

Washington State **Bar
News**

Vol. 48, No. 2, February 1994



**A Report on Law and Lawyers in
Somalia: Will the Rule of Law Replace
the Law of the Gun?**

**Do They Have Laws in the South
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The Right to Bear Arms

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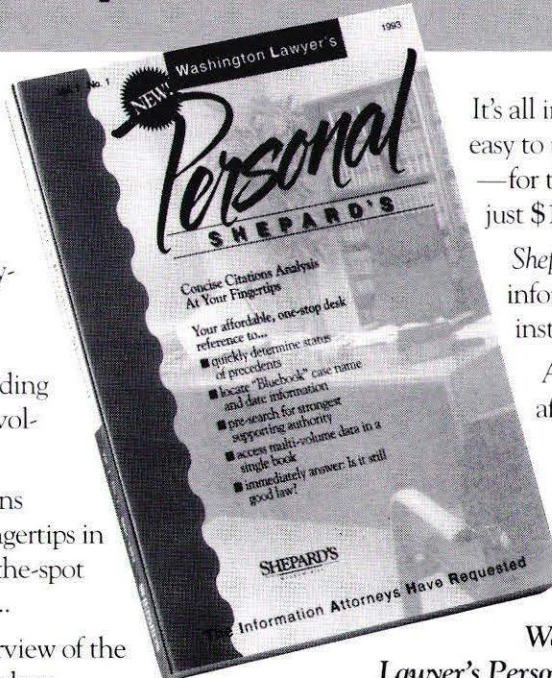
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**A Report on Law and Lawyers in Somalia:
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by Col. F.M. Lorenz, USMC

A year later, the head of the United Nations legal team in Somalia recounts their efforts to re-create a legal system, and considers the prospects for lasting peace in a troubled region.

Do They Have Laws in the South Pacific? *by James B. Parsons* 22

"How many of us have sat at our desks on a dreary winter day and thought: 'Wouldn't it be nice to be sitting on a South Pacific island?'" The author did it.

The Right to Bear Arms *by Jack Richey* 36

"The story I have enclosed for your consideration is *fiction*," the author writes, "but a powerful statement on the issue of guns."

ART CREDITS

Colonel F.M. Lorenz, who wrote the feature beginning on page 13, is staff judge advocate and senior legal advisor to the commanding general, Marine Expeditionary Force, Camp Pendleton, California. In 1992-1993, he was senior judge advocate in the United Nations Combined Task Force Legal Office in Somalia. He contributed letters to the Bar News in March, April May and June 1993. Here, he speaks with Somali lawyers Dr. Ilyas Haji Mohamed and Abdullah Suldan Ahmed, while preparing to transport northern jurists to a meeting in Southern Mogadishu. His daughter, **Marie Lorenz**, contributed the drawing. She is a full-time student, majoring in printmaking, at the Rhode Island School of Design.

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

Praise for *Bar News* Emphasis on Professionalism

Editor:

I read with interest the article by Thomas Tyner, "The Duty and the Breach" (*Bar News*, December 1993, page 18), as well as the other articles on professionalism in the Bar. I, too, bemoan the lack of professionalism in the Bar, and rejoice when I meet attorneys who treat each other with civility in and out of the courtroom. Fortunately, here in Spokane, civility is the rule, rather than the exception, for the most part.

The Tyner article reminded me of a letter I received from a fairly new attorney a few years ago in a contested probate matter. The case was particularly terrible, with allegations of substance abuse, a violent suicide and other horrors. The family, not surprisingly, was devastated and polarized.

In an attempt to get discussions going again, I made contact with opposing counsel and conveyed information received from my client concerning the disposition of assets, etc. I received a letter from opposing counsel the likes of which I had never seen before, and blissfully have not seen again. It accused my client of misdeeds, distortion, and all manner of ills, and included profanities in respect of the client and the case. It was amazing.

I responded by noting that opposing counsel's letter was certainly one of the most interesting I had received in my practice, and I suggested he may be too close to the case to be effective as might be necessary. He withdrew shortly thereafter.

For those who don't believe such letters as those written by Mr. Tyner could really be written, my experience has, unfortunately, been otherwise. I commend the Bar Association for dealing with this issue openly. In our zeal for the almighty billable hour, some have lost what it is to be a lawyer, and

the responsibility that entails both to our colleagues and to our clients.

I was (and still am) blessed with a father not unlike Lester Stritmatter, who taught me much about our profession. I try to live by his example and the example of others in the Bar who have done so much for each of us and for the public. I also try to gently "guide" others when that seems appro-

priate. If we take ownership of this issue, we can change our profession for the better, and do a far better job for the public in general and our clients in particular.

Thank you for continuing to discuss matters such as this in the *Bar News*.

RICHARD L. SAYRE
Spokane

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More on Environmental Law Research

Editor:

We read with interest Susan Golden's article in the November 1993 *Bar News*. Ms. Golden provided a wealth of information about on-line and other information sources pertaining to the environment. However, your readers may be interested in the availability of additional sources on the subjects of environment, environmental due diligence, and corporate and other entities involved in contamination issues.

There are many database services that provide on-line access to hundreds of data banks. In addition to the very popular DIALOG and LEXIS/NEXIS database services (referred to by Ms. Golden at pages 41-44), others include Ariel Online, BRS Information Technologies, Chemical Information Systems, Earthlaw, NTB Online, ORBIT Search Service, STN International, TDS Numerica, and WESTLAW. Readers need to be aware, however, that many data banks are available through more than one database service. Since on-line costs differ among database services, it pays to find the most cost-effective service.

There are many on-line information sources about companies that may be implicated in site contamination or other environmental or waste management issues, including:

ABI-Inform
 American Business Directory
 Company Intelligence
 Corporate Affiliations
 Disclosure Database
 Environmental Protection Agency
 Docket
 Fortune Business Reports
 M&A Filings
 Moody's Corporate Profiles
 SEC Online
 Standard & Poor's Corporate
 Descriptions
 Trinet Company Database
 TRW Business Credit Profiles

Of these, one of the most valuable is SEC Online, which includes companies' environmental status reports submitted to comply with SEC annual reporting requirements.

The article makes several references to document search assistance for due diligence evaluations, which, of course, typically require far more than document and data base review. Standard document assessment should at least include aerial photographs, topographic and land-use maps, historic fire insurance maps, city and county real estate atlases, recorded chain-of-title documents, local history documents, as well

as oral interview. On-site observations and various technical evaluations are also required. For more information about due diligence, readers should consult the following sources:

ASTM Standards on Environmental Site Assessments for Commercial Real Estate (American Society for Testing & Materials, 1993)
Environmental Due Diligence Guide



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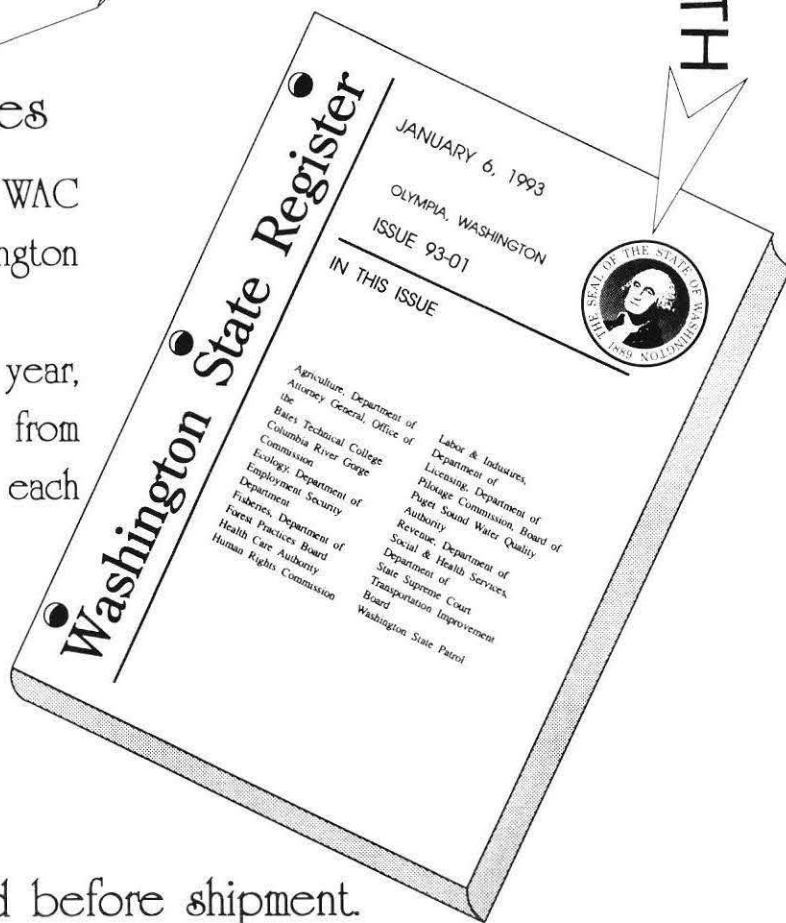
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(BNA, 1991)

Environmental Site Assessment, Phase I: A Basic Guide (Lewis Publishers, 1993)

Guide to Environmental Site Assessments (Association of Groundwater Scientists & Engineers, 1992)

Site Auditing: Environmental Assessment of Property (Specialty Technical Publishers, 1991)

Site Histories: Documenting Hazards for Environmental Site Assessments (Cahners Publishing Company, 1993)

VISTA Environmental Information, Inc. is one of about six national companies that provide radius-defined searches of federal and state agency environmental databases for due diligence purposes. However, the value of their service is limited in that the search does not provide the reason for which a site has been listed on a database. The basis for listing may be a critically important factor in determining environmental liability. Accordingly, review of original federal and state agency environmental files may be necessary.

Last, the U.S. Environmental Protection Agency Region X library, while a valuable repository of environmental information, has limitations. Most significant, only EPA documents are available for loan to the public.

We hope this information will assist your readers in their quests for environmental information.

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An open letter to all active out-of-state WSBA members

Dear Member:

The January issue of Bar News ran a letter addressed to me from James Ray Streinz, an active out-of-state member of the WSBA. Mr. Streinz rightfully pointed out that, in my November "President's Corner" column on governance, I failed to mention out-of-state members. I apologize for this oversight.

This is especially embarrassing because I have always been acutely aware of the large number of out-of-state members we have. As a 1988-91 member of the WSBA Board of Governors, I represented the Third Congressional District, which reaches down to Vancouver and touches Portland. As a graduate of Willamette University's College of Law, I am sensitive to the significant population of Oregon lawyers who belong to the WSBA. We are privileged to have members scattered around the country and, in fact, around the world.

I passed Mr. Streinz's letter along to the new Governance Task Force along with the statistics we were able to secure regarding our out-of-state members. That information was provided to the task force with the request that they consider the issue of out-of-state representation as they decide on a model for future bar governance.

I thank Mr. Streinz for his concern and opinions. I assure you, when I spoke of "inclusion," I meant all members - no matter where they may geographically reside.

Very truly yours,

Paul L. Stritmatter
President



"I WILL NEVER REJECT . . ."

by **Paul L. Stritmatter**
WSBA President

The cornerstone of professionalism is to do work for the general public good without compensation. The oath we take in order to become attorneys includes, "I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed. . . ." The members of the Washington State Bar Association have a right to be proud of their record of such public service.

The Bar Association honors a lawyer or a group of lawyers for outstanding service in volunteer legal services each year. There are always so many stories involving the giving of so much, that it is difficult to decide whom to honor each year. I say the more difficult it is, the better it is. It demonstrates the commitment of all lawyers in the state of Washington.

Two months ago, I wrote in this column about what my father taught me about professionalism on day two of the job. Let me tell you about day one in my legal career as a partner with him.

We spent the day at the Welfare Office (as it was known at that time) interviewing clients, solving problems and accepting cases on behalf of those who could not afford a lawyer. We took three cases that involved on-going litigation. It was a great baptism in the obligation to represent those who cannot otherwise afford an attorney. Nearly all the lawyers in Grays Harbor County, at that time, took their turn at the Welfare Office to advise and represent those in need. A considerable amount of my father's case load was free service for those who could not afford a lawyer.

Some of my proudest moments as a lawyer have been in representing for free those with legal problems. My representation of a high school student allowed him to participate in wrestling, which in turn assured that he stayed in school and graduated. Inspired by the support he received, the young man exceeded all expectations and earlier

accomplishments and assisted his high school in winning the state wrestling championship. The entire community was buoyed by the victory. I personally benefited by making a new friend, watching a lot of great wrestling matches, and knowing that I not only had helped with a legal problem, but had truly affected a young man's future.

Representation of migrant farm workers who thought the legal system would never recognize their rights was particularly meaningful. It was a professional thrill to help establish that the unfair way in which some groups of people are treated will not be tolerated by our system of justice.

Most of my free service is in the family law field, helping mothers who desperately need the assistance of counsel.

The problem appears to be that we will never run out of the need for volunteer legal services. The size of our low-income population grows every year. The need for legal assistance in dealing with complex issues in our society forever increases. The ever-expanding role of government and the need to deal with technical governmental regulations in every aspect of our lives require the assistance of counsel.

While our programs have been successful by any definition, we should always be striving for improvement. There is always a need for more involvement and more service. Several years ago, the Board of Governors adopted an aspirational goal of 30 hours per year for each lawyer in the state to provide free legal service to low-income people. Many of us give much more than that. Many of us do not attain that goal. I challenge all of you to attain that goal this coming year. You will find great personal satisfaction in doing so.

I would like to make some suggestions for improvement in the current system. These are not my personal ideas, but ones that have floated around



Paul L. Stritmatter

and need some in-depth consideration and possible implementation. I have submitted these ideas to our Legal Aid Committee to ask for serious discussion. If they are found to be worthy, we should begin a program of implementation.

1. Charge a minimal fee to clients based on an ability to pay for services. The fees would go to the program, not to the lawyers. The purpose, however, is not to raise funds for the program. The purpose is to give the client a greater stake in the matter. It is to give the client a sense of involvement and an appreciation for the importance of the proceedings. Some clients take legal services for granted. Some consider them a right in which they don't need any personal involvement. Being required to pay for these services, on even a small scale, will help to create a better understanding of the value of the services they are receiving.

2. Require each client, as an exchange for the free service each is receiving, to agree to provide a like amount of service to others. Prepare standard contracts that would be entered into with clients in which they would pledge to provide an equal number of hours of donated time to a local charity or institution. We, as lawyers, could further extend our contribution to public service, knowing that it has in turn resulted in further community service being provided by others. We could even ask that the service be to an organization of our choice. In turn, our free legal-service programs could coordinate with other community organizations and create a shared responsi-

bility in the improvement of our communities. This would also provide a significant increase to the visibility of the good work done by lawyers in providing free legal services.

3. Give priority on motion dockets to those lawyers handling legal-aid cases. If a lawyer is handling a case for free for a low-income client, she or he would wear a button that would grant priority on the motion docket. This would allow the lawyer to save time on the case when services were

being rendered for free, and it would also give recognition to that lawyer for the volunteer work that is being done. Certainly, this idea will need the cooperation of our judges, but I am confident that they would support such a program.

4. Implement a program of financial giving in lieu of voluntary service. Some of us simply don't find the time or don't have the desire to provide legal-aid services. That is not a reflection on the professional commit-

ment of any individual lawyer, but a recognition of the reality of the time constraints many of us practice under. We should, therefore, have a specific program in place that would accept a financial contribution to the administrative costs of our programs for those who would rather make a financial gift than give of their time. Set aspirational goals with regards to levels of giving. LAW Fund, which obtains contributions from lawyers to support our civil legal-service programs in the state of Washington, would also be an appropriate recipient of these contributions.

5. Stop using the term "pro bono" for this wonderful giving of professional time and service. The public doesn't understand meaningless Latin phrases. You will note that this is the first time that I have used that term in this article. As lawyers, we are communicators. We don't communicate well when we use Latin phrases. Let's communicate with the public regarding our work in this area by banning the Latin term and adopting an English term, such as "legal aid" or "volunteer legal services," that everyone will understand.

Without detracting from the need for volunteer work in the civil legal-service area, I would be remiss in not mentioning the criminal legal-service area. Government funding supports programs for providing criminal legal services to the indigent. As we all know, however, that funding is not nearly adequate. Lawyers in our public-defender programs are greatly overworked, and lawyers who receive payment under county contracts are woefully underpaid. We need more lawyers to volunteer to undertake criminal cases for free to help lighten the burden in the criminal-justice system.

Two judges have recently spoken to me about the fact that the Bar has not stepped up to volunteer in the criminal-law field as in the past. The criminal-justice system, as well as indigent defendants, deserve our volunteer efforts.

I commend all of us for the great public service we have provided over the years. Lawyers, like no other professionals, have met their responsibility to help the greater public good. Let's not back off now. Our voluntary efforts are needed more than ever. Promise yourself to do your part this year.

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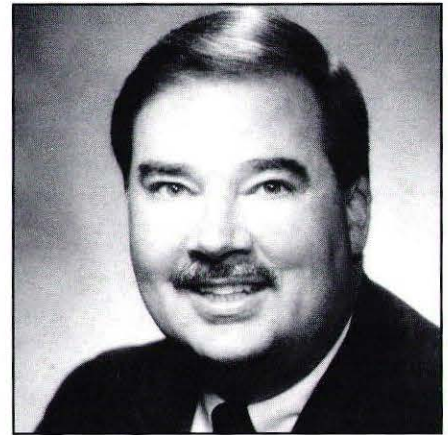
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VIOLENCE IN THE LAW OFFICE

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



Dennis P. Harwick

Every story about violence in the law office seems to start with the phrase, "Everyone says it couldn't happen here. But it did." So goes it in western Washington. Last month, I spent the better part of two days answering inquiries about the tragedy in Kent when a man entered a law firm, shot and killed a lawyer, then killed himself.

The facts are marginally distinguishable since the killer was a disgruntled tenant as opposed to a disgruntled client or litigant. But the phenomena remains—it can happen anywhere. It happened last year in San Francisco; it happened in December in Boise during a deposition; and it happened in Kent.

Ironically, the January 1994 issue of the *ABA Journal* contained an article captioned: "Deadly Clients—Along with Evaluating the Law, Attorneys Should Weigh a Case's Potential for Violence." That article makes the point that "for lawyers, the nature of the profession typically throws them into situations already veering out of control—spouses who can barely stand the sight of one another, debtors who fear that what little they have left may be taken away, or victims who think justice is only a word chiseled above granite columns that no one reads anymore."

