Washington State Bar News

Vol. 50 No. 12, December 1996

The official publication of the Washington State Bar

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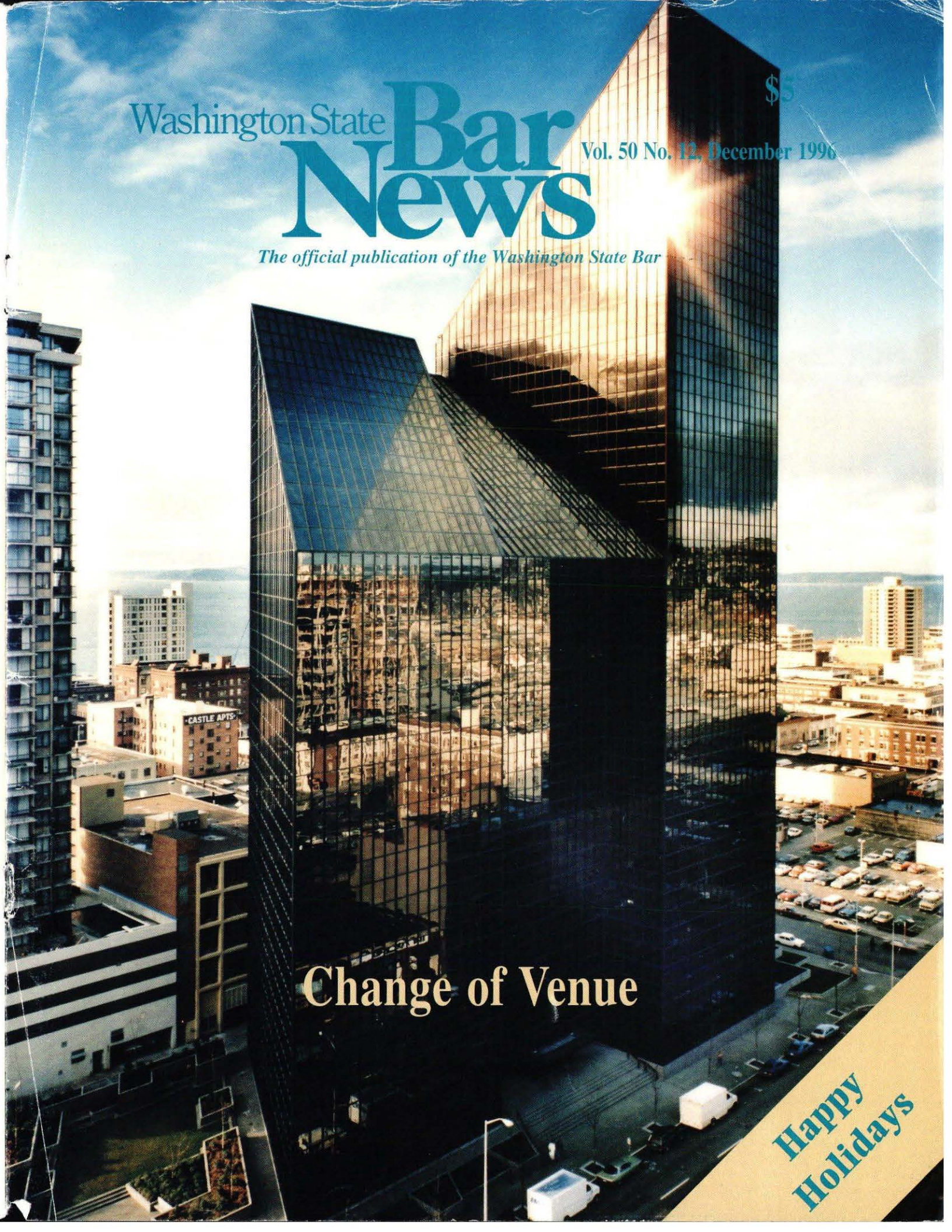

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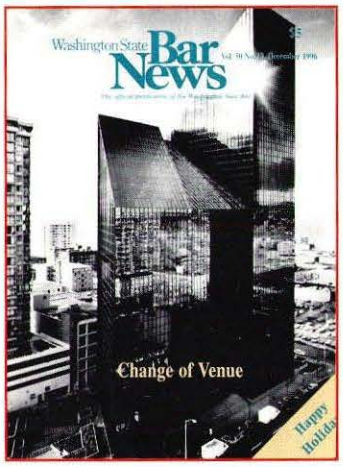

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The *Bar News* encourages correspondence and article submissions. The submission deadline is the 15th day of the month for the second issue following: e.g., September 15 for the November issue. We request a 3 1/2" disk (in any conventional format) and hard copy at the time of submission. Please include a SASE if you would like your material returned. Article submissions should run approximately 1,100 to 3,500 words. Graphics and illustrations are welcome. Address all correspondence and submissions to: Hal White, *Bar News* Editor, 2101 4th Ave., 4th Fl., Seattle, WA 98121-2599.

Washington State Bar News Vol. 50 No. 12, December 1996

The official publication of the Washington State Bar

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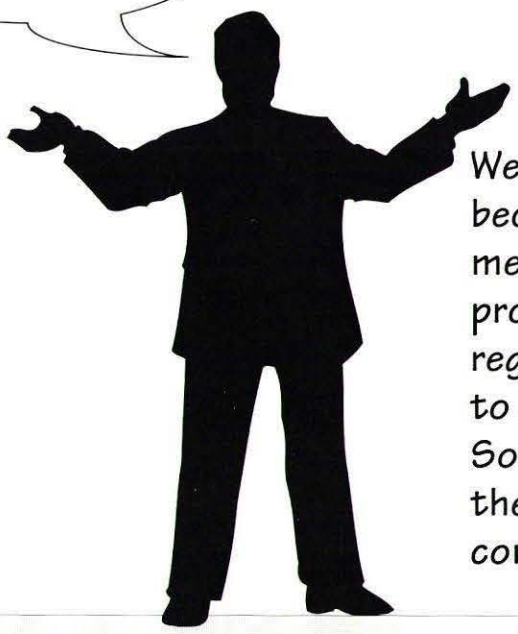

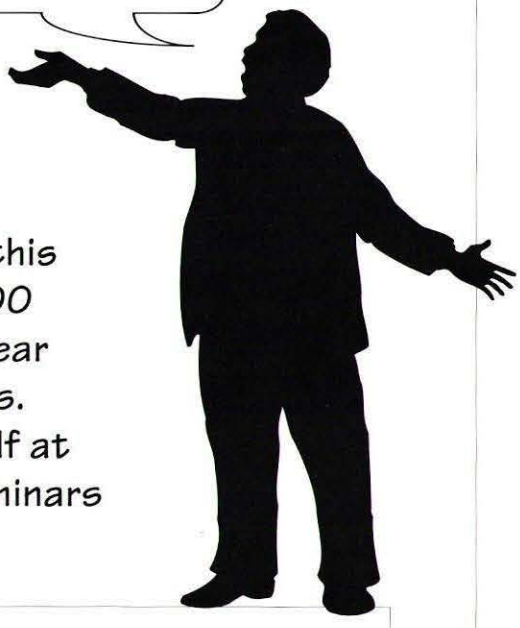

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Washington Lottery

Editor:

Page 2 of the September *Bar News* contains an advertisement I believe deserves some explanation. In addition, I believe bar members representing lottery winners will be better able to serve their clients if the issues involved in assigning lottery winnings are made a little more clear.

Before June 6, 1996, RCW 67.70.100 prohibited lottery winners from assigning the remainder of their winnings to a third party in exchange for a present cash value payment. Substitute Senate Bill 5865, passed by the 1996 Legislature, amended RCW 67.70.100 to allow winners to assign their prizes. The amendment provides that winners may assign their prizes if several conditions are met. The amendment further provides that no voluntary assignment is effective unless and until the IRS provides a ruling that declares voluntary assignment of prizes will not affect the federal income tax treatment of prize winners who do not assign their prizes.

The IRS issued the Washington State Lottery a private letter ruling in which it concluded the constructive receipt and economic benefit doctrines would not apply to non-assigning winners, and therefore would not change their tax status. The ruling also concluded that the cash equivalency doctrine could not presently be used to change the tax status of non-assigning winners, but the doctrine could be applied at such time in the future "where prizes are frequently transferred at a discount that is not substantially greater than the prevailing premium for the use of money." If the cash equivalency doctrine were applied, non-assigning prize winners would be required to recognize as gross income the present value of the remainder of their annuity payments.

It is the Lottery's position that assignments are not presently effective because the IRS private letter ruling does not satisfy the statutory requirement. However, at least eight petitions to assign prizes were filed and granted in Thurston County Superior Court despite the Lottery's opposition. In granting the petitions, the judge held that the IRS ruling satisfied the statute. The Lottery has appealed the decisions directly to the State Supreme Court, but is not seeking a su-

Readers are invited to submit letters of reasonable length to the editor. They should be typed on letterhead and signed. The editor reserves the right to select excerpts for publication or edit them as may be appropriate. Signatures in excess of three names will be printed only in exceptional circumstances, at the sole discretion of the editor.

persedes order to prevent the assignments.

The Lottery recognizes that some of its winners would rather have a lump sum payment than their prize paid out over twenty years, and would like to accommodate those winners. However, the majority of prize winners do not wish to assign their prizes. It is those non-assigning winners who would be most adversely affected by a change in their tax status which could force them to assign their prize just to pay off the tax burden created by such a change. In addition, many winners and their families have made legal arrangements based on receiving their prize over twenty years, and could be put in a difficult position not of their own making or control.

If you would like to find out more about the assignment of lottery winnings, please see RCW 67.70.100 and WAC 315-06-123, or call me at (360) 586-6583, or both.

MICHAEL AOKI-KRAMER
Legal Services Manager
Washington State Lottery, Olympia

Proposed Rule Change

Editor:

Our Bar Association's Board of Governors recently passed and then tabled a proposed amendment to the Rules of Professional Conduct, according to the October issue of the *Bar News*. The amendment would make it a professional violation of those rules to discriminate based upon someone's "sexual preference."

There are several matters which the Bar Association should consider and resolve prior to creating a new protected class, not the least of which is the fact that the rule is unintelligibly vague.

If adopted, the Bar Association should develop a mandatory CLE which would educate its members regarding the proposed rule in sufficient detail so that one can be sure to avoid unintentional violations. The purpose of rules, after all, is to coerce a form of conduct, not generate violations. Losing one's license to practice law is a serious sanction which should be avoided.

Purpose. I have found when indoctrinating my young daughter that she is much more compliant if I have a plausible reason for a rule. I do try to save the "because I said so" trump card for times when I am just too tired to think of a plausible rationale. So, why do we need a sexual preference rule anyway? Has there been a rash of homosexuals being fired? For the most part I cannot even tell who is homosexual in the first place. Have homosexuals recently been denied the privilege to practice law?

Scope. What is the scope of the protected sexual preference? There is a spectrum of sexual conduct which our society over the last 2000 years or so has learned is so destructive to its very fabric that such conduct has been proscribed. Homosexuality, for instance, has traditionally been criminally illegal. Only in our recent progressive era have we legalized sodomy.

Does the sexual preference rule apply to homosexuals who practice indiscriminate sex with multiple partners? The argument in favor of "same sex marriage" goes along the lines of "homosexuals are people too," and they need the safe harbor of a loving stable relationship. This argument obviously does not apply to homosexuals with multitudinous partners.

Does the sexual preference rule apply to bisexuals or those who engage in group sex? In a country where seven year old children are suspended from school for "stealing a kiss" and professional baseball players are sanctioned, only after the playoffs, for spitting in the face of the umpire, my moral/legal compass may not be capable of distinguishing the conduct of homosexuals, bisexuals and group sex players from inappropriate conduct. Upon adopting the proposed rule, it will become the duty of the Bar Association to fill this void.

Does the sexual preference rule apply to conduct which is presently illegal but may be declared one's constitutional right in the near future? The protected conduct in this category could include bigamy, polygamy and prostitution.

Does the sexual preference rule protect conduct which most people would consider to be truly disgusting, but is very sincerely the sexual preference of certain individuals? The protected conduct in this category could include pedophilia, necrophilia and bestiality. While it may seem absurd to the reader to even consider that these acts could possibly have been intended by the drafters to have been included within the rule, this conduct is clearly within the plain language of the rule. And, if we are going to protect the sexual preference of homosexuals, who are we to say that these other forms of sexual preference are not similarly worthy of protection?

Discrimination. What conduct or words will constitute discrimination under the rule? The example set forth in the Bar article involved a homosexual associate whose sexual preference was not known to the partners of the law firm at the time he was hired. It was deemed to be sanctionable discrimination that he was

fired when it became known that he was homosexual. In order for firms to avoid sanctionable conduct, they will need to create a sexual preference policy which must touch on several topics.

Flirting. Once sexual preference becomes a protected class, homosexual flirting may become common. How should the situation be handled where a new homosexual associate flirts with employees or clients of the firm? For that matter, since heterosexual males, by definition, "prefer" women, how would a woman's claim of flirting-turned-sexual harassment be treated in view of a rule expressly prohibiting discrimination against (such a man's) sexual preference?

Boys will be Boys. From time to time men have been known to discuss among themselves the "charms of a lady." Such conversations run the gambit from tasteful to rude. What is the proper way to conduct oneself in the following circumstance. The new young homosexual associate joins in a conversation. He begins to explain in great detail the manliness of his newly found friend. Such talk will be offensive to most heterosexual males. Would it constitute sexual preference discrimination to inform the new associate that he may not discuss his sexual activities in the office? Would not every negative response possibly discriminate against the associate's sexual preference?

Health Benefits. Many firms provide health benefits to employees' family members. This is a bias in favor of traditional families in recognition of the fact that traditional families are the basic building blocks of our society. Is it discrimination against one's sexual preference if no such benefits are provided to the partner of a homosexual? If so, what are the criteria to qualify? Perhaps the State Bar Association should develop a registry of homosexuals who are involved in a stable loving relationship so that law firms would know with some certainty whether or not benefits must be provided.

Responsible Lawyer. Large law firms are often managed by a committee. If a homosexual is discriminated against because of firm policy, who will bear the penalty? For instance, in a law firm where the management committee determines health benefits policy and health benefits were improperly denied to the partner of a homosexual, would every member of the committee be in violation of the sexual preference rule? What about the members of the firm who did not take matters into their own hands when the management committee failed in its professional duty?

False Claims. Every lawyer knows that if there is a protected class, there will be false claims of discrimination. The circumstance will arise where an associate will be terminated for no reason having to do with his sexual preference, but he will make a claim based upon his alleged sexual preference. What level of proof will be required to establish that the claimant's sexual preference falls within the protected class? What parameters of privacy and decency would be placed upon cross-examination regarding this element of the claim?

Quotas. When protected classes are created, the issue of quotas inevitably arises. How does the Bar Association propose to deal with quotas as they apply to sexual preferences? Homosexuals will claim that 10% of the population of the country is homosexual. The 10% figure is accurate only in parts of Seattle and San Francisco. Nationally, the correct figure is about one percent. In Eastern Washington, the correct figure is closer to zero. As a matter of law, every firm with 100 or more lawyers which cannot identify its openly homosexual attorney will be guilty of discriminating against every homosexual job applicant's sexual preference, except in Seattle. In Seattle, since the indigenous population of homosexuals is so much higher than the national average, the correct figure as a matter of law will fall between one and 10 per cent. Perhaps the Bar Association should commission a study to determine the precise figure so as to ensure compliance.

