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Washington State Bar News

Vol. 50 No. 3, March 1996

The official publication of the Washington State Bar

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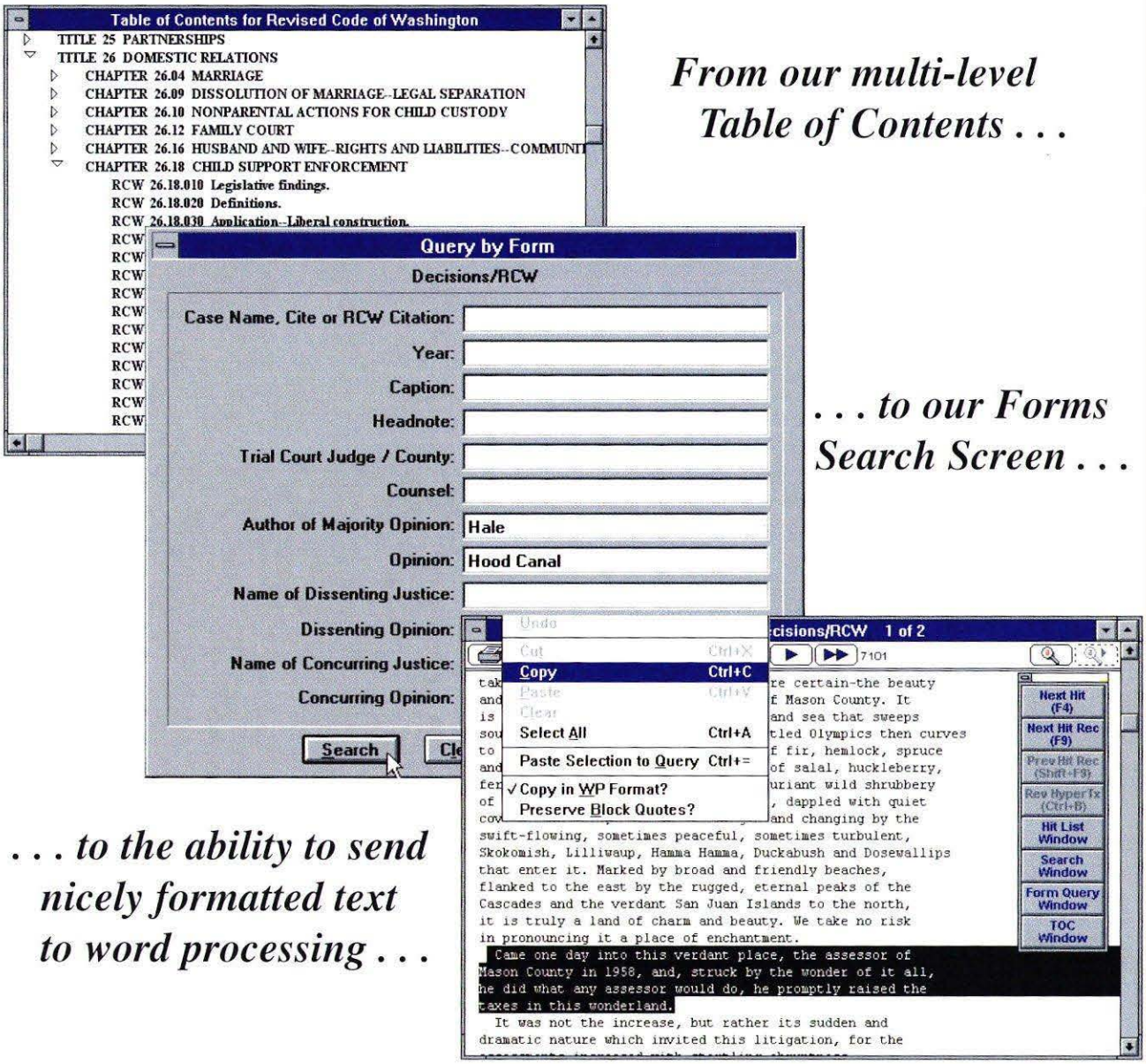

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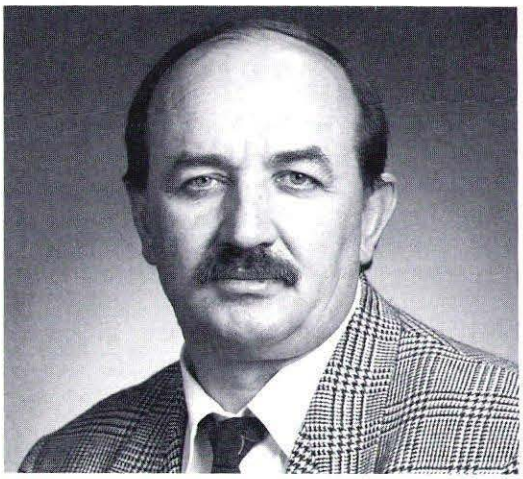

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ANATOLY KOSSENKO

Mr. Kossenko has 20 years legal experience in Russia:

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1993-1995	Far East Academic Law University (FEALU), President
1990-1995	Far East Consult, Ltd., the first Russian Law Firm, President
1989-1990	Foreign Trade Association, Law Consultant
1985-1988	Senior Deputy Prosecutor
1979-1985	Regional Government, Chief Legal Consultant
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Mr. Kossenko graduated from the Law College of the Moscow University in 1976.

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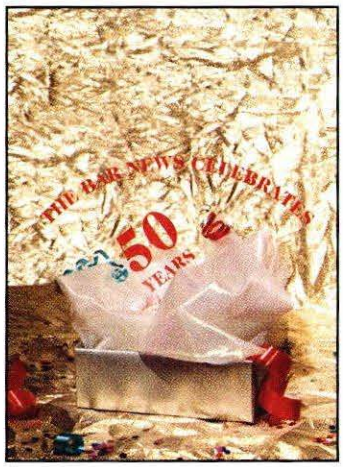

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Judicial Evaluation

Editor:

I find it shocking that the ever increasingly popular pastime of second guessing the King County Bar Association's Judicial Screening Committee for its rating of Justice Richard Sanders has a new player, the editor of the *Washington State Bar News*. In a January *Bar News* editor's response to a reader's letter on an unrelated matter, Hal White assumes that the "not qualified" rating received by Justice Sanders was "almost certainly because of his conservative political beliefs, ignoring his vast appellate experience." Nothing could be further from the truth.

As KCBA's board liaison to, past co-chair and current member of the committee, I take strong exception to Mr. White's gratuitous, unfounded and unsupported conclusion. For obvious reasons, the ironclad rules of the committee do not give members the liberty of discussing the reasons for any rating. However, I can state unequivocally that in Justice Sanders case, the committee's reasons did not include his political beliefs. It is, however, more than interesting that the successful political race was run in part on the perpetuation of that falsehood and the portrayal of the candidate as a victim of the committee's alleged intolerance for conservative beliefs. In fact, the committee rated him based on the very same standard guidelines and criteria under which it rates liberals and moderates. (Ironically, the committee was also recently criticized for its perceived conservative leanings and intolerance for minorities in connection with a gubernatorial appointment to the King County Superior Court Bench.)

A further irony is that it is the committee's own nondisclosure rules that allows such unfounded rumors such as that cultivated in the response by Mr. White to thrive, unchecked. While I cannot discuss a specific candidate, I can say that the volunteer committee members are diverse politically, ethnically and otherwise. They are conscientious beyond reproach, thorough, deliberative, objective and, above all, fair. And the process is fair. They donate untold hours working toward the goal of the betterment of our judiciary. Just speak to people who have previously served on the committee, or ask people who have been interviewed as references for judicial candidates about the dedication and fair-mindedness of these volunteers.

It may be safe but it is also irresponsible journalism to print unfounded allegations such as these about the work of these dedicated people, especially when those criticized cannot respond. It is a personal affront to these volunteers and, perhaps more importantly, undermines the process that has helped produce so many quality judges. Fomenting public distrust of the process is a disservice to the public, the bench and the bar.

RALPH MAIMON
Bellevue

Your assertion that it was "safe" for me to question the committee's motivations because of its nondisclosure rules cuts both ways; neither can anyone put your contrary representations to the test by fully examining the committee's work product. Many people were mystified by the committee's evaluation; not just one lowly editor. You state that the committee did not consider Sanders' political beliefs in its evaluation. This is gratifying — if true — but misses an important point. If a judicial recommendation is widely viewed as biased — and this one was — then something is wrong with the process. It is this perception of bias that "is a disservice to the public, the bench and the bar," not my editorial, which merely reflected widespread legal and lay public opinion.

You also assert that "the committee members are diverse politically." I believe this is misleading. There is only one way to ensure diverse political representation on such committees: Ask the prospective members whether they identify themselves as "liberal," "moderate," or "conservative," and make sure that each group possesses exactly one-third of the voting rights on the committee. Needless to say, the evaluating committee didn't do this. Having, for example, two conservatives for every five liberals (or the other way around) may be your definition of political diversity, but it's not mine. I can think of only one other way to ensure an evaluation which would withstand outside scrutiny: polling every member of the local bar, as other counties do.

Finally, you state that you are "shocked" that the editor of the Bar News *weighed in with an opinion on this matter. While I agree that the KCBA rating would seem to be a provincial affair, not typically meriting mention in the* Bar News, *this rating has unfortunately achieved widespread notoriety, appearing in non-King County publications ranging from* The *[Spokane]* Spokesman Review *to* The National Law Journal. *Moreover, this rating is frequently attributed to "the local bar association," or some similar ambiguous entity, which many nonlawyers assume to be the WSBA. Under such circumstances, the legitimacy of this rating system should not be immune from discussion. - Ed.*

Even More on Jury Nullification

Editor;

First, it is nice to see an editor weigh in with opinions in the letters section of the *Bar News*. Please continue that practice.

Second, jury nullification is nothing more than an easy way for the loser in the legislative fray to vitiate a law that he or she is unable to defeat by the procedures outlined in the Constitution.

If one were to assume, as Mr. Stahl and those like him do, that juries will only nullify laws where "there is significant opposition to that law in the community" then one can also assume that such "significant opposition" would carry the issue in the legislature. If most of the citizenry want a particular law changed then legislators would be swept into office on that platform and the law would be changed.

Contrary to Mr. Stahl's assertion, jury verdicts do not cause legislative change. The verdict in *Slew v. Whipple* did not stop slavery in Massachusetts. Nor did it set a "trend" in that direction. Rather, the industrial economy which prevailed in the northern states made slavery a useless institution. That is what stopped slavery in Massachusetts. Further, if a jury verdict in a 1765 slave case is Mr. Stahl's example of how jury nullification can "have the rapid effect of paring down bad laws" how does he explain the Supreme Court's 1857 *Dred Scott* decision? How does he explain the bloody civil war we fought about it circa 1860?

Nor did jury verdicts stop prohibition. Citizens voting for a Constitutional Amendment did. Mr. Stahl has shown no nexus between jury verdicts in prohibition cases and passage of the 21st Amendment because there is none.

It is incongruous to assert that juries represent the people and legislatures do not when juries are selected by lawyers and legislators are selected by the citizenry.

The reality is that any one jury is only the sum of the prejudices and opinions of its particular members. It is not, merely by being empaneled and sworn, the repository of the conscience of the community, nor will it act as such. The actual repository of the conscience of the community is the body of laws created by the Legislature.

Perhaps Mr. Stahl can explain to us how it is that legislators who are seated by the citizenry are not doing the will of the majority? Perhaps he can explain to us how it is that elected legislatures "stifle freedom" as kings do. Perhaps he can explain why he prefers to be ruled by any 12 persons that are selected by two lawyers who have run out of peremptory challenges rather than by a lawmaking body operating pursuant to the Constitution.

If juries were allowed to disregard laws there would be no reason to have written laws or legislatures to create them. All disputes would be submitted to juries to be decided as each particular jury saw fit. The very reason juries are prohibited from deciding issues of law is so that the will of the citizenry will not be stricken by a minority of twelve.

The Constitution guarantees each citizen the right to be self-governed. That is, to take part in governmental decisionmaking. It does not guarantee each citizen the right to control governmental decisionmaking nor does it promise that each citizen will agree with all laws. Rather, it guarantees each citizen the right to be heard in the process.

Sadly, by advocating a process where any twelve persons who survive peremptory challenges can tear down what the majority of those who have chosen to participate in the process have built up, Mr. Stahl and those like him seek to throttle the citizenry into silence. Jury nullification is simply an easy way to vitiate a law without assembling a majority of the citizens to render the change.

Thus, while claiming to champion democracy, Mr. Stahl actually endorses a tortured form of oligarchy.

Not in my country, Mr. Stahl. If you want to change a law here you will listen to my opinion and the opinion of every other citizen who wants to be heard. Then we will vote. Not just twelve of us. All of us.

SCOTT W. OLSON
Everett

Editor.

Our *Bar News* editor expresses a curious logic when he suggests that we can achieve justice by first creating more injustice [*Bar News*, January 1996, page 7]. Instead of letting juries know that they can nullify bad laws, he would pare down bad laws by rigorously enforcing them. No doubt the victims of this rigorous enforcement can then effectively lobby the Legislature from jail cells after they have lost the right to vote by felony convictions.

Far from repealing drug prohibition, the rigorous enforcement of the drug laws has resulted in a crude disenfranchisement of the poor and minorities.

Mr. White asserts that jury nullification is at odds with constitutional democracy because it ignores the results of the democratic process. Would he say the same thing about the Governor vetoing a bill or about the Supreme Court exercising its power of judicial review? Jury veto power does not ignore the democratic process but is instead the most essential part of the democratic process. The jury verdict is the only time when the citizen will ever vote on the application of a real law in real life.

The Founders recognized that the most important element of democracy is the people's right to say "no" in the jury room.

> Were I called upon to decide, whether the people had best be omitted in the legislature or in the judiciary department, I would say it is better to leave them out of the legislature. The execution of the laws is more important than the making of them.
>
> Thomas Jefferson, letter to Lt. Abbé Arnoud, 1789. 3 *Works of Thomas Jefferson* 81-82 (Wash. ed. 1854)

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The essential elements of a constitutional democracy are separation of powers, protection of individual rights, and sovereignty of the people. Jury nullification uniquely satisfies all three elements and that is why every Founding Father believed in jury nullification and why they put the right to trial by jury into the Constitution in more places and expressed it with more words than any other right.

TOM STAHL
Ellensburg

Bar Dues

Editor:

Last summer then-President Mr. Gould sent out a mailing to the membership proclaiming "No Dues Increase." I complained to no avail that the mailing was a callously disingenuous attempt to use public Bar Association funds to lobby in favor of the "No" position on The Referendum. It did not occur to me, in addition, that the mailing might also be a bald-faced lie.

To wit: I just got my 1996 WSBA Licensing Fee Form. My dues apparently will remain the same, but an additional mandatory assessment has been imposed by another name. Is that what Mr. Gould and the WSBA ruling cabal meant? No dues increase, to be sure; they will just start calling additional mandatory expropriations something else besides dues increases. What a rip-off!

What was Mark Twain's famous saying? There are lies, damned lies, and things lawyers say.

KENNETH SNYDER
Seattle

Ronald M. Gould replies:

The licensing statement that has inflamed Mr. Snyder contains no increase in dues, but it does have a $10 assessment imposed by the Supreme Court for clients' security. This assessment is administered by the WSBA, but it was established by the decision and Order of the Supreme Court pursuant to APR 15. The WSBA's Bylaws and judicial precedents make clear that the Supreme Court governs the practice of law and lawyers, and not the other way around.