The article goes on to identify signals of potential violence: a gut feeling, clients who feel threatened by a situation they cannot control, clients who have a history of violence (and easy access to weapons) and clients who personalize their anger toward opposing counsel or the judge. Frankly, I don't know that any of the sugges-

tions for curing the situation are dispositive, i.e., involve the client in decisions to give a greater sense of control, tell the client that it is not crazy to have feelings of despair, anger, hostility, or depression, don't denigrate opposing counsel, opposing counsel's client or the judge.

But the message is clear—don't ignore the problem. Listen to your staff (who may pick up the signals better than a lawyer who is focused on the legal issue). Think about the security of your office. Imagine the unimaginable. Be cautiously pessimistic with clients so that you don't raise their expectations.

I don't have the definitive answer. I can't even define the problem. Some see it as a gun control problem. Others see it as a copycat phenomenon. Still others see it as the inevitable extension of frustration with a slow and cumbersome justice system.

I do know, however, that it is the antithesis of what lawyers do for a living. We resolve disputes without resorting to the law of the jungle. We try to resolve problems in an impartial, structured forum so that people don't "take the law into their own hands." But the system doesn't always work. And we need to remind ourselves that it can happen here.

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L to r: WSBA president Paul Strimatter, ABA president William Ide and his wife, Gayle. Ide met with the Board of Governors, members of the Washington ABA delegation and trustees of the King County Bar Association. He also spoke to a number of civic groups, the UW law school and a banquet celebrating the centennial of the Gordon Thomas Honeywell law firm in Tacoma.



photo by Jack Young

IDE ON THE MARCH

by Lis Wiehl, Chair, Editorial Advisory Board

Lawyer-bashing is in vogue because lawyers don't communicate with their clients, says R. William Ide III, American Bar Association president. Interviewed in Seattle January 12, Ide maintained American lawyers are "misbehaving" by failing to return phone calls or to fully discuss fees before they send the bill. The result, according to Ide, is a legal profes-

sion which is inaccessible and unaffordable to most people.

Ide announced ABA plans to host a May conference on reforms to the legal profession and the justice system in Leesburg, Virginia; 250 people will be invited, most of whom will not be lawyers. Ide said that the group will come up with specific recommendations for re-

form, and that these recommendations should be a "blueprint for change."

"Some lawyers fail to recognize the importance of client relationships," Ide said. "We need to have a common ethic and a user-friendly grievance system so that peer pressure will encourage civility and efficiency among lawyers."

The justice system is overrun because it has become an "emergency room for every social trauma," Ide said. He favors "unified family courts," where one court has jurisdiction over parents and children, and "diversionary drug courts," where first-time drug offenders are treated for their addiction rather than imprisoned.

We can use these alternative programs as a way of resolving what are really social problems and freeing up court resources for civil and criminal cases," Ide said.

Ide said that reform, both to the judicial system and within the profession, must be spearheaded by lawyers who are ready to put aside their differences and work toward restoring the public's faith in "justice for all."

"We all have to do our part. We can't think that someone else is on the watch. They're not. If we see Rambo lawyering, we have to speak out," Ide said. "Lawyers have to play from the heart. Law is not just for the technicians."

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A REPORT ON LAW AND LAWYERS IN SOMALIA: WILL THE RULE OF LAW REPLACE THE LAW OF THE GUN?

by **F.M. Lorenz**
Colonel U.S.M.C.
Staff Judge Advocate
Unified Task Force, Somalia

During the past year, world attention has repeatedly focused on Somalia. In December of 1992, the faces of starving children on the evening news prompted a military intervention with no historic precedent. Under the auspices of the United Nations (UN), and with the military leadership of the United States, a combined task force representing 20 nations entered the country with the goal of providing security for the delivery of relief supplies. After security was restored and the operation was turned over to the UN, the international media again played an important role in formulating U.S. policy, when images of American soldiers being dragged through the streets of Mogadishu prompted President Clinton to abandon long-term U.S. participation in the operation.

Before the civil war, Somalia had a well-established legal system and a competent bar. In December of 1992, the U.S.-led Unified Task Force found the country in a state of total anarchy where the rule of law had been replaced by the law of the gun. Early efforts to restore the rule of law met with limited success, but they may cast some light on the extent of the problems facing Somalia. This article discusses the Somali legal system and prospects for the future of this devastated country.

Somalia comprises the horn of East Africa, with the Gulf of Aden to the north, the Indian Ocean on the east, Ethiopia to the west, and Kenya to the south. The northern part of the country

is generally dry and brown, turning green briefly during the rainy season. The south is more tropical, with a humid climate and abundant vegetation. Thorn trees prevail in the dry regions, and the countryside consists of dusty plains with few cultivated areas. The Somalis are traditionally a nomadic people. They have competed with each other, clan against clan, for water and grazing rights in a harsh environment for more than a thousand years. Somalis, by nature, are prone to aggressive action to solve disputes. They are distrustful of central authority, although they will band together temporarily to fight against what they perceive as an outside threat.

Unlike other African countries, Somalia has a common language, culture and religion that makes it unique. The Somali language has been in written form only since 1972; most of the written reference material on Somalia today is in Italian, English or Arabic. Somalis trace their lineage directly to the brothers Saab and Saamal, offspring of the prophet Mohammed. Somali tribes are determined by blood lineage, with a system of elders in authority rather than hereditary chiefs. The religion is Islam, although the strict codes adhered to by the faithful in many parts of the Arab world are not observed. Somalis feel no particular affinity for other Islamic countries. Compared to other African nations, the Somalis are one people. Despite these common bonds, in the last three years the Somalis have inflicted upon themselves a level of destruction and suffering without precedent in modern times.

Somalia's colonial history provides the backdrop for a system of laws that was well-established before the civil war in late 1990. Until 1960, Britain ruled the north, and Italy controlled

the southern portion of the country. Independence came in 1960, but the lack of a common written language presented a serious problem for the new nation. Most of the civil servants in the north wrote English, while those in the south used Italian. All publications and laws of the new government had to be written in English, Italian and, in some cases, Arabic, presenting serious difficulty in interpretation from region to region. Additional problems were created because the northern region inherited the British system of common law while the south was under the Italian civil-law system. Judges trained in the common law were given broad powers of interpretation, but the civil-law system was so comprehensive that it left little room for judicial interpretation.

Despite the difficulties of integrating two different systems of law, the new nation was able to establish a reasonably efficient court system, with the assistance of lawyers and judges from other countries. In the 1960s, foreign judges sat on Somali courts; an Italian judge sat on the Supreme Court for several years. Between 1966 and 1968, Martin Ganzglass, an American lawyer and Peace Corps volunteer, served as legal assistant to the Somali Ministry of Justice. He aided in the development of the Somali criminal code and wrote (in English) the only complete book ever printed on that subject, published in the U.S. by Rutgers University Press.

The development of the criminal code illustrates the challenge of integrating the diverse elements of the Somali legal system. Soon after independence, a decision was made to use the Indian Criminal Procedure Code and the Italian Penal Code as the basis for new uniform legislation. Although the



Ready for patrol in Mogadishu, Somalia

Italian Code provided the groundwork, several important changes were made. While Italy abolished the death penalty, Somalia retained that provision in the new Code. Somalia is a Moslem country, and many Islamic legal principles were incorporated into the new system. Several articles make it a crime to sell or use alcohol, both in public and in private homes. Provisions of the Somali Penal Code relating to marriage, the family, and parental respon-

sibility were modified to conform to Koranic law. By 1969, the Somali Democratic Republic had developed a system of laws that was truly integrated and fit the needs of the Somali people.

During the 1960s, there was no formal system of legal education in Somalia; lawyers and judges with a legal education had obtained it in other countries. Educated people, particularly in southern Somalia and the capitol city of Mogadishu, used Italian as the pri-

mary means of communication.

A law school was not established until 1972, as part of the University of Somalia in Mogadishu. By 1985, there were about 300 lawyers practicing in Somalia, with the majority in the city of Mogadishu. At that time, most lawyers were employed by governmental or public agencies, with fewer than 100 engaged in the private practice of law throughout the nation.

Siad Barre was elected President of Somalia in 1969, and he first appeared to be an enlightened ruler who could bring about positive change. His two great accomplishments were the establishment of a written Somali language and women's suffrage. Unfortunately, his regime became increasingly repressive and corrupt, and by the mid-1980s a number of anti-government insurgencies were under way. The armed factions united against their common enemy, and by the fall of 1990, Siad Barre was driven out of Mogadishu, taking refuge in Kenya. The leaders of the major factions could not agree on a power-sharing arrangement, and a devastating civil war began, with tremendous suffering inflicted on the Somali people.

Bands of former soldiers and bandits roamed the countryside, looting, killing and stealing food to survive. Every public building was ransacked. Virtually all records were destroyed, and nearly everything of value was carried off and sold. When the courts and formal legal system stopped functioning in Somalia, there was some effort to return to the traditional Islamic code of law, the Sharia. However, conditions had deteriorated to the point that the few elders and clerics who tried to impose the system were threatened or killed. The nation sank into the depths of anarchy, and by the summer of 1992, their rule of law had ceased to exist. Starvation became widespread, particularly in the interior, where bandits and looters prevented the delivery of relief supplies. Famine in Somalia is not the result of drought and economic stagnation, but the inevitable consequence of political and tribal rivalry.

In December of 1992, the multi-national force (UNITAF) arrived in Somalia to conduct Operation Restore Hope. Since there was no legally con-



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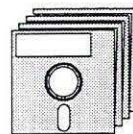
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stituted government to request the intervention of outside forces, the United Nations Security Council passed Resolution 794, providing for a Unified Task Force to use "all necessary means" to ensure the safe delivery of relief supplies. The U.S. provided the leadership and a majority of the initial troops and supplies necessary to make Restore Hope a success. The mission was limited and did not include complete disarmament of the population or rebuilding of government institutions. These tasks would have to be left to the United Nations and, ultimately, to the Somali people. Nevertheless, UNITAF became involved in efforts to reconstitute the Somali Police Force and organized the first meetings of lawyers and jurists in more than two years.

The lawyers and judges in Somalia faced tremendous hardships during the civil war; they watched as their law practices dissolved, and they were required to defend their homes and families. Many lawyers fled the country; it has been estimated that less than half of the membership of the Somali Bar of 1989 remains in the country today. Two distinguished lawyers were among those who stayed in Somalia, and they deserve special recognition for their efforts in reconciliation and disarmament. Their stories show personal courage and determination to restore the rule of law to their embattled country.

Abdullah Suldán Ahmed (a.k.a. Suldán) was born in Ethiopia in 1933 and, soon after, emigrated with his family to Somalia. He had a successful career as a teacher after obtaining his education in Italy while Somalia was still under colonial rule. He began his legal education in 1962 but did not receive his law degree until 1984. He engaged in the private practice of law until 1990, when the court system collapsed during the civil war. He has nine children, although most are grown and have left Somalia for other countries. His wife and three youngest children fled to Nairobi, Kenya, during the worst of the fighting. In the fall of 1990, six armed looters entered his house and took all his valuable possessions, including his car and furniture. He had an armed guard, but Suldán told him to submit to the bandits to avoid bloodshed. Long active in the

peace process in Somalia, he was chairman of a reconciliation and mediation committee that was seeking an end to the fighting and the disarmament of the warring factions. He received a number of death threats for his efforts, and his house was once surrounded by armed men with "technical" vehicles who were angry with his calls to disarm. Since that time, he has been unable to return to his house out of fear

for his personal safety. Suldán was elected interim president of the Somali Jurist Association in March 1993, and worked to organize the judges and lawyers in an effort to reconstruct the courts and judiciary.

Dr. Ilyas Haji Mohamed (a.k.a. Ilyas) began his career as a teacher and librarian after his education in London at the International School between 1963 and 1965. He completed his law

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Cases where such problems arise -- both at the appellate and trial levels -- have been a large part of my practice and in most of them the court was persuaded to depart from normal practice.*

I bring to these cases the perspective of a teacher as well as a practitioner and have written or taught about the doctrines of precedent, statutory interpretation,

procedure and jurisdiction since 1963. As a law professor in the early seventies, I created one of the first academic courses in appellate practice and procedure. Since then I have given seminars on appellate issues not only to attorneys but to state Supreme Court justices and court of appeals judges.

Currently, I continue to assist attorneys and clients in some or all of the various phases of the appellate process -- including the evaluation, design, strategy and presentation of the appeal. I welcome inquiries regarding any or all of them.



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

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Street scene in Mogadishu, Somalia

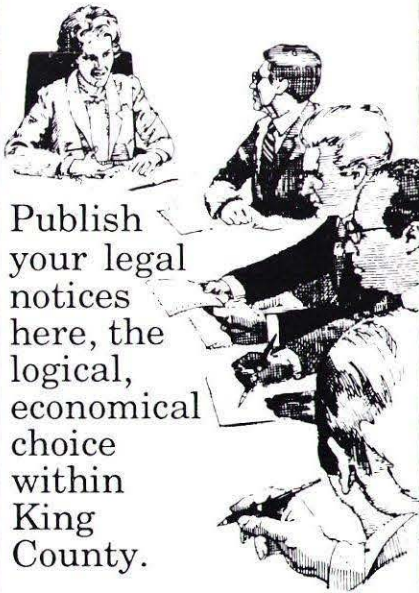
degree at the University of Somalia in 1975 and went on to serve in a number of responsible government positions, including legal advisor to the Minister of Education and Chief State Counsel, a position similar to White House Counsel in the U.S. In 1983, he entered the private practice of law in Mogadishu, leaving government service because of differences with the increasingly unpopular regime. He defended clients before the infamous Security Courts in Mogadishu, one of the primary instruments of repression in Somalia. His large house near the Presidential Palace in Mogadishu had to be abandoned when fighting raged there in the fall of 1990. He had five sons and one daughter; one son was killed in the fighting, and his wife and youngest children took refuge in an outlying town. He has since been able to return to his home with his family, living in a portion of the building that was not destroyed. Ilyas, serving as a delegate to the peace conference held in Addis Ababa in March of 1993, has been a major factor in the peace and disarmament process in Somalia. He went on to serve as chair of the United Somali Professional Association and vice chair of the Somali Intellectual Forum. In an interview in April of 1993, he said prospects are good in Somalia for a return to a society based on justice and the rule of law, and he was then working

on a draft of articles for a new constitution to be considered by the Transitional National Council.

In early 1993, the highest priority of the Unified Task Force was the establishment of security in Somalia, and it became clear that this would be difficult without the assistance of the Somali Police Force. Prior to the arrival of U.S. forces the police had all but disappeared from the streets. This could be expected, since the government ceased to function, police salaries stopped, and police became targets for lawless bands of gunmen. The UNITAF Provost Marshal, Lt. Col. Steve Spataro, began a series of organizational meetings with former police officials to determine what could be done to help get the police back to work. Although funds were not yet available for salaries, the humanitarian relief organizations contributed food that could be used to pay the police as an interim measure. The U.N. was successful in locating a funding source for equipment and salaries, and by March 1993, there were 3,000 former police at work in Mogadishu, with several hundred more at work in the outlying districts. Security had improved dramatically, and the police began to apprehend criminals for the first time in nearly two years.

As the police force began to operate effectively, the lack of a court system

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became a major problem. Criminal trials had not been held in about two years. Somali law (in effect before the civil war) provided for a magistrate hearing within 48 hours of confinement. The Mogadishu prison began to accept prisoners, but there was no capability to review confinement or conduct a trial. In January of 1993, a series of meetings was held between U.S. military lawyers and former Somali judges to discuss the problem. The requirements for a rudimentary court system were reviewed, as well as the identification of a building to provide a secure environment for meetings of judges and lawyers. By February, it became clear to the U.S. military lawyers that the problem was more serious than first perceived. All the Somali lawyers and judges were divided along factional and tribal lines. The U.S. lawyers had been meeting only with Somali lawyers aligned with warlord "General" Aidid, and the U.S. was subject to criticism for ignoring the other factions. After conferring with Philip Ives of the U.S. Liaison Office, it was decided that a meeting of all available Somali jurists was necessary. In Somalia the term "jurist" refers to anyone with a law degree.

Although security had improved in Mogadishu in the early months of 1993, the city was still a dangerous place, particularly for prominent members of clans who ventured into opposing clan territory. It was necessary to send a five-ton military truck with armed escort to the north side of Mogadishu (controlled by warlord Ali Mahdi), to transport the northern jurists across the "Green Line" into the territory of warlord Aidid. This meeting of the Somali Jurist Association was held on March 3, 1993. It was an emotional reunion for many jurists who had not seen each other for more than two years. Forty-three jurists attended, and they elected a steering committee to conduct further business. There was hope that this would form the basis of a nonpartisan group that could begin discussions on the reestablishment of the court system. The meeting led to the formation of the "Somali-American Bar Association," an honorary association that symbolized friendship between Somali and American lawyers.

There are many obstacles in Somalia to the return of the rule of law. All public records, as well as court records, land titles and records of bar membership have been destroyed. Reconstructing these documents will be a slow and difficult process, and it will probably be conducted by committees of lawyers and administrators. Even before the civil war, there was no code of laws in the native tongue; fluency in Italian or English was required.

The UN faces significant challenges in assisting in the reconstitution of the Somali government and courts. Somalia has little experience with democracy and self rule; colonialism and dictatorship have dominated the history of this country. The schools and the university system have not operated in more than two years, increasing the rate of illiteracy and overall apathy toward the written word. The most formidable obstacle to reconstruction is the curse of tribalism that permeates Somali society.

In March of 1993, the Somali Peace Conference established a Transitional National Council (TNC) that would be the focal point of reconstruction efforts. The UN mandate that began on May 4th (UN Operations in Somalia Phase II) is much broader than the mission of the U.S.-led Unified Task Force. The UN Security Council authorized the reconstitution of the police and courts as part of a comprehensive program of nation-building. An ambitious strategy has been developed to assist in the restoration of stability and law and order. In late April 1993, American attorney Martin Ganzglass returned to Somalia and assisted in the development of a judicial strategy for Somalia. Key elements of that plan are as follows:

1. Declare the 1962 Penal Code and the Code of Criminal Procedure to be in effect until the TNC declares otherwise. Most Somali jurists consider the laws in effect just prior to the fall of Said Barre to still be valid.

