Washington State Bar News
Vol. 48, No. 10, October 1994

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Washington State Bar News
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FEATURES

LAWYER REGULATION IN WASHINGTON

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Page 53: Portland, Oregon, Artist **Stephen F. Hayes** provided the illustration of erasing state lines.

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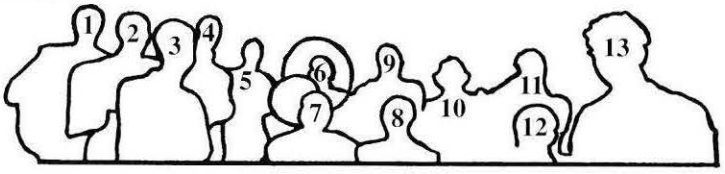

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DEPARTMENTS

Readers are invited to submit letters of reasonable length to the editor. They should be typed on letterhead and signed. The editor reserves the right to select excerpts for publication or edit them as may be appropriate.

A Good Choice Eighty Years On

Editor:

The photo on the cover of the July *Bar News*, showing an old automobile on Snoqualmie Pass in 1914, was most appropriate and very interesting.

JAMES OTIS NEAL
Ephrata

A Good Account of the Federal Rules Changes

Editor:

Christopher Nicoll is to be congratulated for his excellent article in the 1993 Amendments to the Federal Rules of Civil Procedure published in the May 1994 *Bar News*. I would commend a reading of his discussion of the new Rule 26(a) mandatory disclosure rule to everyone who practices in federal court. While our district has not yet made a final decision on this rule, the judges of our court are in the final stages of considering implementation of Rule 26(a) in some form. An excellent discussion of the pros and cons of the rule took place at our recent district meeting attended by some 300 members of the bar of our district. When that decision is made, appropriate notice will be given.

I realize that page constraints limited the size of his comment on all the changes in the rules. The judges of our court feel that some of the most important changes were contained in Rule 30 concerning the number of depositions and the conduct of counsel in depositions. The new Rule 30(a)(2)(A) requires leave of court or agreement of all parties to take more than ten depositions per side.

Rule 30(d)(1) and (d)(3) are addressed to the so-called "Rambo" tactics that too often appear in depositions and the transcripts therefrom. In order to diminish - and hopefully stop - improper, obstructionist tactics, new Rule 30(d)(1) provides in part that objections are to be "stated concisely and in a non-argumentative manner." Lengthy and deponent-leading objections are forbidden and subject to sanctions. Counsel may only instruct a client not to answer to preserve a privilege, enforce a court direction limiting evidence, or present a motion for relief to the court.

Rule 30(d)(3) provides in part that at any time during a deposition, on motion of a party or deponent, the court may terminate the deposition "upon a showing that the examination is being conducted to annoy, embarrass, or oppress the deponent or party." In such event, the court may also impose appropriate sanctions.

This District's Local Rule 100 contains a civility code concerning conduct of counsel. It is my personal observation that the great majority of our bar do not need such a code and conduct themselves as professional men and women. However, in those instances during deposi-

tions where civility and professionalism become a problem, the new Rule 30(d) should provide a quick and appropriate remedy.

Again, congratulations to Mr. Nicoll on a most helpful article.

JUSTIN L. QUACKENBUSH
Chief Judge
United States District Court
Eastern District of Washington
Spokane

Get A Life! She Says

Editor:

I am amazed at the furor over Commissioner Jack Richey's story, "The Right to Bear Arms," which appeared in the February 1994 *Bar News*.

I perceived the story as one more example of the *Bar News*' publication of fiction. For the past few years, we have been treated to a variety of stories written by lawyers - some better than others. I saw this article as just another example of literary work by one of our members.

While Commissioner Richey's story may have a more controversial moral than most, I certainly don't object to the *Bar News* using its pages to launch our members' literary careers.

Lighten up!

CHRISTINA A. MESERVE
Tacoma

Whaddya Mean, It Has No Place in the *Bar News*!

Editor:

When I received the February 1994 *Bar News*, I noticed the cover blurb about "The Right to Bear Arms" and began looking for the article. I came to Washington from another state, where the bar journal is academic in nature, and expected this article to be an academic look at Second Amendment law. Instead, I found it described as a work of fiction "...but a powerful statement on the issue of guns." It was not a powerful statement at all, but drivel; an offensive, emotional appeal not appropriate for a bar association journal. While I defend his right to his beliefs, a story such as Commissioner Richey's simply does not belong in a bar publication. As offended as I was, I was not the first to call and complain, and decided not to write at that time. What has prompted me to respond was the unfortunate collection of letters which appeared in the June and July issues. While I cannot argue with the depth of feeling shown by those writers, their level of knowledge is at best questionable.

I have been involved in the law enforcement profession for more than half my life, as a student, a prosecutor, and a police officer. I am now working as a police officer in a rural area, as I did in another state. As a result of my experience, I have discovered that predatory humans are more common, and far more dangerous, than most of you can understand. I have regularly seen response times of twenty minutes or longer to potentially life-threatening situations; I know cases in which the response time to a home invasion or other imminent deadly danger was over an hour.

There was a time when I was not in favor of private possession of firearms, but I found that the misguided, and often intentionally false, assertions of those

who support such a position did not withstand scrutiny. Firearm ban laws are criminologically unsound, and their only effect will be to impose greater hardship on the honest. They will not have any measurable effect on criminal behavior. There is sociological research which indicates that violent crime rates are higher in those places where it is more difficult for private citizens to be armed in public; my experiences around the country are consistent with those findings.

It may be tempting to respond to the outcome of a complicated collection of related social ills by blaming firearms, but this is simplistic, dishonest, and certain to fail. A clear example is the inclusion, by some, of suicide deaths in totals of "firearms deaths"; suicides are simply different cases, and it was shown years ago that choice of method is an indication of seriousness of intent, not a matter of opportunity. Most homicides are the culmination of escalating violence between people who know each other. This is still the most common pattern; the popular fiction of the "crime of passion" is a legend without basis in historical fact.

Disarming the honest citizen will not stop the predatory criminal offender. It will more often facilitate their victimization of the weak. I have drawn a pistol for defensive purposes more often as a lawfully-armed private citizen than I have as a police officer. Knowing as I do that police simply cannot protect the innocent, I choose to go armed virtually everywhere I go, whether on or off-duty. I go nowhere that I cannot go armed.

One writer to the *Bar News* claims that guns have one main purpose: the kill. So? This is not necessarily a bad thing. The law does recognize self-defense as a complete defense to a homicide charge. I would be willing to bet that few *Bar News* readers know it is well-established that an assailant with a knife or a club presents an immediate threat at a distance of about thirty feet, and should be shot before they get any closer.

It is also well-established that a handgun is a **defensive** weapon, carried when one is not expecting an immediate assault; one cannot make an appointment for an emergency. Yet another writer sarcastically refers to "blowing away an intruder" as "what currently passes for socially acceptable use." Frankly, a home intruder definitely presents a lethal threat, especially at my home, where it means - among other steps - deciding to try to overcome two Rottweilers. This is the least questionable defensive force of which I can think. As for statistics, what statistics are available show very clearly that criminal misuse of firearms is rare (considerably less than one percent of all firearms in existence in the U.S. are used in crimes each year and the percentage is dropping), and legitimate defensive use occurs millions of times per year (one need not have fired a shot to have made a defensive use of a firearm) - far exceeding criminal use.

The suggestion that I may not have sufficient self-control to restrain myself from killing someone in anger is utterly inexcusable. If you are that unstable, check into an inpatient mental health facility immediately; don't assume that I suffer from your mental illness. And then

there is the suggestion another writer to the *Bar News* made about having a big, mean dog. I'm sure that the personal injury attorneys got a good laugh out of that. A quality puppy of some working breeds will cost several thousand dollars; training will cost several thousand more and a lot of time, with no guarantee of success. Use of an aggressive dog is clearly deadly force, and such a dog, improperly trained, can "go off" without human intervention. Both firearms and dogs are components of complete defensive planning, but they are not interchangeable.

The assertion by a writer that the Second Amendment is collective, and not individual, is severely flawed. The meaning of this amendment is not settled in the legal or popular literature. The cases which appear to indicate that there is not an individual right to keep and bear arms were decided under social conditions of extreme racism and xenophobia, and are subject to criticism on those bases, as well as for probable flaws in scholarship.

The entire history of gun control is racist and classist, and the middle and upper classes of those times took for granted that they could own and carry sidearms with little or no governmental interference. There has been little scholarly or judicial attention directed to the Second Amendment, and it is probably unsound to attempt to construe it under such conditions.

One should, however, consider the following analysis if one wishes to make the attempt: First, most of the other amendments in the Bill of Rights are individual, not collective, and it is probable that the Second Amendment was also intended to be individually oriented.

Second, at the time of the Bill of Rights' adoption, it was expected that militia members would report for duty with personal weaponry. This indicates that the individual militia member now would be expected to bring his or her personal battle rifle (which may be as close to the nonexistent "assault weapon" as we will find), sidearm, and ammunition.

Third, the National Guard is NOT the militia. It is a reserve component of the federal military, and subject, in the final analysis, to federal control. Every aspect of its operations is governed by the Army or Air Force. The governors of several states found that out some years ago when they tried to prevent their states' units from training in certain foreign locations. The militia **includes** the National Guard; they are not the same.

If you do not wish to be armed, that is surely your right. Do not interfere with my rights on the basis of your unsubstantiated feelings. I was brought up in a liberal household in the 1960s and '70s, and based on the knowledge I have developed from inside the criminal justice system, I have become, in many ways, more liberal: I cannot support the oppressive positions being argued by so many people who ought to know better. The Fourth Amendment, for example, is being sacrificed to the "war on drugs;" it has even been suggested that the poor should waive their Constitutional rights as a condition of tenancy in subsidized housing. In many ways, I see this country becoming as totalitarian as Great Britain, a place where expediency has overthrown civil liberties. I will resist this unfortunate trend as much as I can, and I urge you to do so.

DOUGLAS R. MITCHELL
Cheney

Considering Bar Governance

Editor:

I read with interest the President's Corner (*Bar News*, August 1994). I always assumed a mandatory, unified bar association was a fact of life, like rain in Puget Sound and the impossibility of selling Washington apples in Japan. Now, apparently, that unshakable concept might become flexible, and I believe we all need to think about the issues with an open mind. A "what has the bar done for me today" mentality may be selfish, but it is also effective to force an agency with a captive audience into providing desired services. I belong to the American Bar Association not because I have to, but because it provides me with services I need.

The president's column reminded me of an argument I once had in court. As I started my argument in opposition to a motion, the judge began nodding his head. After some time, he stopped nodding, and by the time I finished he was shaking his head. He promptly granted the motion. My suggestion to the supporters of the mandatory/unified bar is to be careful not to oversell. We need to look not just at California's history (how normal is anything that happens in that state?), but other states as well. How about Kansas? Illinois? Texas? We need to examine, dispassionately, the costs and benefits of both a unified and split bar association, and make a decision. At the very least, the process should make us reexamine how the bar should serve its members.

The only thing of which I am sure is that the harder those heavily involved in a unified bar lobby to keep the status quo,

the more closely I will listen to the other side.

JAMES B. PARSONS
Kirkland

August *Bar News* A Good Issue

Editor:

I was ecstatic to see the magazine devote almost half its space to diversity issues within the bar (*Bar News*, August 1994). As the statistics presented by Dennis P. Harwick and Justice Charles Z. Smith show, our bar is underrepresented with regard to minority races and is male-dominated.

Whether this has happened because of overt sexual and racial discrimination or by accident is irrelevant. What is important is that the issue is being addressed, and for this I applaud the staff at the *Bar News*.

It is comforting to know that the Supreme Court adopted RPC 8.4(g), making it misconduct for a lawyer to discriminate on the basis of sex, race, creed, religion, color, national origin, disability, sexual orientation, or marital status. The bar is moving to enforce civil rights, or so it would seem. Our federal laws already make it a crime to discriminate on account of race, color, or origin. 18 USC secs. 242, 243. Unfortunately, these statutes are all too frequently overlooked. With RPC 8.4(g) Washington lawyers might take notice and control themselves from displaying any bigoted behavior.

Several years ago I read that lawyers were desperately concerned about their public image. It would be wise public relations for the bar to uphold the civil rights laws and stop discriminating against the public because of sex, age, color, creed, and the like. However, we lawyers make laws, enforce them, live with them, and are masters of circumventing them.

Our practice of jury selection is so abominably violative of the civil rights laws that we ought to cringe whenever we suggest someone else has discriminated. Many courtroom champions flagrantly abuse their power and illegally dismiss jurors. When Melvin Belli said that women jurors are too brutal, he served notice that ladies need not apply when he is at the counsel table. And in a concurring opinion in *Batson v. Kentucky*, 476 U.S. 79 (1986), Justice Thurgood Marshall exposed the Dallas County Prosecuting Attorney to have an office full of egregious bigots. A version of the staff training manual contained these words: "Do not take Jews, Negroes, Dagos, Mexicans or a member of any minority race on a jury, no matter how rich or well-educated."

For the last two years I have been fighting against peremptory challenges across the country. While many lawyers may think they are only picking the best jury for their client, even an imbecile understands that some jury bumps are racist.

The problem is to find out which ones. Those who prejudicially bump whole classes of jurors need not read any further; the discussion is not for you. Sydney Smith was correct when he said, "Never try to reason the prejudice out of a man - it was not reasoned into him and cannot be reasoned out."

For those still with me, what does an

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attorney do if, during jury selection, his or her client leans over and says, "Get rid of that ———!" (fill in any pejorative term you choose). Does the attorney withdraw on the spot rather than be a party to conspiracy to violate the civil rights laws? Would any judge let him? Or does he tell the client to chill out? Or does he quietly commit the crime?

The U.S. Supreme Court has been addressing racist bumping of jurors since 1880, when it decided *Strauder v. West Virginia*, 100 U.S. 303 (1880). The cases showing proof certain that black Americans have been denied jury service because of their color are legion. A reading of *Batson* will afford citations for all the cases you might care to peruse.

And now we have lawyers being caught bumping jurors for sexist reasons. *J.E.B. v. T.B.*, 511 U.S. —, 128 L.Ed.2d 89 (1994). The next category to catch an unwary, bigoted attorney might involve a sexual or religious preference. It could be age. But it will happen so flagrantly that even the U.S. Supreme Court will be forced to address it, though probably no more effectively than it has over the past 114 years.

In the course of fighting against discriminatory jury selection, I interviewed over a score of competent lawyers. Of those, only one had a general idea where voir dire originated. Some erroneously believed that peremptory challenges were constitutionally protected. And all thought that our current system of jury selection was necessary to get fair juries.

The origin of voir dire is hardly noble. American jurors were first subjected to it in 1807 when Chief Justice John Marshall did amazing things to assist a criminal defendant who eighty percent of the public had adjudged guilty before the trial. *U.S. v. Burr*, 25 Fed. Cas. 15 (1807). Among the showings of impartiality by the judge were dining with the accused while the trial was underway; dining with defense counsel; and asking the defense attorney when he might be checkmating the prosecutor. Proving the negative is difficult, but to date I have not discovered any jurisdiction on the planet that even remotely follows Chief Justice Marshall's beneficent enactment of voir dire, but the decision is only 187 years old. Maybe its day is coming and the world will discover how progressive our system is.

You have to wonder how a profession that had the wisdom and courage to develop the line of civil rights cases beginning with *Brown v. Board of Education*, 347 U.S. 483 (1954) to overturn the horrendous "separate but equal" standard laid out in *Plessy v. Ferguson*, 163 U.S. 537 (1896) could so ignore our civil rights laws. How can judges tell schools they must accept all comers when Americans are routinely rejected from juries because of their age, color, religion, sex, or preference?

I work full-time on judicial reform. My employer, the Better Government Bureau of Washington, hired me to pursue the abolition of peremptory challenges across the country. Washington has always been a leader in progressive judicial thought. The time is long overdue for the state bar and our courts to lead the country out of the Middle Ages. We should have the fortitude to enforce the civil rights laws and ban peremptory challenges.

I have presented a rule change proposal to the State Supreme Court to modify CrR 6.4(e) and CR 47(e)(2) to abolish peremptory challenges. I urge all members of the bar to support this change. Let's show the public that the civil rights laws apply even in the courtroom.

STEVE BERTSCH
Lake Stevens

Editor:

I enjoyed the articles on minority representation in the bar association (*Bar News*, August 1994) and I completely agree that it is essential that the bar reflect society.

I also believe that those of us in government service have a special duty to assure that our work forces also mirror our society. When I began as Prosecuting Attorney eight years ago, my office had no minorities and no affirmative action plan. I instituted an aggressive plan and several years ago we passed our goals. Today, I am proud to report that ten percent of our attorneys are minorities (7% of the total bar), and 46% are female (27% of the total bar). I mention this not to boast, but to report that it can be done, with a determined plan and a conviction that it is the right thing to do.

JOHN W. LADENBURG
Pierce County Prosecuting Attorney
Tacoma

The High Cost of Litigation

Editor:

I propose a rule which abolishes all discovery between parties in litigation. The reason is simple. The insurance companies complain most loudly that they are "ripped off" by litigious society and greedy, avaricious plaintiffs' lawyers. Think of the millions they could save in defense costs if we went back to trial by ambush.

What we have now is ridiculous. Both plaintiffs and defendants run up huge costs and time engaging in mostly useless or frivolous motions, deposing everyone in sight who may have heard of the case, and generally agreeing not to agree on anything.

For example, my partner made a motion to amend a complaint in a recent case and to which the defense attorney originally agreed. When he filed his motion to amend the complaint, he received a motion from this same lawyer objecting to his motion to amend, saying it didn't comply with a previous court order. This kind of "lawyering" wastes countless hours and time for everyone. The court, of course, allowed the amendment.

I then read an even more compelling case for my position. In *Ross v. Frank B. Hall & Co.*, 73 Wn.App. 630 (1994) the insurance defense costs were $86,102.48! From the opinion, it appeared to be a clear liability case involving a man whose foot was severed in a fishing boat accident. There was approximately $500,000 in insurance coverage available. The $86,000 was the defense cost without a trial! No wonder the insurance companies complain. I can't imagine spending half that amount, even if the case went to trial for two weeks.

The answer? Let's go back to the old days. Then, at least, we will know who the real lawyers are.

GARTH L. DANO
Moses Lake

Inadequate Indigent Defense Is Common in Washington

Editor:

John L. Farra should be commended for making public an obvious and well-known problem in the criminal defense bar: inadequate representation of indigent defendants is not uncommon in our state (*Bar News*, Letters, August 1994).

Paying attorneys a minimal amount to handle a large number of cases does not provide the economic incentive necessary to ensure adequate counsel in the present environment. Instead, it creates an assembly-line method of processing the poor who are accused of crimes. The result is injustice. This problem is apparent to anyone who practices regularly on the criminal defense docket.

An attorney depending on a defense contract to pay overhead cannot afford to offend the government awarding that contract by being too aggressive. All control the government has over the defense function should be suspect. There is an inherent conflict. We cannot forget that the criminal defense attorney represents the accused against the government.

Being poor is bad enough in our society. Being poor and accused of criminal activity almost guarantees that one is powerless in the face of the criminal juggernaut. Dedicated, efficient and courageous counsel is the only hope of a person in that predicament. And, although there are certainly those who are professional and rise above the economic and political pressure of government, there are not enough to go around.

The truth of the matter is that the poor defendant is in an almost hopeless situation and has no choice but to follow the direction of appointed counsel. If that counsel does not care, or does not have time to care, no one cares. Although there are procedures for the poor to challenge inadequate counsel when such a situation is evident to them, those procedures generally do not work. Judges are hesitant to believe their claims, attorneys find attacking other attorneys distasteful, and, in my experience, the bar association is generally uninterested. It appears to me that the spirit of *Gideon v. Wainwright* has been gutted by the government and a lax judiciary.

We need more attorneys like Mr. Farra who are willing to speak out.

KENNETH KOPICKI
Yakima

by **Ron Gould,** *WSBA President**

As your new president, I would like to acknowledge the work that is being done on your behalf by the WSBA's Board of Governors, committees, sections, task forces and various participating members. Paul Stritmatter and the Board of Governors began some progressive programs for the Bar in the past year. Now, the success of these programs, with responsibilities to both the profession and the public, requires the coordinated goodwill and actions of many. As we move into this coming year, I hope you will consider this simple truth: both our new initiatives and our valuable traditional programs depend on your individual talents, your thoughtful commitment and your personal participation.

Your Participation is Important

First and foremost, it is my goal to encourage your participation in WSBA activities. You are welcome on the WSBA's committees and sections. Whether a seasoned lawyer or a newer member, you can contribute your judgment, experience, goodwill, fresh insights and energy. Each and every lawyer has the chance to make a contribution and a difference for our profession.

You can be appointed to an unfunded position on one of the committees (except for the Judicial Recommendation Committee and the Court Rules and Procedures Committee, both of which have limited members). Call a committee chair to inquire about the committee's work. If you would like to participate, drop me a line, or contact Executive Director Dennis Harwick. I will appoint you to a position.

Here is a list of committee chairs: Attorneys' Professional Insurance, Eric V. Jeppesen; Bench-Bar-Press, Stephen A. Smith; Character and Fitness, Ellen Conedera Dial; Civil Rights, Marta Lowy); Client's Security Program, Kenneth A. MacDonald; Committee of Law Examiners, Frank V. Slak, Jr.; Continuing Legal Education, J.J. Leary, Jr.; Corrections, Leta J. Schattauer; Court Congestion & Improvement, Mary S. Neel; Court Rules & Procedures, Jerry R. McNaul; Disciplinary Board, William S.