Reverse Discrimination. What about firms which are composed of an inordinate number of homosexuals. Inordinate is defined to be a number above the percentage determined in the prior paragraph. Are not these firms guilty of reverse discrimination?

Should the bar adopt the sexual preference rule, it will be entering unchartered waters. Although common sense would indicate otherwise, the language of the rule is so broad that it covers every conceivable type of sexual preference. Thus, it is unintelligibly vague. Prior to adopting such a rule, the bar must set forth with substantial specificity the conduct which it seeks to protect and that conduct which may still be considered socially unacceptable. This, then, gives rise to the question: Is it really the proper role of the Bar Association to engage in social engineering?

JAMES RIGBY
Seattle

In answer to the question posed in your fourth paragraph, those in favor of the proposed rule change would point to the

"Final Report of the King County Bar Association Task Force on Lesbian and Gay Issues in the Legal Profession" as asserting that such discrimination exists (see January 1996 "Board's Work"). Unfortunately, the makeup of the "Task Force" — two-thirds gay or lesbian and the balance presumably sympathetic to the agenda of same — mitigates against its objectivity in such assertions.

Contrast King County's effort, for example, with the pains the WSBA Board of Governors took when creating the "Task Force to Review the Law Clerk Program" (also discussed in the January "Board's Work"). In order to assure a balanced perspective, the Board not only mandated that current or former law clerks could not constitute a majority of that task force, but also insisted on the presence of a (presumably) hostile law school representative, thus insuring — as much as possible — its objectivity. — Ed.

Racism & Bigotry Are Always Wrong

Editor:

Mr. Wang's letter to the editor (September 1996) enthusiastically defended the "King County Minority Counsel Referral Program" — the newest, most blatantly racist creation of the King County Bar Association and the Loren Miller Bar Association.

You remember, that is the grotesquely racist program that intentionally seeks out and punishes all of your innocent White sons and daughters, by automatically excluding all of them from the Program, based solely on their skin being the "wrong" color — regardless of how great their character, merit or need.

Martin Luther King said it best when he stood and bravely spoke out against all racists and bigots:

> 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. *New York Times*, August 29, 1963, page 21.

No, Mr. Wang, Martin Luther King and I are not spreading our "own brand of racism" and we are not "cowardly hiding behind the names of children," when we stand and defend all children — not just some children — against racists and bigots.

But you are right, Mr. Wang, there are plenty of cowards, racists and bigots in the Bar. What else would you call attorneys who support and defend a racist and bigoted program like the mean-spirited and insensitive King County Minority Counsel Referral Program?

Why are the radical-left, liberal supporters and defenders of this racist Program so mean-spirited and so insensitive? Why are they in denial? Why do they refuse to feel the pain that they are intentionally inflicting on innocent White sons and daughters?

And why do they all have their heads screwed on backwards so firmly that they are now a major source of the problem of racism and bigotry in this country, rather than being a seed of the solution?

Since they all just don't get it yet, it is clear that they as badly need to have their consciousness raised — a lot. So I'll try, once again.

No, Mr. Wang, your tired, old, radical-left, liberal excuses for practicing racism and bigotry against innocent White children just don't wash, and they never did.

No. Because some people of color are poor does not give anyone the right to practice racism and bigotry against innocent White sons and daughters. And be-

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cause people of color are the victims of racism and bigotry, does not give anyone the right to practice those evils against innocent White children.

No, Mr. Wang, racist and bigoted programs like the mean-spirited and insensitive King County Minority Counsel Referral Program are not the solution. Instead, they are insurmountable roadblocks on the path to a color blind society; and they will inevitably lead to more — not less — racism and bigotry, in a never-ending, vicious cycle.

Yes, Mr. Wang, I do know what I'm talking about. I have been married to an Asian woman for 23 years and have a 14-year-old Asian/White daughter. So I have experienced stereophonic racism and bigotry from both Asians and Whites.

I assure you from personal experience, Mr. Wang, Asian racists and bigots are just as bad as White racists and bigots.

Mr. Wang, we are all on this earth for but a short time, and the most important legacy that we can leave our sons and daughters are good, sound values and inspired dreams.

Good, sound values such as:

Racism and bigotry are always wrong.

Punishing the innocent is always wrong.

And inspired dreams such as those of Martin Luther King, who climbed to a mountain top where he could see so clearly, and from that high peak gave us his vision: That no child should be judged by the color of his or her skin, and that all children should be judged by the content of their character.

Come. Share our good, sound values, and dream our inspired dream. The time is now. Shut down the racist, bigoted, mean-spirited and insensitive King County Minority Counsel Referral Program.

GREGORY W. MORAVAN
Bellevue

Bar News Departments

Editor:

I miss the column(s) "Around the State." While I don't miss the Seattle shakers-and-movers information, I do miss the whimsical tidbits floating in from the rest of the state. I practice out of state, in small Wilsonville, Oregon. I must confess that I still have old issues of the *Bar News* that I have not read, some as old as August 1995. I have, or had, three items I consistently read — the fax poll, the tombstone ads, and the ATS column. I had no idea that items were missing until I happened to read the latest *Bar News* during a solo dinner. Alas, with the number of whimsical tombstone ads also declining, I'm afraid that I have one item to read — the fax poll.

MARK JOHN HOLADY
Wilsonville, OR

We'll See What We Can Do

Editor:

This letters section has really gone downhill since you stopped printing the Friedman-Cumbow exchanges. Surely there is some topic they would be happy to disagree in public about.

BERNARD H. FRIEDMAN
Olympia

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Lawyers Playing Santa

by **Tom Chambers,**
WSBA President

design by Alan Troy Hunter

Want to get yourself on the front page of the newspaper? It's easy. Just do something wrong. Local media are delighted to give top billing to the unscrupulous and the unsavory. Meanwhile, doing something right — as so many of our members do — garners virtually no attention at all. I would like to reverse that trend this month and devote my column to recognizing all the year-round "Santas" among the lawyers in this state who quietly serve their communities and give us all reason to be proud.

Consider Fred Woeppel of Spokane, who, through the county bar association's volunteer lawyer program, learned of a local woman whose car had been repossessed and whose husband was woefully far behind on his child support payments. He first heard of her plight on a Friday, just three days before Christmas. Through some quick research, as well as contacting a local military base and the bank, Fred was able to get the woman's car back the following morning, enabling her to get to her job at a local hospital. In addition, he was able to secure increased child support for the woman and her four children.

Fred is just one of many such lawyers across the state. The help he and others provide is unknown to the public — indeed, it is unknown to most other lawyers.

As I begin to think about the myriad activities undertaken by our membership, I realize that I cannot possibly mention every lawyer and every good work. Instead, I would like to mention some shining examples that exemplify the spirit and generosity of the Washington State Bar Association.

For many, community service begins as pro bono work. These workaday heroes of our profession find time in their hectic schedules to advise volunteers at battered women's shelters, help nonprofit agencies draft their articles of incorporation, represent their church in a property dispute or advocate the position of citizens' groups in court. Moved by commitment to a cause and to the community, these attorneys — and the firms that support these endeavors — are practicing advocacy in its truest form.

Often attorneys' good works are not confined to the realm of practicing law. Members of the bar devote their time and energy to meeting basic humanitarian efforts as well. Operating with the motto, "A Hungry Child Dreams of Nothing but Food," the Lawyers' Campaign for Hunger Relief has for the past five years helped some of the state's neediest children. Founded by Bob Mussehl of Seattle, who serves as the organization's chair, the campaign has helped feed children through the Summer Sack Lunch Program and the Emergency Feeding Program.

Some lawyers work to make sure that disenfranchised members of the community have adequate shelter. The Seattle firm of MacDonald, Hoague & Bayless, for example, devoted carpentry, painting and other skills to Habitat for Humanity. Attorneys and staff also worked to prepare housing for Washington Refugee Resettlement and Elizabeth House, a shelter for single teenage mothers. Also in Seattle, Ryan, Swanson & Cleveland participates in "Christmas in July," in which area homes receive much needed renovations and "face lifts" such as new paint.

To the south, Terrance Lee of Vancouver looks out for children in dissolution cases by distributing a powerful video to divorcing parents. "Don't Forget the Children" urges parents to consider the effects of their divorce on their children, and it exhorts couples to avoid airing their differences in the courtroom. It is impossible to know — but heartening to imagine — just how many children have been spared the anguish of witnessing a bitter court battle between their parents as a result of Mr. Lee's efforts.

While lawyers serve their communities throughout the year, it is during the holiday season that many increase their efforts. Across the state, countless law firms and legal departments "adopt" needy families through organizations such as the YMCA and the Salvation Army, and make sure there are plenty of gifts under their trees. Members of the Port of Seattle's legal department, for example, secured toys through Hasbro (a customer) and other items via donations from employees. Striking to the participants was that needy children asked for few luxuries, instead requesting basics such as coats, pajamas and socks. In Spokane, the firm of Evans, Craven & Lackie has collected woolen socks and mittens and donated them to area missions.

About 2,000 children are served through the Forgotten Children's Fund, a group that for the past decade has been headed by Larry Longfelder of Seattle. Working with the support of others at his firm, he has led the organization's efforts to raise money in order to purchase, wrap and deliver gifts to needy children. In addition to the children who receive gifts, about 1,000 seniors also benefit from the efforts of the group, which operates with no paid staff and no permanent warehouse facility.

As I salute these dedicated members of the bar, I urge all of you to follow their examples and contribute your time and money — or, best of all, both — to these worthwhile organizations.

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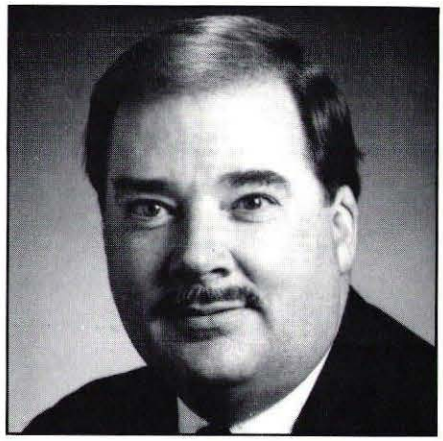
Since I Knew You'd Ask . . .

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



Dennis P. Harwick

Within the next week or so, you will be receiving your 1997 WSBA Licensing Form. Because of advance publicity, it should not come as a surprise to anyone that WSBA membership fees have gone up (first time in a decade). Nonetheless, I anticipate a number of calls and letters expressing shock and objection.

The need for a fee increase has been discussed for several years — particularly as it regards the additional funding required to upgrade the lawyer discipline process. The Board of Governors openly discussed the prospect of a fee increase for over a year and debated the specifics in both May and June of 1996 before unanimously approving the increase as part of the 1997 fiscal year budget. Then the increase was publicized in both the July and August issues of *Bar News*. So . . . it's not for a lack of publicity that lawyers will be taken by surprise when they receive their 1997 Licensing Form!

For the record, here's the schedule of WSBA membership fees for the next four years:

	Active — Years 6 and over	Active — Years 4 & 5	Active — Years 2 & 3	Active — Year of Admission*	Inactive
1997 Membership Fee	$240	$211	$126	$60 $30	$43
1998 Membership Fee	$272	$227	$137	$60 $30	$48
1999 Membership Fee	$281	$233	$142	$65 $35	$50
2000 Membership Fee	$290	$238	$145	$68 $38	$51

* $60 if admitted pursuant to winter bar exam; $30 if admitted pursuant to summer bar exam

In anticipation of some of the questions, let me try a peremptory effort:

Q. Why are my fees going up?

A. In general terms, fees are going up to pay for expansion of the lawyer discipline system and to pay for increased operating costs.

Q. Are fees going up to pay for the new WSBA office?

A. Sort of. Our lease expired at the end of November, we needed additional space, and rents have gone up. We would have needed more space and rent would have gone up even if we'd stayed in the Westin Building.

Q. Are fees going up to pay for new programs?

A. There are a couple of new programs being implemented as part of the expansion of lawyer discipline, but the fee increase did not anticipate significant expansion of other WSBA programs.

Q. Is all of the increase being dedicated to expanding lawyer discipline?

A. No. A significant portion of it is, but all the other WSBA programs such as LAP, *Bar News*, and Access to Justice efforts have experienced incremental increases in operating costs as well.

Q. Why are fees being increased over a four-year period?

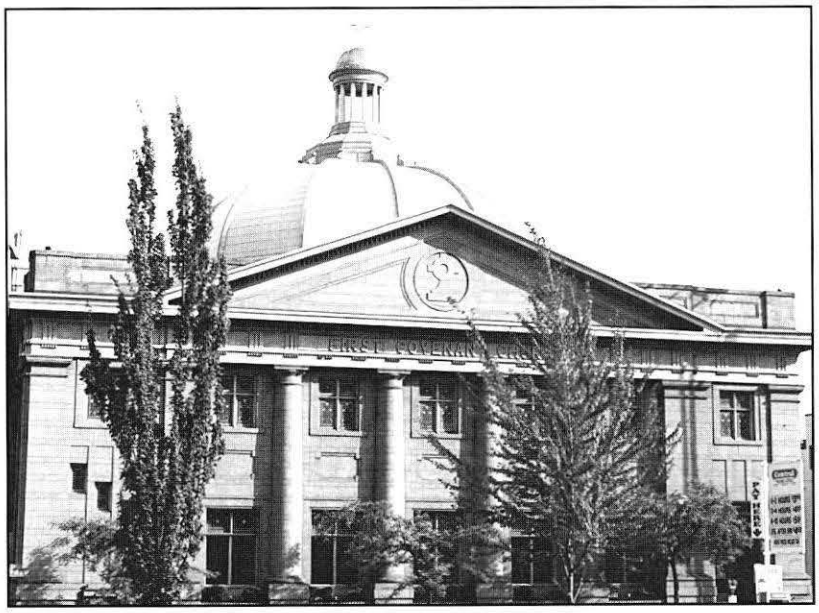
A. Because the Board of Governors wanted to spread the increase out in order to ameliorate its impact, and we didn't need the whole increase at once.

Q. Does this raise Washington's fees to the top of comparable state bar associations?

A. No. Among other western state bars, Washington's fees will go from being the lowest to — get this — the next to lowest (depending on whether Idaho raises its fees).

Okay, I made up that last question, but my point was well-intentioned!

A Tale of Two Churches:



First Covenant Church of Seattle

by **Steven T. McFarland**

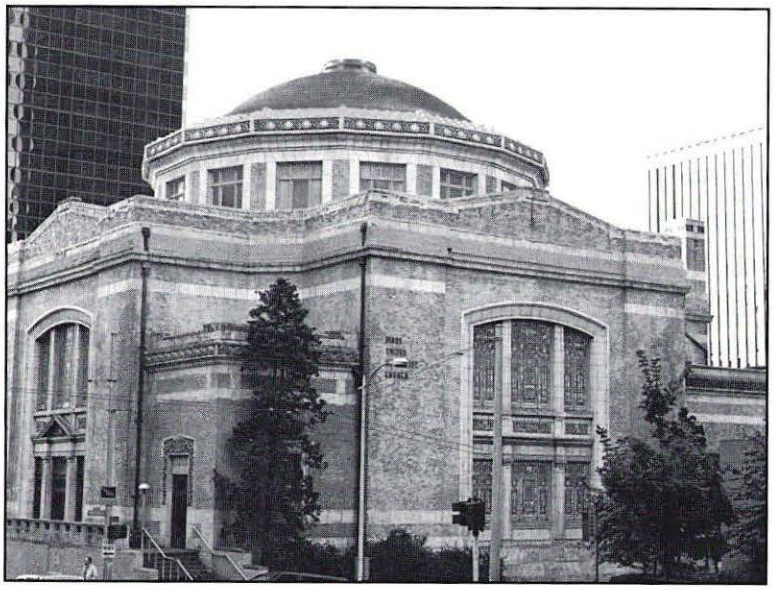
The city of Seattle has an eye for architecture. It likes to preserve old buildings. A lot of them. And the city doesn't seem to care who owns them or what they are used for. If they are churches, all the better, for that means the city has a legal excuse for not contributing to the cost of maintaining them. This is the story of two victims of that city's fatal attraction. Fortunately, they escaped the city's smothering embrace. Unfortunately, in order to escape, each property owner (both churches) had to endure—and pay for—eleven years of litigation through every level of the state judicial system.

