

Washington State Bar News

Vol. 48, No. 1, January 1994



In the Supreme Court of the State of Washington
KNOW ALL BY THESE PRESENTS: That on the fifth day of September Session A.D. 1993
Durrell Burke

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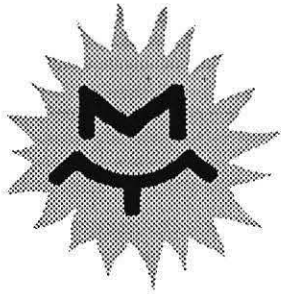
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Letters to the Editor of reasonable length are invited. They should be typed on letterhead and signed. The editor reserves the right to select communications or excerpts therefrom for publication and to edit any letter as may be appropriate.

Captious Captioning

Editor:

The November 1993 *Bar News* contained a letter to the editor from Suzanne Lee Elliott. The point of Ms. Elliott's letter was succinct and well-taken.

Quite simply, she pointed out that publications of the Washington State Bar should not contain information or illustrations that are demeaning to women. Admittedly, this concept is not novel. Yet, unfortunately there is still a need to reiterate this very basic point to the Bar.

To find a second example of this need, the first being the illustration that necessitated Ms. Elliott's letter, one only has to read the caption that you gave her letter: "Ah, *Jeez*, Not Again..."

While such a caption may be (intentionally?) subject to different interpretations, that it is certainly susceptible to the one which we had is exactly why Ms. Elliott's point is not obsolete. That is, in our opinion the caption reduces Ms. Elliott's letter to just another unwarranted, bothersome complaint. Thus, the caption answers itself. Yes, Mr. Editor, again, and again, and even again, until the Bar Association gets it.

MARGARET M. BOYLE
LEANN MCDONALD
Washington Women Lawyers
Seattle Chapter

Who Could Forget Her Role in "The Moonstone"?

Editor:

Contemplating the structure of the WSBA while responding to the questionnaire in the *Bar News* led me, in the words of Haley Mills, to "the most scathingly brilliant idea."

I propose that we modify the WSBA bylaws to provide that the board of governors be selected by random choice from all admitted attorneys resident in the state. Whenever seats on the board need to be filled the WSBA

computer would simply go through the database of attorneys and simply select the necessary number at random to fill those seats. While declining to accept appointment would be strongly discouraged (when I last looked involuntary servitude was still unconstitutional, despite the best efforts of mandatory pro bono advocates to pretend otherwise) those who refused to serve would be replaced by further random selections until a full board was in place.

You may think, "Is this guy kidding, or what? This is a joke, right?"

On the contrary, I'm totally serious. Consider the advantages of such a system.

1. While I have no doubt that all our governors sincerely believe they have the best interests of the state bar at heart, nonetheless, everybody who runs for the board does so to serve some private agenda. My proposal would eliminate anybody actively seeking power for personal reasons.

2. My proposal would end discrimination on the board. Over time, the

board would precisely reflect the membership of the bar with regard to race, sex, age, sexual preference, handicap, or any other criterion. No discrimination. Period.

3. My proposal would also, over time, have every type of law represented in proportion to its representation in the bar. No domination by plaintiff's lawyers, defense lawyers, private attorneys, government attorneys, sole practitioners, associates, partners—every kind of lawyer.

4. We would get fresh faces on the board and discover undreamed-of talents. Elections self-select those who can tolerate the elective process. Many lawyers who would make superb governors are simply unwilling to go through the hassle and expense of an election campaign. In addition, just the briefest consideration of the electoral process makes clear that the skills necessary to get elected are almost totally unrelated to the skills necessary to govern.

5. We would also get fresh faces on committees. At its September meeting



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 6.75 CLE Credits \$240 (includes Deskbook); \$75 (Deskbook not included)
- Essentials of Real Estate**
 Video Replay with Moderator
 Vancouver – Horenstein & Duggan – 1/14
 6.25 CLE Credits \$115
- Damages Strategies in Commercial & Tort Litigation**
 Video Replay with Moderator
 Moses Lake – Ries & Kenison – 1/18
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- Tax Law Update**
 Seattle – Seattle Sheraton – 1/21 (morning)
 4.0 CLE Credits \$85
- Closing Arguments**
 Video Replay with Moderator
 Aberdeen – Phillips, Krause – 1/21
 6.0 CLE Credits \$110
- Corporate Counsel Institute and EXPO**
 Seattle – Westin Hotel – 1/28
 6.25 CLE Credits \$195; \$225 after 1/14
- Discovery Planning and Strategies Implementing Your Discovery Plan**
 Seattle – Hilton Hotel – 1/28
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 Wenatchee – The Chieftain – 2/9
 Ellensburg – Cone, Gilreath, et al. – 2/11
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- The Science Behind Environmental Law**
 Seattle – WA State Convention & Trade Center – 2/17
 6.25 CLE credits \$145
- 14th Annual Northwest Securities Institute**
 Seattle – Seattle Hilton – 2/25-26
 10.75 CLE credits \$295
- Science in the Courtroom: The Use and Abuse of Scientific Evidence**
 Seattle – Stouffer Madison Hotel – 2/25
 6.25 CLE credits \$135

the board proposed a task force to review WSBA governance. Guess how many lawyers who aren't already known to the governors will get on the committee? Guess how many new voices will be heard? (Hint: How many times can you say, "Zero"?) What's more, the present proposal (policy?) is for each governor to appoint one person to each committee whose expenses will be reimbursed. Then other interested persons can be appointed, but with expenses *not* reimbursed. Result: If you're part of the old boy network, you can get on a committee and get your expenses reimbursed. If not, you have to pay your way to serve on a committee. Hard to imagine a better way to ensure that the ins stay in and the outs are kept out.

6. We would save money. Elections are expensive to mount, both for the candidates and for the bar. Let's put that money to better use.

There are some disadvantages to examine in such a system.

1. We would lose the benefit of the old boy network.

2. We would get some governors who would never have chosen to run for office. True. But would this really be a disadvantage?

3. We would get unqualified governors. Perhaps some. But after all, we start out with a pool of highly educated people who are professionally trained to discover relevant facts, develop and analyze all options, make reasoned decisions, and implement decisions. Given such a starting pool, is an electoral process more likely to identify qualified governors than random selection? (Note, also, that this is only a disadvantage to those who presuppose that our present electoral system produces only qualified governors.)

Why do I make this proposal? For two reasons.

First, the present system isn't working. The board is out of touch with the bar membership. We need new faces with new ideas. We're not likely to get that as long as the present leadership network remains in charge of any "reform" process.

Second, I don't know about other members of the bar, but I'm inherently cautious about people who go out of their way to obtain the power to control my professional life. Anybody who actively seeks office as a governor must be presumed to have a personal agenda

which may be benign, may be beneficial, or may be neither. I would much rather place my professional life in the hands of colleagues who have their power over the profession unwillingly thrust upon them than those who seek it out.

It's broke. Those already in power can't fix it because they're part of the problem. Something new is needed.

Give chance a chance.

CHRISTOPHER HODGKIN

Friday Harbor

Bar Licensing Fees: It Could Be Worse

Editor:

As a member of the Washington State Bar and the Law Society of British Columbia, I am an interested observer of the ongoing angst over the WSBA dues increase.

I have just received a notice of what my 1994 dues will be for the Law Society of British Columbia:

Lawyers in practice five years or more will pay a practice fee of \$1,083

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Bill Bishin
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* See, for example, *Sall v. Examining Board of Psychology* (1993) (holding unconstitutional statute governing impaired health care providers); *Su v. M/V Southern Aster* (1992) (overturning trial court's factual findings in business tort context); *Jose v. M/V Fir Grove* (1992) (reversing its own prior decisions, court rejects other authority interpreting maritime statute); *Raby v. M/V Pine Forest* (1990) (limiting discretion of trial court on supersedeas bonds); *National Union Fire Insurance Co. v. Seafirst Corp.* (1989) (rejecting judicial and academic authority on vacation of judgements after settlement); *Teamsters Pension Fund v. Premium Distributors* (1987) (rejecting cases imposing individual ERISA liability); *Seven Gables Corp. v. MGM/UA Enterprises* (1986) (rejecting judicial limitations on motion picture bidding laws); *Short v. Demopolis* (1984) (allowing legislative entry into court's traditional jurisdiction while overturning precedent to find Consumer Protection Act applicable to lawyers and other professionals); *Marvin v. Marvin* (1977) (the "palimony" case: rejecting cases on the rights of unmarried partners to community property).

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in 1994, and those in practice less than five years will pay \$973.

The practice fee consists of a Law Society assessment of \$765, an Advocate (equivalent to the *Bar News*) subscription of \$20, and a Canadian Bar Association fee of \$298 for senior members, \$188 for junior members. The \$765 Law Society assessment represents a \$165 increase over 1993.

Compared to these numbers, WSBA

dues are a bargain.

In addition, each lawyer is enrolled in a mandatory malpractice program. The cost per lawyer in 1994 will be \$3,438. Because of large cash reserves, the cost this year will be \$2,200 due to a "\$1,238 contribution from projected revenues on insurance funds and from surplus."

MICHAEL JACOBSEN
Vancouver, B.C.

Consider the Truly Disenfranchised.

Editor: the following letter was sent to WSBA President Paul Stritmatter.

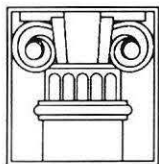
Dear Mr. Stritmatter:

This is to respond to your article entitled "Governance" in "The President's Corner" in the November 1993 issue of the *Washington State Bar News*. I was disappointed that in your discussion of the groups that may be considered for greater representation in the governance of the Washington State Bar Association that you failed to include Washington State Bar Association members who reside and have their offices out of state. While "Young Lawyers," government lawyers and the members of the special bars, minority bars and county bars may feel that they are under-represented, at least they have some representation on the Board of Bar Governors through the governor in the district in which they practice of live. By contrast, all attorneys who live and reside out of the state of Washington have no representation on the Board of Bar Governors as it is presently constituted.

I have not taken the time to count the active out-of-state members of the Washington State Bar, but they certainly must constitute a fairly significant percentage to the members of the Bar. I made a rough calculation that one-sixth of the active Washington State Bar members are out of state, based upon the number of pages (6) of out-of-state attorneys in the City/State Active Membership Roster (33 pages total) in the 1992 directory. Although my estimate of the percentage of active out-of-state lawyers is probably a little high because there are more separate city listings for out-of-state lawyers, out-of-state lawyers are a large group. For example, the listing of Portland lawyers who are active members of the Washington State Bar is longer than all Washington cities and towns except Bellevue, Olympia, Seattle, Spokane and Tacoma.

The active out-of-state members of the Washington State Bar Association pay the same dues as resident attor-

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neys. Although very few out-of-state lawyers practice in the Washington courts governed by the same rules and restrictions on practice and professionalism to which resident lawyers are subject, we have many of the same concerns that Washington lawyers do, and also some other concerns which Washington lawyers do not face. However, because out-of-state lawyers have no representation, those concerns are not known by the Board not discussed by it. Although the new system of committee appointments allows out-of-state lawyers to join any committee which they find interesting, the lack of a governor for out-of-state lawyers prohibits out-of-state lawyers from getting one of the "plum" expense-paid committee memberships.

While I doubt that you or the other members of the Board of Bar Governors have much sympathy for out-of-state lawyers, [the percentage] who voted against the dues increase was higher than the percentage of in-state members who voted against the dues increase. If that vote had been closer, that [might] have made a difference in defeating the dues increase. Similarly, if the vote on limiting the Bar's activities to regulation of the profession is put to a vote of all the members, I imagine that the percentage of votes for such a measure from out-of-state members will be much higher than the in-state vote for that measure. While some of the objection to a dues increase and animosity toward other Bar Association activities is a natural result of being out of state, I submit that it is worse because of a lack of belonging. If out-of-state members felt that they had a voice and governor who would be sending them regular reports of the Board's work, they would probably feel more a part of the Bar Association and more willing to support that Association.

I hope that someone on your task force to study the issue of governance is an out-of-state lawyer who can represent this view. If not, I hope that you at least share this letter and my concerns with the members of that task force and ask them to consider it in their work.

JAMES RAY STREINZ
Portland

The Sale of UPS School of Law

Editor:

I suppose that I should be thankful to the University of Puget Sound bankers and the Jesuits for cleaning up my resumé. Now, if someone asks about "UPS law school," I can just say, "Oh, *that*. Just read, "'Oops! A law school' or 'Greedheads R Us School of Dissemblance.'" The central message

of the UPS law school sale is this: law professors, former and current law students—you're all commodities, and you can be bought and sold in a second.

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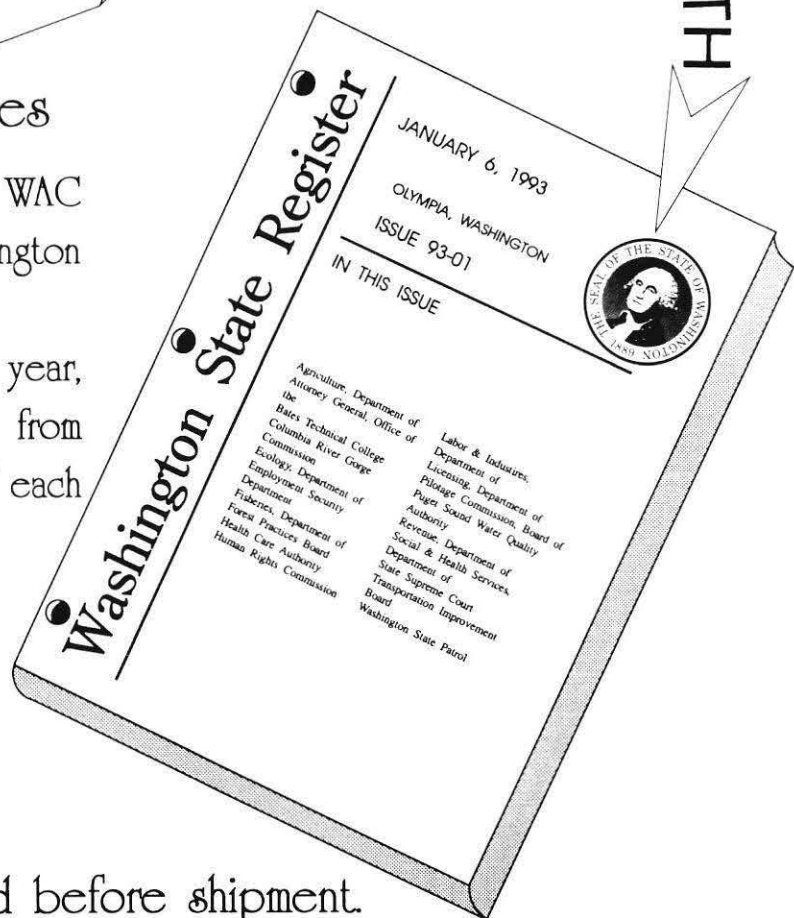
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it's a great tradition in capitalism to buy and sell people's lives. It's only logical that law professors and law students would buy and sell themselves just as lawyers sell themselves every day. I don't deny that I've done it myself, but I am not proud of it.

You may be thinking that I'm just too sensitive, too sentimental, i.e., I'm just not cold and hard enough for real capitalism, and, besides, it's insulting to speak of buying and selling lives along with buying and selling memories. However, I do not take the analogy lightly. Moreover, the effects of capitalism are not either/or; they are on a continuum. There are horrific effects of capitalism, which I do not pretend to know. What I'm talking about is one relatively small effect of capitalism, but for me, a quite important one and that is the buying and selling of my personal symbols and mythology.

A lot has been taken from me that I can never recover. I can already hear the future conversations with potential employers, colleagues, children, grandchildren or friends that start with, "You're a lawyer, aren't you? So, where did you go to school?" "University of Puget Sound law school," I will answer. "I've never heard of that," they will say, and I will say, apologetically, "Well, that's because it was sold in 1993. My school no longer exists."

At this point, they will perhaps guess that the subject makes me angry, sad or uncomfortable and just drop it. Maybe they'll want to save themselves and myself embarrassment by shifting the conversation to how and why this happened. On the other hand, maybe they won't ask how and why because they don't want to know the answer. If they do ask me how and why, I will say that one greedy corporation gobbled up an asset of another greedy corporation, and they didn't ask the lawyers educated there, the law professors, the law students or anybody about it, and they didn't have to.

The conversation about my law school will certainly end at that point. What will I have lost? I will have lost the chance to tell someone about an integral part of my personal identity,

my personal mythology. It's like having a part of my soul carved out and thrown away.