Before the referendum, in response to a fax message sent broadly to Bar members containing inaccurate statements, as Bar president I sent a letter to Bar members advising that the Board of Governors did not intend any dues increase in 1996. Mr. Snyder objected with an angry letter at that time, feeling that the Bar president was not entitled to communicate to members about such issues. He was informed, I believe correctly, by the Bar's general counsel, Robert Welden, that the president and Board of Governors under the WSBA's Bylaws have the authority to communicate to members on matters of policy such as this. The Bar's leadership need not stand silent when those challenging the WSBA make inaccurate statements.

Mr. Snyder now says that my prior communication was a "lie" and goes beyond that to disparage lawyers as "liars." One wonders what type of lawyer has such a negative view of his own profession to make such statements.

If Mr. Snyder wants to argue against the Supreme Court's Lawyers' Fund for Client Protection assessment, he should address his argument and petition to the Washington Supreme Court. The Supreme Court's assessment under APR 15 is not a dues increase. The rule governing the Lawyers' Fund for Client Protection is a Supreme Court rule that was published for comment by members. See August 1993 Bar News. *This issue was discussed in the written communications and debate surrounding the referendum.*

Mr. Snyder also describes the Bar's leadership as a "cabal," which Webster's dictionary defines as "a number of persons secretly united to bring about an overturn or usurpation, especially in public affairs." Does Mr. Snyder believe that our duly elected Washington Supreme Court is part of a "cabal" acting secretly with our duly elected Board of Governors of the WSBA to "usurp" the authority of others? The Board of Governors meets in open meetings that are attended by many liaison representatives of other organizations, and all members of the Bar are welcome to attend these open meetings.

The vast majority of the Bar recognize the value of the WSBA's programs and will defend these programs against challenge, and indeed will recognize that at some point in some future year the dues will have to be increased for our Bar to remain in the leadership role that is proper in view of our responsibilities. But these dues have not been increased for 1996.

The *Bar News* is Too Far to the Left . . .

Editor:

I follow with interest the letters and comments regarding the issues related to the "integrated bar" and partisanship. I concur with the point of view expressed by Harry J. F. Korrell [December *Bar News*, p. 9] regarding use of WSBA dues for lobbying of any kind.

I guess I am one of the so-called "few" who would argue that WSBA lobbying of any kind is an unconstitutional violation of my First Amendment rights. WSBA members have varying opinions regarding (1) regulation of the legal profession, and (2) improving the quality of legal services available to the people of Washington State. It is precisely and solely this variation of opinion which makes it wholly inappropriate for the WSBA Board of Governors to elect to spend WSBA money in the support of any one opinion.

Legal Services Corporation is a fine example. Does anyone seriously wonder whether the liberal WSBA members would complain about the improper use of WSBA dues if the WSBA went on record as supporting the total elimination of LSC funding? I think that complaint would be wholly justified. If you agree, then how is it proper when the WSBA decides to support LSC funding?

Finally, there seems to be a pattern in editing letters to the editor. The editor seems to feel that a critical response to a letter supporting conservative positions is required, while no response or a supportive response is required to a letter supporting liberal positions. The responses to the letters in the December 1995 issue are examples of this pattern.

These problems are easily placed in the context of the "integrated bar." If Mr. Korrell and I can withdraw from the ABA, we no longer have to support its agenda. We have done so. However, there is no withdrawing from the WSBA if one wishes to continue practice in Washington State. And so, so long as the WSBA takes positions on any controversial matter, it will always have dissatisfied members with no realistic remedy.

MARC BOND
Anchorage, Alaska

. . . The *Bar News* is Too Far to the Right . . .

Editor:

I am surprised to learn that WSBA has voted to make the *Bar News* an organ of the Radical Right, particularly the Christian Radical Right. I can see no other reason for printing Robert C. Cumbow's bit of sycophancy concerning M. Stanton Evans's latest book, other than a desperate need to fill three pages of white space.

Claiming that Evans is "one of our most erudite journalists "is a bit of a

stretch. Evans . . . [departed] as editor of the *Indianapolis News* over 20 years ago . . . . Since then, as in the 15 years prior, his primary activity has been producing right-wing polemics.

Mr. Cumbow writes that this book will raise eyebrows. I imagine so. Evans's thesis is, shall we say, novel: Western ideals of individual liberty and self-rule come not from The Renaissance and The Enlightenment but from theocratic feudalism. The thousands of scholars who have written to the contrary are either part of or dupes of a liberal conspiracy.

Perhaps this huge, liberal conspiracy explains why this "important book" was not published by a scholarly publisher but rather by Regnery Publishing, the latest incarnation of Henry Regnery's old Regnery Gateway Publishers, which has engaged in the nearly exclusive publishing of Christian/conservative polemics and apologetics for a half-century.

On the other hand, the scholarly publishers may have taken a pass because this book is in no way scholarly. Contrary to Mr. Cumbow, Evans does not meticulously document his thesis "down to the minutest detail." Evans's endnotes average about 15 per chapter, quite skimpy given the novelty of the thesis and the number of cites to primary sources such novelty normally requires.

Sometimes his sources disappear altogether. Cases in point occur in his revisionist discussion of the Declaration of Independence. Evans's logic and sources both do a vanishing act as he attempts to erase Jefferson's influence, which would have been based inconveniently on Jefferson's non-Christian philosophy, from the document he penned. Unfortunately for Evans's position, he places the Declaration squarely at the feet of John Adams, labeling Adams an "antiphilosophe" and hoping thereby to establish Adams's credentials as a right-thinking, Christian conservative. Evans ignores that Adams was no conservative but rather a follower of the British Whigs, ignores that Adams rejected the French philosophes not because of their religious positions but because of their romantic view of human nature, and ignores that Adams was not a member of orthodox Christianity but rather was a Unitarian.

Where Evans does use cites, they often go astray. An example is his use of Thomas Aquinas in Chapter Two. He quotes Aquinas contrasting voluntary and involuntary behavior and then concluding that the state should not pry into men's hearts, and then he uses these quotes to support his position that Aquinas is a founder of libertarian thought. Placing the quotes back into their context yields a different result. Aquinas was certainly arguing to keep the state out of men's hearts, but his argument was not aimed at protecting individual liberty against state intrusion. He was arguing to protect the church's exclusive control over such matters. Hardly a libertarian position.

This is not an important book. It is another political ax, keenly ground just in time for another campaign.

KNUTE RIFE
Goldendale

. . . The *Bar News* is Alright

Editor:

In your responses to letters to the editor and on your Editor's Page in January 1996 you took on the nullifiers, antipapists, and the conceited. Bravo! You are a clear thinker and a clever writer. I look forward to your future contributions.

I believe that the quality of the *Bar News* has been good, but has improved with your stewardship. I enjoyed the article in January 1996 entitled *Recovering From Losing a Big Case.* I also encourage you to publish Mr. Randolph Gordon as often as possible. His article in the December 1995 issue was, as always, erudite and in that case also a bit painful.

Thank you for your good work.

THOMAS OWEN McELMEEL
Seattle

Editor:

I can't remember a more stimulating issue of the *Bar News* than the December 1995 issue. Robert Cumbow's book review of Stanton Evans' book, *The Theme is Freedom,* was excellent. I ran out and bought the book and found Evans' thesis well-supported and convincing.

The freedoms we lawyers defend for a living did not materialize out of thin air. They owe their beginnings and longevity to the Judeo-Christian tradition. I applaud Mr. Cumbow and the *Bar News* for featuring this outstanding book.

I also read with great interest the reprinted essay of C.S. Lewis on *The Humanitarian Theory of Punishment.* One would not expect to find support for the Honorable John Coughenour's recent controversial decision from C.S. Lewis.

STEVEN T. O'BAN
Seattle

Editor:

I was very pleased that you published C.S. Lewis' *The Humanitarian Theory of Punishment.* I thought it was an excellent article. Also, I concur with your book review commentary on *The Theme is Freedom.* I read it last summer after seeing the author interviewed on C-Span; I thought it was excellent and most insightful.

THOMAS A. TUTTON
Port Angeles

Editor:

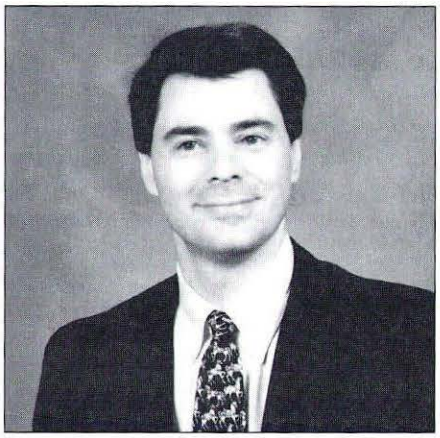
Well-said in your column entitled "Elections, Past and Future." I am also disappointed when lawyers take a supercilious view of democracy's role in the judicial selection process. I am perplexed when lawyers presume the electorate is not sophisticated enough to choose the best judges. This is an interesting viewpoint considering it is perhaps these same lawyers who have no problem with jurors, lay persons, deciding the outcome of extremely complex legal cases.

Elitism and conceit are insidious problems in the legal profession. The accountability of the Bar to the public is essential. Those who wish to erect ivory towers should be prepared to hang from them.

LENHARDT S. STEVENS
Portland, Oregon

Two Anniversaries

by **Hal White,** Bar News *Editor*



Hal White

We celebrate two anniversaries this month: The fiftieth anniversary of the *Bar News*, and the six-month anniversary of my tenure as its editor.

It's rare for a magazine to celebrate its fiftieth anniversary, but it's almost unique to be able to contact its founding editor to harken back to those days of yore about what it was like during that magazine's infancy. Thus, we are proud to offer as our lead story an article by the first editor of the *Bar News*, Mr. John Rupp.

Less important by several orders of magnitude — in fact, literally 100 times less impressive — is my six-month anniversary as editor. We've made several changes in the *Bar News* during this period — some obvious, some less so — so I thought I'd briefly describe the changes and explain what we've done and where we're going.

Among the obvious changes are the addition of several new departments: The Fax Poll, Ethics & The Law, Computers & The Law, and Allegedly Humorous. Although all appear to be popular, the Fax Poll seems to be the runaway favorite. I must admit that this pleases me, because one of the things that I'd like to accomplish as editor is to involve more people in the issues which face our Bar, our profession, and our state.

The Fax Poll has received one criticism, however: Its short voting deadline; until recently, the 10th of the month for faxes, and the 8th of the month for mail. The reason for such stringent deadlines is to allow us to give you the results in the following issue. This is particularly important if the topic is time-sensitive, as many Fax Poll issues are. Unfortunately — and to my surprise — some members have complained that they do not receive their magazines until shortly before or after the deadline. Consequently, we have extended the deadline to the 14th for faxes, and the 11th for mail. This will require us to prepare the page layout the evening of the 14th to meet our publishing deadline the following day, but hopefully this will alleviate the bulk of the problem. Please let us know if this isn't enough time, and how important "next-month" reporting of Fax Poll results are to you.

We've also changed the format of the Table of Contents, Calendar, and Briefly Noted. The entire Table of Contents, for example, is now on one page; the Calendar, to the extent possible, now discloses the number of CLE credits associated with each seminar; and Briefly Noted now has much larger headers to allow readers to quickly locate items of interest. Our goal is to allow you to skim the contents of each page to enable you to quickly find the article, topic, or CLE which interests you. We would appreciate any feedback regarding these changes.

We've also tried to make the *Bar News* more topical. Consequently, in the last few issues we've had articles on the proposed split of the Ninth Circuit; the invalidation of the Sexual Predator Commitment Law; our state Supreme Court race; judicial campaign speech revisions; pending legislative bills; the Wenatchee sex-ring scandal (vis-à-vis repressed memories); and texts of bills which may interest our readers, such as SJR 8210 (changing the selection method of our Chief Justice) and HJR 4205 (the jury nullification amendment; also known as The Letter Department Topic That Would Not Die).

You may also have noticed the lack of theme issues. This is deliberate. My goal is to provide at least one article in each issue of the *Bar News* which will interest any given reader. The concept of a theme issue, which devotes the entire magazine to one topic, is anathema to this goal. This doesn't mean that articles which have historically appeared in a theme issue won't have a home in the *Bar News*, but it does mean that they won't be segregated into one issue.

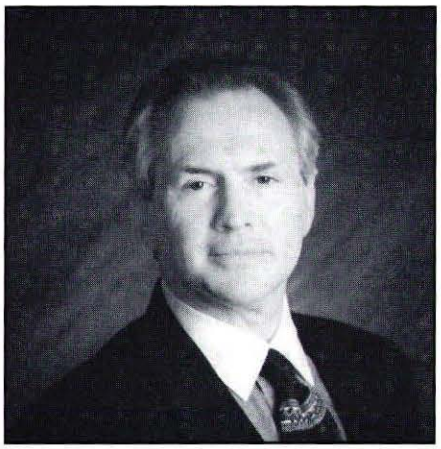
I've also noticed that many members are unclear regarding the powers and duties of the editor. The editor is an independent contractor of the WSBA. He or she is not a WSBA employee. This arrangement was purposely adopted by the Board of Governors to ensure the independence of the *Bar News* editor. Consequently, this permits an editor to offer occasional constructive criticism of our Association, such as last month's editorial regarding the WSBA Awards Luncheon. We are fortunate to have a Board which is secure and responsive enough to promote such an arrangement. Although not all members will agree with an editor's comments, I believe the alternative — an in-house editor taking direction from the WSBA — would make our Association a little poorer.

I welcome any feedback which you may have on my comments, or on the changes we've made in the *Bar News*.

Our goal is to make you proud of this magazine.

Professionalism

by **Edward F. Shea**
WSBA President



Edward F. Shea

We are part of a magnificent tradition. "The business of law is to make sense of the confusion of what we call human life — to reduce it to order, but at the same time to give it possibility, scope, even dignity," said Archibald MacLeish, "Apologia," *Harvard Law Review*, June 1972. We all share this belief, quietly and privately perhaps, but certainly.

And yet, the subject of our "professionalism" has been studied and restudied by both our association and countless state and national bar associations for decades. Those studies usually quote Dean Roscoe Pound of Harvard Law School whose definition of "professionalism" was:

> The term refers to a group . . . pursuing a learned art as a common calling in the spirit of public service — no less a public service because it may incidentally be a means of livelihood. Pursuit of the learned art in the spirit of a public service is the primary purpose.

For a more current version of the same thought, I quote Patrick E. Connelly, Spokane County Bar Association president, 1995, who said in that bar's newsletter:

> [Professionalism] to me means doing the best job for your client while still treating the other party (or parties) and his/her/their counsel with respect and civility. Professionalism further means practicing law ethically and being honest and true to your word. Finally, professionalism means providing legal services not only to those who can afford them, but also to those with limited means and taking action to help improve our profession.

Having read a number of those studies, it can safely be said that our profession has never lacked for fiery preachers pronouncing that it has gone to hell, that we must all repent, reform and resolve to save it. The human condition being what it is — imperfect — there is always room for improvement; the nay sayers are never entirely wrong, just given to overstatement.

A student of the history of our profession will encounter far more literature than can be quoted in one article that, at any given time in the history of our country, lawyers have been both cursed and honored. In his 1933 book, *Lawyers Must Eat*, which held a mirror up to our profession, Alexander L. Schlosser, cited numerous instances of lawyer misconduct that crossed all practice and geographic lines here in the United States. Schlosser quotes the book of another legal scholar for the proposition that towards the end of the eighteenth century, the town of Dedham, Massachusetts,

> [I]nstructed its legislative representatives to "endeavor that such regulations be introduced into our Courts of Law and that such restraints be laid on the order of lawyers as that we may have recourse to the laws and find our security and not our ruin in them" and if "such a measure should appear impracticable, you are to endeavor that the order of lawyers be totally abolished".