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Equally important are the more practice-oriented efforts of our WSBA sections. One is likely working on issues relating directly to your practice. Simply volunteer; become involved, and witness first-hand the benefits of working with your peers.

Your participation in the issues facing the Board of Governors is also important. Attend meetings, call on the Governor from your Congressional District, or feel free to call me [(206) 583-8456] so I can hear your concerns.

You May Help the WSBA With Initiatives and Goals

In last month's column, I outlined many pending matters and new initiatives. I would appreciate hearing from you if you feel we are not addressing an issue that we should. With your help, we will make progress in many spheres:

- I am encouraging the Board to commence preparation of a written long-range plan. We will solicit and encourage comments from our members. Reducing our goals to writing may be challenging, but the end product will clarify thinking and help our members participate in advancing the objectives of our professional organization.
- The Governance Task Force will soon give its evaluation of our governance system. It is my goal to see that any recommendations for change have a fair hearing. Members will have the opportunity to evaluate and express their views on all proposed changes.
- Building on the work of the Professional Qualifications Task Force, I support efforts toward training lawyers in new skills to meet the challenges of practice. As we develop this plan, please give your views to me or Vickie Norris, Task Force chair.
- The Board is appointing a new Access to Justice Board. Concurrent with its work, you will be encouraged to make a commitment to provide legal services to the poor.
- On what is now known as the "LASER" Project, an acronym for Lawyers and Students Engaged in Resolution, there will be a pilot project this fall in one or more Seattle schools. Lawyers from WSBA will participate with educators in teaching students how to deal with disputes and to resolve them without violence. Efforts on this project have been aided by the able assistance of lawyers in the Office of the Attorney General, the WSBA's ADR Section, and the minority and specialty bar associations.
- At the Board's recent request, I will nominate a task force to evaluate issues raised by nonlawyers seeking to enter traditional areas of law practice. Your involvement and experiences in this area will be requested and of assistance to this issue of significance to all of us.
- We should not be overconfident about the progress made on efforts to eliminate gender bias and racial discrimination in our practices and courts. Many observers believe that for every step forward, there is a risk of slipping back. I want to commend all those in our courts and in our law practices who are making a commitment to eliminate vestiges of discrimination. To develop and maintain leadership, we need to recognize and reward diverse talent from all who wish to contribute their legal skills to improve our society. On this initiative your efforts are needed, your help is necessary, and your participation will reward our profession.

Give Something Back to the Community

There is nothing of more importance for the Bar than to encourage actions that enhance the reputation of lawyers and their standing in the community. We cannot accomplish this by lip service. We need to continue our tradition of taking part in community activities. Each such effort shows how lawyers, with their training and special skills, aid our communities. Take the opportunity to step forward in your own community. Be an example of the important role that we play in a society governed by law. Your community effort will help build respect for our profession with those we serve—our clients, the public.

And so I urge you to select a project of interest to you in one of either the WSBA committees or sections, the local or specialty bar associations, or in your community. Or develop your own project. Set your personal goal to use your legal talents to help the public. Make a commitment. Aim high, and you may surprise yourself with what you can accomplish. Become an ambassador for the legal profession. The WSBA will be supportive, and you will discover that it is through your individual efforts that we strengthen the whole legal profession.

* * *

See related article, page 18 of this issue.

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DIPLOMACY AT THE BAR

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

East seems to be meeting West with regularity in recent months—and I don't mean traffic through Cle Elum, Leavenworth, or any of those transitional wet side/dry side towns that straddle the Eastern Washington/Western Washington divide—I mean the steady stream of individuals and groups contacting the Washington State Bar Association from elsewhere on the Pacific Rim.

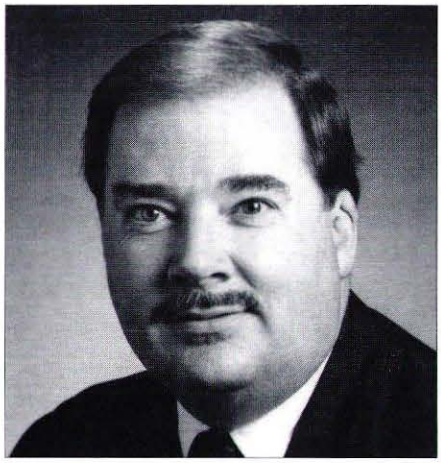
At first, I thought it was just an isolated event when representatives of the WSBA were asked to meet with a delegation from the People's Republic of China. Last week, however, we met with the third such delegation in the past year. Next week, I will meet with the president of the Law Institute of Victoria from Brisbane, Australia. At the recent opening of the Seattle office of Duan & Duan, the first private law firm in China, everyone seemed to have a story about his or her trip to China or the Far East.

Last spring in Bellingham, the Board of Governors met with representatives of the Law Society of British Columbia (the equivalent of the WSBA) and the B.C. Branch of the Canadian Bar Association (the equivalent of the ABA). In June, we met with the Board of Governors of the Oregon State Bar Association. In August, Paul Stritmatter even met with a lawyer in Florence, Italy, to discuss an exchange program. (Note: Paul was on a personal vacation, not a WSBA funded trip!)

Although meetings with the various delegations have different elements, there is always the question, "What does your bar association do?" or "How do you affect the practice of law?" Sometimes the questions are more basic: "Where does your law come from?" "Does the government tell you how many lawyers you can have?" "Are judges lawyers?" "Are policemen lawyers?" "Do you regulate law firms?" Or my personal favorite, "When are you coming to Shanghai?"

The meetings with Chinese delegations have been particularly interesting for highlighting the vast differences between our societies. All of China has approximately 6,500 lawyers. (I offered to send them some of our lawyers, considering the local employment market.) In a society with thousands of years of culture, the Shanghai Bar Association is four years old compared to the WSBA's 105 years of age. We were told that one of our visitors, the Chief Governor of the Shanghai Bureau of Justice, "oversees the activities of the legal community in Shanghai," including admissions to practice law, regulation of law firms, and "admissions to prisons." There are also many similarities: lawyers must pass a bar exam, lawyers are involved in opening trade, and lawyers are taking leadership roles in the evolution of the Chinese society.

Our visit with leaders of the British Columbia legal profession revealed some common themes: regulation of the 7,500 lawyers in British Columbia (most of whom are located in Vancouver and Victoria), client security programs, professional liability insurance and qualifications to enter the profession. Our B.C. counterparts were surprised to hear that the top amount of dues to the WSBA was $195. Their dues (which include mandatory professional liability insurance) are $3,300—Canadian, of course! Actually, we're surrounded on both sides. Oregon



Dennis P. Harwick

State Bar dues are $316, plus $2,100 for mandatory professional liability insurance.

In all such meetings there are elements of "the grass is always greener," but the interesting point is that these delegations are coming to us to find out how we do it. We've all read how Washington State is regarded as a bellwether for emerging social trends. I just didn't know that the WSBA would be such a hot diplomatic posting!

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Seattle Attorney Ron Gould Takes Helm of Bar for 1994-1995 . . .

Ronald M. Gould

by **Lindsay Thompson**
Bar News *editor*

The Bar Association's 1994-1995 president, Ronald M. Gould, is a person of varied accomplishments. He has clerked, and practiced, law at the pinnacles of the profession. He is a shareholder in Perkins Coie, the largest law firm in the Pacific Northwest, dealing with "commercial and financial institutional litigation." If there's a complicated bank failure, he's the federal government's man.

He has been a law professor, an advisor to politicians, and a director of civic and legal groups. In the electoral arena, he defeated the supposedly unbeatable Alva Long in 1988 for a seat on the Board of Governors. His name surfaced as a contender for WSBA president almost immediately after his term on the Board ended in 1991, and those who watch such things generally agreed the Board of Governors would elect him president in due course.

They did, and Ron Gould took over this month as leader of Washington's 20,000 lawyers for 1994-95.

Gould graduated from the University of Pennsylvania's Wharton School before moving to the University of Michigan School of Law. There he edited the *Michigan Law Review* and laid the academic groundwork for his term as clerk to Judge Wade H. McCree, Jr. of the Sixth Circuit Court of Appeals in 1973-74. From there he went to the next court up the line, serving as U.S. Supreme Court Justice Potter Stewart's clerk in the 1974-75 term.

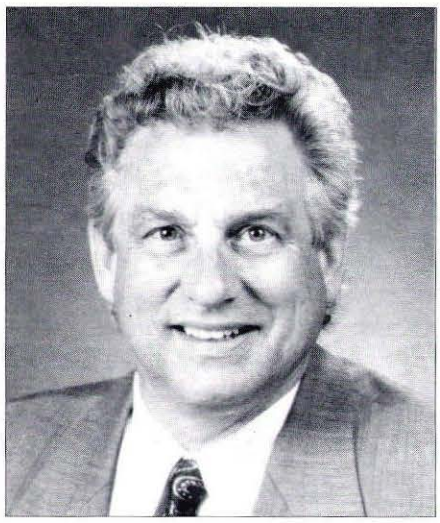
Joining Perkins Coie after his Washington stint, Gould has been active in community and bar activities ever since. He has been a lecturer for the Practicing Law Institute, the *New York Law Journal*, ABA National Institute and, for three years, an adjunct professor at the University of Washington School of Law, teaching dispute resolution. He has been a member or leader of three international delegations.

Gould is a past trustee of the Federal Bar Association in the Western District of Washington, won the Seattle-King County Bar Association's Distinguished Service Award in 1987, and is a Fellow of the American Bar Association. In governmental circles, his long-standing interest in public affairs has led him to three years' service on the Supreme Court's Board for Judicial Administration, a position in Governor-elect Mike Lowry's Transition Team Task Force on Ethics in Government and a role in Governor Lowry's "Citizen's Cabinet." Gould has spent a decade in senior volunteer posts with the Boy Scouts, has served on the boards of the Community Relations Council of the Jewish Federation of Greater Seattle, the Metrocenter YMCA, the Economic Development Council of King County, and the UW School of Law's Public Service Advisory Council.

Gould's professional resume lists these as his practice areas: "Antitrust litigation; antitrust counseling; class action litigation; federal trial practice, including antitrust, trade secret, trademark and other complex commercial litigation; director and officer liability litigation; banking litigation; other commercial litigation, including contract, trade secret, commercial fraud and products liability."

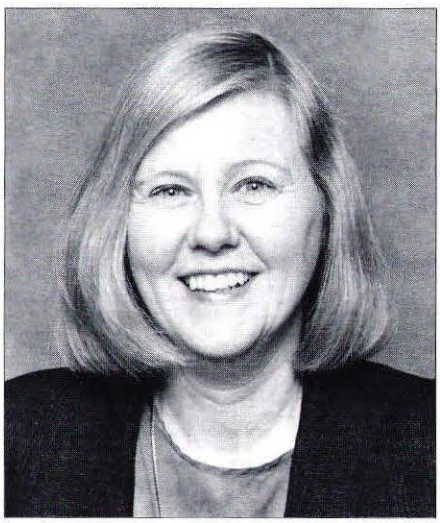
All pretty daunting. In 1990, an agenda item before the Board of Governors brought another former U.S. Supreme Court clerk to the meeting, and he and Gould were soon discussing in great detail the constitutional ramifications of the item at issue. Governor Jeff Tolman, Poulsbo's quintessential small-town lawyer, listened to the colloquy with increasing perplexity before asking, "Is this like those whistles only dogs can hear? Are there some things only Supreme Court clerks can understand?"

Often as not, however, a talk with Ron Gould begins with answering his questions about what you've been up to lately, followed by what his wife, Suzanne, and two children, Daniel and Rebecca, have accomplished lately. His September column in the *Bar News* laid out an ambitious program for the coming year, one that reflects his interests as a citizen, lawyer, past bar governor and, now, the state bar president.



Ron Perey

Peter S. Ehrlichman



Patricia C. Williams

. . . AND THREE NEW GOVERNORS ALSO TAKE PLACES AT TABLE

With the end of the WSBA Annual Meeting in Seattle September 9, three people breathed a big sigh of relief. Governors Wayne Blair and Mike Larson of Seattle and Joe Nappi of Spokane completed their three years' service on the Bar Association's Board of Governors.

Most governors who've commented on it agree there's a lifecycle to serving on the Board. When one first joins it, three years hardly seems enough. By the time three years have run, they seem like plenty.

Stepping up to the Board's table are three new governors. Like their predecessors, two are from Seattle and one is from Spokane (governors are elected by the lawyers living, not working, in Washington's nine congressional districts. Two at-large seats are elected by all the lawyers in King County, reflecting the presence of nearly half the lawyers in the state in that county).

The only contested race for a seat on the Board of Governors was for the First Congressional District seat Wayne Blair vacated. Another Seattle lawyer, Peter S. Ehrlichman, 44, won the race for the seat and takes office this month. Ehrlichman was born in California but grew up in Bellevue; he took his undergraduate and law degrees from Stanford University. In 1975-76 he clerked for then Chief Judge Walter McGovern of the U.S. District Court for the Western District of Washington; a year later he joined Foster Pepper & Shefelman's litigation department. A partner there since 1981, he concentrates his practice in the fields of litigation, intellectual property and employment law, trying cases ranging "from the complex to the mundane."

Ehrlichman has served on numerous WSBA and King County bar committees over the past decade and a half, and is involved with a variety of civic boards and community activities. His experience includes service as a WSBA hearing officer in attorney disciplinary cases and membership in the Intellectual and Industrial Property Law and Litigation Sections, as well as the WSBA Insurance Trust and Judicial Recommendations Committee. Ehrlichman has also served as a pro tem Superior Court judge in King County, and is a member of the American and Federal Bar Associations. He is listed in the current edition of *Who's Who in American Law*.

Moving on to the Board of Governors was a logical next step for Ehrlichman. "I am troubled by the comments of friends and associates of mine who question whether the organized bar serves a vital and useful purpose," he comments. "I look forward to the challenge which such skepticism offers: to help redirect the Bar's work to areas its members feel are relevant to their lives."

Outside work, Ehrlichman has been active in Rotary International, the boards of the Seattle Children's Theater, Seattle Youth Symphony and Architecture and Children Institute, as well as a Boy Scout leader and soccer coach.

For the Fifth Congressional District seat being vacated by Joe Nappi, Jr. of Spokane, the Board of Governors' fourth current woman member was unopposed in the election. Patricia C. Williams, 46, is a native of Bethany, Missouri. She received her B.A. from Park College, a Missouri school, in 1969, and her law degree from Gonzaga University School of Law in 1975.

Williams joined Spokane's Winston & Cashatt as a clerk during law school. In 1975-76 she served as assistant city corporation counsel for the City of Spokane. She returned to Winston & Cashatt, becoming a principal in the firm in 1981, where she practices bankruptcy, employment, commercial and business law. In 1988 she joined the Idaho State Bar. Most recently, Williams was named the first woman certified in business bankruptcy law by the American Bankruptcy Board of Certification.

Long active in local and state bar affairs, Williams is a past officer and president of the Spokane County Bar Association and a current officer of the Federal Bar Association for the Eastern District of Washington. She serves on the Board of the WSBA Creditor-Debtor Section and the Planning Committee for the Northwest Bankruptcy Conference. She is a former member of the WSBA Young Lawyers Section (now Division) and is a current member of Washington Women

Lawyers' Spokane Chapter.

The King County At-Large seat vacated by Mike Larson is one of two (Linda Dunn holds the other) added to the congressional district geographical representation of the state's lawyers to reflect the half of WSBA members who live in the Seattle metropolitan area. Elected unopposed to this seat was Seattle lawyer Ron Perey, 51. Born in Cleveland, Ohio, Perey graduated from Miami University in 1965 and Ohio State University College of Law in 1968. In 25 years of practice as both a personal injury defense and plaintiff's lawyer he has tried over two hundred cases and has handled thousands of contested matters. He has been particularly active in the Washington State and American Trial Lawyers' Associations, holding leadership posts in both organizations. Perey is a member of the Damage Attorneys Round Table and is listed in *The Best Lawyers in America* and *Who's Who in American Law*.

When not busy trying personal injury cases, Perey enjoys a near-bewildering array of hobbies and interests. "I spend a great deal of time with my daughter, my dog and my friends," he says. "I love to read novels and read at least two newspapers a day to keep informed of current events. I am a physical fitness enthusiast, and love to jog, hike (when his knees allow), ski and lift weights. I am interested in the arts and live theater, and am an avid motion picture fan." Perey does more than rent videos: he has invested in the production of two films and is serving as executive producer for a third, a short film to be completed this fall and released at a number of American film festivals. And he loves to travel.

Perey views the crucial issues facing the bar association as including concern over the regulation of nonlawyer delivery of legal services in certain areas, especially family law ("It needs to be efficient, expedient and low-cost"); encouraging the training and availability of truly skilled mediators and arbitrators; Bar staff unionization (he is "generally in favor of unions"); and promoting professionalism, self-policing and integrity among lawyers as a response to the poor public image of lawyers. Perey believes Supreme Court-mandated fees to fund lawyer discipline are coming. He also believes the King County Courthouse is a disgrace to the legal profession and supports any and all efforts to restore it to its former elegance.

For the first time in several years, the average age of the Board of Governors has gone up, but only slightly. Among the eleven governors the average age is now 44.3 years, up from 43.5 last year. Add in the president, and the average age goes from 44 last year to 44.6. Six of the eleven governors were born between 1950 and 1957; the rest are front-end Baby Boomers from the 1943-48 period. Board political junkies predict the 1995 elections will bring a majority of women to the Board of Governors, and the first governors born in the 1960s. Stay tuned, as we TV-era voters say.

GROPING TOWARD UNIFORMITY?
MTCA, CERCLA AND DOCTRINAL MUDDLE

by **John R. Christiansen**

Introduction

This article is a plea for uniformity in Washington environmental law. Over the past couple of decades, environmental liabilities have literally evolved from the status of a nuisance[1] to one of the major considerations in real estate practice.[2] This rapid evolution has left uncertainty and confusion in its wake. This article will attempt to show where some of the confusion comes from, and urge that we make a conscious effort to eliminate some of it.

My concern is with the interpretation of Washington's Model Toxics Control Act ("MTCA").[3] MTCA was enacted in 1988, and only recently have enough cases been tried under it to begin to generate published caselaw. What has been published is disturbing, however, because of its trend toward deviation from MTCA's parent, the federal Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA").[4] The two statutes are in many ways coextensive, meaning that both will often apply to the same set of facts. What disturbs me is that such application appears too likely to lead to different results.

The potential for multiple causes of action leading to different results is not peculiar to environmental law. The range of different claims which might be pled on any given set of facts is probably limited only by a litigator's imagination. But while it may in some cases be just to seek damages under alternative theories of, say, breach of contract and tort, neither MTCA nor CERCLA is intended to serve as a vehicle for damages claims. The liabilities created under both these statutes are supposed to aid the funding of environmental cleanup, and they should be interpreted in that light.

When they are not seen in this light, and are instead seen as mechanisms for private compensation, their common purpose may become lost to view as interpretation focuses on how they differ. This shift in focus actually works against the purpose of the statutes: The possibility of differing results under the same set of facts creates an incentive to litigation which may use funds otherwise available for cleanup, while delaying, complicating and sometimes preventing transactions involving the cleanup of contaminated property.[5]

MTCA and CERCLA need not be interpreted differently, and since their purposes are identical, they should not be. The reasons for MTCA's deviation from CERCLA are understandable and, to some extent, unavoidable. But the interests of the citizens of this state and the environment would be best served by an attempt on the part of the Legislature, the courts and the regulators concerned, to make the interpretation of MTCA and CERCLA as uniform as possible.

CERCLA: MTCA's Flawed Template

MTCA was explicitly modeled on CERCLA,[6] and the two cover much of the same ground. Both are intended to finance and control the cleanup of "hazardous substances" in the ground or water, though MTCA's definition of "hazardous substance" is substantially broader than CERCLA's.[7] Both operate by establishing largely comparable categories of persons who may be held liable for the cleanup of contaminated parties, called "potentially responsible parties" ("PRPs") under CERCLA and "potentially liable parties" ("PLPs") under MTCA.[8] Cleanup liability of such parties is joint and several under both acts,[9] and each provides for contribution among such parties on an equitable basis.[10] Since MTCA is not preempted by CERCLA,[11] in many cases contamination which proves CERCLA liability will also establish MTCA liability.[12]

Given the structural similarities and overlapping intent and scope of the two acts, one would hope that the application of the two acts to the same facts would usually lead to the same result. Unfortunately, this is not necessarily true; the language of CERCLA itself is not always clear, and MTCA may be modeled on CERCLA, but it differs from it in a number of small but potentially crucial ways.

CERCLA's lack of coherence and consistency is notorious:

> Unfortunately, in the rush to enact CERCLA before the 1980 Reagan inauguration, Congress created a hasty and confusing piece of compromise legislation. Among other things, the courts have had to interpret ambiguous grammar and vague congressional intent. The courts' work has been more difficult due to the hurried nature in which the Act was drafted and a series of poorly documented congressional compromises. While the 1986 SARA amendments to CERCLA enlighten a few areas, the 1986 legislative history reflects more ratification than instruction. In other words, Congress chose to acquiesce to judicial interpretations rather than direct them.

"Through the Looking Glass" at 256-57.[13]

Perhaps at best we can say that CERCLA is an evolving law, and sets forth a structure which the courts fill with common law contents consistent with the statute's purpose.

This may be understandable, but the result has often been that what CERCLA means depends on when you ask and which court is answering. An interpretation which made sense in 1982 might have been rejected by the courts in the dominant cases by 1985 and explicitly rejected by Congress in SARA in 1986.[14] Divisions among the federal circuits further confuse interpretation.[15] Even if Washington had adopted CERCLA's material provisions verbatim as of 1988, practitioners and the courts would sometimes have been hard-pressed to say what they were intended to mean.

MTCA: When Does a Difference Make a Difference?

