The Official Publication of the Washington State Bar

Washington State Bar News

Vol. 49, No. 2, February 1995

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International Arbitration and Mediation: Seattle as a Center for ADR?
Democracy and Legal Reform in Cambodia • A Trip to a Diplock Court

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Practice Alert: Poverty as a Barrier to Family Reunification in Juvenile Court

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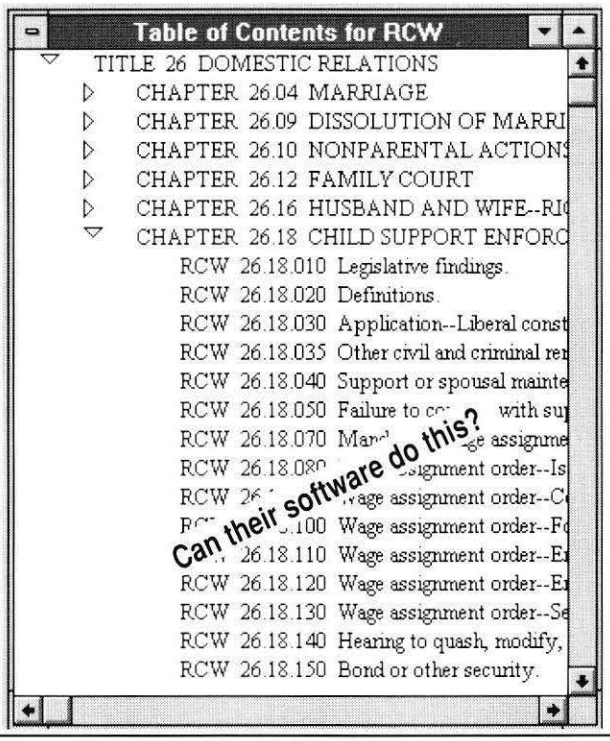

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FEATURES

International Law and Practice

ART CREDIT

COVER: Study for Lincoln by **Mauricio Lasansky**. Charcoal and colored pencil, 72 1/2" x 45". West Art and the Law 1986. From the collection of the Lasansky Corporation.

PAGE 26: The twelfth-century temple of Angkor Wat reflects one of the greatest achievements of the Cambodian people. Pencil drawing by **Marie Lorenz**, now a senior at the Rhode Island School of Design.

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DEPARTMENTS

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

Is Helping Minorities a Racist Act?

Editor:

As one who believes that the underrepresentation of racial minorities in the legal profession is a problem, I found the tone of Gregory Moravan's letter in the December 1994 *Bar News* surprising, and the substance of his arguments ridiculous.

Wouldn't we all love to live in a society in which "need" and "merit" had objective meanings, and where individuals of all races and nationalities were fairly represented in this important profession? Unfortunately, this is not yet reality.

Given this, what *is* Mr. Moravan's problem with voluntary efforts to assist and recognize qualified and deserving minority law students? He notes that the benefits were awarded "solely on the basis of skin color—not merit or need." I would be very surprised if the recipients of the money raised in the event are not deserving of their awards either by merit or need. Are they less deserving than any others that may have been considered? I doubt it. Would the folks who made the contributions to the event have made the same contributions if the objective had not been to assist law students of color? Probably not. Does it, then, hurt majority students that they were not considered for the awards? I submit it does not.

Arguments like the one that Mr. Moravan displayed so angrily rests on the view that our society should be a pure meritocracy. I agree. But the fact is that if our society were a pure meritocracy, representation by minorities in the legal profession would not be an issue (assuming, of course, racial minorities are not inherently less capable). In the face of that reality, there is something wrong with arguing that the problem does not exist, or that a reasonable effort to address the problem is itself wrong because it discriminates against those whom the status quo favors. Reasonable people can differ on how far we should go to address the problem of underrepresentation of racial minorities in the legal profession. It strikes me, however, that an effort to solicit voluntary contributions to recognize and support deserving minority law students is not a close call. It is hardly the "morally wrong, ethnically bankrupt, intellectual dishonest, . . . an 'excusable' and 'despicable' activity" that Mr. Moravan complains of. The organizers of, and participants in, the event do not deserve his criticisms.

YUKIO MORIKUBO
Bellevue

Editor:

I suspect Gregory W. Moravan's letter will evoke the same type of contrary outpouring from those who would seek to keep us divided on the basis of race, color, sex, and so on. I have never been able to figure out why, if you believe in special benefits for certain definable groups, you were a broad-minded fellow; but if you oppose that type of thing you were a racist.

Isn't it about time we all got back together? I don't think having events and/or auctions for the benefit of "law students of color" is the way to do it. How about just an auction for "law students"?

On October 27, 1994, the U.S. Court of Appeals for the Fourth Circuit, in *Podbersky v. Kirwan* (No. 93-2527) held that the University of Maryland could not offer a "black-only scholarship" because it violated the equal protection clause and the university hadn't first tried a "race-neutral" solution. Why don't we try race-neutral scholarships? And why don't we merge all the splinter groups of lawyers into one bar association?

RUSSELL A. AUSTIN, JR.
Bellevue

Articles, Contributions Sought:

The *Bar News* depends upon readers for the bulk of its content each month. Contributions by WSBA members are welcomed in all departments of the magazine. Contact the editor at (206) 625-9211.

More on St. Yves

Editor:

I have something to add to Sharon Creedon's story, "The Patron Saint of Lawyers" (*Bar News*, December 1994).

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FEBRUARY

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Seattle – WA State Convention Center – 2/10
7 Credits $145

Essentials of Real Estate
Seattle – Seattle Hilton – 2/3
Olympia – Ramada Inn – 2/10
6.25 Credits $145

Non-Traditional Families & the Law
Seattle – WA Athletic Club – 2/16
6.25 Credits $145

Contaminated Site Clean-Up
Seatac – Red Lion – 2/16
6 Credits $145

Contract Killers
Spokane – Cavanaugh's Inn at the Park – 2/23
See March for Seattle listing
6.75 Credits $145

Representing the Washington Trustee
Seattle – Sheraton Seattle – 2/23
4 Credits $85

Current Issues in Commercial Litigation
Seattle – WA Athletic Club – 2/24
6.5 Credits $145

MARCH

8th Annual Northwest Bankruptcy Institute
Seattle – Four Seasons Olympic – 3/3-4
10.25 Credits $275

Contract Killers
Seattle – WA Athletic Club – 3/3
See February for Spokane listing
6.75 Credits $145

Advising the Start Up & Newly Acquired Businesses
Spokane – Cavanaugh's Inn at the Park – 3/8
Seattle – Sheraton Seattle – 3/17
6 Credits $145

How to Compel Discovery
Seattle – Sheraton Seattle – 3/10
3.5 Credits $80

Youth Anti-Violence Act
Seattle – WA State Convention Center – 3/17
Yakima – Cavanaugh's – 3/24
6.5 Credits $135

Hanging Out Your Shingle
Seattle – Sheraton Seattle – 3/22
5.5 Credits $145

2nd Annual Employment Law Institute
Seattle – Sheraton Seattle – 3/24
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On May 18, 1985, we were driving down the Brittany coast of France, and about 3 or 4 p.m., came to the small town of Treguier. All of the streets and squares were filled with people, with lots of policemen trying to direct the traffic. We tried to find out the cause of the commotion in our less-than-fluent-French and were told that the next day, Sunday, May 19, would be the "pardon of St. Yves," he having been born in a small village one kilometer away. The word "pardon" means "blessing" or "blessing of the poor," I think.

We decided to stay over at a nearby inn so as to take in the festivities the next day. We had a fine and lengthy dinner and so didn't get back to Treguier as early as we intended. And when we did, the cathedral was full, and there were a couple of thousand people in the square just outside. The service was broadcast with loudspeakers, so we could get a little of it. One thing St. Yves was commended for was his brevity and clarity. We should pay attention to that.

When the service concluded, out came the procession, and it was colorful. There were several churchmen of rank, others carrying a reliquary with the bones of St. Yves, then a large group of gowned—and in many cases bewigged—lawyers and judges, then a large number of young boys carrying colorful banners, all this to the tune of a haunting canticle, and all going to the village of St. Yves' birth on a street where every available niche was filled with flowers.

We learned that the cathedral, which was built between the 13th and 16th centuries, had been badly damaged in World War II, and that it had been repaired and restored with contributions by lawyers from Britain, Belgium, Holland, Luxembourg, and the USA, and that lawyers and judges from these countries had been in the procession.

We took some kidding along the line that lawyers certainly needed a saint, but I pointed out that I could recall no insurance salesmen or real estate agent who had ever been canonized, which evened the score.

If anyone is going to France, or can arrange to do so on May 19, don't miss the pardon of St. Yves. You'll remember it.

BURTON C. WALDO
Seattle

BE LIKE ABE

by **Michael B. Hyman**

(Editor's Note: Bar associations trade their publications back and forth. Every month I go through dozens to see what's doing in other states and cities. One of the real pleasures of the task is the monthly arrival of the CBA Record, *the monthly magazine of the Chicago Bar Association. Its editor, Michael B. Hyman, who practices with Much, Shelist, Freed, Denenberg & Ament, P.C., writes a monthly column called "Editor's Briefcase." I have never met him, but his columns are the work of a lawyer of wisdom and insight, and his writing shows a keen appreciation of what E.B. White called "the nature and beauty of brevity." Hyman's February 1994 column is a good example of his work, and I am grateful for his permission to bring it to the Northwest.)*

No lawyer more completely personifies professionalism than the Illinois country lawyer born nine score and six years ago this month. He was no ordinary country lawyer. Legendary stories of his law practice are only exceeded by the legendary stories of his leadership of the nation during its gravest years. He would become like Athena, a god of wisdom; his memorial in Washington, our country's Parthenon. Honest. Virtuous. Humble. Astute. Few lawyers have been more revered; few lives more venerated.

Be like Abe.

"There is a vague popular belief that lawyers are necessarily dishonest . . . Resolve to be honest at all events; and if in your own judgment you cannot be an honest lawyer, resolve to be honest without being a lawyer. Choose some other occupation rather than one in the choosing of which you do, in advance, consent to be a knave."

Be like Abe.

"In law it is good policy never to *plead* what you *need* not, lest you oblige yourself to *prove* what you *can* not."

"The leading rule for the lawyer, as for the man [and woman] of every other calling, is diligence."

"Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser—in fees, expenses, and waste of time. As a peacemaker, the lawyer has the superior opportunity of being a good man. There will still be business enough."

"Character is like a tree and reputation like its shadow. The shadow is what we think of, the tree is the real thing."

"Let minor differences and personal preferences, if there be such, go to the winds."

Be like Abe.

"Holding it a sound maxim that it is better to be only sometimes right than at all times wrong, so soon as I discover my opinions to be erroneous I shall be ready to renounce them."

"We better know there is a fire whence we see much smoke rising than [we] could know by one or two witnesses swearing to it. The witnesses may commit perjury, but the smoke cannot."

Be like Abe.

"I don't want to be unjustly accused of dealing illiberally or unfairly with an adversary, either in a court or in a political canvass or anywhere else. I would despise myself if I supposed myself ready to deal less liberally with an adversary than I was willing to be treated myself."

"I believe it is an established maxim in morals that he who makes an assertion without knowing whether it is true or false is guilty of falsehood, and the accidental truth of the assertion does not justify or excuse him."

"Important principles may and must be inflexible."

Be like Abe.

"Die when I may, I want it said of me by those who knew me best, that I always plucked a thistle and painted a flower where I thought a flower would grow."

Let's all practice law like Honest Abe.

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How May Lawyers Help Prevent Youth Violence?

by **Ronald M. Gould**
WSBA President

Ronald M. Gould

Today, the children of America stand at a crossroads of peril and violence: They grow up with violence in the streets, and face it in their schools; they must develop values in what may often seem like chaos. The violence is everywhere: In the computer games that they play, in the movies and television series that they view, and—regrettably and increasingly—in the lives of those they know. Lawyers can only do so much to assist in such a deep societal problem. But are we doing our part? Are we doing enough? Are we doing all we can to help a generation of children to have peaceful resolution of disputes and a constructive life?

Many factors contribute to violence. Overworked parents may not have time to give appropriate attention to children. Deficiencies in funding for schools may decrease opportunities in our schools for the present generation that we took for granted a few decades ago. A poor economy and weakened social institutions may create a culture in which violence can grow. Disrespect for law also permits violence to go unchecked. Racial and gender discrimination can harm a child, leading in some cases to reciprocal violence. Violent crime begets more crime, especially when offenders go substantially or totally unpunished. Communities need to see programs to aid youths and need to have laws enforced when youths cross legal bounds. There are many areas in which enforcement of laws now on the books will help to remedy an imperfect environment in which youth violence grows.

But apart from enforcing laws, what can lawyers do to help prevent youth violence? This is a challenge that I pose to the Bar because it is a question that our society now poses to all responsible adults. Lawyers historically have taken the lead in community activities and social issues. The WSBA does not have funds for social projects. I raise this not seeking funding from the Bar, but to encourage each of you in your own organizations and communities to exercise a constructive leadership on these issues. Without Bar expense, lawyers can find ways to make a difference in the lives of children, keeping those who are progressing well on the right track, and helping to provide a second chance, possibly a better chance, for those who have taken a wrong turn.

As many of you know, the WSBA, with the Attorney General and the Superintendent of Public Instruction, is participating in a pilot project called "Laser," Lawyers and Students Engaged in Resolution, using attorneys to train students to be peer mediators at Ingraham High School and Whitman Middle School in Seattle. Support from lawyer groups such as our ADR Section, the WYLD, WSTLA and several minority bar associations has been great. Many lawyers have volunteered, and it has been frustrating that the current pilot project will only involve opportunities for a very few. But if additional funding is obtained from the Washington Legislature, or through private efforts, this project will be expanded statewide.

More generally, the Board of Governors at our Yakima and Seattle meetings invited community leaders to discuss how lawyers can help prevent youth violence. A few themes are emerging:

- Lawyers need to help as people: getting involved with kids in constructive programs, being role models, and helping children to make positive contributions to society.
- Many problems are intensified by poor education and even illiteracy among youths. Lawyers through existing organizations can help as tutors of students. A child who cannot read is at unnecessary risk.
- Many children have by their conduct come within the scope of the criminal justice system. We should not write off a generation of youths without doing everything possible to restore them to useful roles in society. Lawyers can find ways to be involved on a one-on-one basis through existing court and social agencies.
- Each of us in our practices should accommodate policies that help working parents balance child-raising and professional responsibilities. The problems of youth violence arise in any settings where children find themselves losing to competition for attention from a parent or parents. The Bar Association itself should consider policies that facilitate child care for working mothers.

We have a Board of Governors Committee, chaired by Dan Hannula of Tacoma and including Linda Dunn and Peter Ehrlichman of Seattle and Mary Fairhurst of Olympia, which will assess preventing youth violence. That committee is considering what we have heard from community leaders, and it will continue to do so. It will recommend steps that we as lawyers can take to help. Please write to me or any member of this Board Committee to suggest ways for lawyers to prevent youth violence, without a costly Bar Association program. Existing community programs can be supported by lawyers if they will only redirect a portion of their energies. The youths of today are the pilots of our society tomorrow. Let's give what we can of our time and resources to open the way for them.

Ron

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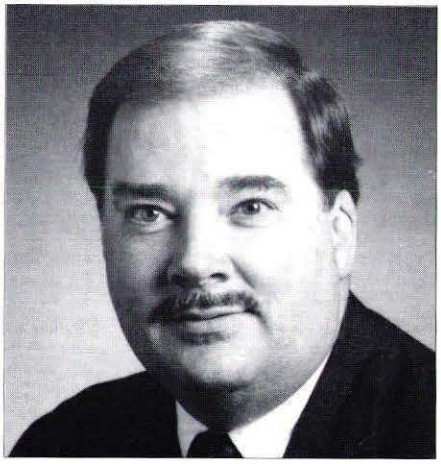


Dennis P. Harwick

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

Four years ago—almost to the day—I sat down and wrote my first "Exec's Report" for the *Washington State Bar News*. At that point I had been at the WSBA only 3 1/2 weeks. Other than some general observations, the most notable portion of that column dealt with the recently filed referendum to reverse the Board of Governors' selection of Hawaii as the site for the WSBA's 1995 convention. Four years later, another referendum has been filed—this one to strip the WSBA of all but its regulatory functions.

My sense of déjà vu made me spend some time thinking. What has changed at the WSBA in the past four years? Why would a group of the membership want to eliminate the unified bar association? If it isn't just the current wave of institutional disenchantment, has the WSBA failed to be responsive to its membership? Or has the WSBA simply failed to adequately communicate the changes that have occurred?

Since I can't answer all those questions in one column, let me address ***what* has *changed at the WSBA over the past four years***.

• *Conventions:* It seems appropriate to start with the 1995 WSBA Convention in Hawaii. Not only will the 1995 convention not be held in Hawaii—it won't be held at all! The Board of Governors considered all the reasons there should be an annual gathering of the membership, but discontinued holding traditional bar conventions. The move was largely symbolic, because conventions were a break-even financial event, but it was important to signal to WSBA members that the Board was responsive to member perceptions.

• *CLE:* The WSBA CLE program moved successfully from a subsidized model to a self-supporting, market-driven model. It worked. Registrations topped 10,000 last year for the first time and, from a financial perspective, CLE was solidly in the black for the second straight year.

