  
Seattle - WA State Convention & Trade Center - 9/17  
4.0 CLE Credits \$95
- Environmental Law for Business and Real Estate Lawyers**  
Seattle - Sheraton Seattle Hotel & Towers - 9/24  
7.0 CLE Credits \$135
- Advising the Injured Worker**  
Seattle - WA State Convention & Trade Center - 9/29  
7.25 CLE Credits \$135

### OCTOBER

- Federal Tax Controversies**  
Seattle - Washington Athletic Club - 10/1  
7.0 CLE Credits \$155
- Washington Wills in the 1990s**  
A Half-Day Institute on Current Drafting Issues  
Moderated Video Replay:  
Port Townsend - Jefferson County Superior Court - 10/4  
4.25 CLE Credits \$85 video replay tuition
- Advising the Small Business**  
Moderated Video Replay:  
Bellingham - Simonarson Law Office - 10/5  
Walla Walla - Lohrmann Law Office - 10/22  
Vancouver - Horenstein & Duggan, P.S. - 11/11  
6.0 CLE Credits \$120 video replay tuition
- Employment Law Advocacy**  
Seattle - Sheraton Hotel - 10/8  
Spokane - Spokane Conv. Ctr. - 10/15  
6.5 CLE Credits \$140
- Significant Changes to the UCC**  
Seattle - Holiday Inn Crowne Plaza - 10/15  
3.5 CLE Credits \$85
- Domestic Violence; Marriage Dissolution**  
Seattle - Sheraton Hotel - 10/22  
Olympia - Westwater Inn - 10/28  
3.75/3.25 or 7 combined CLE Credits \$75 each/\$135 both
- The Core of Your Case - Opening Statement & Closing Argument**  
Spokane - Ridpath Hotel - 10/28  
Seattle - Sheraton Hotel - 10/29  
6.25 CLE Credits \$155
- Oral Advocacy**  
Spokane - Ridpath Hotel - 10/28  
Seattle - Seattle Hilton - 10/29  
6.5 CLE Credits (est.)
- Advising the Injured Worker**  
Moderated Video Replay:  
Olympia - Hanemann Law Office - 10/29  
7.25 CLE Credits \$120 video replay tuition

bar, I will tell you that I am not. There is no reason in the world why bar-related activities, particularly compelled activities such as CLEs, need to be held in a private club, whether it discriminates or whether it does not. Just like bar activities should not be held in a Catholic church, a mosque, a temple, at the Moose, Elks or Eagles, it should not be held at an athletic, city or country club.

We were prepared to litigate this issue with the Spokane County Bar Association. Indeed, the pleadings were already prepared, but their declaration resolved the issue. The new state policy is a far cry from the SCBA's and I invite you to reconsider and put in the additional language contained in the enclosed documents. This issue should be addressed at the next board meeting and voted upon.

CARL MAXEY  
Spokane

### ... And A Whiff of Politics

Editor:

A major goal of the WSBA Computerization of Law Division has been the creation of a "dirt cheap" CD-ROM computer disk containing the Washington Reports, Second Series, the Revised Code of Washington, and the Washington Administrative Code. Such a disk, assembled from state-generated databases and key-word software donated by the Washington Digital Law Library Foundation, could be sold for \$99 total price. This compares with the thousands of dollars currently being charged in initial fees and monthly charges by commercial vendors of similar products.

Last February, when the commission which owns the Washington 2d database voted to release its data to the WSBA, it appeared that the last barrier to production had been overcome. The Library Foundation, of which I am a director, expected to finish its production work and have the CD shipping during June.

However, Supreme Court Chief Justice Andersen had a different idea. In May, Andersen called a special meeting of the law reports commission, and asked that they rescind their previous vote to provide data for the CD-ROM project. He said that it would not do to have data released for a low price—rather, the Courts must charge a price based on "value" (which is, presumably, what the market will bear). For this reason, the Digital Law Library's plans for prompt

distribution of the economical CD-ROM were canceled.

Andersen's main rationale for demanding cancellation of the cheap CD-ROM is that the state constitution prohibits "gifts" of state property. In his view, giving the people of Washington low-cost copies of their law is a prohibited gift.

Refutations of this position are so obvious that presenting them would be a waste of paper. Unfortunately, Chief Justice Andersen claims ownership in the law on behalf of the judicial branch itself, and thus, no unbiased tribunal exists to resolve the issue. A past WSBA president characterized the efforts of WSBA and Library Foundation volunteers as being "the world's greatest pro bono project." Sadly, our Chief Justice declines to participate.

EDWARD V. HISKES  
Richland

*The Chief Justice responds:*

The Commission on Supreme Court Reports, which as Chief Justice I chair, is a six-member body responsible for publishing the official reports of the Supreme Court and Court of Appeals of Washington for the benefit of the citizens of this state. A member of the Wash-

ington State Bar Association is an active member of the Commission.

In publishing the court reports, the Commission has provided a high degree of quality and service at prices below those charged in most states for their official reports.

The Commission well recognizes that there is a growing demand for the official reports to be published electronically, and it is taking steps to meet that demand. Publishing via computers, however is a developing field and involves issues of first impression. Electronic publishing must, therefore, be undertaken cautiously to ensure that distribution occurs in conformity with applicable state statutes and public policy.

In furtherance of the Commission's intent to publish the court reports electronically, several issues must be addressed. Initially, the print volumes had to be converted to an electronic format. That effort was completed late last year. Still at issue are questions concerning how the Commission should sell or license the use of its electronic version of the court reports.

In a letter dated April 18, 1989, the State Attorney General advised the Commission that:

... the statute [RCW 2.32.170]

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thus addresses the distribution of material which is in a publication even if it not in printed form. The Commission, under its authority to market and sell its "publications," should thus include the computer tape. The restrictions upon such sales and the pricing thereof are two-fold. First, the recognition that the opinions are not copyrightable and must be available in the public domain. Second, that under RCW 2.32.170 the price is to be equal to the costs of publication and the expenses thereto. That refers to the overall production costs of the program, not the specific unit.

RCW 2.32.170 requires the Commission "to establish a uniform price at which such decisions, in temporary and permanent form, either separately or together, shall be sold to any purchaser, public or private . . . to establish said price at the amount which is, as nearly as may be, equal to the cost of such publication and the expenses incidental thereto . . ." In addition, Const. art. 8, § 5 generally prohibits the disposition of state property without proper value being received for it.

The Commission has never fully established the cost of publishing the reports electronically. At a meeting held May 29, 1993, the Commission *unanimously* decided: (1) to reconsider certain proposed licensing agreements; (2) to not enter into any licensing agreements at this time; and (3) to appoint a subcommittee to make recommendations to the Commission on alternative ways and means of licensing and charging for the electronic reports.

At the request of the subcommittee, the National Center for State Courts in Williamsburg, Virginia is sending an expert to assist the subcommittee in its inquiry.

The licensing agreements are on hold until the subcommittee makes its recommendations and the full Commission has had the opportunity to consider and vote upon the subcommittee's report and recommendations. It is anticipated that the Commission's efforts to electronically publish the reports will move forward in a timely manner.

The Commission and I will continue to fulfill our responsibilities to the public, the bench and the bar to assure that the reports are made available in accordance with the law in a cost-effective

and timely manner.

JAMES A. ANDERSEN  
Chair, Commission on  
Supreme Court Reports

## That's Not What We Meant

Editor:

Although I usually appreciate the wit and humor that make the Gray Pages some of the most readable in the *Bar News*, I must protest your comments about the Government Lawyers Bar Association's opinions about the proposed mandatory assessment scheme to fund the Client Security Program (or Lawyers' Fund for Client Protection). You indicated that the GLBA representative made the "Ritual Announcement That Government Lawyers Don't Want to Pay Anything." In fact, nowhere in my four-page letter to the Board of Governors did I discuss whether government lawyers should be assessed along with our colleagues in private practice.

As I stated in my letter, GLBA's *primary* concern about the mandatory assessment scheme was that Bar Members would view the action as a "back door" dues increase. The letter could not have been more clear: GLBA strongly believes that "the language of the proposed rule should have been, and should be now, printed in full in the *Bar News*, and comments should be solicited from members prior to any Board of Governors vote on a mandatory assessment or referral of the rule to the Supreme Court."

If you need to summarize GLBA's comments in shorthand, report that we made the "Ritual Announcement that Adequate Notice and the Opportunity to Comment Are A *Must* Before the Assessment of Additional Practice Fees."

EVELYN A. FIELDING  
President, Government Lawyers  
Bar Association, Olympia

*The Editor responds:* Ms. Fielding is correct, up to a point. My comments [*Bar News*, July, page 29] do not reflect the content of her June 15 letter to the Board of Governors. I did not see a copy of it until July 16. My report reflects what was said at the Board of Governors' meeting July 18/19. In it I noted that Narda Pierce, the Solicitor General, expressed the concern of Attorney General Christine Gregoire that maybe there hadn't been enough process. GLBA's representative also stated that view, as did others. But as WSBA Governor Tubbs noted, the subject has been under active study and discussion for a long

time. The GLBA representatives to the Board have consistently taken the position that their members shouldn't have to pay into a Client Security fund because they don't cause any of the claims against it. My personal view is that a more useful approach might have been to try and get more actively involved in the crafting of the proposed rule as it evolved, rather than wait until it was up for a vote and protest that, in effect, each of their members hadn't been polled on the subject.

My characterization of the GLBA position as a Ritual Announcement arises from having watched the group's representatives at Board of Governors' meetings for five years. And the fact is, they always oppose anything that might cost their members money. To say that they are somehow different from other lawyers is to ignore the way lawyers move between private practice and government service—as, for example, I have (and yes, to recognize the obvious, there are some lawyers who spend their careers in government, and good for them). It also encourages the increasing balkanization of the bar. If Attorney General Gregoire is serious about getting involved in the improvement of bar affairs, she could do worse than starting with adjusting her own lawyers' notion that they are an island, separate unto themselves.

### We're Being Nickeled and Dimed to Death

Editor:

As I approach thirty years in practice I hope I am entitled to some grouching about recent legislation.

Is it true that every time the legislature proposes a sales tax on legal services the Bar Association lobbies against it successfully, only to have the B&O tax on legal services raised?

I see the ex parte fee for mailing orders is quadrupling. I fail to understand the reason for the increase. As I recall, these fees were supposedly justified as a work charge, which never made sense to me since the work had to be done by the clerk whether the order came in person or through the mail. True, the clerk has to do some extra delivery work, but the trade-off should be that the clerk can pace the work more efficiently than with the in-person drop-ins.

One of my recent favorites is the requirement that, when real estate excise tax is not due, a citizen must pay the government \$2 for looking at the affida-

vit the government makes the citizen fill out to show no tax is owed.

The banks seem to have caught on to this same mentality. It seems like the cost of the printing checks has quadrupled, and the banks now charge us to look at our account activity to see if we owe service charges.

Were there really 521 new state laws needed this regular legislative session? I know, many are amendments, but why not try harder to get it right the first time? If I could propose one law it would be that no new law be passed until two old ones are repealed. Or we could adopt the old German system of only making something a law if it passes the legislature two times—once when they are sober and once when intoxicated.

THOMAS M. BLAKE  
Seattle

### Speaking of Jumping to Conclusions . . .

Editor

Your remembrance of Lady Willie Forbus, who died at the age of 100 on April 27, and who had been a member of the Washington State Bar since 1919, indicated, "She was a figure of veneration among the state's women lawyers for her pioneering role in the profes-

sion." Why do you assume she was only admired by women lawyers for her courage and tenacity in breaking into a profession that was male-dominated? Each time someone breaks down barriers based on discrimination, it is a gain for all of us, regardless whether male or female. The article should have ended, "She was a figure of veneration among the state's lawyers for her pioneering role in the profession."

ROSEMARIE WARREN LEMOINE  
Bellevue

*The editor responds:* The regrettable, and frequently incorrect, assumption that *everything* said or done has sexist undertones contributes greatly to the peevishness of much public discourse, in and out of the bar. It simply does not follow that the criticized sentence means anything other than what it says. For Ms. Forbus to be admired by women lawyers does not mean she was not honored by male lawyers, too. The only unfounded assumption here is the one the writer makes about the obituary's author, whom she doesn't know from Adam's housecat.

### Fishing in Troubled Waters

Editor:

This letter takes issue with the John

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Rupp article published in the July 1993 *Bar News* entitled "The Douglas-Fortas Connection."

In 1971 or '72, a petition was filed challenging the constitutionality of the Vietnam War. An injunction against Nixon's continuation of it was sought.

Justice Douglas held hearings on the petition in Yakima. He announced that he would prepare and file an opinion. He dictated his opinion to his clerks in Washington, D.C., using a public telephone near his home at Goose Prairie.

Shortly after, Nixon appointee Warren Burger convened the Supreme Court and got the Court to deny the petition before Justice Douglas' opinion could be released.

According to the article, Justice Douglas employed former Justice Abe Fortas as his attorney to investigate whether his opinion had been leaked. Fortas contacted Pacific Northwest Bell to determine whether PNB was involved. Mr. Fortas spoke with Mr. Rupp, who was counsel for PNB.

Mr. Rupp appears to have resented Mr. Fortas' inquiry. He implies in his article that the telephone company would not have listened in when Justice Douglas dictated his opinion to his clerks.

American legal history reflects a number of cases in which the Nixon Administration or local authorities used telephone companies for illegal eavesdropping. While I was in college in 1970, the police, using Southern New England Bell, illegally eavesdropped on telephone conversations in the University community. Fortunately, the phone company and the police were caught—they later had to pay damages to the people whose rights they violated as part of a federal civil rights lawsuit settlement.

Given the temper of the time, Justice Douglas and Mr. Fortas were well within their rights to inquire of PNB as to whether improper activity had occurred.

The Rupp article also suggests that Justice Douglas had no expectation of privacy in his call to the capital, as it was from a public telephone whose wires could easily be clipped.

Mr. Rupp is incorrect. Justice Douglas had every right to expect that his conference with his clerks would be private. *Katz v. United States*, 389 U.S. 347 (1967). Unfortunately, the tone of the article also denigrates the petition to end the Vietnam War, purporting to compare it to other "goofy petitions" re-

ceived by the Supreme Court each year.

The Constitution requires that Congress declare war; no such declaration had been forthcoming. Nixon had invaded Cambodia and was escalating the bombing everywhere. Many of us hoped that the Supreme Court would act to stop the slaughter. I doubt that the victims of the war, including those who served in Southeast Asia, considered the petition to end it to be "goofy."

Finally, I question the timing of this article. Mr. Rupp waited 22 years to tell his story. It seems unfair to publish the article's rather catty and parochial comments about two distinguished Supreme Court Justices after they are dead and no longer able to respond.

JOHN R. MUENSTER  
Seattle

### **My Brother's Keeper? Hell, No!**

Editor:

As a comment and input on President DeForest's article in the July 1993 issue of the *Bar News*, page 9, and Lindsay Thompson's report in the June 1993 issue, page 33, concerning the client security program, please consider the following comments.

I called my insurance broker and was informed that a \$100,000 fidelity bond for me and my firm would nowhere be near \$1,000 to \$2,000. I was informed that more than likely, depending on the number of employees and parties to be covered by the "fidelity bond," the fee would range anywhere from \$100 to \$300. Perhaps bonding the Chief Deputy Prosecutor for King County is a larger task and requires greater underwriting skill than some of us here on the "east side."

I thought the LAP program is more consistent with our "brothers' and sisters' keepers" philosophy as opposed to subsidizing or underwriting a fellow attorney's dishonesty, disability, alcoholism, depression, or other rationalization for inappropriate conduct.

It is my personal feeling that I do not feel that I have any personal obligation, responsibility, duty, or "professional obligation" to in any way be responsible for the unlawful acts of other parties who happen to also be attorneys.

Likewise, I do not personally feel a need to succumb to the "chicken little sky is falling" sword-rattling of potential legislative action, bonds, or other

typical scare techniques consistently utilized by some of the governing members of this body to support additional means of reaching into my pocket in order to have the privilege of practicing law in the State of Washington.

A deep concern for me is that if I have to pay a bond premium for a fidelity bond for myself and my partners, I at least have the opportunity, responsibility, and authority, to oversee and govern my firm's conduct in that regard. As confirmed by recent Supreme Court decisions concerning certain disciplinary matters, I do not have that same confidence in the Supreme Court of this state. I do not agree that practically every other line of work has a bond requirement. Do accountants require a bond? How about insurance salesman? I believe that specialty contractors require a \$4,000 bond, and a general contractor requires a \$6,000 bond. I also believe they deal in construction projects that often exceed \$100,000 to \$200,000 for a typical residence. Is that such a big deal?

I would like to know what the demographics are concerning the experience with the problem of victim compensation. Are we talking about sole practitioners? Are we talking primarily with firms? What is the average defalcation? I find it hard to believe that a firm with a number of partners or shareholders would have these types of problems. If the experience has been primarily with sole practitioners, maybe the legislative response would be that if you are a sole practitioner you are required to have a fidelity bond.

It is not the amount of the assessment, whether it is \$10 a year or \$25 a year or \$200 a year, for a bond premium or whatever. It just grinds me that somehow someone else thinks that because I am a lawyer that I am in some way responsible for the criminal conduct of another individual who happens also to be a lawyer. This attitude of trying to "be our brothers' and sisters' keepers" in my judgment only leads to the profession giving itself continual black eyes and bloody noses. So long as we continually hold ourselves out as being responsible for these bums, the longer our image will stay in the gutter.

The more I think about it, the more sense Mr. Long's advertisement on page 30 of the July 1993 issue makes sense.

CRAIG M. LIEBLER  
Kennewick



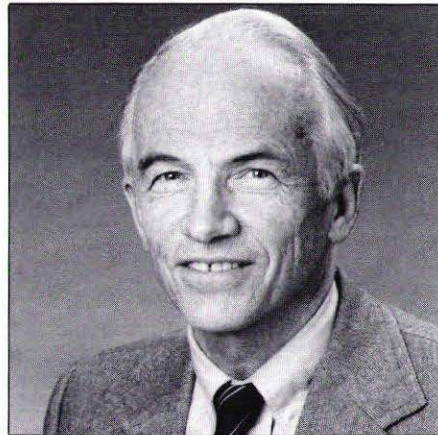
# FAREWELL

by **Steve DeForest**  
*WSBA President*

At the annual business meeting, I will turn over the gavel to Paul Stritmatter. This association will be in good hands. The Board of Governors will be guided by a fair but forceful leader. I had the good fortune to serve with Paul on the Board for three years. He was articulate, responsive and dedicated to the well being of lawyers and the public we serve. His commitment to increasing the availability of legal services to the less fortunate is demonstrated by his major role in Law Fund. He is well-known and highly respected by lawyers and judges around the state. He will have a full agenda, and I wish him well.

The president serves a one-year term, one that went very quickly for me. The members of the Board of Governors do not get off so easily. By the end of their three-year term, it would be understandable if their energy were winding down. Such has not been the case for this year's graduates.

Tom Chambers, a Seattle lawyer from the Eighth Congressional District, put the finishing touches on the final report of the Access to Justice Task Force, which he chaired, for presentation to the Board last month. The report caps a year-long effort which has brought together leaders in the indigent civil legal-service arena to take an in-depth look at access to justice issues, including coordination, cost-effectiveness and funding. Tom never hesitated in his acceptance of this challenge, despite a demanding trial schedule, nor did his effort ever waiver. I am also grateful to Tom for his wise counsel during the past legislative session. As a former WSTLA president, Tom bears a few scars from the legisla-



*Stephen E. DeForest*

tive battle over tort reform. His experience was invaluable to me.

Another leading trial lawyer who will be stepping down is Monte Hester from Tacoma. I never cease to be amazed at how a busy trial lawyer can juggle schedules in such a way as to permit full participation on the Board of Governors. Monte's keen sense of justice and vigilant concern for the rights of the individual have been valuable resources for the Board. During the past year he has chaired the Board's Disciplinary Committee, which acts as a liaison between the major components of the disciplinary system: the Supreme Court, the Disciplinary Counsel and his staff, the Disciplinary Board and the Board of Governors. Monte's eloquence and insightful wit will be missed.

Three years ago Alva Long replaced me on the Board as one of the King County at Large Governors. He brought a different perspective and style to some of the key issues of the day. I have been on the opposite side on a limited number of issues, but Alva has never been mean-spirited or defiant. His commitment to the Board has been second to none. Initially, I thought that the Board might have assigned Alva to tail me, as he was at nearly every Bar-related function I attended. I soon learned that he was there because of his genuine interest in all matters affecting the WSBA. The ultimate testimonial to Alva's commitment is the fact that although he underwent triple by-pass surgery this spring, he did not miss a single Board meeting because of it! Alva expects to continue his association with the Board,

as a liaison representative of the South King County Bar.