Whether or not it might have been possible or desirable, MTCA did not adopt CERCLA verbatim, but made a number of potentially meaningful changes. To date, the comparison of MTCA to CERCLA and analysis of the differences has been the most influential approach to the interpretation of MTCA. While such an analysis has its place and its uses, this emphasis upon the differences between the statutes almost by definition leads away from uniformity.

The reliance on comparative analysis began with the law review comment *Through the Looking Glass*, published in 1989. This comment provided a good critical review of the differences between the statutes, while ending with the following warning:

> The drafters of I-97 claimed to have created a statute that "makes the polluters pay." Opponents of the initiative charged that in spite of its good intentions, I-97 was flawed; I-97 would result in costly lawsuits, lengthy delays, and precious little cleanup. Wholesale adoption of CERCLA terms and provisions probably avoided some of the questions litigated in federal court over the last eight years, but I-97 made enough significant changes in the CERCLA language to give the lawyers a toehold. If Washington courts follow the traditional rules of statutory construction outlined above, the changes will be presumed made with the purpose to "limit, qualify, or enlarge" on CERCLA interpretation as it existed in 1988. The unfortunate result will be full litigation under the state law for meanings that seemed settled under the federal language, and the environment will be the loser.
>
> "Through the Looking Glass" at 278-79.

These words now seem prophetic.

The comparative analysis was substantially relied upon by the Washington Supreme Court in *Bird-Johnson Corporation v. Dana Corporation*.[16] *Bird-Johnson* arose from a suit in the United States District Court for Western Washington by the current owner of a contaminated property against a past owner, alleged to be partially responsible for the contamination, under causes of action including claims for contribution to cleanup costs under both MTCA and CERCLA.[17] The U.S. District Court certified the single question whether MTCA allowed a private action for cleanup cost contribution.[18]

In a six-to-three decision over a vigorous dissent, the Washington Supreme Court held it did not.[19] The majority opinion relied heavily upon the comparative analysis pioneered in *Through the Looking Glass*, reasoning that MTCA's failure to include an explicit provision allowing for a private cause of action for contribution precluded such an action, since CERCLA (by way of SARA) had explicitly provided for one.[20] The dissent would have found such a right implied in MTCA, relying upon the similarities in purpose and general structure of MTCA and CERCLA, and the fact that a right of contribution would actually advance MTCA's purposes.[21]

Bird-Johnson is now mainly of interest as precedent for its method of interpretation, since the Legislature responded to its substance with a 1993 amendment to MTCA explicitly allowing private actions for contribution.[22] Even with respect to MTCA interpretation, *Bird-Johnson* need not stand for the proposition that comparative analysis is the pre-

ferred approach; it may simply be taken as a special case of the general rule that Washington courts will not recognize the statutory creation of a new cause of action by implication, in the absence of a clear statement legislative intent to do so.[23]

And the risk inherent in relying on comparative analysis shows in the history of *Car Wash Enterprises v. Kampanos*,[24] the only other published case to date interpreting MTCA.[25]

The underlying facts were not controverted:[26] In 1985, plaintiff Car Wash entered into a contract to buy a property from defendants Kampanos, including an obvious gas station which was no longer in use. The contract's only provision concerning the condition of the property stated it was purchased "as is and in present condition," upon inspection. Both parties were aware of the presence of underground gasoline storage tanks, and when Car Wash had those removed shortly after closing, in early 1986, evidence of leakage into the soil was noticed. Given an absence of cleanup regulations, Car Wash gave neither the state nor the Kampanos notice of this discovery, but simply filled in the hole.

Bird-Johnson need not stand for the proposition that comparative analysis is the preferred approach; it may simply be taken as a special case of the general rule that Washington courts will not recognize the statutory creation of a new cause of action by implication, in the absence of a clear statement legislative intent to do so.

Four years later, after learning that the law now required cleanup of contaminated property, Car Wash had the soil tested and discovered that contamination levels were high enough to mandate cleanup. Car Wash did so voluntarily, and in May 1991, Car Wash filed a complaint seeking contribution from the Kampanos for the cleanup costs, under a number of theories including a private MTCA action.[27] After *Bird-Johnson* was decided in 1992, the court granted partial summary judgment dismissing all of Car Wash's claims except a contribution action based upon MTCA in conjunction with RCW 4.22.010(4), under the theory advocated by the *Bird-Johnson* dissent. After a bench trial, judgment was entered against Kampanos, allocating seven-elevenths of the liability to Kampanos and four-elevenths to the "empty chair" of the deceased prior owner of the property, on the theory that the gas station had been in operation for a total of eleven years, under the ownership of Kampanos for seven years and the prior owner for four years.

Kampanos appealed, arguing that the trial court erred in holding that a private contribution action existed under the two statutes, and that even if such an action existed, the trial court erroneously failed to allocate liability by using the factors applied in comparable CERCLA cases. After briefing, but before oral argument, the Legislature amended MTCA to explicitly permit such an action, so that the issues remaining were the effect of the contract and the proper method for allocating liability.

In a decision issued April 4, 1994, the court held, *sua sponte* and without re-

questing briefing or argument on the question, that MTCA prohibited *any* private contract for the allocation of cleanup liability. The opinion was based upon the comparative analysis: Since CERCLA made reference to such contracts and MTCA did not, it was presumed that the omission was intentional. The court also upheld the trial court's allocation formula, as within its discretion.[28]

The decision drew national attention[29] and created an uproar in the environmental-law community,[30] since apparently every contract allocating liability in the state had just been declared void. Kampanos filed a motion to reconsider, supported by *amicus* briefs from Boeing, Weyerhauser, the Washington Public Ports Association, Puget Sound Power and Light, the Washington Environmental Council, and the State of Washington. Car Wash itself filed a response asking the court to reconsider that issue. The court then withdrew the opinion, and issued a revised opinion June 13.

The revised opinion did not follow the comparative analysis, but instead relied upon more general principles of statutory interpretation to find that contractual allocation was permissible under MTCA and consistent with the statutory purpose.[31] In reaching that conclusion, the court relied substantially on CERCLA caselaw on the same issue.[32] The court then relied upon Washington contract law to find that the contract in question in *Kampanos* was not effective with respect to the allocation of liabilities, and again upheld the trial court's allocation.[33]

The decision drew national attention and created an uproar in the environmental-law community, since apparently every contract allocating liability in the state had just been declared void.

Kampanos demonstrates the dangers of a simplistic reliance on comparative analysis in interpreting MTCA: For more than two months, from the date the initial opinion was issued until the date of the revised opinion, the validity of liability allocation provisions in contracts concerning the purchase, sale or mortgage of contaminated property, the cleanup and disposal of wastes, and any other matter potentially implicating MTCA, was a wide-open question. The initial result was not necessary under ordinary principles of statutory construction, and was actually contrary to statutory purpose. The revised opinion in *Kampanos* is therefore valuable precedent for the use of those principles instead of comparative analysis in interpreting MTCA, and for the use of CERCLA caselaw as persuasive authority.

In the interest of uniformity, it would have been preferable if the court had adopted CERCLA caselaw as persuasive authority on the allocation of liability as well. There is good precedent for the adoption of caselaw of other jurisdictions as persuasive in interpreting statutes adopted from those jurisdictions.[34] If and when an opportunity presents itself, CERCLA caselaw should be explicitly adopted as persuasive authority for the allocation of liabilities under MTCA as well. If it is, practitioners in Washington will be able to predict for their clients with some certainty that whatever their potential liability for cleanup of contamination may be, it will be the same whether determined under MTCA or under CERCLA.

Conclusion

The interpretation of MTCA is still in its infancy, and it will no doubt take some time to find and work out all the bugs in the statute. In working through MTCA issues, however, the underlying purposes of the statute should be kept in mind, or the goal of interpretation may get lost in the process of interpreting. The comparative analysis has its place, but since the comparison is to a statute which is itself poorly written, it is at best an uncertain guide.

The better analysis, both as a matter of jurisprudence and for day-to-day evaluation of cleanup liabilities, would be to recognize the common purposes of MTCA and CERCLA and use the law interpreting the former to clarify and unify practice under the latter. Ultimately, this can only advance the cause of environmental cleanup; and that, after all, is the point.

Endnotes

1 If sometimes an expensive one. *See e.g.* Wilson v. Key Tronic Corp., 40 Wn.App. 802, 701 P.2d 518 (1985) ($300,000 in nuisance damages awarded for leaching of hazardous wastes from landfill to wells).

2 *See* IV *Washington Real Property Deskbook*, ch. 88.1, p. 88-2 (WSBA 1989)(". . . [h]azardous waste has become as much a concern in a real estate deal as who has proper

title.")

[3] RCW Chapter 70.105D, enacted as Initiative Measure No. 97, approved November 8, 1988. MTCA's was effective as of March 1, 1989. The only article discussing MTCA's history to date is the Comment, "Through the Looking Glass: a Comparison of Covered Persons, Defenses, and Liability under CERCLA and the Washington State Model Toxic Control Act of 1988 (Initiative 97, 1988 General Election)," 25 *Gonz.L.Rev.* 253 (1989-90) ("Through the Looking Glass" herein).

[4] 42 USC sec. 9601 *et seq.*, enacted as Pub.L.No. 96-510, 94 Stat. 2767 (1980). Unless otherwise indicated, references to CERCLA will include its amendments under the Superfund Amendment and Reenactment Act of 1986 ("SARA"), Pub.L.No. 99-499, 100 Stat. 1613 (1986).

[5] The ability to reliably contract with respect to environmental liability furthers the goal of environmental cleanup, since cleanup or the allocation of funds and liability for cleanup will often be part of the bargain. *See* Bereday, "Contractual Transfers of Liability Under CERCLA Section 107(e)(1): For Enforcement of Private Risk Allocations in Real Property Transactions," 43 *CaseW.Res.L.Rev.* 161 (1992).

[6] *See Bird-Johnson Corporation v. Dana Corporation*, 119 Wn.2d 423, 427, 833 P.2d 375 (1992), and *see, generally*, "Through the Looking Glass," *supra*, 25 Gonz.L.R. at 254 and accompanying notes.

[7] MTCA defines "hazardous substance" to include those substances controlled by CERCLA, as well as any other substance defined by Washington law or regulation as hazardous or determined by the Department of Ecology to present a threat to human health or the environment. *See* RCW 70.105D.020(5). MTCA's greater breadth may be most significant in its application to petroleum and petroleum products, which are specifically excluded from CERCLA (*see* 42 USC sec. 9601(14)), given the extent to which such substances are and have been used and stored throughout the state.

[8] *Compare* 42 USC sec. 9607(a) (defining terms of liability for PRPs) *and* RCW 70.105D.040 (defining terms of liability for PLPs). Despite the general similarities between the two, MTCA may be subject to interpretations materially deviating from CERCLA in this area, particularly with respect to defenses based upon corporate structure, management and control. *See* "Through the Looking Glass" at 264-66.

[9] *See United States v. Chem-Dyne Corp.*, 572 F.Supp. 802, 806-08 (S.D.Ohio 1983) (interpreting 42 USC sec. 9601(32)), *and* RCW 70.105D.040(2).

[10] *See* 42 USC sec. 9613(f)(1) and RCW 70.105D.080.

[11] *Burlington Northern Railroad Co. v. Time Oil Co.*, 738 F.Supp. 1339 (W.D.Wash. 1990) (analyzing CERCLA without substantively interpreting MTCA).

> ***The comparative analysis has its place, but since the comparison is to a statute which is itself poorly written, it is at best an uncertain guide.***

[12] *See, e.g., Burlington Northern Railroad Co. v. Time Oil Co., supra* note 11.

[13] Note 3, *supra*.

[14] *See, e.g.*, "Through the Looking Glass" at 258-60, discussing *United States v. Maryland Bank & Trust Co.*, 632 F.Supp. 573 (D.Md. 1986) and the evolution of the interpretation of the liability of "owners," *and* at 275-76, discussing *United States v. Chem-Dyne Corp., supra* note 9 and the evolution of "joint and several liability."

[15] *See, e.g., AM International v. International Forging Equipment*, 982 F.2d 989, 994-95 (6th Cir. 1993) *and Jones-Hamilton Co. v. Kop-Coat, Inc.*, 750 F.Supp. 1022, 1026 (N.D. Cal. 1990) (discussing split among circuits regarding private right to contract for CERCLA indemnification).

[16] *Bird-Johnson Corporation v. Dana Corporation, supra* note 6.

[17] *Bird-Johnson Corporation v. Dana Corporation, supra* note 6, 119 Wn.2d at 425.

[18] *Bird-Johnson Corporation v. Dana Corporation, supra* note 6, 119 Wn.2d at 425.

[19] *Bird-Johnson Corporation v. Dana Corporation, supra* note 6, 119 Wn.2d at 428-29.

[20] *Bird-Johnson Corporation v. Dana Corporation, supra* note 6, 119 Wn.2d at 426-29, *citing* "Through the Looking Glass," *supra* note 3, at 427, fn. 4

[21] *Bird-Johnson Corporation v. Dana Corporation, supra* note 6, 119 Wn.2d at 429-33. The dissent also pointed out that the majority had explicitly *not* reached the question whether MTCA read in conjunction with RCW4.22.040, concerning the right of contribution in general, might establish such a private right of contribution.

[22] Laws 1993, ch. 326 sec. 1, codified as RCW 70.105D.080.

[23] Regrettably, *Bird-Johnson* neglected to cite or discuss any of the cases in which the courts had previously declined to imply the legislative creation of new rights of action. *See, e.g., Baerlin v. State*, 92 Wn2d 229, 595 P.2d 930 (1979) (declining to imply private right of action against state under Securities Act) *and Courtright v. Sahlberg Equipment Co.*, 88 Wn.2d 541, 563 P.2d 1257 (1977) (declining to imply private right of action under workman's compensation statute read together with comparative negligence statute).

[24] *Car Wash Enterprises v. Kampanos*, 74 Wn.App. 537, 874 P.2d 868 (1994).

[25] *Burlington Northern Railroad Co. v. Time Oil Co., supra* note 11, analyzed whether CERCLA preempted MTCA by substantively interpreting only the former act.

[26] The following facts are taken from the trial court's Findings of Fact and Conclusions of Law, attached as an Appendix to Appellant's Brief in Division One of the Court of Appeals, Cause No. 32312-1-I.

[27] The facts in this paragraph are summarized from the uncontested facts in Appellant's Brief, in order to show more clearly the effects of the changing legal context on the parties. *See also Car Wash v. Kampanos, supra*, 74 Wn.App. at 539-42.

[28] See Slip Opinion issued April 4, 1994, Court of Appeals Division One, Cause No. 32312-1-I.

[29] *See, e.g.*, "State Superfund Allows No Indemnification for Toxic Waste Cleanup, Appeals Court Says," 8 *Toxics Law Reporter* (BNA) at 1335 (April 27, 1994); "Forbidding Liability Transfer Impairs Right of Contract, Brief Says in Mini-CERCLA Case," 8 *Toxics Law Reporter* (BNA) at 1425 (May 19, 1994); "Contractual Transfer of Liability Not Permitted Under Washington Superfund Law, Court Says," 5 *Real Estate/Environmental Liability News* (Buraff) at 1 (April 25, 1994); "Washington Court Will Reconsider Ruling on Transfer of Liability Under State Superfund Law," 5 *Real Estate/Environmental Liability News* (Buraff) at 1 (June 6, 1994); "Washington Court Reverses Itself On Risk Transfers Under the MTCA," 5 *Real Estate/Environmental Liability News* (Buraff) at 6 (June 20, 1994).

[30] *See, e.g.*, "Appeals Court to Reconsider MTCA Ruling," *Washington Journal*, Vol. 3, No. 22 (May 30, 1994), at 1, *and* "The Change in 'Car Wash,'" *Washington Journal*, Vol. 3, No. 26 (June 27, 1994), at 1.

[31] *Car Wash v. Kampanos, supra*, 74 Wn.App at 543-44.

[32] *Car Wash v. Kampanos, supra*, 74 Wn.App at 545.

[33] *Car Wash v. Kampanos, supra*, 74 Wn.App at 545-48.

[34] *See e.g. State v. Nordby*, 106 Wn.2d 514, 521 n. 5, 723 P.2d 1117 (1986) (Utter, J., dissenting) (Minnesota decisions on interpretation of exceptional sentence provisions of Sentencing Reform Act "especially persuasive authority" given legislative adoption of provision from Minnesota law).

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by **Lindsay T. Thompson**
Editor, Bar News
Seattle, September 8/9, 1994

Present: The president, Paul Stritmatter, and president-elect Ron Gould; the governors and governors-elect. *Also present:* Judy Andrews (King County Bar Association Young Lawyers); Thomas A. Campbell (Washington Assn. of Criminal Defense Lawyers); Rosemary Daszkiewicz (WSBA Young Lawyers Division); Judge Mary Gallagher Dilley (Administrative Law Judges' Assn.); Kathy Cooper Franklin (Washington Women Lawyers); Dennis P. Harwick (WSBA executive director); Christopher Jennings (Lesbian/Gay Legal Society of Puget Sound); Jim Kaufman (Washington Assn. of Prosecuting Attorneys); Evelyn Fielding (Government Lawyers Bar Assn.); Wayne Tanaka (Washington State Assn. of Municipal Attorneys, Friday); Thomas M. Fitzpatrick (Washington ABA Delegation); Alva C. Long (South King County Bar Assn.); J. Richard Manning (King County Bar Assn.); Narda Pierce (Attorney General's Representative); Bill Phillips (Washington Association of Defense Trial Attorneys); Larry Shannon (WSTLA); Wayne Tanaka (Washington State Assn. of Municipal Attorneys, Friday); Lindsay T. Thompson (*Bar News* editor); Gregory J. Tripp (WSBA General Practice Section); Sandra M. Watson (Washington State Assn. of Municipal Attorneys, Saturday); Robert D. Welden (WSBA general counsel).

President's Report: Paul Stritmatter told the board the WSBA-Supreme Court Task Force on Discipline has been beavering away, aiming to have a report on the ABA's recommendations about lawyer discipline by year's end. Some people on the task force have gotten all in a lather about The Need to Do Something *Immediately*, and they have floated a proposed Supreme Court general order that would assess every lawyer $115 to pay for lawyer discipline. Happily, cooler and more factually anchored heads seem to be prevailing in the late innings, and the idea that the members of the Bar should have some say in these things, championed by the president, seems to be winning out.

The president also said work is proceeding on an agreed statement of facts for the Bar's challenge of the Legislature's

action to bring the WSBA under state public-employee collective-bargaining law, and that he attended the ABA meeting in New Orleans. He thanked all present for their cooperation and assistance during his term of office.

Sounds Like A Case of En Banc Cluelessness: The Board of Governors has been trying, ever so politely, to tell the Supreme Court they need to pass a rule banning sexual relationships between lawyers and clients. One was sent up to the Court, which returned it with a note saying existing rules cover the situation adequately. In June, the Board voted to send some additional information to the Court, and they wrote back to ask that a delegation consisting of Governors Mary Fairhurst and Linda Dunn and WSBA Disciplinary Counsel Lee Ripley meet with members of the Court to discuss the need for the rule.

The Court wrote back in July, saying a meeting would be premature but asking for any written submissions the Board might like to make.

The president suggested that a new memo by Ripley, explaining why the existing disciplinary rules *don't* adequately address the situation, be sent to the court with a renewed request for a meeting. Governor Wayne Blair thought some personal letters to members of the Court might be helpful. "I hate to use the expression, but they don't seem to get it," he said. "We need to try something with some additional punch." Governor Vickie Norris wondered if the board should just wait until the composition of the Court changes after the elections, and try then. WSBA counsel Bob Welden reminded the Board that if a rule didn't get on the Court's agenda this fall, implementation would be delayed a year. Governor Mary Fairhurst offered to coordinate assembly of the new written submissions and the request for a prompt meeting.

President-elect's Report: Ron Gould outlined some of his priorities for the coming year. He is giving a great emphasis to a legislatively mandated joint program between the Superintendent of Public Instruction, the Attorney General and the WSBA to develop a program to train high school students in mediation skills, given their increasing propensity to sort things out by shooting each other. A preliminary program will be inaugurated in a high school October 26, with honorables like the governor and attorney general there. Gould said the main challenge for this program is funding, since the Legislature didn't provide any, and the Bar hasn't got any to put into this.

Gould said he has an ad hoc group working on some recommendations for model policies for law firms to adopt in the areas of part-time employment and family leave. The group is particularly working with government lawyers' groups and the minority bar associations to assure a comprehensive consideration of what it's like to try to practice law and have a life these days. A report is expected by next month. He is also planning to appoint a Board of Governors/Judicial Recommendations Committee ad hoc assembly to look at honing the effectiveness of the committee in recommending candidates for the bench.

In the same vein, he said a reception will be held October 13, put on by the WSBA and its Judicial Recommendations Committee, for minority lawyers interested in judicial careers. Governor Lowry will attend, and the event is intended to make some institutional connections to further the diversification of the bench in Washington.

If You Invite Him, He Will Come: Gould told the board he is actively looking for speaking appearances before bar groups, and he will be meeting shortly with the Canadian Bar Association, Whatcom County Bar, and the state Judicial Conference.

"I DID WHAT?" The Board took up some housekeeping amendments to tidy up the WSBA bylaws. An amendment of Article VII, sec. F(1) would require that resolutions be signed by ten lawyers, clarifying a vague point of whether proxy signatures and signatures by fax were permitted. A second amendment changed the deadline for submitting resolutions to ensure they can be printed in the *Bar News* before each annual meeting. These items were corrections of sections that were reworked in the Board's bylaws revision year before last.

Former Bar governor Alva Long started warming up to a denunciation of the changed deadlines for resolutions until Harwick pointed out Long had voted for the underlying changes when he was on the Board. Both amendments were approved.