First United Methodist Church ("United Methodist") owns half a city block on Fifth Avenue between Marion and Columbia Streets. The sanctuary was erected in 1909 on what is now the northeast quarter of a city block in the heart of downtown Seattle. On the southern part of its property is a separate building housing a chapel and community center; this building (built in 1950) did not catch the City's eye and was spared the honor accorded the nearby sanctuary.

In December 1984, Seattle's Office of Urban Conservation (rather than a private citizen) nominated the domed sanctuary of United Methodist for designation as a landmark under the city's Landmark Preservation Ordinance ("LPO").[1] The congregation vigorously opposed this designation, because it is no blessing for religious building owners. With it comes bureaucratic control of the kind the federal and state constitutions prohibit.

Specifically, United Methodist could not alter the appearance of its own property without the permission of Seattle's Landmarks Preservation Board. The membership of this unelected panel is dictated by the LPO: at least two architects, two historians, a structural engineer, a representative from the City Planning Commission, a real estate manager, someone from the field of finance, and three others of any occupation. Unfortunately for Seattle churches and other property owners, Board member criteria does not include sensitivity to civil liberties. Rather, the LPO requires that "[a]ll Board members shall have a demonstrated sympathy with the purposes of this Ordinance." The ordinance's express purposes are to preserve landmarks while main-

The State Supreme Court Extricates Church Property From Seattle's Landmarks Board



First United Methodist

taining them under private ownership. Nothing is said about respecting the property and religious liberty rights of the landmark owner.

Board control over the church's house of worship was more than an administrative inconvenience. United Methodist's sanctuary was literally crumbling and its membership declining. The congregation could not afford the $4 million that an expert consultant estimated it would cost to restore and shore up the unreinforced domed sanctuary for seismic safety.

This left United Methodist's congregation with several options: borrow against the property in order to restore and maintain the existing sanctuary; demolish the sanctuary and replace it with a smaller one more conducive to current liturgy and reduced attendance; or demolish, sell and move out of downtown in order to be closer to current and potential parishioners.

Rather than channel all their endowed and operational funds toward maintenance of a crumbling monument for the benefit of the Landmark Board, United Methodist's members wanted to pursue their religious mission: worshiping God and serving people — not preserving buildings. So refinancing and repairing was not an acceptable option. Besides, the day that any prospective lender heard that the sanctuary was subject to the omnipotent regulation inherent in landmark designation, the market and loan value of the Church's collateral would plummet.

The other two options were foreclosed by the Landmark Preservation ordinance; the Board was obviously not going to allow United Methodist to demolish "the city's" landmark.

Left with no viable options if its sanctuary was so designated, the Church strongly resisted the nomination for designation. Nevertheless, the Landmarks Preservation Board approved the nomination three months later. Thus began the city's unwelcome and unsolicited campaign to become the church's property manager.

Under the LPO, when the Landmarks Preservation Board approved the city's nomination, the Board automatically acquired significant controls over the church's property. These controls kick in when a building is merely nominated; consequently, the city later lost its argument that the case was not ripe for adjudication. The ordinance prohibited any alteration to the exterior or interior without

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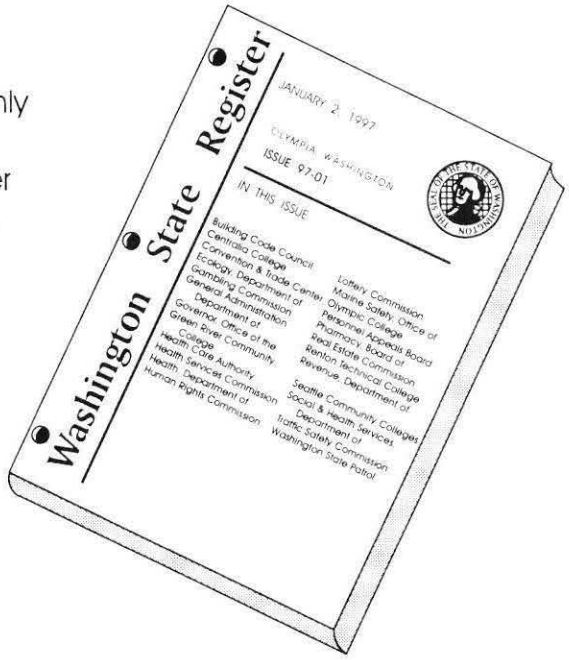

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LP Board approval. There was only one back door: the church could make alterations if it proved to the Board's satisfaction that the alterations were "necessitated by changes in the liturgy." This was the city's modest acknowledgment that the First Amendment has something to say about a city exercising control over a church building. Not surprisingly, this "exemption" proved insufficient to salvage the LPO, at least as it applied to United Methodist.

Later that year, over the church's objection, the LP Board officially recommended that the Seattle city council enact a designating ordinance with "controls" on alteration by United Methodist to its own house of worship.

The church appealed to the city hearing examiner, claiming infringement of its right to religious freedom under the state and federal constitutions. United Methodist sought to either demolish its sanctuary for commercial development in order to fund religious social service ministries, reconfigure the sanctuary to conform to liturgical changes and the needs of a shrinking congregation, or else demolish and sell the prime downtown property in order to move to a site closer to its people.

While the appeal before the hearing examiner was pending, the Washington Supreme Court decided a near-identical case brought by another Seattle church whose domed sanctuary had also been designated a landmark under the same LPO. In that case, the court held that the ordinance violated the right of First Covenant Church parishioners to freely exercise their religion.[2] Fortified with a controlling decision on point, United Methodist moved to dismiss the designation proceedings, but the hearing examiner denied the motion. So the church sued in King County Superior Court for equitable relief from the proceedings by way of injunction and prohibition.

Although the controversy had already lasted almost six years, the legal roller coaster had only just begun. While United Methodist's suit was before the Superior Court in 1990, the U.S. Supreme Court vacated the Washington Supreme Court's decision in *First Covenant I*. It remanded the case for reconsideration in light of *Employment Division v. Smith*, a watershed decision several months earlier that eliminated strict scrutiny of government-imposed burdens on religion in all but the rarest of cases.[3] Distinguishing decades of precedent to the contrary, the high court ruled that government needs to demonstrate a compelling justification for a burden on religious exercise *only* if the burden: a) comes from a policy that singles out religion for regulation or penalty, or; b) impinges on another fundamental right (not just free exercise alone), i.e., a "hybrid" of rights. So United Methodist lost a slam dunk precedent — temporarily.

On remand, the Washington Supreme Court in *First Covenant* reaffirmed its original holding, concluding that First Covenant Church salvaged strict scrutiny protection under the First Amendment despite *Smith*.[4] *First Covenant II* remains today perhaps the nation's narrowest interpretation of *Smith* and, hence, the broadest post-*Smith* affirmation of religious autonomy under the First Amendment's free exercise of religion clause.

Moreover, the state high court again found a basis for exempting First Covenant under the Washington Constitution's religious liberty clause.[5] Using the factors cited in *State v. Gunwall*,[6] the majority held that the state charter provides broader protection to religious freedom than the federal constitution, and that landmark designation of the church violated article 1, section 11.

First Covenant II elicited "hallelujahs" once again from the beleaguered faithful in United Methodist's pews. Surely the LP Board had learned from the high court its civics lesson on religious freedom. Almost eight years of litigation (11 years for First Covenant) appeared to have a happy ending.

Wrong. Despite two on-point rulings on identical operative facts, the LP Board would not release its teeth from United Methodist. No voluntary dismissal of the designation proceedings. No stipulated judgment. Instead, when United Methodist moved for summary judgment based on *First Covenant II*, the city resisted. But the message in *First Covenant II* was not lost on the Superior Court: judgment for the church, enjoining landmark controls and declaring them violative of United Methodist's religious liberty.

The ride was still not over. The city appealed, and Division One of the Washington Court of Appeals reversed in part.[7] The appeals court ruled that "mere designation" of United Methodist did not bur-

Seattle to its churches:

"Your buildings are more important than you are."

den its free exercise of religion, if the City exerted no controls as long as the sanctuary was used "primarily for religious purposes." In reply to United Methodist's stated interest in possible demolition, the appellate panel said the church could do so if it "replaced it with a new building to be used for primarily religious purposes." While the appellate court mainly affirmed the trial court's injunction against most controls, the Church petitioned for review by the state high court. United Methodist challenged the appeals court's replacement requirement, asserting that it had a right to demolish and either redevelop or sell and move. It also argued that "mere designation" in fact directly and substantially burdens the church's free religious exercise. The Washington Supreme Court agreed to consider church landmarking for the third time in five years.

As it had done in *First Covenant II*, the Christian Legal Society filed an amicus brief in support of United Methodist and shared oral argument with the church's counsel, George Hartung of Seattle's Misterek & Woo. Similarly, the city was again supported by an amicus brief from the National Trust For Historical Preservation In The U.S.

And as it had done twice in *First Covenant*, the Washington Supreme Court ruled in favor of the church in *First United Methodist*—by a 5-4 majority. The analysis and conclusions in *First Covenant II* on strict scrutiny, burden and the relative weight of the competing interests proved controlling.

In *First Covenant I* and *II*, the state supreme court found no compelling interest in landmark preservation:

> The possible loss of significant architectural elements is a price we must accept to guarantee the paramount right of religious freedom.[8]

Therefore, the primary battle before the high court was whether the Church had demonstrated that "mere designation" as a landmark and the religious use requirement significantly burdened its religious exercise. If a burden was proven, strict scrutiny under the First Amendment (even under *Smith*'s restrictive interpretation) and the state constitution would mandate a victory for United Methodist.

The high court chastised the appellate panel for failing to inquire whether United Methodist succeeded in showing a burden on its free exercise of religion. Moreover, the lower court erred, according to the five-Justice majority, in conditioning the church's exemption on using the structure "primarily for religious purposes." This "wholly amorphous" phrase "implicitly requires United Methodist to garner city approval for extensive renovations having a debatable religious purpose."[9] The majority predicted this phrase would engender further litigation and unconstitutionally shoulder the church with an administrative burden.

Even more troubling for the state supreme court was the appellate court's allowance of city restrictions if the church tried to sell its sanctuary:

> If United Methodist decides to sell its property in order to respond to the needs of its congregation, it has a right to do so without landmark restrictions creating administrative or financial burdens. . . This protection does not cease if United Methodist sells its property.[10]

While stopping short of declaring all landmarking of churches to be invalid, the supreme court held:

> In the present case, United Methodist has demonstrated that the [LPO] severely burdens free exercise of religion because it impedes United Methodist from selling its property and using the proceeds to advance its religious

mission. Thus, the City's attempts to designate United Methodist a landmark violate the First Amendment to the United States Constitution and article I of the Washington State Constitution.[11]

Other courts have invalidated the landmarking of a house of worship but upheld such restrictions on an adjacent church building.[12] But in Washington, after two decade-long lawsuits and two Supreme Court decisions, the law should be settled. A church cannot be compelled to maintain its house of worship as a monument for tourists and city bureaucrats. Aesthetics must yield to liberty.

Endnotes

[1] Chapter 25.12, Seattle Municipal Code.

[2] 114 Wn. 2d 392, 787 P. 2d 1352 (1990) ("*First Covenant I*").

[3] 494 U.S. 872, 110 S. Ct. 1595, 108 L. Ed. 2d 876 (1990)

[4] 120 Wn. 2d 203, 840 P. 2d 174 (1990) ("*First Covenant II*").

[5] Article I, section 11: "Absolute freedom of conscience in all matters of religious sentiment, belief, and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state."

[6] 106 Wn. 2d 54, 61-62, 720 P. 2d 808 (1986).

[7] 76 Wn. App. 572, 576, 887 P. 2d 473 (1995)

[8] *First Covenant II*, 120 Wn. 2d at 223.

[9] Slip op. at 15.

[10] Slip op. at 16.

[11] Slip op. at 17-18.

[12] *Society of Jesus v. Boston Landmarks Comm'n*, 409 Mass. 38, 564 N.E. 2d 571 (1990) (held: free exercise protection in Massachusetts' constitution prohibits landmark designation of exterior and interior of house of worship); *Rector, Wardens, & Members of Vestry of St. Bartholomew's Church v. New York*, 914 F. 2d 348 (2d Cir. 1990), *cert. denied*, 499 U.S. 905 (1990) (held: church's plan to replace Community House with commercial building not justified by free exercise interest in generating income). The U.S. Supreme Court may review a church landmarking case that presents the issue of the constitutionality of the statute relied upon by the church, the Religious Freedom Restoration Act, 42 U.S.C. 2000bb (1993). *City of Boerne v. Flores*, 73 F. 3d 1352 (5th Cir. 1996), *cert. pending* No. 95-2074 (June 14, 1996).

✣ ✣ ✣

WSBA member ***Steve McFarland*** *directs the Center For Law And Religious Freedom, the advocacy and information arm of the Christian Legal Society, with national offices in Annandale, VA. The author gratefully acknowledges the assistance of George M. Hartung, of the Seattle law firm of Misterek & Woo, who led the legal defense for First United Methodist Church throughout its ten-year struggle with the Seattle Landmarks Preservation Board.*

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Noncustodial Fathers:

Why so many drop out — and what can be done about it.

by **Andrew Kidde**

Author's dedication: In researching this article, I found that gender politics permeate many of the debates surrounding this subject. In writing this article I tried to remain impartial and balanced in my appraisal of the issues. If I succeeded in any measure, I owe it to my parents. As the child of a single mother who struggled to become a university professor in the early 1970s, I have a personal appreciation of the challenges that working mothers in our society face. As the child of a noncustodial father who stayed involved and took care of his three sons every summer, I have a feeling for the difficulties of this role as well. I dedicate this article to them both.

We hear a lot these days about the breakdown of families and especially about fathers who do not pay child support or play an active parenting role. "Deadbeat dads" are blamed for the rising tide of crime and delinquency, teenage pregnancy, falling educational achievement and other social ills. A national study of noncustodial fathers found that over 50% of them lose regular contact with their children after divorce. (Furstenberg, et al, 1983) This is a sad statistic, but labeling these men "deadbeat dads" is too easy and too unhelpful. No doubt some are irresponsible, some even uncaring, but are a full half of divorced fathers incapable or unwilling parents? The real story is more complex; in fact, many children may be needlessly losing caring, loving fathers. A recent study shows that

> fathers describing themselves as having been relatively highly involved with and attached to their children and sharing in family work tasks during the marriage were *more* likely to lose contact with their children after divorce. (Kruk 1992) (emphasis added)

Rather than dismiss all absent fathers as deadbeat dads we need to ask *why* they drop out and what we can do to keep them involved in their children's lives.