If there is any job on the Board of Governors that deserves combat pay, it clearly would be the treasurer's position, especially in an era of extreme fiscal constraint. It is the lot of the treasurer to always ask: "What will it cost? Where is the money going to come from?" Steve Tubbs, from the Third Congressional District, has devoted a remarkable amount of time and diligence this past year, as the treasurer of this association. The work never lets up for the chair of the Budget and Audit Committee, and Steve never let up either. We have been truly fortunate in having Steve on the Board. Numbers are not Steve's only interest. He has been a passionate advocate, orally and in writing, on a wide range of Bar-related issues. When Steve joined the Board, he was a partner in a small Vancouver law firm. While his firm subsequently became a branch office of a large Portland firm, Steve continued to be an informed representative of individual and small firm practitioners, while at the same time looking out for the interests of government lawyers.

As much as Tom, Monte, Alva and Steve will be missed, a strength of the WSBA is the annual reinvigoration of the Board of Governors from its new members.

Linda Dunn, Mary Fairhurst, Dan Hannula and Steven Toole, from Seattle, Olympia, Tacoma and Bellevue, respectively, will bring new vision and energy to the Board. I know they will be valuable contributors. Elsewhere in these pages, I have reported on some of the major steps your association has taken this past year. I am proud to have been a part of the effort, and I now look forward to returning to full-time practice.

Thank you for the opportunity to be your president and spokesman for the past year.

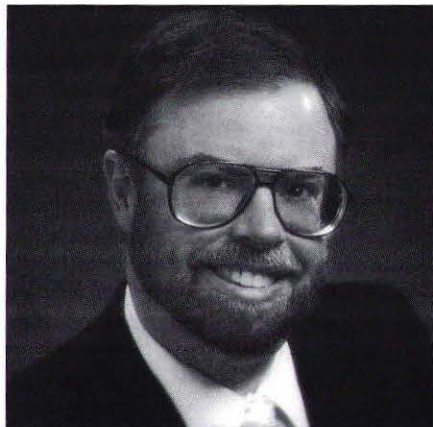
## INCLUSION

by **Paul L. Stritmatter**  
*WSBA President-elect*

As I look upon the coming year for the Bar Association, I look for a year of inclusion. I want to see inclusion in our governance. I want to see inclusion in our decision-making processes. I want to see inclusion in the committee structures of the Bar. I want to see the inclusion of sole practitioners, women, Eastern Washington lawyers, ethnic minorities and government lawyers. It is important that no member of the WSBA be, or feel, excluded from this association. I pledge to work for the inclusion of our members.

As you can imagine, my being elected your president is a source of considerable personal pride. But that personal feeling takes a back seat to my concerns about the hard work needed to create an atmosphere for inclusion of all our members in association business. In addition, it is important that those members who do not wish to actively participate in association activities understand what it is doing for the benefit of all members. This is going to require both more effort on the part of those active in the association to communicate with other members and an effort on the part of the members to keep themselves informed regarding issues faced by the Bar and proposed solutions.

As I write this column, well in advance of its publication, the Board has not yet acted on the proposal to create an additional seat for the Young Lawyers Division on the Board of Governors. I personally support this concept, and I hope that the Board will adopt the idea. This issue, however, raises broader questions about the overall WSBA governance. Should the size of the Board be



*Paul L. Stritmatter*

expanded? Currently, various interest groups in the association send representatives to observe and comment on the Board's work, but they do not actually have a vote. Should they hold Board positions? Should there be lay members on the Board? Should we change the method of electing the WSBA president? During my term, I will be encouraging our Long-range Planning Committee to address these issues and report back to the Board with recommendations for changes to our governing structure.

A giant step has already taken place with regard to the inclusion of women in the governance of the Bar. One of the goals of the Gender and Justice Implementation Task Force, of which I am a member, is to encourage and facilitate the involvement of more women in the Bar Association. It was a source of personal and collective embarrassment for the Board of Governors my third year on the Board, when the entire Board makeup was male. Betty Fletcher, Elizabeth Bracelin and Julie Weston have been marvelous leaders of the Bar. With the recent election of Linda Dunn and Mary Fairhurst, who will join Vickie Norris on the Board, we have made great strides in including women in the governance of our association.

Another big step has already been taken by the Board of Governors to enhance inclusion in Bar committees. One of my first responsibilities as president-elect has been to guide a new system of committee and committee chair appointments. Twenty-six of the 33 Bar Association committees will be restructured by limiting the appointments by gover-

nors to one funded position each: those 11 appointees will be reimbursed for expenses in conjunction with their committee work. As president-elect, I have the duty and responsibility to appoint as many unfunded positions as I believe are appropriate for each committee. These committee members will not be reimbursed for expenses incurred in their committee service. I am working on this job as I write this column. I hope to include as many members of the Bar who have applied for committee positions as possible, while at the same time be realistic about how large a committee can be and still function effectively. I have the opportunity as well as the responsibility to assure broad inclusion of members in our committees. I am keeping in mind geography, ethnicity, areas of practice, willingness to work and the committees' ability to function in an appropriate manner to accomplish their responsibilities.

This is our first try at this restructuring. I expect that I will make some mistakes. I have sought the input and ideas of each of the current committee chairs, the presidents of several legal organizations in this state and the members of the Board of Governors. I am pleased with this new concept, and I am convinced that it will result in a greater inclusion of many members who have wanted to participate in Bar Association committee activities in the past, but have been excluded. (I certainly went through frustration applying for committees for many years before I finally received an appointment.)

In many instances, the unhappiness of members of the association has been the result of a failure on the part of the Bar to communicate what actions it has taken and the reasons for those actions. As lawyers, we are in the communication business. We are continually working at conveying ideas, arguments and solutions to solve problems in our society.

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own or have an interest in 10 acres or less need report only if annual proceeds from the sale of agricultural products grown thereon exceed \$1,000.

For more information, contact the local Agricultural Stabilization and Conservation Service office, listed in the telephone directory under "U.S. Government, Agriculture Dept. of."

But communication is a difficult process, and it does require efforts on the part of not only the Bar Association but also the members. I know that the Governors have worked hard to communicate regarding their work. Most Governors, at their own personal expense, write a letter after each Board meeting, reporting extensively on the work of the Board and requesting input and ideas regarding the issues confronted by the Board. Lindsay Thompson writes not only an informative column on the Board's work, but a clever and witty presentation to increase interest in a subject that is not always interesting to every member of the association. The Board recognizes that further efforts need to be made to communicate with all of our members.

The WSBA will prosper and truly represent the members in their ideas and concerns only if we take appropriate action to ensure that every segment of the bar is included in the governing processes. It is true that the Association does have the responsibilities to develop and enforce regulatory functions and to protect the public. This organization belongs to each of us, and our goal must be to make membership in this bar association a meaningful benefit for all Washington attorneys as well as for the advancement of the profession. That is best accomplished by opening up this organization to a broad base of new ideas. INCLUSION. I will strive as president to see that this goal is accomplished.





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

\* \* \*

One of the great challenges of being a bar executive is having a new boss each year. And even though I serve at the pleasure of the Board of Governors, the president is the closest thing I have to an individual boss. Which brings me to the point of this column—my boss Steve DeForest. This issue marks the close of Steve DeForest's year as president of the WSBA. He may be 103rd president of the Washington State Bar Association, but he is also my 13th bar president/boss. Lucky13. I mean it. Lucky number 13—because I consider myself lucky to have had the opportunity to work with an individual of Steve's thoughtfulness. It is the thoughtfulness that I will remember. Various bar presidents bring various traits to that office, but rarely does one bring the kind of quiet, scholarly thoughtfulness, coupled with a wealth of bar association experience, that Steve DeForest brought to his presidency. The pleasure has been mine. Lucky number 13.

\* \* \*

### **Rebate for Certain Legislative Activities:**

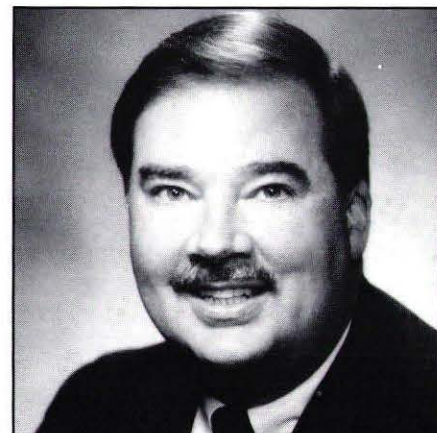
As most of you know, the United States Supreme Court issued a decision in 1990 that requires unified state bar associations like the Washington State Bar Association to provide their members with a rebate of fees used for political or ideological activities when those activities are not reasonably related to legal ethics and regulation of the legal profession, or to improving the quality of legal services.<sup>1</sup>

This column constitutes notice of the

<sup>1</sup> *Keller v. State Bar of California* [110 S.Ct. 2228 (1990)]

positions taken by the WSBA during the recent legislative session and a listing of whether a pro rata rebate of bar dues is available to WSBA members who disagree with the position taken by the WSBA. If a member disagrees with the method used to calculate the amount of the rebate, the dispute over the method used will be submitted to an impartial arbitrator. The method used to calculate this rebate took the entire budget of the WSBA's legislative office in Olympia (\$166,425 in FY 93), divided that amount by the number of active members the WSBA has at the time of the rebate (17,793 as of 7-22-93), then apportioning that amount (\$9.35) by the percentage of time spent by the WSBA legislative staff on a given issue or function. For example, if a member objects to the WSBA's position on a piece of legislation that took 5 percent of the legislative staff's time this past year, that member could request a rebate of \$.47 (5% of \$9.35).

On the following page is a chart of positions taken by the WSBA this past legislative session designating whether the issue is subject to rebate, the per-



*Dennis P. Harwick*

centage of the legislative staff's time attributable to that issue, and the pro rata amount subject to rebate. To apply for a rebate, file a written request with my office detailing which position(s) you object to within 45 days of receiving the September 1993 issue of *Bar News*. Send your request to: Executive Director, Washington State Bar Association, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599. If you have a question about a specific legislative position, please contact John Fattorini at the Legislature in Olympia: (206) 943-9977.

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Bill Number of Legislation/Position	Refund ?	% of Time	Amount of Refund
HB 1152 - Opposed legislative attempt to define WSBA employees as state employees for purposes of union organizing	Yes	10%	.94
SB 5967 - Opposed sales tax on legal services	No	27.5%	None
HB 1072 - Supported allowing guardians ad litem to appear as a party under some circumstances	No	1%	None
HB 1074 - Supported technical amendments to the Corporations Act	Yes	1%	.09
HB 1075 - Supported technical amendments to references to the Internal Revenue Code	Yes	1%	.09
HB 1076 - Supported clarification of distribution of income earned during administration of a decedent's estate	Yes	1%	.09
HB 1077 - Supported revocation of nonprobate asset arrangement upon divorce or invalidation of marriage	Yes	1%	.09
HB 1078 - Supported legislation to overturn Estate of O'Brien, i.e., nontestamentary characterization of interest passing at death	Yes	1%	.09
HB 1084 - Supported expansion of the jury source lists	No	1%	None
HB 1235 - Supported concept of limited liability partnerships for purposes of tax relief; expressed concern about certain liability provisions	Yes	1.5%	.14
HB 1760 - Supported collection through wage assignments of obligations for child support and spousal maintenance	Yes	1%	.09
HB 1768 - Supported facilitating pro se litigation in domestic relations cases	No	1%	None
SB 5061 - Opposed legislation purporting to restrict residential time for abusive parents	Yes	1%	.09
SB 5064/ 5065 - Supported amendments to garnishment statutes	Yes	2%	.19
SB 5066 - Supported limiting powers of a trustee	Yes	1%	.09
SB 5067 - Supported joint tenancy proposal	Yes	1%	.09
SB 5095 - Opposed term limits for elected public officials, including judges	Yes	.5%	.05
SB 5233 - Supported allowing costs to prevailing parties	No	.5%	None
Supported sentencing reform	No	1%	None
Supported retention of funding for civil legal services	No	1%	None
Monitoring of legislation	No	18%	None
Judicial relations	No	5%	None
Producing <i>Olympia Report</i>	Yes	1%	.09
General administration	No	20%	None
Total			2.22

# CUSTOMER SATISFACTION

## —THE SECRET WEAPON IN

### LAW FIRM MARKETING

by James P. Schratz

**I**n today's extremely competitive environment, law firm marketing is receiving increasing attention. Articles on retaining or attracting clients, developing a market niche, or creating a distinctive firm personality appear in almost every issue of the trade journals.

Most, if not all, of these articles miss the mark.

As an attorney and purchaser of legal services for a national insurance company for the past 13 years, I have observed that most law firm marketing plans, rather than differentiating a firm from its competitors, make it indistinguishable from its rivals. It is clear from hundreds of firm brochures and resumés that the firms across the country are competing on one or two narrow grounds: technical competence or personal relationships. The sad fact is that the first is difficult, if not impossible, to measure; the second, in these times of cost containment, is becoming irrelevant.

This article explores the current competitive environment that most law firms, but especially insurance defense firms, currently face; it then proposes a new basis for competition and market differentiation—one that can be measured; one that makes the practice of law fun again and one that can prove profitable to law firms.

Let me expose my biases early. I am a big fan of Tom Peters' *In Search of Excellence* and *Passion for Excellence* and Ron Zemke's *The Service Edge*. My personal experience tells me the market is wide open for a law firm that dedicates itself to customer service; not one that just recites platitudes, but one that has a firm-wide commitment to customer satisfaction. This may be difficult, since attorneys—especially litigators—are, by nature or training, combative. It is difficult for them to subject an opposing party to a withering cross-examination and then, ten minutes later, respond to the client's demands, whether reasonable or not, with all the politeness and

customer dedication of a Nordstrom sales clerk. It is a difficult challenge, but one that can be met.

To date, no law firms are meeting that challenge. As Ron Zemke says in noting the lack of law (or accounting) firms in the top 100 companies dedicated to customer service, "In some of these we decided that customer-centered service was not an imperative; in others we could find no consistent evidence of service superiority."

This lack of customer-centered service is no better demonstrated than in the following:

A partner from a major law firm was quoted in *The American Lawyer* as admitting that in the 1980s the firm added a surcharge to such things as overnight mail, photocopies, telephone calls and faxes. He blamed the New York City firms for starting the practice and said his firm felt compelled to do the same. "We saw the trend, and felt we had to follow or leave money on the table." I seriously doubt that the clients who read that quote felt that the firm was driven by customer service.

#### The Changing Competitive Environment

Before looking at this new approach to law firm marketing, it is important to briefly consider the environment that law firms are currently operating in.

#### The Increased Use of In-house Counsel

A recent study by the American Bar Association disclosed that 80 percent of the corporate clients they surveyed are bringing more work in-house. In addition, some clients, such as insurance companies with a significant volume of litigation, are establishing nationwide staff counsel programs employing up to 500 attorneys to represent their insureds in litigation.

Numerous studies have demonstrated the cost effectiveness of such programs in indemnity and legal expense. More specifically, some insurance companies

have cited studies which show up to a 40-percent saving in legal expense with no increase in legal payments. Some private law firms have attacked the accuracy of these studies. In light of similar findings by numerous carriers and in the absence of compelling evidence to the contrary, a high level of accuracy must be accorded these studies. Even more importantly, given the client's *perception* of the accuracy of these studies, any attempt by private law firms to attack these studies or compete on a price basis against these in-house attorneys is very unlikely to be successful. Some law firms have attempted to meet this competitive threat by attacking the technical competence of in-house attorneys. Such attacks are misdirected. First, since competence cannot be measured, the attacks are based on merely anecdotal evidence and, more importantly, they risk earning the enmity of the senior management, who usually support the program. In a related argument, some firms may point to these studies to rebut the proposition that technical competence cannot be measured. The studies do not measure the technical competence of either in-house counsel or private law firms, but merely the relation between indemnity payments and legal expenses. However, the studies are interpreted by management in such a way as to justify the in-house program.

#### Increased Client Sophistication

As legal fees mount, management is devoting additional corporate resources to understanding and controlling escalating legal fees. The burgeoning cottage industry of legal auditors and litigation cost managers and the increased hiring of private practitioners into in-house management positions clearly presage increasing sophistication among corporate clients with a corresponding increase in client demands.

#### Declining Public Respect

The legal industry's declining reputation has come into even sharper focus in

recent years. Joe Cotchett, a lawyer himself, may have said it best in his book, *The Ethics Gap*.

During the 1980s, America lost its ethical bearings, both individual and institutional. The result was a shocking disintegration of standards in the professions. Bankers, accountants, appraisers, lawyers, contractors, brokers, and politicians, each

made their own Faustian contracts with those who laid siege to our national treasures.

Professor William Ross, in his article, "The Ethics of Hourly Billing by Attorneys" in the *Rutgers University Law Review*, estimated that 40 percent of lawyers inflate their bills; and a recent public survey by the American Bar Association found that untrustworthiness was

one of the six most common complaints the public had about the legal industry. Now, clearly, none of the attorneys reading this article have ever made a Faustian contract, inflated their bills or been untrustworthy, but that is the public's perception of attorneys; and any marketing plan must take this public perception into consideration.

### **We're Professionals**

Some law firms might argue that as "professionals," they are "above" such pedestrian concerns as marketing. Let me briefly respond with another passage from *The Service Edge* describing a past attitude in the healthcare industry.

Yesterday's healthcare professionals lived and worked in a world they dominated and controlled, a world fashioned on the assumption that there would always be sickness and disease, and the sick and injured would always need hospitals and doctors. Times change. The world they live in today is one of budgets and controls and cost containment and market positioning and competition.

Members of the legal industry are subject to many of, if not all, the same market forces as any other industry, including healthcare. We may be a little more protected, and it may take a little longer for those forces to affect us, but affect us they will. This article has used the phrase "legal industry" for a specific reason. Like doctors and others in the healthcare industry, for too long, attorneys have referred to themselves as a "profession," deluding themselves into believing they were exempt from ordinary market forces. By strenuously opposing the typical market forces that operated in the legal industry—such as advertising, or low-cost legal providers who developed their own market niche—attorneys have repeatedly shown their reluctance to adapt to the inexorable laws of economics.

Few, if any, have looked to the healthcare industry to see how it responded to such changes. Maybe we were too busy suing or defending doctors and hospitals to take time out and study them.

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## Why Is A Hospital Like A Law Firm?

Although this sounds like the beginning of another anti-lawyer (or maybe anti-doctor) joke, the following passage from *The Service Edge* is the real answer. Dawn Gideon, director of patient services at Forbes Vantage Group in Pittsburgh, notes,

[P]atients are not basing their decisions on technical, care-oriented aspects such as the hospital's medical technology or the adequacy of staffing on a nursing station. They have no way to judge those things. Instead they base their decisions on things they do feel qualified to judge; the room, the food, the admission process, the questions they ask, the answers they get to their questions—everything from whether people are smiling and friendly to how hard they have to look to find a parking space that isn't reserved for doctors only. Those things don't necessarily have anything to do with the quality of medical care, but they are the way patients are evaluating us.

Patients can't evaluate the quality of the care but they can evaluate the quality of the *caring*.

Some time ago, I was hospitalized for a kidney stone attack. I have no idea whether the doctor performed adequately or in a superior manner; all I know is that the kidney stone is gone, and when I wanted a pain pill at 3 a.m., the nurse was there immediately. My brother "the doctor," after a couple of beers, would also admit that the average patient cannot judge a doctor's technical competence, but rather would base an evaluation on the quality of the service a hospital provides. If it is customer-driven, the hospital receives high marks. If it is not, the patient goes to a competitor down the street. The same argument applies to the technical competence of attorneys.

The reality—one that most law firm marketing consultants have ignored or are unaware of—is that even sophisticated clients, because they lack training and experience, for the most part cannot evaluate the quality of the legal service provided by the law firms they retain.

And, lawyer jokes notwithstanding, a certain sense of awe persists. More-sophisticated clients, such as insurance adjusters or business executives, often cannot properly evaluate technical competence because of heavy caseloads, other job-related demands or the particulars of any one case. Even the most-sophisticated business manager seldom has the time to devote to a particular case. It is almost impossible for a general counsel

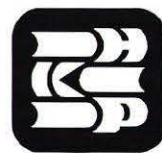
or claims executive to get immersed in a file and adequately assess the law firm's capability. That function in turn is delegated downward. Based on a customer's experience, a law firm develops a reputation for competence, i.e., service, in the following scenario: Senior management asks a question about a particular case. The file handler calls the law firm for an answer and then relays the information to management. It is the fast re-

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sponse time which impresses senior management; there is no discussion of technical competence.