• *Financial Stability:* The WSBA has shifted to a sophisticated budgeting and reporting financial system that allows management and the Board to analyze the fiscal impact of every program and to respond quickly and effectively. The WSBA has not only finished each of the last three fiscal years in the black, it has established financial reserves for general operations, CLE, and WSBA sections.

• *Openness:* The WSBA adopted an open-records policy (with appropriate restrictions on admissions and discipline-related issues) that allows its members to examine its operations.

• *Reexamination:* The WSBA has exhibited a willingness to reexamine how it operates. It created the Task Force on WSBA Governance, which is calling for significant restructuring of the governance mechanism. The Board of Governors (along with the Supreme Court and Disciplinary Board) invited an ABA evaluation of the attorney discipline system to find ways to improve that system.

• *Inclusion:* The WSBA continued a tradition of reaching out to constituent groups for participation in policy-setting. The WSBA is the only state bar that I know of that has 15-20 liaisons from constituent groups attending every meeting of the Board of Governors. The WSBA also opened up its committee appointment policy so that every member of the WSBA can participate on a committee if he or she so desires.

• *Access to Justice:* The WSBA has formalized its commitment to access-to-justice issues through advocating for and supporting the creation of an Access to Justice Board to provide oversight to all of the groups and programs in this arena.

You will hear much debate about the referendum. Much of it may be premised on the notion that the WSBA is unwilling to change. I encourage you to look at the facts and our track record.

ENFORCING LETTERS ROGATORY IN BRITISH COLUMBIA

by **Stephen Antle,**
Ladner Downs, Vancouver, B.C.

This commentary highlights some practical points involved in obtaining an order from the Supreme Court of British Columbia enforcing letters rogatory issued by the American federal or state courts and provides precedent documents to be used in doing so. It is not a discussion of the substantive British Columbia law of enforcing letters rogatory. A good summary of that law can be found in B.J. Freedman and G.N. Harney, *Obtaining Evidence from Canada: The Enforcement of Letters Rogatory* (1987) 21 U.B.C. Law Rev. 351.

There are two substantive legal points which it is important to bear in mind from a practical point of view. The first is that the making of an order enforcing foreign letters rogatory is a matter within the discretion of a chambers judge or master of the Supreme Court, within the statutory limits set out in section 59 of the B.C. *Evidence Act* and section 46 of the Canada *Evidence Act*.

The second is that the Supreme Court has generally refused to enforce foreign letters rogatory unless their principal purpose is to obtain evidence for use at trial, as distinct from as part of a pretrial discovery process. Recently some Canadian courts have recognized that there is necessarily an element of discovery in any examination under foreign letters rogatory, but it will still be necessary to convince the Supreme Court that at least the principal purpose of the examination is to obtain evidence for use at trial.

Before applying for letters rogatory, American counsel should confer with their B.C. colleague, who will apply for the order enforcing those letters rogatory. It is important to review with B.C. counsel the form of letters rogatory you will seek to ensure they are in a form and substance which the Supreme Court will enforce. The form letters rogatory accompanying this commentary are designed to be issued by the U.S. Federal Court. If your action is from a state court, they will have to be modified accordingly. They are not necessarily suitable for use in other Canadian provinces.

The reference in the third paragraph of the requests in the letters rogatory to the Federal Civil Judicial Procedure and Rules (or to the corresponding state court provision) and to cross-examination is important. It has been held by the Supreme Court that an examination under the letters rogatory in B.C. is governed by B.C. law. The standard forms of letters rogatory request that the attorneys of the party obtaining the letters rogatory "be permitted to examine the witness and the attorneys of any opposing parties be permitted to cross-examine the witness." This wording has been held to imply that the party obtaining the letters rogatory is calling the witness himself and therefore his counsel may not cross examine. Counsel must examine, in chief, the opposing party can cross examine, and the party obtaining the letters rogatory can then reexamine on any matters raised for the first time in cross-examination. Only if the witness can be shown to be hostile can the party obtaining the letters rogatory cross examine the witness under the standard letters rogatory. The wording in this third paragraph may permit you to cross-examine the witness, as if you were deposing them in the United States.

These documents contemplate an examination before an Official Court Reporter as Commissioner. This is the common procedure where the examination is by consent of the parties to the American action. If that is not the case, the Commissioner should be a member of the B.C. Bar and supervise the examination, which should still be recorded by an Official Court Reporter.

The other parties in the American litigation must be served with notice of your application for letters rogatory. The Supreme Court will not enforce letters rogatory issued without notice to the other parties. As a practical matter, it is also helpful to obtain the agreement of counsel to the other parties in the American litigation to the date on which the examinations under the letters rogatory will take place.

Once the letters rogatory have been obtained, the order enforcing them is obtained from the Supreme Court of B.C. by beginning a proceeding by filing a petition in the Supreme Court. That petition seeks an order modeled on the letters rogatory you have obtained. In the accompanying petition, that order is set out in paragraphs 1 through 6.

The petition must state the facts on which it is based. In the accompanying petition, those facts are set out in the second series of paragraphs, numbered 1 through 10. You should ensure before seeking your letters rogatory that these facts do exist in your case, and consult with B.C. counsel if they do not.

The petition must be supported by a filed affidavit which deposes that the facts on which the petition is based, as set out in the petition, are true. It is preferable that that affidavit be sworn by American counsel, rather than on information and belief by B.C. counsel. The affidavit must be in the accompanying form, the one acceptable to the B.C. courts. For the affidavit to be admissible in B.C., it must be sworn before a notary public, who must notarize the affidavit and any exhibits to it.

Once the petition and affidavit have been filed and served on the respondent (the proposed witness), the witness has seven days to file an appearance to the petition. The petition can then be set down for hearing at any time on three days' notice by filing and serving on the respondent a notice of hearing of petition. It therefore takes a minimum 11 days between the date B.C. counsel receives the letters rogatory and the making of an order enforcing them. You should bear this necessary lead time in mind.

The Supreme Court normally requires a further reasonable time between the making of its order enforcing the letters rogatory and the examinations themselves. It is helpful if American or B.C. counsel have been able to agree with the witness on convenient dates for their examinations.

Sample forms ☛

UNITED STATES DISTRICT COURT
[DISTRICT] DISTRICT OF [STATE]
AT [LOCATION]

[COMPLAINANT]	)	
	)	
	)	
	)	[CASE NUMBER]
	)	
Complainant	)	
	)	
v.	)	LETTERS ROGATORY
	)	
[DEFENDANT]	)	
	)	
	)	
Defendant.	)	

LETTERS ROGATORY TO THE
SUPREME COURT OF BRITISH COLUMBIA, CANADA

WHEREAS this proceeding is properly under the jurisdiction of and is now pending before the United States District Court for the [District] District of [State];

AND WHEREAS it appears that it is necessary for the purpose of justice and for the due determination of the matters in question between the parties that the following person now residing with your jurisdiction should be examined under oath relating to those matters, namely:

(a) [witness] of [address in British Columbia] on his own behalf and on behalf of [any appropriate corporation];

and such other persons as the attorneys or agents of the parties shall mutually request you in writing to examine;

Now therefore I, [Judge's name], United States District Court Judge, pursuant to Rule 28(b) of the Federal Civil Judicial Procedure and Rules, hereby request that, in furtherance of justice and by the proper and usual process of your court, you summon the attorneys or agents of the parties and the witnesses named above to be examined to attend at such time and place as you shall appoint, either before you or such commissioner as according to your procedure is competent to take evidentiary depositions of witnesses, and that you cause the witnesses, under oath or affirmation, to be examined orally for the giving of evidence and the production of the relevant documents in either their possession or control or that of their employer and set out in Schedule "A" to these Letters Rogatory, in the presence of the attorneys or agents of the parties or such of them as shall, with due notice given, attend the examination;

And I further request that you appoint an Official Court Reporter in the Province of British Columbia, Canada, or his designate, provided that person is an Official Court Reporter in the Province of British Columbia, Canada, as the commissioner before whom the evidence is to be taken;

And I further request that you permit the attorneys or agents of any party present, including members of the [State] Bar, to examine the witnesses in accordance with the Federal Civil Judicial Procedure and Rules, and to cross examine the witnesses;

And I further request that you cause the evidence of each witness to be recorded verbatim by an Official Court Reporter and cause any document produced on the examination to be marked for identification, and that the Official Court Reporter authenticate the depositions taken on the examination and any document or certified copy thereof produced on the examination, and have the same returned by registered or certified mail, under cover duly closed and sealed up together with these presents, addressed to [Clerk's name], Clerk of the United States District Court for the [District] District of [State], United States of America.

We stand ready and willing to do the same for you in a similar case when requested.

Dated this ___ day of _____, 19___ .

_____
UNITED STATES DISTRICT JUDGE

SCHEDULE A 1.

1. [List documents with as much detail as possible.]

No. [Proceeding Number]
Vancouver Registry

In the Supreme Court of British Columbia
Re: Section 59 of the Evidence Act, R.S.B.C. 1979, c.116

Re: Commission to Examine Witnesses and Compel Production of Documents Issued by the United States District Court for the [District] District of [State]

Between

[party obtaining letters rogatory]

petitioner,

and

[witness]

respondent.

THIS IS THE PETITION OF:
[petitioner's name and address]

PETITION TO THE COURT

LET ALL PERSONS whose interests may be affected by the orders sought TAKE NOTICE:

The petitioner applies to this court for an order that:

1. The respondent be examined on commission before a commissioner in the manner and form requested by the letters rogatory made on the ____ day of _____, 19__ by the United States District Court for the [district] District of [state] (the "United States District Court"), in Proceeding No. [case number] under the style and proceeding of [style of proceeding] (the "[state] Action").

2. The respondent attend at the offices of [B.C. law firm address] on [date] from the hour of 10:00 o'clock in the forenoon until 12:30 o'clock in the afternoon and from the hour of 2:00 o'clock in the afternoon until 4:00 o'clock in the afternoon and thereafter from day to day until the examinations are complete, or on such other dates and at such other times as the court may direct or the parties agree.

3. The respondent also produce at the examination all the documents in their possession or that of [any appropriate company] specified in schedule "A" to this petition.

4. [name], official court reporter, or their designate, provided that person is an official court reporter in the province of British Columbia, Canada, be appointed commissioner before whom the evidence is to be taken.

5. The attorneys or agents of any party present, including members of the [state] Bar, be permitted to examine the respondent in accordance with the Federal Civil Judicial Procedure and Rules and to cross examine the respondent.

6. The evidence of the respondent be recorded verbatim by an official court reporter and any documents produced on the examination be marked for identification, and the official court reporter authenticate the depositions taken on the examination and any document or certified copy thereof and have the same returned by registered or certified mail under cover duly closed and sealed up together with these presents addressed to the clerk of the United States District Court for the [district] District of [state], [address].

The petitioner's application is made under Section 59 of the Evidence Act, R.S.B.C. 1979, c.116, as amended, and Rule lO(l)(a) of the Rules of Court.

At the hearing of the petition will be read the affidavit of [U.S. counsel], a copy of which is served herewith.

The facts upon which this petition is based are as follows:

1. The letters rogatory were issued to the Supreme Court of British Columbia by the United States District Court on the ____ day of _____ , 19___ in the [state] Action.

2. The United States District Court is a court of competent jurisdiction in the [state] Action.

3. The United States District Court has the authority to order the taking of evidence outside its jurisdiction in the circumstances, pursuant to Rule 28(b) of the Federal Civil Judicial Procedure and Rules.

4. The other parties in the [state] Action received proper notice of the application to the United States District Court for the order for issuance of letters rogatory.

5. In the [state] Action, the complainant claims [set out a brief summary of the issues, showing how the respondent's evidence is relevant].

6. The respondent has knowledge of facts and matters and is in the possession or control of documents the examination about which and the production of which are relevant and necessary for the purpose of justice and for the due determination of the matters in question between the parties in the [state] Action. The respondent's testimony is intended for use at trial and that is the purpose of the examination.

7. The respondent is now outside the jurisdiction of the United States District Court and is resident in British Columbia.

8. The respondent will not voluntarily submit to the jurisdiction of the United States District Court and give testimony in [state].

9. [U.S. counsel], counsel for the petitioner in the [state] Action, is prepared to attend in Vancouver to conduct the examination of the respondent and to do so at the petitioner's expense.

10. The testimony of the respondent and the identification of the relevant documents in evidence are necessary for the proper prosecution of the [state] Action and will be used at the trial of the [state] Action.

[B.C. counsel]
Solicitor for the Petitioner

SCHEDULE A 1.

1. [List documents with as much detail as possible.]

No. [proceeding number]
Vancouver Registry

In the Supreme Court of British Columbia
Re: Section 59 of the Evidence Act, R.S.B.C. 1979, c.116
and

Re: Commission to Examine Witnesses and Compel Production of Documents Issued by the United States District Court for the [district] District of [state]

Between

[party obtaining letters rogatory],

petitioner,

and

[witness],

respondent.

AFFIDAVIT

I, [U.S. counsel], of [street address], Attorney at Law, MAKE OATH AND SAY AS FOLLOWS:

1. I am an attorney in the law firm of [firm name], counsel for the petitioner in a proceeding in the United States District Court for the [district] District of [state], No. [case number], under the style of proceeding [style of proceeding], and as such have personal knowledge of the facts deposed to in this affidavit, except where stated to be on information and belief, and where so stated I verily believe them to be true.

2. Now shown to me and marked as exhibit "A" to this affidavit is a true copy of the petition to be filed with the court in this proceeding. I have read the petition and the facts upon which it is stated to be based and, to the best of my knowledge, information and belief, those facts are true.

3. I make this affidavit in support of a petition to enforce letters rogatory to examine the respondent on commission in British Columbia and for no other or improper purpose.

SWORN BEFORE ME at the City of [location], in the State of [state], in the United States of America, this ____ day of _____, 19____

A Notary Public in and for the State of [state]

_____
[U.S. COUNSEL]

No. [proceeding number] Vancouver Registry

In the Supreme Court of British Columbia

Re: Section 59 of the Evidence Act, R.S.B.C. 1979, c116

and

Re: Commission to Examine Witnesses and Compel Production of Documents Issued by the United States District Court for the [district] District of [state]

Between

[party obtaining letters rogatory],

petitioner,

and

[witness],

respondent.

ORDER

BEFORE THE HONOURABLE MR./MADAM JUSTICE _____) _____ DAY THE _____ DAY OF_____, 19___

THE APPLICATION of the petitioner coming on for hearing at Vancouver on this date, and on hearing [petitioner's B.C. counsel], counsel for the petitioner, and [respondent's B.C. counsel], counsel for the respondent, and on reading the affidavit of [U.S. counsel], sworn _____, 19____;

THIS COURT ORDERS that the respondent be examined on commission before a commissioner in the manner and form requested by the letters rogatory made on the _____ day of _____, 19___ by the United States District Court for the [district] District of [state] (the "United States District Court"), in Proceeding No. [case number] under the style and proceeding of [style of proceeding].

REFER NOTICE TO

The Board of Governors having set May 15, 1995, as the mailing date for ballots on the referendum to eliminate state bar services, the May 1995 *Washington State Bar News* will be devoted entirely to that topic. Members are invited to send in their views, pro and con, by

THIS COURT FURTHER ORDERS that the respondent attend at the offices of [B.C. law firm; address] on _____, 19____ from the hour of 10:00 o'clock in the forenoon until 12:30 o'clock in the afternoon and from 2:00 in the afternoon to 4:00 o'clock in the afternoon and thereafter from day to day until the examinations are complete, or on such other dates and at such other times as the court may direct or the parties may agree.

THIS COURT FURTHER ORDERS that the respondent also produce at the examination all the documents in their possession or that of their employer and specified in schedule "A" to this order.

THIS COURT FURTHER ORDERS [name] official court reporter, or her designate, provided that person is an official court reporter in the province of British Columbia, Canada, be appointed commissioner before whom the evidence is to be taken.

THIS COURT FURTHER ORDERS that the attorneys or agents of any party present, including members of the [state] Bar, be permitted to examine the respondent in accordance with the Federal Civil Judicial Procedure and rules and to cross-examine the respondent.

AND THIS COURT FURTHER ORDERS that the evidence of the respondent be recorded verbatim by an official court reporter and any documents produced on the examination be marked for identification and the official court reporter authenticate the depositions taken on the examination and any document or certified copy thereof and have the same returned by registered or certified mail, under cover duly closed and sealed up together with these presents addressed to the clerk of the United States District Court for the [district] District of [state], [address].

BY THE COURT

DEPUTY DISTRICT REGISTRAR

APPROVED AS TO FORM:

_____
Counsel for the Petitioner

_____
Counsel for the Respondent

SCHEDULE A

1. [List documents with as much detail as possible].

ENDUM
MEMBERS

March 15, 1995. To make room for as many contributions as possible, please limit your comments to one page and, if possible, send them on a computer disk to: *Washington State Bar News*, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599.

International Arbitration & Mediation —Seattle as a Center for ADR?

by Christopher Kane

In 1994, I completed a certification course for international arbitrators in Los Angeles. The sponsor was the International Centers for Arbitration (ICA), founded in 1992 to promote and facilitate the out-of-court resolution of international commercial disputes.