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Other Rules Changes: The Board also approved a technical correction of RLD 11.1(f) to allow the chair of the Character and Fitness Committee, rather than the WSBA president, to issue protective orders or reinstatement matters. They approved a formal ethics opinion which would bar basing a contingent fee upon the larger amount of the recovery obtained at trial or arbitration or the amount offered in a settlement rejected by the client.

The Board considered, but did not act on, a recommendation to amend the Washington Administrative Code to require that insurance companies notify third-party claimants of settlement payments to the claimant's lawyer. The rule, considered and rejected by the Board in 1992, is designed to prevent lawyers from settling claims without authority and pocketing the funds, or using one client's funds to pay another's "settlement." Adopted in New York, Georgia and Pennsylvania, the rule is believed to have reduced lawyer theft there.

The Board heard a further discussion by various defense and plaintiff's personal-injury lawyers about what to do about *Paiya v. Durham Construction Company* and the mischief it has caused by upsetting what everyone thought was the rule for paying doctors for witness time. Even a doctor was dredged up this time. Voting 6-4-1, the board approved an amendment of CR 26 to provide that the party seeking discovery from a treating healthcare physician shall pay a reasonable fee for reasonable time spent in responding to discovery requests.

Rules changes to implement "right-to-know" legislation by requiring retention of discovery in cases subject to RCW 4.24 were debated again, and at some additional length. In the end, the Board decided that some of the Court Rules Committee's work to amend CR 5 and 26 to this effect went beyond what the Legislature had called for. After some runs at amendments and comparison of amendments proposed by the committee and by Professor Stewart Jay of the UW School of Law, the Board adopted one from column A and one from column B. They'll go to the Supreme Court and will be published in the *Advance Sheets*.

The Board then approved several amendments to the criminal rules. They unanimously approved amendment of CrR 3.1 to allow defense requests for investigation and expert funds to be presented *ex parte*, and for good cause the requests to be sealed, preventing what the defense bar described as the annoying interference of prosecutors. The Board tabled consideration of amendment of CrR 3.6 to require motions for suppression to be in writing and supported by an affidavit or memo. They want to think some more about the competing claims of defense lawyers that having to say in advance what a hearing will be about is burdensome, and the complaint of prosecutors that they can't respond adequately to such motions if they don't know what they are about.

The Board voted 7-0-4 to approve an amendment of CrR 4.7 to allow redacted copies of police reports to be given to criminal defendants. Prosecutorial objections that defendants charged with sex crimes would revictimize their victims by making use of reports detailing the crimes, or that such reports, when allowed to go to defendants, get circulated around jails and cause the identification of informants, were noted.

The Board tabled a consideration of GR 12, to amend the purposes of the bar association, to the next meeting.

Appointments: The Board appointed Garth Jones of Hoquiam to the state Pattern Forms Committee, and they reap-

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pointed Mac Shelton of Seattle to the Pattern Jury Instructions Committee. They approved a slate of nominations to the new Access to Justice Board for consideration by the Supreme Court (which makes the appointments). The nominees are Judge Susan Agid (Judge Evan Sperline, alternate); Paul Stritmatter (Tom Chambers, alternate); Paul Bastine (Greg Dallaire, alternate); Nancy Isserlis (Judge Michael J. Fox, alternate); Phyllis Selinker (Kimberly Brown, alternate); Rep Marlin Appelwick (Judge Cynthia Imbrogno, alternate); Mary Alice Theiler (John Chen Beckwith, alternate); Ken Davidson (George Zwiebel, alternate), and Isabel Safora (Judge Robert Whaley, alternate).

The Board deferred action on appointments to the DISCIS (District Court Information System) Advisory Committee and the nonlawyer post on the Client Security Program. Two nonlawyer positions on the Disciplinary Board have also come open; the Board recommended that the Supreme Court fill them from a list of names previously submitted for consideration. They also recommended that the Supreme Court fill two spots on the CLE board with John F. Sherwood and E. John Compatore.

Wrap-up in Seattle: The Board approved a motion to let the King County Bar Association have a nonfunded, nonvoting representative of its Court Rules and Procedures Committee on the WSBA's committee for coordination purposes. They continued the life of the Legal Services for Members of the Armed Services Committee and appointed Jon Bridge and Ken Lucas as cochairs. They agreed to keep the Consumer Protection Committee alive for another year, so it can implement the recommendations of a coming task force on nonlawyer inroads into legal practice, and appointed Steve Tubbs chair of the committee.

The Board heard reports from Dennis Harwick on the Bar's handling of *Keller* rebate requests (July '94 *Bar News* pages 18, 19) and finances ("Never better," he says). The Board approved the addition of demographic survey questions in the dues statements that go to members in December. This is a project of the Opportunities for Minorities in the Law Committee, to get a better sense of the ethnic and gender makeup of the membership. Christopher Jennings asked why the information couldn't be put on a separate form that could be sent back anonymously, which would make it easier to determine other identifiers like sexual preference. Harwick said the committee had looked at the matter and couldn't come to one mind about it, and he was proposing to run the questions the committee asked him to run. Besides, he added, another piece of paper turns into twenty thousand pieces of paper that have to be processed and analyzed by hand. Once the bar gets machines that can scan and tabulate such forms, the paperwork burden will be lessened and such additional queries which require confidentiality can be contemplated.

Harwick also told the board that CLE registrations are some 2,000 higher than budgeted, continuing the financial turnaround of that department.

The Board heard a report from several of the trustees of the Washington State Bar Foundation and agreed to work with the Bar to revive this essentially moribund entity and get some useful work out of it. The Board and liaisons lunched with the board of the Legal Foundation of Washington.

The board approved $10,000 from the contingency fund to pay for the task force on nonlawyer legal practice.

THE 105TH ANNUAL MEETING

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

After the WSBA Awards Luncheon (see accompanying story), the Annual Meeting of the WSBA was called to order in the Seattle Sheraton Hotel ballroom at 2:20 p.m. September 9, 1994. President Paul Stritmatter presided.

WSBA members admitted in 1944, Benjamin S. Asia, Arthur G. Grunke, and Henry E. Kastner of Seattle; Bernice Bacharach of Wenatchee; Antoinette Derr of Spokane; John B. Krilich of Tacoma, and Frank P. Hayes of Tacoma, were honored for 50 years' service to the public and the profession.

Chief Justice James A. Andersen gave his State of the Judiciary address, followed by Judge T.W. Small, president of the Legal Foundation of Washington, on the foundation's work. President Stritmatter gave the State of the Bar Association Address, and Executive Director Dennis P. Harwick reported on the finances and operations of the bar association. Resolutions Committee chair John G. Schultz of Pasco presented the committee's report. One resolution was timely presented this year, that by Alva C. Long of Auburn. Its text is:

> *Resolution to Limit Use of Mandatory Fees: Be it resolved: Effective October 1, 1996, the Washington State Bar Association shall not use revenue it derives from mandatory dues assessments except to administer and carry out functions necessary to regulate the practice of law in Washington State, to wit, admissions (including the bar examination), licensing, discipline, and monitoring compliance with continuing legal education and trust account regulations.*

Schultz reported the committee held a hearing on the resolution September 2, at which Long, Howard K. Todd and John D. Knodell spoke in favor, and Ron Gould, Dennis Harwick and Wayne Blair spoke in opposition. The committee unanimously resolved to recommend defeat of the resolution.

A motion to approve Long's resolution then brought the matter to the floor. Long introduced it as being virtually identical to one adopted by the District of Columbia Bar Association some years ago and upheld by the court of appeals there. (Left out of the discussion was the case Long has cited extensively in his latest ad campaign, *Popejoy v. New Mexico State Bar* (U.S. District Court, N.M., #92-1462JB) (see, for example, *Bar News*, September 1994, page 30), perhaps because the federal court issued a memorandum opinion and order on August 23 denying the plaintiffs' request for relief against the bar in fairly harsh terms (". . . the fact that Plaintiffs failed to present any significant evidence at the April 25-26 hearing on [the Bar's] lobbying activities leads the Court to believe that Plaintiffs' affidavits are misleading. It is apparent to this Court that Plaintiffs are playing 'fast and loose' with their ethical duties owed to this Court and as members of the New Mexico Bar... The Court should not have to remind Plaintiffs about their ethical duty not to make frivolous arguments . . . Rule 11 . . . proscribes the filing of pleadings for 'any improper purpose' . . . An appropriate purpose for filing these present motions is, of course, to vindicate First Amendment rights. An inappropriate purpose would be to harass the New Mexico State Bar out of disdain for the idea of a mandatory or compulsory bar . . . the fact that Plaintiffs challenged, with-

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out evidentiary support, every single expenditure in 'shotgun' fashion based on patently frivolous arguments raises the inference that Plaintiffs' motives may be, at best, questionable. The judicial process is not intended to be a tool of base harassment and will not be so perverted."))

Long said the advantage of his resolution is that it gives two years to sort out what a mandatory program is. "When we have that worked out, we can decide how to fund other projects." He said he expected the resolution to be defeated, and that he would propose a referendum.

James Raffa of Tacoma criticized the Long resolution for its failure to show how much is being spent on nonmandatory programs, and what programs would be affected, and how much. He pointed out how Wisconsin's bar had suffered when it took the path Long advocated, and he noted that only $7 of that state's $270 bar dues went to nonmandatory programs. Raffa was concerned the Bar might be going through a great upheaval to get at a similarly small expense. He thought the WSBA should adopt a process like Wisconsin's for members to challenge expenditures and seek a dues rebate through arbitration.

Rick Ockerman of Kirkland took Raffa to task for his analysis of the Wisconsin situation. He said after Wisconsin's bar became voluntary it was "much more popular, more sensitive to membership needs, and didn't lose many members." Ockerman said he favored a voluntary bar in Washington, but by the consent of the members, not by the sort of "emasculation" Long's resolution would cause. For that reason, though he had supported similar Long resolutions in the past, he opposed this one. He urged that such resolutions be put aside until the WSBA Governance Task Force finished its work this year and made recommendations.

James Vander Stoep of Chehalis observed that Long "enjoys poking and prodding institutions, and that has its place." In this instance, however, Vander Stoep argued Long crossed the line "from valuable nonconformity to destructiveness."

"Will passage of this resolution improve any lawyer's practice, or access to legal services for those who need it?" Vander Stoep asked. He felt the answer was "No." Quoting Sam Rayburn, Vander Stoep said the resolution proved "any jackass can kick down a barn, but it takes a carpenter to build one." He urged members to continue building rather than succumbing to the momentarily thrilling prospect of destruction.

Howard K. Todd of Seattle disagreed with Raffa's speculation that not much money gets spent on nonmandatory matters by WSBA. Saying he was using figures prepared by Executive Director Dennis Harwick, and with which Todd disagreed, Todd said $65 of the WSBA's $195 licensing fee goes to discretionary spending.

Todd denied the purpose of the resolution was to destroy. "It's the one specific proposal that deals with problems adequately funding discipline of lawyers. Everyone else just talks." He maintained the Bar can still do "good works on behalf of lawyers," but "by their consent, not by the power of the state."

Bellingham lawyer Peter Arkison told the meeting he didn't agree with everything the Bar spends money on, nor, for that matter, did he agree with everything his church budgets funds for. "The question is, as a whole, should we spend our money as we do?" Every group will have people who disagree with particular expenditures. But, overall, the Bar does a good job, he argued. "It's not possible to cut out the *Bar News*, for example, and expect the bar to be effective," Arkison said. "How will members communicate with each other?" The totality is that the WSBA has a good program, Arkison concluded. "It shouldn't be dismantled, a little lopped off here, an arm chopped off there."

Evelyn Fielding of Olympia told the meeting as a young, woman, government lawyer she represented the most disaffected groups in the Bar according to a recent member survey. From that you might expect me to go for any idea that reduces dues as low as possible, she continued. "Not so. The Bar Association sets the tone for the profession." She recounted how the WSBA is working on great issues of access to justice, training for new attorneys, the needs of specialty bar associations, and governance, and said that while she supported county and specialty bar associations, there are some projects only the state bar can do for the benefit of all the lawyers of the state. "The WSBA is being more responsive every year," Fielding concluded.

Terry Lee of Vancouver called Long's resolution "symptomatic of dissatisfaction with all institutions—you don't like pro baseball, you don't like Jimmy Swaggart . . ." But he argued general dissatisfaction isn't a reason to support the resolution, and he urged that it be voted down.

The question was called, and Long closed debate by observing "Most of the people saying this is the end of the world as we know it are wrong. It's the beginning of a new one.

"If you're saying members won't support programs unless forced to, you're wrong. Lawyers aren't that bad."

On a voice vote the resolution was audibly defeated. "Oh, gosh, darn," Long commented. Lem Howell of Seattle rose on a point of privilege to urge Long to wait until the Governance Task Force reports before filing a referendum, noting that each of Long's referenda cost WSBA members close to $20,000. "We don't have that money to be thrown around." Long did not respond.

President Stritmatter then introduced and turned over the gavel to president-elect Ron Gould of Seattle, who adjourned the meeting.

The 105th Annual Meeting Awards

Robert V. Jensen *was presented the Angelo Petruss Award for Lawyers in Public Service, named in honor of a Senior Assistant Attorney General who died during his term on the Bar's Board of Governors. It is given to a lawyer in government service who has made significant contributions to the legal profession, justice system and the public.*

Jensen, CEO of the Environmental Hearing Office and a member of the Pollution Control and Shoreline Hearings Board, has dedicated nearly all of his legal career to public service. He began in the Peace Corps in Ecuador and then served as an Assistant Attorney General for 23 years, being

Robert V. Jensen

recognized by the director of the Department of Ecology for his contributions to the Shoreline Management Act.

Jensen has served 10 years on the Lacey City Council and many more years on its various committees. He was president of the Better Government League of Thurston County from 1988-1992 and a founding director of the Government Lawyers Bar Association.

In numerous letters supporting his nomination for the award, his colleagues maintain that he is a living example of the professionalism that every lawyer should strive to attain.

"I can think of no greater compliment than to be so thought of by your peers," said WSBA President Paul Stritmatter.

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King County Superior Court Judge ***Charles V. Johnson*** *accepted the Outstanding Judge Award, presented for outstanding service to the bench and special contribution to the legal profession.*

Johnson served ten years as a Se-

Charles V. Johnson

attle Municipal Court Judge, but is best known for serving as cochair of the King County Superior Court Delay Reduction Task Force, and later as presiding judge of the King County Superior Court for more than four years, the longest tenure for a presiding judge in memory.

During those two terms, he inspired and led significant changes in the operation and management of the court, including reducing a "strangling case load backlog" and cutting in half the time from case filing to trial.

He has earned numerous awards, including "Distinguished Citizen Participation" from the Model Cities Program; YMCA Outstanding Service Award; "Outstanding Commitment toward Building a Better Community" from the American Judges' Association; and the Distinguished Alumni Award from the University of Washington School of Law.

"Judge Johnson has been the leader in streamlining our court system in King County by significantly reducing the delay in getting to trial. Justice delayed is justice denied. Judge Johnson has done more to bring justice to the justice system than anyone else." President Stritmatter said.

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Jerry F. King *received the Affirmative Action Award, presented to a lawyer or law firm making a significant contribution to affirmative action in the employment of ethnic minorities, women and the disabled in the legal profession.*

King was city attorney for Vancouver, Washington, for nearly 30 years, until his retirement on May 31, 1994. He nurtured, crafted and defended numerous city ordinances, resolutions and policies supporting racial justice, including the city's first Affirmative Action Ordinance in 1972 and the city's newest Work Force Diversity Program. He has authored more than 2,500 formal legal opinions on issues facing the city of Vancouver.

He also was an early advocate for victims of domestic violence, prosecuting these cases before it was "fashionable" or mandated by law. King was elected president of the Washington State Association of Municipal Attorneys in 1968 and president of the Clark County Bar Association from 1986-1987. He is currently an active participant on the YWCA Diversity Task Force and is chair of its Public Policy Committee.

Jerry F. King

Stritmatter said, "Jerry King has served his profession, the justice system and the public well. We salute his tireless efforts here today and thank him for a lifetime of commitment."

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Michael J. McKasy *received the newly created Special Leadership Award, given in special circumstances to a WSBA member who, through leadership and accomplishments on a local, county, state or national level, has brought distinct benefit or honor to the profession, the Bar and/or the public.*

McKasy has been active in the Bar's Litigation, Business Law and International Law sections. He is immediate past-president of the Tacoma/Pierce County Bar.

He received this award for his leadership, energy and hard work in organizing and planning the format and agenda for the Local Bar Leaders Conference held this past May in Chelan. The Tacoma lawyer took a novel approach to the conference, turning it into a very productive and popular two-day meeting. Bar lead-

The 105th Annual Meeting Awards

Peggy McKasy accepts the Special Leadership Award for her husband, Michael J. McKasy

ers from all over the state were able to share ideas and concerns in an open forum, serving to strengthen each local bar association as well as the State Bar. Bar leaders are already gearing up for next year's conference, which promises to be bigger and even better.

Said Stritmatter, "Mike devoted his considerable talents to bringing together all of the bar presidents for an exchange of ideas, which benefited all of the bar associations of Washington and the public."

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The Vancouver law firm of **Morse & Bratt** received the Bar's Pro Bono Award. This award is presented to a lawyer, nonlawyer, law firm or local bar association for outstanding efforts in providing volunteer services to the poor. It is based on cumulative efforts as opposed to a person's or firm's hours or financial contribution.

Morse and Bratt has long been active in the Clark County Volunteer Lawyers' Program. Last year, two of the firm's attorneys each donated more than 88 hours of time, while the firm as a whole donated more than 350 hours. The firm considers pro bono work to be mandatory for its 17 lawyers, who staff the Clark County Volunteer Lawyers' Program's weekly advice clinics and take cases for direct representation.

The firm also has partners serving on the volunteer program's board of directors, donates its conference room for board meetings, speaks to other attorneys about the importance of pro bono work, serves as consultants to attorneys with less expertise, and educates program staff about different areas of the law.

"The very foundation of the legal profession has been built on service to the public. The commitment and dedication of this firm serves as an inspiration for and to us all. The profession and the public have been well served by this firm and I am personally pleased to make this award," said President Stritmatter.

J.D. Nellor, a member of the firm, accepts the Pro Bono Award for Morse & Bratt.

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Longtime Indian rights activist and cofounder of the Northwest Indian Bar Association, **Frederick Paul**, who helped engineer the landmark Alaska Native Claims Settlement Act of 1971, posthumously received the Courageous Award. The award is presented to a lawyer who has displayed exceptional courage in the face of adversity. A member of the Tlingit tribe, he died April 28 at the age of 80. His son, lawyer Blair Paul, accepted the award.

Reared in Ketchikan, Alaska, Frederick Paul fought tirelessly on behalf of Alaska natives. In the 1940s and '50s he helped them oppose commercial fish traps imposed on the territory of Alaska by the federal government. He was inspired by his father, an attorney who obtained the acquittal of his wife after she was arrested in Wrangel, Alaska, for voting - then illegal for Native Americans - and who set aside his classical-singing career to lobby Congress for Native American voting rights in Alaska.

In the 1960s, Paul opposed the U.S. Department of the Interior's plan for noncompetitive oil leasing on Alaska's North Slope. The five-year court battle was settled with Alaskan Indians and Eskimos winning title to more than 40 million acres of land and $1 billion under the 1971 Alaska Native Claims Settlement Act. Paul gave up most of his practice, spending more than 7,000 hours on the case. After the court awarded him a $275,000 fee, the IRS levied Paul for taxes, breaking him financially.

"Mr. Paul committed all of his legal talents and energies to the problems of his clients, without regard to the fact that he wasn't being paid. His courage in the sacrificing of his own interest to aid that of his clients is a role model of professionalism for all of us," stated President Stritmatter.

Blair Paul accepts the Courageous Award for his father, Frederick Paul.

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Judith Proller, immediate past president of the Washington State Trial Lawyers Association, won the Professionalism Award. The award is given to the attorney who most exemplifies the spirit of professionalism ("pursuit of a learned profession in the spirit of public service and in the sharing of values.")

In this day and age when the legal profession is often criticized, Proller, a Bellingham attorney, was the moving force behind the idea of dedicating one month of the year to attorney's professionalism. Through her "mammoth" efforts, the trial lawyers, the WSBA, local and specialty bars were able to jointly designate March as "Professionalism Month." Additionally, she spent a good portion of her year as president of WSTLA traveling around the state discussing professionalism.

"At a time when lawyers have been more concerned than ever with professionalism, Judy Proller stepped forward in her leadership role as president of WSTLA and began to forge a new commitment by all segments of

The 105th Annual Meeting Awards

Judith Proller

the bar to the concepts of professionalism. Through her leadership, the entire Bar focused on issues of professionalism during the month of March and brought a new awareness of the issues and commitment to an increase in the levels of professionalism by all lawyers of this state," stated President Stritmatter.

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The President's Award went to ***Ada Shen-Jaffe****. It is given "for special accomplishment or service to the WSBA" during the term of the current president.*

Shen-Jaffe, executive director of Evergreen Legal Services since 1986, was nominated for her "incredible" commitment to access to justice for all citizens, not only this year, but over a long period of time. The Supreme Court's newly authorized Access to Justice Board was initially her idea.

In addition to her efforts in support of this cause, this past year she served on the transition team for Legal Services Corporation in Washington, D.C.. establishing new leadership to help guide the national corporation in a new direction. Meanwhile, she has been a driving force behind Legal Access in Washington (LAW) Fund, and a powerful proponent of applying the IOLTA (Interest on Lawyer Trust Accounts) rule to Limited Practice Officers. She has also served on the WSBA's Governance Task Force.