2. Guarantee an impartial, non-tribal judiciary by establishing an Inspector General's office and establishing a role for foreign military judges on Somali courts. This is a controversial proposal, and the Somali jurists who learned of the proposal adamantly reject any sig-

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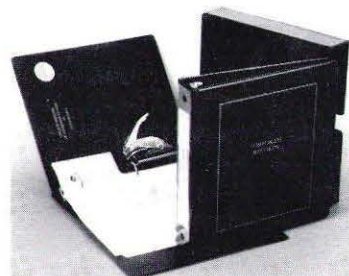
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nificant role for foreign judges. They consider this an affront to sovereignty and a return to colonialism.

3. Appoint regional judges and courts of appeal, as well as supervising the appointment of judges for the district courts. Logistical and financial assistance would be essential for the first

months of operation. The UN plan had a goal of establishing a three-tier court system by October of 1993, and by 1995, the TNC would decide the final form for the courts and legal system for Somalia.

In May of 1993, a special panel under the supervision of the United Na-

tions selected 24 Somali judges as a first step in the reestablishment of a court system. Because of the ambush and murder of 26 Pakistani peacekeepers on June 5, and continued hostilities, further UN efforts to assist lawyers and judges had to be suspended. Although the first group of judges were all Somali, the proposal to use foreign judges at a later date provided fuel for considerable anti-UN sentiment. Some argued that it was evidence of the secret UN intention to control and dominate Somalia in the fashion of a colonial ruler.

Recent events in Somalia underscore the magnitude of difficulty facing the UN. In June and July, the UN made an historic departure from its traditional peace-keeping role, issuing an arrest warrant for Aidid and actively attacking his command post. At least one member of the Somali Jurist Association who was then serving as an aide to Aidid, Mohamed Dahir Anshoor, was killed in the attack. The search for Aidid culminated in the tragic October 3 raid on the Olympic Hotel in Mogadishu, in which 18 U.S. Army Rangers were killed, and at least 70 were injured. This event led to a reversal of U.S. policy and an announcement that U.S. participation in the Somalia operation would terminate at the end of March 1994. The U.S. would concentrate on a political settlement in Somalia and would no longer actively pursue Aidid.

Most Americans supported the decision of President Bush to launch Operation Restore Hope. The initial military mission was clearly defined and was properly declared a success when it ended in May of 1993. Problems arose when the UN undertook a more formidable task—disarmament and nation building—without the command and control structure, military intelligence or logistical capability that is required for modern “peace-enforcing” operations. At least two important lessons have emerged from the U.S. experience in Somalia. First, the international media are a powerful tool in shaping public opinion; television images will have an increasingly important effect on U.S. policy. Second, the U.S. must be cautious of future participation in UN-controlled peace-



▲ Office of the S.J.A., Unified Task Force, Somalia. Front l to r: Maj. **Ron Coulter** USMC, Operational Law; Lt. Col. **Fran Moulin**, U.S. Army, Deputy S.J.A.; Col. **F. M. Lorenz** USMC, S.J.A.; Maj. **Gary Sharp**, USMC, International Law. Back, l to r: Maj. **Doug DeMoss**, U.S. Army, Contract Law; Corp. **Smith**, U.S. Army, Legal Clerk; Maj. **Sarah Green**, U.S. Army, Claims; Staff Sergeant **Leal**, USMC, Legal Chief

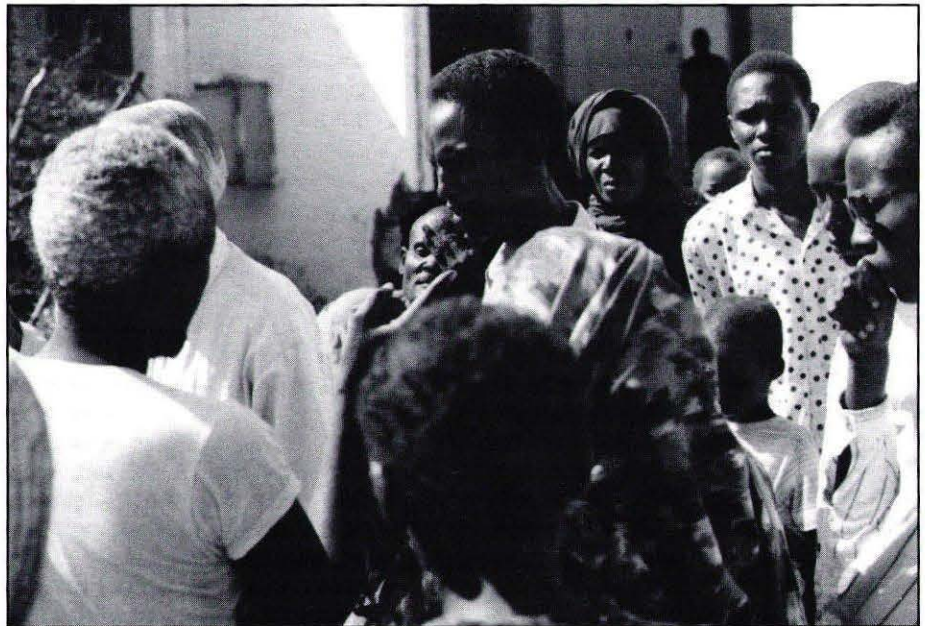
▼ From the roof of the Ministry of Interior, Mogadishu, Somalia



keeping operations whenever there is a significant threat to U.S. personnel.

Recent events in Somalia have frustrated U.S. and UN attempts to revive the police and courts. As of this writing—November of 1993—conditions in Mogadishu have deteriorated, and the police have again been driven off the streets. There were reports of increased inter-clan conflict along the "Green Line" which separates north and south Mogadishu. One of the key members of the Somali Jurists association, Suldan, has apparently been forced to give up his efforts on behalf of reconstruction. He has recently contacted the author from Nairobi, where he is seeking refugee status in an effort to come to the U.S. His work with the U.S. and UN to revive the court system resulted in serious threats against him and his family.

The tragedy in Somalia has not yet run its course; the tremendous human suffering that brought international attention may soon return. As the U.S. prepares to depart, the UN is certain to find it increasingly difficult to maintain a credible presence in Somalia.



Claimants at the front gate of UNITAF headquarters, Mogadishu, Somalia. Typical claims ranged from personal injuries and car damage to dead camels.

Further deterioration in the security situation could result in a complete UN withdrawal, and Somalia may be left to its own fate.

Will the rule of law return to Somalia? To use a common phrase used in the Moslem world, "En Sh'Allah," if it is willed by God.

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DO THEY HAVE LAWS

One attorney's experience practicing

by **Jim Parsons**

How often have you sat at your desk on a dreary winter day and thought, "Wouldn't it be nice to be sitting on a South Pacific island? I wonder what it would be like to practice law on one. Do they even have laws in the South Pacific?" In the back of your mind you think, "I couldn't do that. What would my clients, associates and family think? I am trapped . . ." Then the receptionist's voice comes on the phone: "Ms. Smith is on line one, and it's an emergency."

As one who had those thoughts, but was crazy enough (some have used the phrase "lacking basic mental facilities") to follow through, I thought I would relay some comments on life as a lawyer in the South Pacific.

On a miserable January day in 1989, there was an ad in *The Seattle Times* for an Assistant Attorney General for the Commonwealth of the Northern Mariana Islands. I remembered a law school classmate of mine from the South Pacific who had told me that attorneys there worked in air-conditioned offices until 3 p.m., and then they took their spears to the beach and caught dinner.

After going through an interview with the idea that at least 50 percent of the lawyers in Seattle had responded to the ad, I scrambled around to find something in the library that would give me a clue about where (and what) the CNMI even was. Hundreds of people must have turned down the chance, since they actually offered me the job. But it was on the day my wife gave birth to our first child, and they wanted me there in 30 days.

The next January, again on a miserable day, and my mental facilities again being frozen, I wrote asking about further openings. They must have had

trouble finding anyone qualified, since they again offered me a job. This time, having been through several long trials, and not having seen my son, I thought, "If I am ever going to do it, it had better be now." My wife, who thought it might be a way to finally see me, quietly agreed.

I expected that my peers and clients would think that I had lost whatever scrap of intelligence I had left. When I sheepishly called them, their reactions were usually either "It's great; you'll have a good time," or "I have always wanted to do that. I'm envious; good luck." Of course, the possibility that I might be leaving town for good may have colored their remarks.

The plane began banking to land on Saipan. Not knowing a soul there or having the slightest idea of what my housing would be like, I had a slight panic attack: "What the heck am I doing?" My fears were put to rest when no one met the three of us. We stood at the airport with eight suitcases for 45 minutes, with the temperature at 80 degrees and the humidity at 80 percent (in June, just before the rainy season). Several people finally showed up, claiming to have been at a party and to have forgotten to look at their watches. (I noticed that nobody was actually wearing one.)

We found our house dirty and leaky, but with surprisingly few insects. (They wait until there is food). The ants often turned out to be smarter than the ever-changing residents of the government houses (built by the CIA in the '50s for training Chinese nationalists). "Our" ants once marched in a long line straight for a trap, promptly went around it, and carried on wreaking havoc. (And do not even *consider* leaving a spent soda can in your car overnight.)

I arrived for my first day at work and was told not to worry about doing anything productive for a week. That was fine, because it was several weeks

before they assigned me anything (unless you call going through the entire CNMI Code and listing all the agencies of government and their powers "work"). I was also given a piece of good advice: Reach no conclusions for three months, since things are not always what they seem. Slowly they began to give out assignments, like representing the Alcoholic Beverage Control Board (which had almost turned down one application during its entire existence).

* * *

As the weather turned very wet, and sometimes wild, you noticed little things, like how much water came in your house, and from where; that unless you had a dryer, your clothes would often be wetter after a few days outside than when they were put out to dry. Someone has best described a typhoon as watching a coconut fly by at 75 miles per hour. The rain went on forever, and since the cable television went out regularly, and there was nothing to do when it rained, "bouncing off the walls" is a subtle description of my feelings.

After about six months the weather improves, and you realize that although you have to work, no one wants to work very hard, and green fees on a world class oceanside course are only \$20, including cart. You also realize that everyone knows everything you do or think, but they care only until the next bit of news comes along. There is a large group of expatriates, almost all of whom are there for one reason: to enjoy life. No working late, on weekends, or very hard at other times. Government workers get five weeks of vacation, 13 or so holidays and several other "appreciation" days, which are just excuses to have a good time. In November, there are three paid holidays, and you might hear, "Are they going to make us take another day off with pay?"

IN THE SOUTH PACIFIC?

law in the Northern Mariana Islands

A first trip is often to Bali, which is more inspiring than anyone could describe. Other popular vacation destinations are Palau and Truk for diving, Thailand, Singapore, Hong Kong, Australia, New Zealand, and, around Christmas, a long shopping weekend in Seoul. After you have been on several business trips, you usually have enough frequent flier miles to travel to those destinations free.

* * *

What is it like to practice law? A combination of normal and very strange. The Federal Rules of Civil Procedure are used, as is common law, for the most part. Since there is little indigenous precedent, there is always an argument from some state to support your side. My first litigation came when I was given a file and told, "Sorry." I promptly received a telephone call from the opposing attorney, who started screaming at me and calling me stupid for filing a motion to dismiss one of two appeals he had filed in two different courts (he had sued the presiding judge, claiming he had not been appointed properly, though he had held the position for ten years). After the court awarded sanctions in my favor, I learned the first rule when practicing in the CNMI: always appeal, so you can get a free trip to San Francisco or Honolulu and collect more frequent-flier miles.

The Attorney General's office (but not me) once got sanctioned in the second appeal in a case, because the CNMI Supreme Court held that in the first appeal (three years before), our office, as appellees, should have brought issues to the Court's attention that I mentioned in the second appeal, and since they had not been raised in the first (by either side), both sides please pay \$2,000 to the judicial building fund, thank you very much. In another case, the CNMI Supreme Court reversed the

suspension of an attorney for buying his client's property, charging her fees for the transaction and taking the sale proceeds from his trust account without her approval. The Court reasoned, among other considerations, that it was his aunt, and she had begged him to buy it. For the most part, however, the judges were professional and courteous, if also creations of strong cultural traditions and familial ties. It is also the only place I have been to in the U.S. that could use more good attorneys (probably less than one percent of people in this country realize the CNMI is a U.S. Commonwealth).

No people seem to enjoy themselves more than Micronesians. They are always smiling and agreeable, even if behind the smile they are thinking, "If you actually believe I am going to do that, you're stupid." They have fiestas constantly, and welcome most with free food and drinks. The CNMI distributor has been recognized for the highest per capita consumption of Budweiser in the world. Children are usually welcome because they are everywhere. We were invited to one opening of a hotel wing, which had the finest spread of food I have ever seen and free refreshments everywhere, at no cost to any guest. The downside is that the locals' life expectancy is terribly short, smoking is rampant, and the sedentary lifestyle leads to weight problems for many.

The government of the CNMI is determined to be taken seriously, since it has been ignored by different ruling countries (Spain, Germany, Japan, America) for hundreds of years. Giving to worthy causes is a way of life, and any new business needs to budget a certain amount for charitable gifts (practically a form of bribery, but then, maybe, that is not so bad). The local chapter of the American Red Cross consistently gives more to National than is required, and their annual fund raiser attracts more than 1,000 people at \$20

per person.

All this on an island of 40,000 people (although Saipan is not the only populated island; the other two, Tinian and Rota, only have about 1,000 residents each), where almost half are temporary immigrants earning \$1.75 an hour, or less, depending on whether they get paid. We had a maid who worked 60-70 hours per week, for \$200 per month and was still making four times as much as she would have in the Philippines, assuming she could have found work. We did no laundry or ironing for two years, and we had to convince her that it was important to let our son learn to take his own dishes into the kitchen.

It is impossible to be in the CNMI long without gaining many close friends, while also convincing at least one local that you are lower than scum. And since everyone does the same things, the beach, pool or golf, it is common to call up friends Saturday morning for a picnic that afternoon, or a free trip out to a sand-encircled island for snorkeling. And talk about sunsets, beautiful sand beaches and warm days with wonderful trade winds from January through June . . . !

At the end of my two-year contract, I was ready to come home. Not because of the place or people, but because of family and because I had grown up in Washington. Would I recommend the experience to others? Without hesitation or reservation. Do I ever regret leaving? Absolutely, positively, usually not, depending on the weather, and the size of the pile of messages.

Kirkland attorney Jim Parsons currently practices with Secure Benefits Inc.

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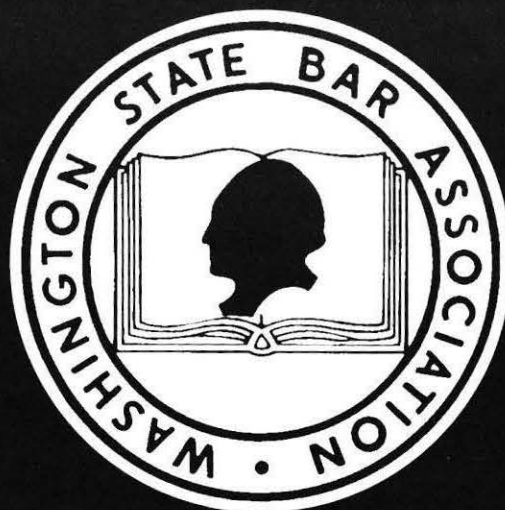
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WASHINGTON STATE BAR ASSOCIATION

Membership Survey Report

November 16, 1993



WSBA MEMBERSHIP SURVEY

Prepared by: Gilmore Research Group – November 16, 1993

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EXECUTIVE SUMMARY

Introduction

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

Key Findings

Overall Attitude

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

Changes in Attitude in the Past Two Years

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

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

Benefits from the WSBA

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

Dislikes about the WSBA or Its Programs

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

Attitudes about Funding Discretionary Programs

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

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

Importance of Discretionary Programs

Among 21 discretionary programs and services studied, members clearly feel the most important are CLE publications and deskbooks offered on a break-even, no-dues subsidy basis. Sole practitioners were especially likely to cite this. Other programs and services considered important are the ethics hotline and ethics opinions, the Resources membership directory, coordination of pro bono activities and access to justice activities.

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

Attitudes about Funding CLE Seminars

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

Satisfaction with Current Form of WSBA Governance

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

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

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

Suggested Improvements

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

INTRODUCTION

Background

The Washington Bar Association (WSBA) is a "unified" bar association, requiring all attorneys to belong. This unified bar status means that approximately 70% of fee income is spent on mandatory, regulatory functions, leaving 30% for discretionary spending. The WSBA Board wants to determine priorities for discretionary spending and for available staff time.

Purpose

Gilmore Research was hired to survey WSBA membership. The purpose of this study is to obtain a statistically reliable understanding of members' opinions about the WSBA and its discretionary programs, dues and governance.

Objectives

The study is designed to answer the following questions:

What is the overall attitude among members towards the WSBA? Why have some members' attitudes changed in the past few years?

On which discretionary functions should the WSBA spend more? On which should it spend less?

Do members favor an increase in dues to fund additional discretionary programs or to continue current discretionary programs? Or, do members favor decreased dues to a level that funds only mandatory, regulatory functions?

Are members satisfied with the form under which the WSBA is governed? What changes are suggested?

Methodology Summary

A telephone interview of 402 WSBA members was conducted between September 15 and 28, 1993. The interviews averaged 13 minutes in length. A randomly selected sample of members was provided by the WSBA. All WSBA members had an equal chance of being selected for this telephone survey.

To extend the opportunity for all WSBA members to offer input, a mail survey of all WSBA members was conducted. The mail questionnaires asked the same questions as the telephone survey. Of the approximately 18,000 questionnaires that were sent out in the October, 1993, *Bar News*, 782 were completed and returned.

Telephone surveys usually are more representative of the

population than are mail surveys. One reason is that telephone surveys generally have a higher response rate. Reflected in the low response rates for mail surveys is the occurrence of self-selection. The members of the population who have "an axe to grind" or who are particularly positive are the people more likely to respond to a mail survey than are other members of the population. Telephone surveys reach many people who otherwise would not have responded to a mail survey. Because of the higher response rate and the broader composition of the sample, the telephone survey is more representative of the entire membership. Other benefits of telephone surveys are that respondents may participate only once, that answers can be clarified by interviewers, and questions that respondents may have can be answered by the interviewers. For these reasons, we strongly recommend that more attention be paid to the results of the telephone survey than to the results of the mail survey. As such, nearly all references in this report are to the telephone survey results. Instances where the results of the mail survey are remarkably different than the telephone survey are noted in parentheses, as it is important to take into account the opinions of those who took the trouble to respond to the mail questionnaire.