Personal mythologies are tremendously important to each of us for our own sense of self-worth and belonging. When you have been part of a currently living organization as, in my case, Stanford University (as an undergraduate) and you say you went to Stanford University, or I worked at such-and-such law firm or company, or I volunteered at such-and-such organization, you immediately create associations for your listener, because such organizations are living and they may know of them. You draw your listener into your personal mythology, your personal story, and you can share something.

Not with a dead organization. Talking about a dead organization is like talking about a dead person. Most people will listen politely about them, but only the grieving relatives really care.

The most galling aspect of the whole affair is the cowardly secrecy with which the sale was done, and the pretense which with it was announced. The nameless members of the boards of directors of UPS and SU knew that people would be upset, so they sent their errand boys and girls to preside at the vivisection. They probably even got some bright UPS law school grads to draw up the paperwork. Accountable to nothing besides their tidy balance sheets, their hands unsullied, and their consciences disengaged, they slithered out of the operating room. Then the errand boys and girls had the audacity and arrogance to tell us all that the bloody mess was a great deal for everyone.

I know I helped build the UPS law school vehicle. I thought I knew who was driving. But someone just grabbed the steering wheel, and the driver just let him have it! The vehicle swerved wildly and my law school education is now just roadkill. Isn't capitalism great?!

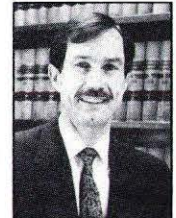
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Romjue v. Fairchild,
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Insurance

Tissell v. Liberty Mutual,
115 Wn.2d 107 (1990)

Child Support

Marriage of Sacco,
114 Wn.2d 1 (1990)

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Hoffer v. State,
110 Wn.2d 415 (1988)

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American Federal Savings v. McCaffery,
107 Wn.2d 181 (1986)

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In Re Dombrowski,
41 Wn. App. 753 (1985)

Personal Injury

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

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by **Paul L. Stritmatter**
WSBA President

Recent polls indicate that public opinion regarding lawyers is at an all-time low. I won't bore you with the list that I have read regarding occupations that are held in higher esteem than the law. I'm sure you have read those materials. We all know about the incessant lawyer-bashing jokes, the crude beer commercials depicting lawyers and rodeo events, and the controversial statements by the president of the California State Bar regarding lawyer-bashing. There seems to be something far more basic, however, than the historic public disdain of lawyers.

The public's opinion of lawyers has never been as high as you would expect. Because of the nature of our profession, that will always be true. Lawyers have the responsibility to be in the center of controversy. Lawyers make the difficult arguments, advocate the rights of the oppressed, and necessarily involve themselves in most of the disputes in our society. As long as we do our job right, there are going to be those who don't like the action of lawyers. Being a lawyer does not mean winning a popularity contest. The work of a lawyer is to properly represent the interests of one's client. By definition, those interests are contrary to the interests of other parties. Someone always is going to be unhappy with the lawyer on the other side of the issue.

For years we heard that members of the public had a very high regard for their own lawyers—they just didn't like other lawyers. When people hired a lawyer and got to know their lawyer on a personal basis, they were usually impressed with the intellect, the hard work, the commitment and the advocacy of the lawyer. That was probably the best that we could ever ask. But in recent years, a very disturbing trend has occurred. In many instances, members of the public are beginning to say they don't like their own lawyer. This is a problem of monumental proportions. It is not a problem that will be solved by a public-relations blitz. It is

a fundamental problem regarding how we treat and how we relate to our own clients.

Last year, 2,300 grievances were filed with the Bar Association regarding lawyer conduct. Fifty three and nine-tenths percent of those complaints were by clients; 40.8 percent of those complaints were dismissed by staff without any investigation necessary because they failed to allege any conduct that would violate the Rules of Professional Conduct; 36.8 percent more were dismissed after investigation for the same reason. They were dismissed because the complaints, on their face or after initial investigation, did not involve violations of our ethical rules.

What were these complaints? In huge numbers, the complaints were that lawyers did not return their clients' calls. Lawyers did not respond to letters. Clients were treated rudely. Clients believed that they were overcharged for the services involved. These are not ethical violations. The most important thing, however, is that the public feels that these are ethical violations. They rightly feel that they are being wronged by this type of conduct. They feel that the Bar Association should do something about this conduct. When the Bar Association dismisses the complaint, clients believe that the Bar is protecting the lawyer, or covering for the lawyer, or is simply not concerned and not looking out for the interests of the public. Our public-relations problem has, in the last few years, turned into a client problem. Too many of us are not properly treating our clients.

If you were ill and your doctor refused to return your calls, what would you think of that doctor? Returning calls promptly is a simple matter of common courtesy, let alone professional necessity. You may be the best lawyer in the state, but if your client is not treated properly, the client will have a poor opinion of you as a lawyer. You can have the best pilot in the industry flying your plane from Seattle to Chicago. If the agent doesn't properly write your ticket, if the plane is late so that

STUPID

you miss your connection, if the stewardess spills the coffee on you or if your baggage is misplaced, you are not going to fly that airline again no matter how skillful the pilot. There is more to client relations than being a skilled advocate. There is more to keeping a client than winning the case. It is imperative that we, as lawyers, improve our deskmanner.

The problem for us goes far beyond image. The September, 1993 *ABA Journal* contains an article "VOX POPULI, The Public Perception of Lawyers: ABA Poll." The article points out that the public perception regarding lawyers seems based on strongly rooted dissatisfaction with some aspects of the way the system works and how lawyers practice their skills. Public complaints about lawyers generally can be placed into four categories—perception that lawyers lack caring and compassion; a perception of poor ethical standards and enforcements; a view that lawyers are greedy; and an apparent public distaste for lawyers' advertising. Participants and focus groups believe that the motivation of lawyers who advertise is greed, and the effect of the advertising is to generate lawsuits from people who would not otherwise bring suit.

While many lawyers view ethics as the absence of disciplinary measures and adherence to the profession's own rules of professional conduct, the public views ethical conduct on a much broader scope, to include things such as fee disputes, lack of client relations and communication problems. The top priority for the public is tougher ethical standards to cover the numerous client relation complaints not currently subject to the lawyer ethics code. Also high on the list is a strict disciplinary system of enforcement for lawyers who violate the code or repeatedly ignore their clients.

All of this points to the fact that we don't need a public-relations program to better the image of lawyers. What we do need is:

1. Training in deskmanner. We need fundamental courses in our law



Paul L. Stritmatter

schools on business relations and human relations in properly dealing with clients.

2. We need a component of our CLE training in client relations. We need to be retrained and reminded regarding proper business procedures and the treatment of clients.

3. Rather than dismissing client complaints as not within our ethical rules, we need a diversion program to deal with the issues and require lawyers to obtain training in how to deal in client relations. Some states have a peer review committee. These committees are comprised of experienced lawyers, known for their professionalism, who provide suggestions and guidance to other lawyers whose conduct, while not unethical, violates generally accepted principles of professionalism.

4. We need to return client telephone calls promptly.

5. We need to communicate with clients, with a heavy emphasis on the listening and hearing parts of communication.

6. The Virginia and Arizona bars require all members to complete a course on professionalism, which includes a component of client relations. Should we consider such a program?

It's up to us, not the public relations people. We must attend to the needs and wishes of our clients in order to develop a positive public image. To paraphrase a recent successful political slogan, "It's the Client, Stupid." Let's focus on the real issue. Let's start today.

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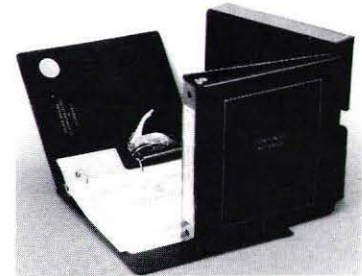
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THE WSBA MEMBERSHIP SURVEY: PERCEPTIONS ARE REALITY, BUT NOT ALL PERCEPTIONS ARE REAL

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

Elsewhere in this issue of *Bar News*, you will find the Executive Summary of the WSBA Membership Survey conducted last fall. Although the WSBA has conducted other membership surveys over the years, this survey may have been the first to include both a scientific, statistically sound survey and an identical self-selecting, mail-in survey. Both are important and, as expected, the self-selecting survey accentuated the opinions of both WSBA supporters and WSBA detractors.

The survey was helpful to the Board of Governors for several reasons.

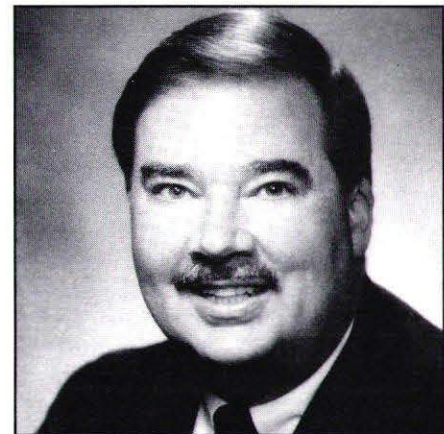
1. It allowed the Board to obtain a statistically reliable understanding of members' opinions about the WSBA, its discretionary programs, its dues, and its governance,
2. It allowed all members of the WSBA to "sound off" about their opinions, and
3. It revealed where members of the WSBA who don't feel strongly enough about issues to proactively

speaking out actually stand on many significant issues.

The old maxim that "perception is reality" is absolutely true. As members perceive, so shall they vote. And as members perceive, so shall they expect.

The converse is that not all perceptions are real. The single biggest complaint about the WSBA's finances was that "too much is spent on annual conventions." Peculiar, because the WSBA didn't hold a convention in 1993, cancelled the convention for the foreseeable future, and made money on the 1992 convention (direct revenues of \$159,678 to direct expenses of \$133,163). Similarly, the WSBA program that has taken the most heat and gone through five sunset reviews over the past couple of years is CLE, yet it was the run-away winner as the top benefit that members derive from the WSBA.

I won't try to outline all the survey's findings here since they are found on pages 32 and 33, but there are things that cause me alarm (the perception by 23 percent of our members that the



Dennis P. Harwick

WSBA is financially mismanaged), and there are things that cause me relief (the fact that a majority—58 percent—of our members are either very positive or somewhat positive about the WSBA). The survey showed, predictably enough, that the more active people are in bar activities, the more likely they are to have a positive attitude toward the WSBA. It also showed the power of inertia—given a choice, nearly half (46 percent) would hold dues constant (compared to 40 percent who would support some level of dues increase).

The power of the status quo also showed up in questions about governance. Seventy-five percent said they were satisfied with the current form of governance. Ninety percent said they were satisfied with the current system of electing governors geographically. Sometimes the responses even cancelled each other out, e.g., 15 percent want more programs, but 11 percent want fewer programs.

I hope that we can find room in an upcoming issue of *Bar News* to detail all the survey's findings. They are fascinating and intriguing. They confuse and confirm. But most of all, they create a benchmark for understanding what the WSBA membership believes about the WSBA.

For those of us in the center of bar activities, the survey brings harmony out of the cacophony of opinions we hear. It brings perspective to the unfocused. And it brings order out of chaos. My thanks to those who participated and to the Board of Governors for authorizing the survey.

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HELPING DOCTORS HELP THEMSELVES

by Fred Zeder

Drug abuse affects people in all walks of life. By drug, I mean any addictive substance including, and in particular, alcohol. When the abuser is a medical doctor the ramifications are particularly chilling. Consider the situation an anesthesiologist faces whenever a patient is on an operating table. The doctor must have total control of the patient's body. Because the patient can quickly decompensate, the doctor must be at the peak of readiness at all times. Yet research shows that even small doses of alcohol or other mood-altering drugs can cause significant changes in perception and reaction time. Prolonged use often results in serious cognitive and perceptual effects. Studies show that anesthesiologists are the most likely physicians to abuse drugs.

While not all physicians find themselves on the anesthesiologist's hot-seat, most are required to make life-and-death decisions. A dermatologist who elects against biopsying a suspicious-looking mole can kill a patient. This is the responsibility that comes with a medical license, a responsibility that attorneys who assist doctors in disciplinary proceedings must respect and share.

A lawyer must wear many hats to successfully represent the drug-abusing doctor. The skills of a detective, psychologist, case worker and, finally, a trial attorney may be required at different points in the proceeding. The attorney has to walk a tight rope that involves balancing the client's interest in maintaining an uninterrupted medical practice with the client's responsibility to safely and competently conduct that practice. An attorney who fails to appreciate this balancing act risks destroying his client's career.

The lawyer often needs to be a detective just to discover the doctor's problem. The client is the last person that the lawyer can rely on to point out

that substance abuse is the cause. Substance abuse results both in impaired control over taking the substance and a distortion in thinking, called "denial." Denial is an avoidance of one of the most powerful and painful realizations in human species: namely, the inability to control one's own life. Doctors spend their professional lives attempting to control the lives of others. To admit they are unable to control their own lives is tremendously difficult.

When the doctor arrives at the attorney's office for help with a disciplinary problem, he or she may honestly not realize that substance abuse is the cause. The lawyer cannot rely on a string of malpractice suits to point the way. Typically, the physician's professional life is the last area of his existence to be affected by addiction. In a study by the Medical Association of Georgia only 30 percent of impaired physicians had experienced malpractice claims, while 80 percent were either divorced or separated.

The conduct which brings the doctor to the disciplinary authority's attention may, at first glance, appear unrelated to substance abuse. A drug problem can cause a string of malpractice claims, or they may be the result of chronically poor judgment and lack of training. A sexual misconduct complaint may be the result of a either deep-seated personality disorder or simply an attempted pelvic exam while intoxicated. Drug abuse can manifest itself through a wide variety of compulsive, and often destructive, abnormal behaviors. Historically, alcoholics and drug addicts were labeled with psychiatric diagnoses. In the final analysis, there is no single clue that the lawyer can rely on. For this reason the attorney has to be sensitive to the possibility of substance abuse in every potential disciplinary action.

The only realistic way to determine if there is a substance abuse problem is to have the physician submit to a com-

plete evaluation. From past experience our firm now requires clients facing disciplinary charges to submit to an evaluation by a psychologist, which will include an alcohol and drug screen. The physician is tested for all of the most commonly abused substances, including fentanyl, mepheridine, diazepam, cocaine, morphine, marijuana, amphetamines, codeine, etc. However this evaluation turns out, the results are helpful. If the physician passes the drug screen, the psychological evaluation provides insight into how the disciplinary situation arose. Disciplinary charges seldom fall out of the sky on a totally blameless practitioner. While the problem may not be that charged by the disciplinary authority, it is almost never nothing. The most important step to successful resolution of a disciplinary charge is the doctor's willingness to admit there is room for improvement. This is not the same as agreeing to plead guilty. It demonstrates that the doctor is reasonable and will cooperate, so long as the disciplining authority acts reasonably. The psychological evaluation may be extremely useful in determining where improvement can occur.

If the physician fails the drug screen, then he or she has to immediately enter in-patient evaluation and treatment at a facility recognized by the state's Medical Disciplinary Board. It is important that the same facility perform the evaluation and, if necessary, the treatment. This helps prevent cold feet between the evaluation and treatment stages and is necessary to assure confidentiality. In the Pacific Northwest, one of the best facilities with experience in evaluating and providing treatment to addicted physicians is Springbrook Northwest in Newburg, Oregon, telephone (800) 333-3712.

If the doctor won't agree to this approach our firm won't represent that doctor. Addicted doctors, like *all* addicts, are reluctant to take action

against their addiction. Sometimes one needs to talk in the physician's own language. A full explanation of "the risks, benefits and alternatives" is the best way to assure cooperation. The

benefits are great, the risks are few, and the alternative is the road to disaster. Another way of saying it is: "If you don't do this, you will probably wind up having your license suspended

or revoked." The primary benefits of voluntary evaluation and treatment are that they can be conducted quickly, with a minimum of interference to the doctor's practice and in strict confidence assured by law. RCW 18.130.175, 70.96A.150, 42 CFR §290dd - part 2.

If the doctor's conduct even hints of substance abuse, the disciplining authority will probably require him to undergo such an evaluation anyway. RCW 18.130.170 gives the state Disciplinary Board authority to require the doctor to submit to a mental or physical examination anytime it believes that the doctor may be unable to practice with reasonable skill and safety by reason of a mental or physical condition. Refusal to cooperate is, in and of itself, grounds for immediate suspension. In the hospital setting, medical bylaws seldom spell out the authority to require a doctor to attend an evaluation. However, the Corrective Action articles are always painted with a broad brush which, in effect, conveys this power.