Before becoming executive director at Evergreen, Shen-Jaffe was deputy director from 1981-1986, a staff attorney for Northwest Washington Legal Services, and served on numerous boards and task forces.

Upon presenting the award, Stritmatter said, "Thousands of Washington's citizens have been positively affected by the dedication of Ada Shen-Jaffe. Her passion and enthusiasm for the issue of access to justice for all of the citizens of Washington has been the foundation of many of the improvements of recent times. Both the legal profession and the public which we serve owe her our appreciation."

Ada Shen-Jaffe

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The Bar's most prestigious award, the Award of Merit, given for long-term service to the Bar and/or the public, was shared by two recipients - attorney ***Frank V. Slak, Jr.*** *and* ***Ruth Walsh McIntyre****.*

As a member of the Committee of Bar Examiners since 1979, Slak is one of those responsible for the professional way that the Bar examination has been handled over the years. He was chair of the 1985 effort to develop new procedures for the bar exam and to restructure the examination itself in order to strengthen the screening process and make the examination uniform and fair. He has dedicated more than 400 hours each year to the Committee, including developing a training process for new bar examiners and presiding as chair since 1990.

Slak has worked in many positions in Spokane, including those of Visiting Professor in the Research and Writing Program at Gonzaga University, Assistant City Attorney, Clerk for Judge J. Ben McInturff and Court/Staff Attorney. He is currently a Court Commissioner of Division III of the Court of Appeals.

"Testing the legal abilities of prospective lawyers is one of the fundamental responsibilities of the Bar Association. Frank has guided our committee of bar examiners for the past four years in one of the most outstanding

Frank V. Slak, Jr. and Ruth Walsh McIntyre

efforts in the nation. Today we recognize his contributions and leadership with our highest award," Stritmatter said.

Ruth Walsh McIntyre has been a friend of the Bar for more than a decade, and has served in many important positions, doing so with integrity and trustworthiness. She has served the WSBA and the public as a member of the Bar's Disciplinary Board, the Client's Security Fund, the Character and Fitness Committee, and is currently on the Governance Task Force.

Growing up in a family of lawyers prepared her for a lifetime of public service, which she continues today by donating her time to more than a dozen organizations, including serving on the board of directors for the Washington Generals, a service organization working with school children, and as president of the Advisory Board for Seattle University's School of Nursing. She and her husband also founded the nonprofit agency International Visions, which works with third-world countries and is currently building a hospital in Shanghai.

Previously a newscaster on KOMO TV, she now works in Seattle as a correspondent for various broadcast news organizations around the world. She is presently working on a master's degree in education at Seattle University.

"We as lawyers devote our time to the Bar Association and the advancement of jurisprudence as a matter of professionalism. Ruth Walsh, who is not a member of this profession, has given tireless service to the programs of the Bar Association for the advancement of the administration of justice. We recognize her commitment by awarding her our most prized Award of Merit," said Stritmatter.

Northwestern School of Law
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December 6-7, 1994 Seattle **December 8-9, 1994 Portland**

The Most Authoritative Hazardous Waste Conference

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Special breakout sessions/Planned by ELMAC with special assistance from EPA Region 10

$325 ($345 after November 6) 14 CLE credits applied for

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Professor Stanley Johanson – University of Texas Law School

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Rodney Owens, Attorney – Meadows, Owens, Collier, Reed, Cousins & Blau – Dallas, TX

Family Partnerships and LLC's –
D. John Thornton, Attorney – Stoel Rives Boley Jones & Grey – Boise, ID

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CLE DOCKET

End of the year update for last minute CLE requirements

November 18
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National Business Institute Inc. (715) 835-7909
National Education Network (800) 637-0020
National Employment Law Institute: (415) 924-3844
National Institute of Trial Advocacy (NITA) (800) 225-6482. BBS registration, messages, etc.: Set communication program to 8 bits, no parity, 1 stop bit, then call (219) 234-7348.
Spokane County Bar Association (509) 623-2665
Tacoma-Pierce County Bar Association (206) 383-3432
University of Washington School of Law (UW CLE) (206) 543-0059; (800) CLE-UNIV
Washington Association of Prosecuting Attorneys (WAPA) (206) 727-8202
Washington State Bar Association CLE (WSBA CLE) (206) 727-8202
Washington State Trial Lawyers Association (WSTLA) (206) 464-1011, (800) 732-9251

October 1994

TBA Seattle: Guardianship and the law and Urban & Industrial Development *Sponsored by* KCBA.

3 Seattle: Forging a New Vision of Justice: Law in the Public Interest. *Co-sponsored by* ACLU, Trial Lawyers for Public Justice and law students at UW and Seattle University. From 8:45 am to 1:30 pm, the conference will be held at the HUB Ballroom at the UW campus. Attendance is free, and no preregistration is required.

3-6 Seattle: Getting to Know the Courthouse. *Sponsored by* KCBA. Times and locations vary. Call KCBA office.

6-7 Seattle: 39th Annual Estate Planning Seminar. *Sponsored by* WSBA CLE.

7 Seattle: Estate Planning Skills Training Certificate Program. *Sponsored by* UW CLE. **Continues Nov. 4, 18, Dec. 2.**

11-12 The Pacific Northwest and the Global Economy: The Americas. *Sponsored by* Institute for Professional and Busines Organizations, (206) 285-5325.

13 Seattle: Reception for minority lawyers interested in judicial careers. *Sponsored by* WSBA Judicial Recommendations Committee. *For information:* (206) 727-8227.

13-14 Seattle: Association of Legal Administrators Region 5 Annual Educational Conference. Contact: (708) 816-1212.

14 Seattle: Federal Tax Controversies. *Sponsored by* WSBA CLE.

14-15 Yakima: WSBA Board of Governors meeting.

15 Deadline for Dec. '94 *Bar News.*

19 Seattle: Red Flags, Black Holes & Silver Linings—Risk Management. *Sponsored by* Seabury & Smith. *For information:* (206) 292-7159/(800) 552-7200 ext. 159.

19 Dealing with the Sexual Harassment Claims in Washington. *Sponsored by* National Education Network.

20 Seattle: Seattle-King County Public Defender Association 25th Anniversary Dinner. *Contact:* (206) 447-3900, ext. 603.

20 Seattle: Family Law. *Sponsored by* WSBA CLE.

20 Seattle: Bankruptcy in Construction. *Sponsored by* KCBA.

21 Olympia: Limited Liability Companies. *Sponsored by* WSBA CLE.

26 Spokane: Limited Liability Companies: The Entity of Choice in Washington. *Sponsored by* National Business Institute. *Contact:* Thomas M. Culbertson, (509) 838-2038.

27 Seattle: Bankruptcy/Garnishment. *Sponsored by* WSBA CLE.

28 Seattle: Employment Law. *Sponsored by* WSBA CLE.

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

28 Seattle: The Basics of Valuation. *Sponsored by* KCBA.

November 1994

2 Tacoma: Trial Tactics for Successful Appeals. *Sponsored by* TPCBA Young Lawyers. *For information:* (206) 564-2111.

4 Spokane: Criminal Law. *Sponsored by* Spokane County Bar Association.

4 Seattle: Guardian ad Litem Seminar for Family Law Attorneys. *Sponsored by* KCBA.

4 Seattle: Employer's Rights and Responsibilities. *Sponsored by* KCBA.

9 Seattle: Roberta Cooper Ramo, ABA president-elect; King County Washington Women Lawyers President's Leadership Award luncheon. *Contact:* Jill Patterson, (206) 454-3313.

10 Seattle: Private v. Public Employees. *Sponsored by* KCBA.

10 Seattle: Employer's Rights and Responsibilities. *Sponsored by* KCBA.

15 Deadline for Jan. '95 *Bar News.*

30 Seattle: Family Law Institute. *Sponsored by* KCBA.

Notices of Interest to WSBA Members

Disciplinary Notice

State of Washington, Commission on Judicial Conduct:

The Commission on Judicial Conduct admonished **Charles H. Thronson**, judge *pro tempore* of the Walla Walla Municipal Court at its public business session August 5, 1994. An admonition is a written action of the Commission of an advisory nature that cautions a judge not to engage in certain proscribed behavior. From an agreed statement of facts, the Commission determined that Thronson did not conduct himself appropriately in court.

On May 18, 1993, Thronson conducted a hearing, the record of which indicated he was rude in tone and manner to the defendant, calling him names such as "smart aleck," telling him to "shut up before you go to jail," and lecturing him on being a loser.

Thronson, responding to the Commission Statement of Allegations, replied that he did not doubt that the tape recorder accurately recorded the proceedings. He stated he says such things seldom and then only for good reason. He believed his behavior was justified because the case was a criminal matter and that the defendant earlier had pled guilty.

Based upon the foregoing recitals, Thronson stipulated on June 6, 1994, that while serving as a judge *pro tempore* of the Walla Walla Municipal Court, he did violate Canons 1, 2(A) and 3(A) of the Code of Judicial Conduct. He accepted the Commission's determination that his described conduct was a violation of the Code of Judicial Conduct, and he agreed that he will exercise caution to avoid repeating the violation in the future. Thronson represented himself. David Akana, executive director of the Commission, represented the Commission. *In re the Matter of Hon. Charles H. Thronson, Judge Pro Tempore, Walla Walla Municipal Court,* No. 93-1548-F-45. [August 5, 1994]

Public Notices

King County Superior Court Rule Changes

A number of changes to the Local Rules of King County went into effect September 1, 1994. Complete copies of the Local Rules are for sale in the Clerk's Office in hard copy and WordPerfect 5.1 diskette form. They are also available on L.A.W. BBS, the WSBA computer information system. The following is a synopsis of the changes: reader should obtain the full text.

Rule Changes

0.4 Changes Superior Court committee selection procedures to be consistent with changes made last year in LR 0.3 concerning the duties of the Presiding Judge.

0.8 Updates Superior Court committees provided for in rules.

0.10 Deletes references to nonexistent policies and guidelines; clarifies jurisdiction of family court regarding nonmarital relationships.

0.12 Deletes summary judgment and civil motion department of the court.

0.14 Adds criminal department as official department of the court.

4.1A Adds "Confirmation of Completion of Blood Testing" form required by the paternity case schedule.

5 Deletes penalties section which was not consistent with LR 7 and unduly limiting on the trial judge.

7 Clarifies which motions are heard in family law and which on the civil motions calendar; clarifies motion continuance procedures; clarifies procedure when motion set for non-civil day.

16 Deletes reference to "Pretrial and Settlement Judge(s)" and makes rule closer to current practice, particularly regarding settlement conferences. Deletes mandatory settlement conference for family law cases; provides for assigned judge, presiding judge or family law commissioner to decide which cases should have settlement conferences; makes reference to pretrial affidavit for family law cases consistent with required OAC form.

23 Adds provision that the court, on motion of party or on its own motion, may limit communication with class members; deletes prohibition of communication with class members.

48 Clarifies procedure for demanding jury.

56 Deletes official comment and clarifies continuance process; clarifies procedure when summary judgment set for nonjudicial day.

65 Deletes local rule sections which incompletely summarize notice requirements and statutory law regarding injunctions.

94.04 Numerous changes designed to make references where appropriate to legislatively mandated forms, to conform the rules to existing practice, and to clarify ambiguities that regularly raise problems.

LJuCR Incorporates numerous changes to titles II, III and IV regarding dependency actions, which were adopted on an emergency basis in July, conforming the rules to recently enacted legislation.

Changes in Domestic Relations Pattern Forms:

Due to statutory changes made in the 1994 legislative session, the Office of the Administrator for the Courts has approved changes to the pattern domestic relations forms. WPF DR 01.0400 (parenting plan) and WPF DR 01.0500 (order of child support) have been altered by the addition of statutory references and other language.

Computer codes on three forms have also been changed. These SCOMIS codes, just beneath the title of each form, went into effect August 15, 1994, and are mandatory. There is no change to the "last revised" date on the parentage forms: it remains "7/93". The "last revised" date on the dissolution parenting plan form has changed to "6/94" because of other changes noted above.

The full text of the changes, as well as revised forms, were published August 19, 1994, in the *Supreme Court Advance Sheets* and are available on-line via the WSBA LAW-BBS computer bulletin board.

Legal Foundation of Washington Seeks Goldmark Award Nominations:

The Legal Foundation of Washington, created in 1984 at the direction of the Supreme Court of Washington to fund organizations to provide civil and legal services to low income people, seeks nominations from the Bar and public for the 1995 Goldmark Award. The award is given to an individual and/or organization in recognition of outstanding achievement in providing equal access to justice.

The award will be presented at the Foundation's annual Goldmark Award Luncheon on January 20, 1995 at the Sheraton Hotel in Seattle.

The Goldmark Award was created in 1987 to honor Charles A. Goldmark, second president of the Legal Foundation of Washington, and a major architect of the IOLTA program in Washington.

Send nominations, which may include documentation and letters of support, by **October 30, 1994**, to the Legal Foundation of Washington, 500 Union Street, Suite 945, Seattle, Washington 98101.

Changes in Judgment Laws

Extending Judgments an Additional Ten Years: SSB-6045, Chapter 189, Laws of 1994, amends RCW 6.17.020 effective June 9, 1994. Within 90 days of the expiration of the original ten year period of validity of a judgment, a judgment creditor may petition the court for an order granting an additional ten years in which execution may issue. The petitioner must pay the Clerk's $110 filing fee at the time of the filing of the petition. The filing fee shall be included in the judgment summary of the order as a recoverable cost. The petition and order shall reference the cause number as originally assigned to the cause of action.

Judgments Are Not Valid Without Summary at Beginning: ESB-5449, Chapter 185, Laws of 1994, amends RCW 4.64.030, effective June 9, 1994. The court clerk is required to enter on the execution docket only those money judgments that have a judgment summary on the first page of the order, identifying the judgment creditor, name of his or her attorney, the judgment debtor, the amount of the judgment, the interest owed to the date of the judgment and the total of the taxable costs and attorney fees. Filings which do not contain such a summary will not be handled as judgments and will not be placed on the execution docket. Any subsequent filing of a judgment summary must be approved and signed by the court.

Attorney General Opinions Issued:

I. Counties—Land Use Regulations—Environmental Regulations—United States—State Agencies—Authority of county to require federal and state agencies to follow county policies and procedures.

The Attorney General's Office has issued an opinion in response to a request by Sen. Eugene A. Prince. The opinion answers two questions:

1. Does a county in Washington have legal authority to impose procedural or substantive legal requirements on the United States and its agencies in the area of land use or environmental regulation?

Synopsis of Answer: A county lacks authority to require any agency of the United States to follow county policies or procedures in land use decisions or environmental regulation, except where Congress has specifically directed federal agencies to conform to local law.

2. Does a county in Washington have authority to impose procedural or substantive legal requirements on agencies of the State of Washington on the area of land use or environmental regulation?

Synopsis of Answer: A county lacks authority to require any agency of the State of Washington to follow county policies or procedures in land use or environmental regulation, except where state law, expressly or by necessary implication, requires state agencies to conform to county procedural or substantive requirements as to a particular agency decision.

Cite as AGO 1994 No. 10, July 29, 1994. Jeffrey T. Even, Assistant Attorney General, is author of the opinion.

II. Schools—School Employees—Salary and benefits—Health Care Authority—Retired Public Employees—Collective Bargaining—Relation of subsidy paid under RCW 28A.400.400 to reduce health insurance premiums for retired employees to salary and compensation limitations imposed by RCW 28A.400.200:

The Attorney General's Office has issued an opinion in response to requests by Sens. Phil Talmadge and Betti Sheldon. The opinion answers two questions:

1. Does the subsidy which must be paid to the Health Care Authority under RCW 28A.400.400 to reduce health insurance premiums for retired school employees affect the insurance benefits allocation for the purposes of determining compliance with the limitation on salaries and compensation imposed by RCW 28A.400.200?

Synopsis of Answer: a) The Legislature has authorized, but has not required, that the payments to be made to the Health Care Authority under RCW 28A.400.400 to reduce health insurance premiums for retired school employees be made from certain funds appropriated in the budget for insurance benefits for current school employees.

b) Money paid to the Health Care Authority for health care benefits for retired school employees should be disregarded in calculating the amounts paid by a school district for salary and benefits for current employees for purposes of applying the compensation limitations established pursuant to RCW 28A.400.200.

Synopsis of Answer: May the source of the subsidy be a subject of collective bargaining between school districts and employees?

2) A school district has discretion to make the payments to the Health Care Authority required by RCW 28A.400.400 out of the appropriation for employee insurance benefits or out of other funds; therefore, the exercise of that discretion affects wages and working conditions of current employees and is a lawful subject for collective bargaining between employees and the district.

Cite as AGO 1994 No. 11, August 8, 1994. Adrienne Smith, Assistant Attorney General, is author of the opinion.

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

The average coupon equivalent yield from the first auction of 26 week treasury bills in September 1994 is 5.08%. ***The maximum allowable interest rate permissible for October 1994 is therefore 12%.***

Compilations of the average coupon equivalent yields from past auctions of 26-week treasury bills, and past maximum interest rates for the past 10 years, appear on page 48 of the *June 1994 Bar News*.

COMMITTEE APPOINTMENT OPPORTUNITIES FOR WSBA MEMBERS

The Board of Governors of the Washington State Bar is called upon to make appointments to various boards, commissions and committees listed below. These vacancies are in addition to those on standing committees of the WSBA, for which a separate mailing goes out to each member annually. Some timeframes for application are shorter than others, as a result of the need to start this service at some point in time and the desire to include as many openings as possible. Over time all openings will be listed at least three months prior to Board action.

Members are encouraged to apply for any and all positions that are of interest. Applications may be directed to Dennis P. Harwick, Executive Director, WSBA, 500 Westin Building, 2001 Sixth Avenue, Seattle, Washington 98121-2599, or to members' representatives on the Board of Governors. Members of the Board of Governors, the congressional or other districts they represent, and their city or residence are listed on the masthead of the *Bar News*.

Board for Judicial Administration (BJA): One Seat
(Call for applicants-September; Board action-November)

The term of Ronald M. Gould (Seattle) expires December 31, 1994. The term of William H. Gates, Jr. (Seattle) expires December 31, 1995. There is no set term (terms coincide with the term of office of each member, most of whom are judges), but the Board prefers that individuals serve two to three years for continuity. Meetings expenses are paid by the BJA. For a description of the BJA, see Board of Judicial Administration Rules (BJAR) in the Supreme Court's Rules of General Application.

JUVIS Advisory Committee: One Seat
(Call for applicants-November; Board action-January)

The term of James A. Doerty (Seattle) expires February 23, 1995. The Board assists the Office of the Administrator for the Courts in dealing with juvenile criminal records. A familiarity with juvenile records and their uses in the criminal justice system, as well as with computers, is recommended. Meeting expenses are paid by the OAC.

Legal Foundation of Washington Board of Trustees: Two Seats
(Call for applicants-September; Board action-November)

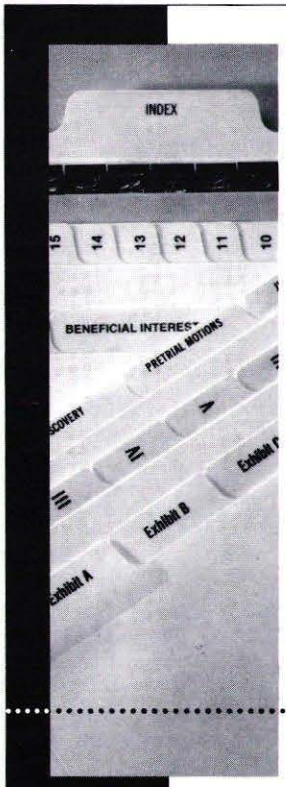
The two-year terms of Rebecca Baker (Republic) and William P. Bergsten (Tacoma) expire December 31, 1994. The two-year term of Kevin F. Kelly (non-lawyers member appointed by WSBA) expires December 31, 1995. The Foundation manages and disburses the interest earned on lawyers' pooled trust accounts (IOLTA) The funds go to support legal assistance and education programs in Washington. A knowledge of, and interest in, access to justice for low-income persons and a willingness to devote the time required to carry out the Foundation's duties. The Board meets five to six times per year for full-day meetings. Committee meetings may require additional time. Meeting expenses are paid by the Foundation. The open terms commence January 1, 1994, and end December 31, 1995. Trustees are eligible for appointment to one additional term, for a total of four years' service.

Limited Practice Board: Two Seats
(Call for applicants-September; Board action-November)

The three-year terms of William L. Green (Seattle) and Teresa A. Sherman (Spokane) expire December 31, 1996. The Board is authorized under Admission to Practice (APR) Rule 12. No less than four of the nine members must be lawyers. WSBA nominates members for appointment by the Supreme Court. Meeting expenses are paid by the Supreme Court.

Ethics Advisory Committee: One Seat
(Call for applicants-September; Board action-November)

The two-year term of Mary H. Wechsler (Seattle) expires December 31, 1995.



WASHINGTON LAWYER DISCIPLINE ANNUAL REPORT — 1993

by **Leland G. Ripley**
Chief Disciplinary Counsel, WSBA

1993 Developments

- The WSBA and Washington Supreme Court requested ABA evaluation of our discipline system. The evaluation team visited WSBA and the Supreme Court March 3-5, 1993.
- The ABA Evaluation Team Report received September 29, 1993.
- The fee arbitration petition form and explanatory brochure revised.
- Rules of Professional Conduct, Rules 1.8 and 8.4 were amended.
- The WSBA recommends that the Supreme Court adopt APR 15 creating an independently funded Client Security Fund.
- Rules for Lawyer Discipline were amended to provide for Disciplinary Board consideration of all stipulated dispositions of disciplinary matters instead of Review Committees considering stipulations to dismissal or lesser sanctions.
- 2,236 new grievances were opened.
- 2,218 grievance files were closed.
- 4,878 brochures, forms and ethics opinions mailed in response to inquiries.
- Counsel was hired to provide informal personal ethics opinions.