Copies of the questionnaires and a more detailed description of the methodology are presented in the appendix of this report.

FINDINGS

A. General Attitudes about the WSBA

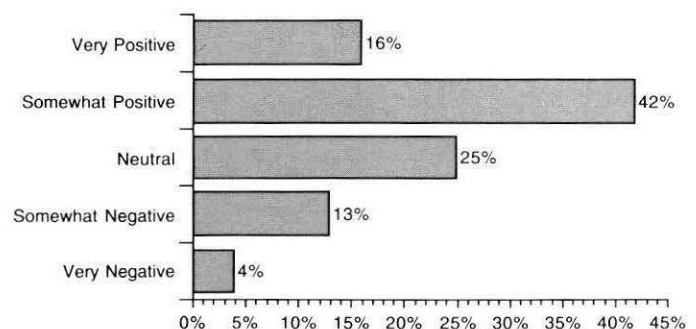
1. Overall Attitude

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

The subgroups most likely to have positive attitudes about the Bar are attorneys in private law firms (64% are "very" or "somewhat positive") and members who are active in two or more Bar groups (63%). The attorneys over the age of 44 were much more likely to say they are "very positive" (29%) than are the younger attorneys (9%). The subgroup most likely to have negative attitudes about the Bar are attorneys in public agencies (25% are "very" or "somewhat negative").

(The mail respondents were much more negative. While the proportion saying they are "very positive" is about the same (14%), fewer said they are "somewhat positive" (29%). One-fifth (20%) are neutral, 27% are "somewhat negative" and 10% are very negative. As noted in the Methodology, people who respond to mail surveys are often the people with "axes to grind," and this may indeed be the case here.)

Figure 1
Overall Attitude Towards the WSBA



Base = 402

QUESTION: Overall, would you say your attitude towards the State Bar is...?

2. Changes in Attitude in the Past Two Years

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

The subgroup most likely to have become more positive about the Bar are members who participate in at least one Bar activity (14% are more positive now). No subgroups stand out as having become more negative.

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

(Again, the mail survey respondents were more negative. One-third (33%) said they are now "less positive" about the Bar than they were two years ago. The main reason for the attitude change was a feeling that the Bar is not representative (15% said this). More specifically, 5% said there is too much focus on urban and large firms, and 4% said special interests get too much attention.)

TABLE 1

Attitude Towards the WSBA Over the Past Two Years

<u>Attitude Has Remained the Same</u>	64%
<u>Have Become More Positive</u>	11%
Have Become More Involved (Net)	6%
More Involved in Bar	4
Have Used Programs	1
Other Involvement	1
Bar Has Responded to Member Concerns	2
Bar Has Become Less Exclusive	1
Like the Decision About Annual Convention	1
Bar Has Become More Budget Conscious	1
Other Positive Reasons	2
<u>Have Become Less Positive</u>	23%
Mismanagement (Net)	7%
Poor Fiscal Practices	2
Too Bureaucratic	2
Programs/Services Not Well Managed	2
Other Mismanagement Issues	2
Not All Members Are Represented (Net)	7
Membership Not Represented in Leadership	3
Bar Governance out of Touch with Membership	2
Put Image over Serving Members' Needs	1
Too Much Focus on Urban and Large Firms	1
Other Representation Issues	1
Too Much Focus on Discretionary Programs	4
Disagree with Handling of Dues Increase	3
Dislike Loss of Service and Programs	2
Poor Handling of Discipline (Net)	2
In General	1
Not Strict Enough	1
Too Strict	*
Other	5
<u>Don't Know</u>	2

Base = 402

QUESTION: Compared to two years ago, would you say your attitude towards the Bar has become more positive, become less positive or remained the same? (If more or less positive) Could you please explain why?

* Less than 0.5%

3. Benefits from the WSBA

One-third of the respondents (33%) said the CLE programs and publications are the main benefits they derive from the Bar. Women were especially likely to mention this (43%). No other benefit was cited by more than 10% of the respondents. One-in-nine respondents (11%) said they receive no benefits from the Bar.

(Fewer of the mail respondents noted the CLE's (18%). Otherwise, no major differences appeared between the telephone and mail respondents on this question.)

TABLE 2

Top Benefits That Members Derive from the WSBA

CLE Programs and Publications	33%
Regulatory and Disciplinary Functions	10
Licensing Function	10
The <u>Bar News</u>	8
Ethics Opinions and Hotline	6
Newsletters for Sections and Divisions	4
<u>Resources</u> Membership Directory	4
Desktop References	3
Electronic Bulletin Board	2
Lawyers Assistance Programs	2
Legislative and Lobbying Activities	2
Section Memberships and Participation	2
Networking Opportunities	2
Bar Admissions Monitoring	2
Providing Accessible Information	2
Other	4
Nothing	11
Don't Know	3

Base = 402

QUESTION: What one thing does the State Bar do that benefits you the most?

4. Dislikes about the WSBA or Its Programs

Nearly one-quarter of the respondents (23%) said that fiscal mismanagement is the thing they dislike most about the Bar. Fiscal mismanagement includes many aspects, such as the cost of the annual convention, costly dues and high administrative expenses. Members who participate in one or no Bar activities were the subgroup most likely to mention fiscal mismanagement (26%).

Another 16% of the respondents said their greatest dislike is that they do not believe all members are represented equally. Attorneys in public agencies were the subgroup most likely to say this (25%).

More than one-quarter (28%) of the respondents said they do not have any dislikes of the Bar.

(Fewer of the mail respondents mentioned fiscal mismanagement (13%), and only 3% mentioned the cost of annual conventions. Otherwise, no major differences appeared between the mail and telephone respondents on this question.)

See Table 3.

TABLE 3
Top Dislikes about the WSBA or Its Programs
as Seen by Members

Fiscal Mismanagement (Net)	23%
Too Much Spent on Annual Conventions	8
Dislike Fiscal Practices (General)	4
Dues are Too Expensive	4
Too Much Spent on Administration	3
Too Much Spent on Lobbying	2
Too Much Spent on Mailings	2
Excessive Fees for Services and Programs	2
Other Fiscal Issues	2
Not Representative of All Members (Net)	16
Bar is Out of Touch With Members	4
Too Much Orientation Toward Urban Areas	3
Too Much Orientation to Large Firms	2
Too Much Attention to Small Interest Groups	2
Too Much Attention to Private Practitioners	2
Lack of Diversity on Committees and Board	2
Difficulty Getting Onto Committees	2
Lack of Member Participation	1
Too Much Focus on Discretionary Functions (Net)	8
Bar Involved in Too Many Activities	5
Too Much Money Spent on Discretionary Functions	4
More Resources Should Go to Mandatory Functions	1
Programs and Functions (Net)	8
CLE Programs and Publications	3
The Bar News	2
Legislative and Lobbying Activities	1
Other Programs and Functions	3
Poor Handling of Discipline (Net)	5%
Discipline is Too Slow	3
Discipline is Too Lenient	2
Too Much Bureaucracy	3
Cliquish Atmosphere	2
Mandatory Membership	1
Other	8
Nothing/No Dislikes	28
Don't Know	2

Base = 402

QUESTION: What one thing do you dislike most about the State Bar or its programs?

B. Issues Regarding Discretionary Programs

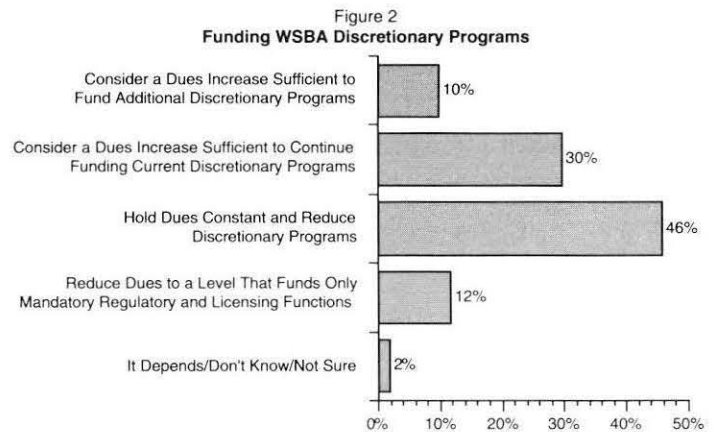
1. Attitudes about Funding Discretionary Programs

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

Overall, 40% would support a dues increase: 10% said they would like to see a dues increase sufficient to fund additional discretionary programs, and 30% prefer a dues increase just large enough to continue funding current discretionary programs.

The subgroups most likely to support any dues increase are attorneys from Eastern Washington (50%), attorneys in private firms (49%) and members who are active in one or more Bar functions (44%). The subgroups most likely to oppose a dues increase are attorneys in public agencies (68%) and sole practitioners (64%).

(More of the mail respondents prefer a reduction in dues (25%). The proportions who gave the other responses changed accordingly: 9% prefer to fund additional programs, 24% prefer to continue funding current programs and 41% prefer to keep dues constant.)



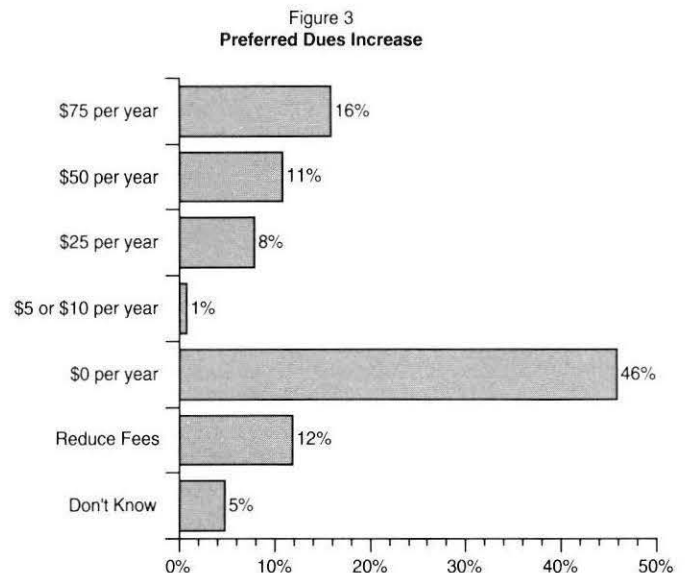
Base = 402

QUESTION: I am going to read you four options. Given that funding for discretionary programs is diminishing, would you...?

2. Attitudes toward a Dues Increase

Overall, about one-quarter (27%) of the membership favors a dues increase of \$50 to \$75 a year. Most (58%), however, do not favor any increase.

(About 17% of the mail respondents volunteered that they would support a dues increase of \$50 or more. However, the question was worded slightly different. The telephone respondents were read a list of dollar amounts, while the mail respondents were asked to fill in any amount.)



Base = 402

QUESTION: Would you support a dues increase of...? (If the respondent had earlier indicated a preference to hold dues steady, this was treated as zero. Likewise, if they stated a preference for reducing fees, this is noted.)

3. Importance of Discretionary Programs

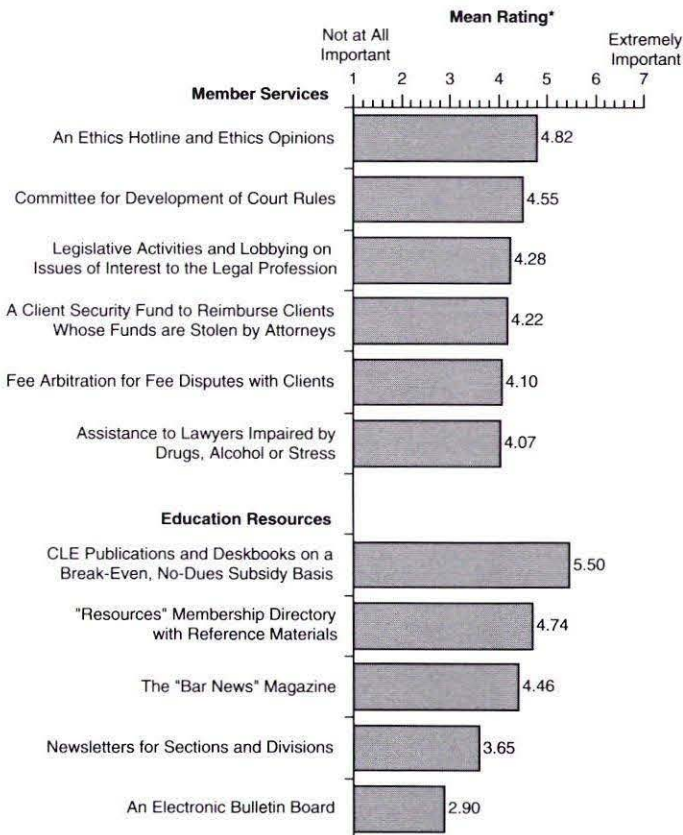
Among 21 discretionary programs and services studied, members clearly feel the most important are CLE publications and deskbooks offered on a break-even, no-dues subsidy basis. Sole practitioners were especially likely to cite this. Other programs and services considered important are the ethics hotline and ethics opinions, the Resources membership directory, coordination of pro bono activities and access to justice activities.

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

(While some of the mean scores given by the mail respondents differed from the telephone respondents', their priorities were very similar. The only notable exceptions were that the mail respondents placed more importance on the security fund and less on coordinating pro-bono activities.)

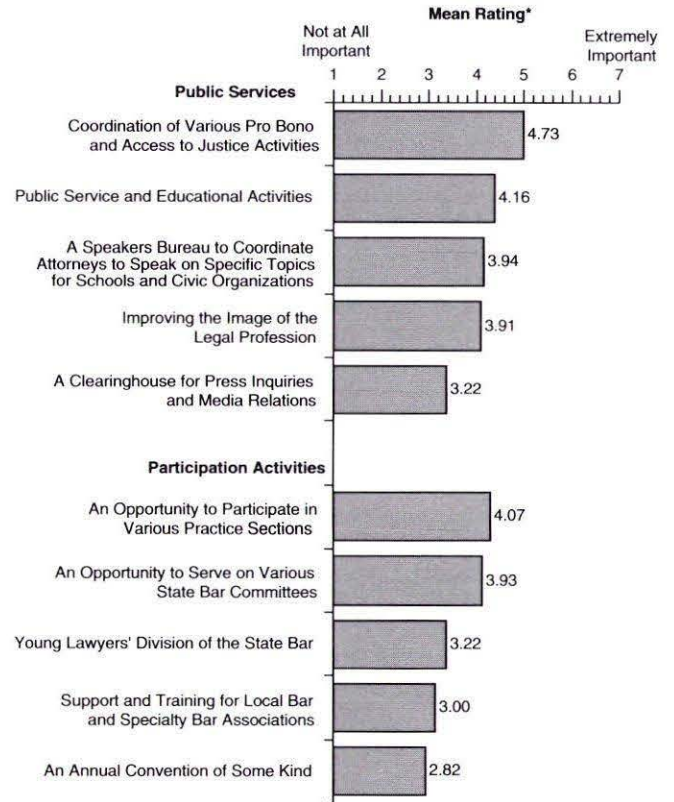
Subgroups of WSBA members have differing opinions about the importance of these discretionary programs. Following is a list of the various programs (presented in the same order as in Figures 4a and 4b) for the telephone and mail respondents. For each program, this list shows what subgroups (from the phone survey) place significantly greater and less importance than the membership as a whole.

Figure 4a
Importance of WSBA Discretionary Programs



* Mean on the 1-to-7 scale.

Figure 4b
Importance of WSBA Discretionary Programs, continued



* Mean on the 1-to-7 scale.

Base=402

QUESTION: "(Using) a scale of 1-to-7, with the number 1 meaning "not at all important" and the number 7 meaning "extremely important"... how important is it that the State Bar provide the following services?"

Member Services

An Ethics Hotline and Ethics Opinions

Overall Mean Rating: 4.82 (Telephone); 5.26 (Mail)

Groups Giving Significantly Higher Importance: Females (5.26).

Groups Giving Significantly Lower Importance:

Attorneys 55+ years (3.96); Males (4.69).

Committee for the Development of Court Rules

Overall Mean Rating: 4.55 (Telephone); 4.69 (Mail)

Groups Giving Significantly Higher Importance: None

Groups Giving Significantly Lower Importance:

Sole Practitioners (4.11)

Legislative Activities and Lobbying on Issues of Interest to the Legal Profession

Overall Mean Rating: 4.28 (Telephone); 4.34 (Mail)

Groups Giving Significantly Higher Importance: None

Groups Giving Significantly Lower Importance:

Attorneys in Public Agencies (3.68)

A Client Security Fund to Reimburse Clients Whose Funds Are Stolen by Attorneys

Overall Mean Rating: 4.22 (Telephone); 3.97 (Mail)

Groups Giving Significantly Higher Importance: None

Groups Giving Significantly Lower Importance:

Sole Practitioners (3.89)

Fee Arbitration for Fee Disputes with Clients

Overall Mean Rating: 4.10 (Telephone); 4.36 (Mail)
Groups Giving Significantly Higher Importance: None
Groups Giving Significantly Lower Importance: None

Assistance to Lawyers Impaired by Drugs, Alcohol or Stress

Overall Mean Rating: 4.07 (Telephone); 4.00 (Mail)
Groups Giving Significantly Higher Importance: None
Groups Giving Significantly Lower Importance: None

Education Resources

CLE Publications and Deskbooks on a Break-Even, No-Dues

Subsidy Basis

Overall Mean Rating: 5.50 (Telephone); 5.26 (Mail)
Groups Giving Significantly Higher Importance:
Sole Practitioners (5.79)
Groups Giving Significantly Lower Importance: None

"Resources" Membership Directory with Reference Materials

Overall Mean Rating: 4.74 (Telephone); 4.98 (Mail)
Groups Giving Significantly Higher Importance: None
Groups Giving Significantly Lower Importance:
Attorneys with law incomes over \$75,000 (4.41)

The "Bar News" Magazine

Overall Mean Rating: 4.46 (Telephone); 4.76 (Mail)
Groups Giving Significantly Higher Importance: None
Groups Giving Significantly Lower Importance:
Attorneys in King County (4.26)

Newsletters for Sections and Divisions

Overall Mean Rating: 3.65 (Telephone); 3.69 (Mail)
Groups Giving Significantly Higher Importance:
Eastern WA Attorneys (4.11)
Groups Giving Significantly Lower Importance: None

An Electronic Bulletin Board

Overall Mean Rating: 2.90 (Telephone); 3.70 (Mail)
Groups Giving Significantly Higher Importance:
Eastern WA Attorneys (3.36); Members who participate in two
or more WSBA activities (3.30)
Groups Giving Significantly Lower Importance:
Attorneys in Private Firms (2.71)

Public Services

Coordination of Various Pro Bono and Access to Justice Activities

Overall Mean Rating: 4.73 (Telephone); 4.13 (Mail)
Groups Giving Significantly Higher Importance:
Females (5.33); Attorneys under the age of 45 (4.98).
Groups Giving Significantly Lower Importance:
Attorneys 45 and older (4.35).

