

Washington State **Bar**
News

Vol. 49 No. 12, December 1995

The official publication of the Washington State Bar



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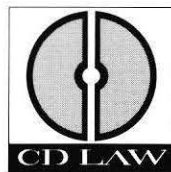
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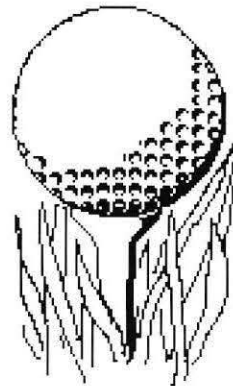
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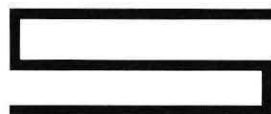


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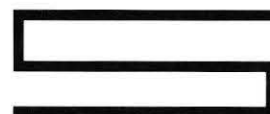
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The *Bar News* encourages correspondence and article submissions. The submission deadline is the 15th day of the month for the second issue following: e.g., February 15 for the April issue. We request a 3 1/2" disk (in any conventional format) and hard copy at the time of submission. Please include a SASE if you would like your material returned. Article submissions should run approximately 1,800 to 2,600 words. Graphics and illustrations are welcome. Address all correspondence and submissions to: Hal White, *Bar News* Editor, 500 Westin Bldg., 2001 6th Avenue, Seattle, WA 98121-2599.

Washington State Bar News

Vol. 49 No. 12 December 1995

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

More Opinions on Clerking

Editor:

I support the law clerk program and urge you not to abandon it. It is good to see the Governors taking a close look at the association's numerous activities but I was frankly disturbed by some of the implicit reasons for killing the program contained in a piece in the FYI Section of the October 19, 1995 *Bar News*. Apparently, the Governors should destroy the law clerk program because the reasons for adopting the program in 1984 no longer exist because there are three law schools in the state, the law clerk program has little racial or ethnic diversity, and the program does not make a profit for the association.

It is certainly true that there is a law school in Spokane and one currently in Tacoma, soon to join the third one in Seattle. They all existed well before the Supreme Court adopted APR 6 in 1984. Two of the schools are open to those who can handle tuition of \$20,000 plus living expenses. And, if you are a certifiable genius you can pay a lot less at the University of Washington's law school. But it would be a mistake to think that these three institutions offer more availability of legal education than they did in the early 1980s. The cost of going to the two private schools in constant dollars is far higher than it was then, restricting access to the rich. Condon Hall is now tougher to get in to than the law schools at Stanford or Harvard.

Besides higher costs, the law clerk program is more necessary than ever because there are less law school seats available now. In the early 1980s the UPS/Seattle University Law School almost had open enrollment and first year classes nearly equal in size to those of the other schools put together. In the past few years that school has dramatically cut its first year enrollment. Now these three schools compete with one another for the intellectual and wealthy elite and legal education for everyone else is less available than in the past except for the existence of the law

clerk program. Of course, I realize that each of the law school bureaucracies is able to restrict the matriculation of white males and impose de facto quotas to enhance racial and ethnic diversity.

Sadly, the FYI piece argued the law clerk program should be destroyed because it does not have racial or ethnic diversity among the enrolled law clerks. Of course it doesn't. It is not a program operated by a private or public political hierarchy vulnerable to pressures from interest groups. It is just one qualifying attorney and a qualifying clerk who enter into a pupil tutor relationship voluntarily. If in 1995 there are going to be 49 enrolled law clerks, half of them, or every last one of them could be members of a special interest group but not because of a quota system imposed from above.

Indeed, if the Governors are looking for a politically correct way to completely destroy the law clerk program in just a few years, while seeming to support it, they should promptly impose racial quotas on future law clerk enrollees. Besides, it's internally inconsistent and illogical to argue that law school education is more available because the three existing institutions do impose special admission opportunities for select special interest groups and then argue the law clerk program should be abolished because it does not do the same thing in the same way.

The law clerk program ought not to be

eliminated on the ground that it does not make a profit for WSBA. For the past couple years the association has been racked with controversy about its dues, activities and programs. Reams have been written about the value of numerous Association activities that do not make a profit. I suspect the only things that do derive from coercive powers such as CLE attendance and bar examinations. For the tiny number of clerks enrolled, it is the best and probably the only way any of them will ever get an opportunity to take a "profitable" bar examination and go on to become talented practitioners who are a credit to themselves as well as the wisdom of the Governors who permitted them to have a profession that would otherwise be merely a fantasy. No worthy economic argument can be made to transform the three law schools into absolute monopolies, certainly not on the grounds that the law clerk program covers its direct costs but not its overhead. If the Governors think the annual law clerk fees are too low: *raise them*. The Governors don't need to come to us for a vote and they can quite easily pummel the clerks by doubling their annual fees to \$1,000 per year. But that would still be only 5% of the cost of going to a *real* law school.

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legal orthodoxy in the high priced law schools, with doing the law day after day in a long internship. There are to be sure some imperfections and potential problems in the clerk program primarily involving exploitation. But there surely can't be less of that than we will get from an absolute monopoly if this worthy program is gutted by the Governors. Given our strong populist history it is unthinkable that a public institution like ours, self governing and part of the judicial branch of our state government, could destroy the law clerk program that is the very embodiment of our training and traditions as lawyers. I hope you can find a way to strengthen and improve the program rather than to get rid of it for no good reason.

As money is the reason offered to do away with law clerks, I bet \$100 that not one of the law clerks in the program could ever get into the UW law school except through a race or minority preference. I'll bet \$200 that not a single clerk ever in the program could quit working for three years and pay \$60,000 tuition to Gonzaga or Seattle University. Well, \$300 says that not one of the three law schools is whining to the Governors that they just can't begin to digest the unfair competition from the law clerk program.

The pity is that murdering the APR 6 program for a little bit of real money saving is crime without punishment. It is not at all like the fabulous savings achieved when Mr. Harwick came aboard and told the lawyers in the Association's discipline department that he was going to steal away their thirty-five hour work-week; figuring those lawyers would just sit on their hands and do nothing while the Governors congratulated each other on their own perspicacity while they planned to use the "savings" on their next meeting in an overseas resort town. No, killing the law clerk program is sin without consequence that will not come with long, loud, angry meetings; union organizing; back-stabbing politicians and constitutional litigation. But even if there be no deterrence to elimination of this excellent program, the Governors ought not to do it absent compelling financial pressures and cogent reasoning based on the State Bar Act and similar underpinnings for the Association's purpose.

WILLIAM G. SIMMONS
Seattle

Editor:

Please work to keep the APR 6 apprenticeship program. Doing away with it is elitist in that it would restrict the practice of law to only those rich enough to afford an \$80,000 legal education.

Those prospective lawyers who are not rich should also be able to sit for the bar. Requiring an \$80,000 formal legal education is a monopolistic barrier to entry restricting the labor pool of potential attorneys to the upper classes. It would be anti-free market and elitist change. Keep the apprenticeship program!

JEFF E. JARED
Kirkland

Let's Just Disqualify Everyone

Editor:

In the September 1995 issue, Letters section, I came across possibly the most absurd example of mock reasoning I have ever encountered. A letter by John Tomasin suggests that Justices Scalia, Kennedy and Thomas disqualify themselves in cases involving abortion, due to Mr. Tomasin's presumption that the Justices' religious beliefs would force them to decide these cases somehow unconstitutionally and unethically.

This fascinates me. First, since Mr. Tomasin wraps his idea within the framework of Pope John Paul II's teachings, does he realize that not all of these Justices are even Catholic? And what about Sen. Kennedy as a lawmaker? Should we assume that his Catholicism would make him ineligible to vote on all issues involving abortion? Indeed, is it Mr. Tomasin's belief that no religious people should hold any position of lawmaking?

Secondly, the logical conclusion that this policy would lead to would leave us in the bizarre position that in any case involving an issue with a moral or ethical core, (or periphery), we would have no Justices able to preside. The reason would be simply that every person on earth, whether spiritual, religious or not, has guiding principles that she uses to make even simple decisions daily. The only people lacking such are labeled sociopathic. This is not a quality most would consider desirable for lawmaking nor interpretation of law. Like it or not, life on this spinning, blue orb is filled with questions and decisions hinging on moral and ethical considerations. In fact, the vast, sweet mystery of our humanness lies in

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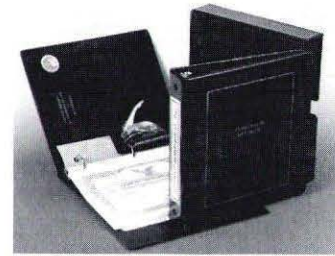
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the ability to pursue such amorphous ideas as justice, peace, loyalty, unity, honesty, religion, philosophy and love. The very core of the practice of law, most quintessentially of the judiciary, is an ongoing exploration of aspects of justice such as fairness, restitution, individual and societal rights, and yes, in an often disconcerting but necessary way to find semblance of rightness and wrongness in our behaviors and interactions. Otherwise, how can one even know when another's rights have been violated, an injustice done, an innocent person wrongly accused, guilt gone unpunished?

A good example would be the death penalty issue. There are legal, moral and religious basis for both views and they are often dearly held and bitterly argued. But would Mr. Tomasin prefer that we abandon the essential marketplace of ideas and require all judges and justices who hold a personal belief on the subject, either pro or con, to step away from these decisions? Is Mr. Tomasin really suggesting that no lawmaker nor interpreter should ever serve if she, (with First Amendment rights of her own), has any sense of ethics or morals?

Every person on earth has views on issues. It is our strength. It is to be celebrated. The world of ideas is where our journey lies. I, for one, would never want to live, nor practice law, in the sterile, robotic, empty legal system that Mr. Tomasin advocates.

CAROLYN M. WESTBERG
Warrenton, Virginia

Responses to Responses on Gay Affirmative Action

Editor:

Frankly, I was sickened by the recent Letters to the Editor by Brian McCoy and Thomas Olmstead, particularly by Mr. McCoy's regrettable comparison of the late Senator Cal Anderson to a "drunk driver, who killed himself when he slammed his car into a tree." That the Washington State *Bar News* would provide a forum for this venal illogic is sad enough; that it would do so without comment or clarification is tragic. At minimum, the Editor might have reminded Mr. McCoy and Mr. Olmstead of the existence of RPC 8.4, subsection (g). Or perhaps subsection (c) would have been more appropriate.

DENIS W. STEARNS
Seattle

[RPC 8.4(g) states that "It is professional misconduct for a lawyer to . . . commit a discriminatory act prohibited by law . . . in connection with the lawyer's professional activities." Subsection (c) states that it is misconduct to "Engage in conduct that is prejudicial to the administration of justice." - Ed.]

Editor:

I address Thomas Olmstead's letter in the October *Bar News*, in which he denounced homosexuals as immoral and deserving of more repression in society, not less.

I disagree with Mr. Olmstead that homosexuality, or homosexual behavior per se, is immoral; he is wrong. I think his bigotry is immoral.

Homosexual behavior is no more or less immoral than heterosexual behavior. I bear Mr. Olmstead no ill will for his ignorance and bigotry. Well, I am probably too forgiving; we really should be even more intolerant than we are of people like Mr. Olmstead. By being tolerant you only encourage them to behave in ways that are morally reprehensible and discourage them from suffering the consequences of being moral deviants.

DANIEL M. WARNER
Bellingham

More on Partisanship

Editor:

In the October issue, I argued that the WSBA should be careful about spending Bar dues on political activities. It has been brought to my attention that out of my concern for brevity and diplomacy I may have sacrificed clarity in my last letter to the *WSBA News*. My objection is not so much to a bar association that takes sides on political issues. What I object to is being forced to pay for political speech with which I disagree.

As you know, in order to practice in Washington I must pay WSBA dues. I cannot withdraw, as I and others have done from the ABA. I warned in my letter that if the WSBA heeds suggestions — like Mr. Cordell's — to oppose the "Draconian" Republican agenda, it may face more referenda and possibly lawsuits. It is not only irritating to be compelled to support the WSBA's lobbying efforts (see page 35 of the October issue of the *Bar News* regarding the WSBA's opposition to budget cuts), it is also unconstitutional. Under *Keller v. State Bar of California*,

496 U.S. 1, 110 S. Ct. 2228 (1990), it is a violation of the First Amendment for an integrated state bar association (one in which membership is required in order to practice in a state) to spend compulsory dues to advance political and ideological causes with which some of the members disagree. I think my dissent is enough, but I think I am not alone.

I appreciate the responses to my earlier letter, but I remain convinced that it is imprudent and unconstitutional for the WSBA to spend our compulsory bar dues on anything beyond "regulating the legal profession or improving the quality of the legal service available to the people of the State." *Keller*, at 14 (internal quotation marks omitted).

HARRY J.F. KORRELL
Washington, D.C.

You raise an important point — and cite an interesting example, if you are referring to the WSBA's lobbying of Congress regarding legal-service funding — but I believe you miss the threshold issue. Few would argue that Keller prohibits the WSBA from funding political or ideological activities beyond 1 - regulating the legal profession, or 2 - improving the quality of legal services available to the people of the state; at least, not without a rebate of bar dues devoted to such lobbying (see, e.g., Dennis Harwick's column in the December, 1994 Bar News).

However, it is under the second exception which the Bar justifies its lobbying regarding the LSC. Thus, (at least insofar as your example is concerned) the pertinent question is, what is the definition of 'improving the quality of legal services available to the people of the state,' and how is that definition monitored to ensure its compliance with Keller?

In a larger context, it would be disappointing if the restrictions imposed by Keller were viewed as a ceiling, beyond which no further protection of dissenting members' funds need be considered, rather than as a floor, upon which augmented procedural safeguards could be implemented by concerned bar leadership. The current option for members who disagree with the Bar's rebate amount — an arbitration process — merely addresses Bar accounting errors, not differences of opinion on categorization. - Ed.

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Life Is Too Short

Editor:

The "In the LAP" article in the November issue is very similar to my own situation. I knew early in law school that I was not enjoying the experience, but I felt I was probably just tired of going to school. I went ahead and completed my legal education, all the time hoping that I would enjoy the practice of law more than I enjoyed learning about law. Following graduation I passed the Washington State Bar Exam. Truly one of life's most stressful experiences.

I went to work for a small firm and started to practice law. The lawyer and staff I worked with were excellent people and I enjoyed working with them. However, after a little over one year in practice I was having "okay days" and "bad days", but no "good days". What finally pushed me over the edge to make a career change was a trip my wife and I took to Washington D.C. While there, I visited with a law school buddy who was working for the Justice Department. He enjoyed the work he was doing and truly loved being a lawyer. At that point I knew the practice of law was not for me and I needed to make a change.

During the month after our trip I considered the possibilities which were open to me. Eventually I decided to join the family business and submitted my resignation to my employer. Although joining the family business is not an option open to everyone, it is the path I pursued.

Two years later, I love what I am doing and have mostly "good days". The pay is similar to what I would be making practicing law full time and I am much happier. I still get the opportunity to practice law in furtherance of the family business, but it is only a small part of what I do.

When I talk to old law school friends, I find that most are supportive of the change I have made and some seek a similar escape from the practice of law.

To those of you considering a career change, I say "research your options and make the change." Life is too short to spend 40 years at a job you don't like.

JOHN C. HYER
Moses Lake

A Defining Moment

Editor:

Jeff Tolman's delightful essay, "A

Small-town Legal Dictionary," reminded me of an abandoned project I undertook some years back: to compile a kind of devil's dictionary for attorneys. I don't expect to find the time to finish it, and offer for any who may choose to do so a few examples of the definitions I jotted down:

pre'termit'ed heir: A relative so undeserving as to remain nameless, and who for that reason is favored by the law.

de min'imus non cur'at lex:
The law provides no remedy, except to the rich.

de min'imus non cur'at Rex:
Every dog is entitled to one free bite.

tre'a • son: A crime so despicable as to require (along with Congress) constitutional definition.

EDWIN J. WHEELER
Tacoma

What Happened to Dewey, Cheetum & Howe?

Editor:

Your November issue listed the new lawyers who passed the bar exam. If they cannot find employment elsewhere, perhaps some should join together to start new firms. The firm names could include:

1. Bean, Rice & Wheat;
2. Amos & Andre;
3. Black, Blue, Brown, Gray & Greene;
4. Dow Jones;
5. Phillips & Morris;
6. Hill & Dale;
7. Port Townsend;
8. Lee & Grant; and
9. Pabst & Miller.

TED D. ZYLSTRA
Oak Harbor

Election Law

Editor:

In King County we just completed an election with five candidates for superior court judge. The winning candidate (as of the latest returns) had less than 35% of the

vote. If we are going to elect judges, I would like to see a judge elected by a majority vote rather than a simple plurality. I suspect most people feel the same way.

I am writing to you to suggest that the Bar Association take a leadership role in drafting and promoting the passage of legislation to improve this aspect of selecting our judiciary. Thank you for considering this request.

MELVYN J. SIMBURG
Seattle

I assume you are referring to the Burrage race. If memory serves, she and others ran for the judicial seat vacated at the last minute by former Judge Arthur Piehler. In such exceptional circumstances, RCW 29.15.180(3) applies, and a plurality will suffice for a victory. Surprisingly, King County had two such races this past election, the second due to the unfortunate death of Judge James McCutcheon on Sept. 26 (see page 59 of his issue).

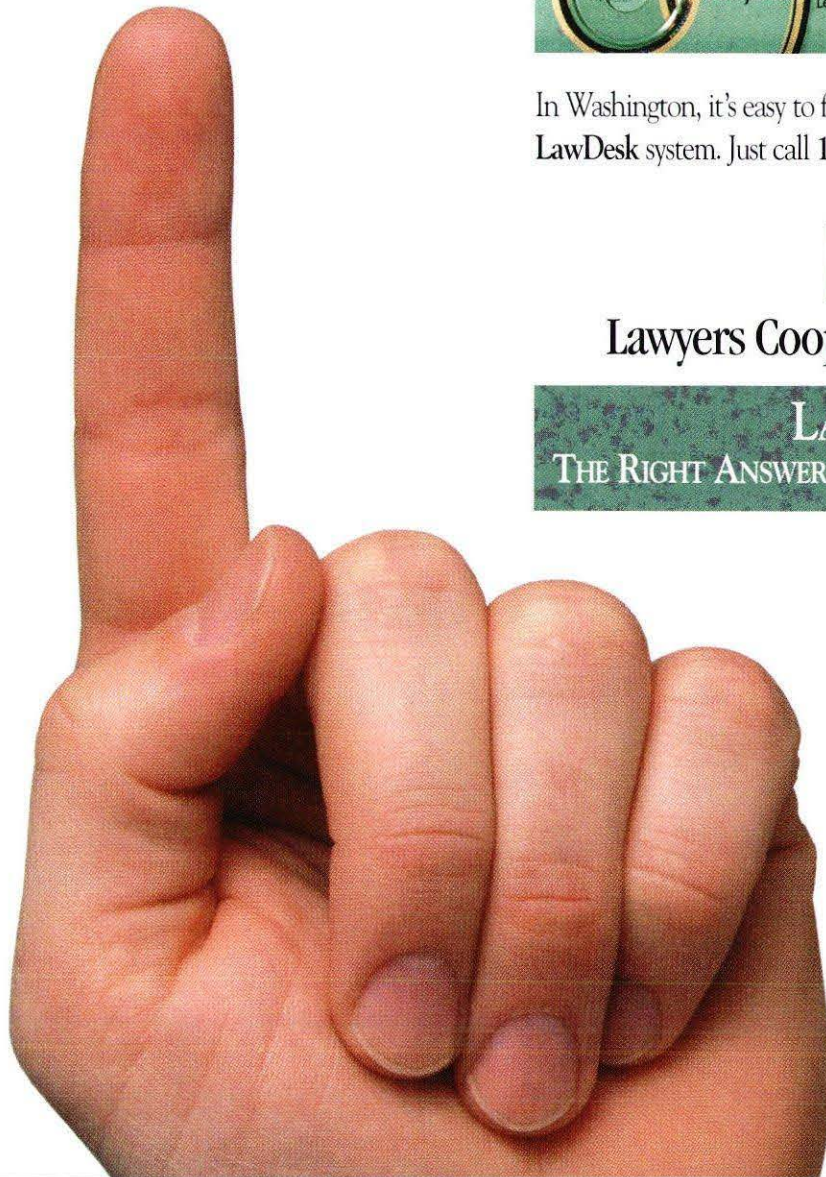
An example of a more "typical" superior court race would be the Niemi/Juarez contest, where there would have been a runoff in the general election if Niemi had not won over 50% of the vote in the primary (RCW 29.30.085(2); Art. 4, Sec. 29, Wash. Const.).

Although I agree that it is preferable for a judge to have the backing of a majority of the electorate, the narrow circumstances which allow a victory with a plurality may not justify the expense of holding a special election several weeks after the general election. Moreover, such an election would occur immediately prior to the Christmas holidays, virtually guaranteeing a low voter turnout. - Ed.

ERRORES SCIBENTIS NOCERE NON DEBENT

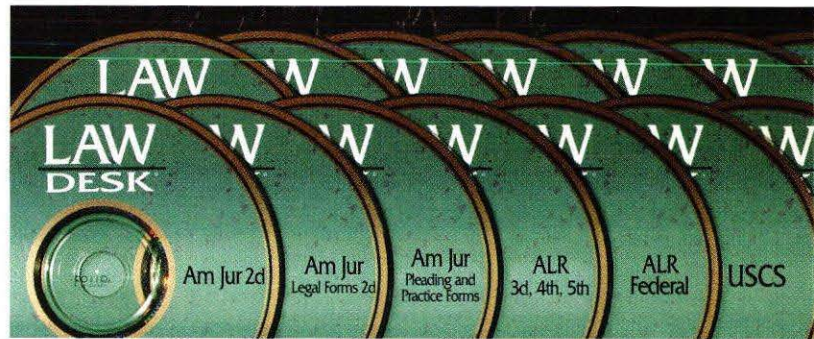
The November *Bar News* listed Hoquiam as the location of letter writer Ronald Kessler. He is from Seattle. We apologize for the error.

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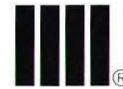


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The Holidays - Enjoy Them!

by **Edward F. Shea**
WSBA President

Winter holidays include Christmas, Hanukkah, Kwanzaa and New Years' Day. These holidays offer us the opportunity to remember past celebrations, to smile as we look at family photographs taken, to reminisce about the happy time shown, and honor the memory of those friends and family members, no longer with us, who were such an integral part of those memories. In reliving those past holidays, we enjoy a richer holiday season.

For all of us who will celebrate the holidays, there are those who will be experiencing distress. Many will be fellow Washington lawyers, recently unemployed, who are victims of the severe reduction in federal funding of legal-service programs to the poor. After so many years of devotion to the legal problems of the poor, our fellow lawyers and legal-service staff now find themselves unemployed and their former clients unsure of future representation. This is no way to treat people. This is zebra morality — as long as the lions have brought down one of the others, we can all go back to grazing without fear for a while. For many of us who had worked and hoped for a better ending to the Legal Services Corporation funding crisis, this Christmas will be less joyful. But we will continue to seek solutions to this funding crisis, and new programs will arise to meet the needs of the poor and the powerless. In this holiday season we all need to ask what more we can do for those in need.

