Washington State Bar News
Vol. 48, No. 4, April 1994

TAXES:
- JUDICIAL ALLOCATION OF THE FEDERAL INCOME TAX CHILD EXEMPTION IN WASHINGTON STATE
- IN THE CROSSHAIRS OF THE IRS: WHAT THE SERVICE LOOKS FOR WHEN IT LOOKS AT ATTORNEYS

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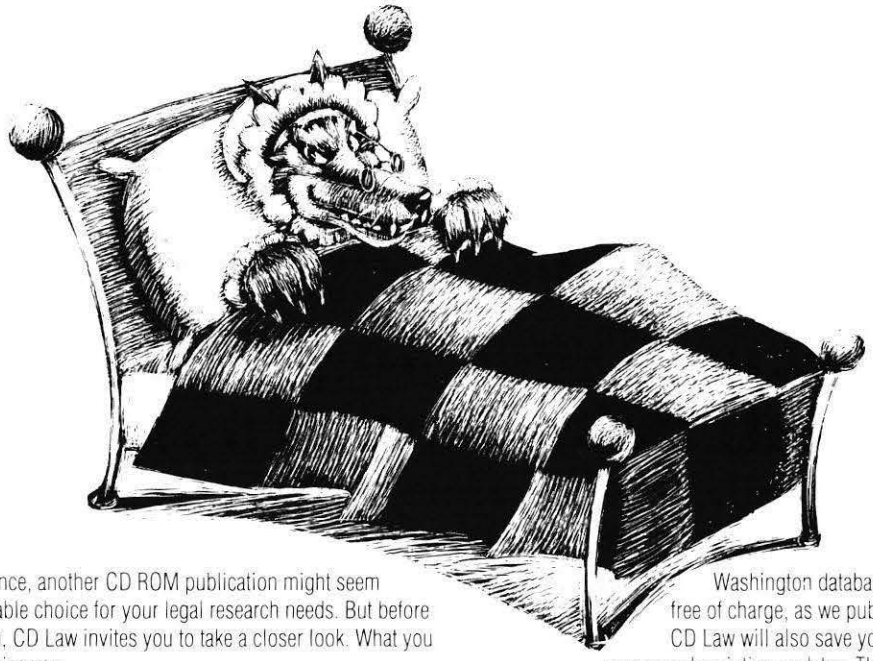

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ART CREDITS

In the spirit of April 1, Greg Lawless's "Appellate Haiku," page 63, serves as the inspiration for a spoof of 18th century Japanese art.

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DEPARTMENTS

REMINDER: *Resources* is being published at cost this year. See the order form on page 40 of this issue.

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

In re: Stritmatter on Professionalism

Editor:

Yes, the public does perceive lawyers as abandoning principles for profit and professionalism for commercialism. While such complaints date from antiquity, their frequency and stridency has increased.

I suggest that improving the legal profession's image begins with the person I see in the mirror each morning—not next week's opponent nor yesterday's adversary. Bettering both the reality and perception of lawyers must start with the conviction that I will be a partisan aggressive advocate for my clients' lawful objectives and will do so in a courteous and efficient manner. Rude and uncooperative behavior is at odds with the duty to quickly, effectively and economically strive to solve the clients' problems. When lawyers realize that good ethics and civility mean good business and less stress, the image of our profession will improve.

J. DONALD CURRAN
Spokane

Editor:

Paul Stritmatter's article in the January 1994 *Bar News*, "It's the Client, Stupid," has prompted me to write. Mr. Stritmatter lists several good practices for limiting client dissatisfaction. However, such practices are simply not going to change the public's perception of lawyers. What no one seems to be willing to face or admit is that the public always has and always will hate and distrust lawyers.

Barbara Tuchman, discussing social conditions in the 14th century, notes: "Doctors were admired, lawyers universally hated and mistrusted." [*A Distant Mirror, The Calamitous 14th Century*, 543-54, (1978)].

While I don't pretend to be a great biblical scholar, it appears that if you happen to be Christian and a lawyer, that even God may hate you. In the King James version of the Bible, according to St. Luke, Jesus allegedly said:

Woe unto you also, ye lawyers! for ye lade men with burdens grievous to be borne, and ye yourselves touch not the burdens with one of your fingers. [Luke 11:46]

Further, it seems like almost every author, playwright, cartoonist, politician, and advertising executive has, at one time or another, taken a pot shot at lawyers. A Shakespeare character said, "First, let's kill all the lawyers." The image of lawyers was anything but flattering in the cartoon strip Bloom County. And who can forget the Big Lawyer Roundup, a Miller beer commercial in which lawyers play the part of the steers in a rodeo?

Making reasonable efforts to keep clients happy is nice. However, it also seems to me that bucking God and 2,000 years of tradition is not a worthwhile use of our time, money and energy. It seems to me that we should simply accept the fact that a certain large portion of the population is always going to hate and distrust lawyers, and get on with our business.

JAY W. NEFF
Everett

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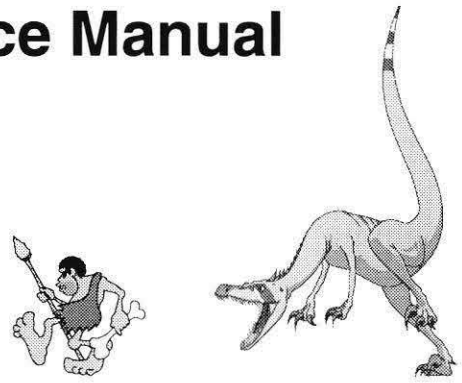

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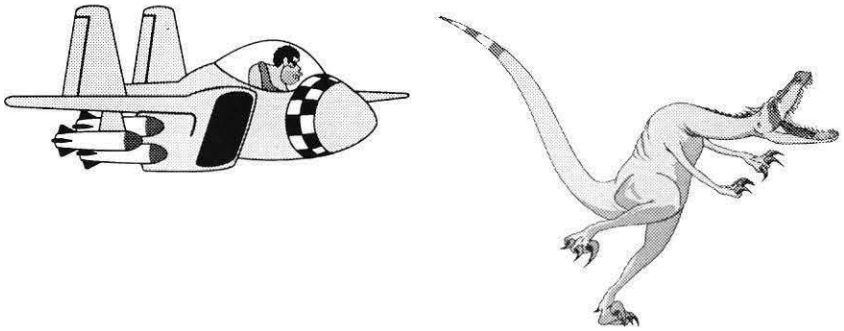

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"The Right to Bear Arms": Unbearable?

Editor:

When I received the February issue of the *Bar News* I responded immediately to the words printed prominently on the cover—"The Right to Bear Arms"—and believed I would be treated to some type of intelligent legal argument concerning the raging conflict between gun control and the Second Amendment. Instead I found the fiction piece by Commissioner Richey and wondered why it was printed in the *Bar News* and what kind of message it was intended to convey. Don't we get enough of this type of emotionally charged manipulation on television?

MARJORIE G. TEDRICK
Auburn

Editor:

Jack Richey suggests his fictional story, "The Right to Bear Arms," is a powerful statement on the issue of guns. Perhaps it is, but this reader and member of the bar suggests it is more akin to highly effective, emotional anti-gun propaganda.

Who wouldn't cry with the parents of a slain child? Who wouldn't throw a piece of iron into the sea if it would bring back a loved one?

Yet, let me respond with a couple of nonfiction statements about guns, hoping that the *Bar News* has room for reason as well as emotion. But first, *caveat emptor:* I am a criminal defense lawyer who believes the Second Amendment is just as necessary to citizens as the other nine amendments in the Bill of Rights.

Unlike the prosecutors in Richey's story, who certainly are fictional, real prosecutors these days virtually always charge the possessor of a gun with a crime in any event. I have witnessed this steady trend since (twice) trying *State v. Adams*, 31 Wn.App. 393 (1982). Attorney Tom Conom handled the intervening appeal. Adams, it may be remembered, was originally charged with murder for killing the gun-toting burglar who broke into his residence in the woods one night.

As does Richey, real life police and prosecutors seem to suffer from "weapon focus," rather than the need to get to the merits of the issue. Ask any lawyer involved with the criminal-justice system, prosecutor or defender, for true-life examples of the anti-gun bias in charging decisions—particularly in those instances where the defendant has no prior record whatsoever. Granted, it's only a trend, but it's not fiction.

When I first started practicing law in 1974, there was a young woman in Snohomish County named Judy Palmer. She wanted a divorce from her drunken, abusive husband. We discussed restraining orders and the like, but we resolved that court process was ultimately going to be valueless if her husband really wanted her. She signed the divorce papers we drafted, but later that night her husband killed her with a bow and arrow. Looking back, I should have advised her to buy a gun and defend herself, but I suppose my thinking was still more idealistic than realistic.

So, no more legal fiction for me, nor in my advice to clients. Thanks, but no thanks.

ROYCE FERGUSON
Everett

Editor:

I read with interest and dismay the (presumably fictitious) story, "The Right to Bear Arms" by Commissioner Richey in the February *Bar News*. While the scenario was tragic and believable, it was readily avoidable by the simple expedient of education. The implicit message that fault lay with the gun is not supported by these recitations.

The errors in this gun owner's possession and use of his weapon were many and egregious. Had the owner and the wife-narrator taken an NRA-sponsored gun safety course they would have been taught how to avoid just this sort of tragedy while retaining the weapon for its intended and valid purpose—self-defense.

We are told that the husband had always owned a shotgun, but apparently had no experience with handguns. The responsible gun owner ***knows his weapon***. Learn what the weapon can do and what it cannot. Among other lessons, education would have taught these people that a shotgun is a very effective home defense weapon.

The husband kept the loaded gun in a night stand drawer. The responsible gun owner will ***never store a loaded weapon. Store all weapons in a secured space***. Trigger locks, storage boxes and gun safes will protect the weapons against accident and theft, and when properly used impose minimal inconvenience to the owner when the weapon is needed. Further, any delay to prepare the weapon gives the user additional time to **think**.

The husband, on hearing a suspicious noise, tried to clear his house—that is, he used the weapon for offensive operations. For the average gun owner, ***the gun should be used for defense only, not for offense***. Most owners are not trained in offensive-combat techniques. Set a defensive perimeter: for example, the bedroom or adjacent hallway only. Defend that space and let the intruder range outside. Dial 911. In short, ***call for help and stay put***.

If the intruder knows you are in the house, ***let him know you are armed***. No burglar wants an armed confrontation—he only wants your TV.

The husband shot at an undefined target in a dark room. If you must shoot, ***shoot only at a known target***.

The husband shot in fear, or, perhaps, for revenge, but without need. ***Shoot only in defense***, that is, when you have a reasonable fear of imminent death or serious injury. Defend your family, not your stereo.

If this family had taken any of the readily available gun safety courses sponsored by the NRA or similar organizations they would have been taught all of these points. Had the family in this story exercised *any one of them*, the tragedy could have been avoided.

The National Rifle Association has always advocated aggressive and widespread gun education. Safe and responsible gun ownership can be achieved by education. Gun ignorance can and will promote the results illustrated in Richey's story. The Draconian effort to outlaw gun ownership by the law-abiding citizen is unnecessary and unwarranted, both by the scenario presented by the story's author and by unlawful use of guns by criminals.

ROBERT H. RAYMOND
Olympia

Editor:

I read with dismay Jack Richey's article, "The Right to Bear Arms." While containing some useful information regarding the psychological after-effects of a shooting, it was little more than an undisguised effort to belittle the constitutional right to bear arms.

Your readers would have been better served by an attempt to highlight the errors which led to tragedy, i.e., the son's decision to sneak into the house in the middle of the night and the father's carelessness in "shooting first and asking questions later." Instead, the story avoids the issue of responsibility, and in the end the "real" perpetrator—the handgun used in the shooting—is executed by drowning and buried at sea in Puget Sound, while the surviving mother contemplates resuming her sex life.

Mr. Richey threw away the opportunity to point out that the right to bear arms is the right of *responsible* gun ownership, not the right to act carelessly or with indifference. Instead, he merely adds his voice to the currently fashionable premise that guns are inherently "bad" and deserving of destruction.

Articles of this nature, though mildly interesting, are more appropriate to the mainstream press and supermarket tabloids. Readers of the *Bar News* expect, and are entitled to, more substantive essays.

DAVID J. AMESBURY
Minneapolis

Editor:

I just read Jack Richey's "The Right to Bear Arms" and noted that it contains the usual politically correct nonsense uttered by silly people schooled in a materialistic philosophy that says a man's character is of little import; it is what object he is near

that counts. I could just as easily write a story in which a four-year-old child was saved from being raped by an Uzi-toting redneck who listens to Rush Limbaugh.

The distressing thing is Commissioner Jack Richey, sworn to defend and protect the Constitution, probably has already written off the Second Amendment. What the good commissioner fails to realize is that the welfare/social worker state developed over the last sixty years has given rise to some very unpleasant young people who settle their disputes by murder. Rather than face the fact that welfare economics devastate the character of man, that families are more important than public institutions, and that this nation's traditions and values do have some meaning, Jack Richey instead places the false cause of evil on pistols. It is his assumption, as is the assumption of other gun-control dunderheads, that the problems would be solved if we only got rid of guns. Mr. Richey seriously believes that if guns were outlawed, those despicable hoodlums and the gangs would immediately go about unarmed and settle their arguments by catapulting marshmallows back and forth, and further, that the drug dealers would settle their turf battles by well-reasoned syllogisms. Mr. Richey believes that firearms are evil and not the gruesome children who daily use firearms for murder and mayhem.

If Commissioner Jack Richey is so against firearms, he should refrain from reaping even a vicarious benefit from their existence in our society. I suggest that Commissioner Jack Richey put signs on the front and rear of his house—large, bold letters so all can see, stating that "This house is not defended by firearms, nor are firearms ever present in this house. And should you come to this house and burgle, rob, rape, murder or assault, we will use no violence but will ensure, should you be caught, that you will get good counseling." In that way, Commissioner Richey and the other simpletons in King County who have made that once-proud county an unlivable urban joke can show the rest of us by their example the folly of owning firearms and how stupid the Second Amendment is.

I know that I am not as sophisticated as the learned commissioner in that, without outside help from brilliant university professors, I could never read the Constitution and conclude that it dictates abortion on demand and prohibits the private ownership of firearms. I have never seen any point in giving heroin junkies clean needles so they can stop worrying about AIDS. Although I do not know very much about the world, I do have an abiding conviction that anyone who compromises or gives up a constitutional right for the perceived good of the order is a fool.

DOUG OWENS
Anacortes

Editor:

After I read Jack Richey's piece, "The Right to Bear Arms," I read it again. No, not because it was informative, nor illuminating, but because I thought maybe I had missed something, a clue perhaps, as to why such an article was published in a Bar publication whose very masthead declares it contains news.

Mr. Richey's article (an admitted work of fiction) has no place in the *Bar News*. Obviously Mr. Richey has a position on firearms and gun control. What may come as a surprise is that there are many members of the Bar, including myself, who do not share Mr. Richey's views.

If the *Bar News* is going to become a forum for personal beliefs then I truly look forward to the "equal time" space which will be provided to detail true stories where firearms have been effectively used to thwart real, not imaginary intruders. If that is not your intent then I sincerely wish contributors and the editorial board would use a medium other than the *Bar News* to air their individual beliefs.

DONALD KRESSE, JR.
Yakima

Anarchic, Maybe, But a Great Climate

Editor:

I enjoyed Mr. Parsons' article, "Do They Have Laws in the South Pacific?" in the *Bar News*. Having spent two years practicing law in the Commonwealth of the Northern Marianas Islands' (CNMI) neighbor, the Territory of Guam, I have some experience with the CNMI's legal system.

Parsons' belief that the CNMI courts tend to subordinate the law to culture is well-founded. In fact, the CNMI—legally speaking—is the Bosnia of the Pacific.

As Parsons states, Saipan is an attractive place to visit. Foreign developers, principally Japanese, have invested millions in resorts and golf courses. Now there is a good chance that because of the courts, these investors will lose everything.

The CNMI Constitution has adopted most of the provisions of the U.S. Constitution, including the equal protection and due process clauses. However, under Article XII of the CNMI Constitution, only those of CNMI "descent" may own property in fee simple. Therefore, the foreign developers have entered into vari-

ous non-fee long-term property interests (devised by creative lawyers) with the local landowners in order to develop property. In many of these transactions, the locals were modestly compensated. Consequently, they have watched their property values increase exponentially while most of the benefits have inured to the developers.

Disliking the way things have turned out, many of the locals have sued foreign developers to have declared void, *ab initio*, transactions freely entered into. The CNMI courts have tended to side with the locals. However, what is tragic, comic, or visionary—depending on one's point of view—has been these courts' attempts to justify their decisions on "legal reasoning" while ignoring due process and equal protection. As one dissenting Justice has stated, in citing Article XII and holding for the locals, the courts have been "lured . . . into errors of logic and analysis, including circular reasoning and unjustified adoption of legal fictions . . .," see *Ferreira v. Mafnas Borja*, No. 90-047 Slip Op. at P. 23 (N.M.I., Feb. 18, 1992). The courts would be on much firmer ground if their decisions were based on the principle that the people of the CNMI will not have their land or culture exploited by foreigners. See, *Analysis of the Constitution of the Northern Marianas Islands, approved by the Delegates to the Northern Marianas Constitutional Convention on December 6, 1976.*

Whether the judicial activism of the CNMI courts preserves the integrity of the CNMI people or culture or "unleash[es] chaos into the Northern Marianas land title system and economy", *Aldan-Pierce v. Mafnas*, No 89-003, Slip Op. at p. 21, 35-36 (N.M.I., July 5, 1991) remains to be seen. In the meantime, the CNMI offers opportunities for those lawyers more interested in "flying by the seat of one's pants" than practicing law.

Incidentally, since the CNMI is located between the Equator and the Tropic of Cancer, it is more properly part of the "North" Pacific.

LENHARDT S. STEVENS
Portland

On the Image of Lawyers

Editor:

The February *Bar News* (page 14) quotes ABA president R. William Ide 3d's acknowledgment that the legal profession is "inaccessible and unaffordable to most people." In the same issue (page 11), our president, Paul Stritmatter, proposes to make our profession less affordable to all clients who pay for legal services, even those who cannot easily afford to pay.

Proponents of volunteer legal work must answer this question: "Are lawyers who volunteer their time going to forego all the income lost volunteering, or are they going to make up the difference from their other clients who pay, even those who cannot easily afford to pay?" Paul Stritmatter's answer apparently is to have paying clients pay more. This is apparent in his suggestion that these clients should pay for longer waits in court so the volunteer matters can be heard first.

This is unfair to "most people" and does not address the problem it is supposed to cure. The pro bono furor attempts to cure our profession's poor public image. But we must remember that our image derives from most people who pay for legal services, and that our image will worsen as those services get more expensive.

The cure is to improve our image by keeping legal services as accessible and affordable to most people as we can. This means that we must avoid groundless "defenses," unnecessary computer-spewed discovery, court hearings when stipulations could be given and suffice, sending associates without settlement authority to court settlement conferences, failing to return telephone calls to clients (forcing those clients to other lawyers to get the attention of their own lawyer), etc., etc.

Expense-conscious, image-enhancing representation of "most people" is more important and affects more people than volunteering. It should be the focus of the Bar, rather than pressure to volunteer.

MARILYN SCHWAM
Moscow, Idaho

Editor:

While several state regulatory systems for lawyers are in the forefront of efforts to protect the client and the public, lawyer discipline systems in other states must move forward to revise their procedures to better serve client and consumer interests.

An ABC News "Prime Time Live" segment February 10 highlighted egregious examples of failures within a system of regulation that has recognized its problems and taken on responsibility for improving itself.

Two years ago, the ABA adopted the report of the McKay Commission which held nationwide public hearings and listened intently to the public's frustration with the lawyer discipline system's unresponsiveness to consumer concerns. The result was the creation of a model for an expanded system of lawyer regulation that addresses both the disciplinary system itself and a wide variety of related consumer concerns.

In the area of disciplinary proceedings, the McKay Report recommended to all states that disciplinary complaints should be made public as soon as charges are filed and served upon a lawyer (already the case in 33 states). The McKay Commission also recommended that all state lawyers disciplinary hearing panels and disciplinary boards have at least one-third public (nonlawyer) representation (now the case in more than two-thirds of the states); that states develop time standards to expedite the disciplinary process; and that courts insure adequate funding and staffing of lawyer discipline agencies.

The McKay Commission Report shared the program's concern with the system's flaws. The profession has recognized that there are problems and is responding to them. Nevertheless, as long as there is one client with an unresolved complaint, we must continue our work to perfect the system.

McKay's expanded system includes vital client-oriented programs that are meant to deal effectively with the 90 percent of client complaints that represent real client problems but are not appropriate for discipline. It calls on all states to replicate effective programs that have been developed— either as models or as successful operations in states such as California and New Jersey.

Because a large percentage of complaints relate to lawyers' fees, and not to actual disciplinary offenses, perhaps the most important of the McKay recommendations calls for adoption of mandatory fee arbitration procedures by all states. I personally urge every state to implement that recommendation.

Another important recommendation calls for programs for mediation of client-lawyer disputes. The Report also calls for state-by-state development of lawyer-oriented programs that ultimately insure better service to clients: lawyer practice assistance programs and lawyer impairment counseling, financial record-keeping rules and random auditing of lawyer trust accounts.

It is incumbent upon each state's highest court—wherein lies the ultimate responsibility for lawyer regulation—to press for consideration and implementation of the McKay Report at the earliest possible date. The legal profession's commitment to careful and honest self-regulation is being challenged.

The American Bar Association is committed to following up on the work done by the McKay Commission by urging the implementation of the Commission's recommendations. Drawing on the experience and expertise of more than 250 judges, disciplinary counsel and leaders of state and local bar associations, the ABA convened a national "Summit on the Profession" in November, 1993 to discuss broad-scale implementation of state developed consumer-oriented initiatives as well as the new initiatives recommended in the McKay Report. The Summit emphasized the need for the judiciary to work with state bar associations to re-evaluate and upgrade current lawyer regulation systems.