Public Service and Educational Activities

Overall Mean Rating: 4.16 (Telephone); 4.03 (Mail)
Groups Giving Significantly Higher Importance:
Nonwhites (5.00); Females (4.67).
Groups Giving Significantly Lower Importance:
Sole Practitioners (3.79); Males (4.01); Whites (4.15).

A Speakers Bureau to Coordinate Attorneys to Speak on Specific Topics for Schools and Civic Organizations

Overall Mean Rating: 3.94 (Telephone); 3.47 (Mail)
Groups Giving Significantly Higher Importance:
Public Agency Attorneys (4.26); Attorneys in King County
(4.12)
Groups Giving Significantly Lower Importance: None

Improving the Image of the Legal Profession

Overall Mean Rating: 3.91 (Telephone); 4.08 (Mail)
Groups Giving Significantly Higher Importance: None
Groups Giving Significantly Lower Importance: None

A Clearinghouse for Press Inquiries and Media Relations

Overall Mean Rating: 3.22 (Telephone); 3.38 (Mail)
Groups Giving Significantly Higher Importance:
Attorneys active in two or more Bar functions (3.51).
Groups Giving Significantly Lower Importance: None

Participation Activities

An Opportunity to Participate in Various Practice Sections

Overall Mean Rating: 4.07 (Telephone); 3.89 (Mail)
Groups Giving Significantly Higher Importance:
Attorneys active in two or more Bar functions (4.35).
Groups Giving Significantly Lower Importance: None

An Opportunity to Serve on Various State Bar Committees

Overall Mean Rating: 3.93 (Telephone); 4.04 (Mail)
Groups Giving Significantly Higher Importance:
Attorneys very active in the WSBA (4.45); Attorneys in King
County (4.03).
Groups Giving Significantly Lower Importance:
Attorneys in Private Firms (3.82).

Young Lawyer's Division of the State Bar

Overall Mean Rating: 3.22 (Telephone); 2.71 (Mail)
Groups Giving Significantly Higher Importance:
Attorneys under the age of 35 (3.85); Attorneys very active in
two or more Bar functions (3.59).
Groups Giving Significantly Lower Importance: None

Support and Training for Local Bar and Specialty Bar Associations

Overall Mean Rating: 3.00 (Telephone); 3.13 (Mail)
Groups Giving Significantly Higher Importance:
Females (3.74).
Groups Giving Significantly Lower Importance:
Males (2.77)

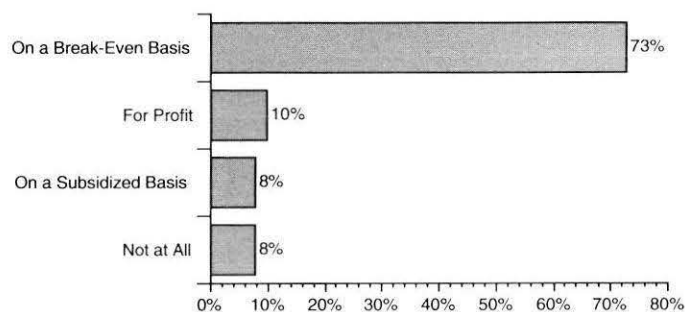
An Annual Convention of Some Kind

Overall Mean Rating: 2.82 (Telephone); 2.86 (Mail)
Groups Giving Significantly Higher Importance:
Eastern WA Attorneys (3.48); Attorneys very active in two or
more Bar functions (3.12).
Groups Giving Significantly Lower Importance: None

4. Attitudes about Funding CLE Seminars

Most of the respondents (73%) feel that the CLE Seminars should be offered on a break-even basis, 10% feel they should be offered at a profit, 8% feel they should not be offered at all, and 8% feel they should be subsidized. No subgroups of attorneys stood out with differing opinions on this. (The Mail results were very similar.)

Figure 5
How CLE Seminars Should be Charged



Base=402

QUESTION: I am going to read you four options. Given that funding for discretionary programs is diminishing, would you...?

C. Governance Issues

1. Satisfaction with Current Form of WSBA Governance

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

(Only half (51%) of the mail respondents said they are satisfied with current governance, 24% said they are not satisfied and 25% said they do not know or gave no response. Again, the major reason for dissatisfaction is a belief that not all members are represented (12%).)

TABLE 4

Satisfaction with Current Form of WSBA Governance

<u>Satisfied</u>	75%
<u>Not Satisfied</u>	11%
Not Representing All Members (Net)	6
Bar Is out of Touch with Members	2
Lack of Diversity on Committees and Board	2
Too Much Focus on Large Firms	2
Other Representation Issues	1
Too Bureaucratic	1
Too Cliquish	1
Fiscal Mismanagement	1
Other	2
<u>Don't Know</u>	13%

Base = 402

QUESTIONS: Are you satisfied with the form under which the Bar is currently governed? (If no) Why not?

2. Satisfaction with the Geographical Election of Governors

The vast majority of respondents (90%) said they are satisfied with the current system of electing governors geographically. Support was strong across all of the subgroups surveyed.

(In the mail survey, just 80% said they are satisfied with the geographic elections. The chief reason for the lower proportion is that 12% said they did not know or did not give a response. Just 8% are dissatisfied.)

TABLE 5

Satisfaction with the Geographical Election of Governors

<u>Satisfied</u>	90%
<u>Not Satisfied</u>	6
Prefer At Large Elections	2
Not Representative of All Members	2
Other Reasons	3
<u>Don't Know</u>	4

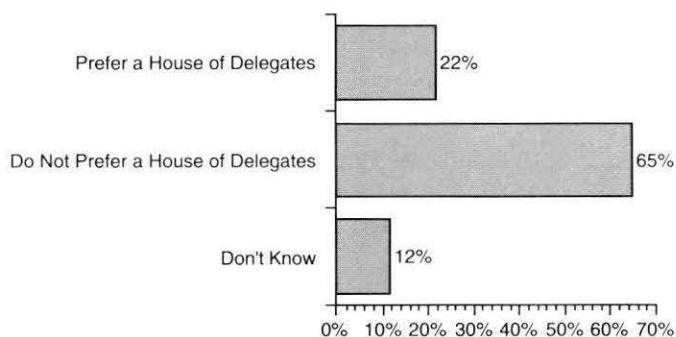
Base = 402

QUESTIONS: Members of the Board are currently elected geographically. Do you support this method of selecting governors? (If no) Why not?

3. Preference for a House of Delegates

Only twenty-two percent (22%) of the respondents prefer a House of Delegates system over the current Board of Governors system. Support is strongest among women (47%), members under the age of 35 (36%) and attorneys in public agencies (33%). (The mail survey responses were very similar.)

Figure 6
Preference for a House of Delegates System



Base = 402

QUESTION: Another system of governance used by some state bar associations consists of a House of Delegates rather than a Board of Governors. Would you prefer a House of Delegates System where specialty bars, such as the Washington Women Lawyers, Asian Bar Association and local bar associations have representatives?

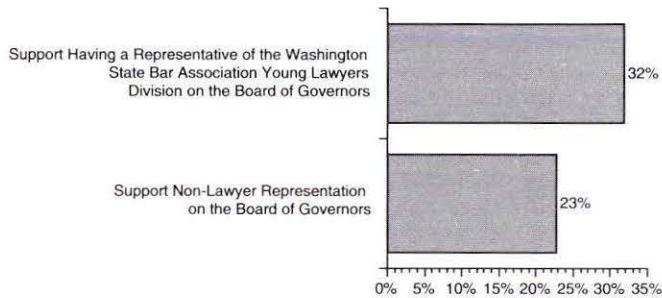
4. Desire for Additional Board Positions

One-third of the membership (32%) supports having a representative of the Young Lawyers Division on the Board of Governors. Support is strong, of course, among members under the age of 35 (58%) and women members (46%).

About one-quarter (23%) of the members support having non-lawyers on the board. No major differences between the subgroups appeared on this issue.

(In the mail survey, just 19% support having Board representation of the Young Lawyers Division, and just 16% support non-lawyer representation.)

Figure 7
Support for Additional Board Positions



Base = 402

QUESTION: Should a governor position be added to the Bar Association for a representative of the Washington State Bar Association Young Lawyers Division? Do you think non-lawyers should be represented on the Board?

5. Suggested Improvements

When asked at the end of the survey what one thing the Bar could do to improve, 16% suggested the Bar be more representative, 15% requested expanded or improved programs and services, and 11% requested fewer programs and services.

(The responses in the mail survey were very similar, although only 5% supported an expansion of programs and services.)

TABLE 6
Member Suggestions for Improving the WSBA

Be More Representative (Net)	16%
Make Effort to Represent All Members	7
Encourage More Members to Participate	5
Be More Inclusive	3
Achieve More Diversity in Committees and Boards	2
Make Appointments to Committees Easier	1
Expand Programs and Services (Net)	15
Increase Pro Bono Efforts	5
Improve CLE's	4
Other Program/Service Expansions	7
Decrease Programs and Service (Net)	11
Focus Only on Mandatory Programs and Services	7
Narrow the Focus of Activities	2
Decrease Lobbying and Legislative Activities	1
Other Program/Service Decreases	2
Economic Issues (Net)	10
Examine/Modify Monetary Practices	6
Lower the Dues	2
Make Programs and Services More Affordable	2
Make CLE's More Affordable	2
Improve Communications With Members	6
Improve Public Image	6
Handle Disciplinary Procedures Better	6
Run the Organization Better	3
Re-examine Goals/Purpose/Mission/Role	2
Other Suggestions	10
Don't Know	5

Base = 402

QUESTION: What one thing do you feel the Washington Bar Association could do to improve?

RESPONDENT PROFILE

To better understand the respondents, questions were asked about their practices and demographics. (The mail respondents tended to be older, were more likely to be a partner in a firm, and were slightly less likely to practice in King County.)

TABLE 7
Practice Information

	Telephone (402)	Mail (782)
<u>Years Practicing as Attorney:</u>		
Two or Less	10%	5%
Three to Five	15	9
Six to Ten	22	20
Eleven to Fifteen	18	24
Sixteen to Twenty	17	18
More Than Twenty	17	23
Mean:	13 yrs	16 yrs
<u>Years as Member of the WSBA:</u>		
Two or Less	12%	5%
Three to Five	16	10
Six to Ten	20	22
Eleven to Fifteen	19	23
Sixteen to Twenty	16	18
More Than Twenty	17	22
Mean:	13 yrs	15 yrs
<u>Principal Area of Law in Past Five Years:</u>		
Criminal	11%	10%
Litigation (Unspecified)	8	7
Civil	6	5
General Practice	6	9
Personal Injury	6	8
Real Estate	5	5
Bankruptcy	4	2
Commercial	4	4
Corporate	4	4
Family Law	4	6
Insurance	4	2
Business	3	6
Labor/Employment	3	4
Estate/Trusts/Probate	3	6
Domestic Relations	2	3
Environmental	2	1
Municipal	2	3
Tax	2	3
Other	22	25
Multiple Responses Permitted		

Practice Type:

In Private Firm	46%	46%
Sole Practitioner	27	22
In Public Agency	19	21
In-House Attorney	6	5
Other	1	6
Not Practicing	2	1

Position In Firm or Agency:

Partner	22%	34%
Associate	17	8
Staff Attorney	6	9
Counsel/Consultant	5	5
Deputy Prosecutor	4	4
Assistant Attorney	3	3
Shareholder	3	3
Clerk	1	1
Other	11	11

Active Participation in WSBA:

A Local Bar	51%	53%
Any WSBA Section	46	44
A Specialty Bar	30	24
A State Bar Committee	12	21
State or Local Young Lawyers	10	8

* Total percent equals the proportion not in sole practice.

**TABLE 8
Respondent Demographics**

	Telephone (402)	Mail (782)
<u>Sex:</u>		
Male	77%	74%
Female	23	26
<u>Age:</u>		
Under 35	26%	14%
35 to 44	36	41
45 to 54	25	31
55 and Older	13	14
Mean:	42 yrs	45 yrs
<u>Ethnicity:</u>		
Caucasian	94%	88%
African American	1	1
Hispanic or Latino	1	*
American Indian or Alaskan Native	1	1
Asian or Pacific Islander	1	1
Other	*	1
Refused/No Response	2	8

* Less than 0.5%.

County of Practice:

King County	57%	47%
<u>Other Western</u>	<u>29</u>	<u>32</u>
Pierce	7	8
Thurston	5	7
Snohomish	5	4
Clark	4	2
Whatcom	1	2
Grays Harbor	1	1
Kitsap	1	2
Clallam	1	*
Cowlitz	1	1
Jefferson	1	*
Lewis	1	1
Skagit	1	1
Mason	*	*
Island	*	1
Pacific	*	0
Wahkiakum	*	*
San Juan	0	*
<u>Eastern</u>	<u>13</u>	<u>17</u>
Spokane	6	7
Yakima	2	3
Grant	1	*
Benton	1	2
Chelan	1	1
Walla Walla	*	0
Adams	*	*
Franklin	*	*
Kittitas	*	1
Okanogan	*	1
Pend Orielle	*	1
Whitman	*	0
Asotin	0	*
Stevens	0	*
Out of State	0	5
Refused	1	-

* Less than 0.5%.

1992 Personal Law-Related Income:

Under \$20,000	8%	7%
\$20,000 to \$24,999	4	2
\$25,000 to \$29,999	4	2
\$30,000 to \$34,999	4	5
\$35,000 to \$39,999	7	4
\$40,000 to \$44,999	6	6
\$45,000 to \$49,999	8	7
\$50,000 to \$74,999	23	23
\$75,000 to \$99,999	14	13
\$100,000 to \$149,999	8	10
\$150,000 and Over	6	9
Refused, Under \$45,000	1	-
Refused, Over \$45,000	3	-
Refused	5	10
Median:	\$55,000	\$62,000

APPENDIX I Detailed Methodology

Overall

Two survey methodologies were employed for this study: telephone interviewing and a mail survey.

In general, telephone surveys offer the most statistically reliable and projectable information. This is because: a) the sample is drawn in such a way that each unit in the sample has a known probability of falling into the sample, b) the sample is administered in such a way that systematic bias is not introduced, and c) the response rate is high.

However, WSBA also desired to give all members a chance to respond to the survey, not just a sample of members. To achieve this, a questionnaire was mailed to all WSBA members. This mail survey asked the same questions as the telephone survey.

The telephone survey was conducted between September 15 and 28, 1993, and averaged 13 minutes in length. The mail surveys were sent out to about 18,000 members in the October, 1993, *Bar News*.

Sample

A randomly-selected sample of WSBA members and phone numbers was provided to Gilmore Research by the Bar. This was subsampled to provide just enough names to complete the desired number of surveys. To obtain the 402 telephone interviews, 992 phone numbers were dialed. Following is a sample disposition describing the outcome of each of those phone numbers.

**TABLE A-1
Disposition of Sample**

Numbers Dialed	992
<u>Non-Working Numbers</u>	
No Answer (after 5 attempts)	94
Disconnects/Wrong Numbers/FAX	55
<u>Respondent Unavailable</u>	
Respondent Not Available	290
Respondent Gone During Study	45
<u>Not Qualified (Retired)</u>	7
<u>Refusals</u>	
Respondent Too Busy	76
Initial Refusal	13
Qualified Refusal	9
Terminated Interview	1
Completed Surveys	402

Based on the above figures, the refusal rate for the telephone survey was 20%. This is lower than the national refusal rate of 25% when using listed numbers. Of the 18,000 mail surveys sent out, 782 were completed and returned.

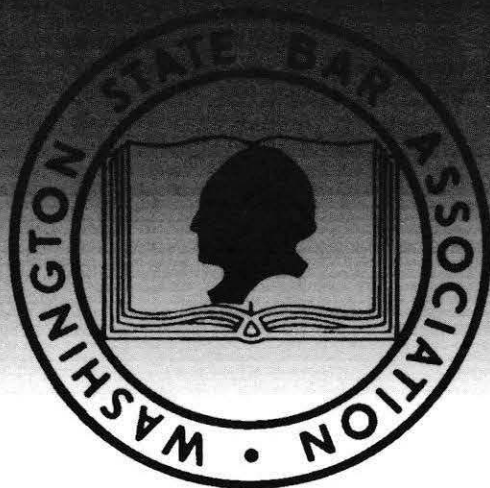
Questionnaire

The questionnaire instruments were designed by Gilmore Research Group staff in conjunction with the WSBA. The questionnaires covered various issues, as outlined in the list of objectives in the Introduction of this report. For the telephone survey, Computer Assisted Telephone Interviewing (CATI) was employed using the Sawtooth Software Ci2 program.

In addition to being presented with lists of possible responses, respondents were allowed to present their own comments to open-ended questions. Where appropriate in the telephone survey, question or answer sets were rotated to avoid any bias due to the order in which the statements were read. Copies of the questionnaires are presented at the end of the Appendix.

Data Coding, Processing and Analysis

Information from the questionnaire was computer processed by Gilmore personnel. Responses to open-ended questions were examined and given numerical codes which categorized the ideas presented in the answers. These codes, along with the numerical responses to closed-ended questions, were compiled and tabulated by custom software at Gilmore. Detailed analysis was performed by Gilmore staff using SPSS-PC+ software. Separately bound computer tables of cross-tabulations have been supplied to the WSBA.