ICA is affiliated with JAMS, the acronym for the Judicial Arbitration & Mediation Service, an alternative dispute resolution (ADR) service with offices in urban areas such as Seattle. JAMS has made its name in the domestic ADR field by attracting retired judges to arbitrate and mediate legal disputes. ICA's goal is to complement this success in the international arena, training arbitrators and administering arbitral proceedings, particularly in commercial centers where business lacks confidence in the even-handed rule of mercantile law.

International transactions normally include an arbitration agreement to insure confidentiality and avoid the risk of litigating claims in the foreign legal system of the other party. For foreigners involved in a dispute with an American customer or supplier, the prospect of burdensome discovery, uninformed juries, and punitive damages—all associated with American style litigation—can all be avoided by arbitration in a neutral forum.

Not to be confused with mandatory arbitration of minor disputes (in Washington, under $35,000 in money claims), commercial arbitration is strictly a creature of agreement. The parties can agree on whichever rules, procedures, and arbitrators make the most sense in the context of their business relationship. Thus, attention to the arbitration clause in the original transaction insures that the machinery for resolving disputes is tailor-made for the transaction and affected parties.

Too often, unfortunately, little attention is given to the drafting of the arbitration clause itself, at great cost to the parties when disputes arise and the parties are unable to agree on the time of day. At a minimum, the clause should encompass all conceivable disputes and provide for final and binding arbitration under specifically identified rules under the administration of an identified appointing authority. In addition, the clause should call out (1) the number of arbitrators (one or three), (2) the site of the hearings; (3) the language; and (4) the choice of procedural and substantive law.

A failure to think through these matters in advance can result in excessive delay and expenses. An arbitration concluded in 1992 between Pilkington and PPG Industries is a case in point. At dispute was whether, under a 1962 agreement licensing float glass technology to PPG, PPG had the right to license allegedly derivative float glass technology for the construction and operation of a float glass plant in the People's Republic of China. The arbitration clause in the licensing agreement merely required that all disputes arising under the license be arbitrated in London under English law.

After eight years of arbitral proceedings initiated in 1985 by Pilkington in London, Pilkington was reportedly awarded royalty fees and interest of £5 million ($7.5 million) and arbitration costs of £11 million ($16.5 million). And those costs represented only 80 percent of Pilkington's attorneys' fees and arbitral expenses. Assuming equal costs incurred by PPG, the parties incurred arbitration expenses more than seven times greater than the award itself.

While this may be an extreme example of arbitration run amok, the Pilkington-PPG case feeds complaints by multinationals that arbitration processes are slow, cumbersome, and expensive. Perhaps because the London Court of International Arbitration (LCIA) and the Paris-based International Chamber of Commerce (ICC) have a long history of administering international commercial arbitration, these institutions have come in for more than their share of this criticism.

The LCIA was founded in 1892, and it claims to be the oldest arbitral body in the world. Given London's prominence as a center of international trade and commerce, it is not surprising that many international agreements provide for dispute resolution by arbitration in London under the LCIA Rules. Founded in Paris in 1923, the ICC Court has handled more than 6,700 cases all over the world under the court's Rules of Conciliation and Arbitration.

Other well-known ADR bodies include the Arbitration Institute of the Stockholm Chamber of Commerce (a favored site for arbitrations involving the former Soviet Union) and the American Arbitration Association (AAA). Closer to Seattle is the British Columbia International Commercial Arbitration Centre (BCICAC), founded by the province in 1986 and located within Canada Place in Vancouver.

Both the BCICAC and the ICA recommend use of the Rules of the United Nations Commission on International Trade Law (UNCITRAL), adopted by the UN General Assembly in 1976. Unlike the LCIA and ICC Rules, the UNCITRAL Rules are not tied to a specific administering and appointing authority. The AAA recommends use of its own Commercial Arbitration Rules but will provide services under the UNCITRAL Rules upon request.

The UNCITRAL Rules were conceived as a universal arbitral procedure, intended as both acceptable and workable in different legal and political systems. They grant broad authority to the arbitral tribunal to conduct proceedings "as it considers appropriate," subject to the fundamental premise that parties be treated with equality and given the full opportu-

nity to present their respective cases. Well known arbitrations under the UNCITRAL Rules include the Iran-U.S. Claims Tribunal in The Hague.

With the exception of the AAA, all the mentioned arbitral bodies nominate arbitrators from a panel of trained international arbitrators unless the parties can agree on a choice. An arbitrator's fees are customarily set by each arbitrator within broad ranges and collected by the administrator. For example, each of the LCIA arbitrators' fees range from $900 to $3,000 per day for meetings and hearings plus $225 to $562 per hour. The ICC arbitrators' fees are set as a declining percentage of the sum in dispute. Arbitral courts and administering authorities also charge varying fees, usually a combination of set charges (depending on the services provided) plus a small percentage of the amount in dispute.

The background of the arbitrator(s) selected can greatly influence the cost and length of the arbitration process. For example, the tradition in common law countries, such as the UK, Canada and the U.S., is for the attorneys to conduct basic cross-examination of adverse witnesses. Arbitrators schooled in French and other civil-law systems are more likely to take over the examination of witnesses and prepare written summaries of the relevant testimonial and documentary evidence. While depositions of witnesses for discovery purposes are very rare in any arbitration, a demand for relevant documents is more likely to be honored by British and American arbitrators than by their Continental European colleagues.

Although arbitral proceedings are normally conducted on neutral ground, as opposed to the home office of one of the parties, it's important to choose a place with hospitable laws. U.S. federal law favors the arbitration of international commercial disputes. Federal courts routinely enforce arbitration clauses, enforce witness and document subpoenas, and arbitral awards. Similarly, British Columbia and other jurisdictions have adopted the key provisions of the 1985 UNCITRAL Model Law on International Arbitrations. Care should also be taken to choose a site reasonably convenient to the principals with direct air connections, good communications and other business amenities.

Another contributing factor to cost and delay is the general requirement that arbitrators issue reasoned decisions as part of arbitral awards. These commonly take the form of lengthy opinions detailing the evidence reviewed and reasoning applied on each of many points raised during a complex proceeding. In the case of three-arbitrator panels, this means that drafts of decisions are often circulated and recirculated among the members in reaching a consensus of opinion.

In an appropriate transaction, it may be in the parties' common interest to agree in advance to dispense with a reasoned opinion in favor of a bare award. The principal disadvantage of a bare award is the absence of any findings or other record upon which to challenge the award in a court of law. Also, the parties and their counsel have no assurance that the arbitrators have understood the facts and applicable law and the decision is unavailable as persuasive precedent for subsequent arbitrations involving similar issues. These factors may not be significant as a practical matter, however, as international arbitration awards can be overturned only in very limited circumstances by the 90 nations which have ratified the

New York Arbitration Agreement of 1958.

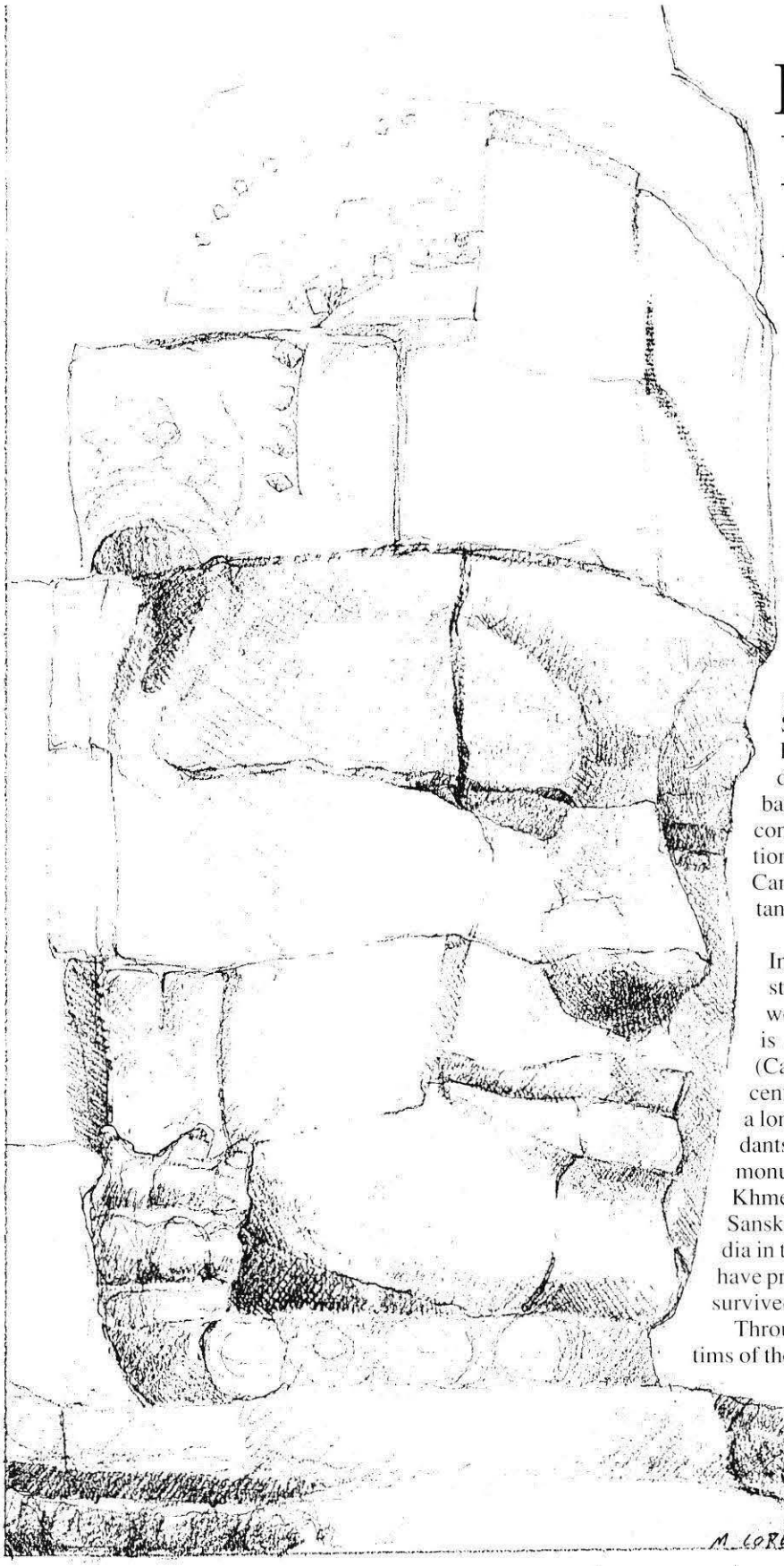
The parties to an international transaction can also adopt other measures to streamline the ADR process. Both ICA and BCICAC rules specify a single neutral arbitrator unless the parties agree otherwise. The BCICAC Guidelines reflect that awards should be issued within 60 days of the closing of the hearing. The ICA Expedited Arbitration procedures include a number of optional provisions to manage the arbitration and speed up the UNCITRAL timetable, thus preventing the possibility of a "runaway" process.

A provision requiring negotiation or mediation as a precondition to arbitration may occasionally be useful, e.g., where a continuation of the business relationship might be jeopardized by an adversarial process causing "loss of face" by one of the parties. If so, however, the parties should be able to agree to mediation after the dispute has arisen. Many commentators question the wisdom of including such a mandatory clause in the basic agreement, thereby binding the parties to a potentially useless exercise with attendant delays.

Despite the criticisms of the arbitration process to resolve international disputes, there appears to be no viable substitute. With the liberalization of international trade in goods and services promised by GATT and NAFTA agreements, the number and complexity of disputes to be arbitrated should keep pace with the expected growth in international transactions. The Northwest's dependence on international trade and strategic geographic position midway between London and Tokyo make Seattle a natural alternative to Vancouver as a center for arbitral proceedings.

The challenge will be to streamline the process to achieve the principal selling point of arbitration—the assurance that contracting parties will be able to obtain a final and binding resolution of their dispute without delay.

Christopher Kane *is a shareholder with Schwabe Williamson Ferguson & Burdell in Seattle.*



Democratic Reform and the Rule of Law in Cambodia

by **F. M. Lorenz**
Colonel, U.S. Marine Corps

After more than 20 years of war and isolation, the Kingdom of Cambodia is emerging from a difficult past to embrace democracy and to establish the rule of law. The elections of May 1993, supervised by the UN in its most ambitious peacekeeping project ever, put King Norodom Sihanouk back on the throne some 20 years after he abdicated. A new constitution makes the Kingdom a constitutional monarchy and provides the basic guarantees of personal rights and freedoms contained in the United Nations Universal Declaration of Human Rights. This article is an update on Cambodia and describes two U.S. programs of assistance in developing democracy and legal reform.

Cambodia is the smallest of the former French Indochinese states to which independence was restored in 1953. It is bounded by Thailand on the west, Laos on the north, and Vietnam on the east. It is a basically homogeneous nation, with Khmers (Cambodians) constituting approximately 85 percent of the total population. The Khmer people have a long and proud tradition; they are the direct descendants of the Angkor civilization that built the great monuments of Angkor Wat in the 12th century. The Khmer language is the closest surviving example of Sanskrit, introduced with Therava Buddhism from India in the sixth century. Common language and religion have provided a shared sense of national identity that has survived invasions and a turbulent history.

Throughout history, the Khmer people have been victims of their aggressive neighbors to the east and west, and modern history made them pawns in a larger conflict between China, the U.S., and the former Soviet Union. Between 1970 and 1974, under the leadership of Lon Nol, Cambodia aligned with the United States and fought the communist Khmer Rouge

guerrillas. As Southeast Asia fell under communist domination, the Lon Nol government collapsed, and the U.S. embassy was evacuated in April 1975.

The four-year period of rule by the Khmer Rouge was particularly devastating. More than one million of eight million Cambodians perished in perhaps the most brutal and thorough attempt to remodel society in modern history. Citizens were killed for speaking a foreign language, possessing western books, or even wearing glasses. It is estimated that 90 percent of the classical dancers were killed in an effort to purge a "corrupt" past. The practice of Buddhism was largely eliminated; the cities were emptied and the surviving population placed in the countryside to work on collective farms.

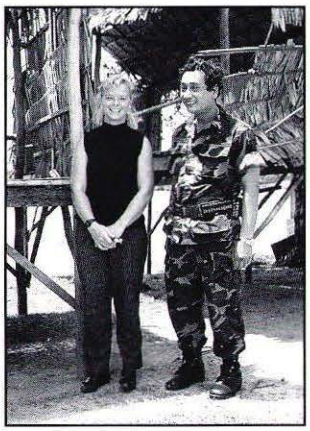
In 1979, the Khmer Rouge were forced from power by a Vietnamese invasion, and Cambodia reverted to a 12-year struggle between four factions, including the surviving remnants of the Khmer Rouge. It was not until October 1991 that changing world conditions made possible a comprehensive peace accord, and the Paris Agreement laid the foundation for UN supervised free elections. In 1992 and 1993, the United Nations Transitional Authority in Cambodia (UNTAC) conducted the largest and most expensive peacekeeping mission ever, culminating in elections where the royalist party (FUNCINPEC) achieved the greatest, although not majority, support. Today the government is controlled by a coalition of the royalist party and the Cambodian Peoples Party (CPP), successors to the Communist government of the last decade. Many problems still remain, but outside observers note that it is remarkable that a coalition government is functioning at all between these rivals who were, not long ago, battlefield enemies.

Despite their terrible reputation for brutality, the Khmer Rouge still control portions of the countryside. Although it is unlikely that they could regain power, they feed on the discontent of the local population that often views the national government as remote and corrupt. There are reports that they obtain support from Thailand, although this is officially denied by the Thai government. Over the years, the Khmer Rouge have become largely self-sustaining through illegal trade in timber, gemstones, and drugs. In July 1994, they took three western hostages, and in November 1994, it was confirmed that the hostages had been killed—possibly by a government mortar round—while they were being transported for ransom. Despite this incident, conditions today in Cambodia are reasonably stable, with the government embarking on a number of programs to establish democracy, promote tourism and develop a free market economy.

Cambodia has a civil-law-based legal system founded on years of French colonial rule. The people have borne the impact of successive authoritarian regimes and the massive destruction perpetrated by the Khmer Rouge. In 1974, there were about 400 lawyers and legal experts in Cambodia, but between 1975 and 1979, more than 80 percent were killed or died of starvation and disease. Almost all the law books were destroyed, and buildings that housed the courts and the law school were converted to other uses. The director of the Faculty of Law was among the 20,000 people known to have been tortured and executed at the notorious Tuol Sleng prison in Phnom Penh. At the end of the Khmer Rouge reign of terror, only about 10 law graduates were known to remain in the country.

As a result of deaths and departures, the country faced a severe shortage of lawyers, judges, and trained legal personnel that continues today. The situation did not improve during the Vietnamese occupation in the 1980s, when the legal system consisted of a Soviet style "unitary" system under the leadership of the ruling party. Cambodia has neither a tradition of an independent judiciary nor experience with "checks and balances," since the concept of separation of powers was never developed before the new constitution.