Whatever the faults of lawyers in eighteenth century Dedham, Massachusetts, the legal profession did not appear to have improved in the minds of some who spoke at the 1932 American Bar Association Convention. Schlosser quotes Judge William Clark of the United States District Court, Newark, New Jersey, as follows:

> I should like to warn you that the public is tired of the way the legal profession has betrayed its trust . . . . They have betrayed their trust in their dealings with the lives of individual citizens and that finally will, of course, arouse the public. You will have restricted legislation . . . . I would regret and we would all regret that that should occur, because all restrictive legislation is apt to go beyond its proper support of public opinion. I suggest, therefore, that the Bar consider seriously an outright numerical restriction.

At the same convention, Young B. Smith, Dean of Columbia University School of Law, was quoted by Schlosser as having a decidedly critical view of the state of the legal profession at that time. Dean Smith described our profession as thoroughly lacking in general education and culture, noting that only 16 states required any college training at all and of the 16, most required only two years of college as a prerequisite to admission to

the practice of law. The Dean is reported to have concluded his remarks by saying:

> If you would materially improve the ethical standards of the profession, law study must be so reorganized as to arouse in the future members of the Bar because I think the present members are beyond redemption — a higher idealism and a greater sense of public responsibility. This can best be done by placing a greater emphasis upon the social implications of legal rules and legal practices, thereby revealing to the student the true functions of law and of the lawyer.

Whatever the study or the generation, it appears to some that lawyers are seduced by materialism at the expense of their professionalism, or so the criticism goes. The criticism is as current as the 1995 address of Sol M. Linowitz to the American College of Trial Lawyers, "Moment of Truth for Lawyers," when he said that lawyers invite scoffing and derision simply because they have forgotten what they are supposed to be.

Linowitz, a noted lawyer, businessman and diplomat as well as author, summed up his feelings about the current state of our profession by saying, "Lawyers are making more and achieving less, and in the process, I am afraid, that they have lost a great deal of what we were meant to be." In an observation that reminds some of my comments in last month's *Bar News*, Linowitz warned,

> And the acceptance of the proposition that law is a business will, I believe, inevitably lead to the kind of government regulation that is imposed on other businesses — only more so, because of the lawyers' imposition powers. What I am saying is that if lawyers cannot by themselves reestablish a climate of professionalism, then government will set the parameters of behavior.

In the 1980s, the American Bar Associations' Commission on Professionalism issued its report to the Board of Governors and the House of Delegates of the ABA. Of the seven recommendations the Commission made to the ABA and to the American public, the last recommendation said in part,

> [F]or if the conduct of the members of the profession is not regulated by lawyers with sufficient vigor to sustain the trust of the American people, other agencies will take on the task and the independence of the Bar will be at risk. . . . If such action is not taken, far more extensive and perhaps less-considered proposals may arise from governmental and quasi-governmental entities attempting to regulate the profession . . . . The challenge remains. It is up to us to seize the opportunity while it is ours.

When these observers and other commentators talk about professionalism, they often quote Dean Roscoe Pound.

The tension it seems is between what are admittedly two components of the profession: earning a living while at the same time honoring the tradition of public service that is required of our profession.

In this continuing criticism of our profession, it is important to keep in mind that we are part of the legal system and that it is honored and respected by many. "No civilization . . . would ever have been possible without a framework of stability, to provide the wherein for the flux of change. Foremost, among the stabilizing factors, more enduring than customs, manners and traditions, are the legal systems that regulate our life in the world and our daily affairs with each other." Hannah Arendt, *Crises of the Republic*, "Civil Disobedience" (1972). But there seems to be something in the American Spirit that critically appraises those professions which seem to possess wealth, influence, and power. "America has always been a country of amateurs where the professional, that is to say, the man who claims authority as a member of an elite which knows the law in some field or another is an object of distrust and resentment." W. H. Auden, *Farber Book of Modern American Verse* (1956). More

recently, Louis Menand in an insightful and provocative article, "The Trashing of Professionalism," *The New York Times Magazine*, March 5, 1995, describes the rise of populous who are attacking professionalism not merely in the legal profession, but in all professions. He notes that an occupation "[B]ecomes professionalized when it sets up methods for controlling its membership in order to distinguish licensed practitioners — engineers, lawyers, architects, brain surgeons, anesthesiologist, history professors, and so forth from lay persons."

Describing professionalism as monopolies, Menand says, "True professions are self-regulating — what is proper for the profession rather than what market conditions demand."

Menand attributes the rise in professionalism to its elevation of excellence over profits. That its decisions are based not on economic factors and not on self-interest, but in disinterest. He analyzes the rise in resentment of the people about professions in this way:

> . . .it is not that professions have collapsed. What has collapsed is the faith in the ideal of a disinterestedness that profession is traditionally dependent on to justify their privileged niche in the system. And the reason for this collapse is the very condition that compelled all those students into law school and medical school: The chasm that now separates the upper fifth of American income-earners from everyone else. Professionals generate resentment on the part of people whose employment is relatively insecure and whose incomes are stagnant or in decline. Professionalism has started to look like a racket.

Menand warns that those who are critical of professionalism and its faults must themselves act in a spirit of disinterestedness or they will be seeking authority principally for self-interest in assertion of their own individual agendas. It was reassuring to find in Menand's article his view that professional ethical standards have probably never been higher and the professional practice has probably never been so closely scrutinized as it is today.

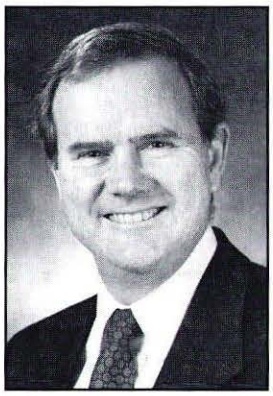
And I was grateful to find that opinion for it is one that I share. My observation of the lawyers that I am in contact with all across the state, is that they truly perceive their role as a member of the legal profession to not merely acquire wealth or material goods, but also to serve the public good. Countless examples abound. From the lawyers in each of our communities that give free clinics to those who want to process their own divorces, to lawyers who take referrals from legal services, organizations who take referrals at sharply reduced fees from legal service organizations, to the thousands of lawyers in all of our bar associations, including the State Bar Association, who work on committees and boards and task forces designed to improve both the practice of law and our profession, and those who have given so much of their time and money to secure federal and state funding for the continuation of delivery systems for legal services to the poor. We are blessed with thousands of lawyers who honor the historic tradition of public service. Each of us recognizes a continuing responsibility to give both time and money as we are able and as is consistent with our primary obligations to family and firm and community. Virtually every service organization throughout our respective communities enjoys a large amount of volunteers who are lawyers who contribute in every imaginable way to the betterment of our communities in our state. All of that conduct by our colleagues in the Washington State Bar Association exemplify a spirit of public service. I found particularly insightful the observation contained in the report of the ABA's Commission on Professionalism:

> Perhaps the golden age of professionalism has always been a few years before the time that the living can remember. Legend tends to seem clearer than reality. Still, it is proper — indeed it is essential — for a profession periodically to pause to assess where it is going and out of what traditions it has come.

As your president, I can assure you that the lawyers who have given up so much of their time and their life to serve on your Board of Governors are devoted to that very assessment.

For those of us who prefer a more concrete method, I offer this simple self-examination: at the end of each year, in view with the spirit of the season, just ask yourself what five or so things you have done as a lawyer that make you proud to be a lawyer. In the end, many of us will find that a much more reliable and meaningful guide than all of the reports of all of the state and national commissions that have ever been or will be published.

Michael J. Havers has joined **Stokes, Eitelbach & Lawrence, P.S.** as a shareholder, practicing in the areas of business law, commercial contracts and finance.



Michael Havers' practice focuses on commercial law, including general business contracts and aircraft, vessel and other asset acquisitions, leases and financings, both domestic and international. He also has experience in commercial litigation and construction contracts. Mike was formerly with the Seattle office of Perkins Coie, and before that he was a partner in the Johannesburg, South Africa law firm of Bowman, Gilfillan & Blacklock. Mike graduated from the University of the Witwatersrand in Johannesburg, where he also received his law degree. He also worked with the London firm of Linklaters & Paines.

50 Years of *Bar News*

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

As you will soon discover, this issue of *Bar News* is dedicated to celebrating the 50th Anniversary Year of *Bar News*. I decided to get out the minutes of the Board of Governors meetings for 1946 to see how the Board dealt with this auspicious event. The minutes make terrific reading — and entertainment.

The first reference to a WSBA publication comes from the November 17, 1945, meeting of the Board of Governors "in Judge Wright's courtroom in the Superior Court in Olympia, Washington." After handling some admissions problems, some law clerk program problems, and some discipline problems (just like the Board of Governors is going to do this weekend in Olympia), the Board moved on to other business items:

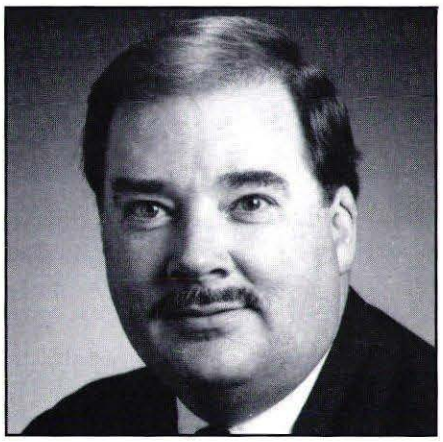
- hearing the Unauthorized Practice of Law Committee Report (just as the Board of Governors is going to do this weekend in Olympia),
- deciding that "the War Finance Committee [should] be advised that they may have the use of the address-o-graph plates for sending out letters prepared by them at the usual cost,"
- considering "Christmas gifts for the office force" (nothing like that on this weekend's agenda!),
- and, finally, this entry: "In re *Publication of Monthly Journal* — It was moved, seconded and carried that no action be taken on this matter at this time."

That's right! They tabled it. Surely, nothing like that has happened recently!

In May of 1946, the Board grappled with the fact that the office rent was going up from $151.50 per month to $174 per month and decided that the Executive Secretary should be authorized to purchase a *motorized* mimeograph machine. No mention of *Bar News* or the "monthly journal."

In August, the Board decided that the salary for the "two assistants in the Executive Office be increased to $25 per month," and then this interesting entry: "In re *new clock* — It was moved, seconded and carried that a clock be purchased in an amount not to exceed $15." No further explanation was offered on where the clock was to go.

The Board then considered the requests of two insurance companies for the Bar's mailing list and summarily denied the requests — that policy hasn't changed! Finally, a hint about that monthly journal:



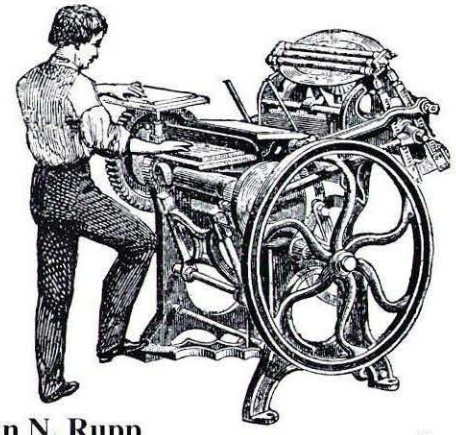
Dennis P. Harwick

"It was moved, seconded and carried that the Executive Secretary prepare a tentative budget for the year 1947, and that she likewise *submit the cost of editing a monthly news bulletin.*"

Finally it was November, the last meeting of the year. The Board had conducted all its business. It had even approved the next year's committee appointments (no small feat even now). And in the last paragraph of the last set of minutes for the year, comes the moment of truth:

> In re the request of Judson F. Falknor asking for $600 additional for the joint publication of the Washington Law Review and the State Bar Journal, it was moved, seconded and carried that Mr. Taylor (Board of Governors member Edward R. Taylor) advise Dean Falknor that this amount will be allowed providing that all the space in one issue become the property of the Washington State Bar Association for its exclusive use in publishing the proceedings of its annual meeting, and that the other three issues [be] allocated to the use of the *Washington Law Review*.

In the course of one year, the issue was tabled, the publication was called a monthly journal, a monthly news bulletin, and, finally, the *State Bar Journal*. But that was it. The publication was authorized — even though it had to share space with the *University of Washington Law Review*. We know it today as the *Washington State Bar News*. It turns 50 this year. And we don't have to print it with that damn motorized mimeograph machine!



In the Beginning . . .

by **John N. Rupp**

The 1996 issues of the *Washington State Bar News* will comprise Volume 50 of that estimable publication, and that circumstance has led the energetic new editor to ask me to write about those high and far-off times when the *Bar News* was started.

There is a mystique about 50th anniversaries that seems to require some sort of recognition. For example, in 1887 the British Empire celebrated the 50th anniversary of Queen Victoria's accession to the throne. The British Isles were illuminated that night with bonfires and flaming beacons, an event that led A.E. Housman to write:

> Look left, look right, the hills are bright,
> The dales are light between,
> Because 'tis fifty years tonight
> That God has saved the Queen.

And to conclude thus:

> Oh, God will save her, fear you not:
> Be you the men you've been,
> Get you the sons your fathers got,
> And God will save the Queen.

In one way or another, our State Bar Association has for many years left footprints in the sands of time in the form of printed records. The old Association, before the Integrated Bar Act and the formation in 1934 of the present Association, printed and published its Annual Reports. You can find them in the larger law libraries. I have looked through them on occasion, but the only sentence that sticks in my memory is that which opened the President's Address in 1912. President W. T. Dovell started thus:

> This being an even-numbered year, God in His infinite mercy has vouchsafed to us no session of the State Legislature.

Soon after the present Bar Association was formed, the Association commenced publication of the *State Bar Journal*. It was a quarterly and was published with the *Washington Law Review*. If you look back through your bound volumes of the *Law Review*, you will observe that for several years the publication was the *Washington Law Review and State Bar Journal*. The arrangement was advantageous to both the Bar Association and the University of Washington School of Law in that the Association made a significant money contribution, and *Law Review* circulation soared because every lawyer in the state received a copy. No salaries were paid to the staff of either publication. The *Law Review* folks were in charge of printing and mailing. I remember that in 1936-1937 I was student editor of the *Law Review* and J. Gordon Gose was editor of the *Bar Journal*. My only problem with the *Bar Journal* was that Jack Gose was usually late in meeting our deadline for copy. Later on, after I started practicing in Seattle, I became editor of the *Bar Journal* and came to understand the problem that a practicing lawyer has in attending to an extra-curricular function such as getting out a bar journal.

But both the Bar Association and the law school were uncomfortable with the arrangement. The Association's Board of Governors realized that a quarterly journal was hardly a good vehicle for keeping the lawyers *au courant* with Bar matters, and the law school faculty believed that the joint publication made their counterparts in other Groves of Academe view our *Law Review* as a parochial publication hardly fit for the community of scholars. So the winds of separation started to blow in about 1940, but the matter had a low priority, and then World War II came along and put everything on hold. I was in the Navy in the North Pacific and gave no thought to the Bar Association matters at home.

When I returned to civilian life and our law firm, in February of 1946, I found that the separation was imminent and that the Board of Governors had decided to create the monthly *State Bar News* and I was to be the editor. What with one thing and another, we didn't start actual publication until early 1947.

Those familiar with the *Bar News* in its present form would hardly recognize it in its earlier manifestation. It appeared monthly as a four-page publication. It was printed by the Argus Press, presided over by the very able Charles Fowler, well-known to lawyers as the printer of briefs. Oh, yes, all appeal briefs to the Supreme Court were printed, as were many other documents. No one had ever even heard of office copying machines — all typewriters were "manual," and carbon paper was large in the land. In federal court appeals, even the record had to be printed.

You sent your manuscript to the print shop, and the type was made on a Mergenthaler Linotype machine. Each line was a separate "slug" of type cast from molten metal by the machine operator. The slugs were then arranged in long forms called "galleys," and a galley proof was sent to you for correction. You returned the galley proof, showing your corrections or changes, to the printer and in due course received a new proof. In the case of briefs, you got "page proof" showing the pagination of the brief, together with index and tables. By that time in the process, you were supposed to have made all your changes. Al Schweppe, however, would sometimes change his mind and write new stuff all around the margins of the page-proof sheets. He drove printers to distraction. I remember being around the Argus print shop and hearing printers mutter, on receiving Al's new material, "That goddamn Schweppe!" But Al didn't care; he wanted perfection in his briefs, and printers' feelings didn't count.