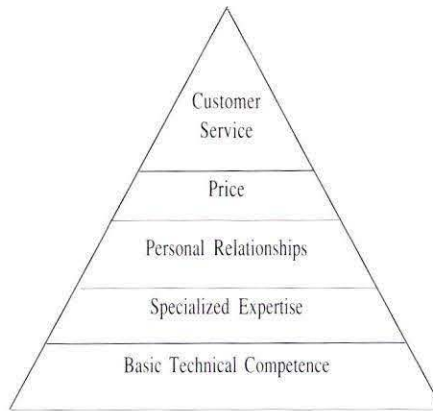
In spite of this, the legal industry by and large still competes on competence. Since approximately 95 percent of all cases settle without a trial, both parties and their attorneys usually have some basis for claiming victory; this prevents an objective measurement of attorney competence. Even if a case is tried to conclusion, a plaintiff's "victory" or defense "victory" can be just as dependent on the vagaries of the jury, judge or particular facts of the case as on the skill of the attorneys. I challenge anyone reading this article to develop an objective measurement which can conclusively demonstrate he or she is a better attorney than their counterpart.

This is not to denigrate attorneys or to argue that attorneys are a fungible commodity (although that argument has been made). Rather it is a request that attorneys recognize that, for the most part, there is no objective measure of their technical competence.

This inability makes it doubly difficult for law firm A to attract new clients from law firm B, which has presumably convinced that client of its technical competence and established a personal relationship. The solution? Don't fight on law firm A's turf on either issue. Move to the higher ground of customer

satisfaction.

The following is a schematic of the grounds on which law firms compete.



Most law firms are still on the bottom rung trying to convince clients that they are technically superior to their competitors. Others have moved up a notch by becoming "boutique" firms or developing "specialized" departments within the larger firm. Although such a tactic may distinguish the firm from the general practitioner, it does little to distinguish them from other "boutique" firms. Still other firms spend thousands of dollars on client lunches, tickets to sporting events and other client development events. Not only are so many firms engaging in this practice that it is difficult

to distinguish many of them, but from many clients' perspective, while it's enjoyable, there are too many professional or personal demands on their time. Furthermore, such practices will not be productive as more and more clients adopt strict conflict-of-interest guidelines which prohibit such practices or adopt cost containment programs which force clients to ignore personal considerations in obtaining cost-effective representation.

Progressing up the rung, some firms are attempting to compete by reducing their hourly rate or postponing rate increases. Sophisticated clients recognize that many law firms, in order to meet fixed costs, will merely work the files a little more to compensate for the lost income or will reduce overhead, such as support staff, in order to maintain partner income. The former seriously undermines client confidence, while the latter can adversely impact customer satisfaction. In any event, such measures are temporary at best and do not help solve the real problem of differentiating the firm from all its competitors, who are also reducing rates.

Finally, the highest rung of competition is customer service, or the "wow factor."

### The "Wow Factor"

Members of the healthcare industry and even the staid banking industry are starting to realize the need for and benefits of focusing on customer service. Here are a few examples:

First Wachovia Bank of Winston Salem, North Carolina has a policy that whoever gets a complaint, whether from a customer or an employee, does his or her best to respond before the close of the day. At Maryland National Bank, there is a performance guarantee—absolute accuracy on banking statements. If there is any error, the bank will make it right immediately, refund any fees incurred, send letters of apology to anyone inconvenienced and pay the customer \$10.

In the healthcare industry, at Mission Oaks Hospital in Los Gatos, there is no waiting in the emergency room. If a patient waits longer than five minutes, the bill is reduced by 25 percent.

Tom Peters calls this "the wow factor." There is no reason that leaders in

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the legal industry cannot do the same thing. Law firms could have their version of a frequent flyer program. To any client who pays \$1 million or more in fees, the law firm would give \$50,000 in free legal advice. This program could be used to build customer loyalty, as the airlines are trying to do, or to build up a new practice area. To the client who pays \$1 million in litigation fees, the firm could offer a complimentary \$50,000 in services in the area of transactional advice.

Another possible example of the Wow Factor involves asking the receptionist to time how long each client waits in the reception area. If the average wait is three minutes, the law firm could announce that for any client who waits five minutes for a meeting with an attorney, the meeting is free. Since clients seldom wait that long, the firm is not giving up anything, but it is sending a clear signal that it is service-driven.

Finally, there is a firm in Bakersfield, California—Anton, Gordon & Monje—which provides its clients with 24-hour, on-line access to current billing. Not only does such innovation eliminate surprises for the client, but it has the side benefit of forcing the attorneys to submit their time sheets on a daily basis.

I said earlier that this is an approach that can be measured, will make the practice of law fun again and will prove profitable. Let me briefly explain

How long a client waits in the reception area or how long it takes for an attorney to return a client's phone call can be measured easily. The dollar value of free legal advice that is given out through a "frequent flyer" program can also be measured. Numerous other examples of how to measure customer service-oriented programs can be developed with little effort. The old saying, "What gets measured gets done," is never truer than in a law firm. Look at what currently gets measured: annual hours, profits per partner, and gross and net income. To the sophisticated client, this sends the clear signal, "You're not important; our profits are." Not only can the ways to achieve customer satisfaction be measured, but customer satisfaction itself can also be measured through surveys, focus groups, etc. When law firms begin to measure these things, they will get done.

Secondly, as the success of Nordstrom—the retail store driven by customer service—clearly demonstrates, customers will pay for above-average service and in so doing will make the firm profitable.

Finally, numerous articles have deplored the malaise affecting many in the legal industry. The prospect of long hours, lost weekends, the ever-shrinking chance of making partner and the increased pressure to not only attract clients but assure that they pay their bills in a timely manner, have left many lawyers wanting to move to Vermont and raise cows. Support staff, who face many of these same pressures including increased layoffs without even the prospect of grabbing the gold ring of partnership, are also experiencing morale problems. It is difficult to get up every morning eager to go to work when the law firm's anthem is "Increase Per Partner Profits By Ten Percent." On the other hand, knowing that you are unique among law firms in dedicating yourself to customer satisfaction allows your staff to believe in and work for something

worthwhile. There is little positive feedback or reinforcement for associates and staff when the goal is to make more money for the partners. There is immediate positive feedback when the goal is customer satisfaction, and the customer/client gives you a smile.

Given the almost universally conservative nature of law firms, I seriously doubt that many can or will adopt a customer service orientation in the near future. For the law firms who do, both they and their ever-increasing client base will be much better off.

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*James P. Schratz, J.D., is vice president of major claims, Fireman's Fund Insurance Company. He has written and lectured throughout the United States and in Europe on these and related issues. He lives and works in Santa Rosa, California. The views expressed herein are those of the author, and do not necessarily reflect those of Fireman's Fund.*

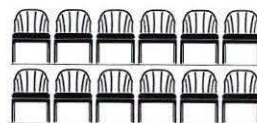
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# DISCOVERY OF ATTORNEY BILLS

by Leonard J. Feldman

**C**lients have long appreciated and emphasized the importance of comprehensive billing statements from their attorneys. Detailed billing enables clients to monitor their attorneys' activities and control legal costs through increased accountability. It's also important for a less obvious reason: according to a recent Ninth Circuit opinion, *Clarke v. American Commerce Nat. Bank*, 974 F.2d 127 (9th Cir. 1992), cryptic billing statements may not be protected by the attorney-client privilege.

*Clarke* arose out of the efforts of the Office of the Comptroller of the Currency to investigate American Commerce National Bank's banking practices. As part of this investigation, the Comptroller issued an administrative subpoena that requested American Commerce to produce various billing statements from outside counsel. American Commerce provided copies of the statements, but redacted all descriptive information other than dates and fees.

The Comptroller brought an action to enforce its subpoena in the United States District Court for the Southern District of

California. The court concluded that the billing statements of certain law firms fell within an established exception to the attorney-client privilege, and it ordered American Commerce to produce those statements. American Commerce appealed.

The Court of Appeals for the Ninth Circuit affirmed the district court's order requiring American Commerce to comply. The court distinguished between "the general purpose of the work performed," which typically is not protected by the attorney-client privilege, and the motive of the client in seeking representation, litigation strategy, or the specific nature of the services provided, such as researching particular areas of law which are protected by the privilege. The court concluded that the billing statements did not disclose specific research or litigation strategy.

*Clarke* has important practical implications for both law firms and their clients. In addition to providing competent legal advice and services, law firms should provide billing statements that include the specific nature of the services provided. Consider the examples below:

## ADR

Washington businesses and attorneys will soon receive ADR pledges and be able to state a desire to opt for alternative dispute resolution in appropriate cases. Two pledges, one for businesses and the second for attorneys, have been prepared by the Mediation Committee of the WSBA Alternative Dispute Resolution Section.

Working together, the Education and Mediation committees of the ADR Section will mail 500 pledges and summary information about ADR to selected businesses. In a separate mailing, 500 attorneys will receive the Attorney Pledge and the Manual on Alternative Dispute Resolution, originally prepared by the Colorado Bar Association and adapted, with permission, by the WSBA ADR Section.

Following the mailing, the committees will survey the recipients to evaluate the effectiveness of the mailing and the information sent.

### BASIC DESCRIPTION

Draft motion to dismiss

Legal research in re statute of limitations

Telephone discussions with Mr. Smith

### DETAILED DESCRIPTION

Draft motion to dismiss for lack of subject matter jurisdiction

Legal research in re applicability of Washington statute of limitations in re torts in preparation for motion for summary judgment

Telephone discussions with Mr. Smith in re potential liability under Washington Consumer Protection Act

Law firms also should ensure that their employees fully recognize the importance of accurately describing the services they provide.

Finally, clients should continue to emphasize the importance of comprehensive billing statements. The issue should be addressed specifically in engagement letters. If possible, clients also should provide specific billing guide-

lines for distribution to their attorneys. If adequate precautions are taken, the attorney-client privilege should adequately protect billing statements from discovery by adverse parties.

---

*Seattle attorney Leonard J. Feldman practices with Heller Ehrman White & McAuliffe*



## CHANGES IN HOME-OFFICE DEDUCTION MAY AFFECT ATTORNEYS

by **Don Carlin**

In a January 12 ruling, the Supreme Court made it more difficult for some taxpayers to claim a deduction for an office in their home.

The ruling upholds the IRS position which states that if a taxpayer uses a home office primarily for administrative duties, the deduction may not be allowed.

To qualify for the home-office deduction, taxpayers have to use their office "exclusively" and "regularly" as a "principal place of business," or as a place to meet with clients or customers in the normal course of business.

The case under review by the Supreme Court involved Dr. Solimon, a self-employed anesthesiologist who performed his services for patients at several local hospitals, none of which provided him with office space. The doctor maintained a separate room in his home, which he used exclusively for administrative business purposes, such as scheduling appointments, billing patients and so on.

While lower courts had upheld the doctor's claim for home-office deductions because it was "essential" to the doctor's business, the Supreme Court ruled the office was not the "principal place of business" and therefore disallowed the deductions, even while acknowledging the office was essential. The court in this case asserted that the hospitals where the doctor performed his services constituted his principal place of business.

The court has stated the determination of a taxpayer's principal place of business is determined under two tests:

First and most importantly, the principal place of business is where the "most important functions" of the business are performed. Second, the amount of time spent on business in the home-office relative to time spent on business outside the home should be considered.

Under the new rules of this court decision, taxpayers whose most important, (i.e., income-generating) activities are performed away from their home-office may no longer qualify for a home-office deduction. While the full impact of this

decision may not be known for some time, potentially affected taxpayers should review their situation in light of the decision and strict application of Sec. 280A(c) of the Internal Revenue Code, which lists the exceptions which would preclude IRS disallowance of deductions for certain business use

... allocable to a portion of the dwelling unit which is exclusively used on a regular basis—

(A) [as] the principal place of business for any trade or business of the taxpayer.

(B) as a place of business which is used by patients, clients, or customers in meeting or dealing with the taxpayer in the normal course of his trade or business or

(C) In the case of a separate structure which is not attached to the dwelling unit, in connection with the taxpayer's trade or business.

One suggestion is to have clients visit and meet regularly in your home and document records accordingly.

If that is not practical, you may want to identify the circumstances that distinguish you from Dr. Solimon—ones which show that the most important services you offer (brief-writing? legal research? settlement negotiations? communication with clients?) are generally performed in the home-office.

A new look at what functions of your business are carried out there may help you comply with the strictures of the code.

*Don Carlin, CPA, is a tax manager at the Seattle office of the accounting firm of Hagen, Kurth, Perman.*

*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.*

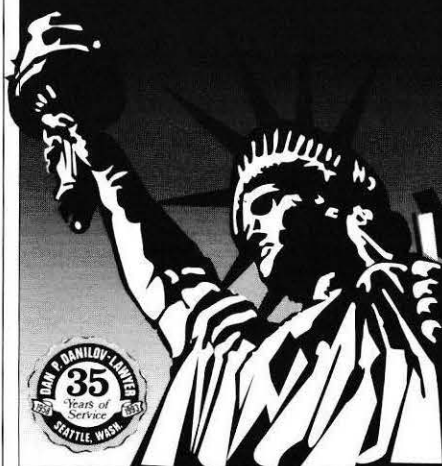
### Upcoming IRS Benefits Conference


The Internal Revenue Service (IRS) and the American Society of Pension Actuaries (ASPA) are sponsoring the second annual "Los Angeles District Benefits [Western States] Conference" on Thursday, September 9 and Friday September 10, at the Biltmore Hotel in Los Angeles. In a unique format, the conference panels match government representatives from the IRS and the Department of Labor with recognized professionals from the private-pension community. This forum offers attendees the opportunity to hear discussions between the government and the private sector on a variety of topical and controversial subjects.

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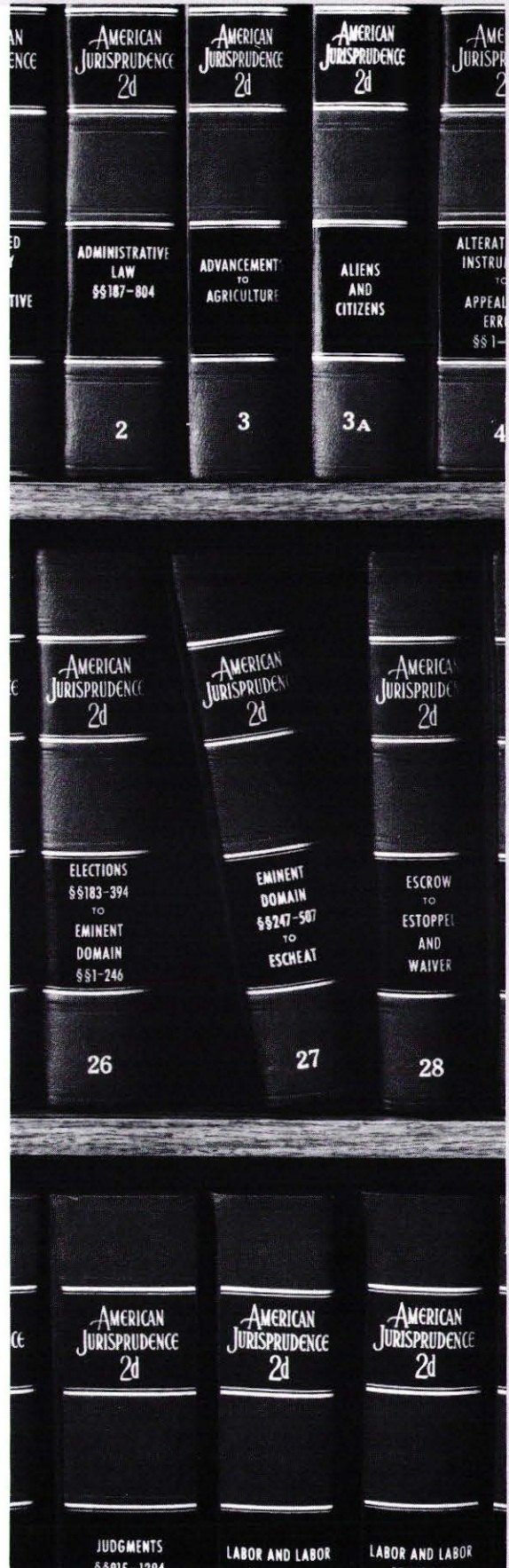
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ASC6





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

Winthrop, July 30-31, 1993

**Present:**

The president and Board of Governors, president-elect Paul Stritmatter, and Governors-elect Mary Fairhurst, Dan Hannula and Steve Toole. Governor-elect Linda Dunn was absent on other business.

**Also present:**

Judge Susan Agid (Court of Appeals); Christine Gregoire (Attorney General of Washington); Judge Kenneth Grosse (Court of Appeals); Dennis Harwick (WSBA executive director); Barnett Kalikow (Washington Assn. of Prosecuting Attorneys and Okanogan County Bar Assn.); Nancy Krier (Government Lawyers Bar Assn.); Alicia Lowe (WSBA Young Lawyers Division); Linda Moran (Washington Women Lawyers); Judge Carol Schapira (Superior Court Judges Assn.); Larry Shannon (WSTLA); Judge T.W. Small (Legal Foundation of Washington); Scott Smith (King County Bar Association); Lindsay Thompson (*Bar News* editor); Robert Welden (WSBA general counsel).

The Board's tour of Washington theme towns continued. Last month it was the faux Bavarian splendors of Leavenworth; this time, and even further away from everywhere, the Wild West charms of Winthrop (where, if you look around, you can get some pretty good ribs for dinner).

In executive session the Board administered a reprimand, reviewed the docket and talked about some of the agenda items for the open session. In open session, the president reported he'd made a second talk at a conference of the Prosecutors' Association, and he praised the group and its Board liaison, Jim Kaufman, for improving relations between WAPA and WSBA. He talked about some other meetings and activities and told the Board he'd written his last column for the *Bar News*. It appears in this issue on page 12.

**The Shape of Things to Come:**

President-elect Paul Stritmatter told the Board he has been working hard on both Board committee and WSBA standing committee appointments. As part of the experiment with open committees, the president is charged with evening out and balancing all the requests for appointment to unfunded committee positions. He also asked what the Board would think about inviting the dean of the Willamette University School of Law—his alma mater—to give a report to the Board in the manner of the regular reports of the Washington law deans. Governor Steve Tubbs offered as how the Willamette dean would be driving past Lewis & Clark Law School—Tubbs' alma mater—to get to the meeting, in Vancouver, in June. Since it's just across town for the L&C dean, why not invite him, too? Then someone else started quacking for the University of Oregon School of Law. You had to be there.

The Board said OK to the Willamette invitation. The rest will have to sort itself out later.

**The Voters, Somehow, Get It Right:**

Reform enthusiasts, who've been shrilly demanding the imposition of new allocations of Board seats to diversify its membership were noticeably silent when Dennis Harwick an-

nounced the results of the spring elections for Board of Governors seats. In the Third Congressional District, WSBA members elected Mary Fairhurst to the Board unopposed. She will succeed Steve Tubbs. In the Sixth Congressional District, Daniel Hannula won Monte Hester's seat by defeating Michael Riggio, 507-163. In the Eighth District, Tom Chambers will be replaced by Steven Toole, who defeated Sheryl Garland, 322-234. Alva Long's successor is Linda Dunn, who beat Roderick Dimoff, 1,908-596, for one of the King County-at-Large seats. They go through a day-long orientation for the job August 26.

**Revenue Enhancements Approved:**

The Board approved requests by the Business Law, Consumer Protection and Antitrust, Creditor/Debtor, Family Law, International Law and Practice, Litigation and Real Property, Probate & Trust sections to raise their dues. Some technical amendments to the Family Law Section bylaws were also approved.

**More Lemmings Sighted Diving Into the Job Market:**

Dennis Harwick told the Board the summer, 1993 bar examination set a record for attendance. More than 1,000 applications were received; 947 took the exam.

**The Winners Are . . .**

Governor Alva Long and his committee announced their recommendations for WSBA awards, conferred at the September Annual Meeting. The Board approved them all.

**Please—Just Once—Don't Hang Up Just Because It's A Telephone Survey:**

The Board approved a membership survey to be conducted in two parts. One part will be a telephone survey of about 400 WSBA members, chosen to be demographically representative, asking what they think the Bar Association ought to provide members, how it should be governed, how it should be paid for, and the like. A professional survey outfit will do the work and tabulate and analyze the results.