If the legal profession is to retain public trust and respect, our system of self-regulations must demonstrate that consumers and the public are our top priorities.

R. WILLIAM IDE 3d
President, American Bar Association
Chicago

. . . And (Shock! Horror!) A Satisfied Reader Turns Up

Editor:

As a WSBA member serving as an Air Force judge advocate, I wanted to let you know that I truly enjoyed the February issue of the *Bar News*.

I appreciated President Stritmatter's open letter to out-of-state WSBA members. In all of my response to the membership survey, I tried to express my frustration with the "taxation without representation" I face each January when I send in my annual dues. The only service I get from the WSBA is the right to practice law and the monthly issue of the *Bar News*. I am too far away to attend CLEs and can't afford to attend the annual conventions (thank you, Alva C. Long, for restoring fiscal sanity to those affairs). And to add insult to injury, I don't have any representation on the Board of Governors. I hope that the Task Force on Governance does follow through and provide us with a meaningful voice on the Board.

Colonel Lorenz's report on Somalia provided a fascinating insight into the varied tasks judge advocates in the military perform. The efforts of his task force to help Somali jurists to restore the order of law to Somalia are inspirational. I can only hope that someday the warring parties will discover that cooperation is more productive than killing, and the task force's efforts will not have been in vain.

Finally, Jim Parsons' story on the practice of law in the Northern Marianas satisfied my curiosity about the job ads I used to fantasize about when I was studying for the bar exam. I'm not sure I can handle the espresso-induced frenzy of Seattle after I leave the Air Force. Saipan sounds real good to me.

EDWARD N. RAMRAS
Major, USAF
Wright-Patterson Air Force Base, Ohio

The Union Debate

by **Paul L. Stritmatter**
WSBA President

Paul L. Stritmatter

The most difficult and divisive issue faced by the Bar recently has been whether or not Bar staff employees should be authorized to hold an election to decide whether they should be represented by a union. It is an issue that has divided the Board, divided the staff, without doubt divided the membership, and has been the subject of considerable debate and consternation.

The genesis of the issue apparently goes back to when John Michalik left the Bar Association as executive director and Dennis Harwick became the new executive director. At that time, Dennis Harwick discovered that staff employees were working a 35-hour week. In his position as manager of the staff, he made a decision that all staff employees should work a 40-hour week. His initial actions in 1991 to impose a 40-hour work week without an increase in pay met with some objections, which resulted in a phasing-in of the policy. The executive director of the Bar Association then, as now, has been delegated by the Board the duty and responsibility to make decisions relating to staff.

Shortly after this issue arose, a core group of staff employees attempted to organize the staff and approached the United Food and Commercial Workers Union Local 1001 and asked it to generate a unionization campaign at the Bar. Staff members were approached by union organizers and apparently a significant number of the staff, which constituted a majority at that time, signed cards for a unionization effort.

A mandatory Bar Association is truly *sui generis* in this area. The National Labor Relations Board has no jurisdiction over employees of a bar association. Likewise, the Public Employment Relations Commission (PERC), which governs public employees also has no jurisdiction. As a result, the union approached the Board of Governors in 1991 and asked the Board to agree to recognize the right of the union to represent the staff employees. After considerable discussion and debate, by a vote of 7 to 3, the Board voted to deny the request of the union and the staff.

The union took its request to the Supreme Court. The union proposed a rule to the court which would have obligated the Bar Association to recognize the union. The Supreme Court, finding this to be a controversy not properly presented to the court, refused to adopt the rule. Thereafter, the union went to the Legislature. During the 1993 legislative session, a proposal that would have brought Bar staff within the purview of PERC jurisdiction was proposed. Ultimately, this proposal was rejected, but a resolution to the Supreme Court was passed in which the Legislature strongly encouraged the adoption of collective bargaining for Bar Association employees. According to the resolution, the Legislature was mindful of the separation of powers and responsibilities among the branches of our state government.

I was approached by the attorney for the union in December 1993 and asked for the opportunity to address the Board regarding a joint proposal to the Supreme Court for a court rule regarding the issue. I gave the union that opportunity, and while the matter was being discussed, the Supreme Court acted on its own, amending GR 12 to authorize the Board of Governors to collectively bargain with the employees of the Bar Association.

The union again requested, and was given the opportunity, to address the Board of Governors on this subject. Simultaneously, the union went to the Legislature and sought passage of a bill which would place staff employees under the jurisdiction of PERC. The bill passed both houses of the Legislature. However, the bill was vetoed by the Governor at the request of the union and the prime sponsor. The Bar Association is clearly not a state agency or state department. *Graham v. Bar Association*, 86 Wn.2d 624 (1976). The Court has ruled that the Bar Association is responsible to the Supreme Court, not to the Legislature, and that the doctrine of separation of powers forbids the exercise by the State Legislature of the power over the Bar Association, while the case of *Zylstra v. Piva*, 85 Wn.2d 743 (1975) recognized a dual status for juvenile court employees and held they could bargain over wages because they were paid by the County. Here, the Bar staff is paid from the dues paid by the lawyers of the state of Washington. Accordingly, the Legislature does not have the authority to require the Bar Association to recognize the union. Any act passed by the Legislature with such a requirement would be unconstitutional as a violation of the separation of powers doctrine. However, the issue was left squarely in the lap of the Board of Governors as to what action should be taken.

There were many arguments posed by both the union and the management of the Bar Association during their presentations to the Board regarding whether or not the Board should recognize the right of collective bargaining for Bar staff. The most compelling for the union may be the simple right of employees to bargain collectively if a majority wish to do so. This is simply a fundamental right that should be recognized as a matter of public policy. Most, but not all, employees in this state enjoy that right. Thus, our employees simply ask for the right to vote. Management's most compelling argument may be that the only state bar to have a unionized staff is that of the state of California. This has been a result of the Legislature's taking over the governance of the bar association in that state. The dues for lawyers in California are just under $500 annually. The unionization of the staff is considered to be one of the significant factors with regard to those high dues. While the state of Washington has 58 nonmanagement staff members for an association of 18,500 members (a ratio of 1 to 319), California has 809 staff members for 137,100 members (a ratio of 1 to 169). California bar leaders privately

report that having to deal with the union has created a mess for their bar association.

The union representatives say they do not want any campaigning by either side before an election. Management counters that the union has been campaigning for three years and that management has done nothing to campaign and should be given the right to do so. The union representatives say they will abandon the right to strike if recognized. Management points out that under PERC, there is no right to strike. The union says it would not be a good idea to submit this issue to the vote of the membership of the Bar. Management counters that the membership has a right to vote if a referendum is filed. The union says it has no idea of the financial impact of unionization. Management says that collective bargaining would have a significant financial impact on the Bar Association.

The union says that a staff vote for collective bargaining is not a reflection of current management. Management responds that the union has vigorously attacked current management in its campaign over the last three years. The union says that job security and just-cause termination are more important issues than wages for most. Management counters that a committee of nonmanagement employees, along with the executive director, drafted a grievance policy that was made part of the Employee Handbook. That grievance committee consists of a majority of nonmanagement employees, and assures a fair hearing regarding any issues of termination. The union says that unionization will not necessarily lead to labor problems. Management says that a union will forever change the relationship between management and staff, will create a divisive and hostile atmosphere and will result in the union's seeking input in how to govern the Bar Association.

I have been approached by members of the staff both strongly in favor of a union and strongly opposed to a union. I have been contacted by members who are incensed that the Board has failed to recognize the rights of our employees to organize. I have been contacted by other members who strongly advocate that as the managers of the Bar, it would be ruinous for the Board to recognize the union. These members argue that the presence of a union would start down the path of an adversarial relationship with the staff. They say that there is nothing that the union can do that the Bar cannot do itself.

The Board has hired a human resources consultant to gather information from the staff about any issues of concern and recommend how to deal with those concerns. The Board has gone on record opposing the legislation because it violates separation of powers. The Board has heard presentations by the staff, the union and management on what factors are involved which should be considered.

The current Board has not ducked the issue. The Board has earnestly tried to get all the information possible to make the best decision, recognizing it has duties to the membership, the staff, the court and the public. Ultimately, the Board voted 7 to 4 in favor of allowing a secret ballot election on whether our employees may be represented by a union to collectively bargain terms of employment without a right to strike. The terms and conditions of the election are being negotiated. The election will be conducted in the near future. Most of the Board members who voted for the election stated that they believed a union was not a good idea, but felt that our employees should have the right to make that decision for themselves. We will await the outcome of the election.

"One Client at a Time" or "It's the Client, Stupid"

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

Almost everyone has heard about the ABA survey on the public image of lawyers. It has made great fodder for columns like this. To me, the most disturbing finding of the ABA survey was that the more people knew about lawyers and the legal system, the lower their opinion was. This challenged the long-held belief that if people only understood what we do, they'd appreciate us more.

Client satisfaction is a significant part of the problem. At a meeting last November, Paul Stritmatter and I joined bar leaders from across the country to discuss the public image issue. One of the proposed solutions was an emphasis on helping lawyers improve their client relations skills. The ABA prefers to use the term "one client at a time." My discussion group was more pithy—"it's the client, stupid"—our version of the hackneyed political phrase "it's the economy, stupid."

The client relations problem often lands on the doorstep of the WSBA in the form of a client inquiry or complaint. Although the following list of the ten most common discipline complaints was developed by the State Bar of California, Lee Ripley, Washington's chief disciplinary counsel, assures me that it is the same here. What follows is a list of the ten most common disciplinary complaints and the generic answer that the Legal Department of the WSBA would give to someone raising such a question.

Ten Most Common Disciplinary Complaints	**The WSBA's Generic Answer to Each of the Ten Most Common Disciplinary Complaints**
1. My lawyer won't return my phone calls.	We suggest that you write your lawyer a letter outlining your questions and concerns and asking for a phoned or written response. Keep a copy of the letter, and either send it by certified mail or personally deliver it to insure the lawyer received your letter. If you do not receive a response, you can consider either going to the lawyer's office to obtain information or contact us again about filing a grievance.
2. Can you tell me if there have been any complaints against my lawyer?	According to Washington Supreme Court rule, we can tell you a lawyer's current membership status and whether he/she is or has been the subject of a public disciplinary proceeding. We can't tell you about complaints against the lawyer unless formal disciplinary charges have been approved by the Disciplinary Board.
3. My lawyer is doing _____. Is my case being handled properly?	We are a licensing agency charged by the Washington Supreme Court with investigating grievances against lawyers. We can't give legal advice. You have a right to discuss your concerns with and obtain answers from your lawyer. You also have the right to seek a second opinion if you remain dissatisfied.
4. I fired my lawyer and now the lawyer won't give my file back. Can you get it for me?	There is a WSBA ethics opinion that says a lawyer may not hold on to a client file if that hurts the client's rights. We can send you a copy of the ethics opinion for you to discuss with the lawyer. If you file a grievance against this lawyer, we will work with the lawyer to insure that the lawyer complies with his/her obligation under that ethics opinion.
5. My lawyer's bill is too high. What can I do?	If you have not yet done so, you should discuss this problem with your lawyer. If you don't like the results of that discussion, the WSBA offers a voluntary binding fee arbitration service where, if both the client and the lawyer agree, the reasonableness of the lawyer's fee can be resolved.
6. My lawyer won't respond to my letters.	You can write one more letter asking that the lawyer contact you and indicating you will file a grievance with the WSBA if the lawyer fails to respond. Keep a copy of the letter and send it by either certified mail or personally deliver it to insure the lawyer receives it. If you get no response, or if you don't want to send another letter, you can file a grievance with the WSBA. We will contact the lawyer and ask the lawyer to contact you. If you still get no response, we will conduct a further investigation.
7. My case was settled, but I haven't received my share of the settlement. How long should it take?	Lawyers must wait for deposits to clear the banking process before disbursing funds to clients. This usually takes a week to 10 days. If you have waited longer than that, you should consider filing a grievance. Since lawyers are required to promptly transmit a client's funds, the WSBA considers this a serious issue.
8. What can the State Bar do to help me with my lawyer?	As a licensing agency, our ability to help you is limited. We have a brochure explaining both the lawyer/client relationship and lawyers fees. We can also provide you with a mechanism for possible resolution of fee disputes. But we can't give you legal advice. We can only see if the lawyer's conduct violates the Rules of Professional Conduct and apply the Rules for Lawyer Discipline if it does.
9. My lawyer abandoned my case. Now what should I do?	If you can't find your lawyer, or your lawyer refuses to do any further work for you, you should take immediate steps to protect your rights, including getting a new lawyer. If you wish to file a grievance against your lawyer, you can write the WSBA a letter or you can return the grievance form we will mail you.
10 My lawyer wants to settle; I don't. The lawyer will withdraw if I don't settle. Is that legal?	The decision to accept a settlement is yours and yours alone. Your lawyer must accept your decision. If the lawyer believes that your rejection of a settlement creates a conflict between your interests and his or her ability to represent you, he or she should withdraw from further representation. If the lawyer's withdrawal will damage your case, your lawyer has a duty to continue the representation.

As you can see, most of these problems are caused by a failure to communicate with the client. One client at a time. Don't ignore the client or the problem. ***Talk to the client.*** It will only get worse.

Judicial Allocation of the Federal Income Tax Child Exemption in Washington State

by **Daniel M. Warner**

Allocation of federal income tax child-dependency exemption is frequently a contentious issue in dissolution and post-dissolution proceedings. The theory behind the exemption is that persons burdened with the responsibility of paying for bringing up children should not be unduly taxed—that the resources available for child support be maximized.[1]

Pre-1984 Rules

Before 1984, a non-custodial parent was entitled to claim the child exemption if he based the claim on a decree or written agreement allocating the exemption to him and he paid at least $600 for the child's support, or if he provided at least $1200 in support and the custodial parent could not clearly establish that she provided more. [2]

The pre-1984 rules proved unworkable:

> The present [pre-1984] rules governing the allocations of the dependency exemption are often subjective and present difficult problems of proof and substantiation. The Internal Revenue Service becomes involved in many disputes between parents who claim the dependency exemption based on providing support over the applicable thresholds. The cost to the parties and the government to resolve these disputes is relatively high and the government has little tax revenue at stake in the outcome. [3]

The 1984 Amendments

In 1984 Congress amended section 152(e) of the Internal Revenue Code ("the Code") to allow the non-custodial parent a claim of dependency exemption only if the custodial parent signed a written waiver surrendering the right to the claim. "Thus," reported the Congressional committee, "dependency disputes between parents will be resolved without the involvement of the Internal Revenue Service. [4] IRS form 8332 is the one-page waiver; it allows the custodial parent to release her claim to a child's exemption for the "current year" or for tax years in the future, including, as the form's notes provide, "for all future years." No longer are divorced parents confronted with the task (or opportunity) of showing how much they contributed to the child's support in order to get the exemption; the custodial parent always gets the exemption, unless she has signed a waiver or the court has allocated it for her. The new rules "establish a simple, bright-line test for the IRS to use." [5]

Problems with the New Rules

While the new rules obviate arguments over which parent provided sufficient support to trigger award of the exemption, all is not settled by this "bright line test," because there is economic sense in awarding the exemption only to the parent with the larger income. So two new problems arise for ex-spouses and their practitioners. First, can the court in a dissolution proceeding award the noncustodial parent the exemption when the custodial parent has not signed the waiver (i.e., can the court assign the waiver)? Second, if the custodial parent has signed the waiver for some years in the future or for "all future years," can the court reallocate the exemption upon a showing of changed circumstances while the waiver is in effect (i.e., is the waiver irrevocable for its duration)?

Can the court award the exemption as part of the dissolution decree?

Washington law holds that a court may award the exemption as part of the dissolution decree. The Washington State Court of Appeals, Division 3, answered the first question in *Re the Marriage of Peacock*. [6] A decree of dissolution was entered in March of 1988; in the decree, the court awarded custody of the parties' child to Mrs. Peacock, but awarded the federal tax exemption to Mr. Peacock, conditioned on his remaining current on support payments. [7] Since Mrs. Peacock had not signed the waiver, she argued that the court erred in granting the exemption to her ex-husband. The court noted RCW 26.09.050, which provides:

> In entering a decree of dissolution of marriage . . . the court shall . . . make provision for the allocation of the children as federal tax exemptions.

And the court found that the 1984 Code amendments were designed to resolve frequent and time-consuming arguments with the IRS over which parent was entitled to the exemption (based on who provided support over the applicable thresholds), not to interfere with "domestic relations issues in which the states have particular interest." [8] The court concluded: "RCW 26.09.050 is not preempted by federal law." This is the same conclusion reached by most courts considering the issue. [9]

IRS 1040 Instructions imply the same ability of courts to award the exemption in decrees.

Interestingly, the IRS itself, in its Instructions to Form 1040 has arrived at the same result (the instructions, of course, are not law and are not binding on the IRS). For tax year 1987, the instructions provided that a noncustodial parent could claim the exemption only if the custodial parent signed Form 8332, or if a divorce decree that was in effect before 1985 stated that the noncustodial parent should take the exemption. This is in accordance with the 1984 Code amendments. For 1988 (and these Instructions have remained unchanged), the following is provided for taxpayers who wish to claim non-custody children:

Attach Form 8332, Release of Claim to Exemption for Child of Divorced or Separated Parents, or similar statement. If your divorce decree went into effect after 1984 and it states that you can claim the child as your dependent, you may attach a copy of the following pages from the decree or agreement instead of Form 8332:

(1) Cover page (write the other parent's social security number on this page), and

(2) The page that states you can claim the child as your dependent, and

(3) Signature page showing the date of the agreement. [10]

The requirement is not that the signature page show the consent of the custodial parent. A decree entered by default or accepted by the custodial parent without full knowledge of its terms or of their importance might well contain an assignment of the exemption to the noncustodian. The IRS instructions allow this, but the regulations do not. [11] The instructions, then, follow the thinking of the majority of courts in allowing a court-assigned exemption.

Duration of the Award to Noncustodial Parent

In *Peacock*, the custodial parent had not signed the waiver surrendering her right to the exemption; the court of appeals affirmed the trial court's allocation of the exemption to the noncustodial parent even absent a signed waiver. When the court allocates the waiver, it should be for one year only; its annual renewal—since the waiver covers the previous year—is conditioned on the noncustodial spouse having met the support obligations for the previous year. [12] If the child support payments were not made, the exemption reverts to the custodial parent because the noncustodial parent would refuse to sign the waiver for the tax year passed.

Reallocating Waivers

Can the court reallocate an executed waiver? The second question posed above, can a state court reallocate the exemption in the face of an executed waiver, is more problematic because of the IRS's contention that the waiver is "irrevocable." As mentioned above (note 15) there are good reasons why a waiver might be executed for several years in the future or for "all future years." Here it is argued that reallocation of such a waiver is proper.

The Commissioner of the IRS has successfully argued that the custodial parent cannot repudiate a written agreement granting her husband the exemption even if she claimed "she was under extreme pressure when she signed" it. [13] This argument, however, is untenable for all cases. It should not prevail in the face of ordinary contract law nor when considered in terms of the purpose of the 1984 Code amendments.

The application of familiar contract law could make void a written waiver of the exemption: Duress, undue influence, and so on. No further discussion of these

principals will be undertaken here.

Courts have broad discretion to modify divorce decrees, even absent voidable causation.

General Rule for Modification of Dissolution Decrees

In dissolution cases, where the welfare of children is at stake, courts have even more latitude to modify the parties' agreements than they do under regular contract law. The Washington Supreme Court has stated that the court's power to modify a judicial decree regarding alimony and support could not be restricted by an agreement between the parties, even if that agreement is incorporated in the decree, unless the alimony and support payments are part of the division of property.

Traditional Rule Unchanged

While the 1973 Dissolution Act made a small inroad on the courts' authority to modify maintenance awards, [14] the traditional rule [15] that courts could modify divorce decrees as to child support is unchanged.

In *Re Marriage of Olsen*, the Court of Appeals opined:

> We are convinced that under Washington law a trial court is never absolutely bound to enforce an agreement between a husband and wife regarding support payments and may, under appropriate circumstances, [change] the obligation of the spouse who promised to make support payments. [16]

Regarding child support provisions, again, the Washington court of appeals has held that "a decree drawn in compliance with the statute may always be modified if circumstances warrant." [17] And more sweepingly, that "the power of the trial court to modify provisions of the decree pertaining to the children's welfare is inviolable." [18] At stake is society's over-arching "public interest in the welfare of the children." [19]

Significance of the Dependency Exemption

As noted above (footnote 4) the dollar amount in issue in these cases may not be great, [20] and by itself probably would not bestir the court to consider reallocation of a validly signed waiver of the child-support tax exemption. However, as part of a general reassignment of financial obligations owing to the children of divorced parents due to changed circumstances, the tax exemption should be taken into account. [21] Automatically awarding the exemption to the custodial parent without regard to her income would not inure to the welfare of the children. If, to take the extreme case, the custodial parent had no income and the noncustodial parent considerable income, such an award would be unreasonable. Similarly, if the custodial parent had waived the exemption, and then her financial circumstances changed or she remarried so that the exemption would benefit her more than her ex-husband, it would be reasonable, as part of a review of support requirements, for the court to consider reallocation of the exemption. [22] The purpose and benefit of shifting the exemption is to maximize tax savings and apply the savings to higher child-support award.

State domestic relations law argues in favor of reallocation of the dependency waiver in appropriate circumstances. Such reallocation, however, would be impermissible if the IRS's contention that the waiver is "irrevocable" preempts state law.

Federal or State Law?

