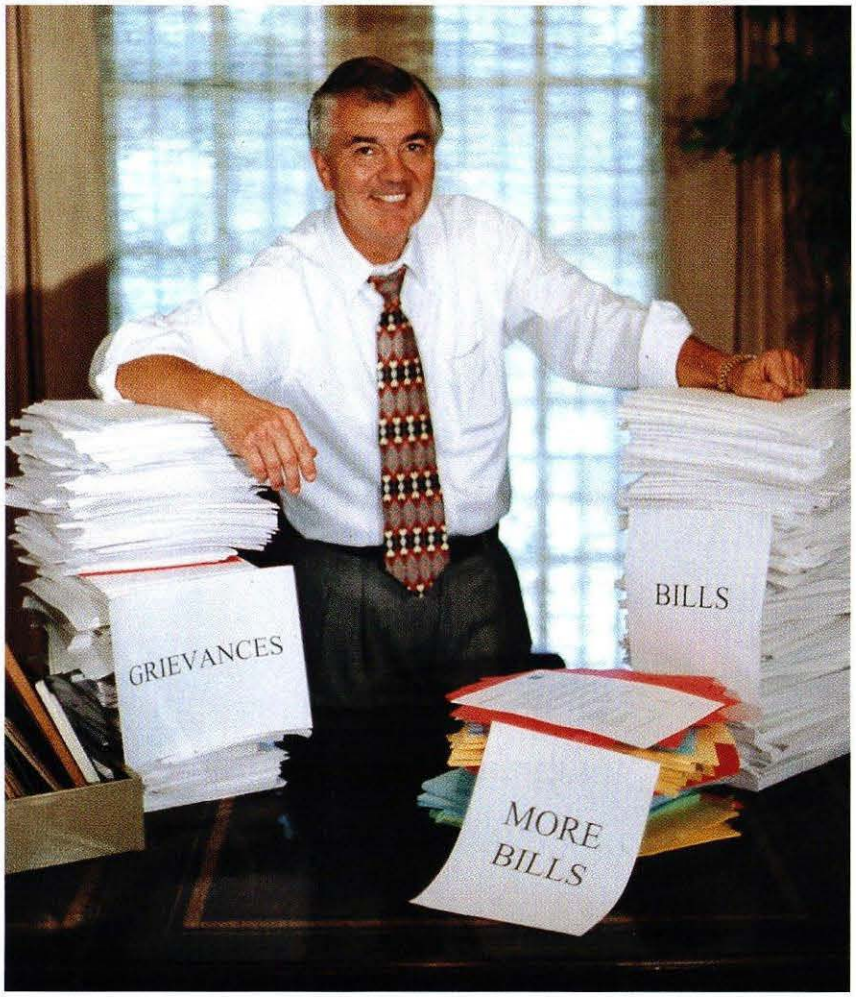
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Vol. 50 No. 10, October 1996

The official publication of the Washington State Bar



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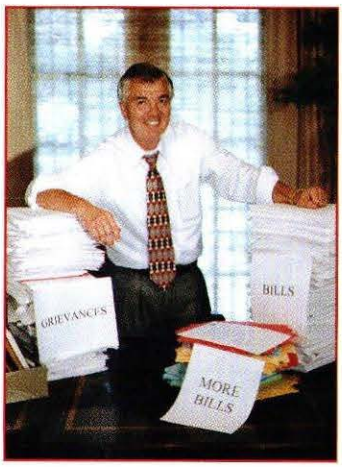
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HAL WHITE
Editor, (713) 667-9399

JENNIFER KLAMM
Managing Editor, (206) 727-8215
jennifer_klamm@dBug.org

JACK YOUNG
Advertising Manager, (206) 727-8260

DOREE ARMSTRONG
Editorial Assistant, (206) 727-8214

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Washington State Bar News

Vol. 50 No. 10, October 1996

The official publication of the Washington State Bar

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Assisted Suicide

Editor:

What with leading pain management physicians and oncologists almost uniformly in agreement that 99.9% of pain in terminal illness is treatable, I am astounded at the legal bar's inability to recognize the signal from the noise on this debate. Once again, a la *Roe v. Wade*, the legal profession seems bent on creating another "privacy right" out of whole cloth and in direct contravention of the ethics we claim to uphold as attorneys. There is no "liberty interest" in dying any more than one has such an interest in polygamy or bigamy or whatever else a person may deem "highly central to one's personal dignity and autonomy." Judge Reinhardt has it exactly backwards: Our lives are not our own; we are all connected by family and in society under the watchful eye of the very One who gave us breath and brains to utter the nonsensical term "pro-choice"!

If this is law, give me medicine any day. Perhaps the U.S. Supreme Court will find the courage to reject the illusory privacy theory here and, in turn, pull the rug out from under *Roe*. It's about time!

BARBARA A. PETERSON
Vancouver, WA

Inappropriate Comparison

Editor:

Edward Shea makes several arguments to support an increase in licensing fees. However, his comparison of our fees to those of physicians is misleading. He states the "licensing/state assn. fees" for a physician are $643. Since I work for the agency that licenses physicians and other health care providers, I know that the annual licensing fee for physicians is only $225. To get to his figure of $643, Mr. Shea may have added the fee for membership in the Washington State Medical Association. This invalidates the comparison, since membership in the WSMA, unlike membership in the state bar, is voluntary.

MICHAEL L. FALLELL
Spokane

More on Affirmative Action

Editor:

Ms. Joyce Shui's letter to the editor in the July King County Bar Bulletin enthusiastically "commended" the KCBA for creating the King County Minority Counsel Referral Program.

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No. That is a destructive program, since it is based on the fatally flawed premise that a good way to remedy racism and bigotry against people of color is to intentionally seek out and practice those same evils against innocent White daughters and sons, by automatically excluding all Whites from the Program.

No. It is never right to practice racism and bigotry against others, even if you have been a victim of bigotry and racism yourself. No. Being poor never makes it right either.

Yes. I do know what I'm talking about. I have been poor; and I have been married to an Asian woman since the early 1970s. The first three years of our marriage were spent in the deep south, in Houston, Texas. So I have personally experienced the horror of dealing with those who intentionally seek you out and practice blatant racism and bigotry against you and your loved ones.

And I have held my daughter in my arms as she sobbed with a broken heart, after having come home from school, and asked me why her face, her hair, and her skin, weren't like those of most of the other children.

But despite the above, and even though my daughter might be one of the future beneficiaries of the King County Minority Counsel Referral Program, I have spoken out against that vile program since I believe, with all of my heart, that it is wrong.

No. I don't believe that Martin Luther King was only talking about Blacks when he said:

> I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.

Come. Share our dream. The time is now. Shut down the destructive, racist and bigoted King County Minority Counsel Referral Program.

GREGORY W. MORAVAN
Bellevue

Discovery Abuse

Editor:

I read with interest the article by Randolph Gordon in the August *Bar News*, "The Riddle of Fisons." I've been practicing in King County since '92, mostly as plaintiff's counsel. In one case, when I became tired of defense counsel's abuses of the discovery process, both in deposition and in written discovery, it was recommended to me that I file a motion against defense counsel for sanctions.

I was shocked by the suggestion. Defense counsel was a partner at a medium-sized firm. With my high bar number I realized I was going to learn under the less-than-loving strokes of my more-senior opposing counsel, but I thought it would be done according to the rules. Lesson number one was well learned. Now, I don't attend depositions without an available judge's phone number in my briefcase. I filed the motion for sanctions, and while they were not awarded, the difficulties became almost nonexistent for the duration of the case.

It seems that the alternative responses to such behavior are either to be equally obstreperous with defense discovery requests (fight fire with fire), or to attempt to force compliance with otherwise unnecessary motions (fight fire with a hose). I learned to fight fire with a hose. It's a

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waste of money and time (sanctions seem to be rarely awarded), but it can be effective. What a shame it's necessary at all.

DANIEL GALLAGHER
Seattle

Swished, Not Swallowed

Editor:

I have been involved in juvenile justice for over a decade now. During those ten years I have read thousands of police reports in which young offenders are the object of law enforcement attention. In this political season, I feel compelled to share a case that might show that all is not lost.

A Washington State Trooper pulled over a car for a traffic violation. He saw a number of beer cans strewn about the vehicle. Face-to-face interviews with the occupants revealed the presence of alcoholic beverages on each youth's breath. All but one fellow admitted consuming beer. The lone dissenter acknowledged the alcohol on his breath, but insisted that he didn't drink any brew. When the trooper asked him how this could be possible, the young man said that while he did have the beer in his mouth, he didn't swallow any of it.

I suspect a certain pot-puffing/non-inhaling resident of Washington, D.C., would be proud of the lad's restraint . . . and ingenuity.

GREG R. HUBBARD
Port Orchard

Court Race

Editor:

In the September *Bar News*, a candidate for the Washington Supreme Court stated that Chief Justice Durham had refused to sign a letter to the Washington State congressional delegation supporting continued funding for legal services. Justice Durham has subsequently and enthusiastically added her signature to this letter.

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The Right Stuff

by **Tom Chambers,** *WSBA President*

When it comes to running any organization, it's all a matter of stuff.

First stuff comes into an organization. Then the organization changes it in some way. Finally stuff comes out of that organization. If you do your job well, what comes out in the end is the Right Stuff. My goal for the coming year is to see that the Right Stuff — and plenty of it — comes out of the Washington State Bar Association.

As members of the judicial branch of government, we lawyers must always remember that ours is the stuff of justice. When the founders crafted our system of government, they knew that the rich and powerful would dominate the executive and legislative branches. Therefore it falls to the judicial branch and the courts — of which we all are officers — to protect the interests of the weak, the powerless and the poor. Let us not forget our role in the delicate structure of government, nor our obligation to clients.

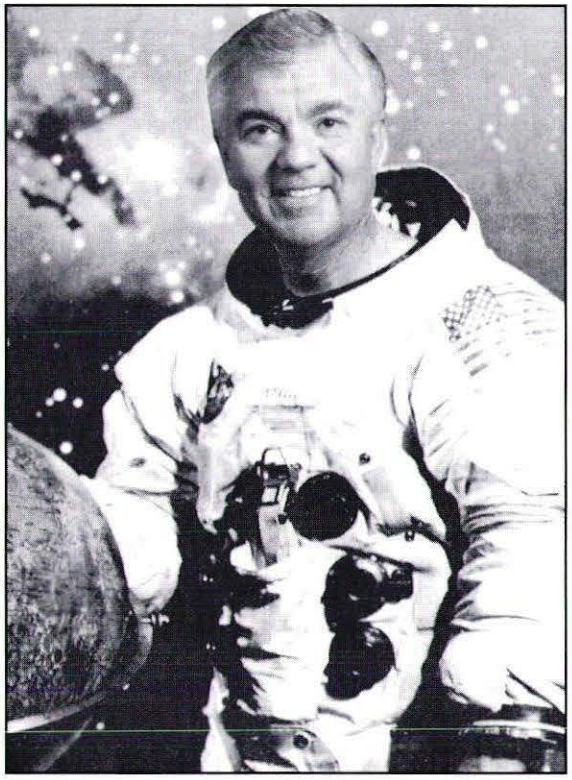
When faced with the opportunity to exercise our role in the balance of power, we first must address the choice between action and inaction. In my view, inaction is always the wrong choice. After all, unless you change the stuff around you, how can you make any progress toward turning it into the Right Stuff? Always take action. You may be wrong part of the time, but that is still better than inaction, which is wrong all of the time.

Once we take action, we must constantly evaluate the results. The best way for this organization to learn if we are turning out the Right Stuff is to hear from members. Constant input and feedback from lawyers throughout the state will let us know if we are headed down the correct path, and it is the best quality assurance program imaginable. Please communicate with the WSBA, letting staff, section chairs and members of the Board of Governors know your impressions and opinions of the jobs we are doing.

As I assume the presidency of this organization, I must keep in mind that I will serve a one-year term. That means I must have goals that can be achieved in a year. If not, then my stuff will get mixed together with the stuff of following years, and who knows what the result will be? A president should not leave a mess behind. In the case of projects that are likely to take several years to accomplish, then I must craft discrete, one-year stages to complete during my presidency.

Also, as president, I must address that stuff that all stuff is made of: money. Producing the Right Stuff isn't free; at the same time, we must ensure that the membership gets its money's worth. As you all know, last June the Board of Governors approved an increase in the yearly licensing fee paid by all lawyers. Over the next four years, licensing fees will increase anywhere from $8 to $95, depending on your status and how many years you have been in practice.

The most compelling reason for this increase is the need to improve the disciplinary system for both the grievant and the lawyer. Clients want a timely response to their complaints;



Tom Chambers

likewise, no attorney wants a complaint — whether founded or unfounded — hanging over his or her head for years. Improving the system will take money, and it will be money well spent. The Right Stuff in this case means that the public will have more confidence in the lawyers and the legal system, and the WSBA will be better able to serve its membership. It's time we all made that investment.

If we do not make these important changes to the disciplinary system, someone else will. Certain members of our state Supreme Court have voiced the opinion that that body will step in and make changes if we don't do it ourselves. Another possibility is that the Legislature will flex its political muscle in efforts to control the Bar. Think about it — do we as lawyers want to create the Right Stuff ourselves, or would we rather abide by another group's definition of the Right Stuff?

Although the membership is facing an increase in licensing fees, keep in mind that the Board of Governors has over the past few years cut many programs. Well over half the current budget — some 70 percent — goes to mandatory stuff, such as licensing and discipline.

I do not have any grand illusions about the job. I know that the detractors are many. Some think that a stuffed president would be the Right Stuff. I fear the yet unseen attacks coming from the Legislature, and I know I will disappoint colleagues who have special agendas to pursue.

But I know that the rewards will also be great. I will meet many exceptional and marvelous lawyers in this Association. I look forward to my year as your president, and I am eager to begin working together to create the Right Stuff for all of us.

A Tribute to John Rupp



Bar News *editor and founder John Rupp*

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

One afternoon in late August I received a phone call to tell me that John Rupp had passed away. He was bar number 29. He was *only* 83. He was a member of the WSBA for *only* 59 years. But John was much larger than that. He was a bridge to our past and a bridge to our future.

John's father, Otto Rupp, began practicing law in Seattle around the turn of the century, was president of the WSBA in the 1920s, and was himself a member of the WSBA for *only* 59 years. In his early years, John practiced law with his father and Al Schweppe, the founder of the WSBA in 1933 as a unified state bar. By contrast, John's son Jim has been a member of the WSBA for *only* 18 years — so far.

In September of 1995, it was my honor to present John Rupp with the WSBA's Special Lifetime Service Award. This is not an annual award — it is given only when there is a deserving recipient. It could, just as accurately, be called the "Legends of the Bar" Award. As a presenter of the award, it was obligatory to race through a list of the formal achievements of John Rupp — and it is an impressive list:

- He was admitted to the Washington State Bar in 1937.
- He was one of the first law clerks for the Washington Supreme Court before joining his father, Otto Rupp, and Al Schweppe in the private practice of law.
- He was the founder of *Bar News* and its first editor from 1947 to 1956.
- He was President of the Seattle Bar Association (as it was then called) in 1956-57.
- He served on the WSBA Board of Governors sometime during the dark ages and then as President of the WSBA in 1966-67.

But none of this captures the essence of this remarkable man. He was — without a doubt — the most unifying figure in the history of the Washington State Bar Association. I believe that John Rupp is the only person who personally knew, worked with, and befriended all five of the executive directors of the WSBA: Clydene Morris from 1933 to 1955, Alice O'Leary Ralls from 1955 to 1972, the legendary Eddie Friar from 1972 to 1982, John Michalik from 1982 to 1990, and Yours Truly.

In addition to his official titles with the WSBA, John was its most dedicated historian, raconteur, and story teller. He could even tell first-hand stories about Princess Evangeline — the daughter of Chief Seattle — if that gives you any sense of his perspective! I had the good sense to go to lunch with John occasionally. I could ask questions like, "Who were Bogle and Gates, and what were they like?"

John was a skilled writer and occasional contributor to *Bar News* long after he turned it over to other editors. One recent *Bar News* editor, Lindsay Thompson (a writer of dazzling skill himself), described John's writing skills this way: "John Rupp's grocery list is better than the best thing I ever wrote."

John was the author of "Rupp's Law of the Perception of History" which states that, "In general, events that occurred before the perceiver was born are Ancient History, seen only dimly through the mists of antiquity; while those occurring after one's birth date are lively and recent, standing out clearly in the sunlight."

We were honored to stand in the sunlight of John's service to the legal profession and to the Washington State Bar Association. He was a treasure.

Characteristically modest, John requested that there be no memorial service — only a party with one proviso: that there be sufficient bars so that no one had to wait in line for a drink. No one did. There was only one problem — John Rupp wasn't there to tell stories.



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How Much Justice Can We Afford?



The Argument for Mandatory Arbitration

by **Randolph I. Gordon**

In 1774, Edmund Burke, the British statesman and political theorist, told the Bristol County sheriffs, "To tax and to please, no more than to love and be wise, is not given to men." Yet, then and now, those who hope to govern must do so without hoping to please everyone. Somewhere, in the "sausage factory" of politics, funding must be found to effect justice.

Justice. Is this a word that has lost meaning? Having seen the name of justice made slave to every political polemicist, have we forgotten that the quality of justice is the defining characteristic of a just society? Thucydides in his Funeral Oration of Pericles boasted of his Athenian democracy stating: "our laws secure equal justice for all in their private disputes." And Thomas Jefferson, the author of our Declaration of Independence, in his First Inaugural Address, set out "equal and exact justice" as one of the principles to which "the wisdom of our sages and the blood of our heroes [had] been devoted." I mention these authorities to remind myself that justice is not simply a commodity to be bartered away in the perennial crises of fiscal policy. It is essential.

And yet, in our own experiences, we have seen the prospect of justice through legal process slip from our grasp. I do not speak of the poor, although one sure measure of a society is its protection of the human rights of its poor, its weak and its ill. I speak of the bulk of our people. The truth is that the process provided by our courts for the peaceful adjudication of conflict is increasingly unaffordable — hence inaccessible — to most of us. We have become too comfortable with a legal system where compromise of what is fair and right is mandated by the costs of the process. Resolution on the merits — independent of the costs of process — is merely an ideal.

Consider the simplest case: enforcement of a promissory note worth $5,000. If the plaintiff cannot gain full recovery after payment of fees and costs, we are not only signaling the withdrawal of society from participation in the orderly resolution of this dispute; we are also signaling to predators the inability of society to control their predations upon the lawful. The species of dispute able to be served by our legal system continue to shrink in number. The procedural protections afforded by our courts are becoming inaccessible, hence irrelevant. Our Constitutional rights are in danger of becoming theoretical.

By all reasonable measures, mandatory arbitration offers a solution. Since 1979, counties in Washington state have had a local option to implement mandatory arbitration pursuant to RCW 7.06. Introduced into King County in 1980 with a jurisdictional limit of $10,000 (upped to $15,000 two years later), initially some 33% of all civil, non-domestic cases were diverted into arbitration. With limits increased again to $25,000 in 1985, some 44% of all civil court, nondomestic filings went to arbitration. By 1989, the year following the last increase to $35,000, half of all civil, nondomestic cases went to arbitration.

A recent survey by the WSBA ADR Section Arbitration Committee found that 98% of plaintiffs' attorneys and 96% of defendants' attorneys regarded the arbitration hearing as fairly conducted. Of cases referred to mandatory arbitration, nearly 97% were resolved without a trial de novo in superior court — and in nine or ten months, rather than 17 months for cases in court.

Initial objectives emphasized reducing court congestion and costs. Yet society most benefits from reductions in time to disposition, reduced litigation costs and increased access to justice. Prompt resolution of disputes has incalculable benefits, not the least of which is the liberation of productive energies otherwise engaged. Reduced litigation expenses and the resultant increase in justice move us closer to the attainment of essential social goals. Institutional savings are secondary. Nonetheless, it should be noted that mandatory arbitration spares judges prehearing motions for cases quickly diverted into the arbitration track. It's simple arithmetic: King County, for example, has an annual budget of $483,000 to cover administration and the county's half of the hourly arbitrators' fees for approximately 2,500 arbitrations; the per case cost is under $200, a mere $90 above the filing fee.