The second part will be a pull-out version of the survey. It will be run in the October, 1993 *Bar News*, to encourage more WSBA members to take part. The posturing and lobbying to get a piece of the action writing the survey questions is intense, to be sure Keenly Felt Special Interests are adequately represented ("Question 43: Should WSBA Members Bow to the Inevitable and Cede Control of the World to the Young Lawyers Division, Or Continue Down Their Present Path Toward Universal Destruction?").

The project will cost \$29,000; the budget has \$30,000 set aside. The motion to approve the plan passed.

**TRAIN WRECK. See also related topics—Regulated Industries; Railroad Retirement Act; Interstate Commerce; Bailments and Secured Transactions; Politics:**

Governor Steve Tubbs reported that negotiations to get access to Washington court opinions for low-cost dissemination in on-line and CD-ROM formats have run aground. A previously approved contract with the state Reporter of Decisions was suddenly rescinded recently.

There seem to be two problems, Tubbs reported. One is that the University of Washington recently got some heavy weather in the press for renting athletic facilities on the cheap. That seems to have given the Chief Justice the yips about being sure the state recovers the cost of producing judicial opinions. The other problem is that to get access to the information, one has

to go the clerks of the various courts for copies of the data, in the format they have the opinions in. That format is one developed in software and computers installed by West Publishing Company. In return, West has contractual first access to the data. The terms of the contracts are unknown, as they are deemed confidential by the courts, and the courts are exempt from the public disclosure laws. There are also cross-agreements between the Reporter of Decisions and West so they can cite to each other's state and regional reporters, and the reason we have dual citation requirements in briefs.

Tubbs said West is willing to release data they have under contract in return for royalty payments—The Pattern Jury Instructions, for example, for \$3,500 a year—and the state is willing to give access to court opinions through an Office of the Administrator of the Courts 800 number that gives on-line access for a yearly access fee and on-line costs of \$25 per hour. Where matters go from here is uncertain.

**And The Winner of This Year's Emily Litella Award Is:**

The Young Lawyers' Division's demand for a seat on the Board of Governors came up for a vote. In a conciliatory opening move, YLD president Lisa Lowe offered up president-elect Rosemary Daszkiewicz as a human sacrifice, repudiating Daszkiewicz' December, 1992 threat that if the YLD didn't get their way, they'd organize a referendum. Hoping to open any minds closed by the perceived threat, she moved on to address some other arguments that have turned up during the protracted debate. Why, if the Young Lawyers feel disenfranchised, should they not be able to vote for their special

representative on the Board? Lowe said the cost of a statewide campaign would be prohibitive, so it makes more sense for the leadership of the Young Lawyers Division to select the Young Lawyers Governor. But, within certain limits, she said, that was a negotiable point. Is giving the Young Lawyers a Governorship too avant garde? No, Lowe said, 22 states responded to an ABA survey, and of those, 78 percent have Young Lawyers representation.

The bottom line, Lowe concluded, is "giving young lawyers a feeling of inclusiveness and sensitivity," getting beyond arguments pro and con to "the right thing."

Wayne Blair saw granting the demand as a first step in including more people in bar governance.

Governor Alva Long thought all the minority bar associations and the Young Lawyers should pool their votes—one each—and appoint someone to the Young Lawyers Governorship; "We need more minorities."

Governor Joe Nappi recounted the opposition of his constituents to the Young Lawyers.

Governor Jan Peterson thought a decision on the matter should be part of an overall decision on change, based on the responses of WSBA members to the forthcoming survey. "Voting now is premature, and possibly an attempt to short-circuit what we learn from the survey. We should table this until the survey results are in." Nappi obligingly moved to table, and the Board obligingly voted the motion down, 5-6, Governors Campbell, Nappi, Norris, Peterson and Tubbs in the minority.

"I heard that the survey wasn't going to include governance

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issues," Lowe replied.

"Wrong," Peterson responded.

Judge Small noted that there is a "growing gap between older lawyers and younger ones. The younger ones lack mentors. That leads to unprofessional exchanges in court, nonsensical motions and cost to clients." He thought the Young Lawyers Governorship would help close the gap.

Governor Monte Hester said the bar needs to be more inclusive, that the Young Lawyers were distinct from all the other special interest groups, and that "we've delayed too long. This can only improve the bar."

Governor Steve Tubbs noted that the Young Lawyers Division gets a lump sum budget each year and has broad discretion in how to spend the money. If they came into the fold with a Governor, shouldn't their programs compete for dollars like everyone else's?

"No," Lowe replied.

After some other, unfocused discussion, Governor Vickie Norris said Lowe had made an argument that convinced her the Young Lawyers Governorship is a bad idea: that the YLD Governor should not be elected because then the incumbent would be answerable to non-Young Lawyers lawyers.

"I represent young and old lawyers, male and female lawyers," Norris said. "We all have geographical constituencies, and we represent all the lawyers in our districts. The seat is not inclusive, it's over-inclusive, to the detriment of other lawyers who aren't young lawyers."

Nancy Krier, the Government Lawyers' Bar Association

representative, said her group hadn't taken a position, but she thought they would oppose the concept. "It's not a fair idea. Each argument the Young Lawyers make for a seat on the Board, other groups can make. We don't understand what stops the Young Lawyers Division from electing governors to the Board now. Mary Fairhurst [the new Third District Governor] is one. A minority seat is needed more."

Alva Long repeated his plan. Governor Blair called for a vote on the concept of having a Young Lawyers Governor and for a decision on the manner of selection later.

Lowe then asked the Board, before they moved to a vote, if anyone had changed his or her mind since the last vote rejecting the Young Lawyers Governorship. No hands were raised. "Then my board has voted unanimously to pull this," Lowe said. "I ask that the proposal be tabled."

Twenty-nine sets of eyebrows rose, in a collective "Huh?"

President-elect Stritmatter broke the silence by telling Lowe he is making the Long-range Planning group the largest committee he's appointing, and making governance issues a top priority. He invited Young Lawyers participation.

#### **Taming the Circles Chart:**

In a genuine tour de force, Governor Tom Chambers introduced Paul Bastine and Mary Ruth Mann, who in turn introduced the final report of the Access to Justice Task Force. The report calls for the creation of a permanent Access to Justice Board of nine members—to ride herd on all the various legal services groups serving the poor, to coordinate and increase resources and deal with the myriad of impediments to a full

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provision of service to those who need it. It will supersede the busy, overlapping mass of circles of competing interests which Evergreen Legal Services' Ada Shen-Jaffe described in a famous Venn diagram a couple of years ago. Dennis Harwick told the Board that by redirecting previously appropriated funds and adding some new money, the project will have a budget of \$110,000.

After much praise for all involved, the Board approved asking the Supreme Court to authorize creation of the Access to Justice Board.

"This is just a first step," Chambers warned. Everyone seemed to think it was a large one.

#### **1993-1994 Budget Adopted:**

Dennis Harwick told the Board WSBA finances are in sound shape as the 1992-1993 budget year heads into the fourth quarter: \$400,000 ahead of this time last year. The Continuing Legal Education program is showing a profit.

On a motion by Governor Steve Tubbs, the Board voted to reinstate the *Resources* directory, selling it to members for \$14 a copy. A motion to double the cost of fee arbitration, from \$50 to \$100, ran into more opposition. Governor Tom Chambers said the Board lacked the will to offer another dues increase proposal, and was increasing user fees right and left to make up the shortfall. Governor-elect Steve Toole thought the fee arbitration program an excellent one: it generally works out more easily and cheaply than, say, getting sued for malpractice and dealing with disciplinary complaints. He thought lawyers should pay the fee.

Governor Alva Long seconded that idea. He thought raising the fee would deter the less-well-off from seeking arbitration, and generate bad publicity.

Governor Jim Handmacher said he opposed having WSBA subsidize individual lawyers' fee disputes, and he rapped Long for coming to the defense of a program he really wants to eliminate.

"If your resolution to limit use of bar dues to mandatory and regulatory functions passes, there will be no fee arbitration program," Handmacher said.

"I have no objection to being charged the full fee," Long replied. In the end, the Board approved the fee increase, but will decide who'll pay it in September. Governors Chambers and Long opposed

the increase.

The Board then moved to consideration of the overall budget for 1993-94. After some discussion of whether the Board should redirect its policy toward the CLE program, demanding that it make more money hawking books and less putting on programs, the Board voted 9-2 to approve the budget. Details of the lengthy document can be obtained by contacting the Bar office.

#### **Only Tracking the Continental Drift Is More Exciting:**

The Court Rules Committee brought the Board its annual laugh-fest. As Chairman Mao might have said, Let A Thousand Court Rules Be Amended. This time most of the thrills were confined to the Rules of Appellate Procedure. There were 65 changes, all told. The Board approved all but half a dozen. Those will be addressed in September. Most were housekeeping changes; all will be printed in the Advance Sheets. Don't miss 'em.

#### **Winthrop Wrap-up:**

In other action, the Board learned the ABA is late with their evaluation of the WSBA Disciplinary System. They'll try to have it out by August. They received a compilation of the results of a survey of King County Bar Association and Young Lawyers trustees on how they value WSBA programs. They also received the annual reports of 24 out of 26

WSBA standing committees. They batted around the No Sex With Clients Rule some more. They heard a much-more-interesting-than-usual report on local bar activities and concerns by Barnett Kalikow, president of the Okanogan County Bar Association.

**Next meeting:** September 9, 1993 in Seattle.

**Coming meetings:** October 22/23, Ellensburg; December 3/4, Seattle; January 7/8, 1994, Olympia; February 11/12, Tacoma; March 25/26, Bellingham; April 8/9, Seattle; May 6/7, Spokane; June 17/18, Vancouver, Washington; July 29/30, Ocean Shores; September 8/9, Seattle. All meetings are open to WSBA members.

The Board of Governors is seeking candidates for appointment to the JUVIS Advisory Committee, to complete the term of John Schultz, who resigned. The preferred candidate is a prosecutor or deputy prosecutor who works with juvenile cases and has an interest in computers. The Board will take up the appointment at its September meeting. Interested persons should contact their representative on the Board of Governors.

The Budget & Audit Committee of the Board of Governors has scheduled additional sunset review hearings on various discretionary programs of the Bar Association. (See page 34 for hearing dates and locations.)

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## Notices of Interest to Bar Members

### WSBA Nondisciplinary Notices:

**Transfer to Inactive Status in Lieu of Interim Suspension:** Seattle lawyer **Paul S. Ritchie** (WSBA #17894, admitted 1988), has transferred to inactive status in lieu of interim suspension pending the outcome of disciplinary proceedings, effective June 23, 1993. [June 23, 1993]

### WSBA Disciplinary Notices

**Censured:** Lawyer **William James Denver**, (WSBA #10624, admitted 1980), formerly of Seattle, has been ordered censured, pursuant to a Stipulation for Discipline approved in December, 1992. The discipline is based on Denver's conduct, in 1982 and 1983, in his joint representation of promoters of, or investors in, tax shelters, in audits before the Internal Revenue Service, and in tax court cases, in violation of conflict-of-interest rules. A history of the case is outlined in *Eriks v. Denver*, 118 Wn.2d 451 (1992). [June 30, 1993]

### Public Notices

#### Court Rules Notice:

When it reconvenes this fall, the WSBA Court Rules and Procedures Committee is scheduled to review the Criminal Rules for Superior Court (CrR) and the Criminal Rules for Courts of Limited Jurisdiction (CrRLJ). Comments and suggestions about these rules are invited. Please send them to Steven Rosen, Staff Attorney, WSBA, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599.

#### *In re RCW 19.52.120(1): Legal Interest Rate ("Usury Rate"):*

The average coupon equivalent yield from the first auction of 26-week treasury bills in August, 1993 is 3.35%. **The maximum allowable interest permissible for September, 1993 is therefore 12%.**

Compilations of the average coupon equivalent yields from past auctions of 26-week treasury bills, and past maximum interest rates, appear in the *Bar*

*News*, October, 1987, for 1982-84; in June, 1989, page 37, for 1984-85; in June, 1992, for 1985-87; and in June, 1993, for 1987-93.

#### *Nominations open for Devitt Distinguished Service to Justice Award:*

Nominations for the award should be in writing and should set forth the nominee's accomplishments and professional activities which have contributed to the cause of justice.

West Publishing Company created the award to recognize the dedicated public service of members of the Federal Judiciary. All federal judges appointed under Article III of the Constitution are eligible recipients. Nominations are due by December 31, 1993 to: Devitt Distinguished Service to Justice Award, PO Box 64810, St. Paul, MN 55164-0810.

#### *Washington State Child Support Schedule:*

The 1993 Washington State Child Support Schedule, effective July 25, 1993, is available from the Office of the Administrator for the Courts, 1206 S. Quince Street, Mail Stop EZ-11, Olympia, WA 98504.

The following revisions have been made to the schedule:

- Income Standards #6 - Imputation of Income, has been revised pursuant to C358 L93, providing that income is not to be imputed to a parent to the extent that a parent is unemployed or significantly underemployed due to the parent's efforts to comply with court-ordered reunification efforts under chapter 13.34 RCW.

- Deviation Standards #1c - Debt and High Expenses, has been revised adding as an expense for consideration for deviation "costs incurred or anticipated to be incurred by parents in compliance with court-ordered reunification efforts under chapter 13.34 RCW or under a voluntary placement."

- The Approximate Median Net Monthly Income table has been updated using data from the U.S. Bureau of the Census, Statistical Abstract of the United States: 1992.

No changes have been made to the worksheets which became effective September 1, 1991.

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**RALJ policy change, King County Superior Court:**

Effective August 2, 1993, King County Superior Court will issue a case schedule on all RALJ appeals at the time the appeal is filed in the Superior Court

Clerk's office. The following reflects the time frames that will be set in the case schedule.

**CASE EVENTS**

\*Filing of Notice of Appeal- RALJ 2.4(a)

**DUE DATE**

Today's Date (F)

Court of Limited Jurisdiction prepares a record and notifies parties that record is ready to transmit - RALJ 6.2(a)

F + 14 days

Appellant to have paid Court of Limited Jurisdiction for copies of records and tape, unless waived - RALJ 6.2(a)

F + 24 days

Court of Limited Jurisdiction to transmit copy of documents and provide copy of tape to appellant - RALJ 6.2(a); RALJ 6.3

F + 31 days

\*Appellant's brief and transcript from tape due - RALJ 7.2(a)

F + 45 days

\*Respondent's brief is due - RALJ 7.2(b)

F + 75 days

\*Appellant's reply brief due - RALJ 7.2(c)

F + 89 days

Oral Argument - RALJ 8

F + 96 days

\*Requires the filing of a document with the Superior Court Clerk.

If you have any questions regarding this change, please contact the RALJ Coordinator at (206) 296-7849.

**Price and Access Changes Coming To L.A.W. BBS**

Changes are coming to L.A.W. BBS, the WSBA's computer research electronic bulletin board system. The changes are being implemented to encourage subscriptions.

• **LAW-RELATED USERS:** Attorneys and other law-related users who are not subscribers may have already noticed that usage has been decreased from 35 minutes per day to 12 minutes per day. Subscribers continue to get up to three hours per day of use. Subscriptions still cost \$30 per quarter or \$100 per year.

• **SUBSCRIBER-ONLY LINES:** Also effective October 1, 1993 area code (206) lines 1 and 2 [727-8312 and 728-2884] will be the only lines open to non-subscribers. Lines 3, 4, 5, and 6 [728-2885, 728-2886, 728-2887] and Tacoma line [927-1030] will be SUBSCRIBER-ONLY.

Subscribers should dial into (206) 728-2885 to avoid busy lines. Subscribers dialing into lines 1 and 2 will automatically be routed to lines 3-6 if the first two lines are busy but sometimes if the computer "hangs," i.e., cannot compute,

then the subscriber will get a busy signal. It is also anticipated that lines 1 and 2 will be busy much of the time. If a non-subscriber attempts to use the subscriber-only lines then he/she will be instructed to dial back on the general use lines.

L.A.W. BBS is operated completely by volunteers. The budget for the BBS comes from subscriptions and from a portion of the section dues of LOPM and General Practice Section members. The BBS budget is spent on phone lines, software, hardware, administration and educational activities. L.A.W. BBS seeks to become self-supporting through subscriptions and hopes to improve the extent and quality of its service with revenues from the additional subscriptions anticipated by this change of policy.

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**PROFESSIONAL ETHICS: CONFLICTS AND  
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**December 3, 1993** 4 CLE Credits  
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1:30-5:30 p.m. \$75 before November 1 1993  
Among the issues raised are Permissible Disclosure of Confidences, Impact of Economic Concerns on Lawyer Judgment, Obligations to Third Parties and the Public, and Conflicting Obligations in Multi-Jurisdictional Practice.

**FEDERAL PRACTICE SEMINAR**

**December 10-11, 1993** 10.5 CLE Credits  
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**Legal Foundation 1992 Annual Report:**

The Legal Foundation of Washington, the recipient of the interest on lawyers' pooled trust accounts (IOLTA), has prepared its 1992 annual report to the public. To receive a copy, call the Foundation at (206) 624-2536, or write to the Legal Foundation of Washington, 500 Union Street, Suite 945, Seattle, WA 98101-2332.

**WSBA Sunset Reviews:**

The WSBA Budget and Audit Committee continues to hold public hearings on sunset reviews of discretionary WSBA programs. The intent of the review is to help the Board make the highest and best use of the limited resources available to the WSBA and may result in improvements, modifications or elimination of a program. In addition to having an open invitation to attend the reviews (at the Westin Building; schedule appears below), interested parties are encouraged to mail comments to Sunset Review, WSBA, 500 Westin

Building, 2001 Sixth Avenue, Seattle, WA 98121-2599. Both letters and forms, available from Jo Morehouse at the Bar office [(206) 727-8244], are welcome.

Pertinent information may include: your affiliation or connection with the program under review; your understanding of why the program was established; whether the reason(s) still apply; other reason(s) to continue the program; who benefits from the program; the breadth and/or depth of the benefit; other providers of the program's product and/or services; and the consequences of dropping the program.

1993 HEARING SCHEDULE

Program	DAY	DATE	SEATTLE'S WESTIN BUILDING	HOUR
LAP	THU	JAN 28	President's Rm, 4th floor	3 pm
Client Security	THU	MAR 18	President's Rm, 4th floor	2:30 pm
Convention	FRI	MAY 14	President's Rm, 4th floor	1:30 pm
Fee Arbitration	FRI	JUN 11	Conference Rm, 23rd floor	1:30 pm
Resources	FRI	JUL 9	President's Rm, 4th floor	1:30 pm
L.A.W. BBS	FRI	OCT 15	President's Rm, 4th floor	1 pm
Local Bar Support	FRI	OCT 15	President's Rm, 4th floor	3 pm
Access to Justice	FRI	NOV 12	President's Rm, 4th floor	1 pm
Communications	FRI	NOV 12	President's Rm, 4th floor	3 pm
CLE	THU	DEC 2	President's Rm, 4th floor	1 pm
Legislative	THU	DEC 2	President's Rm, 4th floor	3 pm

**Note:** Telephone numbers for regular regional CLE providers and other groups presenting events are listed on page 35. Where the contact is an individual, contact information is listed in the specific calendar entry.

**September 1993**

**1** Olympia: Washington Wills in the 1990s (video). *Sponsored by WSBA.*

**1-3** Seattle: Taking and Defending Depositions. *Sponsored by NITA.*

**9** Seattle: Tort Law Update. *Sponsored by WSTLA.*

**9-10** Seattle: WSBA Board of Governors meeting.

**10** Seattle: WSBA Annual Meeting and free CLE Seminar: Protecting Your Practice from Malpractice Claims, Discipline and Litigation. **NOTE:** Enrollment is limited. **NOTE FURTHER:** WSBA convention in Victoria has been canceled.

**10** Seattle: AIDS and the Law. *Sponsored by KCBA. Contact Carolyn King, (206) 340-2584.*

**10-11** Sun Valley: Advanced Estate Planning. *Sponsored by Idaho Bar Foundation.*

**12-14** Leavenworth: Juvenile Training Program. *Sponsored by WAPA. (changed from Aug. 22-24)*

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

**17** Seattle: Water Law in Transition. *Sponsored by WSBA.*

**September 10**  
8 a.m.-4:30 p.m.  
**AIDS and the LAW**  
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1-2 Spokane: Macs and Tax, Gonzaga University School of Law's 20th Annual Tax Institute, Hills Resort, Priest Lake, Idaho. Program focus is estate planning in the Clinton Administration.