Both state and hospital disciplinary authorities, by statute and by law, have the power of summary suspension before hearing. The doctor who waits for an evaluation to be imposed risks a long summary suspension pending its completion. By waiting, the doctor also risks setting off a cascade of dire events which can ultimately destroy his or her practice. If the proceeding is at the hospital level, a restriction of privileges, because the doctor refuses to permit evaluation or because the evaluation reveals a problem, will most certainly be reported to the state's Medical Disciplinary Board. The Board may then go on to issue a statement of charges against the practitioner, which will be reported by the local news media. RCW 18.130.110(2)(c). Additional complaints often surface in response to news reports. These, in turn, may be filed as additional charges by the Board giving rise to still more media stories. As the heat goes up in the disciplinary kitchen the doctor's business partners may choose to terminate their association rather than risk liability exposure. Malpractice carriers will decline to renew policies. Insurance will be available but at astronomical premiums. Dis-

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ruptions to the doctor's practice may reduce patient load to the point that the premiums are out of reach. The doctor will then be terminated by any other hospitals for failure to maintain adequate liability coverage. These terminations will cost surgical assistance fees which would otherwise come through colleagues who want to help in a time of need. If the doctor is ultimately found to be impaired, the suspension will continue pending completion of an in-patient treatment program that will be at least as time-consuming as that following the voluntary evaluation.

All of the disasters just listed can befall a doctor at an accelerated rate when summary suspension is the first shot fired in a disciplinary proceeding. Disciplinary authorities often see summary suspension as an excellent way to get the doctor's attention. Unfortunately, it is also a gauntlet across the face that assures a protracted, and possibly unnecessary, battle. Unless absolutely essential, summary suspension may expose the disciplinary authority to a writ of mandamus. Disciplinary

Board actions are quasi-criminal in nature and require the Board to afford due process. *Board v. Johnson*, 99 Wn.2d 466, 663 P.2d 457 (1983). While state agencies, including the Board, are entitled to issue emergency actions of summary suspension, they may do so only when they can demonstrate that such action is absolutely necessary to prevent an immediate danger to the public health. RCW 34.05.479. Thus, while a civil court action can nullify a summary suspension on due process grounds, tremendous damage will already have been done. The whole point of the early voluntary evaluation is to avoid this kind of situation.

The doctor who completes the in-patient treatment is still not out of the woods. However, when a problem at the hospital level does ultimately percolate up to the state Board, the Board will be inclined to give the doctor preferential treatment. If the Board determines that the doctor's conduct was the result of substance abuse, it can refer a license holder to an approved voluntary substance abuse-monitoring program. RCW 18.130.175. This is in

lieu of other disciplinary action and is strictly confidential.

The program the Board requires is the Washington Physicians' Health Program with offices in Seattle, telephone (800) 552-7236. This program operates under a contract with a licensing authority and is dedicated to the identification, intervention, monitoring, and rehabilitation of physicians who have, or are at risk of developing, disorders which impair their ability to practice medicine. We recommend referring physician clients to the program as soon as it becomes apparent that substance abuse is an issue. Attorneys who are unsure on how to deal with their clients are advised to contact the program's medical director, Dr. Lynn Hankes. Her experience and support can be an invaluable asset in assisting an impaired physician to a successful rehabilitation and continued medical practice.

Seattle attorney Fred Zeder is a partner at Peterson, Breccelin, Young, Putra, Fletcher & Zeder, Inc., P.S.

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**Law Day Conference
Linkages**

The major event that had the working title of the Pound Conference is now titled "Just Solutions: A Public Forum on the Justice System." It will

be held in conjunction with Law Day, May 1-3, 1994, just outside Washington, D.C. Under consideration is the possibility of satellite TV linkages with similar events, held by state or local bars, involving citizens in finding solutions to system problems. If you would like to explore running such a conference in your state or community, call or fax Jack Sweeney, ABA

Division for Bar Services [phone (312) 988-5344; fax (312) 988-5492; ABA/net: Sweeneyj].

Special IRS Information

Lawyers are now among occupations groups the IRS is targeting on nonfiling of tax returns. Under certain circumstances, taxpayers who come in voluntarily to file delinquent returns and pay back taxes and interest may avoid criminal penalties, which could prohibit tax work by the lawyer and his or her firm.

**GREEN REDESIGN
Recycled paint
provides new look for
Bellingham law firm**

When the law firm of Raas, Johnsen and Stuen, P.S. began to redecorate their E Street offices this past summer, they looked for a way to contribute to the community at the same time, says legal assistant and team coordinator Susan Wright. Their decision: to use recycled paint on the office walls.

"Buying recycled helps improve recycling markets and community economics," says Fred Miller of Whatcom County's Third Arrow Project, which helped the law firm locate a source for the recycled paint. The 21 gallons of off-white interior latex is made with 40 percent recycled content, half of which comes from a household paint collection program in Portland, Oregon. (And at a sale price of only \$5 per gallon, plus shipping, it was a bargain.)

The law firm, which won a Whatcom County "Waste Wise Business Award" earlier this year, recycles office paper and toner cartridges, as well as cans and glass from the staff kitchen. Reusable mugs and rechargeable batteries are status quo, as are recycled paper towels in the washroom. This purchase is a first step towards buying more recycled products: "We want to be really environmentally wise and close the loop in the recycling cycle," Wright says.

(For more information on recycled paint, call Rasmussen Paint Company, (800) 992-6692.)

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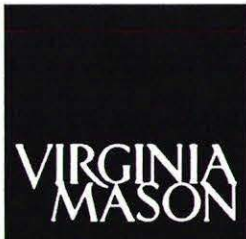
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SABBATICAL

by Jeffrey Jones

Sabbatical. Leave of absence. Semi-retirement. What concepts! They evoke visions of being in some faraway place with nothing but time on one's hands. Away from the hustle and bustle of work and commitments. Taking time off is probably as appealing to a plumber as it is to a teacher, but it seems particularly . . . elusive for modern day lawyers. Or so it seemed to me.

I'm not saying anything new when I say there are a growing pressure on the legal profession which have made the delivery of legal services more difficult. There is, unquestionably, a greater client expectation which requires greater effort on the part of lawyers to meet. There is the increased technological efficiency of computers, laser printers and fax machines, which has reduced delay/response time on any given file to minutes, instead of days. There are increases in overhead expenses, where everything from the cost of office supplies to hourly wages has risen dramatically. The result? Pressure to increase billable hours, which will pay for new technology, cover the higher overhead, meet client expectations, and then, at the end of the day, provide some form of reward for the lawyer who expended all the effort in the first place. The reward is invariably calculated in dollars, but if the equation stops here, it is fundamentally flawed.

Any first-year logic student can tell you there is a difference between the means to an end and an end in itself. Money falls into the former category, notwithstanding the large number of people who confuse it with the latter. Thus, remuneration must be spent, and spending requires time. Time: that ethereal concept again. It brings to mind a number of thoughts, mainly that there isn't enough of it. Especially leisure time. This is both the problem and the challenge of modern-day, post-recession, pre-retirement, baby boom

lawyers: how to discharge one's professional commitments, and still have some leisure time for oneself.

Ironically, here we are in the 1990s. The generation that was supposed to inherit a new utopia. With the advent of the technology that was supposed to let us work less, we are working more. Surely, you recall the predictions of the '60s: "With increased mechanization and computerization, humankind shall be freed from its five-day work week to pursue utopian goals, to enjoy more leisure time, to concentrate on interpersonal relationships with friends and family." Somehow, we got it all backwards, and as technology has increased, so have our billable hours.

As I thought about it the other day at the office, putting in another 10-hour day (there was no court that week, hence the light work load), I reflected that, in my ten years as a lawyer, my life had become a clear case of too much stick and not enough carrot. But what to do? I'd discussed the matter with other lawyers over lunch, or on the phone, but there was rarely enough time to really consider it. Since I was a sole practitioner, my options were even fewer.

A four-day work week seemed impossible, since I would probably come in during my day off to catch up. I'd tried taking two weeks off for my annual holiday, and although it was worth getting away, I worried about the office, and called in every few days or so to make sure all was well. Even worse, on my return, there were so many phone messages, letters, and faxes piled up on my desk, I regretted ever going in the first place. Changing careers was a real temptation, and one which I considered seriously, as have a number of other lawyers I have spoken with. But when I thought about it, I knew I enjoyed many aspects of my profession. Besides, I'd just have to get another job.

Of course, early retirement always comes to mind. But that's really the "never-never" plan, one that kept me

working six days a week for the first decade of practice, but which was rapidly losing its appeal as justification for working another decade. When would it end? And if the magical "early retirement" ever materialized, would I still be able to participate in the activities that I want to do now, such as traveling, tennis, scuba diving, hiking and so on? Or like my parents, would I be tired and frail, even old? My kids would be grown and gone; that was a certainty, so fantasies of helping out in grade school class, later on, were just that. . .fantasies.

No, there had to be a better solution. I liked my job, but I needed more time off. The answer came to me during my annual 14-day holiday last February. Well, maybe it was 11 days, but who's counting? There I was with my wife and family, in a hot, exotic location, wearing shorts and sandals, enjoying life. It was a wonderful vacation, but I knew it would end all too soon. I thought, "Eleven days isn't good enough; there has to be a way to have some serious time off. The answer came to me out of the blue. It was six words, in the form of a chant, perhaps sent from the muses above. "Six months on and six months off," it went. Six months on and six months off. SIX MONTHS ON AND SIX MONTHS OFF. Think about it.

In more mundane terms, it's called job-sharing. I know it sounds more like splitting a janitorial shift at an industrial plant, but the more I thought about it, the more feasible it became. First, remember, this isn't 2 1/2 days on and 2 1/2 days off each week. I'm talking whole-hog: six months off, every year. Obviously, I'd be looking at a reduction in income, but if I could live on half my present salary—and pay fewer taxes (now, there was a bonus!)—the concept seemed workable. And think about it. How much money do you really need to live on, per year, if some modicum of self-control is used. If you can live on less, and have six months off, can you really afford not to?

Of course, it would require finding a second lawyer who also wanted time off. As I conceived of the idea, each lawyer would receive a monthly income for the entire 12-month period. Thus, rather than having to save for the six-month holiday, one would have a dependable, regular income which would provide for living and travel expenses, even when the lawyer was not working.

One would also have to ensure the two six-month periods were equal in desirability. For example, the fairest split of the year would be from February 1 to July 30, and from August 1 to January 30, which would give each person half the summer months off. To keep both lawyers motivated, there had to be an overall profit-sharing agreement, since otherwise, I could return from my six-month holiday to find my practice in a shambles.

When I told my wife about the idea, she initially dismissed it as another of my wild schemes. But the more we discussed it, the more it seemed possible. The most important hurdle, however, was finding the right person. After I pondered the matter, a certain law-

yer came to mind, immediately. He was bright, hard-working, good with clients and motivated. But, like me, he had expressed many of the same frustrations with working too many hours, and too few weeks off. The old story of too much stick and not enough carrot.

The day I returned from my holiday, I called him. I said, "Don't say yes or no right away, but I want you to consider an idea. Think about it; discuss it with your wife, and call me back in a week." Okay, maybe I begged him a little, but not as much as my wife says. He called me back in a week. His answer was . . . yes. When I put down the phone, I suddenly felt light-headed. "Oh, my God, he said yes!" I told my wife. I didn't know whether to laugh or cry.

The following months were full of planning, organizing, rearranging office equipment, and the hundreds of little things that must be done with bringing a new lawyer into an office. I also began telling long-time clients that I had an associate joining me and that I would be taking an extended holiday in the future. Their invariable response

was, "You deserve it," as more clients than one might suspect appreciate how many hours their lawyers spend at the office.

My new partner was also busy winding down his practice and soon began working with me towards our ultimate goal: six months on and six months off. I took him through the routine of meeting bank managers, realtors and various long-standing clients, introduced him to the various filing and other office systems, and extensively reviewed all the work in progress. He'd already come to know my staff quite well, and we set up a second office which he moved into. All new work was diverted to him, while I continued to complete what large files I could. All in all, things went very smoothly. In a general practice, a significant percentage of work is started and finished in a 30- to 45-day time span, so many clients don't have any particular expectations about who they will meet. Most such files will be started and finished by the same lawyer. For the periodic file that overlaps a six-month working period, the client can be introduced to the second lawyer and con-

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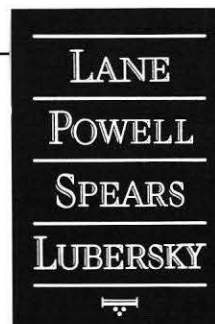
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tinuity maintained. Of course, this system has been successfully used for years in large firms, where files are regularly shared among two or three lawyers over a period of time.

I also had a small number of files which would likely go to trial. After reviewing the matter with opposing counsel (and given the state of most trial lists), I was able to fix discovery and trial dates during the six-month period I would be back, and I advised my clients accordingly.

Then there was the best part. Going home and looking through travel books. When you're staring down the double-barreled gun of six months off, it's a daunting task to decide how to use them. The miser in me wanted to stay home and just savor them, one day at a time, but of course that would be unthinkable. So my wife and I researched various travel destinations, including Costa Rica, the Caribbean, Europe and Hawaii. Just going through the process of "Hey, this would be nice," to "Hmmm, that looks pretty expensive," to "What do you think of this island?" was a pleasure in itself. We regularly pinched ourselves to make sure we weren't dreaming. Here we were, not just fantasizing about saying, "Let's go here," someday, but choosing a destination which we would be departing for, in a few short months! What to do? Ultimately, we settled on a destination.

Setting up alternatives to regular grade school for our son was our next task, but one which is surprisingly easy in most jurisdictions. Correspondence courses have been set up and fine-tuned by virtually every school board to accommodate those families who, for one reason or another, cannot have their children attend public school. After we applied for the material, five large boxes arrived in the mail with complete, step-by-step instructions, which covered everything from reading and writing to arithmetic. In short, teaching your children with the step-by-step instructions provided is a lot easier than you might imagine.

I believe any lawyer with a general practice can do what I've done. And any lawyer in a large firm could do it as well. Perhaps more easily, since it would take only two people of a similar mind, in the same firm, to combine

their work. Suddenly they, too, would be enjoying the life of . . . six months on and six months off.

What's stopping you? Just go down the hall and speak to the lawyer you've commiserated with over the years. Throw down this article on his or her desk, and say, "Don't say yes or no right away, but I want you to consider an idea . . ."

Here it is, midwinter, and I am sitting outside on the lanai of our rented

home in the warm, morning tropical sun of Hawaii. I'm looking out over the pool and ocean surf, working at my computer. Life has settled into a wonderful routine: Home school in the morning, lunch and a noon swim, and then beachcombing and snorkeling in the afternoon. I told my partner, "Don't despair, I'll be back by January." And then it will be . . . his turn.

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

Seattle, December 3-4, 1993

Present: The President and the Board of Governors. **Also present:** Barbara Clark (Legal Foundation of Washington); Rosemary Daszkiewicz (WSBA Young Lawyers Division); Mary Jo Diaz (Government Lawyers' Bar Association); Mary F. Gallagher Dilley (Administrative Law Judges' Association); Dennis P. Harwick (WSBA Executive Director); Janet Helson and Christopher Jennings (Lesbian & Gay Legal Society of Puget Sound); Jim Kaufman (Washington Association of Prosecuting Attorneys); Alva C. Long (South King County Bar Association); J. Richard Manning (King County Bar Association Trustees); Narda Pierce (Solicitor General of Washington); Judge Carol Schapira (Superior Court Judges' Association); Christine L. Schuler (WSBA General Practice Section); Rosemary Strunk (Lesbian & Gay Legal Society of Puget Sound); Lindsay Thompson (*Bar News* Editor); Judge Philip J. Thompson (Court of Appeals); Lynn Tuttle (King County Young Lawyers Division); and Robert D. Welden, (WSBA General Counsel).

Preliminaries: We are advised that some readers have taken it in mind that these reports are the official accounts of gubernatorial actions. They aren't. Dennis Harwick keeps those, which is why these reports generally begin as this one will:

The Usual Openers: After an hour in executive session, the Board convened in open session at the Bar Association office and approved the minutes of the last meeting. Note should be made that the co-chair of the WSBA Governance Task Force is Moni Law, whose surname was incorrectly reported last issue, and that Bob Welden should have been quoted as saying the UW law students "adopted a pro bono or volunteer service requirement . . ." not "the requirement that they have to study ethics . . ."