Yet, proposed cuts by King County of its Superior Court budget to 94.2% of current levels threaten the existence of the mandatory arbitration program. This is the equivalent of drilling a second hole in the hull of a sinking vessel to let the water out. SCOMIS, which tracks courthouse data, cannot capture the number of cases referred for arbitration which settle before they enter the arbitration track. Hence, statistics respecting court/county savings in "trial time" are doubtful. Regarding civil cases resolved more than 150 days after filing, however, only 3.6% of those in the arbitration track went on to a trial de novo, as opposed to 6.6% of the non-arbitrated cases.

Trials de novo could be reduced further by increasing the disincentives for appeal: permit recovery by the prevailing party of all attorneys' fees (not just post-appeal fees under current rules); redefine "prevailing party" by requiring a trial to improve upon the arbitration award by more than 20% (rationale: increased system costs and delay should be considered, not just *de minimus* individual gain); and add an additional filing fee (for appeal), which could burden the litigious without reducing access to other claimants. In these ways, we can reduce the price of justice further, without reducing access to justice.

When we ask: "How much justice can we afford?", it is clear that mandatory arbitration is a bargain.

❖ ❖ ❖

Randolph I. Gordon *is a trustee of the King County Bar Association.*

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The Law of Self-defense for Washington Gun Owners



by **Joe Wishcamper**

Regardless of your personal feelings about gun ownership and gun control, here is the reality: there are a lot of gun owners out there. There are approximately 200,000 concealed weapons permits (CWP) that have been issued in the state of Washington.[1] Given the number of people who own firearms, it behooves everyone who exercises the right to keep and bear arms to shoulder the corresponding responsibility to understand, and abide by, the laws governing the exercise of that right.

Hence the first purpose of this article is to explain the law of self-defense and deadly force in Washington. The second purpose is to advocate that every firearm owner should conduct him or herself in a manner *much more conservative than the law of self-defense requires*. To that end, this article proposes "Ten Commandments" that every responsible gun owner should follow.

The Law of Self-defense in Washington

The law of self-defense in Washington is based upon both statutes and the case law. A person is entitled to use *non-deadly* force as follows:

> Whenever used by a party about to be injured, or by another lawfully aiding him or her, in preventing or attempting to prevent an offense against his or her person, or a malicious trespass, or other malicious interference with real or personal property lawfully in his or her possession, in case the force is not more than is necessary . . . .[2]

The word "necessary" is defined to mean:

> That no reasonably effective alternative to the use of force appeared to exist and the amount of force used was reasonable to effect the lawful purpose intended.[3]

In contrast, the right to use *deadly* force is lawful when committed either:

> (1) In the lawful defense of the slayer, or his or her husband, wife, parent, child, brother, or sister, or of any other person in his presence or company, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished; or
>
> (2) In the actual resistance of an attempt to commit a felony upon the slayer, in his presence, or upon or in a dwelling, or other place of abode, in which he is.[4]

Washington case law provides that the right to self-defense is limited by both subjective and objective factors. The defender must have both an honest[5] and reasonable[6] belief that he or she is confronted with an imminent threat[7] of injury (to respond with non-deadly force) or great personal injury (in order to respond with deadly force), and the amount of force used must be reasonable in light of the threat. The defender is not entitled to use all of the force which he subjectively believes to be necessary to repel an attack; rather, he may use that degree of force necessary to protect himself which a reasonably prudent person would have used under the conditions honestly appearing to the defender at the time of the attack.[8]

Additionally, the defender must not be the "aggressor."[9] Any person who is an aggressor, thereby creating a necessity to act in self-defense, loses his or her right to self-defense. If the person slain would have been justified in arming himself to resist the force utilized by the person trying to claim self-defense, then self-defense is not available.[10]

If these elements are established, self-defense is a complete defense. If any of the necessary elements are missing, the defense is lost entirely.

Significantly, the burden of proof is on the prosecution to show beyond a reasonable doubt that the defendant did *not* act in lawful self-defense.[11] This is one aspect of Washington law that is highly favorable to a person asserting the right of self-defense.

A further provision of the common law

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is that there is no duty to retreat in Washington from a place where one has a lawful right to be.[12] This is true even if the defender knows he could do so in complete safety.[13]

It is important to appreciate that self-defense is applicable only to those situations where the defender *intended* to act in self-defense. When the defender claims that the victim was injured by accident, the trial court can properly refuse even to instruct the jury about the right to self-defense.[14] An accidental death is an "excusable homicide,"[15] but that is an entirely different defense from self-defense.

The jury is required to consider the circumstances as they appeared to the defendant, not as they actually existed.[16] To that end, it is not essential that the aggressor actually make an attack, only that the defendant honestly and reasonably believe that he was under actual or imminent threat.[17] Further, the jury should consider all of the facts known to the defendant, not just those at or immediately prior to the attack.[18] In that regard, the reputation of the attacker or the group to which he belongs is a factor the jury should consider in determining the reasonableness of the defendant's response. For example, in *State v. Despenza*[19] the Court of Appeals held that the jury should have been told that the defendant believed that his attacker was a member of the Nazi party, a group which has a reputation for lawlessness.

Since the legal requirements focus on whether the defendant's use of force was reasonable, the lawfulness of the force used will generally be a question of fact for the jury to decide.[20] However, there are several cases which have ruled that deadly force was not justified as a matter of law. In *State v. Nyland*,[21] the court held that adultery is not a crime which justifies the use of deadly force, since the non-adulterous spouse's life is not threatened. In dicta, the court said that deadly force was restricted to felonies such as murder, robbery, burglary, arson, and rape. That is because in these felonies, "human life either is, or is presumed to be in peril."

In *State v. Griffith*,[22] the court held that deadly force was not justified in response to an unlawful trespass where the victim was not armed and not attacking the defendant. The court stated that deadly force was justified only if the felony which was sought to be prevented was of a violent nature.

In *State v. Madry*,[23] the court held that it was unreasonable as a matter of law to use deadly force to recover $50 which had been stolen from the defendant by someone he knew and would have been able to identify by name to the police. And, in *State v. Brigham*,[24] the defendant and the victim were engaged in an escalating physical conflict of pushing and shoving in which the victim was the more aggressive of the two. At some point, the defendant pulled out a knife and stabbed the victim eight times in the back. The court held that to be excessive force as a matter of law and the defendant was not even entitled to have the jury instructed to consider self-defense.

In *State v. Bell*,[25] the Court of Appeals upheld the defendant's conviction for second degree murder and the refusal of the trial court to give a self-defense instruction to the jury where the victim, who was an alleged homosexual, had grabbed at the defendant's crotch and attempted to kiss him. In response, the defendant struck the victim over the head with a beer bottle and flashlight, then strangled him to death. The court held that the defendant's use of deadly force under those circumstances was unreasonable as a matter of law.

An additional point of interest is that Washington law provides that any person who is charged with a crime and is successful at trial in a defense based upon self-defense is entitled to recover his or her legal fees, time lost, and other expenses involved in the defense from the state of Washington.[26]

Ten Commandments for Responsible Gun Owners

One would think that simply knowing the law of self-defense and abiding by it would be enough to keep one out of trouble. But the consequences of utilizing deadly force, even when justified, are so horrendous that one should go to every possible length to avoid trouble. Just because one has lawfully exercised the right of self-defense and thereby avoided indictment for or conviction of a crime does not mean that one is going to avoid a civil suit arising from the use of deadly force. Accordingly, if one really wants protection from both physical harm and legal harm, here are "Ten Commandments" to follow:

1. If you carry, get a permit.

The law on possession of a concealed weapon is set forth in RCW 9.41. Basically, a person carrying a concealed weapon must have a Concealed Weapon Permit (CWP). A person is qualified for a CWP if he or she is over the age of 21, has not been convicted of a felony or certain misdemeanors, and does not have an outstanding arrest warrant. Even with a CWP, one cannot take a concealed weapon into a jail, courthouse, a public mental health facility, or a bar where liquor is served.[27]

2. Never make a physical response to a verbal threat or insult.

The use of force is justified only to defend against a *physical* injury to the defender. Physical injury does not flow from verbal threats. Rather, it flows from a physical attack.

One can readily imagine that the insults from a potential attacker can be extremely offensive. Persons who are racial minorities, persons with ethnic backgrounds, and persons with prominent physical characteristics must be inured to withstanding the crude, rude, and degrading comments which might be directed at them. In the law of self-defense, there are no such things as "fighting words."

Another problem category is a traffic altercation. Tensions sometimes run high in rush hour traffic. The proper response to a verbal insult, regardless of the context in which it arises, is to walk away. If one cannot control one's temper in the elevated hassle of the day-to-day environment, one ought not to possess a weapon.

3. Attempt to run away and escape if you can do so safely.

Under the law, there is no duty to retreat. But as a matter of prudence, one should endeavor to avoid a physical confrontation at all costs, providing one can do so safely. That includes retreating from a threatened or actual attack even when there is no legal duty to do so.

4. Never shoot at a fleeing burglar or assailant.

One should never use deadly force against an assailant who is trying to escape. If the assailant is trying to get away, let him go. If one walks into one's home and finds a burglar going out the window, let him go. The reason is that if the assailant is moving away, then he is no longer presenting a physical threat, or at least that threat is no longer imminent.

5. Never use physical force to defend personal property.

This advice is more conservative than the law. The law entitles one to use reasonable non-deadly force to defend one's personal property,[28] but it is a bad idea to do so. If an attacker wants your purse or wallet, and you believe that your physical well-being is not threatened if you comply, then comply. Any physical response by you could quickly escalate to deadly force, and your personal property is just not worth it.

6. Do not fire warning shots.

The firing of a warning shot is unsound both legally and tactically. From a legal point of view, the use of deadly force (and discharging a firearm *is* deadly force) is authorized only if one is confronted with an imminent threat of death or great personal injury. Thus, a warning shot presents a "catch 22" situation: if deadly force was not authorized, then the warning shot should never have been fired to begin with. On the other hand, if deadly force is authorized, then one does not have the luxury of firing a warning shot because the attacker is about to cause death or great personal injury. Hence the attacker has to be stopped immediately, and a warning shot does not stop a determined attacker.

From a tactical point of view, firing a warning shot simply puts the attacker on notice that you are armed. If the attacker is armed, then the likelihood that the attacker will open fire against you has just been increased.

7. Always be sure of your target.

Never fire a shot unless you are sure of your target. You do not want to shoot your child who came home early from a date or party, and is hiding in the closet as an ill-advised practical joke. Just because someone is in your house who (you think) is not supposed to be there, that does not give you an automatic, unqualified right to shoot that person. If you are not in imminent fear of death or great personal danger, do *not* fire your weapon. As a practical matter, if you think somebody has broken into your home, do not venture into the house — back out and call

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8. Never fire through a door.

It is a bad idea to fire at an attacker through a door for at least two reasons. First, the threat on the other side of the door is arguably verbal, even if the attacker is trying to beat down the door. There is at least a theoretical possibility that the attacker might desist and go away before he gets through the door. Second, a defender is authorized to use deadly force only if the threat of great personal injury is *imminent*.[29] A threat on the other side of the door might not be deemed "imminent." One is much better off to let the attacker beat down the door, enter the room, and then use whatever force is necessary to stop the attack.[30]

9. Do not carry a knife for self-defense.

Seattle has an ordinance[31] that outlaws the carrying of a knife, whether concealed or not, with a blade in excess of three and one-half inches in length, or any "fixed blade knife," regardless of length. Claims of a good intention and pure motive are of no avail in the face of this ordinance. In *Seattle v. Riggins*,[32] the defendant was carrying a hunting knife and a sheath partially concealed by his coat. He was standing on a sidewalk in Seattle waiting for a bus. A passing policeman happened to notice the partially concealed knife. The defendant was not displaying the knife or threatening anyone with it. Nevertheless, the policeman arrested the defendant and charged him with violation of the Seattle ordinance. The defendant insisted that he had been carrying the knife because he had been assisting a friend in a roofing project earlier in the day. The defendant was convicted and the conviction was upheld on appeal. There is no room to maneuver around this ordinance. Do not carry a knife for self-defense.

10. Secure your weapon at all times.

Your weapon should either be on your person or locked up securely at all times, period. That means that you should own a pistol or gun safe. If you cannot afford such a safe, the absolute minimum acceptable level of security is a trigger lock mechanism. The problem with a trigger lock mechanism is that it does not prevent a thief from carting off your weapon, and taking a hacksaw to the trigger lock at a later time.

To date, no case has held that a gun owner is under a duty to secure a weapon that is located in the gun owner's home in such a fashion that it cannot be accessed by an unauthorized person, whether a family member or intruder. But there are cases that have been filed and are pending at this time that argue for imposing such a duty.

You do not want to be a test case to make new law in this area. If you think you cannot afford a gun safe, then ask yourself whether you can afford the legal fees to hire a lawyer to defend against a suit filed against you because some teenager took the gun out of your night stand, started playing with it, and shot a playmate.

This author's position is that if a person is unable or unwilling to properly secure a firearm, then that person ought to get rid of the firearm.

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Conclusion

One commentator, Cynthia Gillespie,[33] observed that the law of self-defense in Washington is perhaps more favorable than any other state in the union.[34] That may be true. Nevertheless, the law of self-defense is serious business. A person who does not understand (and comply with) the law of self-defense can get into extremely serious trouble. A person acting in self-defense has to be prepared to fight two battles — the first against the attacker, the second against the legal system.[35] We hope the points contained in this article can help to prevent having to fight the first battle, and if the use of force in self-defense is unavoidable, then at least avoid having to fight the second battle.

Endnotes

[1] This estimate was provided by the Second Amendment Foundation of Bellevue, Washington.

[2] RCW 9A.16.020(3).

[3] RCW 9A.16.010(1).

[4] RCW 9A.16.050. There is no statutory definition for "great personal injury."

[5] This is the subjective component of the requirements. The focus is on the actual state of mind of the victim at the time of the incident. *See State v. Alferez*, 37 Wn. App. 508, 511 (1984) (defendant who stated that he was not in fear at the time of the shooting held not entitled to self-defense instruction).

[6] *State v. Hatley*, 41 Wn. App. 789, 798 (1985). This requirement introduces an objective standard into the jury's determination. The jury will be instructed that:

> The slayer may use such force and means as a reasonably prudent person would use under the same or similar conditions as they appeared to the slayer at the time of [and prior to] the incident.

Washington Pattern Jury Instructions, 16.02 (Supp. 1986).

[7] This requires the jury to find that the victim honestly and reasonably believed that the aggressor intended to cause injury (or great personal injury in the event of deadly force) in the very near future. *See, State v. Walker*, 40 Wn. App. 658, 662 (1985). If the threatened violence is more remote in time, the victim may have an alternative course of action to avoid the threatened harm.

[8] *State v. Bius*, 23 Wn. App. 807, 809 (1979).

[9] *State v. Craig*, 82 Wn.2d 777, 783 (1973).

[10] *State v. Jelle*, 21 Wn. App 82 (1978).

[11] *State v. Acosta*, 101 Wn.2d 612, 618-619 (1984).

[12] *State v. Allery*, 101 Wn. 2d 591, 598 (1984).

[13] *State v. Lewis*, 6 Wn. App. 38, 40 (1971).

[14] *State v. Gagolin*, 45 Wn. App. 640, 643-644 (1986).

[15] RCW 9A.16.030 (homicide is excusable when committed by accident or misfortune).

[16] *State v. Wanrow*, 88 Wn.2d 221, 240 (1977).

[17] *State v. Negin*, 37 Wn. App. 516 (1984).

[18] *State v. Wanrow*, 88 Wn.2d 221, 234 (1977).

[19] 38 Wn. App. 645, 649 (1984).

[20] *State v. Kirvin*, 37, Wn. App. 452, 458-459 (1984).

[21] 47 Wn.2d 240, 242-243 (1955).

[22] 91 Wn.2d 572, 5786 (1979).

[23] 12 Wn. App. 178 (1974).

[24] 52 Wn. App. 208, 210 (1988).

[25] 60 Wn. App. 561 (1991).

[26] RCW 9A.16.110(2).

[27] RCW 9.41.300(1).

[28] RCW 9A.16.020(3).

[29] RCW 9A.16.050(1).

[30] A case which illustrates a problem of firing through a door is *State v. Crigler*, 23 Wn. App. 716 (1979). In that case, Crigler was convicted of first degree manslaughter after shooting blindly through a door after yelling "Teeth, if its you, get away, back off." The shot killed the victim. Crigler managed to get the conviction overturned on appeal because of errors in the jury instructions regarding self-defense.

[31] Seattle Municipal Code 12A.14.080(B).

[32] 63 Wn. App. 313 (1991).

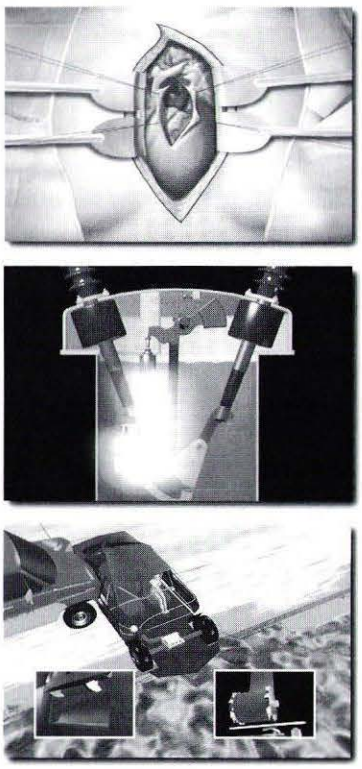
[33] Gillespie, *Justifiable Homicide: Battered and the Law* (Ohio State University Press, 1989).

[34] This statement was made to the author in a telephone interview of Ms. Gillespie on March 13, 1992. Her reasons for so believing include (1) there is no duty to retreat; (2) the burden of proof is on the prosecutor to show the absence of self-defense; (3) Washington has established that expert testimony on the battered woman syndrome is admissible at trial; and (4) there are "enlightened decisions by the Washington Supreme Court dealing with the self-defense rights of women."

[35] Professor Bradley J. Steiner, Martial Arts Instructor, Seattle, Washington.

✣ ✣ ✣

Joe Wishcamper *is a shareholder with Inslee, Best, Doezie & Ryder in Bellevue. His general litigation practice emphasizes real estate and self-defense issues.*



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New Lead-based Paint Requirements for

by **Joseph P. McCarthy**

As of September 6, 1996, owners and lessors of residential property built before 1978 have been required to inform prospective purchasers or tenants of the hazards of lead-based paint and the presence of lead-based paint on the premises. New federal regulations, promulgated by HUD and EPA pursuant to the Residential Lead-Based Paint Hazard Reduction Act of 1992, require these disclosures, and impose monetary penalties and civil liability on anyone who violates the regulations. This article discusses the genesis of these regulations, explains their scope and content, and points out areas where the regulations are unclear.

The Scientific Appreciation of Environmental Lead Hazards

The scientific community has agreed for more than fifty years that lead, if ingested, can be toxic. Ingested lead affects virtually the entire body. It is harmful to persons of all ages, but is especially harmful to women of childbearing age, fetuses, and young children. In small doses, lead can cause learning disabilities, growth impairment, sensory impairment, and neurological damages. In higher doses, it can cause brain damage, convulsions and death.

Lead was commonly used in gasoline, tin cans and house paint from the turn of the century until the 1950s. In the 1950s, some eastern states and cities banned lead from house paint, but it remained in common use nationally until 1978 when lead was banned in residential house paint by the U.S. Consumer Product Safety Commission.

Since the late 1970s, the blood level of lead in American children has decreased significantly. During this same time, however, the Center for Disease Control has concluded that blood levels thought safe in the 1970s, are actually harmful.[1] As of 1991, the Third National Health and Nutrition Examination Survey indicated that about 1,700,000 U.S. school children under the age of six have harmful blood lead levels.[2] The federal government has estimated that the pre-1980 housing stock in the United States contains 3,000,000 tons of lead in the form of lead-based paint, that 83% of the privately owned housing units in the U.S. contain some lead-based paint, and that 64,000,000 U.S. homes contain potentially hazardous lead-based paint.[3] Fortunately, the housing stock in Washington state is generally newer than the housing stock in eastern states, and Washington has a lower incidence of lead-based illness than most eastern states.