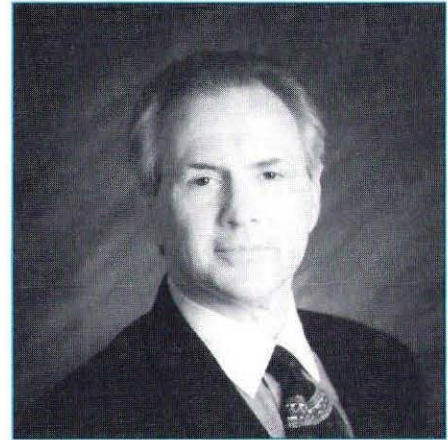
What can you do? Well, there are those who will see no one at Christmas, those confined in nursing homes, or on hospital wards. Organize a group of carolers from your office or your bar association and visit them with your best rendition of "Jingle Bells" or another of your favorites. You do not have to be gifted, just willing. Bring some modest gifts suggested by someone at the hospital or nurs-

ing home. There are the poor and unemployed who will need a Christmas dinner for their families. Go to the mission and bring a pie or a turkey or whatever you want to buy or cook. Stay and help prepare and serve dinner to them. This is what the songwriter meant by "making spirits bright." Instead of the expensive, traditional office Christmas party, have a smaller one and with the savings, help a needy family have a memorable Christmas. Donate to the Washington State Lawyers' Campaign for Hunger Relief and buy one of the Fund's calendars, which will help feed some children. It will remind you of what your parents so often said, "It is better to give than to receive."

And take some time for you. Take some time for what you believe in, for what makes you happy. Make this an unforgettable holiday season.

Some refuse to do the last-minute mall dash; others enjoy the Christmas crowds. But even if you do prefer the last-minute dash, just take some time during the holidays to rekindle that special spirit that has been a tradition during this season. As Bill Murray, one of my favorite madcaps, preached in the modern movie version of "Scrooge," "Christmas is the one day of the year when we are the kind of people we always hoped we would be!"

Organize a convoy of friends and kids to go cut down a tree at a Christmas tree farm and start the trip with a potluck. Telephone an old friend just to extend the season's greetings and to spend a few moments in recognition of that friendship. Invite some friends over to dinner, and let each one bring a part of the meal with all sharing in the evening. Find the photographs of past occasions and share those memories with the others. Bake extra loaves of your favorite holiday bread or cookies and visit a neighbor or an



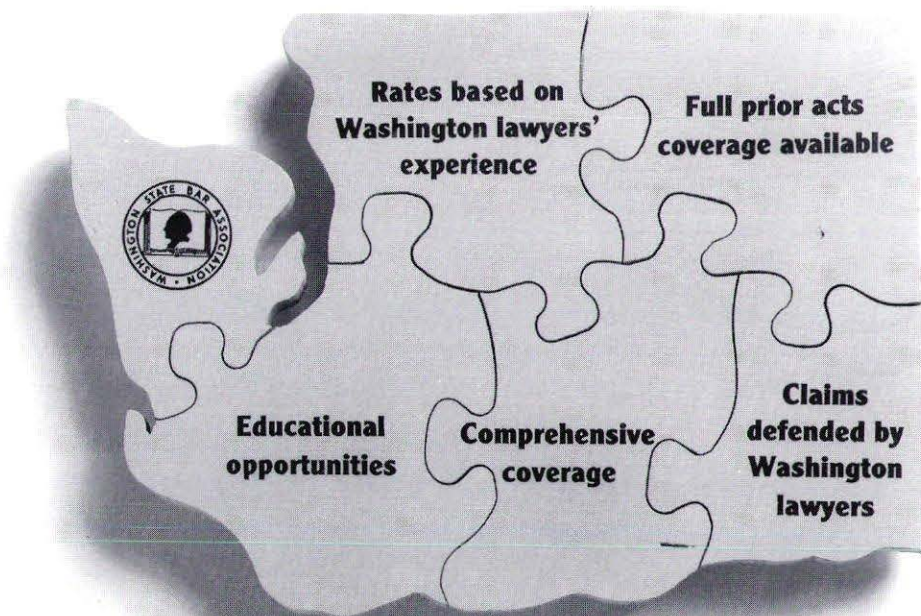
Edward F. Shea

office mate. Pour a glass of your special holiday libation and spend some time getting the Christmas cards and letters in the mail. Include a new holiday recipe if you like. Wrapping gifts can be enjoyable — be creative with brown paper and sponge paints, and a bow can be anything you concoct. If you are inclined, pick a religious service and celebrate the season in your own way. My family enjoys the Children's Mass on Christmas Eve.

There's always another viewing of Frank Capra's black-and-white movie classic, "It's a Wonderful Life." Others love "The Miracle on 34th Street" or "The Homecoming" or the classic or modern version of "Scrooge." These movies and countless stories and poems reveal basic values which can be shared and appreciated by all generations.

It may be inconvenient to travel to "home," wherever that may be. Family relations may not be all that you would want, but this is the time of year that reminds us, as one famous political figure observed, that in the end, it all comes down to family and friends. There are always reasons to say, "Next year I'll go," and they seem sensible, practical. If you can not be there with the others in your life, then call and send what wishes and gifts you can. The only consolation for the inevitable is that we did what we could when we could.

For this holiday season, I send you the timeless Christmas benediction from Dickens' Tiny Tim, "God bless us, every one!"



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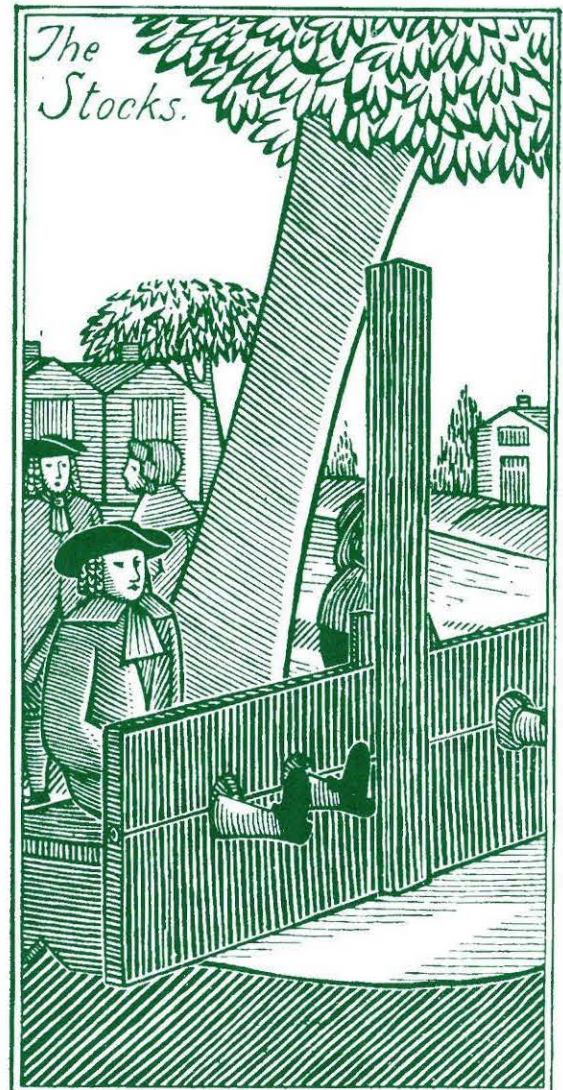
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The Humanitarian Theory of Punishment

by C.S. Lewis

Although most of us are familiar with C.S. Lewis because of children's books such as The Chronicles of Narnia, he was also one of the foremost philosophers of his generation. Indeed, many may be familiar with his work — The Abolition of Man, The Great Divorce, The Screwtape Letters, Mere Christianity and others — without realizing that he was the author.

Although Lewis was unabashedly a Christian, he also wrote on several topics which were not religious in nature. This essay is one such example. When U.S. District Judge John Coughenour recently invalidated Washington's sexual predator commitment law (Young v. Weston, 898 F.Supp. 744), it seemed appropriate to contact the owner of Lewis' copyrights for permission to reprint this piece, which discusses the underpinnings of such laws. The owner graciously assented, and the Bar News is proud to offer this distinguished article to its readership.



In England we have lately had a controversy about Capital Punishment. I do not know whether a murderer is more likely to repent and make a good end on the gallows a few weeks after his trial or in the prison infirmary thirty years later. I do not know whether the fear of death is an indispensable deterrent. I need not, for the purpose of this article, decide whether it is a morally permissible deterrent. Those are questions which I propose to leave untouched. My subject is not Capital Punishment in particular, but that theory of punishment in general which the controversy showed to be almost universal among my fellow-countrymen. It may be called the Humanitarian theory. Those who hold it think that it is mild and merciful. In this I believe that they are seriously mistaken. I believe that the 'Humanity' which it claims is a dan-

gerous illusion and disguises the possibility of cruelty and injustice without end. I urge a return to the traditional or Retributive theory not solely, not even primarily, in the interests of society, but in the interests of the criminal.

According to the Humanitarian theory, to punish a man because he deserves it, and as much as he deserves, is mere revenge, and, therefore, barbarous and immoral. It is maintained that the only legitimate motives for punishing are the desire to deter others by example or to mend the criminal. When this theory is combined, as frequently happens, with the belief that all crime is more or less pathological, the idea of mending tails off into that of healing or curing and punishment becomes therapeutic. Thus it appears at first sight that we have passed from the harsh and self-righteous notion of giving the wicked

their deserts to the charitable and enlightened one of tending the psychologically sick. What could be more amiable? One little point which is taken for granted in this theory needs, however, to be made explicit. The things done to the criminal, even if they are called cures, will be just as compulsory as they were in the old days when we called them punishments. If a tendency to steal can be cured by psychotherapy, the thief will no doubt be forced to undergo the treatment. Otherwise, society cannot continue.

My contention is that this doctrine, merciful though it appears, really means that each one of us, from the moment he breaks the law, is deprived of the rights of a human being.

The reason is this. The Humanitarian theory removes from Punishment the concept of Desert. But the concept of Desert

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*“The first
result of the
Humanitarian
theory is, there-
fore, to substitute
for a definite
sentence . . .*

is the only connecting link between punishment and justice. It is only as deserved or undeserved that a sentence can be just or unjust. I do not here contend that the question ‘Is it deserved?’ is the only one we can

reasonably ask about a punishment. We may very properly ask whether it is likely to deter others and to reform the criminal. But neither of these two last questions is a question about justice. There is no sense in talking about a ‘just deterrent’ or a ‘just cure’. We demand of a deterrent not whether it is just but whether it will deter. We demand of a cure not whether it is just but whether it succeeds. Thus when we cease to consider what the criminal deserves and consider only what will cure him or deter others, we have tacitly removed him from the sphere of justice altogether; instead of a person, a subject of rights, we now have a mere object, a patient, a ‘case’.

The distinction will become clearer if we ask who will be qualified to determine sentences when sentences are no longer held to derive their propriety from the criminal’s deservings. On the old view the problem of fixing the right sentence was a moral problem. Accordingly, the judge who did it was a person trained in jurisprudence; trained, that is, in a science which deals with rights and duties, and which, in origin at least, was consciously accepting guidance from the Law of Nature, and from Scripture. We must admit that in the

actual penal code of most countries at most times these high originals were so much modified by local custom, class interests, and utilitarian concessions, as to be very imperfectly recognizable. But the code was never in principle, and not always in

fact, beyond the control of the conscience of the society. And when (say, in eighteenth-century England) actual punishments conflicted too violently with the moral sense of the community, juries refused to convict and reform was finally brought about. This was possible because, so long as we are thinking in terms of Desert, the propriety of the penal code, being a moral question, is a question on which every man has the right to an opinion, not because he follows this or that profession, but because he is simply a man, a rational animal enjoying the Natural Light. But all this is changed when we drop the concept of Desert. The only two questions we may now ask about a punishment are whether it deters and whether it cures. But these are not questions on which anyone is entitled to have an opinion simply because he is a man. He is not entitled to an opinion even if, in addition to being a man, he should happen also to be a jurist, a Christian, and a moral theologian. For they are not questions about principle but about matter of fact; and for such *cuiquam in sua arte credendum*.¹ Only the expert ‘penologist’ (let barbarous things have barbarous names), in the light of previous experiment, can tell us what is likely to

deter: only the psycho-therapist can tell us what is likely to cure. It will be in vain for the rest of us, speaking simply as men, to say, 'but this punishment is hideously unjust, hideously disproportionate to the criminal's deserts'. The experts with perfect logic will reply,

. . . *an
indefinite sentence
terminable only by
the word of those
experts . . . who
inflict it.*"

'but nobody was talking about deserts. No one was talking about *punishment* in your archaic vindictive sense of the word. Here are the statistics proving that this treatment deters. Here are the statistics proving that this other treatment cures. What is your trouble?'

The Humanitarian theory, then, removes sentences from the hands of jurists whom the public conscience is entitled to criticize and places them in the hands of technical experts whose special sciences do not even employ such categories as rights or justice. It might be argued that since this transference results from an abandonment of the old idea of punishment, and, therefore, of all vindictive motives, it will be safe to leave our criminals in such hands. I will not pause to comment on the simple-minded view of fallen human nature which such a belief implies. Let us rather remember that the 'cure' of criminals is to be compulsory; and let us then watch how the theory actually works in the mind of the Humanitarian. The immediate starting point of this article was a letter I read in one of our Leftist weeklies. The author was pleading that a certain sin, now treated by our laws as a crime, should henceforward be treated

as a disease. And he complained that under the present system the offender, after a term in gaol, was simply let out to return to his original environment where he would probably re-

lapse. What he complained of was not the shutting up but the letting out. On his remedial view of punishment the offender should, of course, be detained until he was cured. And of course the official straighteners are the only people who can say when that is. The first result of the Humanitarian theory is, therefore, to substitute for a definite sentence (reflecting to some extent the community's moral judgment on the degree of ill-desert involved) an indefinite sentence terminable only by the word of those experts — and they are not experts in moral theology nor even in the Law of Nature — who inflict it. Which of us, if he stood in the dock, would not prefer to be tried by the old system?

It may be said that by the continued use of the word punishment and the use of the verb 'inflict' I am misrepresenting Humanitarians. They are not punishing, not inflicting, only healing. But do not let us be deceived by a name. To be taken without consent from my home and friends; to lose my liberty; to undergo all those assaults on my personality which modern psychotherapy knows how to deliver; to be re-made after some pattern of 'normality' hatched in a Viennese laboratory to which I never professed allegiance; to

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*“Of all tyrannies a
tyranny sincerely
exercised for the
good of its victims
may be the most
oppressive.”*

know that this process will never end until either my captors have succeeded or I grown wise enough to cheat them with apparent success—who cares whether this is called Punishment or not? That it includes most of the elements for which

any punishment is feared—shame, exile, bondage, and years eaten by the locust—is obvious. Only enormous ill-desert could justify it; but ill-desert is the very conception which the Humanitarian theory has thrown overboard.

If we turn from the curative to the deterrent justification of punishment we shall find the new theory even more alarming. When you punish a man *in terrorem*,² make of him an ‘example’ to others, you are admittedly using him as a means to an end; someone else’s end. This, in itself, would be a very wicked thing to do. On the classical theory of Punishment it was of course justified on the ground that the man deserved it. That was assumed to be established before any question of ‘making him an example’ arose. You then, as the saying is, killed two birds with one stone; in the process of giving him what he deserved you set an example to others. But take away desert and the whole morality of the punishment disappears. Why, in Heaven’s name, am I to be sacrificed to the good of society in this way?—unless, of course, I deserve it.

But that is not the worst. If the justification of exemplary punishment is not to be based on desert but solely on its effi-

cacy as a deterrent, it is not absolutely necessary that the man we punish should even have committed the crime. The deterrent effect demands that the public should draw the moral, ‘If we do such an act we shall suffer like that man.’ The punish-

ment of a man actually guilty whom the public think innocent will not have the desired effect; the punishment of a man actually innocent will, provided the public think him guilty. But every modern State has powers which make it easy to fake a trial. When a victim is urgently needed for exemplary purposes and a guilty victim cannot be found, all the purposes of deterrence will be equally served by the punishment (call it ‘cure’ if you prefer) of an innocent victim, provided that the public can be cheated into thinking him guilty. It is no use to ask me why I assume that our rulers will be so wicked. The punishment of an innocent, that is, an undeserving, man is wicked only if we grant the traditional view that righteous punishment means deserved punishment. Once we have abandoned that criterion, all punishments have to be justified, if at all, on other grounds that have nothing to do with desert. Where the punishment of the innocent can be justified on those grounds (and it could in some cases be justified as a deterrent) it will be no less moral than any other punishment. Any distaste for it on the part of a Humanitarian will be merely a hang-over from the Retributive theory.

It is, indeed, important to notice that my

argument so far supposes no evil intentions on the part of the Humanitarian and considers only what is involved in the logic of his position. My contention is that good men (not bad men) consistently acting upon that position would act as cruelly and unjustly as the greatest tyrants. They might in some respects act even worse. Of all tyrannies a tyranny sincerely exercised for the good of its victims may be the most oppressive. It may be

better to live under robber barons than under omnipotent moral busybodies. The robber baron's cruelty may sometimes sleep, his cupidity may at some point be satiated; but those who torment us for our own good will torment us without end for they do so with the approval of their own conscience. They may be more likely to go to Heaven yet at the same time likelier to make a Hell of earth. Their very kindness stings with intolerable insult. To be 'cured' against one's will and cured of states which we may not regard as disease is to be put on a level with those who have not yet reached the age of reason or those who never will; to be classed with infants, imbeciles, and domestic animals. But to be punished, however severely, because we have deserved it, because we 'ought to have known better', is to be treated as a human person made in God's image.

In reality, however, we must face the

"[B]ecause [the therapies] are 'treatment,' not punishment, they can be criticized only by fellow-experts and on technical grounds, never by men as men and on ground of justice."

possibility of bad rulers armed with a Humanitarian theory of punishment.

Therefore, the practical problem for Christians is that of living as innocently as we can with unbelieving fellow-subjects under unbelieving rulers who will never be perfectly wise and good and who will sometimes be very wicked and very foolish. And

when they are wicked the Humanitarian theory of punishment will put in their hands a finer instrument of tyranny than wickedness ever had before. For if crime and disease are to be regarded as the same thing, it follows that any state of mind which our masters choose to call 'disease' can be treated as crime; and compulsorily cured. It will be vain to plead that states of mind which displease government need not always involve moral turpitude and do not therefore always deserve forfeiture of liberty. For our masters will not be using the concepts of Desert and Punishment but those of disease and cure. We know that one school of psychology already regards religion as a neurosis. When this particular neurosis becomes inconvenient to government, what is to hinder government from proceeding to 'cure' it? Such 'cure' will, of course be compulsory; but under the Humanitarian theory it will not

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be called by the shocking name of Persecution. No one will blame us for being Christians, no one will hate us, no one will revile us. The new Nero will approach us with the silky manners of a doctor, and though all will be in fact as compulsory as the *tunica molesta* or Smithfield or Tyburn, all will go on within the unemotional therapeutic sphere where words like 'right' and 'wrong' or 'freedom' and 'slavery' are never heard. And thus when the command is given, every prominent Christian in the land may vanish overnight into Institutions for the Treatment of the Ideologically Unsound, and it will rest with the expert gaolers to say when (if ever) they are to re-emerge. But it will not be persecution. Even if the treatment is painful, even if it is life-long, even if it is fatal, that will be only a regrettable accident; the intention was purely therapeutic. In ordinary medicine there were painful operations and fatal operations; so in this. But because they are 'treatment', not punishment, they can be criticized only by fellow-experts and on technical grounds, never by men as men and on grounds of justice.

This is why I think it essential to oppose the Humanitarian theory of punishment, root and branch, wherever we encounter it. It carries on its front a semblance of mercy which is wholly false. That is how it can deceive men of good will. The error began, perhaps, with Shelley's statement that the distinction between mercy and justice was invented in the courts of tyrants. It sounds noble, and was indeed the error of a noble mind. But the distinction is essential. The older view was that mercy 'tempered' justice, or (on the highest level of all) that mercy and justice had met and kissed. The essential act of mercy was to pardon; and pardon in its very essence involves the recognition of guilt and ill-desert in the recipient. If crime is only a disease which needs a cure, not sin which deserves punish-

ment, it cannot be pardoned. How can you pardon a man for having a gumboil or a club foot? But the Humanitarian theory wants simply to abolish Justice and substitute Mercy for it. This means that you start being 'kind' to people before you have considered their rights, and then force upon them supposed kindnesses which no one but you will recognize as kindnesses and which the recipient will feel as abominable cruelties. You have overshot the mark. Mercy, detached from Justice, grows unmerciful. That is the important paradox. As there are plants which will flourish only in mountain soil, so it appears that Mercy will flower only when it grows in the crannies of the rock of Justice; transplanted to the marshlands of mere Humanitarianism, it becomes a man-eating weed, all the more dangerous because it is still called by the same name as the mountain variety. But we ought long ago to have learned our lesson. We should be too old now to be deceived by those humane pretensions which have served to usher in every cruelty of the revolutionary period in which we live. These are the 'precious balms' which will 'break our heads.'³

There is a fine sentence in Bunyan: 'It came burning hot into my mind, whatever he said, and however he flattered, when he got me home to his House, he would sell me for a Slave.'⁴

Endnotes

¹ 'We must believe the expert in his own field.'

² 'to cause terror.'

³ Psalm 141:5.

⁴ *The Pilgrim's Progress*, ed. James Blanton Wharey, second edition revised by Roger Sharrock, Oxford English Texts (Oxford, 1960), Part I, p. 70.

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What a Law Firm Should Consider when Purchasing Malpractice Insurance

by Lucy Aiello

There are a number of professional liability insurance carriers in the marketplace today. This article will attempt to assist law firms, as consumers of this often misunderstood product, to better understand the basics of such insurance.

The Policy: What to Look For

The actual layout of a policy varies between insurance carriers. What one carrier places in a definition, another may place in a provision. When comparing contracts you may have to do some detective work to discover if, and where, an item is inserted. Carriers differ in the following subject matters:

- what is covered
- who is covered
- the defense and settlement of claims
- claims expenses, limits, and deductibles
- innocent partner coverage
- extended reporting period options
- reporting claims
- exclusions
- reporting firm changes

Insuring Agreement Coverage Clause

The Insuring Clause is the portion of the policy that defines who and what is covered under the policy. Most policies state that the Company will pay damages resulting from claims arising out of any

act, error or omission by the Insured in his/her profession as a lawyer. Most Clauses also state that any claim must be made within a certain time frame.

It is in this Clause that you may find other services by lawyers listed as covered activities. The most common is Notary Public. However, as the needs of the legal community change, many companies are expanding the Insuring Agreement Coverage Clause to encompass other activities. This is in lieu of extending coverage via an endorsement. Examples may include performing as an arbitrator or mediator, or serving as a member/officer of a bar association. By enhancing the Clause to include these activities, insurance companies rarely expose themselves to any additional hazard.

If your law firm is involved in an activity which is not expressly stated as a covered activity, inquire about coverage through an endorsement. You should also ask whether there is any premium associated with such an endorsement.

Who is Defined as an Insured?

Although most policies reference the Named Insured as a "defined insured" in the declarations page attached to the policy, it is also common to include in that definition current and past partners, officers, directors, stockholders or shareholders, employees, and retired professionals while they were performing services on behalf of the Named Insured.

Some questions to consider when reviewing this portion of a policy:

Does the policy cover all lawyers in the firm?

Is coverage afforded for attorneys who previously worked in other law firms? This is referred to as "lateral hire" or "career" coverage. Some carriers may require prior insurance by such individuals as a condition of offering this coverage.