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Lake trout are reportedly excellent this time of year. *Contact: John Maurice, (509) 328-4220.*

4 Port Townsend: Washington Wills in the 1990s (video).

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

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

8 Seattle: Critical Issues in Employment Law. *Sponsored by WSBA.*

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

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15 Tacoma: Estate Planning. Sponsored by Tacoma-Pierce County Bar Association.

15 Spokane: Critical Issues in Employment Law. Sponsored by WSBA.

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

17 Seattle: Sunday Institutes on records management, micrographics

standards and technologies, disaster preparedness, retention and disposition of business records. Contact Mary Hodges, ARMA, (800) 422-2762 (U.S.)/(800) 433-2762 (Canada).

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

19-20 Seattle: "Information and Im-

aging '93," expo of imaging systems, CD-ROM/WORM, OCR scanners, micrographics, CAR systems, bar-coding, etc. (See Oct 17-20, above.)

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

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

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

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

22 Seattle: Family Law. Sponsored by WSBA.

28 Spokane: Oral Advocacy: Opening Statements and Closing Arguments. Sponsored by WSBA.

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

29 Seattle: Oral Advocacy: Opening Statements and Closing Arguments. Sponsored by WSBA.

#### November 1993

4 Spokane: WDTL annual Insurance Law Seminar. Contact: (206) 628-6600.

5 Seattle: WDTL annual Insurance Law Seminar. Contact: (206) 628-6600.

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

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

19 Tacoma: Appellate Practice. Sponsored by Tacoma-Pierce County Bar Association.

#### December 1993

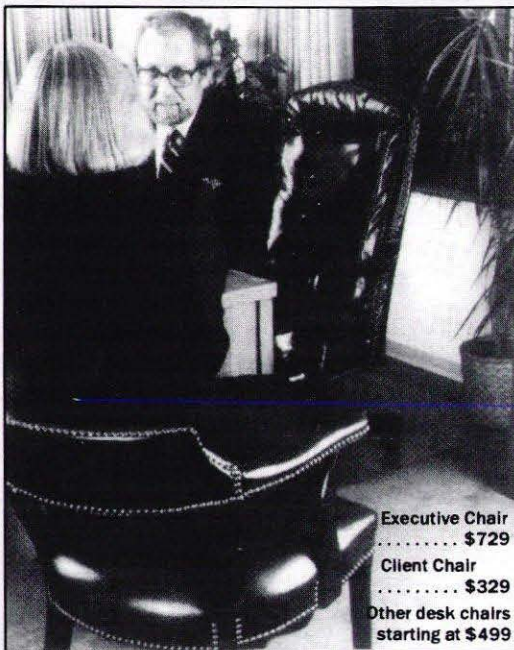
3 Idaho Falls: Annual Law Update. Also presented December 10 in Boise and December 17 in Lewiston. Sponsored by Idaho Bar Foundation.

4 Tacoma: Annual Year-End Potpourri CLE. Sponsored by Tacoma-Pierce County Bar Association.

15 Deadline for copy for February, 1994 *Bar News*.

#### March 1994

20 Caen, Normandy, France: International Lawyers Defense Competition. Sponsored by the Bar Association of Caen. For information: Jean-Marie Girault, tel: 31-06-06-44; fax 31-06-06-70; telex 772.372.



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# CONFLICTS: A TRUE LOVE/HATE STORY

by Robert W. Goldsmith

**C**onflicts: depending on where you're working, you either love them or hate them.

When I was a public defender, another lawyer and I were assigned an ugly murder case for which the death penalty would be sought (and later rejected by the jury.) I'll never forget how my supervisor (who shall not be named) began scanning our old closed case records, stored haphazardly on index cards, trying to find a conflict to get us out of the case. Success! The victim herself had had an expedited drug case in our office. We found the file in the basement—a bare police report was the only thing in it. No time entries, no notes, no interview sheet. Despite the lack of "confidences or secrets," it was enough to call the county, say we had a conflict and withdraw.

In contrast, in private practice we go through all sorts of maneuvers to avoid losing a paying client. Recently, I was involved in a case where one lawyer originally represented the two codefendants in a drug case. So far, no problem, since they had knowingly consented to this arrangement. (See RPC 1.7(b).) The conflict arose when one defendant wanted to testify to exonerate the other one by claiming full responsibility. The prosecutor refused to do anything before trial unless and until each defendant had his own attorney. I think the prosecutor was right. The lawyer who represented both clients reluctantly referred one to me. Notwithstanding all the possible consents granted, the practical problems required a second attorney.<sup>1</sup> For one thing, just imagine the same attorney giving the closing argument saying to acquit defendant A for reason "x" and acquit B because A did it alone! Hard to wear those two hats.

Going back to the defender case, my supervisor was correct in getting us out

of the case. After all in such a case, no lawyer or firm should be tainted with any potential for divided loyalty. After all, it would not be hard to conjure up problems in that case—for example, would other lawyers defending in the capital case have such immediate access to the police report? Or, what if relatives of the victim turned up and were horrified to see their loved one's law firm defending her alleged killer?

In criminal cases, the standard for conflicts should be high. But is it?

In a death penalty case, *State v. Stenger*, 111 Wn.2d 516 (1988) the Clark County prosecutor's office was disqualified where the Prosecuting Attorney himself had represented the defendant on several criminal cases before he took office. The Supreme Court narrowly confined the disqualification to this type of case because the prosecutor had obtained background information relevant to the penalty phase. Amazingly, the Court said that the prosecuting attorney would not have been disqualified from a first degree murder case "since that charge by itself is unrelated to the accused's previous crimes concerning which the prosecuting attorney represented him." 111 Wn.2d at 521.

That statement goes too far. There are a number of potential areas where such knowledge of a defendant's background causes a conflict for the prosecuting attorney and the office, if it is small enough. Under ER 404(b), prior bad acts, not necessarily criminal convictions of record, may have been revealed to the attorney who is now the prosecutor. If these prior bad acts are relevant and admissible to, say, premeditation, does the prosecutor suppress the memory of them? And doesn't that knowledge affect the decision about whether to charge 1st or 2nd degree? Or, if the prosecutor previously learned of out-of-state convictions which are not reflected in his/her office's calculation of criminal his-

tory, is that something to use? These questions are especially apt in counties with small prosecutor's offices.

To gain the trust of a client in a criminal case, a good lawyer will just let the client talk. Sometimes that leads to things we'd rather not know but it helps the client. RPC 1.6(a) says: "A lawyer shall not reveal confidences or secrets relating to representation of a client. . . ." This rule is hard to reconcile with the potential for mischief contained in the *Stenger* dicta quoted above.

To protect confidences, *Stenger* recommends screening the defendant's previous lawyer from the prosecution of the new case. The Court reasons that prosecutor's offices and other public law offices such as defenders can use a "Chinese wall" to prohibit disqualification of the entire office, citing to RPC 1.11(c). Of note is the Court's pointed omission of the imputed disqualification rule, RPC 1.10.

For RPC 1.11 does not contain the steps that RPC 1.10(b) imposes on law firms with former client conflicts. Law firms can only retain former client/conflict cases if they guard confidences with "Chinese walls" made up of three parts: (1) the disqualified lawyer is screened; (2) the former client receives notice of the conflict and the screening mechanism; and (3) the firm can show no confidences were revealed before the screen was up. RPC 1.10(b).

There seems to be no reason why a former criminal case client should be less apprised of what's going on than some corporation in a battle over money.<sup>2</sup> The cost, hassle or the "difference" of public and private lawyers, 111 Wn.2d at 522, do not satisfactorily explain why prosecutors are apparently exempt from the procedures of RPC 1.10(b), as *Stenger* implies.<sup>3</sup> Should we just trust them? Are they above the heat of battle and the competitiveness of litigation? Would they abuse such a con-

flict? In my nonhumble opinion, prosecutors are as likely to cheat as the rest of us.

Despite the stringency of RPC 1.10, such conflicts in civil cases don't upset the applecart very easily. In *Teja v. Saran*, 68 Wn.App. 793 (1993) Teja consulted an attorney about a debt Saran owed him. The attorney advised Teja to file in small claims court, which Teja did. Then Saran counterclaimed for a

greater debt in superior court, employing the very attorney whom Teja had consulted.

On its face, this scenario violates RPC 1.9(a), which prohibits representing another person in a related matter where the interests are materially adverse to a former client. Yet the trial court refused to disqualify the attorney and both parties obtained judgments on their debts. The Court of Appeals ruled it was error

not to disqualify but since no prejudice was shown, it was affirmed.

In criminal cases, prejudice need not be shown where an actual conflict of interest adversely affects the lawyer's performance. *In re Richardson*, 100 Wn.2d 669, 677 (1983) (where defense counsel also represented a defense witness and dropped a valid line of cross examination when it imperilled the witness.) Though "prejudice" is not required, I don't understand how that is any different from an adverse effect. The more potent rule is that if a potential conflict of interest exists, the court's failure to inquire automatically requires reversal. *In re Richardson*, 100 Wn.2d 669, 670.

When a defense witness is represented by the defendant's attorney or firm, one approved method is to appoint a new, unassociated lawyer to represent the witness. *State v. Hatfield*, 51 Wn.App. 415 (1988) (no problem, even though appointment made on day of trial.)

The real test of Richardson's principles occurred in *State v. Martinez*, 53 Wn.App. 709, review den. 112 Wn.2d 1026 (1989). Sad to say, the principles lost. There, the defendant and a juvenile codefendant were represented by the same defender office. The defendant wanted to call the juvenile as a witness, in an otherwise slam dunk prosecution case. The defendant's attorney spoke to the juvenile and decided not to call him. The trial court knew of the conflict and failed to make any inquiry. The Court of Appeals dodged the Richardson principle by saying it did not apply when the witness was not actually called to testify. In a righteous dissent, Judge Rosselle Pekelis pointed out that the law does not limit the duty to inquire only to situations involving testimony. Otherwise, an attorney can "insulate" himself from the conflict rule "... by not calling his other client despite the fact that the defendant client ardently requests it." 53 Wn.App. at 719.

Where does that leave us? The courts may find error where conflicts occur, but won't often provide a remedy. We must be sure to provide a conflict-free representation. In the age of computers, we don't need to be scrounging in messy index card files or in dusty basements. Just type a name in and wait for the answer. . . .

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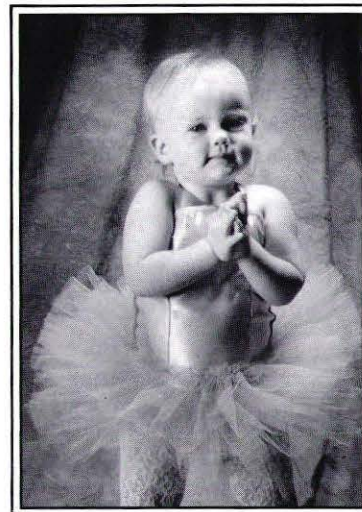
<sup>1</sup> *U.S. v. Wheat*, 486 U.S. 153, 108 S.Ct. 1692, 100 L.Ed.2d 140 (1988) posed a similar scenario. There, the right to select an attorney collided with the right to have a conflict-free attorney. The majority (5-4) upheld the trial court's finding of an irreconcilable conflict where there was the possibility that the attorney representing multiple defendants might need to cross-examine one of his clients on behalf of the other. The dissent pointed out that the likelihood of this occurring was so remote as to make the right to choose a particular counsel paramount. In my case it was not remote because one defendant wanted the other's testimony preserved for trial in a deposition.

<sup>2</sup> See Ethics Opinion 1991-120 (7/91), ABA/BNA *Lawyer's Manual on Professional Conduct*, 1001:7118 (1992 ed.) "If the lawyer's [former defense lawyer now a prosecutor] representation on a matter would result in an information-specific or matter-specific conflict, the lawyer may not work on the matter without disclosure to and consent from the client." This practice would bring former criminal case clients closer to the way civil case clients are treated. This also covers the problem of knowledge of prior crimes and/or misconduct to some extent.

<sup>3</sup> *Stenger* also cites to *U.S. v. Caggiano*, 660 F.2d 184 (6th Cir. 1981) where the disqualification of the entire U.S. Attorney's office was *not* the remedy where defendant's attorney at his first trial (hung jury) was hired by the U.S. Attorney's office before the second one. *Caggiano*, like *Stenger*, supports the belief that since prosecutors have an ethical duty to "seek justice" instead of results for a client, they are less likely to circumvent the ethical rules regarding conflicts. 660 F.2d at 191, citing ABA Committee on Professional Ethics, Formal Opinion 342, 62 ABAJ 517 (1976).

**Robert W. Goldsmith** is the head of a one-man firm and has never attended any seminars on lawyers who leave the profession.

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# “PARTNERSHIP”

**S**ometimes I think that the process of making partner is too dramatic for real life and should, instead, take place in the form of an opera; perhaps, “Il Partnershipio.” Here then (with apologies to any one opera lover, person of Italian ancestry or woebegone associate who I may unintentionally offend) is the way I envision such an opera might unfold.

## ACT I

The curtain rises on a conference room in the offices of the prestigious Bologna law firm of Sephugia, Sephugia and Goldstein. Arturo, an associate who has been with the firm for more than five years and limits his practice to real estate law, is seated at a conference table piled high with documents. Also at the table are six other people.

Dressed in a four-piece suit (two vests), Arturo moves to the front left of the stage and, cupping his hand and putting it to his mouth to signal to the audience that he is speaking to them and cannot be heard by the others in the room, sings the famous introductory aria, “O Mio Rusumeo,” in which he immodestly boasts of the background that led to his hiring by the firm. After rattling off virtually all his accomplishments since the crib, including his Italian Jurisprudence Award in contractos and his many mooto courto triumphs, he finally returns to the conference table.

In the ensuing septet, the people around the table each identify themselves and sing of what has brought them to the conference table. Unfortunately, since all of them are singing at once, nobody in the audience can make out a word. Everybody in the audience, however, is presumed to have read the libretto and to know that they are attending an important condominium closing in which Arturo is representing the builder and condo developer Roderigo de Seisin, who, unbeknownst to Arturo, is planning to use the property that he is purchasing for warehouse condos, the first of their kind in Bologna.

The seller, an old widow by the name of Maria Malalucca (whose husband,

Real Lee Malalucca, left the property to her when he died from lemon gelatos that had been poisoned by the grandniece of the evil zoning administrator, Rodrigo dello Fixitto), thinks that the property is a worthless swamp, notwithstanding its location in downtown Bologna. She has been driven slightly daft by her no-good son, Hank, who, despite being valedictorian of his college class, has never aspired to be anything other than a toll collector in the exact-change lane of the autostrada. Maria spends the first act spraying the conference room to rid it of the malaria that she thinks has been brought in from her swamp property by a buzzle of flies. She sings her famous aria “Agli Uffizzi non vogliamo tsetse” (No Tsetse in the Uffizzi”) while continually squirting a can of Raid.

Also at the table is Stefano Sephugia, the 83-year-old senior partner in Sephugia, Sephugia and Goldstein, Arturo’s law firm. As we learn from his “Io son il secondo Sephugia” (“I am the Second Sephugia”), Stephano is not the originator of the firm, but succeeded to the position of senior partner upon the death of his older brother Alfredo, who died when a wound, accidentally inflicted by a notary public in affixing his stamp to a document, became infected. Stefano spends each day in this conference room and participates in whatever meetings are being held there. He falls asleep from time to time, but wakes up abruptly and says, “Well, I guess that’s alright,” every five minutes or so.

The other two people in the room are Rosa and Rocco Petrocelli, brother and sister paralegals. They sing their enchanting duet “O, siamo solo un paio di paralegali” (“Oh, We’re Just a Pair of Paralegals”), in which they bemoan the life of a paralegal and shuffle all of the papers on the table back and forth, putting them in different piles, then returning them to their original piles.

Arturo gets up from the conference table and again goes to the front left of the stage, cups his hand and sings to the audience of his anxiety over the forthcoming decision about whether he will be made a partner in the firm: “Perdio se non mi fanno socio faccio” (“If I Don’t

Make Partner, I’m Gonna Have A Fit”). And the curtain falls as the others, except (Stefano, who is asleep) run over to where Arturo is standing and sing the angry quintet, “Se non do cantare dove non ti so pu ò ascoltare” (If You Don’t Stop Singing Where We Can’t Hear You, We’re Gonna Give You a Crack on the Head”).

## ACT II

The scene is in the same conference room four days later. Stefano Sephugia is asleep in the same chair that he occupied in the first act. Seated around the table with Stefano are five other people all wearing anywhere from three- to six-piece suits, except one, who is wearing a swimsuit and scuba gear. Lucca Provolone, who is chairing the meeting, announces in his aria, “Arturo sì o Arturo no” (“Arturo, Up or Down With Him?”) that the next order of business is consideration of whether Arturo should become a partner in the firm. The others around the table all sing at once the quintet “Arturo socio? Giammai!” (“If He’s a Partner, We’re All Guppies”). During the quintet, Stefano falls asleep, but awakens at the end and announces, “Well, I guess that’s alright. Lucca quieta the Executive Committee with “Zitti sitti vi tolgo i proventi” (“Quiet Quiet, or I’ll Cut Your Partnership Share”) and asks each of them to express his view separately. One of the partners opines that the partnership cannot afford to make another partner: “Che scherzi son questi?” (“Is This A Joke? We’re All Broke”), while another says that he does not believe that Arturo has achieved the requisite level for partnership: “Divino ancor non è” (“He’s Not a God Yet”). The fellow in the scuba gear realizes he has come to the wrong place, “Pesce non cè: corallo hemmeno” (“There Are No Fish, There Is No Coral”), and announces his intention to leave just as soon as he votes on the partnership question. Stefano awakens and says, “Well, I guess that’s alright.”

Just then, a tremendous commotion is heard out in the hall and one of the partners rushes into the meeting to announce that Channel 69 Eyewitness

by Stanley J. Fairweather

News has sent a crew to the firm, which is in the process of interviewing Arturo in his office. The curtain rings down as the Executive Committee sings its famous sextet "Su partiam, su partiam, Arturo alla tele andiamo a guardar" ("Let's Adjourn and Watch Arturo on the Tele").

#### ACT III

The scene is in Arturo's office, where a cameraman and Channel 69's Lolita Bellissima are setting up for the interview. We learn from Lolita's lilting "Il piano do Roderigo è all'aria" ("Roderigo's Plan Is Dead") that Arturo has discovered that Roderigo was intending to turn the property purchased from Maria into whorehouse condos and sell them on a one-hour timesharing basis. In keeping with the new Code of Professional Responsibility, Arturo has run to the police and ratted on his client. Just then, the telephone rings, Arturo puts his hand over the receiver and tells

Lolita that it is Maria, who has called to thank him: "E il fazzo con e Raid" ("It's the Nut With the Raid"). Lolita suggests that Arturo put Maria on the speaker phone so all of the viewing audience can hear her first-hand, but Arturo explains that he cannot do that: "Son solo un umile associato senzo l'interfon" ("I'm Only a Lowly Associate Without a Speaker Phone"). Lolita is shocked to hear this and asks Arturo when he will become a partner and, in his touching aria, "Solo in cielo un socio sarò" ("Maybe Only in Heaven Will I a Partner Become"), he explains to her that there is no guarantee, even after these long years of service, that he will be made a partner on this earth. At this point, several of the Executive Committee members, who have been listening to the interview from outside of Arturo's office and who sense that the possibility of Arturo's not becoming a partner is creating adverse publicity, sing the poignant trio "Oh desdetta socio si ha da

far" ("Oh Shit, We'd Better Make Him a Partner Now") and burst into the interview to congratulate Arturo on becoming a partner. Stefano, who has fallen asleep on the floor outside of Arturo's office, sits bolt upright and says, "Well, I guess that's alright," and the entire cast, in a gala finale, sing and dance to "Ma sì che va bene" ("Well, We Guess That's Alright").

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*Stanley J. Fairweather is senior partner in the mythical Chicago firm of Fairweather, Winters & Sommers. His amanuensis, Arnold B. Kanter, is a Chicago attorney and law firm management consultant. Called "our era's Daumier" by Scott Turow, Kanter is the author of The Handbook of Law Firm Mis Management (Catbird Press, 1990) and the recent sequel, Advanced Law Firm Mis Management, from which this excerpt is published by permission of Catbird Press. Paul Hoffman, a Connecticut artist, illustrated both books.*

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## LAP OFFERS COUPLES' SUPPORT GROUP

The practice of law is difficult for both the practitioners and the people who live with them. In relationships where both people are lawyers, difficulties appear to be more widespread. In a study conducted by LAP in 1987, 32 percent of lawyers, randomly selected, indicated that they were experiencing dissatisfaction in their love relationship with their

spouse or companion.