Federal Preemption does not apply. Whether a state court may consider reallocation of a validly signed waiver as part of a modification of the decree depends upon whether such consideration is precluded by federal preemption. The Peacock court, in determining that it could assign the waiver *ab initio*, reviewed the law of federal preemption as interpreted by the Washington courts. [23]

Congressional intent is determinative in questions of federal preemption of state law. In Washington there is a strong presumption against finding preemption. Preemption may be found only if federal law "clearly evinces a congressional intent to preempt state law," or there is such a "direct and positive" conflict "that the two acts cannot 'be reconciled or stand together . . .'" Domestic relations is an area particularly with the authority of the states: insofar as marriage is within tem-

poral control, the states lay on the guiding hand. "The whole subject of the domestic relations of husband and wife, parent and child, belongs to the law of the states and not to laws of the United States." Federal courts repeatedly have declined to assert jurisdiction over divorces that presented no federal question. On the rare occasion when state family law has come into conflict with a federal statute, this Court has limited review under the Supremacy Clause to a determination whether Congress has "positively required by direct enactment" that state law be preempted. A mere conflict in words is not sufficient. State family and family-property law must do "major damage" to "clear and substantial" federal interests before the Supremacy Clause will demand that state law be overridden.

The United States Supreme Court has found implied federal preemption where state law at issue conflicts with federal law, either because it is impossible to comply with both or because state law stands as an obstacle to the accomplishment and execution of congressional objectives. [24]

Simplification Sought

As noted above, [25] the Congressional objective for adopting the Code amendments regarding disposition of the exemption was to reduce congestion in federal tax court caused by arguments over which spouse should get it. There was no Congressional interest in interfering with the very strong, indeed "inviolable" authority our state courts assume over provisions of divorce decrees affecting the welfare of children. So long as arguments about which spouse gets the exemption do not clog the federal system, there is no federal interest in this issue and the state is free to decide as it sees fit. "It is a matter of indifference to the IRS which parent receives the exemption, so long as only one parent claims it and the forms are in order." [26] It has also been observed that "the Amendment [section 152] itself contains no declaration that the declaration [waiving the exemption] be signed voluntarily and does not prohibit state courts to order the custodial parent to sign the declaration." [27] By this analysis there is no conflict with federal law at all; the analysis, however, rather strains the normal conception of a "waiver" as something voluntary.

Although Washington courts have not ruled on this precise question, whether the trial court should have discretion on a petition for modification to reallocate the exemption, the matter was specifically addressed in *Ford v Ford*. [28] The parties were divorced; in an order on motions for rehearing the trial court ordered the former wife to assign the dependency exemptions to her ex-husband. The Florida District Court of Appeals held that such an order was appropriate, using the analysis described here. [29]

Enforcing the Order Reallocating the Exemption

In the face of recalcitrance, a court in Washington will issue an order directing execution of the necessary IRS form. The order will be enforced by a contempt citation, or by having a representative of the court execute the form. "If a court of equity could not enforce its decrees, 'obviously the court would be rendered impotent and we would have neither law nor order but everyone could do as he or she

pleased. Of course, such a situation cannot be countenanced by the courts for a moment.'" [30]

The Unanswered Question

The unanswered question, and the solution: Following a step beyond the question of contempt proceedings in state court, assume a court, either in the decree or by reallocation after the decree, does in fact assign the exemption to the noncustodial parent. That parent then attached the involuntarily-made declaration to his or her return. Meanwhile the custodial parent also claimed the exemption in the filing. The Tax Court would again be confronted with the vexing problem Congress sought to avoid for it: which parent should get the exemption. Interestingly, this situation has not presented itself to the Tax or federal courts. Obviously Congress could clarify the law; it has not done so. Obviously, too, the Supreme Court could interpret the law to settle whether state courts are preempted from allocation or reallocation of the exemption; it has declined the opportunity to do so. [31] Absent definitive federal solutions, the states, as noted above, have generally allocated and reallocated the exemption.

Conclusion

Before 1984, the divorced spouse who provided more support was entitled to the federal child-support income tax exemption. Because cases in which determining who provided more support were hotly argued by ex-spouses (and with little impact on the revenue collected) and were clogging the federal Tax Court, Congress in 1984 amended the law to allow the custodial parent (most often the ex-wife) the exemption unless she signed a waiver giving it to her ex-husband. However, grant of the exemption to the custodial parent might make no economic sense and could inure to the economic harm of the children. Accordingly most jurisdictions have held that even absent a signed waiver a court may award the exemption in a divorce decree. The IRS's assertion that an executed waiver is "irrevocable" is untenable: not only might such a waiver have been signed under conditions which would render any contract voidable, but courts have broad discretion to modify divorce decrees to protect the welfare of divorced parents' children. The court may reallocate the dependency exemption notwithstanding federal law requiring a signed waiver: the matter is of peculiar state-court concern, and the purpose of federal law is not frustrated by the exercise of such state-court discretion. The state courts—and Washington, insofar as the matter has been decided by a Washington court, have held there is no federal preemption. No clarification has been forthcoming from either Congress or the Supreme Court.

Footnotes

[1] A discussion of the history of the child-support exemption, *see* David J. Benson, "The Power of State Courts to Award the Federal Dependency Exemption Upon Divorce," 16 *U. Dayton L. Rev.* 29, text accompanying notes 40-48 (1990).

[2] For clarity in the discussion here, the custodial parent shall be considered the mother and references shall be to feminine pronouns; the noncustodial parent shall be considered the father, and references shall be to masculine pronouns.

[3] Act of Aug. 31, 1967, Pub. L. No. 90-78, § 1, 81 Stat. 191, 191-92, 26 U.S.C. §

152(e)(2)(A) and (B), amended 1984 by P.L. 98-369, § 423(a).

[4] H.R. Rep. 98-432(II) (1984) at 966-967. Ronald Pearlman, Deputy Assistant Secretary of the Treasury, testifying before the committee on Ways and Means, (Tax Law Simplification and Improvement Act of 1983, Hearings on H.R. 3475, 98th Cong., 1st Session, 150, 165, 1983) made a further observation:

> Although the tax liability in these disputes generally does not exceed a few hundred dollars, the parties are often willing (because of the emotional nature of the issue) to litigate the matter at a cost far in excess of the value of the exemption. This wastes judicial and other governmental resources and contributes greatly to the case backlog in the United States Tax Court.

One commentator noted, "[T]he Tax Court was the scene of literally thousands of trials to determine whether Mom or Pop was entitled to the $1,000 exemption for little Johnny." (Holden, "The Domestic Relations Tax Act of 1984, 34 *R.I.B.J.* 11, 12 [1986]).

[5] Section 152(e) (1) Custodial parent gets exemption...

> (2) *Exception where custodial parent releases claim to exemption for the year.* [A noncustodial parent may take the exemption] . . . if—
>
> (A) the custodial parent signs a written declaration (in such manner and as the Secretary may by regulations prescribe) that such noncustodial parent claim such child as a dependent for any taxable year beginning in such calendar year, and
>
> (B) the noncustodial parent attaches such written declaration to the noncustodial parent's return for the taxable year beginning during such calendar year.

There are two other exceptions: (3) provides an "exception for multiple support agreement[s]," and (4) provides an exception for "certain pre-1985 instruments."

[6] *Id.* at 967.

[7] *Ford v Ford*, 592 So. 2d 698, Fla. Dist. Ct. of Appeals, 1991, at 702.

[8] 771 P.2d 767 (Wash Ct. App., 1989).

[9] *Id.* at 768.

[10] *Peacock, supra*, at 769. The court did note, however, that some state courts refused to assume authority in this area (at 766).

[11] *See Lincoln v. Lincoln*, 746 P.2d 13 (Ariz. 1987); *Monterey County v. Cornejo*, 266 Cal. Rptr. 68 (1990); *Serrano v. Serrano*, 566 A.2d 413 (Conn. 1989); *Rohr v. Rohr*, 800 P.2d 85 (Idaho 1990); *In re McGarrity*, 548 N.E.2d 136 (Ill. App. 1989); *In re Baker*, 550 N.E.2d 82 (Ind. App. 1990); *In re Walsh*, 451 N.W.2d 492 (Iowa 1990); *Hart v. Hart*, 774 S.W.2d 455 (Ky. App. 1989); *Rovira v. Rovira*, 550 So. 2d 1237 (La. App.), *cert. denied* 552 So. 2d 398 (La. 1989).; *Wassif v. Wassif*, 551 A.2d 935 (Md. App. 1989); *Bailey v. Bailey*, 540 N.E.2d 187 (Mass. App. 1989); *Fudenberg v. Molstad*, 390 N.W.2d 19 (Minn. App. 1986); *Nichols v. Tedder*, 547 So. 2d 766 (Miss. 1989); *In re Milesnick*, 765 P.2d 751 (Mont. 1988); *Babka v. Babka*, 452 N.W.2d 286 (Neb. 1990); *Gwodz v. Gwodz*, 560 A.2d 85 (N.J. 1989); *Sheehan v. Sheehan*, 152 A.D.2d 942, 543 N.Y.S.2d 827 (1989); *McKenzie v. Jahnke*, 432 N.W.2d 556 (N.D. 1988); *Hughes v. Hughes*, 518 N.E.2d 1213 (Ohio, 1988), *cert. denied*, 488 U.S. 846 (1988); *Motes v. Motes*, 786 P.2d 232 (Utah App. 1989), *cert. denied*, 795 P. 2d 1138 (Utah 1990).; *Cross v. Cross*, 363 S.E.2d 449 (W. Va. 1987); *Pergolski v. Pergolski*, 420 N.W.2d 41 (Wisc. 1988). *Contra Villaverde v. Villaverde*, 547

So. 2d 185 (Fla. Dist. Ct. App. 1989) (but, *nb*, explicitly overruled by *Ford v. Ford*, 592 So.2d 698, (Fla. Dist. Ct. App. 1991); *Varga v. Varga*, 434 N.W.2d 152 (Mich. App. 1988); *Eichle v. Eichle*, 782 S.W.2d 430 (Mo. App. 1989); *Jensen v. Jensen*, 753 P.2d 342 (Nev. 1988); *In re Vinson*, 732 P.2d 79 (Or. App. 1987); *Brandriet v. Larsen*, 442 N.W.2d 455 (S.D. 1989); *Davis v. Fair*, 707 S.W.2d 711 (Tex. App. 1986).

The *Ford* court observed, (592 So.2d at 702) regarding the minority position, "It should be noted that while Nevada and South Dakota do not allow trial courts to transfer the dependency exemption unless the custodial parent voluntarily relinquishes it, trial courts are allowed to reduce the amount of child support a custodial parent receives to balance the loss of the exemption to the noncustodial parent. It has been suggested the same result would obtain in Texas. *See Cross v. Cross*, 363 S.E. 2d 449, 457-58 (W. Va. 1987); *Davis v Fair*, 707 S.W.2d at 718."

[12] Instructions to Form 1040, 1987 Tax Year, p. 8.

[13] Internal Revenue Service, Instructions to Form 1040, 1988, p. 8.

[14] Bender's Federal Tax Service, Section A:3.81[b], p. A:3-22 (Pub.067 BFTS #42 10/91) follows the law, not the instructions, in counselling as follows:

Comment: The waiver must be signed by the custodial parent. *A provision in a divorce decree, that is not signed by the custodial parent, would not satisfy this requirement.* [Emphasis added.]

I.R. Regulation § 1.152-4T, A-3 provides that the noncustodial parent may claim the exemption "only if the noncustodial parent attached to his/her tax return . . . a written declaration from the custodial parent stating that he/she will not claim the child" for the year.

The current Internal Revenue Manual ("IR Manual"), at section 513.2, for use by IRS auditors follows the regulation:

[T]he custodial parent will be deemed to provide over 1/2 the child's support, and therefore entitled the child's dependency exemption, irrespective of the amount of support provided by the noncustodial parent or the terms of any divorce or separation agreement. An exception to this rule is provided where the custodial parent signs a written declaration that he/she will not claim the exemption for the taxable year, and the noncustodial parent attaches the declaration to his/her return for the year . . .

[15] [T]he judgment should contain a provision indicating that the annual waiver of the dependency exemption is conditioned on the former husband's being current in his child support payments. *Ford, supra*, at 704. And to the same effect, *see Fudenberg v. Molstad*, 390 N.W. 2d 19 (Minn. Ct. App. 1986). Obviously, this means the custodial spouse must execute a new waiver annually; in many situations this may not be a very satisfactory situation.

[16] *Bridgett v. Comm. IRS* 1972 WL 2281 (Tax Court), 31 T.C.M. (CCH) 798, T.C.M. (P-H) 72,160 (1972); the case was—of course—decided before the 1984 amendments and was based on the previous law (see text accompanying Note 2, *supra*.) The Tax Court quoted standard contract law to the effect that a person will not be relieved from the consequences of his own improvidence, poor judgment or lack of wisdom. And it noted that then-

applicable law (Public Law 90-78, 90th Congress, 1st Session, 1967, allowing the noncustodial spouse to claim the exemption if the custodial spouse signed an agreement surrendering it) was designed to relieve the IRS of a number of disputes "so great that it has cast a serious administrative burden on the Service and has tended to clog the administrative machinery involved in bringing them to a conclusion" (Senate Report No. 488, to accompany H.R. 6056, Public Law 90-78).

[17] *See, e.g., Millheisler v. Millheisler*, 261 P.2d 69 (1953); *Von Herberg v. Von Herberg*, 106 P.2d 737 (1940); *Troyer v. Troyer*, 30 P.2d 963 (1934).

[18] *See* RCW 26.09.070(7). A decree of maintenance may be nonmodifiable if the separation contract and the decree itself so provide.

[19] See, e.g., *Schaefer v. Schaefer*, 219 P.2d 114, (Wash., 1950).

[20] *In re Marriage of Olsen*, 600 P.2d 690, at 693

[21] *Henry v. Russell*, 576 P.2d 908 at 909 (Wash. Ct. App. 1978)

[22] *In re Marriage of Studebaker*, 677 P.2d 789, at 791 (Wash. Ct. App. 1984).

[23] *Timmons v. Timmons*, 617 P2d 1032 (Wash, 1980).

[24] In 1992 the dependency exemption is $2,300; for a taxpayer with a marginal tax rate of 15%, the tax savings are $345; for a taxpayer with a marginal rate of 28% the savings are $644; with a marginal rate of 31% the savings are $713. For a noncustodial parent in the 31% tax bracket with two dependent children, the savings amount to $1,426, that much more to use to pay child support.

[25] The Michigan Court of Appeals has held that while a trial court no longer has the authority to determine which parent is entitled to the exemption (differing with the Washington Court of Appeals in *Peacock*), it opined that, in the future, if the custodial parent ever requested the court for an increase in child support, the exemption would be a factor in that decision. *Strickradt. v. Strickradt*, 401 N.W. 2d 256, 258 (Mich.Ct. App. 1986).

[26] "To deny our courts the power to allocate the exemption gives the custodial parent the power to punish the noncustodial parent by making the tax liability greater for the noncustodial parent; greater in fact than the savings the custodial parent stands to gain from claiming the exemption. The only real winner in such a situation is the federal government, while the real loser is the child." *Ford, supra*, at 703.

[27] *Peacock, supra*, at 768-69 (citations omitted).

[28] *Northwest Cent. Pipeline Corp. v. State Corp. Comm'n.*, 489 US 493, at 509 (1989).

[29] Note 6.

[30] *Ford, supra, at 702.*

[31] *In re Marriage of Einhorn*, 533 N.E.2d 29, 37 (Ill. Ct. App. 1988)

[32] 592 So.2d 698, at 704.

[33] *Ib.*, at 704.

[34] *Peacock, supra, at 769-70, quoting from Nelson on Divorce and Annulment (2d ed.), Vol. II, 285, section 16.01.*

[35] *Hughes v. Hughes*, 518 N.E. 2d 1213 (Ohio, 1988), *cert. denied* 109 S.Ct. 124 (1988).

* * *

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In the Crosshairs of the IRS: What the Service Looks for When it Looks at Attorneys

by **Thomas M. Culbertson**

Last year, the IRS released a special-audit technique guide to assist Service personnel in auditing the returns of attorneys. The guide makes interesting reading, from both a compliance and an audit point of view, for those who want to know what the Service looks at when it reviews an attorney's return. A copy of the guide can be found in the CCH loose-leaf publication known as *IRS Positions*.

The audit guide is part of the IRS's recently established Market Segment Specialization Program ("MSSP"), the purpose of which is to enhance both compliance and audit yields in specifically identified industries and professions and in connection with specifically identified issues. MSSP teams research operations and financial practices in identified market "segments," review a sampling of returns, and develop an audit technique guide to be used by examiners generally. The Service says that it has about 80 MSSP segments identified, and it has released six audit technique guides. Those six cover an eclectic group: bed and breakfasts, air charters, taxicabs, trucking, mortuaries, and attorneys.

IRS personnel have stated publicly that the audit technique guides are not intended to focus greater scrutiny on any particular groups of taxpayers or to otherwise influence the case selection process. Rather, the guides are to be used only once a particular taxpayer has already been selected for audit. The introductory section of the guide for attorneys, which provides a history of the project, might lead one to believe otherwise.

The Service's study of attorneys arose out of a 1988 project which investigated the extent of non-filing among attorneys, who the Service refers to as "professionals who had the training and knowledge to understand their tax obligations." The Service chose San Diego County as its study area, and it reached the astonishing conclusion that "ten percent of the population of practicing attorneys were non-filers." While the validity of that finding may be questionable, it led the Service to the not-too-surprising conclusion that if non-filing was that common, other forms of noncompliance among attorneys must be rampant. Thus the legal profession became the subject of one of the first publicly released MSSP audit technique guides.

Since one purpose of the guide is to educate examiners as to the legitimate financial and business practices of a profession or industry, much of what is in the attorney guide is neither surprising nor particularly interesting, at least to an attorney who knows much at all about the financial aspects of the practice. Of greater interest, of course, is discussion of areas in which the Service sees the potential for audit adjustment and areas which have commonly been the subject of abuse. Sprinkled throughout the guide are anecdotal descriptions of particularly abusive practices by individual attorneys. What follows are highlights of the 50-page guide.

Client Advances

Addressing an area in which the IRS believes attorneys commonly misapply accounting principles, the audit guide advises examiners that expenses advanced on behalf of clients (such as deposition expenses, expert witness fees, and the like) are not deductible by the attorney. Rather, they are in reality nondeductible loans to clients, at least if there is any understanding or expectation that the expenses will be reimbursed. See *Canelo v. Commissioner*, 53 TC 217; aff'd per curium, 447 F2d. 484 (9 Cir. 1971). Since Rule 1.8(e) of the Rules of Professional Conduct requires that a client remain ultimately liable for advanced costs, an attorney would have a difficult time arguing that there was no agreement or expectation that the expenses would be reimbursed.

Of course when the advance is reimbursed, the reimbursement may be excluded from taxable income, but with lawsuits (and therefore advances) spanning several years, a long time can pass from the economic event and its recognition for tax purposes.

If reimbursement is never made, the attorney is entitled to a bad-debt deduction under Internal Revenue Code § 166 in the year in which it has been established that the debt is uncollectible. Although not mentioned in the audit guide, a logical extension of this approach is that a solvent client who never reimburses the attorney for advanced costs recognizes forgiveness of debt income under §§ 61(12) and 108.

The audit guide confusingly refers to two arguments raised by attorneys, both of which relate not to the deductibility of client advances, but to the treatment of the resulting deficiency when such improper deductions are exposed. First is an exception to the tax benefit rule used to provide that if the statute of limitations had run on an improper deduction, a subsequent reimbursement did not have to be

included in income. This exception is no longer recognized, and attorneys are warned that even if the statute has run on the year of the deduction, the Service can still require any reimbursement to be included in income in the year of payment (assuming the statute has not run on *that* year).

The second argument has to do with whether or not a tax deficiency resulting from improper deductions can be treated as a change in the taxpayer's method of accounting which, under § 481, may allow the taxpayer to make an "adjustment" (i.e., pay the deficiency) over more than one year. The Service position, as reflected in the audit guide, is that the disallowance of such deductions is either not a change in accounting, or it is a change for which no such lenient adjustment is allowed.

Deferral of Income Through Client Trust Accounts

The IRS apparently sees many opportunities for tax deferral or avoidance through the misuse of client trust accounts, and throughout the guide, examiners are instructed to carefully scrutinize all transfers of funds in and out of client trust accounts.

The opportunity to defer recognition of income is pretty obvious and, no doubt, commonly found. An attorney settles or wins a case, deposits the proceeds into his or her trust account near the end of the year, distributes the proceeds (including attorney fees) at the beginning of the next year, and includes the fees in income in the new year. The audit guide states, "[O]nce the settlement is received, the attorney's fee is determinable and available and should be included in income," because the fee has then been constructively received. The guide then goes on to suggest that examiners check end-of-the-year trust account balances to look for such deferred income.

Treas. Reg. § 1.451-2 does require a cash basis taxpayer to recognize income once it has been constructively received, or "made available so that [the taxpayer] may draw upon it at any time [without] substantial limitations or restrictions." One can imagine many circumstances where the deferral of such income may be clearly tempting and equally clearly wrong. However, the mere fact that settlement proceeds have been deposited in the trust account does not necessarily mean that they are immediately available to the attorney. RPC Rule 1.5(c) requires an attorney earning a contingent fee to provide the client with an accounting, and Rule 1.14(a)(2) prohibits an attorney from withdrawing from the trust account any fee which is disputed. Thus, it is simplistic to say, as the IRS suggests, that an attorney's fee is "available" as soon as it is deposited into the trust account.

