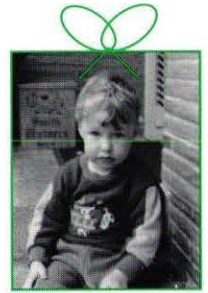


# Washington State **Bar News**

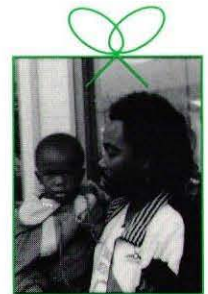
Vol. 48, No. 12, December 1994

## Lawyers Campaign for Hunger Relief

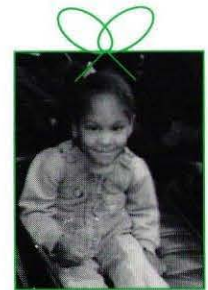
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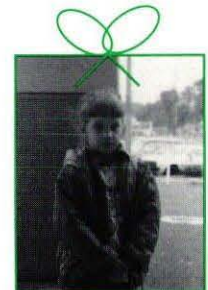
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*In This Issue: Stories and Reminiscences*

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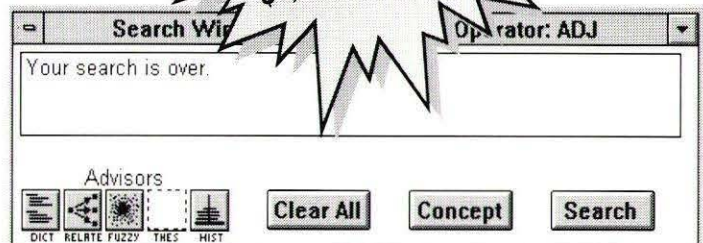
- Supreme Court Decisions from 1939 to present (Vols. 1-124 Wn.2d)
- Court of Appeals Decisions from 1969 to present (Vols. 1-75 Wn. App.)
- Washington Reports, 1st Series, (Vols. 180-200, more on the way.)
- The 1994 Revised Code of Washington
- The 1994 Washington Administrative Code (current through June 22, 1994)
- Annual Session Laws
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- Washington State Constitution
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- The Spokane Municipal Code
- The King County Code
- The Pierce County Code
- The Skagit County Code
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**More Coming Soon**

**Table of Contents for RCW**

- ▼ TITLE 26 DOMESTIC RELATIONS
  - ▷ CHAPTER 26.04 MARRIAGE
  - ▷ CHAPTER 26.09 DISSOLUTION OF MARRIAGE
  - ▷ CHAPTER 26.10 NONPARENTAL ACTIONS
  - ▷ CHAPTER 26.12 FAMILY COURT
  - ▷ CHAPTER 26.16 HUSBAND AND WIFE--RIGHTS AND DUTIES
  - ▼ CHAPTER 26.18 CHILD SUPPORT ENFORCEMENT
    - RCW 26.18.010 Legislative findings.
    - RCW 26.18.020 Definitions.
    - RCW 26.18.030 Application--Liberal construction.
    - RCW 26.18.035 Other civil and criminal remedies.
    - RCW 26.18.040 Support or spousal maintenance.
    - RCW 26.18.050 Failure to comply with support order.
    - RCW 26.18.070 Modification of support order.
    - RCW 26.18.080 Enforcement order--Issuance.
    - RCW 26.18.090 Enforcement order--Contempt.
    - RCW 26.18.100 Wage assignment order--Enforcement.
    - RCW 26.18.110 Wage assignment order--Enforcement.
    - RCW 26.18.120 Wage assignment order--Enforcement.
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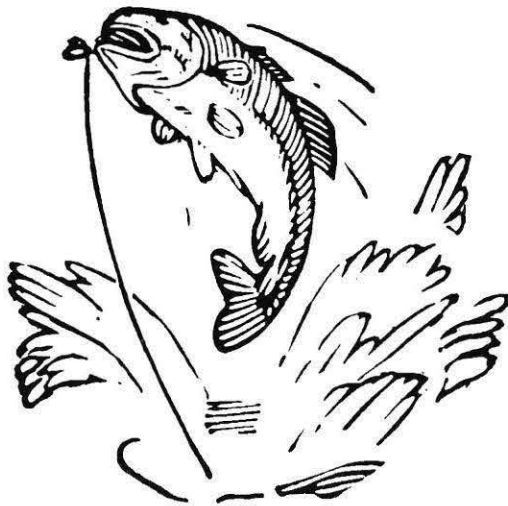
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**FEATURES**

**Stories and Reminiscences**

THE PATRON SAINT OF LAWYERS, <i>by Sharon Creeden</i>	17
Some thoughts for new lawyers from a lawyer-turned-storyteller.	
LATTES, BEETLES AND APPELLATE CASES, <i>by Norman R. McNulty, Jr. and Deborah McNulty</i>	23
We all have a bad day now and again.	
FELLINI IN ROSLYN, <i>by James S. Turner</i>	25
How a Bellevue lawyer ended up on "Northern Exposure."	
WHEN IS AN EDUCATION LIKE A SINGAPORE CANING? <i>by Brian McLean</i>	28
A last word from the UPS School of Law.	
THE DAY I CROSS-EXAMINED GOD, <i>by Barry Bennett</i>	30
An Act of God defense is subjected to the ultimate authority on the subject.	

**THE REAL WORLD**

SEND THE LAWYERS TO HAITI, <i>by Michael W. Herb</i>	51
A WSBA member and faculty member in the UW School of Business ponders the good lawyers can do in the world.	

**PRACTICE ALERT**

THE BANKRUPTCY REFORM ACT OF 1994, <i>by Peter H. Arkison</i>	52
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**COVER CREDIT**

Washington State Lawyers Campaign for Hunger Relief has raised \$100,000 since 1991. Founded by Seattle lawyer Robert C. Mussehl, the Campaign donates money to six hunger-fighting organizations: the Seattle Summer Sack Lunch Program; Food Lifeline (Seattle & Spokane); Meals on Wheels (Senior Services of Seattle); Seattle Emergency Feeding Program; Campaign to End Hunger (the Supplemental Food Program for Women, Infants and Children (WIC)); and CARE. Due to the support of its many volunteers, 100 percent of each donation goes into food. In the Cover photo, members of the Campaign help sort salvaged food at Food Lifeline in Seattle, which will then give it to area distribution centers. Pictured left to right: **Lillian Hochstein**, special events coordinator for Food Lifeline; **Sam Chapin**; **Brad Doyle**; **Russell Frerichs**; **Morris Rosenberg**; **Nick Abraham**; **Winifred Nazarko**, executive director of Food Lifeline; **Sandy Rivas**; **Robert Mussehl**; **Bill Robbins**; **Geri Wright**; **Ronald Abrams**; **Paul A. Gray**; **Charlie Cruikshank**; **Carol Davidson**; and **James Chambers**. Photo by WSBA advertising director **Jack Young**.

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DEPARTMENTS

**Letters:** A critique of diversity; the bear truth; and advances in computerized law. 5

**Editor's Page:** The Man Who Liked Dogs, *by Lindsay T. Thompson* 9

**The President's Corner:** Should the WSBA Evaluate Judicial Candidates in Contested Elections? *by Ronald M. Gould* 13

**Exec's Report:** 1995 Licensing Forms—They're on the Way! *by Dennis P. Harwick* 15

**McLaughlan at Large** 19  
 The photo feature page, a staple of the '70s and early '80s, returns.

**In the News:** Mr. Bulk Sales Retires, *by Lindsay T. Thompson* 21

**In the LAP:** What Lawyers Can Do About Stress *by Barbara Harper and Donna L. Spilis* 35

**The Gray Pages**

- **The Board's Work:** The BOG will meet December 2-3 in Seattle. A report on the meeting will appear in the *January Bar News*.
- **Digest:** WSBA and Judicial Conduct Commission disciplinary notices; notice of change for receipt of service of writs of garnishment and levies; public-defense service standards available; essay contest announced; Bar exam results; sentencing input sought; Eastern District Court of Washington adopts FRCP 26; five Attorney General's opinions; annual military law update; ALI-ABA award nominations sought; legal interest ("usury") rate; notice to WSBA members in re *Keller* compliance option; Goldmark Awards luncheon; new Access to Justice Board. 39
- **Calendar** 49
- **Appointments;** Committee Appointment Opportunities for WSBA Members 50

**Around the State:** News from home; Kitsap and Pierce County reports; LAW Fund; Washington Association of Legal Secretaries Report. 56  
 In Memoriam: Alva Long

**Announcements** 59

**Notices** 60

**Classified Advertising Information** 60

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*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.*

### Is Diversity Really Exclusion?

Editor:

I am writing to protest the blatantly racist "Bidding for Diversity Silent Auction and Dinner" sponsored by the King County Bar Foundation and the Asian, Hispanic, Loren Miller and Northwest Indian Bar Associations; and which was written about, with approval, and advertised in the October 1994 issue of the *King County Bar Bulletin* at pages 1, 4 and 15.

The flagrant racism of the auction was made patently clear since both the articles (pages 1 and 4) stated that the auction's sole beneficiaries were to be "law students of color." Make the mistake of being unfortunate enough to be born white and—step to the back of the bus, and don't use our toilet, I guess.

But tell me, can my daughter, who is half Chinese and half white, apply for auction benefits? Is her skin colored enough to pass the test? Or would she be granted only a half benefit, since she had the misfortune to have me as her father? Or would she be so polluted by me that she should be punished by being granted no benefit at all?

It seems to me that any organization that has the policy of awarding benefit solely on the basis of skin color—not merit or need—and any publication like the *Bar Bulletin*, which promotes such activities and permits such an organization to advertise such activities on its pages, is racist and offensive. I am ashamed of them.

I submit to you that being racist and discriminating against white law students—based solely on the color of their skin—in supposed support of "diversity" is a contradiction in terms, and is morally wrong, ethically bankrupt, intellectually dishonest, and inexcusable. Good ends never justify such despicable means.

I find contemptible the current Politically Correct NewSpeak and DoubleThink that only whites can be racist.

Ask yourself, if there was a White American Male Bar Association, would you think it was racist and sexist if it held an auction to exclusively benefit white males? Of course you would. Then I would submit to you that it is just as racist for the *Bar Bulletin* and the minority bar associations to do what they have done.

We all owe it to society to speak out against racism wherever it raises its ugly head—including that of racist organizations of color.

To paraphrase a real leader who I greatly admire, "I have a dream" that someday all Americans will be judged by what

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they do—not by the color of their skins. But I guess some people and organizations just don't get it.

I note that the racist auction's ad stated that it was the first-ever such auction. I hope those organizing it will do society a favor. Please: make it the last-ever such auction.

GREGORY W. MORAVAN  
Bellevue

### Emily Litella Lives

Editor:

After reading the many letters to you about the story "The Right to Arm Bears" (or was it "The Right to Bare Arms"?), I discussed the matter with a friend of mine who resides at the Woodland Park Zoo.

After careful consideration, we decided that we have the right to provide weapons (including semi-automatic rifles) to our furry friends who are hunted in the wild (and to wear short-sleeved shirts any time we want to).

JACK BEREITER  
Kent

### News on the Computer Front

Editor:

I'm writing to let attorneys know about recent developments of interest at LAW BBS and the Computerization of Law Division (COLD) of the Bar Association.

LAW BBS now has up-to-date case law. Case law includes Washington Reports, Second Series, and all Court of Appeals cases. Electronic versions of advance sheet cases should be available approximately when the paper versions are mailed.

By the time this letter is published we expect that the updated Washington statutes will be on-line. As with most of the resources on LAW BBS, the statute will be available for research or for transfer into your computer.

COLD wishes to welcome our new technical system operator, Michael Malone. Mr. Malone is a professional computer programmer with an extensive background in operating computerized bulletin board systems. With Mr. Malone's assistance databases can be kept more current than has been possible in the past. He is also available to answer your questions about using LAW BBS. Just leave him a message at (206) 727-8314.

COLD's role within the Bar Association has expanded. Last summer the Board of Governors approved some ambitious goals for COLD. Among its goals, COLD hopes soon to have local access through-

out the state, either by an 800 phone number hookup or through the Internet. COLD is also now providing input to the Bar Association and various government entities on issues related to electronic access to government data as well as managing LAW BBS.

COLD is in need of volunteers to serve on and participate with its steering committee. Committee meetings are held at 12:30 p.m. on the third Tuesday of each month at the WSBA offices in Seattle. Everyone is welcome to attend. To be on

the steering committee a volunteer must be an attorney knowledgeable in, or willing to learn about, computers, and is, or is willing to become, a member of the WSBA General Practice or Law Practice Management Sections. Steering committee members serve for one-year terms. Those interested in joining may contact me.

RON STEINGOLD  
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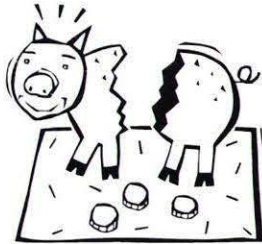
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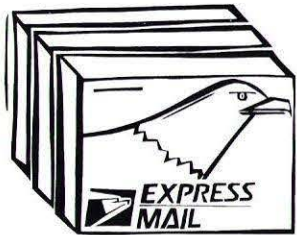
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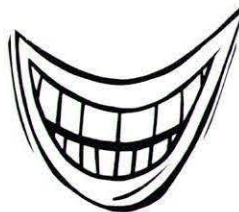
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## THE MAN WHO LIKED DOGS

by Lindsay T. Thompson

‘Midst the hubbub of the holiday season, take some time, find one of James Thurber’s books, and read a while. This month is his centennial. As he put it in the preface to *The Thurber Carnival* (1944), “James Thurber was born on a night of wild portent and high wind in the year 1894, at 147 Parsons Avenue, Columbus, Ohio. The house, which is still standing, bears no tablet or plaque of any description, and is never pointed out to visitors. Once Thurber’s mother, walking past the place with an old lady from Fostoria, Ohio, said to her, ‘My son James was born in that house,’ to which the old lady, who was extremely deaf, replied, ‘Why, on the Thursday morning train, unless my sister is worse.’ Mrs. Thurber let it go at that.”

That’s Thurber for you. Life, slightly off-kilter. His masterworks are mainly stories of his youth in Columbus, like “The Night the Bed Fell,” “The Day the Dam Broke,” and “The Night the Ghost Got In.” Adam Gopnik’s mid-summer appreciation of Thurber in *The New Yorker* called these stories “the Western Reserve of Kafka Country, a world of premonitions and stretched nerves and—there is no other phrase for it—constant existential dread. The point, of course, is that Thurber’s people are funny to us exactly because their dread is out of proportion to their essential security. But *they* don’t know that. He worked with material that he knew always touched the outer edge of craziness.”

And yet the same edgy, complex mind came up with that simplest of creatures, the Thurber Dog. It began as an accident in a sketch: he drew a bloodhound’s head too big. To get the rest of the dog on the page, he had to park it on the stunted body of a basset hound. But it worked. “He may not be as keen as a genuine blood-

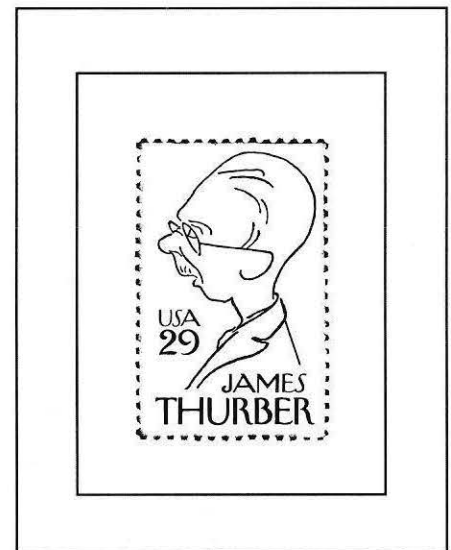
hound,” Thurber wrote, “but his heart is just as gentle; he does not want to hurt anybody or anything; and he loves serenity and heavy dinners, and wishes they would go on forever, like the brook.”

Thurber, widely thought to be the embodiment of the mild-mannered eccentric, cultivated that notion. At 50, he wrote of himself, “Thurber goes on as he always has, walking now a little more slowly, answering fewer letters, jumping at slighter sounds . . . he plans to spend his days reading *Huckleberry Finn*, raising poodles, laying down a wine cellar, playing boules, and talking to the little group of friends which he has managed somehow to take with him into his crotchety middle age.”

In his roundabout way, that snippet of Thurber autobiography reveals much of the real man while wrapping him in a comic mist. James Thurber was a hard man to live with, or be friends with, struggling as he did with blindness, mental upheavals and drink. He straddled a world that no longer was and a world that got progressively more baffling. Even as he chronicled America’s entry into the nervous, complicated, urban world of the post-war era, he clung to his past. In an elegant evocation of that past, he wrote, “The clocks that strike in my dreams are often the clocks of Columbus.”

That’s Thurber for you, too. After you’ve read his stories for their laughter, read them again for his skill in writing. It’s brilliant. His long apprenticeship as a journalist (he didn’t publish anything first-rate until he was thirty-six, Gopnik notes) and sharing an office with E.B. White at *The New Yorker*, brought a clean, crisp line to his work. His words are as simple and elegant as his drawings—just a few strokes of the pen.

He had a thing about lawyers. Imagine



having a client who could write his attorney, as Thurber did in 1949, “Up to 1934 my budget for barristers had consisted of \$500 which I paid upon the occasion of my divorce from the Kappa Rosebud I married in 1921, when I was getting \$35 a week. With the approach of the arthritic period of life, with its Book-of-the-Month-Club symptoms and its tendency to sell stories to the movies, I suddenly attained that primary mark of the successful casual writer: my annual legal fees assumed the proportions of those of a small business firm hiring fifteen people, nine men and six women. People began to make ballets, print dresses, fired enamel tea trays, beer coasters, recordings and oratorios out of the small things I had written and drawn. Writers began to accuse me of plagiarism, invasion of privacy, libel and unAmerican activities. This is known as success in America.”

Lawyers turn up in his stories and drawings as well. There’s the famous cartoon of an irritated lawyer standing before the bench, pulling up a life-sized kangaroo and suggesting to the startled witness, “Perhaps *this* will refresh your memory.”

He liked the line so well, he used it again, in a story.

“A newsboy went by shouting something about the Waterbury trial.

“. . . ‘Perhaps this will refresh your memory.’ The District Attorney suddenly thrust a heavy automatic at the quiet figure on the witness stand. ‘Have you ever seen this before?’ Walter Mitty took the gun and examined it expertly. ‘This is my Webley-Vickers 50.80,’ he said calmly.

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What can a mediator do to help the plaintiff's case?
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What can a mediator do to help the defendant's case?
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- Vickie K. Norris – Advanced Mediation Training: How to break the logjam.
- The Honorable Anne Ellington, King County Superior Court Presiding Judge –  
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**The all-day workshop** will be held on **Thursday, December 15, 1994** at the Seattle Sheraton, 1400 Sixth Avenue in downtown Seattle. The cost is \$150 per person, and lunch will be provided. Call early and reserve your space: reservations are limited, so early registration is strongly encouraged.

**Available** in time for the seminar will be Settlement Now's new videotape, *Prentice v. Cutter: An Interactive (Mock) Mediation*, which will be available for purchase along with the new Settlement Now *Video-Interactive Mediation Training Manual*. Also available for purchase will be the two previous Settlement Now videotapes: *Right Way/Wrong Way*, with William F. Lincoln (\$100); and *On Mediation*, a conversation with noted mediation experts and entertaining speakers, Anthony C. Piazza and William F. Lincoln (\$100).

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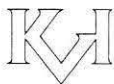
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## SHOULD THE WSBA EVALUATE JUDICIAL CANDIDATES IN CONTESTED ELECTIONS?

by **Ronald M. Gould**  
*WSBA President*

The WSBA is addressing whether or not it should expand its role in contested judicial elections. While no have been made this year, we are looking at the issue for the future. I would appreciate hearing whether or not you believe this would be helpful to the Bar and to the public.