Lead can be ingested in a number of ways. Children, of course, eat paint chips.[4] In addition, normal wear and tear of lead-based paint creates a dusty film on walls, windowsills and other interior surfaces. Lead from exterior paint also flakes or leaches into the soil near homes. Both interior and exterior lead in these two latter forms can be inhaled or transferred to the mouth by the hands. There is a growing consensus in the scientific community that these two forms of lead pose a greater hazard than paint chips.[5]

The Genesis of the Current Regulations

In 1971, Congress passed the Lead-Based Paint Poisoning Prevention Act,[6] which prohibited the use of lead-based paint in federally assisted or constructed housing,[7] and established a program for the identification and abatement of lead-based paint hazards in federally assisted housing.[8] In 1978, the Consumer Products Safety Commission banned the use of lead in all residential paint.[9] Since 1978, lead-based residential paint has been unavailable in the United States.

Nevertheless, in subsequent years evidence mounted that the past use of lead had created an ongoing environmental health hazard to children. Therefore, in 1992, Congress enacted the Lead-Based Paint Hazard Reduction Act of 1992.[10] The act established research and remediation programs for lead-based paint hazards in housing[11] and the workplace.[12] It also required, under pain of monetary penalties and civil liability, the disclosure of lead-based paint hazards during sales or leases of housing constructed before 1978.[13] Congress directed HUD and EPA to develop regulations to implement these disclosure provisions.[14] Those regulations were published in final form on March 6, 1996,[15] and became effective September 6, 1996.

Summary of Regulations

The new regulations impose the following duties on sellers and lessors of housing built before 1978: A seller or lessor must (1) disclose all information it has regarding the use of lead-based paint on the premises; (2) give the purchaser or tenant a written pamphlet about lead hazards; and (3) include a warning of lead hazards in the purchase & sale agreement or lease. Sellers, but not lessors, must also provide prospective purchasers a 10-day lead hazard inspection contingency period in the purchase and sale contract.[16]



Housing Sales

Any agent involved in a sale or lease has a duty to inform the seller or lessor of the requirements of the regulations, and a duty to insure compliance with the regulations.

Effective Dates

The regulations became effective on September 6, 1996, for owners of more than four "residential dwelling units," and become effective on December 6, 1996, for owners of one to four "residential dwelling units." "Residential Dwelling Units" include single family houses and multi-family structures. [17]

Covered Transactions

The regulations apply to "all transactions to sell or lease" pre-1978 housing.[18] There are certain exceptions, but the regulations will apply to the majority of sales and leases. The major exceptions follow:

First, foreclosure sales are excluded on the theory that such properties are sold "as is." The trustee selling such a property will likely have no knowledge of any lead-based paint hazards, and the purchaser does not, during the foreclosure process, have an opportunity to conduct an inspection.[19]

Leases of less than 100 days are also excluded provided that the lease cannot be renewed or extended. HUD's intent is to exempt temporary housing rentals of three months or less, such as hotel/motel stays and vacation housing. Month-to-month leases, which are by definition less than 100 days, are not included in this exemption unless the term is limited to 100 days at the outset.[20]

Renewals of existing leases are exempt provided the owner or manager has already disclosed to the tenant all the information required by the regulations and has not obtained any new information on the presence of lead in the premises. If new information has been obtained, it must be disclosed to the tenant.[21] Thus, leases executed before the effective date of the regulations will be subject to the regulations upon renewal.

In the Seattle area it is common for tenancies to become month-to-month at the expiration of a lease. Such tenancies can continue for years without ever being "renewed." HUD has taken the position that "renewal" in such cases occurs when there is a "significant" change in the terms of the lease.[22] In its explanation of the new regulations HUD and EPA cite a rent adjustment as a "significant" change but give no further guidance. It is not clear whether *any* rent adjustment would be significant. Nor is it clear whether other events might be significant. Consider a tenant on a month-to-month tenancy who marries. If the new spouse moves in, has there been a significant change in the terms of the lease? The regulations are unclear.

A lease—but not a sale—of housing which has been certified to be lead-based "paint free" by a federally certified inspector is exempt.[23] However, the federal government has not yet developed a training and certification program for lead-based paint inspectors. Some eastern states already have such certification programs and, in the meantime, owners and managers can use state-certified inspectors to determine if the housing is lead-based paint free. Washington state has not developed such a certification program.

Other than the foregoing exemptions, *all* sales and leases are covered, including oral leases. In such circumstances the tenant must be given a separate written warning.[24]

Finally, it should be noted that the regulations specifically cover the purchase of *any* interest in the real property, including partial title.[25] Thus, owners who convey a partial interest might have a duty to disclose to the purchaser. On the other hand, there would appear to be little reason to disclose lead-based paint hazards to purchasers of a non-possessory interest. The regulations only cover transfers of real property interests for consideration.[26] Thus, gifts, court ordered transfers, construction liens, and testamentary transfers would not be covered. Also, by their own terms, the regulations apply "to all transactions to sell or lease target housing."[27] This language suggests that only the sale of a *building* is covered. Beyond that, the issue remains murky. HUD and the EPA have been silent on this issue.

Covered Properties

The regulations apply to the sale or lease of any "Target Housing," which is defined as "any housing constructed prior to 1978, except housing for the elderly or persons with disabilities . . . or any 0-bedroom dwelling."[28] Housing for the elderly and disabled are excluded because neither children nor childbearing mothers are normally expected to live in such housing. There is an exemption to the exemption, however, if a child less than six-years-old lives in or is expected to live in the housing.[29] "Zero-bedroom dwelling" is a dwelling where the sleeping area is not separate from the living area. It includes efficiencies, studio apartments, dormitories, and rentals of individual rooms in residential dwellings.[30]

The phrase "housing constructed be

fore 1978" seems plain enough. The obvious intent of the 1978 cutoff is to regulate housing which might contain lead-based paint. The regulations do not, however, define the term "construct." It is not clear whether housing which was built prior to 1978 but renovated afterwards would be considered "Target Housing." The cautious owner or agent will want to err on the side of compliance with the regulations.

Seller and Lessor Disclosure Requirements

As noted at the beginning of this article, Sellers and Lessors must disclose lead-based paint information to prospective purchasers and tenants. This section explains these disclosure requirements. First, the required disclosure can occur at any time during the sale or lease process as long as it occurs before the time the purchaser or lessee becomes legally bound.[31] Second, HUD has taken pains in the language of the final rule to clarify that the regulations do not require mass disclosure of information to prospective purchasers or tenants regardless of their level of interest.[32]

EPA-approved Pamphlet

As for the disclosures themselves, the seller or lessor must provide the purchaser or lessee with an EPA-approved lead hazard information pamphlet. EPA has published one such pamphlet, entitled *Protect Your Family From Lead In Your Home*.[33] Other pamphlets may become approved in the future, but there are no others at this time.

Disclosure of Lead Paint Hazards

The seller or lessor must also disclose the presence of any known lead-based paint or lead-based paint hazards in the building. However, it will not do to simply state that there is lead-based paint on the premises. The seller or lessor must not only disclose the presence of such paint or hazards, but must also disclose any additional information which is available to the seller or lessor regarding the location of the paint or hazard, the condition of the paint or hazard, the way the seller or lessor came to know about it, and other information which is available to the seller or lessor.[34]

The regulation distinguishes between "known" and "available." "Known" means actually known.[35] "Available" means reasonably available.[36] The regulations specifically state, however, that a seller or lessor has no positive obligation to search for, remediate, or abate lead-based paint or lead-based paint hazards.[37]

The seller or lessor must also disclose the above information to any agent (except a buyer's agent) who is involved in the sale or lease of the premises.[38] In addition, he must disclose to the agent the existence of any available records or reports pertaining to paint or hazards on the premises.[39] This is intended to insure that the agent is informed.

These disclosure requirements do not, however, impose any duty on the seller or lessor to investigate or remediate lead hazards.[40]

Delivery of Available Records

The seller or lessor must also give the purchaser or lessee any records *available* to the seller or lessor which pertain to the paint or hazards on the premises.[41] "Available" means reasonably obtainable at the time of disclosure.[42] HUD and EPA take the position that showing records to a prospective tenant or purchaser is insufficient; the owner or manager must

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deliver copies to the prospective purchaser or tenant.[43]

These records must include records and reports regarding common areas in multi-family buildings. "Common Areas" are defined to include any portion of the premises generally accessible to users and tenants, including playgrounds and boundary fences.[44] This definition is quite expansive, and includes areas outside the building itself.

The duty to provide records includes reports regarding other units in a multi-family building, provided the information was obtained as part of a project-wide evaluation or inspection.[45] The government's rationale is that inspections often involve random rather than complete sampling, and that no information might be available for any particular unit in a building — even though there might be general information available. Thus, prospective tenants and purchasers must be given available information about the entire premises, not just the unit being sold or leased.[46]

Required Contract Provisions

A purchase & sale agreement or lease must also contain certain language. The requirements for purchase & sale contracts differ slightly from the requirements for leases, as explained below.

" . . . pre-1980 housing stock in the United States contains 3,000,000 tons of lead . . . "

First, the contract must contain, either in the text or as an attachment, a one paragraph "Lead Warning Statement." The language of this statement is set forth in the regulations. The statement required in a PSA is longer than the statement required in a lease.[47]

Second, the contract must contain a disclosure of known lead paint and lead-based paint hazards, or a statement that the seller or lessor has no knowledge of any paint or hazards.[48] The contract must also contain a list of all the available records or reports which were provided to the purchaser or lessee, or a statement by the seller or lessor that no such materials are available.[49] These written disclosures are the same as the disclosures discussed in the preceding section of this article.

Third, the lease must contain the purchaser's or lessee's acknowledgment that he has received the pamphlet, the written disclosure of hazards, and the listed documents.[50]

If an agent is involved in the transaction, the contract must contain a statement that the agent has informed the seller or lessor of his obligations under the statute, and that the agent is aware of the agent's duty to insure compliance with the statute.[51]

Finally, all parties to the transaction, including the agent, must all certify to the accuracy of their various statements to the best of their knowledge. These certifications must be signed and dated.[52] The seller, lessor and agent must retain a copy of the required contract provisions for three years from the date of sale or commencement of the lease.[53]

Penalties and Liability

The regulations contain various enforcement mechanisms. A person who know-

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ingly fails to comply with the regulations is subject to civil monetary penalties assessed by HUD.[54] HUD also has the power to bring action in federal court to enjoin violations of the regulations.[55] More importantly, a person who knowingly violates the regulations is jointly and severally liable to the purchaser or lessee for three times his actual damages, and his attorneys' fees.[56] Joint and several liability means that if more than one person is liable to the plaintiff, each of them is liable to the plaintiff for the full amount of the plaintiff's damages, regardless of their individual share of fault. Violation of the regulations is also a violation of the Toxic Substances Control Act,[57] which exposes the violator to possible monetary penalties up to $10,000, and criminal sanctions.[58] Congress has made it clear, however, that failure to comply with the regulations or statute has no effect on the validity or enforceability of any sale, lease, loan, mortgage, lien, contractual obligation or title.[59]

The significant risk of non-compliance lies in the area of civil litigation. During the last thirty years, there has been a great deal of lead-based paint litigation in the eastern states. A number of eastern states have also enacted their own lead-based paint disclosure and abatement statutes. Numerous landlords have been found liable under theories of negligence, implied contract, and violation of state law for failing to disclose or remove lead-based paint hazards.[60]

"A child who suffers injury from lead-based paint can have astronomical damages."

A child who suffers injury from lead-based paint can have astronomical damages. There have been numerous million-dollar verdicts, and in one recent New York case, the jury awarded over $10,000,000 to an injured child.[61] The potential exposure is so significant that insurance which covers lead-based paint liability of multi-family owners and managers is expensive and not widely available.[62] Proving liability in these cases will be even easier if a seller or lessor has violated these new regulations.

Summary of Agent Responsibilities

The regulations impose specific duties on agents involved in the sale or lease of pre-1978 housing. "Agent" is defined in the regulations as any party who enters into a contract with a seller or lessor for the purpose of selling or leasing target housing.[63] It does not include a purchaser's representative who receives all compensation from the purchaser.[64] The regulations state:

Each agent shall ensure compliance with all requirements of this subpart. To insure compliance, the agent shall: (1) inform the seller or lessor of his/her obligations under [the regulations]; (2) Ensure that the seller or lessor has performed all activities required under [the regulations], or personally ensure compliance with the requirements of [the regulations].[65]

The regulations impose on agents not only the duty to inform the seller or lessor of his obligations, but insure that the disclosures, inspection period, contract language and certifications are observed. The regulations place a personal burden on the agent to insure compliance if the seller or lessor fails to comply. However, the extent of this burden is unclear

The regulations do, however, provide somewhat of a "safe harbor" for agents. First, they require sellers and lessors to disclose known facts and available documents to agents, as well as purchasers and lessees.[66] Second, they provide that if an agent has informed a seller or lessor of his obligations under the regulations, the agent shall not be liable for failure to disclose the presence of lead-based paint or lead-based paint hazards known by the seller or lessor but not disclosed to the agent.[67] Taken together, these regulations should protect an agent from liability created by a careless owner.

Nevertheless, the regulations could be improved upon from an agent's point of view. For example, the regulations relieve sellers and lessors from any positive obligation to evaluate or reduce lead-based paint hazards,[68] but are silent as to

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agents. Also, the obligation to "personally ensure compliance" when the seller or lessor has failed to comply suggests that the agent must deliver copies to the purchase or lessee, but nothing in the regulations requires the seller or lessor to deliver such documents to the agent. The one thing that is clear from the regulations is that the government has put the ultimate burden of compliance on the agent.

Conclusion

A good case can be made, at least in western states with a relatively new housing stock, that these regulations will require a significant expenditure of resources to address a relatively minor public health problem. Nevertheless, the threat of treble damages is very worrisome and should give sellers and lessors of pre-1978 housing plenty of incentive to comply.

Endnotes

[1] CDC, 1991, U.S. Centers for Disease Control and Prevention, *Preventing Lead Poisoning in Young Children: A Statement by the Centers for Disease Control*, Atlanta, GA.

[2] Pirkle, 1994. Pirkle, J.L., D.J. Brody, E.W. Gunter, R.A. Kramer, D.C. Paschal, K.M. Flegal, T.D. Matte, "The Decline in Blood Lead Levels in the United States." *Journal of the American Medical Association* 272(4): 284-291.

[3] EPA, 1995. U.S. Environmental Protection Agency, *Report on the National Survey of Lead-Based Paint in Housing: Base Report*. Washington, D.C.: EPA 747-R95-003.

[4] The lead paint chips taste sweet, so children like to eat them.

[5] CDC, 1991. U.S. Centers for Disease Control and Prevention, *Preventing Lead Poisoning in Young Children: A Statement by the Centers for Disease Control*, Atlanta, GA.

[6] 42 U.S.C. § 4801 *et seq.*

[7] 42 U.S.C. § 4831. This provision also prohibited lead-based paint on cooking and eating utensils and on toys and furniture.

[8] 42 U.S.C. § 4822.

[9] 42 F.R. 44199 September 1, 1977; 16 C.F.R. Part 1303.

[10] 42 U.S.C. § 4851 *et seq.*

[11] 42 U.S.C. §§ 4852, 4852a, 4852b, 4852c.

[12] 42 U.S.C. § 4853.

[13] 42 U.S.C. § 4852d.

[14] 42 U.S.C. § 4852d(a)(1).

[15] 61 F.R. 9064-9088, March 6, 1996. The regulations will be codified at 24 C.F.R. Part 35 (HUD) and 40 C.F.R. Part 745 (EPA).

[16] 24 C.F.R. 35.90. The parties can agree to a different number of days or the purchaser can waive the contingency.

[17] 24 C.F.R. 35.84(a) and (b).

[18] 24 C.F.R. § 35.82.

[19] Subsequent sales of property obtained through a foreclosure sale are not, however, exempt.

[20] 61 F.R. 9068, March 6, 1996.

[21] *Id.*

[22] *Id.*

[23] This exemption does not apply to sale transactions on the theory that each new purchaser needs to know in order to later disclose as a seller, and on the theory that a purchaser is also entitled to a lead hazard inspection contingency which would be illusory if the purchaser did not know the history of the residential unit.

[24] 61 F.R. 9068, March 6, 1996.

[25] 24 C.F.R. 35.86.

[26] *Id.*

[27] 24 C.F.R. 35..82

[28] Housing for the elderly means retirement communities or similar types of housing reserved for persons over the age of 62.

[29] 61 F.R. 9083, March 6, 1996.

[30] *Id.*

[31] 61 F.R. 9071, March 6, 1996.

[32] 61 F.R. 9071, March 6, 1996.

[33] This pamphlet is available from the National Lead Information Clearinghouse at 1-800-424-LEAD; from the National Safety Council's gopher at cais.com; or on the Web at http://www.nsc.org/nsc/ehc/ehc.html.

[34] 24 C.F.R. 35.88.

[35] 61 F.R. 9071-72, March 6, 1996.

[36] 24 C.F.R. 35.86.

[37] 24 C.F.R. 35.88.

[38] *Id.*

[39] *Id.* "Agent" is defined as a party who enters into a contract with the seller or lessor to sell or lease the housing. 24 C.F.R. 35.86. The definitions in the regulations seem to be consistent with Chapter 179, Washington Laws of 1996, commonly known as "REASN" (see Sept. 1996 *Bar News*). REASN states that a broker or agent who performs services for a buyer or lessee is a "Buyer's Agent" unless he has entered into a written agency agreement with the seller (among other exceptions).

[40] *Id.*

[41] *Id.*

[42] 61 F.R. 9072, March 6, 1996.

[43] 61 F.R. 9072, March 6, 1996.

[44] 24 C.F.R. 35.86.

[45] 24 C.F.R. 35.88.

[46] It is not clear how these provisions should apply in the resale of a condominium unit. RCW 64.34.425 requires sellers to provide a resale certificate from the condominium association. Under the federal regulations sellers must disclose "known" hazards, and "available" information about those hazards. "Available" means "reasonably obtainable by the seller." 24 C.F.R. 35.86. Arguably, information in the possession of the condominium association is reasonably obtainable. Also, RCW 64.34.425 requires the resale certificate to include "information reasonably requested by mortgagees of prospective purchasers of units." This provision could arguably include information on lead-based paint. Thus, a condominium association may have a duty under state law to provide information on such paint in common areas or other units in a resale certificate.

[47] 24 C.F.R. 35.92(b)(1).

[48] 24 C.F.R. 35.92(b)(2).

[49] 24 C.F.R. 35.92(b)(3).

[50] 24 C.F.R. 35.92(b)(4).

[51] 24 C.F.R. 35.92(b)(5).

[52] 24 C.F.R. 35.92(b)(6).

[53] 24 C.F.R. 35.92(c).

[54] 24 C.F.R. 35.96(a).

[55] 24 C.F.R. 35.96(b).

[56] 24 C.F.R. 35.96(c)(d).

[57] 15 U.S.C. § 2601 *et seq.*

[58] 24 C.F.R. 35.96(f).

[59] 42 U.S.C. § 4852d(c).

[60] *See, e.g.*, 19 ALR 5th 405, "Landlord's Liability for Injury or Death of Tenant's Child From Lead Paint Poisoning."

[61] *Lugo v. City of New York*, Supreme Court, Bronx County, 1993.

[62] *Housing and Urban Development Reporter*, August 2, 1993, pp. 175-76; September 12, 1994, pp. 264-65. The federal government has convened a task force to recommend solutions to this problem.

[63] 24 C.F.R. 35.86.

[64] *Id.*

[65] 24 C.F.R. 35.94(a).

[66] 24 C.F.R. 35.88(a)(3).