The audit guide seems to take the same position as to retainers, although the language is not entirely clear:

> This [retainer] is commonly deposited into a trust account. The attorney then transfers part or all of the money from the trust account to the general account as it is earned. *If the attorney is on a cash basis of accounting and has free access to the funds, the retainer is taxable when received.* [Emphasis added]

Preliminarily, it should be pointed out that Ethics Opinion 186 draws a distinction between (1) "retainers," which are paid merely to obtain the attorney's availability, are earned as soon as they are paid, and they should, therefore, never be deposited in a trust account, and (2) advance fee deposits which are earned only if and when appropriate services are rendered, must be deposited into the trust account, and can only be withdrawn as earned. As defined, retainers should be included in income when received from the client, and advanced fees should be included only as earned. Certainly, one could argue that the latter is not earned until a bill is produced (if that is the attorney's customary practice with regard to advanced fees) and that if the normal billing cycle produces a bill in January for December services, January is when the fee is earned.

Entertainment-related Expenses

The audit guide states that entertainment, promotion and advertising are "categories which attorneys have been found to abuse," which certainly does not distinguish the practice of law from any other profession or business. To be deductible, such expenses must not only

satisfy the normal "ordinary and necessary" criteria of § 162, they must also satisfy the special provisions of § 274, which require that the entertainment be "directly related to" or "associated with" the active conduct of a trade or business. Reducing several pages of regulations to a single sentence, we can say that entertainment passes the "directly related to" test if it involves active business discussions or occurs in a clear business setting, and it passes the "associated with" test if it has a clear business purpose and it directly precedes or follows a "bona fide business discussion." The guide cites two specific cases in which entertainment expense deductions were denied: an attorney who spent $60,000 on tickets to rock concerts for clients and referral sources, and an attorney who gave a party at his country club for clients, referral sources and business associates at which no business was discussed.

The audit guide fails to point out an important distinction between "entertainment" expenses, which must pass the "directly related to" and "associated with" tests to be deductible, and "business meals," which the regulations exempt from those tests (§ 1.274-2(f)(2)(i)). "Business meals" are ones provided under circumstances which are merely "conducive" to business discussion. The regulations distinguish a meal served in a quiet restaurant, and a meal served where there are "distractions," such as a floor show. They provide that "entertainment" includes providing food and beverages to guests at night clubs, cocktail lounges, theaters, country clubs, and the like. The audit guide adds the taxpayer's home to that list of "entertainment" sites, and the regulations expressly provide that a "business meal" can occur, under the right circumstances, in the taxpayer's home.

Unreported Income

The audit guide cites a couple of examples of how attorneys have avoided reporting what is clearly taxable income. Real estate and corporate attorneys, it notes, are sometimes given an interest in a real estate project or a start-up company in exchange for legal services. Such consideration, while not cash, is nevertheless taxable income. Somewhat similarly, the guide cites an example of an attorney who was advanced a large sum of money by his corporate client and then had the loan gradually forgiven as he performed legal services. Such loan forgiveness is also taxable.

Returning to abuses concerning trust accounts, the guide advises watching for trust account checks written for fees and deposited into personal—rather than business—accounts, where they are never reported as income. The guide suggests that the examiner inspect the endorsements on all checks written to the attorney out of the trust account to assure that all such funds were properly reported. In one case, trust account funds were apparently withdrawn in cash with an ATM card!

Clients, too, can be the benefactors of tax abuses concerning trust accounts. The audit guide describes a client who deposited $100,000 into his attorney's trust account, took the "fee" expense as a deduction, then had the attorney return the funds.

Other Areas of Concern

The audit guide, of course, advises examiners to watch for personal expenses taken as business deductions, citing in particular entertainment (discussed above), travel, and "disguised hobbies." Auditors are advised to inquire as to an attorney's hobbies. The guide cites as a fraudulent example an attorney who drew a salary of only $11,000 but whose professional corporation paid some $200,000 of his living expenses. Where a C corporation has taken the deduction, the guide directs the examiner to treat the expense as a constructive dividend. The taxpayer, on the other hand, will usually want the disallowed expense to be treated as additional compensation, to avoid the double taxation of dividends.

The audit guide also devotes some attention to the employee/independent contractor issue. Part-time or temporary legal support staff (the guide mentions secretaries, receptionists, paralegals and law clerks) usually must be treated as employees, due to the close supervision and control under which they work. The guide acknowledges that the result may be different when the worker is another attorney, with the degree of control exerted by the hiring attorney being the most important factor. Rev. Rul. 87-41, which sets forth the IRS's 20-factor test in this area, is attached to the guide as an exhibit.

The guide states that books (other than loose-leaf reporters and other annual subscriptions) generally must be depreciated over five years rather than deducted currently. It neglects to mention the annual election under § 179 to deduct up to $17,500 in such personal property expenditures (at least to the extent such expenditures do not exceed $200,000 a year). Anyone who, in the conduct of a trade or business, pays a nonemployee more than $600 in compensation in a year is required to file a Form 1099 (§ 6041), and the audit guide advises that the attorney has that filing responsibility as to payments out of his or her trust account as well. Auditors are advised as to how to obtain a list of all 1099s filed by a taxpayer (or filed with respect to a taxpayer), if the auditor suspects that a copy provided by the taxpayer was recently prepared and never actually filed.

Audits of Attorneys

The guide will make particularly interesting reading for attorneys whose practices are audited. It recommends substantial groundwork before the first contact with the attorney/taxpayer, including asset searches to determine if there is a lifestyle which cannot be supported by the amount of reported income. Of interest to tax attorneys is the fact that an examiner can obtain access to returns prepared by the attorney, which can be used to "point out new cases as well as trends in preparation." The guide also recommends obtaining a printout of all 1099s filed by, or with respect to, the attorney.

Those who represent audited taxpayers know that it is seldom advisable to bring the client to the audit conference, and the Service apparently feels that most attorneys do not know this but will quickly figure it out: "[Preparation for the first conference] is particularly important when dealing with attorneys since it may be the only opportunity to meet with the taxpayer directly." Examiners are advised in particular to establish the attorney's responsibility for financial transactions affecting his practice. Interviews with attorneys require particularly good preparation because, in the words of the guide, "attorneys tend to answer questions literally and offer little additional information." Attached to the guide as an exhibit is a five-page outline of a suggested initial interview.

Audited attorneys sometimes attempt to shield their financial records from disclosure by invoking the attorney-client privilege, but most such efforts have not been successful. The audit guide advises that the identity of the client, the fact of representation, and the terms on which representation is provided are usually not protected by the privilege because such information is neither confidential nor legal advice. Nor, the guide adds, is information acquired while acting as a mere closing agent or while performing the functions of an accountant protected by the privilege.

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

Special Meeting, Seattle, March 5, 1994

Present: The president, president-elect Ron Gould and the Board of Governors. West Campbell participated by telephone. *Also present:* Dennis P. Harwick (WSBA executive director); Brad Steiner (WSBA Young Lawyers Division president-elect); Lindsay Thompson (*Bar News* editor); Lynn Tuttle (King County Bar Young Lawyers Division Trustees); and Robert Welden (WSBA general counsel).

The Board convened at 10:10 a.m. in the Bar Association offices in Seattle, before an audience of Association employees, lawyers and union representatives that, at its peak, numbered about 40. The meeting was settled upon at the Board's meeting in Tacoma in February (see "The Board's Work," March 1994, page 27), and its purpose was to hear a presentation by Bar Association management in response to the several presentations made by Local 1001 of the United Food and Commercial Workers Union over the past three years (see "The Board's Work," December 1991, pages 31-32; March 1992, page 21; June 1992, pages 33-36; February 1993, page 41; January 1994, pages 25-26; March 1994, page 27).

WSBA executive director Harwick made some opening remarks summarizing the presentations to follow, then introduced Seattle lawyer Greg Dallaire. A past head of Evergreen Legal Services, Dallaire gave the Board a personal overview of what going through the unionization process can be expected to involve, based on his experience at Evergreen in the 1970s.

"Whether you like it or not," Dallaire told the Board, "you are management. You can't be neutral, and you can't delegate that role to the senior staff. If you have a union, you become management."

One problem Dallaire cited is that operations are affected in innumerable ways by the overlay of state and/or federal labor regulations that come into play if a union enters the workplace. "One of the first things you have to do is hire counsel to help you make your way through the maze," he commented. Dallaire also told the Board that from a management perspective, one has to try and get as strong a management-oriented contract as possible, one that spells out management's prerogatives clearly. With one, it's possible to minimize the sense of being hamstrung.

But getting such a contract requires a lot of hard bargaining—by its very nature, a difficult, confrontational process. And once you've got an issue nailed down in a contract, when the contract comes up for renewal, you can't just deal with the new issues in the next contract negotiation, he told the Board. You have to go back to square one and renegotiate everything: "The union will constantly try to erode management authority. It's not just a question of wages and benefits."

Dallaire told the Board that a union becomes a new party in the workplace. "If you want to discuss an employee's performance with that employee, depending on what your contract says, you may also have to have a union representative present. The union can use the WSBA membership as a tool; it can go directly to them with matters and you, as management, may not be able to respond effectively, or at all."

Stressing that he has represented unions and is by no means opposed to them as a concept, Dallaire told the Board it is possible to have a good working relationship with a union. "But it is extremely difficult to have positive working relationships when the bargaining process is underway."

Governor Jim Handmacher asked what the financial impact of unionization was when Evergreen experienced it. While reluctant to quote figures without consulting Evergreen, Dallaire said the Board could count on its being expensive to start with. "Once a contract is in place, you don't tend to notice it so much."

Governor Vickie Norris asked Dallaire what he meant by trouble maintaining positive work relationships during the contract bargaining process. "How long is the bargaining period?" she queried. "Our first contract took nine months," Dallaire replied. Governor Wayne Blair, who was a member of the Evergreen board then, confirmed that time frame.

Governor Jan Peterson pressed Dallaire on the question of cost and got a qualified answer: it was "over $35,000" in 1978. In response to questions by Governor Mary Fairhurst about his references to the "political role" of the union in Evergreen's affairs, Dallaire said the union contacted client organizations of Evergreen's during bargaining with its account of what was going on. Such contacts prompted some of those clients to contact Evergreen management in turn, asking why management was being so intransigent about what sounded like reasonable requests by the union.

After some general closing remarks, Dallaire departed and was succeeded by WSBA general counsel Bob Welden. Welden told the Board he viewed the unionization question from three different perspectives: one as an employee of the Bar Association; one as a member of the bar for 24 years (wincing slightly as he mentioned that; he had a birthday recently); and as general counsel to the Bar Association for the last five years. But while he viewed matters from those perspectives, he added, he appeared and spoke for no one but himself.

"I appear here with mixed emotions," he told the Board. "I believe in the value of unions. In 1970, I formed a law firm on collective principles, in which every employee had an equal voice in all decisions. One of my best friends just retired as vice president of organizing at the United Food & Commercial Workers.

"But sometimes we have to set aside personal feelings," Welden said, telling the Board it was his conclusion that it was not in the Bar's best interest to recognize a union or conduct an election. To see how "we got to where we are today," Welden reviewed aspects of the tenure of the current executive director, Dennis Harwick, and his two more recent predecessors, John Michalik and Eddie Friar.

Welden said that when Harwick came to the Bar in 1991, Bar employees saw him as an agent of needed change, but they were quickly disillusioned when Harwick concentrated, instead, on putting right the parlous finances of the Association. The pivotal event, in Welden's view, was a March 1991 general staff meeting, at which Harwick announced a rewritten employee policy manual. While much about the new manual was substantively the same as what had been in the old, for many employees it was their first encounter with Harwick, and attitudes were crystallized by a number of sub-events in that meeting. Some complained about being required to take breaks and a certain time for lunch, even though it was required by law that they do so. Others took umbrage at Harwick's comment that he wanted to make the Bar Association office a more professional place, from which comment they inferred he thought it was not one already. He also

announced the work week would go from 35 to 40 hours without a corresponding increase in pay. "For many employees, everything Dennis Harwick does is colored by the impression of that day," Welden said. For example, when a department proposed a change in snow days policy, Harwick endorsed it; the union organizing committee ran a story in its next newsletter taking credit for having forced Harwick to make the change. An anomalous policy of giving employees year-end bonuses—anomalous because the Bar Association is a nonprofit organization, not given to accumulating profits—was abolished in 1991, but the amount of the bonus was added into all employees' salaries thereafter. Harwick opponents still complain about having their bonuses taken away, Welden reported.

Turning to opponents' claims of unjust terminations, Welden said, "Dennis Harwick has made this a place where merit is rewarded and lack of it is penalized. Some of the people who were terminated in recent years were good friends, but all were terminated for cause. All were given written warnings, except one who was terminated for sexual harassment and had to be let go immediately, and the warnings were documented. I was consulted in each case. No one has been unjustly terminated," he concluded.

Welden continued, "As a WSBA member for 24 years, I am concerned about how the Bar Association manages and spends moneys paid in member dues and other types of fees. I can vote for members of the Board of Governors, and I can reverse actions of the Board through the referendum process. I am concerned about your bringing a third party into the governance of the bar." Quoting from the Bar News ("From the Archives," August 1992, page 15), he likened the situation to the periodic, panicky pushes of some to put nonlawyers on the Board of Governors "before the Legislature does it to us. You're considering bringing a nonlawyer political group into the management of the Bar, a group which is accountable to no one but itself. I think members oppose this. You're being asked to bring in a group so powerful it can defeat your unanimous effort to protect the independence of the Bar in the Legislature."

Welden predicted, based on conversations with pro-union employees, "One of the first things you will hear is that the Association financial reserves should be tapped to raise salaries . . . The union will try to dictate the allocation of bar dues among bar programs according to its, not bar members', preferences."

"Previous boards of governors saw the error of letting the state interfere with the affairs of the bar, and they took steps to oppose it in the courts. The Chief Justice has said that the most important job we have is the protection of the independence of the bar and the judiciary, and that that task is never-ending, Welden continued. You have to stand up to the Legislature, even if the union is powerful there. If you surrender now to avoid a hard case before the Supreme Court, the union will go back to the Legislature, whenever they don't get their way, and ask their allies there to pass another bill, and another bill, dictating what the Bar will do." He predicted that the Legislature, "which has already amply demonstrated its lack of concern over preserv-

ing the separation of powers," would, if asked by the Bar Association union, repeal the State Bar Act and turn regulation of lawyers over to the Department of Licensing.

"Tell this political pressure group to go away," Welden concluded. "We are lawyers. We are trained to fight our battles in the courts. When we have done so before, we have won. That is where we should take this fight."

After a break, executive director Dennis Harwick addressed the Board. "I have been reluctant to do this," he told them. "In a decade in bar administration, I have never sat at the end of the table here, with my back—literally and figuratively—to my fellow bar employees." He told the Board he had avoided a debate that would put him at odds with the Bar Association staff during the organizing effort, "at the cost of public ridicule. I have never criticized staff or the organizing committee to the Board of Governors. I will not today."

But Harwick cautioned the Board, "If we move to a system in which I am defined as The Enemy, it will make it harder for me to get done the things you, as the governing body, have assigned me to do." He wondered how the WSBA could have accomplished the downsizing necessitated by the 1992 dues rollback vote if a union had been there opposing staff reassignments. "As it is, we were able to eliminate ten percent of staff positions with only one person losing a job," he reminded the Board.

Seeking, he said, to separate fact from rumor and fiction, Harwick denied reports that he had threatened to resign if the Board voted to allow staff to vote on union representation and Quoting from the statutory definition of the duty of care of directors of nonprofit corporations—to which he analogized the Bar Association as an entity—he told the Board theirs was a choice between satisfying a short-term need and serving the long-term interests of the Bar. "Avoiding a crisis with the Supreme Court and the Legislature is appealing," he said, but consider the financial, operational and institutional interest of the Bar before you take the easy way out.

Harwick cited conversations he'd had with local employers who deal with Local 1001 of the UFCW, who said the union's preferred method of operation was using the media and the Legislature to damage and embarrass and pressure management, and who were unwilling to appear and say so or, lest their names be used, out of fear of reprisals. He cited the example of the State Bar of California, now the only unionized bar staff in the nation. Harwick told the Board the union was voted in in 1984, and by 1987 fiscal demands led to a doubling of bar dues. The California bar has 25 to 30 percent more staff than the American Bar Association, and one staffer for every 165 California bar members. By comparison, the Washington State Bar Association has one staff member for every 284 lawyers. Harwick told the Board the California bar is trapped in nearly year-round bargaining, having taken two years to get agreement on a two-year contract.

"A pervasive impact of unionization on the California bar can be seen in their legislative agenda," Harwick argued. "The union goes to the Legislature whenever it's unhappy with a bargaining issue, and legislative leaders call the Bar and tell them, 'You must yield or none of your bills will be passed.'"

"One has only to look at Local 1001's tactics in using the Washington Legislature to see what that will be like," Harwick said. He cited newspaper accounts of how, after the chair of the State Liquor Control Board floated the idea of privatizing liquor sales in Washington, Local 1001 got a bill introduced to abolish the Liquor Control Board. Local 1001's president, Joe Peterson, was quoted in the papers as confirming that the bill was in retaliation for the chair's idea.

Harwick predicted unionization will require significant additional costs for labor counsel during the election period, as well as the addition of a senior staff person to deal with the panoply of labor-management issues that will attend everyday decision-making if a union organizes the Bar staff. "Long-term costs are harder to quantify, because over time they become institutionalized." He predicted staff support for the work of the Board of Governors and WSBA task forces would have to be sharply reduced as senior staff's attention is diverted to the unionization issue. Worst, he predicted, would be the starting down the path of breaking WSBA staff into "Us and Them."

Harwick said unionization will affect the Bar Association's ability to provide services to members. "For example, what if we have a provision that prohibits the bar staff from working on Saturdays? We can't do CLEs then." He predicted the union would oppose and try to restrict the use of lawyer volunteers in bar activities because limiting bar work to bar staff will mean more staff are needed, and more UFCW members result. "Every dollar bargained away will affect WSBA programs and services," he said, quoting a past *Bar News* report ("The Board's Work," March 1994, page 27), in which Local 1001 president Joe Peterson was quoted as saying he had "no idea" how much unionization would cost.

Turning to the question of whether challenging the legislation bringing the bar under the PERC statutes was an appropriate response, Harwick said he recognized the Board's distaste for a constitutional confrontation. "But in 1993, we accepted compromise legislation that recognized the separation of powers. Now the union has obtained legislation that tosses it aside. We cannot stop either the Legislature or the union unless we find out if we are or aren't part of an independent judiciary." He predicted the cost of a court challenge should not be great. "The brief is already written. You can find it in the *Graham* case (86 W2d 629 (1976)) and the *Seattle Times* case (unpublished), and even in Local 1001's request, last year, for a Supreme Court Rules change to require us to recognize them, where they acknowledge the Legislature has no jurisdiction ("The Board's Work," June 1992, pages 33-36; January 1994, pages 25-26). The end result is much the same whatever path you choose, Harwick told the Board. The union will use the Legislature as long as it feels it works; it won't stop going to the Legislature until it sees going there won't work; and if going to the Legislature works now, it will always be the pressure point of choice for the union in its disputes with the Bar Association.

Harwick denied union supporters' claims that employees of the Bar have been unfairly terminated in the last three years. He invited governors to come look at personnel files and see for themselves. He complained that staff members of the organizing committee had never come to him to talk about how to resolve the complaints they had, preferring, apparently, to present those issues to the rest of the staff as having been rejected out of hand. Concluding, he urged the Board to

vote with their heads rather than their hearts, and not to pass the decision off onto the WSBA staff.

King County Young Lawyers Division representative Lynn Tuttle asked Harwick how much opposing the union effort had cost so far. About $10,000, he replied, though assigning a dollar value to the efforts of WSBA lobbyist John Fattorini hadn't been calculated yet.

Governor Wayne Blair said he perceived a relationship problem between Harwick and the WSBA staff, and wondered (a) did Harwick think one existed, and (b) if so, what should be done about it? Harwick responded that people tend to look for actions that confirm their perception of things, and that's what union organizers on staff had been doing, sometimes to the extent of turning black into white. Their frame of reference requires a black hat, a white hat and a victim. Governor Vickie Norris returned to Harwick's comments about the costs of unionization, and she wondered if that might force the layoff of staff because finances are tight. It might, Harwick answered. We don't know yet.

The format of the meeting was that Harwick would make whatever presentation he wanted to make, and a union representative would then be free to rebut new material not previously raised or covered in the union's several presentations to the Board. Local 1001 president Joe Peterson told the Board they, as well as the union, were in difficult circumstances: he had never had to ask a board to recognize the union before, but that's where the law had put the parties.

"I didn't like having to go to the Legislature a year ago," he continued, "But I did, and the Legislature spoke. It advised the Supreme Court that bar employees could have a union, and later the Court gave you that discretion. We determined you weren't going to exercise it, so we had to go back to the Legislature." He urged Board members not to look at the California bar or Evergreen Legal Services experiences from the "narrow point of view you have heard today." Peterson told the Board they hadn't heard about how the California bar resisted the union for three years, or how employees have to go to the Legislature there because the Legislature controls the bar. He denied that the unnamed employer Harwick cited was representative of employers Local 1001 works with, and he was miffed that he hadn't been given the chance to invite some employers to speak himself.

Peterson noted Greg Dallaire's comments about how negotiation could result in a strong management contract, and said that, while Local 1001 didn't really set out to get strong management contracts out of its negotiations, they try to develop good working relationships. He denied Harwick's claim that employees had not brought the issues leading to the original organizing effort to him, and he told the Board new bargaining cards had been signed by WSBA employees. "We still have a majority."

"The real question," Peterson continued, "is whether you are going to affirm public policy that grants employees the right to unionize under PERC." He said the bill passed by the Legislature recently—bringing the Bar under the state labor laws—was to "get a set of rules in place to operate under." He told the Board if they would voluntarily recognize those rules he would ask the Governor not to sign the bill, and he was confident that it wouldn't be signed.

"We've negotiated thousands of contracts without disputes," Peterson said. He called the claim that organizing the

Bar would be costly "simply not necessarily true." He disputed Dallaire's comment that state and federal labor law made the playing field uneven: "I don't have the hearts and minds of your employees eight hours a day. I've had two meetings with employees, and I've helped the organizing committee put their newsletter together."