The Cambodian constitution was adopted by the constituent assembly on Sept. 21, 1993, some four months after the elections. The King is the national symbol of unity and eternity in this constitutional monarchy. The preamble of the constitution states the peoples' determination to reconstruct the nation, "based on the System of Liberal Democracy and Pluralism." The constitution guarantees fundamental rights to life, personal freedoms and security, and it eliminates capital punishment. Chapter IX provides for an independent judiciary, with a Supreme Court and a Council of magistrates chaired by the King. The laws of Cambodia are still incomplete, with many subjects, both civil and criminal, not yet covered by laws passed by the national assembly. The criminal code is still the "UNTAC Code," passed in September 1992, and designed by the UN to provide transitional criminal laws until a penal code is adopted by the national assembly.



U.S. Navy Lt. ***Linda Young*** *with Lt. Gen.* ***Sao Sok****, Chief Prosecutor, Royal Cambodian Armed Forces.*

Ministry of Justice, Phnom Penh, built by the French in 1927.

The present Cambodian judicial system suffers from massive needs at all levels. There is a vast shortage of skilled and experienced legal practitioners, material resources, and the lack of a system of laws to meet the needs of a democratizing society. In the provinces, where the majority of the population have the greatest need for a judicial system, the situation is grave. During the past year, the government of Cambodia and the Ministry of Justice have gone to outside sources for help in judicial reform and development.

The International Human Rights Law Group ("Law Group") has headquarters in Washington D.C. and is affiliated with the Geneva-based International Commission of Jurists. The Law Group's mission is to assist locally based advocates in emerging democracies to promote and

protect human rights in their own countries. It has experience with the human-rights movement in Cambodia, as well as access to an international pool of pro bono lawyers. In September 1993, the Law Group was asked to assist with a training project for defenders in the first significant effort to introduce a system of trial advocacy in Cambodia. The Defenders Project began operations in January 1994 with the arrival of Francis J. James, project coordinator and former U.S. Federal Defender. Twenty-five of 250 applicants were selected as advocate trainees, and they are currently undergoing an intensive, clinically based nine-month training program. The Law Group obtains the part-time assistance of a number of pro bono attorneys from the U.S., and two full-time project trainers, Joyce Bang, formerly an Assistant U.S. Attorney, and Karen Tse.

The Law Group has applied for funding for an ambitious program, the Cambodian Provincial Court Reform Project. Approval is anticipated by the U.S. Agency for International Development (USAID) and will be coordinated with the Cambodian Ministry of Justice. The program is expected to be in operation in early 1995, after the selection of four Project Centers in the outlying provinces. Each of these will be staffed with resident experts, mostly recruited from the U.S., who will remain in Cambodia for about 10 months. Each resident expert will be aided by two "judicial assistants." Their primary responsibility will be to provide advice and support to local courts and legal staff. The assistance will include training for judges, prosecutors and court staff, as well as overseeing material support necessary to improve court functioning. The trainers will be primarily visiting judges, prosecutors and jurists recruited through the Law Group's international network and partner organizations. Offers of collaboration have been received from the American Bar Association, senior judges of the Judicial Conference of the United States, judicial training experts and a number of law schools around the world.

. . . courtrooms were used as storage facilities and intentionally desecrated to demonstrate a break from the colonial and reactionary past. Since that time, little has been done to remove the scars of the past . . . Improvement of court facilities will help instill public confidence in the court as a fair and honorable place where justice can be found.

Most court buildings in Cambodia are in various stages of disrepair, decay and neglect. Under the Khmer Rouge, courtrooms were used as storage facilities and intentionally desecrated to demonstrate a break from the colonial and reactionary past. Since that time, little has been done to remove the scars of the past, and structural repairs are needed. The project will provide funds for modest renovation and chairs, tables, filing cabinets and basic supplies. There is a program underway to provide computers for the filing clerks with Khmer software, now commercially available but rare in the provinces. Improvement of court facilities will help instill public confidence in the court as a fair and honorable place where justice can be found.

The military justice system in Cambodia suffers from the same problems as the civilian system. There are both a military court and a military prison in Phnom Penh, but there is no code of military justice. In the U.S., the jurisdiction of military courts extends only to military personnel, and it includes both military and nonmilitary offenses. For example, a U.S. serviceman can be tried by a military court for committing the offense of rape against a civilian victim in the civilian community. In Cambodia, under the current system, military tribunals have jurisdiction only over "military offenses," those offenses "which concern discipline within the armed forces or harm to military property." (Article 11, UNTAC Code). "Ordinary offenses" for military personnel are to be tried in the civilian courts, but that term is not further defined. Unlike in the U.S., the jurisdiction of military courts can extend to civilians. In a recent visit to the military prison in Phnom Penh, a number of civilians were observed who had run afoul of the Cambodian military. But the Cambodian army is becoming increasingly open to outside observers and human-rights advocates, and it is actively seeking U.S. assistance to develop a system that meets international standards.

The International Military Education and Training (IMET) Program is funded

by the U.S. Department of State and administered by the Department of Defense. Aimed at friendly developing countries, it permits foreign military personnel to attend U.S. military schools and the U.S. military to provide training overseas with mobile education and training teams. In 1991, the scope and purposes of the IMET program were expanded to include funding for civilian officials who work with foreign defense establishments. Training in basic democratic principles, civilian control of the military, military justice systems, and human rights is provided. The Navy International Programs Office and the Naval Justice School have been assigned to develop programs and coordinate the efforts of all participating services.

As part of IMET, the Naval Justice School devised the multi-phased Executive Program for Human Rights and Military Justice. During Phase I, a survey team visits the host nation, and in coordination with the U.S. Embassy, interviews civilian and military leaders who are familiar with the nation's criminal-justice system. The team also interviews members of the press, international organizations such as the International Committee of the Red Cross, and local relief and human-rights groups. In Phase II, a group of four to eight representatives from the host country travel to the U.S. The delegation consists of selected civilian and military leaders who will be influential in the development of the host country's legal system. They visit U.S. civilian and military courts and related facilities to see U.S. criminal and rights protection systems in action. They also help develop, review and approve the proposed Phase III curriculum for their country. In Phase III, a teaching team of four military attorneys, selected from all the services, returns to the country and presents a 40-hour seminar to 40 to 60 military and civilian leaders. Course content varies in level of sophistication, depending on the country and its needs, but it generally includes the basics of military justice, human rights and civilian control of the military. Additional subjects can be included, such as the law of armed conflict, military-press relations, government ethics, and environmental law.

The current level of U.S. assistance to Cambodia is "nonlethal" aid that promotes development and democratic reforms. About 40 U.S. military personnel are currently stationed in Cambodia as part of a "train the trainers" program in de-mining and mine awareness. The presence of large numbers of mines, left over from previous conflict, is one of the most significant problems facing the country today. Current U.S. military aid is strictly limited to humanitarian and legal reform; more extensive assistance is tied to the government's progress in reforming the army and its top-heavy command structure. In December 1994, co-defense minister Tea Chamrath announced that the army would be reduced in size, made more efficient, and the number of generals would be dramatically reduced. The focus of the army would shift to rural development needs, in the hopes of persuading the peasants to change their loyalty from the Khmer Rouge to the elected government.

In September 1994, a team of U.S. military attorneys visited Cambodia as part of the IMET program to conduct a Phase I survey. The delegation consisted of a Marine colonel from Camp Pendleton, California, an Air Force major and a Navy lieutenant, both from the International Training Branch at Newport, R.I. Meetings were held with U.S. Ambassador Howard Twining and his staff to coordinate efforts. Additional meetings were held with the co-ministers of defense, the minister of justice, the head of the military court, the chief judge of the Court of Appeals, and representatives of the press and human-rights groups. All agreed that there is a tremendous need for assistance, both in the requirement for basic legal training and in the development of a system of military justice. There was general agreement that the IMET program would be a valuable first step in that direction.

. . . there is a tremendous need for assistance, both in the requirement for basic legal training and in the development of a system of military justice. . . in the areas of democratic reform, humanitarian aid and the restoration of the rule of law.

IMET Phase II was held at Marine Corps Base Camp Pendleton, California during the last week of November 1994. This was the first time that the Marine Corps served as host to a Phase II program. Five senior Cambodian officials attended; the senior member was Lt. Gen. Tuon Chey, now serving as governor of Siem Riep province, a strategically important area that contains the famed ruins of Angkor Wat. The delegation also included Maj. Gen. Ney Thol, the Chairman of the Military Court, Maj. Gen. Sao Sok, the Chief Prosecutor, and Dr. Phat Mau, legal advisor to the Minister of Justice. Mau is a Cambodian American who has lived in New York City, is a member of the New York Bar, and now has the responsibility for drafting most of the new laws for the Kingdom.

During Phase II, plans were made to tailor the content of the course to the needs of the Cambodian legal system and the Royal Cambodian Armed Forces. The selection of the attendees for the seminar will be critical, and the U.S. Embassy staff will assist in the process, making sure that the civilian and military leaders who attend are in influential positions and will benefit the most from the seminar. The IMET Executive Seminar, Phase III, is to be held in Phnom Penh in the spring of 1995. The IMET team will bring the necessary equipment for simultaneous translation, including a portable power source, since electric service in the city of Phnom Penh is still unreliable. Although the goals of IMET Phase III are modest, we hope it will lead to further assistance and the development of an effective system of military justice.

There remains a great need for assistance in Cambodia today in the areas of democratic reform, humanitarian aid and the restoration of the rule of law. The turnout for the May 1993 elections was nearly 90 percent, despite threats from the Khmer Rouge, indicating a popular demand for freedom that is rarely seen in "first-world" countries. In Cambodia, there is an opportunity to make a real contribution.

For more information on the Provincial Court Reform Project, write to the International Human Rights Law Group, (Attn: Peter Rosenblum), 1601 Connecticut Ave. NW, Suite 700, WA D.C. 20009. For information on the IMET program, write Col. F.M. Lorenz USMC, Staff Judge Advocate, I Marine Expeditionary Force, Camp Pendleton, CA 92055-5300.

F.M. Lorenz *is a member of the WSBA and a Staff Judge Advocate with the Marine Expeditionary Force at Camp Pendleton, California. His reports on United Nations efforts to restore the Somalia legal system appear in the* Bar News, *March 1993, page 5; April 1993, page 5; May 1993, page 5; June 1993, page 5; and February 1994, page 15.*

DESTRESSORS

SOME SIGNS & SYMPTOMS OF STRESS

Physical symptoms:
- pounding heart
- tightened stomach
- neck and lower back pain
- headaches
- dryness of mouth and throat
- insomnia
- fatigue
- disruption of digestion

Behavioral symptoms:
- inability to sit still/concentrate
- increased smoking/drinking
- loss/increase of appetite
- proneness to accidents

Personality changes:
- emotional tension and alertness
- general irritability
- depression
- hyperexcitation

Impact on professional performance:
- procrastination
- file stagnation
- failure to respond to messages
- excuse-making
- lowered productivity
- fewer billable hours

Experience:
- isolation
- deterioration of communication
- lowered self-esteem

METHODS TO INCREASE THE CAPACITY TO TOLERATE STRESS *

Physical:
- eat a proper diet
- get enough rest
- take regular exercise
- eliminate high-risk behavior (smoking, excess alcohol, missed meals, tranquilizers, etc.)
- use systematic relaxation techniques
- meditate

Social:
- seek out those who support you unconditionally
- share your pain with another

Mental:
- take time to assimilate what is going on with you
- make what you enjoy a priority in your life
- get clear about your goals, values and priorities

Stress is big news: on TV, in the dailies, and in the *Bar News* as well. ["What Lawyers Can Do About Stress," by Barbara Harper and Donna L. Spilis, December 1994, page 35].

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Is stress getting you down?

Take a look at the two tables above.

Are the "signs and symptoms" familiar? Give some of the "methods" in the other table a try.

* Want to talk about it? Call the Lawyers' Assistance Program, (206) 727-8268.

A Trip

by **Kerry Stevens**

My first impression was that I was watching a living example of a constitutional-law bar exam question. There were lots of issues. Should certain evidence be suppressed as a result of the prosecutor's failure to disclose important documents? Should the confession of the accused that had been obtained without his first being provided access to counsel be admitted? Had the defense been denied effective cross-examination of the witnesses because of the evidence that had been withheld? It was an intriguing set of facts and issues. Instead of this being an academic exercise, I was watching a live session of a Diplock court proceeding. No, I wasn't in Kansas anymore. This was Northern Ireland, and although the legal arguments and some of the principles being argued were familiar, there was a lot that was peculiar. The first reminder that I was on foreign turf came when I entered the courthouse. The ubiquitous soldiers with machine guns were stationed at the turnstile entrance I had to pass through, but having been in Northern Ireland for a week already, I barely took notice. After entering the first door I was required to enter either the "female entrance" or "male entrance." I knew that by stepping through the door I was subject to being frisked or searched by a female police officer. Fortunately, I must not have appeared to be the suspicious type, as I passed through with only a nod of the head.

I found the courtroom where the hearing concerning the "Ballymurphy Seven" was scheduled to commence at 9:30, and I took a seat in what appeared to be the spectator section of the courtroom. It wasn't long before I was directed to a seat on the side, in what I had thought was the jury box. This being a Diplock court, the defendants in this case had no right to a trial by jury.

The layout of the courtroom was quite peculiar to an American observer. The first rows were occupied by the barristers, distinguished by their absurd wigs and academic-looking gowns. The barristers' role in the proceeding was to make the argument in court. The solicitors, who did all of the background work,

TO A DIPLOCK COURT

were seated behind the barristers; they were there as a resource to the barristers. In the very back of the courtroom, where it was doubtful that they could hear a word being said, sat the three defendants in the case. Each defendant, and the Crown, had a barrister and a solicitor representing their interests. Before the arguments commenced, there was a two-and-a-half-hour delay that no one could explain. Perhaps it had something to do with the fact that besides me, another 10 lawyers from the United States were present to observe the proceedings. We had all been required to sign a list which was provided to the judge before the proceedings began. The judge had the right to have any of us excluded should he choose to do so. Instead of exercising that option, I believe that he merely tried to outwait us. After two hours, one of the bailiffs encouraged us to observe the proceedings in another courtroom, but most of us declined. The judge came into the courtroom just after noon, at which time the other lawyers present had been scheduled to be elsewhere. After hearing arguments of the defense, he recessed for lunch. Although our presence was never acknowledged, we were a bit conspicuous, as no other observers were present except one member of each of the defendant's families.

We were intrigued by the proceedings at that point, and most of us returned to see how the Crown was going to refute the points made by the defense. And indeed, under grueling questioning from the bench, the Crown barrister, who was as cool a character as I have ever seen, finally began to squirm a bit. We all waited with bated breath to see how the court would rule, but the judge recessed for the day with the request that the Crown barrister prepare to answer a question the following day. I think he correctly surmised that by the next day the Americans would all be off on other pursuits.

I was dismayed to learn later that the case had not been dismissed, despite the court's assessment that a fair trial was no longer possible because the testimony of the crown witnesses had occurred months earlier, precluding effective defense cross-examination using evidence produced in documents that came to light after the Crown had closed its case.

Every American lawyer remembers that first year in law school when most of the case law seems to have been dated in the 1600s and written by some British lord. Fifteen years later, I still remember Lord Blackstone and the keg of flour that fell on someone's head, giving rise to the principle of res ipsa loquitur. It was this tie that our legal system has to English jurisprudence that alarmed me when I learned of the Diplock courts in Northern Ireland.

Under the auspices of the British crown, those accused of crimes against the state are subjected to a legal process that denies them virtually all the rights that we accord American defendants. People can be detained and interrogated without probable cause, or an arrest warrant, and without access to a lawyer, for up to 72 hours. After that, they can be detained an additional four days and interrogated throughout that period. Suffice it to say that many confessions are signed under these circumstances and are later retracted. Silence in the face of the interrogation can be used against the accused as an inference of guilt.

One of the Ballymurphy Seven defendants had admitted to every single thing the interrogator accused him of, although he later claimed to have had absolutely no knowledge of many of the things of which he was accused. After the week in the interrogation barracks, the accused can then be remanded to jail for a seemingly indefinite period. The Ballymurphy Seven, who were between 17 and 20 years of age at the time of their arrest, had spent more than three years in jail at the time that I attended the hearing. No bail was granted, nor is it expected to be granted. When the matter eventually gets to trial, there is no right to a jury. A single judge, appointed by the Crown, sits as sole trier of fact of the men and women who are politically committed to ousting the British from Ireland. The judge comes into court in an orange robe, with orange being the color that symbolizes everything the nationalists oppose.

The crown witnesses are identified as "Soldier A," Soldier B," and so on. They often testify from behind a screen. The accused does not know who has testified against him. In a perfect world, perhaps this abrogation of rights may not matter. If those who were arrested were guilty, and interrogation techniques resulted only in the truth's being told, and if the Crown witnesses testified truthfully, and if the judges were all truly impartial, then, perhaps, we could laud Britain for having developed a system which is effective. Justice Felix Frankfurter sums up my concerns about these issues in his opinion in *Davis v. United States*, 328 U.S. 582, 66 S. Ct. 1256, (1946), when he states: "History bears testimony that by such disregard are the rights of liberty extinguished, heedlessly, at first, then stealthily, then brazenly at the end."

I still remember Lord Blackstone and the keg of flour that fell on someone's head, giving rise to the principle of res ipsa loquitur. It was this tie that our legal system has to English jurisprudence that alarmed me when I learned of the Diplock courts in Northern Ireland.