The president reported he continues to stay busy, which

for other people would be frenetic. Since the last meeting he attended meetings of the Tacoma-Pierce County Bar Association; the UW Alumni Recognition Dinner honoring King County Prosecutor Norm Maleng and former WSBA president Elizabeth Bracelin; the administrative committee of the Supreme Court on lawyer discipline issues; the Supreme Court as a body, to present new lawyers for admission; an ABA conference on discipline and lawyer-client relationships; the King County Bar Association Judicial Appreciation Dinner; the WSBA public relations committee; the annual WSBA Bench-Bar-Press Conference; and appeared on KIRO radio's "Legal Line" show. He also met with nine King County lawyers as part of his "focus group" efforts to see what's on WSBA members' minds as the Board travels around the state.

The president also reported the Supreme Court has asked the Bar to file a brief on the proposed court rule that would extend IOLTA to title officers; Charles K. Wiggins of Seattle will prepare the brief free of charge. He continues to talk up WSBA and local bar participation in March, 1994, designated as lawyer professionalism month by the state trial lawyers and defense lawyers' associations.

President Stritmatter then announced he has appointed the following people to the Professional Qualifications Task Force: Judge Kathleen Learned, King County Superior Court; former WSBA governors Julie Weston and Tom Chambers; UW Law School Dean Wallace Loh; Jonathan Bowman; Daniel Jaech, who is not a lawyer; Bob Kaplan; Whitman County Prosecutor Jim Kaufman; Rick Creatura; Peter Marchel; Young Lawyers Division president-elect Brad Steiner; David Dorsey; Norman Brock; and Margie Esola-Beran. He said no law student was appointed to the task force because law students would lack sufficient background and understanding of the issues to be studied, and would likely be too pressed by studies, to make an effective participation.

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Young Lawyers Division president Rosemary Daszkiewicz then asked that a law student be appointed anyway, and had one ready to be nominated. Several governors thought the presence of Dean Loh and Bowman, a 1993 Gonazaga graduate just admitted in November, would suffice. A motion to add a law student failed 3-8, governors Blair, Hannula and Larson voting aye. The rest of the nominations were then approved without dissent.

Executive Director's Report: Dennis Harwick told the Board he'd met

recently with the Prosecutor's Association board and thought some headway had been made improving the formerly prickly relationship between WAPA and WSBA. He talked about the recently published ABA poll of public attitudes about lawyers, showing the interaction of lawyers and clients is a major problem in clients' eyes.

Harwick told the Board March 4, 1994, is the likely date of their retreat to study the CLE program and that the 1994 licensing fee notice went in the mail December 7.

A New Reason for Bar Membership in Adjoining States: Governor Peterson reported on efforts of a Board Committee to see if there is any interest in trying to refloat a bar convention, restyled as a law fair, in conjunction with the annual meeting. Reaction by the main bar groups was the same as that of Third Congressional District lawyers when I floated the idea of running for the Board of Governors in 1990: absolutely no one thought it was at all necessary. A motion to disband the committee passed, 10-1.

Governance Task Force Assesses Its Task and Forces: Governor and Task Force co-chair Wayne Blair told the Board the Task Force had met, and had heard interesting reports on the history of the governance of the Bar Association, and on the Last Great Spasm of Reform in the early 1970s. They are working to identify issues needing to be looked at, and how to accomplish any change, since to propose change means walking through the Valley of Ambiguity between the Supreme Court's claim that the Bar Association is an arm of the Court, and the fact that in the 1930s the Legislature passed the State Bar Act, which dictates the form and some of the substance of the Association.

Does Anyone Remember How the Rule in Shelley Winters' Case Goes? With the Legislature meeting in Olympia this month, the Board heard its annual pre-session report from Legislative Committee chair Pete Middlebrooks. Sometimes actively questioning proposed legislation, other times looking politely baffled (tax and probate legislation will do 'em in every time, especially since this year the probate code revisions include abatement of probate and non-probate assets; omitted children; lapsed gifts; plus the Rule in Shelley's Case and the Doctrine of Worthier Title). Some of the observers looked as if they were reliving, awake, a dream in which they showed up for the bar exam (having forgotten it was that day). In the end, the Board voted to support legislation to amend the Sentencing Reform Act; to adjust the treatment of Social Security payments as child support; to require the State Department of Retirement Systems to honor valid court orders to pay non-employee ex-spouses survivor benefits; to update references to the federal Internal Revenue Code

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in RCW Titles 11 and 83; to make technical corrections to last session's SSB 5066, amending the powers of trustees in probate; and revisions to the probate code. The Board also passed a resolution continuing its support for "the inexpensive and expeditious dissemination of court decisions in electronic form."

Saturday Action: Rolling away the stone at 8:00 a.m., the Board re-convened Saturday morning for a report by the Sunset Review Committee of the Board, which has been studying the usefulness of various WSBA programs. The committee's most recent objects of study were the LAW-BBS computer bulletin board and the work of the Communications Department of the Bar Association.

Governor Linda Dunn said the number of lawyer-users of the bulletin board is growing as word of its services gets around and the WSBA membership becomes more computer-literate. There was discussion of regulating the committee that runs the bulletin board more closely; someone said they want to put all the WSBA desk books on the bulletin board.

Why, that would mean no one would buy the paper copies any more, someone observed with alarm. In a refreshingly candid observation, President Stritmatter wondered if that isn't the position the Supreme Court is taking about making the Appellate Reports available for reproduction on cheap CDs. Not the same thing, replied Governor Jan Peterson. Deskbooks sell mainly when they come out. Their value won't drop to zero just because some members read them on computer screens. Others present said they didn't know how to get access to the system, or where to get instructions on its use. In the end, the committee felt both the bulletin board

and the Communications Department (which includes the *Bar News*) were holding their own.

It's A Seasonal Thing, Apparently: Former WSBA governor Steve Tubbs appeared in his new incarnation as chair of the Consumer Protection Committee, with a plan for galvanizing this administrative version of the Un-dead. The Committee has been trying to tackle the unauthorized practice of law for most of this century, and Tubbs wanted some money so it could meet by teleconference in several locations around the state.

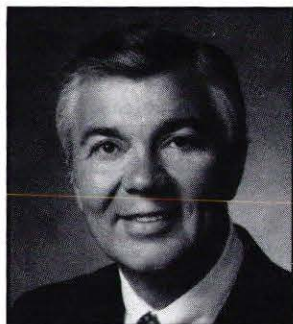
The usual debate ensued about the usefulness or lack of usefulness of such an effort. Fine, said Tubbs. Let's just go out and announce to the public that we have neither the civil nor criminal remedies to do anything about unlicensed practitioners of law, and that being a self-regulating profession is meaningless.

The Board voted \$3,000 for the Committee to do its thing.

Unionization Returns: Lawyer Jim Webster led a delegation from the United Food and Commercial Workers' Local 1001 to tell the Board they were about to ask the Supreme Court to adopt a court rule to implement legislation passed by the Legislature last year, authorizing the Supreme Court to do something about the results of an unofficial vote of WSBA employees to unionize in 1991. He hoped the Board would appoint a committee to meet with them to see if they could agree on a joint submission. If they didn't appoint a committee, Local 1001 was going to submit a proposed rule straightaway.

Former WSBA president Steve DeForest reviewed the history of the matter. Governor Steve Toole moved to have the Board's Personnel Committee look at the question. There

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was concern in some quarters that meeting with the Local might constitute a de facto legal recognition of them as a bargaining representative, and if that was going to be the effect, they wanted to know going in. Other governors didn't like the take-it-or-leave-it nature of the Local's proposal. Observer Christopher Jennings told the Board he was appalled, as a WSBA member, that the Board had not taken action on this months ago.

Webster said he'd recommend to the Local that they hold up while the Personnel Committee seek legal advice and determine whether to meet to discuss a joint submission, and there matters were left for the moment.

At Least You Can See Inside: Governors are itching to get at \$30,000 that was budgeted to help fund gubernatorial newsletters to constituents. President Stritmatter brought up a letter he had just received from Portland WSBA member James Ray Streinz (see "Letters to the Editor", this issue) pointing out that out-of-state WSBA members are utterly disenfranchised. 12.7% of WSBA members live out of state, Stritmatter noted.

Governor Jim Handmacher asked why not give that 12.7% to the King County governors, since that's where the majority of WSBA members live. There was some discussion of spending that money on a newsletter for out-of-state members, maybe written by the president, who observed that out-of-state members contribute \$443,000 a year in dues. Such considerations were overwhelmed by the voting strength of King County governors, and the money will be divided up proportionately among the governors, with the King County group allocating their collective share between those with districts and those elected at-large.

Joint Efforts Approved: The Board heard a presentation

by leaders of the Washington Association of Legal Secretaries. They'd like to explore collaborative educational projects with the Bar Association, and suggested the creation of a joint committee. The Board voted to create a six person committee to do that, three to come from each group.

Wrap-up in Seattle: In other action, the Board received the Gilmore Research Group's findings on the recent WSBA membership survey and heard a report on the results from Governor Jan Peterson and WSBA Communications Director Mary Elizabeth St. Clair. (Details of the survey appear at pages 32 and 33 of this issue of the *Bar News*.) The Board deferred action for a month on nominating a successor to Mary Wechsler on the state Judicial Ethics Advisory Committee, and appointed Margot Keller to the Commission on Judicial Conduct to replace Dan Hannula, who resigned upon election to the Board of Governors. The Board heard a report from Ruperta Alexis, chair of the WSBA Judicial Recommendations Committee, and discussed at length problems the Committee has avoiding being drawn into electoral politics as judicial posts are increasingly sought-after. The Board directed the Committee to establish procedures for considering candidates for both elected and appointed judicial positions and report back with their plans by June.

During lunch Friday the Board met with the Board of the Washington State Trial Lawyers Association. After lunch the Board heard a report on the activities of the King County Bar Association from its president, Mary Alice Theiler.

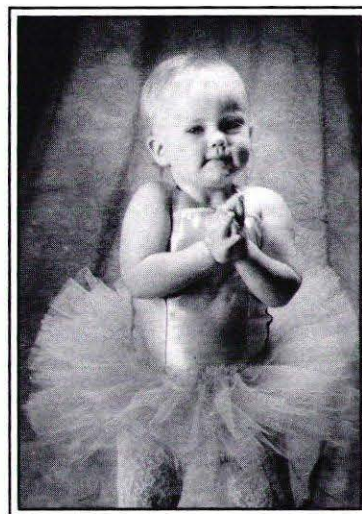
Saturday the Board heard a report from Sarah Stookey, chair of the Group & Prepaid Legal Insurance Committee, on its work, and voted to endorse March as Lawyer Professionalism Month. They voted 9-2 to table until January an appointment to the Board of Judicial Administration.

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Notices of Interest to Bar Members

WSBA Disciplinary Notices

Reprimand: Spokane lawyer **Dennis McMullen** (WSBA #8242, admitted 1978) has been ordered reprimanded pursuant to a Stipulation to Discipline approved September 7, 1993. McMullen acted as a closing agent in the sale of his home to purchasers, who applied for conventional financing. The discipline is based upon McMullen's submission of a false Mortgagors' Affidavit to the purchasers for their signatures; and his submission of the signed, false Mortgagors' Affidavit and a false Settlement Statement to the purchasers' lender. [October 28, 1993]

Suspended: Seattle lawyer **John N. Stafford** (WSBA #2931, admitted 1967) has been ordered suspended for a period of one year, effective October 20, 1993, with the suspension to begin upon Stafford's status change from inactive to active. The discipline is based

upon Stafford's practice of law while on inactive status. [November 4, 1993]

Suspended: Seattle lawyer **William K. Angle** (WSBA #10861, admitted 1980) was ordered suspended from the practice of law for two years by Supreme Court order entered November 8, 1993. The suspension is based upon Angle's felony conviction for structuring currency transactions in violation of 31 USC sec. 5324. [November 12, 1993]

Suspended: Tacoma lawyer **F. Curtis Hilton** (WSBA #4028, admitted 1958) was ordered suspended for one year, with two years' probation with conditions, from the practice of law in the State of Washington by Supreme Court order entered November 10, 1993. The suspension is based upon Hodges' neglect and delay of two clients' cases. [November 23, 1993]

Disbarred: Enumclaw lawyers **William C. Decker** (WSBA #3617, ad-

mitted 1971) has been ordered disbarred pursuant to a stipulation for discipline, approved October 26, 1993. The discipline is based upon Decker's practicing law while suspended, and misuse of his trust account. [November 4, 1993]

Disbarred: Tacoma lawyer **Mark Russell Hanna** (WSBA #13504, admitted 1983) was ordered disbarred from the practice of law by Supreme Court Order entered October 26, 1993. The disbarment is based upon his guilty plea, in United States District Court, to a felony charge of manufacturing marijuana. [November 5, 1993]

State of Washington, Commission on Judicial Conduct Notice

Stipulated Closure of Proceeding: The Commission on Judicial Conduct and Judge **Ralph L. Perkins** of the

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Pend Oreille County District Court entered into a stipulated closure of a proceeding against him. The stipulation, dated October 21, 1993, recites that on or about February 27, 1993, and March 27, 1993, while serving as a judge of the Pend Oreille County District Court, Perkins did intentionally strike and cause bodily harm to Anna K. Nordtvedt, his then-spouse, at their residence. On June 16, 1993, he was charged with two counts of fourth degree assault. On June 16, 1993, the Commission wrote to Judge Perkins advising that the Commission had opened initial proceedings to look into the charges, and invited a response. None was received.

On September 3, 1993, Perkins entered pleas of guilty to the two charges in Pend Oreille Superior Court. The Court accepted the pleas. The Commission determined probable cause existed to believe he violated Canons 1 and 2(A) of the Code of Judicial Conduct, and served a Statement of Charges on Judge Perkins September 3, 1993.

The stipulation between Perkins and the Commission recited that while serving as a District Court judge for Pend Oreille County he violated Canons 1 and 2(A) of the Code of Judicial Conduct. He stipulated that based on the facts the Commission could censure

him, find his pattern of behavior inappropriate for one holding judicial office, and recommend to the State Supreme Court that he be removed from office.

Perkins agreed to submit his resignation immediately, with an effective date no later than December 1, 1993, and to resign and terminate his judicial duties no later than December 1. He further agreed to neither seek nor serve in judicial office in Washington until: (1) he files a petition for reinstatement under WAC 292-12-160; (2) the Commission determines, after a hearing, to recommend to the Supreme Court that he has made an affirmative showing that reinstatement will not be detrimental to the integrity and standing of the judiciary and the administration of justice, or be contrary to the public interest; and (3) the Supreme Court enters an order reinstating his eligibility to hold judicial office.

In exchange for Perkins' promise to resign, the Commission agreed to accept the resignation and close the investigation without a hearing. Edward F. Shea of Pasco represented the Commission. Judge Perkins was represented by Paul J. Mack of Spokane. *In re the Matter of Hon. Ralph L. Perkins, Pend Oreille County District Court, No. 93-1474-F-42.*

Public Notices

Notice from the U.S. Bankruptcy Court, Western District of Washington:

Effective November 26, 1993, Public Law 103-121 raised filing fees for Chapter 7, 11 and 13 cases, Bankruptcy Court Clerk Lewis P. Stephenson announced.

Chapters 7 and 13: The clerk's office will collect a \$130 filing fee plus a \$30 administrative fee for a total of **\$160**. This is a fee increase of \$10.28 USC sec. 1930(a)(1).

Chapter 11: The clerk's office will collect an \$800 filing fee for a chapter 11 case that does not concern a railroad. This is an increase of \$200. 28 USC sec. 1930(a)(3).

A copy of the complete text of 28 USC sec. 1930, as amended, is available from the Office of the Bankruptcy Clerk in Seattle and Tacoma.

Annual Bar Dues/Licensing Deadline:

The annual license fee (bar dues) for all members of the Washington State Bar Association is due on or before February 1, 1994. License fee forms will be mailed to all members in December. If you have not received your form by the end of December, please contact the WSBA Licensing Department (206-727-8210). The license form will also include the annual trust account declaration, as well as the CLE certification form for those required to report CLE credits this year (those active members admitted 1976 through 1983).

In re RCW 19.52.120(1): Legal Interest Rate ("Usuary Rate"):

The average coupon equivalent yield from the first auction of 26-week treasury bills in December 1993 is 3.37%. **The maximum allowable interest permissible for January 1994 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.