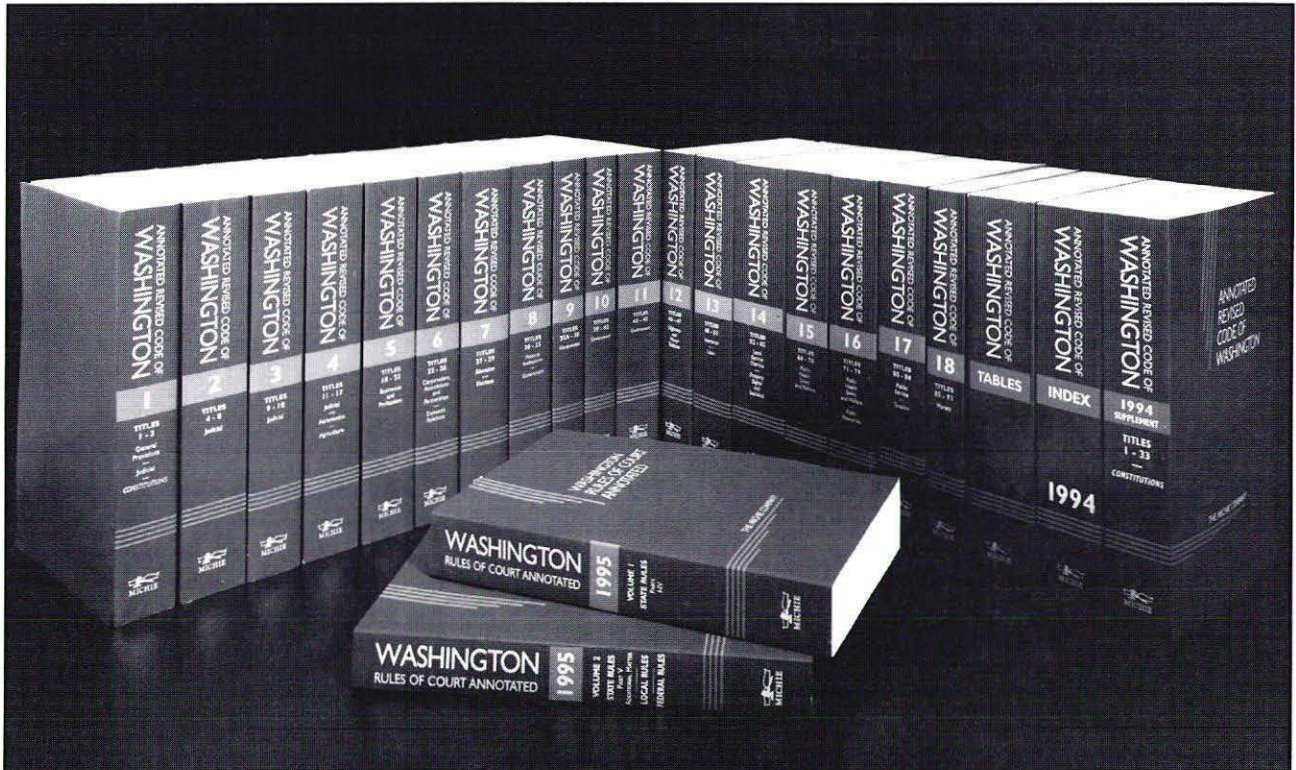
Are the nonlawyers (support staff) specifically defined as having coverage while working for the Named Insured?

Does the policy contain coverage in "definitions" for independent contract lawyers? Most policies that do not specifically define independent contractors as insureds do not afford coverage to them. This is because a contractor does not technically meet the definition of any other named insured: i.e., partner, officer, director, shareholder, stockholder, employee, associate, nonlawyer or of counsel. If your law firm uses the services of independent contractors or per diem lawyers, request that your insurance company name them on the policy for work performed on behalf of your law firm. Even if an insurance company provides such coverage, however, they may impose a surcharge if the contractor does not have his/her own coverage. Consequently, the law firm should expect the contractors they hire to carry professional liability coverage.

Finally, is there protection to the heirs and legal representatives of any insured in the case of death, incapacity or bankruptcy?

By reviewing the definitions of who is covered, you will know if this is the right policy for your firm, or whether further coverage is necessary.

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Defense & Settlement Clauses

The duty to defend a law firm in a claim, even if the claim is "groundless, false or fraudulent," is common in most professional liability policies. The right to investigate and negotiate the claim as the Company deems expedient is also typical.

The "consent to settle" clause found in most policies represents a compromise between the insured's interest in protecting his reputation, and the Company's interest in protecting its assets by settling claims at amounts it deems reasonable. The insured's interest is protected by the absolute right to prevent a settlement by refusing consent. The insured can have his day in court and, hopefully, be vindicated.

One of the benefits of this clause is that it forces communication between the Company and the Insured. My experience has been that the vast majority of insureds will consent to settle when presented with a well-reasoned evaluation of the merits of the claim, including a consideration of the costs of proceeding to trial.

From the Company perspective, the real concern is that without control of the ultimate settlement decision, there is exposure to large verdicts that could otherwise be controlled by settlement. An insured who takes an unreasonable position on the settlement of a case can expose the Company to a judgment well in excess of settlement value. To protect themselves, most companies use the so called "hammer clause." The effect of the hammer clause is to shift the risk of an adverse result to the insured by capping the Company's exposure at the amount the case could have been settled at, plus defense costs, up to the time of the insured's refusal to consent.

Most carriers find that the hammer clause is a meaningful safeguard for the policies they write. Moreover, it is in the interests of the overall insured group to have this feature, in order to protect their premiums from the negative impact that unreasonable refusals to settle could impose.

Who handles claims is also an important consideration in assessing professional liability coverage. Most carriers have a panel of approved law firms from which defense counsel will be selected. They are usually willing to discuss who is on such a panel.

Claims Expenses

On most liability policies, claims expenses are defined as fees charged by the lawyer selected by the Company, coupled with the fees associated with the investigation and defense of a claim. They do not usually include salaries of regular employees of the Company.

A key issue is whether claims expenses reduce the amount available to pay for damages (also known as *indemnities* or *losses*). This is typically referred to as "claims expenses within the limits," versus "claims expenses outside the limits."

Claims expenses *within* the limits of liability mean that the limits of liability

"A key issue [when you are selecting a policy] is whether claims expenses reduce the amount available to pay for damages."

purchased by the firm will be reduced first by the expenses incurred in the defense and investigation of the claim, and whatever limit of liability is remaining will be the amount available to pay the damages.

Claims expenses *outside* the limits of liability mean that the limits of liability purchased by the firm will *not* be reduced by the expenses incurred in the defense and investigation of the claim. This permits the amount of liability purchased to be fully available to pay for damages from any claim that is brought against the firm, provided no other terms and/or conditions preclude coverage. Some carriers cap the amount they will expend for claims expenses on any one claim, or during any one policy period. Other carriers may apportion the claims expense allotment in conjunction with the limits of liability purchased. After either of these points is reached, the limits will begin to be eroded by additional claims expenses and/or damages.

Placing claims expenses outside the limits of liability increases the costs the Company will incur as a result of claims. Therefore, the Company must charge more for this option. Moreover, as a condition of offering claims expenses outside the limit of liability, a carrier may require that the "consent to settle clause" be inserted into the defense & settlement provision of the policy.

Deductibles: What Are The Options?

Most professional liability policies offer an "each and every claim," otherwise termed "per claim," deductible as their standard deductible option. This means that for each and every claim reported during the policy period, the Named Insured has the responsibility to pay the stated deductible amount.

Aggregate deductibles are attractive to law firms carrying higher deductibles, frequently in excess of \$25,000. The aggregate deductible establishes the total amount the firm will pay for all claims, regardless of the number of claims, within the policy period. This is a benefit for a larger law firm, if merely from a budgeting standpoint. Should the firm experience claims activity, the maximum contribution required of them is clearly known.

A "loss only" deductible is one wherein the insured pays the deductible at the time an indemnity payment, if any, is made. Should no liability be found on the part of the Insured, no deductible is required. Other industry terms for this feature are "damages only" and "first dollar defense" deductibles. If it is available, there is an additional cost associated with this type of deductible, as well as certain criteria that a firm must meet.

The Self-Insured Retention option, or SIR, may be appropriate for very large law firms opting to bear a significant portion of the risk. An SIR permits a law firm to handle the claims brought against that firm during the policy period. The specifics of how and when the firm must interact and communicate with the Company are outlined within the language defining the SIR.

What a deductible is applicable to, and when it must be paid, is also important. Most policies state that when a deductible is applicable to both claims expenses and damages, the Insured is required to pay the deductible as soon as the carrier be-

gins incurring costs in the investigation and defense of the claim. When the deductible is applicable to damages only, the Insured will not be required to pay the deductible unless and until an indemnity payment is made.

Innocent Insured Coverage

Most standard policies exclude criminal, dishonest, fraudulent or malicious acts. Typically, when an insured in a firm commits such an act, no one else in the firm is implicated; nevertheless, the firm may become involved. Do you want a policy that will defend and protect the "innocent" law firm members? If this is not included in the standard policy, ask if your carrier will add this coverage.

Extended Reporting Periods

"Extended Reporting Period" is known as the ERP, or Tail, option. Most carriers offer this feature, but vary in the details of such an endorsement. The basic language will explain how and when the ERP option may be exercised by the Named Insured. The ERP allows a firm to report claims they become aware of *subsequent* to the policy expiration date, if they occurred *prior* to the end of the policy

"Most standard policies exclude criminal, dishonest, fraudulent or malicious acts."

period. To illustrate: an insured's policy expires today, with no retroactive date on the policy, and the insured opts to purchase an unlimited ERP. Six months later, a summons and complaint are served for an act that occurred one year ago, making it an act that was committed during the policy period. Unless otherwise excluded, this claim would be covered under the ERP.

Remember, the ERP is an endorsement that attaches to a policy, and is not in itself a policy. It is purchased when the policy is no longer in effect, due to cancellation or nonrenewal by the Insured or Company for any number of reasons.

An insured should look at the specific

policy language regarding ERPs to learn:

- When the option to purchase may be exercised, and any limitations thereof.
- What the time frame for reporting options are, and their affiliated costs. As a rule, there are 1, 2, 3 and unlimited year options with rates ranging from 100% to 400% of the last annual premium.
- Who can purchase this option. (Just the Named Insured firm, or any individuals within that firm?)
- Whether there is a limitation that allows this option to be purchased only if the cancellation or nonrenewal was initiated by the Company.
- Whether the policy limits are reinstated.
- Whether this is available if a lawyer has been suspended or disbarred.
- Whether the premium for this option is fully earned at the time of purchase; typically, neither the Named Insured nor the Com-

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pany would be allowed to cancel the ERP and return any premium.

- Whether the ERP can be extended once it has expired; i.e., can you purchase another ERP after the most recent one expires?

In conjunction with the ERP option, there is an additional feature which some carriers offer when a lawyer in a firm ceases to practice law. This is termed the "nonpracticing lawyer" or "retired partner" extended reporting period option." As with the ERP, it is meant to provide an individual lawyer with added time to report claims that may be made subsequent to their exit from active practice. Any carrier that offers this option has its own stipulations, similar to their ERP options. When reviewing this option, check to see if the premium can be waived under certain conditions.

Exclusions: Every Policy Has Them

No professional liability policy has ever been deficient in exclusions. What you need to be aware of is *what* the carrier is excluding. Standard policies exclude claims:

- from criminal, dishonest or fraudulent acts that the insured was aware of prior to the policy period
- from outside enterprises
- from notarizing unwitnessed signatures
- by insureds against other insureds
- by insureds acting as a director or officer of other corporations
- by insureds acting as public officials or governmental employees
- for bodily injury or loss of property

Knowing what is excluded in your policy is crucial to understanding your coverage.

Limits: How Much Is Enough?

The amount of limits a law firm should purchase is an individual business decision. The factors that should enter into the decision include the firm's clients, the

"There are two factors which are most significant in determining [insurability]: practice areas and prior claims experience."

nature of the cases (including the financial risks) associated with such clients, the areas of law practiced (and any case law relative to those practice areas), and the number of professionals to be covered by the policy.

Whether you purchase a policy with a "per claim" and "aggregate limit" equal to each other, or an aggregate limit in excess (usually two times) the per claim limit, is a further consideration for the firm. A "per claim" with an "aggregate limit" *equal* to it states the specific amount, in total, of the Company's liability. For example, "\$1,000,000 Per Claim and Aggregate" equates to \$1,000,000 total limits available, regardless of the number of claims. A limit with an aggregate in excess of the "per claim" amount, some-

times referred to as a "Split Limit," again outlines the total limit of the Company's liability as the amount reflected in the Aggregate. Here, however, the per claim limit changes. For example, if the limit reads: "\$1,000,000 Per Claim and \$2,000,000 Aggregate," the firm will have a total of \$1,000,000 available for the first claim and up to \$1,000,000 for any subsequent claims reported during that policy period.

Reporting Claims: Know What The Carrier Requires

Most policies outline the procedures required when there is a claim made against the law firm.

In general, a firm will be required to submit to the Company, directly and in writing, the details of the claim. Notification to your insurance agent, or broker, is not notice to the Company. This notice should include any and all demands, notices, summons or other material the Insured may have received. Most companies do not authorize you to admit liability, settle claims, agree to arbitration, waive any rights or incur any costs on behalf of the Company.

A claim made against a law firm is a sensitive matter, and there may be a desire on the part of a firm to wait and see what transpires. However, timely reporting to the Company is essential to assure proper handling. Moreover, also be aware that some policies require reporting *potential* claims.

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Reporting Changes In The Firm: Is This Required?

Some carriers require that if a firm changes during the policy period, the carrier must be notified. To assure that you have coverage for changes within the policy period, check to see if your insurance carrier requires such notification.

What An Underwriter Is Really Looking For In An Application

An underwriter is looking to determine what risk should be taken on behalf of the insurance company, and what the appropriate price is for that risk. There are two factors which are most significant in determining this formula: practice areas,

and prior claims experience. In conjunction with these areas, the length and stability of a firm's existence, compliance with appropriate "support to professional" staff ratios, gradual albeit controlled growth rates, internal docket and risk controls, and the firm's community involvement are also taken into account when reviewing the applicant firm.

Most applications provide a list of practice areas for which the applicant must insert percentages, based on either time involved or fees generated for each area. In completing this portion of the application, it is imperative to be as accurate with your representations as possible. If your firm performs work that does not fall into the categories outlined, talk to the underwriter. Insurance companies realize that not all firms fit into the standard categories. The underwriter keys very strongly into this segment of the application, so it is important to provide appropriate information.

The claims activity your law firm has experienced is also weighed heavily in the application assessment. What does the underwriter look for? Simply: Who, what, when, where, why and how much.

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Who: Who asserted the claim against the firm, and who in the firm is named?

What: What are the allegations against the firm, what services were rendered, and what error was alleged to have been made?

When: When were you made aware of the claim, when were the services rendered, and when did you report it to your insurance carrier?

Where: Where was the claim brought against the lawyer? While in association with another firm? At a branch office?

Why: Why was the claim made? A fee dispute? An unfavorable judgment? Poor client communication? A documentation or clerical error? A missed statute or title defect?

How much: What did it cost? On closed claims, what were the total damages, claims expenses and deductibles paid; on open claims, what are the current reserves? Do the reserves include expenses to defend the claim?

Have you had to contribute any portion of your deductible? What are the demand amounts of the claimant, and how do these relate to the overall case, from your perspective?

In order to provide this information, a law firm has the right to inquire of an insurance company the amount of expenses and indemnity payments on closed claims, and/or the reserve amounts on open claims. It would be tantamount to bad faith for an insurance company not to disclose such information to a firm.

“One of the worst things a firm can do is submit a copy of a summons and complaint in lieu of completing a claims supplement.”

All the above are key elements in understanding the experience of the law firm. An underwriter will weigh these components, reviewing the status of each incident and the measures taken to avoid future recurrences. In fitting all the pieces together, the underwriter is trying to arrive at an accurate conclusion. Is there a common link for firms reporting more than one claim? Do the claims made against the law firm arise from a practice area the firm is well versed in, or one it has minimal involvement in? Are the claims due to poor internal management of firm associates, or lack of communication between partners? Was a lawyer dysfunctional due to the misuse of alcohol or drugs, or from family, work or physical stress? The more clarity you provide, the better the underwriter will be able to assess your firm.

One of the worst things a firm can do is submit a copy of a summons and complaint in lieu of completing a claims supplement. It is extremely frustrating for an underwriter to review such papers that, to be fair, are usually most damaging to the firm. Think about it: sending in a complaint that carries with it all counts and complaints against the firm and/or individual lawyers for their service, or lack thereof, can in no way be favorable to the firm. To attach a copy of a dismissal, however, with a claims supplement, is acceptable. Without your cooperation in providing this information, you may realize an unwarranted surcharge or a declination.

A brief comment about potential claims may also be useful. Underwriters look at potential claims and the reporting of such in one of two ways: One, that the law firm is acting diligently and being cautious; Or

two, that a firm may be headed in a distressed direction. Regarding the first possibility, the firm that reviews its cases, and queries its partners and associates for any potential problems, and reports such to their insurance carrier, is viewed favorably. Moreover, depending upon the policy language, reporting a potential claim could be a key element at a later date, should the incident evolve into a true claim against the firm. For this reason, it is very unfortunate that some firms hesitate to report potential problems for fear of having their premium increased. The greater threat is that, should this potential claim blossom into an actual claim, coverage could be denied by the insurance carrier due to the “prior knowledge” language of the policy.

In reference to point number two, an inordinate number of potential claims could trigger further investigation by the underwriter. A firm that fits into this category can expect additional questions during the application process.

Pricing

Many particulars go into pricing. First and foremost, most insurance companies set premiums based upon the number of lawyers within a firm. The fees a firm generates may also be added into the equation for some carriers. Usually there is no charge for retired or semiretired partners and (based upon the definition of “Insured” in the policy) coverage is extended gratis. Whether or not there are charges assessed for “of counsels” or independent contractors is an individual Company prerogative. There may be a charge if they are uninsured, or if they work beyond the minimum amount of time allowed per Company guidelines;

otherwise, an exclusion may be in order. Most companies do not charge for paralegal or other support staff.

Insurance carriers may also have price guidelines for certain practice areas. For example, an emphasis in securities law may necessitate higher premiums than a criminal defense practice.

Another facet that enters into pricing is prior insurance history. If a firm has not carried professional liability insurance in the past, they will be starting at ground zero from a pricing perspective. These firms can anticipate an increase in premiums over the next five to seven years on the basis of the increased exposure the Company now assumes. Remember, the insurance company is not only exposed to acts during the current policy period, but to past acts of the firm during policy periods. Companies therefore must add this exposure into their rating formula to arrive at the appropriate price for the firm. Once the law firm reaches the insurance company’s “full” or “mature” rate, the law firm should realize a stabilization in its premiums, provided all else remains constant within the firm.

The liability limits the firm chooses, in conjunction with the deductible amount, also affect the premium. The higher the limits of liability, the higher the premium. A firm can control some of this cost by selecting a higher deductible. Unless there are restrictions from the Company, most underwriters are willing to offer various choices to law firms.

Conclusion

Many new and inexperienced carriers have entered the marketplace. The carrier you choose should have at least an “A-” rating from recognized rating agencies, and experience within the legal professional liability industry. Discuss these and other issues with an insurance broker prior to the purchase of your policy. While it may be time-consuming, it will be time well spent.



Lucy Aiello is a senior underwriting specialist and underwriting coordinator at Coregis Insurance Company. Coregis is represented locally by Hall-Conway-Jackson Inc.



“Usury Rate”

The average coupon equivalent yield from the first auction of 26-week treasury bills in November 1995 is 5.53%. *The maximum allowable interest rate permissible for December 1995 is therefore 12%.* Compilations of the average coupon equivalent yields from past auctions of 26-week treasury bills, and past maximum interest rates of the past 10 years appear on page 72 of the June 1995 *Bar News*.

Pierce County Code Supplement

The July 1995 Pierce County Code supplement is now available. Total cost, including postage (\$6.13) is \$59. To order, please make your check payable to Pierce County and mail to: Pierce County Council, Attn.: C. Schmidt, County/City Building, Room 1046, 930 Tacoma Ave. S., Tacoma, WA 98402. For further information, contact Cynthia Schmidt at (206) 596-6695.

Juvenile-court Forms

A 1995 statutory amendment contained in the “Becca bill” requires school dis-

tricts to file a truancy petition in juvenile court against a child who has unexcused absences five or more times a month, or at least ten times in a school year. RCW 28A.225.030, as amended by Laws of 1995, Chap. 312, § 68. The statute sets forth procedures to bring a child before a juvenile court judge for purposes of ordering school attendance. Laws of 1995, Chap. 28A.225 RCW.

Clallam and King counties have developed model truancy forms, which are available in printed, paper format and on diskette in (1) WordPerfect 5.1 for DOS and (2) Word for Windows 6.0 (King Co. only); and (3) Word 5.5 for DOS (Clallam only). To order either diskette or paper forms, call the voicemail OAC forms line at (360) 705-5328, leave your name and address, and request the truancy forms packet and/or disk.

From the above phone number, you can also request a memorandum announcing that there are no 1995 changes to the domestic-relations forms.

Judicial Conduct Stipulation

Pursuant to Article IV § 31 of the Washington Constitution, RCW 2.64 et seq., WAC 292-08, et seq., and WAC 292-12, et seq., the Washington Commission on Judicial Conduct (“Commission”) and the Honorable [King County District Court

Judge] Rosemary Bordlemay hereby stipulate and agree as follows:

1) The Commission believes that Judge Bordlemay, respondent herein, suffers from a health problem which renders her unable to continue her service in the judiciary and, by her conduct, has violated the Code of Judicial Conduct.

2) Judge Bordlemay does not admit the truth of the statements in paragraph 1 above. Judge Bordlemay does not dispute, however, the Commission, based upon its determinations set forth in paragraph 1 above, can take appropriate action under Article IV, Section 31 of the Washington State Constitution.

3) Judge Bordlemay is presently on administrative leave and is not performing any judicial functions. Judge Bordlemay agrees that her execution of this Stipulation constitutes her resignation from office, effective as of January 1, 1996.

4) Judge Bordlemay agrees that following the execution of this Stipulation, she shall not serve in any judicial position that is subject to the Code of Judicial Conduct without first securing approval from the Commission in the manner provided in WAC 292-12-160.

5) The Commission shall close this matter without further proceedings, effective on January 1, 1996.

Devitt Award

Nominations are being sought for the 14th Annual Edward J. Devitt Distinguished Service to Justice Award, which recognizes the dedicated public service of members in the Federal Judiciary and is administered by the American Judicature Society with funding provided by West Publishing Company.

Any interested person may submit a nomination, open to all federal judges appointed under Article III of the Constitution. The selection committee this year is composed of U.S. Supreme Court Justice Anthony M. Kennedy, Eighth Circuit Court of Appeals Chief Judge Richard S. Arnold and Southern District of Indiana Chief Judge Sarah Evans Barker. Nominations are due by December 15 to: Devitt Distinguished Service to Justice Award, 180 North Michigan Avenue, Suite 600, Chicago, Illinois 60601-7401.

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January 19, 1996
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**1996 Goldmark Award Recipients
& Keynote Speaker**

The trustees of the Legal Foundation of Washington are pleased to announce that Patricia Arthur will receive the 1996 Goldmark Award at the Foundation's annual luncheon on January 19, 1996 at the Seattle Sheraton Hotel. Arthur currently serves as the director of Institutional Legal Services for Evergreen Legal Services. She has represented people incarcerated in every type of facility in Washington since 1982. One of her nominees described her work as, "difficult, often thankless, and always important."

The President's Award, given by the Foundation's president to honor exemplary efforts, is being presented to Cheryl Baughman, volunteer attorney coordinator for the Clallam County Pro Bono Lawyer's Program. The Equal Justice Coalition will receive the Trustees' Special Award of Appreciation.