Your colleagues and friends may be surprised to learn that, at present, the WSBA has virtually no role at all in any contested elections. There is a standing WSBA committee on Judicial Recommendations, but its role has been to review applicants who are interested in appointment to Washington's appellate courts. That committee compiles a list of those it considers well-qualified to serve on one of the divisions of our court of appeals or the Washington Supreme Court. That list is updated regularly and forwarded to the Governor who, during the past several administrations, has generally made appointments from it.

The WSBA Judicial Recommendations Committee has no role at all in contested elections for the appellate courts, and none for any of the trial courts in our state. Those who are lawyers, as well as many members of the public, wonder why we are silent on judicial elections.

Many specialty and county bar associations have active judicial-screening programs and have expanded their comments, filling what many perceive to be a gap left by the WSBA's inaction. In voter pamphlets for elections for the appellate courts, there are references to ratings by these specialty or local bar associations, but generally no references to a rating by the WSBA, unless a candidate makes public that he or she has been approved on the WSBA potential appointment list.

Questions have been raised whether the WSBA should be doing more. Last year, our Judicial Recommendations Committee, believing that the issue was a matter of policy that needed clarifying at the level of the Board of Governors, referred it to them.

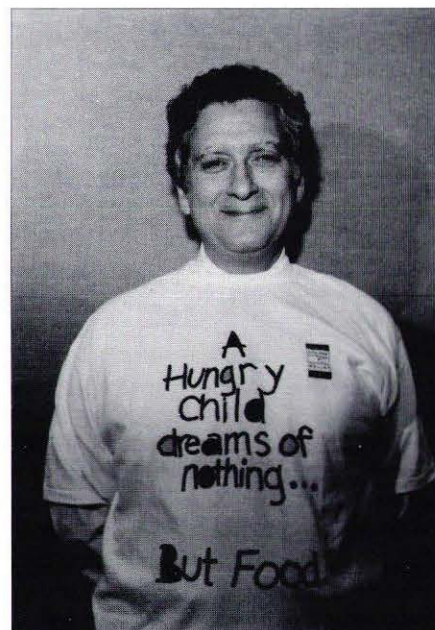
In response, the Board, last July, re-

solved that the WSBA president appoint an ad hoc committee, composed of Board of Governors members and members of the Judicial Recommendations Committee, to address whether the WSBA should be involved in contested elections and other related issues. I appointed Governors Steven Toole of Bellevue [(206) 455-1570] and Peter Ehrlichman of Seattle [(206) 447-4400], and the current cochairs of our Judicial Recommendations Committee, Sharon Sakamoto of Seattle [(206) 682-9932], and Jim McNeill of Spokane [(509) 838-1214]. This ad hoc committee is currently working on the issue. I know that any of them would welcome advice and comment from any Bar member.

I, too, would like to hear your views. Although I do not think that the Association should make fine distinctions on preferences among qualified candidates, it seems to me that there should be a role for us in assessing whether a candidate is qualified to be on the bench. The WSBA's view, if reached deliberately and fairly, should be given weight by the public.

There may be practical reasons against the WSBA's evaluating on a county-by-county basis, but there is little reason not to review appellate court elections. To state an extreme example, let us assume that a person decides to run for an appellate judge's position when that candidate has been previously reprimanded for unethical conduct, has never had any type of counseling or litigation practice whatsoever, and has made public statements showing a lack of proper judicial temperament. Under our current system, while any WSBA leader can speak out individually, the organization has no standing committee to review whether such a candidate is qualified for the position. In the extreme case, I think just about everyone would agree that the WSBA should have some role.

But where should we draw the line? Are there any pitfalls that we need to consider? Do we have the adequate resources to do the job? Should our Judicial Recommendations Committee be ex-



*Ronald M. Gould*

panded? Should nonlawyers participate in any judicial screening in contested elections on any involved the WSBA's committees? Will we duplicate or strengthen the efforts of other bars?

These and other questions may occur to you as you think it over. Please pass along any comments to any of the ad hoc committee members mentioned above, or write or call me at (206) 583-8456 to express your views.

Thanks for considering this issue.



I also want to direct your attention to the Washington State Lawyers Campaign for Hunger Relief. Hungry and undernourished children start out life with disadvantages that many never overcome. Such need demands our attention as lawyers working within a legal system that promotes social justice and equal opportunity. Read the Campaign's insert in this issue. This nonprofit organization, staffed mainly by volunteers, has two objectives: improving the plight of needy children and the elderly chiefly in Washington State, and improving the image of lawyers in our communities. Your contribution to the Campaign can do both.

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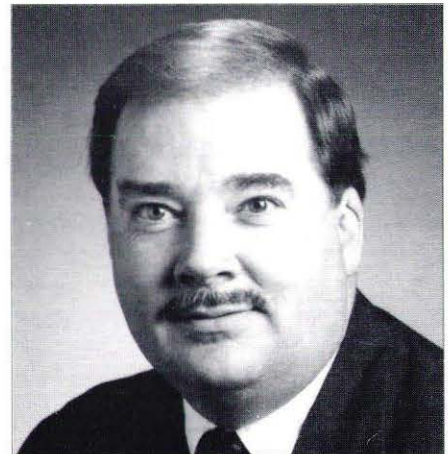
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## 1995 LICENSING FORMS — THEY'RE ON THE WAY!

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



### Keller Compliance Option:

Recently the Board of Governors modified the method the WSBA uses to comply with the U.S. Supreme Court ruling in *Keller v. State Bar of California*.<sup>1</sup> Rather than utilizing a rebate system as it has the past four years, the Board decided to use a "dues reduction" option that allows members to withhold that portion of the annual licensing fee (dues) used for "non-chargeable" activities as defined by the *Keller* case and its progeny.

Consequently, when you receive your 1995 Licensing Form, you will find a detailed explanation of the "Keller Compliance Option," including a summary of the FY 95 WSBA budget. The new "Keller Compliance Option" allows you to deduct the amount the WSBA estimates it will spend in the coming fiscal year for **political or ideological activities** that are not reasonably related to the regulation of the legal profession or improving the quality of legal services. Since the WSBA engages in very few political or ideologi-

cal activities (limited to a few positions on esoteric legislation within our legislative program), the dues reduction amount is quite small—only \$2 for a member paying the full \$195 dues (and a pro rata smaller amount for those paying lower dues).

It is important to note that the test for what is "chargeable" and "nonchargeable" under the *Keller* case and its progeny is much narrower than the debate about "mandatory" and discretionary programs. Nonchargeable activities (those for which a reduction is available) are limited to activities that meet a two-pronged test: 1) they must be political or ideological, and 2) they are not reasonably related to the legal profession or improving the quality of legal services. The Keller Compliance Option approved by the Board of Governors has been reviewed to make sure that it meets the requirements of the relevant cases, including *Chicago Teachers Union v.*

*Hudson*<sup>2</sup> and *Popejoy v. New Mexico Board of Bar Commissioners*.<sup>3</sup>

The Board of Governors approved this change, not because it saves the WSBA money (it will be more expensive to print the necessary disclosures than it has been to give notice of a rebate), but to respond to those members of the WSBA who felt the rebate system was unfair and cumbersome. This dues reductions system allows members to take the reduction at the front end of the process.

<sup>1</sup>*Keller v. State Bar of California*, 496 U.S. 1 (1990).

<sup>2</sup>*Chicago Teachers' Union, Local No. 1, etc. v. Hudson*, 475 U.S. 292 (1986).

<sup>3</sup>*Popejoy v. New Mexico Board of Bar Commissioners*, 831 F. Supp. 814, 820 (D.N.M. 1993).

### Collection of Demographic Information:

Another element of the 1995 License Form will be a **voluntary demographic questionnaire**. As you may recall, a few years ago the WSBA collected demographic information at the time of licensing through a voluntary question on the licensing form. At the request of the Opportunities for Minorities in the Legal

Profession Committee, the Washington Coalition of Citizens with Disabilities, Washington Women Lawyers, and the King County Bar Association, we are again collecting this information. In addition to questions about gender and racial/ethnic group, the questionnaire will include a new question about disabilities,

as that term is defined by the Americans with Disabilities Act.

I need to emphasize that providing the demographic information is strictly voluntary, but it has been very helpful in obtaining an understanding of the increasing diversity of our membership. Thank you in advance for participating.



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# THE PATRON SAINT OF LAWYERS

by Sharon Creeden

**L**awyers have a heavenly connection through a patron saint. He is St. Ives, a thirteenth-century lawyer who protected orphans and the poor. St. Ives, also called Saint Ivo, was born in Brittany. After resigning from the legal profession, he became a priest and built a hospital. He is immortalized in a humorous poem:

St. Ives is from Brittany,  
A lawyer but not a thief,  
Such a thing is  
Not beyond belief!

Here is a prayer to St. Ives from a new law school graduate.

## Top Ten Prayers to St. Ives:

10. All this knowledge about the Rule Against Perpetuities and the Dead Man's Statute won't dribble out my ear before the bar exam.

9. Palms that don't sweat when I shake hands at job interviews.

8. A dream job where I can save the whales, fix the hole in the ozone and bring justice to the streets.

7. Or a dream job with a private office, a parking space and an espresso machine.

6. Or any job that lets me pay my student loans and my share of the rent.

5. Being able to bill for advice given at parties.

4. Clients who pay without being sued.

3. Witnesses who say the same thing on the stand as they do in my office.

2. Never hearing that dumb shark joke again.

1. As Aretha Franklin says, "Just A Little Respect."

*Sharon Creeden's book, Fair is Fair: World Folktales of Justice, will be released in April 1995 by August House. The book contains stories and related legal comments. Creeden is an attorney-turned-storyteller. After graduating from the University of Puget Sound in 1980, she worked as a deputy prosecuting attorney in King County. She left law practice to travel nationally, telling stories to law groups and colleges. With the 1994 intake of new WSBA lawyers completed, and the winter bar exam just around the corner, Creeden offered this story because "recent graduates may need a little heavenly help from the patron saint of lawyers."*

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photo by Jennifer Simmons

L to r: On stage—**Mark A. Hutcheson**, Davis Wright Tremaine; Seattle Mayor **Norm Rice**; **James D. Young**, VP of Food Lifeline Board of Directors also with Grant Thornton accounting firm; **Kathleen Anamosa**, Davis Wright Tremaine. In middle, receiving award:—**James R. Woeppel** and **Gary Sparling**, both of Aiken, St. Louis & Siljeg.

In July, Seattle law firm Davis Wright Tremaine challenged local law firms, banks and CPA firms to see which organization could collect the most food per employee for Food Lifeline. More than 5,200 people donated a total of 237,050 food items, enough to feed 1,820 western Washington families of four for one week. Seattle law firm Aiken, St. Louis & Siljeg won first place/legal leader with 655 food items per employee.

One for the books—attorney **Yale Lewis** in his second term as chair of the Seattle Public Library Board.

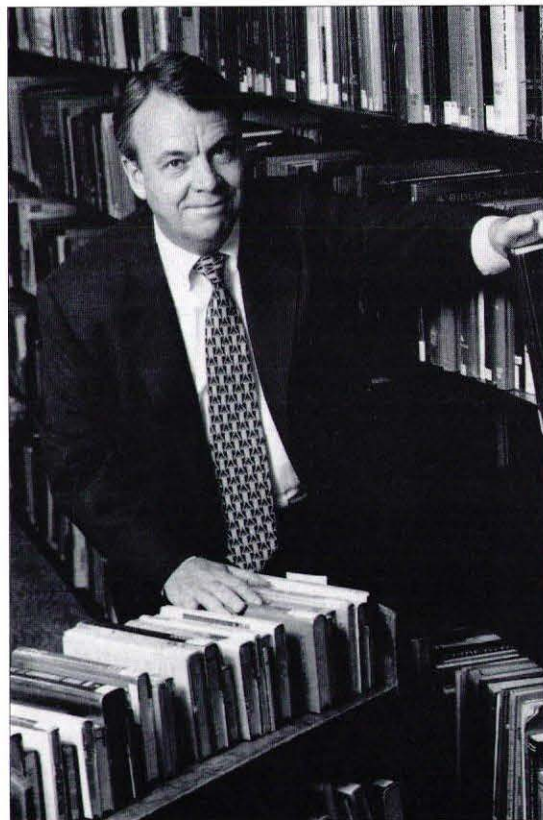


photo by Kim Zumwalt



photo by Millie Photographers

**John D. McLaughlan**

The September 1970 Bar News inaugurated "McLaughlan at Large," photo spreads of WSBA members, as a regular feature. Attorney photographer **John D. McLaughlan** had been taking pictures for the magazine for years, and during the next decade, readers enjoyed his photo pages recording meetings, conventions and Bar members at work and play. This month's modest photo retrospective of 1994 is dedicated to John D. McLaughlan and his fine contributions of the '70s and early '80s.



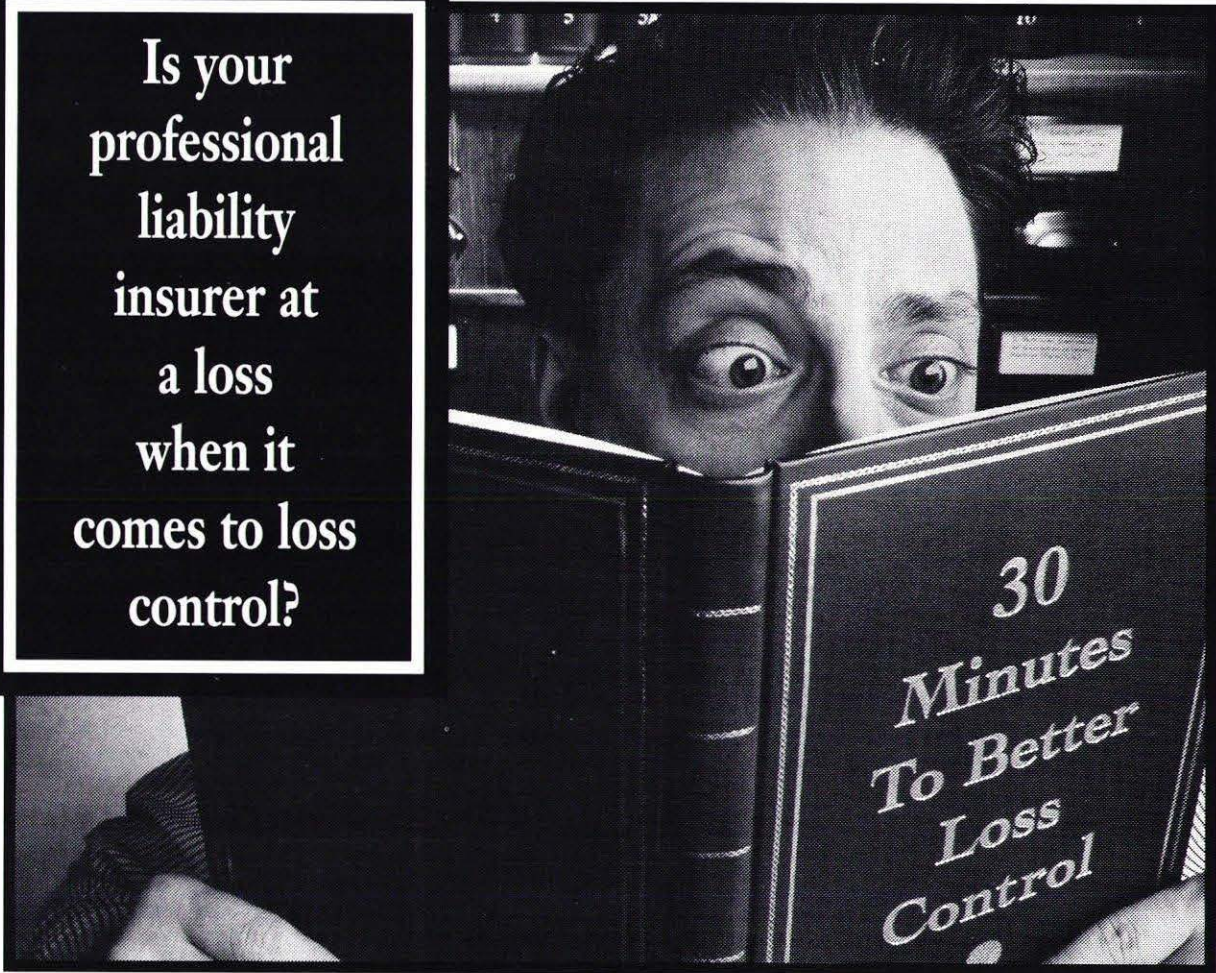
1914 photo by Webster & Stevens

Guess **who** this is! (Hint: How well do you know your King County judges?)

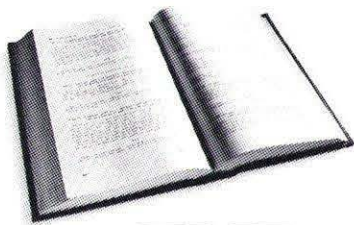
Judge **Betty Taylor**. Photos submitted by Seattle attorney **Helen M. Johansen**.

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## A LIFE IN THE LAW

# Mr. Bulk Sales Retires

by **Lindsay T. Thompson**

"A life in the law" is just a phrase to most people. For Seattle lawyer Edgar R. Rombauer, that's pretty much what his life has been. Rombauer, 87, retired earlier this year, almost 60 years after he was called to the bar.

We met Rombauer, who looks twenty years younger than he is, at Hiram's on the Ship Canal, where, over a seafood lunch, he told us about a legal career he began in 1935. Life was just one adventure after another for the young Rombauer. The son of best-selling cookbook author Erma (*The Joy of Cooking*) Rombauer, he was educated at St. Louis Country Day School in the early 1920s, then at the Institution Siliq. VeVey in Switzerland.

Returning to America, Rombauer spent three years in what he describes as "diversified business experience," including work as a professional photographer and, once he arrived in Seattle, as a bridge builder. The famous photo of the Aurora bridge, its two arms about to be joined at the center, features Rombauer as one of the figures at the top.

A chance dinner conversation led him to apply to law school at the University of Washington. The law school was looking for people with a variety of life experiences, not necessarily just a stack of degrees. Rombauer put in his application, was accepted as what was then called a "Special Student," and entered in 1930.

The Great Depression's heavy hand made getting through law school a financial challenge, but Rombauer stayed the course and graduated in 1935. Admitted to practice late that year, he was subsequently admitted to practice before the U.S. District Courts for Washington, the Ninth Judicial Circuit Court of Appeals, the Internal Revenue Service, and the U.S. Board of Tax Appeals. From 1935 to 1950 he maintained a general practice, including office, trial and appellate work, with trials ranging as far away as the Midwest.

After World War II Rombauer began to concentrate his practice in real prop-

erty, business law and escrow closings. With Herbert Droeker he perfected a commercial business sales earnest money receipt form, which, including bulk sales provisions, became the standard for the industry. Over the next 30 years Rombauer became the expert on the Washington Bulk Sales Act. "People would call me from all over when they had a question about it," he recalled. He lectured on bulk sales, personal property transfers, and related real estate topics at the University of Washington and several community colleges for a quarter of a century. In 1987 he collaborated with Steve Watson to redraft and update the Purchase and Sales Agreement for a Business Opportunity to parallel UCC requirements and set another industry standard in the process. He served as the first chair of the King County Bar's Real Estate and Escrow Closing Attorney's Division of the Real Estate Section.

As if all that wasn't enough, Rombauer closed more than 7,500 escrow transactions.

"I planned to keep on practicing for a while," Rombauer told us, but some health problems, while minor, combined with the cost of maintaining a practice, prompted him to close up shop. One thing he plans to stay active in, however, is efforts to re-enact the Bulk Sales Act, repealed in the last legislative session. "It was a mistake to repeal it," he told us with some feeling. "But legislators were persuaded that it was hardly used any more, when the fact is, it was a significantly useful statute."

We asked for a photo to go with this story, and got a note back confessing, "Unfortunately, I have no portrait taken of me other than passport or auto license pictures, which make me appear as a walking cadaver. If time does not permit a photograph my feelings will not be hurt."