WASHINGTON STATE BAR ASSOCIATION

Membership Survey

Report

November 16, 1993



by **Lindsay Thompson & Robert Welden**

Olympia, Washington

January 7-8, 1994

Present: The president and the Board of Governors. Also present: Rosemary Daszkiewicz (WSBA Young Lawyers Div.), Mary Gallagher Dilley (Administrative Law Judges Assoc., Friday), Zanetta Fontes (King County Bar Assoc. Trustee), Kathy Cooper Franklin (King County Bar Assoc. Trustee), Judge Donald D. Haley (Superior Court Judges Assoc.), Dennis Harwick (WSBA executive director), Ernest Heller (Administrative Law Judges Assoc., Saturday), Judge Elaine Houghton (Washington Court of Appeals, Div. II), Luci Isaki (Legal Foundation of Washington), Christopher Jennings (Lesbian/Gay Legal Society of Puget Sound), Nancy Krier (Government Lawyers Bar Assoc.), Alva Long (South King County Bar Assoc.), Narda Pierce (Solicitor General of Washington), Bill Phillips (Washington Defense Trial Lawyers Assoc.), Larry B. Shannon (Washington State Trial Lawyers Assoc.), Patrick D. Sutherland (Washington Assoc. of Prosecuting Attorneys), Lindsay Thompson (*Bar News* editor), Jeff Tolman (American Bar Assoc. Delegation, Washington state), Steven B. Tubbs (General Practice Section), Lynn Tuttle (King County Bar Assoc. Young Lawyers Div.), Robert D. Welden (WSBA general counsel).

After an executive session of 90 minutes, the president called the meeting to order. He reported that, since the last meeting of the Board of Governors, he met with the Chief Justice and Mary McQueen twice to discuss matters of interest; lunched with the editor of *Washington Journal* regarding possible cooperative ventures; attended the Grays Harbor and Walla Walla Bar Association Christmas parties; met with local judges and participants in the Spokane pro bono conference; met with a group of nine government lawyers in the Olympia area prior to the Board meeting there to discuss topics of interest to that group; met with the Legal Aid Committee of the Bar; met with acting Chief Justice Barbara Durham on other matters relating to the legal profession; and met with members of the Court regarding the American Bar Association's evaluation of the WSBA disciplinary system, with a view toward the appointment of a joint task force to consider the recommendations made in that report.

The minutes came up for approval, and Governor Steve Toole requested clarification of whether the Judicial Selection Committee had been asked by the Board to develop procedures for handling endorsements in contested elections, as his notes reflected and as was reported in "The Board's Work" for last month's meeting period. The executive director's minutes indicated otherwise, and it was decided in the end that no procedures were to be developed at this time.

Continuing in the vein of what one Governor called, "What I think I said, or what I meant to say," Governor Jim Handmacher then corrected the *Bar News* account at the last meeting in which it was reported that the money which would be allocated to the notional "0 District," made of up

all out-of-state WSBA members for communications by Governors, was not in fact to be divided up amongst the other 11 Governors, who represent Washington Congressional districts or are elected at large from King County.

Dennis Harwick, noting that he had apparently made the same mistake the *Bar News* had, recalculated the figures. They show that the 0 District will be entitled to approximately \$4,250 for communication purposes. Left unresolved is who will communicate with them, as they have no representation on the Board.

At 10 o'clock, members of the Supreme Court of Washington arrived to meet with the Board: Chief Justice James Andersen, Acting Chief Justice Barbara Durham, Justice Richard Guy, Justice Charles Smith, Justice Barbara Madsen and Court Administer Mary McQueen attended. During introductions, Justice Guy described himself as "a member of the Supreme Court and vassal to the Chief Justice." Governor Steve Toole, next in line in introductions, remarked, "Aren't we all, in a way?"

President Paul Stritmatter reviewed the major issues the Board has been considering of late, and Chief Justice Anderson discussed at some length his view of the coming work of the joint court and bar association task force to review the ABA discipline system audit.

"We don't think the discipline system is faulty, but it can benefit from updating and review, and that is what this task force is intended to accomplish." He expects it will begin holding hearings shortly and that it will produce a final report by the end of the year.

The Chief Justice continued that he would address the joint session of the Washington Legislature the following week to discuss the state of the judiciary, and that he had two main concerns: first, the maintenance of the independence of the bar and the judicial branch of government. "We have to be eternally vigilant. Inroads are made all the time; it is a constant fight." Second, the Chief Justice is concerned that the state is in a fairly precarious financial condition, which the judiciary recognizes and attempts to cope with. However, the Chief Justice observed, the judiciary cannot do its job if the Legislature constantly "adds to our burdens and keeps whacking our budget."

During a general discussion, Justice Guy noted that he had had some concern about the future and independence of the bar association. He observed that if the membership doesn't support the governance system, the bar cannot expect to continue successfully. "However, I was struck by the diversity of groups and their interest in participation in today's meeting. Is this usual?" he asked. Advised that it was, he indicated that his confidence had grown considerably.

Justice C.Z. Smith counseled the Board to seek a mechanism to ensure diversity during its consideration of gover-

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pro • tec • tion

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nance issues.

After an hour's discussion, the members of the Court left, and the Board turned its attention to the Court's decision not to publish for comment proposed Rule of Professional Conduct 8.4(g), regarding sexual relations between lawyers and clients. The Board was told that the Court felt that any discipline arising from such relationships could be dealt with under other existing rules. However, various members of the board recalled that WSBA disciplinary counsel Lee Ripley told the board plainly, when the rule was proposed, that other rules do not adequately cover this sort of problem, and that it is perceived as a growing and increasingly controversial problem. For its part, however, the Court noted in its letter to the Bar, that it recognized feelings were strong on the issue and invited a resubmission with more supporting information.

Governor Jan Peterson moved to refer the matter to the Rules of Professional Conduct Committee for a response to the Court's letter. Young Lawyers Division president Rosemary Daszkiewicz told the Board this is a "critical issue" and urged a response to the Court as early as possible. The Board voted its approval.

In another related matter, the Board took up the Supreme Court's recent decision denying the rule proposing the creation of an access-to-justice coordinating board to serve as a clearinghouse for resources allocated to groups serving the legal needs of the indigent in Washington state. Having

received information that the Court would be receptive to a resubmission of this proposal, Governor Jan Peterson moved the adoption of a two-page declaration and resolution clarifying the need for a court rule and drafted by Governor Mike Larson. The Board unanimously approved the document and its submission to the Court. The Board also approved taking up former Governor Tom Chambers' offer to spearhead the campaign to secure adoption of the rule.

The chief item in the executive director's report was Dennis Harwick's request for Board approval for his seeking a leadership position in the National Association of Bar Executives. Like many organizations, such an undertaking requires not only elections, but progressive movement through a series of chairs culminating in the presidency of the organization. Given that this would be a multi-year commitment, Harwick wanted to be sure the matter was on record, so that some future Board of Governors wouldn't look up, find him out of town for a meeting and say, "Who authorized this?" Governor Joe Nappi, noting that two previous executive directors from this state bar had been presidents of NABE, said the Board should be proud that Harwick was involved in such things and should encourage the undertaking. That is what the Board did.

The Board then adjourned for lunch with members of the Government Lawyers Bar Association, and the Thurston, Lewis, Mason and Grays Harbor county bar associations. After lunch, as is Board tradition, the presidents of the

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county bar associations in attendance were invited to give reports on the activities of their bars and their view of the great issues of the day. Frank Groundwater, president of the Thurston County Bar Association, Evelyn Fielding, president of the Government Lawyers Bar Association, and Kristal Wittala-Knudsen, chair of the Capitol Chapter of Washington Women Lawyers, all gave reports.

January in Olympia meant, as usual, the first Fattorini sighting of the year. WSBA legislative liaison John Fattorini gave the Board an initial report on likely action of interest to the Bar in the coming session of the Legislature. So far, he said, filings of bills had been slow, and there were only a few of any particular interest.

A long wrangle followed, as some of the most recently elected members of the Board tried to undo last January's endorsement of legislation to authorize the creation of limited liability companies under Washington law. This is a new beast in Washington, but legislation creating it has been approved in approximately 38 other states. Its proponents argue that its chief advantage is that it offers significant tax benefits, not available to some Chapter S and Chapter C corporations. Its chief demerit, in the eyes of the Washington State Trial Lawyers Association, is that it is suspected to be a ruse to protect assets from tort litigation. A number of lengthy speeches were made about the iniquity of it all and how the whole topic ought to be reopened for consideration by the Board in its current membership.

In response, several Governors pointed out that the proposal had been debated for two years, that it had been exhaustively considered by the Board last January, and that there was no reason being offered to reconsider the endorsement of the bill except that some of the new members felt uncomfortable about it and just wanted to reopen the question. In the end, after a considerable roundelay, Governor Jim Handmacher moved to table the question until February. The Board voted 10-1 in favor, Governor Steve Toole voting nay.

Governor Handmacher then moved to support a request by Division II of the Court of Appeals for funding of two previously authorized judgeships. Judge Elaine Houghton told the board that the four-member Division II Court of Appeals is handling as many cases as Division I was handling when its size was increased from six judges to eight. Former Governor Steve Tubbs, as a representative of the General Practice Section of the Bar, told the Board that a client of his had recently been required to post a supersedeas bond, the amount of which included three years' interest to cover the time the trial judge expected the matter would take to be resolved on appeal. The Board unanimously voted to endorse the funding of the positions.

Observer Christopher Jennings asked if the Board's endorsement, last year, of House Bill 1443—which would outlaw discrimination based on sexual orientation—needed to be reaffirmed this year. The Board agreed that its endorse-

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ment from last year still stands.

After a break, the Board took up a proposed contract with the state's Reporter of Decisions (the person who publishes the *Washington Appellate Reports* and *Washington Reports*). After several years of wrangling and discussion, a plan has been agreed upon by which the Bar would be licensed to make the Appellate reports available in electronic form (read, on your computer) to subscribers. However, matters were complicated by the last-minute insertion, in the proposed draft, of some onerous indemnification clauses. Solicitor General Narda Pierce, who had been involved in the drafting and discussion of the contract by the various state agencies involved, reported that, as a result of a telephone conversation she had with the reporter of decisions during the discussion, it appeared to be that indemnification clauses could be removed. The apparent deal breaker having been found not to be one, the Board reaffirmed its authorization that the president sign the contract once the final details are worked out.

The Board then bogged down in some additional committee appointments, but were able to agree on the appointment of Seattle lawyer Bill Gates to a two-year term on the Board of Judicial Administration. Gates was originally appointed to fill out the unexpired term of former WSBA president Jack Dean, who died during 1993.

As part of the resolution appointing Gates, the Board expressed its intention (nonbinding on future boards, parlia-

mentarians in the audience quickly pointed out) that the next available position on the Board of Judicial Administration will go to a lawyer in eastern Washington.

In the final matter of the day on Friday, the Board voted to cosponsor, with the King County Bar Association, the 1996 American Bar Association Pro Bono Conference in Seattle. Executive director Dennis Harwick noted that the financial requirements of the venture would be no more than a couple of thousand dollars.

The Board then returned to executive session to consider some matters they had not been able to complete in the morning.

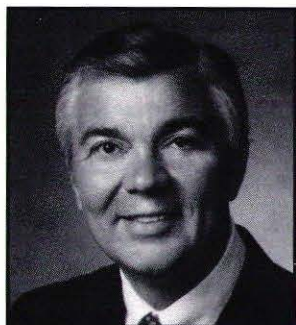
The editor, having been unable to attend the Saturday session of the Board, notes with gratitude the assistance of WSBA executive director Dennis Harwick and general counsel Robert Welden in completing this report.

THE WELDEN REPORT

The Board's morning began at 7 o'clock in a continuance of its executive session which lasted until 8:45. Cub reporter "Ace" Welden then seated himself at the editor's table on Saturday morning to continue this report after the editor was called away unexpectedly.

"Why would you want to be president . . .?" The Board took up the annual election of the president-elect, who will succeed President Stritmatter at the end of his term follow-

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ing the annual meeting in September. Following a tradition established over the past several years which is now codified in the WSBA Bylaws, the President-elect this year will be from King County. The Presidential Search Committee was comprised of Governors Peterson, Dunn, Norris, and Larson. Peterson, Dunn, and Norris each reported on the nomination of, and committee's interview with, three persons, all former Board members: Thomas J. Chambers, Ronald M. Gould, and Roy J. Mocerri. Peterson noted that the nominees could generally be described as white, middle-aged males, politically active and "liberal," all successful lawyers in their chosen field, all litigators, all three from humble beginnings, and, he noted, all three wore French-cuffed monogrammed shirts with cuff links for the interview. He noted that two were from large law firms, sometimes called "elevator lawyers," and the other owned his office building. There are, however, significant differences in style and substance which were noted in the reports.

Governor Larson expressed his concern about the committee's procedures, noting that this was his third year on the committee. He said he was unable to make the interviews because he was only given 48 hours' notice. The Board learned about the candidates only two days before this meeting, and he was concerned the Board was sliding back into the old "closed" system of selecting a president.

Nancy Krier said that Washington Women Lawyers tried to recruit women and persons of color as nominees and "knew the efforts the Board took to get the word out, and that WWL got the word." Discussion ensued on whether it would be better to proceed with the election at this meeting or wait until February, which was pretty well summed up by former Governor Tubbs: "You're damned if you do—you'll be criticized for running a railroad—and damned if you don't—you

open the door to electioneering." Governor Blair said that if the other Governors were comfortable with the process of voting today, they should. Each Governor then gave his or her views on the nominees, and the Board proceeded to elect Ron Gould as the president-elect.

If you train them, they will stop: Attorney General Christine Gregoire then met with the Board to present two ideas. First, she discussed the idea of teaching mediation in high schools following a project developed at Harvard and piloted in Massachusetts, New Hampshire and the District of Columbia, where she described the project as "an overwhelming success." She had not developed the details, but in part of Governor Mike Lowry's youth agenda being submitted this legislative session, he is seeking a 1/2-million-dollar appropriation to include this type of program in the curriculum. Gregoire suggested that rather than asking overworked teachers who are not trained in the area of nonadversarial conflict resolution to take this on, why not ask lawyers to volunteer for the project? The idea would be to train a core group of students who want to learn, and then have them teach their peers. Governor Peterson noted that in his experience as a parent and coach, a majority of kids in high schools want violence to stop—"across the board."

The reaction from the Governors was overwhelmingly supportive of the idea, with some concern about financing and staff support, particularly since the bar's law-related education programs were among the first to get the budget ax last year after the dues rollback. Gregoire thought that those issues could be resolved through the involvement of her office.

The Board voted to endorse the concept as presented by Gregoire and to authorize her to tell Governor Lowry that the

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LAW Fund

LAW Fund was created by members of the private bar to significantly increase the capacity of civil legal-service programs to assist low-income people who need legal help. It provides funding for three organizations which, together, provide civil legal services on a wide range of high-priority legal problems to poor people in all 39 Washington counties: Evergreen Legal Services, Puget Sound Legal Assistance Foundation and Spokane Legal Services Center.

LAW Fund coordinates its annual campaign to lawyers and law firms in every region of Washington. During 1993, several county campaigns were particularly successful: Doug Duggan helped raise more than \$5,500 in Clark County; a special thank-you to Arden &

WSBA would support the program with its members. Stritmatter said to "add my aye" to the vote. An ad hoc committee was appointed chaired by president-elect Ron Gould (waste no time putting him to work) and with Attorney General Gregoire, Governors Dunn and Fairhurst, and Rosemary Daszkiewicz, Lynn Tuttle, and a member of the ADR Section.

The second issue presented by Gregoire was to adopt a CLE ethics requirement. It was agreed that this is an important idea, and it was referred to the CLE Board, CLE Committee, Young Lawyers, and other interested bodies, to return to the agenda in March.

Wrap-up in Olympia: In other business, the Professionalism Committee reported a series of recommendations for WSBA involvement in Professionalism Month in March, 1994 in conjunction with the Washington State Trial Lawyers and Washington Defense Lawyers associations. The

Budget and Audit Committee noted it was finalizing the sunset review process, received authorization to expend \$6,000 to insert the recent membership survey report in the February *Bar News*, and noted that the FY 1994-1995 budget process would begin in February. The Professional Qualifications Task Force was given \$5,000 to fund it over the next six months, and \$1,200 was authorized to fund the requirements of the contract with the Reporter of Decisions the Board had approved earlier. As part of his annual performance evaluation, the Board reconfirmed that the executive director has exclusive authority over WSBA staff-related matters, and that he may advise the Board without unreasonable fear of retaliation.

On a social note: the Board and observers attended the Government Lawyers Bar Association's Annual Holiday Party on Friday evening at the Sitaline Gallery, where a good time was had by all.

Next meeting: Tacoma, February 11-12, 1994.

Notice of Board of Governors Election

Three positions on the WSBA Board will be up for election this year, i.e., the governors representing the First and Fifth Congressional Districts and one of the governors representing King County at Large. Those positions are currently held by M. Wayne Blair (First District), Joseph Nappi, Jr. (Fifth District) and Michael A. Larson (King County at Large).

The WSBA Bylaws provide that any members in good standing, except a member previously elected to the Board of Governors, may be nominated for the office of governor from the district in which he or she *resides* by filing a petition signed by at least twenty (20) active members of the Bar *residing* in said district.

Nominating petitions are available from Jo Morehouse at the WSBA Office, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599; (206) 727-8244. Petitions must be received by the executive director of the WSBA by 5 p.m. on March 1, 1994. The Board of Governors determines the official dates of the election. Ballots are usually mailed around the first of June and counted approximately the first of July.

Note: This year, the *Bar News* intends to include in its May issue a small pull-out section carrying statements of 100 words or fewer from all the nominated candidates. Those statements are due along with the nominating petitions.

Report

Brandenburg, Baumgartner & Henderson, Blair Schaefer Hutchison and Wolfe, Hall & Holland, Horenstein & Duggan, Morse & Bratt, Nichols Lane & Marshall, Sellers & Jacobs, Thayer & Muenster and Weber & Gunn; also to the Vancouver City Attorney's office and the Clark County Prosecuting Attorney's office.

LAW Fund welcomes new board member Roberta R. Katz and new advisory board member Christine O. Gregoire; it thanks the Kongsgaard-Goldman Foundation for generously donating to the LAW Fund seed money campaign.

If you would like to make a contribution to the LAW Fund 1994 Annual Campaign, or if you would like more information, please call (206) 623-5261.

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Notices of Interest to Bar Members

State of Washington, Commission on Judicial Conduct Notice

Correction: In the December 1993 Bar News ("Digest," page 33) it was erroneously reported that Whatcom County Superior Court Judge Michael F. Moynihan had stipulated to an order of reprimand from the Commission on Judicial Conduct.

Public Notices

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 January 1994 is 3.39%. The maximum allowable interest permissible for February 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; on page 37 of June 1989 for 1984-85; on page 47 of June 1992 for

1985-87; and on page 49 of June 1993 for 1987-93.