The speaker for the luncheon will be John Powell, executive director of the Institute on Race and Poverty at the Law Center of the University of Minnesota. Powell previously directed Legal Services of Greater Miami and served as legal director of the national office of the American Civil Liberties Union. Many people in Seattle know him as a legal-service attorney in Washington in the mid-'70s. He is a graduate of Stanford University and the University of California at Berkeley, Boalt Hall.



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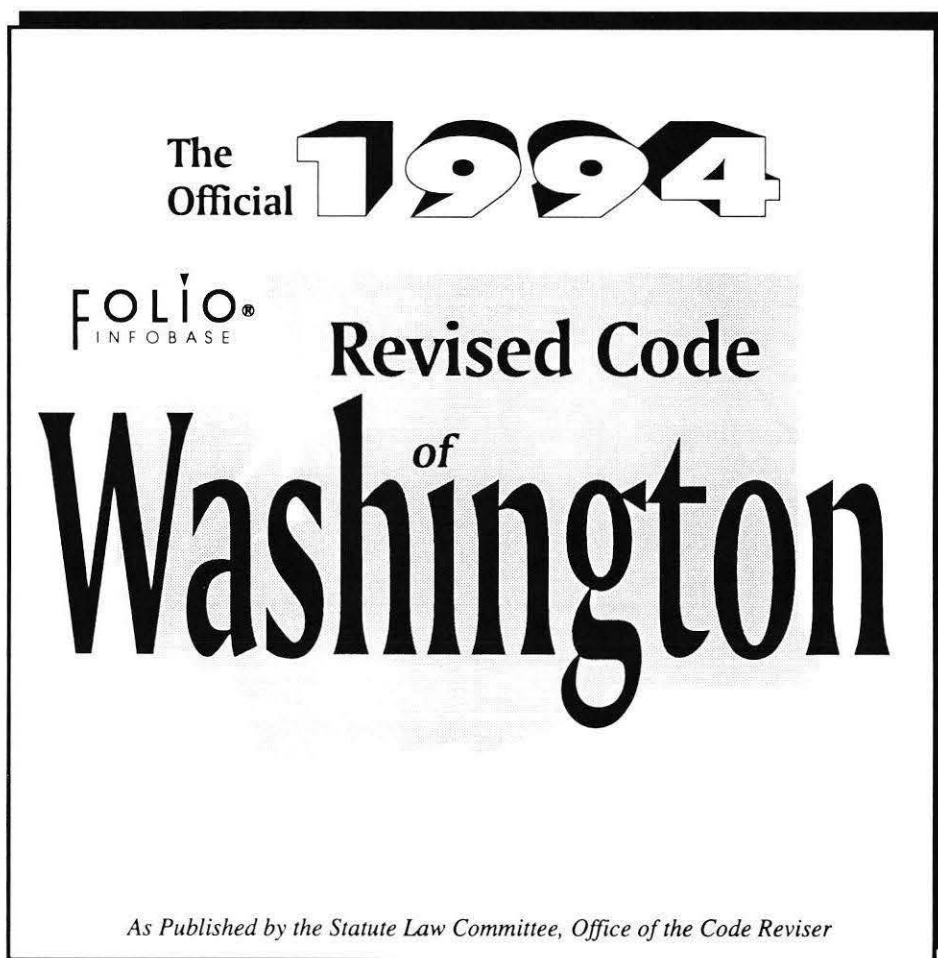
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December 1995

1 Seattle: **The Legality of Liens.** By KCBA.

1 Seattle: **Tausend & Vaughn's Federal Civil Practice Update.** By UW CLE.

1 Portland: **Real Estate Exchanges Under 1031 I.R.C. — A Guide to the Last Remaining Tax Shelter for Real Estate Investment.** By International Law Institute. (206) 726-9337. *Also Dec. 8 in Bellevue and Dec. 14 in Spokane.*

1 Portland: **Mastering Evidence & Proving Your Case.** By Oregon State Bar. Carolyn Wence at (503) 684-7407.

1-2 Bellevue: WSBA Board of Governors meeting.

2 Seattle: **Aronson & Tegland's Washington State Civil Practice Procedure Update.** By UW CLE.

2 Tacoma: **Potpourri.** By Tacoma-Pierce County Bar Association. (206) 383-3432.

4 Seattle: **Foreign Representatives and Distribution.** By NSCC.

5 Vancouver, WA: **The Legal Team.** By WSTLA.

5 Spokane: **Smorgasbord of CLEs.** By Spokane County Bar.

6 Seattle: **Electronic Document Management Solutions for Law Enforcement.** By Advanced Imaging and Networks LLC. (206) 622-2963, (800) 232-5881. *Also January 10.*

6 Tacoma: **1995 Washington Health Legislative Conference — The New Marketplace: Where is it Taking Us?** By Washington Health. (206) 543-3670.

6 Seattle: **The Lawyer on the Internet: Becoming an Effective User.** By WSBA CLE.

7 Seattle: **Collection of Judgments.** By WSBA CLE and Creditor/Debtor Section. *Also in Spokane Dec. 14.*

7 Seattle: **Real Estate Legal Aspects in Washington.** By NBI.

7 Bellevue: **Going Out on Your Own: Or Moving Your Practice Home.** By KCBA and EKCB.

7-8 New Orleans: **1995 Employment Law Conference.** By NELI.

7 Olympia: **Regulatory Reform 95.** Bob Wallis (360) 753-6404.

8 Seattle: **How Distribution Law Affects Your Business Clients.** By

Listing of Calendar Phone Numbers

- Davis, Wright, Tremaine (DWT): (206) 622-3150
- King County Bar Association CLE (KCBA): (206) 624-9365
- Law Seminars International (LSI): (206) 621-1938 or (800) 854-8009
- National Business Institute, Inc. (NBI): (715) 835-7909
- National Employment Law Institute (NELI): (415) 924-3844
- National Institute of Trial Advocacy (NITA): (800) 225-6482. BBS registration, messages, etc.: Set communication program to 8 bits, no parity, 1 stop bit, then call (219) 234-7348.
- North Seattle Community College Continuing Education (NSCC): (206) 527-3705
- Spokane County Bar Association (SCBA): (509) 623-2665
- University of Washington School of Law (UW CLE): (206) 543-0059; (800) CLE-UNIV
- Washington Defense Trial Lawyers (WDTL): (206) 233-2930; fax (206) 628-6611
- Washington State Bar Association CLE (WSBA CLE): (206) 727-8202; fax (206) 727-8320
- Washington State Trial Lawyers Association (WSTLA): (206) 464-1011, (800) 732-9251

CLE sponsors should send submissions by the 15th of the month for the second issue following (e.g., January 15 for the March 1 issue) to: Washington State Bar Association, *Bar News Calendar*, 500 Westin Bldg., 2001 Sixth Ave., Seattle, WA 98121-2599. Fax (206) 727-8320. Questions? Call (206) 727-8214.

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8 Seattle: **Essentials of Drafting Wills and Other Estate Planning Documents.** By WSBA CLE and Young Lawyers Division. *Also in Vancouver Dec. 15.*

8 Seattle: **Family Law Institute.** By KCBA.

8 Seattle: **WSTLA's 1995 Holly Ball.**

8 Sea-Tac: **Defending DUIs: Trying Cases Under the New, New DUI Law** (for defense lawyers only). By The Washington Foundation for Criminal Justice. (206) 451-1995.

9 Seattle: **New Law for the Statutory Side of Practice.** By UW CLE. *Also on Dec. 20.*

11 Seattle: **Immigration.** By NSCC.

12 Tacoma: **Mock Mediation** (2nd program in the JAMS/Endispute ADR Advocacy Series). (206) 627-3059.

12 Seattle: **New Horizons in Elder Law & Medicaid Issues.** By The National Academy of Elder Law Attorneys. (800) 843-7763.

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13 Portland: **What Every Attorney Should Know About Finance and Accounting.** *Also Dec. 14 in Seattle.* By Sequoia Corporation. (202) 955-9373.

14 Seattle: **Real Estate Institute.** By KCBA.

14 Seattle: **Survey of Federal Reserve Regulations.** By DWT.

14 Seattle: **Immigration Law in Washington.** By NBI.

14-15 Seattle: **The Sixth Annual Seattle Conference on Computer Law.** By LSI.

14-15 Seattle: **Commercial Real Estate Leases.** By LSI.

15 Seattle: **Best of CLE 1995.** By WSBA CLE and General Practice Section. *Also VIA•CLE — live CLE to your office over your phone.*

15 Seattle: **White-collar Crime.** By KCBA.

15 Seattle: **Trial as Theater.** By WSTLA.

15 Seattle: **Trial — Ultimate Theater: Communication and Persuasion for Advocates.** By NITA.

15 Seattle: **American College of Trial Lawyers' Direct & Cross-Examination Skills Update - Interactive Video Training.** By UW CLE.

15 Spokane County Bar Annual Holiday Party and Auction.

16 Seattle: **Planning & Living With the 1995 Tax Bill.** By UW CLE.

20 Seattle: **Statutes in Everyday Litigation and Business Practice.** By UW CLE.

18-21 Seattle: **Land Use Practice Certificate Program.** By UW CLE.

21 Seattle: **Cross-Training 101: Avoiding Traps for the Unwary.** By KCBA and UW CLE.

28 Seattle: **Essentials of Probating an Estate.** By WSBA CLE and Young Lawyers Division. *Also VIA•CLE — live CLE to your office over your phone.*

January 1996

5 Seattle: **Lifetime Giving: Planning and Procedures** (1/2 day). By WSBA CLE and Real Property, Probate and Trust Section.

5 Seattle: **Fiduciary Income Taxation: A Practical Guide** (1/2 day). By WSBA CLE and Real Property, Probate and Trust Section.

8 Medford, OR: **Leadership & Supervisory Skills for Women.** *Also Jan. 9 in Springfield, OR; Jan. 10 in Salem, OR; Jan. 11 in Portland, OR; Jan. 12 in Seattle; Jan. 29 in Bellingham; Jan. 30 in Bellevue; Jan. 31 in Tacoma; Feb. 1 in Olympia; Feb. 2 in Portland; Feb. 22 in Everett; Feb. 23 in Seattle.* By The National Businesswomen's Leadership Association. (800) 258-7246.

9 Tacoma: **WDTL Membership Dinner Meeting.**

12-13 Olympia: **WSBA Board of Governors meeting.**

18-19 Seattle: **Buying and Selling Electricity in the West.** By LSI.

19 Seattle: **The Essentials of Handling Adoption.** By WSBA CLE.

19 Seattle: **The Law Office Management Institute and Legal Expo Exhibit Hall.** By WSBA CLE, Law Practice Management Section, and Puget Sound Chapter of Assoc. of Legal Administrators.

19 Seattle: **Corporate Counsel Institute and Legal Expo Exhibit Hall.** By WSBA CLE and Corporate Law Department Section.

20-21 Seattle: **21st Annual Military Law Update.** By Army Judge Advocate General's School/6th Legal Support Division. (206) 281-3002.

23 Portland: **Med Ed Lawyers** (Lectures on 12 medical specialties). Presented in 12 two-hour sessions weekly through April 9. By Oregon State Bar and Oregon Law Institute. (503) 620-0222

25 Seattle: **Proposed Revisions to Article 9 and Sticky Article 9 Problems.** By DWT.

25 Seattle: **Choosing Your Retirement Plan.** By KCBA.

26 Seattle: **Suing the Government: What You Should Know About Public Sector Liability.** By WSBA CLE.

February 1996

1 Seattle: **Making the Most of Your Deposition Skills.** By WSBA CLE. *Also in Olympia Feb. 9.*

9 Seattle: **Mediation.** By WSBA CLE.

9-10 Vancouver: **WSBA Board of Governors meeting.**

15 Seattle & Spokane: **Elder Law.** By WSBA CLE and Elder Law Section.

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22 Seattle: **Survey of Recent Re-statement of Suretyship.** By DWT.

23 Seattle: **Real Property Management.** By WSBA CLE and Real Property, Probate & Trust Section.

23-24 Vancouver, BC: **Northwest Securities Institute.** By WSBA CLE and Business Law Section, in cooperation with Oregon State Bar CLE Committee & Securities Section.

March 1996

1 Seattle: **Director's & Officer's Liability.** By WSBA CLE.

1 Spokane: **State & Local Tax Deskbook.** By WSBA CLE and Taxation Section. *Also in Seattle March 8.*

5-7 Bellevue: **WSBA Bar Exam.** (206) 727-8209.

8 Seattle: **Estate Planning for Small to Medium Sized Estates.** By WSBA CLE.

12 Seattle: WDTL Membership Dinner Meeting.

15 Bellevue: **Employment Law Institute.** By WSBA CLE. *Also VIA CLE — delivering live CLE to your office over your phone.*

21 Seattle: **Revisions to Article 5.** By DWT.

21 Olympia: **Planning and Compelling Discovery.** By WSBA CLE. *Also in Seattle March 28.*

22 Seattle: **The Seventh Annual International Law Institute.** By WSBA CLE and International Practice Section.

22-23 Tacoma: WSBA Board of Governors meeting.

21-24 Phoenix: **WDTL Sunbreak Seminar.**

April 1995

19 Seattle: WSBA Board of Governors meeting.

25 Seattle: **Lending to Indian Tribes.** By DWT.

May 1995

3-4 Spokane: WSBA Board of Governors meeting.

16 Seattle: **Survey of Article 7; Security Interests in Documents of Title.** By DWT.

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1994 Grievances and Lawyer Discipline

by **Barrie Althoff**

This is the inaugural article in a new monthly department dealing with lawyer discipline, professional responsibility, and ethics. Readers are encouraged to contact Barrie Althoff, WSBA Chief Disciplinary Counsel, or Hal White, Bar News editor, regarding topics which they would like to see discussed in this department.

Last year about one in eight actively practicing lawyers in Washington were accused of violating the Rules of Professional Conduct. This article summarizes the approximately 2,100 grievances, and discusses the disciplinary and related action taken.

Who Were the Grievants?

Nearly two-thirds of all grievances were filed by a lawyer's ex-clients (53%) or

existing clients (12%). Opposing clients filed another 13%, while the WSBA itself filed 12% of the grievances. Opposing counsel or other lawyers or judges filed another 7%, and about 3% were filed by court reporters, expert witnesses, and others.

Who Were the Grievances Filed Against?

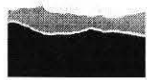
By area of practice of law, nearly two-thirds of all grievances were filed against lawyers practicing family law (33%), criminal law (18%), or personal injury law (12%). Each of these areas of practice is among the more widely practiced areas of law, and thus is likely to result in many grievances. Clients in these areas often have not previously dealt with lawyers, and often do not have realistic expectations of what their lawyer will or can do for them, or what the lawyer's services

will cost. Aside from these areas of law, grievances were filed last year in the following areas: real estate (5%), estates/probate (5%), bankruptcy (4%), contracts/consumer law (2%), labor law (2%), collections (2%), worker compensation (2%), corporations (2%), landlord-tenant (1%), and guardianships (1%). The remaining 10% of grievances relate to lawyers practicing in areas of immigration, traffic offenses, commercial law, administrative law, foreclosure, taxation, and other areas.

Although precise statistics are not available, it appears that most lawyers against whom grievances are filed practice either alone or in small partnerships. However, because most lawyers practice alone or in small firms, it is expected that most grievances would be filed against them. Moreover, such practices often handle high-volume/low-profit cases, and may be struggling to implement the quality control procedures more common in larger firms — which might catch problems that otherwise could give rise to grievances.

What Did the Grievances Allege?

About 35% of grievances allege that the lawyer either did not perform promised legal services at all, or that the lawyer unduly delayed performance beyond what the client expected, or otherwise failed to perform required duties for the client. Usually associated with these grievances are allegations that the lawyer failed to communicate with the client — usually by not responding to numerous letters and repeated telephone calls. Another 5% of grievances merely allege non-communication without other allegations. Another 15% allege excessive or exorbitant fees, failure to return unearned fees, unauthorized withdrawal of disputed fees, or other fee disputes. Grievances alleging fee violations also often allege incompetence on the part of the lawyer. About 10% of grievances allege that the lawyer made misrepresentations to the court or the client. About 8% of grievances arise from



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trust account overdrafts or conversions. Grievances alleging that a lawyer had conflicts of interest, failed to pay personal debts, or failed to turn over a file to a client's new lawyer (usually claiming a lien for unpaid legal fees), constituted about another 12% of grievances.

What Happened to the Grievances?

Disciplinary counsel are required to examine each grievance to determine if it alleges a violation of the Rules of Professional Conduct and, if it does, to investigate the grievance. Disciplinary counsel dismissed almost immediately nearly 50% of the grievances for failure to allege such a violation. Disciplinary counsel dismissed another 28% of grievances after investigation showed that, although the grievance alleged a violation, there was either no evidence, or insufficient evidence, to establish that a violation had

“Usually associated with these grievances are allegations that the lawyer failed to communicate with the client — usually by not responding to numerous letters and repeated telephone calls.”

occurred. Another 8% were dismissed by Review Committees. About 4% of grievances were deferred, pending resolution of civil or criminal cases in which sub-

stantially similar issues were being raised. About 10% of grievances were viewed as basically fee disputes (ordinarily not the proper subject for lawyer discipline) and were referred to voluntary fee arbitration.

What Sanctions and Remedies Were Imposed?

Last year only 29 public sanctions were imposed for acts of misconduct. The Supreme Court disbarred six lawyers and suspended another 10 from the practice of law. Another six were reprimanded, and seven were censured. Thirty-one lawyers received either a private admonition (for misconduct involving inattention, neglect, or lack of competence in handling a matter); or a private advisory letter, cautioning the lawyer concerning his or her conduct. Thus, fewer than four in a thousand lawyers were subject to either public or private adverse discipline action last year.

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January 8

Mr. William Burkitt
Hindman and Burkitt
306 Flora Street
Bellingham, Washington 98225

Dear Bill:

Please find enclosed copy of billings mistakenly sent to our office by you when you sent to us billings mistakenly sent to your office by Dr. S _____.

If I am mistaken in believing that you were mistaken in sending these billings to my office along with those mistakenly sent to your office, please pardon my mistake. Until recently, you see, it was my understanding that I did not make mistakes. My secretary, however, informs me that I was mistaken.

Correctly yours,


Ira John Uhrig
IJU:lg
Enclosure

Bill Burkitt is a partner with the Bellingham firm of Hindman and Burkitt. Former attorney **Ira Uhrig**, having practiced family law in Bellingham for roughly ten years (some years rougher than others), has since become the Whatcom County District Court Commissioner, the United States Magistrate Judge for Northwest Washington, and Pipe Major of the Bellingham Bagpipe Band. He is contemplating running away from home to join the circus.

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William D. Burkitt

January 21

Mr. Ira Uhrig
1200 Dupont St., Suite 2A
Bellingham, WA 98225

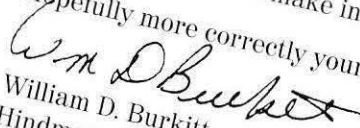
Dear Ira:

Your letter of January 8 is incorrect, i.e. you made a mistake.

You see, it was our mistake where we mistakenly sent you the billings that belonged in our office instead of sending only those billings that were mistakenly sent to our office that should have been sent to your office.

Actually, my secretary made the mistake when she mistakenly sent those bills to you along with the bills that were mistakenly sent to us. So you see, you thought you made a mistake, but in fact, you were wrong.

I hope that this will end the letters concerning the various mistakes that we all make in our day to day operations.

Hopefully more correctly yours,

William D. Burkitt
Hindman and Burkitt

WDB: pknk



The Theme Is Freedom.

Religion, Politics and the American Tradition.

M. Stanton Evans, 366 pp., hardcover, \$24.95. Regnery [(202) 546-5005], 1994.

reviewed by **Robert C. Cumbow**

One of our most erudite journalists, M. Stanton Evans, has written an important book. *The Theme Is Freedom*, which appeared over a year ago, contains much that will be difficult for liberal lawyers, jurists, politicians, and academicians to swallow; indeed, it contains much that will raise the eyebrows of those who routinely describe themselves as "conservative" as well. But no one who thinks, speaks, or writes seriously about America, its freedoms, its economic system, and the state and direction of contemporary law can afford not to read his book.

One of Evans's purposes in writing is to challenge what he calls "the liberal history lesson." That agenda, as Evans relates it, holds essentially that the individual freedoms and rights enjoyed in the United States are the result of a triumph of rationalism over a tradition of both religious and political oppression; that the philosophies of the Enlightenment led the way to a radical assertion of individual freedom over both absolutist statecraft and restrictive religion.

To the contrary, Evans asserts (and amply demonstrates), the two fundamental bases of American liberty—the dignity and responsibility of the individual human being and the necessity of limitation on governmental power — are both the unique product of Judaeo-Christian religious teachings, embodied in Scripture, reasserted triumphantly during the widely-misunderstood Medieval period, and fiercely defended against the Enlightenment's introduction of representative government with virtually limitless (and ultimately tyrannical) top-down power. Somewhere along the line the notion of absolute kingly power became associated with established religion, in the form of the theory of a divine right of kings. Though this idea was soundly rejected in the Middle Ages — and especially in the English common law tradi-

tion, even before Magna Carta — radical revolutions since 1789 couched themselves as blows against both kings and religion, and threw out the baby of religious values with the bathwater of absolutism. In this fashion, the Enlightenment political philosophy of Rousseau and Locke led not to the American Constitution but to the excesses of the French Revolution, Italian Fascism, German Na-

"No one who thinks, speaks, or writes seriously about America, its freedoms, its economic system, and the state and direction of contemporary law can afford not to read his book."

tional Socialism, and Russian Communism.

The liberal history lesson is thus, by Evans's lights, wrong on almost every count. The American Revolution was not, he reminds us, the act of a group of rebels breaking away from a centuries-old tradition of absolutism and abuse of power. Rather, it was an effort to *preserve* a centuries-old tradition of religious and political freedom against a Parliament newly flexing its unfettered muscles against colonies that, until the 1760s, had been largely self-governing. In this sense, the American Revolution was — unlike the European and New World revolutions that followed it — not radical but uniquely conservative.

What is most admirable about *The Theme Is Freedom* is the way in which Evans meticulously documents, supports, and defends his initially surprising thesis, down to its minutest detail. His sources include the Bible; Judaic and early Christian philosophers; medieval philosophers

and state documents; legal, political and religious thinkers of the Renaissance and the Enlightenment; and the public and private writings of American leaders from the earliest Colonial times through the ratification of the Bill of Rights. Tapping these sources studiously, he demonstrates that the American Revolution, the Declaration of Independence, the Constitution, and the largely unnecessary Bill of Rights owed less to Rousseau, Locke, and Paine than to the religious tradition and devout faith in which America's founders and its earliest political thinkers were steeped.

It is initially surprising that so many people could get the origins of American freedom so wrong. But it becomes less so when one recalls that the so-called "Great Books" are, after all, chosen and taught by a predominantly liberal academia, often without regard to what the actual influence of those books was in their own time, or to the historical importance of other books and ideas less known and favored in our own time.

Evans cogently and convincingly demonstrates the now largely forgotten or discredited role of religious thought in the founding and buttressing of the American ideas of freedom and government.

To be sure, Evans occasionally gives short shrift to the actual role played by non-Judaeo-Christian philosophers in shaping these ideas. Surely Plato and Aristotle, by way of Averroës, had as much to do with St. Thomas Aquinas's writings on law, politics, and human will as did St. Paul, St. Augustine, and Tertullian. Nevertheless, Evans soundly defends his position that the economic and political freedoms that are unique to the United States originate predominantly from the Biblical tradition, not from Classical and Enlightenment rationalism.

That Biblical tradition, developed during Medieval times and defended with decreasing success from the Renaissance forward, is profoundly evident in the writings of the American Colonial period, the Revolution, and the Constitutional pe-

Justice Oliver Wendell Holmes wrote, "I see no reason for attributing to man a significance different in kind from that which belongs to a baboon or a grain of sand."

riod that followed it—a span of history that, Mr. Evans reminds us, is as long as the time from George Washington's day to our own.