We walked out into a summer afternoon and thanked Rombauer for taking time to visit with us. Wishing us well, he strode jauntily off to his car, the one with the UCC 6 license plate.

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# LATTES, BEETLES AND APPELLATE CASES

by Norman McNulty and Deborah McNulty

“I can’t believe they did that to me,” cried Jack as he slammed down his fist on the bistro table, seriously threatening my hazelnut latte. Several people passing by the outdoor espresso bar stared at us.

“What happened?” I asked. I was surprised by my colleague’s display of temper because Jack was the most unflappable of men. Once, an opposing attorney yelled right in his face that his brief was “a testament of cant and ignorance,” and Jack only blinked. During another trial he requested an opportunity of making a brief response to a previous argument, and the judge sardonically replied, “Counsel, you haven’t been brief all day.” Jack only smiled and sat down. Another time he chuckled, sincerely chuckled, when his client robbed a bank two hours after a jury acquitted him of, yes, robbing a bank.

Jack wasn’t chuckling over his coffee. “Look at this case,” he ordered, handing me the recent supreme court advance sheets.

“What are you talking about, Jack?”

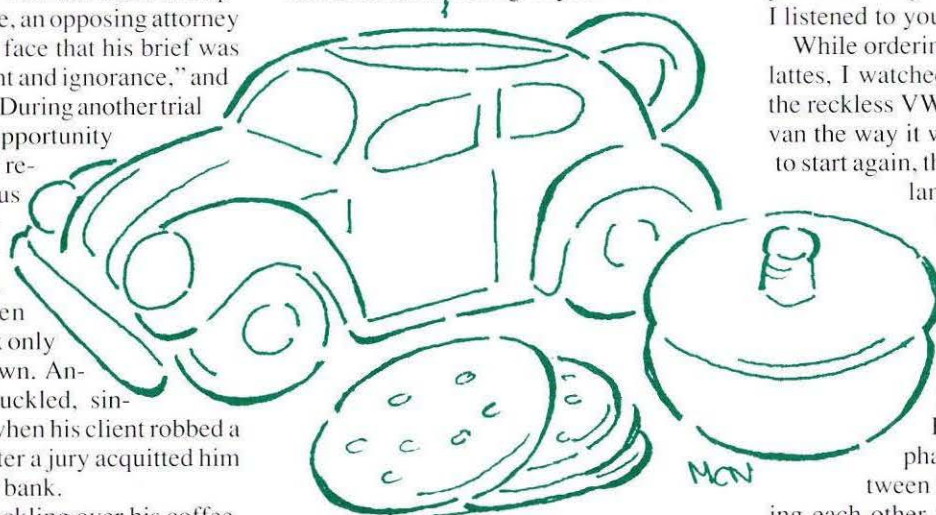
“I’m talking about—see this case,” he shouted, jabbing his finger onto the page. He continued impatiently, “You see here the court says the water rights issue before it was a matter of first impression in this jurisdiction. That’s a lie.”

“What’s a lie?”

“Anna, hear me, this is not a case of first impression. The court decided the issue 22 years ago in one of my cases.” Jack hung his head. “I’m dead,” he sighed. “Or might as well be dead.”

I heard the sound of a Volkswagen beetle and saw it jangling down the city street. Just as I was thinking of how old it might be based on the size of the back window, the really old thing lost control

and slammed into the side of a parked van, the kind families buy to fill with infant car seats. Even though my face contracted at the crunching sound, Jack did not look around to see what had happened. I said, “I don’t know if you’re dead, Jack. That’s taking it a bit far, isn’t it? I mean, did the court make the same ruling in your case?”



“Yes, and that’s the most frustrating thing about it. I think I would have almost preferred their overruling my case than to ignore it all together.”

“I see.”

“No, you don’t see because I’m not explaining myself very well. It was my first argument in the state supreme court. I was just out of law school and had just been hired at a firm. The one I’ve told you about, with all the senior partners gargoyles. One of the Gargoyle brothers walks into my cubicle one day and says, ‘Here kid, this is yours, and good luck.’ I think he didn’t have much faith in the case and didn’t want the bother. Of course, I worked myself to gravy and won a unanimous decision.”

“Of course.”

“When the advance sheets came out, I must have made fifty copies. Sent a copy

to every soul I knew. And then some. I framed the court’s mandate. Still have the thing hanging on the wall at home.”

I stood up. “I’m going to order you a hazelnut. They really are good.”

“Thanks, but no. I’ve got to get back to the office.”

“Nonsense,” I answered, “I want to tell you a sad story about a case. It’s only fair. I listened to yours.”

While ordering and paying for the two lattes, I watched the continuing saga of the reckless VW. Stuck in the side of the van the way it was and evidently unable to start again, the vehicle was blocking a lane of traffic. A Volkswagen bus had stalled behind it, and one would think people who owned the same make of car would stick together, but this was not the case. Stamping their Birkenstocks on the asphalt, both drivers stood between the German autos blaming each other for every aspect of their predicament.

Settling myself into my seat and handing Jack his latte, I began, “I know you’ve argued in the appellate courts many times.”

“Yes. Yes?”

“Do you ever shepardize your own cases to see if they’re cited by other courts?”

Jack squirmed. “Well, no, not exactly. Once in a great while, I might accidentally happen across a citation or something. I don’t go hunting for them, if that’s what you’re suggesting.”

“I’m not suggesting anything. Don’t worry. I don’t mind telling you that even though I don’t have as many published decisions as you do, I never quit reminding myself about them, few as they are. I reread them. Forced husbands to study them. I shepardize them every month. I

do. I know it's crazy, but when I do find a court has cited one of my cases, I feel a surge of joy in my heart, like someone has jump-started my engine."

Jack stared at me thoughtfully. I think he wondered if he was being ridiculed, but my blank face, drained by confession, must have convinced him of my sincerity because he asked for the rest of my story.

I explained, "Before I joined our firm, I worked, you know, in the legal department of a large logging firm on the coast. A state agency had issued a regulation

governing the construction of logging roads in the watersheds. My company thought the regulation invalid, and I was given the task of litigating the matter. The superior court ruled in favor of the agency, but I appealed to the supreme court, which reversed and held that the regulation was void because it created a criterion inconsistent with the statute."

"That sounds great," said Jack, his face showing more self pity than congratulations.

"But two months later the Legislature

amended the statute and effectively overruled the decision."

"Too bad," Jack, brightening, commiserated.

A young policeman arrived and swaggered up to the bantam drivers, directing them to stand aside while he heaved the beetle away from the van and opened the front hood. He gazed nonplused into the space he had exposed before demanding an explanation from the auto's owner. The beetle owner's reaction was splendid. He pressed a palm to his forehead and turned incredulous to the VW bus owner. Obviously, the cop had asked what had happened to the engine. The Volkswagen people threw open the back of the beetle and showed him. Embarrassed, the policeman began barking orders to get the ancient vehicles moved. The drivers, now united in common cause, resisted a bit, and, as when anyone talks back to a policeman, a crowd gathered to watch the show.

"I was not pleased," I continued when I returned my attention to the moping Jack. "However, very recently a court has cited my case for the proposition that an agency regulation must comply with the underlying statute. I couldn't believe it. Can you imagine? Anyway, at least on the general legal principle for which it stands, my case is alive and well."

"Thanks, Anna, you've made me feel much better."

"Well, you're welcome. Uh-oh, here comes the woman who owns the van. Oh no, one kid in a stroller and one by the hand." The mother practically screamed. The baby started screaming for her. The two Volkswagens were still there, the drivers leaning against their property congenially swapping war stories about their chariots of choice. The fact that the mother's van was smashed in appeared to concern no one but her. "Good, the policeman's coming back," I muttered.

Sipping his latte and turning around, Jack asked, "Why, what happened?" and returned all glum to face me again.



*Norman McNulty is a 1973 graduate of the University of Washington. A past Bar News contributor, he is in private practice in Spokane. Deborah McNulty is a graduate of Portland State University and works as a paralegal in Spokane.*

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**30-DAY MONEY BACK GUARANTEE**



## FELLINI IN ROSLYN

by James S. Turner

### Prologue

**Q**uiet surrounds our Beaux Arts home this Saturday morning, in July's first week, following my juristic battles of Monday through Friday. My daughter, Diane, her dark eyes sparkling, hands me the *Eastside Weekly*.

"Look Dad," she beams. "Your chance to get into TV!"

The ad, for extras, suggests aspiring actors mail a head shot to Northern Exposure.

The next day, I drop one in the mail.

A few days later, Lou Baus, our firm's receptionist, excitedly hands me a message slip, which gives Northern Exposure as the caller and a Redmond phone number.

*(Cut to Int:<sup>1</sup> The cast—or "cattle call"—at the Redmond studios.)*

Some 50 to 60 hopefuls stand in place while a casually clothed woman who (I later learn that she is a director) scrutinizes each of us. I am struck by the unusual countenance or stature of most of my fellow candidates and wonder why I was asked to come. Later, I learn that a cast was being selected for a Federico Fellini theme, as a part of an episode called, "On Your Own".

I'm thinking, "This is fun."

The director beckons me to join the rejects. Gosh, I am actually disappointed. After a few minutes, the woman returns and views the rejects again. I catch her eye and give her a lawyerly stare-down.

This time, she directs me to the group which will survive the cut. She then points to a tall, dark, young man; a short, likewise dark man, and me—also, some might say, short. She intones, "Priest," "Priest," "Priest," nodding to each of us, then confers with another director, points at me and says, "Cardinal."

A few minutes later, other survivors are directed downstairs to the costume room to be fitted. I am handed a gown, a cassock, a jeweled crucifix and a skull cap, all crimson. I dress. They measure me, take my name and promise further instructions.

This really *is* fun!

*(Cut to Ext:<sup>2</sup> Roslyn, on a shimmering Wednesday morning in late July.)*

Some 15 to 18 extended truck trailers nestle in a dusty, weedy Roslyn field. They serve the needs of the cast and crew. At the costume trailer, I retrieve my Cardinal clothes and retreat to another to dress.

Feeling almost ecclesiastic, I find my way to the makeup trailer. The makeup lady weaves her magic, and my furrowed face ages even more. They waive a trip to the coiffure station; apparently my do fits a television holy man.

Actors and jurors must share a similar attribute: Patience. There's lots of waiting. My fellow Fellini folk are dressed, made up and coiffured by 10:30 a.m. that Wednesday. The shoot (filming) begins some four to five hours later.

The next day, my fellow extras are ready by about 6 a.m., and the camera starts rolling about six hours later. No fault of Northern Exposure—waiting is endemic to the film industry.

*(Cut to Ext: Vacant lot in Roslyn.)*

(As I have a few cauldrons boiling at the office, I have rented a cellular phone so I can stir them by remote.)

Waiting for the filming to begin, the Cardinal talks by cell phone to his assistant, Sue Mercer, in Bellevue. A tourist points toward the Cardinal, calling his companions' attention to this dichotomy.

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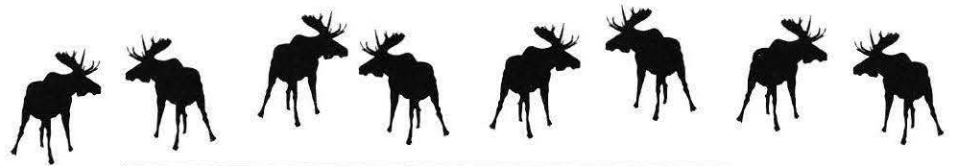
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*"First light brings . . . the Priests, the Nuns, a couple of other Little Persons, a Military Subaltern, a Male Child, a Striking Likeness of Jacqueline Kennedy Onassis in her pink pill box hat and matching suit, a Spittin' Image of Sophia Loren . . ."*

*(Cut to Ext: Wednesday late afternoon, with the now-slanting rays of the summer sun casting shadows over a dusty, weedy, Roslyn artifact-littered alley. The scene is mellow, arcane, Fellini like . . .)*

In addition to the Cardinal, are his Elite Flock: Strong Man, Ingenue, Her Watchful Mom, Lady of Very Small Stature, Very Well-Nourished-and-Bosomy Lady with Lovely Countenance, and a Thirty Something Marcello Mastroianni Look-alike.

The Cardinal is getting all sorts of mock adulation from his fellows, e.g., "Father, will you forgive my sins?" "Will you bless me father?" The Cardinal usually counters by offering his ring and saying, "My son/daughter, you may kiss my . . . ring."

Various scenes are shot of the Elite Flock.

Before the cameras roll, the Cardinal is directed to stroll across that dusty, weedy lot adjacent to the alley and turn his crucifix toward the setting sun so that the glint from the imbedded glass will project to the camera. He is told to stop at a mark and scrutinize the other extras, some 30 feet away, who are sitting or standing around a table.

"Action!"

The camera grinds. The Cardinal walks slowly, the sun retreating over his left shoulder, and tries to reflect it to the camera. He stops at the mark and gazes at his Elite Flock.

"Cut!"

The director examines the shot.

"Print it."

This sequence may end up in the actual production! "A print without a rehearsal?" I think to myself. Wow! (Tearfully, I must admit it never made national TV.)

We conclude about 6 p.m., and the Cardinal's Elite Flock are sent to a bed

and breakfast in Cle Elum, paid for by Northern Exposure.

*[Oh! A word about the fees: Extras (seen, but not heard) earn \$50 per day—something less than my hourly fee. They paid me \$15 for fuel to get to Roslyn (Heck—\$15 will get my Jetta Diesel to Boise!) I also got a \$10 meal allowance on Wednesday night. Had a meal from the salad trough at a Cle Elum Cafe, including a glass of wine, paid a tip and got back a buck, plus change. Breakfast and lunch are also usually served cafeteria style from a trailer on location. I would rate the food as 2 1/2 stars.]*

On Thursday, our supervisor rousts us out of bed around 3:30 a.m. Matinal ablutions are performed all around, but we leave with no breakfast. It's back to the beauty and dressing parlors in Roslyn.

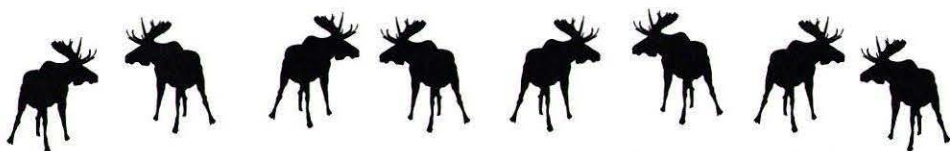
First light brings a host of other "Fellini" extras, the Priests, the Nuns, a couple of other Little Persons, a Military Subaltern, a Male Child, a Striking Likeness of Jacqueline Kennedy Onassis in her pink pill box hat and matching suit, a Spittin' Image of Sophia Loren, etc.—25 to 30 all told.

They are joined by "Ed," a Northern Exposure star.

In the story, Ed catches a trout; Ruth Ann (Peg Phillips) cooks it. He bites into the fish and chomps down on a gold ring bearing the inscription "To Juliette, F.F."<sup>3</sup> Ed feels he needs a dose of creativity in his filming and starts wearing the ring. Each time he picks up his camera and looks through the lens, he sees Fellini folk in dreamlike scenes, sees himself making a speech and accepting a Lifetime Achievement Award, etc.

Feeling cursed by the ring, he wants to get rid of it.

*(Cut to Ext: Dusty, weedy alley in Roslyn) Somehow, the Fellini folk are alerted*



*Innumerable takes ensue. It's a bizarre foot race, with multiple starts and with off-beat people wearing strange attire.*

...  
"Cut!"

to Ed's intention. Led by the Cardinal, they are determined to get the ring from him.

"Get him! Get the ring!" (The audio portion of the taping never got to the final product.)

Fifty extras are variously assembled in the dusty alley.

"Action!"

A Female Person of Very Short Stature rambles down the alley after Ed and the ring, followed by the other Fellini Folk.

There are many takes. We run toward the camera, pass by it and go after Ed, reassemble and do it all over again. (It's a no-no to look into the camera lens.)

We stop at 3 p.m. and are told to show up at a church parking lot east of Fall City at 7:30 Friday morning.

On Friday, shuttle buses take us to a staging area, adjacent to the Snoqualmie River, where about four trailers of the vast Roslyn trailer fleet have moved during the night. We reclaim our costumes, get painted, coiffured and robed. We will continue Thursday's chase of Ed.

*(Cut to Ex: About five miles east of Fall City, near the Snoqualmie River.)*

During the entire shoot, the hair and makeup people follow us with their portable hair dryers and beauty kits. The Cardinal's Elite Flock and Thursday's bunch stand ready to chase Ed and "Get the ring!"

*(Cut to The Chase: Near the shores of the Snoqualmie River.)*

A director reminds the Cardinal to lead the Fellini Folk in the Ed chase.

Innumerable takes ensue. It's a bizarre foot race, with multiple starts and with offbeat people wearing strange attire.

Some shots (kept in the final cut)

feature the Cardinal's Elite Flock in the immediate foreground of the search scene.

The filming continues for several hours.

The Cardinal and Flock fail, as Ed casts the ring back into the river.

The last "Cut!" rings out.

We trudge toward the trailers to surrender our costumes.

Lunch is served, and my adventure ends, but the memory lingers on.

Who knows what lies ahead? Maybe I'll go out to the Snoqualmie River and see if I can find the ring

If I find the ring, what then . . . ?

But, now it's back to my very un-Fellini law office, with nobody asking to kiss my . . . ring.

#### *Epilogue*

It was a privilege to work with the Northern Exposure casting staff and production crew those three days. The extras could not have been better treated. The staff displayed the utmost courtesy and helped us at every turn.

They are first-class people and good neighbors in our Puget Sound community.

Had it not been for the graciousness of Attorney Jackie Shafer, of Langley—my opponent in a most contentious case, Judge Allen Hancock and my client in agreeing to reschedule a hearing, I would not have had this wonderful opportunity, and I thank them.

<sup>1</sup> Interior shot.

<sup>2</sup> Exterior shot.

<sup>3</sup> Giuliette was Frederico Fellini's wife



*Former WSBA Governor James S. Turner practices in Bellevue.*

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## WHEN IS AN EDUCATION LIKE

by **Brian McLean**

*Editor's note: Brian McLean delivered not only the last, but one of the most delightful and shortest ever of student speeches at commencement of the University of Puget Sound School of Law.*

**B**ecause the school is being purchased by a Jesuit—or Catholic—institution, it seems only appropriate that I now make a confession. Father Sullivan from Seattle University was standing in the Field House parking lot one hour before commencement, admiring a late-model automobile, and that automobile belonged to President Pierce, and I sold it to Father Sullivan.

I asked, and apparently the school is unwilling to pay me for this speech. So I have decided to keep it short and put very little thought into it. However, this is easy. For three years I have written exams that are long-winded, disorganized, miss the main issues, and end like a half-completed roadway over a deserted canyon—and I was not paid to write these exams. I see no reason to change now.

Ambassador Albright, distinguished guests, faculty, graduates, family & friends, federal agents:

It is a great honor to be standing before you today to say farewell to law school, and to help us all pull together as a community to bury our academic careers, and to bestow a disturbed blessing upon peers who are already leaders of their generation and are developing into leaders of tomorrow's generations as well. I exhort you, my fellow classmates, to go out into the world and do good by enlisting in causes that help society do something for someone less fortunate than you. Additionally, I exhort you to believe in UFOs.

Also, support me today in my fight to make the wealthy pay its fair share of the taxes. Then, if one day we become wealthy, join me in a fight to change the system again.

What was law school like?

I thought long and hard about this. I suppose the closest analogy to law school is that of a caning in the Singapore penal system. It hurts, it leaves scars, it has very little relation to the real world, and the British started it.

However, we should feel fortunate after three years of law school to have earned the privilege of beginning this healing process, and of returning to some kind of normal existence, whatever a normal existence is. I have vague memories of my life before law school—manicures and pedicures, bungee jumping, massages, limousine rides, front row seats at the symphony, and days of semi-conscious inebriation at construction sites. I also vaguely recall throngs of people—strangers—walking up to me and giving me money. I look forward to returning to that life.