Washington Supreme Court Decisions

In re Richard A. Peterson, 120 Wn.2d 833, 846 P.2d 11330 (1993). The Court found the lawyer's depression was insufficient mitigation to avoid disbarment for theft.

In re John O. McLendon, 120 Wn.2d 761, 845 P.2d 1006 (1993). The Court (4-3 with two abstentions) found that bipolar illness was sufficient mitigation to change the Disciplinary Board's disbarment recommendation to a two-year suspension for trust account theft.

The Court suspended six lawyers pending completion of their disciplinary proceedings. Five suspensions resulted from felony convictions and 1 resulted from the Court's finding that the lawyer's continuing to practice constituted a threat of harm to the public.

Disciplinary Board Meetings

The Disciplinary Board meets as a Committee of the whole every other month. In FY 1993 the full Board met November 13, 1992, January 22, March 19, May 21, July 16, and September 24, 1993. The Board approved seven disbarment recommendations, 5 stipulations and two hearing records, three suspension stipulations, and one hearing recommendation of a censure. The Board made six suspension recommendations after hearing, and the Board dismissed one hearing matter with an admonition. Pursuant to the Chair's order, the Board also considered five appeals of Review Committee dismissals. The Board also reviewed the text of two Reprimands issued to lawyers.

Review Committee Meetings

There were 12 Review Committee meetings during FY 1993. Each committee consists of two lawyers and 1 nonlawyer member of the Disciplinary Board. The Committees approved six stipulations to a Letter of Censure, and two stipulations to a Reprimand. The Committees dismissed 212 grievances, 10 original dismissals, 202 conditional dismissal appeals. The Committees also dismissed 17 grievances with advisory letters. The Committees approved one stipulated dismissal of an inquiry into a lawyer's competency. Committee action resulted in acceptance of 18 Admonitions involving 19 grievances.

Staff Handling of Grievances

Staff dismissed 1,047 grievances (47.20% of all closures) without requesting the lawyer's response, 464 failed to state a grievance, 209 were referred to fee arbitration, 66 to the Interprofessional Committee for mediation, and 13 to the Commission on Judicial Conduct. Staff sent 131 letters to lawyers asking that they contact their clients to resolve communication problems, and dismissed 142 grievances after an informal investigation. We also closed 22 grievances after writing to the grievant and explaining their option to choose fee arbitration or to pursue a grievance.

Staff dismissed 739 grievances (33.32% of all closures) after investigation. We closed 39 grievances because the lawyer was disbarred, suspended or had disappeared. Twenty-seven grievances were deferred, and we closed 20 grievances for miscellaneous reasons such as costs payment or referral to other agencies.

Special District Counsel

There are 335 Special District Counsel, lawyer volunteer investigators. During 1993 SDCs investigated and reported to disciplinary counsel on 143 grievances. This is approximately 30% of the possible investigations SDCs could handle.

Fee Arbitration

The WSBA runs a voluntary fee arbitration program. The reasonableness of a lawyer's fee is arbitrated if both the lawyer and the client agree. In 1993, we received 204 fee arbitration petitions. 70 agreements to arbitrate resulted in 63 hearings and six settlements and one proceeding remains pending. Because each dispute is unique, we do not keep a record of the prevailing party.

A party, usually the lawyer, may precondition agreement to arbitrate on the other party, usually the client, depositing the disputed amount into the WSBA trust account to be paid to the prevailing party. In 1993 we deposited disputed fees totaling $67, 601.09 into trust.

Trust Account Overdrafts

During 1993 we opened 188 [1992 - 226] investigations based upon trust account overdraft notices. In 1993, we closed 146 [1992 - 192] of these investigations.

1993 Trust Account Overdraft Closures

Five for-cause audits resulted from overdraft notices. Forty-two overdraft notices remain under investigation.

Trust Account Audits

In 1993, staff completed 10 audits for cause. These audits revealed three cases of trust account conversion, five lawyers

not in compliance with RPC 1.14 and two lawyers in compliance with RPC 1.14.

In 1993 staff completed random examinations of 89 firms involving 840 lawyers. Under trust account regulations approved by the Supreme Court, 30 days after a law firm complies with the chair of the Disciplinary Board's order the WSBA copy of the examination report is destroyed. As of February 1, 1994, there were four 1993 examinations awaiting proof of compliance.

Ethics Inquiries

For part of 1993, as a membership service, one disciplinary counsel provided daily informal personal ethics opinions. For 168 days in 1993 disciplinary counsel answered 1,964 inquiries, an average of 11.69 inquiries each day!

Lawyers Disciplined

While seven grievances were dismissed at the hearing stage, 20 sanctions were imposed on 17 lawyers. There were five Letters of Censure, and three Reprimands. 7 lawyers were suspended and five disbarred.

Lawyers Censured

Herbert D. Austad - Port Orchard
Robert J. Verzani - Federal Way
Herbert H. Fuller - Olympia
George Livesey - Mount Vernon
Thomas G. Olmstead - Seattle

Lawyers Reprimanded

Dennis O. McMullen - Spokane
John C. O'Rourke - Seattle
Dale L. Russell - Deer Park

Lawyers Suspended

William K. Angle - Seattle
John O. McClendon - Spokane
F. Curtis Hilton - Tacoma
Edna N. Verzani - Federal Way
James Thomas Hopkins - Everett
William C. Zosel - Seattle
Allison J. Lyon - Everett

Lawyers Disbarred

Mary C. Jarvis - Out of State
Kenneth Jennings - Tacoma
Richard A. Petersen - Vancouver
Michael L. Roswell - Olympia
William J. Siesseger - Tacoma

RPC Amendments

RPC Rule 1.8 was amended to permit repayment of expenses in class actions to be contingent on the outcome of the litigation.

RPC Rule 8.4 was amended to add (g) which prohibits a lawyer from committing a discriminatory act in connection with the lawyer's professional activities.

Reason for Overdraft	Number	Percent	Change
Bank Error	37	25.34	-12.16
Deposit to Wrong Account	26	17.81	-.02.49
Improper Endorsement	19	13.01	+04.71
Disbursal Before Deposit Cleared	35	23.97	-01.03
Math Error	29	19.86	+10.96

Financial Information — FY 1993

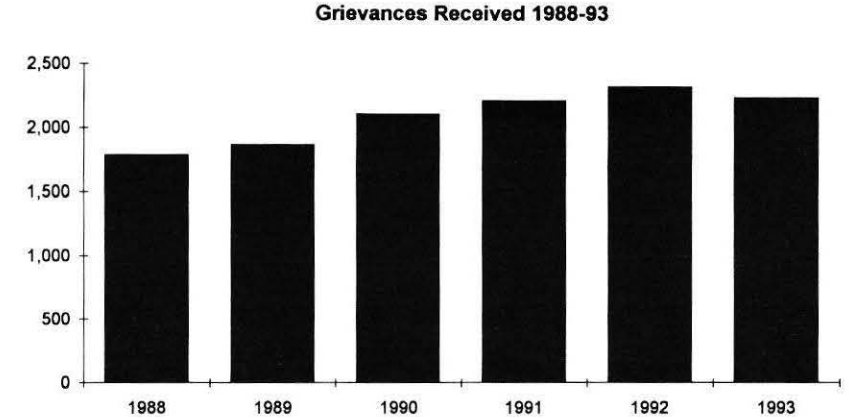
WSBA Expenditures on Client Security Program	$108,727.96
WSBA Expenditures on Discipline	$917,028.70
WSBA Expenditures on Fee Arbitration	$22,281.11
WSBA Expenditures on Lawyer's Assistance Program	$222,342.07
WSBA Expenditures on Trust Account Audits	$187,119.39
Total	**$1,457,499.23**

This is 42.1% of Licensing Fee Revenues

New Matters Opened in 1993

Disciplinary Grievances	2,196
Interim Suspension Requests	7
Reciprocal Discipline	5
Motions to Appoint Counsel to Protect Clients	4
Disability Proceedings	4
Probation Monitors	6
Cost Monitors	13
Reinstatement Proceedings	0
Total	**2,236**

[1992 = 2,324 / -3.79%]



Nature of Grievances—1993*

Nature of Grievance	*Number*	*Percent*
Advertising & Solicitation	35	1.59
Lawyer's Fees	278	12.66
Trust Account Violations[includes overdrafts]	282	12.84
Unsatisfactory Performance	785	35.75
Violation of a Duty to a Client	293	13.34
Interference with Justice	182	8.29
Personal Behavior	306	13.93
Violation of a Duty to the WSBA	35	1.59

* For a more detailed explanation of the nature of these grievances, see pages 48-49. For a table correlating some of these grievances with areas of practice, see page 49.

Identity of Grievant—1993

Identity of Grievant	*Number*	*Percent*
Client	504	22.95
Former Client	542	24.68
Opposing Client	235	10.70
WSBA	280	12.75
Ct. Reporter/Expert Witness	62	02.82
Other Lawyer	67	03.05
Opposing Counsel	29	01.32
Judicial	7	00.32
Other	449	20.45
Unknown	21	00.96

Areas of the Law—1993 Grievances

Area of the Law	*Number*	*Percent*
Family Law	519	23.63
Criminal Law	303	13.80
Torts	227	10.34
Estates/Probate	98	04.46
Real Property	80	03.64
Bankruptcy	62	02.82
Collections	45	02.05
Guardianships	29	01.32
Foreclosure	26	01.18
Corporate & Banking	20	00.91
Workers Compensation	20	00.91
Contracts/Consumer Law	18	00.82
Administrative Law	15	00.68
Landlord/Tenant	14	00.64
Immigration	14	00.64
Labor Law	14	00.64
Commercial Law	11	00.50
Juvenile Matters	4	00.18
Traffic Offenses	3	00.14
Environmental Law	3	00.14
Taxation	2	00.09
Patent/Trademark	1	00.05
Anitrust	0	00.00
Other	97	04.42
Unknown	339	15.44
None	232	10.56

Disposition of Closed Matters, 1991-1995

DISPOSITION	1991	1992	1993	1994	1995
DisciplineImposed/ Discipline-related (1)	119 4.7%	138 5.7%	111 5.00%		
Interim Suspension	4 0.1%	5 0.2%	6 0.27%		
Disability Transfer	14 0.5%	1 0.1%	0 0%		
Dismissal after Hearing	3 0.1%	7 0.2%	0 0%		
Dismissal with Advisory Letter	76 2.9%	42 1.8%	17 .77%		
Review Committee Dismissals (2)	197 7.7%	213 8.9%	212 9.56%		
Staff Dismissals After Investigation	1085 42.5%	884 36.8%	739 33.32%		
Deferred	27 1.0%	34 1.4%	27 1.22%		
Staff Dismissals Without Request for Lawyer's Response	888 34.8%	979 40.8%	1047 47.20%		
Miscellaneous (3)	146 5.7%	99 4.1%	59 2.66%		
Totals	2559 100%	2402 100%	2218 100%		

Disposition of Closed Matters, 1986-1990

DISPOSITION	1986	1987	1988	1989	1990
Discipline Imposed/ Discipline-related(1)	82 4.4%	9 3.8%	81 4.9%	86 5.4%	82 4%
Interim Suspension	0	0	3 0.2%	3 0.2%	8 0.4%
Disability Transfer	1 0.1%	6 0.3%	3 0.2%	4 0.2%	1 .05%
Dismissal After Hearing	11 0.6%	6 0.3%	2 0.1%	1 0.1%	1 0.05%
Dismissal with Advisory Letter	87 4.7%	68 3.8%	61 3.7%	52 3.3%	50 2.5%
Review Commitee Dismissals(2)	245 13.2%	218 12%	203 12.3%	209 13.1%	179 8.8%
Staff Dismissals After Investigation	840 45.2%	763 41.9%	718 43.4%	631 39.6%	815 40%
Deferred	10 0.5%	19 1.0%	20 1.2%	13 0.8%	36 1.8%
Staff Dismissals Without Request for the Lawyer's Response	515 27.7%	555 30.4%	460 27.8%	508 31.9%	818 40.2%
Miscellaneous(3)	66 3.6%	119 6.5%	103 6.2%	86 5.4%	43 2.1%
Totals	1857 100%	1823 100%	1654 100%	1593 100%	2033 100%

Disposition of Closed Matters, 1981-1985

DISPOSITION	1981	1982	1983	1984	1985
Discipline Imposed/ Discipline-related	57 5.8%	51 4.7%	112 7.7%	91 7.0%	90 5.5%
Disability Transfer	0	1 0.1%	5 0.3%	2 0.2%	2 0.1%
Dismissal After Hearing	4 0.4%	10 0.9%	10 0.7%	11 0.9%	18 1.1%
Dismissal with Advisory Letter	56 5.7%	71 6.5%	119 8.2%	107 8.3%	75 4.6%
Review Committee Dismissals	———	422 38.6%	308 21.1%	169 13.1%	228 14.0%
Staff Dismissals After Investigation	501 50.8%	80 7.3%	414 28.4%	459 35.5%	712 43.9%
Deferred	2 0.2%	7 0.6%	12 0.8%	3 0.2%	15 0.9%
Staff Dismissals Without Request for Lawyer's Response	366 37.1%	444 40.6%	458 31.4%	431 33.3%	461 28.4%
Miscellaneous	-----	8 0.7%	20 1.4%	21 1.6%	22 1.4%
Totals	986 100%	1,094 100%	1,458 100%	1,294 100%	1,623 99.9%

Notes to Disposition of Closed Matters

(1) Includes stipulations to misconduct without discipline and, after 1986, admonitions, although an admonition is a finding of misconduct.

(2) Includes original dismissals and conditional dismissal protests.

Notes to Discipline Imposed

(4) This sanction is not in the Rules for Lawyer Discipline, effective January 21, 1983.

(5) Based upon active in-state lawyers at midyear.

(6) A nonpublic finding of misconduct without the imposition of a disciplinary sanction.

(7) Not a sanction, can be imposed for up to two years when a lawyer is sanctioned.

Before January 21, 1983, probation was imposed as a "suspended" suspension.

Discipline Imposed, 1991-1995

DISCIPLINE	1991	1992	1993	1994	1995
Censure	5	9	5		
Reprimand	3	5	3		
Suspensions (average days)	4 (443)	6 (267)	7 (334)		
Disbarment	9	11	5		
Total Sanctions	21	31	20		
Total Grievances Resulting in Discipline	56	104	92		
Lawyers Disciplined	21	29	17		
Percentage of Lawyers Sanctioned (5)	.2%	.2%	.11%		

Discipline-related Matters, 1991-1995

Admonition (6)	66	34	19		
Probation (7)	3	9	6		

Discipline Imposed, 1986-1990

DISCIPLINE	1986	1987	1988	1989	1990
Censure	19	16	5	2	2
Reprimand	5	5	4	4	2
Suspended Suspension (4)	1	------	------	------	-----
Suspensions (Average days)	8 (140)	4 (288)	4 (343)	6 (321)	6 (461)
Disbarment	5	3	11	6	4
Total Sanctions	38	28	24	18	14
Total Complaints Resulting in Discipline	63	37	22	59	37
Lawyers Disciplined	30	20	24	17	14
Percentage of Lawyers Sanctioned (5)	.25%	.17%	.17%	.13%	.10%

Discipline-related Matters, 1986-1990

Admonition (6)	10	23	23	23	34
Probation (7)	5	6	3	6	3

Discipline Imposed, 1981-1985

DISCIPLINE	1981	1982	1983	1984	1985
Censure	22	24	21	31	19
Reprimand	12	8	9	20	15
Suspended Suspension	5	2	------	------	------
Suspensions (Average days)	4 (201)	7 (139)	10 (197)	10 (248)	9 (104)
Disbarment	4	11	6	4	11
Total Sanctions	47	52	46	65	54
Total Complaints Resulting in Discipline	53	50	68	79	85
Lawyers Disciplined	40	44	40	47	42
Percentage of Lawyers Sanctioned	.44%	.46%	.40%	.44%	.37%

Discipline-related Matters, 1981-1985

Admonition	-------	-------	------	-------	-------
Probation	-------	-------	3	8	15

Characterization of Grievances Received in 1993

CHARACTERIZATION OF COMPLAINT	*RULE(S) INVOLVED, RPC*	*NUMBER*	*PERCENT*
Advertisements	7.1, 7.2, 7.4	7	00.32
Solicitation	7.3	18	00.82
Improper Firm Name	7.5	4	00.18
Other Advertising Complaints		6	00.27
Exorbitant, Excessive Fees	1.5(a)	104	04.74
Failure to Return Part of Fee Paid	1.14	45	02.05
Improper Fee Contracts	1.5(d)	1	00.05
No Written Contingent Fee Contract	1.5(c)	1	00.05
Improper Fee Division Among Lawyers	1.5(e)	3	00.14
Fee Division with Nonlawyer	5.4(a)	4	00.18
Other Fee Complaints		120	05.46
Trust Fund Conversion	1.14, 8.4(b), (c)	16	00.73
Trust Fund Commingling	1.14(a)	3	00.14
Failure to Account to Client	1.14(b)(3)	18	00.82
Failure to Deposit into Trust	1.14(a)	6	00.27
Failure to Maintain Proper Records	1.14(b)(3)	0	0
Failure to Promptly Notify Client	1.14(b)(4)	1	00.05
Withdrawal of Disputed Funds	1.14(a)(2)	5	00.23
Failure to Honor Liens	8.4(d)	6	00.27
Trust Account Overdraft	RLD 13.4	188	08.56
Other Trust Account Grievances		39	01.78
Incompetence	1.1	110	05.01
Failure to Perform, Delay	1.3	291	13.25
Failure to Communicate	1.4, 1.3	137	06.24
Professional Judgment		20	00.91
Other Performance Grievances		226	10.29
Misrepresentation to Clients	1.4, 8.4(b)	27	01.23
Adverse Business Interest	1.8(e)	3	00.14
Disclosure of Confidential Information	1.6, 1.8(b)	12	00.55
Limiting Liability to Client	1.8(h)	0	0
Appearing without Authority	RLD 1.1(d)	5	00.23
Representing Conflicting Interests	1.7, 1.9	79	03.60
Improper Withdrawal	1.15	16	00.73
Failure to Turn Over File	1.15(d), Formal Opinion #181	68	03.10
Settlement Without Authority	1.2(a)	12	00.55
Payment of Client Expenses	1.8(e)	0	0
Violation of Attorney's Oath	RLD 1.1(c)	1	00.05
Other Client Duties Grievances		72	03.28
Communicating with Represented Adversary	4.2	16	00.73
Advising Law Violation		5	00.23
Threatening Criminal Charges		2	00.09
Misrepresentation to Court	3.3(a),(b)	51	02.32
Disobeying Court Order	3.5(c), RLD 1.1(b)	6	00.27
Improper Juror Contact	3.5(a)	1	00.05
Improper Witness Contact	3.4	4	00.18
Improper Contact with Officials	3.5	2	00.09
Aiding Unlawful Practice	RLD 1.1(e)	25	01.14
Partnership with Nonlawyer	5.4(b)	2	00.09
Harassing Lawsuit	3.1	10	00.46

Characterization of Grievances Received in 1993, continued

CHARACTERIZATION OF COMPLAINT	*RLE(S) INVOLVED, RPC*	*NUMBER*	*PERCENT*
Harassing Lawsuit	3.1	10	00.46
Failure to Support the Law		1	00.05
Appearing as Lawyer and Witness	3.7	1	00.05
Other Interference with Justice		56	02.55
Felony Conviction	RLD 1.1(a), 3.1	5	00.23
Nonfelony Conviction	8.4, RLD 1.1(a), 3.1	4	00.18
Other Acts of Moral Turpitude	8.4, RLD 1.1(a)	4	00.18
Schemes to Defraud	8.4(c)	29	01.32
Practice While Suspended	RLD 1.1(l)	8	00.36
Offensive Language		29	01.32
Failure to Pay Personal Debt		71	03.23
Misrepresentation/Fraud	8.4(c)	34	01.55
Medical Incapacity		0	0
Nonpayment to Professional	Formal Opinion #140	12	00.55
Failure to Honor Stipulation		3	00.14
Restricting Practice of Law	5.6	0	0
Conduct Prejudicial to Justice	8.4(d)	3	00.14
Other Personal Behavior		103	04.69
Failure to Cooperate	RLD 1.1, 2.8	5	00.233
Failure to Cooperate with Audit	RLD 1.1(j), 13.2	0	0
Failure to Honor Discipline Stipulation	RLD 1.1(m)	1	00.05
Failure to Pay Costs	RLD 1.1(n)	3	00.14
Other RLD 1.1 Violation	RLD 1.1	3	00.14
No Trust Account Declaration	RLD 13.3	22	01.00
False Information on Bar Application	RLD 1.1(f)	0	0
Breach of Other WSBA Duties		1	00.05

Correlation Between Areas of Practice and Types of Grievances—1993*

Areas of Practice	***Fees***	***Trust Account***	***Perform - ance***	***Client Duties***	***Interfer - ence with Justice***	***Personal Behavior***
Family Law	95	10	237	74	37	55
Criminal Law	11	3	188	42	28	23
Torts	12	30	58	33	20	23
Estates	8	7	35	26	3	19
Real Property	10	4	30	27	6	9
Bankruptcy	11	4	20	11	11	5
Collections	1	3	21	9	10	1
Guardianships		8	8	6	2	3
Foreclosure		1	10	9		6
Corporate	4		3	9	2	2
Workers Comp.		1	9	11		
Consumer	1		10	2	2	2
Administrative	2		2	4	6	1
Landlord/ Tenant	1		6		1	6
Immigration	3	1	6	2		2

* These are general grievance descriptions. Because advertising involves less than 2% of all grievances filed, this general category is not included in this compilation. The listed areas of practice are the "top" 15 based upon the number of grievances filed.