Some older readers may wonder why I

explain about printing and briefs. I do so because even people of middle age won't remember such things. About 15 years ago, a Portland lawyer asked me for a copy of my brief in a case decided by our state Supreme Court in the 1950s. So I exhumed my copy and asked my secretary to make a photocopy for the fellow in Portland. She turned the brief around in her hands and exclaimed, "My, what a pretty little book." Never before had she seen a printed brief.

When we decided on the *Bar News* format, Mr. Fowler consulted a designer about the appearance of the name at the top of the front page. We finally settled on an Old-English typeface. Some time later, Fowler told me that one design his "expert" had submitted showed a drawing of a long mahogany bar with a back-bar mirror and a smiling bartender. (All he had been told was "Bar News.") I asked Fowler for the drawing and he informed me that he had been embarrassed and had destroyed it. A pity! What a cheerful front cover it would have made for, say, Volume 50 No. 3.

As time went on, sometimes the *Bar News* would have six or eight pages. Nearly all of it was written by me, although I had some correspondents in other parts of the state. I remember them with affection and their work with respect.

And for a year or so I had a professional assistant in Seattle in the person of my old friend, Bill Speidel, a free-lance publicist hired for me by Clydene Morris, the Bar Association's Executive Secretary. But those of you who have read Bill's books know that he had the literary style of a musk ox, so usually I had to rewrite most of his news accounts. I discussed this with Bill, and finally I told Clydene that we might as well reduce our expenses by dispensing with Bill's services.

Washington State Bar News

SEVEN BAR BILLS GET NOD FROM LEGISLATURE

INTRODUCING . . . The WASHINGTON STATE BAR NEWS

DELEGATES BACK WORLD COURT, ATOMIC CONTROL

BOARD OF GOVERNORS TO ANNOUNCE BAR EXAM RESULTS

PROS, CONS OF NEW METHOD FOR SELECTING JUDGES AIRED

Then . . .
the first Bar News

A wryly amusing aspect of that situation was this: Clydene was some sort of shirt-tail relative of Loren Grinstead, a prominent Seattle lawyer. Bill Speidel's first wife was Loren's daughter, Nanon. Nan Speidel was a sprightly lady whom I knew socially. She had an unusual custom. Nearly everyone smoked in those days, and Nan used a cigarette holder. When she was through with a smoke, she stored the holder in her bosom. Many ladies stored small objects in their cleavage, but Nan was the only one I knew who put a cigarette holder there. Ewen Dingwall characterized her practice as "unappetizing." Whether that was a cause of their estrangement I do not know, but eventually Nan and Bill were divorced. One day Bill telephoned me: "Do you suppose it is only a 'coincidence' that the day my divorce became final was the day Clydene Morris informed me that I was fired from the *Bar News*?" I told Bill that so far as I knew it was a coincidence. But I knew Clydene quite well and must say that I cannot put that timing as beyond her mind. I never knew, however, and did not pursue an inquiry.

So the *Bar News* rocked along reasonably well and peacefully during the ten years, 1947-1957, when I was editor. I think we kept the lawyers reasonably well-informed. Sometimes I would write editorials, a delightful prerogative of an editor. I always used the "Editorial We," ever mindful of Mark Twain's observation that the only individuals who can be "we" are kings and queens, editors and persons with tapeworms.

One time I wrote an editorial that started, "We wish we would get more letters," pointing out that letters to the editor add spice to a publication. I think I didn't get a heavy response. But Jake Gose sent the editorial to our mutual friend, Nard Jones of the *Seattle Post-Intelligencer*. Soon, I started receiving letters from Nard. One I remember was this:

Sir. What is to be done about the crickets in the ale at the Sign of the Steaming Bitch? This is a disgrace to the Crown!

Anxiously,
J.W.B. Manningham-Twicket, OBE

There was a whole spate of these missives, mostly even less printable than the example. Jones was a good writer and a

noted wag, and I have many pleasant recollections of him and his *PI* colleague Doug Welch.

One day, the mail brought a letter from Bellingham lawyer John Marshall Bacon. He reported that a William Claude Dunkenfield had invented an "atomic-explosion-proof sheet" which would be invaluable in preserving court records, bank documents and deeds on file in county auditors' offices. The sheets were somewhat heavier than paper and would require the strengthening of courthouse floors and the use of power punches and stove bolts to fasten them in files — all minor inconveniences compared to the security and preservation of important documents. He went on in that vein at some length. Naturally, I printed his letter and did so without comment. A while later I got from Bacon copies of his correspondence with a purchasing agent of a Seattle bank. The bank fellow asked for more information and Bacon was happy to oblige with a letter even more fanciful than his initial offering. I heard no more about it until Harvard Palmer expressed his gratitude that I had not published that subsequent correspondence. Harvard's letter closed thus: "I had speculated that our Mr. ___'s peculiar gait was a result of his early life on the side hills of the Palouse country, but now I believe that it's the result of his having had one leg pulled more than the other."

In contrast to some of my successors as editor, I never had any arguments or controversies with the Board of Governors. Perhaps it was because I was never paid for my services, but I prefer to think it a result of my winsome nature. I did get a criticism once, although not from the Board. The United States still used military conscription, and the topic of draft evaders was sometimes quite hot. One day I wrote a news story about the formation by some Seattle lawyers of a committee to provide representation for persons charged with draft evasion. Promptly I was telephoned by George Stuntz. He told me I was out of line and was giving aid and comfort to the enemy. I explained that all I had done was report the news and had not expressed an opinion for or against the committee. Evidently, however, George was not mollified. For soon Paul Ashley telephoned. Paul was the First District member of the Board. He reported that Stuntz had called him to complain of my conduct. "What did you tell him?" I asked. "Oh, hell," said Paul. "I told him that we knew Rupp was incompetent, but he sure was cheap." And I never heard another word about it.

As you have already divined, the early *Bar News* was really a one-man show. Then one day in about 1956 I was called on by a young lawyer named Robert M. Elston who said he liked the *Bar News* and would like to assist in its publication. So I put Bob to work doing some writing and some of the "dog work" of preparing an issue for publication and mailing.

Lindsay Thompson and Robin MacNeil have said that suddenly there comes a "click" in one's head that says it's time to quit. With me, it is a more gradual process best described by the country expression "running out of soap." So, in 1957, I informed the Board of Governors that I was resigning. They were gracious about it and appointed Mr. Elston to succeed me. I reminded Bob of Act I, Scene I of *Hamlet*, where the sentry at Elsinore tells the new sentry, "For this relief much thanks."

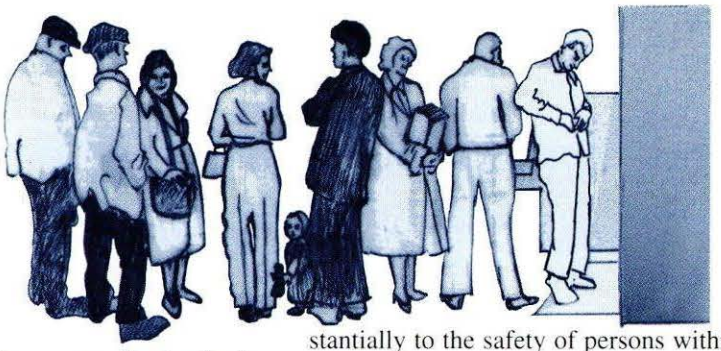
. . . and now.
Bar News *staff and production crew at Valco Graphics press site.*

Through the permutations and combinations of the succeeding 40 years, the *Bar News* has undergone many changes, all of which I believe have improved it. I am pleased to have had a hand in its origin and early development, and grateful to many of my lawyer friends for their help and cheer. Perhaps this stanza from Hilaire Belloc's "Dedicatory Ode" expresses pretty well the camaraderie of the Bar:

> From quiet homes and first beginning,
> Out to the undiscovered ends,
> There's nothing worth the wear of winning
> But laughter and the love of friends.

In addition to serving as the first editor of the Bar News, ***John N. Rupp*** *was the 1995 recipient of the WSBA Lifetime Service Award.*

Courthouse Security Draft Report *by* **Jeff Sullivan**



Introduction

The issue of courthouse security came to the forefront earlier this year, when three people were shot to death in the halls of the King County Courthouse. Following this tragedy, Chief Justice Durham convened a courthouse security summit to explore ways to ensure the safety of citizens and court personnel conducting business in our courts.

One of the recommendations of the summit was to create a task force to review the issues surrounding courthouse security and establish uniform security standards.

The Courthouse Security Task Force began meeting during the summer of 1995 to develop courthouse security standards. The following proposed standards are for your information, consideration, and comment.

What is Courthouse Security?

Courthouse security encompasses deterrence, detection, and limitation of damage. Security must serve the objectives of the judicial process, not dominate them. Proper and effective security design of courthouse facilities can contribute substantially to the safety of persons within the courthouse. The more effective the deterrent, the lower the incidence of security problems. Finally, security seeks to limit damage that may be caused by an action or a threat.

It is incumbent upon state and local government to provide practical standards for a safe and secure courthouse environment for the public, employees and officials through a collaborative effort of the three branches of government: executive, judicial and legislative.

STANDARD 1 LOCAL COURTHOUSE SECURITY COMMITTEE

A Local Courthouse Security Committee should be established for the implementation of these standards.

Commentary

Specific security needs inevitably will vary from location to location due to local conditions and changing circumstances. Thus security must be addressed within each jurisdiction and there must be a formal mechanism for doing so.

Court security issues affect many sectors of the community and include differing local needs and serious funding concerns. A Local Courthouse Security Committee should include representatives of the judges, law enforcement agencies, funding authorities, clerks and other appropriate bar and community groups. The issues should be reviewed in a cooperative and constructive manner.

A Local Courthouse Security Committee may be initiated by the presiding judge or a local legislative authority. An existing local Law and Justice Council may serve as the Local Courthouse Security Committee.

STANDARD 2 SECURITY POLICY AND PROCEDURES MANUAL

A Security Policy and Procedures Manual should be developed and maintained for each courthouse.

Commentary

Every anticipated security incident should have a policy statement and procedure to prevent such incident and to react to such incident. All employees should have a personal copy of the manual, receive training pursuant to the manual, and know what is expected of them during a security incident.

STANDARD 3 PERSONS SUBJECT TO SECURITY SCREENING

All persons should be subject to security screening. Mail and other deliveries to courthouses should be received in a central location. All items should be subject to screening.

Commentary

One of the best security measures is the interdiction of weapons. The only certain method for interdiction is to screen all people without exception when they enter the facility.

Mail is a common method of delivering bombs. Without adequate screening, mail and other items delivered to a courthouse cannot be considered safe. Technology is readily available to complete non-intrusive examination.

STANDARD 4 COURTHOUSE SECURITY OFFICERS

Uniformed, commissioned officers should be assigned specifically to courthouse security. *[This recommendation may be modified to include private security guards.- Ed.]* The officers should receive specific training on courthouse security and the use of weapons in a courthouse environment.

Commentary

Courthouse security should be a law enforcement function. All officers assigned to court security should be state certified. Law enforcement officers in the court for other reasons should not be considered a component of the court security system. The security of the courthouse should rest with individuals who have received specific training in courthouse security and the courthouse security system.

STANDARD 5 WEAPONS IN COURTHOUSE FACILITIES

A. No weapon should be permitted in the courthouse facility except those carried by courthouse security officers or as authorized by section B.

B. Each court should establish by court order rules governing carrying of weapons into the courthouse facility by law enforcement officers. Law enforcement officers outside the scope of their employment should not be permitted to bring weapons into the court facility.

C. Minimum standards of security should include magnetometers, x-ray machines and secure storage lockers for weapons.

Commentary

The issue of whether and when law enforcement officers should be required to surrender their weapons at the court facility is highly controversial.

Competing views require individual courts to review their needs and formulate policy based upon defined security needs and the political realities which exist in a given community.

STANDARD 6 MOVEMENT OF PRISONERS

A. Prisoners should be transported into and within the courthouse facility through areas which are not accessible to the public. When a separate entrance is not available and public hallways must be utilized, appropriate physical restraints should be employed and public movement in the area should be restricted during the time of prisoner transport.

B. Prisoners should be held in a secure holding area while awaiting court hearings and during any recess.

C. Law enforcement or corrections officers should accompany prisoners to the courtroom, remain during the hearing and return prisoners to the secure holding area.

Commentary

If transport is made through a public area, it exposes the public to danger, enhances the possibility of prisoner escape and increases the ability to transfer weapons to prisoners.

Court security officers and bailiffs should not assume this responsibility for prisoners.

STANDARD 7 DURESS ALARMS FOR JUDGES AND COURT PERSONNEL

All courtrooms and hearing rooms should be equipped with duress alarms connected to a central security station. Duress alarms should also be located on the bench and chambers of the judicial officer, and at the work station of bailiff, receptionist, secretary, court clerks and all cash handling counters within the court facility. The duress alarm system should be a system with enunciation capability, i.e., identifying the specific source of the alarm.

Commentary

It is important that the duress alarm system be a type which includes an audible alarm at the central security station; however, the system should not include an audible alarm at the activation site. The duress alarm system should quickly summon additional help from the county sheriff's department or the nearest police jurisdiction when needed.

Testing of duress alarms should be done regularly so that confidence in the system is maintained.

STANDARD 8 CLOSED-CIRCUIT VIDEO SURVEILLANCE

The use of closed-circuit video surveillance is recommended. Closed-circuit video surveillance should include the court facility parking area, entrances, lobby, courtrooms and all related public areas.

Commentary

Public notification that the courthouse is under video surveillance will serve as a deterrent. The design of some existing courthouses may require a greater reliance on supplemental security devices such as video equipment. Closed-circuit video surveillance should be effectively monitored.

STANDARD 9 RESTRICTED ACCESS TO COURT OFFICES

There should be controlled access to the offices of judges and court personnel.

Commentary

The security of the office space housing judges and court personnel must be maintained. Unlimited access to this area is dangerous and unnecessary.

Steps that may be taken to facilitate this standard include a main receptionist checkpoint, passive or active electromagnetic hall locks, cardreader door locks, and video or other visual entry packages.

The judges' chambers and parking spaces should not be designated by "Judge" signage.

STANDARD 10 AFTER-HOURS SECURITY

A comprehensive security plan should include procedures for security in the courthouse and related areas for periods of time other than normal working hours.

Commentary

None

STANDARD 11 STRUCTURAL DESIGN OF COURTHOUSE

The local courthouse security committee should participate in the planning process of the design, construction or remodeling of courthouse facilities.

Commentary

None

STANDARD 12 INCIDENT REPORTING

A. Every violation of the law that occurs within a courthouse facility should be reported to the law enforcement agency having jurisdiction.

B. The Security Policy and Procedures Manual for each courthouse should include a policy for reporting security incidents.

C. Procedures for the tabulation of such incidents should developed by the Office of the Administrator for the Courts of Washington State.

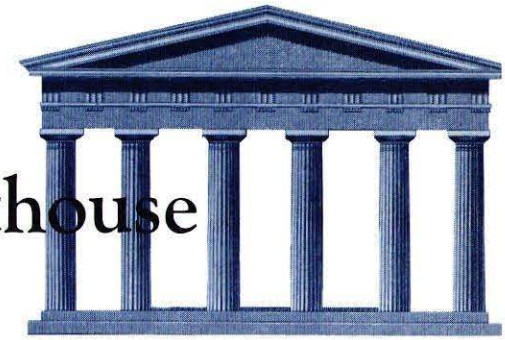
Commentary

To measure the effectiveness of court security procedures, it is mandatory to recognize and report these incidents. A standard incident reporting form developed by the Office of the Administrator for the Courts should be utilized by court personnel to record a summary of each event which compromised the security of the court and/or the safety of the participants in the court process.