No matter how fortunate I should feel about the future, however, there is a dull ache in my stomach, an unsettled feeling that perhaps, today, I am not so fortunate. It would be superfluous to say that this is the happiest moment in my life. I am \$50,000 in debt, I don't have a job, I am 32, and I still live at home with my parents.

# A SINGAPORE CANING?

Many of us today are overwhelmed by the job search that lies before us. Although we had the best credentials ever of any class to enter the University of Puget Sound School of Law, the job market for lawyers and law graduates is at a low ebb right now. I pulled this representative classified ad out of the *Tacoma News Tribune* this morning:

Wanted: Leaf Raker at Washington State Mental Hospital. Experience Necessary. Law school graduates need not apply.

I want to say a few words about the move and sale of the law school. In 1908, my grandmother was at the opening-day parade for Stadium High School in Tacoma. My dad grew up and went to high school in Tacoma. So I have roots here. On the other hand, I grew up in Seattle and received my bachelor of arts degree from Seattle University. So you see, I have mixed feelings about the move of the law school.

Tacoma is a wonderful town, with much natural beauty, a long history and great opportunities for the future. At Seattle University, my grades were higher and the classes were easier. Tacoma will survive without a law school because it has so much more to offer. It is in the midst of its own renaissance. The law school will get better, too, with Seattle University's support, especially if the classes become easier and the grades higher. Let's stop talking about losers; let's put the sale and move behind us and focus again on the

positive. As graduates, let's ask Seattle University for a second diploma and an upward grade adjustment on our transcript. I think it's about time we were all in the top 20 percent.

No commencement would ever be complete without a heartfelt thank-you expressed to the family and friends and federal agents who have supported us and endured the pain of having a loved one in law school. You should feel honored today as well . . . .

In closing, we are known by the company we keep. And for the past three years, I have kept company with some of the finest, smartest, most sensitive and caring individuals I have ever met. It has been an honor to be a part of your lives and to be a member of the last class of the University of Puget Sound School of Law. I will miss you, Class of 1994. God bless you, and, to quote Doug Llewellen of People's Court, "Remember, if you get into a dispute with someone, don't take the law into your own hands, Take 'em to court."

Thank you.



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by **Barry Bennett**

**I**'m going to tell you about the day I cross-examined God. But first I have to take you back to a Friday morning in May, when Bill Evers strode casually through my office door and tossed himself into my brown leather loveseat, draping his brawny arms limply over the stacks of files. Bill was a shipwrecked sailor. His *Lady Belle* lay beneath the Pacific, her final voyage a legacy of coral and rust, and Bill needed a good lawyer. A tossed quarter that landed on my face in the yellow pages had brought him to me.

Business had been slow lately, and it was good to see a new face. This was one hell of a face, too: its nose jutted forward like the prow of a ship, lending the long, angular contrast to its otherwise moon-round features. Jowls curved by the edges of a gray mustache that framed two buck teeth hanging so low they could almost take a bite out of the lower left chin. Large brown eyes bulged from a gray background, darting back and forth as if determined to keep sight of the end of that nose. They say that after a while, people begin to resemble their pets. I figured Bill must have spent some time fishing for walrus. I wanted to slip two quarters in a slot and throw him some cod.

Bill had a straightforward story to tell: hurricane at sea, ship sunk, cargo lost, captain sued. It looked bad, but I had an idea. I broke the binding on my trusty *AmJur*, and the first volume serendipitously fell open to the penultimate heading, "Act of God." There I read that an Act of God was an event that "could not happen by human intervention." To qualify, an occurrence must be abnormal, strictly natural in origin, and inevitable. The best candidates for Acts of God were "geophysical phenomena" such as lightning, storms, and *hurricanes*.

I had my strategy. If I could prove that

Bill had taken all necessary precautions, he should have a watertight (so to speak) defense. Throw in a little pathos for good measure: poor ship captain, struggling to make a living on the open sea, lost all he owned already—surely he wasn't responsible for a hurricane, too? Why, I'd make him a regular Horatio Hornblower.

His crew would back him up, too. Experienced seamen all, they had weathered many a lesser storm. I'd have a lineup of eyewitnesses describe the fierce, unforgiving eye at the center of the hurricane, the blackness surrounding the ship, the foaming water that swept over the hull like suds from a Maytag with a whole box of Tide in it—and most of all, the crew's brave, if futile, efforts to stem the onrushing flood. Where were the plaintiff's witnesses? That was the beauty of it: he didn't have any.

As the trial date arrived, I had everything lined up. The brief was done, the witnesses primed, the captain ready to spin his tale of seafaring derring-do. The plaintiff put on his case first: a woeful exhibition, I thought, of a few loose nails intended to demonstrate my client's negligence. A theory sure to crumble in the face of our spirited defense.

And spirited it was. The jury sat entranced as Bill described his experiences with storms of years past, each time steering his cargo to shore. They gazed reverently as he explained the intricate precautions he had taken on this voyage to safeguard the plaintiff's 30,000 boxes of stuffed animals. They almost cried as he risked life and limb to salvage each last cute little teddy bear, not forgetting the forty crates of sour pickles.

I leaned back and waited for the plaintiff's futile closing argument. Instead of making a speech, however, the plaintiff's attorney requested permission to put on a rebuttal witness whose avail-

# THE DAY I CROSS- EXAMINED

# GOD

ability he had only just discovered. I objected, to no avail. Then he sprung the surprise of the day.

"Your honor, for my next witness, I call the Lord."

The Lord? Now here was an unusual development. Just when things were going so well. If this was the real thing, it could put a real chink in my defense.

The gallery fell silent as a tall, lanky, gray-haired man strode slowly through the courtroom. No beard—some pictures would have to be changed, I thought, including the Sistine Chapel. But He had bright blue eyes, so sharp they threatened to pierce you like two blue thunderbolts. Now I understood how He had engraved the Ten Commandments for Charlton Heston.

The judge motioned God to the witness stand.

"Raise your right hand, please. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help You You?"

"I do, so help Me Me."

"Please be seated." As He sat down a low rumble shook the room.

"Excuse me, your honor. I forgot I had a can of Earthquake Starter in my back pocket. It's a little device the boys in the back room cooked up, makes earthquakes a whole lot easier. You don't know what I had to go through to swallow up the Israelites after they made the golden calf."

"I can imagine. Now, could you please state your name and address for the record?"

"I am that I am."

"You are that You are? Could You be more specific?"

"Oh, of course. Charlton—I mean Moses—didn't like that either. Of course, Moses was much shorter. Could you repeat the question?"

"State your name and address, please."

"My name is God. I am omnipresent."

"Do you go by any other names?"

"My aliases include the Lord, the Almighty, Allah, the Great Goddess, the Grand Poobah, and the Big Cheese."

"The Big Cheese? Who calls you the Big Cheese?"

"Oh, they're not on Earth. They're in a galaxy you don't know about yet."

"Then it's true that other planets also contain intelligent life?"

"What do you mean 'also'?"

"Yes, well . . . let's move on. Your witness, counselor."

"Your honor, we will now qualify the witness as an expert in Acts of God. Sir, can you describe your experience with Acts of God?"

"Certainly. I've had substantial experience. I caused it to rain for 40 days and nights straight, a record never approached even in Seattle. I appeared in a burning bush that was not consumed—hot as the devil in there too—devil, get it? Let's see—I parted the Red Sea, knocked down the walls of Jericho with a trumpet blast . . ."

"Can you provide the court a demonstration of your expertise?"

God looked out the window, snapped His fingers, and the bright August sky was suddenly blind white with snow. He raised His hand and the snow turned to sleet. He moved His arm and thunder cracked overhead like two cymbals in a celestial symphony. Finally, He crossed His hands and the sky brightened once more. I felt like the Connecticut Yankee in King Arthur's court, grateful for the return of the early afternoon haze.

"Now, Sir, are You familiar with the events of December 12, in which a hurricane caused the wreck of the Lady Belle?"

"Of course I am. After all, I'm omniscient."

"Yes, of course. Did You cause that

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hurricane?"

"No, I did not."

"What did cause it?"

"Most storms are natural phenomena that result from the Earth's geology and climate. People have a tendency to equate such phenomena with My actions, but I don't think you realize how busy I am these days. In the old days there weren't that many of you around. Now, with billions of you earthers, I simply can't be involved in it all. Not and give it the proper attention anyway. Oh, I'll do a

tornado here and there, but most of it's been operating on its own for several millennia now. I'm afraid you humans can be a bit presumptuous at times."

"Thank you. No further questions."

It was my turn. I had to be careful; the jury might not like it if I badgered Him. I might regret it a few years down the road too.

"I'd just like to ask You a few questions, Sir. How many hurricanes have You created?"

"Oh, my. A couple of million, I'm

afraid. But very few lately."

"Isn't it true that this hurricane bears a remarkable resemblance to many of the ones You have caused?"

"Yes, it does. Many hurricanes are alike. But I've taken to specializing, and this one was rather routine."

"But don't all hurricanes follow laws that You created?"

"Certainly they do. But most are so far removed from My actions that there are layers of intervening causes between Me and them. If I understand *your* laws correctly, that makes them no longer My acts."

"Can You tell the jury exactly what You were doing when this hurricane struck?"

"Certainly. I was having dinner with Elvis."

"No kidding. Do You eat with the king often?"

"Only occasionally, although I do follow his whereabouts through the tabloids. Of course, we don't call him the king up there. I'm sure you understand."

"Of course."

This wasn't going well. God was denying everything, and I didn't have any evidence that He *had* caused the hurricane. Since I couldn't contradict His testimony, I'd have to show that He's contradicted Himself. It was tricky, but it was my only chance: I would challenge His credibility. After all, God had more statements on record than Lani Guinier. I would take His past writings and Bork Him with them. I was sure Bork would think the association with God was appropriate.

"Sir, let's talk about the Great Flood. In Genesis 7:4 it says the Flood was caused by 40 days and nights of rain and nothing else. Yet in Genesis 7:11 it says that the Flood was also caused by 'the fountains of the great deep.' How do You explain this contradiction?"

"You know, I've watched theologians debate that very question with some interest. The truth is, after thinking about it I just wasn't sure the rain would do the trick. So I added the fountain bit later on."

I saw the jury nodding in acknowledgement. Strike one for God.

"In Genesis 7:15 it says Noah brought one pair of each animal into the ark. Yet in Genesis 7:2 it says Noah brought one pair of each unclean beast but seven pairs of each clean beast. Both statements can't be correct, now can they?"

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## Perplexed by a Washington Statute

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The Commission, established in 1982 under RCW 1.30, is conducting a survey of Washington State statutes containing errors, unintended ambiguities, or anachronisms. If you know of a statute that needs technical revision (as distinct from substantive amendment or repeal), please let us know.

Write to: Washington Law Revision Commission, Marjorie D. Rombauer, Chairperson, c/o School of Law, University of Washington, 1100 NE Campus Parkway, Seattle, WA 98105



"Oh, that old thing. That's a typo. The 'seven' from the chapter number got transposed with the numbers of animals. It went to the printer before I could catch it."

The jury looked at each other with understanding; they'd all made the same mistake. Strike two.

"Let's go back to the beginning. In Genesis chapter 1, it says You created plants on the third day, and man and woman—at the same time—on the sixth day. Yet in chapter 2, it says You created man before creating plants, and that only later did You create woman from Adam's rib. Now, how do You explain *that* contradiction?"

"I'm glad you brought that up. That passage has caused Me more trouble than anything else I've written. Let Me just say this in response. I had never created a human being before, and I was experimenting with different ways to do it. Unfortunately, both methods made it into the Bible. But the truth is I created man and woman equal before Me."

The jury—eight women and four men—burst into applause. The game was up. I guess when you know everything, you can be difficult to trip up. At this point I had nothing to lose. I decided to ask the one thing that had always troubled me.

"Sir, just one more question. It's a little off point, but I must know the answer. Lord—since You are good, why is there evil in the world?"

"Ah, you'd like to know that now, wouldn't you? I'm sorry, but I must be going."

With that, He pulled out a small box and flipped the lid. We sat stunned as His voice boomed across the courtroom.

"Beam me up, Scotty!"

There was a flash of light and color and—whoosh!

He was gone.

I fell back in my chair, knowing I had lost the case, yet feeling richer nonetheless. Many people spend their entire lives seeking God. Yet here in this courtroom, on a still summer's day when the desert breathed silent and the sea lay soft by the shore, He had found me.

Now, that wasn't too bad.



*Barry Bennett is an attorney with the Bonneville Power Administration in Portland.*

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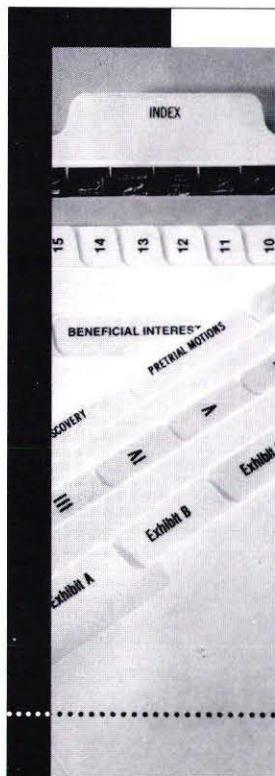
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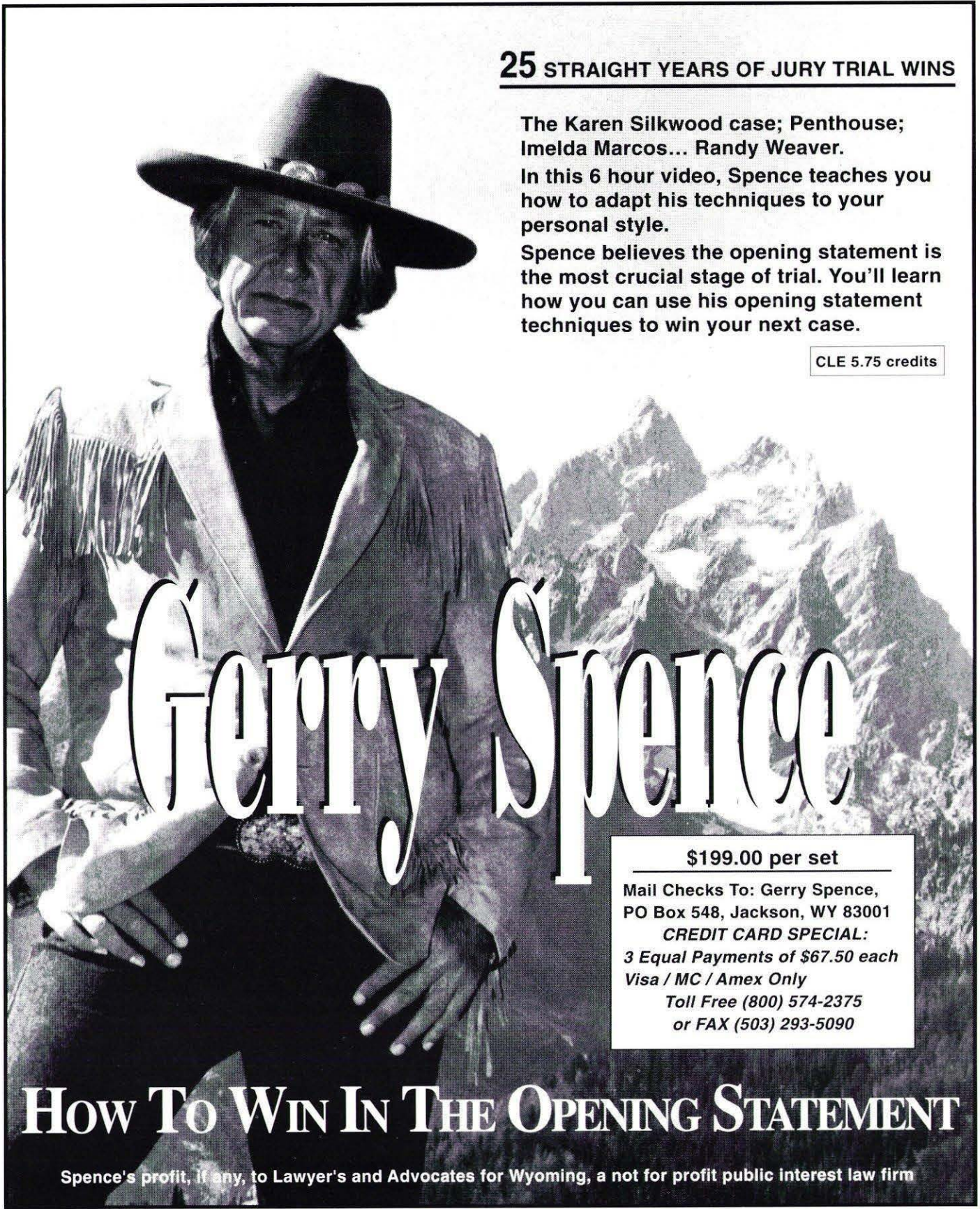
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# WHAT LAWYERS CAN DO ABOUT STRESS

by **Barbara Harper** and **Donna L. Spilis**

(excerpted from an article from a book to be published by the ABA Law Practice Management Section this year entitled *Stress Management and the Legal Profession*)

In our society, symptoms of stress often go undetected until they yield negative physical, professional or interpersonal consequences. Failure to heed stress warning signs is not unique to the legal profession, but it does reflect the institutional denial of lawyers' humanity. The analysis of data from a stratified, random sample of 10 percent of the practicing lawyers in the state of Washington demonstrates that one-third of the lawyers suffer from psychological, behavioral and physical symptoms that indicate the presence of depression, alcohol abuse or cocaine abuse. Similar data have been collected in other jurisdictions.

This article points out sources and signs of stress in the legal profession and provides a stress management model for bar association lawyer assistance programs (LAP).

## What is Stress?

Stress is a physiological and psychological response to negative or positive environmental change. How one responds to a stressor depends on how the event is perceived. Events that elicit stress in one lawyer (a 70-hour work week, disagreements with opposing counsel, etc.) may have no negative effect on another.

Stress responses may be caused by an event that is perceived as positive; stress, when channeled correctly, can maximize performance. A certain amount of stress can be stimulating. It makes life interesting and challenges us to solve problems innovatively. To deal with stress effectively, we need to start by identifying times and situations which trigger the stress response.