Evans suggests that the public neglect and actual suppression of religious values in Twentieth Century America has encouraged the growth of a new form of paganism. He reminds us that even the thoughtful political philosophies of Plato and Aristotle assumed an essentially totalitarian state, and grounded "rights" not in human dignity and freedom but in the ability of individual citizens to participate in the workings of the state. One source of American neopaganism that Evans identifies is Justice Oliver Wendell Holmes, a founder of modern liberalism, who wrote, "I see no reason for attributing to man a significance different in kind from that which belongs to a baboon or a grain of sand." The contemporary result of the long reach of this strain of Holmesian thought, ironically, is not that human beings have no special rights, but that baboons and sand *do*. With the best of

intentions, our jurisprudence seems to have brought us to an unaccountable pass in which trees have more rights than unborn children — a new pantheism that excuses human beings' flight from both faith and personal responsibility. Evans's point makes a lot of sense, especially in light of the new tribalism of diversity, which, with the worthiest of intentions, ends by emphasizing and celebrating cultural and ethnic differences to the virtual exclusion of what we all share as Americans.

Evans decries the liberal embrace of a neopagan nature worship that grinds to dust the Judaeo-Christian view of human beings as holding special rights and inviolable dignity, above the rest of nature, by virtue of that spark of the divine called a soul. Of course liberals, too, speak loudly of "rights" — more so, in fact, than conservatives. But there is a key difference, according to Evans: Today, the term "rights," he says,

generally means that if you are

able to *vote on* something, or be included in it, it doesn't matter what level of power is being wielded. In this view, the salient issue is *who will have the power*, in what proportions, as opposed to *definite limits on its scope*. The Greeks and Romans believed this, more or less, but our founding fathers didn't.

Singled out for particularly strong criticism are Justice William Brennan and his notion that our views of the meaning of the Constitution must be subject to revision over time. The whole idea of a Constitution, as conceived by the Founders, Evans argues, is to provide stable, constant, predictable limits on the power of the federal government. Today what remains of that Constitution, in Evans's view, is "blank paper." And that is dangerous because it means we have gradually, almost imperceptibly, replaced a strongly limited government with a virtually unlimited one.

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The contemporary American discrediting of religion — and of state tolerance and support for religion — has had much to do with that. Loosed from the moorings of religion-based values, notions of freedom and human rights are necessarily value-free, subjectivist. Efforts to ground personal and political freedom in pure reason rather than in a belief in God have tended inevitably toward totalitarianism, because a citizenry without personal conviction must place its faith in the state. Evans points to the examples of the French Revolution, the Russian Revolution, the Fascism and Nazism of 1940s Europe, and the increasing power of — and reliance on — the federal government in the contemporary United States.

The prevailing liberal tenor of current public discourse in America gets the religious issue exactly backward, according to Evans: "Students of the modern holocaust . . . trace the rise of the totalitarian movements to the absence of interior guidelines in modern populations, who looked to the state to provide them with criteria for living. . . . Loss of belief goes hand in hand with loss of self-reliance, and thus the rise of statist practice." Thus, far from urging protections against the alleged encroachments of religion on public life, we need "a reinfusion of religious precept in our national life and public custom. . . . What is being talked of," Evans adds, "is not 'imposing' belief on others, but rather defending it against an aggressive and relentless opposition." Moreover, this is not without implications for the commercial life of our nation: "Economic liberty is integral to the free society . . . and is recommended by religious precept."

Evans's ambitious work is not without its shortcomings. He occasionally forgets that he is not writing to show that Christianity is right and paganism wrong, but rather that Judaeo-Christian values support and sustain individual freedom, while those same theories of freedom, detached from religious values, tend toward totalitarianism. His rhetoric occasionally takes a regrettably anti-intellectual turn. In a well-defended discussion of the role of evolution science in encouraging the neopagan view, for example, he harms his credibility by seeming to condemn evolution theory altogether rather than reconcile it with Judaeo-Christian intellectual tradition. Similarly, he tosses the term "pornography" into a discussion of the government's role as arts patron, side-tracking his point, which has to do with government power, not with what is and

is not obscene. And there is one overriding dilemma that Mr. Evans does not address: Doesn't the Judaeo-Christian view of the freedom and dignity of the individual demand that every individual's views are entitled to tolerance? If so, doesn't it lead eventually to moral relativism anyway? And if not, doesn't it become a kind of absolutism itself? [*Perhaps the answer lies in the distinction between tolerance and acceptance.* - Ed.]

But such lapses are few and far between. On the strong side, Evans argues persuasively and carefully, and from a balanced record, not one tilted by selective citation. He is also profoundly good

at anticipating the reader's questions. Every time I pencilled an objection or challenge into the margin of a page of *The Theme Is Freedom*, I found that very question addressed within the next few pages.

Having that pencil in hand is, by the way, a good idea. Evans has written a provocative and challenging book that demands to become a dialogue with its reader.



Editorial Advisory Board chair Robert C. Cumbow practices in Seattle with Perkins Coie.

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RESULTS

of
THE WASHINGTON STATE BAR NEWS
FAX POLL



In last month's *Bar News*, we asked your opinion regarding the continuation of the Law Clerk Program as provided under APR 6. We asked you to check one of five statements which most reflected your views. The results:

1. **79%** strongly supported the continuation of the law clerk program.
2. **4%** somewhat supported the continuation of the law clerk program.
3. **6%** supported the law clerk program, but only with certain modifications.
4. **6%** somewhat opposed the law clerk program.
5. **6%** strongly opposed the law clerk program.

The Board of Governors will be reviewing this issue at its December 1 and 2 meeting in Bellevue.

Your Comments:

"Professors in classrooms are not the sole founts of knowledge. . . [P.S.] More fax polls — lots of polls — all kinds of topics!"

Rebecca Wiess, Seattle

"The Law Clerk Program, as structured, is probably a better means of training than law school."

Donald N. Powell, Tacoma

"I know of at least two attorneys who participated in this program and are now active members of the Bar. They are both excellent attorneys. The time and drive needed to commit to this program eliminates any inappropriate candidates, and produces fine, quality lawyers."

Kathleen C. Healy, Seattle

"This program provides a real opportunity to capture the talents of people too sensible to put up with the abuse of traditional law school education. The profession needs such people."

Ann Forest Burns, Seattle

"The Law Clerk Program costs should be carried by the law clerks participating in the program. While I applaud the program, fees should be increased to make the program self-supporting."

Gretchen Valentine, Seattle

"...Don't change anything without first asking the tutors and alumni of the Law Clerk Program."

Andy Brassington, Richland

Because the percentages were rounded, the total does not equal 100%. Overall, 53 responses were received which, according to the experience of other magazines, is within the average range of responses. The Editor welcomes comments regarding our members' interest in fax polls.

Although these statistics accurately reflect the viewpoints of the individuals who responded, they do not necessarily reflect the overall opinion of the WSBA membership.

THE WASHINGTON STATE BAR NEWS

FAX POLL

What is your opinion regarding the congressional debate on funding for the Legal Services Corporation? A current (Nov. 1) Senate bill would decrease its funding from \$400 million to \$340 million per year; a current House bill would decrease funding to \$278 million per year. Moreover, qualifications are attached to one or both bills, including: requiring competitive bidding by firms which seek to provide LSC services; a prohibition against class action suits using LSC resources; the elimination of LSC activities which attempt to influence the passage of legislation; and requiring that organizations which accept federal funds apply such regulations to other funds solicited by that same organization.

Please check the statement which most reflects your opinion, along with any comments or qualifications which you may have, and fax this entire page to the number below. Please, only one vote per attorney.

- 1. _____ Legal Services funding should be increased.
- 2. _____ Legal Services funding should remain the same.
- 3. _____ Legal Services funding should be decreased to the level of the Senate bill.
- 4. _____ Legal Services funding should be decreased to the level of the House bill.
- 5. _____ Legal Services funding should be eliminated.

Comments: _____

Name and city of faxing attorney: _____
(This will not be published unless your comments are chosen for publication along with poll results in the January *Bar News*.)

Fax your response by December 10 to:
(206) 282-4987
(Please note: This is not the WSBA fax number.)

Or, mail your response by December 8 to:
Washington State Bar Association
Attn.: Hal White, Bar News Editor
2001 Sixth Ave., Suite 500
Seattle, WA 98121

Please send suggestions for future fax polls to the above address.



The Photo Album

Snow was falling on the last work day before Christmas. The Show Cause Calendar, as always, had been terrible. He'd had a reasonably successful, but not perfect, day on the calendar. Not surprisingly, his clients who got the Christmas visitation they sought thought nothing of his work. Obviously they had a right to visitation, and would have gotten it with or without him. The clients who didn't receive the visitation they wanted were livid. He had ruined their holiday by his bad lawyering. They would certainly consider that when his bill came in the mail. He was tired and frustrated, but mostly resigned.

As he drove into the office the lights were on. He knew who would be there — his partner — and who wouldn't: everyone else in the office. "Enough is enough," he thought. "I might as well tell her tonight."

He walked into the building, put his briefcase on his desk, and shuffled to her office. "Let's have a Coke and visit. Do you have time?" he asked.

"Sure," Jane responded. They got up and walked to the conference room.

"I'm quitting," he told her, trying to

hold back his emotion. "Non-paying, unappreciative clients, judges who don't listen anymore because they have such full calendars, and our overhead running out of control is just too much. You are a terrific friend and partner, and I'll miss you everyday, but I'm done. It's just not worth the fight anymore. Life is too short. I'll stay a few more months so that we can wind my practice down. Think about it and let me know what would be best for you."

For several moments his law partner just looked at him, surveying how serious he was. She knew how he felt: Law practice had changed dramatically in their 15 years together. Their 30% overhead was now 70%. Law had become a business of time management for everyone involved: lawyers, staff, judges, and clients alike. Where there was once respect for attorneys, now there was overt scorn. She knew how he felt, and how serious he was about trying a new career. She had even thought about it herself.

Slowly she reached behind the TV in the conference room and placed a wrapped package in front of him. "My timing is either great or terrible. Merry Christmas!

Please open it now," she said.

He took the present and opened the card. "For Christmas I wanted you to remember how wonderful you are, and what a joy you are to work with. Merry Christmas. Jane."

Despite his heavy heart he smiled at her. He removed the seasonal wrapping to find a photo album. The top page was a small card from a plant he and Jane had received a decade and a half ago. It said "Congratulations Del and Jane on opening your office. It's a big step but we know you'll do great." It was signed by his Mom and Dad.

"Where did you find this?"

"I save things. Have for years. Keep going."

The second page was a notice of his appointment as counsel in a juvenile case 14 years ago. A young man had been falsely accused of burning a building. Through Del's hard work the boy had been acquitted. It was Del's first big case. He was still very proud of the job he had done.


He quickly turned to the next page. It was a photo of a beaming man and woman holding an infant. Del had performed the adoption. He now knew the family well — saw them often at the baseball and soccer fields. On the back of the photo it said "Thanks to you, we are a family."

Page four was a billing he had sent out a decade ago. On the bottom was a handwritten note: "Thanks for your personal touch. We've never had a lawyer before. We do now."

On and on he read. Each page was a reminder of the many people whose lives he had touched. Many of the writers were people he had met as a lawyer, but now knew as dear friends.

After several minutes of reading he looked across the table at his partner. "Why?" he asked.

"Because it's a hard world out there now. Harder than it has ever been for attorneys. And things have been particularly hard on you. I have always saved the things you have read, liked, and then thrown away. I didn't have a clue what to get you for Christmas. I hope you like this.



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On the back of the photo it said,



“Thanks to you, we are a family.”

You're a great friend, and partner, and lawyer. I hope you'll stay. Those people — and I — need you.”

His hands held a biography of his past 15 years: copies of obituaries of clients and lawyers who had died; thank you notes from satisfied and thankful clients; copies of verdicts and decisions he had won. For a long time he read in silence. He had always wanted to make a difference in people's lives. That's why he had decided to be a lawyer. Possibly (how could he have forgotten so many of these?) he had. Jane quietly rose and got each of them a cola from the refrigerator. She knew him well enough to let him think through his dilemma without interruption.

The album contained photos of Jane and each of their families together at a couple of bar conventions, and when he was sworn in to the U. S. Supreme Court. There were pictures of sports teams the firm had sponsored, two of which he had coached. A picture of his 30th birthday party at the office was next to a picture of his 40th birthday party there. Both pictures showed people he cared deeply for.

The final page was his favorite Elizabeth Barrett Browning poem, edited. Jane had given it to him on their first day as partners. It said:

Come with me and be my love
law partner . . . the best is yet to
come.

He honestly didn't know what to say. It was hard; he wanted to quit, but now he knew he would think about the decision for awhile. Jane had truly given him a great Christmas gift: The gift of perspec-

tive, and reflection, and pride in how full his profession could make him. He had always wanted to make a difference, and in some cases he really had. Thanks to Jane he remembered that now.

He was also reminded of a great human failing: That we remember bad things much longer than good things. Thanks to Jane, his decision would now be based on a level playing field: analyzing both the good and bad points of practice. Whatever he decided, he would be able to make a better decision, thanks to his partner.

After reading the wonderful compilation of his professional life, he looked at his law partner.

“Thank you so much. It is a wonderful gift,” he finally said to her, “and, Jane, Merry Christmas to you!”



The Lawyers' Assistance Program is a confidential program designed to assist lawyers in finding help for mental/emotional, drug, alcohol, family, health and other personal problems. Services include assessment, referral, short-term or long-term counseling, follow-up training and case management.

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A permanent day and time will be discussed at the first meeting.

If interested, please contact Jean Johnson
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My Life in (Divorce) Court: One Lawyer's Journey Into the Dark Side of the System

... But this time, he was the client.

*In the middle of the journey of our life
I came to my senses in a dark forest,
for I had lost the straight path.*

*Oh, how hard it is to tell
what a dense, wild, and tangled wood this was,
the thought of which renews my fear!*

*So terrible it is that death is hardly worse.
But to reveal the good that I found there,
I will speak first of other things.*

Dante Aligheri, The Divine Comedy, Canto I

by Randolph I. Gordon

Stone Age Tool-making and the Adversarial Process

I found the perfect metaphor for the adversarial process as it applies to family law practice in, of all places, the Provincial Museum in Victoria, B.C. There, in a third floor display case, I learned how early humans, for hundreds of thousands of years, had made their stone spearheads and arrowheads. I had always envisioned a Stone Age artisan fashioning the tool by the skilled sculpting of stone. Not so. The technique is better described thus: pick up two stones the size of potatoes and, holding one in each hand, smash them together furiously until the stones are reduced to rubble; sort through the flakes of stone looking for sharp pieces suitable for spearheads and arrowheads. The sculpting technique was necessary only when resources (i.e. stones) were scarce.

This is precisely what the adversarial process does to the litigants, with the parties featured in the roles of the potato sized stones. The clash of testimony and affidavits yields factoids of various shapes, some of which can be fashioned into weaponry. It is a rare potato-sized stone which, under intensive pounding,

does not yield up a factoid or two suitable for the purpose. In the legal process, it is, of course, the obligation of the artisan-attorney to pretend, at least in public, that all the factoids are sharp. There is no scarcity of stones.

The image of the litigants as Paleolithic humans hurling stony factoids at one another without taking the time to devise a proper shaft so as to make a spear conveys something of the dignity and effectiveness of the proceeding.¹

Sun Tzu's *The Art of War* and the Loss of Dignity

Master Sun reminds us: "It is better to keep a nation intact than to destroy it." His student, Wang Xi, notes: "Nation, army, division, battalion, unit — great or small, keep it intact and your dignity will be improved thereby; destroy it, and your dignity will suffer." So, too, in the no longer intact family unit.

One manifestation of the loss of status and dignity, however, often comes as a surprise to the subjects of a divorce proceeding: the loss of the ability to be generous. The subjects soon come to learn that all bounty must flow through the judicial process, where said bounty can be appropriately taxed by the officers of

the court. It follows that any spontaneous demonstration of paternal (or maternal) generosity must be mandated. One example will suffice:

Father: "I would like to buy our daughter a saddle for her pony as a gift."

Temporary Order: "Father shall buy appropriate-sized saddle for daughter's pony no later than the fifteenth day following the purchase of said pony or he shall be subject to contempt sanctions."

The application of such well-drafted mandates soon stifle all unauthorized impulses. And, one must hasten to add, well it should, for such generosity and gifting is inimical to the adversarial system, which system is not only of indisputable merit but a good deal older than either the daughter or her pony.

T. S. Eliot: "... like a patient etherized upon the table."

In the process of conjugal dismemberment, the subject parties come to expect a certain loss of power and social status, not



dissimilar to that experienced by patients etherized upon the operating table.² When disputes arise respecting custody or residential time of the children, it often becomes necessary to conduct psychological evaluations of the parents to determine how the best interests of the children are to be served in the parenting plan.

The Heisenberg Uncertainty Principle respecting subatomic particles represents the proposition that "the observer affects the events observed." Accordingly, physicists tell us it is impossible to determine both the speed and location of the electron; the act of determining one affects the other. So, too, with the observation of parents with their children: please act "naturally" with your child in a psychologist's office, while both you and your four-year-old daughter "pretend" the man in the chair is not there observing you. (Young children, like photons, *have* no rest mass.)

While for years, your physicians have described you thus: "pleasant, obese white male comes in today complaining of hemorrhoids" or the appropriate equivalent, they have always had the courtesy to bury such insights in medical records which you would never have occasion to peruse. As a party to a divorce, the scrutiny of psychiatrists and psychologists must be memorialized in a report — which they must fully expect you to read. The "objective" evaluation of such ineffable traits as a parent's love for his or her child has the unfortunate consequence of rendering the subject (patient) an object — which makes for an unpleasant demotion in status.³ Whatever the case, you will undoubtedly be buoyed by the assessment which in tone, if not substance, reads something like this:

Husband, a whining, white male who refuses to take responsibility for the failure of his marriage, comes in today complaining about the destruction of his business, the defamation of his character, the recent accusation by his estranged, allegedly alcoholic, spouse of assault upon her and molestation of their chil-

dren, and the legal system. He refused to be assuaged when it was pointed out to him that service upon him of a summons during the Thanksgiving football game was s.o.p. and that his whimpering was extremely unbecoming.

The true challenge of any divorce is finding a course of reasonable conduct in the face of unreason, security amidst powerlessness, and dignity throughout the process. Divorce, although frequent, is still accompanied by social isolation; the pity of the populace; and condescension of the professionals.⁴ As it (fortunately or unfortunately) increases in frequency, divorce has also become one of the seminal experiences of American culture. However, being disfavored, it does not, at least in my experience, enjoy the benefits of the ritual gift-giving associated with births, Bar Mitzvahs, graduations, weddings, and other life passages.

Determining Professional Good Will in the Grand Academy of Lagado

In Swift's *Gulliver's Travels*, often overlooked is Gulliver's visit to the sages of the Grand Academy in the floating island city of Lagado. There, the studious reader will recall the work of the resident scholars: having blind workers grind up paint pigment and attempting to reconstitute food from its digestive end products. These heroic efforts pale by comparison with the work of the expert witness in the valuation of professional good will.

Those unschooled in family law might question the utility of a discipline in which pairs of experts employing approved

methods of indisputable accuracy are able to derive values for the same business which vary by 200 percent or more one from the other. Some cynics might attempt to impugn the integrity of such experts by suggesting that the choice of methodology relates to the source of payment to them. Some might suggest that a single court appointed expert would halve the expense. But not I.

I concede that there were moments when I could not understand how it was that the good will of a professional practice — which was without value as an associate — was of infinitely greater value once, as a partner, liabilities had been assumed.⁵ I admit to brief confusion respecting valuation of an asset which could neither be bought nor sold, and which dissipated the precise moment when work ceased; like the electric charge of a bicycle-powered generator after you have stopped pedaling.

My skepticism vanished, however, after observing how the review of twenty-one boxes of subpoenaed accounting information could give rise to a valuation based upon a simple proposition: my earnings were simply a stream of income which could be discounted to present value like a bond or annuity. This insight, which had somehow eluded me to that point, has since permitted me to spend six days a week in my office clipping coupons, serene in the knowledge that my practice will continue to yield earnings (like a bond or annuity) without any work whatsoever.⁶

"Stand Firm Like a Promontory": Marcus Aurelius

Winston Churchill is quoted as having said: "When you must kill someone, it costs nothing to be polite." In the context of divorce litigation, Churchill's remark may be reduced to this corollary: when you cannot kill someone, it costs a great deal to be impolite. This is no better illustrated than in the studied insult of motion practice in family court.

Some would regulate the raging battle of affidavits by a strict application of the rules of evidence and a schedule of fines. All hearsay would be stricken by a special

master with services to be paid for by the offending affiant. All gratuitous insults would generate a fine and a mandated retraction, with "gratuitous insults" defined as all lay opinion evidence, *in personam* attacks, and subjective assessments and characterizations of another's motives, veracity, and character. Rather than endorsing such negative regulation through fines, however, I would propose a positive alternative: a system of awards for "Most Hearsay," "Most Scurrilous," "Lowest Blow," with contributions being made to some worthy cause by the recipient, as an offset to the honor.

Until such an award system is established, the best advice to be given to the subjects of obloquy and public execration is that given by the stoic philosopher and Roman emperor, Marcus Aurelius, who wrote: "Stand firm like a promontory upon which the waves are always breaking. It not only keeps its place, but stills the fury of the waves."⁷

Abraham Lincoln: "The Better Angels of Our Nature"

Abraham Lincoln, who bore both personal and national burdens with dignity and humanity, wrote:

No man resolved to make the most of himself, can spare time for personal contention Better give your path to a dog,

than be bitten by him in contesting for the right.

Taken to heart by divorce attorneys, who have already forsworn legal actions motivated by malice or lucre, and litigants, who have not, this would leave scant room for litigation.

In his first inaugural speech, Abraham Lincoln likened the looming Civil War to a husband and wife in a divorce:

Physically speaking we cannot separate. We cannot remove our respective sections from each other, nor build an impassable wall between them. A husband and wife may be divorced, and go out of the presence, and beyond the reach of each other; but the different parts of our country cannot do that. They cannot but remain face to face; and intercourse, either amicable or hostile, must continue between them.

Unfortunately, whenever it is contemplated that parenting is to be shared by the parents to any degree, the husband and wife, unlike Lincoln's example of husband and wife, but very much like his example of sections of the nation, cannot go beyond the reach of the other. They *must* remain face to face and intercourse,

either amicable or hostile, *must* continue between them. All the conditions for civil war are met.

Asking the interested parties to justify the disposition of their children and the fruits of their lives' work invites contention born of self-interest and emotion. Amid the emotional turmoil of a divorce, it may truthfully be stated, as W. B. Yeats wrote in "The Second Coming": "The best lack all conviction, while the worst are filled with a passionate intensity." The force with which self-interest and emotional stakes are advanced bears no relation to a just outcome. Pecuniary prowess does not yield justice any more than "might makes right." For the parties, the strongest observable correlation is the inverse relationship between their intensity and their liquidity. For the professionals in service to the system, a simpler equation governs: passion equals cash in.

The division of assets and determination of the best interests of the children is a fact-sensitive exercise best handled by a neutral, inquisitorial system. An adversarial process operating in the realm of high emotion serves only to torque the facts. The opposition of zealous extremes will not necessarily generate a golden mean. Quite the contrary. For instance, if the husband claims $2 + 2 = 3$ or so, and the wife claims $2 + 2 = \text{no less than } 10$ — a not infrequent set of assertions — averaging the contentions will not yield the correct answer. In fact, the closer to the correct answer the husband comes, the more inaccurate an average becomes. Woe to the poor *schlemiel* who claims $2 + 2 = 4$.