Good Grief!

by **Mary Truselo**
MSW, LAP Counselor

Life is an endless process of joining and letting go, breathing in and breathing out, swirling around endlessly and involving the core emotions—fear, anger, sadness and joy. Behind all of these is the deeper self that—when accessed—can hold all of these feelings in an embrace of love and helplessness: compassion.

Loss is an inevitable part of life. Change is the only thing that is certain. Every day and every year are ever moving change. This change brings both major and minor losses; they then open us to a continual rebirth—new beginnings—filled with fear, joy excitement and awe.

Accompanying this inevitable flow are deep feelings. That is what is meant by the expression "To live well is to grieve well."

Moving from these broad generalizations to a specific example, let us look at divorce.

Divorce is a major life disruption—a deep loss for both men and women. It is felt on many levels and affected by multiple factors—whether or not the divorce is our choice, whether we are facing aloneness and a new identity as a single or moving into a new relationship.

Loss, to be integrated into life, must be grieved. What there was is no more. Our relationship to life is different. In divorce, we lose our family as we knew it; we lose our identity as part of a pair; we may lose the place we live and our financial stability. We must grieve.

The three faces of grief are anger, sadness and fear. These emotions are not rational, neat or linear intellectual exercises; they are eruptive, irrational experiences. They need to be allowed. Grief is not a "one, two, three—you're out!" progression but a deep, circular, bodily felt energy moving on its own timetable.

We struggle because our life history has given us an intellectual relationship to anger, sadness and fear. Although we may judge, avoid, deny, explain and justify our feelings based on our personal history and conditioning, feelings just are.

When we go through a major life upheaval and the accompanying eruption of strong emotions, we don't seem to "know" ourselves, seem to be "out of control" or "acting crazy," and we judge ourselves and the whole process as "bad."

"Uncomfortable," "painful," "frightening" are true and apt descriptions of a grief reaction. "Bad" sets us at odds with part of ourselves and adds a layer to the process that can be very hurtful. Feeling lost, confused, afraid and depressed is normal.

We are particularly vulnerable if facing "alone time" because we have often been socialized to be rational and "in control." This fear is of a primitive nature and is sometimes compounded by the fact that we have not been allowed any expression of fear. It is a double bind—we're afraid of our fear.

Anger is often modeled in destructive ways and acted out or expressed in explosive and harmful behaviors. The normal human expression of sadness is tears, but often a layer of shame is attached to this healing response to pain. Denial or repression of sadness and anger can lead to severe depression and an accompanying sense of failure.

Grief needs to be respectfully and fully felt with a compassion for the vulnerable human being experiencing it. If we are unable to supply ourselves with this respect we may need to ask for help.

Knowing when we need help is a mark of maturity. Culturally, we have set up an ideal of the hero who can go it alone, but this is not true for any of us. We need one another.

The Lawyer's Assistance Program of the WSBA will offer a 12-week group on balancing intellectual and emotional aspects. It is appropriate for anyone who is struggling, or has struggled, with this issue. For further information call Mary Truselo, (206) 727-8269 or Joyce Elven at (206) 272-8268.

Common Characteristics of Grief

by **Jinny Tesick, M.A.***

A variety of feelings and behaviors can be experienced in the grief process. Not everyone will respond to loss in the same way. It is helpful to know that the following characteristics can be a normal part of the grief experience.

FEELINGS: shock, numbness, sense of unreality, anger, irritability, guilt, self reproach, sadness, depression, anxiety, fear, hysteria, helplessness, vulnerability, low self-esteem, loneliness, relief, feelings of being crazy, mood swings, intensity of all feelings.

PHYSICAL SENSATIONS: hollowness in the stomach, tightness in the chest and throat, dry mouth, oversensitivity to noise, dizziness, headaches, shortness of breath, weakness in the muscles, lack of energy, fatigue, excess of nervous energy, heart pounding, heavy or empty feeling in body and limbs, hot or cold flashes, skin sensitivity, stomach & intestinal upsets, increase in physical illnesses.

THOUGHT PATTERNS: disbelief, sense of unreality, preoccupation, confusion, lack of ability to concentrate, seeing, hearing, feeling the presence of the deceased, thoughts of self destruction, problems with decision making.

BEHAVIORS: appetite and sleep disturbances, absent minded behavior, social withdrawal, avoiding reminders of the loss, dreams of the loss, searching and calling out for the deceased, restlessness, sighing, crying, visiting places that are reminders of the loss, treasuring, carrying objects that belonged to the deceased, change in sexual activities, need for touch, hugs, contacts with others, increased sensitivity to positive and negative attention, picking up mannerisms of the deceased, exhibiting symptoms of deceased's illness.

SOCIAL CHANGES: either an increased desire for support of close friends or a withdrawal from friends and family, increased dependency on others, a need for acting "normal" around others, a need for relationships apart from those related to grief, self-absorbed (no energy for interest in others), marital difficulties, especially with the death of a child. Role changes, role reversals, change in social patterns and status, hypersensitivity to topics of loss, need for rituals.

Nota Bene

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

Every Tuesday at noon in the WSBA Presidents Room, (4th floor, Westin Building), LAP sponsors a free job hunters' support group for WSBA members who are actively involved in the search for a new position. This is a drop-in group focusing on the exchange of ideas, job leads, and job finding ideas. Call Joyce (206) 727-8268 for a free newsletter and information regarding programs with speakers.

*Jinny Tesick will present a Peer Counselor training on grief and loss at the WSBA Wednesday, Nov. 2, at 5 p.m.

The Cascadia Law Practice Agency

A proposal to improve lawyer regulation by the year 2000

by **George A. Riemer**

State bar associations are allocating more and more resources to the regulation of their members. With an ever-increasing number of lawyers comes a commensurate increase in alleged ethical violations ranging from false and fraudulent advertising to frivolous lawsuits and improper client solicitation.

The need for greater efficiency and effectiveness in the delivery of regulatory services is heightened in times of shrinking state bar and court budgets. A popular theme for the 1990s appears to be "doing more with less." In reality, government needs to "*be* more with less." This distinction is not just a subtle play on words. "Being more with less" requires us to reevaluate the barriers that artificially limit the efficiency and effectiveness of government regulation.

It is time to consider regionalizing the practice of law and the regulation of the legal profession.

Norman Krivosha, chair of the board of directors of the American Corporate Counsel Association, stated in the February 1994 issue of *Corporate Legal Times* that he believes that a national bar examination should be established in the United States. It would establish basic legal competency, but each state would continue to license lawyers following a review of their character and fitness. The idea of a national bar examination is not a new one, but it has not generated sufficient interest to be given serious consideration by Congress or state supreme courts.

While a national bar examination or regulatory agency is not likely or necessarily desirable in the next 20 to 25 years, regional consortiums could be created to pool the resources of individual states in the delivery of more efficient and effective lawyer regulation.

The Northwest is an ideal proving ground for interstate cooperation in these areas. The states of Oregon, Washington and Idaho have similar geographic, demographic and political characteristics. Many members of the Oregon State Bar are admitted to the practice of law in Washington and Idaho and vice versa, and the whole concept of what it is "to practice law" in each of these states is much more similar than dissimilar.

Yet, lawyers desiring to practice law in Washington, Idaho and Oregon must now pass three bar examinations. Those admitted in only one state may go to other states to consult with clients there. So long as they do not engage in the "unlawful" practice of law in the states they are not admitted to practice in, no regulatory eyebrows are raised. Unfortunately, few jurisdictions have clear rules describing what constitutes the unlawful practice of law for lawyers.

Lawyers are forced to practice across state lines by the very nature of modern law practice, and the "unlawful" practice of law by lawyers is not seen as a serious concern by state disciplinary authorities.

Statutory authority exists for the consolidation of the admission and disciplinary functions of a profession in two or more states. ORS 190.420(1) provides that "any power or powers, privileges or authority exercised or capable of exercise by a public agency in this state may be exercised and enjoyed jointly with any public agency in another state to the extent that the laws of the other state permit such joint exercise or enjoyment." ORS 190.420(2) provides that public agencies in Oregon and in other states may enter into agreements with one another for joint or cooperative action. ORS 190.420(3) elaborates on the content of such agreements, and ORS 190.430 requires every such agreement to be submitted to the attorney general to make sure it is compatible with the laws of Oregon. Washington and Idaho have similar laws. See RCW 39.34.010 et seq. and IC 67-2326 et seq.

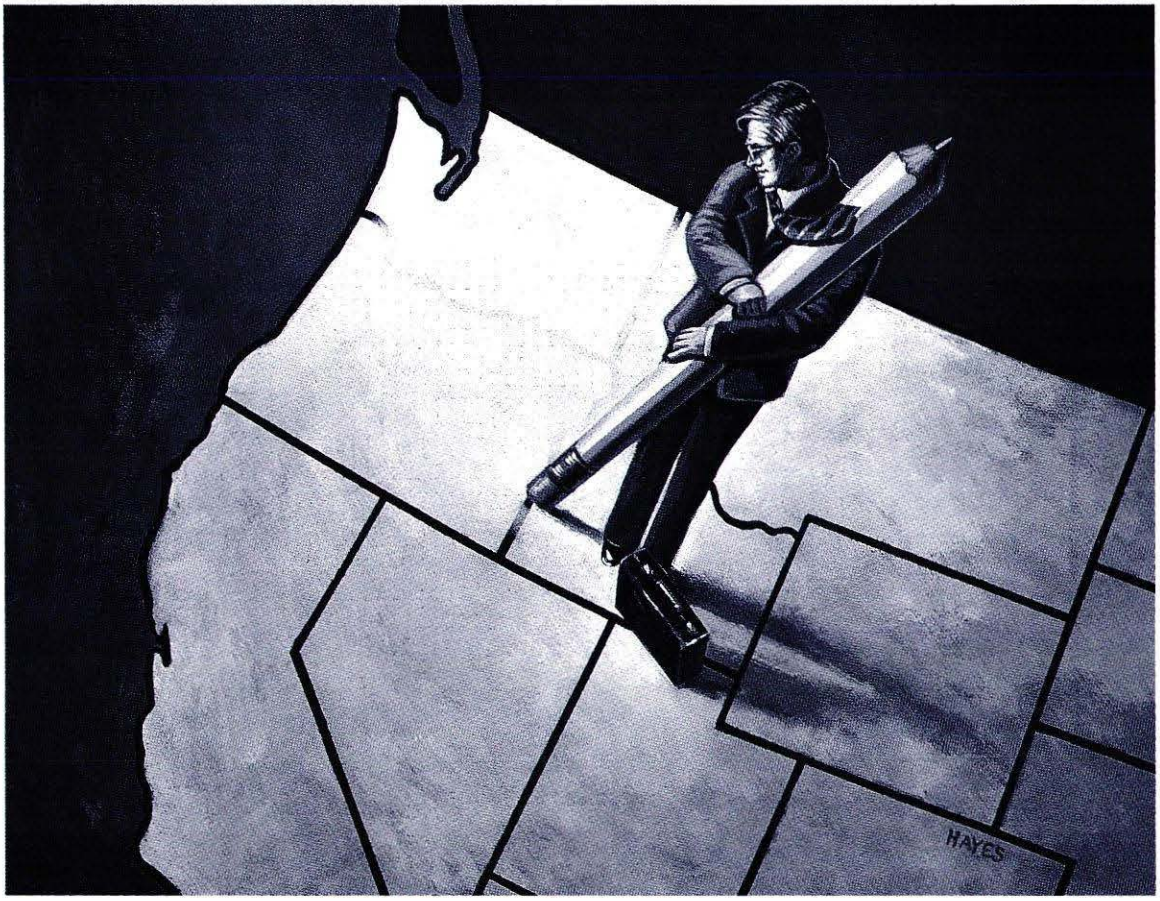
While the complexity of this undertaking is not underestimated, the legal professions in these three states should be able to resolve all legal impediments if the goal of more efficient and effective law practice regulation is kept firmly in mind.

Joint Working Groups

This intergovernmental cooperation could begin with the establishment of working groups in the admission and disciplinary areas appointed jointly by the supreme courts of the three states.

The disciplinary working group could examine the disciplinary rules and procedures in Oregon, Washington and Idaho to identify similarities and dissimilarities and to offer recommendations for their consolidation into one uniform code. This working group could also review disciplinary procedures, staffing and related issues to determine how best to coordinate the handling of complaints against lawyers in all three states and, ultimately, to unify and consolidate the disciplinary functions with staff in all three states working together as part of a single disciplinary authority. A uniform fee could be established in the three states to support these consolidated functions.

The admissions working group could study the application procedures for membership in the bar, standards of admission, and the structure and content of the bar examination in each state. This group could study and make recommendations regarding a uniform bar examination that would entitle a successful applicant to practice in all three states. This uniform bar examination could include state law components to ensure that applicants have an adequate level of knowledge concerning the specialized laws of each jurisdiction.



A Goal for the Year 2000

The year 2000 is less than six years away. Law practice is regional, national and international in scope right now, and the globalization of law practice will mushroom in the 21st century. If we start now, interstate cooperation between the state bar associations and supreme courts in Washington, Idaho and Oregon could lead to a regional admission and discipline process by the year 2000.

A new three-state agency, perhaps the Cascadia Law Practice Agency, could license lawyers to practice throughout the Northwest under uniform ethical standards and procedures. If the three states can develop a framework for the establishment of the suggested working groups by mid-1995, create them by the end of 1995, conduct the appropriate studies and evaluations throughout 1996 and 1997, and present their recommendations to the three supreme courts and other appropriate governmental bodies for approval in each state in 1998, we could have a fully functioning consolidated lawyer regulatory agency for the Pacific Northwest by 2000.

Without implementing a bold new vision of lawyer regulation, Washington, Idaho and Oregon may be faced with state bar association "meltdown" sometime in the early part of the 21st century. Individual state bar associations are finding it difficult to fund all the programs they have traditionally operated. Admission, discipline and mandatory continuing legal education programs are consuming an ever increasing portion of bar revenues. Isn't it time to consolidate these functions with bar members in each state paying the same fair share for the regulation of their profession?

The Cascadia Law Practice Agency would advance the interests of individual lawyers because admission to practice would require passing only one bar examination. Lawyers would have to know and comply with only one set of disciplinary rules and procedures. The citizens of all three states would benefit as a result of uniformity of lawyer ethics standards and the elimination of artificial barriers to the provision of legal services. The three state bar associations would no longer have to be mandatory membership organizations and could concentrate on providing services to their members in a broader range of areas than legal restrictions currently permit.

The future of the regulation of the legal profession is at hand. Lawyer regulation needs to be simpler, less costly and more focused on public protection than it can be using state oversight as the model. Redundancy of functions must give way to coordination and consolidation of similar services. Washington, Idaho and Oregon lawyers should work together to establish the Cascadia Law Practice Agency. Let us seize the future and show the public what lawyers as a group can do to truly improve the legal profession and our legal system for the entire Pacific Northwest.

***George Riemer**, a member of the Oregon and Washington bars, is general counsel and director of executive services for the Oregon State Bar. Opinions expressed by the author are his own and do not necessarily reflect the opinion of either state bar or their governing boards.*

NEWS FROM HOME

Ning Fu has joined Miller, Nash, Wiener, Hager & Carlsen's international transactions group. She holds a J.D. from Lewis & Clark Law School and her LL.M. from Xiamen University Law School. Formerly a business law attorney in China, Ms. Fu will represent Asian and American companies and investors.

In Seattle, Preston Gates & Ellis has announced the addition of two more partners. **Judith A. Bigelow** and **Bart Freedman** have become partners in the firm's Seattle office. In addition, **Margaret A. Niles**, **Jessica Stone Levy**, **J. Alan Clark**, **Christopher H. Cunningham**, **John David Fugate**, **Michel R. Gahard**, **Knoll D. Lowney**, **Teresa C. McNally**, **Sarah E. Oyer**, **Faith Li Pettis** and **Roger D. Wynne** have joined the firm as associates.

Schwabe Williamson Ferguson & Burdell's Seattle General Business Department is now headed by **Dennis Ostgard**, a shareholder in the firm. The 14-lawyer department focuses on general business, real estate, land use, environment and forest products work.

Meanwhile, Seattle Schwabe shareholder **Christopher Kane** has been certified as an international arbitrator by the International Centers for Mediation (ICA). ICA rules are based upon the widely-accepted United Nations Commission on International Trade Law rules. A second Washington lawyer, retired Superior Court Judge **Terrence Carroll**, has also obtained the international mediator's certification.

Cozen & O'Connor, Seattle, has named **Daniel P. Mallove** a senior member of the firm. He has been with C&O'C since 1988 and practices products liability and municipal liability defense. **Mark S. Anderson** has been named a member attorney in the firm. Another member of the Class of 1988 at Cozen, he is a subrogation and property damage litigator.

Messina Bufalini Bulzomi, P.S. in Tacoma has added **John R. Christensen** as an associate. He comes to the firm from the Washington Attorney General's Office.

In Vancouver, Washington, **Albert Schlotfeldt** has been elected president of the Clark County Young Lawyers for 1994-1995.

David A. Waldschmidt, formerly general counsel of Pacific Northern Oil Corporation, has joined Tosco Northwest Company as corporate counsel. Tosco, headquartered in Seattle, is a large petroleum refining, marketing and distribution company with refining facilities in Washington, California and New Jersey as well as nearly four hundred BP-brand gas stations.

Formerly assistant city attorney in Vancouver, Washington, **Judy Zeider** has been named chief assistant city attorney. She replaced **Ted Gathe**, who became city attorney upon the retirement of **Jerry King**. Joining the office as an assistant city attorney is **Michael Karber**.

Albert and **Carolyn Brockmeier** have moved their office to an unusual building in Port Angeles. A clause in the lease provides that the building may only remain in its position, perched on pilings over the water, if it remains a law office. The Brockmeiers, who graduated from the University of Idaho School of Law in a mid-life career change in 1990, took over the building from retiring lawyer **Clarence Fiddler**.

The WSBA Health Law Section has elected **Mary Giannini** of Tacoma chair for 1994-95.

In Spokane, **Yvonne Leveque** has joined Morrison & Leveque after clerking for Chief Justice Elbridge Coochise of the Northwest Intertribal Court System's Appellate Division.

Seattle lawyer **Phil Mahoney** and his associate, **Thomas Ikeda**, have moved their practice to the Pacific Building, 720 Third Avenue, Suite 1520. **Bill Lanning** has joined the firm on an of counsel basis.

Shahina Piyarali has joined Heller Ehrman White & McAuliffe in the corporate department of the firm's Seattle office. A graduate of the University of London and the University of Washington School of Law, she was called to the bar as a barrister in 1990.

Michael Jaeger has joined Bellevue-based Trujillo, Peick, Lingenbrink & Magladry as an associate.

In the ADR arena, ten Seattle bankruptcy lawyers have joined Judicial Arbitration & Mediation Services (JAMS)/ Endispute's first panel on debtor-creditor relations. They are Davis Wright Tremaine's **C. Keith Allred**, **Suzanne M. Barnett** of Barnett McLean; **Gayle E. Bush** of Bush, Strout & Kornfeld; Foster Pepper & Shefelman's **Jack Cullen**; **Michael B. McCarty** of Forsch McCarty, P.S.; **Shawn Otorowski**, from Schwabe, Williamson, Ferguson & Burdell; and **Irving W. Sandman of** Graham & Dunn.

Faulkner, Banfield, Doogan & Holmes announce the addition of **Keri Clark**, former law clerk to U.S. District Court Judge James A. von der Heydt, in the

firm's Anchorage office.

In Tacoma, Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim has added **Greg Forge** to the firm's Public/Private Resolution Group.

CLARK COUNTY REPORT

by **JOHN F. NICHOLS**

What Did You Do Last Summer?

I won't bore you with my annual report on my summer activities. Suffice it to say that, once again, it involved a lot of driving; a lot of miles; a lot of heat; and a lot of softball. Which leads me to my submission to the revised SAT exam:

Which of the following does not belong with the rest of the group?

a. Rambler; b. elderly driver; c. turn signal on for 10 miles; d. 50 m.p.h.; e. left lane on the freeway; f. none.

If you correctly chose "e," then in 2,500 words or less, please explain why everyone driving in front of me always answers "f"?

Letters from Camp

While a majority of the CCBA was busy campaigning, some fortunate few enjoyed an actual vacation. The most fortunate thereof was **Gayle Ihringer**. Gayle was the contest winner of the question, "What is Rusty's, the bailiff of People's Court, real name?" This entitled her to a month-long camp at **Gerry Spence**'s ranch specializing in legal wrangling, hog-tying witnesses and rustling stray clients. Husband and fellow attorney **Ed Dunkerly** was kind enough to share one (OK, the only) letter he received from Gayle.

Dear ~~Mr. Dunkerly~~ Ed,

Arrived in camp last week; it is really cool. Mr. Spence promised to autograph almost anything for half his usual fee. No such luck with Lee Bailey or Mr. Shapiro. All the other campers think my accent is "neat." I don't have the heart to tell them I'm from Vancouver, Washington, not B.C.

The food's okay but not as good as yours. Especially that scrambled egg thing you make with those freeze-dried bacon bits. Mmmmmm. Gerry says I'm doing real good on my torts but need to improve on my retainers and securing book rights. He is such a stickler for fringies. He looks real impressive in his cowboy hat. He reminds me a lot of Matlock, or is it McCloud?

We don't get cable here, but every cabin has a VCR and tapes of all of Gerry's trials. We talked all about my work with juvies. Gerry said I was right on track, because when they get older they become adults. I never had anyone explain it quite like that.

I guess I'd better be going; there's a long line forming at the fax machine. If you have time send me my Cel-phone and spurs. I'm the only one without any and the only one without a picture of a Benz. How embarrassing!