Since LAP's inception, our staff counselors have worked with many couples. Common issues include: limitations on time; the inability to listen; angry outbursts; financial difficulties; stress-related fatigue; inappropriate limit-setting; and a pattern of broken commitments.

The net result seems to be less inter-

action with the family. For instance, angry outbursts are likely to occur when the lawyer has work-related pressures not easily resolved or brought home from the office. These outbursts lead to isolation and, often, overwork: an attempt to compensate for an untenable emotional situation by providing material support.

When lawyers become aware of the impact these issues have on their personal relationships, they begin to alter their practice, spend more time with their family and colleagues and feel less isolated. For lasting changes to occur, this process takes time, support from others and perseverance.

LAP is offering a couples' support group for lawyers and their significant others that will begin in October. The group will meet from 4:00 to 5:30 p.m. and will run for 10 consecutive weeks. If you are interested, please call LAP for further information regarding the date for the first meeting.

Participants will study methods of communication that aid in resolving the above-mentioned issues and those brought up by the group, which will use the exercises in *A Couple's Guide to Communication*, by John Gottman et al. Other exercises will be used from time to time. The facilitators will be two lawyers who are LAP peer counselors and who have been together as a couple for many years.

### Nota Bene :

LAP is a confidential service providing assessment and referral for a broad range of problems confronting lawyers. These include stress, burnout, depression, career dissatisfaction, alcohol and drug abuse. Contact the Lawyers' Assistance Program at (206) 727-8268. Every Tuesday at noon in the WSBA Presidents' Room, (4th floor, Westin Building), LAP sponsors a free job hunters' support group for WSBA members who are actively involved in the search for a new position. This is a drop-in group focusing on the exchange of ideas, job leads, and job finding ideas. Call Joyce Elven at (206) 727-8268 for information on upcoming special programs to be held periodically in conjunction with these meetings.

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**Requires:** Dos 3.0 or higher; 480KB conventional memory, 7MB hard disk space.

**In Brief:** WordPerfect 6.0 is the best version of WordPerfect yet. It greatly enhances the ease of use quotient while adding powerful new features. You may run into memory limitations in running version 6.0 depending on your computer.

by David M. Sandhaus

I've got a confession to make—I'm not a WordPerfect user. I'm a "Microsoft Word For Windows" user. I'm in the great minority of law office computer users since, according to recent surveys, over 90 percent of law offices use some version of WordPerfect. However, version 6.0 goes a long way towards remedying many of the shortcomings of WordPerfect that previously kept me from considering it for my office. It's the best version of WordPerfect yet, although there are still some performance issues that you may want to consider before upgrading to it.

WordPerfect has become the top law office word processor because of its many powerful legal-specific features and because it is fast. WordPerfect, though, is not inherently easy to use.

Many dedicated, everyday WordPerfect users (e.g., legal secretaries) may gasp at that notion, but to the casual or novice computer user (e.g. attorneys), prior versions of WordPerfect could be intimidating.

Opening a document in a prior version of WordPerfect confronted the user with a blank screen with no information about how to proceed. If you knew that depressing the [F3] key brought up the help function, you could then learn how to execute a command.

Even using the help function was awkward, since it required that you juggle back and forth between the help text and the document text to make things work, sometimes forgetting key elements of a command. Even the WordPerfect [F3] key wasn't conventional since most programs define [F1] as the help key, as version 6.0 now does.

Prior versions required users to memorize a plethora of keystroke combinations and commands. WordPerfect 6.0

fixes all that by operating in a graphical mode and providing customizable menus in both the graphical and text mode that do away with all that memorization.

For example: Want to save a document in WordPerfect 6.0? Select "File" from the menu bar and click on "Save." You can still save by pressing the "Ctrl-[F12]" key combination, but casual users don't need to remember those strange keystrokes to save important briefs.

Want to print a document? Select "File" and "Print" from the menu bar. No longer do you need to remember "Shift-[F7]".

WordPerfect 6.0 users can work in either text or graphical mode. In the

graphical mode, icons on a button bar represent frequently used commands. For example, clicking with your mouse on the printer icon brings up the menu for printing your document.

Button bars can be customized by the user: you could, for example, add the "section" (§) key to the tool bar as a frequently used command.

The bottom line is that the novice user can now learn WordPerfect by experimenting with various menu choices and icon buttons without having to memorize commands. In one fell swoop, WordPerfect has gone from powerful but intimidating to powerful and user-friendly.



Once upon a time...

Another pet peeve of mine about previous versions of WordPerfect was that you could open only two documents at one time. That's just too limiting when you are attempting to work with a variety of client memos, pleadings, letters, and other documents. WordPerfect 6.0 allows you to open nine documents at once and arrange them on-screen in different windows.

WordPerfect also now allows you to

drag-and-drop text with your mouse (no need to use the "Block" command) to move or copy blocks of text from one location in a document to another or from one document to another document. Anyone who is comfortable with using a mouse will find the drag-and-drop method of blocking a more intuitive and straightforward method of manipulating text.

WordPerfect has added a "Quick-

finder" feature that allows you to search for documents based on keywords and Boolean search terms. The Quickfinder feature does extract some hard disk overhead in creating the required search indexes. WordPerfect 6.0 also includes a command for creating watermarks. Watermarks are user-defined text, such as "confidential" or "client copy" that underlie or "watermark" the document. Previously, creating watermarks required purchasing a special add-on program.

Another nice feature is the ability to add an endnote separate from other footnotes. That comes in handy, for instance, when you want to add a copyright (©) notice at the end of a document but leave other footnotes intact.

WordPerfect includes Japanese and Hebrew character sets (the Hebrew character set now includes vowels). While admittedly most law offices are not going to be communicating in Hebrew or Japanese, their inclusion exemplifies the depth and power of this new version.

WordPerfect's summary feature, which encapsulates key document facts and statistics, is the most powerful summary feature of any word processor on the market. You can add information such as "billed to," "attachments," "blind copy" and more besides the usual summary information such as author, date created and document description.

WordPerfect 6.0 hosts a slew of other features not found in other DOS word processing packages. New features include: full spreadsheet functionality; scalable fonts; built-in grammar checker; a customizable Button Bar; fully editable WYSIWYG; graphics editing; irregular text warp around graphics; editable border, table, and outline styles; color printing; selectable merge; envelope barcode printing; and WordPerfect Coach. The "Coach" feature is a subset of the help function that leads the user in applying various WordPerfect commands such as outline, search and replace, and hypertext.

The clip art in 6.0 is of the highest quality I have ever seen included in a word processor. It is just another example of WordPerfect's attention to detail and desire to deliver the highest-quality product.

There are some down sides to upgrading to WordPerfect 6.0. First, WordPerfect warns in their documentation that

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macros created in prior versions of WordPerfect "may not" convert to version 6.0. Another potential problem is that the hardware overhead required to run WordPerfect 6.0 may be too onerous for some offices. WordPerfect recommends that you have a 386-based computer with 520KB available conventional memory, a hard disk with 16MB for available for complete installation, and DOS 6.0 or memory management software. The importance of memory management software will be illustrated in a moment. In addition, WordPerfect recommends that you have a VGA monitor. This eliminates all 286 systems and requires a fairly hefty 386 with an advanced graphic system to run 6.0.

For example, using my 486 66MHz computer, it took four minutes and 19 seconds to convert a 13-page WordPerfect 5.1 document loaded with graphic information to a WordPerfect 6.0 document. A typical one-page memo took 2.5 seconds to convert.

More troubling is that, at first, WordPerfect refused to convert my 13-page 5.1 document, warning that I had insufficient memory (I have 16MB RAM in my computer) to complete the operation. I was able to free up enough low memory by stripping all my device drivers from my autoexec.bat file.

Admittedly, my computer is loaded with drivers (tape backup, fax board, and CD-ROM ) that the typical user might not have on their computers. On the other hand, I don't have a network driver that is typically present on large office systems.

Therefore, if your office has invested huge amounts of time in automating your document production by creating custom macros, or if your office has predominantly 286-based computers, or if you anticipate conversion problems due to memory problems in upgrading 5.1 documents to 6.0 documents, you may want to consider holding off on 6.0.

Eventually, though, a move to WordPerfect 6.0 may be inevitable, since it is a part of WordPerfect Corporation's WISE (WordPerfect Information System Environment) strategy of linking all WordPerfect software products to a common macro and tool language. In any event, you should test out a version of 6.0 before converting your entire office to it.

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## NEWS FROM HOME

**Bruce R. Colven** has joined Vancouver's Morse & Bratt, concentrating his practice in personal injury and civil litigation. He's a 1992 graduate of Lewis & Clark Law School.

**Robert P. Karr** was elected to a third term as president of the Foundation of

the International Association of Defense Counsel in April. The IADC is a group of about 2,600 defense attorneys in private and corporate practice. Karr is a shareholder in Karr Tuttle Campbell in Seattle.

**Thomas Hamerlinck**, a partner in the Bellevue office of Riddell, Williams, Bullitt & Walkinshaw, has been elected a Fellow of the American Academy of Matrimonial Lawyers. He is one of 12

Washington lawyers admitted to the organization, which aims to raise the standards of matrimonial law.

Bogle & Gates honored four of its lawyers earlier this year. The newly-created Robert W. Graham Award was conferred upon **Linda Bracken, Patrick Crumb, Karen McGaffey** and **Lucy Isaki**. The award recognizes exceptional pro bono service by firm lawyers.

Heller Ehrman White & McAuliffe has added a former regional administrator of Alaska's Department of Environmental Conservation as an associate in the Seattle office. **Svend A. Brandt-Erichsen** is also a former legislative director to Alaska Senator **Ted Stevens**.

Two Washington lawyers have been elected Fellows of the American Bar Foundation. **Peter Greenfield**, recently president of the King County Bar Association, is with Evergreen Legal Services. **Christopher Mathews**, of the firm Brown Mathews, is active in a variety of civic and legal organizations. The Foundation seeks to improve the legal system through research into the law, the administration of justice and the legal profession.

**Steven M. Hedberg**, a partner in Perkins Coie's Portland office, has been named an expert in business bankruptcy law by the American Bankruptcy Board of Certification.

Helsell, Fetterman, Martin, Todd & Hokanson announced additions to the firm earlier this year. **Dirk A. Bartram, Watson B. Blair** and **Deborah L. Martin** became members of the firm in January, and **Jacqueline K. Boettcher** joined the firm as firm administrator last year.

**Greg Russell** was named Young Lawyer of the Year by the King County Bar Association in June. Russell practices with Williams, Kastner & Gibbs in Seattle, and he serves as chair of the Washington Lawyers Practice Manual and a director of Downtown Action to Save Housing.

**Douglas A. Hofmann** is president-elect of the Association of Defense Trial Attorneys. He is a partner with Williams, Kastner & Gibbs in Seattle.

Peterson, Bracelin, Young, Putra, Fletcher & Zeder has added **Fay Anne Freedman** to its ranks. The new associate practices personal injury, product liability and employment general litigation.

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**Roger H. Eigsti**, president and chief executive of Safeco Corporation in Seattle, was named chairman of the company in May. He succeeds another Washington Lawyer, **Bruce Maines**, who died earlier the same month.

**Jana Lovejoy**, former assistant city attorney in Longview, opened her office for the private practice of law in Woodland in May.

**Mary Jo Heston**, former United States Trustee for Region 18 of the U.S. Bankruptcy Court, has joined Lane Powell Spears Lubersky.

A former corporate and private lawyer in Japan, **Bruce T. Goto**, has joined Riddell, Williams, Bullitt & Walkinshaw. Goto is a former in-house counsel at Marubeni Hytech Corporation in Tokyo and a foreign lawyer for the law offices of Braun, Maoriya, Hoashi & Kubota in Tokyo.

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**AMERICAN IMMIGRATION  
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On May 13, the following persons were elected to serve on the Executive Committee of the Washington Chapter of the American Immigration Lawyers Association (AILA) for the 1993-1994 term: **Pamela S. Cowan**, president; **Ira S. Rubinstein**, vice president; **Janet H. Cheetham**, secretary; **Susan D. Taylor**, treasurer; **Julia M. Bolz**, program chair; and **Elizabeth C.Y. Peng**, membership chair.

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**CLARK COUNTY REPORT**

by **JOHN F. NICHOLS**

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**RUMOR CONTROL**  
*Courtroom Procedures*

Last month illustrated diverse courtroom tactics employed by CCBA attorneys to achieve various results. These methods are not to be found in the Civil Rules of Procedure, nor are they condoned or endorsed by the CCBA.

In the category of Honey v. Vinegar fly-catching, we have **Mary Arden**. While arguing on the dissolution docket before Commissioner **Richard Monahan**, she concluded her presentation by stating, "Thank you, Honey." The Commissioner immediately corrected her ad-

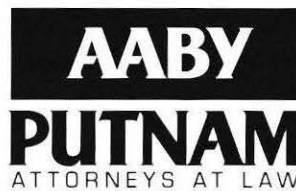
vising, "That is Your Honor, Honey," or if out of court, "Commissioner, Dear." She was obviously chagrined at this breach of etiquette and has enrolled in an accelerated course with Miss Manners. (Half-credit for audiotape.) One wonders how she addresses Judge **Barbara Johnson**.

**John Wulle** of the local Attorney General's office uses a slightly different approach when dealing with those video courtrooms. Following Judge **Roger Bennett's** oral decision, John requested further argument. The judge advised him that he could continue to argue, but he

did not have to listen. Whereupon, the judge retired from the bench, leaving John to address the unblinking eye of the courtroom camera. In response, John started with a simple tap routine; followed by juggling WAC books; and ending with his usual one-kneed plea for orphans and the elimination of the designated-hitter rule. The judge, in the meantime, viewed the antics from his chambers skybox, ultimately ruling with the familiar refrain, "Upon further review, the decision stands." Maybe John should take a cue from Mary, e.g., "But hon, you haven't seen my Brando im-

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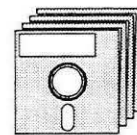
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personation.”  
*Docket News*

Commencing September 10, 1993, all Friday dockets will start at 9:00 a.m. rather than the traditional brunch session at 9:30. For those having a tough time retaining such things, remember, “Fall back one-half hour and spring forward whenever you can.”

*What's Your Handle, Good Buddy?*

For the third time in as many months, the publicity machine at Weber & Gunn has churned out another nebulous footnote on its senior partner. This time, **Ken Weber** received well-deserved kudos

from *The Columbian* for organizing a local Ham radio network to establish communications in the event of an earthquake or other disaster (such as taking a custody case without a retainer). Ken was featured in a 3/4-page photo under the caption “The Big One.” A word to the wise, Ken: no more profile shots.

*What Price Roast?*

June's meeting of the CCBA ushered in new president, **Jill Kurtz**, and featured a roast of departing president, **Curt Wyrick**. Those present need no review of the proceedings; the memories will haunt us in perpetuity. The rest of you

will have to be content with the following report. Kurtz felt that a mere plaque, (the kind that's attached to wood, not the kind on one's teeth) was not enough for departing pres Wyrick. Myself, I felt that in view of Curt's record, a roast would be redundant. After the proceedings I could only describe the roast as extremely “raw.” One must remember that when Curt assumed the presidency he didn't know a bylaw from a bypass. At least now he knows what a bypass is. The first presenter, Ernie Nicholson, concentrated his critique on Curt's fiscal management. Such examples as bouncing a CCBA check to a youth group and investments in a Texas Savings & Loan were just blips on an otherwise solid economic profile.

Next, **Casey Marshall** commented on Wyrick's emotional stability. He stated, “I love going to Curt's weddings, especially the last two.” A surprise speaker was Curt's coworker and latest mother-in-law, **Mary Young**. Mary mused on Curt's inability to ascertain the date of Cinco de Mayo. She did acknowledge that he often used “Cinco de Mayo” as an alias when on out-of-town trips. Finally, **Rich Melnick**, also of the prosecutor's office, spoke in a halting, subdued voice of the awe he held Curt in. That the mere thought that Wyrick was only a heartbeat away from being county prosecutor sent a chill down his spine, while visions of having his own corner office danced in his head. This memorable theme then disappeared into a description of the aging process and bodily functions.

President Wyrick's long, long-awaited rebuttal was very entertaining in an acrid manner, as would be expected from an embittered pol without any meaningful friends. Space does not permit a full disclosure of its context. Let it be noted that by its conclusion, there was not a wet eye in the audience.

*Tyrantus est Mortis.*

## EAST KING COUNTY REPORT

by **MARIJEAN E. MOSCHETTO**

September's here, and thankfully the kids are back in school. Vacations are over, and everyone I know is gearing up for fall. In the offing on the Eastside in the last quarter of the year is October's Anniversary Party of the East King County Bar Association. October's regular EKCB luncheon will be a celebra-

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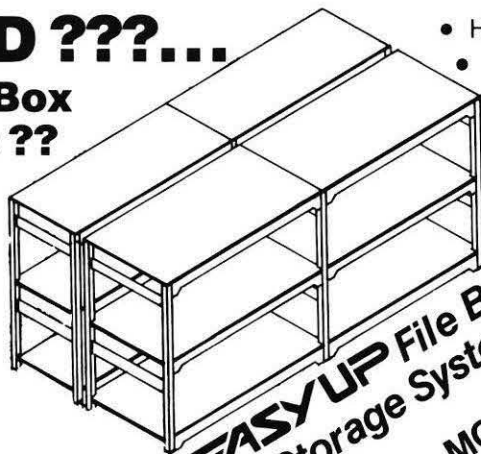
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tion of thirty years of service to the legal community on the Eastside. We'll also have reminiscences of legal practice before that time—Quiz question: How long did it take for attorneys to get to Seattle for court by taking the Kirkland ferry?

December is the annual Holiday Party held at the Hyatt in Bellevue. The winner of ELAP's annual fund-raising raffle will be chosen, along with the many other prizes available. At the party, the first appearance of the cool-cat Eastside Barrister's Blues Band with **Al Shabino**, **Joe Koplín**, **Ted Barr** and a host of other lawyer musicians will be a special feature. EKCBA's 1994 officers and trustee members will also be announced.

In other gossip, **Tom Hansen** has joined the Revelle Hawkins firm. **Val Hoff**, also of Revelle Hawkins, has become president of EKCBA, succeeding our own **Steve Toole**, who has been elected to the WSBA's Board of Governors. Val is also recovering from knee surgery, so she is reduced to figuratively kicking opposing counsel in the you-know-what. **Jim Dailey** of Redmond is rejoining EKCBA, fitting for a former president of the organization, and recently participated in the Suburban King County Bar Association Golf Challenge. My good friend, **Ralph Moldauer**, has resigned his position of Secretary of the WSBA Family Law Section and climbed to new heights in a new office in the Koll Business Center. Ralph believes in cutting overhead, so instead of sending out announcements, here is Ralph's new telephone number: (206) 454-6546.

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## LAWYERS' CAMPAIGN FOR HUNGER RELIEF

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What happens to the 17,000 low-income kids eligible for free lunches at King county schools when cafeterias are closed for the summer?

Some 20 percent are receiving free sack lunches, thanks in part to the Lawyers' Campaign for Hunger Relief.

**Daisy Lau-Leung**, sack lunch coordinator for the Seattle Department of Family and Youth Services, credits outreach efforts financed by the Lawyers' Campaign for a 43 percent increase in the number of meals served last year.

"Outreach tells parents and their youngsters that sack lunches are available, and where," says **Bradford Doyle**, co-chair of the '93 fund drive. The print-



Photo by **Christy Porter**, courtesy of Seattle Department of Housing & Human Services.

ing and distribution of 90,000 flyers financed by the Lawyers' fund increased participation and added 20 playgrounds for the sack lunches to be served.

The U.S. Department of Agriculture funds the program for as many meals as it has people to serve, but does not provide for publicizing it, Doyle said. "This is just one of the five programs receiving money from the Lawyers' Campaign that is alleviating childhood hunger in Washington state every day."

Doyle and his co-chair, **David M. Otto**, are appealing to King County lawyers to double their efforts for this year's fund drive. "Getting federal and state dollars for such programs is like waging jungle warfare," Otto said. "In many instances, our support is plugging the holes in programs providing healthy nutrition for kids during their early years, when learning habits and life skills are being formed."

A resolution supporting the 1993 fund drive approved by the King County Bar Association "encourages every attorney to contribute to the Lawyers' Campaign for Hunger Relief in a meaningful way."