A clearer picture of the experience of noncustodial fathers in the USA, Canada, and Great Britain is provided by several recent studies. (Arditti and Allen, 1983; Arendell, 1992; Dudley, 1991; Dudley 1996; Kruk, 1991; Kruk, 1992; Lund, 1987; Umberson & Williams, 1993). In interviews with hundreds of noncustodial fathers, researchers found that these men often refer to three common themes when explaining why they have stopped seeing their children. First, many fathers experience extreme grief following separation with their children. This pain is reinforced by "visiting" the children they once lived with — discontinuing visits helps them get over it. Second, many perceive the legal system as substantially biased against men as parents. Their frustration with this system and their feeling of being devalued by it prompt them to stop trying to obtain the kind of parental role they want. Third, many divorcing couples do not learn to control the conflict that erupts during custodial transfer or other co-parenting functions. As a result, fathers — either voluntarily or involuntarily — stop spending time with the children to shield them from this conflict. While other, more logistical, reasons were also presented — such as job relocation or apartments that were too small — these three themes shed light on the psychological and emotional reasons many noncustodial fathers drop out.

Noncustodial Fathers' Experience of Grief

While the sense of grief and loss is a very high burden for both parties in a divorce, the noncustodial parent, most commonly the father, has the additional loss of the relationship with the children. For some fathers, this loss may be the most

painful of all the losses of divorce; as one father noted, "It was more difficult for me to lose a son than to lose a wife." (quoted in Arditti and Allen, 1983) This sense of loss may be compounded by feelings of being isolated and unneeded, as another father noted:

> . . . you are out there, you are in your flat or room or whatever — you are away from your children, and your wife, and they are in the family home, in their familiar surroundings, your wife has your children there (be they crutches or be they a great joy), but they are people who care about each other, they are a threesome and you are an isolated one. That can be absolute desolation. (quoted in Kruk, 1991)

For some fathers, this loss and despair can lead to the decision to discontinue visiting. As other fathers commented: "(after a visit) it would take me several days to pull together enough to even function at work . . . I had to break it off to survive," (quoted in Arendell, 1992) or: "it's very easy to perhaps cut yourself off and not think about it. That way the pain goes." (quoted in Lund, 1987) The studies are full of these poignant expressions of grief — it is striking material, all the more so since this aspect of divorce is not often presented in discussions of post-divorce families.

Perception of Bias in the Legal System

Some fathers gave up pursuing custody or their desired visitation schedule due to their belief that the legal system was biased against them. As one father said,

> I feel the justice system as we know it now is a joke . . . The judges are extremely one sided, and most lawyers don't care or represent you properly. (quoted in Arditti and Allen, 1983)

Another dad noted, "People who say it's a man's world are not fathers that have been through a divorce." (quoted in Arditti and Allen, 1983) Issues of gender bias are common concerns in family law. In many jurisdictions, observers note a bias against women in property division. (*See* Aspaklaria, 1980) In the area of custody of young children, a bias in favor of women was incorporated into the law until fairly recently. The "tender years presumption" is no longer the law — however, its effects no doubt linger, both in the law and society at large. Indeed, many of the fathers interviewed in these studies perceived its continued influence strongly.

Fathers typically found that lawyers and judges presumed that they would not be interested in custody of the children, and other fathers reported that their attorneys did not inform them of the option of joint custody, and discouraged them from pursuing custody because they were not hopeful of prevailing. Throughout the studies, substantial criticism of divorce attorneys was common, yet it is also interesting to note that the attorney's role sometimes seemed an impossible one to perform well: several fathers reported both frustration that their attorneys were not fighting hard enough and frustration that their attorneys efforts were too forceful and damaging the prospects for co-parenting.

Alva Long Memorial

(correction)

The memorial Alva Long Native Plant Interpretive Plaza and Trail opened for the public in October (See October *Bar News*, page 41.) It is in keeping with both Alva's great love of the outdoors and 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. The project's overall cost was $25,000, of which all but $7,500 has been donated. Donations are being sought to complete the funding. All tax-deductible 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.

The correct phone number is (206) 684-7434.

Conflict with the Former Spouse

Other fathers stopped spending time with their children because of conflict with their ex-wife. For many men, conflict with their former spouse was wrapped up in the issue of control. These fathers felt that their ex-wives had all the power to control their visitation, or that they would set the children against them to limit or preclude visitation. One father questions whether continuing to parent is worthwhile in the face of these emotional war games:

> My children would come over crying. And the reason they were crying was because their mother brought them over crying, saying, "I don't want to make you see your dad, but the judge made me do it, and I can't do anything about it, and you're just going to have to do this." And she'd be crying and the children would be basket cases. And so, sometimes you'd ask yourself. . . would the children be better off without me, just to avoid the stress, and would I be better off? (quoted in Umberson, 1993)

". . . [T]he use of affidavits with hurtful content was correlated with higher levels of post-divorce abuse."

Other fathers retaliated through violence — and had visitations curtailed by court order. Regardless of who may be at fault in escalating the conflict or whether the decision to terminate visits was voluntary or involuntary, many children lose contact with their fathers due to the conflict between the parents.

For many couples conflict over the children was heightened by the legal process. Lawyers generally approach divorce work in a traditional adversarial manner. Parties are discouraged from communicating directly, and mistrust and competition are accentuated through the legal process. As one father noted: "We originally had a joint custody agreement, and it was the legal system that tore this apart." (quoted in Kruk, 1992) Kruk's study found that custody conflicts that were exacerbated by the legal process were more likely to result in noncustodial parental disengagement, as compared to divorces where conflict existed before the attorneys were involved. (Kruk, 1992)

Addressing the Dropout-Dad Problem

While no single approach to the dropout dad problem will reverse this sad phenomenon, the use of mediation to resolve custody and divorce disputes may be one of the most important components of a plan to address the problem of disappearing noncustodial fathers. As an alternative to the adversarial system of the courts, mediation provides a dispute resolution process which allows couples to avoid or mitigate many of the distressing experiences that are identified by noncustodial fathers as reasons for dropping out of parenting. Mediation is less likely to be perceived by men as biased against them — and if men have more trust in how the custodial agreement was reached they will be more likely to follow

it. Mediation is also a better process than the adversarial court system for reducing the level of conflict between the parties — and a reduced conflict-ridden co-parenting relationship will promote continued noncustodial parent involvement and be less psychologically damaging to children. Finally, mediation can also help the parties process their grief and can be better integrated with counseling or other family support.

Couples Do Not Perceive Mediation as Biased Against One Gender or the Other

Mediation is a preferable dispute resolution forum in terms of the perception of fairness. A study of a child custody mediation project in Charlottesville, Virginia found that men in the mediation group were substantially more likely to feel that their rights were protected than were the men in the court process group. Interestingly, this benefit to the men was not at the cost of the women in the study — women in the mediation group indicated that their rights were protected at a level similar to that of the women in the court process. This was in spite of the fact that women generally were highly satisfied with courts routinely awarding custody to mothers. (Emery, 1994)

In general, outcome studies of mediation projects find a high degree of satisfaction with regard to the neutrality of the mediator and the fairness of the agreements. (Pearson, 1994) Given the perception by noncustodial fathers that courts are heavily biased against them on parenting issues, this finding indicates that mediation may result in a greater likelihood that noncustodial parents will maintain contact with their children.

Mediation Lessens the Level of Conflict Between Divorcing Spouses

Mediation also tends to diffuse anger between parents. As one mediation client noted. "I know that if it hadn't been for the (mediation) service, I would be still now feeling and manifesting considerable anger all the time over the separation." (Walker, 1994) The tendency of the mediation process to reduce conflict is documented in many of the outcome studies that have looked at domestic mediation. Particularly interesting is a recent Canadian report which compared mediation and litigation clients and tracked the number of instances of emotional and physical abuse following the entry of the divorce decree. (Ellis, 1994) Mediation clients generally reported greater rates of decrease in physical and emotional abuse than did lawyer negotiation clients. Among the lawyer negotiation clients, the use of affidavits with hurtful content was correlated with higher levels of post-divorce abuse.

Mediation Can Sensitize the Parties to Issues of Grief

Family mediators are generally trained to recognize patterns of grief associated with divorce. In their interventions, mediators can help the parties identify where they each are in the grief process and how the significant events of the separation, such as when to file the legal papers, when to move, and when the children's new residential schedule will start, can be timed with sensitivity to the concerns of both parties, including issues of grief. Mediation is also a private process in which the parties are less likely to experience shame if they express grief. In court, the parties' grief is legally irrelevant, unlikely to be acknowledged, and probably going to be perceived as an embarrassment to all concerned. A sensitivity to the parties' grief is also unlikely

to affect the timing of the significant events of traditional divorce process, which may well get carried out under court order over the objection of one of the parties.

Mediation is also a better dispute resolution forum than litigation in terms of referring parties to counseling or mental health assistance for dealing with grief. In mediation a broad range of the emotions associated with the grief cycle can be acknowledged. (For more information on the grief cycle in divorce, see Emery, 1994.) Mediators can make appropriate referrals to counselors when a party seems fixated on one emotion. The traditional court process does not provide a comparable experience. In fact, the traditional court process reinforces the anger phase of the grief cycle to the exclusion of all others — this tendency may well undermine the healing process toward a more stable emotional state.

Mediation Helps Divorcing Couples Co-parent

Mediation provides a dispute resolution forum that is perceived as fair by both parties, that can help parties reduce conflict, and can assist parties in recovering from grief. It is not surprising, then, that several studies have found that mediation is more likely to result in divorced couples being able to co-parent successfully. One study of the durability of mediated agreements found that 78.3% of the parenting agreements were being followed. (Meierding, 1993) This compares favorably with the 50% of noncustodial fathers who typically stop following the visitation schedule in the general divorcing population. Another study of mediated joint-custody agreements found that even the couples who had been significantly stressed in the mediation process and had had great difficulty reaching agreement were able to report substantial improvement in their co-parenting skills. (Brotsky et al, 1988) A study on custody mediation in Charlottesville, Virginia found that nine years after the divorce, the noncustodial parents who had been randomly assigned to mediation reported more frequent current contact with their children, more frequent communication about the children, and greater involvement in current decision making about them than did noncustodial parents who had been randomly assigned to the litigation group. (Emery, 1996). It is a powerful testament to the benefits of mediation that the positive effects on co-parenting were still felt nine years after the divorce.

The Benefits of the Involvement of Noncustodial Fathers

Children benefit from the involvement of noncustodial parents in several ways. A recent study found that

> Noncustodial parent involvement ratings were correlated with higher scores on abstract reasoning . . . . There was also correlation between the length of visit and children's positive self-esteem measures in school, . . . and their mathematics. (Lund, 1987)

Another study found that paternal involvement in child care was an important factor in the development of empathy in children. (discussed in Popenoe, 1996) Popenoe also notes that society at large benefits from increased parental involvement. (Popenoe, 1996) Not only are parenting duties a civilizing force for many men, but also fathers' contact with children is correlated with higher rates of

payment of child support. (Maccoby and Mnookin, 1992)

Conclusion

Perhaps there is something of a self fulfilling prophecy in using terms such as "deadbeat dad." Family roles, though perhaps the deepest identities we have, are vulnerable to the negative expectations of others both within and outside the family. The institutional system that our society provides for divorcing couples helps shape family roles after divorce. For parents this influence can make co-parenting all but impossible; for fathers, this influence is often a substantial obstacle to continuing as a parent.

For the sake of the children, we need to radically rework how our system operates. We need dispute resolution that is seen by both parents as fair, that works to reduce rather than exacerbate conflict, and helps parents grow beyond their grief to a stable co-parenting life. Divorce mediation, which has existed for approximately 20 years as a recognizable profession, has already shown that it can help divorcing couples learn to co-parent.

Further development and refinement of mediation as a profession — and implementation of mediation as an alternative to litigation — should be an important priority in our society if we want to turn around the "disappearing dad" problem.

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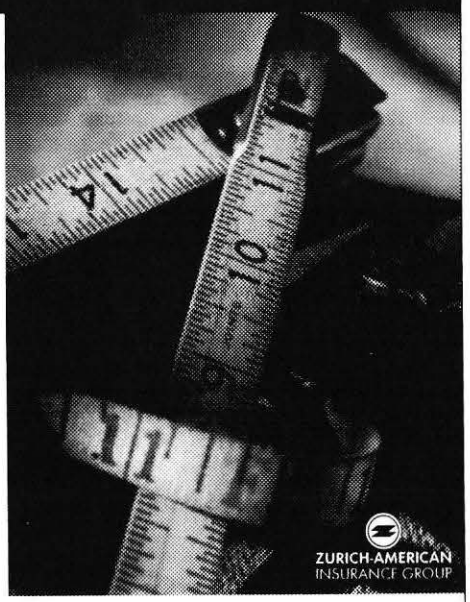

Mediator and WSBA member ***Andrew D. Kidde*** *practices in Seattle.*

December

2 **Guardian ad Litem Training for Family Law**
Seattle
By KCBA (206) 340-2578
6.75 CLE credits

2 **WordPerfect for Attorneys**
Des Moines
By Highline Community College (206) 878-3710 ext. 3342
CLE credits pending

3 **13th Hazardous Waste Law & Management Conference**
Seattle
By NW School of Law (503) 768-6672
11.25 CLE credits

3, 4 **WA Probate**
Seattle - 3rd
Spokane - 4th
By NBI (715) 835-8525
7.25 CLE credits (incl. 1 ethics)

3 **Intangibles**
Seattle
By ACA (206) 624-8105
1 CLE credit

3, 12, & 16 **Searching Legal Ethics**
Seattle
By West Pub. (206) 628-6435
2.25 CLE ethics credits

4 **Real Estate Legal Aspects in WA**
Seattle
By NBI (715) 835-8525
6.5 CLE credits

4, 13 **Drafting Key Business Documents**
Spokane - 4th
Seattle - 13th
By WSBA CLE (206) 727-8202
6.5 CLE credits (est.)