Peterson denied that any of the unionization effort was aimed at Harwick personally, or that there was some future intention to seek repeal of the State Bar Act. "If I had any interest in that I would have done it a long time ago," he added. "It took us 12 years to organize Seafirst Bank. It cost millions of dollars. We won." He called taking nine months to reach a contract agreement "absurd," and in response to a comment of Harwick's that union seniority rules have the effect of protecting mediocre job performance, Peterson called that "absurd," too. "We've been at the forefront to provide our members with the greatest compensation package possible," he replied.

Warming to the theme, Peterson told the Board they, not Local 1001, could make a union costly. He told them Nordstrom didn't want a union, and it ended up costing them $50 million. "If you want to take us on, and [do] take us on, and have us sue you for not implementing the new legislation, go ahead . . . If you don't resolve this today, it will just cause more problems than anyone needs or deserves."

Asked by Governor Jim Handmacher how many WSBA staffers have signed union cards, Peterson refused to say. Queried about Local 1001's quarrel with the Liquor Board, he told the Board, "I will do everything possible to protect agencies I have under contract from legislative control." He expressed surprise "to hear that we are a powerful force in Olympia. Most employers say unions are weak and ineffectual." President Stritmatter, who got run through the legislative wringer the week before over the unionization issue, told Peterson, "You don't give yourself enough credit."

Repeating things he said in his previous presentations, Peterson told the Board their perceived inability to raise dues to fund future wage increases is just a function of not communicating effectively with lawyers as to why they should pay more. He offered to assist in making that presentation. "We can be your greatest advocate or we can be your worst nemesis. We prefer to be the former."

Jean McElroy, a WSBA staff attorney and organizer for the union effort, told the Board she was sick and tired of hearing the unionization matter being blamed on previous administrations' policies. "Many of the cards have been signed by people who didn't even work here then," she told the Board, calling turnover at the Bar office unusually high. She disputed Harwick's claims that the organizing committee had never tried to meet with him, said employees don't feel as if they are paid on a merit basis, and if the administration is willing to make changes asked for by employees, why haven't they? She said union partisans were "shocked" by Welden's remarks and concluded he either "hadn't heard or didn't understand" what their effort was about to say such things. She said personnel files had been papered to make them look as if unjustified terminations were legit, and that the reason they wouldn't tell how many employees had signed union cards was because she was afraid it would give the administration a target number of how many more people to fire to break the back of the effort.

Governor Dan Hannula posed a hypothetical question: "If this Board is committed to meeting these goals you seek—if we were to do those things, why would we need a union at the Bar office?"

"Don't answer that," Local 1001 president Joe Peterson directed. A short pause ensued. "Ordinarily that question would be considered an unfair labor practice," he told Hannula.

"Are you telling me I don't have the right to ask that question?" Hannula asked Peterson.

"Right now, you do," Peterson answered.

McElroy answered the question, saying she couldn't be sure that the rights one Board of Governors gave, another, later Board wouldn't take away. Only a union contract can lock the things she wants into place, she said.

Another WSBA staff lawyer and organizing committee member, Randy Beitel, followed McElroy. He felt taking the separation of powers question to the Court would tarnish the image of lawyers by making it look as if they'd resort to any argument to avoid unionization. "The smart thing to do is to implement the legislation."

At 1:30 p.m., the Board recessed for lunch and an executive session to take advice from legal counsel. They returned at 2:40 p.m. Having determined that the formal presentations had ended, President Stritmatter asked if anyone in the audience wished to comment.

Seattle lawyer James Hardman said he'd been following the issue in the newspapers and in the *Bar News* and thought the issue made the Bar Association look bad. "What struck me was that the bar seems to be claiming a special privilege under some anomaly in the law. I've seen no justification for the special privilege. The anti-union arguments are the same ones any employer would make. People should know the basis for the claim of a special privilege which prevents WSBA employees from unionize, and then decide whether they think the argument has merit.

"Some things are a hassle," Hardman told the Board. "That doesn't mean you prevent them [from] happening."

Jerrie Bennett, a Bar employee in the CLE Department, told the Board she had worked in union businesses earlier in her career, and she was "vehemently opposed to being forced to join a union." She had never experienced any mistreatment by Bar management, and she had received extra training when she had asked for it, at the Bar's expense. She told the Board she had been harassed by pro-union staff members, who treated her "as if I was too simple to understand what the issues really are."

Bennett continued that some Bar employees hadn't even voted in the union organizer's straw poll. "Joe Peterson feels no need for a vote," she said. "I can understand why. If there was a truly secret ballot, there'd be no union." She said staff members had been told all signing a card meant was they could get more information about the union, and they had been promised benefits there was no way to assure.

"If I have to join the union, I'll be charged somewhere between $360 and $430 a year in union dues," Bennett commented. "The lawyers of Washington rolled back a dues increase because they didn't want to pay more than $195 a year for their professional licenses. I make a lot less than the average lawyer. Do you think I want to pay hundreds of dollars a year to keep a job I already have?"

John Hughes, current president of the union at Evergreen Legal Services, said he didn't know much about the issues at hand, or the separation-of-powers considerations that might be involved in the Legislature's application of labor laws to the Bar association, but he didn't think letting the staff vote on unionization was that big a deal.

Jack Young, a WSBA staff member in the Communications Department, confirmed that people had been told signing a card

simply meant getting more information about the union, and he thought the presentation management made was no more narrow or one-sided than Peterson's was for the union. He predicted a current survey of WSBA staff by a personnel consultant would show that the Bar association is a good place to work and employees are well taken care of.

Randy Simon, another WSBA staff lawyer, briefly urged the Board to vote to allow the staff to choose whether to unionize or not. Lynn Tuttle, exchanging her King County Young Lawyers representative's hat for that of her job as a WSBA staff lawyer, affirmed comments made by other pro-union speakers on behalf of some staff who were unwilling to speak for themselves. She mentioned that in the dues rollback vote, she saw several ballots bearing messages that their makers wouldn't vote for a dues hike so long as the staff were denied the right to unionize. She thought that indicated a trend, from which it could be inferred that members want this to happen.

Governor Wayne Blair thought the opposite, based on what he'd heard and seen. After that, the discussion fell into an unedifying round of "Did so!" "Did not!" ripostes between various interested parties until Governor Jan Peterson broke it up. "Let's cut this off," he said. "The fear of retaliation is mutual, and regrettable—and unfounded. It prevents people's speaking their minds. Things have to be seen in that light."

Another WSBA Legal Department employee, Bethel Webb, asked the Board, "Why am I any different from prosecutors in King County, or state police, or any number of other groups, such that I'm not allowed the privilege of organizing? If the majority want to do so, why can't they? Why would you say we can't?"

Wrapping up the discussion, Dennis Harwick chided the Board for seeming to take the easier, short-term solution, and he recapped the main points of his earlier comments. He added that in the recently published survey of Washington Bar members (*Bar News*, February 1994), not one had mentioned unionization as an issue. "And as for the fairness question," he remarked, "you can twist that any way you want. One way to look at it is to ask if it's fair to require WSBA members to pay for something we all know is not in the best interests of the Bar?"

The Board then took a short break, reconvening at 3:47 p.m. Governor Jan Peterson moved "that the Board of Governors authorize a secret ballot election, under rules and terms negotiated and agreed to by the Bar Association and Local 1001, United Food & Commercial Workers, to decide whether WSBA employees will be represented by a union to collectively bargain terms and conditions of employment, without the right to strike, under the jurisdiction of an independent entity to be negotiated and agreed upon." Governor Linda Dunn seconded the motion.

Jan Peterson opened the discussion, observing that "The issue for me isn't whether a union is better or not for the employees. It is always a pain to have to deal with employees. It is always a pain to have to deal with employers. I believe our employees have a right to choose freely how they want their affairs managed. . .

"It is for us to decide—not the Legislature. We have an obligation, and an opportunity, to decide it. Just cause, merit pay, progressive discipline are not unreasonable or un-doable, with or without a union. But it's for the employees to decide. You give up some rights and privileges to gain others in collective bargaining. That's not the issue for us. It's for the employees.

"It would be folly not to recognize the right to choose. Separation of powers is a mistaken path to follow. My motion is carefully worded to achieve the ends I have discussed. The essence of it is a truly fair election. The rules and terms have to be agreed on—not dictated by the Legislature or anyone else."

Governor Dunn noted that she seconded the motion because "the motion is simple. The results won't be."

"Asking me to make this decision without my heart is like asking me to walk without my feet," she told the Board. Her heart is where her sense of ethics lies, and in her heart she knew that while a union won't solve all the complaints people have brought to the table, she didn't want to pass the resolution of the issue off to the Legislature or the courts.

Governor Wayne Blair remarked that the Board makes decisions every day affecting all sorts of interests: members' interests; the courts'; the public's interest. "What do we do when those interests clash? We weigh them. Here we have a choice: we can allow the employees to vote. We comply with the legislation. Or we can litigate."

"Litigation will be costly, divisive and close on the merits. The Supreme Court might easily go along with the Legislature's action," Blair said. He recalled the *Zylstra* case (85 W2d 743 (1975)), where the opinion of the Court showed when you cross collective bargaining with separation of powers, anything can happen. "The fundamental principle is, let the employees decide."

Governor Vickie Norris opposed the motion. Reviewing part of the *Bar News* coverage of the issue ("The Board's Work," June 1992, page 33), she noted that Randy Beitel had told the Board, " No directors in their right mind would want [a union]. If I were on the Board, *I* probably wouldn't want it, either."

"Then I went on to read Governor Blair's comments: 'My conflict is that we wear different hats on the Board—What's in the best interests of the public on the one hand, the profession on the other. I see a clash between these two roles. If I look at the profession, I look at California and shudder. It's a possibility down the road that the Bar could have the sort of labor strife California's bar is having.'"

"We've had two more years to watch the California experience," she declared. "We should still shudder."

"By opposing this motion, I do not oppose good employee-employer relations," Norris said. "This board can take care of these issues, and should. We don't need a union to do that."

"I don't know why Governor Dunn says she doesn't know what having a union among us would be like. We've had one among us for three years. It has cast responsive actions to personnel concerns as negative. The Ad Hoc Organizing Committee Newsletter has undermined management. That is the nature of the beast." She attributed Governor Blair's position to the union having backed the Board into a corner. "Last year's legislation recognized the separation of powers between the Legislature and the Courts. This year's legislation just Xs it out. We have been manipulated by the union," Norris concluded.

Governor Dan Hannula told the Board that in his heart, he felt the union is not in the best interest of the Bar Association, but he was going to support the motion. "I think the concerns of employees can be corrected without a union. In this context, a union has different goals and objectives from the Bar.

"The thing that bothers me the most is whether we give our employees the right to choose. If we tell them, 'We know better; you have no right to choose,' we foster an environment in which they cannot function at their full potential." He said he had tried to answer Bethel Webb's question and couldn't. "I hope there is a fair election with dignified presentation on both sides. That is

what the employees deserve; not rhetoric, but solid facts."

Governor Jim Handmacher said he wasn't ready to announce a position yet, but expressed several concerns. "I am struck by Governor Hannula's comment that a union is not in the best interest of the Bar, but he intends to vote for it anyway. I'm troubled by that. The ultimate hat we wear is to determine what *is* in the best interests of the Bar Association, and that includes the public. I haven't heard anyone tell how a union will present a benefit to the public interest. If it's not in the best interests of the Association, isn't that the end of the discussion?"

Handmacher was also concerned about the influence a union would have on Bar Association management. "Actions speak louder than words," he said. "The newspaper articles tell the story. An employer proposed a programmatic change—admittedly a fairly dramatic one—and the union's response was immediate and retaliatory. This bar is susceptible to the same tactics. We see it in the current legislation. If we succumb to the pressure this time, they'll think they can do it to us again in the future. The union has shown it can manipulate the Legislature to make us accede to its demands."

"Letting employees choose is not the whole issue," Handmacher said. "It's not just a choice. We have to assume the worst—that if the choice is made, the union will win."

Governor Joe Nappi shared Handmacher's concerns. "The Supreme Court told us what to do when they amended General Rule 12 in December. All they did was confirm in us the power to make a decision. It is almost a unanimous opinion in this Board that the union is not in the best interests of the Bar Association. We thought so three years ago, and we think so now."

Governor West Campbell told the Board he couldn't be "as eloquent as Bob Welden. He states the case better than I." He was also impressed by the arguments of Jerrie Bennett and Jim Handmacher.

"We have to balance the right to vote against the interests of the membership and the public," Campbell continued. "I don't want to manage the Bar Association with a third party. This Board, just three weeks ago, took responsibility for bringing in a personnel consultant. I expect negatives and positives in that consultant's report, just as we got in the ABA report on discipline. We can fix our problems ourselves. I want to see the Board and membership work for change, but not with Mr. Peterson or with the Legislature."

Governor Steve Toole told the Board, "I don't think a union is in the best interests of the Bar Association, but I think letting people vote is. My problem is that we support legislation to do away with discrimination, while appearing to practice it against our employees. I can't ignore my principles. It is unfortunate we're in this situation, but the concerns of opponents are not the issue."

Governor Mary Fairhurst said she had come nearly full circle in her thinking on the issue, and she agreed with Dan Hannula. "I hope in an election employees have heard, and will remember, that this Board will act on their concerns. I regret they needed to take these steps to get matters to us."

Vickie Norris expressed frustration that the Board "was focusing so intently on the interest of 50 or 60 people, while there hasn't been a hell of a lot of input about the needs of the 19,000 members of the Bar Association out there. We're about to do something almost everyone agrees is not good for the 19,000 members who plopped us down in these chairs to manage their business. That disturbs me. The membership has been dropped out of the loop."

Jim Handmacher added, "I'm concerned, like Vickie, about what the members think. None of us have been overwhelmed by members input so far. I'm concerned about the Board's making a decision of this import without hearing from the membership. We are elected to make decisions, but there are some issues so fundamental that we need to have the members' input. Just as we would not decide the coming governance issues without member input, so we should not make this decision.

"I think this is that sort of issue. Where people on both sides are unsure whether to listen to their heads or their hearts, I think we need to put the matter to a vote of the membership, and I offer that as an amendment to the motion."

Jan Peterson declined to accept the amendment as a friendly one. Joe Nappi seconded it, and it proceeded to discussion. Dan Hannula thought the Board "will look weak and ineffective if we don't make this decision. The Court gave us authority to decide. We should decide."

Mary Fairhurst noted that a constituency of hers, the Thurston County Bar Association, had formally resolved that there should be a vote of the Association membership. Her view was that the Board should go ahead and vote, and if the membership disapproves of the decision, they can set a referendum in train. "I agree with Dan that we should act now."

"We've had three years to hear from the membership," Jan Peterson responded, "and we seem not to be hearing anything. If we make a decision that is abominable to them, they will let us know that's what we've done."

Wayne Blair said a vote to refer the matter to the membership is, in effect, a vote to litigate. Steve Toole commented that members of the Association have had a great deal of opportunity to communicate with us. "I got maybe 15 responses to a column I wrote in the *King County Bar Bulletin*."

The motion to amend by calling for a referendum was then voted on, and it was defeated 2-9, Governors Handmacher and Nappi voting aye. Governor Mike Larson announced he "probably will support the main motion." Jan Peterson said he thought the ultimate issue was not whether the union is good for the Association. It was that he, like Dan Hannula, couldn't answer Bethel Webb's question.

On a vote on Jan Peterson's motion, the motion carried, 7-4, Governors Campbell, Handmacher, Nappi and Norris opposed. President Stritmatter said he would start consultations on the arrangements right away. Several Governors thought the Board's Personnel Committee should handle the matter.

Jan Peterson told the Board he didn't think a fair hearing had been given to either side of the issue, given the prevailing temper around the Bar office. "That has to take place now." Local 1001 president Joe Peterson called the Board's decision "a good step. I am concerned, however, about the structure of how you set this up. A number of people who voted 'no' are on the Personnel Committee, and members are also scattered around the state . . ."

"Who do you want to exclude?" Governor Vickie Norris interrupted. "People who voted 'no' or people from eastern Washington?" "Whatever you want," Peterson replied a bit weakly. In the end, it was decided the president and legal counsel will make the arrangements and run them by the Board in a conference call.

The Board then adjourned.

The next meeting of the Board is in Bellingham, March 25-26, 1994. Meetings of the Board are open to members.

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Notices of Interest to Bar Members

WSBA Membership Transfers

Transferred: On January 13, 1994, **Robert S. Egger** (WSBA #9852, admitted 1960) became an inactive member of the Washington State Bar Association. This is not a disciplinary notice. [January 31, 1994]

WSBA Disciplinary Notices

Censured: Spokane lawyer **Robin Morris Bale** (WSBA #14596, admitted 1984) has been ordered censured by the Disciplinary Board pursuant to a Stipulation for Discipline approved January 21, 1994. The discipline is based upon Bale's representation of, and court appearances for, clients while suspended for nonpayment of dues. She failed to notify her clients that she was suspended and she failed to file an affidavit of compliance as required by RLD 8.3. She also failed to state in her application for reinstatement that she was representing clients during the period that she was suspended. [January 31, 1994]

Disbarred: Kirkland lawyer **John M. Woodley** (WSBA #4917, admitted 1973) has been ordered disbarred, effective immediately, pursuant to a Stipulation for Discipline based upon Woodley's conviction, after a jury trial, of 44 Federal Class E felonies. His criminal convictions arose from his actions as trustee in connection with the Elizabeth A. Lynn Trust, the Elizabeth A. Lynn Foundation, and the White Pine Care Center. The convictions were for 36 counts of mail fraud, four counts of tax evasion, and four counts of making false tax returns. He violated RLD 1.1(a) and RLD 1.1(i) by violation of RPC 8.4(b) and 8.4(c). [February 3, 1994]

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 March 1994 is 3.88%. ***The maximum allowable interest permissible for April 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.

Garnishment of pay of federal employees and involuntary allotments from the pay of military members for commercial debts: The Defense Finance and Accounting Service (DFAS) is giving notice that all requests for payments pursuant to court-ordered garnishments as authorized under Section 9 of Pub. L. No. 103-94, Hatch Act Reform Amendments of 1993, for all Department of Defense Civilian Employees, except those noted below, shall be submitted to the Defense Finance and Accounting Service-Cleveland Center, Office of General Counsel, Code L, 1240 East 9th Street, P.O. Box 998002, Cleveland, OH 44199-8002.

For requests that apply to employees of the Army and Air Force Exchange Service or civilian employees of the Defense Contract Audit Agency (DCAA) and the Defense Logistics Agency (DLA) who are employed outside the United States, see 5 CFR Part 581, Appendix A.

For requests that apply to civilian employees of the Army Corps of Engineers, the National Security Agency, the Defense Intelligence Agency, and non-appropriated fund civilian agencies of the Air Force, contact the following offices: *U.S. Army Corps of Engineers* - Corps of Engineers, Omaha District, Central Payroll Office, P.O. Box 1439 DTS, Omaha, NE 68101-1439; *National Security Agency* - General Counsel, National Security Agency, Central Security Service, 9800 Savage Road, Fort George Meade, MD 20755-6000; *Defense Intelligence Agency* - Office of General Counsel, Defense Intelligence Agency, Pentagon, 2E238, Washington, DC 20340-1029; *Air Force non-appropriated fund employees* - Office of General Counsel, Air Force Services Agency, 10100 Reunion Place, Suite 503, San Antonio, TX 78216-4138.

For civilian employees of the Army, Navy, and Marine Corps who are employed outside the United States, contact the following offices: *Army Civilian Employees Europe* - 266th Theater Finance Command, Attn: AEUCF-CPF, APO New York 09007-0137; *Army NAF Civilian Employees in Japan* - Commander, U.S. Army Finance & Accounting Office, Japan, Unit 45005, Attn: APAJ-RM-FA-E-CP, APO AP 96343-0087; *Army Civilian Employees in Korea* - 175th Finance & Accounting Office, Korea, Unit 15300, Attn: EAFC-FO (Civilian Pay), APO AP 96205-0073; *Army Civilian Employees in Panama* - DCSRM Finance and Accounting Office, Unit 7153, Attn: SORM-FAP-C, APO AA 34004-5000; *Navy and Marine Corps Civilian Employees Overseas* - Director of the Office of Civilian Personnel Management, Office of the General Counsel, Navy Department, 800 N. Quincy Street, Arlington, VA 22203-1998.

This action took effect February 3, 1994. For further information contact Rod Winn at (216) 522-6105.

Supplementary Information: Congress has authorized the garnishment of Federal civilian employees' wages for commercial debts pursuant to Section 9 of Pub. L. No. 103-4, Hatch Act Reform Amendments of 1993. The applications and orders and legal issues related thereto will be reviewed by the appropriate addressee Office of General Counsel.

Patricia L. Toppings
OSD Federal Register Liaison Officer
Department of Defense

Treat Award:

The National College of Probate Judges annually selects an individual who has made a significant contribution to the improvement of the law of judicial administration in probate or related fields. Previous recipients have been members of the judiciary, attorneys and law school deans or professors. The achievement may be an innovative program that has been designed and adopted leading to advances in the probate field; an article, treatise, book or opinion which is of unusual quality and resulted in a significant impact; a leadership role in some organization or activity that resulted in significant improvement in probate law or administration; or any other outstanding activity or contribution to probate law, probate administration or a related field.