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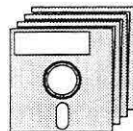
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- Spokane County Bar Association (Spokane BA) (509) 623-2665
- Tacoma-Pierce County Bar Association (TPCBA) (206) 383-3432
- University of Washington School of Law (UW CLE) (206) 543-0059
- Washington Assn of Prosecuting Attorneys (WAPA) (206) 753-2175
- Washington State Bar Association (WSBA CLE) (206) 727-8202
- Washington State Trial Lawyers Ass'n (WSTLA) (206) 464-1011, (800) 732-9251

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

January 1994

- 5 Boise: Last Gasp CLE (video). *Sponsored by* Idaho Law Foundation.
- 6 Seattle: Women in Litigation. *Sponsored by* WSTLA.
- 7 Spokane: How to Probate. *Sponsored by* WSBA CLE.
- 7 Seattle: Appellate Advocacy. *Sponsored by* WSBA CLE.
- 7 Seattle: Children and the Law. *Sponsored by* KCBA.
- 7-8 Olympia: WSBA Board of Governors meeting.

- 15 Deadline for March 1994 *Bar News*.
- 20 Spokane: 16th Annual Insurance Law Seminar. *Sponsored by* WSTLA.
- 21 Seattle: The New Federal Tax Act. *Sponsored by* WSBA CLE.
- 21 Seattle: 16th Annual Insurance Law Seminar. *Sponsored by* WSTLA.
- 21 Seattle: How to Probate. *Sponsored by* WSBA CLE.
- 21-23 Everett: Defending the Justice System. *Sponsored by* Washington Association of Legal Secretaries. *For in-*

- formation:* Patty Young, (206) 258-3511.
- 28 Seattle: Corporate Counsel Institute. *Sponsored by* WSBA CLE.
- 28 Seattle: Annual Law Office Management Institute & Expo. *Sponsored by* WSBA CLE.
- 28 Seattle: Discovery Plans. *Sponsored by* WSBA CLE.
- 29-30 Seattle: Nineteenth Annual On-site Technical Training Program. *Sponsored by* The 6th Judge Advocate General Detachment (LSO). *For information:* Dorris Burre, (206) 281-3002.

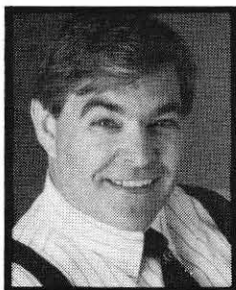
February 1994

- 3 Vancouver, WA: Discovery Plans. *Sponsored by* WSBA CLE.
- 4 Seattle: Domestic Relations. *Sponsored by* WSBA CLE.
- 4 Seattle: Trial Skills. *Sponsored by* WSTLA.
- 11 Ellensburg: Essentials of Real Estate (video). *Sponsored by* WSBA CLE.
- 10-12 Coeur d'Alene Resort: Family Law Council of Community Prop-

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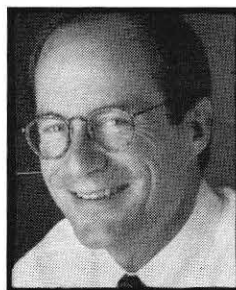
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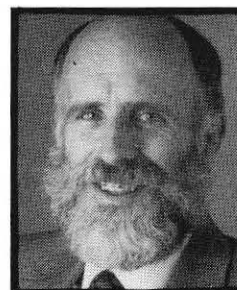
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Government contract accounting and compliance, business interruption, overhead and gross profit analysis.



Rick Head
Receiver, trustee and expert witness on business interruption, structured settlements, business reorganization, personal injury and wrongful death analysis.



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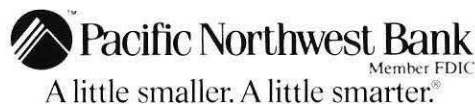
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erty States Seminar. *Sponsored by Idaho Law Foundation.*

11 Seattle: Asset Protection. *Sponsored by WSBA CLE.*

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

11-12 McCall, Idaho: Winter Bankruptcy Seminar. *Sponsored by Idaho Law Foundation.*

11-12 Tacoma: WSBA Board of Governors meeting.

15 Deadline for copy for April 1994 *Bar News.*

20-25 Whistler Village, B.C.: SKI-MENDER. *Sponsored by WSTLA.*

24-26 Seattle: 14th Annual Northwest Securities Institute. *Sponsored by WSBA CLE.*

25 Seattle: Science in the Courtroom. *Sponsored by WSBA CLE.*

March 1994

3-5 Sun Valley: Corporate Counsel Workshop. *Sponsored by Idaho Law Foundation.*

11-12 Sun Valley: Workers' Compensation Seminar. *Sponsored by Idaho Law Foundation.*

12 Chehalis: Computers in the Courtroom; Writing Your Procedures Manual; Receptionist—Jack of all Trades; Citations—Update & Review; Complications in Bankruptcy; Misdemeanor Criminal Law. *Sponsored by Washington Association of Legal Secretaries. For information: Holly Underwood (509) 662-3685.*

15 Deadline for May 1994 *Bar News.*

17-18 Vancouver, B.C.: Doing Business with Japan and Korea. *Sponsored by Asia Pacific Foundation of Canada/Vancouver Board of Trade/Canada-Korea Business Ass'n. Contact: CLE Society of B.C.: (604) 669-3544.*

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.*

25 Boise: Idaho Law Review. *Sponsored by Idaho Law Foundation.*

25-26 Bellingham: WSBA Board of Governors meeting.

26 SeaTac: WALS seminars. See March 12 Chehalis listings, above.

April 1994

4 Maui, Hawaii: STRESSBREAK. *Sponsored by WSTLA.*

8-9 Seattle: WSBA Board of Governors meeting.

15 Deadline for June 1994 *Bar News.*

22-23 Boise: Idaho Practical Skills Course. *Sponsored by Idaho Law Foundation.*

May 1994

6 Idaho Falls: Elder Law. *Sponsored by Idaho Law Foundation.*

6-7 Spokane: WSBA Board of Governors meeting.

13 Coeur d'Alene: Elder Law. *Sponsored by Idaho Law Foundation.*

15 Deadline for July 1994 *Bar News.*

20 Boise: Elder Law. *Sponsored by Idaho Law Foundation.*

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BAR SURVEY GETS MEMBERSHIP OPINION

by Jan Eric Peterson

The Washington State Bar Association has recently undergone a time of positive self-examination. This has created healthy speculations and differences of opinion about what the Bar should and should not be. The Board of Governors and the administration have instituted many changes. In an effort to seek further guidance about what the membership wants, the Board commissioned a membership survey in two parts. If I had to sum up the results in two words, the members prefer the "status quo."

The Gilmore Research Group, an independent market research company, was hired to conduct the survey. Gilmore helped the Board of Governors Survey Committee develop a questionnaire designed to get the members' opinions in a number of areas:

1. What the membership liked and did not like about the Association;
2. What dues they were willing to pay;
3. The priorities for spending discretionary funds, which are those funds

(20 to 30 percent of the annual budget) which are not used to pay for mandatory programs, such as discipline and licensure;

4. To receive input on governance issues.

The survey was conducted in two modes. The first was a telephone survey in September of 1993 with 402 of our members. This was specifically designed to be scientifically and statistically reliable. The second mode was a self-selecting mail-in insert in the *Bar News*. Seven hundred eighty-two members responded by completing the survey, tearing it out of the *Bar News* and mailing it in. The experts tell us the telephone survey is much more reliable because of the self-selecting nature of the mail-in. The members of the population who have an axe to grind or who are particularly active and positive are more likely to respond to a mail survey, thus skewing the data. The random telephone survey is more representative of the entire membership. For many reasons, the professionals support the data gathered by the

telephone survey and recommend we pay more attention to its results, although they are not all that different.

After reviewing the results, the Board is encouraged to learn that the priority readjustments which have already been made by the Board, the Bar office and the budget fit closely with the membership's desires. As the Board continues to examine expenses and program development, the opinions of the members as expressed in this survey will be carefully considered.

Below you will find the "executive summary" of the summary, as written by the Gilmore Research Group. We would like to thank all of you who participated in responding to the survey. Please continue to share your views through your district's Governor or by calling the State Bar office at 727-8212. Additional results of the survey will be published in upcoming issues of the *Bar News*.

Jan Eric Peterson chairs the Membership Survey Committee of the WSBA Board of Governors

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KING COUNTY BAR ASSOCIATION TASK FORCE ON GAYS AND LESBIANS IN THE LEGAL PROFESSION

This new task force of 24 members has held its first meeting and hopes to complete its work in 12 to 18 months. "The legal profession needs to set an example of eliminating bigotry and treating each person with dignity and respect," said chair Scott Smith. The task force plans to recommend policies on recruiting, health benefits, career advancement and social functions to law schools, law firms and other employers.

For more information on the task force and its work, call (206) 624-9365.

EXECUTIVE SUMMARY

Introduction

The WSBA hired the Gilmore Research Group to survey the WSBA membership. The purpose of this study is to obtain a statistically reliable understanding of members' opinions about the WSBA and its discretionary programs, dues and governance. A telephone survey of 402 members was conducted between September 15 and 28, 1993. A mail survey of 782 members was conducted in October, 1993. The findings presented in this executive summary are from the phone survey, which should be considered the most representative of the entire membership.

Key Findings

Overall Attitude

A slight majority of the respondents said they have an overall positive attitude towards the Bar — 16% are "very positive," and 42% are "somewhat positive." One-in-six members said they are negative towards the Bar — 4% are "very negative," and 13% are "somewhat negative." The remainder (25%) are "neutral."

Changes in Attitude in the Past Two Years

For most members, their attitude toward the Bar is unchanged from two years ago (64%). Nearly one-quarter of the respondents (23%), however, said their attitude toward the Bar is *less* positive now compared to two years ago. This is significantly greater than the 11% who said they are *more* positive now.

The main reason given by the respondents whose attitude toward the Bar has become *more* positive is that they have become more active. The main reasons given by the respondents whose attitude towards the Bar has become *less* positive are a feeling that the Bar is mismanaged and that all members are not equally represented in the Bar.

Benefits from the WSBA

One-third of the respondents (33%) said the CLE programs and publications are the main benefits they derive from the Bar. Women were especially likely to mention this. No other benefit was cited by more than 10% of the respondents. One-in-nine respondents (11%) said they receive no benefits from the Bar.

Dislikes About the WSBA or Its Programs

Nearly one-quarter of the respon-

dents (23%) said that fiscal mismanagement is the thing they dislike most about the Bar. Fiscal mismanagement includes many aspects, such as the cost of the annual convention, costly dues and high administrative expenses. Another 16% of the respondents said their greatest dislike is that they do not believe that all members are represented equally. Attorneys in public agencies were the subgroup most likely to say this. More than one-quarter (28%) of the respondents did not mention any dislikes of the Bar.

Attitudes about Funding Discretionary Programs

Given a choice of increasing dues or reducing discretionary programs, most respondents favored reducing discretionary programs. Nearly half (46%) prefer holding dues constant and reducing discretionary programs, while another 12% wish to reduce dues to a level that funds only mandatory regulatory and licensing functions.

Overall, 40% would support a dues increase: 10% said they would like to see a dues increase sufficient to fund *additional* discretionary programs, and 30% prefer a dues increase just large enough to continue funding current discretionary programs. Overall, about one-quarter (27%) of the membership favors a dues increase of \$50 to \$75 a year.

Importance of Discretionary Programs

Among 21 discretionary programs and services studied, members clearly feel the most important are CLE publications and deskbooks offered on a break-even, no-dues subsidy basis. Sole practitioners were especially likely to cite this. Other programs and services considered important are the ethics hotline and ethics opinions, the *Re-*

sources membership directory, coordination of pro bono activities and access to justice activities.

The respondents feel the least important programs and activities are the annual convention, the electronic bulletin board and support and training for local bar and specialty bar associations.

Attitudes about Funding CLE Seminars

Most of the respondents (73%) feel that the CLE Seminars should be offered on a break-even basis, 10% feel they should be offered at a profit, 8% feel they should not be offered at all, and 8% feel they should be subsidized.

Satisfaction with Current Form of WSBA Governance

Three-quarters of the respondents (75%) said they are satisfied with the current form of WSBA governance. Just 11% said they are not satisfied, mainly citing their belief that not all members are represented.

The vast majority of respondents (90%) said they are satisfied with the current system of electing governors geographically. Only twenty-two percent (22%) of the respondents prefer a House of Delegates system over the current Board of Governors system.

One-third of the membership (32%) supports having a representative of the Young Lawyers Division on the Board of Governors. About one-quarter (23%) of the members support having non-lawyers on the board.

Suggested Improvements

When asked what one thing the Bar could do to improve, 16% suggested the Bar be more representative, 15% requested more programs and services, and 11% requested fewer programs and services.



NINTH CIRCUIT FEDERAL APPELLATE PRACTICE HANDBOOK

by Malcolm L. Edwards

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The *Ninth Circuit Federal Appellate Handbook* is the definitive practice guide for federal appeals in the Ninth Circuit. While the book focuses on practice in the Ninth Circuit, much of the material will be of interest to the lawyer handling any federal appeal. With the exceptions of rules relating to the Bankruptcy Appellate Panel, most of the rules applicable to the Ninth Circuit are also applicable to appeals

in other circuits.

The book was written by the lawyers in the Arizona firm of Ulrich, Thompson & Kessler, P.C. and three members of the California firm of Sidley & Austin. Paul Ulrich, the founding shareholder of Ulrich, Thompson & Kessler, has substantial experience in the writing of appellate handbooks. He was state bar co-chair and a contributing co-editor for the award winning *Arizona Appellate Handbook*. He was also the national co-chair for the American Bar Association's *State and Federal Appellate Handbook* projects. James Harris, Joel Samuels, and Andrew D. Vélez-Rivera of Sidley & Austin have each had substantial appellate experience, with special emphasis on bankruptcy appeals.


Until the publication of this handbook, there has been no readily avail-

able way to obtain full information about practice in the Ninth Circuit. Even the experienced practitioner approached the job of processing an appeal in this circuit with some degree of confusion and concern because of the lack of effective resource material. Certainly, the first time practitioner approached the process with a gnawing uncertainty not easily resolved. Now, with the *Ninth Circuit Appellate Handbook* both the experienced practitioner and the first timer can approach the job with a high degree of knowledge and comfort.

Chapter 1 of the *Handbook* is an introduction to the Ninth Circuit. It contains an interesting description of the history of the court and then removes the mystery as to the internal operations of the court. The chapter includes information on the mundane but very important means of communicating with the court, being admitted to practice, discipline, and the computerized electronic bulletin board maintained by the court. Instructions for use of the bulletin board are printed in the appendix.

Chapter 2 of the *Handbook* describes a method of managing an appellate practice which is of value for any appellate practice, state or federal. The appendix also contains a filing checklist for federal civil appeals, criminal appeals, bankruptcy appeals, and administrative reviews. These checklists may be reproduced, and they provide the appellate manager or appellate attorney with a means of insuring compliance with the time requirements for each step in the review proceeding. This is extremely important in the Ninth Circuit, as the court is not likely to ignore a missed deadline.

Anyone who is considering an appeal in any federal circuit should carefully read Chapter 3 of the *Handbook* which deals with appellate jurisdiction and appealable orders. The federal appellate system is full of irreversible traps for the unwary as a result of the



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multiple rules and decisions defining when a notice of appeal must be filed. Too often in the federal system these procedural rules can determine the outcome of a client's case, regardless of its merits. If you want to be amused and frightened about the thicket of federal rules and decisions in this area, see "The Elusive Appeal," *Litigation*, Vol. 18, No. 3, p. 27 (Spring 1992).

Chapter 3 of the *Handbook* contains an excellent analysis of the final-judgment rule and its exceptions, the appealability of collateral orders, interlocutory appeals and review by extraordinary writs. The interplay between when a decision is final or otherwise subject to review and when a notice of appeal must be filed is best understood by reading Chapter 5 along with Chapter 3. Chapter 5 contains an understandable and detailed discussion of initiating the civil appeal.

The *Ninth Circuit Federal Appellate Practice Handbook* also contains a substantial chapter on standards of review. Counsel must explicitly define the standard of review for each issue raised on appeal. This has been the rule in the Ninth Circuit for some time and has been required in all federal appeals since December 1, 1993. Chapter 4 identifies the various standards of review that apply to specific factual, legal and mixed fact and law issues. This chapter, like all of the *Handbook*, is liberally footnoted with multiple references to cases supporting the propositions stated by the authors in the chapter. Thus, the chapter can serve as a ready reference to cases defining the standard of review on the particular issue you may wish to raise in your appeal. The Ninth Circuit has an internal publication which defines the standard of review for literally hundreds of issues. This rather substantial document is used by the law clerks in preparing internal memoranda for the judges. This publication would have been a welcome addition to the appendix if it had been available for general use.