5 **Minor Settlements**
Seattle
By WSTLA (206) 464-1011
CLE credit pending

5 **Settlement & Court Approval of Claims of Minors & Incapacitated Persons**
Seattle
By WSTLA (206) 464-1011
7 CLE credits pending (incl. approx. 1-1.5 ethics)

5 **Going Out on Your Own**
Bellevue
By EKCBA (206) 340-2578
2 CLE credits pending

5 **Office Seminar**
Everett
By Snohomish County Clerk (206) 388-3430
7 CLE credits

5, 6 **Insurance Law**
Spokane - 5th
Seattle - 6th
By WDTL (206) 233-2930
6 CLE credits

5, 12 **Foreclosing, Protecting, and Defending Against Liens**
Spokane - 5th
Seattle - 12th
By WSBA CLE and Creditor Debtor Section (206) 727-8202
6.75 CLE credits

6 **Ethics**
Walla Walla
By Walla Walla County Bar Assoc. (509) 529-4980
4 CLE ethics credits

6 **Advising & Defending Public Officials**

Seattle
By WSBA Administrative Law Section (206) 272-8871
6.5 CLE credits

6 **Internet Basics for Your Law Practice**
Spokane
By Themis (206) 783-4014
3 CLE credits

6 **Trial Masters at Work — A Demonstration with Paul N. Luvera & James S. Rogers**
Seattle
By WSTLA (206) 464-1011
6.25 CLE credits

6 **Collection of Judgments**
Seattle
By KCBA (206) 340-2578
6.75 CLE credits

6 **Criminal Defense in 1997: Are You Ready?**
Seattle
By WACDL (206) 623-1302
6.75 CLE credits (incl. .75 ethics)

6 **Everything You Need to Know; A Smorgasbord of Legal Tidbits**
Spokane
By Spokane County Bar (509) 456-6032
CLE credit pending

6-7 **Estate Planning Workshop**
Seattle
By Nat'l Network of Estate Planning (303) 446-6100,fax(303) 446-6060
16 CLE credits

6-7 **Employment Law Litigation Practice Skills**
Seattle
By UW CLE (206) 543-0059/ (800) CLE UNIV
CLE credit pending

6, 13 **How to Draft Wills and Other Estate Planning Documents**
Seattle - 6th
Spokane - 13th
By WSBA CLE/YLD (206) 727-8202
7 CLE credits (incl. .5 ethics)

7 **Bridging the Gap**
Seattle
By KCBA, WA Journal & Seattle U School of Law, (206) 340-2578
7 CLE credits (incl. .75 ethics)

7 **Annual Year-end Update & Judges' Corner**
Tacoma
By TPCBA (206) 272-8871
6 CLE credits (incl. 2 ethics)

7 **Internet for Attorneys**
Des Moines
By Highline Community College (206) 878-3710 ext. 3342
CLE credit pending

9-13 **Family Law & Practice Skills Certificate Program**
Seattle
By UW CLE (206) 543-0059/ (800) CLE UNIV
CLE credit pending

10 **Legacy of Irving Paul**
Seattle
By ACA (206) 624-8105
CLE credit pending

10 **Finance & Accounting**
Seattle
By Sequoia Corporation (202) 955-9373
7.5 CLE credits

10-13 **Land Use & Practice Certificate Program**
Seattle
By UW CLE (206) 543-0059/ (800) CLE UNIV
CLE credit pending

11 **4th Annual Real Estate Institute**
Seattle
By KCBA (206) 340-2578
6.75 CLE credits pending

11 **Getting the Judge to Say Yes**
Lacey
By Kinder Legal Writing (206) 622-3810
7 CLE credits

11 **Rainmaking for Attorneys**
Des Moines
By Highline Community College (206) 878-3710 ext. 3342
CLE credits pending

11 **Personnel Law Update 96**
Seattle
By Council on Education in Management (510) 988-1809
11.5 CLE credits

11 **WA Law Review 1996**
Seattle
By WA Law Inst. (206) 726-9337
4 CLE credits (incl. 1.25 ethics)

12 **WA Collection Law & Practice**
Seattle
By WA Law Inst. (206) 726-9337
6.5 CLE credits (incl. 1.5 ethics)

12 **Computer Law**
Bellevue
By LSI (206) 567-4490
14.25 CLE credits (incl. 1 ethics)

12 **Ethics: Engagement Letters and Fee Agreements**
Location TBA
By KCBA (206) 340-2578
4 CLE ethics credits pending

12 **Commercial Real Estate Leases**
Seattle
By LSI (206) 567-4490
15 CLE credits

12 **Family Law Litigation in WA**
Seattle
By NBI (715) 835-8525
6.5 CLE credits (incl. 1 ethics)

12 **Best of CLE 1996**
Seattle
By WSBA CLE and General Practice Section (206) 727-8202
6.5 CLE credits (incl. 2.25 ethics)

12 **Current Developments in Estate Planning**
Walla Walla
Walla Walla Valley Estate Planning Council (509) 382-2541
1.5 CLE credits

12, 13 **WA Boundary Law & Adjoining Landowner Disputes**
Lynnwood - 12th
Tukwila - 13th
By PESI (800) 621-5336
6.25 CLE credits

13 **Employee Discipline & Discharge**
Seattle
By Themis (206) 783-4014
5.75 CLE credits

13 **Defending DUIs**
SeaTac
By WA Foundation for Criminal Justice (206) 451-1995
8.25 CLE credits

13 **Real Estate Exchanges Under Section 1031**
Seattle
By CPS (206) 454-9449
7.25 CLE credits

17 **3rd Annual Fam. Law Institute**
Seattle
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6.5 CLE credits pending

17 **Dangerous Liaisons — Ethics, Conflicts & the Small Practice**
Seattle
By UW CLE (206) 543-0059/ (800) CLE UNIV
CLE credit pending

18 **Cross-Training: Traps for the Unwary**
Seattle
By UW CLE (206) 543-0059/ (800) CLE UNIV
CLE credit pending

19 **Ethical Problems in Estate Planning**
Seattle
By WSBA CLE (206) 727-8202
3.25 CLE ethics credits

19 **Litigation Risk Analysis**
Seattle
By UW CLE (206) 543-0059/ (800) CLE UNIV
CLE credit pending

19 **Avoiding Ethical Problems in Estate Planning & Tax Matters**
Seattle - morning session
By WSBA CLE and Taxation Section (206) 727-8202
3.25 CLE ethics credits

19 **Tax Workshop for Estate Planners**
Seattle - afternoon session
By WSBA CLE (206) 727-8202
3.5 CLE credits

20 **How to Probate an Estate and Handle Post-Mortem Matters**
Seattle
By WSBA CLE /YLD (206) 727-8202
6.75 CLE credits (incl. .75 ethics)
Also offered as VIA-CLE

20 **Tegland & Aronson's WA State Civil Practice & Procedure Update '96**
Seattle
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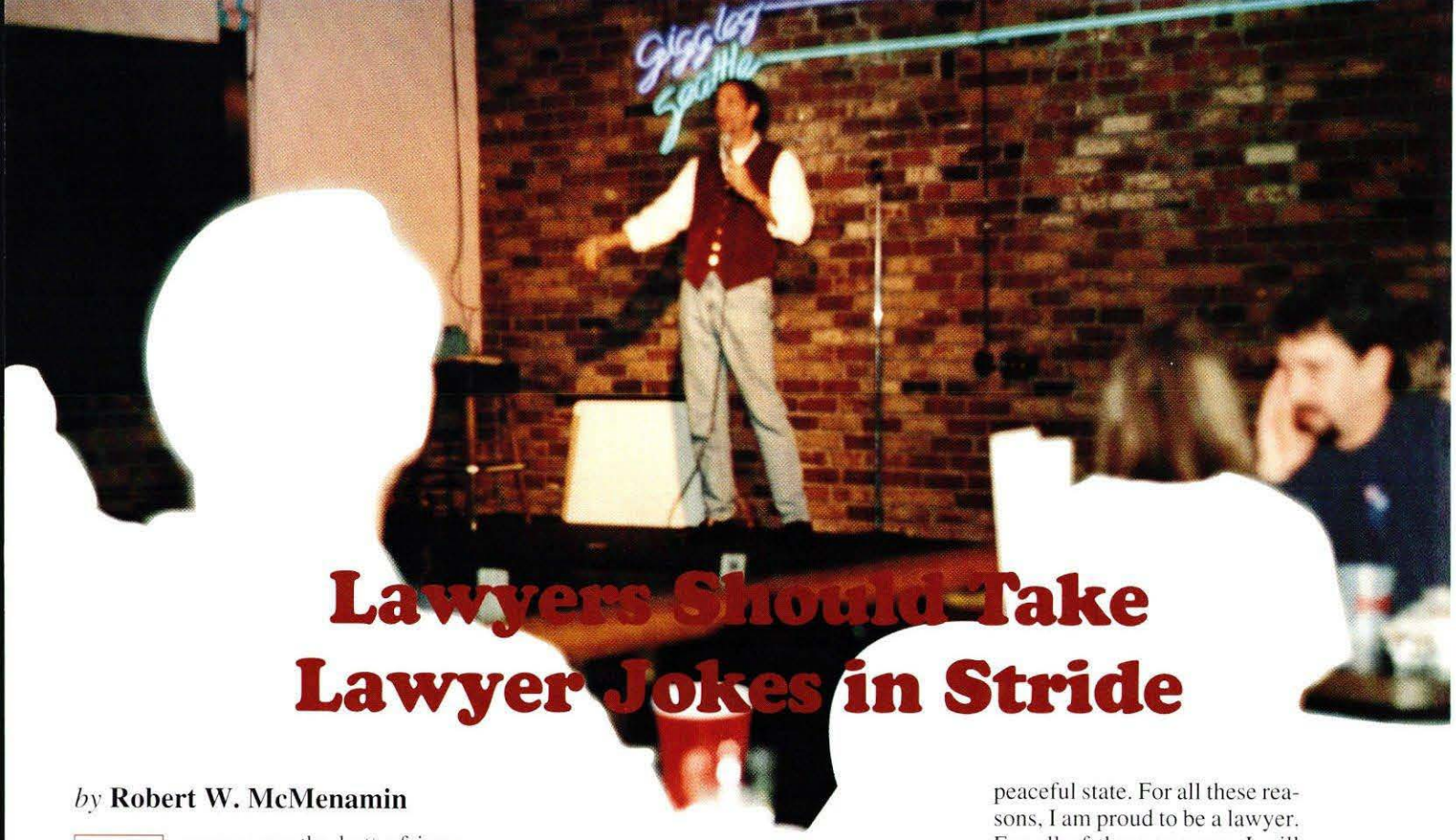
CLE credit pending

20 **Making the Most of What You've Got**
SeaTac
By WSTLA (206) 464-1011
6 CLE credits (incl. .5 ethics credits)

20 **18th Annual Taxation Winter Workshops**
Spokane
By Gonzaga University School of Law (509) 328-4220 ext. 3738
CLE credit pending

21, 30 **Statutory Construction**
Seattle
By UW CLE (206) 543-0059/ (800) CLE UNIV
CLE credit pending

23 **Avoiding Legal Malpractice & Bar Discipline**
Seattle — Moderated video CLE
By WSTLA (206) 464-1011
3 CLE ethics credits



Lawyers Should Take Lawyer Jokes in Stride

by **Robert W. McMenamin**

Lawyers are the butt of innumerable jokes. Some language describing their antecedents, conduct, and character can't be printed in a family newspaper. Lawyers object to such jokes and equate them to lawyer bashing. This feeling of victimization shows the absence of a sense of humor or its presence in a warped form.

Humor or humour (British spelling) is first explained in the dictionary as a fluid, especially the cardinal humours "formerly considered responsible for one's health and disposition: blood, phlegm, choler (yellow bile), or melancholy (black bile)." It goes on to state: "the quality that makes something seem funny, amusing, or ludicrous." Some people apparently stopped at the first definition and apply choler or melancholy.

The Bible is a font of wisdom to many Jews and Christians, both hard-shell and soft-shell. St. Luke, Chapter 11, Verse 46, states: "Woe to you lawyers also! Because you load men with oppressive burdens and you yourselves with one of our fingers do not touch the burdens."

Sir Thomas More (1478-1535), in describing a neighboring people, declaimed: "They have no lawyers among them, for they consider them as a sort of people whose profession is to disguise matters."

Shakespeare, in Henry VI, has an antisocial character named Dick utter those oft-repeated words: "The first thing we do, let's kill all the lawyers."

You put these utterances into context and they are funny — not a heavy burden. Perhaps the oldest joke, beside the one having to do with the world's oldest profession — law or prostitution — has to do with the alleged fact that sharks would not bite lawyers because of professional courtesy. Getting back to the oldest profession argument, some clients see a remarkable similarity in the activities of the two professions.

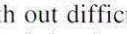
What do lawyers do? They are persons trained in the law. They interpret it for clients, give advice and counsel, act as scriveners of documents, and represent clients in or out of court. What is law? It is all the rules of conduct established and enforced by authority, legislation, or custom of a given community, state or other authorized body.

John W. Davis, an American Bar president in the 1920s, had some thoughtful words concerning his profession:

> We build no bridges; we raise no towers; we construct no engines; we paint no pictures . . . but we smooth out difficulties, we relieve men's burdens; and by our efforts we make possible the peaceful life of men in a peaceful state. For all these reasons, I am proud to be a lawyer. For all of these reasons, I will not joke with you or anyone else about our profession. For all of these reasons I am going to be unwilling to stand mute when our profession is insulted.

This last statement is dead wrong. His refusal to accept a joke exemplifies a serious fault in our profession. This fault can be described as pomposity, self-importance or an exaggerated sense of worth.

Humor is a facilitator, a lubricant, a method of gaining attention and acceptance. A lawyer must merchandise his wares, knowledge, and acceptance of the law. Merchandising requires promulgation of the goods and services of the lawyer. A joke makes one aware of the lawyer and law. Awareness should lead to recognition and respect. Respect, however, must be earned by the lawyer with a ready smile and a helping hand. A dour countenance and an exaggerated sense of self-importance cuts off communication. Let the jokes fly and humor abound to lighten up human relationships. What the hell — we only live once and will not get out of this world alive. Let's leave a decent footprint upon it.



Robert W. McMenamin *is an attorney with McMenamin & Taylor, in Beaverton, Oregon.*

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in November 1996 is 5.29%. The maximum allowable interest rate permissible for December 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*.

Attorney General Opinion

Counties - roads - police powers - interlocal cooperation act - authority of noncharter county to maintain federally owned roads not open to the general public.

1. Federally owned roads which are closed to the general public are not "county roads" and a noncharter county therefore lacks authority to maintain such roads with state and county funds.

2. A county has authority, if it chooses, to set and enforce traffic signals on federally owned roads within the county, except where superseded by federal law; however, the county has no obligation to set and enforce traffic signals on such roads because they are not "county roads" as defined in state law.

3. A county may contract with an agency of the United States to maintain federally owned roads within the county, or to set and enforce traffic controls for such roads, in return for payment by the federal agency of the costs incurred by the county in performing such services.

4. A county may use "county road property tax revenues" as defined in statute, after diverting them to the current expense fund pursuant to law, for setting and enforcing traffic controls on federally owned roads within the county.

5. For purposes of allocating the state motor vehicle fuel tax under RCW 46.68.120, .122, and .124, federally owned roads in a county which are closed to the general public are not "county roads" and should not be considered in making the allocation.

6. A county which deposited revenues from the county road property tax levy into its current expense fund to pay the expenses related to setting and enforcing traffic controls on federally owned roads within the county would not thereby lose its eligibility to receive state funding under such statutes as RCW 36.79.140. *[AGO 1996 No. 17]*

Findings & Results of the Pearson Commission

The 21-member Court Composition Committee (popularly known as the "Pearson Commission," after its cochair, retired justice Vernon Pearson) has released its findings and recommendations. The committee was charged by Chief Justice Barbara Durham to study the utility of reducing the membership of the Washington Supreme Court from nine to seven members. The committee made the following findings:

1. A nine-member court provides greater opportunity for participation by persons of diverse geographic, ethnic and gender

backgrounds than would a seven-member court.

2. The anticipated cost-savings, if any, would be insubstantial in comparison to the important long-term role which the court performs and in comparison to the budget of the entire state.

3. Any increase in efficiency or collegiality achieved because of reduction in the size of the Court is more than offset by the benefit of having each issue which comes before the Court debated fully and considered by nine people having different life experiences and intellectual diversity.

4. In addition to writing opinions, members of the Supreme Court are faced with an ever-increasing number of petitions for review. The State's population, both levels of trial courts, and the Court of Appeals all are being increased, thereby creating more cases which will proceed through the court system and which the Supreme Court will ultimately determine whether to hear. Under these conditions the size of the Supreme Court should not be decreased.

The committee's recommendations will now be forwarded to the Supreme Court for consideration.

Supreme Court Election Results

Incumbent Justice Charles Johnson retained his seat on the Washington Supreme Court by outpolling challenger Douglas Smith 62% to 38%.