Send nominations to Treat Award for Excellence Committee, National College of Probate Judges, PO Box 3798, Williamsburg, VA 23187-8798; include a resumé of activities of the nominee, letters of recommendation, awards received, achievements in probate and re-

The Washington Law School Foundation *presents*

UNIVERSITY OF WASHINGTON CLE

– 1994 Spring Schedule Preview –

EMPLOYMENT LAW

The 27th Annual Pacific Coast Labor Law Conference: Critical Issues & Trends in Labor and Employment. One of the oldest employment law conferences in the country, bringing together attorneys, human resource professionals and labor leaders. May 19-20 (13 credits approx.) $290

ENVIRONMENTAL LAW

"Slippery When Wet, Volatile When Dry": The Fourth Annual Environmental Law & Management Conference. Focus on clean water and clean air issues. Special feature: Creative Environmental Settlements Workshop with Barbara Lither (Director of Enforcement, EPA Region 10) and David Lombardi, Chief Mediator for the Ninth Circuit. May 17-18 (Portland); May 19-20 (Seattle). (14 credits approx.) $325

BIO TECHNOLOGY

The Second Annual University of Washington Biotechnology Conference. Focus on regulatory, scientific, legal and other key aspects of developments in biomedical technology. Special feature: analysis of impacts of state and federal health care reform. June 3 (7 credits approx.) $120

FREE PRACTICE MANAGEMENT / ATTORNEY TRAINING SEMINAR

The 21st Century Lawyer: Is There A Gap To Be Narrowed? -- An Examination of the MacCrate Report. A national symposium on education and the legal profession, featuring Robert MacCrate, Dean Brest, Honorable Harry Edwards, Carrie Menkel-Meadows, and others. April 16 (6.5 CLE credits; application pending). FREE

Contact Us

- John Rapp, Director
- Kristin Scheyer, Conference Coordinator

1-800-CLE-UNIV
206-543-0059
685-3929 (fax)

Address: 706 Condon Hall
1100 NE Campus Pkwy
Seattle, WA 98105

lated fields of law, any other relevant material and the names of the proposers; they are due June 15.

Is Your Court User-friendly?

For many court users, perceptions of how the process treated them is more important than a case's outcome. Sharing strategies to improve the delivery of justice can help enhance the public's trust and confidence in the courts.

The American Judicature Society is collecting suggestions for simple ways courts can be easier to use and more inviting to the public. With funding from West Publishing Company, the Society will compile these tips into a booklet to be distributed nationwide. Among the suggestions the Society has received so far are volunteer-staffed information booths, payment of court fines by credit card and clear informational signage throughout the courthouse.

The Society welcomes ideas from judges, attorneys, court staff and court users. Please send your suggestions to American Judicature Society, User-friendly Courts Project, 25 E. Washington Street, Suite 1600, Chicago, IL 60602; fax (312) 558-9775, or call Ira Pilchen at (312) 558-6900.

United Kingdom Fulbright Award in European Community Law, 1995-1996:

This four-month grant provides a U.S. citizen who has been qualified to practice law between three and six years an opportunity to pursue three months' study and work experience in London and one month's work experience in Brussels. Contact the Council for International Exchange of Scholars, (202) 686-7878.

New family law forms: You can retrieve them from the L.A.W. BBS:

The new family-law pleading forms are now available. Do you need them but not know where to pick up a copy? Consider logging into L.A.W. BBS and downloading them directly to your computer.

Also, if you need forms or files in other areas of law, give L.A.W. BBS a try. Some of the forms and files available are: corporations & partnerships; landlord-tenant; collections; security interests & liens; wills and probate; criminal and traffic; bankruptcy; personal injury; maritime; commercial transactions; real estate transactions; international law; environmental law; tax law; and miscellaneous topics.

In addition, you can still search several important databases, including municipal codes, tax rulings, case law, the RCW and the WAC.

If you need assistance accessing L.A.W. BBS, check the yellow pages in the back of the 1992 WSBA. *Resources*, or call the WSBA at (206) 727-8200.

YMCA State Mock Trial Competition finals:

April 16 and 17, 20 schools will vie for the state mock trial championship. State champions will advance to the nationals in Chicago May 5-9.

Interested persons in the legal profession are invited to volunteer as audience raters for the state finals, to assess two competing teams and provide points based on the two-hour team performances. Those unable to volunteer are invited to attend the trials at Thurston County Courthouse, April 16, 9 a.m.-5 p.m. and April 17, 9 a.m. to noon (reception following). Contact Scott W. Johnson, YMCA Mock Trial Director, at (206) 543-0114.

CALENDAR

Business Advisory Services, Inc. (206) 223-5400
CLE International (206) 621-1938
Idaho Law Foundation (208) 342-8958
King County Bar Association CLE (206) 340-2579
Lewis & Clark Law School/Northwest School of Law (503) 768-6642
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; (800) CLE-UNIV
Washington Association of Prosecuting Attorneys (WAPA) (206) 753-2175
Washington State Bar Association CLE (WSBA CLE) (206) 727-8202
Washington State Trial Lawyers Association (WSTLA) (206) 464-1011, (800) 732-9251

April 1994

1 Seattle: Technology-driven Regulation. *Sponsored by* WSBA CLE.

1 WSBA Judicial Recommendation Committee Questionnaires due at 5 p.m. in WSBA office.

1 Seattle: Negotiation and Settlement Advocacy. *Sponsored by* WSBA CLE.

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

8 Seattle: WSBA Board of Governors/Section Leaders Meeting.

9 Everett: "Be a Trendsetter," 2nd annual leadership workshop. *Sponsored by* Washington Association for Legal Secretaries [WALS]. *For information:* Sally Favors, (206) 537-8217/591-6084.

8-9 Seattle: WSBA Board of Governors meeting/section leaders meeting.

8-10 Seattle: Professional Mediation Skills Training Certificate Program. *Sponsored by* UW CLE.

15 Seattle: Essentials of Evidence. *Sponsored by* WSBA CLE.

15 Seattle: Auto Cases. *Sponsored by* WSTLA.

15 Deadline for June 1994 *Bar News*.

16 Lacey: "Be a Trendsetter," 2nd annual leadership workshop. *Sponsored by* Washington Association for Legal Secretaries [WALS]. *For information:* Sally Favors, (206) 537-8217/591-6084.

16 Seattle: The 21st-Century Lawyer: Is There a Gap to be Narrowed? A Symposium on the MacCrate Report. *Sponsored by Washington Law Review*. Contact: Ruth Kennedy, (206) 543-4069.

16-17 Seattle: Professional Mediation Skills Training Certificate Program. *Sponsored by* UW CLE.

21 Wenatchee: Agricultural Law. *Sponsored by* WSBA CLE.

21-23 Leavenworth: WSBA YLD Midyear Meeting, AOP, CLE & Practice Conditions Forum. *For information:* (800) 223-8511 in-state/(509) 548-5269.

22 Seattle: Confronting Allegations of Child Sexual Abuse. *Sponsored by* WACDL. *For information:* (206) 623-1302.

22 Seattle: Workers' Compensation. *Sponsored by* WSTLA.

22 Olympia: Discovery Plans (video). *Sponsored by* WSBA CLE.

22 Seattle: United Nations Peacekeeping and World Law. *Sponsored by* WSBA World Peace Through Law Section.

22-23 Seattle: Family Law Skills Institute. *Sponsored by* WSBA CLE.

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

23 Wenatchee: "Be a Trendsetter," 2nd annual leadership workshop. *Sponsored by* Washington Association for Legal Secretaries [WALS]. *For information:* Sally Favors, (206) 537-8217/591-6084.

28 Portland, OR: Gerry Spence/Demonstrations/Tom Vesper (video). *Sponsored by* WSTLA.

29 Spokane: Essentials of Evidence. *Sponsored by* WSBA CLE.

29 Seattle: Business on Indian Reservations. *Sponsored by* WSBA CLE.

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

29 Seattle: Protecting the Consumer. *Sponsored by* WSBA CLE.

30 Seattle: Quarterly meeting, Evergreen Legal Services Board of Directors. Also on **July 16** and **October 22**. *For information:* Bev Miller (206) 464-5933/(800) 542-0794.

May 1994

1 Law Day, U.S.A.: Just Solutions. Entries for ABA awards throughout the state. Applications due May 14.

2-3 Bellevue: Managing Your Law Firm in the New Economy. *Sponsored by* Altman Weil Pensa. *Contact:* (206) 462-8235.

3 Moses Lake: Family Law in the '90s (video). *Sponsored by* WSBA CLE.

4 Wenatchee: Damages Strategies (video). *Sponsored by* WSBA CLE.

6 Seattle: Business Succession Strategies. *Sponsored by* WSBA CLE.

6 Seattle: Construction Law Midyear. *Sponsored by* WSBA CLE.

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

6-7 Spokane: WSBA Board of Governors meeting.

12 Seattle: Estate Tax Returns. *Sponsored by* WSBA CLE.

12-14 Orcas Island: WSBA Environmental Law Section Midyear Meeting.

13 Seattle: Ethical Dilemmas for the Practicing Lawyer. *Sponsored by* WSBA CLE.

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

15 Deadline for July 1994 *Bar News*.

17-18 Portland, OR: Fourth Annual Environmental Law & Management Conference. *Sponsored by* UW CLE.

19-20 Seattle: Fourth Annual Environmental Law & Management Conference. *Sponsored by* UW CLE.

19-20 Seattle: Pacific Coast Labor Law Conference: Critical Issues & Trends in Labor & Employment. *Sponsored by* UW CLE.

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

20-22 Richland: WSBA Business Law Section Midyear Meeting.

June 1994

3 Seattle: Biotechnology Conference. *Sponsored by* UW CLE.

3-5 Yakima: WSBA Real Property, Probate & Trust Section Midyear Meeting

10 Seattle: Trusts. *Sponsored by* WSBA CLE.

10-12 Bellevue: WSBA Family Law Section Midyear Meeting.

15 Deadline for August 1994 *Bar News*.

15 Nominations due, Treat Award for Excellence. *Sponsored by* National College of Probate Judges (see "Digest," page 39 of this issue.)

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

17-18 Vancouver, WA: WSBA Board of Governors Meeting.

24-25 Chelan: WSBA Litigation Section Midyear Meeting.

August 1994

1 Applications due, United Kingdom Fulbright Award in European Community Law. *Contact* CIES, (202) 686-7878.

September 1994

16-17 SeaTac: First Annual Criminal Justice Institute. *Sponsored by* WSBA CLE.

A Better and Safer Place to Live

by **Bill Dennis**

Jack Richey's story in the February *Bar News* is simple enough on the surface, but it is a perplexing piece of work. The narrator is a woman with a husband and college student son. But her spouse insists on buying a revolver after their home is burglarized. The son knows all of this, but not wanting to wake his parents, decides to be stealthy during a midnight visit. The father hears him creeping about and calls 911. The operator tells him to stay in his bedroom while the police are on the way, but the father, perhaps in an excess of machismo, goes to confront the supposed burglar. Inevitably, the darkened house became the scene of a tragic shooting that leaves the son dead at his father's hand and the parents bereft. At the end of the story the parents make the gun the scapegoat, in an almost Biblical sense, by tossing it into Puget Sound in an effort to begin healing their relationship.

I like that ending. Any family this stupid shouldn't have any sharp instruments at home, let alone loaded guns.

My own experience and that of my family has been quite different. If my father had not taught his bride how to use a gun for self-protection I probably would not be here. On at least two occasions (once in Boston and once again in the Rainier Beach area of Seattle) she drove off individuals who appeared bent on harming her family and did so without firing a shot. That is not a completely unusual experience. My sister-in-law—in the affluent suburb of Kent—was awakened by a strange man leaning over her bed at 3 a.m. She shouted for her father to bring his gun and the visitor left abruptly. Estimates vary, but there is persuasive evidence that about 1,000,000 Americans have similar experiences each year (*See* Keck & DeLone, *Journal of Quantitative Criminology*, March, 1993).

Since the Richey article ended with the couple ridding themselves of their gun, it is safe to surmise that the author's intent was to suggest that at least some of us are better off unarmed. Let's examine that proposition. The author has plausibly described one class of people who shouldn't be armed—the stupid and imprudent. The very young, the immature and those too damaged or befuddled to think clearly are other classes. I would also add anyone who resists being armed, both on libertarian principles and on the theory so that they can't be counted on to act intelligently in an emergency. But what about the rest of us? Is the normally intelligent individual who has spent a few hours familiarizing himself with a gun better off to be unarmed?

Before sharing some information that bears on that, let me point out that it's pretty hard for the average reader to be well-informed on this topic. I don't mean to point the finger at a particular publication because the *Longview Daily News* is actually a pretty good paper. But it was the one I took home every day for 90 days and read from cover to cover, cutting out every article on a shooting as I read. The hard part was finding all the datelined places and measuring the distances from Longview. When I was done I had 54 articles about someone abusing a gun to rob or kill and five about legitimate self-defense. The reader would conclude that guns are misused far more often than not if he did not know that the average distance from Longview was 26 times as far in the abuse stories as it was in the self-defense stories. *The Daily News* is typical in that it will print a story about legitimate self-defense only if the events in the story occur so close to home that the readers can be expected to know about them from some other source. But they will go anywhere in the world for a story about someone abusing a gun. (The farthest-away story was about someone's beer-drinking goat getting shot in Brisbane. I never did figure out why that was news in Longview.) So don't think that you have a balanced view of this subject unless you do a good deal more than read your local paper and a couple of weekly news magazines.

For instance, there is quite a bit of evidence that disarming the general population actually raises the homicide rate. Gun control advocates determinedly ignore the fact that the places with the highest crime rates in the country are those with the tightest gun laws and that homicide rates in those places have usually risen substantially since those laws were enacted. But when Florida and Oregon eased their laws governing the concealed carrying of handguns, they actually experienced a reduction in their crime rates (George F. Will, *Newsweek*, November 10, 1993, at p. 94). And Kennesaw, Georgia—the infamous nest of redneck crackers—turns out to be a pleasant suburb of Atlanta with a population of about 10,000. True, for the last decade it has had a law that mandates that every home be equipped with a gun, ammunition and someone who knows how to use them. But the odd thing is that the city has experienced a substantial drop in most categories of crime and no increase in accidental or other sorts of shootings (*Dallas Morning News*, February 3, 1991). Ten years and a population that size is a useful experiment. Then there is the case of Chicago, where the homicide rate had been dropping steadily until the city banned the concealed carrying of handguns by ordinary citizens. The homicide rate has risen every year since (Jay Edward Sinkin, *The Wall Street Journal*, March 25, 1991).

So it appears that people who are reasonably intelligent and even fairly well-trained at using a gun generally benefit from being armed for self-protection. Contrary to what you might think, allowing people to have this option doesn't place a great burden on society, either. I know that the much-cited comparison between Seattle, and Vancouver, B.C. purported to reach a different conclusion (*New England Journal of Medicine*, November 10, 1988). But anyone who is going to take that study seriously needs to read the correspondence section printed in the same publication on May 4, 1989. The condemnation was virtually unanimous. My favorite was Dr. Gryder's remark that he was politically in favor of gun control and of using science to look at our social problems, but that it must not be flawed science that we use.

But if flawed science is the best that gun control advocates have to support their positions, then perhaps the points I've made have more than a little merit. It may even be that situations like Richey's fictional tragedy notwithstanding, an armed citizenry reasonably well-schooled in the safe and prudent use of their weapons might make this a better and safer place to live.

* * *

***Bill Dennis** is a lawyer in Kelso.*

Open Letter to Members of

Dear Member,

The Bar Task Force on Governance has met four times since last November to examine how the Bar governs itself and to look at ideas on how it might be governed in the future. The Task Force is soliciting comments from WSBA members regarding individual concerns and ideas relating to the Bar governance issue. In seeking those comments, the Task Force has adopted the following mission statement:

> The Task Force on Governance has been charged with the study, assessment and evaluation of State Bar governance for the purpose of determining the most appropriate role and function for the State Bar, and what changes, if any, would best enable the State Bar to carry out its role and function in the most effective and economical way possible. The Task Force is guided by the following principles: professionalism, sound legal ethics and the protection of the public, the rule of law, access to justice for all, inclusiveness, pluralism and diversity. The Task Force will present a comprehensive report to the Board of Governors not later than July 1994.

Our tasks include:

1. educating ourselves on the WSBA's current form of government;
2. assessing the strengths and weaknesses of the present structure;
3. comparing the WSBA's form of governance with those of the ABA, other state bars, other professional organizations and other relevant models of government, and providing a critical analysis;
4. receiving input from members across the state; and
5. recommending changes in present form of governance, if deemed necessary and appropriate, and documenting the rationale for these recommendations.

In addressing these tasks, the Task Force is looking at six broad areas of concern and asking the following questions:

General Issues. What are the purposes and values of the Bar Association as an organization? Is the WSBA being sufficiently responsive to its membership; and if not, what style of government would allow for greater responsiveness? Should Bar membership be voluntary, mandatory or a combination of both (a split bar)? Should the disciplinary functions of the Bar be transferred to the Supreme Court?

Governing Board. Should the Board of Governors continue? How many representatives should sit on the Board? Is it important for representatives to be elected? How important is one person, one vote? Should Governors be elected by geographical areas other than Congressional districts? Should lay persons serve on the Board? Should a WYLD (Young Lawyer) representative serve on the Board, and if so, how should that representative be selected? Should there be representatives from other organizations on the Board such as local bars, special-interest bars, the ABA, the judiciary, our out-of-state constituency? Should the Board of Governors be restricted to administrative duties in executing policy decided by a more representative body? Should the term of the Board of Governors continue to be three years and limited to one term? Should the geographical area in which members vote and run for office be based upon the member's residence or place of work, or should the candidate have a choice?

House of Delegates. Should there be a representative body, separate from the Board of Governors, that sets the policy of the Bar? What should the representative makeup of such a body be? How should those representatives be selected, and for what length of term? Should representatives be limited to a set term? Should there be representatives from sections, committees, local bars, special-interest bars, or other organizations? Should the decisions of such a representative body be advisory or binding?

Role and Selection of the WSBA president. How should the president be selected and for what length of term? What

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Holistic Justice Center/International Alliance of Holistic Lawyers

In 1990, Vermont attorney Bill van Zyverden opened the Holistic Justice Center in Middlebury, Vermont. It houses the International Alliance of Holistic Lawyers, a nonprofit, educational organization that includes 350 members in 43 states and four foreign countries, dedicated to promoting long-range problem-solving rather than short-term litigation as a means of resolving disputes. Its goal is personal and professional change.

Writer Kathleen Sullivan quotes van Zyverden in the December 1993 New York Bar Association *State Bar News*:

"Theoretically, holistic lawyers view their clients differently from those using the traditional model of dispute resolution. People come to lawyers with problems. The traditional approach seeks to understand what kind of problem the person has. The holistic approach is to understand what kind of person has this problem and why.

"Holistic justice is the awareness and understanding of the cause and effect of past behavior, the responsible acceptance of consequences and personal commitment to change. I don't take on or solve a person's problems. Clients need to know that they must do this themselves."

The *News* says, " In line with this, van Zyverden involves his clients as much as possible when litigation is unavoidable. He asks that they conduct their own investigations, take their own pictures, interview potential witnesses and assemble documents."

He says, "Encouraging people to take responsibility helps them heal their own inner conflict around the issue. It defuses a lot of anger."

The February 1994 *Vermont Bar Journal & Law Digest* carried his article, "Collaborative Law—Moving Settlement Toward Resolution" (page 35). For more information, contact the Center at PO Box 753, Middlebury, VT 05753; (802) 388-7478; fax (802). 388-1035.

THE BAR REGARDING GOVERNANCE

should the president's authority be? How should the president-elect be selected? What should the authority of the president-elect be? Should the president-elect be a voting member of the Board of Governors?

Costs of any Changes. What would the different methods of governance cost, compared to the present costs of the existing method of governance? What impact would these costs have on dues?

Procedures to make Changes. Should the Task Force recommend changes? What authority is required to authorize the recommended changes, i.e., the Supreme Court by Court Rule, the Legislature by amending the State Bar Act, and/or a vote of the general Bar membership? Should the general membership vote on any proposed changes to governance, and should that vote be on the basis of the total overall changes recommended or on the basis of an item-by-item list of recommended changes?

Mandatory v. Voluntary Bar. Should the WSBA continue as it is (mandatory bar)? Should the WSBA transfer the regulatory functions of discipline and admission to the Supreme Court and become a voluntary organization? Should the WSBA become a "split" bar with the costs of the mandatory functions of the bar assessed to all members and non-mandatory functions assessed only on a voluntary basis?

Recently, the WSBA received the ABA Report on the Washington Lawyer Regulation System, which recommends the transfer of lawyer discipline to the Supreme Court. The Task Force will be studying that recommendation relating to its effect on Bar governance; specifically, if lawyer discipline is transferred to the Supreme Court, is a mandatory bar needed and/or desirable?

The purpose of this letter is to inform members of what the Task Force is considering and to solicit comments. The Task Force realizes that members have a variety of views. Some members feel strongly that a change of governance is crucial if the Bar is to have continued viability. Others feel strongly that the current form of governance should not be changed. To facilitate comment, a list of the names of the members of the Task Force with their telephone numbers is provided below. Please feel free to call us, or provide your concerns or comments in writing to the Task Force on WSBA Governance, Attention: Jo Morehouse, 2001 Sixth Ave., #500, Seattle, WA 98121-2599.

Please also take note that the meetings of the Task Force are open to those members who would like to attend and are scheduled for March 11, April 15, May 13, June 10 and July 15. The Task Force is also planning "public hearings," in which comments from the members of the Bar will be solicited; times and locations will be announced at a later date.