State Law Library: Books Recently Cataloged:

Listed below are some of the new titles recently acquired by the State Law Library, and available for loan by phone from (206) 357-2136, or by mail from Washington State Law Library, Temple of Justice, PO Box 40751, Olympia, WA 98504-0751.

On January 7, 1991, the State Law Library began circulating the video collection of the Office of the Administrator for the Courts (OAC), which has more than 150 titles and over 175 videos. A catalog of titles is available from OAC; call Judicial Education at (206) 753-3365, ext. 3248, for a copy.

When requesting materials, please include the author, title, and call number.

CHILDREN AS WITNESSES

Child victims, child witnesses: understanding and improving testimony. Edited by Gail S. Goodman and Bette L. Bottoms. New York:

Guilford Press, ©1993. Pp. 347. KF9672.A75C48 1993

COMPETENCY TO STAND TRIAL

Paull, Donald. Fitness to stand trial. Springfield, IL: Thomas, ©1993. Pp. 195. KF9242.P38 1993

DNA FINGERPRINTS

DNA on trial: genetic identification and criminal justice. Plainview, NY: Cold Spring Harbor Laboratory Press, 1992. Pp. 161. AI057.55.D65 1992

DIVORCE

Putzel, Constance K. Representing the older client in divorce: what the lawyer needs to know. Chicago, IL: Section of General Practice, American Bar Association, ©1992. Pp. 172. KF535.P88 1992

JUDICIAL ERROR

Radelet, Michael L., Hugo Adam Bedau and Constance E. Putnam. In spite of innocence: erroneous convictions in capital cases. Boston, MA: Northeastern University Press, ©1992. Pp. 410. KF9756.R33 1992

RIGHT TO COUNSEL

Burkoff, John M. and Hope L. Hudson. Ineffective assistance of counsel. New York, NY: Clark Boardman Callaghan, ©1993-. 1 vol. (loose-leaf) KF9649.B87 1993

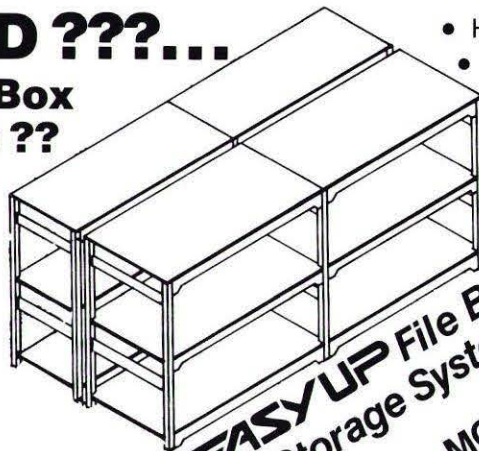
Errata:

An erroneous sentence on page 17 of the January 1994 Bar News referring to Dr. Lynn Hanks should have read: His [not her] experience and support can be an invaluable asset in assisting an impaired physician to a successful rehabilitation and continued medical practice.

Also, as a courtesy to Sirach Capital Management, Inc., readers of the Daily Journal of Commerce's King County Lawyers' Directory are informed that the correct number for WSBA 1992-1993 president Steven E. DeForrest is (206) 624-3600, not (206) 624-3800, as listed on the WSBA officer list on the pre-numbered ninth page.

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 National Business Institute, Inc. (715) 835-7909
 National Institute of Trial Advocacy (NITA) (800) 225-6482
 Spokane County Bar Association (Spokane BA) (509) 623-2665
 Tacoma-Pierce County Bar Association (TPCBA) (206) 383-3432
 University of Washington School of Law (UW CLE) (206) 543-0059
 Washington Assn of Prosecuting Attorneys (WAPA) (206) 753-2175
 Washington State Bar Association (WSBA CLE) (206) 727-8202
 Washington State Trial Lawyers Ass'n (WSTLA) (206) 464-1011, (800) 732-9251

February 1994

3 Vancouver, WA: Discovery Plans. *Sponsored by WSBA CLE.*

4 Seattle: Domestic Relations. *Sponsored by WSBA CLE.*

4 Seattle: Trial Skills. *Sponsored by WSTLA.*

10 Bellevue: Labor & Employment Law Update 1994. *Sponsored by Williams, Kastner & Gibbs. For information: Christine Gagne/Ron Knox, (206) 628-6600.*

11 Ellensburg: Essentials of Real Estate (video). *Sponsored by WSBA CLE.*

10-12 Coeur d'Alene Resort: Family Law Council of Community Property States Seminar. *Sponsored by Idaho Law Foundation.*

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

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

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

11-12 Tacoma: WSBA Board of Governors meeting.

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

19 Spokane: Substance Abuse in the Workplace. *Sponsored by Gonzaga School of Law. Contact: Dana Sievers, (509) 328-4220, ext. 3742.*

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

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

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

March 1994

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

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

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

15 Deadline for May 1994 *Bar News.*

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

20 Caen, Normandy, France: International Lawyers Defense Competition.

Sponsored by the Bar Association of Caen. For information: Jean-Marie Girault, tel: 31-06-06-44; fax 31-06-06-70; telex 772.372.

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

25-26 Bellingham: WSBA Board of Governors meeting.

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

April 1994

4-8 Maui, Hawaii: STRESSBREAK. *Sponsored by WSTLA.*

8-9 Seattle: WSBA Board of Governors meeting.

15 Deadline for June 1994 *Bar News.*

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

29 Portland, OR: American Bankruptcy Board of Certification examination. *For information: Scott Williamson, (202) 546-1200.*

May 1994

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

6-7 Spokane: WSBA Board of Governors meeting.

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

15 Deadline for July 1994 *Bar News.*

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

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HEALTH PLANS FOR THE SMALL

by **Kent Tarpley**

Health insurance jargon has long been gibberish to the layperson. For those who don't speak the dialect, here is a discussion of terms.

Webster's (1941) defines risk as: "Hazard; danger; peril; exposure to harm; *com.* the hazard of loss, either of ship, goods or other property; *the amount which may be lost, as in insurance.*" (*emphasis added*)

The more risk transferred from you to an insurance company, the higher an insurance premium you pay.

Key points to consider in any health insurance plan are: out-of-pocket maximum, co-insurance percentage, maximum coverage and deductible. Premium payments depend on these variables. Common rules of thumb are: you generally get what you pay for, and your salesperson must explain the plan to your satisfaction and answer your questions intelligently.

There are three basic types of policies

Basic Hospitalization—Coverage for basic hospital costs such as room, food, out-patient services; and hospital supplies, such as aspirin, bandages and Kleenex.

Major Medical—Coverage for in-patient hospital services; major or minor surgery, emergency medical service for accidental injury, doctors' charges, anesthesiologists, x-rays, etc.

Comprehensive Major Medical—A combination of the coverages mentioned above. (It can also cover prescriptions drugs, pregnancy, dentistry, optometry, chiropractic, psychiatry, well care, drug care, etc.)

These are general terms, not specific to any company. Ask your provider what its specific plan covers. The same applies to the following terms used by the health insurance industry.

Co-insurance — The sharing of risk between you and the insurer up to the maximum out-of-pocket amount of your particular plan. It is expressed as

a ratio of the incurred medical expenses payable by the insurer and the insured. The first number is the insurer's percentage of the risk; the second number is the insured's percentage of risk.

Out-of-Pocket Maximum — The maximum dollar amount of covered medical expenses you must pay before the insurer begins paying 100% of the covered expenses. In the example below, the out-of-pocket expense would be \$2,000.

Example: 80%-20% co-insurance with a \$2,000 out-of-pocket maximum, \$500 deductible and a \$1,000,000 policy maximum. After the insured has paid the \$500 deductible, the insured is responsible for paying 20% of the covered expenses until his or her total payments, including the deductible, reach \$2,000.

Assume the bill is	\$ 8,000
Subtract the deductible;	500
The balance is	7,500

times the insured's percentage X .20 to yield the insured's payment of \$1,500.

By adding the \$500 deductible and the \$1,500, the insured has met the \$2,000 out-of-pocket maximum and the insurer is responsible for the balance of the covered medical expenses. (Note: some insurers do not count the deductible as part of the out-of-pocket maximum amount, so you must ask about it before you establish your plan)

Policy Maximum—The cumulative maximum dollar amount of covered expenses, or amount of risk, for which the insurer assumes financial liability. In today's market, two common "maximums" are \$1,000,000 and unlimited coverage.

Deductible — The amount you must pay before the insurer begins to pay at the co-insurance rate. This may be on a per occurrence or a cumulative basis.

Premium — The dollar amount you pay for health insurance coverage, usually on a monthly basis. Deductibles,

co-insurance and out-of-pocket maximums can affect the amount of premium.

Below are some examples.

Co-Insurance — 70%-30% means the insurer is taking less risk than at 90%-10%. (70-30% = lower premium; 90-10% = higher premium, assuming all other factors are equal.)

Out-of-pocket Maximum— A \$2,000 vs. a \$500 out-of-pocket maximum: The insurer is at less risk for the larger amount, so the premium should be less for the \$2,000 out-of-pocket maximum than for the \$500.

Deductible — The higher the deductible, the less the risk for the insurer, so a \$5,000 deductible carries a lower premium than a \$500 deductible does.

Covered Expenses — Expenses for which a health plan provides reimbursement. The insurer provides you with a list of them. Coverages that are not on that list can be very important to your pocketbook, since you may pay 100% of these non-covered expenses.

Waive — To relinquish or forego a medical charge, usually a deductible or co-payment, on the part of the insurer. For example, the deductible is often waived for emergency care.

Pre-existing Condition — Any medical condition for which you have been treated prior to the effective date of coverage. "Pre-existing" may apply to conditions existing from one day to several years before you apply for new coverage. The insurer may exclude or waive them, or have a specific waiting period before covering them. (e.g., 90 days, six months, etc.)

Date of Coverage—The date that medical coverage takes effect.

Per Occurrence—Generally, per time or per visit limit, whether for the same or different medical reasons. This can affect how much you pay for co-payments, deductibles or cumulative expenses.

PRACTICE: PART 1 — TERMS

Co-payment—Exists anytime the insured and insurer share the cost for medical care. It usually refers to the amount paid by the insured, either for a per visit fixed fee (see below), or for their percentage of co-insurance (i.e., the 20% of 80-20 co-insurance).

Per Visit Fee (Co-Payment)—A fixed dollar amount you pay before insurance coverage takes effect. This is usually on a per occurrence basis and may or may not apply to your deductible or out-of-pocket maximum.

Examples:

\$10 per visit fee for a routine medical visit. You pay the first \$10 for each such visit before the insurance starts paying.

\$5 co-payment for prescription drugs. You pay the first \$5 for each prescription before the insurance starts paying. (Note: If you are picking up three prescriptions at the same time, you pay \$15, not \$5)

Routine Visit (Routine Expense)—Usually refers to a nonemergency visit to your doctor or healthcare facility.

Benefit Amount—Usually refers to the maximum dollar amount your policy will pay for a specific service. For example, a transplant might be listed at \$200,000. The insurer is stating that this is the maximum amount it will pay for a normal transplant. If the costs are higher, you can be burdened with the difference between the stated maximum benefit amount and the actual expenses.

Prevailing Rate (Usual and Customary Charge) — The amount, determined by the insurer, that most medical facilities or doctors in the area charge for any given treatment or service.

Waiting Period—The length of time, generally expressed in days, that must elapse before you are eligible for medical coverage (read: before the insurer begins paying claims).

Two acronyms deserve mention in

today's healthcare arena: PPO and HMO.

PPO (Preferred Provider Organization)—A PPO is a select group of doctors, hospitals and other care providers in a given area that agrees to offer its services for lower fees. The insurer provides you with a list of PPO doctors, specialists and facilities. You usually choose to use a PPO or non-PPO provider, for which you pay more.

HMO (Health Maintenance Organization)—An organization that provides comprehensive medical care to its members on a prepaid basis. You may go to any person in that HMO for treatment, and the expense is covered. HMOs do not assume costs for services performed outside the HMO unless they're for some special, authorized need.

It is important to understand three basic rules *before* being interviewed by a prospective insurer:

Rule #1—Contrary to popular belief, asking questions is an act of intelligence, not stupidity.

Rule #2—If you are baffled by any terminology, ask for an explanation in terms that make sense to you.

Rule #3—Trust is an admirable trait, but a misunderstanding of terminology can cost you money.

It is imperative that you, the consumer, question the agent(s) you are working with about all of the aforementioned portions of your health insurance program. Make sure the answers are satisfactory and the information is complete. The person you are working with is often the indicator of the type of service you will receive.

[See the March 1994 *Bar News* for Part II: Selection.]

Kent Tarpley is an associate of Financial Strategies Group in Seattle.

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

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THE RIGHT TO BEAR ARMS

a story by **Jack Richey**, Commissioner, King County Superior Court

It has been two months since my only child died. The loss for me was complete and devastating. Nothing so tragic should ever happen to a loving mother. He is gone. But now, so is the gun.

Scott was a tall, handsome young man who looked more like his father than me. Father and son adored each other, and Matt, my husband, was so proud when Scott got a 3.5 G.P.A. his second term at Western Washington University. I was thrilled, and they both knew how very much I loved my boy. We were a close, intimate family.

The funeral is still a blur in my memory. Oh, I'm sure it was typical of many like it today, when young men are violently killed in a society where weapons are everywhere. I vaguely remember the high school coach standing and saying, "Scott not only was a fine athlete who loved to compete but a youngster who was always kind and respected the rights of others." I could see our friends and neighbors seated beyond the darkened glass of the enclosed family room at the funeral home. Some were crying, but no one—including Matt—sitting next to me could know or understand the tremendous suffering I was enduring. I tried to suppress the racking convulsions of my body, but they were too powerful. I vomited, then fainted, and had to be carried to the car before the services were over.

Matt had always owned a shotgun. He taught Scott at an early age to aim ahead or lead a flying duck or pheasant before pulling the trigger. My son liked hunting, but when he was 16, he told me that what he enjoyed most was the chance it gave him to be alone with his dad. They had long talks and, I think—unlike many boys—Scott took much of his dad's advice seriously. Matt told him when he was no more than nine or ten that it was unhealthy to smoke. Scott never took a puff.

It wasn't until two years ago, after we had a burglary, that Matt bought a .38 caliber revolver. The front double doors had been smashed open while Matt and I were at work and Scott was at school. The burglars took the VCR, some money, jewelry and Scott's two-

gallon jar filled with pennies. What really upset Matt was their taking his four-year honor roll pin from high school. The gold pin had a guard, a small ruby and a pearl representing each year of high grades. "That does it," he said. "We have to get something to protect us from all the crazy drug addicts who need to steal in order to support their habit." He put the loaded revolver in the drawer of the night stand on his side of the bed. My protests were dismissed with his saying that we didn't have any small children who could find the gun. Only he knew where it was, and only he would use it. The subject was closed.

It was the beginning of spring finals for Scott at Western. I had talked with him on the phone two days before, and he said he would be home on the following weekend. He was bringing a special girl for dinner on Saturday night, and he thought we would like her. I started planning the dinner and what I was going to wear. It would be wonderful having him home for the summer.

About 1:30 a.m. Tuesday morning, an unusual noise brought me out of a sound sleep. It wasn't right. I strained my ears, listening intently, and after a second sound from somewhere in the other end of our large house, I woke Matt. He listened and then thought he saw a light through the white window drapes. Quietly he got out of bed and peeked through the drapes to the yard below. "Call 911," he whispered. "The rec room light just went off." The 911 operator said the police were on the way. She said to stay in the bedroom and lock the door, but Matt already had the revolver in his hand and was quietly going out into the dark hall. "Come back," I pleaded, but he was gone. Then there was silence for what seemed an eternity. A shot boomed in my ears. Seconds later, Matt's anguished roar echoed throughout the entire house. The police learned from Scott's roommate, Doug, that the two boys hadn't decided until midnight that Scott needed a reference book from home for Wednesday's history final. They didn't want to wake us, so they just drove down from Bellingham, and

Doug waited in the car while Scott went down to the rec room to get the book. He had turned out the lights and was leaving when he was shot.

Matt's lawyer told him it had been a difficult decision for the prosecutor's office. Several reviewing deputies thought he should be charged with manslaughter, but in the end, it was decided that the homicide was legally excusable. A very unfortunate accident. The gun which had been taken into evidence by the police was returned to its owner.

They kept me sedated in the hospital overnight, treating me for severe shock. When I returned home, and as the weeks passed, I knew my entire life had been shattered to a point of near insanity. My boy was gone. My husband had killed him. Under the law, it may have been excusable, but I blamed him. I blamed the gun. I blamed God. We no longer went to church. I rarely left the house. Matt returned to work after a week, but I couldn't make myself resume a job of teaching other parents' children.

We haven't made love since it happened. I've always been the one who would touch and send the known signal, but now that just isn't possible. Matt went to some counseling sessions, but I must see a psychiatrist once a week, and she says it will be at least a year before we can decrease the visits. Matt kisses me good-bye each morning and tries to help in many ways. My sister says that I have to forget and go on with life, but she cannot know how I feel.

It was Matt's idea, but I readily agreed. He suggested it last night and said it was something we should do together. This morning we drove to Seattle and caught the ferry. As we stood at the rail he removed the paper bag containing the gun from his coat pocket. I put my hand lightly on top of his and, together, we dropped the gun to the bottom of Puget Sound. It was the first time I had voluntarily touched him in two months.

Maybe some day we will be able to resume some kind of satisfactory relationship. At least the gun is gone. But then—so is my son.



CLARK COUNTY REPORT

by JOHN F. NICHOLS

Golf Activities

Comes now, the obligatory reports on various counties' golf tournaments. The highlight of the annual event held at beautiful Orchard Hills Golf Country, was the appearance of **Greg Ferguson**. Greg's appearance was notable not by his performance but for his tasteful ensemble strikingly accessorized by his pink putter complete with side saddle stance. This earned the kudos of his playing partners as well as the honor of teeing from the red tees. The coveted award for the "most gross" went to **Michael Brace**, who upon receipt of the trophy apologized profusely to his playing partners, **Casey Marshall, John Nichols** and **Ed Reed**, for having exposed them to his swing, vocabulary, and his failure to share adult beverages. Before said apology, Ed had threatened to come out of retirement to hold Brace in contempt

for his lack of etiquette. The winner of the tournament was in doubt, not so much as to whom as to if. Apparently **Rich "Sandman" Saunders'** participation was in doubt when it was rumored that he might have to go to his office, thereby interfering with his usual occupation of golf. Such fears were put to rest when it was discovered that Rich's office had moved and had not left a forwarding address. Thus, Sandman once again successfully defended his title. Those not participating in the golf tournament opted for a bike ride, which included an instructive seminar on Spandex abuse.