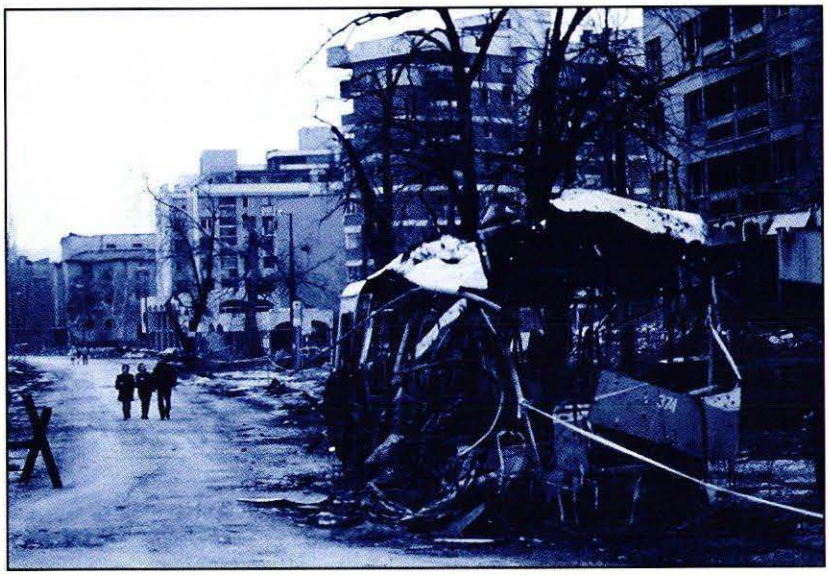
[67] 24 C.F.R. 35.94(b).

[68] 24 C.F.R. 35.88(a).

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Joseph P. McCarthy *is an attorney with Reed McClure in Seattle.*

Nation-building in the Balkans: U.S. Efforts to Promote the Rule of Law in Bosnia and Herzegovina



Sarajevo suburb of Grabavica the day after reversion to federation.

by Col. **Rick Lorenz**

In November of 1995, the Dayton Peace Agreement established the framework for a military and political settlement of the deadly conflict in Bosnia and Herzegovina. US leadership and direct US military participation made it possible for the parties to reach a comprehensive agreement after nearly four years of war. The Dayton accord provides for two geographic "entities" to exist within Bosnia, 49% of the land in the "Republic of Serbska," and 51% in the Federation, composed mainly of Croats and Muslims. The parties agreed to a cease fire, to pull back their forces beyond a zone of separation, and to conduct free national elections within the first year.

The NATO Peace Implementation Force (IFOR) deployed in December 1995, with the mission of enforcing the military aspects of the Dayton accord. There were many early successes, and within the first 120 days there was a complete separation of the warring factions and general withdrawal of military forces into designated holding areas. The civilian aspects of the Agreement have proved to be more formidable, with the re-establishment of political and social structures taking much longer than anticipated. One of the key civilian elements of the peace effort is a functioning court and legal system that can provide a foundation for peace. In Bosnia today, U.S. lawyers are working to assist local lawyers and judges in re-establishing the legal system and increasing respect for the rule of law.

The Implementation Force now has about 30 U.S. military lawyers in Bosnia. They are located at the headquarters of the multi-national commands and in the field with Civil Affairs programs. Military lawyers play an important role in the operation and provide support in a wide range of subjects. One of the primary functions of military legal advisors has been to provide legal analysis and interpretation of the Dayton accord. The military mission of IFOR is directly tied to Dayton, and unless military force is authorized by the terms of the agreement, there would be no authority to act. For example, military force, sometimes referred to as "all necessary means," would be appropriate to ensure removal of heavy weapons belonging to one of the factions from the zone of separation. But military force would not be appropriate to allow the return of a refugee to his home by evicting the current occupant. This would be a civilian decision and a local police matter. Military lawyers are called upon daily to provide advice on the limits of military force in a complex and politically charged environment.

U.S. civilian lawyers are also on the scene in Bosnia and provide assistance in developing the rule of law. The American Bar Association Central and Eastern European Law Initiative (CEELI) program opened its office in Sarajevo in February 1995, during a time when the city was still under siege, and artillery shells were landing downtown without warning. In July of 1995 there were still about 900 shells per day exploding in Sarajevo, and the city was a devastated battle zone. Sevima Sali is a Bosnian lawyer and former judge who was hired by the ABA to run the office until a U.S. lawyer could be assigned. Charles Rudnick, a Boston lawyer, arrived in December 1995 at about the same time as initiation of the NATO Peace Implementation Force.

The cease fire made it possible to begin the work of CEELI, and there was coordination at the outset between the U.S. military lawyers on the NATO staff and the CEELI representatives. Early CEELI projects included a workshop entitled "Establishing an Independent Judiciary in

the Federation of Bosnia and Herzegovina." There were 30 judges and court officials in attendance, including the Federation Minister of Justice, the President of the Federation Constitutional Court, the Dean of Sarajevo Law School and senior representatives of the High Prosecutor's Office. The program included a series of panels, and presentations by two visiting jurists, Judge Patricia Wald of the U.S. Court of Appeals for the District of Columbia, and Judge Ernst Markel of the Austrian Supreme Court. Two U.S. military lawyers assigned to IFOR stood in for visiting jurists when their flight was delayed overnight in Zagreb, Croatia. Initial CEELI programs have been well received with enthusiastic participation of key members of the Bosnian legal system.



Dobrijna Village near Sarajevo airport.

The Bosnian court system is suffering from massive difficulties at all levels, and lack of pay for judges is a fundamental problem. During the war the justices were paid only in cigarettes (when available) and now the salaries are only slightly improved—the U.S. equivalent of about $100 per month. The currency in use in Sarajevo is the Deutschmark; the Bosnian Dinar has been so de-valued that it is rarely used. One judge stated that the judiciary has been "reduced to beggars," having to ask each day for supplies and the other essentials for operating their court. The current situation makes the goal of judicial independence difficult to achieve, because the politicians control what little funds are available to operate the courts.

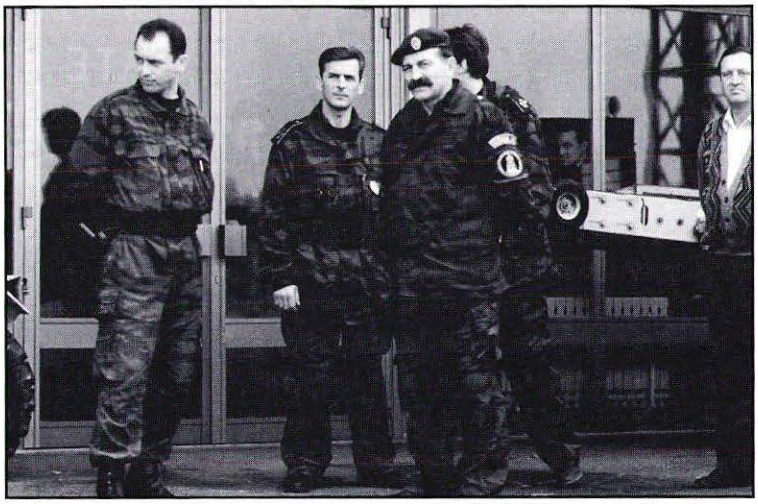
Several of the Bosnian judges refer to the difficulty in establishing a Western style court system in a nation with no democratic tradition. The years of socialism created a mind set and deeply held attitudes about political power that will be difficult to change. There was one subject on which all the local judges and court officials seem to agree. The establishment of an independent judiciary and respect for the rule of law will be a prerequisite for establishing democracy in Bosnia and Herzegovina.

The Constitution of the Republic of Bosnia and Herzegovina (BIH) provides for a unique Constitutional Court consisting of nine members. Most European systems divide the responsibility of the highest judicial matters between the Supreme Court and the Constitutional Court, but only the BIH Court has members from other nations casting votes on decisions. Six members of the court are from Bosnia, equally divided between the three ethnic groups, Croat, Muslim, and Serb. Three members are from other nations. The purpose of the extra seats was not only to avoid deadlocks but to serve as a mechanism for moderation and conciliation. The foreign justices have been appointed to terms of five years, when they expect to be replaced by local judges. The five-year period is to help establish the court's legitimacy and to aid in developing sound procedures.

U.S. military lawyers have been working on a number of rule of law projects in Bosnia, and military transportation is still the only way to ensure freedom of movement and facilitate meetings between lawyers who were recently enemies. In February 1996, IFOR military lawyers arranged a meeting in Pale, the capital of the Republic of Serbska, that was an important milestone in judicial reconstruction for Bosnia. The primary organizer of the meeting was Col. Rob Kuncz, a reserve lawyer with CIMIC (Civil Affairs) at IFOR Headquarters. This was the first meeting of the ministers of justice of the Republic of Serbska and the Federation of Bosnia and Herzegovina since the beginning of the war that divided them during the past four years. The Federation Minister of Justice is Mato Tadic and the Serbska Minister is Marko Arsovic. The Federation delegation included the Deputy Minister of Justice and a Supreme Court judge. The meeting went extremely well, and there was discussion regarding the disposition of pending cases and the coordination of case information between the entities. There are plans for future meetings and IFOR will assist in security and transportation.

The cooperative efforts between CEELI and IFOR military lawyers have resulted in significant gains in promoting the rule of law. The civilian and military programs complement each other; for example, CEELI has the resources to provide experts and can coordinate with other civilian funding sources such as the Soros Foundation.

In April of 1996, U.S. military lawyers



Serb police in Banja Luka.

*Author **Rick Lorenz** (top left) & other NATO military lawyers.*



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embarked on a program to conduct an assessment of Bosnia courts and legal systems. The assessment began with an overview of the system, with a description of the organization of the courts, using available data as a point of reference. It will include court jurisdiction — both geographic and subject matter — as well as case load, administrative support, adequacy of the facility, and the status of the judiciary. There will also be an attempt to measure subjective factors such as public respect for the court system and judicial independence. Representative courts have been selected in a number of locations in areas under the control of all three factions, and many of the locations are accessible only by military transportation. This assessment will be used to identify critical needs and to serve as the basis for grants and funding assistance from the U.S. Agency for International Development (USAID) and non-governmental donors.

One of the most difficult subjects for IFOR has been the NATO policy on the apprehension of persons indicted for war crimes (PFWC) by the International Criminal Tribunal in the Hague. IFOR policy is set by NATO through the 16-member North Atlantic Council, and any changes must be approved by that body. PFWCs are to be apprehended only if they come under the control of IFOR personnel in the normal course of their duties, and there is no authority under the IFOR mission to actively pursue war criminals. U.S. military lawyers have been directly involved in developing, promulgating, and defending this policy. Although this policy has been subject to criticism, the active pursuit of PFWCs would dilute the mission, drain manpower, and most likely inflame the local population to retaliate. Many of the PFWCs in Bosnia are national heroes, and the U.S. learned hard lessons in Somalia when there was an attempt to arrest Mohammed Farah Aidid and underestimated the depth of local support for the warlord. Even more significant is the danger of a destabilization of the entire peace process.

Bosnia has been a battleground for centuries, and the people will not easily put aside the memories of past conflicts. In the geographic center of the former Yugoslavia we can find the fault lines for the clash of three great civilizations, Germanic, Slavic and Turcic. The Dayton

Peace Agreement for Bosnia has the goal that some observers find to be an impossible ideal: a single nation, multi-ethnic state where all people can travel freely and can live together side by side. But Dayton has inherent contradictions, providing at the same time for a partition of Bosnia into ethnic enclaves, one for the "Republic of Serbska" and the other for a fragile federation of Muslims and Croats. During the first six months of the IFOR mandate there have been some ominous signs: the flight of the Serbs from the Sarajevo suburbs, the difficulties for displaced persons to return to their own homes, and the failure of the Muslim and Croat factions to successfully form a Federation government.

The real test will come with the elections scheduled for the fall of 1996. Many European diplomats have sought to postpone the elections, claiming that the conditions are not yet suitable. There is still no real freedom of movement for civilians, and indicted war criminals are still in power in the Republic of Serbska. But the U.S. has pushed for holding the elections on schedule, recognizing that a delay could mean that elections would not be held until after the departure of IFOR. Moreover, if a delay of the elections were announced, there would be little incentive for the factions to improve conditions in the short term. *[The elections were held on September 14. Independent monitors stated that technical flaws and political obstruction prevented large numbers of people from voting. —Ed.]*

It is difficult to predict what will happen in Bosnia in the first half of 1997. The mandate of IFOR will have expired, but there will probably be some kind of military force to follow, with a smaller U.S. presence. There is a great risk the Serb and Croat entities will be absorbed into a "Greater Serbia" and a larger Croatia, and that BIH will dissolve into an isolated Muslim mini-state surrounded by enemies. But the Dayton accord has set the framework, and U.S. leadership has given the first real chance for peace in four years. The people of Bosnia will ultimately choose whether they will have a lasting peace.

WSBA member Col. ***Rick Lorenz*** *served on the NATO Peace Implementation Force in Bosnia.*

Washington Lawyers for the Arts,
in collaboration with Artist Trust, opened a drop-in legal clinic January 8 of this year, located in the fifth-floor conference room of the Vance Building, 1402 3rd Avenue in downtown Seattle [telephone at Artist Trust, (206) 467-8734]. During clinic hours, 2-4 pm the fourth Monday of the month, volunteer lawyers are on hand to offer advice regarding contract, copyright and general art law. A flat administrative fee of $5 per consultation is requested.
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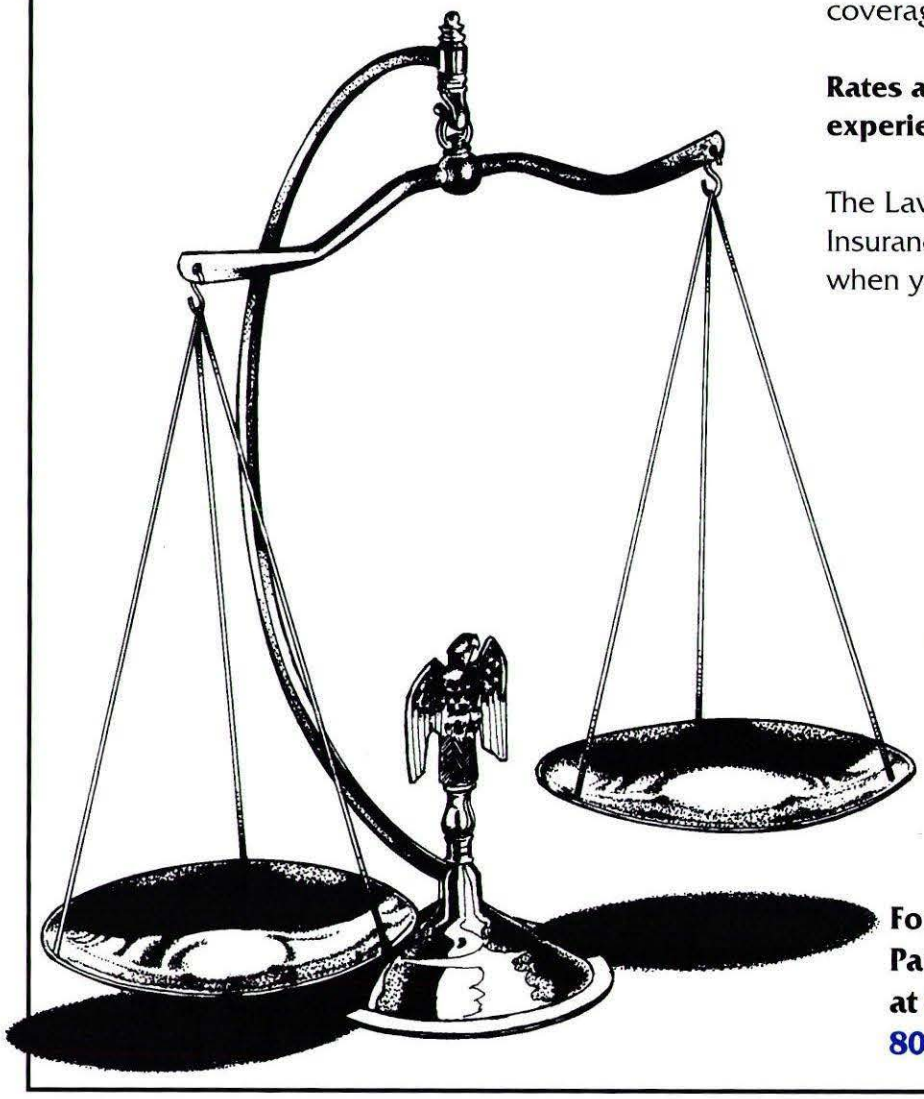
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by **Tammy L. Lewis**
September 5, 1996
Seattle

Lawyers' Fund for Client Protection — Annual Report: Robert D. Welden reported to the Board on the Annual Report drafted by the Lawyers' Fund for Client Protection Committee, pursuant to APR 15(g). The Board recommended that the Supreme Court make revisions to Rule 9 of the Fund's procedural rules, which will change the claimant's maximum limit of recovery from $50,000 per lawyer to $30,000 per claim. The Board unanimously approved the Committee's Annual Report to the Supreme Court.

Disciplinary Rules: The Board discussed the advisability of amending RLD 5.5(BP), which governs the administration of reprimands. The Board was presented with an amended rule which would provide that reprimands be administered by the Disciplinary Board rather than the Board of Governors; however, the proposed changes were not adopted by the Board. The Board moved to amend GR12, which authorizes certain new programs recommended by the Joint Task Force on Lawyer Discipline. These changes address mechanisms for arbitration and mediation of disputes between members and clients and diversion of less-serious misconduct to a practice assistance program. The Board also adopted recommended changes to RLD 4.13, 5.2, 5.3 and 5.5(a), which clarify the hearing officer's authority to recommend an admonition. The Board also approved proposed amendments to RLD 11.1, which increases public access to disciplinary information.

Increasing Volunteerism in the Bar: The Board considered and adopted a resolution encouraging members of the WSBA to provide voluntary pro bono legal services. The resolution does *not* provide for mandatory pro bono. The Board also considered an alternative resolution proposed by the Legal Aid Committee.

Annual Report by Kirke-Van Orsdel Inc. (KVI) — Lawyers' Professional Liability Insurance: Eric Jeppeson, of the WSBA Professional Liability Insurance Committee, and Pamela Blake of KVI provided an annual report and update on the Bar's insurance program. KVI is the broker of record for the WSBA insurance program. Blake provided statistical information including claims analysis and loss control programs designed to help firms reduce potential claims. The Board also discussed the desirability of publicizing the WSBA insurance program, which is intended to assure the availability of malpractice insurance in Washington state.

TV Washington Presentation: Dennis L. Heck, president of TV Washington ("TVW"), provided a brief presentation regarding the services provided by TVW, a statewide cable television network modeled after C-SPAN.

Court Rules and Procedures Committee: The Committee recommended that a task force be formed to further investigate the desirability of discovery limitations and mandatory-disclosure rules similar to those adopted by the Eastern District of Washington federal courts. The Honorable Faith Ireland provided suggestions with respect to the judiciary's perspective on discovery issues. The Board agreed that the president-elect, Tom Chambers, would provide recommendations and draft a charge for the task force to be presented at the October Board of Governors meeting. The Board also authorized the submission of proposed amendments to the infraction rules for courts of limited jurisdiction recommended by the Committee.

The President's Report: Tom Chambers suggested that the Board schedule a retreat in October to outline priorities of the Board's work for the next year. He also circulated the Board of Governor committee assignments for the next year. The Board tabled the adoption of committee chairs, to be deferred for consideration the next day. The Board also discussed the enlargement of the Legislative Committee from 22 to 33 members. The Board affirmed its prior decision in expanding the size of the Committee.

The Executive Director's Report: Dennis Harwick discussed the pending move of the WSBA office. Harwick also addressed concerns of some board members regarding the satisfaction of ethics CLE credits by buying CLE tapes, which are sometimes limited to a certain number of attorneys per tape. The Board nominated Scot Bergstedt and Lynn Wise to the MCLE Board. In addition, the Board agreed to discuss a nomination for the Washington Pattern Jury Instructions Committee at the next Board of Governors meeting in October.

Budget and Audit Committee Report: In addition, the Board reviewed and briefly discussed the Budget and Audit Committee Report, which appears to be on track for the fiscal year ending September 30, 1996.

by **Jim Baker**
September 6, 1996

State bar to seek legislation making unlicensed practice of law a felony: In response to the Final Report of the Task Force on Nonlawyer Practice of Law (Sept. 29, 1995), chaired by Paul M. Larson of Yakima, and follow-up reports prepared under the direction of the WSBA Board of Governors, the board passed a resolution that the bar association "shall seek legislation making unlicensed practice of law a felony and giving prosecutors the right to seek injunctive relief".