While the *Handbook* is more than three inches thick, the organization of the *Handbook* provides easy and rapid reference to the particular matter with which you may be concerned. Thus, there are separate chapters on initiating the civil appeal, prosecuting the

civil appeal, criminal appeals, administrative agency reviews, immigration, labor, power and tax appeals, and bankruptcy appeals. Motions and extraordinary writs are also covered in a separate chapter. The subject of interest to you may also be readily accessed through use of the Subject Index or the Table of Authorities.

Chapter 7 discusses general Ninth Circuit civil motion practice, and it includes a description of the various uses of motions and extraordinary writs. No appellate handbook would be complete without a description of the decision-making process. Chapter 8 of the *Handbook* describes the internal procedures and decision-making processes of the court. You should read this chapter before decision time, as an understanding of the decision-making process should influence the way you prepare your brief and make your oral argument. This chapter also contains a very interesting discussion on consistency of decision-making in the Ninth Circuit and the rules followed by circuit panels to attempt to obtain consistent decisions within the circuit.

Federal Appellate Practice, Ninth

Circuit will be available for purchase in February 1994. It is available from Lawyers Cooperative Publishing, Washington D.C. Publishing Center, Aqueduct Building, 50 Broad Street, Rochester, N.Y. 14694, 1-800-828-6266. If you plan on handling a federal appeal, especially to the Ninth Circuit, you should have a copy of this book in your library.

Malcolm L. Edwards has practiced appellate advocacy in the state and federal courts for more than 30 years. He is a senior partner in the firm of Edwards, Sieh, Wiggins & Hathaway. He is president-elect of the American Academy of Appellate Lawyers. He is the co-executive editor of the recently released Washington Appellate Practice Deskbook, and was Co-Editor in Chief of the award winning predecessor, the Washington Appellate Practice Handbook. He was chair of the task force that wrote the current Appellate Rules and was most recently a special consultant to the WSBA Rules Committee for its review and revision of the Appellate Rules.

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Q&A FOR WINDOWS

by David M. Sandhaus

Q&A For Windows
Symantec Corporation
1021 Torre Avenue
Cupertino, California

Phone (800) 441-7234, Contact: John Russo

List Price: \$249

Requires: Windows 3.1; a 386 or 486 computer with a minimum 4MB RAM.

In Brief: Q&A for Windows makes some improvements in form creation, word processing-database integration and the introduction of design tools. However, Q&A is buggy, and is missing some key features, such as the ability to open more than one database at a time in separate windows.

For years, one of the best law office automation programs has been *Q&A* integrated word processor and database program. I felt so strongly that legal professionals could benefit from knowing how to use *Q&A* that I designed a Bar approved CLE course that teaches users how to create and design legal specific database applications.

However, I have long since migrated my applications to Windows. Therefore, it was with much anticipation and excitement that I awaited the delayed Windows version of *Q&A*. Unfortunately, the wait was not long enough because *Q&A for Windows* has some problems.

Some Background On Databases

Some background is in order for those of you who are not familiar with *Q&A* or databases. A database is a software program that allows you to collect information in a structured form and then retrieve that information as needed for specific legal tasks. For example, in my CLE course I teach users how to create databases to track documents and evidence in complex litigation, to retrieve and manage case files, to retrieve topical information from the law library, to conduct law firm marketing, to check for conflicts, to calendar legal events, and to retrieve legal research from past briefs and pleadings.

The beauty of the DOS version of *Q&A* was that it made it easy (creating a database in *Q&A* is much easier than learning how to use *WordPerfect*) to create law office databases. An added plus was that *Q&A* allowed you to seamlessly integrate information contained in a database with a word processing document. For example, you could use your *Q&A* marketing data-

base to identify tax clients and then automatically generate a letter notifying them of a change in the tax law using the *Q&A* word processor.

Q&A Write

Write is the word processing portion of *Q&A for Windows* and like its DOS predecessor, it is extremely easy to use. For instance, *Q&A* will automatically retrieve the last document worked on by a user. Therefore, knowing how to find and open a file, one of the most confusing aspects of computing for a new user (i.e., an attorney), is managed by *Q&A*.

Q&A can also load a specific document type. For example, *Q&A* can be set to always load the memo form. Therefore, the senior partner, whose only computer need is to generate memos to manage a case, can set *Q&A* to automatically load the memo form with the appropriate formatting to accomplish that task.

Write's ease-of-use is greatly enhanced by the fact that it will open and save files in their native format. For example, *Write* will automatically open and save *WordPerfect* files. As a result, *Q&A Write* can be used in conjunction with the main office word processing program.

There are some other nice features in *Q&A Write* including; the ability to open eight documents at a time, the ability to insert "stamps" into a document, the ability to automatically send faxes without reloading the print driver; and an automatic save feature.

Q&A Write, though is not a legal word processing program. It has no line numbering, table of contents, redlining, or indexing functions. This lack of functionality eliminates *Q&A Write* as the principal law office word processing program.

However, database integration and not legal word processing is the reason for buying *Q&A*. One of the major annoyances in *Q&A For DOS* was remedied in *Q&A for Windows*, i.e., the ability to identify database merge fields for placement in a *Write* document.

In previous versions of *Q&A*, merge fields were identified for placement in a document by pressing the **ALT-F7** keys in *Write*. However, you had to repeatedly press **ALT-F7** each time you wanted to identify a merge field (or memorize all the field names). *Write* eliminates the need to continuously press **ALT-F7** by creating a dialog box that is accessed by clicking on an arrow icon and contains all the merge field names.

Q&A also makes it easier to program data fields, address envelopes, and create mailing labels. In short, *Q&A for Windows* has made it easier to integrate database information into a word processing document.

Q&A File

There are several important improvements to *File*, the database portion of *Q&A*. *File* has added drawing tools that allow a user to create detailed forms. It is now possible to create exact facsimiles of paper forms on the computer.

That is a real advantage for a form based business (e.g. a mail order company) that needs to be able to send information from a database to pre-printed forms on a dot matrix printer. However, since most practice areas aren't truly form oriented, the enhanced drawing tools probably aren't going to be of much value to a law firm.

Q&A has also revamped its artificial intelligence front end (previously called, *Intelligent Assistant*) and now calls it, "DAVE" (Do Anything Very

Easily). In a way, DAVE is less ambitious than *Intelligent Assistant*, but it is also more usable.

Intelligent Assistant allowed you to train Q&A to understand natural language queries. For example, you could query Q&A to, "show me all my clients who own a car." That query, though would require that you teach *Intelligent Assistant* to recognize that "car" also included the words auto, automobile, vehicle, truck, pickup, etc. It took so long to teach *Intelligent Assistant* every possible synonym contained in a database that it rendered it somewhat impractical to use.

DAVE takes a different approach. It poses a series of questions by means of a dialog box that walk you through different database queries, some of which, such as calculating the value of fields, could otherwise be quite complex. Therefore, DAVE greatly eases the ability to retrieve information from a database. However, it abandons the plain English query approach of *Intelligent Assistant*. As a result, you can no longer search for "cars" and still hope to find "automobiles."

A welcomed refinement in *File* is the spreadsheet view. The spreadsheet view allows you to view all your database attributes such as field restrictions, initial values, programming, and formatting in a single screen. Previously, that information was accessed through several levels of menus.

File also has added a feature it calls "scripting" that allows you to automate certain repetitive functions and even add them to a form as a mouse activated button. Scripts can also be added to *File's* toolbar and menu.

Another nice feature of *File* is that it saves information as it is entered into the database. That is important because Q&A is aimed at novice users who might not otherwise have the database proficiency to protect important information.

Some Problems

Unfortunately, the improvements and hard work that have gone into making a better Q&A are seriously undercut by some bugs and design missteps. Q&A for Windows is more like a late beta than a production program.

For instance, the documentation that comes with Q&A warns you that the on-line tutorial was designed to work

at a graphic resolution of 640 x 480 lines. At first, I thought that was a minor annoyance since the tutorial was probably the last thing Symantec worked on and they probably used somebody else's software to create it.

Wrong! Graphic resolution quickly became a major annoyance when I entered the word processing portion of Q&A. I found that I could type ahead of characters appearing on my screen when I was in 800 x 600 resolution. Only by resetting my monitor to a lower resolution would the screen refresh keep up with my typing. Similarly, data disappeared when scrolling through fields in the database portion of Q&A at higher resolutions. Requiring users to know how to switch graphic drivers and to re-boot Windows is not compatible with ease of use.

However, that is not all that is buggy about Q&A. Setting incorrect print drivers caused Q&A to hang or totally crash. Q&A wouldn't let me to return to a crashed out database without totally re-booting my system. Using Q&A with other programs such as *Word For Windows* caused memory problems and "not enough system resources" messages.

Q&A also crashed when converting a WordPerfect 5.1 file to Q&A format. In fact, Q&A crashed all the time from apparent memory conflicts. Memory conflicts indicate that not enough time was spent testing how Q&A would work in a real world environment that included the simultaneous running of different software programs.

However, buginess aside (inevitably the bugs will be worked out in subsequent versions) there are some design shortcomings in Q&A for Windows that were a major disappointment. Q&A is a flat file database. That means that data is collected in a single location. Relational databases, by comparison, will save data to multiple locations.

Therefore, one of the key attributes I looked forward to in Q&A for Windows was the ability to open more than one database at a time. The ability to open more than one database would allow a user to see information contained in different databases much as you are able to in a relational database. The inability to open more than one database is an inexplicable error in design.

In Q&A For DOS, you created and designed your database and data entry form in a one-step process. That's no longer true. In Q&A for Windows, you first create a "Master Form." After you create the Master Form you then create a data entry form.

However, you cannot designate data field lengths by assigning a number in your Master Form. In Q&A for Windows you designate the length of your fields by using a sizing tool when creating your data entry form! Using the sizing tool is cumbersome and requires learning a new skill. It also requires that you move fields and field names all over a form.

The inability to designate field size by a number is a big pain that I have never seen in any other Windows' database program (e.g., *Access*, *Approach*, *AceFile* and *Filemaker*). Therefore, creating a data entry form, something that used to be a relatively simple process in Q&A, now takes multiple steps and requires some new, but not desired or required skills.

Q&A for Windows, unlike the DOS version, does not have a macro language. Scripting replaces some of the functionality of macros, but not all of it. Q&A for Windows also does not allow for posting, a feature that allowed you to work around some of the flat file restrictions of previous versions.

In conclusion, Q&A for Windows is buggy and not yet ready for prime time player. However, beyond its buginess are some major design flaws. The program is now more difficult to use than its DOS predecessor and has eliminated some important performance features such as macros and posting. In sum, I'd stick with the DOS version of Q&A for now, or if you need an easy to use Windows database with limited word processing functionality, take a look at *Lotus Approach*.

David Sandhaus is a practicing attorney and can be reached at (509) 448-8757. He will speak on "Document Assembly/Expert Systems: Specific Applications and Strategies..." and "Training Technology in the Law Firm Jungle" at the January 28 WSBA Law Office Management CLE seminar in Seattle.



NEWS FROM HOME

Lawrence A. Wans, formerly of Williams, Kastner & Gibbs, and **James S. Sorrels** are pleased to announce the formation of their partnership, Sorrels & Wans Law Firm, at Suite 3-A, Sunset Building, 23607 Highway 99, Edmonds 98026-9272, as of November 1, 1993. The firm will emphasize tort and commercial litigation, business law, real estate transactions and disputes, estate planning, and appellate representation at all levels.

After 20 years in the Grand Central on the Park Building in Seattle's Pioneer Square, **Stewart P. Riley** has moved his office to Suite 5700 in the Columbia Center, 701 Fifth Avenue, Seattle 98104. He continues to emphasize criminal defense and white collar criminal matters in his practice.

Williams Kastner & Gibbs partner **Phil Egger** has been elected a Fellow of the American College of Trust and Estate Counsel. The group is committed to law reform, including improvements in legal procedures, changes to the transfer tax system, and income taxation of estates and trusts.

James C. "Pete" Middlebrooks moved his office last October. He is now located in Magnolia Village, 2313 Viewmont Way West, Seattle 98199. He continues to chair the WSBA Leg-

islative Committee.

James A. Trujillo has been appointed to a three-year term on the Governor's Juvenile Justice Advisory Committee. He is a partner of Trujillo, Peick, Lingenbrink & Magladry, P.S. in Bellevue.

Richard LeMaster was named head of the Employee benefits Practice section of Seattle's Karr Tuttle Campbell last fall. **Craig Day**, a firm associate, assists LeMaster is serving the firm's employee benefits, and pension and profit-sharing clients. Another attorney in the firm, **Richard R. Gans**, has become a member of the Estate Planning Council of Seattle.

Ryan Durkin, a partner in Seattle's Hillis Clark Martin & Peterson, is chair-elect of the 1,500 member Environmental and Land Use Section of the WSBA.

Leslie Thullen Kunick, formerly of Hawley Troxell Ennis & Hawley, has been appointed City Attorney for the City of Ketchum, Idaho.

Vancouver lawyer and immediate past chair of the WSBA Court Rules and Procedures Committee **Duane Lansverk** has been inducted into the American College of Trial Lawyers.

Judith Runstad of Seattle has been named deputy chair of the Federal Reserve Bank of San Francisco for 1994 by the Bank's board of governors. Runstad is a partner and managing di-

rector of Foster Pepper & Shefelman.

D. Jean Shaw of Vancouver is the new president of the Humane Society of Vancouver, Washington. A board member since 1991, Shaw is an attorney with Horenstein & Duggan. Another member of the firm, **Scott Collier**, also serves on the board.

John R. Rizzardi, who practices with Betts, Patterson & Mines, has successfully completed the requirements for national certification in business bankruptcy law, the American Bankruptcy Board of Certification announced in October.

Dellwo, Roberts & Scanlon and Roberts & Seines, P.S., both Spokane law firms, merged October 15 and operate under the style Dellwo, Roberts, Scanlon & Seines, P.S. The new firm is located in the Roberts & Seines offices at South 613 Washington.

CLARK COUNTY REPORT

by JOHN F. NICHOLS

Every once in awhile even I receive letters concerning this column. Usually these epistles from Limbaugh wannabes are recycled for more productive use such as lining for my Barney lunch box. However, certain inquiries are of such a generic nature that they demand instant response. I have therefore compiled over the course of some 10 years the following examples.

Dear Mr. Nichols (if that is your real name).

My question is something of a two parter. First, are all of those stories you write about true? Second, if they are true how come no one has punched your face in or have they?

Please respond.

Interested in La Center

Dear Interested,

I assume that is *your* name because you live in La Center. In response to your questions, all of my stories are, in the words of "made of TV movies", factually based. That is, they really did happen or could of happened or should of happened to some real people. I stand behind my stories 100% almost all the time. Secondly, I have never been the actual victim of violence from one of my subjects. I would like to attribute

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this to the sophisticated intellect of CCBA members who can take a gentle ribbing without malice afterthought. More realistically, knowing most CCBA'ers and their SAT scores in verbal comprehension, they in the words of Senator Packwood, "... [J]ust don't get it." Finally whether this is my real name or not is not relevant to the journalistic quality of my column. Neither are the rumors that my name, phone number and/or Uzi are not listed or registered.

Dear Mr. Nichols,

By what act of congress have you been allowed to continue with your monthly drivel? Why not use this valuable space to address social ills or at least something that would better the bar instead of sophomoric pot shots at respectable attorneys.

Sincerely,

A respectable attorney

Dear Mom,

You are not an attorney. If you don't quite writing these upsetting letters I'll have dad take away the remote. I hope you like the home. As I told you, there are plenty of folks your own age to play with. Visit you next year. By the way this is not drivel. And I don't think attorneys are concerned about any of my social diseases. Next you'll be telling people I have VD-ROM.

Dear Mr. Nichols,

How do you come up with such zany ideas? Your mind must be as furtive as Stephen King or that Grisham guy who is making big bucks instead of practicing law. Have you ever thought of giving up law and becoming a writer? Please do.

A worthy opponent

Dear Worthy,

Yes I have and no I won't. At least not until that first advance check clears the Bank of Fred. I have too many clients that depend on me as their last refuge of justice in America. Plus I have not received my advance on my latest transcript, "The Loves and Trials of John Nichols or, A Scribe in the Wilderness: The Unauthorized Autobiography," I think the title might be a little long but it takes up about a third of the book so far. As for my "zany" ideas, I have to thank all those CCBAers, especially the little people with little minds in the yellow pages; the courthouse; and of course my

friends and family.