The challenge before us is simply stated: to create a system where the most timid among us can state $2 + 2 = 4$ in open court during divorce proceedings with equanimity and without fear of retribution. Such a system would not punish truth-telling, nor reward extremism. Such a system would truly, in the words of Lincoln, permit us to act under the guidance of "the better angels of our nature."

Endnotes

¹ Remarkably, although the factoids remain unshafed, the same cannot be said of the parties.

² Metaphor from T. S. Eliot's famous poem "The Love Song of J. Alfred Prufrock."

³ Putting it another way, making the



Peter J. Harris

Peterson, Bracelin, Young, Putra, Fletcher & Zeder, Inc., P.S.

is pleased to announce that

Peter J. Harris

(B.A., 1983, U.C. Davis; J.D., 1986, Cornell University Law School)

has become an associate of the firm. Mr. Harris previously practiced in the San Francisco Bay Area and is a member of the California and Washington bars. He will practice with the firm, specializing in personal injury, employment, and professional licensing litigation, as well as continuing to practice in the areas of business, commercial, real estate, antitrust and consumer rights litigation.

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ineffable — well, “effable” — may, for a fleeting moment, make you wish the evaluators were “effing” themselves. You may rest assured that their “efforts” are directed elsewhere.

⁴As the frequency of divorce increases, there is an emerging third class of society who have themselves recently undergone the vicissitudes of the process. Such “alumni” can form an important, although impoverished, support group. Care must be taken to avoid a subclass of embittered “ghosts”: alumni who, like ghosts trapped between two worlds, are unable to partake of the joys of their former life or move forward into the light; such “ghosts” remain rooted to their pre-divorce existence and are frequently observed driving by their former residences (“haunts”) late at night, mumbling obscenities which prominently feature the names of attorneys.

⁵It was a pleasant experience, offsetting the loss of dignity described above, to find out just how valuable my legal practice was. It was far more valuable, it turned out, than my interest in my former house and property.

⁶This period of time has (coincidentally) been associated with a precipitous reduction in accounts receivable, collections, and earnings. I freely concede that there are things which I do not understand, which is the beginning of wisdom. In any event, while I figure out this apparent aberration, I am available for work as a process server in family law matters during evenings, nights, weekends, and holidays.

⁷The stoic philosophy is well-suited for the divorce litigant, having as its two principal exponents an emperor, Marcus Aurelius, and a slave, Epictetus, with the emperor being the student of the slave. Marcus Aurelius lived a Spartan existence in the field with his soldiers. Epicureanism and hedonism are best reserved for post-divorce philosophical outlooks as they generate too much fodder for pre-divorce affidavits.



Bellevue attorney **Randolph I. Gordon** is a frequent contributor to the Bar News.

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How Distribution Law Affects Your Business Clients 6.75 CLE credits
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Essentials of Drafting Wills 7.25 CLE credits
Seattle – Sheraton Seattle – 12/8
Vancouver – Red Lion Inn at the Quay – 12/15

Best of CLE 1995 1.5 to 6.5 CLE credits – Your Choice
Seattle – WA State Convention & Trade Ctr. – 12/15

The Essentials of Probating an Estate 7 CLE credits
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If you can't attend in person, VIA•CLE may be your answer. With VIA•CLE, you can attend a live WSBA seminar by simply dialing in from the phone in your office. In December, “Best of CLE” and “How to Probate an Estate” are available through VIA•CLE. Call us at 206-727-8202 for information on how to sign up.

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Buying Your New Computer

by **Deborah Norwood**

We buy cars every day. Selecting a car is not much different from selecting computer equipment. In either case, you run through a list of needs and desires, check the pocketbook, shop around and make a purchase. However, there are some basic tenets to think about when selecting a computer:

1. Use technology wisely. We control a computer. We decide what we want it to do and when we want it to work. Although you wouldn't use a desktop computer to write a grocery list, it's invaluable for drafting letters and documents. If, like me, you have trouble adding, then a spreadsheet for arithmetic is great, and for any accounting it's a must. Using your computer wisely, for example, includes limiting the number of times you edit a document. Computers make editing so easy that we get caught up in revising over and over to make the document perfect.

2. A new system should help you improve your work. If you can't think of cost-effective reasons to change, don't. If you can see advantages to moving to a new system, then do it.

What is most important to you? For a car, the primary use may be to commute to work. For a computer, the primary use may be to draft wills and write letters.

Discuss your purchase with everyone who will use the system. Ask them how they would improve what they do. The more input you receive, the more likely your system will perform the way you intend. If you're the only one who will use it, interview people in similar situations to see whether a computer could perform tasks better, cheaper and more productively.

3. Assess your needs and sort them by priority. Although you will never find the perfect computer to fit all your needs, some items will be paramount, and these should be the controlling factors in making your selection.

Before you purchase a computer, make a list of mandatory features, then those that are desirable, and stick to your list.

A list for a stand-alone PC, in addition to standard features such as 1.44 disk drive

and keyboard, might include: 16 MB of RAM to handle graphics (8MB is fairly standard); a gigabyte on the hard drive (850 MB is common); an SVGA color monitor; a mouse; a 19.6 modem (14.4 is standard); a CD-ROM drive and sound card; and a processor speed of at least 66 MHz. I would expect it to come installed with a current operating system and environment such as DOS 6.2 and Windows95. Most PCs come with applications software bundled with the hardware, such as Microsoft Works (a combination of software which includes word processing, spreadsheet, and other items). I would also expect reference tools on CD-ROM, such as an encyclopedia or dictionary, included in the package. Finally, a printer would be a must, ideally a laser jet. If you prefer Apple/Macintosh computers, you should seek comparable features.

Try out the piece of equipment you plan to purchase. Visit other sites — an office, for example — that use the system you are considering. Ask other users to identify the system's good and bad features.

4. Changing tools requires changing procedures. Plan to modify your operations to take full advantage of features of the new system. Look at how you perform your job, and analyze how a new tool could make it better. A new computer won't cure sloppy record-keeping or poorly drafted documents.

The better organized your current system is, the easier to determine your needs and areas for improvement. This is true whether you are purchasing your first computer, or are upgrading your current system to take advantage of new power and features.

5. Take the time to learn how to use your new tool. We get better with computers — faster at completing projects, more efficient with fewer errors — the more we use them.

Although training can be expensive, learning a system without it may be more so. I spent months learning word processing on my own; it's not an experience I would recommend. Even experienced users usually learn something new at training sessions.

Use it or lose it. Once you've learned how, keep using it. With the rapid pace of change for technology, a tool can become outdated simply by sitting idle for a few months.

6. Know your vendor. Shop around. Recognize that although the cheapest price may be at a discount retailer, you may pay a price later in poor service and lost time.

Investigate the service and maintenance that a vendor provides. Most personal computers come with a limited warranty; read it carefully to discover what options you have if something breaks. The same goes for software. If you can't afford to be without a computer, you may want to investigate a maintenance agreement including, for example, on-site maintenance, quick response time to a call, toll-free phone assistance, and phone assistance applicable to your time zone or hours of business. Maintenance agreements are available for both hardware and software.

One word of caution: The technical assistance available through your computer, for example through e-mail, is convenient unless your equipment is nonfunctional. Manuals and documentation for PCs now come on CD-ROM drives or on the hard drive loaded by the manufacturer. Theoretically, this keeps costs down and saves trees. However, a manual on the hard drive is useless if the system won't turn on. If that is what you have, be sure that telephone assistance is available.

7. Prepare to upgrade. The useful life of a computer system is generally five years. However, you don't need to upgrade every time a new feature is added unless you continually crave the cutting-edge power of a new system. Nevertheless, with so many changes and improvements to technology, five years for computers is similar to 20 years for electric typewriters.

8. Have fun. Once learned, computers become indispensable tools and make life — and work — easier and more pleasurable. Enjoy the ride.



Deborah Norwood is the State Law Librarian at the Washington State Law Library in Olympia.

Report issued by task force on nonlawyer practice of law

The Task Force on Nonlawyer Practice of Law, appointed in November 1994 to examine the regulation of unauthorized practice of law and whether there is a role for nonlawyers to play in the practice of law, issued its final report on Sept. 29, 1995. The Task Force was chaired by Paul Larson of Yakima, and was comprised of both lawyers and nonlawyers, including members of the Family Law, General Practice, and Real Property, Probate and Trust Sections; bankruptcy practitioners; representatives of the Young Lawyers Division, the Consumer Protection Committee, the King County Bar Self-Help Program, the Korean Bar Association, the Attorney General Consumer Protection Division, the State Paralegal Association, the Washington Association of Legal Secretaries, and the League of Women Voters; an Administrative Law Judge; the Pierce County Prosecuting Attorney; the State Law Librarian; and the Administrator for the Courts.

There was a significant split between the majority on the Task Force, who recommended that, under certain circumstances, nonlawyers might be granted a limited license to practice law, and the minority, who recommended that nonlawyers not be permitted to practice law under any circumstances. However, the Task Force unanimously concluded that before considering any form of licensing of nonlawyers to perform any legal functions, such as closing officers who are now granted a limited license under Admission to Practice Rule 12, there must be an effective regulatory and enforcement system.

This is an issue which has been studied for many years by the WSBA. The conclusion that has been repeatedly reached is that in order for the WSBA to avoid antitrust liabilities, an independent Unlicensed Practice Board under the direct control of the Supreme Court must be established. That proposal has never been carried out by the Board of Governors or the Court, for both financial and philosophical reasons. Enforcement of Unauthorized Practice of Law restrictions is now left to county prosecutors, who have limited resources and only prosecute when there is a victim who has suffered harm and will testify in court, and the Attorney General who can, in appropriate circumstances, within the AG's limited re-

sources, bring actions under the Consumer Protection Act.

The majority of the Task Force did not attempt to identify practice areas which might be appropriate for nonlawyers to enter. Rather, they set out a licensing and regulatory scheme, which would include requirements for education and training, standards of care, professional liability insurance, and disclosures to clients of the limitations on their practice. The Task Force recommended that the Board of Governors circulate the report to WSBA Sections and ask them to examine areas of practice which involve needs of low-income persons and identify tasks that could be performed by a nonlawyer, and to make recommendations for permitting nonlawyer practice in those areas.

The Task Force concluded that if Sections do not recommend areas to license nonlawyer practice, then the Board do nothing further until some outside party requests licensing in the future.

The Board of Governors will be taking this up at their meeting on Jan. 12-13, 1996. A full copy of the Task Force report may be obtained by writing Robert D. Welden, General Counsel, Washington State Bar Association, 2001 Sixth Ave., Suite 500, Seattle, WA 98121-2599, or by calling (206) 727-8232. Written comments to the Board should also be directed to Welden, and must be received not later than Dec. 22, 1995. ♦

Best of cle or bite of cle?

For the first time, WSBA CLE's traditional year-end seminar "Best of CLE" gives attorneys the option of registering for just a bite of CLE — as little as 1.5 hours — or for a full course meal of 6.5 hours. Twenty-four different presentations will be made throughout the day. The seminar is Dec. 15 in Seattle at the Convention Center and by VIA•CLE — linking any attorney's office telephone to the live seminar sessions.

Traditionally, "Best of CLE" has attracted hundreds of year-end registrants by featuring six or seven of the top speakers — as rated by seminar registrants throughout the year.

This year, "Best of CLE" is bigger — and even better. Twenty-eight of our best speakers will present 25 different topics on subjects ranging from estate planning, family law, employment law, trial strategies, business law and real estate.

This innovative seminar format means the estate planning partner can start the seminar at 8:30 a.m. and hear four top-notch presentations: an overview of the Probate and Trust Bill, a review of estate planning documents related to living trusts, a CPA's discussion of tax issues facing the unmarried couple, and finally a primer on fundamentals of Washington trust law.

Have you voted on the monthly Bar News Fax Poll? See page 44.

Continued on page 52

**1996 WSBA
Committees,
Chairpersons, and
WSBA Staff Liaisons**

**Access to Justice
Board**

Chair: Paul L. Stritmatter, (360) 533-2710;
Liaison: Joan Fairbanks, (206) 727-8282.

Attorneys Professional Insurance

Chair: Eric V. Jeppesen, (206) 454-2344; Liaison: Bob Welden, (206) 727-8232.

Bench-Bar-Press

Chair: Bill Cameron, (509) 585-4272; Liaison: Mary Elizabeth Stritmatter, (206) 727-8212.

Character & Fitness

Chair: Dan Zender, (360) 647-1500; Vice-chair: Chris Meserve, (360) 943-6747; Liaison: Bob Welden, (206) 727-8232.

Civil Rights

Chair: Doug Leightner, (360) 696-0686; Liaison: Brynn Hancock, (206) 727-8244.

Consumer Protection

Chair: Doug Walsh, (206) 464-7744; Liaison: Bob Welden, (206) 727-8232.

Continuing Legal Education

Chair: Meredith Hardy, (206) 462-7202; Liaison: Diane de Ryss, (206) 727-8220.

Corrections

Chair: Helen Anderson, (206) 543-0346; Liaison: Mark Mason, (206) 727-8251.

Coming to a mail box near you...

This month all bar members will receive their 1996 licensing forms. If you are an active status member your trust account declaration will be included. Active status members in Group 1 will also receive their CLE certification form. Some frequently asked questions:

Licensing form

When will I receive my 1996 license form?

The form should reach you by Dec. 20, 1995. If you have not received the form by then, you should call for a duplicate to be mailed to you.

When are the forms and fees due?

The licensing form and fee are due by Feb. 1, 1996. Late penalties are assessed on payments received (postmarked) after March 1, 1996. Do not sign the licensing form's Voluntary Resignation of Membership box unless you intend to voluntarily resign from the bar. (But do sign the trust account and CLE certification forms where applicable.)

What if I want to go on inactive (or active) status?

Please call (206) 727-8271 for an application and instructions. Status changes are *not* automatic: a change in status application must be completed.

What if I am going to be out of the country and unavailable to sign the forms?

If you will be available to sign and return the forms by Feb. 1, the forms should be held and returned by that date. If you will not be available, a letter should be sent to the WSBA Licensing Department explaining the reason forms will be filed late and giving the anticipated date it will be filed. *License fees must be paid by March 1, or late penalties will be imposed without exception (including out-of-country members).*

CLE Certification:

(Hint: if you don't receive the CLE form, you are not required to report this year.)

How many CLE credits do I have for this reporting period?

The WSBA does not keep track of your individual attendance at CLE programs. You need to keep your own record for reporting your CLE credits. Carry-over credits from your prior reporting cycle will be pre-printed on your form.

As a member of Group 1, do I have to report separate ethics credits this year?

No, Group 1 will **not** report ethics credits this reporting period. The ethics credit requirement will be phased in beginning in 1996 for Group 2. (APR 11.2)

I was a speaker at a CLE program. Do I get any extra credits?

Speakers at *accredited* CLE seminars may claim up to 10 additional CLE credits for preparation time for each hour of presentation, in addition to the credits earned for attending the program. A panel moderator or speaker may claim a maximum of 5 credits.

How many credits for audio/video can I claim?

You may claim up to a third (a maximum of 15

credits out of the 45 credits total) per reporting cycle.

What if I have not earned all 45 credits by Dec. 31, 1995?

You must still file the compliance form by Feb. 1; then make up the delinquent credits, file a supplemental compliance form and pay a late filing fee before May 1. The late filing fee is \$150 the first year, then increases by \$300 for each consecutive reporting period. Remember you must be in compliance by Dec. 31, and credits must be reported by Feb. 1, 1996. Do not confuse these dates!

Finally: Keep copies for yourself. Don't add in the Keller rebate; it is an optional deduction. Remember to sign the Trust Account Declaration and the CLE form (and the Licensing Form if you intend to resign). Only *active* members automatically receive *Bar News* free; all others must pay. *Resources* is an additional \$15.15 (\$14 out-of-state). The PO Box address on the licensing form is only for mailing licensing forms — this is not the WSBA address and should not be used for any other correspondence. And while the envelopes prompt you to return all the forms, we really don't need the instructions back! For questions about your licensing/CLE forms, call (206) 727-8271. ♦

1996 wsba section & division leaders

Administrative Law: C. Robert Wallis, (360) 753-6404.
Alternate Dispute Resolution: George Nazarian, (206) 572-3657.
Business Law: Robert D. Kaplan, (206) 682-5151.
Computerization of Law Division: Mark Sullivan, (206) 223-0600.
Consumer Protection & Antitrust: Douglas C. Ross, (206) 622-3150.
Corporate Law Department: Sandy D. McDad, (206) 924-5272.
Creditor/Debtor: Frank Kurtz, (509) 248-4282.
Criminal Law: Douglas J. Shae, (509) 664-5202.
Elder Law: Suzanne Howle, (206) 682-2333.
Environmental & Land Use: Todd D. True, (206) 343-7340.
Family Law: Mary L. Hammerly, (206) 646-6546.
General Practice: Rickey C. Kimbrough, (509) 882-5901.
Health Law: Andrew K. Dolan, (206) 689-4175.
Indian Law: John C. Sledd, (360) 598-3311.
Intellectual & Industrial Property: James P. Donohue, (206) 622-8484.
International Practice: Alan C. Rither, (509) 375-2218.
Law Practice Management: D. Bruce Gardiner, (206) 823-9456.
Litigation Law: Peter M. Vial, (206) 624-7141.
Public Procurement & Private Construction: Paul R. Cressman, (206) 682-3333.
Real Property, Probate & Trust: Michael D. Carrico, (206) 624-3600.

Continued on page 51

What wsba committees were up to in 1995

WSBA's 27 Committees were busy as usual during 1995. Here are a few highlights from some of their year-end reports to help you keep up to date on Bar happenings.

- LAP Steering Committee: Currently working to incorporate LAP as a mandatory function of the Bar.
- Rules of Professional Conduct Committee: Considering questions such as licensing of paralegals or other non-attorneys for providing services traditionally provided by attorneys at reduced costs for consumers; advertising and restrictions upon contacts with potential clients; the sale of a practice; application of RPCs to attorneys practicing in non-traditional organizations (i.e. limited liability companies and law firm affiliations).
- Legal Services Committee: Hooking up pro bono programs to a telecommunications information sharing network.
- Legal Assistants Committee: Establishing guidelines for the utilization of legal assistants.
- Public Relations Committee: Created the "Just Tell It" brochure and video to aid attorneys in spreading the good news about the profession; produced the "Lawyers Commitment," a document for attorneys to display in their offices that details their commitment to professional courtesies.
- Washington State Continuing Legal Education Board: With the assistance of WSBA staff assigned to act on the Board's behalf, the MCLE Board reviewed 7,500 applications for CLE approval and approximately 6,000 certificates of compliance under APR 11.

Heard presentations from three program sponsors specializing in mediation training, as well as a spokesperson for the WSBA Alternative Dispute Resolution Section, regarding CLE accreditation for courses on mediation. "We concluded that although we support mediation training for lawyers, we cannot approve mediation programs designed for laypersons, as those programs do not meet the requirements of Regulation 104(a). Since January 1994, the Board has reviewed approximately ninety programs on either mediation, alternative dispute resolution, or arbitration. Ninety percent of those courses were approved for CLE credit."

Voted to award credit to those individuals who write WSBA deskbooks.

- Court Congestion & Improvement Committee: Revised Courtroom Decorum Guidelines in June 1994, and spent much of this past year disseminating them to bar associations, judges' associations, and other interested groups.

Recommended to the Board of Governors Judicial Recommendations Ad hoc Committee that the "WSBA should consider rating candidates as qualified or unqualified for contested Courts of Appeals and Supreme Court elections, using publicly stated criteria and procedures..."

- Civil Rights Committee: Made recommendations regarding pending legislation affecting civil rights, and a member testified on their behalf during hearings affecting the adoption of the WAC pertaining to the treatment of tuberculosis. Next year they hope "to take a proactive role by recommending legislation rather than merely assessing proposed bills, as well as anticipating key legislation."

- CLE Committee: Reviewed proposals by the Sections, Young Lawyers Division and staff for CLE seminar topics in 1996. Final list of approximately 130 topics provided to CLE Department to assist them in developing curriculum.

Technology subcommittee evaluated non-traditional ways to deliver publications and seminars and will focus on CD-ROM and video-conferences. Longer term options to consider include a databank of CLE information and bulletin board access to CLE materials.

Redrafted judges policy on CLE tuition to expand the scope of eligible judges, increase their tuition from \$10 to \$25 for each day or partial day, and clarified that the lower tuition policy is to encourage the judiciary to attend seminars to interact with the Bar outside the courtroom. That policy was adopted by the Board of Governors. ♦

Sections/Divisions — Continued from page 50

Taxation Law: George C. Mastrodonato, (360) 754-6001.

World Peace Through Law: Jan Bush, (206) 624-1193.

Young Lawyers Division President: Pamela A. Cairns, (206) 628-2788.

- All Sections are provided administrative support by WSBA Sections Administrator Sheri Borgford, (206) 727-8239.

Court Congestion & Improvement

Chair: Tom Kellenberg, (206) 583-8407; Liaison: Maria Regimbal, (206) 727-8231.

Court Rules & Procedures

Chair: Walt Krueger, (206) 889-7600; Liaison: Steve Rosen, (206) 727-8225.

Disciplinary Board

Chair: Joe Delay, (509) 455-9500; Vice-chair: Rich Wallis; Liaison: Karen Tall.

Editorial Advisory Board

Chair: Bob Cumbow, (206) 583-8566; Liaison: Jennifer Klamm, (206) 727-8215.

Group & Prepaid Legal Services

Chair: Mark Casey, (509) 624-6464; Liaison: John Redenbaugh, (206) 727-8221.

Interprofessional

Chair: Anthony Russo, (206) 448-5905; Liaison: Ken Kagan, (206) 727-8283.

Judicial

Recommendation

Co-chairs: Sharon Sakamoto, (206) 682-9932, and Jim Jesernig, (360) 902-1887; Liaison: Katie Corrigan, (206) 727-8227.

Law Examiners

Chair: Frank Slak, (509) 456-3095; Liaison: Mary Barnes, (206) 727-8229.

Lawyers' Assistance Program

Chair: Pat Comfort, (206) 564-8400; Liaison: Barbara Harper, (206) 727-8265.

Lawyer's Fund for Client Protection

Chair: Greg Dallaire, (206) 464-3939; Liaison: Bob Welden, (206) 727-8232.

Legal Aid

Chair: Yvette War Bonnet, (206) 259-3421; Liaison: Joan Fairbanks, (206) 727-8282.

Legal Assistants

Chair: Karlene Weiland, (360) 676-8600; Liaison: Bethel Webb, (206) 727-8235.

Legal Services to the Armed Forces

Co-chairs: Jack Nevin, (206) 591-7748, and Jonathan Bridge, (206) 448-8800; Liaison: Brynn Hancock, (206) 727-8244.

Legislative

Chair: Pat Aylward (509) 662-3685; Vice-chair: Curt Ludwig, (509) 586-7611; Liaison: John Fattorini, (360) 943-9977.

MCLE Board

Chair: Gary Randall, (509) 328-4220; Liaison: Cathy Blinka, (206) 727-8219.

Opportunities of Minorities in the Legal Profession

Chair: Felicia Gittleman, (206) 682-5151; Liaison: Diane de Ryss, (206) 727-8220.

Public Relations

Chair: Brad Steiner, (206) 593-2970; Liaison: Mary Elizabeth Stritmatter, (206) 727-8212.

Resolutions

Chair: Gary Gayton, (206) 521-3000; Liaison: Bob Welden, (206) 727-8232.