The resolution notes that, with one exception, only licensed and admitted lawyers should practice law in this state. The only exception that was approved was for Real Estate Limited Practice Officers, provided that their legal work "is limited to the closing of real estate and personal property transactions pursuant to APR 12."

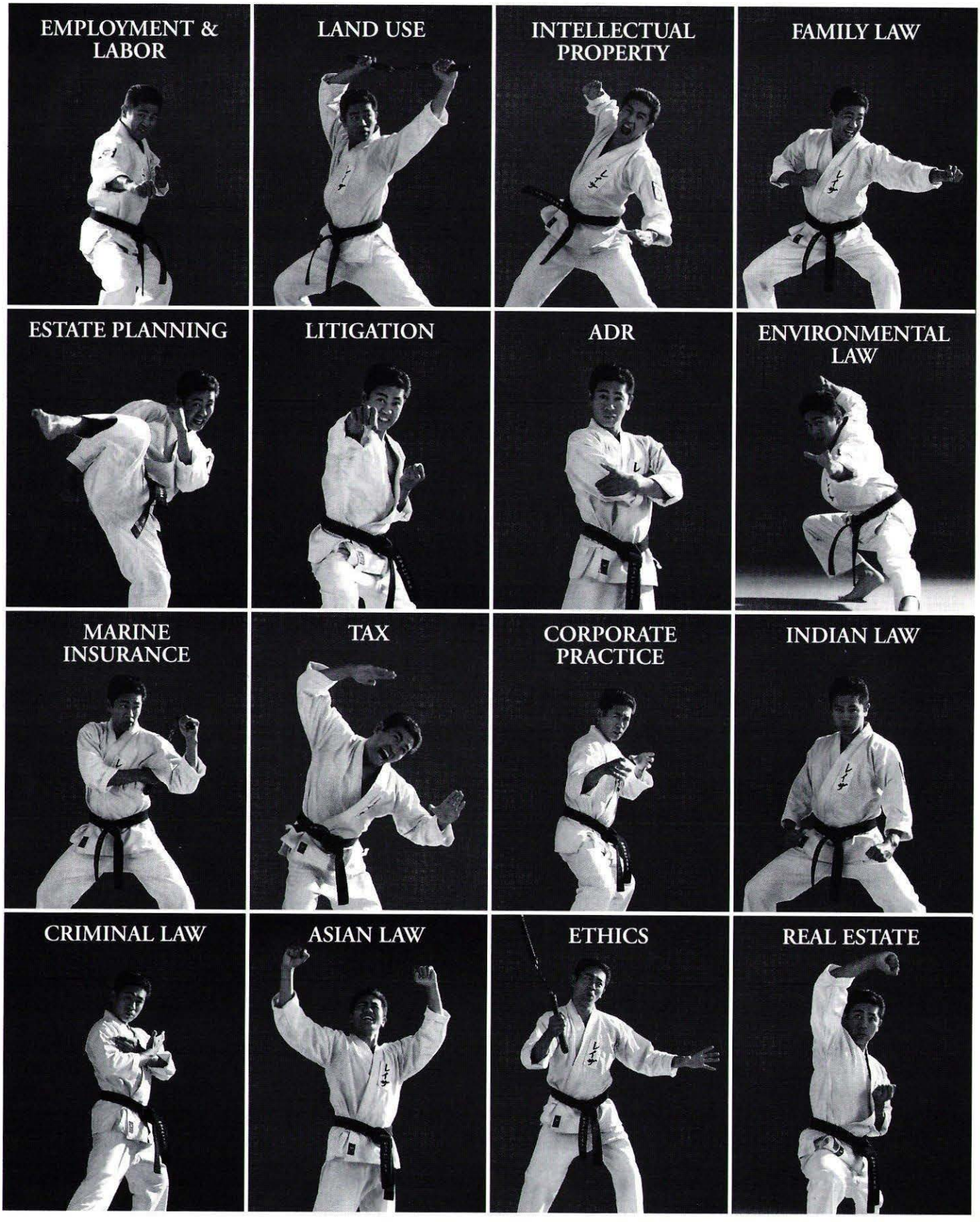
Additionally, the resolution directs the Bar Association "shall seek legislation making the unlicensed practice of law a per se violation of the Consumer Protection Act RCW 19.86."

In passing the resolution, the board rejected a proposal to allow a paralegal to practice law under the review, approval and supervision of a licensed lawyer "in conjunction with and ancillary to that licensed lawyer's law practice."

The meeting was the last one of the 1995-96 Bar year and the presidency of Edward Shea of Pasco. Other action taken at the meeting:

Discrimination Based Upon Sexual Orientation: The Board may recommend that the Supreme Court amend RPC 8.4 to provide that it is professional misconduct, subject to discipline, for a lawyer to discriminate against other persons in connection with the lawyer's professional activities on the basis of sexual orientation.

RPC 8.4(g) currently prohibits a lawyer from committing a discriminatory act *prohibited by law* on the basis of sex,


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Nov 14-16 – Mastering Influence: Fourth Annual Pacific Coast Law & Human Communications Conference
Nov 15 – Labor Standards and Benefits Law
Nov 15-16 – State Tax Litigation
Dec 6-7 – Employment Law Litigation Practice Skills
Dec 9-13 – Family Law & Practice Skills Certificate Program
Dec 10-13 – Land Use Law & Practice Certificate Program
Dec 17-21 – FIRST EVER SUPER CLE WEEK!
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race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status. However, only a few jurisdictions in the state of Washington (i.e., Seattle) prohibit discrimination based upon sexual orientation. An additional sentence is proposed to RPC 8.4(g) to provide:

In addition, this rule prohibits acts of discrimination on the basis of sexual orientation *to the same extent such acts are unlawful* when committed on the basis of sex, race, age, creed, religion, color, national origin, disability, or marital status.

(Emphasis added.) A new subsection (g) is also proposed which would state that, when representing a client, it is professional misconduct to engage in conduct that can be reasonably interpreted as manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status.

One of the groups supporting the changes is the King County Bar Association Committee on Lesbian & Gay Issues in the Legal Profession. David M. Horn of Seattle, the immediate past chair of the committee, appeared before the board and gave a presentation in favor of the changes. He gave a history of the work leading up to the proposals. (The history is set forth in D. Horn, "Lesbian & Gay Committee Makes Progress," 15 *Bar Bulletin* 12 (Sept. 1996).) The proposed changes have already been recommended by the WSBA Rules of Professional Conduct Committee chaired by Blaine Gibson of Yakima.

Horn said that "free speech purists" do not like the proposals but many organizations including the Washington Women Lawyers, the Asian Bar Association and the Loren Miller Bar Association are in favor of the changes.

"We feel the rule is very necessary," said Marcella Fleming, the president of the Loren Miller Bar Association.

Colleen Kinerk said that the rule does not infringe on the rights of persons who, due to religious reasons, believe that homosexuality is a sin. She said that the changes "will heighten the consciousness of all of our members."

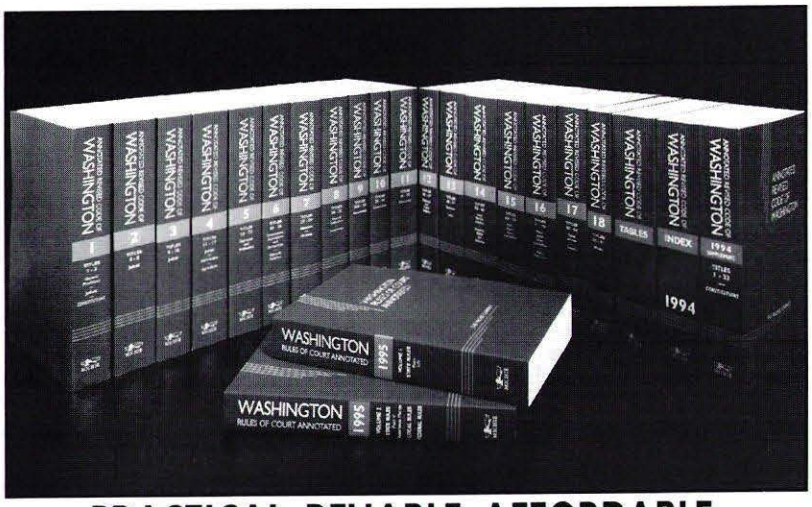
Governor Daniel L. Hannula of the Sixth District presented a hypothetical situation: A lawyer who believes homosexuality to be a sin hires an associate, and later discovers that the associate is a homosexual. Would it be a violation of the RPC 8.4 to terminate the associate's employment? After discussion, it was concluded that the firing would amount to professional misconduct.

Barrie Althoff, Director of Lawyer Discipline and Chief Disciplinary Counsel for the bar association, opined that proposed sub (g) "may not be too enforceable" and that sub (h) had "ambiguities" but was probably enforceable. He suggested that an effort be made to "tweak the rule" so that its intent is clearer and the method of enforcement is clearer.

In order to show general support for the amendments to RPC 8.4, while reserving the right to make some changes, the board engaged in a rather interesting procedural maneuver. The Board voted to recommend the changes to the Supreme Court, then voted to reconsider the vote, and then voted to table the matter until the board's next meeting.

Access to Justice Board Reauthorization: The Board also used the same parliamentary procedure as noted above to support in principle, but table until next meeting, a recommendation for the reauthorization of the Access to Justice Board, which is currently chaired by Paul

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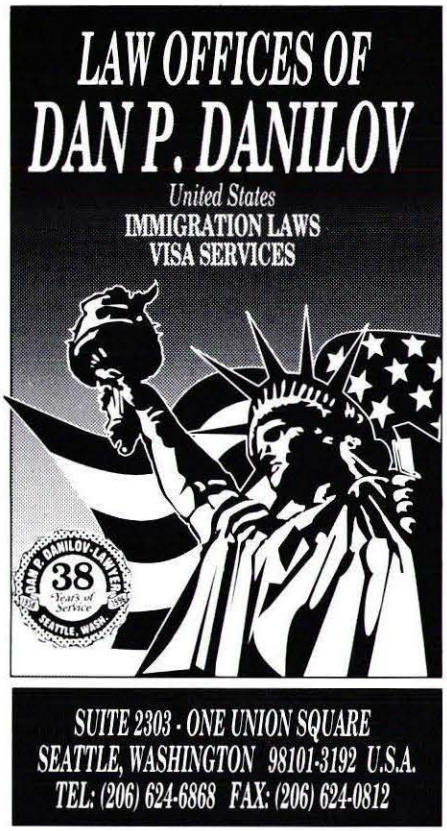
Stritmatter of Hoquiam. There is some disagreement whether the chair of the Access to Justice Board should be appointed by the WSBA Board of Governors or selected internally by members of the Access to Justice Board. Stritmatter called the Access to Justice Board "a jewel of the Bar Association." He noted that in the past it was a "big issue" whether the board of governors picked the chair or the board picked its own chair. President Shea said that the "biggest question" in connection with reauthorization concerns "the line of authority." He noted that, historically, persons involved with federal legal services "may have had some distrust of the [Washington State] board of governors." There was some tension between some of the members of the board whether the vote should be postponed for another month. Refusing to postpone the vote would amount to "a disservice to ourselves and our integrity," said Governor Mary E. Fairhurst of the Third District. She said it could be viewed as "high handed." "If this is a good motion today, then it will be a good motion next month," said Governor Steve Toole of the Eighth District.

Mandatory CLE Task Force: J. J. Leary of Seattle, the chair of the Mandatory CLE Task Force, reported that another year of work is needed to complete the work of the task force. Leary said the task force, which is comprised of four sub-committees, is giving "the first serious scrutiny in 20 years" to issues involving mandatory continuing legal education. The board directed Leary to provide it with a budget request and a proposed time line.

WSBA Personnel Handbook: The board unanimously approved the adoption of a revised personnel handbook.

Mary Fairhurst, New President-elect: Mary E. Fairhurst of Olympia was unanimously elected as president-elect of the WSBA for 1996-97 and president of the WSBA for 1997-98. She will be only the second woman in the history of the WSBA to become its president. Governor Daniel Hannula of the Sixth District, who chaired the presidential search committee, said he was enthusiastic about recommending her election even though she was the only applicant. He said that Fairhurst, a 1984 graduate (magna cum laude) of Gonzaga Law School who is an assistant attorney general in the state's corrections division, will be particularly good as a leader for young lawyers, women lawyers and government lawyers. "Mary has passion," Hannula said. "She is positioned to bring us into the next century." Before the vote was taken, Fairhurst gave an emotional speech stating how honored she was to be considered for the position. She pledged to double the 20-40 hours per month she already works on WSBA matters.

Annual Meeting: The board meeting adjourned shortly after 11:30 a.m. to allow President Shea to prepare for the 12 p.m. 1996 WSBA Awards Luncheon and Annual Business Meeting. The business meeting, which began after the awards were made, was one of the shortest such meetings in recent memory since there were no resolutions and there was no new business. After approval of the minutes from the 1995 annual meeting and President Shea's report on some of the highlights of the year, recognition was given to outgoing governors: Linda J. Dunn, King County at Large; Mary E. Fairhurst, Third District; Daniel L. Hannula, Sixth District; and Steven G. Toole, Eighth District. Four new governors were welcomed: Terrance J. Lee, Third District; Marijean E. Moschetto, Eighth District; Donald N. Powell, Sixth District; and Mary Alice Theiler, King County at Large. President Shea passed the gavel to Thomas Chambers of Seattle, president for 1996-97. After a brief speech on the judiciary's role in protecting the less powerful members of society, the annual meeting was adjourned.



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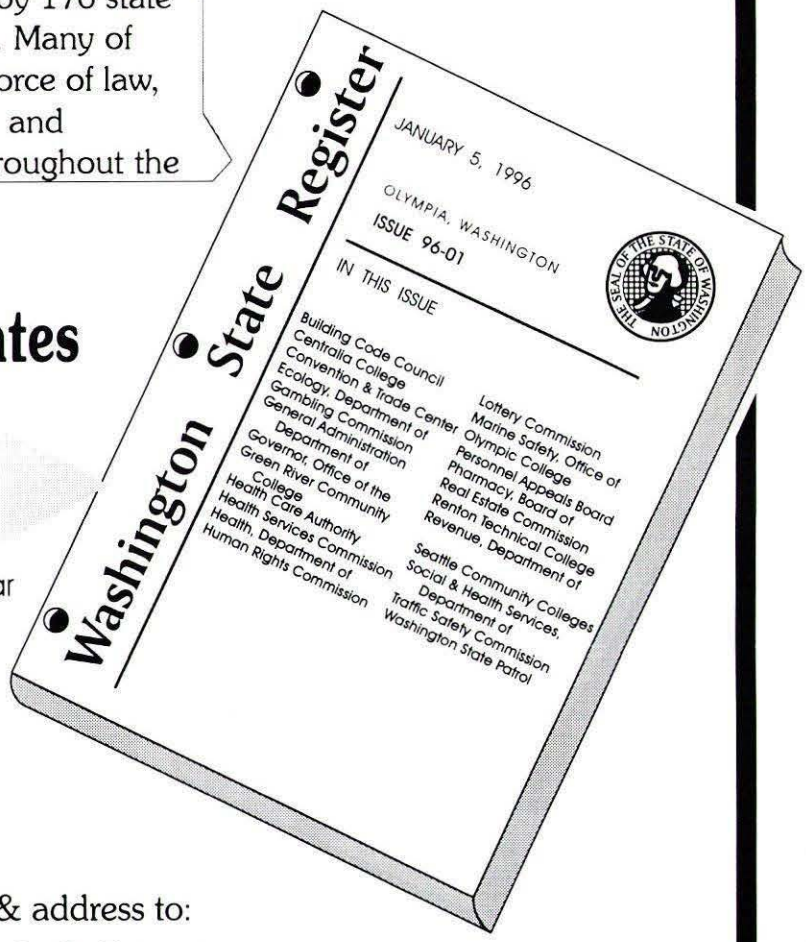
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Law of Confessions

by David M. Nissman & Ed Hagen. Clark, Boardman, Callaghan, New York, 1994, $120; five-ring binder, 19 chapters, appendices, case table & index. To order, phone (800) 221-9428.

reviewed by **James M. Peters**

If you thought you knew everything you needed to know about the law of confessions, think again. Since 1985, there has been an extraordinary amount of activity by the United States Supreme Court in the area of confessions law. The Court has examined and re-examined almost every issue during the last decade. Previously sacrosanct doctrines have gone under the knife and practitioners unfamiliar with these new rulings are out-of-touch. A new book, *Law of Confessions*, written by career prosecutors David Nissman (Criminal Chief Assistant United States Attorney, Virgin Islands) and Ed Hagen (Assistant District Attorney, Eugene, Oregon) fills that void, presenting recent and historic cases in a concise, active style seldom found in the legal genre.

The authors' lively writing style succeeds in holding one's attention far better than the sedate, unimaginative style of many legal texts. The book contains just enough historical background to be interesting, but not so much that the reader becomes bogged down in minutia. It touches on all the subjects one would expect to find in a book of this type, and is organized into chapters which logically divide the issues into categories such as voluntariness, waiver, custody, interrogation and impeachment. The authors also addressed more subtle areas of the law, including judicial confessions, the interplay of fourth amendment issues, corroborating confessions, confessions obtained by private citizens, and the cutting-edge Constitutional and ethical issues which arise from contact by government attorneys with represented persons. A comprehensive "table of cases" and "issue index" makes navigating the book uncomplicated.

Being trial lawyers themselves, Nissman and Hagen know the hectic pace of trial work and realized the need for an aid to last minute research that inevitably accompanies a heavy trial schedule. They wanted to create something more than just another law book; they wanted to create something that would be practical, informative and useful on a daily basis. To accomplish those goals, they included in the purchase price a computer disc containing the entire text of the book. Their idea was for users to be able to locate a legal issue in the book, then with a few keystrokes on their PC, lift text from the book to build the essentials of a trial or appellate brief. Even though my computer talent is less than sterling, I tried the disc and here is what happened: It took less than five minutes to read the instructions and install the contents of the disc on my computer. Within ten minutes I was identifying an issue and transferring text from the book to WordPerfect, and then into a brief. The ease with which the program allowed this "cut and paste" technique is a terrific time-saver. That is what really sets this work apart from others, and that is the reason it belongs in the library of every prosecutor and criminal defense attorney.

In fact, Nissman and Hagan's idea to computerize prosecution manuals in this way so appealed to the United States Department of Justice that they recently spent a year on assignment in Washington organizing federal trial books into this easy-to-use format.

It was not easy to find something to criticize about this book. One chapter addresses how various state appellate courts have added their unique state constitutional analysis to some of these issues. With fifty states and various territories in the Union, that task was too large for one chapter and would have been better left to other authors who could focus their attention on individual jurisdictions. The appendix contains serviceable briefs of United States Supreme Court cases, organized in chronological order, latest to earliest, except, bafflingly, for two 1994 cases which are "tacked on" at the end, following an 1884 case, as if they were an afterthought. Together with a few other editing glitches, these are the only blemishes on this excellent publication.

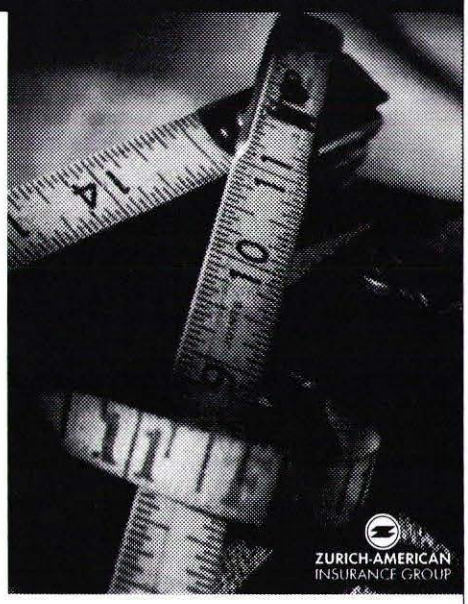
WSBA member ***James M. Peters*** *is an Assistant United States Attorney and practices in Idaho.*

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Billing Practices

by **Anne I. Seidel**, *WSBA Disciplinary Counsel*

This article, the second in a series on lawyers' ethical duties regarding fees and billing practices, discusses the ethical implications of various billing procedures.