Jeff Sullivan *is the Yakima County Prosecutor and chair of the Courthouse Security Task Force.*

Comments on the draft report may be directed to Chuck Foster at the Temple of Justice, P.O. Box 41174, Olympia, WA 98504-1174, or via fax at (360) 357-2127. The deadline for commentary is March 31, 1996.

ADR Comes to the Courthouse



by **Paula Casey**

By special appointment, several hundred people went to the Thurston County courthouse for a new program last year. They went to resolve lawsuits, but they were not there for a trial, nor to meet a judge in a black robe. Instead, the parties and their attorneys participated in Alternative Dispute Resolution Week.

Thurston County Superior Court brought alternative dispute resolution processes to the courthouse for any civil matter during one week in March and October.[1] In addition to regular calendars and trials, the court set aside the equivalent of one day for every judge for four settlement conferences. In addition, through the Thurston County Dispute Resolution Center and private mediators, the court provided daily courthouse mediation sessions. The goals were to better acquaint attorneys and the public with alternative dispute resolution resources, and to make those resources available at the courthouse.

By local rule[2], one party could invoke ADR Week processes by requesting participation. Responding parties were then required to participate in the mediation or settlement conferences unless they could show cause for not participating. Counsel participated with the parties in all ADR processes.

More than 100 cases participated in Thurston County's two ADR weeks. During each week, mediation and settlement conference requests were equally divided. Over half of the cases were fully resolved during these appointments.

The numbers illustrate the success of the program, but they tell only part of the story. Experience in other settlement and mediation work in Thurston County indicates that although a case may not resolve at the formal meeting, it may still resolve without trial. We believe that settlement and mediation work contributed to such resolutions. Thus, the court expects to see few of the ADR Week cases in trial.

Features of Thurston County's Program

1. Offering ADR at the courthouse. The location of the ADR meetings demonstrated that ADR can be an integral part of the court system. Arbitration under the Mandatory Arbitration Rules and judge-conducted settlement conferences have long been regarded as part of the court system; this program introduced mediation as another problem-solving process available at the courthouse.

2. Offering more than one form of ADR. Different cases can benefit from different types of ADR. The opportunity to self-select the form of ADR preserves an important role for counsel in choosing the process that will best benefit a particular case.

3. Offering a no-cost form of ADR. Some individuals resist mediation because of its cost. By offering a no-cost settlement conference, everyone has an opportunity to participate without incurring the cost of a neutral. (The first ADR Week provided no-cost first-session mediation with the donation of service from the Thurston County Dispute Resolution Center and some private mediators; the second ADR Week provided nominal-cost first-session mediation by agreement with the same resources. All follow-up sessions were billed at customary rates. It may be unrealistic to expect either group to participate below their normal rates on a consistent basis.)

4. Support by the Attorney General's office and the local bar. A program is only successful if people use it. The Attorney General's office, which conducts a significant amount of business in Thurston County Superior Court, participated in both ADR Weeks and promoted the ADR opportunity among its attorneys. The local bar publicized both ADR Weeks and offered an ADR CLE timed for the fall session.

5. The courthouse atmosphere. During ADR Week, the court furnished a coffee-break room for all mediators, parties and counsel participating in the program. The atmosphere was cooperative and conciliatory in comparison with more adversarial courtrooms.

Lessons Learned

1. Administration and scheduling during a single week is a challenge. Good support resources are a must. Extra space for mediations, such as jury deliberation rooms, is required. Some flexibility is also needed to accommodate cases outside the week if schedules require.

2. Different types of cases benefit from different types of ADR. There are a multitude of approaches to mediation, and it is important to note that different cases benefit from different types of mediation. Parties with ongoing relationships in businesses, neighborhoods and families benefit most from interest-based mediation. Tort lawsuits where parties are replaced at the bargaining table by insurers may benefit from a different type of ADR. More complicated legal issues may require mediators with experience in complex mediation or in the subject matter of the lawsuit. Thurston County's next ADR effort will more closely match the type of case with the best facilitation model.

3. The experience and skill of the neutral affects outcomes. Because the resolution of a case can be determined by the skill of the neutral, the court and the attorneys have responsibility for careful selection. The court should screen and qualify its mediation panel. Attorneys should seek out appropriate mediators or other resources for each case.

Conclusions

Court-annexed ADR rewards courts with cost-savings and civil backlog reductions, and benefits litigants by resolving cases sooner and for less money. Moreover, court-annexation ensures that ADR services are broadly accessible, and demonstrates the legal community's commitment to providing the best ways to solve legal problems.

Thurston County Superior Court will offer Alternative Dispute Resolution Week this year during the week of April 29-May 3. An additional model of ADR

will be added for the coming session. Attorneys with at least ten years of experience in personal injury or wrongful death litigation will be available for peer settlement conferences in personal injury and wrongful death lawsuits. The deadline for signing up for ADR Week is March 15, 1996. Interested persons may call Beverly Morgan at (360) 786-5560 for more information or to request participation forms.

Endnotes

[1]For 20 years Thurston County has required settlement conferences in dissolution proceedings. Since 1987 the court has mandated mediation for disputed parenting plans.

[2]**THURSTON COUNTY SUPERIOR COURT LOCAL RULE**

Thurston County Superior Court designates the week of April 29 to May 3, 1996, as Alternative Dispute Resolution Week (ADR Week). The following emergency local rules are adopted:

ELR 96-01 ALTERNATIVE DISPUTE RESOLUTION WEEK

(a) Request for Settlement Conference or Mediation.

(1) *Requests.* Any party desiring to participate in a settlement conference or mediation session during ADR Week shall file a Notice of Request to Participate in ADR Week in the form appended to this rule. The requesting party shall designate the ADR model to be scheduled from among the choices of mediation, judge-conducted settlement conference or peer-attorney settlement conference (peer-attorney settlement conferences are available only in personal injury cases). This request shall be filed no later than close of court business on March 15, 1996.

(2) *Notice.* Parties requesting participation in ADR Week shall serve a copy of the Notice of Request to Participate in ADR Week and a copy of this rule on all counsel or parties by March 15, 1996.

(b) Participation.

(1) *Participation Required.* All parties shall be required to participate in a settlement conference or mediation session if a Notice of Request to Participate in ADR Week is filed and served by any party, unless an objection is filed and a waiver granted.

(2) *Objections.* Any party objecting to participation in a settlement conference or mediation session shall be required to demonstrate good cause for a waiver of this requirement. An objection, together with materials identifying the basis for the objection and demonstrating good cause for the waiver, shall be filed and served on all parties by March 25, 1996, and scheduled for hearing.

(3) *Hearing on Objections.* All hearings on objections and requests for waiver shall be scheduled for April 8, 1996, at 9 a.m.

(c) Requirements.

(1) *Statements.* All parties to a cause for which a request to participate in an ADR Week settlement conference has been filed shall file with the court and serve on all counsel or parties a statement containing a concise discussion of all relevant factual and legal issues presented by the lawsuit by April 19, 1996. Statements in marriage dissolution actions for which a request for participation has been made shall also comply with LSPR 94.04(f). Written statements are not required for mediations unless requested by the assigned mediator.

(2) *Participation.* All parties and counsel shall attend the settlement conference or mediation session scheduled pursuant to a request to participate in ADR Week; *except in family law mediations*, the requesting party shall designate whether counsel should attend. Any party objecting to the designation regarding attendance by counsel at family law mediations shall file and serve the objection on the other party by March 25, 1996, and schedule for hearing.

(3) *Hearings on attorney participation.* All hearings on issues of attorney attendance shall be scheduled for April 8, 1996, at 9 a.m.

(d) Time and Place of ADR Week Sessions. Settlement conferences or mediation sessions will be scheduled at the Thurston County Courthouse, Building 2. The court will notify all parties or counsel of the specific date and time by April 19, 1996.

✣ ✣ ✣

Judge ***Paula Casey*** *presides at the Thurston County Superior Court.*

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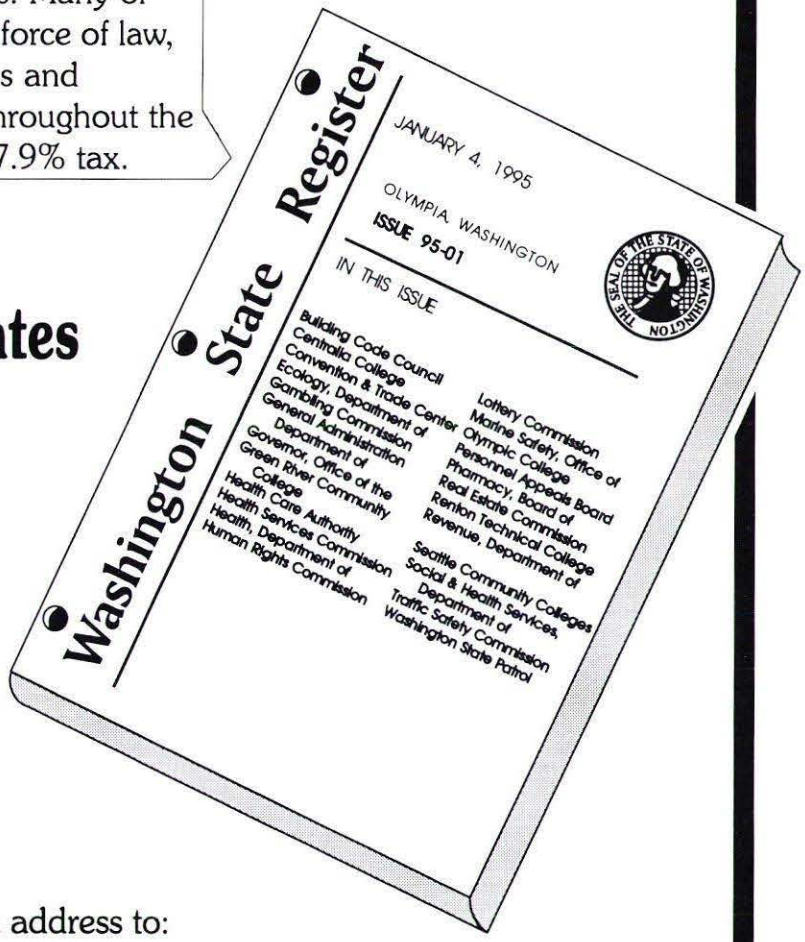

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NO BALM IN GILEAD: AN EXAMINATION OF *BIRKLID V. BOEING*

I am wounded at the sight of my people's wound;
I go like a mourner, overcome with horror.
Is there no balm in Gilead, no physician there?
Jeremiah 8:21-22

by **Randolph I. Gordon**

Washington's Industrial Insurance Act: The Myth

The myth which underlies the Washington Industrial Insurance Act (RCW 51.04.010 *et seq.*) is this: In 1911, based upon a *quid pro quo* compromise between employees and employers, employees gave up common law actions and remedies in exchange for sure and certain relief. Upon occurrence of a compensable occupational disease, the Act became the exclusive remedy for employees against their employers for such diseases.

The basic elements of this compensatory scheme are these: Nearly all civil actions by workers against their employers are eliminated; "fault" is eliminated; the types of recognized damages are limited; the recovery of damages is limited by schedule; and evidence is presented in the first instance to an administrative judge rather than a jury.

However, for workers injured by toxic chemicals, the hope of sure and certain relief has proven illusory.

The workers' compensation system institutionalizes the relative power of industry and the worker at that historic interval in the early 1900's when the pendulum had swung to its extreme position of promoting industrial enterprise over individual rights, in the heyday of the railroad, before the age of trade unions or the automobile. In short, workers to this day labor under limitations in compensation exchanged for industry's having yielded evanescent common law defenses about to be taken from it. By contrast, the employer continues to enjoy under the Industrial Insurance Act freedom from any civil action instituted by the worker even in cases of conduct which is grossly negligent.

The unfortunate consequence of the limitation in the recovery of damages central to the workers' compensation system is the corresponding reduction in the deterrence against injurious conduct and the incentive for workplace safety. Public policy is not well-served by the unsavory spectacle of employers eagerly asserting their own negligence, embracing even gross negligence, so as to be obliged only to pay the relatively meager scheduled damages available under the Industrial Insurance Act rather than bearing the actual financial consequences of their wrongdoing which would flow from civil liability.

However, the intentional tort exception to the Industrial Insurance Act, when applicable, makes industry accountable for the actual damages of harm intentionally inflicted upon its workers. In principle, the Act has always yielded to actions against the employer for intentional injury to the worker arising under RCW 51.24.020, where it could be shown that the employer had the specific, deliberate intention of producing such injury. In practice, however, there has been only one instance (in 1922) where a *contested* claim of deliberate intention has survived summary dismissal and been remanded to a jury for determination. Until now.

The Intentional Tort Exception in Operation: A Brief Review

In *Perry v. Beverage*, 121 Wash. 652, 209 P. 1102 (1922), defendant Beverage, a supervisor for the employer, assaulted Mr. Perry with a ceramic pitcher, striking him in the face. Beverage testified that he had "struck him with all my might. I don't know just how hard I did strike him." *Id.* at 659. There was sufficient evidence, the Washington Supreme Court concluded, for a jury to find deliberate intention to produce injury.

In *Mason v. Kenyon Zero Storage*, 71 Wn. App. 5, 856, P.2d 410 (1993), a supervisor (Barrett) purposely chased another worker with a forklift, crushing him between two drums. Affidavits established that Barrett often rammed employees with a forklift to enforce discipline. Deliberate intent to injure was not in dispute on appeal.

In every other case from *Perry* in 1922 until 1995, the Supreme Court declined to find sufficient evidence of deliberate intention to cause injury to warrant a jury trial. *Delthony v. Standard Furniture Co.*, 119 Wash. 298, 300, 205 P. 379 (1922)(adopting language of the Oregon court in *Jenkins v. Carman Mfg. Co.*, 79 Or. 448, 155 P. 703 (1916)) set the stan-

dard to be applied for the next 80 years:

> We think by the words "deliberate intention to produce the injury" that the lawmakers meant to imply that the employer must have determined to injure an employee and used some means appropriate to that end; that there must be a specific intent, and not merely carelessness or negligence, however gross.

Failure to observe safety procedures and gross negligence respecting safety laws is not enough to give rise to an inference of "deliberate intention" to cause injury. *Biggs v. Donovan-Corkery Logging Co.*, 185 Wash. 284, 54 P.2d 235 (1935) (Logging cable snapped; although readily foreseen, was not deliberate); *Foster v. Allsop Automatic, Inc.*, 86 Wn.2d 579, 547 P.2d 856 (1976) (knowingly disabling a safety device insufficient to show intent to cause the injury which resulted).

Even where an act has a substantial certainty of producing an injury, it has not been held sufficient to show deliberate intent. In *Higley v. Weyerhaeuser*, 13 Wn. App. 269, 534 P.2d 596, *review denied*, 85 Wn.2d 1013 (1975), for instance, a saw operator was injured when a piece of a saw's rotating cutterhead broke loose, penetrating a Plexiglass shield and driving a piece of the shield into Higley's eye. The high frequency of flying cutterheads and the inadequacy of the shielding did not suffice to show deliberate intent.

As the Supreme Court summarized: "Our courts have effectively read the statutory exception to the IIA's exclusive remedy policy nearly out of existence." *Birklid v. The Boeing Co.*, 127 Wn.2d 853, 862 (1995). "Under all court interpretations to date," the Court noted, "RCW 51.24.020 has provided an exception only for a case of assault and battery . . . . The statutory words must . . . mean something more than assault and battery." *Id.* At 862-63. The Washington Supreme Court decided that the facts surrounding the case of Theresa Birklid and her co-workers at Boeing's Auburn plant would serve to illuminate the meaning of the law.