Stephen Feldman, a Seattle lawyer and psychologist, identifies the following stress producing situations in the practice of law:

- managing—control of office problems;
- dealing with difficult clients;
- avoiding exhaustion and loss of control of the practice while preparing and trying cases; and responding to

## Stressors Reported by Lawyers

- *Inadequate time to complete jobs satisfactorily*
- *competition—turning every encounter into a win-lose situation*
- *self-criticism—focusing on weaknesses, rather than strengths*
- *the absence of recognition or reward for good job performance*
- *powerlessness—the failure to see available choices*
- *hurrying—constant pressure to perform better and faster*
- *the comparison of achievements, or lack of them, to those of peers*
- *pessimism*
- *the unrealistic expectation that life should be problem-free*
- *lots of responsibilities but little authority or decision-making capability*
- *the inability to work with others because of basic differences in goals and values*
- *a lack of control over or pride in the finished product*
- *job insecurity due to pressures from within or to the possibility of a takeover or merger*
- *prejudice and bigotry expressed by colleagues of a different age, sex, race or religion*
- *concerns related to being responsible for employees*
- *not being able to use personal talents or abilities effectively or to full potential*
- *the FUD factor—fear, uncertainty, doubt*

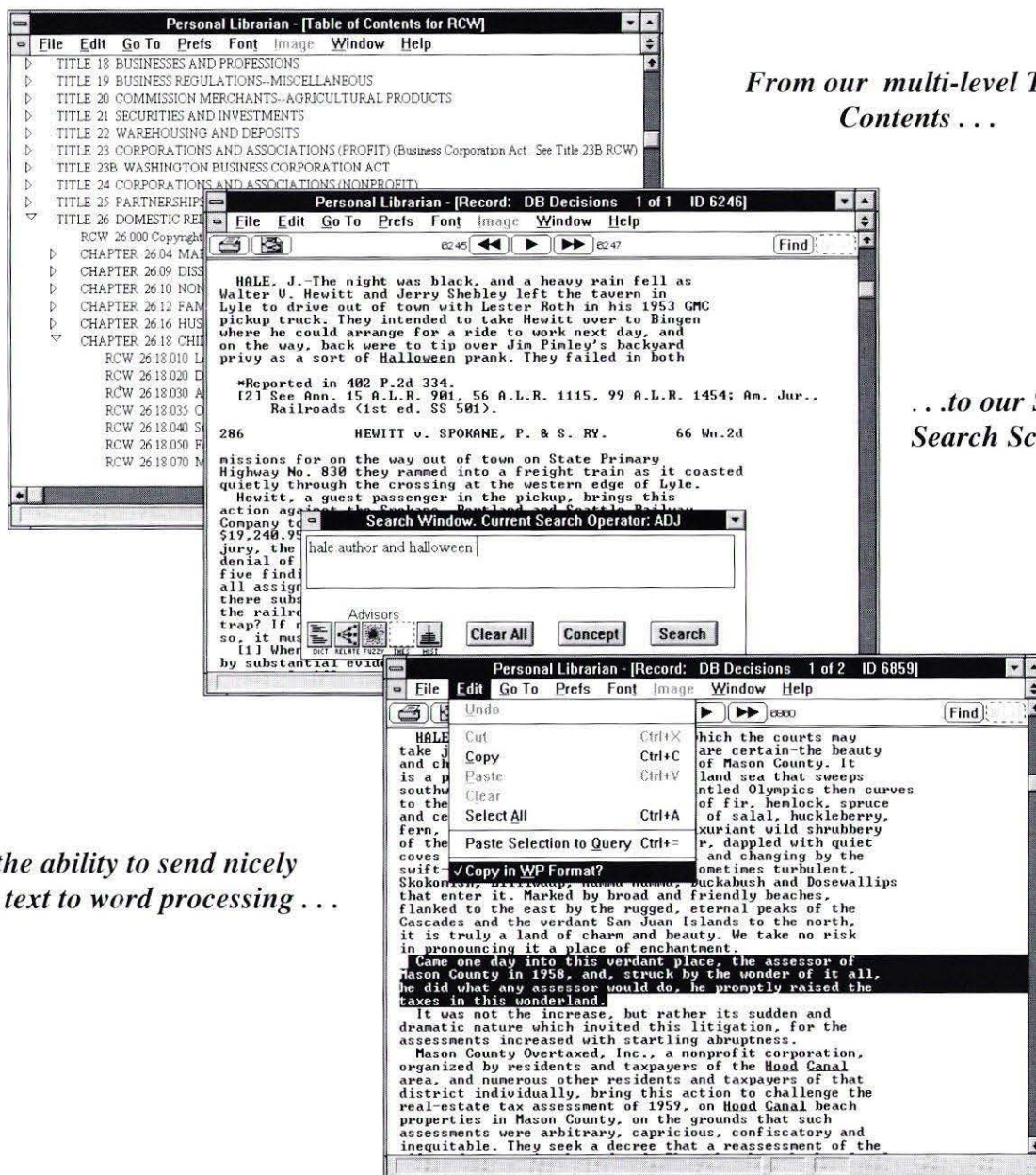
the competing demands of ethical guidelines, client responsibilities, legal community expectations and the public at large.

When stress becomes chronic or overwhelming, a lawyer may experience negative physical symptoms and changes in personality and/or behavior. Managing stress is the process of taking responsibility for perceptions, attitudes and beliefs and learning how they bring out stress reactions. The process includes recognizing that stress is NOT a sign of weakness but an opportunity to reevaluate and manage problematic events successfully. Lawyers are encouraged to take their own stress inventory, to evaluate both life and practice styles and to make those changes that are most compatible with

how they want to live. Lawyers can lessen the stress of their situations by asking a few questions:

What parts of the situation are temporary?  
Over what parts do I have control?  
How can I change what I'm doing?  
How can I change the situation?  
What do I still need to know?  
What elements present opportunities for growth?

Of the 100 county, state and provincial LAPs in the U.S. and Canada, 26 serve clients impaired by stress or other mental-health issues. The Georgia State Bar LAP offers stress management courses. Its director, Deborah Elzea, suggests to lawyers:

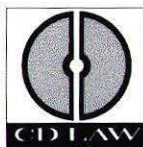


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- refine your job skills or learn new ones;
- find your own cruising speed; and
- pay attention to your body—you need to know the earlier, subtler signs of trouble, not the later, more obvious ones.

The California Bar LAP, under the direction of June Brown, has made an excellent film, "Everything You Always Wanted to Know About Stress, But Were Afraid to Ask." The Oregon Bar offers groups and workshops dealing with several subjects, including stress reduction. The Washington State Bar Association LAP refers lawyers to weekend workshops which focus on stress reduction through professional and self evaluation. They also offer both group and one-to-one treatment.

The first challenge to the LAPs is to devise stress management programs that are largely devoted to the consideration of how lawyers view and handle the world. The next is to give them information that will lead to confidence in their power to change their situation and to practice law more effectively. In planning and implementing stress management programs, LAPs and law firms should address issues in two categories: education and assessment.

**Education:**

- a definition of stress which clarifies the experience;
- an explanation of personal health implications which warn lawyers of the ramification of untreated stress;
- discussions of various stress management strategies which offer lawyers options for self care; and
- the development of personalized stress management plans which give lawyers the opportunity to set their own stress reduction goals.

**Assessment:**

- a stress assessment which gives a clear picture of what needs changing and helps staff direct lawyers to the appropriate resources;
- and a determination of major stressors in the work place which gives lawyers focus and the opportunity to explore change.

There is an abundance of information on stress. No law firm or lawyers' assistance program has to reinvent the wheel. Don't add to your own stress; ask for help.

*Barbara Harper is Director of the Washington State Bar Association's LAP.*

*Donna L. Spilis is Staff Director for the ABA Commission on Impaired Attorneys.*



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## Notices of Interest to WSBA Members

### WSBA Attorney Discipline

**Censured:** Fall City lawyer **Ralph P. Teller** (WSBA #10842, admitted 1980) has been ordered censured pursuant to a Stipulation for Discipline approved July 15, 1994, by the Disciplinary Board. The discipline is based upon Teller's use of his IOLTA account as his personal checking account, in violation of RPC 1.14, and for writing personal checks when there were insufficient funds in the account, in violation of RPC 8.4(c). No client funds were involved. The account had not held client funds since February 1989. [September 21, 1994]

### State of Washington, Commission on Judicial Conduct Decisions:

**Stipulation and Agreement and Order of Admonishment:** The Commission on Judicial Conduct and the Hon. **Robert E. Schillberg**, Judge of the Snohomish County South District Court, stipulated and agreed that on August 20, 1993 he held a disposition hearing in which a defendant pled guilty to the theft of two packages of cigarettes from a grocery. Schillberg assessed a \$10 fine, deferred \$9, and gave the defendant \$1 to pay the remainder of the fine. In delivering the disposition, Schillberg made remarks about the health consequences of cigarette smoking and stated that the store was more culpable than the defendant charged with theft.

Schillberg agreed to accept an admonishment and the Commission's determination that his conduct violated Canons 1, 2(A), 3(A) and 3(C)(1) of the Code of Judicial Conduct, and agreed he will exercise caution to avoid repeating the violation in the future. David D. Hoff represented the Commission. Schillberg represented himself. *In re the Matter of Hon. Robert E. Schillberg, Judge, Snohomish County South District Court*, No. 93-1602-F-48 [October 7, 1994]

**Censure and recommendation of disqualification:** The Commission on Judicial Conduct held a fact-finding hearing in the matter of Jefferson County *pro tem* District Court Judge **Thornton B. Hatter**. Hatter moved to dismiss the charges against him on grounds that the Commission had no jurisdiction over him for a variety of reasons. After hearing testimony and considering exhibits, the Com-

mission found that Hatter was admitted to the Bar in 1982 and was available to perform *pro tem* judicial functions in Jefferson County District Court from December 18, 1991, to August 12, 1993, and did occasionally perform them. The Commission found Hatter was still available to perform judicial functions.

The Commission also found that in July 1992, Hatter engaged in conduct with a minor which violated Canons 1 and 2(A) of the Code of Judicial Conduct. The Commission determined such conduct detrimentally affected the integrity of the judiciary, undermined public confidence in the administration of justice, and adversely affected his fitness to hold judicial office. The Commission concluded that Hatter's conduct was part of a pattern of conduct, involving three individuals in vulnerable positions, although two of the three events occurred before he began to perform judicial functions and so did not support charges of violation of the Code of Judicial Conduct. Hatter did not acknowledge misconduct or the appearance of misconduct in the 1992 incident and the Commission found no evi-

dence that he has made, or will make, any effort to change or modify his conduct. The Commission found the conduct "particularly opprobrious in light of the high standards expected from a judge. Respondent's conduct, in its best view, manifests an absence of judgment. Respondent's testimony to issues concerning his service as a judge *pro tem* and the testimony at his criminal trial about his alleged sexual contact with TB. [one of the minors in the subject incidents] was evasive, unresponsive, or untrue. Mitigating factors found by the Commission were that the misconduct occurred outside the courtroom and in Hatter's private life; that there have been no complaints against him resulting in public statement of charges by the Commission; and that there is no evidence Hatter used his judicial position to exploit or satisfy his personal desires.

The Commission concluded that Hatter should be censured and a recommendation made to the Supreme Court that he be disqualified from serving as a judicial officer in the future. Paul R. Taylor and Byrnes & Keller represented the Com-

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mission. Hatter represented himself. *In re the Matter of Thornton B. Hatter, Judge Pro Tem, Jefferson County District Court, CJC No. 93-1445-F-46* [October 7, 1994].

## Public Notices

### *Notice of Change of Office Designated by U.S. Bank of Washington, National Association for Receipt of Service of Writs of Garnishment and Levies:*

Pursuant to RCW 6.27.080, U.S. Bank of Washington, National Association, hereby gives notice that effective immediately it is designating the following offices as the office for receipt of services of writs of garnishment and levies: Branch Services, U.S. Bank of Washington, National Association, c/o U.S. Bank of Oregon, 17650 NE Sandy Blvd., Gresham, OR 97230.

The mailing address for this office is the following: Branch Services, U.S. Bank of Washington, National Association, c/o U.S. Bank of Oregon, PO Box 30869, ORC 5138, Portland, OR 97230.

Effective November 1, 1994, the Loan Recovery Department of Spokane, Wash-

ington will no longer accept service of Writs of Garnishment and Levies, and effective immediately, the Writs of Garnishment and Levies served on the Branch Services Department of U.S. Bank of Washington, National Association, will be effective to attach any accounts that the judgment debtor maintains at U.S. Bank of Washington that are subject to garnishment under RCW 6.27.010 et seq.

### *Public-defense Servic Standards Available:*

The 87-page booklet, *Standards for Public Defense Services*, is available from the Washington Defender Association at (206) 623-4321. The WSBA Board of Governors approved the standards in January 1990.

### *Essay Contest Announced:*

The ABA Ross Essay Contest addresses the topic, "Simplifying the Justice System: What Needs to Be Done?" ABA members are invited to submit essays not exceeding 3,000 words and not previously published. Postmark deadline is February 1, 1995. The winner will receive \$7,500 in prize money and a trip to

the ABA annual meeting in Chicago. For contest instructions and entry forms, contact Vanessa Gardner, *ABA Journal*, 750 North Lake Shore Drive, Chicago, IL 60611, tel (312) 988-6011.

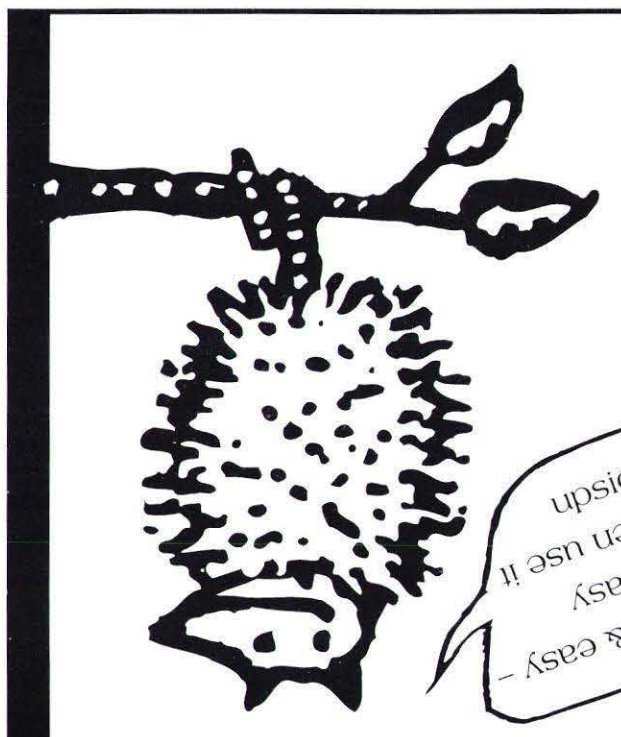
### *Bar Exam Results:*

The Washington State Bar has announced that 657 candidates passed the summer 1994 bar exam. Of the 881 candidates who sat for the examination, 74.6 percent passed the three-day test; 76.2 percent of attorney applicants passed the exam.

### *Sentencing Input Sought:*

Professor David Boerner and King Co. Sr. DPA Peter Goldman announce their association to complete the second edition of *Sentencing in Washington*, first published by Butterworth in 1985. They invite input from interested attorneys and judges, who should contact Goldman at 4800 Columbia Center, 701 Fifth Avenue, Seattle, WA 98104; (206) 296-9654; fax (206) 296-8819 (Appellate Unit).

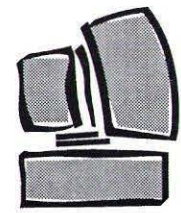
*U.S. District Court, Eastern District of Washington General Order:*



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The judges of the U.S. District Court for the Eastern District of Washington have issued General Order Misc. No. 81-A, dated October 12, 1994, announcing that after "extensive discussions with the bar of the court, and presentations from interested attorneys and litigants" the court has unanimously agreed that the interests of justice will be served by the application of the entire Rule 26 of the Federal Rules of Civil Procedure as amended and effective December 1, 1993, to all civil actions, except those listed here, filed on and after November 1, 1994. Amended Rule 26 will also be applied to any case filed before that date if the judge in whose court the action is pending specifically orders that it apply. The types of actions which will not be subject to Rule 26 unless specifically ordered by the court are bankruptcy appeals; social security appeals; Equal Access to Justice actions; statutory penalty actions; reviews of governmental agency actions where the matter is heard on the administrative record; actions to register or enforce judgments; and 28 U.S.C. section 2254 and 2255 habeas corpus actions. A party or litigant may, at any

appropriate time, upon good cause shown, make application to the court in any individual action for relief from the requirements of any portion of FRCP 26.

**Attorney General Opinions Issued:**

I. Public Works - Public Agency Contracts - Contractors and Subcontractors - Obligation of general contractor to list subcontractors on public works bid.

The Attorney General's Office has issued an opinion in response to a request by Rep. Hans Dunshee. The opinion answers the question: Where a bidder on a public works project has supplied a list of subcontractors as required by RCW 39.30.060, and is successfully awarded the contract, is the bidder obligated to use those subcontractors named in its list?

*Synopsis of Answer:* A general contractor is obligated by RCW 39.30.060, as amended, to submit a list of the major subcontractors it will actually use on a public works contract if awarded the bid; the statute assigns no specific duties to public agencies in implementing its provisions, and does not specify a procedure for substituting subcontractors after the bid award.

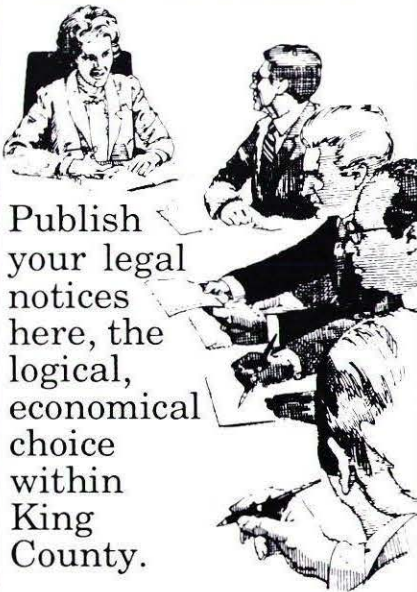
Cite as AGO 1994 No. 14, September 16, 1994. Suzanne J. Shaw, Assistant Attorney General, is author of the opinion.

II. Courts - Superior Courts - Filing Fees - Public Funds - State Treasurer - County Treasurer - Law Libraries - Procedures for dividing fees received on superior court cases between the state and county treasuries, and calculating the amount due to the county law library fund.

The Attorney General's Office has issued an opinion in response to a request by Pierce County Prosecuting Attorney John W. Ladenburg. The opinion answers the questions: 1. What is the proper method for apportioning superior court filing fees among the state treasurer, the county treasurer, and the county or regional law library fund? 2. Which superior court filing fees are subject to law library collection?

*Synopsis of Answer:* 1. Current law requires county treasurers to remit to the state treasurer 46% of all superior court filing fees covered by RCW 36.18.020 before calculating any amounts due to the county or regional law library fund.

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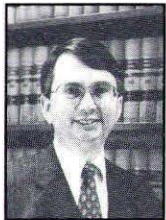
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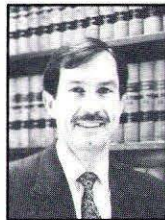
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74 Wn. App. 550 (1994)

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72 Wn. App. 800 (1993)

### Trial Practice Rules

*Bryant v. Palmer Coking Coal Co.*,  
67 Wn. App. 176 (1992)

### Motions to Vacate

*Vaughn v. Chung*,  
119 Wn.2d 273 (1992)

### Service of Process

*Ronjue v. Fairchild*,  
60 Wn. App. 278 (1991)

### Insurance

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

### Business Torts

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

### Workmen's Compensation

*Dennis v. Dept. of Labor and Ind.*,  
109 Wn.2d 467 (1987)

### Real Estate

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

### Child Custody

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

### Personal Injury

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

### Property Division

*In Re Marriage of Lindsey*,  
101 Wn.2d 299 (1984)

### Product Liability

*Gannon v. Clark Equipment Co.*,  
38 Wn. App. 274 (1984)

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2. After remitting the state's share of superior court filing fees to the state treasurer, county treasurers are required by RCW 27.24.070 to deposit an amount in the county or regional law library fund equal to \$12 times the number of civil or probate fees paid in connection with the filing of a new matter.

Cite as AGO 1994 No. 15, September 19, 1994. Loretta A. Vosk, Assistant Attorney General, is author of the opinion.

III. Colleges and Universities - Collective Bargaining - Higher Education - Authority of four-year higher education institutions to engage in collective bargaining with faculty representatives.

The Attorney General's Office has issued an opinion in response to a request by Senator James E. West. The opinion answers the questions: 1. Do faculty at four-year institutions of higher education have a right to engage in collective bargaining? 2. If faculty have a right to engage in collective bargaining, must the governing boards of such institutions have procedures to protect the rights of faculty members who have not chosen to be represented?

*Synopsis of Answer:* 1. The faculty at four-year state supported higher education institutions do not have a right under current law to engage in collective bargaining with their employers.

2. At their discretion, the governing bodies of four-year state-supported higher education institutions may enter into bargaining with representatives of the faculty concerning wages, hours and working conditions, but such bargaining does not establish the terms of employment of non-represented faculty members.

Cite as AGO 1994 No. 16, September 28, 1994. Maureen Hart, Senior Assistant Attorney General, is author of the opinion.