The "troubles" in Northern Ireland are the result of a lengthy history of circumstances, all beyond the scope of this article. What troubles me is the precedent that is being set across the seas. To quote a well known maxim, "The price of freedom is eternal vigilance." I believe that it is part of our responsibility as lawyers to keep watch on the legal processes around us and work to protect those principles that we learned about, not just because we were able to pass a bar exam, but because we believe in them.

Kerry Stevens *practices law in Port Orchard.*

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

Olympia, January 13-14, 1995

Present: The President and Board of Governors. *Also present:* Thomas A. Campbell (Washington Association of Criminal Defense Lawyers); Mary Jo Diaz (Government Lawyers Bar Association); Judge Mary F. Gallagher Dilley (Administrative Law Judges Association, Friday); Susan Edison (King County Young Lawyers Division); Judge Judith Eiler (South King County Bar Association); Mark O. Erickson (Washington State Association of Municipal Lawyers); Judge Edward Fleischer (Court of Appeals); Zanetta Fontes (King County Bar Association); Dennis P. Harwick (WSBA Executive Director): Lucy Isaki (Legal Foundation of Washington); Jim Kaufman (Washington Association of Prosecuting Attorneys); Nancy Krier (Washington Women Lawyers); Tom Miller (WSBA Human Resources); Bill Phillips (Washington Defense Trial Lawyers); Narda Pierce (Attorney General's Office); Judge Janice Shave (Administrative Law Judges Association, Saturday); Judge Evan Sperline (Superior Court Judges Association); Bradford Steiner (WSBA Young Lawyers Division); Lindsay T. Thompson (*Bar News* editor); Gregory Tripp (WSBA General Practice Section); and Robert Welden (WSBA General Counsel).

Of Course, If This Passes There'll Be No More Money to Pay for Their Next Referendum: The president told the board a referendum of the membership will have to be held over a proposal to cut off use of WSBA licensing fees to pay for any Bar functions. Petitions circulated over much of 1994 by the late gadfly Alva Long and picked up last fall by his *soi-disant* heirs generated enough signatures to validate the proposition. The president called for a vigorous debate on the merits of the referendum among WSBA members.

In his view, there aren't any. If it passes, he said, there'll be no money for anything to assist and improve the professionalism and education of lawyers; all the WSBA sections will be eliminated; all the WSBA standing committees will be terminated, removing more than a thousand lawyers from participation in the governance of the bar; there'll be no one in Olympia to lobby against the daft schemes—like mandatory pro bono—the Legislature and state agencies want to impose on lawyers; higher B&O taxes, sales taxes on legal services, and bonding requirements for lawyers. There won't be any money to fund efforts to eliminate bias and discrimination in the legal system, or to protect the independence of the judiciary from the almost annual assaults of the Legislature.

"This referendum is contrary to GR 12," the president told the board. "It seeks to repeal the Supreme Court rule that defines the purposes of the Bar Association. It's wholly negative: for all their talk of the need for a voluntary bar to replace the WSBA, they don't propose the creation of one. They just want to tear down this one."

"Experience around the country shows statewide voluntary bar associations are less effective than unified bars," Gould

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continued. He called on members on both sides of the issue to debate it thoroughly, and asked the board to set a date for the referendum ballots to go out.

Governors Peter Ehrlichman, Ron Perey and Patricia Williams were appointed by the board to write the ballot, as is required by the bylaws. After some discussion, the board decided ballots will go out May 15, 1995, the spring date chosen to give plenty of time for the subject to be debated and covered by the legal press at the state and county levels.

Our Hats Are in the Ring: The board's presidential search committee reported on its interviews with three lawyers who want to be WSBA president in 1995-96. The job rotates around the state, and this time it's eastern Washington's turn.

The contenders are Jim Danielson of Wenatchee, Ed Shea of Pasco and John Schultz of Kennewick. The committee told the board all three are eminently qualified; the board decided to ask the three to come to the February meeting in Tacoma, so all the governors can meet and talk with them before making a selection. No swimsuit competition, though talent presentations will be allowed as long as they don't involve fiery batons or animals likely to make a big mess.

Newt Blair Unveils the Revolution (Latest Draft): Governance Task Force co-chair Wayne Blair brought the board the latest draft of its report, which is not yet ready for final approval but is gonna be one of these days . . . Blair told the board the Task Force's preferred Road to Utopia is the creation of a 114-member House of Delegates to run the WSBA; failing that, they want to make the board of governors bigger.

"The House of Delegates will be bigger, and more expensive, and less efficient making decisions," Blair said, but will satisfy demands for a more diverse governing class. "And those are its good points," a governor quipped. Another remarked, "This is where you try to cut off your witness."

Since the draft that was circulated is not final, and since nothing will be done with the final version until after the referendum is resolved, we'll get back to it in a few months.

Ditto the Discipline Task Force Report: The WSBA and the Supreme Court released their joint study of reform of the lawyer discipline system in Washington. With a report of several hundred pages and a 47-page executive summary, this report is heavy reading. The board will take up what to do about it in February, but until the referendum is resolved nothing of significance will happen, which delay will give me time to read it and explain it in a future *Bar News*.

Wrap-up in Olympia: The board and liaisons hopped a state shuttle bus for a trip to the Temple of Justice and the annual meeting with the Supreme Court. Members of the board reported to the court on issues before the Bar Association, including the coming referendum, the coming report of the Task Force on WSBA Governance, and the just-released report of the WSBA-Supreme Court task force on lawyer discipline. After the meeting the board and liaisons lunched with the Thurston County Bar; after lunch they heard reports from the presidents of the Thurston County, Government Lawyers and Capitol Chapter of Washington Women Lawyers bar associations.

The board approved a resolution designating March 1995 as Lawyer Professionalism Month for the second year. The

president told the board he appointed Robert Zagelow of Walla Walla co-chair of a WSBA-King County Task Force to advise the Supreme Court on making changes to the voters' pamphlets for judicial races. The board appointed Brad Steiner, WSBA Young Lawyers Division president, to the WSBA Young Lawyer seat in the state's ABA delegation. He filled the seat held by Paula Boggs, who was appointed to the ABA State Bar Delegate position vacated by Llewellyn Pritchard.

In other appointments, the board reappointed Jim Doerty of Seattle to a full year term on the Supreme Court's JUVIS User Advisory Committee, expiring February 29, 1996. To fill the seat on the WSBA Character & Fitness Committee vacated by Mary Beth Nethercutt, the board appointed Gary Libey of Colfax; that term ends September 30, 1997. At the request of the chair of the CLE Board, the board agreed to ask the Supreme Court to replace Craig Schauerman on grounds of insufficient attendance.

The board also approved some changes to the operating policies of the WSBA Judicial Recommendations Committee, and deferred action on others. Diane de Ryss and Cathy Blinka gave the board a report on the operations of WSBA's CLE department and the CLE Board which regulates all CLE activity in Washington.

A resolution calling on the Legislature and Congress to continue funding legal services for the poor was approved. John Purbaugh and Lucy Isaki told the board that legislators in D.C. and Olympia are talking about completely defunding legal services.

The board heard a lengthy report from WSBA Legislative Committee chair Pat Aylward and others on the committee's review of bills of interest to the bar. Most of the bills discussed are still under consideration by the committee and so required no action by the board.

Members of the Washington Statute Law Commission arrived in high dudgeon, preceded by a blast of letters and calls to the bar association complaining that their bill to create a Unified Real Property Security Act was NOT WEIRD. In this space last month, it was reported by WSBA legislative liaison John Fattorini that some people around Olympia do think it's a weird bill. The WSBA Real Property, Probate & Trust Section hasn't opined on the Question of Weirdness yet, but Ellen Dial appeared for its executive committee to say they oppose the bill, which would combine the three separate foreclosure laws on the books into one. Dial said most people think the goal is laudable but the bill as drafted represents a major policy shift in favor of creditors.

Members of the Commission were as intent on hissing this reporter for having the temerity to report, accurately, what was said at the last meeting, and on sulking over the perceived slight of their professionalism as drafters, as they were about talking about the bill. One asked the board to tell the *Bar News* editor to report that the proposal "is a meritorious, professionally drafted bill, which has support in the bar." The president and board stroked all the ruffled feathers in a very statespersonlike way, and voted to take no position on the matter as it now stands.

Next meeting: February 17-18, 1995 in Tacoma.

NOTICE TO MEMBERS IN RE REFERENDUM

The Board of Governors having set May 15, 1995, as the mailing date for ballots on the referendum to eliminate state bar services, the May 1995 *Washington State Bar News* will be devoted entirely to that topic. Members are invited to send in their views, pro and con, by March 15, 1995. To make room for as many contributions as possible, please limit your comments to one page and, if possible, send them on a computer disc to: *Washington State Bar News*, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599.

NOTICE OF BOARD OF GOVERNORS ELECTION

Four positions on the WSBA Board will be up for election this year, i.e., the governors representing the Second, Fourth, Seventh, and Ninth Congressional Districts. Those positions are currently held by Vickie K. Norris (Second District), West H. Campbell (Fourth District), Jan Eric Peterson (Seventh District), and James V. Handmacher (Ninth District).

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

Nominating petitions are available from Jo Morehouse at the WSBA Office, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599; (206) 727-8244. Petitions must be received by the executive director of the WSBA by 5 p.m. on March 1, 1995. The Board of Governors determines the official dates of the election. Ballots are usually mailed around the first of June and counted approximately the first of July.

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

Notices of Interest to WSBA Members

WSBA Nondisciplinary Notices

Interim suspension: Spokane lawyer **Howard M. Nichols** (WSBA #8718, admitted 1978) was ordered suspended from the practice of law pursuant to RLD 3.1 by order of the Supreme Court of Washington entered November 29, 1994. This is an interim suspension pending the outcome of disciplinary proceedings.

Interim suspension is pursuant to RLD Title 3 and is not a disciplinary sanction.

WSBA Disciplinary Notices

Suspended: Seattle lawyer **Richard Brent Daniel** (WSBA #12309, admitted 1982) has been ordered suspended for a period of eight months, retroactive to March 16, 1994, and placed on two years' probation effective November 23, 1994, pursuant to order of the Supreme Court of Washington entered November 23, 1994. The discipline is pursuant to RLD 12.6 and discipline imposed by the Supreme Court of the State of California. Daniel shall also provide the Washington Supreme Court with proof of compliance with the California Supreme Court provision that he take and pass the California Professional Responsibility Examination.

Public Notices

Attorney General's Office Opinions Released

The Attorney General's Office has issued the following opinions:

1. Counties - Cities - City/County Charters-Freeholders - Incorporation - Annexation - Options available to freeholders elected to present city-county charters:

In response to a query by Senator Bob McCaslin, the Attorney General's office has held, in summary, (1) a board of freeholders elected pursuant to article 11, section 6 of the state constitution to draft and present a proposed city/county charter may not instead draft a charter relating to the county only: (2) the state constitution requires that a city/county charter specifically provide for the legal status of cities within the new government's territory, and grants broad discretion to the voters defining which, if any, of the powers and duties of existing cities would continue or change after the adoption of a city/county charter; (3) cities remaining in existence in a city/county operating under a city/county charter retain authority to annex territory, only if and only to the extent that the charter grants such authority; (4) all of the voters of a county may vote on the adoption of a proposed city/county charter, including those residing within any incorporated cities in the county; and (5) a board of freeholders

lacks authority to use public funds or property to advocate or promote adoption of a city/county charter after it has been drafted and submitted pursuant to the constitution; however, the acts of soliciting and recording public opinion, drafting, debating, deliberating, selecting options, and submitting a charter to the county are all specifically implied by the freeholders' constitutional role and do not constitute an unlawful use of public property. Cite as AGO 1994 No. 20, November 17, 1994. Jeffrey T. Even, Assistant Attorney General, is author of the opinion.

2. Fish - Licenses - Department of Fish & Wildlife - Interpretation of "having designated" for purposes of applying for a limited entry crab fishing license:

In response to a question posed by Senator Sid Snyder and Representative Richard King, the Attorney General's office held that Section 2(2), chapter 260, Laws of 1994, creating a new limited-entry Dungeness crab-coastal fisheries license, effective January 1, 1995, requires that the vessel which meets the historical criteria outlined in chapter 260 be the same vessel designated on the 1994 qualifying license at the time the 1995 license is sought. Cite as AGO 1994 No. 21, November 23, 1994. No author is listed.

3. Firearms - Ammunition - Licensing - Necessity to obtain license to sell firearms and ammunition:

In response to a question by Representative Clyde Ballard, the Attorney General's office has held (1) the employees of a firearms dealer are required to undergo fingerprinting and a background check before they can sell firearms, in addition to the requirement that they be eligible to possess a firearm and obtain a concealed weapons permit: (2) firearms dealers who permit employees who do not meet the qualifications set forth in RCW 9.41.10(5)(b) to sell firearms are subject to license revocation as well as to possible criminal penalties as outlined in RCW 9.41.810; (3) an employee of a firearms dealer does not have to obtain his or her own dealer's license in order to sell firearms if the employee does not own, control or profit from the business and otherwise meets the requirements contained in RCW 9.41.110 for an employee of a dealer; (4) a person who is engaged in the business of selling ammunition in the state of Washington, but is not engaged in the business of manufacturing or importing ammunition or of selling firearms, does not have to obtain a state license, nor are the employees of such a person subject to a licensing requirement. Cite as AGO 1994 No. 22, December 13, 1994. No author is listed.

4. Court Reporters - Court Costs - Counties - County Treasurers - Retention of costs recovered from litigants for preparing transcripts of court proceedings:

In response to a question by William Hawkins, Island County Prosecuting Attorney, the Attorney General's office has given the following opinion: (1) Official court reporters are entitled to retain, as compensation in addition to the salary provided in RCW 2.32.210, any fees earned from transcribing the records of court proceedings; (2) a county may not lawfully reduce an official reporter's salary by the amount of the transcription fees collected by the reporter; (3) a superior court clerk may not retain fees collected under RCW 2.32.240 for transcription services; such fees are to be deposited in the county treasury; (4) persons employed to electronically record superior court proceedings pursuant to Civil Rule 80(b) may or may not be entitled to retain fees paid for transcription services; this is a term of employment to be determined by the county employing the recorder; (5) the county, not the state, is responsible for paying necessary transcription or tape copying costs for superior court proceedings involving indigent criminal defendants. Cite as AGO 1994 No. 23, December 14, 1994. Adrienne E. Smith, Assistant Attorney General, is author of the opinion.

Evergreen Legal Services Board Meetings Announced

1995 quarterly meetings of the Board of Directors of Evergreen Legal Services, a 501(c)(3) not-for-profit organization which provides civil legal services to eligible low-income clients, will be held on the following dates: February 25, 1995; April 29, 1995; July 15, 1995; October 28, 1995.

These public meetings commence at 9 a.m. While they are usually held in the vicinity of SeaTac Airport for cost economy reasons, and to accommodate board member travel, specific meeting sights may vary from meeting to meeting based on space availability or other program purposes. All meetings are open, except that limited portions may be closed, pursuant to a vote of a majority of the board of directors, to hold an executive session. In such sessions the board reviews, considers, and, in some cases, votes on matters related to: (1) litigation to which the program is or may become a party; (2) internal personnel, operational, investigative or sensitive labor relations

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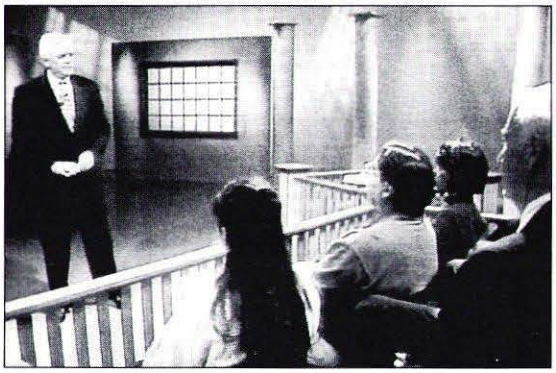

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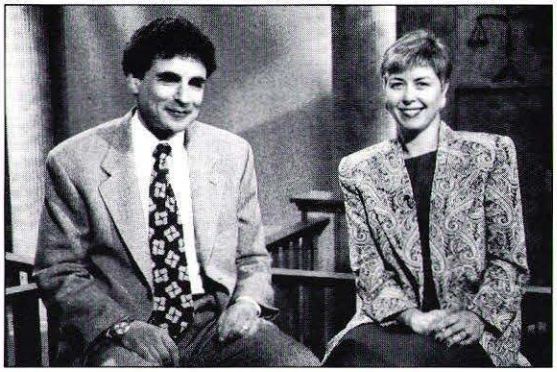

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matters. Any such closed sessions will be as authorized by pertinent laws and regulations and will be duly noted, in summary form, in open session and corresponding minutes. Closed sessions will also be formally certified by the program's director or deputy director/general counsel as authorized. A copy of the certification will be maintained for public inspection at the program's Central Support Office located at 101 Yesler Way, Suite 300, Seattle, WA 98104, and will be otherwise available upon request.

For specific meeting site information, please call Bev Miller, (206) 464-5933 or (800) 542-0794.