Communicating the Basis of the Fee

Communicating with the client is the first component of proper billing practice. The client should know and agree to the basis for the fee when the representation commences or within a reasonable time thereafter. If the lawyer has previously represented the client on the same terms, the Rules allow the lawyer to presume that the client is aware of the fee arrangement.[1] RPC 1.5(b) recommends that every fee agreement be in writing. Such a practice helps lawyers avoid possible misunderstandings about the basis of the fee. The Rules only *require*, however, that the agreement be in writing in contingent fee cases or if the client so requests.[2]

Billing statements should provide the client with sufficient information to understand the charges. This obligation stems from the general duty to "explain matters to the extent reasonably necessary to permit the client to make informed decisions regarding the representation," as found in RPC 1.4(b) and from the duty under RPC 7.1 to avoid making false or misleading communications about the lawyer's services. For example, if a lawyer informs the client that billing will be based on an hourly rate, a bill that merely states an amount owed for "professional services" is insufficient.[3]

Similarly, lawyers have a duty to provide complete and accurate information in their billing statements. Lawyers may not, without client agreement, charge lawyer rates for work done by nonlawyers or change initials on bills to indicate that work was performed by a specific lawyer when in fact someone else did the work in question. Such charges and initial-switching constitute misrepresentations and are unethical. Moreover, lawyers may not omit information from billing statements if that makes the statement — considered as a whole — materially misleading.[4] For example, if a billing statement that does not indicate who performed certain work in question would, under the circumstances, cause the client to believe incorrectly that a particular lawyer performed the work, the lawyer must clarify this with the client.

What Can You Bill?

The most important consideration in determining whether you can bill a client for a particular charge is whether the client was informed of and agreed to pay the charge. For example, assume you represent several clients with similar legal issues. For the first client, you research the issue and write a summary judgment motion, which takes you ten hours. For the second client, you spend one hour recycling the legal analysis from the first brief and revising the summary judgment motion. If the second client agreed to pay a flat fee equivalent to a certain number of hours at your billing rate for the summary judgment motion, there would be no problem with billing such an amount as long as it is not clearly excessive.

On the other hand, if the client agreed to pay you at a certain rate for each hour worked, it is not permissible to bill the client more than the actual number of hours worked on that matter. In this example, then, you could not bill both clients ten hours each for their summary judgment motions. The total number of hours that you bill should not exceed the eleven hours you actually spent on the two projects. Similarly, if a lawyer travels for two clients, or travels for one client and does work for another client en route, the lawyer should not bill twice for the same block of time. And if the lawyer goes to a motions calendar for several clients, the sum of the hours billed to all the clients for the time spent waiting before the cases were called should not exceed the actual number of hours the lawyer waited.[5]

The fact that the lawyer-client relationship is a fiduciary one can also limit what an attorney can bill. For example, an attorney for an estate should not bill professional legal rates for tasks that should be performed by staff.[6] When the lawyer renegotiates the basis of the fee during the representation, a heightened fiduciary obligation arises.[7]

Another constraint on the amount a lawyer can bill is the prohibition against charging an unconscionable or clearly excessive fee. Rule 1.5(a) requires that a lawyer's fee be "reasonable." However, prior to the adoption of the Rules of Professional Conduct, our Supreme Court held that a lawyer could be subject to discipline over fee issues only if the fee is "unconscionable" or "clearly excessive."[8] It is not clear whether by adopting the RPCs — including the requirement of reasonableness in RPC 1.5(a) — the Supreme Court rejected this earlier limitation on discipline. However, attorney discipline has generally not been sought where the issue is simply a dispute between the lawyer and the client over how much the client should pay. Nevertheless, the requirement of "reasonableness," as well as the eight factors listed in RPC 1.5(a) to be considered in making such a determination, is relevant when courts set fee awards, such as in probate matters.

If you and a client disagree over how much the client owes, one option to consider is the Bar Association's voluntary[9] fee-arbitration program. This program requires both the client and the lawyer to pay a $50 filing fee and participate in binding arbitration. Further information on this program can be obtained by calling (206) 727-8207.

Endnotes

[1] RPC 1.5(b); Comment to ABA Model RPC 1.5(b).

[2] RPC 1.5(b), 1.5(c)(1).

[3] ABA Comm. on Ethics and Professional Responsibility, Formal Op. 93-379.

[4] RPC 7.1(a).

[5] For a detailed discussion on this issue, see ABA Comm. on Ethics and Professional Responsibility, Formal Op. 93-379 (billing for professional fees, disbursements and other expenses).

[6] *Estate of Larson*, 103 Wn.2d 517, 531; 694 P.2d 1051 (1985).

[7] *Perez v. Pappas*, 98 Wn.2d 835, 841; 659 P.2d 475 (1983).

[8] *In re Fraser*, 83 Wn.2d 884, 892; 523 P.2d 921 (1974).

[9] As a result of the Joint Task Force on Lawyer Discipline recommendations, mandatory fee arbitration is currently under consideration.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in September 1996 is 5.61%. The maximum allowable interest rate permissible for October 1996 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 appeared on page 41 of the July *Bar News*.

Alva Long Memorial

A memorial for former WSBA governor Alva Long is scheduled to open for the public this month. It is in keeping with Alva's great love of the outdoors and with the Long family's previous donation to the city of Seattle and its people to provide a natural outdoor park for the education and enjoyment of the natural beauty of the Northwest, Camp Long. It was spearheaded and built 57 years ago and is named for Judge William Long, Alva's father. The memorial is called Alva Long Native Plant Interpretive Plaza and Trail. The project's overall cost was $25,000, and all but $7,500 has been donated. All donations are tax-deductible, and with your help it will complete this memorial, not only for Alva, but for the many people who will build their own memories and gain a greater appreciation of the Pacific Northwest. All donations should be made payable to Camp Long Advisory Council, with the notation, "Alva Long Memorial," Camp Long, 5200 35th Ave. S.W., Seattle, WA 98126; phone, (206) 687-7434.

Legal Foundation of Washington

The trustees of the Legal Foundation of Washington will meet on December 13, 1996, at the Foundation office, 500 Union Street, Suite 545 at 9 a.m. The public may attend this meeting in order to comment on the Foundation's activities, pursuant to Article I, Section 1.7 of the Bylaws of the Legal Foundation of Washington.

Withdrawal of Published Informal Opinion 91-1

On August 9, 1996, the WSBA Rules of Professional Conduct Committee voted unanimously to withdraw published Informal Opinion 91-1, "Confidentiality and Use of Cordless Telephones."

Censured

Seattle lawyer Donald J. Koler (WSBA #10668, admitted 1980) has been ordered censured for violations of Rules of Professional Conduct 3.1 (bringing frivolous claims) and 8.4(d) (conduct prejudicial to the administration of justice) pursuant to a stipulation which was approved by the Disciplinary Board on July 18, 1996.

After the Washington State Court of Appeals entered a ruling adverse to Koler's client, Koler filed a 42 U.S.C. §1983 class action on behalf of his client in U.S. District Court against the opposing party, the lawyers representing the opposing party, and the Court of Appeals judges on the panel which had ruled against Koler's client. The federal court action alleged that the Court of Appeals judges had conspired with the opposing party and her lawyers because one of the judges on the Court of Appeals had formerly practiced law with the opposing party's lawyers. However, Koler had no direct factual evidence that any of the named Court of Appeals judges had conspired with the named lawyers. The federal action was dismissed, among other reasons, because neither the opposing party nor her lawyers were state functionaries acting under color of state law and absolute immunity protected the named Court of Appeals judges. The District Court imposed sanctions against both Koler and his client. Koler appealed the District Court's order to the Ninth Circuit Court of Appeals, which affirmed and imposed additional sanctions.

Respondent was represented by H. Tony Martin. The Bar Association was represented by Disciplinary Counsel Leslie Ching Allen.

◆

Spokane lawyer Phyllis D. Schoedel (WSBA #3231, admitted 1952) has been ordered censured pursuant to a stipulation for discipline, approved July 1996. The discipline is based upon her neglect of a family law matter and failure to keep the client updated about the status of her case.

In February 1991, a client retained Schoedel to obtain an order increasing her child support and providing for post secondary support. The client's daughter was graduating from high school in May 1991 and planned to attend a community college in the fall. The original child support

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order provided support until the child turned 19 years of age, in November 1992. The parties reached an oral agreement in January 1991. Based on this agreement, the father began paying the higher child support amount in February 1991. Although the client requested that Schoedel enter the agreed orders before her daughter graduated from high school, no orders were entered. In August 1991, opposing counsel sent Schoedel a letter stating that if she did not promptly conclude this case, he would file a motion to dismiss the case for lack of prosecution and the father would stop paying the higher agreed support. Schoedel met with opposing counsel later in August and sent a proposed agreed order. In September 1991, opposing counsel returned the proposed agreed order with a few requested changes. In November 1991, because no agreed order had been filed, the father stopped paying support. In early December 1991, the client called Schoedel's office. Someone in the office told the client that Schoedel was out of the office. The client asked her mother to call the office, and the mother reached Schoedel. The client then drove to Schoedel's office and waited to meet with her. During this meeting, Schoedel told the client that she would either settle her case, or set it for hearing by the end of the week. In late January 1992, the client learned that opposing counsel had not received any recent correspondence from Schoedel. The client terminated the attorney client relationship and did not pursue a child support order. Schoedel agreed to pay $2,700 restitution to the client.

Schoedel's failure to enter an agreed child support order for approximately one year violated RPC 1.3. Schoedel's failure to keep her client informed as to the status of her case violated RPC 1.4.

William J. Powell represented Schoedel. Disciplinary Counsel Julie Shankland represented the Bar Association.

Reprimanded

Newport lawyer Douglas Lambarth (WSBA #1200, admitted 1970) has been ordered reprimanded pursuant to a stipulation approved by the Disciplinary Board on July 12, 1996. The discipline is based upon Lambarth's neglect of a civil matter, in violation of RPC 1.3, his failure to promptly notify his clients of receipt of their funds and failure to promptly disburse those funds in violation of RPC 1.4 (a) and 1.14(b)(1), and his failure to promptly release a deed of trust from escrow in violation of RPC 1.3.

On September 3, 1992, Lambarth deposited into his trust account $4,025.09 received in settlement for his clients. Lambarth failed to respond to his clients' repeated requests for information about the settlement, and he failed to disburse the money until April 29, 1994, when he paid it out (with interest) to his clients. Lambarth also failed to promptly deliver an executed direction to escrow.

The hearing officer was C. Bradley Chinn. Lawyer Douglas Lambarth was pro se. The Bar Association was represented by Disciplinary Counsel Bernadette S. Janet.

◆

Vancouver lawyer Gimi Page (WSBA #19148, admitted 1989) has been ordered reprimanded pursuant to a stipulation for discipline, approved July 1996. The discipline is based upon her presentation of agreed orders to the court which she changed after opposing counsel and his client had signed.

Page represented the father in a dissolution. The parties reached an agreement, and Page drafted proposed agreed orders and sent them to opposing counsel for signature. Opposing counsel's client requested changes in the pleadings. Opposing counsel called Page to discuss the changes. Page was unavailable, but conveyed to opposing counsel that he should make the changes and return the pleadings. Opposing counsel made the changes, both he and his client signed the pleadings and he mailed them to Page. Page's client requested that the pleadings be "put back" to the original proposed language. Page made several changes in the pleadings without notifying opposing counsel. On one occasion, Page used white-out and typed over opposing counsel's handwriting to avoid disturbing his signature. The changes included lowering the amount of back due child support by $1,706.70, changing a clause in the Parenting Plan regarding whether the father could take the child out of the court's jurisdiction, and adding a new requirement of notice that applied only to the mother. Page presented the altered pleadings to the court as agreed final orders. Opposing counsel did not find out about the changes until approximately four days after the court entered the pleadings.

Page violated RPCs 3.3(a)(1) (lawyer shall not knowingly make a false statement of material fact to the tribunal), 3.3(f) (in an ex-parte proceeding, a lawyer shall inform the tribunal of all relevant facts known to the lawyer that should be disclosed to permit the tribunal to make an informed decision, whether or not the facts are adverse) and 8.4(d) (it is professional misconduct for a lawyer to engage in conduct prejudicial to the administration of justice) by altering provisions of pleadings after opposing counsel and his client had signed them, and presenting those changed pleadings to the court as agreed final orders.

Page represented herself. Disciplinary Counsel Julie Shankland represented the Bar Association.

For a complete copy of any disciplinary decision, call the Washington State Disciplinary Board at (206) 727-8280, leaving the case name and your address.

In Memoriam

Carl K. Chen: Vancouver attorney Carl K. Chen died in April at age 50 of hepato renal syndrome. Born in China and raised in Connecticut, he had been a Clark County resident since 1988.

Seaton "Rocky" Daily, Jr.: Spokane native Seaton "Rocky" Daily, Jr. died in August at age 51. He was a King County deputy prosecuting attorney and served as an assistant U.S. attorney from 1975 to 1978, when he resigned to join his father in private practice.

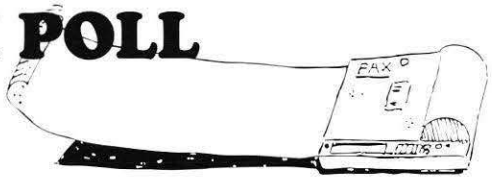
Joseph Erickson: Kennewick sole practitioner Joseph Erickson died of cancer in August at age 47. He served on the Gonzaga University law school dean's advisory board. He was very active in the WSBA and founded its General Practice Section.

Thurman E. Ward: Goldendale native Thurman E. Ward died in January 1996 of Parkinson's disease at age 84. Following in his father's footsteps, he practiced law for more than 40 years. He was Klickitat County Attorney for 14 years, Goldendale City Attorney for 10 years, and City Commissioner for 22 years.

Richard Wrenn: Retired Spokane County District Judge Richard Wrenn died March 8 after an extended illness. He served on the bench from 1978 to 1993; prior to that he was a Spokane County Prosecutor, Assistant Attorney General in Olympia and a city attorney for Spokane.

THE WASHINGTON STATE BAR NEWS

FAX POLL



What is your opinion regarding the reciprocity of state bar admissions? Such a system would extend membership — upon application and passing a character & fitness review — to attorneys in states willing to accept Washington attorneys under a similar arrangement.

Proponents contend that this would enfranchise attorney representatives of the military, minimize the need to associate with counsel in other states where WSBA members practice, allow the WSBA to exercise disciplinary oversight over non-WSBA attorneys who practice in Washington, and recognize the growing interrelationship of states in business and commerce. Opponents argue that Washington's laws are unique and require a separate bar exam.

Please check the statement which most reflects your opinion, along with any comments or qualifications which you may have, and fax (or mail) this entire page to the number/address below. No cover sheet is necessary.

1. ____ I strongly support state bar reciprocity.
2. ____ I somewhat support state bar reciprocity.
3. ____ I am undecided, but I believe the issue should be studied.
4. ____ I somewhat oppose state bar reciprocity.
5. ____ I strongly oppose state bar reciprocity.

Comments/Other:_____

_____

_____

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Name and city of faxing attorney (required): _____
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Please send suggestions for future fax polls to the above address.

RESULTS

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THE WASHINGTON STATE BAR NEWS

FAX POLL



Correction: The September Fax Poll results incorrectly transposed the "strongly opposed" and "somewhat opposed" tallies regarding physician-assisted suicide. The correct percentages are: 4% of respondents somewhat opposed physician-assisted suicide, while 28% of respondents strongly opposed this practice. The *Bar News* apologizes for the error.

In last month's *Bar News*, we asked your opinion regarding the WSBA's rating of judicial candidates in contested elections. The results:

1. 48% strongly supported the concept of judicial rating.
2. 3% somewhat supported the concept of judicial rating.
3. 0% were undecided, but believed the concept should be studied.
4. 3% somewhat opposed the concept of judicial rating.
5. 46% strongly opposed the concept of judicial rating.

Overall, 39 valid responses were received.

Your Comments:

"We must be vigilant in removing political philosophy and personal bias from the rating process, otherwise the process does more damage than good. Stating reasons for the ratings would enhance the process and allow the voters to judge the objectivity and bias of the raters."

Don Powell, Tacoma

"How do you anticipate rating them? If you are talking about a panel appointed in the way it is done in King County, I would really oppose it. In King County one attorney is given responsibility for interviewing references. That attorney can put any spin he wants to and can make or destroy a candidate. The candidate doesn't even get a chance to rebut negative information. It is . . . intellectually dishonest."

William Lawrie, Seattle

"The public, and even attorneys, have far too little information on which to elect judges. Given the number of contested elections, more, not less, information is needed."

Mike Runyan, Seattle

"I am highly suspicious of bar groups' rating systems, based on the . . . manner in which the King County Bar conducts its 'rating' by a small clique which operates in secret."

Andrea Gilbert, Seattle

"Local bar associations are better able to rate the vast majority of candidates than the State Bar. Additionally, WSBA ratings are [more] likely to reflect political preferences than judicial qualifications."

Steven Hemmat, Seattle

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

October

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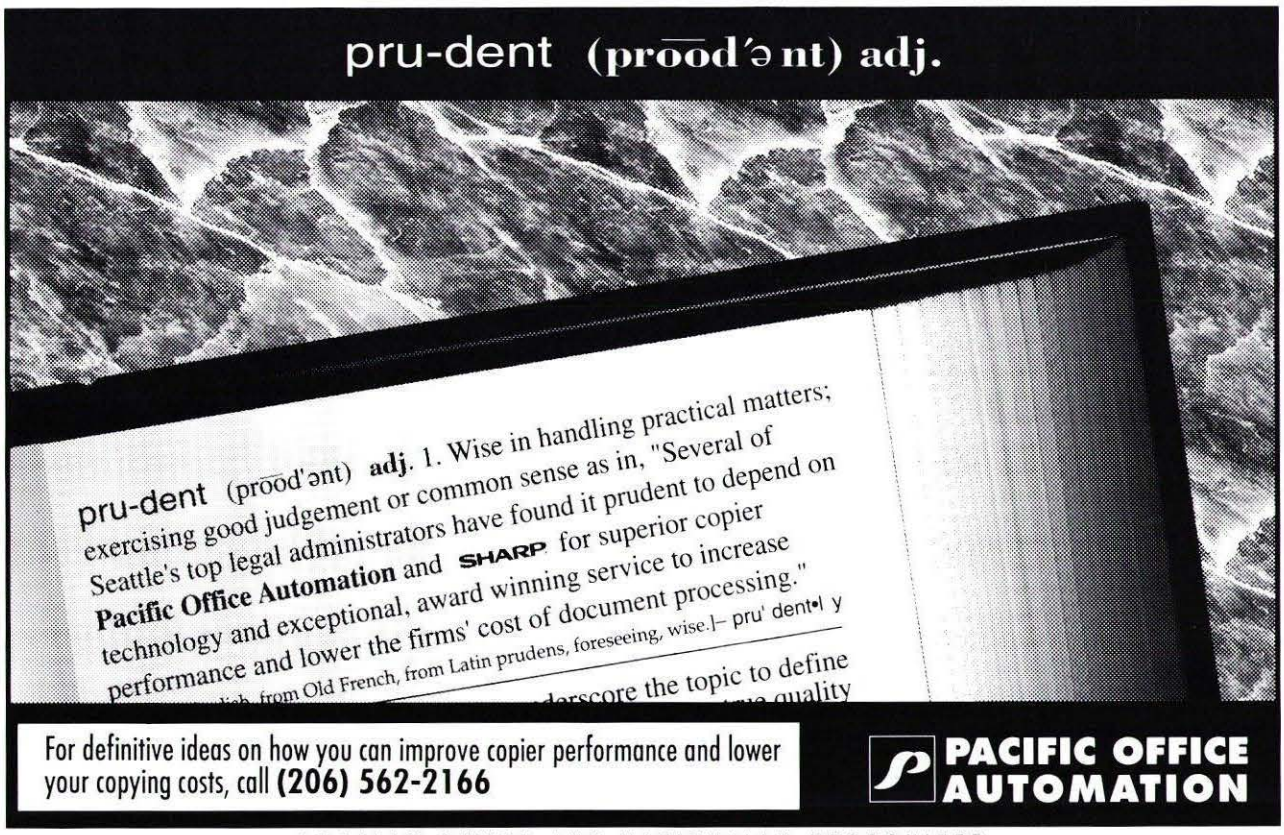
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What's In a Domain Name?

by **James Cameron**

Every individual or organization with a presence on the Internet uses a domain name so other people can send them e-mail or access their Web site. However, although a domain name is in some sense the electronic equivalent of a street address or P.O. box, it can have value that far exceeds that of an ordinary address.