IV. Courts - Filing Fees - Dissolution and Divorce - Filing fee applicable on the filing of a petition for modification of a dissolution decree or petitions for extension of judgment.

The Attorney General's Office has issued an opinion in response to a request by Mary Campbell McQueen, Administrator for the Courts, State of Washington. The opinion answers the questions: 1. Which filing fee applies where a petition for modification of a dissolution decree is filed in the superior court of a county other than the county where the

initial decree was entered? 2. Is the fee collected for filing a petition for modification of a dissolution decree subject to a state distribution pursuant to RCW 36.18.025? 3. Is the fee collected for filing a petition for extension of judgment subject to state distribution pursuant to RCW 36.18.025?

*Synopsis of Answer:* 1. RCW 36.18.020(5) sets the fee for filing a petition for modification of a dissolution decree at \$20; this fee applies whether the petition is filed in the county where the original decree was entered or in another county.

2. RCW 36.18.025 requires that the county and state treasuries split fees filed for modification of a dissolution decree, the county to receive 54 percent and the state to receive 46 percent.

3. A fee collected by a superior court pursuant to section 1, chapter 189, Laws of 1994, for the filing of a petition for extension of judgment, is not a fee set in RCW 36.18.020 and therefore is not subject to the split between the county and the state.

Cite as AGO 1994 No. 17, October 3, 1994. Loretta A. Vosk, Assistant Attorney General, is author of the opinion.

V. Industrial Insurance - Workers Compensation - Physician and Patient-Recording Official Proceedings - Authority of Department of Labor and Industries to prohibit recording of medical examinations.

The Attorney General's Office has issued an opinion in response to a request by Senator Linda Smith. The opinion answers the question, may the state Department of Labor and Industries lawfully instruct physicians not to permit the recording of examinations conducted by the physicians of workers' compensation claimants pursuant to RCW 51.32.110?

*Synopsis of Answer:* The Department of Labor and Industries has authority in prescribing the conduct of medical examinations conducted pursuant to the state's industrial insurance program (RCW 51.32.100) to prohibit the patient and third parties from recording such examinations, and such action is not inconsistent with RCW 9.73.030 or other Washington law.

Cite as AGO 1994 No. 18, October 19, 1994. James K. Pharris, Senior Assistant Attorney General, is author of the opinion.

### Annual Military Law Update Announced:

The 6th Judge Advocate General Detachment (LSO), Fort Lawton, Washington, announces that the 20th annual on-site continuing legal education program will be held at the University of Washington School of Law, Room 109, N.E. 41st, Seattle, on January 21 and 22, 1995, beginning at 7:30 a.m. each day. The military law seminar is open to all legal officers, both active and reserve, of all service branches and the National Guard. Civilians with an interest in military law are also invited to attend.

Anyone interested in attending should contact Doris Burre at (206) 281-3002. There is no registration fee, however, seating is limited. CLE credit will be requested from the Washington State Bar Association.

### Francis Rawle Award Nominations Sought:

The ALI-ABA Committee on Continuing Professional Education announces the opening of the nominating period for the 1995 Francis Rawle Award for outstanding contributions to the field of post-admission legal education.

The award, named after a former ABA president, includes a cash stipend of \$2,500 and an inscribed medallion plaque. Nominations should be sent to the Rawle Award Committee, ALI-ABA, 4025 Chestnut Street, Philadelphia, PA 19104-3099. All nominations must be received by Friday, March 3, 1995. For information contact Donna Maropis, (800) CLE-NEWS, ext. 1612.

### 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 November 1994 is 5.93%. The maximum allowable interest rate permissible for December 1994 is therefore 12%.

Compilations of the average coupon equivalent yields from past auctions of 26-week treasury bills, and past maximum interest rates, appear in the *Bar News* on page 39 of October 1987 for 1982-84; and on page 48 of June 1994 for the period 1984-94.

## NOTICE to WSBA Members Keller Compliance Option

### I. Overview

Under *Keller v. State Bar of California*, the WSBA cannot use the compulsory dues of objecting WSBA members for *political or ideological activities that are not reasonably related to the regulation of the legal profession or improving the quality of legal services*. These activities are considered "nonchargeable." The WSBA may use compulsory dues for all other activities.

On October 14, 1994, the Board of Governors of the WSBA agreed to convert its mechanism for refunding nonchargeable activities from a "rebate" system to a "dues reduction" system. Effective with the 1995 WSBA membership year, WSBA members will be permitted to deduct a specified amount from their dues payment that represents each member's pro rata portion of dues devoted to nonchargeable activities.

The method used to calculate the dues reduction is based on the method approved by the U.S. Supreme Court in *Chicago Teachers Union v. Hudson*. In that case, the Court indicated that it was appropriate to use the year for which the most recent audit report is available as the base line period for determining chargeable and nonchargeable activities and for calculating the cost of the nonchargeable activities.

Based on the decision of the Impartial Decisionmaker in *Popejoy v. New Mexico Board of Bar Commissioners*, the Board of Governors of the WSBA has concluded that the only activities in the WSBA budget that are "political or ideological" are a portion of those activities funded as legislative activities. To calculate the FY 95 dues reduction, the WSBA used the FY 95 WSBA budget and the dues rebate history for the past four years.

### 2. Dues Reduction for FY 95

The Board of Governors has voted to set the dues reduction for FY 95 at \$2 for members paying full dues (\$195). Members paying lesser dues would be entitled to a pro rata reduction, i.e., dues of \$115 = a \$1.18 reduction; dues of \$60 = a \$.62 reduction; dues of \$30 = a \$.31 reduction; and inactive membership dues of \$37 would be entitled to a \$.38 reduction. Based on actual experience during FY 91-94, the WSBA estimates that ap-

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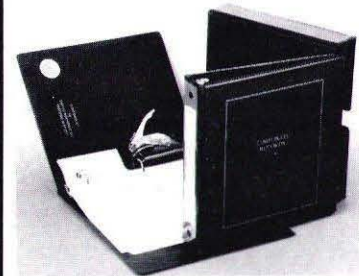
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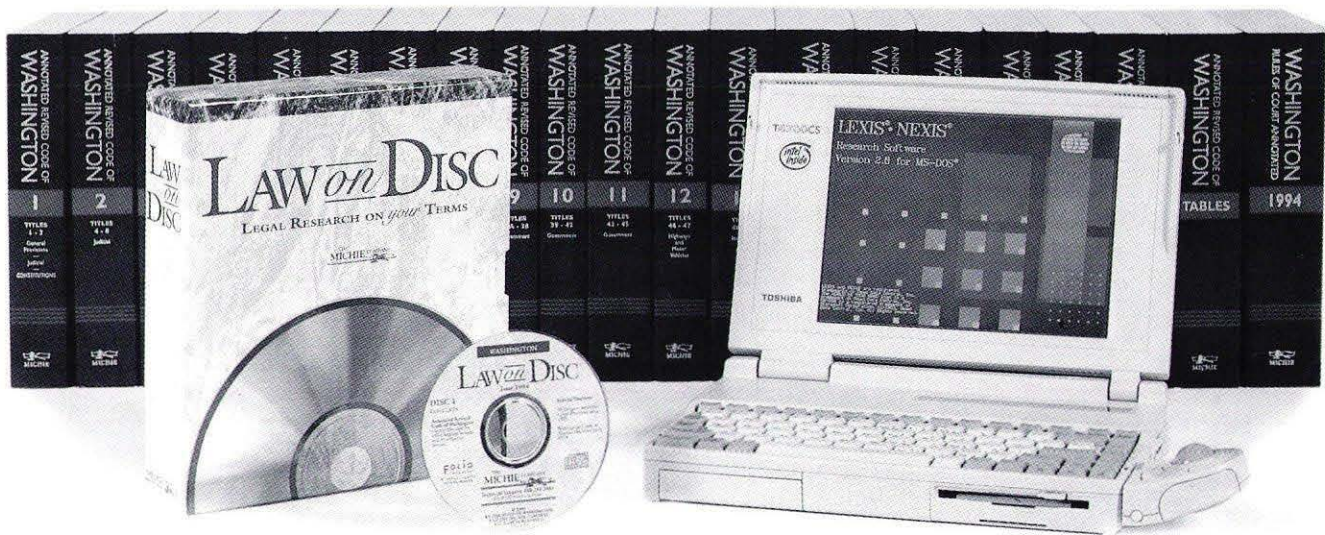
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proximately \$1.50 of FY 95 dues would be subject to rebate, but has set the dues reduction amount at \$2 to give those who take the reduction the benefit of any error that may have been made in the calculation and to make it unnecessary for members to request arbitration for small amounts.

### **3. Deadline for Arbitration Requests**

Any member who wishes to call for arbitration of the amount of the dues reduction permitted for FY 95 should deliver a request in writing to the Executive Director of the WSBA within 45 days of the date of mailing of the 1995 License Fee Notice. For details of the arbitration process, see Paragraph 5 below.

### **4. Detailed Calculation of the Dues Reduction**

As noted above, the Board of Governors reviewed all of the FY 95 activities in accordance with the opinion of the Impartial Decisionmaker in *Popejoy v. New Mexico Board of Bar Commissioners*, a case where all of the activities of the State Bar of New Mexico were challenged. The Board of Governors concluded that only the WSBA's legislative activities would include political or ideological activities not reasonably related to the regulation of the legal profession or improving the quality of legal services. A summary of the WSBA's FY 95 budget is shown below at Paragraph 6.

The FY 95 budget for the WSBA's legislative activities housed in its Olympia office is \$185,141. In addition, a portion of the WSBA's overhead expense at its principal office in Seattle (\$4,467) is added, for a total budget of \$189,608. That amount is then divided by the total number of active members of the WSBA at the time this notice was prepared (18,559) to arrive at the amount of each member's dues attributable to legislative activities (\$9.98 per member). That \$9.98 is then apportioned by the percentage of time spent by WSBA legislative staff on specific legislative activities, i.e., chargeable and nonchargeable activities.

Over the past four years, the WSBA has used an extremely "conservative" test for determining whether individual issues would be subject to rebate, i.e., the WSBA has erred on the side of considering issues nonchargeable even when a reasonable argument could be made that such issues were reasonably related to regulating the legal profession or improving the quality of legal services. Using that conservative standard, the amount eligible for rebate over the past

four years totaled \$8.56, a yearly average of \$2.14 per member. However, of that \$8.56, \$2.58 was directly attributable to the separation of powers objection to union legislation. Since that issue was settled during the last legislative session, and will not be in dispute this year, the yearly average drops to \$1.49 per member.

### **5. Arbitration Process**

a. A member of the WSBA who contends that the WSBA has incorrectly set the amount of dues that can be deducted may demand arbitration by delivering a written demand for arbitration within 45 days of the date of mailing of the Annual Licensing Form. Delivery may be made in person or by first class mail, and mailed demands will be deemed delivered upon mailing. Demands shall include the name and the address of the member or members demanding arbitration, a brief statement of the claim or objection, and the signature of each objecting member.

b. If one or more timely demands for arbitration are delivered, the WSBA shall submit the matter forthwith to arbitration. All timely demands for arbitration shall be consolidated for hearing and the provisions of RCW 7.04 shall apply as if the parties had entered into a written agreement for arbitration. Upon receipt of all timely demands for arbitration, the WSBA shall apply to the Chief Justice of the Washington Supreme Court for appointment of an impartial arbitrator.

c. A member demanding arbitration is required to pay his or her WSBA dues, excepting the amount in dispute, on a timely basis as otherwise required by the WSBA Bylaws. Failure to pay dues by the requisite date may result in suspension as provided by the WSBA Bylaws and the Admission to Practice Rules.

d. A hearing shall be held within 30 days of the appointment of the arbitrator. The arbitrator shall determine the date, time, and location of the arbitration hearing(s) and shall so notify the parties at least 15 days prior to said hearing(s). The arbitrator will hold hearings in which the parties will be permitted to participate personally or through a representative. The WSBA shall bear the burden of coming forward regarding the accuracy of the determination of the amount of dues that can be withheld. Members demanding arbitration shall have access to the financial records upon which the WSBA based the determination of the amount of dues that can be withheld. These records shall be available for inspection and copying

during normal business hours. Copying shall be at the member's expense.

e. All parties will be given the opportunity to present evidence and to present arguments in support of their positions. The following rules shall apply to the arbitration proceedings:

i. There will be no transcripts or post-hearing briefs.

ii. The arbitrator will issue an award stating the reasons for the decision within five business days of the closing of the hearing. The opinion will be brief and will be based on the evidence and arguments presented.

iii. The arbitrator will charge a maximum of \$100 per hour for services, including the hearing, preparation, and study time, and shall be reimbursed for all necessary expenses of the arbitration. The WSBA will pay for the arbitrator's services.

iv. The arbitrator shall not be deemed a necessary party in judicial proceedings relating to the arbitration.

v. The arbitrator shall have no authority to add, subtract, set aside, or delete from any Supreme Court Rule and WSBA Bylaw.

f. Members admitted to the WSBA during the course of a year shall be given a copy of this notification with their initial dues statements. Such members may demand arbitration within 30 days following receipt of the notification. If arbitration is pending at the date of delivery of a demand for arbitration, the newly admitted member's demand shall be consolidated with the pending arbitration. All of the provisions of this section shall otherwise apply to demands for arbitration filed by newly admitted members.

### **6. Summary of FY 95 WSBA Budget**

The FY 95 WSBA Budget is broken into 24 categories. Each category is attributed with direct revenues generated by activities within that category, with direct expenses paid for activities within that category, and with a pro rata share of the WSBA's overhead/indirect expenses using an allocation process based on time records maintained by all WSBA staff. All licensing fees (dues) are shown as revenue in the administrative budget category.

The following budget summary on page 46 has been reviewed by the WSBA outside auditors BDO Seidman for purposes of consistency of presentation with previous year's budgets and audited financial statements.

Budget Category	Revenues	Expenses	Net Budget Impact
Access to Justice	0	93,488	(93,488)
Administration	3,782,000	729,851	3,052,149
Admissions/Bar Exam	720,950	638,921	82,029
Audits	1,500	142,511	(141,011)
Bar News	331,500	607,754	(276,254)
Clients Security Program	300	110,934	(110,634)
CLE - Publications	653,250	544,992	108,258
CLE - Seminars	1,418,300	1,375,253	43,048
Communications	38,400	246,630	(208,230)
Court Rules	0	21,234	(20,234)
Discipline	26,025	1,340,110	(1,314,085)
Fee Arbitration	7,200	23,485	(16,285)
LAW BBS/COLD	37,543	37,543	0
Lawyers Assistance Program	8,500	261,385	(252,885)
Leadership	5,000	313,011	(308,011)
Legislative	0	189,608	(189,608)
Local Bar Support	2,560	19,651	(17,091)
Mandatory CLE	112,000	112,741	(741)
Membership Records/Licensing	60,000	258,416	(198,416)
Resources	92,500	70,452	22,048
Sections - Administration	85,230	98,106	(12,876)
Sections - Operations	368,220	366,035	2,185
Young Lawyers Division	35,000	127,868	(92,868)
Contingency	0	57,000	(57,000)
<b>Total</b>	<b>7,785,978</b>	<b>7,785,978</b>	<b>0</b>



### Legal Foundation of Washington 1995 Goldmark Awards Luncheon

Yes, I would like to honor the work of legal services by attending the luncheon.

I will bring \_\_\_\_\_ additional guests. (\$25/person enclosed).

No, I cannot attend the luncheon, but I would like to show my support with a donation of \$\_\_\_\_\_.

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**Goldmark Awards Luncheon, January 20, 1995  
Sheraton Hotel, \$25 per person:**

The Legal Foundation of Washington is proud to announce that the featured speaker for the 1995 Goldmark Awards Luncheon will be Alex Forger, president of the Legal Services Corporation in Washington, D.C., and lifelong advocate for access to justice for the poor.

Forger provided pro bono representation to poor people for more than 30 years and, most recently, provided services to AIDS patients in Brooklyn. For more than 10 years, he chaired New York's Legal Aid Society, the nation's oldest legal-service program. As president of the New York State Bar, and as a member of the ABA House of Delegates, he pressed for an increased commitment to pro bono representation in the legal profession. He has served as the chair of the ABA's Commission on Legal Problems of the Elderly and the Volunteer Lawyers AIDS Project.

## Washington Supreme Court Appoints Access to Justice Board Members

The Washington Supreme Court has appointed nine members to the newly-formed Access to Justice Board. In May of this year, the Court mandated the formation of the Board to address the needs of low-income residents of Washington in receiving access to our justice system.

"As the legal needs and the sheer number of low-income persons increase, so has the need to marshal the limited attorney resources in ways that maximize their benefit to the low-income community," reported the WSBA's Access to Justice Task Force. "Efforts to provide low-cost legal assistance are woefully lacking." More than 800,000 Washingtonians are living in poverty—unable to afford a lawyer. To qualify for free or low-cost legal assistance, individuals must have incomes 125 percent below the poverty level; that means a family of four with an annual income of not more than \$16,750.

Based on recommendations from the WSBA Board of Governors, the recent appointees to the ATJ Board are: Judge Susan R. Agid, Division One Court of Appeals; Rep. Marlin Appelwick, Appelwick, Trickey & Lukevich; Paul A. Bastine, Bastine, Carroll & Iverson; Kenneth H. Davidson, Davidson, Czeisler, Kilpatrick & Zeno; Nancy L. Isserlis, Davidson, Bailey, Isserlis & Medeiros; Isabel R. Safora, Port of Seattle; Phyllis Selinker, Snohomish County Legal Services; and Mary Alice Theiler, Thieler, Douglas, Drachler & McKee.

Hoquiam attorney Paul L. Stritmatter, immediate past-president of the WSBA, will chair the ATJ Board. "For the poor, access to justice means the ability to enforce and protect essential legal rights despite one's economic status," says Stritmatter. Under the administration of the Bar, the ATJ Board will work to secure access to the legal system by fostering the development of a statewide, civil legal-service delivery system; develop and implement policy initiatives to enhance the availability of resources; serve as a repository of information relating to civil legal-service issues; develop and implement new programs designed to expand access to justice opportunities; and address existing and proposed laws which may affect meaningful access to justice.

The ATJ Board will serve for two years, subject to renewal by the Supreme Court.

## Articles, Contributions Sought:

The *Bar News* depends upon readers for the bulk of its content each month. Contributions by WSBA members are welcomed in all departments of the magazine. Proposals and submissions may be directed to the Editor at the WSBA office; telephone queries may be made to the Editor at (206) 625-9211. For a list of style and format guidelines, please write the Editor at the WSBA office.