Which Elevator?

In another stroke of genius in government spending and public service, Clark County has installed decorative signs numbering the courthouse elevator. Said signs "decorative" jet black plastic emblazoned by the words "Elevator 1" have been placed outside and, inside the courthouse, "Lift." The existence and whereabouts of any other elevator in the courthouse has not been revealed. Look for a new sign in a

shaft near you.

You got to have heart

On a more serious note, I have been advised that local long-time attorney **Doug Bratt** was involved in a serious auto injury. Saving his life was the judicious use of his seat belt and steering wheel. The "T-bone" crash flung Doug into his steering wheel causing serious concern about his health. At the hospital, extensive tests were run concerning any injury to his heart. Fortunately, the results proved negative. As last seen, Doug appeared to be in much better spirits buoyed by the news not only that he had a ticker but that it was running with the same precision as his practice.

KITSAP COUNTY REPORT

by KATHLEEN M.S. WRIGHT

County Creates Commissioner: Action figure claims newly funded position. In a bold move, Thurman

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Lowans, late of Soriano, Soriano & Lowans, was appointed superior court commissioner by the superior court judges after receiving overwhelming support in the county bar poll. The "Thurminator" (as he has been dubbed by those unwilling to be identified) bucked tradition and was offered the job for which his colleagues thought him qualified. Thurman was suspicious, but he accepted anyway.

New Firm: Long-time associate **Lillian Schauer** of the same Soriano,

Soriano & Lowans has departed to form the firm of Schauer & Larson, with **Kristin Larson**. We think this means that **Lawrence** and **Jerry**, the Soriano brothers, will be very busy the next few months. It's either more work, or start that ice cream company. "Lawrence and Jerry's"—kind of has a catchy ring to it.

Cowboy Guy: An anonymous contributor has forwarded information just too good to pass up about Port Orchard litigator **Michael Dunn**. I quote:

"'Cowboy guy,' as he is fondly referred to by his adoring public, is now the proud owner of a registered Paint/Quarter Horse, which he promptly renamed 'TIGA' in honor of his favorite sailboard. The horse is a yearling; Mike figures by the time it is big enough to carry him, he will have learned how to ride. He's also bought a *second* pair of cowboy boots, i.e., the 'work boots' after being advised that 'only greenhorns wear their Tony Lamas anyplace where sh___ can actually be kicked.' If he sees this and calls you, tell him that [censored] told you." Can't reveal my sources . . .

New Faces? Dragged kicking and screaming, the new officers and trustees of the county bar were thrust into the limelight at the December meeting. Actually it's sort of an amber light, but let's not pick nits. They are, to everyone's great surprise, president **William Crawford**, vice president **Anna Laurie**, secretary **Michael Kirk**, treasurer **Patrice Cable**, and trustees **Andrew Becker**, **Susan Caulkins**, **Darrell Uptegraft** and **Constance Bartholomew**. Keep this column, and you will know who is next year's president, etc. We run this like the DAR. Your ancestors must have been born. You must obtain the testimony of three people that you like macaroni salad with little olive pieces. If you are vice president this year, you will be president next year, unless you cancel the chocolate chip cookie order and do the hokey pokey in Judge **James Roper's** courtroom. [Note that this is a two-pronged test]. The particularly scary thing about this is that in only two (count them, two) short years—yes, in 1995—**Michael Kirk** will be president of the bar. Society and decorum as we know it will cease to exist. "Killer" Kirk, unlike his namesake **Jerry Lee Lewis**, has not married his 14-year-old cousin. But he did confide at the fantastically well-attended Kitsap Women Lawyers' Christmas Party that the last live concert he attended was **Barry Manilow**. (?) See, we told you it was scary. Feelings, whoa, feelings.

Neat People Who Should Be Acknowledged: Recent Advice Clinic participants: **Marilyn Paja**, **Anthony Otto**, **Kevin Underwood**, **John Andrews**, **Peter Matty** and **Connie Bartholomew**. Pro Se Disso attorneys (a particularly thankless task): **Bonnie**

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30-DAY MONEY BACK GUARANTEE

McDaniels, Kathleen Shedd and **Holly Banks**. Recent "Attorneys of the Month" (who get that coveted designated parking place): **Sam Fleshman** and **John Andrews**.

LINCOLN COUNTY BAR ASSOCIATION REPORT

by **RUSTY MCGUIRE**
President forever, it seems.

It has been four years since there has been a report from Lincoln County and guess what: nothing's changed. The Lincoln (County) Kennedy Bar Association's annual golf tournament and banquet was held September 30, 1993. An overwhelming majority of the membership (15) showed up for dinner and to hear WSBA president **Paul Stritmatter** give a speech of great importance to the members. The food was good, and the speech was excellent. Paul's only problem is that he or a secretary is such a big Husky fan that he/she entitled Paul's speech notes, "Lincoln Kennedy Speech Notes." Actually, there were other problems (Paul's tie, but how do you tell the WSBA president that the couch that was destroyed in order to make the damn thing would have been better off as is?)

Paul was asked to tell stories about small-town practice and leave out the boring trust account and CLE information. He did a remarkable job. He thinks our trust accounts are under our mattresses. (We aren't sure about the trust account but do save money in a jar for hernia retention devices, if that's what he meant.) He also bragged about his prowess on the golf course that afternoon. He did beat the only two guys that golfed with him. There is something untrustworthy about a man who loads his clubs (Pings) on an airplane to shoot 18 on a rural course in eastern Washington. The other members, (**Dennis Wallace** and me), the conquered golfers, prefer our vinyl bags and the fact that if the ball is close you can tap in with a swift kick. I think Paul enjoyed his stay. He was able to witness eastern Washington trees that actually take deposits of golf balls and then

gestate two weeks before shedding their offspring. He also missed his flight and had to stay at the Wallace residence. As president of the WSBA, he took an oath to tell true stories at bar functions which is why, he complained later, **Jeff Tolman** gets so many laughs. Apparently speaking at the Lincoln (County) Kennedy has caused a rift amongst two former speakers of the bar over here. We are rumored to be the hotbed for upcoming speakers from around the

state. Get your applications in early. Since our last report, the county bar has added **Mark DeWulf**, a 1993 UPS grad. We also have added **Richard Kayne** from Spokane. Rick fell into the FNG (fun new guy) role and will be president soon. He also wears double-breasted suits and fancy ties. He must lose these to ever take the throne. At least his ties came out of a silkworm instead of Stritmatter's favorite upholstery reconditioning shop.

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

by YVONNE PARAMORE

Helping . . . a Personal Story

The Washington State Lawyers' Campaign for Hunger Relief channels your contributions to a number of hunger relief food programs. One of those is the WIC Program (Women Infants and Children Program); which provides

access to free nutritious food for toddlers and young children throughout the state.

If you are wondering if your contribution makes a difference, let me assure you that it does and share with you excerpts from a letter written by a WIC Program recipient which recently came to my attention.

In May 1992, this woman became pregnant and discovered that her insurance policy did not include maternity coverage. She tried in vain to find other health insurance; however, due

to her preexisting pregnancy, she was not able to find it. She acknowledges that this was a very difficult time in her life; she needed help in raising a healthy, happy and productive child.

In the second month of her pregnancy, she had no other recourse but to apply for government assistance; it was a personally degrading experience for her. Welfare stipulated that she participate in the WIC Program during her term to ensure that she would have a healthy pregnancy. She says, "In one way it was very embarrassing to be on welfare at 22 years of age, but it taught me that these programs definitely have filled a very important need in our society."

"The WIC Program was very instrumental in teaching me how to take better care of myself and my baby. It required that I be counseled by an accredited nutritional advisor in order to receive WIC food coupons. Using these coupons, I was allowed to purchase only certain types of foods. This food consisted of the basic four food groups, which enabled me to have the correct daily allowances of vitamins and minerals."

Today this woman's son is almost two years old and is healthy, happy and alert. She writes, "Despite the pain and embarrassment, I am very thankful for what I learned and for what was given from WIC during this difficult period in my life."

This letter represents only one of the recipients of your contributions and only one of the approximately 230,000 hungry children in the state of Washington. Your contributions to the Washington State Lawyers' Campaign For Hunger Relief make a difference. Please give generously to help those less fortunate and those who are our future.

**WASHINGTON STATE TRIAL
LAWYERS ASSOCIATION
REPORT**

by MICHAEL HEATHERLY

Race discrimination and World War II were unlikely topics for a WSTLA Holly Ball, our annual year-end gala. But the highlight of the 1993 event was an award presented to a lawyer and his client who fought for more

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than 40 years to right what they felt was a monumental wrong.

Art Barnett, the lawyer, and **Gordon Hirabayashi**, his client, received WSTLA's first-ever Courage Award, recognizing one who demonstrates exceptional courage in the face of adversity, brings honor to our system of justice and whose courageous action is consistent with the goals of WSTLA. The award was presented by WSTLA president **Judith Proller** at the ball on December 3 in Seattle. In poignant acceptance speeches, Barnett and Hirabayashi recalled their uphill battle against the U.S. government.

Hirabayashi was a young University of Washington graduate and Barnett a 35-year-old sole practitioner when Hirabayashi decided to resist the government's wartime evacuation of Japanese-Americans to internment camps. Hirabayashi knew Barnett through social contacts and had even baby-sat the two youngest children of Barnett and his wife, Virginia. Facing enormous peer pressure not to challenge the government, and recognizing that his career could be ruined, Barnett agreed to represent Hirabayashi.

Despite Barnett's heroic legal efforts, the U.S. Supreme Court ruled against Hirabayashi in 1943, unanimously upholding the government's internment policy under the doctrine of military necessity. In a breathtakingly ironic twist, the speakers recalled that when Hirabayashi was officially "sentenced" to his assigned internment camp he was notified that the government did not provide for transportation. Hirabayashi had to hitchhike to the camp.

Barnett and Hirabayashi continued their quest for vindication for 43 years before their tenacity was rewarded. In 1986, Judge **Donald Vorhees** vacated Hirabayashi's conviction because of fundamental errors in the trial, and Congress later approved compensation for Hirabayashi and the others who had spent time in the internment camps. Barnett, who has practiced law for 61 years, went on to become one of the country's best-known civil rights attorneys, but the Hirabayashi case probably remains his most famous.

Following presentation of the award, the Holly Ball continued with the traditional dancing and socializing. However, many conversations came back to the lessons learned from experiences

such as those of Barnett and Hirabayashi. One WSTLA member commented that it will be hard to whine about a flat tire on the way to court or an obnoxious client's phone calls when one remembers Hirabayashi's imprisonment by his own government for the crime of being Japanese by descent. Although the magnitude of Barnett and Hirabayashi's struggle will be hard to top, WSTLA will make the Courage Award one of its annual presentations.

WASHINGTON WOMEN LAWYERS

Former Secretary of Defense Les Aspin announced November 18, 1993, the formation of the Advisory Board of the Investigative Capability of the Department of Defense. In the conference report accompanying the National Defense Authorization Act for Fiscal Year 1993, Congress recommended that the Secretary of Defense convene a panel to address investigation-related issues. Secretary Aspin formed the

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Advisory Board in an effort to maintain the continuous support of the American public in the conduct of Department of Defense investigations and to develop proposals for improving Department of Defense investigations.

Washington Women Lawyers board member **Paula E. Boggs** presently an assistant U.S. Attorney in Seattle, will serve as staff director to the advisory board. She will head a staff of 16 attorneys, investigators and clerical personnel. Prior to joining the U.S. Attorney's office in 1988, Boggs served four years in the Army, during which she held positions in the Pentagon and White House.

The Advisory Board has been established, under the auspices of the General Counsel, to assess the criminal and administrative investigative capacity of components within the Department, including the Department of Defense Office of Inspector General, the Army Criminal Investigation Command, the Naval Criminal Investigative Service and the Air Force Office of Special Investigations. The Board will study the organization of, and the division of responsibilities and coordination of activities among, these components.

The Board will review the investigative procedures used, the qualifications for and training of investigative agents. After considering all aspects of the Department of Defense investigative process, the Board will submit a report to the Secretary by December 1994.

The report will contain findings and recommendations for enhancing the timeliness, thoroughness, efficiency, independence, accuracy and fairness of Department of Defense investigations.

YAKIMA COUNTY REPORT

by **GARY G. MCGLOTHLEN**

Heard from **Don Kinney**, directing attorney of Evergreen Legal Services at a local CLE: A public-service lawyer talking about trusts is like a penguin talking about soaring.

G. Scott Beyer of the Gavin Law Office appears as a guest commentator in the local Yakima daily *Herald Republic*. Scott has educated the public with articles on "Durable Power of Attorney," "Living Trusts" and the only article his wife has read, "Sexual Harassment in the Workplace." Rumor has it that the next article will be ghost-written by Scott's wife, title to be selected by her.

The new firm of Wagner & Associates, made up of **Philip W. Wagner** and **Gary Luloff**, spun off the Yakima Office of Bogle & Gates, the first of the year. New digs upstairs at 820 Chinook Tower will see Phil and Gary concentrating on their insurance-funded case load. **Paul Larson** will be joined at Bogle by local product **Scott**

Snyder, who has just completed being first in his class for his L.L.M. in International Law at University of California at Davis. Scott joins the Bogle family, which will continue its emphasis in international law, commercial law and commercial litigation.

New judicial faces are appearing in Yakima County: Union Gap has withdrawn from the Yakima County District Court. Mayor **Ron Krebs**, a Yakima County District Court probation officer appointed **Jon Martin** as Union Gap Municipal Court Judge for a term commencing January 1. Stay tuned next month for developments and news of the new faces on the bench at Selah Municipal Court.

IN MEMORIAM

Orlo B. Kellogg

Orlo B. Kellogg, 88, died November 30, 1993. A Seattle native, Kellogg graduated from the University of Washington in 1927. He was elected to the Order of the Coif. In 1940 he joined Bogle & Gates, but he left the firm in 1942 to serve in World War II. Assigned to the Seventh Army, Kellogg fought in North Africa, Italy, France and Germany, rising to the rank of major. He was awarded the Bronze Star in 1945 for his demonstration of "unusual ingenuity, outstanding initiative, and unflinching devotion to duty" in overcoming supply and transport shortages. The Army also awarded him five Bronze Battle Participation Stars. Kellogg served as a Trial Judge Advocate and legal advisor to his battalion's commanding officer.

Kellogg returned to Seattle and Bogle & Gates in 1946, trying commercial lawsuits and handling commercial and financial transactions. He was a role model for younger lawyers, who enjoyed the benefit of his guidance and advice. "He was noted for his intellect, breadth of legal knowledge and professionalism," Bogle & Gates observed in announcing his death. "His charm, wit and camaraderie will be missed by his family, friends and colleagues."

In 1974, Orlo Kellogg retired from practice, but he maintained his interests in reading and travel. His survivors include his wife, Evelyn Hanselman Kellogg, and a number of nephews and nieces.

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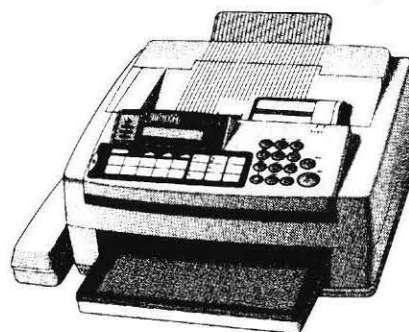
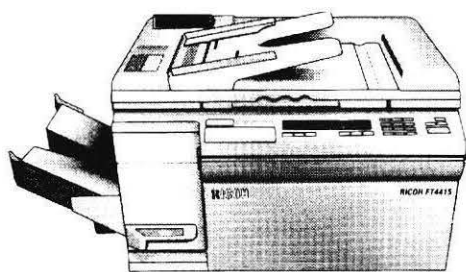
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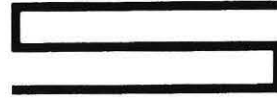
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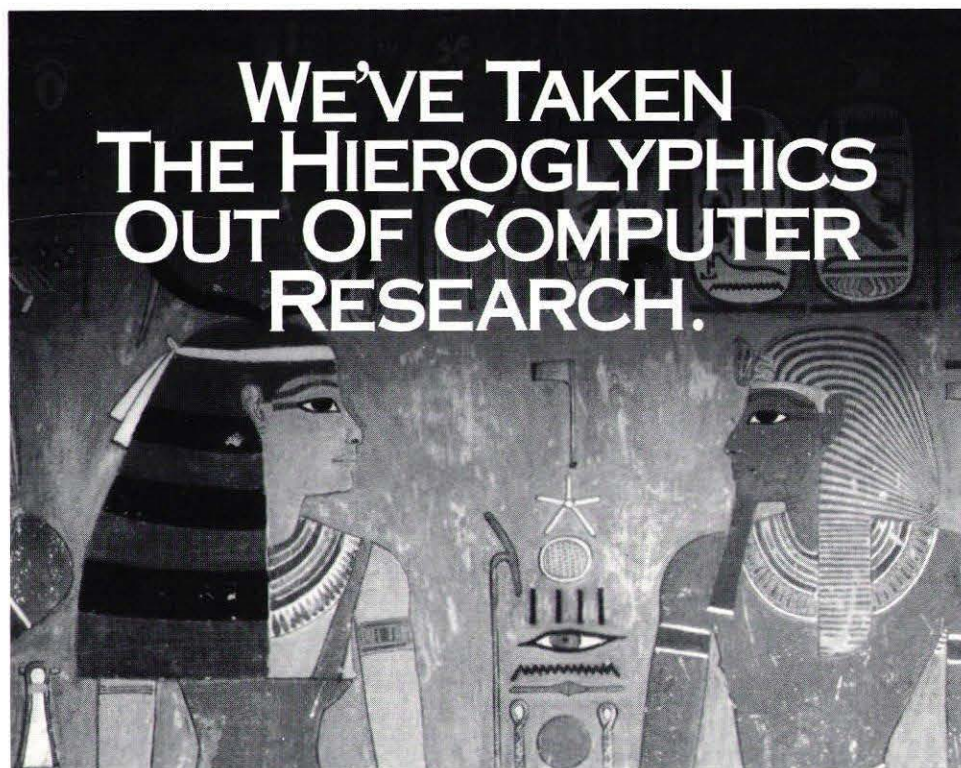


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