Thanks to all of you that wrote and keep those letters coming. Maybe next month an advice column would help those experiencing problems with their social ills.

EAST KING COUNTY REPORT

by MARIJEAN E. MOSCHETTO

With the holiday season coming to a close, many of us on the Eastside have hit the ground running. 1994 promises to be an extremely interesting year.

The November membership meeting featured new 11th District King County Council member **Jane Hague**. Jane not only spoke at us, but spoke with us. Her interest in the issues that affect the Eastside lawyers is genuine. Jane promised to meet with us to work on continued funding for the Eastside Legal Assistance Program and the Eastside Regional Law and Justice Center.

Lisa Scott is still in Bellevue but has relocated her office. Several of the former members of the Revelle Hawkins firm have become Hawkins Jeppesen Hoff P.S. with the departure of **Geoff Revelle** to accept an executive position at Attachmate in November, 1993. My good friend **Russ Cofano** has returned from the big city and is again practicing with the Hawkins firm in Bellevue. **Steve Fisher** has moved to the Stole Rives firm, and **Mark Schedler** has joined the Williams Kastner organization. **Cheryl Garland** is on a leave of absence.

Congratulations to Judge **Rosemary Bordemay** of the Northeast Division of King County District Court on the birth of her new daughter. Also congratulations to new EKCBA president **Val Hoff** who, I expect, will boldly go where no man has gone before. Yours truly deserves a pat on the back as the new president of Eastside Legal Assistance Program. Those who have worked with me before will warn you to watch your wallets.

Many thanks to the more-experienced practitioners on the Eastside who were the original movers of EKCBA, whom I've seen more frequently at the membership meetings, such as **Jerry Hahn** and **Evan Inslee**. Having these folks at the table, sharing their experiences with those of us who haven't been around so long, is great. And, of

course, congratulations to **Maury Powell**, awarded an honorary membership at the October Anniversary Bash. As soon as Maury starts getting his newsletter, we'll expect to see more of him also.

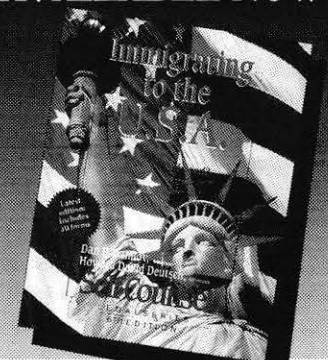
PIERCE COUNTY REPORT

by GEORGE S. KELLEY

The second annual war stories competition was the featured entertainment at the November TPCBA luncheon. The rules of the contest were simple. The stories were required to be no more than five minutes long and be more or less true. After the last story the audience was asked to vote by applause for the best story (like in the Ted Mack Amateur Hour show). This is called the "clap off."

Most of the stories cannot be reprinted due to limitations imposed by good taste. However, highlights include **George Christnacht** and the tale of a divorce court threat of the amputation of male body parts. **Beth Jensen** spoke of a sex change operation and its impact on a personal-injury case. Last year's winner, Judge **Art Verharen**, told of the jury that ran out of toilet paper. Judge **J. Kelley Arnold** won with a story about a divorce case in

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Judge **Robert Peterson's** court where **Joe Betzendorfer** was examining his client about his employment in the hopes of having a low amount set for child support. Joe asked what his client did for a living and received the reply that he worked at a dairy farm. He inquired again as to what the fellow did on the farm and the client responded he worked around the cows. Joe directed his reluctant client to describe precisely what he did and the fellow said he shoveled cow —, to which Peterson responded as an aside, "You and I have the same job." Arnold offered to share the prize, a dinner at one of our local waterfront restaurants, with Peterson.

The University of Puget Sound School of Law was sold to Seattle University and will be moved to Seattle. The sale negotiations were conducted in secret and the results announced as an accomplished fact. Many of the Puget Sound graduates are very upset, as are local supporters of downtown Tacoma who will have another empty building to fill. The blow to downtown boosters was made worse by the announcement that the Woolworth store across the street from the law school was also closing its doors.

You may recall the story about the bomb threats in the First Interstate Bank building which houses both the bank and an IRS office. It is also home to several of our largest law firms. During the time the building is cleared to

search for bombs, these firms suffer much downtime. It has come to our attention that one of these firms reduces the pay of its staff for the time the building is closed. It is not known whether the reduction in pay was an effort to improve the bottom line, to discourage future bomb threats, or both.

The TPCBA Young Lawyers announce the election of **Julie Weigand-Johnson**, president; **Wayne Fricke**, president-elect; **Mark Schumock**, secretary; **Felicia Malsby**, treasurer; and **Kathryn Carman Comfort** and **Martin Deunhoelfer**, new trustees.

SKAGIT COUNTY REPORT

by **KEN EVANS**

The Skagit County Bar breathlessly awaits the annual battle of the yellow pages in the GTE phone book. Last year, **Michael J. Tario** was the clear winner with two full pages to **Rich Weyrich's** one full page. **John, Tom, John, Jr.** and **Rosemary Kamb** were not far behind with two-thirds of a full page but were disqualified since their ad included four attorneys. The Kambs are considered minor players in the advertising wars. Still using their high school yearbook photographs are **Pat McMullen** and **Bill McCann** from Sedro Woolley, with McCann getting the clarity award in advertising with

his now-famous quote, "I get the job done."

The **Don Bisagna** saga continues. Bisagna's office was condemned by the county for a parking lot (*take note: Whatcom County—where there is no parking*), and Bisagna was forced to float through the streets of Mount Vernon practicing law from his car and the libraries of those attorneys still willing to extend him a smidgin of professional courtesy. He now occupies his new office in downtown Mount Vernon, where the cost per square foot, since the Mount Vernon City Planning Department has gotten through with him, exceeds that of the Columbia Center.

Sharon Nichols returns to the practice of law with **Marilyn Nittenberg** after a five-year sabbatical. Sharon formerly practiced in Whatcom County and devoted much of her practice to domestic relations. After seeing the new domestic relations forms and being taken to the Skagit Valley Hospital Care Unit for two days following her first interview with a potential client in a custody case, Sharon is now limiting her practice to civil litigation of a nondomestic nature.

Pat Caulfield has refused all further domestic cases to concentrate on her ministry work.

Gregory A. Admiston joins **Joe Bowen** in the practice of maritime and environmental law as well as other civil (also nondomestic) matters. Greg arrives just in time for humpy season on the Skagit River.

Steve Skelton and **Cindy Timms** are preparing for their annual one-month leave to the Caribbean. Skelton and Timms attempted to leave the practice of law in Skagit County three years ago, but when they moved to the Caribbean, they found that nothing was against the law, and there was no way to make a living. They returned to Skagit County, where everyone is guilty of something, and at least 20 percent of the county remains on some sort of probation from Skagit County District Court, where 3,000 criminal cases were processed last year. In a county with a population of 70,000, assuming no repeat offenders and a reasonable growth rate, everyone should be on probation by the year 2035, and there will be no attorneys practicing domestic law.

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**WASHINGTON STATE
LAWYERS' CAMPAIGN FOR
HUNGER RELIEF**

by YVONNE PARAMORE

Hunger and Senior Citizens in America: The Urban Institute of Washington D.C. recently released a comprehensive study on hunger among America's senior citizens. The results are disturbing. The study indicates that 8 percent of older Americans (between 2.9 million and 4.9 million senior citizens) have less than adequate access to food (termed food insecurity). Many seniors must choose between buying food or purchasing other necessities of life such as shelter and medicine.

Food insecurity means a healthy diet is unaffordable for many seniors. U.S. Rep. Tony Hall, D-Ohio, Chairman of the Congressional Hunger Caucus, has said that hunger among America's seniors is "one of America's saddest secrets." Federal food assistance programs only reach approximately one-third of the country's seniors needing assistance.

The problem is no less severe in the Seattle-King County area. Many of our neighbors who are senior citizens are falling through the cracks and not being serviced by the various food assistance programs. Existing food assistance programs can not afford to do aggressive outreach programs because of funding limitations.

As we began the New Year, I would encourage you to consider the tragedy the Urban Institute study represents and to further consider what contributions (large or small) you could make toward resolving this problem.

**WASHINGTON STATE TRIAL
LAWYERS ASSOCIATION
REPORT**

by MICHAEL HEATHERLY

WSTLA sees 1994 as a year of opportunity for raising the level of professionalism among lawyers and making the profession more accessible to women and young practitioners. Three

programs developed in late 1993 will reach full bloom this year: Professionalism Month and the Women's and Young Lawyers' sections.

With 1993 turning out to be Lawyer-bashing Year, WSTLA president **Judith Proller** of Bellingham felt it was time to respond with something more than an attempt to salvage our public image. She has proposed that WSTLA and nearly 50 other lawyers' organizations across the state—including the county bar associations and specialty groups—to declare March "Professionalism Month." Several organizations have already agreed to participate.

Among the events planned for March is a 5-CLE-credit seminar in Bellevue March 11, co-chaired by Proller and **Jeffrey Tilden**, president of the Washington Defense Trial Lawyers. The program will feature a panel of noted attorneys, academics and judges who will discuss everything from the Bar's disciplinary process to strategies for countering guerilla-style deposition tactics.

Meanwhile, **Patricia Willner** of Bellevue, head of WSTLA's Law Student Advocacy Program, is organizing discussions relating to professionalism at each of the state's three law schools. **Ervin DeSmet** of Seattle, chair of WSTLA's Roundtable program, has asked each of the county Roundtables statewide to make professionalism the topic at their March meetings. WSTLA

also is working on a focus issue of its *Trial News* as well as a survey of judges eliciting their thoughts on which elements of professionalism require the most urgent attention.

Regarding a different aspect of the profession's state of affairs, WSTLA has developed a membership section to deal specifically with issues common to women trial lawyers. **Cheryl Robbins Berg** of Tacoma has been selected to chair the group, whose goals include eliminating gender bias in litigation, promoting more women to leadership positions, identifying unique contributions women make to the profession, and educating judges, jurors and the public about women's legal issues. The section met for the first time November 9 in Seattle and will conduct several brown-bag lunches this year.

Another WSTLA program formed last year to help integrate a traditionally under-represented group into the "mainstream" of trial lawyers is the Young Lawyers' Section. **Andy Benjamin** of Seattle is chair, with **Karen Zimmer**, also of Seattle, co-chair. The section—open to those admitted to practice in Washington for five years or less—already has met for a discussion on building one's practice. A second meeting, scheduled for January 12 at WSTLA headquarters in Seattle, will address the equally crucial issue of how to avoid committing legal malpractice.

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WASHINGTON DEFENSE TRIAL LAWYERS REPORT

by LAURIE D. KOHLI

The Washington Defense Trial Lawyers honored several of their members at their November 10 dinner meeting, in appreciation for the time and effort these members have devoted to the organization. Among those honored were **Mary Spillane**, editor of *The Defense Press* for the past three years, **Russell Love**, chair of WDTL's Amicus Curiae Committee since 1989, **John Graffe** and **Clarke Johnson**, casenote authors for *The Defense Press*, and **Bob Keolker**, chair of the Membership Committee for the past two years.

Also honored were **Pete Johnson**, chair of WDTL's Eastern Washington Services Committee, **Terry Hall**, chair of WDTL's Court Rules and Procedures Committee, and **Beth Jensen**, in appreciation of her contributing both

her time and artistic talent for the past four WDTL annual conventions.

At the dinner meeting the contributions of WDTL's 1991-1992 seminar leaders were also recognized: **Tim Blue**, chair of the Medical Seminar and **Doug Yoshida**, co-chair; **Andy Cooley**, chair of the Accident Reconstruction Seminar; **Sheryl Willert**, chair of the Insurance Law Seminar and **Joel Salmi**, co-chair.

A new location has been selected for the WDTL 1993 annual convention, which will be held July 29-August 1, 1993 at the brand-new Skamania Lodge, which overlooks the Columbia River Gorge in Stevenson. Amenities include an 18-hole golf course, tennis courts, a pool, hot tub and outdoor whirlpool, mountain biking and hiking trails and easy access to ice caves, Multnomah Falls, and the Mt. St. Helens volcanic area. It is expected that the usual Spartan mindframe will prevail.

WASHINGTON WOMEN LAWYERS REPORT

by ANNE BREMNER

The State Board for the upcoming year for WWL will include: **Tiffanie Kilmer**, executive director; **Kathy Cooper Franklin**, president; **Nancy Krier**, president-elect; **Joan E. Sullivan**, secretary; **Dina L. Yunker**, treasurer; **Petrea Knudsen Reilly**, vice president, gender and justice; **Colleen Kinerk**, vice president, leadership development; **Karen F. Jones**, vice president, membership; **Anne Bremner**, vice president, publicity; **Jeanne Marie Clavere**, vice president, special events. At the annual dinner, Member of the Year awards were given to: **Linda Moran**, Capitol Chapter; **Leslie Savina**, King County Chapter; **Mary McIntosh**, Skagit County Chapter; **Susan Schreurs**, Pierce County Chapter; **Gail Nunn**, Snohomish County Chapter; **Judith Corbin**, Spokane Chapter and **Deborra Garrett**, Whatcom County Chapter. Our thanks go out to

all these women for their dedication and leadership.

WWL's Annual Retreat was held at Kathy Cooper Franklin's in-laws' home on October 2. **Dina Yunker** received the President's Award for her outstanding work for WWL. **Colleen Kinerk** was elected Board Member of the Year for her stellar work as vice president, leadership.

WWL was happy to report that in 1993 the Supreme Court adopted a version of the RPC 8.4(g) making an act of discrimination based upon gender and race an act of misconduct. Outgoing president Linda Moran, in her speech to the WSBA Board of Governors at the WSBA Annual Meeting expressed WWL's gratitude for their support of the RPC. Three WWL members are now members of the Board of Governors.

The King County Chapter of WWL was proud to sponsor, together with other organizations, the 1993 the Judicial Appreciation Dinner featuring speaker **Robert Takasugi**, California federal judge, on November 18 at the Seattle Sheraton Hotel. Honored guests included judges of the state, federal and tribal courts.

The Gender and Justice Committee worked hard in 1993 and arranged some wonderful speakers for the Gender & Justice workshops, including Judge **John Coughenour** on November on November 18, Justice **Barbara Madsen** on the 19th and Judge **Laura Inveen** on December 10.

A great 1994 is planned for WWL. For information on any item in this column, please contact Tiffanie Kilmer, or write Washington Women Lawyers, PO Box 25444, Seattle, WA 98125-2344; phone (206) 622-5585.

YAKIMA COUNTY REPORT

by GARY G. MCGLOTHLEN

The Yakima County Bar grew by leaps and bounds when a new class of attorneys took the oath of office before judges **John Gavin** and **Heather Van Nuys**. **Brad Myler**, a Willamette

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grad with more than 10 years' computer experience, joined Peters & Fowler to put his bytes to use. **Jeff Cutter**, out of Gonzaga and recently a commercial electrician, sparks the Lyon Law Offices with his presence. **Erik Kerzee** comes from the cold plains of Nebraska, through the U of Iowa to Evergreen Legal Services' Farm Workers' Division in Granger, where he can keep the snow on the ground for his outdoor sports. **Patricia Loera**, who left her family home in Sunnyside to join the Attorney General's Yakima office after departing the U of W, now enjoys working cases of juvenile dependencies and fair-hearing appeals. Two local products, **Kirk Ehlis** out of Willamette Law and **Don Treat** out of U of W, joined with Meyer Fluegge & Tenny: Kirk to play basketball while involving himself in business law, and Don to keep the firm from going to the dogs by training his two new puppies at home. **Greg Lighty** had the pleasure of introducing his wife, **Catherine Lighty**, prior clerk for bankruptcy judge **John Rossmessl**, to the Yakima Bar. Married this last May, Greg and Catherine enjoy family law and hope to grow into estate planning. **Julia Dooris**, who has been known to auction herself off for dinner and dancing, joins with Velikanje Moore & Shore litigation section after being introduced by her attorney sister, **Milie Dooris**, of Olympia. Julia's brother, **Pat**, now a reporter in Portland, Oregon, hopes she makes lots of money so she can repay the money she borrowed from him to attend the U of W. Somehow, Julia wrangled season Husky Football tickets and may try to beat the Husky football game attendance record of sometime Yakima County Superior Court Judge, but always Husky fan, **Steve Brown**.