Sincerely,
Rick Ockerman
Ruth Walsh McIntyre

List of Task Force Members:

Evelyn Fielding (206) 459-6947	Greg Dallaire (206) 464-3939	Wayne Blair (206) 682-7090	C.C. Bridgewater (206) 577-3080
Jim Handmacher (206) 627-8131	Moni Law (509) 575-5593	Joe Erickson (509) 586-0519	Mary Fairhurst (206) 753-4960
Gordon McHenry (206) 865-5674	Ruth McIntyre (206) 322-1409	Pat LePley (206) 641-5353	Lisa Lowe (206) 892-1705
Fred Montoya (509) 484-5611	Joe Nappi (509) 624-3233	John McKay (206) 587-0700	Lori Molander (206) 455-6829
Ada Shen Jaffe (206) 464-5933	Brian Stiles (206) 855-0131	Rick Ockerman (206) 820-6658	Sally Savage (509) 335-6666
		Delain Swenson (509) 529-0630	Robert Whaley (509) 456-5717

CLEARWATER

by **John E. Keegan**

Clearwater Summer *has just been published. Situated in an idyllic small town in the Pacific Northwest in the late fifties, the story depicts the loss of innocence and confrontation of teenager Will Bradford, the son of the local hardware store owner, and his friends, Taylor Clark, a human joke book, and Wellesley Baker, the tomboy daughter of the town's stockcar racing hero.*

Early reviewers have raved over the book. Library Journal *says, "The author has given fresh life to the familiar literary world of the seemingly self-satisfied, safe-from-change Eisenhower era. Will's first-person narrative proves near perfect . . . . Packing the punch of Stephen King's novella* The Body, *a classic of small-town life disrupted by violent death, this carefully crafted first novel is, in its turn, highly recommended . . . ."* Publishers Weekly *calls it "a sincere and tender evocation of the passage from childhood to maturity."*

The following excerpt from Clearwater Summer *is reprinted with the permission of the publisher, Carroll & Graf, New York. © 1994.*

In summer, the weather imitated Clearwater's name. Some days the sky was so blue you'd lose your balance if you looked at it too long. Any cloud that dared to appear seemed to dissolve from the heat. The wheat farmers loved the heat because it thickened the crops for the August harvest. The smell in the air made you hungry.

Ever since the fire in Clark's garage, we'd had the other kind of day, cloudbursts so hard they knocked the petals off the roses and flattened the grass like the hair on a wet collie. I figured God was dampening things in case Taylor experimented anymore with his pyromania. On these days, Dad said customers became water conscious and bought chains and ballcocks to stop the runs in their toilets and putty for the leaks in their windows.

Wellesley and I thought of rain as a good excuse to take Taylor for a cherry Coke. I'd already done my chores at the hardware. We debated under the awning in front of the Rexall.

"Who's paying?" Taylor asked, looking at me. I had a part-time job and Taylor had his allowance; Wellesley had neither even though her dad made her get up at 5:30 and clean their house and do chores before school every day.

"I haven't been paid yet," I said. My excuse sounded trumped-up but for some reason Dad hadn't paid me since Easter. He said to keep track of what he owed me in a Western Hardware invoice pad. Each time I filled up a page, I gave the carbon copy to him and he stuck it in a drawer in his office. Dad said it was a forced savings plan.

"Lame, Bradford," Taylor said, "you're probably squirrelling it away in mining stocks or something. When I'm panhandling for pennies with a tin cup on street corners someday, you'll be smoking cigars in a corner office in Chicago counting the money you saved from my cherry cokes."

"What else would you spend it on, Taylor?" Wellesley asked.

"Hah! I've got plans, like buying a car..."

"Your parents will give you Dan's," Wellesley interrupted. Taylor's brother had a cherry '49 Ford his parents bought him for high school graduation.

"And college . . ."

"You won't make it out of high school," she said.

"And Christmas presents for my family . . ."

"Last year, you gave your mom a stolen potholder," she said. Taylor had lifted it from the Sprouse Reitz store in Union Gap.

"I paid them back later! Besides, I'm trying to reform," Taylor said, faking a hurt look. "If you take my money, I'll have to steal."

"I'll pay you back," I said, "as soon as I get paid."

"I'm not that thirsty," Wellesley said, "it'll spoil my dinner. I'll just watch you two rot your guts out with that stuff."

"Don't you go holy on me like Bradford," Taylor said. "By the way, if your old man's got enough to blow on stock cars, why don't you hit him up for an allowance?"

"My Dad grew up in Philadelphia," she said. "The kids stupid enough to have allowances got their arms bent off if they didn't fork it over to someone tougher."

We sat on the stools at Martin's soda fountain in the Rexall and watched the rain drizzle down the windows. Taylor ordered a round for three and took back four dollars and forty cents change from the five dollar bill he'd tried to hide. I wished my parents shared some of the Clarks' philosophy. The Clarks managed to give their sons a sense of handling money without violating the child labor laws. Dad didn't believe in giving away something for nothing.

Wellesley's sister, Tiffany, strolled into the Rexall with her arm on a guy. She wore a nice white cotton dress with a sash around the waist. She had a fuller shape than Wellesley and wasn't bad looking. Now that she'd finished school, Wellesley told me Tiffany hardly ever came around the house. She said her dad considered graduation from high school emancipation into the real world. I'd never totally bought that excuse because Tiffany left home before her graduation. She was supposed to be living with a cousin in Olalla but Wellesley said she was shacking up with a car mechanic.

The guy with her, in low slung pants held up by a pink suede belt, looked too anemic to grip an end wrench. I doubted Mr. Baker would approve of someone so puny. He'd want a weight lifter or a fullback, someone who'd crush your knuckles when he shook hands. The guy's hair was greased into a ducktail. I could smell the Brylcream. They shared drags on his cigarette.

Tiffany acted surprised to see Wellesley and pulled her hand away from her friend. "Isn't it about dinner time for you kids?" She spoke in a sarcastic voice that I could tell grated on Wellesley.

SUMMER

"What are you doing here?" Wellesley asked.

Tiffany looked at her friend as if to say isn't it obvious. Her ninety-pound weakling was trying to read the price on the sunglasses in the rack next to him. A pair of those horned-rim ones would just about complete the picture I thought.

"Have you seen Mom?" Wellesley asked.

Tiffany looked at her friend again, who was ignoring the discussion at the stools, "No, but Dad's over at the Drift Inn. I saw the car." The Drift Inn was one of those places I'd been warned to stay away from. People said men from the rendering plant stopped there to drink their paychecks and brawl. "How's Mom doing?" Tiffany's question seemed an afterthought.

Wellesley ignored her. "I've got to go, you guys." She took one more suck of her cherry coke to get the ice water that had melted and then spun off her chair. Maybe she couldn't afford much, but Wellesley never wasted anything she got her hands on.

As soon as Wellesley reached the door, Tiffany turned to the rack and stuck a pair of white plastic glasses on her friend. He slipped into an Elvis Presley pose with his hands ready to strum a guitar. Tiffany tittered.

"There's a pair," Taylor whispered to me.

Tiffany never bothered to introduce her greasy friend. Afterwards, Taylor wished he'd asked some motor questions to see if he was the car mechanic Tiffany was living with.

After dinner, the rain let up and Taylor and I thought of spying on Wellesley as a joke.

Wellesley lived about eight blocks from ours in a neighborhood without paved streets or sidewalks. It used to be the site of Clearwater's lumber mill. The mill burned down before World War II. Now it was just a poor part of town with a wrecking yard. People in Clearwater called the area "Milltown" and the people "Millers." "Mill" was a short-hand way of describing what they wore and what they thought - an ugly pair of cords were mill pants and a dull person was mill-brained.

Wellesley's house had asphalt shingles coated with red-colored sand to imitate bricks. Where shingles had fallen off, patches of yellowed siding showed through like a knee through a hole in your jeans.

Every light in her house must have been on when we got there. We saw Wellesley in the kitchen, her back to us, washing dishes. Mrs. Baker fidgeted in a chair across the table from her husband. He shoveled food into his mouth from the plate he held up to his chin. We kept our faces far enough from the window so no one would see us.

Then Mr. Baker set his plate down and planted his fist and the handle end of his fork on the table. The plate rattled. "This tastes like horse shit! When are you going to cook something edible?" His bass voice vibrated the half-open window.

Taylor and I looked at each other. I knew we shouldn't be doing this.

"Look at me when I'm talking to you! Do you hear me?"

Mrs. Baker slowly raised her head, holding it sideways to protect herself.

He sloshed his drink in her face, "Wake up! You act like you're dead!"

Wellesley ran to the table and patted her mom with the dish towel. Then Wellesley hugged her as if she was the mother and her mom the hurt child.

In Taylor's eyes, I could see the reflection of the Baker family in the kitchen. He seemed mesmerized. Then the chair scraped against the floor.

Mr. Baker rose from his seat, one hand on the table for balance, and started toward Mrs. Baker.

Wellesley stood tall between her mom and dad.

He slapped Wellesley's face, "Let her fight her own goddamn battles."

Wellesley raised her eyes, but didn't move her head. She looked so defenseless next to her dad, like the performer in the rodeo who runs into the ring to distract the Brahma bull from the fallen rider.

I felt like I'd swallowed one of the coke glasses at the Rexall and it had choked off my air supply. I couldn't believe the town's stock car champion was slapping his daughter around.

Mr. Baker grabbed Wellesley by the jaw and bent her neck back, "You don't like it here, go live with your whore sister!" Then he flicked her head, knocking her off balance, and turned toward the window.

We ducked. Taylor's face was panicked. Mr. Baker would pound us if he knew we'd seen him. I held my breath and pressed against the side of the house. Nothing moved inside. Then Mr. Baker belched. A cupboard door opened, slammed shut, then another. His shadow moved across the rectangle of light cast onto the dead grass next to us.

Taylor offered no resistance when I tugged on his sleeve to leave. Nobody followed us.

Even though it had started to pour again, we walked home slowly, hands in our pockets. Jags of lightening exposed the cardboard-looking fronts of the crackerbox houses in Milltown, followed by angry thunderclaps. Cold water ran down the back of my neck and under my shirt. Neither of us said anything.

In my darkest fantasies, I couldn't imagine my dad doing what I'd seen in that kitchen. He'd yelled at me plenty. I'd seen him mad enough to break the guts of my tennis racket over the bedpost. But he'd never lay a hand on a woman.

I was still wide awake at midnight when the train came through town. I thought of Wellesley and me in the tree over the garage that time, the way she'd hugged the trunk like it was a friend. The wail of the train whistle hung in the air. It sounded sad, like it was lost in some faraway place.

* * *

Seattle lawyer ***John E. Keegan****, a graduate of Gonzaga University and Harvard Law School, is a partner at Davis Wright Tremaine, where he practices land use law full-time. Meantime, he is also completing a second book which is so far untitled.*

NEWS FROM HOME

Tina Kernan, a 1993 graduate of the University of Idaho School of Law, has joined Pike & Gittins in Clarkston.

Schwabe, Williamson, Ferguson & Burdell has become the first Seattle area firm to become the exclusive sponsor of one of the six clinics of the Legal Action Center. Sponsored by Catholic Community Services, the Legal Action Centers serve clients in the areas of landlord/tenant disputes, debtor/creditor issues and consumer protection cases. Some 55 attorneys in the firm are participating. The firm has also added **Thomas M. Donahue, Jr.**, **Anamaria G. King**, and **Stefani Quane** as associates in the Seattle office.

Andrew C. Smythe, formerly with Turner, Stoeve, Gagliardi & Goss, has become a principal with Chase, Hayes & Kalomon in Spokane.

José Gaitán was named a Fellow of the American Bar Foundation last November. He is a principal in the Seattle firm of Gaitán & Cusack.

Shirley Battan, former chief of the Urban and Agricultural Resources Division of the Washington Attorney General's office, has been named Deputy Attorney General by Attorney General **Christine Gregoire**.

Perkins Coie has announced the addition of **Kurt Becker**, **Judith Corley**, **Kevin Hamilton** and **Ronald McIntire** as partners in the firm.

Daniel O'Leary, a former partner of Pozzi, Wilson, Atchison, O'Leary & Conboy in Portland, has become of counsel to Davis Wright Tremaine in the firm's Portland office.

Richard Riddell, senior partner at Seattle's Riddell, Williams, Bullitt & Walkinshaw and former president (1976-77) of the WSBA, was honored by his firm at a January reception. Riddell retired recently after practicing law 48 years in the firm his father started.

Governor **Mike Lowry** has appointed Mount Vernon lawyer **John Meyer** to the board of trustees of Skagit Valley Community College.

Miller, Nash, Weiner, Hager & Carlsen recently announced it has hired associates **William Buchanan**, **Steven Hill**, **Jeffrey Roelofs** (Portland) and **Lance Bass**, **William Connors** and **David Hackett** (Seattle). **Joyce Bernheim**, **Milt Christensen** and **Casey Mills** have become partners. **Richard Edwards** has been re-elected managing partner of the firm.

Scott J. Horenstein of Vancouver has been elected to a Fellowship in the American Academy of Matrimonial Lawyers.

Nick Verwolf of Davis Wright Tremaine (Bellevue) and **John Bergman** of Helsell, Fetterman, Martin, Todd & Hokanson were inducted into the American College of Trial Lawyers in September.

Richard H. Wollenberg has been named vice president for production for Longview Fibre Company's Western Container Division.

Brian Holtzclaw, **Lori Nomura** and **Timothy Woodland** have joined Foster Pepper & Shefelman in the firm's Seattle office.

David G. Johansen, real estate department chair at Lane Powell Spears Lubersky in Seattle, has been elected to the board of directors of Unico Properties, Inc. **Michael Dwyer** has been named partner-in-charge in the Seattle office of the firm.

Seattle firm Hillis Clark Martin & Peterson has received the Washington State Hispanic Bar Association 1993 Scholarship Award for support of the Association's scholarship program through contributions, mentoring and pro bono assistance.

Stewart, Sokol & Gray, formerly the construction, fidelity and surety practice group of Stafford Frey Cooper & Stewart, opened January 1 as a separate firm officed in Portland, and with affiliate offices in Seattle and Anchorage.

Lori Guzzo and **S. Karen Bamberger** have become principals in the Seattle firm of Betts, Patterson & Mines.

Scott Blankenship, formerly of Gaitán & Cusack, **Christopher Gillette**, formerly with Williams, Kastner & Gibbs, and **Theodore Rogowski**, previously with Cadwallader, Wickersham & Taft, have opened their own firm, Blankenship, Gillette & Rogowski, for the general practice of law, including business transactions and contract formation, entertainment and sports law, commercial and insurance litigation, and environmental law.

David Sprinkle has become a partner, and Kathleen Healey an associate, in the Seattle firm of Lasher Holzapfel Sperry & Ebberson.

Gary Gayton has become of counsel to Gaitán & Cusack in Seattle.

Five lawyers have left Anchorage-based Bradbury, Bliss & Riordan to form a new, Seattle firm. **Terrence Cullen**, **Carl Forsberg**, **Dean Lum**, **Patrick Middleton** and **Roy Umlauf** are principals in the new civil litigation defense

firm, Forsberg & Umlauf, P.S.

Morrison & Foerster has added a new partner, **Anna Lewak Wright**, to head the Seattle firm's biotechnology patent group.

Helsell, Fetterman, Martin, Todd & Hokanson has added two partners—**George A. Nicoud, 3d** and **Linda D. Walton**, and three associates—**Jennifer Divine**, **Erik Price** and **Bradley Shannon**.

Daniel Hoyt Smith has been named managing director of MacDonald, Hoague & Bayless in Seattle.

Douglas Tingvall, general counsel to John L. Scott Real Estate Since 1985, has been named vice president of the Bellevue-based real estate firm.

Tousley Brain has announced that **Kim D. Stephens** is the firm's newly elected managing partner. With the firm since 1981, Stephens concentrates his practice in financial, business, securities and construction litigation.

Two lawyers in the Seattle office of Ater Wynne Dodson & Skerritt, **Greg Harris** and **Stephen J. Kennedy**, became partners in the firm earlier this year. Harris is head of the firm's litigation department, and Kennedy works principally in complex litigation in the state and federal courts.

Louisa Barash, **Daniel Dunne, Jr.**, and **David M. Heineck** have become partners of Heller Ehrman White & McAuliffe. All are with the firm's Seattle office.

David Anderson is the new corporate secretary/counsel for Airborne Express in Seattle. He is the first person to take on the duties of corporate secretary as well as those of the in-house counsel's position.

Mark W. Berry is a recently-named partner of Davis Wright Tremaine in the firm's Bellevue office.

Kathryn Gates Hildt of Port Townsend has been appointed to the board of trustees of Peninsula Community College by Governor Lowry.

CLARK COUNTY REPORT

by **JERRY RIGG**

Lawyer Exchange Program is Smashing Success. The Relocation and Attorney Protection Service (RAPS) was implemented on April 1. In the spirit of collegiality and mutual desire to "get away from it all", volunteers (forced and otherwise) reported from Kitsap and Clark counties. Military busses exchanged the detainees at the factory outlet parking lot in Centralia, chosen as a neutral shopping outpost with adequate security.

Judge Dean Morgan Leads the Charge. Chaperoning the group and chosen by ability to cite unpublished North Dakota cases without notes was the Honorable **Dean Morgan** of Division II, Washington Court of Appeals. The new Rules of Court allow for interdistrict transfers and the judge happily heard the landlord/tenant motion calendar on Friday, April 1. He dispensed justice by sentencing the landlords to write the RLTA 50 times in longhand. Tenants were given a month's rent at half-price, a latte and free representation by **Joe Prather.** He advertises as "friendly and affordable," and Morgan figured free was about as affordable as one could get.

Back to His Roots. **Johnny Joe** (a.k.a. John J.) **Holtmann** felt right at home in Kitsap where every lawyer is required to use at least two, and sometimes three, given names. JJ was overheard marveling at the fact that Kitsap County only had motion calendar once a week. "Why, where we come from, attorneys can note up a matter from a cellular phone in the court parking lot and have it heard in the next five minutes."

Tonya's Place. Following the bus (with appropriate warning lights) was a tractor/trailer driven by **Mary Arden**, pulling her office building. Until recently, said building was located immediately next to the "Wedding Place," site of Tonya Harding's wedding. Mary secured historical-landmark status for the building by responding correctly to the question, "How do you spell Gillooly?"

We Bagged Another One. **Bill Baumgartner**, **Joe Mercer** and **Paul Henderson** were transported to the Poulsbo Sportman's Club to teach gun safety and its relationship to the Second Amendment. The "arming bears" requirement was too confusing, so they adjourned the class to Elsie's for greasy burgers. Bill, also known as The Great Hunter, warned of a Cowlitz County theft ring which allegedly was terrorizing hunting cabins by stealing horned trophies, ostensibly for use as aphrodisiacs. The WSBA has indicated that Cowlitz County is next on the list for RAPS treatment.

Where is Battle Ground? Wherever it is, new Clark County Bar president **Jill Kurtz** was recently named Battle Ground's Business Person of the Year. Never you mind that she was the only one nominated. Kurtz, who prefers to be called "Hillary" and is considering a legal name change, will manage the new Jackson Family Neverland Clinic, formerly the Kitsap Alternative Dispute Resolution Clinic. Hillary found it difficult to arrange the daily Clark County "After Hours" from Kitsap, stating, "Those Pony Express bills are killing me."

The "Brenda Starr" Award. Ace investigative chronicler, **John F. Nichols,** (not to be confused with attorney **John L. Nichols, Jr.** of Tacoma), was given the Brenda Starr Award for impressive achievement in journalism at the Kitsap County Bar luncheon. John has been encouraged to dye his hair red and book an exciting adventure trip to Pago Pago before writing his next Clark County Report. But seriously, John, the county report would be dull, dull, dull without you.

KITSAP COUNTY REPORT

by **JOHN F. NICHOLS**

April 1 was the commencement date of a new WSBA trial program code named RAPS [Relocation and Attorney Protection Service]. Selected for this pilot program were Clark and Kitsap counties. Why were these counties picked? It probably has to do with serious inbreeding or in the case of Kitsap, a lack of any cable access other than reruns of Petticoat Junction and the American Gladiators. In any event, the Bar Association found it necessary that certain attorneys from the respective counties be relocated for the protection of themselves, the Bar and/or their clients. The selection process was by a weighted system incorporating many factors including bar number; trust account balance; size of yellow page ads; ability to match socks; and being able to list who is sleeping with whom on "Melrose Place."

Accompanying the deportees was **Ron Anderson** as official cub reporter. Scoop did a fine job, but as I always say, "those

who can, write; those who can't, just copy down what other people say and then worry about the spelling."

A list of the transferees and their reassignments are as follows: [Please note that though real names were used, they were spelled differently to protect their identity and/or because I did not have a phone book to verify same.]

Russell Hauge [pronounced H-A-U-G-E]. Russ's assignment was an in depth tutorial with prosecutor Art Curtis. It was hoped that Russ could understand how the criminal-justice system really works. Hauge was immediately put to work as an official assistant to an official deputy prosecutor. He learned real well how to put defense attorneys on hold and say, "We don't deal on those types of cases," without moving his lips. Russ was quite impressed with the experience, stating, "It was the first honest work I have ever done. But I would like to make the office more like King County's; then I wouldn't have to answer phones or even talk to people."

Robert** "No Hit" **Beattie. Bobby actually welcomed the transfer to Clark County. As he put it, "I was tired of beating the bushes trying to find a kid who could hit the ball past the pitcher, let alone out of the infield." Well, Bobby, welcome to the bigs! Years of steroids and hormone injections have produced Clark County 12-year-olds who are almost as big as some Taiwanese. (Of course not all the experiments turned out as hoped. Sorry, Mr. Swanger.) Clark County youths excel at spitting and scratching and the boys are pretty good too! When asked about his practice, Beattie replied, "The fielding is okay, but the hitting needs some work." It is obvious Bobby is spending way too much time in the office.

Constance Bartholomew. Also searching for new talent, Connie was accompanied by **Mike** "Killer" **Kirk**. This duo and a host of roadies were assigned to cruise the county karaoke bars under the name of Connie and the F.K.A.s. Highlights other than the hoards of "groupies" were Connie's Ethel Merman medley and Killer's "Elvis." Saddest moment: "Connie has left the county."