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**December 1994**

**1 Nominations due for WSBA president.**

**1** Seattle: CLE Docket, one-hour segments on tax law, employment, secured transactions contracts, and other areas of practice. *Sponsored by Northwestern School of Law of Lewis & Clark College.*

**1** Seattle: Basic Consumer Bankruptcy. *Sponsored by KCBA.*

**1-2** Seattle: WAPA winter meeting & banquet.

**2** Seattle: How to Draft Wills and Other Estate Planning Documents. *Sponsored by WSBA CLE.*

**2** Seattle: Domestic Violence: National Disgrace or Crime *du Jour*? *Sponsored by WACDL.*

**2** Seattle: Constitutional Limits on Forfeiture: The Pendulum Swings Back. *Sponsored by WACDL.*

**2** Seattle: Law, Literature & Film. *Sponsored by UW CLE.*

**2** Seattle: Using Trusts in Estate Planning (4th in a basic-skill series) *Sponsored by: UW CLE.*

**2** Seattle: Holly Ball. *Sponsored by WSTLA.*

**2-3** Seattle: WSBA Board of Governors' meeting.

**3** Seattle: A Pictorial History of the

United States Environmental Law. *Sponsored by UW CLE.*

**6** WA, D.C.: Salmon in Decline: Fishing for a Solution. *Sponsored by Environmental Law Institute. Contact: (202) 939-3816.*

**6-7** Seattle: 11th Annual Hazardous Waste Law and Management Conference. *Sponsored by Northwestern School of Law of Lewis & Clark College.*

**7** Seattle: "What We See: Trials Viewed from the Bench": sitting federal judges and magistrates share their perspective on aspects of trial practice in federal court. Followed by Federal Bar Association annual meeting and dinner. *Contact: Kathleen Garvin, (206) 625-1711.*

**8** Seattle: Construction Bankruptcy—Protecting the Rights of Your Clients. *Sponsored by WSBA CLE.*

**8-9** Portland: 11th Annual Hazardous Waste Law and Management Conference. *Sponsored by Northwestern School of Law of Lewis & Clark College.*

**9** Spokane: CLE Buffet—All You Can Learn. *Sponsored by Spokane Co. Bar Ass'n.*

**9** Seattle: Trial as Theater. *Sponsored by WSTLA.*

**9** Olympia: How to Draft Wills and Other Estate Planning Documents. *Sponsored by WSBA CLE.*

**10** Seattle: Ninth Circuit Appellate Practice Institute. *Sponsored by UW CLE.*

**12** Seattle: Innovative Billing is Good for Your Financial Health. *Sponsored by KCBA Health Law Section. For information: Donna Moniz, (206) 223-4770.*

**15** Seattle: CLE Encore Performance: The Best Topics and Faculty/Holiday Party. *Sponsored by KCBA/EKCBA.*

**15** Seattle and Spokane: Liens—Pro-

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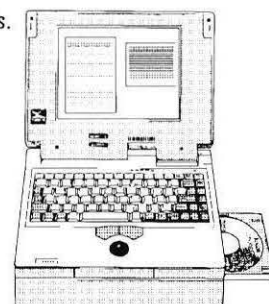
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tecting, Defending and Foreclosing Against Liens. *Sponsored by WSBA CLE.*

15 Deadline for February 1995 *Bar News.*

15 Seattle: luncheon—Marketing Services Abroad. *Sponsored by World Trade Club.*

15 Seattle: Mediation Problem-solving—Different Perspectives. *Sponsored by Settlement Now. Contact: Patty Buck, (206) 545-5165.*

15 Seattle: Confirmation of Plans of Reorganization Under Chapter 11: New Value Exception, Gerymandering Classes, etc. *Sponsored by DWT, (206) 622-3150.*

16 Seattle and Spokane: Best of CLE. *Sponsored by WSBA CLE.*

16 Seattle: Tegland's Annual Litigation Update 1994. *Sponsored by UW CLE.*

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

16 Seattle: Visuals in the Courtroom. *Sponsored by KCBA*

16 Seattle & Spokane: moderated video: Subrogation. *Sponsored by WSTLA.*

16 American College of Trial Lawyers Greatest Hits. *Sponsored by UW CLE.*

16-17 Portland: Federal Practice Seminar. *Sponsored by Northwestern School of Law of Lewis & Clark College.*

17 Seattle: On Your Own: Business Traps for the Small Firm. *Sponsored by KCBA.*

19 Seattle: Key Concepts. *Sponsored by KCBA/UW CLE.*

20 Real Estate Update. *Sponsored by KCBA.*

22 Seattle: WSTLA Best Sellers.

28 Seattle & Spokane: Moderated video: Auto Cases - Nuts & Bolts. *Sponsored by WSTLA.*

29 Seattle: How to Probate an Estate. *Sponsored by WSBA CLE.*

29 Seattle & Spokane: Moderated video: Litigation Skills. *Sponsored by WSTLA.*

29 Seattle: How to Probate an Estate. *Sponsored by WSBA CLE.*

29 Seattle: Litigation Skills (video). *Sponsored by WSTLA.*

30 Seattle and Vancouver, WA: A Second Look at Durable Powers of Attorney and Directives to Physicians—Ethical and Drafting Issues. *Sponsored by WSBA CLE.*

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 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*.

**Statute Law Committee:  
One Seat**

(Call for applicants—December;  
Board action—February)

The six-year term of Bernard J. Gallagher (Spokane) expires March 31, 1995. The six-year terms of Keith H. Campbell (Spokane) and James D. Hamilton (Vancouver) expire March 31, 1997. The six-year terms of Mary F. Gallagher Dilley (Seattle) and John G. Schultz (Pasco) expire March 31, 1999. The Commission is authorized under RCW Chapter 1.08. Five of its twelve members must be lawyers. It is the governing board of the Office of the Code Reviser, which serves as the bill-drafting arm of the legislature and as the codifier and publisher of the Revised Code of Washington. The Committee meets four to five times per year; a per diem of \$50 and travel expenses is paid by the Committee. For information: Dennis W. Cooper, Code Reviser, (206) 753-1440.



by **Michael W. Herb**, a lawyer

**I**n September 1994, President Clinton sent U.S. troops to Haiti to restore democracy, putting the elected (“representative”) government back in power. For any permanent improvement in the situation, there must be an establishment of an independent judiciary and this will require an influx of lawyers for advice because an independent court system is something Haiti has never had. Returning an exiled president and legislators won’t be enough.

Throughout Latin America, the judicial branch in most countries is too weak. Too often, when a poor person is murdered, there is no investigation, arrested individuals in many cases never brought to court and when prominent people are charged, the police file becomes “lost” and the court dismisses the case for “lack of evidence.”

There has been a trend towards democracy south of the border but it is all very shaky because of the lack of separation of powers. There is a new willingness there, however, to take responsibility and examine social problems realistically rather than simply blaming everything on “Yankee Imperialism.” The end of the Cold War has had this effect.

An example of this attitude is a 1992 book by a Venezuelan named Carlos Rangel called “The Latin Americans,” published by “Transaction Publishers.” He argues that it is a myth to blame the “Yankees” for all instability and lack of progress and points out that North America has always had more order and prosperity than South America, even in colonial times, long before there were any U.S. investments or interventions in the south.

He quotes from a diary written in 1750

by a Venezuelan named Miranda who visited the North American colonies and was amazed at the “amount of freedom, industrious spirit and prosperity.”<sup>1</sup>

The author speculates that the explanation is that when the British Colonies became independent in the 1776 war, they already had a system and tradition of democracy with a separation of powers and a consequent reasonable amount of freedom. By contrast, Latin America was colonized by powers that were rejecting free thought, new ideas and dominated by an old feudal spirit with all its disintegrating tendencies.

When the South American countries became independent in the 1800s, instead of new liberal equalizing institutions, there was a caste system of rich and poor, with a ruling elite controlling everything. From then on, there has been endless civil wars and military takeovers, but the squabbles were on the surface, between ruling groups. The liberal European ideas took hold in North America but not in Latin America.<sup>2</sup>

Rangel feels that is the reason for more economic energy and dynamism in the U.S.

When DeTocqueville visited the U.S. in 1831, he noticed this difference and predicted that someday North Americans would be called upon “to supply the wants of South Americans.”<sup>3</sup> He went on to write about the great equality in the United States and felt that it was “the fundamental fact from which all others seemed derived.”<sup>4</sup> He was in awe of the American legal profession, particularly the judiciary’s writing “the way it functions is most favorable to liberty and public order.”<sup>5</sup> People may not have been equal economically but they were in court.

And that is the key. It isn’t just democ-

racy (elected governments) that has kept people free in the U.S.; it is because of the separation of powers, particularly an independent judicial system. It is from that resulting freedom that the creative economic energies flow.

In Latin America, there are many democratic governments now but the amount of freedom is still at the whim of the executives in power, thus a lingering cloud over the rights of the people. Their rights don’t adequately rest on a court system following a rule of law.

Haiti has known only bully governments from the time of its independence from France. Imposing a government that was elected won’t result in any lasting improvement. The people need lawyers for advice on creating a truly independent court system. That is the starting point for all other change, whether land reform or anything else.

If this is accomplished, it still won’t signal an end to corruption. We have corruption at times in the U.S. American police have beaten on people. It hasn’t been only Haitian police doing that sort of thing. But in the U.S., there is a court to turn to. Under the Haitian military regime, the people had no one to help.

What happened when L.A. police beat up Rodney King? They ended up in jail, and he won a lawsuit over it.

We need to send lawyers to Haiti once it is calm enough. Many Americans would cheer about that, saying, “Now there are fewer attorneys here—hooray!” In the U.S., the public is tired of seeing lawyers “getting criminals off” and filing lawsuits that obstruct someone who is trying to get something accomplished.

This is a failure on the part of the public to recognize our most valuable asset: our freedom.

This freedom comes from an independent judiciary that can even order Congress and the U.S. President around. But the judiciary won't function unless lawyers are bringing cases to those courts.

What is really happening when those cases are filed? The plaintiff is going to court to make sure what has happened to them is legal and fair. If the suit is frivolous, the court will impose sanctions.

The freedom people have comes from their rights. But what are "rights"? These are simply little rules the U.S. Supreme Court has come out with through the years for the government, particularly the police, to follow.

It is time for people in Haiti to also have some rights. We don't need to turn it into a protectorate as was done in the early 1900s. We need only to help them get a working court system going.

The idea is not new. A Roman statesman named Polybius centuries ago warned that government power always degenerates and becomes perverted into corruption unless balanced and neutralized. Montesquieu and John Locke built political philosophies on the point. Our

founding fathers worked up the Constitution from these philosophies. In the *Federalist Papers*, James Madison wrote in Federalist No. 48, that "concentration of power in the same hands is precisely the definition of despotic government, even if those people are elected." Alexander Hamilton felt that complete independence of the courts of justice is essential.<sup>7</sup>

The U.S. legal system also ensures we have reasonable freedom from each other by requiring that conflicts be resolved in court rather than physically. All the complexity has this purpose: to keep the conflict at a verbal level, eliminating false information, and keep it fair.

Now the legal system is strained to the limit. That problem is not with the system. It is with society. Never has there been so much violence and family abuse. Blaming that on lawyers is like blaming fire-fighters for forest fires because they always seem to end up being involved.

It is time to follow the lead of the Latin Americans who are willing to look at themselves closely, to see what is it that needs correcting, rather than just blaming outsiders (the U.S.). It is also time for some self-examination in the U.S. rather than blaming everything on lawyers.

Meanwhile, once order is sufficiently restored in Haiti, it will be necessary to get a court system properly functioning, or else there can be no hope for any permanent change in the Haitian situation.

#### End notes

<sup>1</sup> Carlos Rangel, *The Latin Americans*, 1992, Transaction Publishers, London, p. 29.

<sup>2</sup> *Ibid.*, p. 29.

<sup>3</sup> *Ibid.*, p. 69.

<sup>4</sup> Alexis DeTocqueville (edited by Richard Heffner), *Democracy In America*, 1956, Mentor Books, N.Y., p. 11.

<sup>5</sup> *Ibid.*, p. 76

<sup>6</sup> Hamilton, Jay, *Madison, The Federalist*, Random House, p. 324.

<sup>7</sup> *Ibid.*, p. 505.



WSBA member *Michael Herb* is on the faculty of the University of Washington School of Business.

by **Peter H. Arkison**

**L**et me introduce you to the Bankruptcy Reform Act of 1994. It is only a matter of time before you or your client will meet this law "up close and personal." It is the second major change to the Bankruptcy Code since it went into effect on October 1, 1979. This article mentions only some of the changes which will probably have the broadest impact; bankruptcy judges and lawyers will spend years trying to understand the full impact of all 70 sections which cover 115 pages.

If there were a single way to characterize the law, it would be that Congress attempted to overrule numerous court decisions which gave a different interpretation to the Code from that intended. A large number of decisions by the Ninth Circuit Court of Appeals and the U.S. Supreme Court are affected.

With a couple of exceptions, this law applies to all cases filed since October 22, the day the President signed it.

This brief summary cannot substitute for a detailed study of the law. References to "Section" or "Code," unless otherwise specified, are to the Bankruptcy Code, Title 11 U.S.C. § 101 et. seq.

### Family Law

Congress has decided that alimony, support and maintenance (collectively called support) are a national priority; new provisions concerning support orders, property divisions and divorce liens will probably have the broadest impact.

Previously, support was not dischargeable under Section 523(a)(5) as long as it had not been assigned to a third party, other than the state, for purposes of collecting welfare. Property divisions and hold harmless provisions, where one was required to pay certain debts, were not support and were dischargeable. This led to some litigation over the issue of whether a particular payment called for in a dissolution decree was for support or a property division.

The Ninth Circuit case law holds that the Bankruptcy Court has the ability to determine what is a support obligation and what is a property division by looking at the substance of the obligation and the needs of the parties as opposed to the

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label given it by the divorce court. See *Stout v. Prussel*, 691 F.2d 859 (9th Cir. 1982), *Shaver v. Shaver*, 736 F.2d 1314 (9th Cir. 1984), and *In re Calhoun*, 715 F.2d 1103 (6th Cir. 1983). The bankruptcy courts will continue to determine what is support and what is a property division. Support obligations remain nondischargeable under Section 523(a)(5); however, they are given a priority status under Section 507(a)(7), ahead of taxes, which are now in Section 507(a)(8). This change impacts two places: (1) the distribution of the estate to creditors and (2) plans filed under Chapters 11, 12 or 13. In order for a plan to be confirmed it will be necessary to pay all of the past-due support through plan payments—something that many debtors with tax obligations will be unable to do.

Previously, it was necessary to obtain relief from the automatic stay to seek an initial setting or an increase of support. See *In re Mac Donald*, 755 F.2d 715 (9th Cir. 1985), and *In re Stringer*, 847 F.2d 549 (9th Cir. 1988). Section 362 was amended to allow the commencement or continuation of a proceeding to establish paternity or for the establishment or modification of an order for alimony, maintenance or support. Relief from stay was neither granted to collect support from property of the estate nor to divide property. The recent decision of *In re Siragusa*, 27 F.3d 406 (1994), where the court held that (1) the post-discharge modification of alimony did not violate the discharge injunction and (2) the state court had jurisdiction to determine that payments were nondischargeable alimony, is probably not affected by the changes.

Congress attempted to amend Section 523(a) by adding subparagraph (14), which would make it possible to have property divisions in dissolution actions held nondischargeable. It is not clear that Congress achieved what it sought because the language has a double negative. The debt, including "hold harmless" provisions with respect to community creditors, is not supposed to be dischargeable unless the debtor does not have the ability to pay from property that is not necessary

for the reasonable support of the debtor and dependents or if the benefit to the debtor far outweighs the detrimental consequences to the receiving former spouse or child. By including the child, Congress recognized that many property divisions are done to protect the children. Part of the ambiguity of the new language deals with who has to bring the action to determine whether the property settlement is dischargeable and who has the burden of proof. Creditors who are third-party beneficiaries of hold harmless provisions do not have standing to contest the dischargeability of the obligation—only the ex-spouse or child.

"Divorce liens" have often been given to equalize the distribution of property. The typical case allows one spouse to remain in the residence and gives the other a lien for a portion of the equity. Section 522(f) allows a debtor to avoid a lien which impairs a claim of exempt property. In the case of *In re Pederson*, 875 F.2d 781 (9th Cir. 1989), the Ninth Circuit had held that divorce liens were avoidable. After *Farry v. Sanderfoot*, 500 U.S. 291, 111 S.Ct. 1825, 114 L.Ed.2d 337 (1991), the court reversed itself and held that they were not. *In re Catli*, 999 F.2d 1405 (9th Cir. 1993). Congress probably wanted to prohibit debtors from avoiding all of them; however, the language applies only to those for support, not property divisions.

Child support creditors or their representatives will be permitted to appear before the court and to intervene in the proceedings without charge or the requirement of being a lawyer.

## Exemptions

Section 522 allows the debtor to claim property as exempt under that section or under applicable state law. The exemptions allowed in Section 522(d) have been doubled. This allows the debtor a "wild card" exemption of \$16,600. This increase was to raise the amount allowed to account for inflation since 1978.

## Preferential Transfers

Section 547 allows the trustee to set aside certain transfers to or for the benefit

of creditors within 90 days of the bankruptcy filing; the 90-day period is extended to one year for insiders.

The trustee will not be able to set aside payments to the former spouse or child for support under Section 547; payments which have been assigned, including those to DSHS, will not be protected.

The officers and directors of small businesses usually have to personally guarantee the payment of bank loans. Often, when the business was failing, the principals chose to have the corporation make payments to the bank on the loans that they had personally guaranteed rather than paying other creditors. In *Levit v. Ingersoll Rand Financial Corp.*, 874 F.2d 1186 (7th Cir. 1989), the court held that payments made to the bank between 90 days and one year prior to the bankruptcy filing on personally guaranteed loans were preferential transfers which could be set aside because they benefited the corporate insiders; although this decision upset the banking industry, it was adopted by the Ninth Circuit in *In re Sufolla, Inc.*, 2 F.3d 977 (9th Cir. 1993). The change does not allow the trustee to go after the bank for those payments.

The debtor, in a Chapter 11 case, is given the powers of a trustee. Section 1107; Section 546 requires that actions to set aside preferential transfers must be brought within two years of the appointment of a trustee. Since the debtor usually has little incentive to set aside preferential payments to creditors that it wants to continue to do business with, actions would seldom be taken, even though they would benefit other creditors. *In re Software Centre International, Inc.*, 994 F.2d 682 (9th Cir. 1993), holds that this time commences with the filing of the petition. The changes extend the time to one year after the appointment of a trustee if that takes place more than two years after the filing of the petition.

A trustee, or debtor in possession, in a Chapter 11 case, can bring a motion within 120 days of the filing of the petition seeking the return of goods to a creditor for a setoff of part of the account; this requires the consent of the creditor.

## Lien Perfection

A creditor can have a security interest with an effective date of the day the

debtor obtains possession of the collateral under RCW 62A.9-301 if the security interest is perfected within 20 days; Section 547 allowed only a 10-day period for perfecting the lien when the trustee sought to set aside preferential transfers. The Code is amended to conform with the 20 day period in the UCC.

A section of the new law is intended to allow the creditor to continue the perfection of a security interest, such as by filing an UCC 3. There are a number of lien statutes, such as RCW 60.04 (for labor and material), which require both the filing of a claim of lien and the commencement of an action, each within a short period of time, to perfect a claim of lien. There was a conflict between sections 362 and 546 about what steps a party could take to perfect its lien claim. Although the language in the amendment is designed specifically to deal with UCC filings, it probably applies to various lien claims. Cases such as *In re Hunters Run Ltd. Partnership*, 875 F.2d 1425 (9th Cir. 1989), which allowed a creditor to bring the foreclosure action up to 30 days after the bankruptcy was dismissed, will be of questionable value.

### Homestead

Section 522(f) allows a debtor to avoid a lien which impairs a claim of exempt property; under RCW 6.13.010 a debtor has a homestead exemption merely because of residing on the property. A judgment does not attach to the property unless it is recorded pursuant to RCW 6.13.090; even then it is still subordinate to the \$30,000 homestead exemption, with certain exceptions found in RCW 6.13.080. The Ninth Circuit ruled in *In re Chabot*, 992 F.2d 891 (9th Cir. 1993), that a judgment did not impair the homestead exemption because the debtor received the full amount of the homestead. That decision is overruled by the new law, and the debtor is able to avoid a judgment whether or not there is any equity in the property above the homestead amount when the bankruptcy is filed. However, as long as the property remains in the estate, such as when the Chapter 7 Trustee is selling it, the liens continue; any appreciation in the property would go to the bankruptcy estate. See *In re Hyman*, 967 F.2d 1316 (9th Cir. 1992), and *In re Reed*, 940 F.2d 1317 (9th Cir. 1991).

### Exceptions to Discharge

Section 523(a)(2) sought to make nondischargeable charges for luxury goods and cash advances on credit cards on the eve of bankruptcy. The luxury goods charges must now exceed \$1,000 and be incurred within 60 days of the filing of the bankruptcy. The cash advance time limit has also been extended from 20 to 60 days.

Many people have taken to using credit card "convenience checks," or even the credit card itself to pay tax debts. Since those were not debts for taxes, the debtor was able to effectively take a nondischargeable debt and make it dischargeable. Debtors who pay nondischargeable tax debts to the U.S. with borrowed funds will have a nondischargeable debt to the lender.