The domain name of the White House is *whitehouse.gov*, and an e-mail message can be sent to the President of the United States using the e-mail address:

> *president@whitehouse.gov* (pronounced "president at whitehouse dot gov").

Similarly, Bill Gates of Microsoft can be reached by sending e-mail to the address: *billg@microsoft.com* using Microsoft's domain name *microsoft.com*. If you're a Mariners sports fan, the Mariner Web site can be reached by entering: *www.mariners.org* in a Web browser. In this case the associated domain name is *mariners.org*.

There are literally hundreds of thousands of domains names in existence now, covering many well-known company names, organizations, product lines, and ideas. A short but illustrative list includes: *mcdonalds.com, playboy.com, nytimes.com, gillette.com, money.com, getalife.com, help.com, nextlife.com, getrich.com, funeral.com, bullsemen.com, mickeymouse.com, rollingstones.com* and *who.com*

Each of the examples above is what is known as a "commercial" domain, and ends with the suffix "com." Generally, the suffix following the "." in a domain name is known as the "high-level" domain, and identifies the type of organization to which the domain belongs. Common high-level domains include "org" (nonprofit organization); "com" (business); "gov" (government organization); and "edu" (educational institution).

What Does This Have To Do With Law Firms?

What does all of this have to do with law firms? Plenty. Law firms are fundamentally businesses, and like any business moving on-line, they must understand the value of a domain name as part of an on-line strategy. Domain names serve two vital purposes. First, they are a simple but valuable device for establishing a firm's on-line image.

Larger firms such as Perkins Coie, Stoel Rives or Williams, Kastner & Gibbs have already acquired domain names incorporating their firms' names, and are using these in their e-mail and Web site addresses. The domain name of Perkins Coie, for example, is *perkinscoie.com*, and the firm's Web site address is *www.perkinscoie.com*. Someone looking for the Perkins Coie site on the World Wide Web has only to make a reasonable guess at this address in order to locate the firm's site.

Smaller firms don't always have the advantage of a recognized firm name to utilize in their domain name choice. However, they may have other, potentially more valuable options that larger firms don't have. Jon Fox, a partner at Cowan, Hayne & Fox, a leading DUI defense firm in the state of Washington, originally used America On-line for his e-mail, and had the e-mail address:

foxxxman@aol.com

The extra x's were necessary because AOL already had other "Fox"s with e-mail accounts. Not only was this an unattractive feature, but the domain name *aol.com* was shared with 6 million other users.

Jon switched from AOL to Halcyon of Seattle as his Internet service provider, and acquired a new e-mail address, *jsfox@halcyon.com*. This provided a more attractive and professional e-mail address but the domain, *halcyon.com*, still did not help differentiate his practice.

However, the domain name *duidefense.com* did. Jon Fox acquired this name as part of his Internet strategy, and his e-mail and Web site addresses are now *jsfox@duidefense.com* and *http://www.duidefense.com*, respectively.

From a marketing perspective, these addresses are a long way from his original e-mail address, *foxxxman@aol.com*, and will be invaluable as Jon moves elements of his practice on-line. Not only does *duidefense.com* brand Jon Fox and his firm as "the" DUI defense practitioners, but it means that anyone, anywhere in the world interested in DUI defense has only to enter *www.duidefense.com* into a Web browser to locate Jon Fox's Web site. Rarely has any business, let alone a small business, had such a powerful marketing vehicle available.

The use of a domain name to market his firm is not unique to Jon Fox. Examples of other attorneys using domain names to brand

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Julia Harmatz, Attorney at Law (Seattle, WA) (Intellectual property, trademark, trade secret & Internet law)

jharmatz@ip-attorney.com
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The second important reason for acquiring your own domain name is that it is yours, and can be transferred from one ISP to another. This means, for example, that if you become unhappy with your current Internet service provider or, worse, they go out of business, the domain name can be easily transferred to another provider's system.

This is a key consideration, because once your e-mail and Web site address are in print on business cards or brochures, or widely disseminated, it is expensive and cumbersome to change them.

Acquiring a Name For Your Firm

The process of acquiring a domain name is straightforward. If you have a name that you would like to register, give it to your Internet service provider and they will handle the details of registration. The ISP will register the name through InterNIC, the arm of the National Sciences Foundation (NSF) which has the responsibility to dole out Internet domain names.

The ISP will charge a fee for their time, typically less than $75. In addition, InterNIC will charge you directly for the use of the name. The cost is $50 a year per domain name, with a two-year minimum paid up front.

Domain name registration is on a first-come, first-served basis. Jon Fox, for example, has exclusive use of the name *duidefense.com* as long as he pays his yearly fee of $50. This is an important reason for identifying and acquiring a domain name as early as possible.

You can review specific domain names by clicking to the InterNIC Web site at *http://rs0.internic.net/rs-internic.html* and using the "Whois" service.

✣ ✣ ✣

***James Cameron** is a principal of Internos, Inc., and offers Internet connectivity, Web site design, and Internet CLE seminars to law firms. He can be reached by phone at: (206) 789-4831; and via e-mail at: jcam@internos.com.*

PROFESSIONAL & CLASSIFIED ADVERTISING INFORMATION: Please see page 5

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Phone: (206) 448-2100
Fax: (206) 441-4363

Medical Negligence & Product Liability

Chemnick, Moen & Greenstreet is available for referral or association in plaintiff's medical negligence and product liability claims.

The firm's staff includes a nurse-attorney and a nurse-paralegal. Patricia K. Greenstreet and Eugene M. Moen are past chairpersons of WSTLA's Medical Negligence Section. Paul W. Chemnick organized WSTLA's Product Liability Section and served as its first chairperson.

Chemnick, Moen & Greenstreet
450 Market Place Two
2001 Western Avenue
Seattle, WA 98121
(206) 443-8600

Vehicle Crash-Worthiness

Paul W. Whelan
of the law firm
Schroeter, Goldmark & Bender, P.S.
is available for association or referral in cases related to motor vehicle crash-worthiness, including cases involving fuel-system integrity, such as Chevrolet C/K series pickup trucks.

810 Third Avenue, Suite 500
Seattle, WA 98104
(206) 622-8000

Appellate Consultant

Heather Houston
Offering an appellate perspective on every phase of your case. Thirteen years' experience evaluating, briefing, and arguing appeals. Former law clerk to Justice Robert F. Utter.

Gibbs Houston Pauw
1111 Third Avenue #1210
Seattle, WA 98101
(206) 682-1080

Police Misconduct

Theodore Spearman, who has 20 years' experience in governmental torts and related constitutional litigation under Title 42 § 1983, is available for consultation, referral or association.

Theodore Spearman, P.C.
755 Winslow Way East
Suite 208
Bainbridge Island, WA 98110
(206) 842-0566
(206) 842-6639 fax

California Probate

Tim Gavin
Attorney CPA
(510) 494-5504

State & Local Tax

Frank Dinces is available for consultation and referral on any aspect (planning, audits, litigation or lobbying) of state and local taxation. With over 10 years of focused experience, Mr. Dinces seeks to represent clients being audited, engaging in major transactions, pursuing legislation, challenging tax assessments or seeking tax refunds.

The Dinces Law Firm
Suite 800
500 - 108th Ave. N.E.
Bellevue, Washington 98004
(206) 637-2827

Referrals or Consultations Invited:

1. Military personnel matters—pay, orders, discharges, in-service status, post discharges.
2. Federal employee personnel matters. Related boards and commissions to (1) & (2) above.
3. Federal boards and commissions—not including patent, tax, commerce or communications.
4. U.S. Claims Court, Washington, D.C., U.S. District Court litigation.

J. Byron Holcomb, Esq.
P.O. Box 10069
Bainbridge Island, WA 98110
Telephone (206) 842-8429
24 hours

DSHS Liability

Sexual Abuse Claims

Mick Seidl, counsel for plaintiffs in *Babcock v. State*, 116 Wash. 2d 596 (1991), is available for consultation or referrals in sex abuse cases, including negligence claims against DSHS and foster homes.

Seidl & Rizzo
Suite 350 Lincoln Place
1620 SW Taylor Street
Portland, Oregon 97205
(503) 229-1819
(503) 229-0360 (fax)

Referrals, Associations and Consultations in
Immigration Law Matters

Robert H. Gibbs
(19 years' experience)

1111 - 3rd Avenue
Suite 1210
Seattle, Washington 98101
(206) 682-1080

Divorce Representation for Attorneys

Family Law

Rodney G. Pierce is available for association and consultation in all phases of family law matters.

Mr. Pierce's practice includes representation of attorneys, accountants, doctors, engineers, athletes and other professional individuals in family law matters.

Pierce Law Offices
800 Fifth Avenue #4200
Seattle, WA 98104
(206) 587-3757
fax (206) 628-0504
pager (206) 361-7777

For Sale/Wanted

Practice Transition Partners: attorney, CPA and commercial broker/business consultant offer practice valuation, buyer/merger search, structuring and documenting sale/purchase transactions and facilitating financing. Confidentiality assured. Jaye Lynn Schneider, JD (206) 822-2353; fax (206) 822-1486; Michael P. Weiss, CPA, (206) 842-4360; William E. Pearsall, e-mail Pearsall@wolfnet.com.

Law Books: RWCA — complete current set $1,100; Wash App. Volumes 35-57, $200; Wn 2d Volumes 100-114, $125; call Jack Vincent, (360) 385-5584.

Funniest of all law books is the 1997 edition of *The Lighter Side of Practicing Law*, which contains 140 humorous courtroom anecdotes told by 112 judges and lawyers from all 50 states. Washington stories from Jack A. Richey of Redmond and Herbert H. Freise of Seattle. To purchase this 118-page book, send a $25 check, payable to "We, the Lawyers" to retired lawyer William F. White at 205 Berwick Road, Lake Oswego, Oregon, 97034. You get by return mail. No order form or shipping charges required.

For sale: West's Revised Code of Washington — full set with cumulative annual pocket parts — $1,000.00. Contact George at (360) 696-9446.

Washington Reports 1st and 2nd. Leather bindings on early volumes plus appellate reports. Call Gosta, (206) 258-3553.

Washington Digital Law Library. Washington CD of cases, statutes and administrative code — June update ($49 plus tax). Call (509) 946-9507 or write WDDL, PO Box 1830, Richland, WA 99352.

Country estate on Puyallup's South Hill, 20 minutes to Tacoma, 50 minutes to Seattle. Quiet country setting on five acres with Mt. Rainier view; great 3,700-square-foot home with five bedrooms; three-stall barn with RV storage and more. $342,000. Call (206) 848-9347.

Space Available

Downtown Seattle office-sharing: $150 per month. Also, full-time offices available on 32nd floor, 1001 Fourth Avenue Plaza. Close to courts. Furnished/unfurnished suites, short-/long-term lease. Receptionist, legal word-processing, telephone answering, fax, law library, legal messenger and other services. (206) 624-9188.

Seattle waterfront office-sharing: unique opportunity to join established Seattle firm in its new view space on the waterfront. Services and amenities included with lease are: law library, phone system, copiers, conference rooms, secretarial furnishings, and the staff to coordinate services. On-site parking also available. Please contact Mary Gould at (206) 628-5858 for more information.

Sweeping, unobstructed view of Olympics and Elliott Bay (First Interstate Building, 41st Floor) — elegant law office near courthouse. Reasonable rates include receptionist, basic messenger service, mail delivery, fax, two conference rooms, law library, fully equipped kitchen. For more information, please call AnnaMarie at (206) 624-9400.

Seeks Association

Medical malpractice plaintiff's counsel for association in Montana claim vs. nursing home and physician. Call Goldstein Law Firm, PC at (406) 265-1221.

Position Wanted

Legal word processor/secretary: mature male college grad., type 80 wpm, congenial computer guru seeks position with Seattle/King County law firm. Call Walter at (206) 230-9492.

WSBA attorney, recently passed Connecticut Bar, seeks employment. Experience as judge (Veterans Affairs) and consultant (Treasury). Bilingual, computer-skilled, published. Please respond to A. Cotter, (902) 566-8903, fax (902) 566-8879.

Position Available

Attorney jobs: Indispensable monthly job-hunting bulletin listing 500-600 current jobs (federal/state government, courts, Capitol Hill, public interest, corporations, associations, law firms, universities, international organizations, RFPs) for attorneys at all levels of experience in Washington, DC, nationwide and overseas. Order: *National and Federal Legal Employment Report*, 1010 Vermont Avenue NW, #408-WB, Washington, DC 20005. $39-three months, $69-six months. (800) 296-9611. Visa/MC.

The 58-lawyer firm of Garvey, Schubert & Barer seeks an associate to join its corporate/securities practice in the Seattle office. Preferred candidates should have two years' minimum corporate and securities experience, with some experience representing public companies in these areas. Candidates also should be computer literate and exhibit excellent people skills. All résumés should be sent to Garvey, Schubert & Barer, 1191 Second Avenue, 18th Floor, Seattle, WA 98101, Attention Carol Alberthal.

Six-attorney, Wenatchee growing law firm seeking aggressive, motivated associate with minimum of one year's general-practice experience. Salary and benefits negotiable. Send résumé and references to Cassel, Beuhler, Hotchkiss, DiTommaso & Crowell, Attention: Paul J. Cassel, PO Box 3880, Wenatchee, WA 98807.

Vancouver law firm with large personal-injury practice seeking Washington State Bar admittee. No experience required. Medical experience and/or insurance background a large plus. Excellent academic credentials required. Diverse case load with frequent client contact. Strong interpersonal, public-relation skills necessary. Computer (WP 5.1) experience helpful. Please send résumé in confidence to: Arthur D. Miller, 1220 Main Street, Suite 355, Vancouver, WA 98660.

Employment law attorney: Landerholm, Memovich, Lansverk & Whitesides, P.S., a 23-attorney law firm in Vancouver, Washington, seeks employment law attorney with at least three years' experience in counseling employers on a broad range of employment matters, including discrimination, wage and hour, ADA compliance, drug-testing and personnel handbooks. Litigation experience a plus. Applicants must demonstrate an ability to manage rapid growth, possess a superior academic background and have excellent writing skills. Please submit résumé, law school transcript and a short writing sample to Director of Administration, PO Box 1086, Vancouver, WA 98666.

Associate position available with small downtown Seattle law firm engaged in general civil trial/maritime/insurance defense practice in Washington and Alaska. Solid trial practice skills required;

maritime industry and/or maritime law experience a plus. Must have excellent writing and analytic skills. Please send résumé and writing sample to: Craig Smith & Associates, 600 University Street, Suite 2020, Seattle, WA 98101.

Bogle & Gates P.L.L.C. is pleased to announce an opportunity in its Seattle office for a litigation associate. The successful candidate will have a minimum of two years' litigation practice experience handling product liability/personal injury and general commercial-litigation matters. Experience in a law firm setting and current Washington State Bar membership is strongly preferred. We require outstanding academic credentials, excellent oral and written communication skills, and a dedication to providing the highest-quality client service. We offer a competitive compensation and benefit package, and a professional work environment. Qualified individuals should submit a cover letter and résumé outlining their qualifications, and a writing sample to: Ms. Alisa Tazioli, Attorney Recruiting and Training Manager, Bogle & Gates P.L.L.C., Two Union Square, 601 Union Street, Suite 5100, Seattle, WA 98101-2346. We are an EEO employer and encourage those from diverse backgrounds to apply. (No phone calls please.)

Entrepreneur, Shoreline, WA. Varied, long-established practice — build on a solid reputation and take over client base. Résumé to PO Box 7026, Shoreline, WA 98133.

Leading employee benefits consulting firm seeks experienced ERISA attorney. Two-plus years' retirement and health and welfare background required. Please send résumé to Foster Higgins, 1215 Fourth Avenue, Suite 1900, Seattle, WA 98161. Attn: Human Resources.

City of Federal Way Assistant City Attorney. Full-time position in the Law Department with a starting salary estimated to be $4,270 - $4,639. Requires a law degree with admission to the Washington State Bar Association and a minimum of four years' municipal civil-law experience (including trial experience) involving zoning code, land use, code compliance, property acquisition, municipal issues, and ordinance, resolution and contract drafting experience. Closes October 15, 1996. To apply, complete a City application and attach résumé and cover letter. Send to City of Federal Way, 33530 First Way South, Federal Way, WA 98003. For more information, contact Human Resources at (206) 661-4187. The City of Federal Way is an equal opportunity employer committed to a diverse workplace.

Attorney/CPA — Immediate opening to join small Portland, Oregon office. Tax compliance and planning projects of all types. One-plus year's experience preferred. Excellent opportunity for right person. Résumé/salary history to: *Bar News* Box 503, WSBA, 2001 Sixth Avenue, Suite 500, Seattle, WA 98121-2599.

Litigation attorneys: Heller Ehrman White & McAuliffe's Seattle office is seeking junior associates to join our expanding litigation practice. Candidates should possess superior academic credentials and have at least one year's legal experience in the area of general commercial litigation. All inquiries confidential. Please send résumé and law school transcript in confidence to: Susan Collier, Professional Recruitment Administrator, Heller Ehrman White & McAuliffe, 701 Fifth Avenue, Suite 6100, Seattle, WA 98104. HEWM is an Equal Opportunity Employer.

Services

Legal research is my forte! Contract attorney performs legal research at UW Law Library for lawyers anywhere in Washington State. Will draft trial briefs, motions, memoranda. Clerked in King County Superior Court, U.S. Bankruptcy Court. Elizabeth Dash Bottman, (206) 526-5777.

Forensic document examiner. Trained by Secret Service/U.S. Postal Crime Lab Examiners. Court-qualified. Currently the examiner for the Eugene Police Department. Only civil cases accepted. Jim Green at (503) 485-0832.

Contract attorney: experienced, accomplished trial and appellate attorney available, twelve-plus years' experience. Litigation and writing emphasized. References; reasonable rates. M. Scott Dutton, (206) 324-2306, fax (206) 324-0435.

Complex litigation in Oregon? We are an AV law firm and will co-counsel or pay a contingent referral fee for personal injury, commercial litigation, employment law and civil rights, constitutional law or other complex matters. We have successfully litigated in the U.S. Supreme Court and in federal and state trial and appellate courts in several western states. Call Don S. Willner & Associates, (800) 333-0328 or (503) 228-4000.

Registered professional land surveyor with JD and extensive experience as a consultant and expert witness in boundary disputes. Author of articles and regular columns in recognized journals and instructor for land surveyors' seminars; active in professional societies. Jerry R. Broadus, Geometrix Surveying, Inc. (206) 840-5680.

Oregon accident? Unable to settle the case? Associate an experienced Oregon trial attorney to litigate the case and share the fee. OTLA member; references available. Zach Zabinsky, (503) 223-8517.

California litigation/collection — California attorney ready to assist you in your California needs: domesticating judgments, jurisdictional challenges, debt collection, bankruptcy, depositions, and business litigation. Rick Schroeder, (818) 879-1943, (818) 879-5443 (fax).

Skip tracing — locator. Will find the person or no charge. No minimum fee for basic searches; 87% success rate. Confidential. Nationwide. (888) 2-VERIFY.

Miscellaneous

Berlin — Apartment in elegant, former luxury hotel in exclusive Grünewald district, directly on lakeshore of Koenigs See. Completely furnished, large balcony overlooking lake, sleeps two, weekly $850. Law Office of Ken Lawson, fax (206) 632-1086, telephone (206) 632-1085.