U.S. Magistrate Reappointment Panel

Public Notice regarding reappointment of incumbent U. S. Magistrate judges John L. Weinberg and Ira J. Uhrig in the Western District of Washington:

The current eight-year term of office of full-time United States Magistrate Judge John L. Weinberg is due to expire on September 30, 1997, and the current four-year term of office of part-time United States Magistrate Judge Ira J. Uhrig is due to expire on July 20, 1997. The U.S. District Court is required by law to establish a panel of citizens to consider the reappointment of the magistrates to new terms.

Duties of the full-time position include: 1) trial and disposition of misdemeanor cases; 2) conduct of preliminary proceedings in felony cases; 3) assisting district judges in disposition of prisoner petitions and Social Security appeals; 4) conduct of various pretrial matters and evidentiary proceedings on reference of the litigants; 6) trial of petty and misdemeanor cases at outlying government facilities such as Fort Lewis, Bangor Naval Submarine Base, Olympic National Park, Mt. Rainier National Park and Bremerton Naval Shipyard.

Duties of the part-time position include: 1) trial and disposition of petty and mis-

demeanor cases arising from Whidbey Island Naval Air Station; 2) conduct of regular calendars involving charges of traffic offenses and violations of park regulations; 3) conduct of most preliminary proceedings in criminal cases.

Comments from members of the bar and the public are invited as to whether the incumbent magistrate judges should be recommended by the panel for reappointment by the court and should be directed to: Bruce Rifkin, Clerk, U.S. District Court, 215 U.S. Courthouse, Seattle, WA 98104.

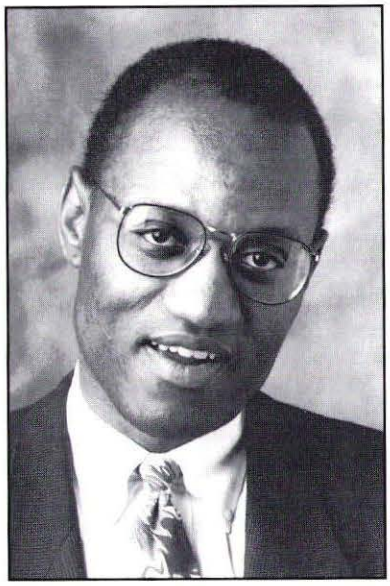
Comments must be received no later than January 3, 1997.

Interim Suspension

Kent lawyer Edward L. Parks (WSBA # 18356, admitted 1988) was ordered suspended from the practice of law pending the outcome of disciplinary proceedings by Supreme Court order entered September 25, 1996.

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

Legal Foundation of Washington



Anthony P. Griffin
Legal Foundation of Washington
Goldmark Award Luncheon Speaker

The Legal Foundation of Washington invites you to attend the Annual Goldmark Award luncheon on Friday, January 24, 1997, 11:30 a.m.-1:30 p.m. in the Cirrus Room of the Seattle Sheraton Hotel. The luncheon honors outstanding achievement in providing equal access to justice for those who cannot afford it.

Distinguished attorney Anthony P. Griffin is the featured speaker. He is a renowned advocate for the constitutional rights of his clients and has consistently demonstrated a dedication to preserving fundamental rights through access to the justice system. He is probably best known for his work as counsel for Michael Lowe, a Ku Klux Klan grand dragon, in a case where Lowe had been ordered to surrender a membership list. Despite the unpopularity of this case, particularly in the African -American community, Griffin recognized this as a clear infringement upon the Klan's first amendment rights.

The Legal Foundation of Washington is a nonprofit organization established in 1985, at the direction of the Washington Supreme Court, to fund legal services and law-related education for low-income people through the Interest on Lawyers/LPO Trust Account (IOLTA) Program. Because of recent federal cuts, Foundation funding is being stretched further than ever before.

You or your firm may show your support for access to justice by purchasing an individual ticket or a table at the luncheon. Purchasing a table enables the Legal Foundation to offer complimentary invitations to six other guests from the legal-service community. Please clip out and return the coupon below.

Legal Foundation of Washington
January 24, 1997
Goldmark Awards Luncheon

☐ Yes, I would like to honor the work of legal services by attending the luncheon. I will bring ___ additional guests ($25/person enclosed).

☐ My firm would like to purchase a table ($250). Four members of our firm will attend and six seats will be donated (a charitable contribution of $150).

☐ No, I cannot attend the luncheon, but I would like to show my support with a donation of $_____.

Name (s): _____

_____

Organization: _____

Address: _____

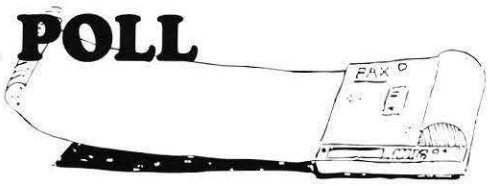
_____

Phone: _____

Mail form and check to:
LFW * 500 UNION ST * STE 545 * SEATTLE, WA 98101

THE WASHINGTON STATE BAR NEWS

FAX POLL



What is your opinion regarding the pending rule change before the Washington Supreme Court to liberalize RPC 8.4(g)? Such a change would prohibit discriminatory acts on the basis of sexual orientation, regardless of whether state laws prohibit such discrimination.

Proponents argue that sexual preference has no bearing on an attorney's ability to practice law, and that this merely expands throughout the state what already applies in certain jurisdictions (e.g., Seattle). Opponents contend that this would trivialize and further repeal the religious rights of those who believe that some sexual conduct is a sin, and would also restrict members' First Amendment rights of free speech. (See the October and November "Board's Work" for additional background on this issue.)

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. Only WSBA members may vote.

1. ____ I strongly support the proposed revision of RPC 8.4(g).

2. ____ I somewhat support the proposed revision.

3. ____ I am undecided, but I believe the issue should be studied.

4. ____ I somewhat oppose the proposed revision.

5. ____ I strongly oppose the proposed revision.

Comments/Other:_____

_____

_____

_____

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

Fax your response by December 14 to:
(206) 727-8320

Or, mail your response by December 11 to:
Washington State Bar Association
Attn: *Bar News* Editor
2101 4th Ave., 4th Fl.
Seattle, WA 98121-2330
Please send suggestions for future fax polls to the above address.

RESULTS

of

THE WASHINGTON STATE BAR NEWS

FAX POLL

In last month's *Bar News*, we asked your opinion regarding cameras in the courtroom. The results:

1. 20% strongly supported cameras in the courtroom.
2. 10% somewhat supported cameras in the courtroom.
3. 5% were undecided, but believed the concept should be studied.
4. 5% somewhat opposed cameras in the courtroom.
5. 60% strongly opposed cameras in the courtroom.

Overall, 41 valid responses were received.

Your Comments:

"What have we got to hide?"
Elena Garella, Seattle

"A trial is conducted to settle an issue between plaintiffs and defendants. It is not an educational or a TV special."
W.L. Brown, Jr., Tacoma

"If the public interest in court proceedings is so great, why are 99.9% of trials held in an empty-but-open courtroom? Only the lurid, sensational hearings draw interest."
Frank H. Johnson, Spokane

"The true evil in the *Simpson* trial . . . was not the televised broadcast of the proceedings, but the extraordinary numbers of 'talking heads' who flooded talk shows . . . . The public was told *what* to think, rather than being allowed to watch, then decide for him/herself."
Gwendolyn L. Grundei, Goldendale

"With the advances in technology, public observation via TV will be unobtrusive. Given the public's right to observe trials and the structural restraints of physically observing the trial, TV seems to be the only answer."
Mark Holody, Wilsonville, OR

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

The Shortage of Substantive Law on the Internet (or: With all the Internet sites out there, "Where's the beef?")

by **Gary Kendra**

If no one owns the law, why is it so hard to find it on the Internet?

The first thing evident to anyone performing legal research on the Internet (particularly on the popular World Wide Web) is the shortage of state and federal case law and statutes.

Simply put, the Internet is currently no match for traditional print-based legal reporters and established electronic services such as WESTLAW and NEXIS.

Governmental agencies, state bar organizations, law schools, and various courts are leading the charge to make primary legal content available electronically to the public. This has resulted in an increased availability of such resources on the Internet, much of it posted within the last year.

For example, over 7,000 U.S. Supreme Court decisions from 1937 to 1975 were released this fall by the U.S. Government and are currently available on the Internet (http://www.fedworld.gov/supcourt/index.htm). These opinions are maintained as part of the U.S. Air Force FLITE (Federal Legal Information Through Electronics) system. Recent Supreme Court opinions and federal circuit opinions (post-1990), the U.S. Code and the Code of Federal Regulations are also available at a number of sites.

State governments and courts are also undertaking extensive efforts to make legislative developments, committee reports, new or important statutes and other primary material available over the Internet. Many states are making appellate level decisions available to practitioners and the public in downloadable form—in some cases within hours of official release.

Finally, there has been an explosion in the availability of governmental forms on the Internet. The IRS home page contains downloadable copies of the entire IRS tax forms collection. Many state forms for business organizations and other regulated activities are springing up in Web sites across the country. True electronic filing for many governmental agencies may be just around the corner.

These resources make the Internet a cost-effective alternative to traditional legal research in certain circumstances. However, despite these efforts, pre-1990 court decisions—and many statutes and regulations—are virtually nonexistent on the Web. In fact, the Internet represents only a fraction of the legal authority necessary to effectively perform legal research.

Perhaps the biggest obstacle to the widespread availability of state and federal law on the Internet is that old law school nemesis, *The Bluebook, A Uniform System of Citation*.

Among the first things taught to aspiring attorneys in law school are legal research and the *Bluebook* form of citation. The *Bluebook* provides uniform rules and conventions for citing court opinions, statutes and legal publications. The citations provide a convenient way for readers to identify the source of precedent, rules or legal information. Use of the *Bluebook* form of citation is mandatory in most state and federal courts.

At the heart of the *Bluebook* conventions are the identification and retrieval of publications based on the physical characteristics of books: volume, page numbers and publication date.

While the *Bluebook* works well for such traditional print-based material, in the digital world—where court rulings are disseminated electronically through bulletin boards, CD-ROMs and the Internet—volume and page numbers are of diminished importance.

Relevant on-line material is typically located through the use of search engines and hyperlinks. Page numbers and volumes don't correspond to what is viewed on a computer screen. Moreover, opinions may be available on-line weeks before they are printed.

In short, while the *Bluebook* works great for traditional print media, it is largely unsuitable for information stored and retrieved electronically.

Compounding this problem is the proprietary nature of the pagination systems of many state and federal reporters, and the exclusive licensing arrangements between major legal publishers and judicial or other state agencies.

For example, West Publishing Co., the "official" publisher of the Federal Reports, Federal Supplement, Federal Rules Decisions and various compilations of state reporters and statutes, claims copyright protection for its internal pagination systems. This claim was upheld by the 8th Circuit in *West Publishing Co. v. Mead Data Central*, 799 F.2d 1219 (8th Cir. 1986).

In that case, West sued Mead for incorporating West pagination in Mead's LEXIS legal research service. The court determined that West was entitled to copyright in its pagination because of the considerable "labor, talent and judgment" used in compiling the pagination system. The case was eventually settled when West granted Mead a license to use West's pagination in LEXIS case reports.

In light of the *Mead* decision, West will allow reference to the first page of West reported decisions but not "pinpoint" or "jump cites" to particular pages contained within a decision; any use of interior page numbering requires a license from West. Thus, because most courts require reference to specific page numbers when citing legal precedent, use of West pagination is frequently mandatory.

The *Mead* decision was clearly "pre-Internet," at least in the popular sense. At the time of the decision, WESTLAW and NEXIS were at the cutting edge of electronic legal research. They continue to set the industry standard, dominating the market with extensive, well-organized databases and sophisticated Boolean search engines geared to quickly locate legal precedent, Shepardize cases and the like.

However, since the *Mead* decision, there has been an explosion of on-line computer usage at home, in business and in government. Previously incompatible computer systems can communicate through standardized transmission protocols at increasingly higher speeds. While on-line pornography and network security dominate headlines and sell newspapers, a growing number of organizations are turning to the Internet as part of their day-to-day business activities.

This, in turn, focuses attention on governmental resources—in many cases available in electronic form and easily posted on the Internet, and leads to the question: Who owns the law and to what extent should it be made widely (and freely) available on the Internet?

Early this year, West entered into a $4.3 billion merger agreement with the Toronto-based publishing conglomerate, The Thomson Corporation. As part of a

Department of Justice consent decree issued pursuant to anti-trust concerns, the merged company will be required to license West reporter pagination openly for a capped fee. Nevertheless, legal challenges to the merger continue, and West's rights to the pagination of its reporters is again under challenge, this time by Matthew Bender, Hyperlaw, Inc., and others.

In light of these impediments to widespread availability of primary legal resources on the Internet, numerous efforts are underway to change the manner in which law is cited. These efforts, if successful, could lead to a proliferation of primary legal materials accessible via the Internet in a form suitable for legal use.

For example, in August, the ABA House of Delegates adopted a resolution recommending a new national vendor-neutral citation system. Specifically, the ABA recommended that:

- All jurisdictions adopt a system of citation equally effective for print, CD ROMs, other digital media and networked systems such as the Internet;

- The system be based on a sequential numbering system for each decision published during a given year;

- Paragraph numbering be adopted in lieu of page numbers;

- Case citations be based on the year, court identifier, decision number and — where appropriate — the paragraph number where the reference appears; and,

- Until electronic citation becomes more widespread, parallel citation to traditional reporters be utilized.

Thus, the *Mead* decision might be cited as follows under the ABA's alternative citation system:

> *West Publishing Co. v. Mead Data Central*, 1986 8Cir. 27, Par. 22, 799 F.2d 1219, 1225.

In other words, the decision would be the 27th decision issued by the Eighth Circuit in 1986. The paragraph reference would be used to identify a particular section within the opinion.

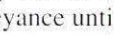
Similar initiatives have been adopted by bar organizations in other states. In Wisconsin, for example, the state bar has approved adoption of a "vendor and media neutral" citation system. The Wisconsin Supreme Court is holding a decision on mandatory use of a vendor neutral system in abeyance until 1997.

The ABA recommendation and similar state efforts are already generating considerable controversy. The *Bluebook* and West reporting format have been around for decades and are widely accepted throughout the profession. While electronic legal research is gaining in popularity, research through traditional publications is still the norm.

In fact, many practitioners eschew mandatory use of electronic citation. In most law offices, the Internet is still viewed as an interesting but nonessential resource. In others, the "Internet machine" is relegated to a corner in the library next to the WESTLAW terminal.

While widespread use of the Internet for primary legal research, electronic filing and governmental and client e-mail may soon be on the horizon, it is not yet feasible to abandon traditional and proprietary research tools. It may be years before the Internet is an effective alternative to proven techniques and practices.

On the other hand, the enormous amount of public and private expenditures on low-cost, easily accessible technology and the explosive growth of networks clearly indicate that widespread usage of the Internet or a similar universal computer/information network is here to stay. So don't ignore the cost and time-saving potential the Internet offers — your competitors certainly won't.



Gary Kendra *(gkendra@oeonline.com) practices transactional and news media law in Detroit, Michigan. He is a frequent lecturer on legal issues surrounding the Internet and information technology and has written extensively in this area.*

Marketing Counsel

Monthly publication, 12 pages per issue, $159 per year.*
1200 Cooper Point Rd. S.W., P.O. Box 11610, Olympia, WA 98508-1610
mktgcounsl@aol.com (800) 797-4434 Sample issue free upon request.