Rules of Professional Conduct

Chair: Blaine Gibson, (509) 575-7501; Liaison: Bob Welden, (206) 727-8232.

For the good of the public

Despite an impending dramatic loss of funding and increased regulations from Congress, Washington state's access to justice community is moving forward to preserve the model public-private partnership and to continue to provide equal access to justice for those in need of critical legal assistance. To accomplish this, we need your help.

Congress has yet to finalize its FY 1996 budget. However, Washington state expects to lose 1/3 to 1/2 of its funding from the Legal Services Corporation on January 1, 1996. Several thousand cases that no longer can be handled with LSC funds will have to be closed or transferred. Some legal services offices will be closing their doors, leaving thousands of low income clients without access to legal assistance — senior citizens who are targets of consumer fraud, women who are victims of domestic violence, tenants who have been served with eviction notices, families who live in unsafe housing.

The Washington State Bar Association strongly encourages its members to contribute a minimum of 30 hours per year of public interest legal service to low income clients and to provide financial support to organizations that provide legal services to low income people. Those contributions of time and money are needed now more than ever before.

The Washington State Bar Association's Legal Aid Committee, the Washington Young Lawyers' Division and the Access to Justice Board are asking every WSBA member to make a contribution FOR THE GOOD OF THE PUBLIC. Your help is desperately needed to preserve equal justice in Washington state. Here's what you can do:

- Volunteer with a local pro bono program (call WSBA for program names and numbers: 206-727-8282).
- Encourage other attorneys to volunteer with local programs.
- Contribute to local pro bono programs and to the LAW Fund (206-623-5261) and urge others to do the same.
- Educate and raise awareness of the need for legal services.
- Join the Equal Justice Coalition (206-447-8168), a bipartisan coalition working to preserve legal services in Washington state.

Please call today. ♦

**CLE — Continued from page 49**

Meanwhile, the attorney who practices employment law can see a client in the morning, at 10:15 hear a presentation on employee handbooks, followed by an overview of significant state and federal cases, and then two sessions on minimizing and investigating sexual harassment in the work place.

A second key distinction this year is the freedom to choose how much programming to attend. For the attorney who only needs a small number of credits, he or she can attend a short 1.5 hour session for \$55, still get the complete course book covering all 25 topics, and head back to the office.

If other topics look tempting, an attorney may stay for a half day at the \$110 tuition. For those staying for more than the half day, registration is \$145—with the full array of concurrent sessions from which to choose.

In addition, WSBA CLE will deliver "Best of CLE" right to an attorney's doorstep. With VIA•CLE, attorneys can telephone into selected sessions of "Best of CLE" — and hear the live seminar from the convenience of their offices. Eight different topics, covering estate planning, employment law, and depositions, are offered through VIA•CLE.

VIA•CLE registrants must sign up in advance. They receive a copy of the course book, a PIN number and toll-free number to call to access the live seminar. On Dec. 15, they simply call at the appropriate time, enter the PIN number and they can hear the live seminar over their speaker phone at their desk. They can even ask questions!

How to Register — For more information or to register for "Best of CLE" — whether attending by person or by phone — call the WSBA CLE offices at 206-727-8220. ♦



ACCESS TO JUSTICE BOARD REPORT

by LINDSAY T. THOMPSON

The setting up of multiple countervailing forces in the federal government, often cited as the essential genius of the American system, can also produce results akin to being under siege. Despite virtually around-the-clock efforts by friends of the federal Legal Services Corporation to save both its existence and funding, opponents keep coming back, round after round. Defeat them in the House of Representatives, they counter-attack in the Senate. Restore funding in the Senate, and a new amendment turns up in a different House Committee.

While the philosophical issue — whether the federal government should be in the legal services business — rages in The Other Washington, here at home legal services providers have been trying to carry on with business while figuring out how the new order of things will affect This Washington once the dust settles. The one constant factor in this process is the assumption that Congress will attach to legal-service funding, including privately generated funds, a series of restrictions on what sorts of cases legal-service providers can handle and the scope of their representation of low-income clients. Several versions of the restrictions, for example, would require low-income clients to waive the attorney-client privilege, and give up the right to take part in class action suits. The import of these restrictions is that if the federal role in funding legal services cannot be killed outright, it can be slowly strangled to death. Whatever form the new order of things takes, it will go into effect January 1, 1996.

The Access to Justice Board, a creation of the Washington Supreme Court, has been holding meetings this fall with "stakeholders" in the legal-service community — the three statewide legal-service corporations, county pro bono programs, law firms and a variety of other service providers — to devise a new model for legal services in this state. The model agreed upon in October is based on some essential principles: that Washington's civil legal-service delivery system should protect the individual

rights of low-income clients; employ the civil-justice system to oppose laws, regulations, policies and practices that operate unfairly against low-income individuals and groups; promote the interests of low-income individuals and groups in the development and implementation of laws, regulations, policies and practices that directly affect their quality of life; employ a broad range of legal-advocacy approaches to expand the legal rights of low-income individuals and groups where to do so is consistent with considerations of fundamental fairness and dignity; and to empower low-income individuals and groups to understand and effectively assert their legal rights and interests within the civil-justice system, with or without the assistance of legal counsel.

In brief, the plan calls for the creation of two corporations. One will be the recipient of such funds as the federal government decides to spend, and will assume primary responsibility for providing financial, staff and technical support to those volunteer attorney programs and other service providers whose primary activities comply with the funding conditions and restrictions dictated by Congress. The program will also serve as the primary client entry point into the statewide legal-service delivery system: a traffic cop of sorts, directing people to the entity which can best serve their needs.

The second corporation will be created

out of the merger of Evergreen Legal Services, Puget Sound Legal Assistance Foundation, and Spokane Legal Services Center. This entity will be the recipient of state, local and private funds, and will work in fields outside the restricted scope of the federally funded program.

Obviously, these changes will require a new way of thinking about and funding legal services. Insights into this transition, and how to turn it into a new system that is both financially viable and legally effective, will develop as the transition advances into 1996. Although in many respects the legislative mayhem that has been visited upon legal services in 1995 has been a crisis and a tragedy, it also represents an opportunity. Washington, which has shown the way to other states in many areas of law, now has the chance to build something new under the sun. The federal government, dithering over whether to lead or follow, will simply have to get out of the way.

THE JUDICIARY

Gonzaga School of Law graduates federal judge **Franklin D. Burgess** and retired Spokane County Superior Court Judge **Harold D. Clarke** received 1995 Distinguished Judicial Awards. Burgess


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was appointed Federal District Judge for Western Washington in 1994 by President **Bill Clinton** and previously served more than a decade as the U.S. Magistrate in Tacoma. An All-American basketball player in his undergraduate days at Gonzaga, Burgess was inducted into the Gonzaga Athletic Hall of Fame in 1989. Clarke retired last week from the Spokane Superior Court, where he served with distinction for more than 21 years. He has served on numerous judicial committees and commissions, including the Sentencing Guidelines Commission and the Commission on Judicial Conduct. He has been a trustee of the Superior Court Judges Association and served as its president judge in 1988-1989.

Judge **Nicole MacInnes** was recently appointed to King County Superior Court by Governor **Mike Lowry**, to fill the vacancy created by the death of the Honorable **James McCutcheon** (see page 59 of this issue). She has served as a judge in Seattle Municipal Court, the busiest court in the state, since 1989. During her six-year tenure, she directed the court's focus on domestic violence, helping establish Seattle as a national model for handling domestic violence cases.

CLARK COUNTY

Marcia M. Jenkins has become asso-

ciated with Greenen & Greenen.

Alicia Lowe, an attorney with Schwabe, Williamson & Wyatt's Vancouver office, has been appointed to the board of directors of the American Bar Association, Young Lawyers' Division. She will serve in the group's cabinet and be a voting member of the executive council.

EAST KING COUNTY REPORT

by **MARIJEAN MOSCHETTO**

You are invited to the East King County Bar Association Holiday Party, to be held at the Bellevue Hyatt on December 7, with festivities commencing at 5:30 p.m. Every year, EKCBA puts on a wonderful spread for its members and guests with music, camaraderie and good wishes for all. Eastside Legal Assistance Program also holds its annual Silent Auction and Raffle with many great gifts, including this year's grand prize of a trip for two to Tahiti!! Tickets for the Tahiti trip are \$1 per, \$10 per book, and tickets may be purchased at the party right up to the drawing. This is our best raffle prize yet, so don't miss your chance.

We hope to see **Jacqueline Jeske**, formerly of Hawkins, Jeppeson & Hoff, who has now returned to government service as a deputy prosecutor in the family sup-

port section. **Wendy Kaiser** has moved her office to the Skyline Towers. **Timothy Austin** has joined the firm of Egger Betts Sherwood Austin in Bellevue. The firm of Casey, Gordon & Davis has moved their offices to One Bellevue Center. We'll either have congratulations or condolences for **Alex Wirt**, who as of the time of writing this report is running for King County Superior Court judge. **Holly Holman** has gone to the dogs, that is, been elected a member of the SPCA/Humane Society Board. As for South King County Bar Association, which won the Golf Challenge this year (again!), may your divots never run deep. And best wishes to **Maury Powell**, the first president of EKCBA; I've been thinking about you.

At this time of year, please don't forget donations to your favorite charity. No matter what your particular political persuasion, no one can deny that the need keeps growing. Please share this year's successes freely.

And to all, Happy Holidays from the Eastside!!

KING COUNTY

The King County Bar Foundation has been named Outstanding Philanthropic Organization for 1995 by the Washington Chapter of National Society of Fund Raising Executives and the Northwest Development Officers Association. The award committee honored the Foundation for its "unparalleled leverage of contributed funds, its significant support for pro bono legal services and other nonprofit agencies and its encouragement of philanthropy and volunteerism in the community." The Foundation promotes programs that enhance public understanding of the legal system, increase public access to legal remedies and increase minority participation in the legal profession.

Marcia K. Fujimoto has joined Graham & Dunn as a shareholder; **Nadine C. Mandel** has joined the firm as of counsel, and **Riza E. de Jesus**, **Shauna L. Vernal** and **Kumi Yamamoto** have joined the first as associates.

Richard W. Elliott has been appointed partner-in-charge of Davis Wright Tremaine's Bellevue office. Beijing area



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native **Fengming Lieu** has joined the firm's China Practice Group.

Laura J. Buckland and **Heather C. Francks** have become associated with Stokes, Eitelbach & Lawrence.

Seattle attorney **Patrick W. Dunn** is the new chair of the board of trustees of the Children's Home Society of Washington, which will begin its second century of service to Washington's children and their families beginning in 1996.

Ronald R. Ward, **Maria S. Diamond**, **William D. Hochberg** and **Theodore R. Willhite** of Levinson, Friedman, Vhugan, Duggan & Bland were recently elected to the WSTLA Board of Governors. Willhite also received the WSTLA President's Special Recognition Award of his commitment to educate lawyers and the public about the law and our legal system, his exemplary service to the community and the organization.

Peick, Lingenbrink & Magladry has announced its new firm name and redefinition of scope of practice. **James A. Trujillo** has separated his practice and will continue in the same office location.

A Bellevue-based enterprise document management group, Saros Corporation, has named **Ted Corvette** as general counsel.

Ryan Durkan, a partner in Hillis Clark Martin & Peterson, was recently appointed by Governor **Mike Lowry** to chair the state's new 14-member Land Use Study Commission.

Bellevue patent attorney **James R. Vance** and Seattle attorney **H. Troy Romero** have merged their practices to form Vance & Romero in downtown Bellevue.

Foster Pepper & Shefelman has expanded its Family Law Practice Group to include **Diane Fitz-Gerald** as partner and **Natalie de Maar** as of counsel.

Heller Ehrman White & McAuliffe received the prestigious Lambda Legal Defense and Education Fund 1995 Liberty Award in recognition of the firm's role as one of the nation's first major law firms committed to representing lesbians and gay men in high-impact, pro bono civil-rights litigation, for serving as a leader in the legal community in adopting internal policies designed to promote the recruitment and advancement of lesbian and gay attorneys, and for its long-standing and significant contribution to Lambda.



Sixteen attorneys brought in more than \$9,000 for the Seattle area's Special Olympics Washington during Trattoria Mitchell's 10th Annual Lawyers Take Orders benefit. Pictured helping make the presentation are, left to right: attorneys **Craig Sternberg** and **Tom Hillier**, restaurant owner **Papá Mitchell**, Special Olympics chair **Dick Allard**, waitstaff **Cora Matthew**, attorneys **Maria Culic** and **Jim Fowler**.

Stephen L. Day, former regional counsel for the Interstate Commerce Commission, and director of the new Transportation and Logistics Law Practice Group of Betts Patterson & Mines, has been re-elected president of the Puget Sound Chapter of the Association for Transportation Law, Logistics & Policy.

The American Folklore Society has awarded the Aesop Prize for 1995 to **Sharon Creeden** for her book, *Fair Is Fair: World Folktales of Justice* (see the December '94 *Bar News*, p. 17). The collection contains 30 world folktales about wise judges, clever lawyers and deceitful tricksters, most of which are followed with commentary on how the same legal issues are reflected in American law.

Nancy Anderson has joined Groff & Murphy in Seattle.

KITSAP COUNTY REPORT

by **JOAN CASE**

Moving and Shaking:

Scott Henderson is leaving the Tolman,

Kirk firm and is planning on going back to school for a further degree. (This, of course, means he gets the third degree). He asserts the rash of recent referrals to him as Scooter in public places has nothing to do with this choice.

Elizabeth Lee, employed as a judicial clerk in the Kitsap Superior Court, is leaving for private practice in Tacoma at the firm of Williams, Kastner, & Gibbs.

Cynthia Rosa, **June Gerard** and **Elaine Thomas** have departed from the Tracy, McDaniel firm and are office-sharing with **Marilyn Paja**. They indicate they are interested in referrals in family law, elder law and some areas of concentration such as Medicaid application processing or appeals.

The prosecutor's child support division sponsored an open house on Halloween from noon to 2 p.m. Unofficial sources deny the rumor that the price of admission was one appointment as assigned counsel in the ever-popular "Deadbeat dads" civil-contempt calendar. (Yes, Virginia, we know there are deadbeat moms out there, too).

Our clear finalist for this month in the ongoing search for "The practice of law a la "The X Files": **Kelley Rinehart** reports for your consideration the following:

A communication from a person not previously known to his office: "Send Money: Help keep California Green. What the he__?! Who... are you? How many other computer petitions come in along with this, *not* to mention *advertising* and _____ and... How much faith have you got in the law school's trash can?"

The reply from Mr. Rinehart: "Dear Ms. _____: This is in reply to your letter to me of unknown date in which you posed the question 'What the he—?', and asked me to send money. A survey in this office produced a consensus that your question was worth \$2. Please find enclosed."

At the time of writing of this column, word has not been received if the \$2 check had been cashed and, if so, in what galaxy. However it is clear that The Truth Is Out There.

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LAW FUND REPORT

by **LAUREN MOORE**

As the year comes to a close, please remember to make your annual contribution to LAW Fund if you have not already done so. Thousands of lawyers and hundreds of law firms have made their gifts this year, and we thank you for your support in such a critical year.

Thank you to Cairncross & Hempelmann for substantially increasing your gift to LAW Fund this year. Thank you to Riddell Williams Bullitt & Walkinshaw for more than doubling your gift to LAW Fund this year. The response of the legal community in support of legal-service programs in such a crucial year has been heartening. We need your support now more than ever.

LAW Fund supports the legal-service programs which are part of the public-private partnership that works effectively to provide civil legal services to the poor.

Please send your contribution to the LAW Fund administrative office, 1326 Fifth Avenue, Suite 815, Seattle, WA 98101, or call (206) 623-5261.

OPBA REPORT

by **CHARLES W. CONE**

On September 10, 1995, the Old Pharts Who Practiced Law in Chelan County before 1960 celebrated the bountiful harvest that blesses our valley with fruit and tourist dollars.

McGlinn's Ale House, in the historic Orondo Avenue Garland Building, was chosen as the proper venue for this gala occasion.

Eight members were present.

Judge **Jerry Hanna** was excused to attend his law school reunion with the other graduate of Valliparzo University.

Robert Hensel's excuse for absence was that he had suffered a "bruised heart" in a recent collision at Crash Corner in Cashmere. It was reported that Robert is making good recovery from his injuries and that Jerry is being cured of his excess exuberance at the reunion champagne breakfast.

The result of a poll of members as to their predictions on the outcome of the deliberations of the O.J. Trial was Hung - 6; Total Disinterest - 2. Mayor **Jim Lynch** and member **David Whitmore** advised that they still have offices to work in and have missed the interminable trial and even lengthier final arguments.

Our group will meet again in early December to honor the Christmas season. Again, **Ed Engst** will preside as Jolly St. Nick, **Earl Foster** will talk on "Photographing Christmas Parties" and **Bernice Bacharach** will lead the group of the singing of the Hallelujah chorus.

OPBA wishes a happy Yuletide season and a glad and prosperous new year to all.

PIERCE COUNTY REPORT

by **TONI FROEHLING**

As we in the profession move kicking and screaming into the twenty-first century, the latest "improvement" is case management. Not since we lost Bartleby and the other scribes have we looked forward with such anticipation to a change in the way we conduct our affairs. We here in the enlightened county to the south have managed to avoid case management for several years. Not any more. The judges are adopting a system for Pierce County which will become mandatory sometime next year. The chief flack catcher for the judges is currently the Honorable **Bruce Cohoe**, who has worked tirelessly on the implementation of what is obviously a complex system. One of the benefits of being several years behind King County is that we have the opportunity to see how miserably their system works and to formulate improvements. Toward that end, anyone with *constructive suggestions* is invited to pass them on to Judge Cohoe. Don't whine; it's too late and it doesn't help.

The trustees of the Pierce County Bar Association have recently approved the formation of the FRIEND committee, which is in place to offer our thoughts and assistance to those members who have suffered a personal or family loss or other major change. Contributions for that purpose can be made c/o **Marywave Van Deren**.

An effort is underway to explore methods of attracting lawyers from other counties into our local bar association. Some benefits might be a better exchange of ideas, broadened referral networks and more money from dues. This latter might be helpful in the future, especially considering the cutbacks coming to legal assistance programs as a result of federal and state budget tightening.

This month's Bubba award goes to **Glen Prior**, who, during a momentary lapse, decided he would step into the jury room in Department 11 when he heard a knock on the door Trouble was, there was a jury in deliberations, and they didn't particularly want his input. No doubt when he came out to face Judge **Thomas Sauriol** and Judicial Assistant **Lettie Hendrickson**, he was treated with the dignity and respect a member of our profession deserves. Right.

SPOKANE COUNTY

From the Spokane County Bar's *Calendar Call*, the *Bar News* learned that **Jay E. Leipham** joined the Richter-Wimberly law firm, and **Michael L. Wolfe** joined Randall & Danskin.

There have been several relocations in Spokane: **Thomas G. Walsh** to 516 W. Sprague Avenue; **Terry L. Williams** to 9505 N. Division, Suite 103; **Ronald E. Doty, Jr.** to 140 S. Arthur, Ste. 690; and **Michael A. Nelson** to 7307 N. Division St., Ste. 312. **Scott M. King** has moved to 20817 N. Perry in Colbert, and **Bill Baker** has opened a new law practice at 1403 W. Boone in Spokane.

Gonzaga School of Law Associate Professor **Stephen Sepinuck** has been named the winner of the American College of Commercial Finance Lawyers' annual award for legal writing in the area of commercial finance law in "A Defense of Extending Article 9 to Cover Security Interests in Deposit Accounts as Original Collateral." The award will be presented at the ABA midyear meeting in Nashville in February 1996.

WASHINGTON LAWYERS CAMPAIGN FOR HUNGER RELIEF REPORT

by **JOHN WOOD**

I don't know about you, but I get pretty calloused about giving money away to causes or the guys on the street. It's just become an automatic "no, sorry." I think I've been desensitized by the number of requests and a suspicion about where the money will end up being used.

But it's hard to turn my back on a hungry child. Knowing the impact hunger has on children, it's difficult not to put some effort into seeing that they get fed. So many of them have been born into this world in a family or a situation over which they have no control. They are forced to eat very little or eat foods that are cheap and low in nutritional value.

The results are immediate and long-term, and the impact is profound, for every child and for us as a society. Hungry children suffer from sickness more than normal children and seek medical care twice as much as their friends.

The hungry child does not do as well in school. The hungry child has a lower self-image than his or her peers. The hungry child's ability to reason, to read, to interact, to perform . . . all suffer.

When we raise children who are hungry and poor early in life, we set them — and ourselves — up for failure, dependency and crime later on. This is where our social problems begin.

In this organization we call The Lawyers' Campaign for Hunger Relief, we have a campaign slogan, which, every once in a while, we have to remind ourselves of: "A hungry child dreams of nothing but food."

It's not just a slogan. It means that a child who is not eating, or not eating well, will think of nothing else and do nothing else well. It is a matter of survival, and a child must pay full attention to that need. What else is there?

Worldwide, 18 million people die from hunger every year. Eighteen million . . . the population of this state three times over! Most of those are young children. In the United States alone, more than 5,000,000 children live without enough food. It's as if all of Washington were

chronically hungry.

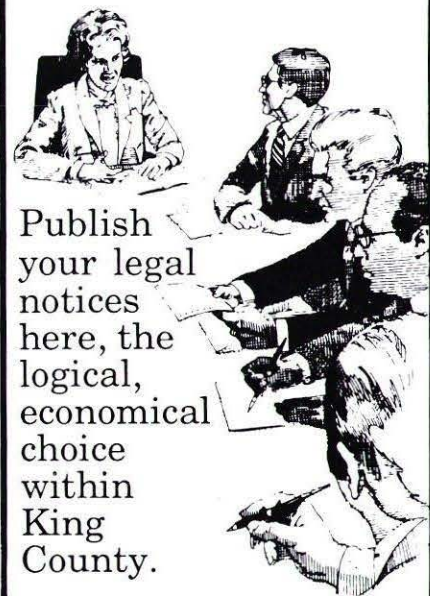
We think that this is a civilized, progressive country, but these figures seem to belie that vision and question our compassion. Twenty three percent of our children grow up in poverty — *double the rate of any other industrialized nation*. And, remarkably, this number continues to grow.

One of the things that keeps us from giving to causes or campaigns is the overwhelming scope of the problems we face. We ask, "How could my dollars possibly make any difference?" I wrestle with the same question.

And then I see some of the results we have achieved in four years of soliciting funds from the legal and professional communities. We have a modest campaign, all volunteers, and all the money collected (unless otherwise specified) goes directly to organizations that feed children.

One example: As a direct result of LCHR donations over a three-year period, low-income children in Seattle received 450,000 additional healthy meals through the summer sack lunch program

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... 450,000 meals that would not have been served.

It is our position that the legal community has the resources to contribute to the resolution of the hunger problem in this state and that it has the responsibility to do so.

If you want to help, call us at (206) 622-3000. Give of your time, your ideas, your energy and your money. If you've ever been hungry, I won't have to twist your arm.

WASHINGTON WOMEN LAWYERS

Thao Tiedt, a partner in Ryan, Swanson & Cleveland and chair of its Employment Group, was named Member of the Year October 10 by the WWL King County Chapter. This annual award is given to a chapter member who demonstrates dedication and commitment to the ideals of the organization, summed up in its Statement of Purpose:

The principal purpose of the King County Chapter of Washington Women Lawyers is to advance and support all women in the legal profession by: (a) enhancing recognition and effectiveness of women lawyers and judges in the profession and in the community; (b) increasing interaction between women lawyers of diverse background and practices; and (c) providing a forum for informing our mem-

bers and the community about social and legal issues of concern to women.

Congratulations, Thao!