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## GOVERNMENT LAWYERS BAR ASSOCIATION

by **EVELYN FIELDING**

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Summer is in full swing in Olympia! The AG Golf Tournament filled the

Tumwater Valley course with greens enthusiasts for a day in the blistering June sun. In the Handicap (Pro) Division **James Hawk** had the low gross, **Dean Manberg** had the second low gross, **Mike Lynch** scored the low net, and **John Ryan** was the second low net. In the Callaway (not quite Pro, but darn close) Division **Fred Caruso** walked away with the low gross, **Bruce Clausen** had the second low gross, **Tom Prud'homme** took the low net, and **Chris Gregoire** was the second low net. In the Guest (Ringer) Division **John Sells** and **Charles McClure** had the low gross, **Russ Ripp** had the second low gross, **Mike Brewick** took the low net, and **John Kerschner** had the second low net. Closest to the pin on the second hole were **James Hawk** and **Doug Bohlke**, and on the seventeenth the closest to the pin were **Ann Laurier** and **Bill Thomas**. Longest drive honors for men went to **James Hawk** and **Jim Collyer** for the fourth hole, and **Bruce Clausen** and **Mitch Harada** on the eleventh. Longest drive honors for women were won by **Maureen Hart** and **Lynn Goodwin** on the fourth, and **Ann Laurier** and **Andrea Favret-Buser** on the eleventh.

Government Lawyers are also looking forward to an August tradition in the AG Office: The annual summer picnic—this year, it's a "Picture Perfect Picnic" featuring a Photo Contest in addition to the traditional Volleyball Tournament, and Horseshoe Competition.

Special mention must be made of this year's Challenge Cup: A Cake Baking Contest that is bringing out recipes from Mississippi Mud Pie Cake to Tomato Soup Cake with Cream Cheese Frosting.

However, summer is not all fun and games. In July, Government Lawyers Bar Association sponsored a lunch program featuring **Bill Pilkey**, a financial services representative from the Washington State Employees Credit Union.

His lecture, "Financial Planning on a Government Salary," offered timely (and rather sobering) advice to those of us directly affected by state and local budget decisions. Unfortunately, since the lecture was scheduled the week after the start of Nordstrom's anniversary sale, much of the good advice came too late!

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## SKAGIT COUNTY REPORT

by WARREN GILBERT

Outgoing SCBA president **Bill McCann** noted that his gauge on the pulse of the bar indicated general relief to see him go. Not so, Bill, and as soon as someone will say so on the record, it will be printed.

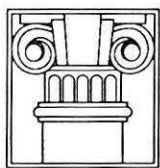
The Skagit, Island, San Juan and surrounding counties' Bar Golf Tournament was held July 30 at the Skagit Golf and Country Club. Since the deadline for this publication was July 15, the following results are probable only—Low Gross: **Terry Lewis** shot even par 71. Low Net: **Mike Lewis** shot net 48. Having won the low net in the Skagit Invitational, the Oldsmobile Scramble low net and now the Bar Tournament low net, Mike is finding it hard to get a game locally and will be on the road for the rest of the season. One final golf note: **Martin Lind** is playing again.

**Dan Fosso** has joined **Ken Evans, Mike Lewis** and **Chris Pollino** in their office across from the Swallow. Dan was allowed in based upon his grandfather's Anacortes residential time. A graduate of Pepperdine, B.A. Econ. with honors, UCSB, M.A. Econ. with honors and Pepperdine J.D. with honors, he adds what one senior partner noted has been conspicuously absent. He will, however, be doing the junk for the other three in accordance with tradition.

**Gregory Edmiston** had to join **Joe Bowen** in the practice of law as the result of scratching on the eight ball. Greg was working in Hanford as in-house counsel for Westinghouse, doing government contracts. His experience has prepared him nicely to respond to some of the domestic-relations correspondence flying around the county.

**John Meyer** won a majority of the votes in an uncontested election for SCBA president for the upcoming term. His primary goal will be to see that the

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bench bar liaison committee does not meet during his tenure.

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## WASHINGTON WOMEN LAWYERS REPORT

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by ANNE BREMNER

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The State Board of Directors of Washington Women Lawyers met July 8. **Kathy Cooper-Franklin**, president-elect, announced that a nomination slate has been selected for next year's board.

Congratulations were offered to **Mary Fairhurst**, incoming WSBA Governor from the Third District and **Linda Dunn**, incoming WSBA Governor at Large.

The annual WSBA dinner and CLE will be held at the Washington Athletic Club on October 8 from 8:30 a.m. until 5 p.m., with the dinner following. **Barbara Jo Levy** and **Ellen Barton** are co-chairing the CLE, "Negotiating Skills for Women." It will feature Dr. **Lillian Glass**, author of the best-selling book, *He Said, She Said: Closing the Communication Gap Between the Sexes*. Other speakers include the Honorable **Barbara Durham** of the Washington Supreme Court, the Honorable **Joanne Tompkins**, formerly of the Washington State Court of Appeals; **Betsy Hollingsworth**, **Barbara Harper**, **Ada Ko**, **Pat Clark**, **Debora Juarez**, **Anne Bremner**, **Suzanne Michael**, **Kathy Cooper-Franklin**, **Colleen Kinerk**, **Shannon Sperry** and **Sheryl Garland**. Dr. Glass will also be the featured speaker at the dinner. For more information, contact **Tiffanie Kilmer** at (206) 622-5585.

President **Linda Moran** reported that the Gender and Justice Implementation Committee may well become a standing committee of the Supreme Court.

WWL is selling Shattering the Glass Ceiling pins (which are actually quite attractive and look like "arty" jewelry) to support WWL objectives, such as promoting the Gender & Justice workshops and the proposed RPC on sexual harassment. This year, the State Board is starting an annual fund.

To join Washington Women Lawyers or receive information on any item in this column, please contact Tiffanie Kilmer or write to Washington Women Lawyers, P.O. Box 25444, Seattle, WA 98125-2344. NOTE: men and law firms are welcome to join!

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## IN MEMORIAM

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### Lee Olwell

Lee Olwell, 83, died May 29, 1993 in Seattle. Born in Everett, Olwell graduated from the University of Washington in 1931, and the University of Michigan School of Law in 1934. Admitted to the bar in 1934, he set up practice in Seattle as a trial lawyer. He was a partner in the firm of Olwell, Boyle & Hatrup from 1955 to 1984, and also served a stint as a Mercer Island district court judge.

A past president of the Washington State Sportsmen's Council and the Washington Game Bird Club, Olwell is survived by his wife; two sons and a daughter; eight grandchildren and four great-grandchildren.

Attorney Richard Krutch of Seattle wrote the *Bar News* after Olwell's death,

I want to share an episode which brings me fond memories of Lee:

Lee, several other lawyers and I filed lawsuits against the State of Washington on behalf of the surviving families of five persons killed in an avalanche in a platted subdivision in Chelan County. The gist of the claim against the state was that an avalanche expert was going to alert the residents that his study showed their homes were located in the path of an avalanche which had a 100-year cycle. He first went to the State of Washington and was directed to the Attorney General and the Real Estate Division of the Department of Licenses. This expert explained that perhaps his study had been utilized by the developer and Chelan County, and misread. The expert, who was going to warn the property owners, was assured that the state would take care of the matter. After threats—from the developer—of suit against the state, the state backed off and took no action. They did not, however, advise the avalanche expert or any property owners.

Shortly before trial, the state moved for dismissal on the ground that the complaints did not state a cause of action be-

cause the state had no duty to the plaintiffs. The trial court granted the motion. Our argument was that the state had assumed a duty and dissuaded the person from giving the warning which would have prevented the tragedy.

We appealed and made our scholarly argument to the Supreme Court. We lost, 5 to 4, with Justice Charles Wright authoring the two-page majority opinion and Justice Robert Utter the 19-page dissent. Lee fussed and fumed. We petitioned for a rehearing and waited. Justice Matthew Hill, of the majority, retired, or died, or did both, and the Governor appointed Charles Horowitz as his replacement. Rehearing was granted.

All plaintiffs but Lee Olwell filed learned briefs. Lee filed a one-pager which, as memory serves, said, "I have practiced law for forty years and have never read a sorrier opinion than that of the majority. For God's sake, please read the minority opinion."

I couldn't believe it. Neither could the court, as Lee's brief was stricken as "intemperate." Oral argument was set, and all plaintiffs met to discuss a coordinated short argument. Lee came to the meeting and said he was going to participate in the argument.

"What will you say?" we asked.

"I will say, 'Your Honors, I apologize for my intemperate brief, wherein I claimed Justice Wright's opinion was the worst-written in forty years. You all took issue with this, but if you don't agree with me, tell me, then, what was the worst opinion?'"

Lee told me not to worry, as he was just having fun, but to please let the others sweat it out.

We won a reversal, and you can read about it in *Brown v. MacPherson's*, 86 Wn.2d 293. Robert Utter wrote the nine-page majority opinion, and Charles Wright the dissent, but this time it grew to eight pages.

Thanks, Lee.



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**Frank J. Daly:** Anyone who knows the whereabouts or has any information regarding the last will and testament of Frank J. Daly, please contact Sharon

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**Three bedrooms, two and one-half** bathrooms, den, large community area with deck, fireplace, facing Whistler Mountain (beautiful view), basement; ski in ski out to lifts. Box #544, Whistler, B.C. VON1B0 (604) 926-5477.

**Large home within** one-quarter mile of Sun Valley Lodge on Saddle Road; four bedrooms; three baths; recreation, dining and living rooms and covered two-car garage. If interested, please contact Box 391, Mount Vernon, WA; available December 27-January 3.

**"World Famous Romantic Beach."** Lanikai, Kailua, Oahu, Hawaii. Guests don't want to leave this most sought-after location and comfortable one- to five-bedroom, fully furnished homes, including piano. Call owner: (808) 262-9119 or fax: Attn: Barbara (808) 263-4042.

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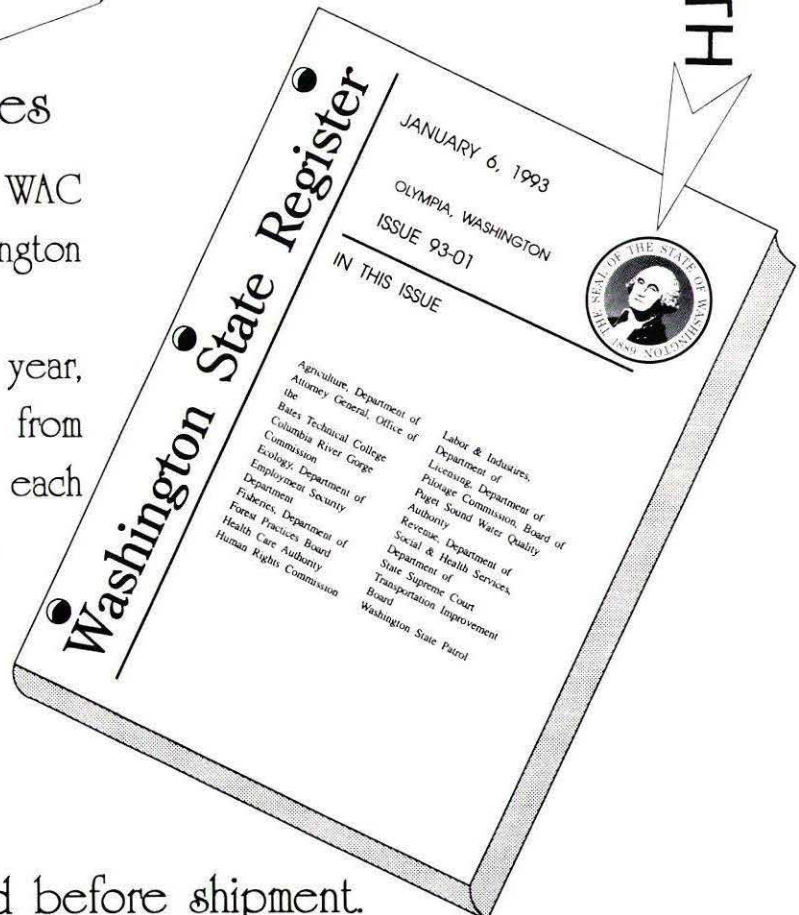
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*Washington State  
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1993  
**A** *nnual Report*



## Inside Your 1993 Annual Report

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# P resident's Report

Dear Fellow Lawyers:

1992-93 has been a year of austerity and change. Change in any organization, especially one that has 18,000 members, is an incremental process. Since last September a number of changes have been initiated which will have long term benefits for the lawyers of this state.

**Committees.** With 1,000 newly admitted lawyers each year, the opportunity to serve on a WSBA Committee has steadily decreased. To remedy this situation, the Board of Governors has now significantly modified the appointment system. Substantially all persons who apply for a Committee position will be appointed. There are a few exceptions, dictated by court rule or practical limitations. As this is an experiment, modifications may be necessary, but the objective is to open up the WSBA Committees.

**CLE Seminars.** During this year there has been a turnaround in the CLE seminar program. Attendance and revenues are up, expenses are down, and the program currently is projected at break even or slightly better for the year, reflecting a dramatic improvement over the \$228,000 loss incurred in the prior fiscal year. An outside consultant was hired. The Board of Governors accepted the consultant's recommendation that the WSBA continue its sponsorship of CLE seminars, but the Board added a caveat that the program must be self-sustaining and not subsidized by member dues. A number of other recommendations to improve the cost effectiveness of the program have been implemented as well.

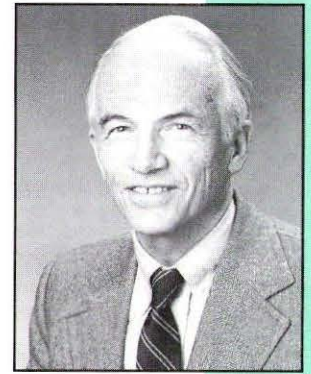
**Discipline.** The WSBA took advantage of the availability of the ABA Standing Committee on Professional Discipline to evaluate our lawyer discipline system. As of the date of writing this letter, we are awaiting the Committee's report and recommendations.

**Client Security Program.** The Board, after extended study, has recommended to the Supreme Court a proposed rule under which a separate trust fund would be established for the Client Security Program. The proposed initial assessment of each lawyer is \$10 per year.

**Communications.** A number of steps have been taken to improve communications between bar leadership, bar staff, and members. A change in title from Department of Public Affairs to Communications Department emphasizes the refocusing of efforts toward improving internal communications. In addition to opening up Bar Committees, semi-annual meetings between the Board of Governors and Section leaders have been held. A master calendar of recurring events and an appointments data base have been created, which will improve advance notice of events and vacancies. I have accepted with pleasure every opportunity to speak to local bars from Omak to Bellingham, from Spokane to Port Orchard, and have met with leaders of specialty bar groups, to learn first hand about the views of their members.

**Sales Tax on Legal Services.** Despite passage by both the House and Senate of revenue bills which included extending the sales tax to legal services, five months of effort by the WSBA paid off when the bill sent to the Governor dropped this provision. Lawyers are making a greater contribution to the state tax collector through an increased B&O tax, but for most lawyers I think the latter is preferable to the cost of administering a sales tax and the absorption of that tax when the client is unable to pay it.

**Sunset Review.** In adopting a dues increase in July 1992 the Board committed to a process of sunset review of all discretionary programs of the WSBA. Notwithstanding the reversal of that increase, the Board has carried through on its commitment. Public hearings are being held. The review will take the better part of another year to complete. It is providing valuable information and input from members, which will assist the Board in the prioritization of resources and services.



**Professionalism.** Raising the level of professionalism is a continuing effort. During the past year the Court Congestion and Improvement Committee has developed and circulated a proposed Courtroom Decorum and Practice Guidelines. Whether or not these Guidelines are ever formally adopted or implemented, the heightened awareness which they have generated has been a positive step in addressing professionalism in litigation. The May issue of the *Bar News* was devoted to professionalism.

**Access to Justice.** Under the leadership of Tom Chambers, an Access to Justice Task Force has reviewed the existing systems, funding problems, and related issues affecting the adequacy of effective civil legal representation for the poor. It has recommended the creation of an Access to Justice Board, which would work to secure adequate funding for civil access to justice activities; coordinate such activities and foster development of a statewide, integrated, non-duplicative civil legal services delivery system; serve as a repository of information relating to civil legal services issues; establish substantive standards for the delivery of civil legal services; and develop and implement policy initiatives and criteria which enhance the availability of resources.

**Diversity.** The Board's commitment to diversifying the leadership has shown improved results. One-third of the WSBA Committee chairs this year have been women and minorities, including such key committees as Judicial Recommendations, Court Congestion, Client Security, and Character & Fitness. For the first time in the history of this Association there will be three women serving on the Board beginning in fiscal 1993-94. Relationships with specialty and ethnic bar groups have been strengthened, although more needs to be done.

**Bylaw Revision.** Under the direction of Wayne Blair, the Bylaws have been overhauled and updated, with ambiguities eliminated. Only a few substantive changes have been made.

The Association's financial situation continues to be of great concern to me. Annual dues remain at the same level as they have been for seven years, and are lower than those of unified bars in states of comparable size, such as Oregon and Arizona. The membership spoke decisively in December in voting to roll back a dues increase. The Board immediately cut \$400,000 to balance the budget. Public service activities of the WSBA were the immediate casualties: lawyer referral, mentor partnerships, law related education, tel-law, and the mock trial program.

We have lived within our means, but in my judgment we are falling short in meeting our obligations as a self-regulated profession. The long term situation needs to be carefully evaluated. Each year a larger percentage of our resources are being committed to our mandatory functions: admissions, bar exam, annual licensing, administration of mandatory CLE, and trust account audits. This puts a squeeze on member activities and services. WSBA Committees, the legislative program, *Bar News*, CLE publications, and Section support may have to be reduced and, over time, possibly eliminated.

The challenge that lies ahead, as I see it, is for each lawyer to recognize her or his responsibilities to the public, both directly by contributing to solutions which assure access to the courts for all citizens, and indirectly by participating in efforts to adapt the justice system to the requirements of a changing society. The pressures and stress of making a living must not be allowed to short change our obligations as a profession.

Sincerely,



Stephen E. DeForest



# 1993 **B**oard of Governors



## President

Stephen E. DeForest  
1001 Fourth Avenue Plaza - Ste. 4400  
Seattle, WA 98154  
(206) 624-3600

## First District

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## Third District

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(206) 694-7551

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Yakima, WA 98907  
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Seattle, WA 98104-2399  
(206) 624-6800

## Eighth District

Thomas J. Chambers  
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Seattle, WA 98122  
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## Ninth District

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P.O. Box 1533  
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(206) 627-8131

## King County

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

## King County

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



Front: Jan Eric Peterson (Seattle), Alva C. Long (Auburn), Stephen E. DeForest -  
President (Seattle), Monte E. Hester (Tacoma), M. Wayne Blair (Seattle)

Back: Thomas J. Chambers (Seattle), Stephen B. Tubbs (Vancouver), Vickie K. Norris  
(Everett), Michael A. Larson (Seattle), West H. Campbell (Yakima)

(not shown) Joseph Nappi, Jr. (Spokane) and James V. Handmacher (Tacoma)



# S

## standing Committee and Section Chairs

### STANDING COMMITTEES

#### Attorneys Professional Insurance

Geoffrey G. Revelle

#### Bench/Bar/Press

Kimberly Ann Boyce

#### Board of Continuing Legal Education

Malachy R. Murphy

#### Character and Fitness

Claire Cordon

#### Civil Rights

John C. Beckwith

#### Client's Security Program

Mary Beth S. Nethercutt

#### Committee of Law Examiners

Frank V. Slak, Jr.

#### Consumer Protection

Michael Doezie

#### Continuing Legal Education

Peter A. Spadoni

#### Corrections

John B. Midgley

#### Court Congestion & Improvement

Mary Gallagher Dilley

#### Court Rules & Procedures

Duane Lansverk

#### Disciplinary Board

Paul D. Fitzpatrick

#### Editorial Advisory Board

J. Scott Miller

#### Group & Prepaid Legal Services

Kelly N. Brown

#### Interprofessional

Lisa A. Vincler

#### Judicial Recommendation

Wendy K. Bohlke, Co-Chair

Marilyn F. Sherron, Co-Chair

#### Lawyers' Assistance Program

Patrick C. Comfort

#### Legal Aid

Marla Elliott, Co-Chair

E. Bronson Potter, Co-Chair

#### Legal Assistants

Thao A. Tiedt

#### Legal Services to the Armed Forces

Michael V. Riggio

#### Legislative

James C. Middlebrooks

#### Opportunities for Minorities in the Legal Profession

Gordon A. McHenry, Co-Chair

Georgia Yuan, Co-Chair

#### Public Relations

Matt M. Sayre

#### Resolutions

David D. Hoff

#### Rules of Professional Conduct

Allan H. Baris

### SECTIONS

#### Administrative Law

Stanley E. Perdue

#### Alternative Dispute Resolution

Alan Kirtley

#### Business Law

Evelyn Sroufe

#### Consumer Protection, Antitrust & Unfair Business Practices

Diane G. Fitz-Gerald

#### Corporate Law

James M. Rupp

#### Creditor/Debtor

Daniel M. Caine

#### Criminal Law

William H. Redkey, Jr.