Birklid v. Boeing: Toxic Exposures, Anticipated Injury

In 1987, a novel phenol formaldehyde composite, known as CPH2284P, underwent preliminary testing in Boeing's Auburn plant to meet a Federal Aviation Administration deadline imposing new requirements for flame-resistant materials in the construction of passenger aircraft. Internal Boeing documents obtained during pretrial discovery revealed that workers complained of illness shortly following the introduction of the composite into the Auburn plant's 1702 building for pre-production testing. Building General Supervisor Johnson requested additional ventilation for the building stating:

> During MR&D [materials research and development] lay-up of phenolic pre-preg, obnoxious odors were present. Employees complained of dizziness, dryness in nose and throat, burning eyes, and upset stomach. We anticipate this problem to increase as temperatures rise and production increases.

The request for ventilation was denied the next month: "The odor level of the phenolic prepregs relative to other materials currently used . . . does not warrant expenditure of funds for additional ventilation at this time."

Following the introduction of CPH2284P into production, dozens of workers reported burning eyes, skin and throat irritation, disorientation, fatigue, dizziness, nausea, vomiting, and dermatitis. As had been anticipated by Supervisor Johnson, the problem had indeed worsened. (Ironically, Mr. Johnson, himself, later reported symptoms from the toxic exposure.) According to members of worker "safety circles," Boeing refused to heed worker complaints and continued to deny any relationship between the composite material and illness.

The workers' evidence: Boeing discouraged them from reporting symptoms to Boeing medical; workers who did report symptoms were liable to have their confidential medical conditions placed on overhead projectors in front of their co-workers and blamed for the loss of group awards based upon safety records (no accident reports); and workers who obtained restrictions from working with the material from Boeing medical were threatened with termination unless their restriction was "pulled." According to sworn statements, labels were removed from the product, safety equipment was unavailable or unusable, and Material Safety Data Sheets were either unavailable or supervisors refused to provide them. Nearly a dozen affidavits attest to dramatic changes in workplace conditions being initiated in advance of air monitoring by government agencies: production using the composite was temporarily reduced, cleanup operations were commenced, doors were opened, and fans were brought in to the area — only to be removed following testing.

The 1702 Building, the focal point of the epidemic of toxic illness, was a vintage structure used as a morgue during the Second World War: the building was freezing in the winter and, during summer months, temperatures rose to nearly 110 degrees, as confirmed by Boeing internal documents. Boeing employees working with the composite material would remove rolls of the material from refrigeration, where it was placed to reduce vapor volatility when not in use, and would pull off, cut and shape sections of the material, often using a heat gun to increase its malleability. Interior aircraft parts would be fabricated by the "laying up" of ply upon ply of the material. On more than one occasion, workers collapsed at their work station and were removed by ambulance. But production continued.

The Road to the Washington Supreme Court

The procedural route by which the complaint filed by the workers reached the Washington Supreme Court is instructive. In 1991, seventeen workers filed a complaint in King County Superior Court against their employer (Boeing) and the manufacturer of the composite (Ferro),

alleging intentional injury, outrage, discrimination, and products liability claims. The case was promptly removed by defendants to United States District Court for the Western District of Washington under federal question jurisdiction because certain claims implicated the Toxic Substances Control Act and federal discrimination claims.

Claims against Ferro were settled for an undisclosed amount in a confidential settlement. The discrimination claims against Boeing were later resolved in a confidential settlement, but not before the intentional tort claims had been dismissed on summary judgment as failing to establish the deliberate intention to produce injury.

The dismissal was appealed to the Ninth Circuit Court of Appeals, which certified two questions to the Washington Supreme Court:

> 1. Whether the evidence produced by the plaintiffs in their response to the motion for summary judgment could, under Washington law, justify a jury in finding the "deliberate intention" exception specified in RCW 51.24.020, and , if so, the requirements of Washington law to permit such a finding?
>
> 2. Whether the evidence produced by the plaintiffs in their response to motion for summary judgment could, under Washington law, justify a finding of "outrageous conduct" that would avoid the preclusion of RCW 51.04.010, and, if so, the requirements of Washington law to permit such a finding?

Thus, the following important issue was squarely presented to the Washington Supreme Court: To what extent does the exclusivity bar of the Industrial Insurance Act shield intentional injury to Washington workers?

A Philosophical Interlude on Intentionality

Boeing took the position that so long as it was not motivated by the desire to harm workers, it could not be found to have had the requisite specific intent. Boeing went so far as to propound its formulation of the law as follows:

> Evidence that a worker has deliberately engaged in conduct that results in occupational injuries or disease within its workforce is *not* evidence of a specific intent to injure members of that workforce for purposes of RCW 51.24.020 so long as that conduct was reasonably calculated to advance an essential business purpose.

Such a formulation would continue to permit employers to be liable for assaults (as in *Perry*) by supervisors upon workers; clearly, assault does not advance an essential business purpose. What, however, did it say about the facts in the instant case?

Here, Boeing had anticipated the harm which would befall workers and disregarded that knowledge for the purpose of advancing an essential business purpose: airplane manufacture. Under Boeing's formulation, then, there could be no liability. Did the workers have to show that Boeing had the emotional desire to hurt them? Would such an analysis advance public policy?

RCW 51.04.010 sets forth the public policy underlying the Industrial Insurance Act: "The welfare of the state depends upon its industries, and even more upon the welfare of its wage worker." How would this public policy be served, the plaintiffs asked, if workers could be knowingly sacrificed in service of the business purpose of their employer?

Yet, at the same time, corporate intent is necessarily diffuse. It is quite possible for a corporation to injure workers as part of a business plan without any personal animus, with the injury being a penultimate, but not ultimate, consequence of the corporate plan. Would an employer be immune from the non-accidental injury of its workers where injuries were a necessary byproduct of its business?

When a tunnel is proposed to be constructed, there is a statistical probability of injury or death to a worker. What if there were a substantial certainty of injury? Is foreknowledge of the fact that an injury is substantially certain to occur the precursor of corporate liability in tort? All intention is deduced from the proximity of cause and effect. We do not know, for example, whether a pupil who throws a stone towards the schoolhouse intends to break the window. But if, time and again, stones are hurled and the consequence is broken glass, we are entitled to infer the intention to break the windows.

If one knows that eggs must be broken to make an omelette, can one infer that ordering an omelette means you must have wanted to break eggs? What if you want an omelette without breaking eggs?

In the final analysis, the plaintiffs argued to the Court that a cold-blooded business calculation posed a greater threat to the workers of Washington State than the risk of an assault in anger.

A desire to harm is not necessary — and indeed is improbable — in the corporate environment. Specific intent must be able to be inferred from willfully disregarding actual knowledge of certain injury. The answer must be found in the basic, commonsensical question: Was it an accident, or did you do it on purpose?

The Holding of *Birklid v. Boeing*

Boeing's decision to put the new resin into production despite its advance knowledge of injury to its workers from the phenol-formaldehyde fumes was found to be "[t]he central distinguishing

". . . the plaintiffs argued to the Court that a cold-blooded business calculation posed a greater threat to the workers of Washington State than the risk of an assault in anger."

fact in this case from all the other Washington cases that have discussed the meaning of 'deliberate intention'." *Id.* At 863. The facts presented constituted the first case to reach the court "in which the acts alleged go beyond gross negligence of the employer, and involve willful disregard of actual knowledge by the employer of continuing injuries to employees." *Id.*

However, the Washington Court, in a carefully crafted 9-0 decision authored by Justice Talmadge, declined to adopt the "substantial certainty" test of Michigan, South Dakota, Louisiana, and North Carolina. Such a test would have expanded specific intention to include constructive intention: that is, where, "[i]f the actor knows that the consequences are certain or substantially certain to result from his act, and still goes ahead, he is treated by the law as if he had in fact desired to produce the result." *See Beauchamp v. Dow Chemical Co.*, 398 N.W.2d 882 (1996).

The Court likewise refused to adopt the "conscious weighing" test of Oregon which focuses upon whether the employer had an opportunity to consciously weigh the consequences of its act and knew that someone would be injured. *See Lusk v. Monaco Motor Homes, Inc.*, 97 Or. App. 182, 775 P.2d 891 (1989) (employer refused to provide respirators to toxic paint workers despite repeated complaints) and *Gulden v. Crown Zellerbach Corp.*, 890 F.2d 195 (9th Cir. 1989) (temporary workers ordered to scrub floors on hands and knees despite PCB levels known to be over 500 times the safe level).

Rather, the Washington Supreme Court, "mindful of the narrow interpretation Washington courts have historically given to RCW 51.24.020, and of the appropriate deference four generations of Washington judges have shown to the legislative intent embodied in RCW 51.04.010" fashioned its own standard:

> We hold the phrase "deliberate intention" in RCW 51.24.020 means the employer had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge. *Id.* at 865.

As for the tort of outrage, the Court made it clear that the exclusivity bar of the IIA precludes assertion of any claim arising directly and solely from the conduct of the employer in the workplace, where the conduct is related intimately and specifically to job conditions, and does not arise from a separate dignitary injury. *Id.* 872-73. The facts of this case did not satisfy the "separate injury" analysis set forth in *Reese v. Sears, Roebuck & Co.*, 107 Wn.2d 563, 731 P.2d 497 (1987) (overruled on other grounds).

The tort of outrage ordinarily may be predicated upon both the intentional or reckless infliction of emotional distress. The mere reckless infliction of emotional distress is barred where, as here, the emotional injury is not a separate injury. The *intentional* infliction of emotional distress, however, survives as a species of intentional tort falling within the exception carved out by RCW 51.24.020. The Washington Supreme Court, therefore,

permitted the injured workers to submit to a jury the question of whether Boeing's conduct constituted the tort of outrage based upon the intentional infliction of emotional distress.

The Implications of *Birklid v. Boeing* for Toxic Workers

The potential for injury of workers from exposure to toxic chemicals is unfortunately commonplace in the modern workplace. Mere chemical injury, however, will not suffice to give rise to civil liability any more than injury occasioned by a flying cutterhead or a snapped logging cable. As a legal matter, the instrumentality of harm is irrelevant to the determination of deliberate intention to inflict injury. Intentional injury may be inflicted by means of a water pitcher, a fork lift, or toxic fumes. What differs is that the capacity of toxic chemicals to injure is often not the consequence of an accident, while many machines become injurious only when a defect becomes manifest. Moreover, toxic chemicals have the capacity to give rise to continuing injuries to numerous workers similarly situated.

As noted at the outset, the limitation in recoverable damages which is central to workers' compensation reduces both deterrence against injurious conduct on the part of the employer and incentives for workplace safety.

Fortunately, we can usually count on the toxic worker to try to avoid injury. Unfortunately, the worker exposed to toxic chemicals has virtually no way of foreseeing the risks of exposure and, indeed, the risks may be largely unknown to the worker, or concealed from the worker, as was alleged here. Unlike the consumer in the context of product liability, the employee even lacks the choice of refraining from product use.

By contrast, the employer may respond to economic deterrence and incentives by gaining knowledge about a product, disseminating such knowledge to workers, implementing industrial hygiene measures in the absence of complete knowledge, or choosing alternatives to the problematic product. The three routes by which the worker may be protected — increased knowledge, product selection, and industrial hygiene — are exclusively within the control of the employer.

The intentional tort exception to the Industrial Insurance Act provides the precise deterrence needed. An employer who anticipates injury from a toxic chemical exposure in its production process may no longer subject employees to continuing injury. *When* an injury becomes certain may be an appropriate subject for debate; but actual knowledge of certain injury may no longer be willfully disregarded.

Perhaps most importantly, the Washington Supreme Court has made it clear that the statement: "the blood of the workman was a cost of production,"* although possibly correct in 1916, "no longer reflects the public policy or law of Washington."

**Stertz v. Industrial Insurance Commission*, 91 Wash. 588, 590- 91, 158 P. 256 (1916).

Randolph I. Gordon *practices in Bellevue and was co-counsel for the plaintiffs in the* Birklid *case. He would like to acknowledge the insights offered by James D. Hailey to this article and his inestimable contribution as co-counsel representing the plaintiffs in* Birklid et al. v. Boeing.

by **Hal White**
Editor, Bar News

Although the Governors no doubt intended to make a splash at their February 9-10 meeting in Vancouver (Wash.), they probably didn't envision anything on the scale of The Big Oregon Flood of '96. When it appeared that downtown Vancouver would be inundated, WSBA staffers Dodie Prescott and Brynn Hancock swung into action, alerted the Governors and liaisons of a venue change to Seattle, and hurriedly switched hotel lodgings, conference rooms, and other accommodations to less watery surroundings. Kudos to both for their last-minute heroics.

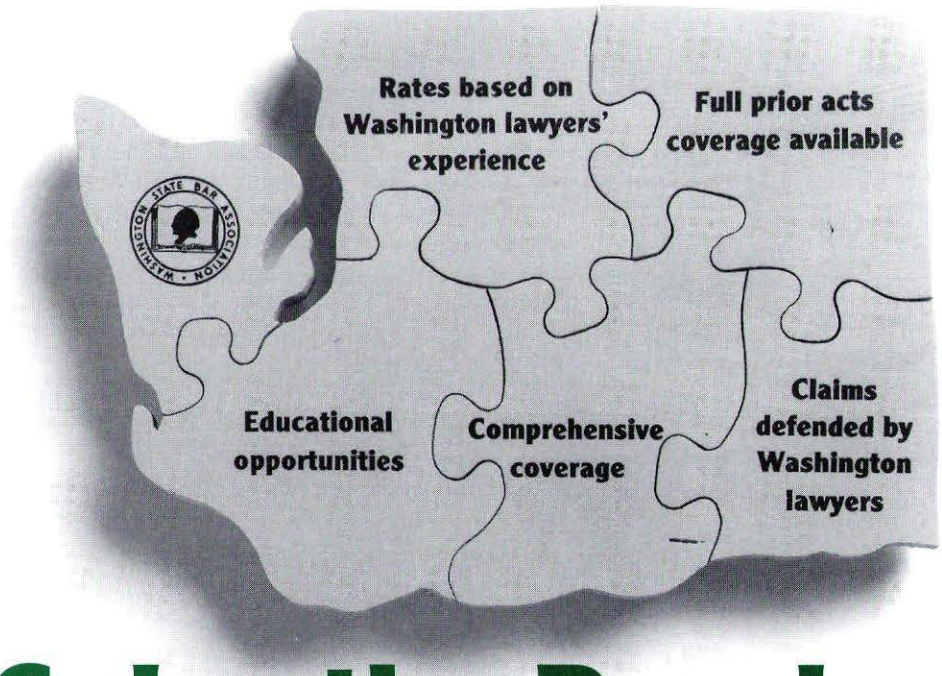
WSBA CLE Director. After introductory remarks by WSBA President Ed Shea, Executive Director Dennis Harwick opened the meeting by discussing the resignation of CLE director Diane de Ryss. After five years of service, she is moving to greener pastures, and the WSBA has begun a local and national search for a replacement. Thus far, over 50 applications have been received.

Appointments. Wayne Blair was appointed to a two-year term on the Board for Judicial Administration. Paul Stritmatter, Mary Alice Theiler, Claude Pearson, Nettie Alvarez, John Powers and Evelyn Fielding were appointed to one-year terms as board members for the Northwest Justice Project.