**Marketing Counsel* is offering a special introductory rate of $125/year to WSBA members through March 30, 1997.

reviewed by **Zoe Burnett**

As law firms vie for new clients and work to maintain current ones in an increasingly competitive market, the value of marketing grows clear. Although not all law firms are large enough to justify a marketing department, all law firms need to market. The monthly newsletter *Marketing Counsel* addresses those law firms that realize the importance of marketing yet do not have the size or resources to justify a marketing department. *Marketing Counsel* is a marketing newsletter for small law firms. It is succinct and easy to follow, and offers do-it-yourself marketing tips for small and medium-sized firms.

Marketing Counsel wisely takes the approach that law firm marketing is not just about relating to the media, but to one's clients as well, briefly touching on client retention and what small firms can do to retain clients. *Marketing Counsel* has an honest, objective attitude, and the three newsletters I studied reviewed everything from reception area decor and how to dress for a professional photo to client retention and acquisition. A word of caution: the urge to judge each individual article as an island is strong, yet the way to derive the most benefit from the newsletter is to judge each piece as part of a mosaic. For instance, it seems easy to dismiss the reception area article as frivolous, but upon reflection one realizes that a reception area is often the first impression a potential client has of a firm. This "introduction" can portray the firm in a variety of lights; and although each firm may want to convey a specific message to its client base, no one wants to make a negative first impression. Seen in this light, the article about lobby decor finds a valid place in the newsletter.

The two weaknesses of this newsletter are minor. The first, more truthfully, is a qualification rather than a weakness. As *Marketing Counsel* itself trumpets in the premier issue, this is a marketing newsletter for smaller law firms. Larger, more sophisticated firms with marketing departments will find the newsletter a bit simplistic. The authors realize this pre-

Book Group

The Lawyer's Assistance Program invites women lawyers to participate in a weekly book discussion group the first Wednesday of every month, 12 noon to 1:30 p.m., with peers and LAP clinician Jean Johnson. Book selections examine specific challenges in one's personal and professional life, life enhancement and other topics chosen by the group. The cost is $10 per session, based on the ability to pay.

Contact Jean Johnson at the Lawyer's Assistance Program, (206) 727-8268.

Services provided by LAP are confidential.

dicament and make no pretensions about trying to create the final word in legal marketing. Secondly, it would have been nice to see more substance and direction provided by the newsletter. Though it bills itself as a newsletter with "practice development strategies," it is, in fact, more a newsletter of marketing *facts* than strategies. A marketing strategy must be delineated before this newsletter becomes a useful tool, yet that is the area where most smaller firms need assistance. Without a broader strategy in which to properly frame the marketing tactics found in *Marketing Counsel*, the newsletter becomes a collection of marketing tidbits. Consequently, articles that would help the smaller law firm develop strategies for practice development would be useful.

One example of a lack of substance is the instance in which the newsletter briefly addresses technological tools in marketing. Of course, the ubiquitous web page is involved, described ideally as an interactive brochure and a bulleted list neatly summarizing broad areas that should be considered in the development of a web page. This is useful for the firms that are thinking of starting a web page, but it provides no edge to those which already have one and want to improve. Also, client retention could have been explored more critically, addressing concrete examples of what to do. Saying that firms need to retain clients is important, but saying *how* to retain clients is vital — particularly today, when there are more and more lawyers competing for fewer and fewer clients.

Ultimately, the purpose behind law firm marketing is making it easier for lawyers to acquire and retain clients, which is done by anticipating and satisfying clients' needs. *Marketing Counsel* is a legal marketing primer unto that end, offering a plethora of subjects and creating an awareness for the necessity of marketing. However, *Marketing Counsel* could offer greater value by exploring client retention techniques in greater depth, providing more detailed, useful directions for lawyers to follow when marketing, and offering assistance or guidelines in developing a marketing strategy.

Though the newsletter may offer information in a slightly different focus from the way it bills itself, this does not lessen its value. It is encouraging to see publications such as *Marketing Counsel* address the issues of law firm marketing.

✣ ✣ ✣

Zoe Burnett *is the Client Relations Coordinator for Perkins Coie in Seattle.*

What to Do When a Disciplinary Grievance is Filed Against You

by **Barrie Althoff**, *WSBA Chief Disciplinary Counsel*

There is about a one in eight chance that a grievance will be filed against you with the Bar Association in any given year. Thus, at some point in your career, you will likely be the subject of a disciplinary grievance. This article presents some suggestions of what to do when it happens.

Keep calm. This is happening each year to about 2,400 of your fellow Washington lawyers and, statistically, there is a high likelihood that the grievance will ultimately be dismissed. Nevertheless, it is likely to be emotionally difficult for you, and you are likely to feel anger towards, and perhaps betrayed by, the grievant. You are also likely to feel anger at the disciplinary system and disciplinary counsel, and this anger is likely to surface each time you think of the grievance. It can take quite a bit of time and effort to get over it.

Set up an office file relating to the grievance. Keep in it all matters relating to the grievance and any resultant proceedings. You should keep this file *permanently*, even long after the grievance is resolved, and regardless of whether it is dismissed or prosecuted. Pursuant to Rule 12.8(b) of the Rules for Lawyer Discipline ("RLDs"), the Bar generally destroys all grievance files three years after they are first dismissed. However, grievants — on occasion — file new grievances long after the three years, and make substantially the same allegations; since the Bar would have no record of a dismissed grievance, the Bar would likely treat it as a new grievance and subject you to a new investigation unless you saved the relevant records and can show the Bar that it is the same matter.

Review Letters and Files. Read very carefully the letter from disciplinary counsel transmitting the grievance and carefully review the copy of the grievance sent to you. Study your client file relating to the grievance. Also remember that disciplinary counsel has a right to your file under the RLDs; thus, do not destroy, add to or alter any part of the client file.

Study the law. In addition to reviewing the law applicable to the underlying transaction, review the relevant sections of the Rules for Professional Conduct ("RPCs") and the pertinent Rules for Lawyer Discipline. Consult appropriate secondary materials to study the applicable rules more closely. For example, you may want to review the following:

- *Lawyer Discipline Manual* (available for purchase from the Office of Disciplinary Counsel of the Bar). It contains a compilation of the current RLDs, RPCs, ABA Standards on Lawyer Discipline, and related charts and diagrams related to lawyer discipline (about $10);
- *Annual Discipline Report* (available free from the Bar). It contains a summary of the year's discipline events, including a reprint of discipline notices which appeared during the prior year in the *Washington State Bar News*.
- *WSBA Resources*. Besides containing the names, addresses and telephone numbers of all members of the Bar, this directory also contains the current RPCs and the texts of various formal and informal ethical opinions.
- ABA/BNA, *Lawyers' Manual on Professional Conduct* (available from the ABA). This is a

comprehensive multi-volume treatise dealing with lawyer ethics, professional responsibility, and malpractice.

- ABA, *Annotated Model Rules of Professional Conduct*, Third Edition (1996, available from the ABA.) This sets out the ABA Model Rules with detailed annotations. Many of Washington's Rules of Professional Conduct are based on these rules. This should be on every lawyer's desk.
- ABA, Ethical Opinions (formal and informal). Several volumes of opinions, available from the ABA.
- Geoffrey Hazard & William Hodes, *The Law of Lawyering - A Handbook on the Model Rules of Professional Conduct*, Second Edition (Prentice Hall, 1994), a well-regarded treatise and analysis of the RPCs.
- *Georgetown Journal of Legal Ethics*, a journal devoted to professional responsibility and legal ethics issues.

Consider retaining a lawyer to represent you. You should consider retaining a lawyer to represent you when a grievance is filed against you, especially if the grievance alleges serious ethical violations. Even if it does not, if a Review Committee orders the matter to a hearing, retaining counsel would be wise since it is difficult to represent yourself effectively in any proceeding, let alone one wherein your license to practice law may be at stake.

Respond promptly to, and cooperate with, disciplinary counsel. RLD 2.8(a) and (b) require such conduct, and if you do not do so, disciplinary counsel can depose you at your cost and institute a separate disciplinary action based on your failure to cooperate.

Fix the problem itself. The fact that a grievance is filed against you does not relieve you of your ongoing obligations to the client. If the underlying client matter is still pending, attend to it *very* promptly, and document your work well. If at all possible, try to work out the matter with the grievant (unless the grievant is now represented by a new counsel, in which case you must obviously go through that new counsel); sometimes you can save a long-term relationship with the client by very promptly responding to and resolving the grievance.

Examine your practice to see if you can improve. When a grievance is filed against you, take that opportunity to reexamine your entire practice to see if you are living up to the high ethical ideals we, as members of the bar, are called to uphold. Go beyond the mere grievance that is filed, and reexamine all aspects of your practice and procedures to see if you can better serve your clients and the public and make improvements that will help you prevent future grievances from being filed against you. In looking at the particular conduct complained of in the grievance, consider whether you need to report the incident to your malpractice insurer.

Be patient. Because of the large number of appeals possible in the process, the large number of grievances filed each year and the resultant backlog of grievances, processing and investigating the grievance — and ultimately prosecuting it if so ordered by the Review Committee — are likely to take a long time. It is hoped that the recent expansion of the ODC will expedite this process.

HOFFMAN, HART & WAGNER

IS VERY PLEASED TO ANNOUNCE THAT

KARI A. FURNANZ
(A Graduate of Willamette College of Law)

JOE R. TRAYLOR
(A Graduate of Willamette College of Law)

and

SCOTT SCHAUERMANN
(A Graduate of University of Oregon School of Law)

HAVE BECOME ASSOCIATES WITH THE FIRM AND WILL PRACTICE IN OUR OREGON OFFICE.

THE FIRM CONTINUES TO FOCUS EXCLUSIVELY ON CIVIL LITIGATION
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Attorneys at Law

is pleased to welcome

JEFFREY M. THOMAS

and

FRANKLIN D. CORDELL

as associates of the firm.

Mr. Thomas was an associate in the Seattle, Washington, office of Perkins Coie. He will continue his civil litigation practice, including personal injury, real estate, products liability, insurance coverage and other types of complex civil matters.

Mr. Cordell was an associate with Covington & Burling of Washington, D.C. He will continue his practice in civil litigation, with an emphasis in products liability and insurance coverage matters.

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Facsimile: (206) 467-6292
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PEERY, HISCOCK, PIERSON, KINGMAN & PEABODY, P.S.

is pleased to announce that

WILLIAM E. FITZHARRIS, JR.

has become a shareholder of the Firm, and will continue his practice emphasizing professional liability defense, insurance coverage, and general litigation.

The Firm is also pleased to announce that

JOHN C. GIBSON

and

MICHAEL P. GRACE

have become associates.

505 Madison Street
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Seattle, WA 98104
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The Washington State Hospital Association

is pleased to announce that

Gregory S. Vigdor, J.D.

has been promoted to

Vice President for Policy Development

Mr. Vigdor is now responsible for coordinating the Hospital Association's overall public policy agenda. He also continues to serve as president of the Washington Health Foundation, a subsidiary of the association which provides nonprofit research, education, and health care outreach services throughout the state.

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Lawyer Ethics & Discipline Former WSBA Chief Disciplinary Counsel

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Seattle, WA 98104-4015
(206) 223-2082
fax (206) 223-1677

announces his availability for consultation, association or representation regarding lawyer ethics issues, defense of disciplinary grievances, as well as consultation, association, or expert testimony regarding claims for lawyer malpractice.

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Douglass A. North

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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, D.C., nationwide and overseas. Order: *National and Federal Legal Employment Report,* 1010 Vermont Ave. NW, #408-WB, Washington, D.C. 20005. $39-three months; $69-six months. (800) 296-9611. Visa/MC.

Redmond corporate/technology law firm with strong, growing clients and markets, seeks experienced business or technology attorney with at least five years' experience and some client base to join our practice. Write: J. Kirin, P.O. Box 86, Redmond, WA 98073 or FAX: 206-883-4616.

The WSBA is looking for a lawyer with five years' litigation experience for lawyer disciplinary work. Must be WSBA member and never disciplined. Requires commitment to quality and teamwork, excellent writing skills, and ability to manage large case load and meet deadlines. Starting salary: $38,000. Please send résumé, references and writing sample to: Human Resources, Washington State Bar Association., 2101 4th Ave, 4th Fl, Seattle, WA 98121-2330.

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 St., Ste. 2020, Seattle, WA 98101.

Small, family law firm is looking for an associate primarily to handle courthouse work, including show cause hearings. We are looking for someone who is outgoing, who can think and talk on his or her feet, who is not intimidated, and who is able to hold the hands of clients and give them reassurance. Please submit résumé to: Anderson & Fields Inc. PS, 207 E. Edgar St., Seattle, WA 98102.

Got the "lost in a big firm blues?" If recognition of your talents, quality of life, and top notch staff are important to you; if you are brilliant, hard working, and such a great person that (potential) clients beg to have you represent them, then we're looking for you to help grow our practice. We are a small firm established 26 years ago on a foundation of excellent client service and community involvement, a willingness to work hard to achieve our goals and a love of the practice of law that shows. We offer a superior firm environment, good benefits, base salary plus performance bonus. Please send your résumé along with a letter telling me why you are the person we seek to: Susan Ryan at Lund & Williams, 410 Marina Park Building, 25 Central Way, Kirkland, WA 98033.

Prominent, medium-sized Seattle law firm seeks an associate for its real estate department. Candidates must have high academic credentials and minimum of one year's experience with real estate transactions. Send résumé and writing sample to Attorney Recruiting Coordinator, WSBA *Bar News* Box 509, 2101 Fourth Avenue, 4th Floor, Seattle, WA 98121-2330.

Personal-injury attorney seeks contract attorney with substantial trial experience for case over flow. Respond to: WSBA *Bar News* Box 508, 2101 4th Ave, 4th Fl, Seattle, WA 98121-2330.

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and résumé to WSBA *Bar News* Box 507, 2101 4th Ave, 4th Fl, Seattle, WA 98121-2330.

Quality attorneys and law clerks — sought to fill temporary and permanent positions in law firms and companies throughout Washington. Please contact Legal Ease, L.L.C. at (206) 822-1157.

Litigation attorneys: Marten & Brown LLP is seeking associates with a minimum of two years' experience to join our growing litigation practice. Environmental experience preferred. This is an excellent opportunity for a motivated person to join Seattle's leading environmental law firm. We require outstanding academic credentials, excellent oral and written communications skills and a commitment to client service. Please send résumé to Beverlee E. Silva, 1191 2nd Ave, Ste 2200, Seattle, WA 98101.

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Carney Badley Smith Spellman, P.S., a mid-sized Seattle law firm, is seeking to fill two associate positions. Commercial/construction: We are seeking an attorney with at least four years of commercial and construction litigation experience. General-business/corporate: We are also seeking an attorney with at least three years of experience in general business and corporate transactions; tax experience is desirable. Both positions require excellent academic credentials, references, and interpersonal skills. Send résumé in confidence to Ms. Barbara Margolies, Hiring Coordinator, Carney Badley Smith & Spellman, P.S., 2200 Columbia Center, 701 5th Ave, Seattle, WA 98104-7091.

Sussman, Shank, Wapnick, Caplan & Stiles LLP is soliciting applications for an associate position within its Creditor's Rights/Bankruptcy Practice Group. Applicant should have minimum of two years of bankruptcy and business litigation experience. Majority of bankruptcy experience should be in representing business creditors. Some debtor experience helpful. Admission to practice in Oregon required; admission in Washington a plus. Competitive compensation and benefits. Please send letter of application and résumé to: Administrator; Sussman, Shank, Wapnick, Caplan & Stiles LLP: 1000 S.W. Broadway, Ste 1400; Portland, OR 97205.