Criminal fines will not be dischargeable in a Chapter 13 case.

### Priority Claims

The Ninth Circuit has recently ruled that the U.S. did not have to file a proof of claim by the deadline set by the Bankruptcy Court to have it allowed a priority claim under Section 502, *In re Pacific*

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*Atlantic Trading Co.*, \_\_\_ F.3d \_\_\_, WL 443441, (9th Cir. 1994); this decision is broad enough to include all priority claims, not just the government's. Section 726(a)(1) is amended to allow the filing of a priority proof of claim until the trustee commences distribution to creditors. When a Chapter 11 case converts to Chapter 7, debts incurred during the Chapter 11 are generally entitled to be treated as priority claims; the new law requires these proofs of claim to be timely filed.

### Sovereign Immunity

This is one of the changes that applies to previously filed cases. It reverses Supreme Court decisions in *Hoffman v. Connecticut Department of Income Maintenance*, 492 U.S. 96, 109 S.Ct. 2818, 106 L.Ed2d 76 (1989) and *United States v. Nordic Village, Inc.*, \_\_\_ U.S. \_\_\_, 112 S.Ct. 1011, 117 L.Ed2d 181 (1992), where the Court held that there was no waiver of sovereign immunity if the government did not file a proof of claim. A judgment for a money recovery, but not for punitive damages, can be obtained against federal and state governments; some commentators have stated that there may be constitutional problems with the waiver as it

applies to state governments.

### Miscellaneous

The bankruptcy courts will be able to hold jury trials if authorized by the district courts and with the consent of all parties; this applies to both core and non-core matters under 28 U.S.C. § 157. This affects, and in some ways implements, *In re Cinematronics, Inc.*, 916 F.2d 1444 (9th Cir. 1990).

Real property lessees are given many of the protections that purchasers of real property have under Section 365. The debtor will have to perform all obligations under a personal property commercial lease commencing 60 days after the filing of the petition; the defaults in lease payments can be cured at the nondefault rate of interest.

Under RCW 62A.2-702, a creditor has certain reclamation rights if a demand is made within 10 days to an insolvent debtor. This 10-day period is extended to 20 days if the bankruptcy petition is filed before the 10-day period expires.

Professional fees incurred by a creditors' committee in a Chapter 11 case could be paid by the estate under Section 503. Necessary expenses, e.g., travel to

meetings, of the committee members will also be reimbursable; they will not be compensated for their time.

Applicants for student loans cannot be turned down just because of a prior bankruptcy.

There are provisions for a simplified Chapter 11 for a small business, defined as one with debts less than \$2,000,000.

The debt limitations for Chapter 13 are increased to \$250,000 of unsecured debt and \$750,000 of secured debt.

New criminal provisions are added to 18 U.S.C. §§ 152, 153 and 154 concerning the concealment of assets, false oaths, bribery, embezzlement against the estate, and adverse interest and the conduct of officers of the estate. A new crime of bankruptcy fraud is created.

Chapter 7 trustees are given a raise.

### Commission

When all else fails, a commission should be appointed to study the law and make a report about what additional changes should be made.

Such a one was created, and it was charged with making a report to Congress within three years.

in Bellingham. He is a frequent writer and speaker on the subject.



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NEWS FROM HOME

Tom McGrath, a.k.a. Thomas F. McGrath, Jr., Attorney at Law, has announced the opening of his new law office in the Key Bank Building in Bellevue. McGrath brings more than 25 years' business and legal experience, primarily in real estate, banking, construction, commercial collection, title insurance and escrow with him from Torbenson, Thatcher, McGrath in Seattle, where he was a partner for eleven years.

They just do things differently in Poulsbo, it seems. In the town where U.S. Supreme Court judges come for dinner at the Sons of Norway Hall, attorney Roger Sherrard helped organize Albania's first-ever judicial conference in 1993. This summer he was back in Tirana again as organizer of the second Albanian judicial conference. Also participating in the conference was Seattle attorney Charles K. Wiggins.

Alec W. Brindle Jr. has joined the law firm of Faulkner, Banfield, Doogan & Holmes as an associate in the firm's Seattle office. Brindle was previously legislative assistant to Alaska Senator Frank Murkowski.

Heller Ehrman White & McAuliffe attorney Patrick W. Dunn has been appointed to the Department of Revenue's Advisory Committee for the Manufac-

turers Tax Study. The committee will assist the department in carrying out the Washington legislature's directive to conduct a study of the effect of the state's tax system on manufacturers and recommend to the legislature sales and use tax changes for more equitable taxation of manufacturers.

Williams Kastner & Gibbs' Christopher Shank has been elected to a three-year term on the Executive Committee of the WSBA Family Law Section.

Benjamin F. Stephens, formerly with Bogle & Gates, has joined Riddell, Williams, Bullitt & Walkinshaw in the firm's corporate finance department.

The Northwest Chamber Orchestra has re-elected Kathleen A. Amamosa president. She practices law with Davis Wright Tremaine in Seattle.

The American Bar Association's International Law and Practice Section has chosen Seattle lawyer Michael Sandler chair-elect of the 15,000 member group. Sandler is a partner with Foster Pepper & Shefelman.

KITSAP COUNTY REPORT

by KATHLEEN M.S. WRIGHT

Another month, almost another non-column. Amid clamoring from a throng of one about the lack of the Kitsap Reports, fingers are again being put to key-

board. Missing a deadline when nothing bad happens to you is a heady feeling. No Rule 11 sanctions, no penalties from the IRS, just an occasional (hopeful) "Did you stop writing that column?"

Election News. Effective January 1, 1995, Kitsap County will have a new prosecuting attorney, Russell Hauge. In a spirited primary, Mr. Hauge defeated 17-year veteran C. Danny Clem. While Mr. Hauge promises no immediate and radical changes, a fly on the wall of the prosecutor's office has seen more than one resume being prepared.

It's Back—the Poulsbo CLE. The famous (and infamous) Poulsbo CLE was held November 10. Honored this year as "Small Town Lawyer Made Good" is Roberta Cooper Ramo, president-elect of the American Bar Association. Our very own Jeff Tolman, on loan to the rest of the world, together with partner Michael Kirk, are the movers and shakers in this "Best of the West" presentation. The cowboy hat was a nice touch, Jeff.

New Kids in Town. Scott Kalkwarf now has an office in Port Orchard, coming to Kitsap County from Child Protective Services, via a career as a mental health professional. Pamela Dale recently joined the office of Lillian Shauer, emphasizing personal injury and family law. Randall Hansen is now with The Paja Law Firm, Port Orchard. Nancy Rees has joined John Jackson III in his practice in Bremerton. Other recent new additions to Kitsap County: Brett Wieberg, Steve Sherman, Leisa Solt-Wolf.

What Goes Around, Comes Around. Kevin Howell is back with Tolman [Diamond] Kirk. Kevin circulates through local firms at least once a year to keep the supply of jokes and party stunts current. The new Tolman\*Kirk logo (unable to be accurately reproduced by this program) contains a symbol between the partner names that may be confusingly similar with that of the rock star formerly known as Prince. Perhaps it is Prince, in a new career, or else a trademark infringement waiting to happen.

Memorial Note. A special memorial ceremony was held by the County Bar on September 16, 1994, to commemorate the life and contributions of Merrill Wallace. After 61 years of practice in the county, Wallace died earlier this year, and his absence will be noted in the Bar.

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Attorney **Don Powell** and wife **Elsie** enjoy the dance.

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**LAW FUND**  
by **LAUREN MOORE**

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Congratulations to LAW Fund Board member **Ed Shea** for receiving the award as the National Lawyer Volunteer of the Year from the March of Dimes.

Congratulations to LAW Fund Board members **Paul Stritmatter** and Hon. **Susan Agid** for being appointed to the Access to Justice Board.

With the end of the year upon us and the spirit of holiday giving occupying our thoughts, be sure to remember that a donation to LAW Fund in lieu of a gift to a colleague, client or business associate is a thoughtful, original idea. LAW Fund will prepare a special holiday card to inform the recipient of your gifts in their honor. LAW Fund will send the information along with your personal greetings. And remember, gifts of cash to LAW Fund are fully deductible for federal income tax purposes up to 50 percent of your gross income for the year in which the gift is made.

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Walkers take a nature break at the first annual Tacoma-Pierce County Bar Association Convention, which featured CLEs, social and recreational activities September 23-25 at the Alderbrook Resort Golf and Convention Center. The 65 registrants earned nine CLE credits, played golf and tennis, and went on a nature walk with their 75 family members. Bar News editor **Lindsay Thompson** spoke at the Saturday dinner before the evening dance. Early risers heard guest speakers **Paul Stritmatter**, WSBA past-president, and **Jeff Tolman** lead a breakfast discussion on professionalism.

Entitled "Laidback Bar Activities for Lighthearted Lawyers," the convention was just that, and a great start of a new tradition.

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**PIERCE COUNTY REPORT**  
by **GEORGE S. KELLEY**

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Judge **J. Kelley Arnold** has left the

superior court bench to take a job as federal court magistrate in Tacoma. He may have felt that the retirement plan in the federal system was better than the state's in that the people writing the

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checks do not have to balance their books (at least not for this generation), or that someone promised him he wouldn't have to hear any more divorce cases. Whatever the reason, he will be missed up on the hill and a welcome addition to our local federal judiciary.

Tacoma Municipal Court Judge **Sergio Armijo** has been selected by Governor **Mike Lowry** to take Arnold's place. Initially, the Governor requested a bar poll to assist him in making the selection, but after the bar and numerous applicants got ready to participate, he changed his mind and saved us the trouble and expense of polling the membership.

One of the reasons that a representative of the Governor's office gave for the decision on the poll was that Arnold's position needed to be quickly filled in order to avoid a backlog. Unfortunately, they forgot that Armijo was on the November ballot for the Tacoma Municipal Court position and was unopposed. At the time this is written, it is unclear whether or not he will continue on the municipal court ballot and delay his acceptance of the superior court job until after the election. Meanwhile, write-in campaigns are being organized for his position, and at least one judicial hopeful has requested that the municipal court position be declared vacant. Confusion abounds, and rumors circulate. It is stuff like this that may

have encouraged Arnold to seek the calmer waters of the federal system.

The centennial celebration at Gordon, Thomas et al. continued with a reception at the firm's Tacoma offices. For those of you who missed it, there is a video of the firm's first one hundred years available for screening. The production values are excellent, although the scenes from the early years are a bit grainy. PBS's **Ken Burns**, who brought us the Civil War and Baseball documentaries, is said to be interested in the film rights to the firm's second hundred years.

Gordon, Thomas took the time to announce that **Matthew A. Reiber** and **Julie Weigand-Johnson** have become partners in the firm.

Judge **Donald Thompson** finished the Portland Marathon with a time of 4:05. The trouble with his finish time is that he came so close to breaking the four-hour barrier that he may be tempted to run another. With a little more training and a new pair of running shoes, a sub-four-hour finish should be easy.

**Mike Turner** put some kind of stuff on his hair to darken it so that he would look younger in his son's wedding pictures. The pictures turned out great as did the wedding. Unfortunately, Mike's hair, like the autumn leaves, turned a reddish-brown color and may not make it through the winter.

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## WASHINGTON ASSOCIATION OF LEGAL SECRETARIES REPORT

by **CINDY MANSON**

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*September 1994 Board of Governors meeting:* More than 90 members attended the WALSA Board of Governors Meeting and Educational Conference hosted by Whidbey Island Legal Secretaries Association September 16-18 in Oak Harbor. Sixty-eight attended the Back to Basics breakfast Sunday morning, which included member presentations on ways and means, public speaking and starting a PLS/ALS study group.

Our first two series of legal education workshops this year were held in Bellevue on October 7 and in Lacey on October 19. Speakers at the Bellevue workshops included the Honorable **Richard J. Thorp** of Snohomish County, Snohomish County Confirmation Clerk **Marilyn Minnich**, Kitsap County Court Administrator **Madelyn Botta**, King County Program Analyst **Barbara Miner**, Detective **Gary Forrest** of the City of Bellevue Police Department, and attorneys **Lynn Wise**, **Daniel Jackson**, **Robert Stevens**, **Randy Simon**, **Marlin Appelwick** and **Doug Cowan**.

Lacey speakers included Thurston County Court Clerk **Judy Foster**, a Washington State Patrolman from Lacey and attorneys **Linda Dalton**, **Gregory Marks**, **Maria Regimbal**, **Jim Johanson**, **Ross Taylor** and **David Chapman**.

**Arline Joyce**, Certified PLS, Washington's representative to the National Association of Legal Secretaries, attended the national association's board of directors meeting in Tulsa, Oklahoma, on November 3-5. It focused on the association's long-range plan, meeting and association restructuring, membership and budget issues and planning goals for the next three to five years. There were also reviews of the results of a national survey on members' opinions about the association's direction and what they hope to receive from the membership. The board will hold its mid-year business meeting in February 1995.

*January 1995 Board of Governors meeting:* The Kitsap County Legal Secretaries Association will host the Washington Association of Legal Secretaries' Winter 1995 Board of Governors Meet-

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ing and Educational Conference January 20-22 at the Silverdale on The Bay Resort Hotel in Silverdale.

The WALS Legal Education Committee will hold concurrent seminars separate from the business meeting on Friday, January 20, from 4 - 6 p.m.: "Crime on the Federal Level"/"PLS Topic - Judgment." The cost is \$15 for members and \$25 for nonmembers.

*The Educational Conference* starts Saturday morning, January 21, with two sets of concurrent seminar sessions: first, "Wetlands and Land Use"/"Bankruptcy - Debtors' Rights," and second, "The Psychology of Client Relations: Dealing with Difficult People"/"Bankruptcy - Creditors' Rights." Basic registration is \$40 for members and \$60 for nonmembers (includes Friday Welcome Party, NALS Forum, Newcomers' Forum, Saturday Workshops, Concurrent Seminars, Luncheon and Business Meeting). Saturday seminars only cost \$20 for members and \$40 for nonmembers.

*Networking Breakfast:* The fee for Sunday morning's Networking Breakfast is \$10. Topics are "Domestic Pattern Forms," "Law Office Administration," "WordPerfect 6.0 for Windows," "WordPerfect 6.0 for DOS" and "Adoption."

The registration deadline is January 6. For information, call **Charlotte Jensen**, Certified PLS, (206) 479-5111.

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### IN MEMORIAM

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#### Alva C. Long

Auburn lawyer Alva C. Long, 68, died in his sleep the night of October 28, 1994, at his home. A King County native and son of a well-known King County Superior Court judge, Long was a graduate of the University of Washington and its School of Law. He was admitted to practice in 1954.

Long concentrated his practice in the district and municipal courts of south King County. His largely misdemeanor caseload included a vast number of drug-and-alcohol-related cases, a legacy, he often said, of his years of morphine and alcohol abuse. Long gave up both in 1973 and insisted that his substance-impaired clients seek treatment and attend AA as part of his representation of them.

Alva Long was widely known among King County lawyers for his eccentric courtroom behavior and mode of dress, the latter described by the *Seattle Post-Intelligencer* as "Ties barely knotted, mismatched socks and jarringly clashing outfits." In 1988, he ran for a seat on the WSBA Board of Governors, losing to current WSBA President Ron Gould. He ran again, successfully, in 1990. During Long's tenure, WSBA annual meetings became a forum for his resolutions to restrict the ability of the Bar Association to perform various functions. He sponsored successful referenda to cancel the Board of Governors' selection—based on WSBA member polls—of Hawaii as a Bar convention site and to roll back a Board-approved member licensing fee increase in 1990 and 1992, respectively.

Active in practice until the day he died, Long also served as the WSBA liaison of the South King County Bar Association after he left the Board of Governors in 1993. He is survived by his brother, Redmond attorney William G. Long; a sister, Louise Parry of Seattle; five former wives; four stepchildren and several nieces and nephews.

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#### Douglass A. North

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## WILL SEARCH

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**Tony Colella.** Seeking will of Tony Colella, 79-year resident of South King County. Call Tom Taaffe, (206) 242-9552.

**Harlan Dehlin Olsen:** Searching for will of Harlan Dehlin Olsen, born 11/8/26; died 5/16/93. Resided in Alaska and Utah. Contact John L. Black, Jr., 10 West 300 South, Suite 500, Salt Lake City, Utah, 84101; (801) 363-3550.

**Lester C. Green.** Anyone having knowledge of a will or trust for Lester C. Green a.k.a L.C. Green, lifelong resident of Crown Hill area, please call John A. Henry at (206) 542-3138.

**Frank Albino.** Anyone having knowledge or possession of an original will of Frank Albino, resident of Snohomish County, deceased on August 10, 1994, please contact Joel Green, Green & Ockerman, 9757 Juanita Dr. N.E., #100, Kirkland, WA 98034, (206) 820-6658.

**Charles Price Huey, Jr.** Anyone having knowledge or possession of an original will of Charles Price Huey, Jr., please contact Kathleen Wareham, MacDonald, Hoague & Bayless, (206) 622-1604.

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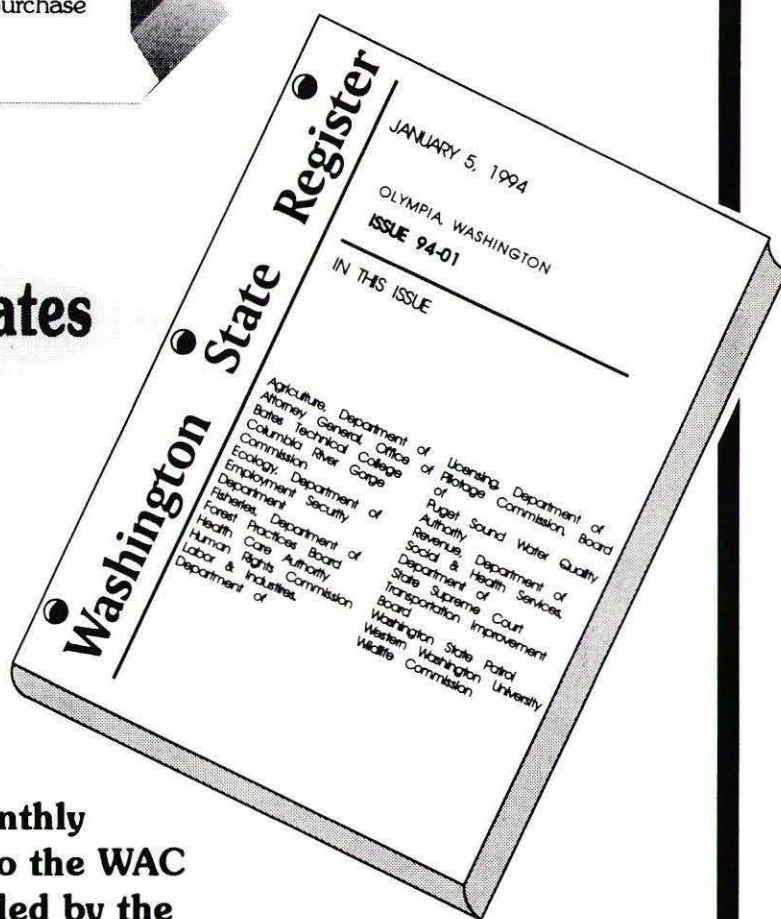
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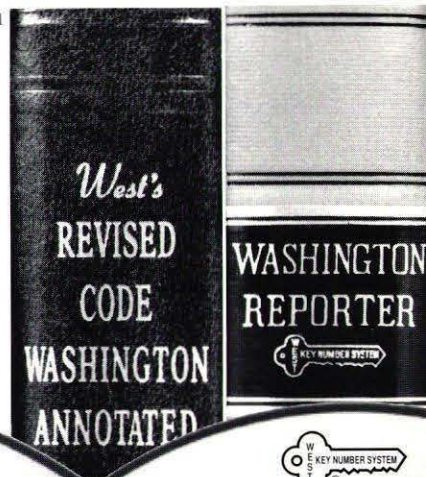
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