WSBA Governance. The Governors then heard introductory remarks by Wayne Blair, chairman of the Governance Task Force, regarding the recommendations of that group (see the July, 1995 *Bar News* for details of this report). After lengthy debate and considerable liaison input, the Board declined to adopt either the "House of Delegates" or the "Expanded Board" method of WSBA governance at this time. However, the Board will discuss at its March 22-23 meeting in Tacoma whether this decision should be referred to the entire WSBA membership for a vote. On a related topic, the Board will consider at its May 3-4 meeting in Spokane whether out-of-state members should be allowed to vote in governance elections. Member comments concerning this latter issue may be directed to President Ed Shea at 1816 N. 20th Ave., P.O. Box 2368, Pasco, WA 99302.

Professional Ltd. Liability Partnerships (PLLPs). The Board then voted to ask the Supreme Court to include PLLPs in the proposed amendment to RPC 7.5(d). Although a similar amendment was published in the January *Advance Sheets*, it merely added PLL *companies* to the types of law practice referred to in that rule.

Law Practice Sales. Bob Welden then presented the recommendations of the Rules of Professional Conduct Committee concerning the sale of law practices. Although the committee believed that the current rules did not prevent such sales, it nevertheless recommended the adoption of a Formal Opinion (as opposed to a rule modification) to clarify this issue. Unlike guidelines in some states, the committee's proposed opinion refrained from offering specific timelines and procedures regarding client notification and/or acceptance of such sales. Copies of the committee's report may be obtained through the WSBA. For background information on this topic, and a somewhat contrasting solution to



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this problem, see pages 24-27 of the February *Bar News*. The Board will consider this topic at its May meeting.

Disciplinary Changes. Led by Governor Peter Ehrlichman, the Board formally adopted, with minor changes and some additions, the disciplinary revisions outlined on pages 39-40 of the January *Bar News*. Due to the importance, length and fiscal impact of these revisions, an article will be devoted to this topic in the April *Bar News*. The Board will discuss how RPC 11.1, Lawyers' Fund for Client Protection issues, and a complaint processing timeline will mesh with these changes at its May meeting.

Legislative Update. John Fattorini then updated the Board on various pieces of legislation. Briefly summarized, bills amending the Washington uniform ltd. partnership act (SHB 1018), amending the UCC (SHB1182), and transferring certain interests in IRAs (HB 1019) passed the House; legislation unifying real property foreclosure procedures (HB 1092) and waiving penalties for certain estate tax returns (SHB 1097) are dying; and certain acts regarding child support modifications (HB 1618, 1619 & 1620) are not being pursued, although HB 2558 & 2559 are still alive.

Competing pieces of legislation which would regulate real estate brokerage relationships (HB 1659, SB 5554 & SB 6653), create an office of public defense (HB 2342 & SB 6189) and revise restrictions on residential time for abusive parents (SHB 5676 & SB 1907) bode well for the passage of some version of these bills; and legislation suspending professional licenses for failure to repay student loans (HB 2371), regulating real estate appraisers (HB 1860 & SB 6484), and amending Washington's ltd. liability company and business corporation acts (SB 6168 & SB 6169), are also doing well. SB 6117, which reduces B & O tax rates, was enacted over the Governor's veto.

Nonlawyer Section Memberships. In a final matter George Nazarian, chairman of the ADR Section, requested that nonlawyers be allowed to join the ADR Section in an official or semi-official capacity. The rationale for this proposal was that nonlawyers made significant contributions in terms of time and expertise to the section's work. The Board deferred consideration of this request until its June meeting, in order to solicit comments from other WSBA sections and to review possible bylaw ramifications.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in February 1996 is 4.99%. ***The maximum allowable interest rate permissible for March 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 appear on page 72 of the June 1995 *Bar News*.

Counsel Appointed to Protect Client Interests

Seattle lawyer Paul Mueller has been appointed as custodian to take possession of the necessary files and records of inactive Seattle lawyer Craig S. Palmquist (WSBA #5516, admitted 1974), to protect the interests of Mr. Palmquist's clients. This appointment of counsel to protect client's interests is pursuant to RLD 8.6 and is not a disciplinary action. Questions should be directed to the WSBA at (206) 727-8207.

Interim Suspension

Olympia lawyer Jason James McCarty (WSBA #15985, admitted 1986) was ordered suspended from the practice of law pursuant to RLD 3.1 by Supreme Court order entered December 18, 1995. The order suspends McCarty pending the outcome of disciplinary proceedings. A suspension under RLD 3.1 is not a disciplinary action.

Suspended

Seattle lawyer Terry P. Watkins (WSBA #2333, admitted 1967) has been ordered suspended for one year effective December 21, 1995. Mr. Watkins has also been placed on two years probation upon his reinstatement. This discipline is pursuant to a stipulation based upon Mr. Watkins's trust account misconduct and his noncooperation with the WSBA investigation.

Trust Account Misconduct

On 22 occasions, from December 11, 1991, through May 3, 1993, Watkins disbursed funds from his trust account for his personal benefit. The funds were earned fees which he failed to remove in a timely manner from his trust account. For each of the disbursements, Watkins negligently failed to maintain records that identify the client from whom he earned the fees. Watkins' conduct violated RPC 1.14(a), prohibiting commingling of client and attorney funds, and RPC 1.14(b)(3) requiring the maintenance of complete trust account records.

Noncooperation

From February 10, 1992 through April 20, 1993, the WSBA received eight overdraft notices regarding Watkins' trust account. On June 10, 1993, the WSBA received a grievance regarding a nonsufficient funds check written by Watkins. He knowingly failed to respond in writing to numerous written requests for response from the WSBA. Despite being served with subpoenas duces tecum, Watkins failed to appear for two depositions. When Watkins did appear for depositions, he failed to produce subpoenaed documents and refused to answer questions about the matters under investigation. Watkins' conduct violated RLD 13.4(d) requiring a lawyer to notify the WSBA of trust account overdrafts. Watkins's conduct also violated RLD 2.8(a)(1-5), requiring a lawyer to promptly respond to WSBA requests for information relating to matters under investigation.

Disciplinary counsel David T. Cluxton represented the WSBA. Watkins represented himself. For a complete copy of any disciplinary decision, call the WSBA Disciplinary Board at (206) 727-8280, and leave the case name and your address.

Judicial Recommendations

WSBA Judicial Recommendation Committee to Schedule Interviews:

The WSBA Judicial Recommendation Committee is accepting applications from attorneys and judges seeking consideration for appointment to potential appellate court vacancies. Interviews are scheduled on a space-available basis for May 31, 1996. Candidate questionnaires are due at the WSBA office by 5 p.m. on April 16, 1996, for the May meeting.

The Committee's recommendations are reviewed by the WSBA Board of Governors and then referred to Washington's Governor for consideration when vacancies on the Washington Court of Appeals and Supreme Court are filled.

To schedule an interview, contact the WSBA at 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599, telephone (206) 727-8200, and obtain a questionnaire. Please specify whether you need the questionnaire designed for a judge or an attorney.

Local-rule Comments Eastern District Court

Comments are being sought on the proposed amendments of the Local Rules of the U.S. District Ct. for the Eastern Dist. of Wash. A summary of the proposed amendments will be available on March 4, 1996, from: The United States District Court, Attn: Local Rules, P.O. Box 1493, Spokane, WA 99210; (509) 353-2150. The comment period closes April 4, 1996.

Bankruptcy Homepage & Certification Exams

The American Bankruptcy Institute is now online at **http://www.abiworld.org** with a weekly newsletter of insolvency issues, legislative news, terminology, the U.S. Bankruptcy Code, and conferences, as well as a hotlink for ABI members to search a 2,000+ item database and private discussion forum. For more information and ABI certification exam locations and dates, call (703) 739-0800.

ABA Award Nominations

Nominations for the 11th annual ABA Livingston Hall Juvenile Justice Award are open until April 1. It recognizes lawyers who practice in the juvenile-justice field with the highest degree of skill and professionalism. Contact Alyssa Logan, ABA Juvenile Justice Center, 740 15th St. N.W., Washington D.C. 2005, or call (202) 662-1506, for a copy of the nomination form.

THE WASHINGTON STATE BAR NEWS

FAX POLL

On our fiftieth anniversary it seemed appropriate to solicit your opinions regarding the content of the *Bar News*. Please grade the following departments from one (1) to five (5) to indicate those which you enjoy the most. Indicate in the "comments" section what you like and dislike about the departments, how you would like to see them improved (or stay the same), and your suggestions for future departments.

Please fax (or mail) this entire page to the number/address below. No cover sheet is necessary. Please, only one sheet per attorney.

	1=Excellent	2=Good	3=Fair	4=Poor	5=Replace
Allegedly Humorous	1	2	3	4	5
Around the State	1	2	3	4	5
The Board's Work	1	2	3	4	5
Book Reviews	1	2	3	4	5
Briefly Noted	1	2	3	4	5
Calendar	1	2	3	4	5
Computers & The Law	1	2	3	4	5
Ethics & The Law	1	2	3	4	5
Fax Poll	1	2	3	4	5
FYI	1	2	3	4	5
Lawyers' Assistance Program	1	2	3	4	5
Letters	1	2	3	4	5

Comments:_____

_____

_____

_____

Name and city of faxing attorney: _____

(This will not be published, unless your comments are chosen for publication along with the poll results in the April *Bar News*.)

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

Or, mail your response by March 11 to:
Washington State Bar Association
Attn.: Hal White, *Bar News* Editor
2001 Sixth Ave., Suite 500
Seattle, WA 98121

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

RESULTS

of

THE WASHINGTON STATE BAR NEWS

FAX POLL

In last month's *Bar News*, we asked your opinion regarding the proposals of the Task Force on Nonlawyer Practice of Law. The majority opinion recommended that nonlawyers be allowed to practice law in a limited fashion under certain circumstances. The minority position recommended that only attorneys be allowed to practice law, except in currently recognized categories. We asked you to check one of three statements which most reflected your views. The results:

1. **11**% supported the majority position of the task force.
2. **87**% supported the minority position of the task force.
3. **2**% supported an alternate position.

This issue apparently struck a nerve among our members. This is both the highest response to our Fax Poll and the most lopsided result. Overall, 104 valid responses were received. The Board of Governors is currently considering the recommendations of the task force.

Your Comments:

"Leave it alone, particularly in light of the additional taxpayer/lawyer cost."
Joseph H. Trethewey, Seattle

"We go to three years of law school and pass a grueling three-day examination for the right to practice law. These are the minimal requirements to make us minimally qualified to practice. Even then, many say we aren't ready to be set loose on the public. How, then, can someone with *less* training possibly be qualified? This plan would cheapen the law and harm clients."
Osgood S. Lovekin, Jr., Seattle

"I am opposed to nonlawyers practicing law because without formal legal training (i.e., a degree from an accredited law school) they will not recognize the limitations of their knowledge and possible consequences of their drafting and advice."
Adrianne Tollefsen, Seattle

"This is a poor proposal attempting to address indigent client needs. The only "businesses" interested in providing legal services will focus on *paying* clients. LPO businesses show [that] nonlawyers want to practice only in profitable areas — real estate transactions & estate planning; not areas with a large percentage of indigents. If attorneys lose such client bases to others attempting to poach our profession, we will become nothing but litigators, and I don't think this is the image our Bar should be left with."
Chris Johnson, Spokane

"Looks like yet another circumstance in which the Bar is 'Doing it to us again.' Are we as a group so concerned with being politically correct that we feel compelled to engage in yet another example of self emasculation?"
Darrel R. Ellis, Cle Elum

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

March

1 & 8 **State & Local Tax Deskbook**
Spokane (1st) — Seattle (8th)
By WSBA CLE and Taxation Section (206) 727-8202
6 CLE credits

6 & 22 **Getting the Judge to Say Yes**
Spokane (6th) — Seattle (22nd)
By Kinder Legal Writing (206) 622-3810
7 CLE credits

8 **Estate Planning Essentials for Small to Medium-sized Estates**
Seattle
By WSBA CLE (206) 727-8202
7 CLE credits

8 **Estate Planning Certificate, #4: Using Trusts in Estate Planning**
Seattle
By UW CLE (206)543-0059/ (800)CLE-UNIV

11 **401(K) Plans from A to Z**
Bellevue
By Corbel (800) 326-7235
5.5 CLE credits

13 **Land Use Law Update in WA**
Seattle
By National Business Institute (715) 835-7909
6.5 CLE credits (inc. 1 ethics)

13 **Motions to Suppress Statements**
Seattle
By WACDL (206) 623-1302
1 CLE credit

15 **Intro to Patents, Copyrights**
Port Angeles
By Clallam County Bar (360) 452-3323
1 CLE credit

15 **Employment Law Institute**
Bellevue
By WSBA CLE (206) 727-8202
Also VIA•CLE — live CLE to your office over your phone.
6.5 CLE credits

15 **Keys to Success in a Real Estate Transaction in Washington**
Seattle
By National Business Institute (715) 835-7909
6.5 CLE credits (inc. 1 ethics)

15 **Family Law Skills, Session 13: Representing the Elder Client**
Seattle
By UW CLE (206)543-0059/ (800)CLE-UNIV

15 **In the Ninth Circuit**
Seattle
By WACDL (206) 623-1302
2 CLE credits

19&20 **Practical Guide to Estate Admin.**
Seattle (19th) — Spokane (20th)
By National Business Institute (715) 835-7909
7.25 CLE credits (inc. 1 ethics)

21 **Revisions to Article 5**
Seattle
By Davis Wright Tremaine (206) 622-3150

21 **Courtroom Struggles: Forensic Issues and Frye/Daubert**
Seattle
By Seattle Forensic Institute of Washington (206) 624-6454

21 **Trial Advocacy Program**
Seattle
By WSBA YLD (206) 727-8239
(18 sessions, 57 total CLE credits)

21 **Telecommunications Revolution**
Bellevue
By Law Seminars International (206) 621-1938/(800) 854-8009
13.5 CLE credits

21&23 **Communication in the Ctroom**
Seattle
By Carl Grant (206) 587-4009
2 CLE credits

21&28 **Planning and Compelling Discovery**
Olympia (21st) — Seattle (28th)
By WSBA CLE (206) 727-8202
6 CLE credits

22 **7th Annual Int'l Law Institute**
Seattle
By WSBA (206) 727-8202
7.25 credits (or 1.5 AV)

22 **Family Law**
Seattle
By National Business Institute (715) 835-7909
6.5 CLE credits (inc. 1 ethics)

25 **Language in the Courtroom**
Spokane
By Gonzaga U School of Law (509) 484-6090
1 CLE credit

28 **Intellectual Prop. Law in WA**
Seattle
By National Business Institute (715) 835-7909
6.5 CLE credits (inc. 1 ethics)

28 **New Issues in WA Water Law**
Seattle
By Law Seminars International (206) 621-1938/(800) 854-8009
16 CLE credits

29 **Nursing Law in WA**
Seattle (audio-visual)
By National Business Institute (715) 835-7909
6.5 CLE credits (inc. 1 ethics)

29 **Subrogation**
Seattle
By WSTLA (206) 464-1011
5.25 CLE credits

29 **'96 Spring Seminar**
Seattle
By Nat'l Organization of Veterans' Advocates (913) 357-5251
14 CLE credits (inc. 1.75 ethics)

When Does a Client Become a Client?

by **Jean Kelley McElroy**
WSBA Disciplinary Counsel

Many attorneys believe that a potential client does not become an actual client until a retainer is paid. However, this belief can result in malpractice or disciplinary problems, because payment of a retainer is only one indication that an attorney/client relationship has been formed.