Timely as always, the Yakima County Bar officers showed appreciation to **Doug Peters** for his 1992 leadership as Yakima County Bar president with a gift of a bronzed apple. With the stress of being Yakima Bar's president now over, Doug is enjoying sailing on Puget Sound without a care in the world except for a good stout wind to run before. Overlooked, but not forgotten, the Bar made an award for exceptional service as 1991 Yakima

County Bar president to **Stan Pratt**. No one could remember back to 1991, but all agreed his service must have been exceptional. Reports are that Stan's bronzed apple had been in cold storage.

Mariano Morales, Jr., late of Wiley Hurst & Associates, opened his solo law practice at 804 Summitview Ave. on January 1, 1994. Mariano will con-

centrate on making enough to pay his share of the overhead to start with, but he would like to emphasize a general trial practice in the future. He comes with experience as a lobbyist for an environmental group in Washington D.C., as an attorney for the U.S. Forest Service Planning Staff in Portland, Oregon, and a short stint with the Yakima County Prosecutor's office.



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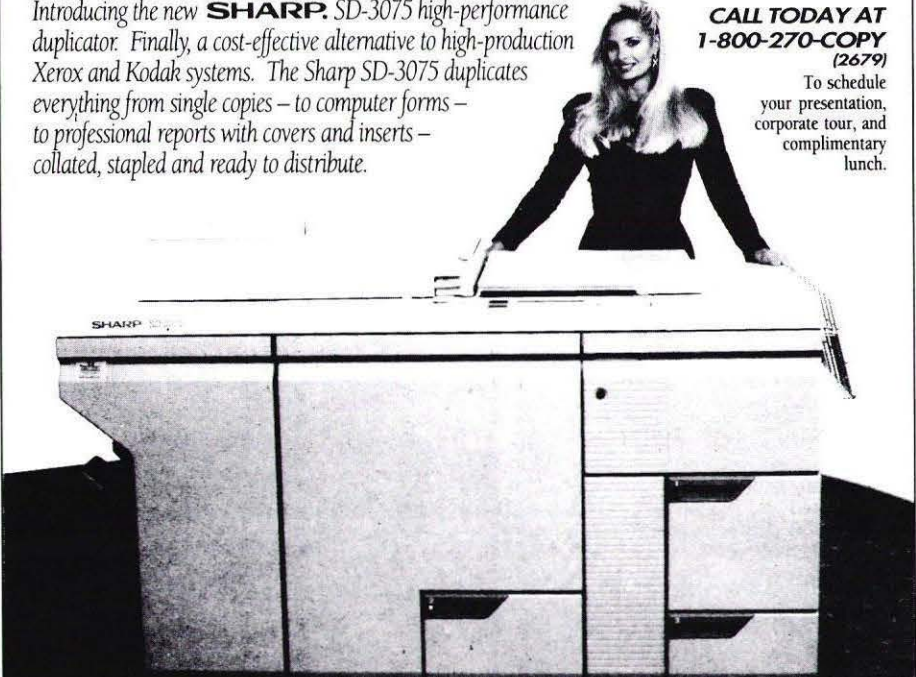
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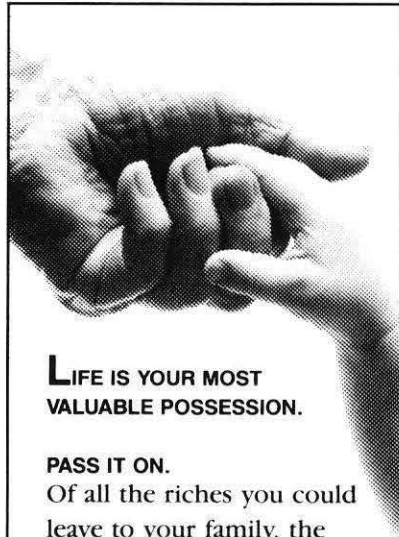


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IN MEMORIAM

James C. Harper

James C. Harper, 78, died September 3, 1993 in Coupeville. Born in Winnipeg, Manitoba, Harper was educated in Seattle and graduated from the University of Washington School of Law. He was retired senior partner



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of Roberts, Shefelman in Seattle. He practiced in the areas of real property, probate and trusts, and was active in state and local bar association activities. He lived at Mutiny Bay on Whidbey Island from 1977 to his death. Survivors include his wife, Margaret Harper, one sister, six children and eleven grandchildren.

Donald E. Lehet

Donald E. Lehet, 59, died October 11, 1993 after a brief illness. Lehet was a partner in the Seattle law firm of Groshong, Lehet & Thornton. His practice was limited to plaintiff and defense personal injury law.

Lehet was a graduate of Miami University, Oxford, Ohio, and he received his LL.B. from Chase Law School at Northern Kentucky University. He practiced law in Ohio from 1962 to 1977. Lehet joined his firm, then known as McCutcheon & Groshong, in 1978.

Survivors include his wife, Kathryn, one son and three daughters, and several grandchildren.

James E. O'Hern

James E. O'Hern, 72, died September 30, 1993 after a short illness. A native of Omaha, Nebraska, O'Hern graduated from Creighton University. He transferred to the University of Washington School of Law and graduated *cum laude*.

O'Hern served in Europe in World War II, rising to the rank of captain. In 1951 he moved to Tacoma and joined the law firm of Metsger, Blair, Gardner & Bolt. His civic involvements included membership in the Knights of Columbus, Tacoma Elks, and the Tacoma-Pierce County Bar Association. He was also a fishing, hunting and gardening enthusiast.

Survivors include his wife, Rosemary; two sisters, five children and eleven grandchildren.

Robert M. Elston

Robert M. Elston, 71, died at his Seattle home November 13, 1991 after a long battle with cancer. A native of Columbus, Nebraska, Elston served in the U.S. Army during World War II. He graduated from the University of Washington School of Law in 1953

and entered private practice in Seattle. Elston served as an assistant attorney general from 1960 to 1963.

From 1963 to 1968 Elston served as the first elected judge of the Shoreline District Justice Court. In 1968 Governor Evans appointed him to the King County Superior Court, where he served until his retirement in 1987.

Judge Elston was an active member of the Washington legal community. He served as president of the Washington State Magistrates' Association for two terms, chair of the King County District Judges' Association for two terms, and vice chair of the King County Commission on Alcoholism. He served on a variety of other boards and committees including the Shoreline YMCA and King County Mental Health-Mental Retardation Board. In 1963, he was awarded the Citizenship and Achievement Award by the Richmond Highlands Exchange Club, and in 1965 the Award of Merit by the Washington State Bar Association- its highest honor.

Elston was also a pioneer of legal journalism in Washington, serving as associate editor of the *Bar News* under founder John N. Rupp. He succeeded Rupp as Editor in August, 1957 and served in that post one month short of eleven years. He resigned in July, 1968 to take the bench.

Judge Elston's survivors include his wife of 53 years, June; four children, a brother and a sister.

Walter Lawrence Minnick

The following Memorial Resolution was presented to the Superior Court of Walla Walla County in remembrance of W.L. "Shine" Minnick, who died October 1, 1993, by County Bar Association president John W. Lohrmann, and was forwarded to the Bar News by Walla Walla attorney Herman H. Hayner. "Shine started practicing law in Walla Walla in 1939," Hayner writes. "He served in the Navy during World War II. Then he returned to Walla Walla and continued the practice of law until his semi-retirement in 1988, when he became of counsel to the Minnick-Hayner firm until his death...I have been associated with Shine in the practice of law since 1948."

Walter Lawrence Minnick, better known to us as "Shine" Minnick, of Route 5, Box 64, died October 1, 1993 at the age of 80. Surviving are his wife, at home; three daughters, Carol Santa of Kalispell, Montana; Laura Copeland of Walla Walla; and Margaret Minnick of Mercer Island, Washington; and a son, Walt Minnick of Boise, Idaho.

Mr. Minnick attended Walla Walla schools and graduated with Phi Beta Kappa honors in political science from Whitman College in 1935. He earned his law degree from Harvard Law School in 1938.

On September 8, 1936, he married Dorothy Waldron. He served in the Navy during World War II and then returned to Walla Walla with his wife to raise their family, establish a law practice and manage his family's farm.

For more than 40 years Mr. Minnick practiced law in Walla Walla. He co-founded the Minnick-Hayner firm and specialized in agricultural, corporate, estate and tax law. He was a member of the American Bar Association, American College of Probate Counsel and the American College of Trial Lawyers. He received a special award from the Washington State Bar Association for outstanding service in the field of law.

Mr. Minnick was extremely involved in the community. He was a Whitman College trustee and overseer, and had been president of the Walla Walla Chamber of Commerce and Southeastern Washington Fair. He was active in his church, the Elks Lodge, and Rotary Club. His exemplary life and legal career will remain an inspiration to us all.

THEREFORE, BE IT RESOLVED by the Walla Walla County Bar Association, that we express in this resolution our respect and appreciation of Shine Minnick, both as a citizen and as a member of the Bar; that a copy of this Resolution be filed with the Superior Court for Walla Walla County for entry upon its permanent record, and that an additional copy be delivered to the family of Shine Minnick as an expression of both our sympathy and our esteem.

DATED at Walla Walla, Washington, this 15th day of October, 1993.

Spencer David Short

Spencer David Short, 91, died in Ellensburg October 9, 1993. An Ellensburg native, Short attended Washington State University, then transferred to the University of Washington, where he obtained his law degree. He returned to Ellensburg and joined his father in practice. He married in 1940; after his father's death his wife, Mary Jessica, assisted him in

his law practice.

During prohibition, Short served a brief term as Kittitas County Prosecuting Attorney. Active in bar and civic affairs, he was a member of the Presbyterian Church and the Kittitas County Historical Society. He retired in the early 1980s. Survivors include two cousins and eight nieces and nephews. He was preceded in death by his parents, wife and four siblings.

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

Family law attorney—We are seeking an attorney with a minimum two years' experience (more preferred), emphasizing family law and some ex-

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Applications invited for U.S. Magistrate Judge position at Tacoma, Washington. The United States District Court for the Western District of Washington will appoint a full-time United States Magistrate Judge to be stationed in Tacoma for an eight-year term. The term will begin after the incumbent is sworn in as a United States District Judge, which is expected to be in late spring of 1994. The duties of the position are demanding and wide-ranging and will include: (1) trial and disposition of misdemeanor cases; (2) conduct of preliminary proceedings in felony cases; (3) assisting district judges in disposition of prisoner petitions and Social Security appeals; (4) conduct of various pretrial matters and evidentiary proceedings on reference from the judges of the district court; (5) the trial and disposition of civil cases upon consent of the litigants; (6) trial of petty and misdemeanor cases at outlying government facilities such as Fort Lewis and Olympic National Park. This responsibility may require travel to each of these federal enclaves.

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

To be qualified for appointment an applicant must:

(1) have been engaged in the active practice of law for a period of at least five years (with some substitutes authorized);

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

(3) be less than 70 years old; and

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

A merit selection panel composed of attorneys and other members of the community will review all applicants and recommend to the judges of the district court in confidence the five per-

sons whom it considers best-qualified. The court will make the appointment following an FBI full-field investigation and IRS tax check of the appointee. An affirmative effort will be made to give due consideration to all qualified candidates, including women and members of minority groups. The salary of the position is \$122,912 per annum.

Application forms and further information on the Magistrate Judge position may be obtained from the Clerk of the District Court: Bruce Rifkin, Clerk, 215 U.S. Courthouse, 1010 Fifth Avenue, Seattle, WA 98104, (206) 553-5598 or Janet Thornton, Deputy in Charge; 1717 Pacific Avenue, Room 3100, Tacoma, WA 98402, (206) 593-6313.

Applications must be submitted only by potential nominees personally and must be received no later than March 18, 1994.

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

WILL SEARCH

Morris S. Pope: Will prepared 1986-1992. Believed to be drawn up between 1991 and 1992. Seattle and Kitsap County areas—Please contact attorney Randy Loun, 509 4th Street, Suite 6, Bremerton, WA 98310—or any information leading to and finding what attorney drew up will dated after 1983, \$1,500 reward. Please contact daughter, Robin Pope-Keehn, (206) 275-0467 (home) after 7 p.m. or (206) 275-6066 (work) 9-6 p.m.

Bettie Charlyne Royle—Resident of Vancouver, Washington died 9/20/93. If you have information about her will, please contact Margaret Phelan at (206) 699-4771.

Frank W. Bagley of Seattle, Washington died on October 15, 1993. Anyone with knowledge of a will, please contact Theodore M. Resenblume, 701 Fifth Avenue, #2750, Seattle, WA 98104; (206) 625-1111.

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Registered professional land surveyor with J.D. and extensive experience as a consultant and expert witness in boundary disputes. Author of articles and regular columns in recognized journals and instructor for land surveyors' seminars; active in professional societies. Jerry R. Broadus, Geometrix Surveying, Inc. (206) 840-5680.

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Happy New Year!

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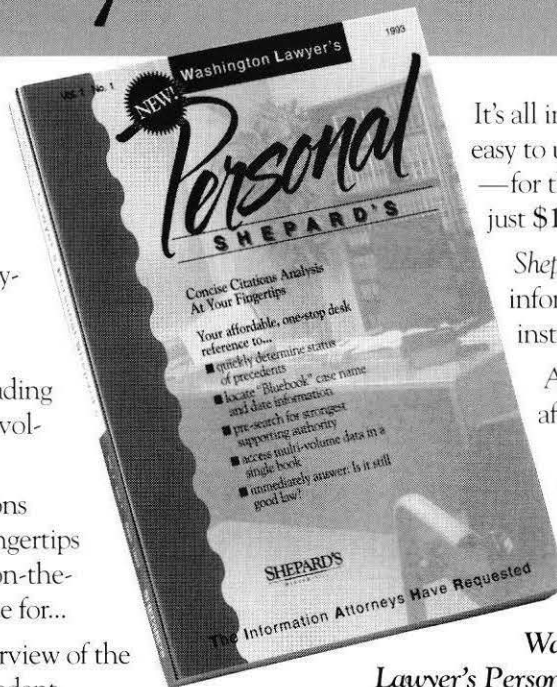
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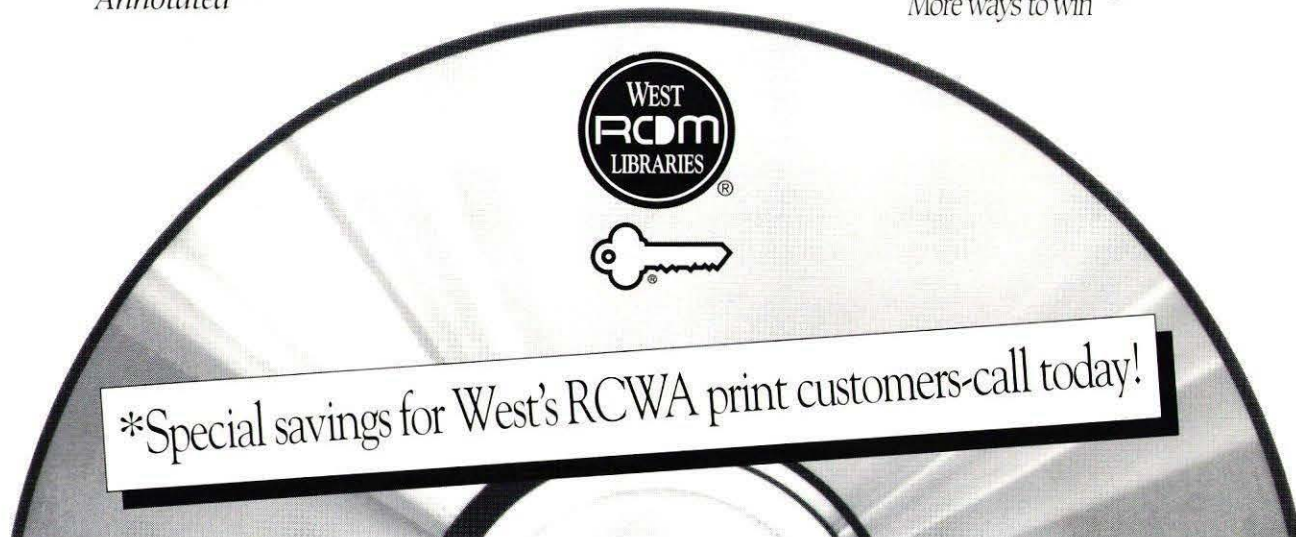
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