#### Environmental & Land Use

Dennis J. McLerran

#### Family Law

Paula C. Crane

#### General Practice

Kimberly A. McDonald

#### Health Law

Paul J. Dauenhauer

#### Indian Law

Sharon I. Haensly

#### Intellectual & Industrial Property

Daniel D. Crouse

#### International Law & Practice

Michelle H. Hurley

#### Law Practice Management

William L. Weigand, Jr.

#### Litigation

David D. Swartling

#### Public Procurement & Private Construction

Kerry C. Lawrence

#### Real Property, Probate & Trust

Janis R. Cunningham

#### Taxation

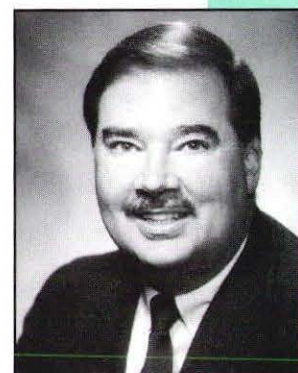
Rodney J. Waldbaum

#### World Peace Through Law

Eric L. Clauson



# Executive Director's Report



In looking back at the previous two WSBA Annual Reports, I find that I called 1991 a "year of transition" and 1992 a "year of reexamination." Let's call 1993 a *year of challenge*. I am pleased to report, however, that most of the challenges have been squarely faced and, to one degree or another, successfully met.

With some irony, I find that I seem to write this message each year while the summer bar exam is in session. Last summer (1992) there were 854 applicants sitting for the exam. This summer (1993) there are 922 applicants sitting in the Convention Center taking the exam. This is the year that the WSBA's active membership will pass 18,000. We had 17,793 active members as of July 22, 1993. And that's *before* the admission of the hundreds of applicants taking this bar exam.

In last year's report, I announced that the WSBA was facing another fiscal crisis, but that our new accounting/reporting system had given us enough warning that we hoped to cut \$340,000 in expenses during the last four months of the fiscal year to avoid a deficit. As the attached financial report will attest, we were successful—ending the year \$122,029 in the black. That is the good news. The bad news is that we are still well short of the 10% of operating budget reserve (fund balance) that our outside auditors recommend. Even with the \$122,029 contributed to reserve in FY 92, we have a fund balance of only \$183,297 compared to the recommended level of approximately \$700,000.

Which brings me to the seminal event of Fiscal Year 1993 (October 1, 1992 to September 30, 1993)—the referendum to rollback the dues increase. The lion's share of the money that would have been raised by the dues increase was budgeted to bring our fund balance to the level recommended by the auditors. Obviously, that didn't happen. At the same time, it was clear that a major reduction of WSBA programs would be needed—"downsizing" to use the term of the decade—in order to step back from the brink of financial disaster.

The Board of Governors made the hard decisions: eliminating law-related education, eliminating the convention, reducing public relations, increasing user fees, etc. Nearly 10% of authorized staff positions were eliminated. It worked. Once the hard cuts were made, the remaining functions operated with greater assurance and with efficiency. In fact, the WSBA is having a banner year financially in FY 93 for several reasons. First, during the first six months of the fiscal year, virtually all spending was frozen while we waited for and sorted out the effects of the dues rollback. Secondly, the much beleaguered CLE department has performed heroically. (See "Highlights" for more detail.)

Last year I closed this report with a wish—"I hope several years from now to be able to look back at this Annual Report and think that we persevered, that we made the right decisions, and that we lived up to the responsibilities that we owe to both our members and the public." As the visual theme of this Annual Report implies, we are putting the pieces of the puzzle together. We are persevering (and prospering). We are meeting the challenges in a year of challenge.

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

Dennis P. Harwick



# H

## ighlights of Activities

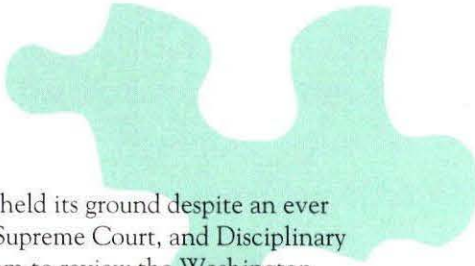
**“Wait and See.”** The first three months of Fiscal Year 93 were largely a matter of waiting to see what happened to the dues increase. Vacancies in staff positions were unfilled. Most activities were postponed pending the referendum. Within a week of the referendum results, however, the Board of Governors met in emergency session and adopted a revised budget. The following cuts were made:

- Six staff positions were eliminated in the CLE Department and the Public Affairs Department,
- Legal Lines (part of the Seattle Times InfoLine service) was eliminated,
- MENTOR and Mid MENTOR—law-related education programs for the public—were eliminated,
- “On Your Own”—an information booklet for high school seniors—was eliminated,
- funding for the YMCA’s Mock Trial competition was eliminated,
- complimentary books for law libraries from the CLE department were eliminated,
- Resources, the WSBA membership directory, was not printed this year,
- the WSBA convention scheduled for Victoria, B.C. in September 1993 was cancelled, and
- miscellaneous cuts were made in other programs and budgets.

**Sunset Review of Discretionary Programs:** Even before the dues rollback referendum, the Board of Governors adopted a formal plan to conduct sunset review hearings on discretionary programs. Names of the discretionary programs were placed on slips of paper and literally drawn out of an envelope to determine the order of the hearings. To date, public hearings have been held and comments have been solicited on the Lawyers’ Assistance Program, the Client’s Security Program, the WSBA convention, the fee arbitration program, and the *Resources* membership directory. Upcoming hearings include: LAW BBS (the electronic bulletin board), support for local bar associations, access to justice support, communications efforts, continuing legal education, and our legislative efforts.

**Sales Tax on Legal Services:** In the face of long odds, a coalition including the WSBA successfully convinced the Washington legislature that a sales tax on services, including legal services, was a bad idea and would have the effect of both creating a misery tax and driving legal work across state lines. Recognizing the serious financial crisis the State of Washington faces, the WSBA supported an increase in the B&O tax in lieu of a sales tax on legal services.

**Continuing Legal Education:** At this point last year, there were serious questions whether the WSBA could or should be in the continuing legal education business. By now, most critics have been persuaded by the performance of the CLE department this past year. With a smaller staff, they have put on more programs and turned a money losing program into a financial success. A CLE consultant reviewed our CLE program and recommended that the WSBA continue CLE programming on a financially self-sustaining basis, that CLE speakers be reimbursed for their out-of-pocket expenses, and that a number of programming/marketing modifications be made. The Board of Governors accepted those recommendations. Diane de Ryss and her staff deserve much praise for changing paradigms and responding so successfully to the many changes required of them.



**Discipline:** The WSBA Legal Department held its ground despite an ever increasing case load. The Board of Governors, Supreme Court, and Disciplinary Board invited an ABA discipline evaluation team to review the Washington attorney discipline system and to make recommendations. Although the evaluation team's report has not been received yet, I have it on good authority that they will recommend significant increases in disciplinary staff. How we will pay for them is another question.

**Relations with Sections:** 1993 is the year when a new relationship was defined between the WSBA and its Sections. Beginning next year, Sections will reimburse the WSBA for the costs of administrative expenses and, in exchange, Sections will be able to carry forward the operating results of their financial activities.

**Public Affairs—Communications:** A new Director of Public Affairs arrived (Mary Elizabeth St. Clair—former Executive Director of the State Bar of Nevada and past chair of the National Association of Bar Executive's Section on Public Relations and Communications). She found, however, a reduced staff and a slashed budget. The Board of Governors recently renamed the Public Affairs department the Communications department as part of a move to focus the use of our limited resources on member communications rather than public relations.

**Functional Budgeting:** On a topic only an accountant could love, I must laud the success of the WSBA's move to a detailed functional budgeting/reporting system. By "functional" I mean the allocation of direct and indirect (overhead) expenses by function, e.g., CLE, convention, discipline, etc. Beginning with FY 92, we moved from a 59 line financial report to a 35 page financial report broken down by 28 different functions within the WSBA, along with several pages of comparative reports and charts.

So why is functional budgeting so important? Because it is the single biggest reason the WSBA was able to respond to the fiscal crisis that emerged in FY 92 and to make meaningful and immediate changes to the FY 93 budget that was three months underway when the dues rollback referendum passed.

**Credit Where Credit is Due:** Although Steve DeForest and I get to write the reports, everyone should understand that much of the leadership is provided by a group of hard-working, dedicated individuals including members of the Board of Governors, the chairs and co-chairs of the WSBA committees, the chairs of the WSBA Sections, and the WSBA department heads. Since the others are named elsewhere in this Annual Report, I'd like to take this opportunity to thank the WSBA department heads: Bob Welden (General Counsel), Lee Ripley (Chief Disciplinary Counsel), John Fattorini (Legislative Representative), Diane de Ryss (Director of CLE), Andy Benjamin (Lawyers' Assistance Program Director), Pat Dieken (Director of Administration), and Mary Elizabeth St. Clair (Director of Communications). In addition, I want to thank the WSBA staff for their support in what modestly can be called a year of challenge.

# I ndependent Auditors' Report



One Union Square  
600 University Suite 2400  
Seattle, Washington 98101  
Telephone: (206) 624-2020 Fax: (206) 624-7579

Accountants and Consultants

## Independent Auditors' Report

Board of Governors  
Washington State Bar Association  
Seattle, Washington

We have audited the accompanying balance sheets of the Washington State Bar Association as of September 30, 1992 and 1991, and the related statements of revenues, expenses, and changes in fund balance, and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

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

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Washington State Bar Association at September 30, 1992 and 1991, and the results of its operations and its cash flows for the years then ended in conformity with generally accepted accounting principles.

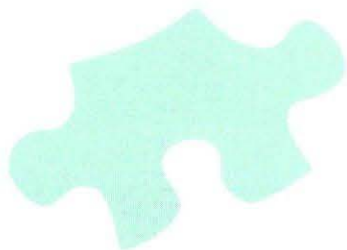
*BDO Seidman*

December 4, 1992



# Balance Sheets

ASSETS	September 30,	
	1992	1991
<b>Current</b>		
Cash and cash equivalents	\$ 760,112	\$ 755,808
Certificates of deposit	500,000	200,000
Trust account deposits	9,160	13,441
Receivables		
Trade	44,010	47,802
Interest	17,132	12,881
Other	2,643	10,477
Inventory		
Supplies	67,365	43,248
Desk and course books	45,236	98,641
Deferred costs and prepaid expenses	220,436	226,924
<b>TOTAL CURRENT ASSETS</b>	<b>1,666,094</b>	<b>1,409,222</b>
<b>Property and Equipment</b> , net (Notes 1 and 2)	<b>477,656</b>	<b>269,829</b>
<b>Inventory - Desk Books</b>	<b>171,494</b>	<b>142,839</b>
	<u><u>\$ 2,315,244</u></u>	<u><u>\$ 1,821,890</u></u>
 <b>LIABILITIES AND FUND BALANCE</b>		
<b>Current Liabilities</b>		
Accounts payable	\$ 281,436	\$ 257,145
Accrued expenses	245,998	231,872
Trust account liability	9,160	13,441
Current maturities of obligations under capital leases (Note 2)	44,140	3,706
Current portion of deferred compensation (Note 3)	36,042	32,934
Unearned seminar income	263,384	258,025
Deferred licensing fees	830,238	807,924
Other deferred income	65,527	7,189
<b>TOTAL CURRENT LIABILITIES</b>	<b>1,775,925</b>	<b>1,612,236</b>
<b>Obligations Under Capital Leases</b> ,		
less current maturities (Note 2)	193,678	—
<b>Unearned Seminar Income</b>	<b>50,000</b>	<b>—</b>
<b>Deferred Compensation</b> , less current portion (Note 3)	<b>112,344</b>	<b>148,386</b>
<b>TOTAL LIABILITIES</b>	<b>2,131,947</b>	<b>1,760,622</b>
<b>Fund Balance</b>	<b>183,297</b>	<b>61,268</b>
	<u><u>\$ 2,315,244</u></u>	<u><u>\$ 1,821,890</u></u>



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



# Statement of Revenues, Expenses, and Changes in Fund Balance

	September 30,	
	1992	1991
<b>Revenues</b>		
Licensing fees	\$ 3,311,696	\$ 3,161,134
Continuing legal education programs	1,244,676	1,367,231
Bar examination fees	640,519	579,973
Sections	280,165	264,908
<i>Bar News</i>	255,525	267,737
Convention	159,678	107,617
Mandatory continuing legal education	120,851	111,575
Interest earned	65,218	106,357
Membership records	55,266	30,455
Citizens Rights pamphlets	33,347	30,361
National Mentor grant	31,663	31,434
Young Lawyers Division	31,105	24,453
Lawyer Referral Service	31,086	38,415
Bar journal directory ( <i>Resources</i> )	28,901	45,156
Other income	116,606	62,221
<b>Total Revenues</b>	<u>6,406,302</u>	<u>6,229,027</u>
<b>Expenses</b>		
Salaries	2,149,647	2,129,965
Continuing legal education	917,750	963,722
Employee benefits	596,136	538,577
Rent, taxes, and utilities	394,625	394,390
Bar examination and admissions	357,887	418,053
<i>Bar News</i>	291,890	292,872
Sections	227,309	250,817
Postage and supplies	176,980	132,067
Equipment rent and maintenance	158,942	190,677
Convention	132,771	159,484
Leadership	107,626	153,299
Depreciation and amortization	102,537	85,950
Young Lawyers division	92,025	84,507
Bar journal directory ( <i>Resources</i> )	64,993	66,556
Public affairs	63,584	73,369
Discipline	52,925	100,218
Legislative activities	33,252	37,066
Membership records	32,470	35,586
Interest	29,283	19,845
Insurance	29,046	28,530
Law-related education	24,928	47,166
Lawyer Referral Service	23,597	21,502
Lawyers' Assistance Program	21,436	24,508
National Mentor	19,282	25,449
Professional fees	18,375	21,088
Pro bono coordination	14,993	29,812
Local bar support	12,476	12,103
Client security program claims	8,751	34,609
Loss on asset dispositions	2,279	17,664
Write-down of fixed assets	—	48,175
Other expenses	126,478	150,778
<b>Total Expenses</b>	<u>6,284,273</u>	<u>6,588,404</u>
<b>Revenues Over (Under) Expenses</b>	122,029	(359,377)
<b>Fund Balance, beginning of year</b>	61,268	420,645
<b>Fund Balance, end of year</b>	<u>\$ 183,297</u>	<u>\$ 61,268</u>

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

# S

## tatements of Cash Flows

Increase (decrease) in cash and cash equivalents

	September 30,	
	1992	1991
<b>Cash Flows from Operating Activities</b>		
Cash received from licensing fees and other activities	\$ 6,480,887	\$ 6,149,618
Cash paid to suppliers and employees	(6,101,053)	(6,524,287)
Interest paid	(29,283)	(19,845)
Interest received	65,218	110,653
Payments on deferred compensation	(32,934)	(30,095)
<b>Net Cash Provided by (Used in) Operating Activities</b>	<u>382,835</u>	<u>(313,956)</u>
<b>Net Cash from Investing Activities</b>		
Acquisitions of property and equipment	(312,643)	(92,624)
Certificates of deposits	(300,000)	700,000
<b>Net Cash Provided by (Used in) Investing Activities</b>	<u>(612,643)</u>	<u>607,376</u>
<b>Cash Flows from Financing Activities</b>		
Payments on capital leases	(25,755)	(29,162)
Proceeds from capital leases	259,867	—
<b>Net Cash Provided by (Used in) Financing Activities</b>	<u>234,112</u>	<u>(29,162)</u>
<b>Net Increase in Cash and Cash Equivalents</b>	4,304	264,258
<b>Cash and Cash Equivalents, beginning of year</b>	<u>755,808</u>	<u>491,550</u>
<b>Cash and Cash Equivalents, end of year</b>	<u>\$ 760,112</u>	<u>\$ 755,808</u>

### Reconciliation of Revenues Over Expenses to Net Cash Provided by (Used In) Operating Activities

Revenue over (under) expenses	\$ 122,029	\$ (359,377)
Adjustments to reconcile revenues over (under) expenses to net cash provided by (used in) operating activities:		
Depreciation and amortization	102,537	85,950
Write-down of fixed assets	—	48,175
Loss on asset dispositions	2,279	17,664
Change in assets and liabilities:		
Decrease (increase) in:		
Receivables	7,375	(11,895)
Inventory	633	28,706
Deferred costs and prepaid expenses	6,488	(73,340)
Increase (decrease) in:		
Accounts payable and accrued expenses	38,417	(63,246)
Unearned seminar income	55,359	(14,243)
Deferred licensing fees	22,314	50,556
Deferred compensation	(32,934)	(30,095)
Other deferred income	58,338	7,189
<b>Net cash provided by (used in) operating activities</b>	<u>\$ 382,835</u>	<u>\$ (313,956)</u>

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

# **S**ummary of Accounting Policies

## **Operations**

The Washington State Bar Association is a not-for-profit entity. Operations consist of regulating the practice of law in the state and providing various law-related services to the membership and the public.

## **Deferred Costs**

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

## **Inventory**

Inventory primarily consists of desk books and course books to be sold. Any inventory quantities in excess of 1 year are classified as noncurrent assets.

## **Property, Equipment, and Depreciation**

Property and equipment are stated at cost. Depreciation is computed over the estimated useful lives of the assets, generally 5 to 10 years, using the straight-line method.

## **Unearned Seminar Income**

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

## **Deferred Licensing Fees**

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

## **Income Taxes**

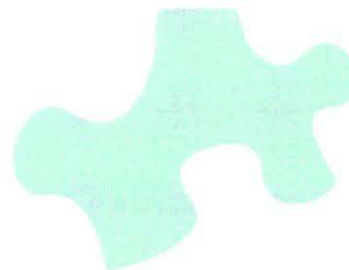
The Bar Association is an organization exempt from federal income taxes.

## **Cash Flows**

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

## **Financial Statement Classifications**

Certain amounts in the 1991 financial statements have been reclassified to conform to 1992 classifications.



# N

## otes to Financial Statements

### NOTE 1 – Property and Equipment

Property and equipment consists of the following:

	September 30,	
	1992	1991
Furniture and equipment	\$1,012,463	\$ 702,099
Leasehold improvements	12,091	12,091
	1,024,554	714,190
Less accumulated depreciation and amortization	546,898	444,361
Property and equipment, net	<u>\$ 477,656</u>	<u>\$ 269,829</u>

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

### NOTE 2 – Lease Commitments

The Bar Association is committed under various operating lease agreements for office space, equipment, and an automobile, and under capital leases for equipment. The assets under capital leases, included with property and equipment on the accompanying balance sheet, have a net book value of \$244,861 and \$34,666 as of September 30, 1992 and 1991. Effective December 1, 1986, the Bar Association entered into a 10-year noncancellable lease with two 5-year renewal options for the use of new office space in Seattle. The Bar Association also entered into a 3-year lease for office space in Olympia, effective March 1, 1990.

During fiscal year ended September 30, 1992, the Bar Association entered into a capital lease agreement for telephone equipment recorded at a value of \$96,361. The lease has a 5-year term and includes interest at 10.5%. In addition, the Bar Association entered into a capital lease agreement for computer equipment recorded at a value of \$163,506. The lease has a 5-year term and includes interest at 10.5%.

The future net minimum payments under capital leases, and future minimum rental payments required under operating leases with remaining lease terms of 1 year or more, are as follows:

Year Ending September 30,	Operating Leases	Capital Leases
1993	\$ 396,746	\$ 67,026
1994	383,753	67,026
1995	381,826	67,026
1996	328,059	67,026
1997	53,866	30,814
Thereafter	—	—
Total minimum payments	<u>\$1,544,250</u>	298,918
Less amount representing interest		61,100
Present value of net minimum payment		237,818
Less current maturities		44,140
Long-term portion		<u>\$ 193,678</u>

Rent expense was \$318,346 and \$299,496 for the years ended September 30, 1992 and 1991.

### NOTE 3 – Deferred Compensation

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



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