Alps — Germany/Austria — Apartment in panoramic Bavarian Alps town of Seeg, ten miles from Ludwig's castles in Füssen/Austrian border, 100 miles from Munich. Magnificent ski, spa, hiking, biking area. Completely furnished, including washer, large balcony with mountain view, garage, sleeps two to three, weekly $750. Law Office of Ken Lawson, fax (206) 632-1086, telephone (206) 632-1085.

Disability-discrimination in employment study — dissertation researcher seeks life history interviews with wheelchair users filing Title I (ADA) cases. If your client fits this profile, contact John White, MA, OTR/L (503) 359-2824.

Cabo San Lucas — deluxe one-bedroom condo on waterfront. Fantastic view, pool, fully equipped kitchen, AC, TV/VCR, three private balconies overlooking marina, restaurant and bar on premises, prime location. $125/night (503) 393-5059.

New Prez, 4 Governors Take Places on WSBA Board

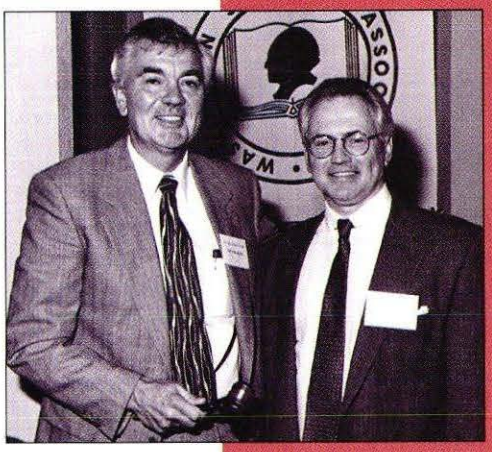
One new president, four governors, 11 award winners and fifteen 50-year service award winners made for a lot of photo ops at the Bar's Annual Meeting Awards Luncheon on September 6 at the Seattle Hilton.

Thomas J. Chambers of Seattle took the gavel from outgoing president Ed Shea.

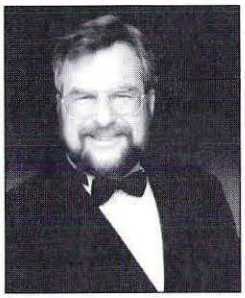


Chambers served on the WSBA Board of Governors from 1990-93. He has had his own law practice, Tom Chambers & Associates, on Capitol Hill since 1971, with an emphasis in personal injury litigation. He is the author of *Tom Chambers Trial Notebook*, published in 1992, and numerous articles in the King County *Bar Bulletin* and the *Washington Journal*. He is an active speaker at seminars in the Northwest, California, Hawaii and British Columbia. He was president of the Washington State Trial Lawyers Association in 1985-86 and served on its board from 1975-95. Chambers also served on the Board for the Association of Trial Lawyers of America from 1987-89, was State Chapter President of the American Board of Trial Advocates in 1993, was a founder of Trial Lawyers for Public Justice, and on the WSBA Access to Justice Task Force in 1994. He has won numerous awards, including WSTLA Trial Lawyer of the Year in 1989.





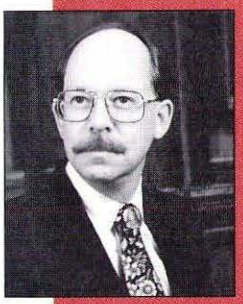
New Governors introduced were **Marijean E. Moschetto**, **Mary Alice Theiler**, **Donald N. Powell** and **Terrance (Terry) Lee**.



Marijean Moschetto represents the Eighth district. She began practice with her father's law firm in 1978 after graduation from McGeorge School of Law. She has been active in the East King County Bar Association and was president of the Eastside Legal Assistance Program in 1994-95, when the program launched the Domestic Violence Defense Fund, which provides free legal representation in the temporary order phase of family law cases to income-qualified victims of domestic violence.

Continued on page 59

Clockwise from upper right: new President Tom Chambers receives the WSBA gavel from outgoing President Ed Shea; new governors Don Powell; Terry Lee; Mary Alice Theiler; Marijean Moschetto.



WSBA On the Move

As part of the WSBA's move to a new location in downtown Seattle, the Bar office has the following furniture, in good condition, for sale:

- Five Rose Johnson workstations, two years old (four size 6'-x-8'; one size 8'-x-12').
- Eight Smed workstations, six years old (each about 7'-x-9').
- One Mywest workstation, four years old.
- One large conference table, 20'-x-6', 14 swivel chairs and eight sled base chairs.

Please contact Diane at the Bar office at (206) 727-8288 for more information.

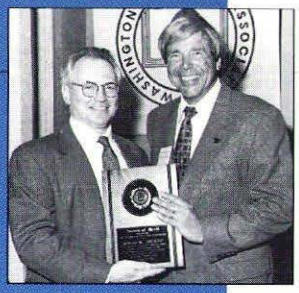
Our exact move date has yet to be determined because it depends on when construction is finished, but it should be around the middle of November. Send any correspondence to us at the old address through the end of November. If you are coming by in person during the last two weeks of November, please call us at (206) 727-8200 to verify our location.

Officially as of December 1, our new address will be:

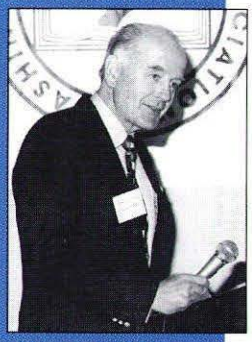
2101 Fourth Avenue — Fourth Floor, Seattle, WA 98121-2330.

The main number remains (206) 727-8200.

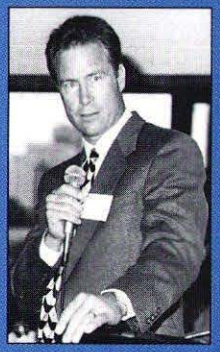
Watch this space next month for more information on our move to the "Darth Vader" building in Belltown! ◆



Dave Soukup



J. Donald Curran



J. Patrick Aylward



Will Williams



Tom Swayze



Alan Hancock

WSBA Award Winners

Outgoing President Ed Shea Presents Awards at Annual Meeting Luncheon

Seattle attorney **David W. Soukup** received the highest honor, the Award of Merit. Soukup was appointed to the Seattle Municipal Court in 1967 and became King County Superior Court Judge in 1969. In 1977 he started the first Court Appointed Special Advocate Program (CASA), which uses trained volunteers to advocate for abused and neglected children in juvenile court. "It was said that the common trait of leaders across centuries and across cultures is their ability to attract followers," Shea said. "And if that is a fair definition, it is certainly true of our recipient. From a single CASA project in King County, in all 50 states there are now 610 organizations devoted to the same purpose."

J. Donald Curran, who has practiced law in Spokane for more than 35 years, received the Lifetime Service Award. Now a partner in the firm of Delay, Curran, Thompson & Pontarolo, he was the first president of WSTLA in 1967, president of the Spokane County Bar Association in 1982, a member of the WSBA Board of Governors from 1988-91, and appointed to the Board of Judicial Administration in 1995. He currently is a member of the Gonzaga University Board of Regents and chair of the WA State Committee of the American College of Trial Lawyers.



Ed Shea & Kathleen Taft

J. Patrick Aylward of Wenatchee received the President's Award for his work on the WSBA Legislative Committee since 1988, including as chair for the past two years. "It was my pleasure and my great relief to know that the person who was at the helm of the WSBA Legislative Committee was J. Patrick Aylward," WSBA President Ed Shea said.

Kathleen M. Taft of Spokane received the Award for Professionalism for her 60-plus years of selfless service to her clients and her community. Taft has been a teacher, mentor, civic activist, and was the first Spokane County Superior Court Family Court Commissioner, a position she held for 25 years. She graduated from the UW School of Law in 1935 and was one of the first women to practice law in the state. "Mrs. Taft has never refused a client, friend or colleague anything they asked if it was hers to give. She is an example to all attorneys of what it is to practice law with love for your fellow human beings," Shea said.

Suzanne Kendall



William L. Williams of Olympia received the Angelo Petruss Award for Lawyers in Public Service. Williams joined the Attorney General's office in 1975 and is now chief of the Transportation and Public Construction Division. Previously he was chief of the Health Division and Corrections Division. He also was a founding member of the Attorney General's Ethics Committee, and is president of the North Thurston School District Board.

Superior Court Judges **Thomas A. Swayze** and **Alan R. Hancock** both received the Outstanding Judge Award. Swayze was Assistant Attorney General for the State of Washington and served in the State House of Representatives from 1965-74, where he was Minority Leader and Speaker of the House in 1971-73. "Among Pierce County lawyers Judge Swayze is known for his fairness and his ability to make lawyers, witnesses, and jurors at ease during a difficult process," Shea said. Hancock has been Superior Court Judge for Island and San Juan counties since elected in 1988. He is a life-long resident of Whidbey Island and was Island County Deputy Prosecuting Attorney. "Judge Hancock is always pleasantly, but firmly, in control of the courtroom," Shea said. "He is always courteous, always open to hearing every viewpoint and has an appropriate sense of humor and exudes fairness."

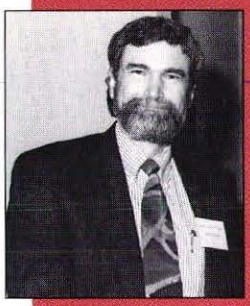
Suzanne P. Kendall of Seattle received the Pro Bono Award for her dedication to the King County Bar Association Neighborhood Legal Clinics. She has worked at the clinics for more than 10 years, and has been chair since 1995. "She always goes beyond mere duty to take all the time necessary to visit with the people who come to the clinic," Shea said. "She exemplifies the spirit and the letter of pro bono."

University of Washington law professor

Continued on page 59

Roy Prosterman received the Courageous Award for founding the Rural Development Institute in 1981. RDI works to reduce world poverty and instability by advocating land ownership and other forms of secure land tenure for farmers in underdeveloped countries (see the February 1996 issue of *Bar News* for a feature story). "Land reform is obviously dangerous work," Shea said. "Three of Professor Prosterman's friends and colleagues were assassinated in a cafe in El Salvador in 1980. He and two other RDI members were forced to leave the Philippines when a group of coconut landlords threatened to kill them...He risks his health on a continuing basis because RDI goes to great lengths to conduct rural field work... Such conduct should be an inspiration to us all."

V. Rafael Stone and the law firm of **Foster Pepper & Shefelman** shared the Affirmative Action award. Stone has practiced law for 23 years and is a partner at Foster Pepper. He has been a leader in attracting minority and women candidates to the firm and believes strongly in promoting them to positions of responsibility. The firm was in the top 8 percent of the largest 250 firms identified as national leaders in the National Law Journal survey on minority representation. The firm is also among the top 100 firms across the nation in their percentage of women lawyers. ◆



Jack Cullin accepts for Rafael Stone & Foster Pepper



Roy Prosterman

Governors — *Continued from page 57*

Mary Alice Theiler represents King County at large. She is a founding partner of the Seattle law firm of Theiler Douglas Drackler & McKee, where she practices maritime and personal litigation and employment law. She was president in 1993-94 of the Seattle-King County Bar Association, and is president of the KCBA Foundation. Theiler also is a member of the Minority and Justice Commission of the State Supreme Court, Access to Justice Board, Executive Council of the National Conference of Bar Presidents, and Board of Directors for the Northwest Justice Project.

Donald Powell, a third-generation lawyer, represents the sixth district and is a shareholder in the firm of Lozier, Powell & Ripley in Tacoma, with emphasis in family law, real property and business litigation. He is a Pro tempore Court Commissioner and Judge for Pierce County Superior Court, and was a founding member of the Tacoma-Pierce County Bar Association.

Terrance (Terry) Lee is a solo practitioner in Vancouver and represents the third district. He previously was prosecutor for the Quinault Indian Nation, Deputy Prosecutor for Cowlitz County and senior associate with Landerholm, Memovich, Lansverk & Whitesides. He was the leading pro bono provider for the Clark County Volunteer Lawyer Program in 1993 and 1994, and has been Chair of the CLE Committee and President of the Family Law Section of the Clark County Bar. ◆

Go ahead caller, you're on the air...

(A satisfied VIA-CLE registrant)

We work hard to earn your praise. We want to hear about your experiences from CLE seminars, whether good or bad. If you can't attend a CLE seminar in person, VIA-CLE may be your answer. Plain and simple — it means to participate via phone (from office or home). VIA-CLE registrants register in advance. They receive a copy of the course book, a PIN number and toll-free number to access the live seminar. And registrants can even ask questions!

The following is a brief interview with a happy customer, Kokie Adams, an attorney in Lynnwood who was a VIA-CLE registrant at the *Essentials of Probating an Estate* seminar. Ms. Adams has been a WSBA member for six years and handles business law, general practice, and some real estate & probate cases. This was her first time attending a seminar as a VIA-CLE registrant.

CLE: How did you find out about VIA-CLE programs?

KA: I received the seminar brochure and it sounded fantastic.

CLE: What attracted you to attend as a

Continued on page 60

15 members with 50 years of service to the law:

- Robert F. Buck, Friday Harbor
- Merle D. Cohn, Seattle
- William A. Davenport, Spokane
- Fielding H. Ficklen, Spokane
- George T. Gagliardi, Tacoma
- Herman H. Hayner, Walla Walla
- James P. Healy, Tacoma
- Edmund F. Jacobs, Puyallup
- Patrick H. Murphy, Spokane
- Dale M. Nordquist, Centralia
- Frederick James Orth, Seattle
- Arthur Ross Paulsen, Tacoma
- Frank August Peters, Tacoma
- Rush E. Stouffer Jr., Tacoma
- Roger C. Walsh, Seattle

Toll-free Legal Services Hotline Debuts

by *Ron Roseman*

Morris Dees, one of the nation's leading civil rights attorneys and Director of the Southern Poverty Law Center in Montgomery, AL, will give the keynote address to participants at the Northwest Coalition Against Malicious Harassment's 10th Annual Conference on October 18-20 at Gonzaga University in Spokane. Focusing on the conference theme "Facing the Threats: Organizing for Justice in the Northwest," Dees will speak on the threats posed by anti-government extremists. For more information call the conference coordinator at (509) 328-4220 ext. 2105.

The severe shortfall in legal services delivery capacity is the most critical challenge facing every individual and organization in Washington State's Access to Justice network. In the hope that newly emerging information technology offers unprecedented opportunities for greater service at lower costs, the Northwest Justice Project (NJP) has developed a statewide client intake system. The system allows low-income individuals to be referred for legal assistance in their community by calling a toll-free number. The program, called CLEAR (Coordinated Legal Education, Advice and Referral), is staffed by experience attorneys and paralegals who provide legal advice and written information as well. The program began operation in June 1996.

CLEAR uses advanced computer and telephone technology to assist the caller efficiently by relying on a comprehensive database that includes a large law library of informational brochures for non-lawyers and pro se instructions and forms. In addition, certain cases can be referred to NJP offices, local volunteer lawyer programs, law school clinics or other resources in the caller's community. CLEAR is able to serve non-English speaking callers because it employs a bilingual staff and makes effective use of an extensive language bank/interpreter system.

CLEAR currently serves the following counties: Asotin, Benton, Clallam, Columbia, Ferry, Franklin, Garfield, Jefferson, Lincoln, Pend Oreille, Skagit, Spokane, Stevens, Walla Walla, Whatcom and Whitman. Clark, Cowlitz, Island, Klickitat, San Juan, Skagit, Skamania and Wahkiakum counties will be added to the CLEAR service area in October 1996. This is about 35 percent of the low-income population. The program will expand to the rest of the state by the end of this year. CLEAR can be reached by calling 1-888-201-1014.

The Northwest Justice Project also maintains modestly staffed offices that are located in: Bellingham, Everett, Olympia, Pasco, Seattle, Spokane, Tacoma, Wenatchee and Yakima. NJP is the federal partner in the Access to Justice network and has received federal funding to deliver legal services to low-income individuals during 1996. While the Project has submitted a competitive bid to receive 1997 funding, final decisions will not be announced until November 1996 and the availability and amount of funding is contingent upon continuing deliberations in Congress. ◆

VIA-CLE — *Continued from page 59*

VIA-CLE registrant rather than attending in person?

KA: Transportation and time factor. Traveling from Lynnwood, neither downtown Seattle nor Bellevue are convenient. Parking downtown is not cheap or easy. Being a lawyer outside of downtown Seattle, it takes time away from my work schedule to attend a seminar in person. Since this seminar was in segments I could pick segments I needed instead of going to all of the CLE. And it was more cost effective to take segments needed and not pay the full day fee. It only took two hours out of my day rather than four.

CLE: Did you find the process of registering/using the system easy to follow?

KA: I dialed in just fine, and instructions I received prior to the seminar were easy to follow.

CLE: Were you able to participate fully in the program?

KA: I did not see any problem in being on the phone. It was easy to ask questions if I wanted to. The program chair and automated system prompted users for questions. I listened on speaker phone and could still be in the office for emergencies.

CLE: Can you name one best point of participating as a VIA-CLE registrant?

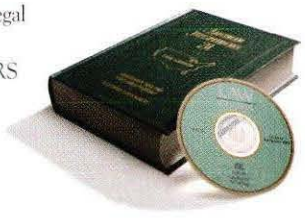
KA: More efficient use of time by utilizing breaks and lunch. Instead of being downtown for the seminar and traveling back to the office to sign papers, and going back downtown for the seminar, I could still participate in the office. I didn't miss a full day at work.

Ms. Adams added that she would like to see more programs offered as VIA-CLE. When asked if she would consider using VIA-CLE again, she quickly replied "certainly" and would "highly recommend" it to her fellow attorneys. She said the course book was great; it came with a disk and forms which were helpful. All this and "live" credits too? You bet Ms. Adams!

Future seminars offered as VIA-CLE: Probate on December 20, 1996; Employment Law Institute on March 13, 1997. ◆



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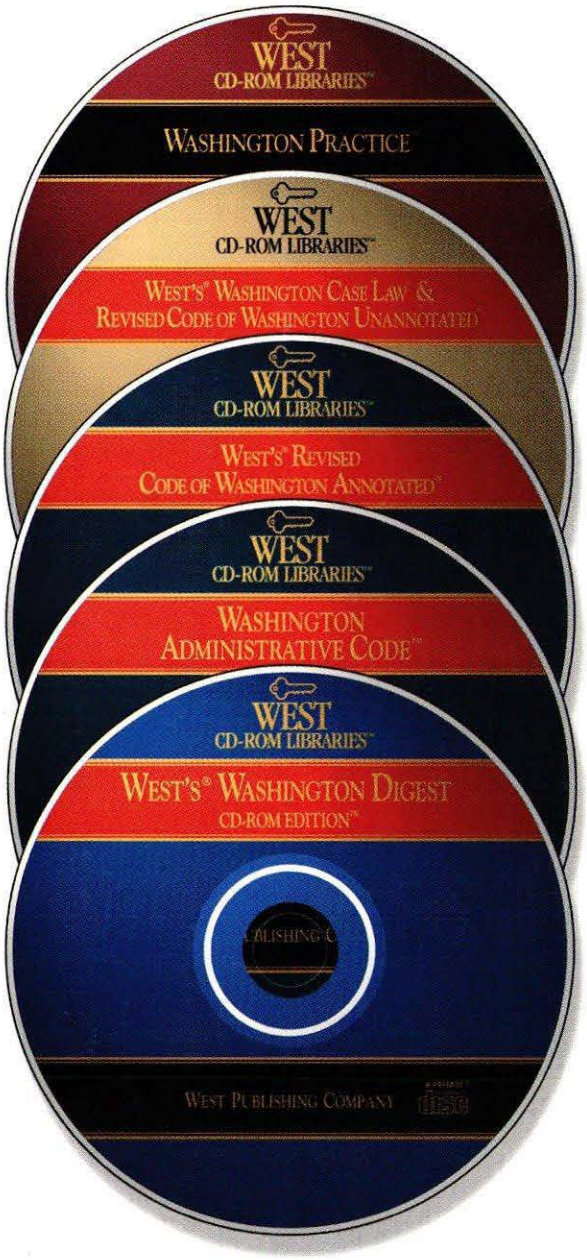


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