Susan Daniel. Having exhausted Kitsap's supply of *pro ses*, Susan was soon immersed in a cornucopia of indigents. Her refusal to allow her clients to plead guilty soon made her the darling of the prosecutor's office. She was thus reassigned to Horenstein & Duggan and forced to bill by the hour per their usual standards. She grew to like it so much that she was pardoned back to Kitsap County to run against prosecutor **Dan Clem**. Get in line, Sue.

Now the rest of the news from the Kitsap County Bar: The annual Kitsap Bar installation dinner honored Judge **James Maddock** on his retirement and acknowledged his years of service. He plans to spend time riding his motorcycle and being with his family. I don't know, Judge, but unless you have one big sidecar, biking is not a real family activity. Unless, of course, they are all part of your gang.

*The Legal Foundation of Washington selected attorney **Guadalupe "Lupe" Gamboa** (center) to receive the prestigious Charles A. Goldmark Distinguished Service Award for 1994 for his lifelong dedication to the betterment of the lives of the farmworker community and the cause of justice for the disenfranchised. He is currently the directing attorney for the farmworker division of Evergreen Legal Services in Granger and has represented farmworkers in many precedent-setting court cases.*

***Mario Obledo**, (right) chair of the National Rainbow Coalition, Inc., was speaker at the award luncheon. He represented Gamboa and **Michael J. Fox** (left) 25 years ago when they were both arrested for criminal trespass in labor camps in the Yakima Valley.* State v. Fox *and* Garza v. Patnode *established the right of farmworkers to organize to form unions and to receive visitors of their choosing into their labor camp homes.*

The Goldmark Award is presented annually by the Foundation to honor outstanding achievement in providing equal access to justice for those who cannot afford it.

Merrill Wallace was honored for 61 years of practice, during which he has paid $20 per month in office rent. Connie Bartholomew (see above) was in town long enough to pick up the president's award for exceptional service and planning. Scoop failed to specify what kind of planning, i.e., land use, parenthood, or hors d'oeuvres. One must assume it was not video dating. **Jeff Tolman** received the coveted professionalism award. This is presented annually to the Kitsap attorney with the best grooming habits and table manners. In Kitsap, that usually means saying, "excuse me," after every belch during a formal dinner. Humanitarianism award went to **Roger Sherrard** for his continuing efforts in assisting the people and judiciary of Albania in their

quest for democracy and freedom. Also, his work in getting the emancipation proclamation passed was much appreciated. The remaining members of the KCBA were complimented on being there and using the right salad fork. (That's the small one, isn't it?) Everyone looks forward to next year when they have been promised to be upgraded from paper to plastic plates.

LAW FUND

During its second annual statewide campaign, LAW Fund raised more than a quarter of a million dollars from lawyers, law firms, corporations and foundations. The $255,000 raised is a 63 percent increase over the funds raised during the first annual campaign in 1992. Thanks to the help of several thousand lawyers from all across our state, LAW Fund is one of the most successful civil legal-service fundraising programs in the country.

During 1994, LAW Fund volunteers will again be contacting law firms and individual lawyers for annual fund contributions. Board members of LAW Fund set a fundraising goal of $500,000 for 1994 at their January board meeting. Fundraising goals were also discussed for each county.

LAW Fund is in the process of creating a planned-giving brochure for bar members and their clients. It will be distributed to all bar members this spring.

For more information, please contact the LAW Fund administrative office at (206) 623-5261.

PIERCE COUNTY REPORT

by **GEORGE S. KELLEY**

Each February for the last 86 years, those members of the TPCBA not on ski or sun breaks celebrate Abe Lincoln's birthday at a banquet in his honor. The event is attended by State Bar officials, judges from all levels of court and other dignitaries too numerous to count. Abe himself was rumored to have attended in one of the early years.

This year's featured speaker was Chief Judge **Barbara Rothstein** of the Western District of Washington, who compared the issue of federalism in Lincoln's time with that of today. Knowing the attention span of the average Pierce County lawyer after a few drinks and a good dinner, she kept her remarks short and to the point.

Attorney ***Anthony Butler*** *has put his passion for bike riding to good use. He volunteers for the American Lung Association of Washington's annual bicycle treks. Butler's involvement with the fund-raisers began in 1986, when he collected pledges and rode* Trek Tri-Island *from Seattle to Victoria via the San Juan Islands. This June he will be riding from Seattle to Spokane on the seven-day* Trek Washington *and working on the Association's two-day* Trek Clean Air *to Westport in May and Back on* Tri-Island *in September.*

Other events of the evening included the recognition of **Chuck Gleiser** and **John Krilich** for 50 years of bar membership. On the other end of the age scale, **Felicia Malsby** gave the traditional young lawyers' speech. This was a return to a tradition where a new lawyer in town described his/her experiences as an attorney new to the practice. The tradition was intended to introduce new lawyers to the bar and remind older lawyers that, contrary to their own self-images, that they, too, were once young, inexperienced and funny.

Felicia told a story about a divorce case where the husband had filed an affidavit claiming that he had no money. Felicia's client, the wife, happened to find $20,000 cash hidden in the former family home, and she deposited it in Felicia's trust account. The husband's attorney, upon learning of the cash and possessing a quick mind, immediately demanded to know what happened to an additional $20,000 the allegedly indigent husband had stashed. From this story, a young lawyer might learn that while one's client may not always be truthful, his lawyer should, at least, be flexible.

New officers of the TPCBA were introduced at the banquet. Your humble correspondent was elected to be president and will be privy to much inside bar association information, some of which might be seen in future reports. **Joe Quinn** was elected to be vice president. New board members are **Tony Froehling**, **John Dayhoff** and Judge **Karen Strombom.** We are very pleased to have a sitting superior court judge on the board, as she will provide an insight into bar business from an entirely different perspective. We hope that she will enjoy the experience of hanging around with lawyers.

The legal community suffered a double loss when **Leo McGavick** and **Murray Anderson** died. Both were able trial lawyers and a credit to the profession. Both will be missed.

Linda K. Nelson has moved her practice to the offices of Anderson, Burrows and Galbraith, Inc. P.S.

WASHINGTON DEFENSE TRIAL LAWYERS REPORT

by **LAURIE D. KOHLI**

The Washington Defense Trial Lawyers will hold their Auto Defense Seminar on Friday, April 15 at the Washington Athletic Club. The program will be chaired by **Suzanne Michael** and **Andy Cooley**, and will feature **Joyce Tsongas** and **Deborah Rutt**, trial consultants, who will discuss "Preparing Your Client for Deposition and Trial," and Dr. **John Wiseman**, a chiropractor who is an expert in video fluoroscopy. WSTLA member **Bill Bailey** will speak on the "Plaintiff's Perspective," and former WDTL president **Mike Runyan** will speak on recent developments in the law in this area. Those interested should call WDTL's executive director, **Nora Tabler** at (206) 233-2930.

WASHINGTON STATE LAWYERS' CAMPAIGN FOR HUNGER RELIEF

by **L. YVONNE PARAMORE**

Law Day Gala: On Law Day, May 1, the Washington State Lawyers' Campaign For Hunger Relief is sponsoring a fund-raising gala. We hope to see you there. The Campaign, in conjunction with several major law firms, is sponsoring a dinner and auction at McCormick & Schmick's restaurant in the Watermark Tower Building in downtown Seattle. Donation for this evening of food, fun and benevolence is $150 per couple. Remember, charitable contributions to the Campaign are tax-deductible.

The keynote speaker will be Washington State Attorney General, Christine Gregoire, an honorary co-chair of the Campaign. There will be two dinner seatings, with the speakers, program and auction in between. The first seating will be at 5 p.m.; the program will begin at approximately 7 p.m., with the second seating at approximately 8:30 p.m.

Don't get left out of the fun and miss an opportunity to contribute to those who need your help. Contact any member of the Campaign for your tickets. Consider purchasing a table. You may also call the Campaign, in care of Bob Mussehl, at (206) 622-3000, or fax your request for tickets to him at (206) 684-6831.

Come out and share an evening of enjoyment with your colleagues; meet the Attorney General, and contribute to a worthy cause.

WASHINGTON STATE TRIAL LAWYERS ASSOCIATION REPORT

by **MICHAEL HEATHERLY**

1994 has been a busy school year for People's Law School, WSTLA's public-education program now in its eighth year. Statewide, 11 PLS programs have been completed since the start of the year or are still under way. Seventeen more are scheduled, and others may be added.

Attendance has been strong, with more than 100 students each showing at four of the programs so far. A January-February program for the general public in Wenatchee drew more than 150 participants, while one on Bainbridge Island in January through March brought in 130.

WSTLA has broadened the audience for PLS by supplementing the traditional general-topic programs with others geared toward particular groups. For example, 114 entrepreneurs signed up for a Small Business Law School in Kirkland in February. Meanwhile, 150 teachers switched roles and became students for a Teachers' Law School at SeaTac the same month. Other specialized programs on the 1994 calendar are devoted to elder law, family support, disability, Hispanic issues and medical professionals.

On April 22 WSTLA will present a seminar-style PLS that is a natural for the organization. The topic is "Nuts and Bolts: Legal Issues Facing Non-Profits in 1994," and the agenda is aimed at directors, officers and employees of nonprofit organizations. Appropriately enough, WSTLA's own executive director, **Gerhard Letzing**, will co-chair the event, along with WSTLA member **Fred Diamondstone**, a Seattle attorney. Subjects to be covered include civil liability, employment issues, tax laws and the Americans With Disabilities Act. WSTLA was able to get 7 CLE credits approved for the seminar, so some of the students, as well as some of the teachers, will be attorneys. The program will run from 9 a.m.- 5 p.m. at the Washington State Convention and Trade Center in Seattle.

The PLS concept was created in 1986 by **Judith Proller**, who is now WSTLA president. From a single program in Everett in 1987 PLS has grown to more than 30 programs each year statewide. More than 11,000 people have attended over the years. Heading up the current "school year" is WSTLA Public Affairs Committee member **Rod Stephens**, a Renton attorney, who has taken responsibility for organizing no less than 16 of the 1994 programs.

YAKIMA COUNTY REPORT

by **GARY McGLOTHLEN**

The shifting sands of attorney movement keep blowing faster than the spring winds. **Paul T. McMurray** leaped onto the waves from the Gavin Firm and surfaced as an Assistant City Attorney in the City of Yakima Civil Department. From here, Paul can hunt and fish with his two springer spaniels while losing sleep over the City's tort defenses, public and labor contracts. He says his favorite food is wild duck, but his favorite restaurants are in Portland, Oregon.

G. Thomas Dohn, retired from his litigation practice because of poor health, has established himself in the practice of estate planning, trusts, wills and probate. His tattered but respected shingle hangs now at 105 North 3rd Street in Yakima, with the bells ringing at 457-DOHN (3646). Recently elected to the position of vice president of the Board of Trustees of Mutual of Enumclaw, he now can direct instead of represent. What a difference an election makes! Tom is especially excited—as excited as Tom can get—about his new membership in the National Network of Estate Planning Attorneys. Like working with a team of 425 partners, he says.

Mike Shinn leaped on his sailboard and caught the favorable wind from the Gavin firm across the street to Halverson & Applegate, where his sails are full of business law issues and commercial litigation. Rumor has it, on good authority, that after he tried out for Halverson's basketball team last year, he did so well at

guard they could not afford to let him be signed by any other team.

Larry Peterson joined the beach BBQ at the Yakima City Attorney's office from his dry position as a civil deputy for the County Prosecutor's office.

Robert Linnell, after 32 years as an Assistant U. S. Attorney, announced his retirement. Bob has been before the 9th U. S. Circuit Court of Appeals more than 230 times during his career and speaks highly of the caliber of the bench on the 9th Circuit and the Eastern District of Washington. Bob plans on returning to Maine and winds of salt sea air to fill his sails of retirement. With Bob's retirement, the bar suffers the loss of a true gentlemen advocate. Yakima County has its solid reputation because of members like Bob Linnell.

IN MEMORIAM

R. James Gooding

R. James Gooding, 60, died December 28, 1993 in Kent. Gooding was killed in his law office by a disgruntled rental property tenant, who then killed himself. Born in Alberta, Canada, Gooding moved to the United States in 1955. He served in the U.S. Army and then enrolled at the University of Washington. Gooding graduated from the University in 1961 and the UW School of Law three years later. He taught real estate law at Bellevue Community College and real estate seminars for Boeing Company retirees. Survivors include his mother, two sisters, wife and two children. Gooding's son, James, a California lawyer, plans to take over his father's practice after passing the Washington bar examination.

Herbert Hamblen

Herbert Hamblen, 88, died January 6, 1994. A graduate of Harvard Law School, he was a principal of the Spokane firm of Paine, Hamblen, Coffin, Brooke & Miller. Active in civic affairs, Hamblen chaired the Spokane Parks and Recreation Foundation for 27 years and was a founder of the city's Crime Check Program. Hamblen served three terms in the Washington Legislature, and served as Speaker of the House in 1947.

Leo A. McGavick

Leo A. McGavick, 89, died in Tacoma January 11, 1994. Born in Rosedale, McGavick was educated in Spokane and held degrees from Gonzaga University and Gonzaga School of Law. He set up practice in Tacoma and retired 62 years later. His alma mater honored him with an honorary doctorate and its Law Medal.

Active in community affairs, McGavick served in the Washington Legislature, chaired the Tacoma Utilities Board, and served as board member, chairman and counsel to State Mutual Savings Bank. Survivors include three children and eleven grandchildren.

James D. Sawyer

James D. Sawyer, 59, died in Monroe November 13, 1993. A founding member of the Washington State Trial Lawyers Association, he was involved with many civic and community groups. Survivors include his wife, four children, and four grandchildren.

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APPELLATE HAIKU

by **Greg Lawless**

Having finished a recent clump of Advance Sheets placed on my desk by the Advance Sheet Fairy (the person in our office who accumulates several hundred of them and then, in the dead of night, delivers them to my IN bin), and having drawn my usual wealth of information from them (to wit, crime does not pay—based on the large number of criminal cases in the Advance Sheets—and because few criminals seem pleased with the results of their trials), I have come away with the feeling that my time was largely wasted. If only it didn't take so long to read all of those cases I wouldn't mind, but *terse* hardly describes an appellate decision. Since real estate law is my primary focus, why do I read the criminal law cases? It's because I know—I *just know*—that someday in a footnote the High Court will proclaim:

1. The Court has decided Scarface's sentence will stand and, by the way, we have also decided to use the Native American concept that people cannot own land, consequently there is no more real estate law, and all real estate lawyers will starve to death.

How, then, to improve the Advance Sheets? The solution is not an easy one, but once the answer occurred to me it was so obvious it was almost embarrassing. Simply require that all Supreme Court and Court of Appeals decisions be done as haiku poems! Of course, you may say, "Why didn't *I* think of that?" The Advance Sheets would become the Advance *Sheet*.

I don't really worry about the brevity of the haiku form causing problems for the court. Let's face it—even the great cases are only remembered for one or two issues. Take *Miranda v. Arizona*. All anyone knows about that case is that it stands for the notion that the police have to read a defendant his or her constitutional rights after an arrest. But is that all the case says? No way; it goes on and on and on. It could have been presented much more effectively as a haiku. Under the new system of Appellate Haiku the case would appear as follows:

Miranda v. Arizona, 165 US 456 (1964)

First, before all talk
Know constitutional rights.
Plum blossom descends.

Now there's a decision I can understand, took a few seconds to read, and has the system beauty inherent in haiku. Imagine how impressed your clients will be when you can not only recite the law, but recite it word for word, having memorized the entire case!

Picture this conversation: "Mr. Lawless, do you think I have an easement?" "Mr. Halmwitz, that was covered in *Johnson v. Ferndale*, which held

Prescriptive is not
Descriptive, yet it is a right.
Snow melts and is wet.

I think my revolutionary, yet practical, idea could be used in the lower courts as well, though I would suggest different styles of poetry for each court. Probably sonnets for superior court, heroic couplets in district court, and limericks for municipal court. I believe it will not only lessen the volume of paperwork but would be much easier on the client as well.

The point was driven home to me recently as I was in the Municipal Court Building to pay a traffic ticket. Since the line was about four miles long, I decided to peek into municipal court to see if anything interesting was going on. I asked the clerk which court was in session. I was told that in one particular courtroom they were going to have the arraignment calendar, but, before that, a defendant was going to be given the results of a jury trial that had just been completed. I walked into the courtroom and instantly spotted the defendant. His pale complexion nicely contrasted with the bright ear rings in his ears, nose, cheeks and lips. His purple hair was cut very short, at least on the left side, revealing that the tattoo on the side of his head which said "Maggot" was the same color as the one on his butt ("Fred") which you could see through the tear in his black pants, which matched his black, high-top tennis shoes, tee shirt, socks and switchblade. You could tell he was the defendant because he was dressed more nicely than the defendants waiting for arraignment, probably to impress the jurors. The judge stated, "Fred Borkins, having been tried by a jury of your peers, and the jury having reached a verdict, you hath been found culpable of the offense of driving a motor vehicle while under the influence of intoxicants for which you shall receive a sentence after a presentence report hath been completed."

Fred the Defendant walked out of the courtroom with a friend of his. "How did you do, man?" "Not sure, but I think I won, man," Fred replied. But there'd be no confusion if the judge had stated, plainly, simply:

There once was a defendant named Fred.
Driving drunk, the police officer said.
He was tried by a jury
Who vented their fury.
Now he'll hang by the neck until dead.

Now that we have the solution to lengthy court decisions, it's just a matter of implementing it. I recognize it may take a while, since judges probably aren't as adept yet at poetry as, say, for example, I am. But I think it's reasonable to have this proposal fully underway within a couple of weeks.

* * *

***Greg Lawless** is a partner in the Ballard law firm of Mullavey, Prout, Grenley, Foe & Lawless.*

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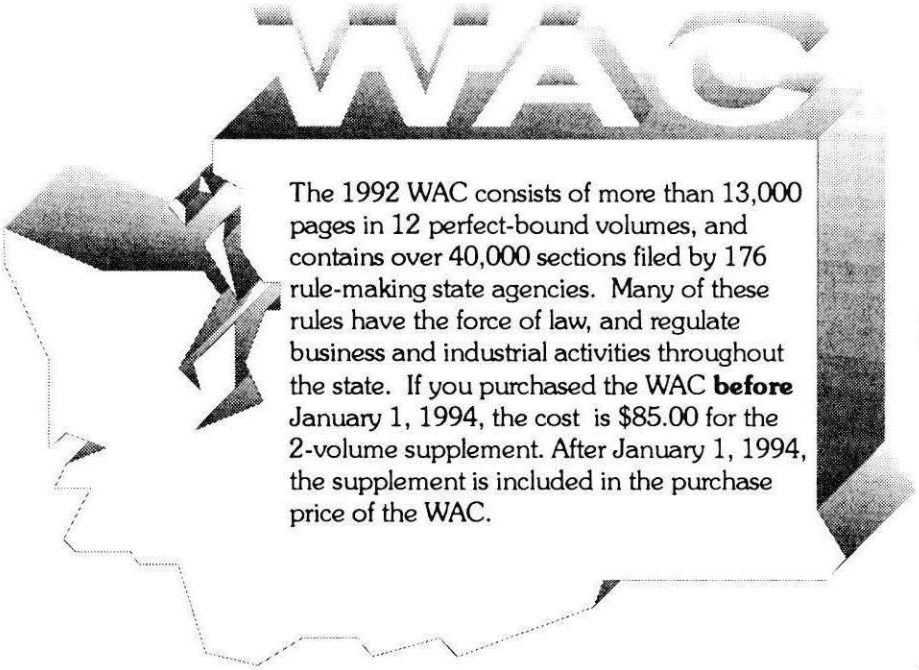

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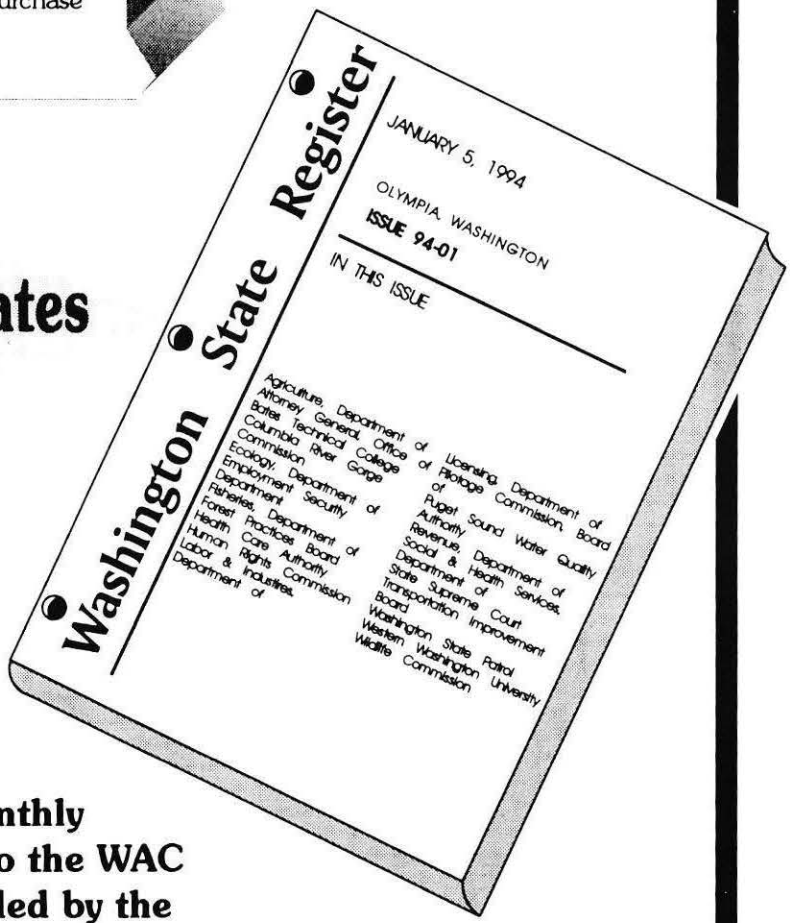

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