See ya in Court,
Gayle

Thanks for sharing Ed. Can't wait for the slides.

GOVERNMENT LAWYERS BAR ASSOCIATION REPORT

by **ANNE L. SPANGLER**

Congratulations to **Bob Jensen** on winning the Bar's Angelo Petruss Award for Lawyers in Public Service. The Bar announced its award in August. Bob currently serves as the governor-appointed chief executive officer of the Environmental Hearings Office and as a member of the Pollution Control and Shoreline Hearings Board. Special thanks to all of you who supported GLBA's nomination!

GLBA has pledged its support to a new Volunteer Legal Clinic for Thurston County. The clinic is the result of collaborative efforts by the Puget Sound Legal Assistance Foundation (PSLAF), GLBA, the Washington Women Lawyers, the Thurston County Bar Association and the Thurston County Young Lawyers, as well as the Olympia Chapter of the Washington State Paralegal Association, the Thurston County Legal Secretaries Association and the judiciary, to meet the increasing needs of low-income people. The clinic is the first new pro bono initiative in Thurston County in a number of years. It is slated to open this fall, and it should become an important community resource. We all wish it great success!

Steering Committee members for the clinic include: **Marla Elliott** and **Bruce Neas**, of PSLAF; **Harriet Strasberg** and **Kathy Tierney**, on behalf of the Capitol Chapter of the Washington Women Lawyers; **Judy Giniger**, **Trish Nightingale** and **Tom Bjorgen**, on behalf of GLBA; **Jamie Moore** and **Ann Hirsch**, on behalf of the Thurston County Bar Association; **Joe Shorin** and **Lilia Lopez**, on behalf of the Thurston County Young Lawyers; **Sherry Davies** and **Cathy Washington**, on behalf of the Olympia Chapter of the Washington State Paralegal Association; **Louise Akramoff**, on behalf of the Thurston County Legal Secretaries Association; and representing the judiciary is Thurston County Superior Court Commissioner **Christopher Wickham**. For more information, please contact Administrator Marla Elliott at (206) 943-6260, or Steering Committee Chair Kathy Tierney at (206) 357-3089.

Watch for upcoming GLBA-sponsored CLEs in November 1994 and February and April 1995. In addition to the Supreme Court Forum held in September, GLBA also is planning many exciting programs in the coming year.

If you are interested in joining GLBA (for a mere $10 per year), or if you have questions about the association, please contact **Linda Sullivan** at (206) 459-6223.

LAW FUND

by **LAUREN MOORE**

Congratulations to LAW Fund Ex-Officio Board member **Ada Shen-Jaffe** for receiving the WSBA President's Award.

To date, thousands of Bar members have contributed to LAW Fund's Annual Campaign through firm and individual donations. The Annual Campaign runs the entire year with focused regional campaigns during different times of the year. During October, look for LAW Fund in Clark, Whatcom, Skagit, Snohomish, Yakima, Chelan and Douglas counties. If you would like to be involved in the LAW Fund campaign in your region, or you would like to make a contribution, write LAW Fund, 1326 Fifth Ave., Suite 815, Seattle, WA 98101, or call (206) 623-5261.

PIERCE COUNTY REPORT

by **GEORGE S. KELLEY**

This summer saw a revival of the traditional Old Lawyer v. Young Lawyer softball game. The last one was held in 1973 when **Frank Burgess**, now Federal District Court Judge Burgess, was 35 years old. A dispute arose as to which team he should play for. Restraining orders were issued in favor of each side and angry words were exchanged. Twenty-one years passed before anyone dared to schedule a rematch, and controversy clouded the contest.

The trouble started when only eight young lawyers appeared to start the game. Softball rules clearly provide that a team must have a minimum of nine players or there is a forfeit. Young-lawyer manager **Kevin Ringus** drafted a nonlawyer to fill one of the missing positions, and **Larry Couture**, old-lawyer team manager, consented to play. There is some confusion as to whether the game was merely for practice after the forfeiture had been declared or whether there was a waiver of the rules by the old lawyers.

The old lawyers came out on the short end of a 13-2 score. After additional discussion with umpires Judge **Bruce Cohoe** and Court Commissioner **Ed Haarmann** a three inning second game was scheduled as enough young lawyers had finally shown up to field a legal team. The veterans prevailed in this game 5-4.

The young lawyers hosted a post-game picnic at which time there was some debate as to who won. The judges declined to make a ruling, and a renewal of this tradition may not take place for another 21 years in the summer of 2015.

There was yet another competition between old and young lawyers this summer. There is a public service program in town called "Paint Tacoma Beautiful" in which various service organizations paint the houses of needy persons. This year a friendly competition was scheduled between young lawyer and old lawyer teams as to which would finish its house first. The young lawyers, led by **Martin J.H. Duenhoelter,** jumped to an early lead over **Joe Quinn**'s old lawyer team. Unfortunately, after the job was nearly done, the young lawyer house was destroyed by fire through no fault of the painters. Luckily, the homeowner had insurance, and her house will be repaired and painted by licensed and bonded workmen at the expense of a fire insurance company. The young lawyers can take comfort in the fact that if they are patient they will soon enough become old lawyers.

Philip DeTurk has printed a brochure announcing the relocation of his Puyallup law office. In it, he lists the types of cases he handles. In the civil litigation area he lists such things as product liability, automobile and bungee cord cases. When asked about this last area of practice, Phil stated that there have been many eye injuries caused by defective bungee cords. Some might say that it's quite a stretch to "specialize" in this area of the law.

IN MEMORIAM

J. Angus Coghill

Seattle lawyer James Angus Coghill, 51, died July 9, 1994. A graduate of West Seattle High School, Coghill received a degree in education from Washington State University and his law degree from Gonzaga University in 1973.

Coghill practiced law in Seattle until his death. He was active in a number of organizations, including West Seattle

Rotary Club, Trout Unlimited, Bayview Golf Club and the West Seattle High School Site Council. A memorial service for Coghill was held July 20 at West Seattle Golf Club; his ashes were scattered over the high-mountain lakes near Ennis, Montana.

Survivors include his mother, wife, two children, and four brothers and sisters.

George N. Cromwell

George N. Cromwell, 76, died August 10, 1994. A Bellevue resident, Cromwell was educated at Washington & Lee University in Virginia, receiving both his undergraduate and law degrees there. During World War II he served as a flier in the Naval Air Corps.

Admitted to practice in Virginia and Washington, Cromwell practiced law as a tax attorney from 1953 to 1984. Survivors include his brother, wife, two sons and six grandchildren.

Gary E. Hall

Kirkland native Gary E. Hall, 43, died June 17, 1994, in Seattle. He was a graduate of Western Washington University and the University of Puget Sound School of Law, and joined the Bar in 1979. Hall was active on a variety of community boards, including the Greater Seattle Business Association. In 1992, the King County Bar Association honored him for his work with the Volunteer Legal Services Program by conferring a Certificate of Appreciation upon him.

Hall's survivors include his parents, a brother and a sister.

Randall M. Johnson

Randall M. Johnson, 39, died June 22, 1994. Born in Pocatello, he grew up in Normandy Park and was a graduate of the University of Washington and the University of Puget Sound School of Law. Johnson practiced in Tacoma and was a 15-year resident of Federal Way, where he was active in youth sports groups, Catholic Community Services, the Childrens Home Society and Bellarmine High School. Johnson concentrated his practice in adoption law, and was a member of the Foster Adoption Institute, Tacoma-Pierce County Bar Association and Washington State Trial Lawyers Association. Survivors include his father, four siblings, his wife, and three children.

Randall L. Ommen

The following Memorial Resolution was presented to the Yakima County Superior Court on July 29, 1994 by the law partners of Randall L. Ommen, Charles R. Lyon, William L. Weigand, Jr., Lonny R. Suko, J. Eric Gustafson, and Robert M. Boggs.

WHEREAS, the following facts, having been presented to the membership of the Yakima County Bar Association, and to the Superior Court of the State of Washington in and for Yakima County in open court, namely, that:

Randall Lee "Randy" Ommen, a well-loved and respected member of this bar, was born on September 4, 1964 at Lodgepole, Nebraska, and passed away July 9, 1994 in a tragic boating accident at Desert Aire Resort. Randy is survived by his loving wife Tammy, unborn daughter Ashley, his parents, Robert and Alice Ommen, and his bothers, Robert and Ronnie.

Randy Ommen was reared at Lodgepole, Nebraska, graduating from Lodgepole High School in 1982. He went on to attend the University of Nebraska at Kearney, from which he graduated in 1986. On September 29, 1984, Randy married his lifelong sweetheart, Tammy Jo Slingsby. In 1989 he graduated from Willamette University School of Law in Salem, Oregon, and began his professional practice with Lyon Law Offices here in Yakima. In 1989 he became a member of the Washington State Bar Association and in 1990 he became a member of the Oregon State Bar.

Randy was a bright and conscientious attorney, and became a partner in the Lyon Law Firm in 1993.

Randy will be remembered as an able, skillful and dedicated member of the legal profession, with an exceptional knowledge in the water adjudication cases. He will also be remembered for his positive, can-do attitude, his willingness to take on any challenge, and for never having said no to any work assignment. Randy was a loving husband, and a true friend to his partners and fellow workers.

High praise for Randy has come from opposing counsel, who respected him for his fierce loyalty to his clients, total dedication to his cause, and the fact that he was at all times courteous and considerate of his opponent and all the personnel involved in both in-court and out-of-court activities.

The untimely passing of this bright young shining star and respected member of our bar creates a vacancy which truly saddens our hearts.

NOW, THEREFORE, BE IT RESOLVED, that the minutes of this memorial service be spread upon the records of this court and that a copy of this resolution be provided to the members of the family of Randall Lee Ommen as a gesture of our mutual loss and of our respect for their departed loved one.

Viston R. Smith

Retired Veterans' Administration attorney Viston R. Smith died May 24, 1994, in Seattle. A native of Nashville, Tennessee, Smith attended four universities, collecting his B.A., M.A. and LL.D degrees in the process. Smith was an enthusiastic bridge player. A former member of the Vanderbilt Team, he amassed over 1500 master points in the American Contract Bridge League. Survivors include his sister, two sons and a stepson.

William R. Studley

The following remembrance of William L. Studley was submitted by his law partner of 32 years, Wayne D. Purcell of Longview, "to bring this information to Bill's friends across the state."

William R. Studley, 77, a longtime attorney in Longview, died August 1, 1994 at his home.

Studley graduated from the University of Michigan School of Law just before World War II. He served in the U.S. Navy as a lieutenant, junior grade, in the South Pacific.

After the war he practiced a short time in Seattle, then came to Longview in 1947. He was appointed City Attorney in 1948 and served in that capacity for thirty years.

In 1956 Studley and Wayne D. Purcell formed the partnership form of Studley & Purcell, which became Studley, Purcell & Spencer in 1960 and lasted until the senior partners retired in 1988.

Throughout his career, Studley fully participated in both local and state bar activities. He was one of the founders, and a past president, of the Washington State Association of Municipal Attorneys.

He was a real credit to his profession in his civic duties as well as in his professional ones. In his younger years he was very active in the Jaycees and the Republican Party. He served as president of many organizations, including the Longview Chamber of Commerce and the Cowlitz County Fair Board.

Studley is survived by his wife, Edie, and two sons: David, a lawyer in San Francisco, and Scott, of Longview.

The law firm of

CABLE, LANGENBACH,
HENRY & KINERK

is pleased to announce that

NEIL A. CABLE

has become associated with the firm.

Mr. Cable, formerly of Lane Powell Spears Lubersky, will continue his litigation practice.

1000 Second Avenue Building
Suite 3500
Seattle, Washington 98104
(206) 292-8800
Fax (206) 292-0494

John G. Bauer
Donald A. Cable
Neil A. Cable
Keelin A. Curran
Robert J. Henry
Colleen Kinerk
Edward R. Langenbach
David E. Leshner
Margaret K. Suman

FOSTER PEPPER & SHEFELMAN

Takes Pleasure in Announcing

BRADLEY W. HOFF

ROBERT KUNOLD, JR.

BATUR H. OKTAY

SHARON SEUNG

PHILIP N. TANAKA

Have Become Associates of the Firm
Practicing in Our Seattle Office

BELLEVUE (206) 451-0500 • PORTLAND (503) 221-0607 • SEATTLE (206) 447-4400

MICHAEL S. MOREY

LICENSED IN OREGON
AND WASHINGTON

JERI CHAVIS
KARILYN PILKINGTON
REBECCA RIX

Legal Assistants

is pleased to announce the relocation
of his office to:

The Jeffrey Center
1020 SW Taylor, Suite 800
Portland, OR 97205

Telephone (503) 226-3415
Facsimile (503) 226-4976

Mr. Morey will continue to devote his practice exclusively to plaintiffs personal injury, products liability and medical malpractice with particular emphasis on cases for adult and child victims of sexual abuse.

THORSRUD CANE & PAULICH

is pleased to announce that

DOUGLAS K. YOSHIDA, M.D., J.D.

has joined the firm as an associate.

He will continue his practice in the areas of Medical Malpractice and Professional Liability defense, as well as Personal Injury, Product Liability, and other Insurance Defense matters.

The firm also announces that

BARRY W. BRANDON

will soon begin his practice as a Senior Attorney with the United States Department of Justice, Indian Resources Section in Washington D.C. We wish Barry the best.

1350 Puget Sound Plaza
1325 Fourth Avenue
Seattle, WA 98101
(206) 386-7755

August 1, 1994

STOKES, EITELBACH & LAWRENCE

is pleased to announce that

GAIL N. WAHRENBERGER

and

SUZANNE J. THOMAS

have joined the firm as shareholders in the areas of litigation, employment and family law.

Suite 4000, 800 Fifth Ave.
Seattle, Washington 98104
Telephone: (206) 626-6000
Facsimile: (206) 464-1496

The law firm of

ALSTON, COURTNAGE, MACAULAY & PROCTOR

is pleased to announce that

J. PARKER MASON

is now counsel to the firm

Mr. Mason was previously an associate at Graham & Dunn

His practice empahsizes real estate and secured lending law

Suite 3900
1000 Second Avenue
Seattle, Washington 98104-1045
(206) 623-7600

August 1994

The Attorneys and Staff of

Weiss, Jensen, Ellis & Botteri

wish farewell and the best of futures to Richard M. Botteri, an old friend, who left the firm on September 1, 1994.

We are also pleased to announce the firm's new name:

WEISS, JENSEN, ELLIS & HOWARD

Christopher H. Howard

is the firm's senior litigator and is resident in the Seattle Office. He received his A.B. Degree with Honors from the John Hopkins University and his J.D. from Stanford Law School. Mr. Howard's practice focuses on defense of medical liability, products liability, premises liability and tradename and trademark disputes.

We are also proud to announce that

Gregory L. Powell

has joined the firm in our Portland Office.

Prior to joining Weiss, Jensen, Ellis & Howard, Mr. Powell served as Minority tax counsel for the U.S. Senate Committee on Finance in Washington D.C. He obtained his undergraduate degree from the University of Oregon and law degree from Northwestern School of Law at Lewis & Clark College. Mr. Powell's practice will emphasize corporate, tax and estate planning for closely-held businesses and partnerships and real estate taxation. He will continue his active involvement with federal legislative issues.

Portland Office:
2300 US Bancorp Tower
111 S.W. Fifth Avenue
Portland, OR 97204
(503) 243-2300

Seattle Office:
3150 First Interstate Center
999 Third Avenue
Seattle, WA 98104
(206) 340-1825

Position Announcement

KING COUNTY DISTRICT COURT COMMISSIONER

• ***Salary and Benefits:*** Annual Salary $91,900 and complete King County Benefit package.

• ***Distinguishing Characteristics of Work:*** Full-time; minimum appointment, two years [Dec.1/94-Nov. 30/96]. Preside over criminal and civil matters for all the King County District Court divisions as assigned by presiding judge. Appointee must maintain highest standards of conduct consistent with Code of Judicial Conduct and other applicable rules.

• ***Minimum Qualifications:*** Five years' experience practicing law; WSBA member in good standing; working knowledge of WA Court Rules, particularly Limited Jurisdiction Court Rules and King Co. Dist. Ct. Rules and Procedures; familiarity with and understanding of all courts of limited jurisdiction case types , i.e., anti-harassment, small claims, traffic infractions, impounds, civil and criminal matters.

• ***Experience:*** Previous experience as pro tem judge, court commissioner, administrative law judge, magistrate or equivalent experience with emphasis on criminal matters desirable.

• ***Other Skills and Abilities:*** Adaptability and flexibility in accepting work assignments and impromptu scheduling. Ability to work well independently with a variety of people, including court and probation staff, judges and court administrators. Demonstrated ability to maintain appropriate judicial demeanor and courtroom decorum under a variety of courtroom pressures. Ability and willingness to conform with and adapt to a variety of court procedures and judicial styles.

• ***Application Process:*** Submit cover letter, resumé and completed King County Bar Association Applicant Questionnaire* to: Judge Rosemary Bordlemay, Chair, Personnel Committee, King County District Court, E-340 King County Courthouse, Seattle, WA 98104.

**Obtainable from King County Bar Association, 900 Fourth Avenue, Seattle, WA 98164; questionnaire completed within the last six months will be accepted.*

• ***Application Deadline:*** October 14, 1994, 4:00 p.m.

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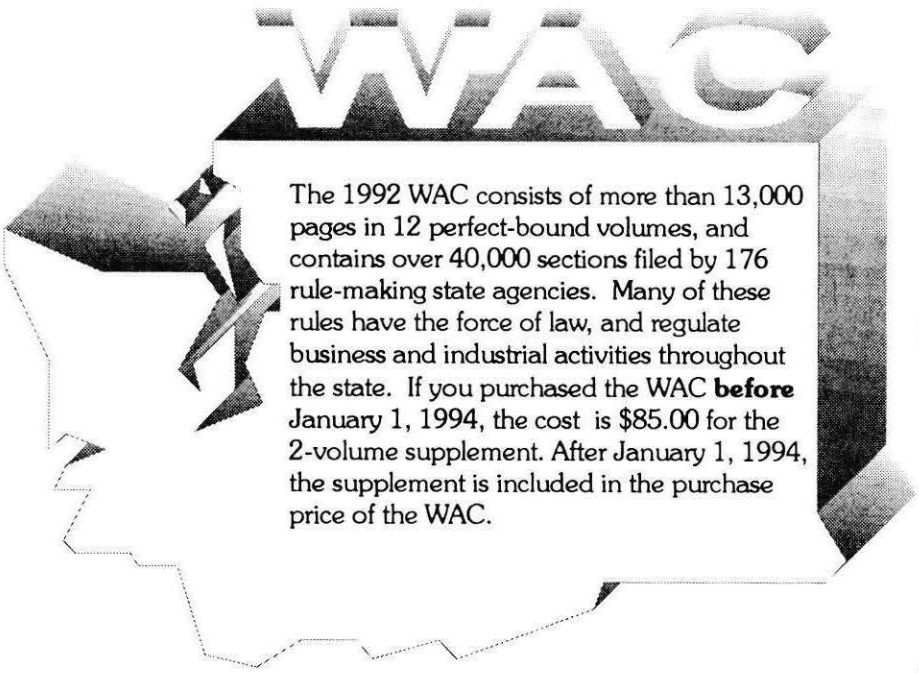

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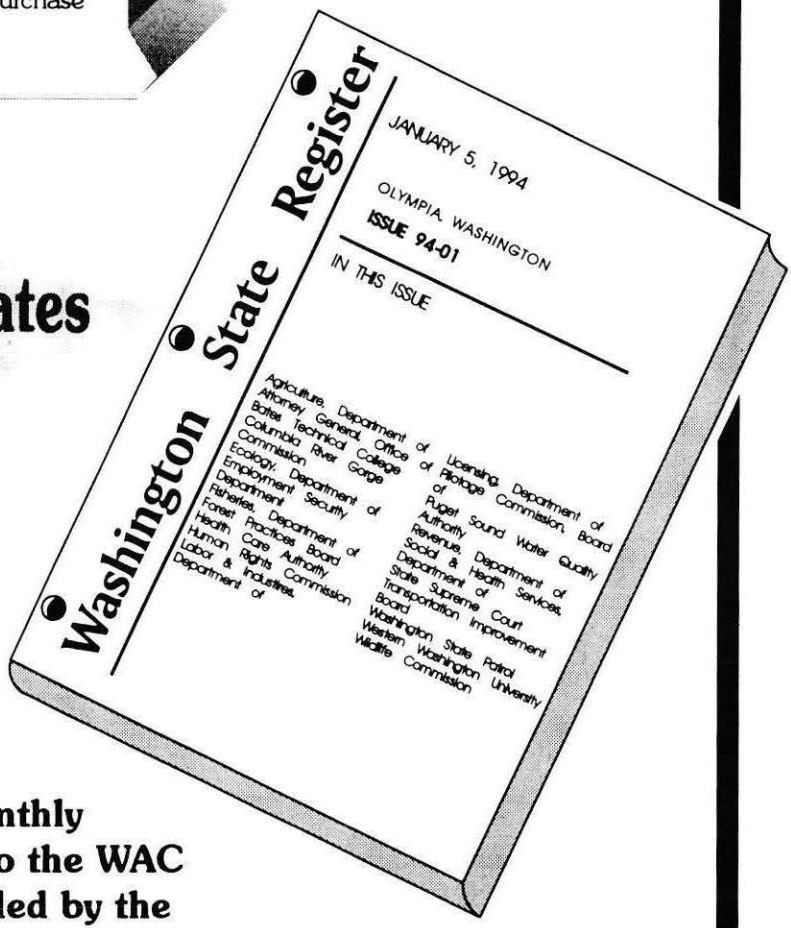

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