Awards

Law Librarians: West Publishing Corporation is seeking nominations for its 1995 Excellence in Private, Academic and Government Law Librarianship Awards. The awards, which may include a cash grant, honor librarians who excel in organizing, managing and providing access to legal and factual information. Nominations should include the nominee's name, title, institution, years of service as a law librarian, accomplishments and activities relating to the selection criteria, supporting documentation, other considerations justifying grant of the award, and the name and address of the person submitting the nomination. Nominations will be kept confidential. The deadline is March 1, 1995. For more information, write the West Excellence in Law Librarianship Awards, 620 Opperman Drive, Eagan, MN 55123.

Government and Public-sector Lawyers: The American Bar Association's Government and Public Sector Lawyers Division is seeking nominations for two awards.

The Hodson Award recognizes sustained outstanding service or a specific extraordinary accomplishment by a government or public sector lawyer. Nominations are due March 15, 1995.

The Nelson Award recognizes outstanding contributions to the ABA by an individual government or public sector lawyer. Nominations are due May 1, 1995. For more information contact Joseph Ferrara, (202) 653-5610.

Professionalism Awards: The American Bar Association's Standing Committee on Professionalism will present the 1995 E. Smythe Gambrell Awards to law schools, bar associations, law firms and not-for-profit law-related organizations that enhance professionalism among lawyers. Entries are due March 31, 1995. Forms and guidelines are available from Ernestine Robles at the ABA Center for Professional Responsibility, 541 N. Fairbanks Court, 14th Floor, Chicago IL 60611-3314, (312) 988-5308.

Juvenile Justice: The ABA Juvenile Justice Center is seeking nominations for its Livingston Hall Juvenile Justice Award, to honor lawyers practicing in the juvenile justice field with high skill and professionalism. For a copy of the nomination form contact Alyssa Logan, ABA Juvenile Justice Center, 1800 M Street N.W., WA, D.C. 20036, (202) 331-2262. Nominations must be received by April 15, 1994.

King County Hearing Examiner Rules of Procedure available:

The King County Hearing Examiner has adopted Proposed Rules of Procedure. Interested parties are encouraged to request copies from James N. O'Connor, (206) 296-4660; 700 Central Building, 810 Third Avenue, Seattle, WA 98104-1614.

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

The average coupon equivalent yield from the first auction of 26-week treasury bills in January 1995 is 6.73%. ***The maximum allowable interest rate permissible for February 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 48 of the June 1994 *Bar News*.

State Law Library—Books Recently Cataloged

Listed below are some of the new titles recently acquired by the State Law Library, and available for loan by phone from (206) 357-2136, or by mail from Washington State Law Library, Temple of Justice, P.O. Box 40751, Olympia, WA 98504-0751. A quarterly *Books Recently Cataloged* list, generally containing 150-200 new titles, is also available. Copies may be obtained by mail from the above address.

On January 7, 1991, the State Law Library began circulating the video collection of the Office of the Administrator for the Courts, which has more than 150 titles and over 175 videos. A catalog of titles is available from OAC;

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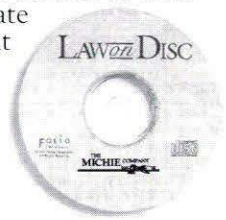

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BREAST IMPLANTS—SAFETY REGULATIONS

Breast implant litigation: current medical and legal theories. New York: Law Journal Seminars-Press, ©1994. Pp. 793. **KF1297.M4B7 1994**

DIVORCED PARENTS

Garrity, Carla B. *Caught in the middle: protecting the children of high-conflict divorce.* New York, NY: Lexington Books, ©1994. Pp. 189. ***HQ834.G38 1994***

EQUITABLE DISTRIBUTION OF MARITAL PROPERTY

Snyder, Michael B. *Qualified domestic relations orders: financial issues in divorce.* Deerfield, IL: Clark, Boardman, Callaghan, ©1993- . 1 vol. (loose-leaf) ***KF532.7.S69 1993***

INSTRUCTIONS TO JURIES

Eades, Ronald W. *Jury instructions on damages in tort actions.*, 3d ed. Charlottesville, VA: Michie Co., ©1993. Pp. 892. ***KF8984.D6 1993***

LAW LIBRARIES

American Association of Law Libraries. State, Court, and County Law Libraries Special Interest Section. Trustees Development Committee. *Sourcebook for law library governing boards and committees.* Littleton, CO: F.B. Rothman, 1994. Pp. 446. **Z675.L2A5 1994**

SENTENCES (CRIMINAL PROCEDURE)

Forer, Lois G. *A rage to punish: the unintended consequences of mandatory sentencing.* New York, NY: Norton Pub. Co., ©1994. Pp. 204. ***KF9685.Z9F67 1994.***

Business Advisory Services, Inc. (206) 223-5400
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Davis, Wright, Tremaine (DWT) (206) 622-3150
Idaho Law Foundation (208) 342-8958
King County Bar Association CLE (206) 340-2579
Northwestern School of Law of Lewis & Clark College (503) 768-6642
National Business Institute, Inc. (715) 835-7909
National Education Network (NET) (800) 637-0020
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.
Professional Education Systems (800) 843-7763; fax (715) 836-0105
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Tacoma-Pierce County Bar Association (206) 383-3432
University of Washington School of Law (UW CLE) (206) 543-0059; (800) CLE-UNIV
Washington Association of Criminal Defense Lawyers (WACDL) (206) 689-8500
Washington Association of Prosecuting Attorneys (WAPA) (206) 727-8202
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
World Trade Club (206) 448-8803

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2 SeaTac: Representing Victims of Sexual Abuse. *Sponsored by* WSTLA.

3 Olympia: Elder Law. *Sponsored by* WSBA CLE.

3 Seattle: Essentials of Real Estate. *Sponsored by* WSBA CLE.

3 Portland: 24th Annual Estate Planning Seminar. *Sponsored by* Northwestern School of Law of Lewis & Clark College.

3 Seattle: NW Regional Immigration Seminar. *Sponsored by* Amer. Imm. Lwyrs. Assn., WA Chapter/NW Imm. Rights Project. *Contact:* Susan Taylor, (206) 382-0906.

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10 Seattle: Elder Law. *Sponsored by* WSBA CLE.

10 Olympia: Essentials of Real Estate. *Sponsored by* WSBA CLE.

10 Spokane: Personal Injury/Insurance Defense. *Sponsored by* SCBA.

11-12 Seattle: Professional Mediation Skills Training Certificate Program, Parts IV & V. *Sponsored by* UW CLE.

15 Deadline for April 1995 *Bar News*.

16 Seattle: CLE on the Nontraditional Family. *Sponsored by* WSBA CLE.

16 Seattle: Environmental Law. *Sponsored by* WSBA CLE.

17 Tacoma: WSBA Board of Governors meeting.

17 Seattle: Planning for the Disabled and/or Elderly. (6th in a basic-skill series). *Sponsored by* UW CLE.

23 Seattle: Perfection of Security Interests by Filing, UCC Searches and Discovery of Secret Liens. *Sponsored by* DWT.

23 Spokane: How to Avoid Unenforceable Contracts. *Sponsored by* WSBA CLE.

23 Seattle: Representing the Washington Trustee. *Sponsored by* WSBA CLE.

24 Spokane: Basic Bankruptcy. *Sponsored by* SCBA.

24 Seattle: Commercial Litigation. *Sponsored by* WSBA CLE.

24 Seattle: Nuts and Bolts of Money in Divorce. *Sponsored by* KCBA.

28 Seattle: Appellate Practice. *Sponsored by* KCBA.

March 1995

3 Seattle: How to Avoid Unenforceable Contracts. *Sponsored by* WSBA CLE.

3 Seattle: Violence in Law. *Sponsored by* WSTLA.

3-4 Seattle: Northwest Bankruptcy Institute. *Sponsored by* WSBA CLE.

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

10 Seattle: How to Compel Discovery (half day). *Sponsored by* WSBA CLE.

10 Seattle: Revisions to the Probate Code (half day). *Sponsored by* WSBA CLE.

10 Spokane: Advising the New or Expanding Business. *Sponsored by* WSBA CLE.

10 Spokane: Ethics & Professionalism. *Sponsored by* SCBA.

10-12 Phoenix: Sunbreak Seminar. *Sponsored by* WDTL.

11 Longview, WA: WALS seminars on legal research, estate planning and probate. Also in Yakima March 25. *For information:* Diana Osborne, (206) 259-5106.

15 Deadline for May 1995 *Bar News*.

17 Seattle: Putting It All Together (7th in a basic-skill series). *Sponsored by* UW CLE.

17 Seattle: Advising the New or Expanding Business. *Sponsored by* WSBA.

17 Seattle: The Juvenile Violence Act. *Sponsored by* WSBA CLE.

20-24 Phoenix: WSTLA Spring Break. *Sponsored by* WSTLA.

22 Seattle: Hanging Out Your Shingle. *Sponsored by* WSBA CLE.

23 Seattle: Professional Seminar. *Sponsored by* WDTL.

23- 25 Phoenix: Spring Break. *Sponsored by* WSTLA.

24 Spokane: Employment Law/ Discrimination. *Sponsored by* SCBA.

24 Seattle: Employment Law Institute. *Sponsored by* WSBA CLE.

24 Yakima: The Juvenile Violence Act. *Sponsored by* WSBA CLE.

25 Yakima: WALS seminars. See March 11, above.

30 Olympia: Negotiation and Settlement Advocacy. *Sponsored by* WSBA CLE.

30 SeaTac: Arbitration/Mediation: Just the Basics. *Sponsored by* WSTLA.

30 Seattle: Survey of Restatement of Suretyship. *Sponsored by* DWT.

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

31-April 1 Bellingham: WSBA Board of Governors meeting.

April 1995

14 Spokane: Attorney General's Update. *Sponsored by* SCBA.

15 Deadline for June 1995 *Bar News*.

15 Seattle: New Defense Lawyer Workshop. *Sponsored by* WDTL.

20-22 Milwaukee, WI: Long-term Services in the '90s: Life-affirming or Life-limiting? National Legal Center for the Medically Dependent & Disabled 10th anniversary special program on elder-law issues. *For information:* (414) 288-3802.

27 Seattle: Recent Developments and Assorted Issues in Real Estate and Construction Finance. *Sponsored by* DWT.

28 Spokane: General Real Estate. *Sponsored by* SCBA.

May 1995

12-13 Spokane: WSBA Board of Governors meeting.

15 Deadline for July 1995 *Bar News*.

18 Seattle" Treatment of Unexpired Leases and Executory Contracts in Bankruptcy. *Sponsored by* DWT.

19 Spokane: Family Law Update. *Sponsored by* SCBA.

June 1995

15 Deadline for August 1995 *Bar News*.

16-17 Lake Chelan: WSBA Board of Governors meeting.

22 Seattle: New Article 8 of UCC. *Sponsored by* DWT.

23 Spokane: Federal Law Update. *Sponsored by* SCBA.

30 Seattle: Products Seminar. *Sponsored by* WDTL.

July 1995

15 Deadline for September 1995 *Bar News*.

28-29 Winthrop: WSBA Board of Governors meeting.

August 1995

3-6 Whistler, B.C.: WSTLA Annual Meeting & Convention.

15 Deadline for October 1995 *Bar News*.

September 1995

7-8 Seattle: WSBA CLE Board of Governors meeting.

8 Seattle: WSBA CLE Annual Business Meeting.

15 Deadline for November 1995 *Bar News*.

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The Washington State Bar is looking for black/white and color photographs of law-related items, events and people for possible use as a cover or inside photo in upcoming issues of the *Bar News* and for the cover of the *Resources* annual directory.

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Committee Appointment Opportunities for WSBA Members

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

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

***Commission on Judicial Conduct*: One Seat**
Call for applicants-March; Board action-May)

The four-year term of G. Douglas Ferguson (Seattle) expires June 16, 1995. The four-year term of Margo T. Keller (Tacoma) expires June 16, 1996. The Commission is authorized under RCW Chapter 2.64 .Members are eligible for appointment to one additional term, for a total of eight years' service. For more information: David Akana, executive director, P.O. Box 1817, Olympia, Washington 98507, tel. (206) 753-4585.

***Judicial Information System Committee (JISC)*: One Seat**
(Call for applicants- April; Board action- June)

The three-year term of James S. Turner (Bellevue) and William F. Baron (Seattle), who hold one seat jointly, expires July 31, 1995. The Committee is authorized under the Supreme Court's Judicial Information System Committee (JISC) Rules and RCW Chapter 2.56. Appointments must be of persons who have demonstrated an interest in, and commitment to, judicial administration and the automation of judicial systems and functions. The WSBA Board makes nominations for appointment by the Chief Justice. The Committee meets every other month for three hours. For information contact Rick Coplen, Information Services, Office of the Administrator of the Courts, P.O. Box 41170, Olympia, Washington 98504, tel. (206) 753-3365.

***Statute Law Committee*: One Seat**
(Call for applicants-December; Board action-February)

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

RESOURCES

Annual Membership Directory

If you didn't order the new 1995-96 *Resources* membership directory on your license renewal form, here's your chance!

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Poverty as a Barrier to Family Reunification in Juvenile Court

by **Randal E. Steckel**

Homelessness is one of many barriers to family reunification in Juvenile Court.

Poor families face numerous dilemmas once they enter into dependency proceedings in Washington's juvenile-court system, set up under RCW 13.34 *et seq.* to reunify families by addressing parental deficiencies. However, poor people often find themselves unable to achieve the goal of family reunification due to practical budgetary/political dilemmas which are beyond their control. Poverty in and of itself is a disadvantage to families once they find themselves involved in the dependency system.

As a public defender, I have had the pleasure of representing hundreds of families in actions involving the Division of Children and Family Services (DCFS), a subdivision of the State Department of Social and Health Services (DSHS). I work with parents who have had their children either placed in foster care or under court supervision because of perceived parental deficiencies. All of my clients are living at or below the poverty level and are wholly without financial resources.

A petition to have a child declared dependent is filed under RCW 13.34.010 *et seq.* Without going into great detail on statutory guidelines, we can say that a court can find a child dependent (i.e., requiring the state's and the court's protection or support) if the child is abandoned, abused or neglected, without an available parent or guardian, or developmentally disabled and in need of state services. The official DSHS policy is that homelessness, in and of itself, is not a reason to place a child in foster care. That aside, if a parent is homeless in addition to having other problems (e.g., mental illness or drug addiction), the matter of that family's homelessness is usually an allegation in the dependency petition. The vast majority of people involved in such actions are in some way reliant on the public dime—Social Security Income, Medicare/aid, welfare, or Aid to Families with Dependent Children. Many of my clients reside in some form of public or publicly subsidized housing.

When a child is placed in foster care, DSHS notifies its counterparts within the government bureaucracy. As a result, benefits the parents receive to care for their children are often substantially reduced or terminated. When the children are placed in foster care, parents who are relying on AFDC money and public housing for survival have their means of support cut off. Without a child in the home they do not receive an AFDC allowance; without that allowance they are unable to pay the rent. Those in public or subsidized housing stand a chance of losing their dwelling if it appears the child will be out of the home for an extended period of time. It is a classic Catch-22 situation: No children, no money; no money, no housing; no housing and the children will not be returned to their parents.

If a parent is able to obtain appropriate resources through DSHS and becomes able to adequately parent a child, the child will not be returned to the parent unless and until the parent obtains safe and stable housing. Safe and stable housing can be a parent living in a relative's home, public or other subsidized housing. However, once parents have lost their public assistance and/or public housing, establishing an adequate residence is typically a very long and drawn-out process.

When a child is placed in foster care, DSHS pays the foster family a set fee for expenses, including clothing vouchers, transportation costs, medical bills and evaluations—typically about $430 per month per child. The agency spends thousands of dollars a month keeping children in foster care, but no financial support is provided to parents to reestablish themselves or keep themselves in housing once a child is placed in care. Some government monies are available to assist parents, but these funds are seldom sufficient to assist the parents in achieving safe and stable housing.

DSHS is very good at working with the Seattle Housing Authority, low-rent agencies, and charities. However, the reality is that low-cost or subsidized housing is virtually nonexistent. Waiting lists are long. It can be months, possibly years, before a person involved with DSHS can obtain safe and stable housing.

Lawyers can help clients faced with such a dilemma. There have been cases where public defenders have successfully requested housing funds in King County Superior Court to assist families reunify. DSHS, however, has decided that this is inappropriate and appealed, arguing in *In re the Matter of J.H.*,[1] that the superior court does not have the authority to order it to pay for housing, where the money has been earmarked by the Legislature for other specific services. The Court of Appeals agreed with DSHS:

> The court's order requiring the department to provide up to $1,200 in this case to secure private housing for this family in order to avert the possibility of foster home placement not only presumes the availability of $1,200 that the Legislature has not appropriated, but also presumes the court's ability to administer an open-ended housing assistance program for similarly situated families . . . . In the absence of a specific appropriation or statutory entitlement, we hold that paragraph 7 rests on untenable grounds and thus constitutes an abuse of discretion.[2]

The only remedy available to a parent, according to the appeals court, would be to

> . . . compel the attendance in the courtroom of the caseworker, or her supervisor, or even the secretary of the department, as frequently as necessary until the agency acts with the

urgency and effectiveness that the particular needs of the children demand." [3]

The "remedy" outlined by the appellate court is a wholly ineffective enforcement mechanism. As a practical matter under the new case law, when a DSHS employee is subpoenaed into court very little will occur. When a judge queries the DSHS employee as to resources; the employee will claim that no money is available to the agency for certain services, and the court's ability to order specific services will dissolve. Only if a judge finds that the Department has not made "reasonable efforts" to reunify a family will the court be able to affect foster-care funding. [4]

At first glance, it seems that *In re Matter of J.H.* has dealt homeless parents a severe blow.