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MISCELLANEOUS

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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.

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Lincoln County

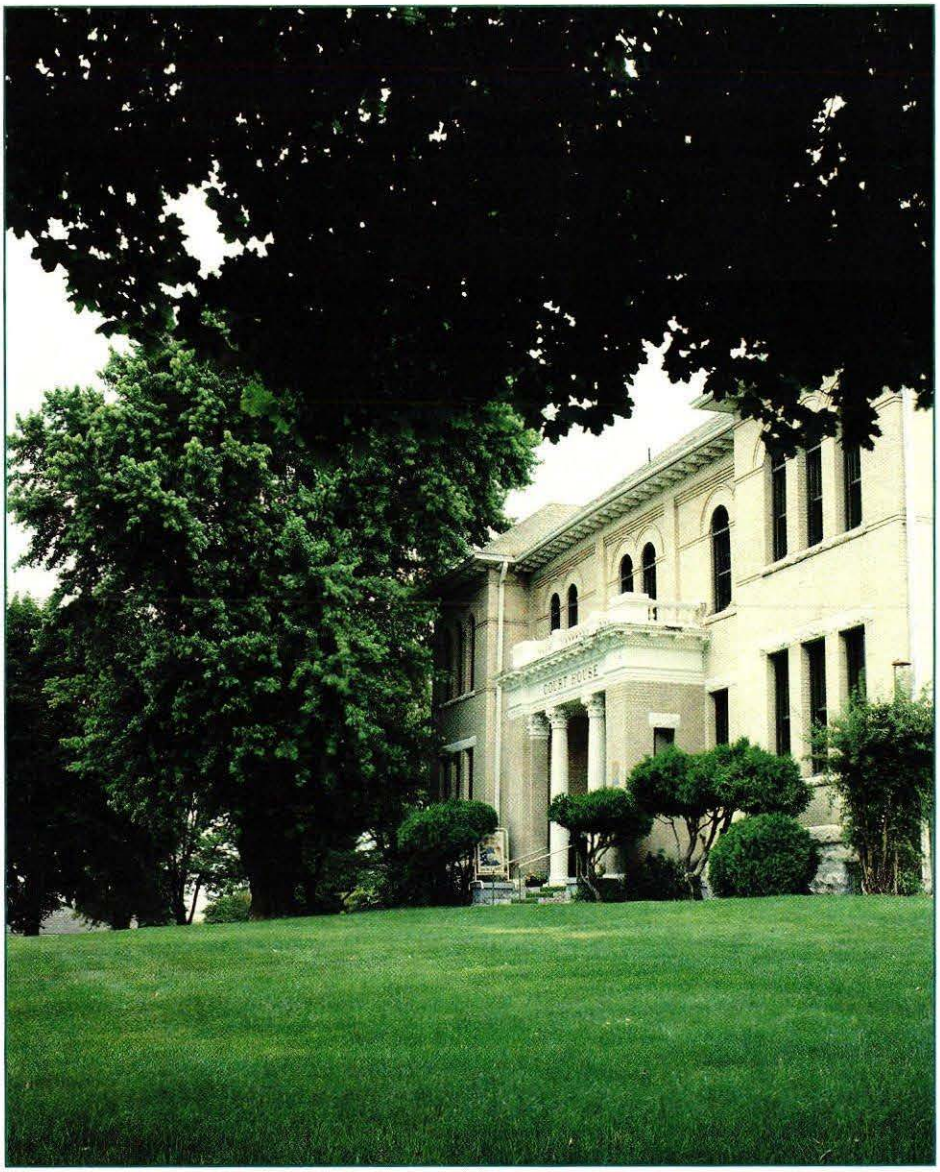


photo by Stan Morse

by **Csilla Muhl**

The Lincoln County Courthouse, or "Grand Old Lady" as it is affectionately called by county residents, was struck by arson on December 21, 1995. Ironically, this was not the first time a major fire has seriously affected the citizens of Davenport, Washington. A little over 100 years ago, a disastrous fire in a neighboring town was responsible for moving the county seat to its current home.

The Lincoln County seat and courthouse were originally located in Sprague, Washington. Although Davenport was the temporary seat in 1883, Sprague was voted the permanent county seat in a controversial 1884 general election — which some Davenport residents contend was rigged. For more than ten years, Sprague maintained its coveted position as the seat of Lincoln County, until a fire destroyed the entire town of Sprague on August 3, 1895. As a result, the Northern Pacific Railroad Company was forced to move its divisional headquarters to Spokane — and once the railroad left town, barely 400 residents remained. Consequently, on December 15, 1896, Davenport was named the Lincoln County seat. "The Grand Old Lady" was erected by Fred Baske the following year.

The recent 1995 fire damaged much of the original building, but a newly restored structure—utilizing the existing brick walls and identical in appearance to the original — emerged from the ashes. A mere six months after the fire, Davenport observed the completion of the building's exterior, including the cupola. Sometimes called the "crown jewel" of the courthouse, the cupola resembles a school bell tower and can be seen for miles outside of the town. Restoration of the interior, as well as the Grand Reopening, will be celebrated on the one-year anniversary of the fire: the twenty-first of this month.

Bonnie Kam joins WSBA as Communications Director

Bonnie Kam, former Public Relations Director of the Bar Association of Erie County in New York, is the new Director of Communications for the WSBA. At the Erie County Bar, she spent more than 10 years as editor of *The Bulletin*, a monthly publication for attorneys. She escaped another New York winter by joining us in September before the mountain passes closed.

"I fell in love with the Pacific Northwest in 1985 before Microsoft and Starbucks were household words on the East Coast," Kam explained of her decision to move west, "and I have felt drawn to this region ever since."

"Through my membership in the National Association of Bar Executives, I have admired this organization and its leadership from a distance and very much wanted to be a part of it. As Director of Communications, I would like to further articulate the benefits that the State Bar has to offer its primary constituencies — members throughout the state, local and specialty bars, the print and electronic media and the public at large."

Kam currently serves on the executive council of the NABE Communications Section, and won the 1995 NABE Luminary Award for Excellence in Public Relations. She is a Phi Beta Kappa graduate of the State University of New York at Buffalo, where she also earned a Master of Arts degree in Organizational Communication. She previously worked in corporate communications and advertising. ◆

WSBA On the Move

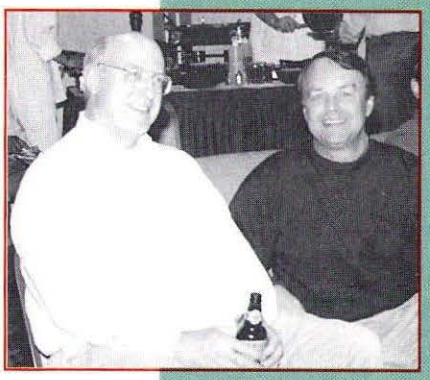
By the time this reaches your desk, the Bar will be in the midst of its move to a new office at Fourth & Blanchard in downtown Seattle (see cover photo — we're on the third and fourth floors). The original schedule of moving in mid- to late-November was pushed back a bit, and the move is now scheduled for mid-December. Things may be a little hectic for the first week while we reorganize so please bear with us! **Our new address is: 2101 Fourth Avenue — Fourth Floor, Seattle, WA 98121-2330**. Our main phone number remains (206) 727-8200, and our fax number is still (206) 727-8320. ◆

Access to Justice Conference

Visualize Justice

by Sharlene Steele

The first annual Access to Justice Conference is now more than just a vision - it is a successful reality! When 180 members of the Washington State Access to Justice Network got together in Chelan October 4-6 with a common mission — *Visualize Justice in Washington State* — they created a revitalizing energy that will not soon be forgotten. Each member of the Washington State Access to Justice Network was well represented. Participants included representatives from specialized legal services providers, Northwest Justice Project staff and board, Columbia Legal Services staff and board, local/minority & specialty bar associations, Access to Justice Board, Equal Justice Coalition, volunteer attorney programs, law schools, LAW Fund, Washington State Supreme Court, Legal Foundation of Washington, Washington State Bar Association, the courts and courthouse facilitators. The conference was held in conjunction with the WSBA Board of Governors meeting.



WSBA Governors Lish Whitson and Peter Ehrlichman relax at the conference

Paul Stritmatter, chair of the Access to Justice Board, welcomed participants to the conference by exclaiming, "WAKE UP AMERICA! This is not a radical cause. This is not a liberal ideal. It is conservative values to the core. It is a part of our pledge of allegiance to the American flag. It is providing basic and essential services to the disadvantaged in our society. It is securing a guarantee of equal justice under the law to preserve the stability of the current order of things. It is a fundamental bedrock

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"The work output between us...you know it doesn't keep me warm."

Don Henley — "Heart of the Matter"

Does the stress of lawyering, parenting, dual careers and similar pressures make it difficult to revitalize your relationship with your spouse/partner? Do you find that your relationship tends to come in last on your "To Do" list? If so, you are certainly not alone.

The WSBA's Lawyer Assistance Program (LAP) is initiating a couples group to help attorneys and their spouses/partners with the struggles, stresses and external pressures that complicate our lives and compromise our relationships.

If you are interested in getting together with other couples to explore ways to make your relationship more of a priority on the "To Do" list of your life, call LAP at (206) 727-8268. LAP provides confidential counseling, assessment and referral services to licensed attorneys (RLD 12.17).

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Chair: Ronald Whitener, (360) 866-4113

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Conference — *Continued from page 57*

principle of the constitutions of the United States and the state of Washington. It is essential to the most conservative value we hold for our own protection in a free society, the establishment of a rule of law."

Workshop sessions included: the role of the judiciary; access for pro se clients; technology; financial support; effective participation by private attorneys; the Equal Justice Coalition Network; and the Plan for Delivery of Civil Legal Services to Low Income People in Washington state. Two CLE sessions also were offered — Public Benefits and DSHS Hearing Process and Issues in Publicly Subsidized Housing. Two plenary sessions brought all conference participants together to network and brainstorm about the best imaginable future of equal justice in Washington. King County Bar President Scott Smith remarked, "It was a terrific blend of education and inspiration." A conference report committee has been formed to prioritize goals and identify appropriate organizations to implement these goals.

On the lighter side, "The Moderately Talented Yet Plucky Repertory Theatre of Justice" provided music, laughter and fun at the welcoming reception. *The Wizard of Lawz*, freely adapted by Marla Elliott, Joan Fairbanks, and Pat McIntyre, was hilariously entertaining. Chief Justice Barbara Durham spoke at Saturday's luncheon about the importance of equal justice for all and a favorite project of hers, "Judges in the Classroom." Justice Howard H. Dana, Jr., of the Maine Supreme Court, captivated the audience at dinner when he talked about his term as Director of the Legal Services Corporation during the Reagan years.

Conference expenses for participants were kept to a minimum because of the generous financial support from Anderson Hunter; Wayne Blair; Bogle & Gates; Columbia Legal Services; Davidson, Czeisler, Kilpatric & Zeno; Davies Pearson; Davis Wright Tremaine; Garvey, Schubert & Barer; Helsell Fetterman; Horenstein & Duggan; Legal Foundation of Washington; Lukins & Annis; MacDonald, Hoague & Bayless; Perkins Coie; Preston Gates & Ellis; Schroeter, Goldmark & Bender; Theiler Douglas Drachler & McKee; Stritmatter Kessler; Washington Journal and the Washington State Bar Association.

Plans for the next conference are already underway. Mark your 1997 calendars now for June 20-22 at the Yakima Red Lion. Once again, the WSBA Board of Governors and several other boards are planning to hold meetings during the conference. The 1997 WSBA Bar Leaders Conference also will be held in conjunction with the ATJ Conference. ◆

Committees — *Continued from page 58*

Intellectual & Industrial Property
Chair: James P. Donohue, (206) 622-8484

International Practice
Chair: Gary Tober, (206) 223-7000

Law Practice Management
Chair: Dean Messmer, (206) 624-1230

Litigation Law
Chair: Tim Weaver, (509) 575-1500

Public Procurement & Private Construction
Chair: Margo Easton, (206) 628-9500

Real Property, Probate & Trust
Chair: Gordon Tanner, (206) 624-0900

Taxation Law
Chair: Richard Algeo, (509) 328-6123

World Peace Through Law
Chair: Michael Nance, (206) 624-3211

Young Lawyers Division President
Chair: Timothy Szambelan, (509) 625-4488

The Native American Pro Bono Panel is Looking for Members

by Allen H. Sanders

Legal services programs in Washington State cannot possibly meet all the needs of low income Indian individuals and the poorer tribes. Recent cuts in federal funding for legal services have made it even more difficult for them to gain access to our justice system.

The Native American Pro Bono Panel is a new statewide effort to expand legal resources for Native Americans. It is a joint project of Columbia Legal Services and the Northwest Justice Project and is being established with the assistance and support of the Washington State Access to Justice Network. By joining this specialty pro bono panel, you will make a significant difference in someone's life and will join the growing number of Washington State attorneys who are making access to justice for all a reality.

You do not need experience in Indian Law to become a member of this Pro Bono Panel. You will have lots of support and resources:

- You will be offered training, for which CLE accreditation is anticipated, in basic Indian Law before you take a case.
- You will be able to consult with attorneys with expertise in Indian Law.
- You will have ready access to pleadings and other relevant legal materials.
- You can select the number and type(s) of cases you wish to handle. Here are a few examples of the types of cases that may arise:
  - An issue of jurisdiction in state court;
  - A matter before a tribal court;
  - Negotiations with a school district for fairer treatment of Indian children, consistent with special federal laws regarding Indian education;
  - Helping an Indian individual obtain health or other benefits under a federal Indian Program; and
  - Helping an Indian person on a matter that does not involve an issue of federal Indian law at all but does allow you to donate your particular legal expertise to those least able to afford a lawyer.
- You will enjoy the collegiality and shared commitment of being part of a specialty pro bono panel.

If you would like to sign up, or would like more information, please contact:

Allen Sanders
(206) 464-0838
Columbia Legal Services
Native American Project
101 Yesler Way, Suite 301
Seattle, WA 98101

or

Robert McCarthy
(206) 464-1519, ext. 254
Northwest Justice Project
Native American Unit
401 Second Ave. S. Suite #407
Seattle, WA 98104

◆

The LASER Project Needs You! Training Now Available

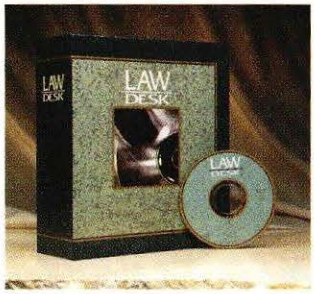
by Marla Elliott

The LASER Project provides an exciting opportunity for lawyers to help prevent violence in their communities by working with local schools. LASER volunteers "adopt" a school by training selected students in dispute resolution skills. These volunteer lawyers then visit the school for a few hours each month to mentor student mediators throughout the school year.

Originally a pilot program in a few selected schools, LASER (Lawyers and Students Engaged in Resolution) is now ready to expand and is actively seeking additional volunteers.

If you're interested in volunteering but need training, you may be able to receive free training in dispute resolution alongside school personnel through your regional Education Service District (ESD). The ESDs, in cooperation with the Office of the Superintendent of Public Instruction, will be offering conflict resolution training this year and have agreed to allow LASER volunteers to attend for free.

To volunteer for LASER or to get more information, call Marla Elliott, LASER Project Coordinator, at (360) 664-2476 in Olympia. ◆



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