IN MEMORIAM

C.W. (Hal) Halverson

On May 15, 1995, the Washington State Bar lost one of its truly outstanding lawyers with the death of C.W. (Hal) Halverson in Yakima. Hal Halverson was raised on a cattle ranch in Idaho, attended college and law school at Stanford, and came to Yakima in 1927, the year Lindbergh flew the Atlantic. There he was associated for many years with the firm of Rigg, Brown and Halverson (now Cockrill & Weaver, P.S.) In 1943 he went out on his own and began building the law practice now known as Halverson & Applegate.

During his long and outstanding career, Hal Halverson was a lawyer who could do anything. He handled civil, criminal, trial, tax, condemnation and all sorts of other matters with great competence and (always) integrity. Usually his cases were difficult and challenging. He accepted both the difficulty and the challenge quietly and with a relish. He was an inspiration of many lawyers in the Yakima area, most particularly those who had the good fortune to practice with him.

Mr. Halverson was the foundation on which Halverson & Applegate was built

and grew. Hal Halverson will be missed by his family, his partners, his colleagues at the bar, his clients, and many others he helped quietly and privately in many ways.

Bernard J. Gallagher

Former State Representative Bernard J. Gallagher died suddenly August 3, 1995. Mr. Gallagher practiced law in Spokane County for 53 years, leaving an active practice at the time of his death. He was a graduate of Gonzaga University (1936) and Gonzaga Law School (1940). He served the 5th Legislative District in Spokane as a Democratic Representative between 1941 and 1943, leaving to serve in the United States Army Office of Special Investigations. He returned to Spokane after service in China and India and served as State Representative for the 3rd District between 1949 and 1960.

Bernard Gallagher continued his public service in local government affairs and was a member of the Spokane Catholic Charities Credit Union Board at the time of his death. He was honored June 9, 1995, by the Statute Law Committee, which serves as the governing board of the state Office of the Code Revisor. (See story on page 51 of the August 1995 *Bar News*.) He was instrumental in the creation of the Committee in 1951 and went on to serve for 44 years. At the June 9 meeting, the Committee — chaired by his daughter Mary Gallagher Dille — praised him for his service in a resolution signed by the Secretary of State on behalf of the citizens of Washington. "Whereas, The people of this state owe a large debt of gratitude to Bernard J. Gallagher for his efforts to see that the laws are both accurate and available at low cost to the public and the legal community. Whereas, It is unlikely that we shall again see the equal of his tenure and services . . . The Committee finds that Mr. Gallagher's experience, expertise, good sense, and extraordinary dedication stand as a sterling example of public service for all to emulate."

Gallagher was known for his honesty and service to those most in need. He was an inspiration to his children: Dr. Bernard J. Gallagher, Jr.; Judge Mary F. Gallagher Dille; Margaret A. Richards; and Paul A. Gallagher; and his 11 grandchildren. He was preceded in death by his wife, Phyllis, his son Patrick and his grandson Michael Dille.



Donna M. Parvey King

Donna M. Parvey King of Vancouver, Washington, passed away on September 30 after a brief illness. Ms. King was a 1955 graduate of the University of Washington, graduating with magna cum laude honors and as a member of Phi Beta Kappa. From 1955 to 1960 she was an employee of the King County District Court. She moved to Vancouver in 1965, entered law school at Lewis and Clark College in 1976 and graduated in 1980. She became a WSBA member in 1981. She conducted a small law practice from her home and also served as the attorney for the Clark County Mosquito Control District.

She was married to Jerry F. King, who was City Attorney of Vancouver for 29 years, retiring in 1993. Besides her husband, she leaves a son, Quentin Charles King of Somerville, Massachusetts. Ms. King was a board member of the first Hospice organization to serve Clark County, and also of the Friends of the Columbia Gorge. Memorial contributions can be made to the Friends of the Gorge, P.O. Box 49820, Portland, OR 97240-0820.

James McCutcheon

King County Superior Court judge James D. McCutcheon, Jr. died September 26 at Swedish Hospital, one day after collapsing in his courtroom during jury selection. He was 74.

Judge McCutcheon grew up in Chehalis and attended Washington State University and the University of Washington School of Law. He was appointed to the superior court bench in 1981 and served as president of the Superior Court Judges' Association in 1990-1991. He was a fellow of the American College of Trial Lawyers when he was in private practice in the firms of McCutcheon & Soderland and McCutcheon & Groshon.

He is survived by his wife, Marian, two daughters and two grandchildren.

Bradford M. Gierke

Tacoma lawyer Bradford M. Gierke, 58, died September 30. He was born in Tacoma and raised in Olympia. He received his B.A. from the University of Washington in 1960 and his J.D. from Harvard University in 1963. In 1969, he started in private practice and was the senior partner in the firm of Gierke, Curwen, Metzler & Erie.

He was a member of the Tacoma-Pierce County Bar, American Bar, Washington State Trial Lawyers and American Trial Lawyers associations and the Defense Research Institute. He chaired the WSBA Young Lawyers Section in 1971-1972.

Mr. Gierke was recognized by his peers as an attorney who exemplified professionalism, fairness and respect for opposing parties and counsel in the intense and adversarial area of litigation practice. He built bridges by bringing people together and by making other people's journeys through this life a little easier.

"Brad loved the practice of law, worked hard for his clients and practiced law as it should be, with honesty, respect and professionalism," said Brian Sonntag, State Auditor and long-time friend.

Survivors include his wife, four children, three grandchildren and four step-children.

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Lawrence R. Ream

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Jose Dino Vasquez

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Mr. Nagel and Mr. Vasquez will focus their practice
on First Party Insurance and Casualty Defense.

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September, 1995

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Established Eastern-Washington firm with active business practice is looking for an attorney with experience in business law, preferably with an LL.M. in taxation or a CPA. Experience should include business planning and formation, real estate, tax planning, financing, 1031 exchanges and general business transactions. Knowledge of agricultural business, particularly tree fruit production and marketing, would be an asset. Compensation negotiable. Send resumé, references and cover letter to *Bar News* Box 468.

Tax/business associate — small av-rated Central Washington firm seeks attorney with experience or interest in all levels of tax and general business. LL.M. (taxation desired). Excellent academic record and superior writing skills required. Applicant should have ability to work with and develop clients. Salary commensurate with experience. Equal Opportunity Employer. Please send resumé, law school transcripts and a writing sample in confidence to Lonny D. Bauscher, Foreman and Arch, Dodge & Volyn, P.S., 701 North Chelan, Wenatchee, WA 98801.

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tial existing practice to fill a need in our Seattle office for an estate planning and general tax practice and to complement an existing tax/estate practice in our Portland office. Our firm is unusual in many ways. If you possess the qualifications and are interested in a dynamic new practice environment, please send a resumé and letter to Maggie Kinsella, Weiss, Jensen, Ellis & Howard, 2600 Pike Tower, 520 Pike Street, Seattle, WA 98101.

Family law attorney needed in established Lynnwood law firm. Minimum one year's experience preferred. Salary DOE. Please send cover letter and resumé to *Bar News* Box 473.

Alston, Courtnage, MacAulay & Proctor seeks an attorney with at least two years of experience in commercial real estate transactions. Please send resumé to the attention of Robert C. MacAulay at 1000 Second Avenue, Suite 3900, Seattle, WA 98104-1045.

Associate attorney sought by well-established, medium-size general practice law firm in Kitsap County. Must be WSBA member. Please send resumé, references, writing sample, and a brief description of your professional goals: Associate Attorney Recruitment, P.O. Box 8182, Port Orchard, WA 98366.

Three-person established McCall, Idaho, firm seeking associate. Minimum two years experience preferred. Respond to Millemann, Pittenger & McMahan, Attn: Steven J. Millemann, Box 1066, McCall, Idaho 83638.

Associate position — six-attorney firm in Portland metropolitan area seeks associate with at least one year's experience to assist with growing Washington practice. Experience in construction litigation and/or creditor's rights helpful, but not necessary. Strong academic credentials and writing skills required. Send resumé to: Furrer & Scott, P.O. Box 23414, Tigard, OR 97281. Attn: Lisa N. Maguire.

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Major Seattle law firm seeks ERISA lawyer. Salary DOE. Please send resumé to *Bar News* Box 477.

The law firm of Birch, Horton, Bittner and Cherot has an opening in its Anchorage, Alaska office for an attorney with excellent academic credentials and writing skills. Must have four or more years' experience in natural resources, federal lands, environmental, and fisheries/game. Competitive salary and benefits. Send resumé to: Michael J. Parise, Birch Horton, Bittner and Cherot, 1127 W. 7th Ave., Anchorage, AK 99501.

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Business attorney—Landerholm, Memovich, Lansverk & Whitesides, a 23-attorney firm in Vancouver, Washington with a thriving business practice, seeks a business attorney to practice primarily in the areas of corporate, commercial and transaction law. Applicants must possess superior academic background and excellent writing and interpersonal skills. Previous business law experience preferred but not mandatory. Please send resumé, law school transcript and a short writing sample to Director of Administration, Landerholm, Memovich, Lansverk & Whitesides, P.S., P.O. Box 1086, Vancouver, WA 98666.

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WILL SEARCH

R.L. Jsmes: Please contact Robert Baronsky, attorney, at (206) 382-1830, 2830 Two Union Square, Seattle, WA 98101, if you have any information about a will prepared for R.L. Jsmes, also known as Robert Lee Jsmes, of Seattle.

Joseph Warner: Anyone having knowledge or possession of an original

will of Joseph Warner, please contact attorney Michael J. Longyear at (206) 587-6556.

Lucille Stewart: Anyone having knowledge or possession of an original will of Lucille Stewart, please contact attorney Michael J. Longyear at (206) 587-6556.

Everett L. Smith. Please be advised that Everett L. Smith died on 8/23/95. Mr. Smith's estate is presently being probated under King County Cause #95-4-03746-9. No valid will has been located or found; therefore, such probate is proceeding based upon Mr. Smith dying in testate. If any individuals have knowledge regarding the Last will and testament of Everett L. Smith and its present location, contact Victor Van Valin or David Tall at the law firm of Oseran, Hahn, Van Valin & Watts, P.S., 10900 N.E. 4th Street, #850, Bellevue, WA 98004, (206) 455-3900.

Regina Haleva of Seattle, Washington: Anyone having knowledge of a post-1980 original will of Regina Haleva, who died August 13, 1995, please contact attorney Patricia A. Wilner (206) 646-2770.

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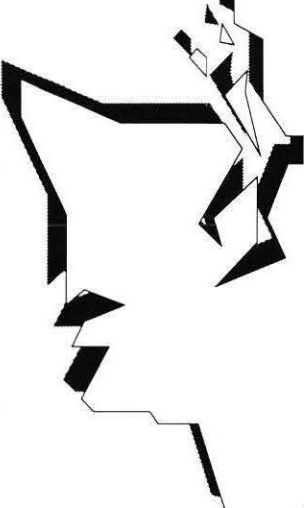
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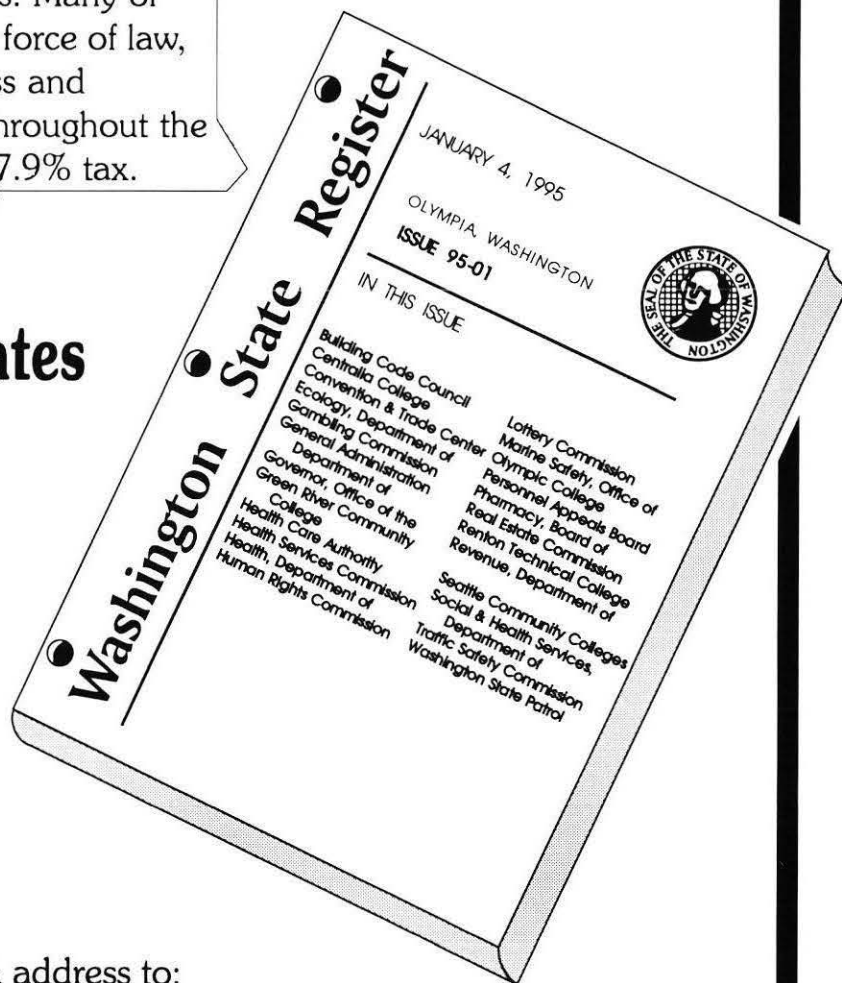


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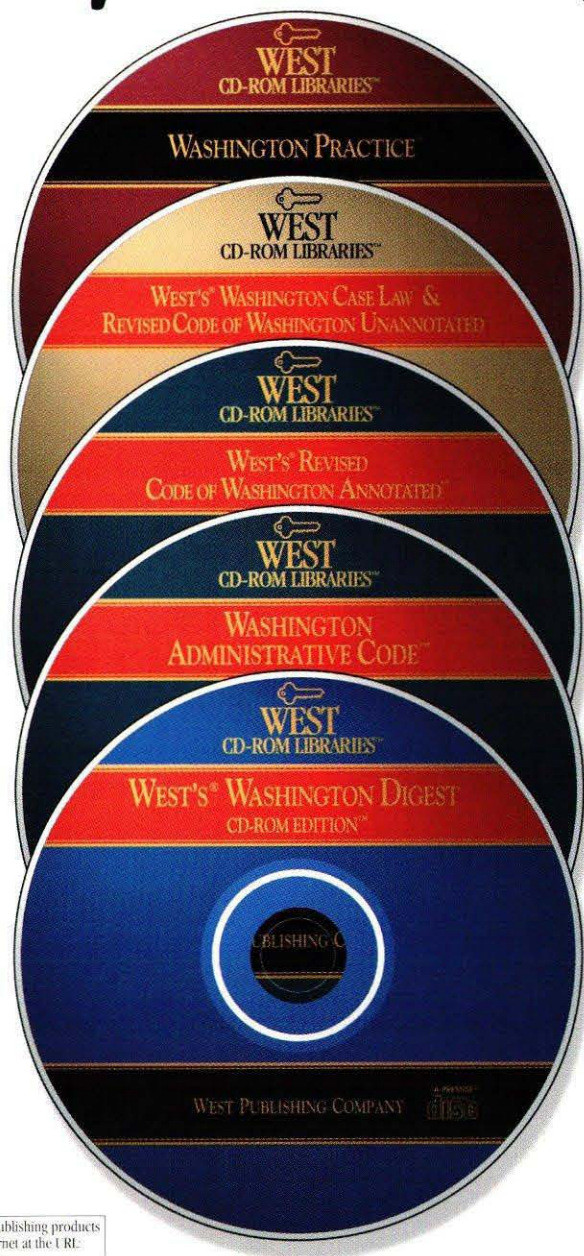
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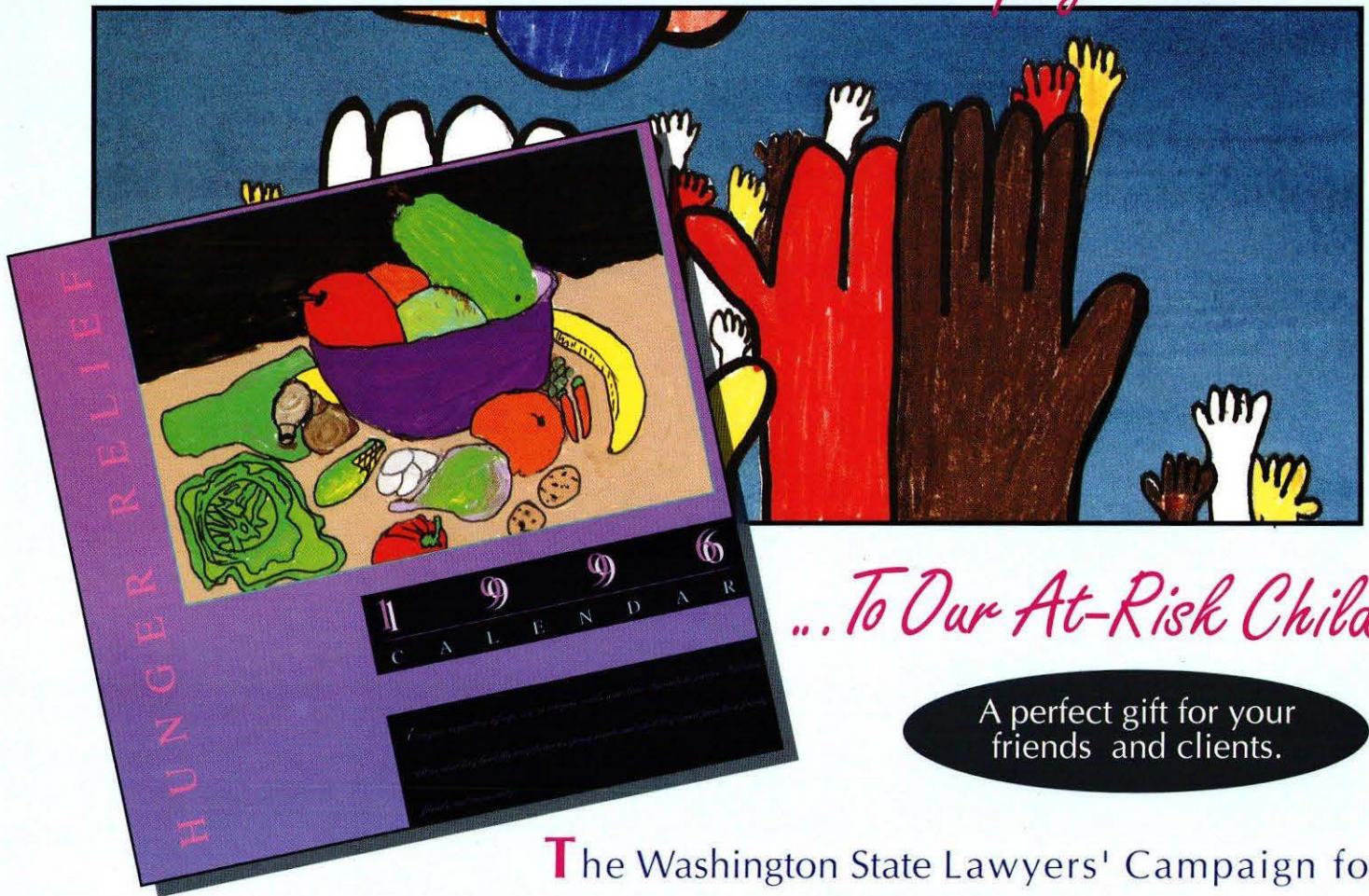
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*Purchase A Calendar Now And
Lend A Helping Hand.....*



...To Our At-Risk Children

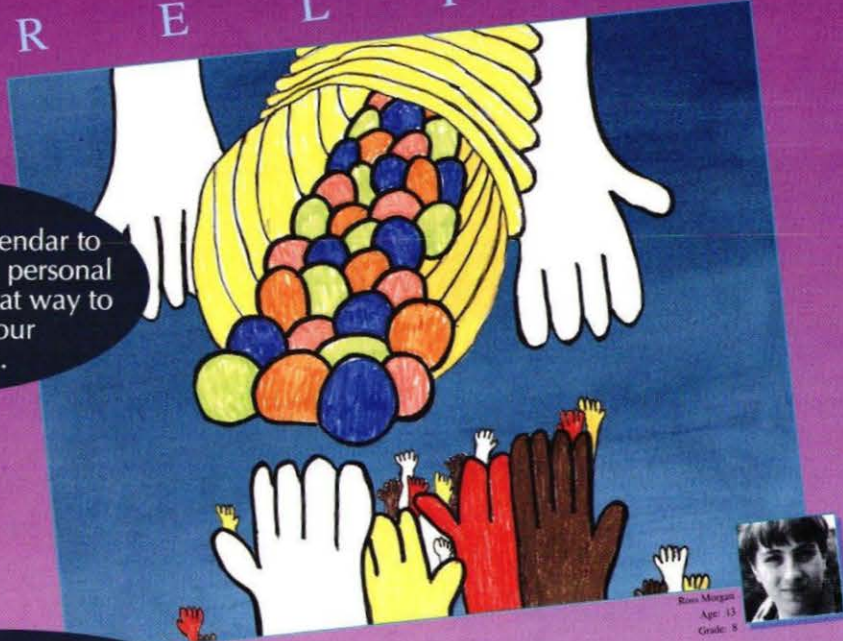
A perfect gift for your friends and clients.

The Washington State Lawyers' Campaign for Hunger Relief, your neighborhood community organizations, all invite you to local initiative to increase hunger and alleviate hunger among at-risk children in their formative years. **W**ith your support, we can raise funds for local food programs while raising awareness through promotion of this Hunger Relief/ Children's Rights Calendar. **L**et us work together for this noble and worthy cause.



A perfect gift for your friends and clients.

H U N G E R R E L I E F



We can mail this calendar to all your clients with a personal letter from you. A great way to show clients your appreciation.

Funds raised through this calendar go to your local charitable organization.

Issues concerning hunger, education, religion, job opportunities, and healthcare are expressed through children's artwork. Often, artwork can bring out a child's feelings that words cannot.

1 9 9 6 J A N U A R Y

Easy to read dates with brilliant colors. Holidays are also noted.

	1	2	3	4	5	
7	8	9	10	11	12	
14	15	16	17	18	19	
21	22	23	24	25	26	27
	29	30	31			

We asked 11 different questions to children, ranging from 8 to 16 years of age how they perceive their rights, and how we can help alleviate hunger.

How can you help someone who needs a home, food or clothing?



"Because if people don't have a home, food, or clothing they won't have shelter and they might get very sick. That is why they need food, homes, and clothing."

Yuki Mei
Age: 7 1/2 Grade: 2

Black and white photographs depict the children who have participated in this beautiful full-color calendar.

Where Does The Money Go?

1. The Campaign To End Hunger (CTEH)

CTEH provides public outreach with the purpose of increasing participation in existing supplemental food programs.

2. Summer SACK Program

The Summer SACK Program provides children with high nutritional meals during the vacation months. This helps to ensure proper meals all year long.

3. Emergency Feeding Program

The Emergency Feeding Program of Seattle-King County provides food to low-income families, bridging the gap between what they can provide for themselves and what the WIC program provides.

4. CARE

CARE works to improve the nutritional status of mothers and their needy children, and to improve their knowledge of preventive health practices. Additionally, CARE helps to provide these children with better access to food, primary health care and education.

5. The Children's Alliance

The Children's Alliance is a multi-issue organization working to improve the lives of children. It seeks to make children and families a public priority in Washington.