Fortunately, the legal battle has not ended. Approximately three weeks after the Court of Appeals heard the *J.H.* case, the Washington Supreme Court decided *In re Detention of J.S.*, 124 Wn. 2d 689 (1994). In that case, a court commissioner ordered DSHS to provide special services for mentally ill people that were not typically available. [5] DSHS argued to the Supreme Court that the Commissioner violated the separation of powers doctrine by ordering DSHS to provide services that were not legislatively funded. The Court disagreed, noting in its decision,

> [T]he State finally argues the court has improperly ordered it to incur expenditures beyond its appropriation by essentially creating new services for the Respondents. The State maintains the trial court is attempting to modify policy choices made at the legislative level. This argument, however, is misplaced. The legislature has granted the court the power to determine the best interests of the individual and in so doing, to consider less restrictive treatment. The statutory framework represents a legislative policy choice to create this role for the court. We find that because the court has the power under the statute to order less restrictive treatment, it necessarily has the power to compel compliance with its order.[6]

The lack of money for housing is just the tip of the iceberg; resources are sorely lacking to provide indigent people with mental-health services, drug/alcohol treatment, in-home counseling (home-based services provided by DCFS) or visitation supervisors.

We hope lawyers will use the *Detention of J.S.* case to argue that *In re the Matter of J.H.*, should be either reversed or certainly questionable and that trial courts can order funding for families to secure much-needed housing.

What does all this mean? From my perspective as a public defender, it is becoming harder and harder to adequately represent indigent people. With Initiative 601, funding has become tighter, and it looks as if things will get worse. The system, as it exists, is not dealing in a humane and equitable fashion with the families that it is charged to help. The vicious cycle goes on. People lose their children, and then they lose their financial support. When they lose their money they lose their housing. The chances of getting children returned without safe and stable housing are virtually nonexistent.

Is this the fault of DCFS? No. By and large, the caseworkers who serve these families are hard-working, professional and caring people. They are not given the resources to adequately help their clients. In the end, children remain in foster care longer than necessary. Families become apathetic and despondent; their poverty leads them into cycles of domestic violence, drug addiction, or their mental health deteriorates.

What are we to do? There are no easy answers. The lack of money for housing is just the tip of the iceberg; resources are sorely lacking to provide indigent people with mental-health services, drug/alcohol treatment, in-home counseling (home-based services provided by DCFS) or visitation supervisors.

Generally everyone, regardless of viewpoint, agrees that DSHS is not adequately funded to carry out its mandate to protect children and assist families in crisis. The chilling effect of *In re the Matter of J.H.*, will be that the courts, which have traditionally been successful in getting the Department to pay for services, can now be stymied *not* to act, based on a "separation of powers argument."

What should we do? The Legislature needs to be educated as to the practical dilemmas poor families face in Juvenile Court. The courts need to reexamine *In re the Matter of J.H.*, in light of *In re the Detention of J.S.* Society needs to be more humane towards those living in poverty, and there has to be a restructuring of the current rules and regulations involving public housing and welfare benefits for families in crisis. Unless these things change, children will suffer, families will remain torn apart, and the true intent of the law—which is to help those in need—will remain elusive.

Endnotes

[1] *In re the matter of J.H., B.H., J.C., K.C.*n Nos. 31089-5-I, 31090-9-I, 31124-7-I and 31135-2-I (consolidated on appeal; slip op. Oct. 1994).

[2] *In re welfare of J.H., et seq.* pp 10-11, notations omitted.

[3] *In re the welfare of J.H., et seq* . at pp 11-12.

[4] "Reasonable efforts" is the statutory duty of DSHS to reunify families under RCW 13.34. *et seq.* and public law 96-272.

[5] *In re the Welfare of J.H., supra*, construed the court's authority under RCW 13.34. et seq. *In re Detention of J.S.*, however, construed the court's authority under RCW 71 *et seq.*, Washington mental-health commitment statute. The focus of the two statutes, however, is similar. Under 13.34 *et seq.* the courts have wide discretion to make decisions in the "best interest of the child." Under RCW 71.05.240, the court has the authority to make decisions that are in the best interest of the *person.*

[6] *Detention of J.S.*, 124 Wn.2d at 698-699.

Randal E. Steckel *is a public defender at the Society of Counsel Representing Accused Persons in Seattle. He works exclusively in the area of dependency law.* *He would like to thank Adam Shapiro, Dennis Ichikawa, Anne Daly and Kern Cleven for their assistance and patience in writing this article.*

THE JUDICIARY

U.S. Magistrate Judge **Cynthia Imbrogno** of the Eastern District of Washington has been appointed to chair the Ninth Circuit Task Force on Prisoner Remedy Procedures. Ninth Circuit Chief Judge **J. Clifford Wallace** announced the appointment in November.

The level of prison litigation in federal court has increased markedly in recent years. In some courts civil cases filed by prisoners in state and federal institutions run as high as 40 percent. Thirty percent of all civil cases in the court of appeals are filed by state and federal prisoners. The task force will prepare a report for the judicial conference of the Ninth Circuit and will make recommendations for promoting adoption of improvements.

Governor **Mike Lowry** announced the appointment of Seattle lawyer **Charles K. Wiggins** to the Court of Appeals, Division II, in mid-December. Wiggins will fill the seat vacated when Judge **Gerry Alexander** was elected to the Supreme Court. Wiggins, 47, has had a trial and appellate practice for nearly 20 years and has been a frequent contributor to the *Bar News* on bar association and state constitutional law issues.

The Spokane County District Court Judges elected **Dan Maggs** as new presiding judge and **Sam Cozza** as acting presiding judge for the 1995 calendar year. Pursuant to LARLJ 5, Maggs and Cozza will join **John Madden** and **Christine Cary** on the executive committee of the district court judges for 1995.

NEWS FROM HOME

Morse & Bratt, Vancouver, has added **Scott Shiplett** as an associate concentrating in immigration law.

Eric A. DeJong, with Davis Wright Tremaine in Seattle, has been elected to the board of directors of Washington Works, a nonprofit, privately run program that assists Seattle and King County welfare recipients in achieving self-sufficiency. He will serve a three-year term on the board. The firm's managing partner, **Bradley C. Diggs**, has been appointed to the board of directors of the Legal Foundation of Washington. He will serve a two-year term ending December 31, 1997.

Ted S. O'Neal has joined Witherspoon, Kelly, Davenport, & Toole in Spokane as an associate. His practice will concentrate in corporate and security laws.

Beverly A. Hallett is an associate with Trunkenbolz & Carlson in Spokane, handling real estate and business law.

Richard D. Campbell has joined McCormack, Dunn, & Black in Spokane, working in the fields of construction law and litigation.

The Tacoma law firm of McGavick, Graves has appointed **Paul R. Willette**, **Elizabeth A. Pauli** and **Gregory A. Jacoby** as shareholders in the firm. **Dana R. Conley** and **Gregory F. Amann** have also joined the firm as associates.

Peter S. Lineberger, formerly of Bozeman, Montana, has opened his practice in Spokane.

Michael (Mickey) Morey of Portland has been appointed national cochair of the Legal Committee of the National Coalition for Accuracy About Abuse/ American Coalition Abuse Awareness. The NCAA/ACAA is an organization composed of sexual-abuse survivors, therapists, researchers and attorneys devoted to issues including therapy, research, legislation and litigation to assist all victims of sexual abuse.

Seattle attorney **Robert H. Blais** has been elected a Fellow of the American College of Trust and Estate Counsel.

Steven O. Rosen, a partner in Miller, Nash, Wiener, Hager & Carlsen in Portland, has been reappointed Division Director of the Section of Litigation in the American Bar Association. Rosen supervises aid substance of all committees of the section, including aviation litigation and products liability, as well as assisting the development of the sections' continuing legal education programs.

Karen P. Sluiter has announced that **Andrea Logue Passer** has become an associate in her office and that the office itself has relocated to Suite 225 in the Lake City Professional Center, 2611 NE 125th Street in Seattle. Sluiter continues her practice in the areas of estate planning, probate, elder law, and real estate. Passer will practice in the areas of estate planning, guardianship, probate and elder law.

John A. Gose, a partner with Preston Gates & Ellis in Portland, has been appointed to the National Bankruptcy Review Commission created under the Bankruptcy Reform Act of 1994. He was appointed by outgoing Speaker of the U.S. House of Representatives and WSBA member **Thomas S. Foley**.

Everett H. Billingslea has joined the Seattle office of Oceantrawl Inc. as senior attorney. Oceantrawl is a fishing company operating three surimi factory trawlers in the Bering Sea and elsewhere. Billingslea was previously associated with Bogle & Gates in Anchorage and Seattle.

Bogle & Gates in Seattle has announced that **Brian C. Golob**, an associate in the corporate finance and security litigation practice of the firm, has been transferred to Tokyo, where he will practice in the Japanese firm of Nagashima & Ohno. He is the second Bogle & Gates attorney to practice in the firm and will be with the Japanese firm for a year and a half.

James H. Trujillo, a partner in the Bellevue law firm Trujillo, Peick, Lingenbrink & Magladry, has been appointed regional president of the Hispanic National Bar Association. In his new position, Trujillo will represent the Pacific Northwest including Washington, Oregon, Idaho, and Alaska.

Paul Tyler, former vice president and counsel at First Interstate Bank of Washington, has joined the law firm of Lane, Powell, Spears, Lubersky in Seattle and will concentrate his practice in the commercial litigation field.

Stoel, Rives, Boley, Jones & Gray has announced the addition of **Scott L. Fredericksen** to the firm's white-collar criminal-law group. He joins **Ronald Sim** and **Phillip Talbert**. Fredericksen is a former special prosecutor for the office of Independent Counsel in Washington, D.C.

Senior Family Support Deputy Prosecutor **Patricia Brady** of Snohomish County was invited by U.S. Attorney General **Janet Reno** to train U.S. attorneys and the FBI at a November criminal nonsport conference in San Diego. The seminar was designed to increase federal criminal prosecution of severely delinquent interstate child support obligors under the Child Support Recovery Act of 1992. Brady was also invited to provide similar training last year to assist U.S. Attorneys in implementing the act.

Heller, Erhman, White & McAuliffe has added two associates. **Scott Benner** has moved to the firm from Bogle & Gates. **Laura Bertin** is a graduate of Harvard Law School and the University of Washington.

Judith Runstad, a Seattle attorney, will succeed **James Vohs** as chairman of the Federal Reserve Bank of San Francisco in 1995. She is a partner at Foster, Pepper & Shefelman in Seattle.

James E. Niemer has joined Lane, Powell, Spears, Lubersky in Seattle, practicing with the tort and insurance department and concentrating in the construction litigation. He was previously with the firm of Schiffirn, Hopkins & Olson in Seattle.

The American Bankruptcy Board of Certification has designated **A. Stevens Quigley** as board-certified in business bankruptcy law. As of August 1994, Quigley was the only lawyer in the state of Washington with dual certification in consumer thirteen and seven and business bankruptcy proceedings and with all three national bankruptcy certifications.

Mark W. Hendricksen has joined Wells, Saint John, Roberts, Gregory & Matkin in Spokane.

Hackney & Schwartz has announced that **Peter L. March and Charles V. Carol** have become partners of the firm, now known as Hackney, Schwartz, March & Carol.

Mark A. Reinhardt has joined Lane, Powell, Spears, Lubersky in Seattle and will concentrate his practice in the securities and business transactions fields. Reinhardt was formerly with Jenner & Block in Chicago. **Geri Ann Baptista** has also joined the firm, handling premises and product liability cases.

Mori Irvine, former judge with the Board of Industrial Insurance Appeals in Olympia has left her position as ADR Training Manager for the Superior Court in Washington D.C. for a position with the U.S. Court of Appeals for the 11th Circuit in Atlanta, Georgia. She will serve as a conference attorney, mediating select cases filed for the court of appeals.

From the Spokane County Bar's *Calendar Call*, the *Bar News* has learned that **Peter J. Lineberger** has relocated from Bozeman, Montana and opened his offices for the general practice of law. He is a member of Washington and Montana bars and has been a Fellow of the American Academy of Matrimonial Lawyers since 1992.

Neil L. Cane has relocated to new offices in Spokane. **Michael J. Beyer** and **Michael A. Meyer**, independent practitioners, have relocated but retained their telephone numbers.

University Legal Assistance has recently changed its phone and fax numbers: The new telephone number is (509) 324-5791; the new facsimile number is (509) 324-5805.

CHELAN COUNTY OLD PHARTS BAR ASSOCIATION REPORT

by **CHARLES W. CONE**

Eleven members were present when the OPBA held its Winter Meeting at Mickey O'Reilly's Restaurant December 8. This meeting commenced a festive holiday season. The luncheon also honored the retirement from judicial office of two of our members, Hon. **Robert Graham**, Chelan County District Court Judge, and Hon. **H.B. Hanna**, Douglas County District Court Judge.

The two judges have contributed almost 80 years of service to the bars of Chelan and Douglas counties, to the community, and to the public affairs of our area.

Their retirement also marks the end of almost 40 years of judicial service to the district courts of Chelan and Douglas Counties.

Judges Hanna and Graham are welcomed into the ranks of the retirees, and with thanks for their active and distinguished professional careers.

During the meeting, **Bernice Bacharach** announced that she was leading the Perot for President movement in our counties for the 1996 election. Politicians are prohibited from membership in that organization.

Following election of officers and approval of the 1995 agenda and work chart, **Ed Engst** entertained the group with his baritone bellowing of bawdy yuletide ballads.

The meeting was adjourned when the management asked us to leave.

EAST KING COUNTY REPORT

by **MARIJEAN E. MOSCHETTO**

Congratulations to our 1995 officers and Board of Trustees! The slate includes: **Randy Gordon**, president; **Ted Barr**, vice president and president-elect; **Marijean E. Moschetto**, secretary; **Donnelly Wilburn**, treasurer; **Val Hoff**, past president; and trustees **Don Fleming**, **Madeline Gauthier**, **David Lawyer**, **Kristin Olson**, **Allen Sakai**, **Wayne Stewart**, **Jim Trujillo**, **Alex Wirt**, and **Mike Zeno**. Keep those names in mind for your complaints and compliments.

What can EKCBA do for you? I will quote the inagural address of Randy Gordon:

"The system of justice
Which we are driven toward,
Can no longer be run by
How much can you afford?
Of this I am sure
In the coming "revolution"
Those present here today
Should be part of the solution.

I will propose
To our Board of Trustees,
That a Task Force be named
To address legal fees;
To ask judges to give
Full fee recovery
When terms are awarded
Respecting discovery;
To streamline the process
In a family law matter
Mandating at filing
Standard Financial data;
The Presiding Department,
Should not keep us about
For trial assignments
Which never go out.
An Eastside law library
Is not a big risk,
When it all can be stored
On a CD-ROM disk.
An Eastside court is a must;
Can justice survive
Our driving to Kent
On I-405?

The year up ahead
You, of course, understand
Is filled with great prospect,
We've lots of things planned:
Our monthly luncheons
Our annual cruise,
Our golfing event,
Our newsletter news,
Our section activities
Our work with ELAP,
Our joint CLEs
With KCBA are back.
This year I hope that
You'll choose to attend.
Dinner this Spring
With the Supremes once again.
For Eastside legal issues
We are for you.
Let us know what it is,
That you want us to do.

We are an association
Of colleagues and friends
How effective we are
Well, you know, that depends
On how much you help
With your time and ideas
Please help us with both
As you have in past years."

Be sure to check out the monthly luncheons held at the Bellevue Inn at noon on the third Thursday of each month or call the EKCBA office at (206) 637-3097.

Did you forget to include $15.15 with your licensing fee for your 1995-1996 attorney directory & reference book?

Fill out the coupon on page 50 of this issue.

Washington State Bar Association
RESOURCES

GREATER SEATTLE LEGAL SECRETARIES ASSOCIATION REPORT

by **LEANNA S. ANDERSON**
& **LINDA L. KNISS**

The GLSA held their annual Christmas dinner/meeting December 13 at Seattle's Holiday Inn Crowne Plaza. Entertainment was provided by the "Young Performers." Family members were invited to take part in the evening's activities and to have their pictures taken with Santa. In addition to a donation to the "Young Performers" for their musical presentation, those in attendance offered gifts for GLSA's Adopt-A-Family program. Both these gifts and a generous donation on behalf of GLSA were presented to the family in celebration of Christmas. GLSA would like to extend best wishes to all for a happy and prosperous New Year!

LAW FUND REPORT

by **LAUREN MOORE**

Congratulations to Spokane Legal Services Center, Spokane Volunteer Lawyers Program, and University Legal Assistance for jointly receiving the Goldmark Award from the Legal Foundation of Washington. The award recognized the unique model of collaborative service delivery to low-income people in Spokane County.

Thank you to LAW Fund President **Mark Hutcheson** for hosting the LAW Fund Annual Board Retreat in December, and thank you to all of the LAW Fund Board members who attended and so enthusiastically participated. The retreat featured an exercise created to demonstrate to each Board member the experience of a low-income person in desperate need of civil legal services. It was a success, and Board members left the retreat energized and prepared to work on end-of-the-year fundraising for LAW Fund.

During the 1994 LAW Fund campaign, contributions were received from lawyers located in 29 of our 39 counties in Washington state—from every county with 20 lawyers or more. A sincere thank-you to all who participated. Your contributions toward equal access to justice helped LAW Fund have another successful year of steady growth.

If you are interested in more information about LAW Fund, please write LAW Fund, 1326 Fifth Avenue, Suite 815, Seattle, WA 98101, or call (206) 623-5261.

WASHINGTON ASSOCIATION OF LEGAL SECRETARIES REPORT

by **CINDY MANSON**

The Washington Association of Legal Secretaries announces its concurrent spring legal-education seminars/workshops for legal-support professionals.

Topic I: Legal Research—Learn to identify relevant law; determine the difference between primary and secondary and mandatory and persuasive authorities.

Topic II: Estate Planning—A review of Powers of Attorney; Living Wills; Simple Wills; and Community Property Agreements—What they mean—What they do!

Topic III: Probate—Processing the file from initial contact to the Declaration of Completion.

The workshops run from 9 a.m. to Noon in Longview, Washington, on March 11, 1995, and in Yakima on March 25, 1995.

Cost is $35 for association members and $55 for nonmembers. Registration deadlines are March 4, 1995, for Longview and March 18, 1995, for Yakima. There will be a late fee of $5 for registrations received after these dates.

Contact: **Diana Osborne**, (206) 259-5106.

Recent certifications: **Laura Borda**, **Bridgett Allen**, **Sharon Hanson**, **Debbie Burge**, and **Kay Schraeder** were recently certified by the National Association of Legal Secretaries as Certified Professional Legal Secretaries (PLS). Allen is employed by LeSourd & Patten of Seattle; Hanson by John Shultz, Mount Vernon; Burge by Reed McClure, Seattle; Schraeder by Gordon, Thomas & Honeywell, Seattle. Borda is from the Seattle area.

The Certified Professional Legal Secretary examination consists of seven parts: Written Communication Skills and Knowledge; Ethics; Legal Secretarial Procedures; Legal Secretarial Accounting; Legal Terminology, Techniques and Procedures; Exercise of Judgment; and Legal Secretarial Skills. More than 3,400 legal secretaries have been certified since the examination was first administered in 1960.

For further information, please contact the Washington Association of Legal Secretaries Certification Chair, **Peigi Flynn**, at phone (206) 624-1040.

WASHINGTON STATE TRIAL LAWYERS ASSOCIATION REPORT

by **SUSAN M. WEBER**

In this time of cries for tort reform and criticism of the civil justice system, the Washington State Trial Lawyers Association (WSTLA) takes this opportunity to inform fellow colleagues in the WSBA about certain facts of the Liebeck v. McDonald's case that haven't made the newspaper articles.

As many of you may know, in August 1994, an Albuquerque jury awarded Stella Liebeck $200,000 in compensatory damages and $2.7 million in punitive damages (two days of coffee sales for McDonald's) for severe burns she suffered when a cup of McDonald's coffee tipped over in her lap.

What many of you may not know is that the jury reduced the $200,000 compensatory damages award by 20 percent for her negligence. The $2.7 million punitive-damage award was reduced to $480,000 by the trial court.

What many of you may not know is that 79-year-old **Stella Liebeck** suffered third-degree burns to her thigh and groin area which required painful skin-grafting, debridement and whirlpool treatments. She is permanently scarred. The coffee that spilled as she was trying to take the lid off of the cup was sold at 180-190 degrees Fahrenheit, according to McDonald's corporate specifications. Coffee at 180 degrees Fahrenheit and above will cause third-degree burns in two to seven seconds.

What many of you may not know is that McDonald's Corporation knew about the risk of such severe burns for more than 10 years. More than 700 claims were reported between 1982 and 1992. McDonald's witnesses admitted in court that consumers are unaware of this risk of serious burns, that McDonald's Corporation is and has been aware of such risk, that it did not warn of the nature and extent of this risk and could offer no explanation as to why it did not. McDonald's witnesses also testified that it did not intend to turn down the heat and admitted that when sold, its coffee was not fit for consumption because it will cause severe scalds if spilled or drunk.

What many of you may not know is that the news media documented that coffee at the McDonald's in Albuquerque was sold at 158 degrees Fahrenheit the day after the verdict. The risk of serious burns resulting from coffee sold at that McDonald's has decreased dramatically.

The jury in *Liebeck v. McDonald's* consisted of six men and six women who found that McDonald's was negligent and applied the law of punitive damages to deter McDonald's and other similar businesses from exposing its customers to the risk of serious burns. The trial court's ability to reduce the punitive damages is an example of safeguards in the civil-justice system from "runaway" jury awards, as the initial award in this case has been described by many critics. Customers of at least one McDonald's, and presumably many others, since the verdict are exposed to a much lower risk of serious burns resulting from McDonald's lowering the temperature at which it sells coffee. *Liebeck v. McDonald's* is an example of how the civil jury system works for all of us. *

Other information of interest from WSTLA:

WSTLA's Law Student Advocacy Committee is working with each of the law schools in the state once again this year. Activities include providing judges for Moot Court competitions, assisting Trial Advocacy classes by providing speakers on oral presentations, trial tips, and real-life examples of trial work. WSTLA also recognizes annually one student from each law school for outstanding public-service work with the WSTLA Public Service Award. WSTLA continues its Mentor-Mentee program with the UW School of Law, matching up law students with attorneys for advice, employment contacts and practice tips on life after law school.

Women of WSTLA held its first annual retreat this fall with the focus on management of the challenges faced by professional women at work and at home. The retreat and seminar were a success in providing not only substantive informa-

tion, but also an opportunity to cultivate professional and personal relationships among fellow WSTLA members.

WSTLA presented Judge **William L. Dwyer**, U.S. District Court, W.D. Washington, with WSTLA's 1994 Judge of the Year award at the judicial recognition luncheon in November honoring him for years of distinguished service and judicial excellence. Also honored at the luncheon were retiring Judge **Jack P. Scholfield** of the Court of Appeals, Divison I, and retiring Chief Justice **James A. Anderson** of the Washington Supreme Court.

* *Information on the* Liebeck v. McDonald's *case was compiled from S. Reed Morgan's article,* McDonald's Burned Itself, *written for the Minnesota Trial Lawyers Association in December 1994 (Morgan represented Stella Liebeck) and from Donald L. Schlapprizzi's article,* Did Ya Know . . ., *excerpted in the December 1994 issue of WSTLA's* Trial News.

IN MEMORIAM

Daniel B. Allison

Seattle lawyer Daniel B. Allison, 87, died December 17, 1994 in Seattle. Born in Chehalis, Allison graduated from the University of Washington School of Law in 1933. Called to the bar that year, he practiced for 61 years. He was very active in the Masonic orders. Survivors include his wife, two children and one grandchild.

Harold Lant

Bellingham attorney Harold Lant, 86, died November 10, 1994 at his home. A native of Utah, he moved to Bellingham with his family in 1925. After graduation from the University of Washington School of Law, Lant was called to the bar in 1932. He became a partner in the firm of Abbott, Lant & Fleeson. His long career included memberships in the American and Washington State bars and the College of Estate and Trust Counsel. He served on the Board of Governors of the WSBA from 1950 to 1953. Lant was a past-president of the Whatcom County Bar Association and a trustee of the UW School of Law Alumni Association.

Active in civic affairs, Lant chaired the county Republican Party from 1940 to 1944 and was later a state party committee member. He served on the boards of the Bellingham Museum, Mount Baker Area Council, Boy Scouts of America, and as past president of the Bellingham Rotary Club, the University Club, and the BPOE. Survivors include his wife, three sisters, two children, two grandchildren and one great-grandchild.

Joseph J. O'Rourke

WSBA member Joseph J. O'Rourke, 67, died December 11, 1994, in Seattle. Born in Brooklyn, New York, O'Rourke was a graduate of the U.S. Coast Guard Academy and the University of Washington School of Law. He served in the Coast Guard in World War II and the Korean War, retiring with the rank of captain. O'Rourke later joined the Applied Physics Laboratory at the University of Washington, where he was assistant director. Retiring in 1993 after 37 years' service, he continued his association with the lab as a consultant. Survivors include his mother, two brothers and a sister, his wife, and three children.

Donald J. Stocking

Donald J. Stocking, 86, died November 26, 1994, in Seattle. He was born in Billings, Montana, and graduated from the University of Montana School of Law in 1931. Stocking became an assistant U.S. attorney in 1934 and moved to Seattle in 1938 to work for the Securities & Exchange Commission. In 1957, he was named assistant regional administrator, and in 1962 he became regional administrator in the SEC's Denver office. He was awarded the agency's Distinguished Service Award in 1967. After retiring in 1980 he returned to Seattle.

Stocking was active in community affairs, ranging from service in the Municipal League to the presidency of the Seattle Area/King County Camp Fire Girls. Survivors include his wife, six children, eleven grandchildren, and a sister.

John W. Sweet

Seattle native John W. Sweet, 73, died December 2, 1994, in Seattle. A graduate of the University of Washington School of Law, Sweet served as a Navy pilot in World War II. After the war he continued his interest in aviation by practicing aviation law for 47 years. He was a member of the Lawyer-Pilots' Association, the Wash ngton Athletic Club and The Jesters, an international squash organization. Survivors include two brothers, his wife, two children and four stepchildren, and seven grandchildren and step grandchildren.

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AFTERWORD

"Move to Strike!": The Saga Continues

Readers continue to dredge the files for Those Special Moments, the kind that leave you saying, "That just didn't need to happen. Or if it did, I didn't need to be there to hear my client say it."

Seattle lawyer **Jennings P. Felix** read the last "Afterword," and "it reminded me of a jury voir dire I participated in in Tacoma some years ago. I was a deputy prosecuting attorney for Pierce County and the late federal judge **Bill Goodwin** was chief defense counsel.

> Bill asked one of the jurors, a rather elderly man as elderly men went in those days, "Now, sir, just because the prosecuting attorney has seen fit to charge my client with this crime is no indication to you, is it, that he is guilty?"
>
> The juror replied, "Waal, I don't 'spect that he pulled his name outen a hat!"
>
> When the laughter subsided, Bill, somewhat red-facedly, asked to excuse the juror for cause, which motion the court granted.

✣✣✣

Grays Harbor County Superior Court Judge **David Foscue** has been keeping track of Voir Dire Moments as well. He sent two "that seem appropriate candidates for your next column."

> Q. There is a young girl involved. I think she is six years of age. How old is your nine-year-old child, sir?
>
> A. (No answer)
>
> Q. I mean, what sex is she?
>
> A. She is a female.

Another case:

> Q. And I assume that you understand that this is an adversarial process and Mr. Menefee, who's the prosecutor, and his chief criminal deputy, Mr. Fuller, will argue in behalf of their position, but I am, of course, allowed to argue for Mr. Sykes also, and you'll listen to both sides.
>
> A. Yes. Yes, I will.
>
> Q. You don't have to closely or anything but you will at least tell me now you're going to listen and make your decision based upon the facts, probably not how eloquent we are or not are. Is that correct?

✣✣✣

In Vancouver, **William F. Nelson** is a collector, and from his archives has produced "a few contributions which I affirm under penalty or perjury are true and correct" (the *Bar News* is glad when readers Observe the Formalities):

> An agnostic friend of mine came forward to be put under the oath, and the following was spoken:
>
> Judge: Do you solemnly swear to tell the truth, so help you God?
>
> She: I prefer to affirm, Your Honor.
>
> Judge: Oh, oh, fine. Do you solemnly affirm to tell the truth, so help you God?

Nelson recalls, "In a trial against a podiatrist for failure to obtain informed consent prior to surgery for bilateral metatarsal exostosis, an attorney's examination of his client—the plaintiff—to establish what she did not know what she was consenting to when she signed the form went like this:"

> Q. Do you know what *bilateral* means?
>
> A. No.
>
> Q. Do you know what *metatarsal* means?
>
> A. No.
>
> Q. Do you know what *exostosis* means?
>
> A. Yes.
>
> Q. You do?
>
> A. Yes. It means bad breath.

Still in a confessional mood, Nelson reports that "In anticipation of the conviction of a friend/client on a traffic charge, I had received assurances that for sentencing I could represent his record as unblemished, save one minor infraction, so the sentencing debate went as follows:"

> I: . . . and in conclusion, my client has only one other traffic ticket in fifteen years of driving, and that is just a failure to yield the right of way to a pedestrian in a crosswalk.
>
> Prosecutor: The pedestrian died, Your Honor.

And signing himself, "Yours very truly, so help me," Bill concludes, "In deposition after the particularly hostile, large, in fact, rather porcine, sheetrock worker who had rear-ended my client's car defiantly stated his name, the examination proceeded this way (and without objection):"

> I: What is your occupation?
>
> He: I'm a taper.
>
> I: Are you spelling that t-a-p-i-r?
>
> He: Yeah.

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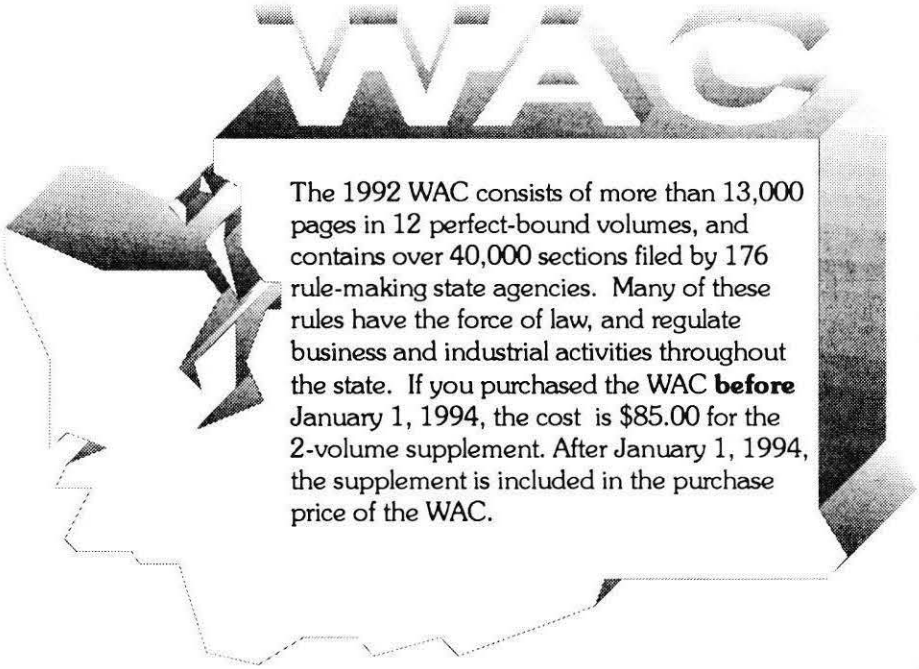

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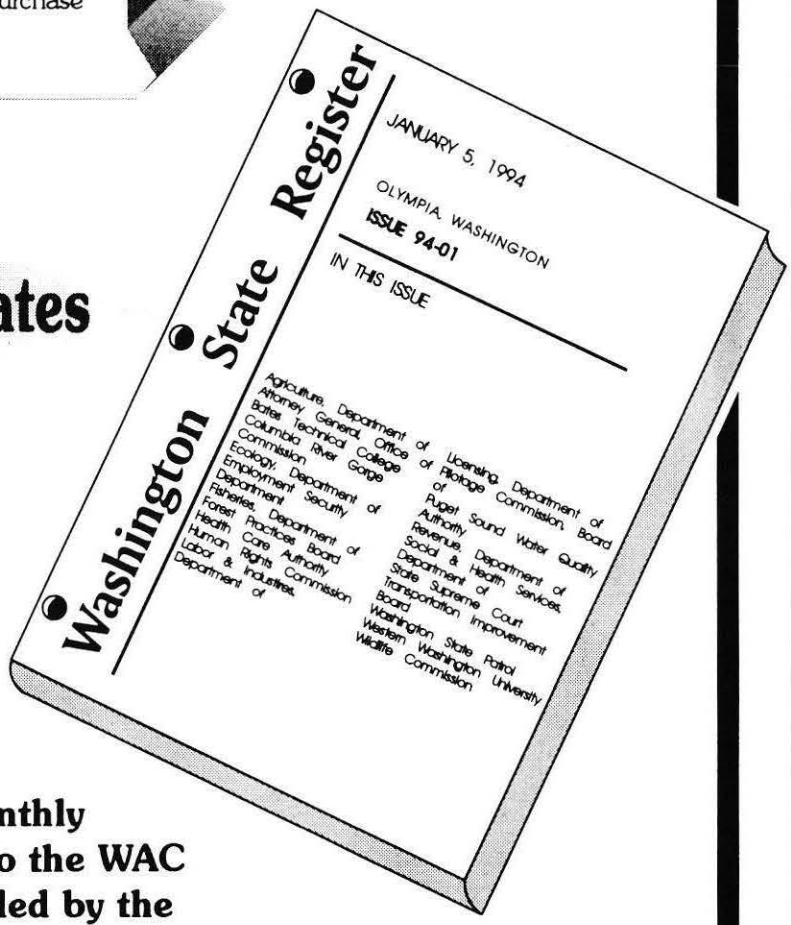

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