When the Relationship is Formed

In general, an attorney/client relationship is formed when a client, seeking legal advice or help from an attorney, authorizes that attorney to act on the client's behalf, and the attorney agrees to do so.[1] In Washington, the existence of an attorney/client relationship turns largely on whether the client has formed a belief, reasonable in light of the circumstances, that such a relationship exists.[2] Thus, although an attorney and client should always enter into a written agreement formalizing their relationship, no writing is required to establish such an association.[3] Moreover, an attorney/client relationship does not require the payment of a fee or a formal retainer.[4] The relationship can even arise during a brief consultation; whether in person, on the telephone, or otherwise.[5]

Court rules can also create attorney/client relationships. For example, such a relationship exists between an associated Washington attorney and the out-of-state attorney's client in a *pro hac vice (for this occasion)* admission, because the local attorney is responsible for the conduct of the proceedings.[6] Also, presumably an attorney/client relationship exists between an Admission to Practice Rule 9 supervising attorney and the intern's clients, because both the lawyer and intern assume responsibility for the work performed.[7]

Why the Existence of the Relationship is Significant

The attorney/client relationship creates both rights and duties. For example, an attorney's authority to act on behalf of a client depends upon the existence of this relationship.[8] Also, the attorney/client privilege applies only when the attorney/client relationship has been established.

An attorney also owes a fiduciary duty to a client and sometimes to third parties by virtue of their relationship to the client. Thus, an attorney/client relationship must be proved to establish malpractice.[9] In addition, many of the Rules of Professional Conduct relate to the duties arising from the attorney/client relationship.[10] For example, an attorney must act with reasonable diligence (RPC 1.3), must keep the client informed (RPC 1.4), and must avoid conflicts of interest (RPCs 1.7 - 1.12). These duties apply whether the attorney realizes it or not if the client has formed a reasonable belief that he is represented by the attorney. Moreover, RPC Title 4 applies to attorneys in their interactions with *non*clients if they are acting in the course of representing a client. Finally, because inactive or suspended lawyers must refrain from practicing law (RPC 5.5, and Rules for Lawyer Discipline 1.1(l) and 8.2), they must also avoid forming attorney/client relationships.

How to Avoid Problems

There are several measures that can reduce problems resulting from consultations with potential clients. For example, because it is possible to form an attorney/client relationship in an initial consultation concerning a legal matter, check for conflicts of interest *before* the initial substantive consultation occurs. Check again after the initial consultation, using any additional information gathered.

If you discover a conflict, immediately consult with your client(s) and get written

waivers (when appropriate and allowed by RPC 1.7 - 1.12), or inform the potential client that you cannot undertake the representation. When appropriate, the lawyers who consulted with the potential new client should be screened from the previous matters that created the conflict. If the conflict is between two existing clients and involves a new matter, you may need to withdraw from representing both of the clients.

Since many potential clients desire that the information conveyed for conflicts investigation purposes remain confidential, the safest course is for the attorney to treat all such information as protected by RPC 1.6 unless the potential client consents to disclosure.[11] To avoid potential conflicts problems, you may want to caution the potential client not to volunteer information concerning the substance of the matter before the conflicts check is performed.

If during the initial consultation you determine that you cannot agree to the representation at that time or that you will never accept the representation, you should make that clear as soon as possible. Every time you decline representation, send a follow-up letter to the potential client, by certified or registered mail, specifically stating that you will not accept the case. Further, any time you believe an existing attorney/client relationship has ended or should end, notify the client in person or by phone (if possible) *and* follow up with a certified or registered letter notifying the client of your decision.

Keep in mind that, since no fee is required to form an attorney/client relationship, the duties owed to your clients are the same whether you are representing them *pro bono* or for a fee. Do not fall into the trap of thinking that your duties are reduced in any way because your client is not paying a fee.

Endnotes

[1]ABA/BNA Lawyers Manual on Professional Conduct § 31:101.

[2]*State v. Hansen*, 122 Wn.2d 712, 720, 862 P.2d 117 (1993); *Bohn v. Cody*, 119 Wn.2d 357, 363, 832 P.2d 71 (1992); *In re McGlothlen*, 99 Wn.2d 515, 522, 663 P.2d 1330 (1983).

[3]A written fee agreement is required if you are charging a contingent fee. A written fee agreement should be used in every "for fee" case, and a written representation agreement should be used in every *pro bono* case.

[4]*McGlothlen*, at 522.

[5]*State v. Hansen*, at 720; *Teja v. Saran*, 68 Wn. App. 793, 795-796, 846 P.2d 1375 (1993); *State ex rel. Slusser v. Billet*, 52 Wn. App. 561, 563- 564, 762 P.2d 350 (1988), *review denied*, 111 Wn.2d 1032 (1989).

[6]APR 8(b) provides that a lawyer from another state may appear as a lawyer in a trial or proceeding in this state only with the permission of the court and "in association with an active member of the Bar Association, *who shall be the lawyer of record therein, responsible for the conduct thereof, and present at all proceedings*" (emphasis added); *Dorsey v. King County*, 51 Wn. App. 664, 670-671, 754 P.2d 1255 (1988).

[7]APR 9(d)(1) states, "The supervising lawyer or another lawyer from the same office shall direct, supervise and review all of the work of the legal intern and *both shall assume personal professional responsibility for any work undertaken by the legal intern while under the lawyer's supervision.*" (Emphasis added.)

[8]Rules for Lawyer Discipline, Rule 1.1(d); RCW 2.44.010 *et seq.*

[9]*Bohn*, 119 Wn.2d at 365; *Stangland v. Brock*, 109 Wn.2d 675, 679-681, 747 P.2d 464 (1987); *Bowman v. John Doe*, 104 Wn.2d 181, 185-187, 704 P.2d 140 (1985).

[10]Washington Rules of Professional Conduct, Titles 1-3.

[11]Washington's courts have not squarely addressed the application of RPC 1.6 to preliminary information obtained from a potential client for purposes of determining whether an attorney/client relationship will be formed. The ABA Committee on Professional Conduct takes the position that Model Rule 1.6 applies to all such information:

> [T]he Committee concludes that Model Rule 1.6 and DR 4-101 of the Model Code apply to protect information imparted by a would-be client seeking to engage the lawyer's services even though no legal services are performed and the representation is declined.

ABA Formal Opinion 90-358; *compare Hansen*, 122 Wn.2d at 719-721.

Internet E-mail in the Law Office

by **James Cameron**

More and more attorneys are going online.[1] A recent survey concluded that the Internet population had doubled in 1995 alone, and there is every indication that attorneys are mirroring that trend.[2]

A previous column discussed the types of things attorneys are now doing online, including:

- communication with clients and other attorneys,
- legal and nonlegal information research or gathering, and
- marketing.

Though many of these services are based upon access to the World Wide Web, Internet e-mail is every bit as important, and in many instances more important, for law firms contemplating an online presence.

E-mail-based Electronic Services

Internet e-mail allows people to exchange messages and other information through the Internet. It differs from traditional office e-mail in that it provides access to other e-mail accounts anywhere, whether they be on the Internet, America Online, CompuServe or Microsoft Network. The entire online world, through e-mail, becomes accessible. Participants can exchange information, gather legal resources and find new clients.

The most important and best-known uses include:

Communication: Internet e-mail provides a low-cost alternative to telephone, fax and courier. Monthly fees for a standard Internet account, including e-mail, range from as little as $5-$10 a month, depending upon usage.[3] These fees are independent of where the mail goes — across town or around the world.

Document transfers: E-mail can be used to send virtually any type of file imaginable — formatted Word or WordPerfect documents, Excel spreadsheets and World Wide Web pages. This method offers significant cost and time efficiencies compared to sending printed material by fax or courier.

What other uses are there? A number of e-mail-based electronic services for attorneys go far beyond the role of e-mail. Here are just a few:

Information resources: Lawyers can access many e-mail-based electronic forums for gathering information, exchanging ideas, networking, and, yes, finding clients. One of the best examples, and certainly one of the largest, is the mail list *net-lawyer*[4], moderated by Lew Rose of the law firm Arent Fox in Washington, D.C.; *net-lawyer* discusses issues that arise for law firms moving online and, with nearly 1,900 subscribers globally, it is an invaluable way of gathering information on online legal resources, Internet tools, e-mail confidentiality issues, and promoting your firm online.

Client services: Another innovative feature of the Web site of the law firm Arent Fox (www.arentfox.com) is its Arent Fox InfoNet section. Offering e-mail-based electronic forums for discussing ideas and issues covering various areas of law, current topics include Qui Tam, Advertising, and Counterfeiting Remedies. Not surprisingly, InfoNet is also a vehicle for attracting new clients.

Bar association services: One of the best examples of how innovative bar associations can use online technology to provide an entire new level of membership service is TBALink (www.tba.org). Offered by the Tennessee Bar Association, TBALink provides a broad range of Internet services, many of them e-mail-based, to the members of that association for $25 a year. These services include free Web sites, online legal links, legal discussion groups, current judicial information and court opinions delivered to TBALink members' desktops.

Marketing: The Tennessee law firm of Siskind and Susser has achieved dramatic increases in its business through its innovative use of a Web site to market itself. Two thirds of the firm's business now originates from the Internet. A key feature of the firm's marketing strategy is its Web-based subscription to its immigration bulletin. Six thousand e-mail subscribers receive the newsletter automatically on a regular basis, thus providing value to existing clients, and keeping Siskind and Susser firmly in the mind of prospective clients.

Internet E-mail Solutions

To take advantage of the e-mail services described above, you need a commercial or shareware package that supports Internet e-mail. Most of them are strictly for e-mail communication over the Internet, so they can't be used for office e-mail unless the Internet itself is viewed as your network. Some of the well-known programs, all of which are

available in computer retail stores, are:

Qualcomm's Eudora: *Eudora* is one of the best Internet e-mail packages available today in both PC and Mac versions. It comes with Netscape Communication's *Netscape Navigator* Web browser, which is also available commercially.

Netscape Communication's Netscape 2.0: Netscape Communication will soon ship its next release of Internet software, *Netscape 2.0*. What distinguishes this program from early versions is it includes, in addition to its highly popular Web browser, a complete e-mail tool. One particularly attractive feature of this tool allows users to encrypt their e-mail messages.

CompuServe's Internet in a Box: *Internet in a Box* has always been a good Internet suite; it bundles a solid e-mail tool, a good Web browser[5] and several other Internet programs together as a package — a program with which most new users can't go wrong.

Your Firm's Current E-mail Package

All of these e-mail packages are suitable for solo attorneys and law firms with a small numbers of computers. However, many firms use a standard e-mail program such as MS Mail or cc:Mail, and would prefer to use this for their Internet e-mail needs as well.

This is possible through the use of an e-mail gateway service, which allows such mail programs to support both internal and Internet e-mail, using a single Internet link into a firm's office network.[6] Compared to the cost of maintaining phone lines for multiple dial-up Internet accounts, a gateway can result in significant capital and maintenance savings.

Endnotes

[1] Though different surveys of the Internet population have yielded very different results over the last 6 months, a reasonable count seems to be in the range of 10 to 20 million. The commercial online services contribute approximately another 10 million.

[2] The most recent Internet survey was conducted by Find/SVP, and may be found at http://etrg.findsvp.com.

[3] Many Internet Service Providers, particularly the larger ones, offer metered rates for Internet services. US West, for example, offers 5 hours a month for $8.95, and 20 hours a month for $25.00. In each case, usage beyond the limit costs an additional $1.98 an hour.

[4] Many e-mail-based electronic services are based upon mail list technology. To find out more about how they work, the net-lawyer list is a good start. To become a subscriber send the message:

subscribe net-lawyers

to the address listproc@lawlib.wuacc.edu. You will receive back a message describing the list, including how to unsubscribe from it. Be sure to save this message.

[5] This browser will very soon be Microsoft's "Internet Explorer."

[6] Generally, these links are higher speed lines with transfer rates of 56 KBPS (thousands of bits per second) or more.

James Cameron *is a partner in Northwest Lawyer, which provides Internet services for law firms, including Internet connectivity, Web design and promotional services, Internet CLE workshops and seminars. (206) 624-343; e-mail:* jcam@nwlawyer.net

CLARK COUNTY REPORT
by **TERRY LEE**

Jeff Justin has left franchise land and wound up at a local firm known for its accordian size growth and subsequent shrinkage, a.k.a. Horenstein & Duggan. Jeff still has a tendency to ask how much you pump at the gas station, but I am sure once he is weaned away from lightbulb-grilled hotdogs and other fancy cuisine, he will fit right in.

December CLEs are a great time to find out the history of local bar associations. A WSBA-sponsored CLE in our local area had attorneys from Cowlitz County and Clark County who have not been near a courthouse in 30+ years showing up and getting their credits. **Dennis Maher** was a designated driver for the Cowlitz County contingent.

Barry Brandenburg, a charming and talented lawyer, recently purchased the 90-year-old Fort Vancouver Seamen Center building. It is expected that he will now be wearing a variety of sailors' caps as he trudges to and from the courthouse.

Jim Hamilton, pilot and soccer-player extraordinare, was recently designated the greater Hockinson Santa of the year. Jim thought this was a neat gift until he realized that the average weight of the well-fed Hockinson youth is 150+ pounds. After having three dozen sit on his lap, he has filed a Labor and Industry claim.

KING COUNTY

Steven O. Rosen, a partner of Miller, Nash, Wiener, Hager & Carlsen, has been appointed chair of the American Bar Association Litigation Section's State Justice Initiatives Task Force, charged with encouraging increased efficiency and reforms in state courts throughout the nation.

Loretta Story has joined the Bellevue law firm of Hawkins Jeppesen Hoff P.S. as an associate.

Stephen A. Eggerman and **John VanSandt** have opened their law firm, Eggerman and VanSandt, LLP in downtown Kirkland. They will practice primarily in personal injury, estate planning, probate, family law and workers' compensation.

Melba T. Caliano has been elected chair of the Seattle Landmarks Preservation Board.

Thomas F. McGrath, Jr. has joined Western American Exchange Corporation as Washington State Manager with new offices at One Union Square, Suite 2428, 600 University St., Seattle, WA 98101. WAEC is a Qualified Intermediary on Sec. 1031 real estate tax-deferred exchanges.

Joann Francis has joined Foster Pepper & Shefelman's Municipal and Public Finance Group as Of Counsel.

James L. Vandeberg, licensed in both California and Washington, has joined Graham & Dunn as Of Counsel in its Seattle Business, Finance & Tax Group.

William E. Van Valkenberg, formerly with Bogle and Gates, and **Bradley B. Furber**, corporate finance and securities lawyer, have formed a new firm, Van Valkenberg Furber Law Group P.L.L.C.

William O. Ferron, Jr. has recently been named managing partner of Seed and Berry LLP, a Seattle intellectual-property law firm; he will continue to specialize in software protection, licensing, litigation and general trademark and copyright matters.

Schwabe, Williamson & Wyatt recently announced the addition of **Carla C. Wigen** to the firm's Seattle office.

Jeffrey M. Sakoi has been elected to a three-year term on the Management Committee for the Seattle intellectual-property firm, Christensen O'Connor Johnson & Kindness.

Edsonya Charles has joined the Seattle law firm of Hillis Clark Martin & Peterson as an associate. Her practice will emphasize land use and environmental matters.

KITSAP COUNTY REPORT
by **JOAN CASE**

Tracy DiGiovanni has become a partner in the law firm of Shiers, Chrey, Cox, Caulkins and DiGiovanni, LLP, effective January 1, 1996. Tracy joined the firm in 1990, and her work is mostly in the area of real estate and commercial transactions. The Shiers firm is one of the oldest in the county, having been a full-service law firm since 1916.

New attorneys in the area: **Paul Fjelstad** in Bremerton.

The Kitsap County Bar Association has new officers, installed at the annual installation dinner on January 26, despite a rumored attempt by the outgoing administration head to have herself installed as President for Life and Eternal Sovereign of the Very Next Day, via a palace coup. New officers for 1996 are: **Mike Kirk**, president and notary public; **Pat Cable**, vice president; **Andy Becker**, secretary; and **Darrell Uptegraft**, treasurer. Darrell is the one who will collect the big-bucks penalty from all who don't pay their dues on time. (Hint.)

For all of you who missed it: **Terry**

Decker turned 39 and a little bit more on January 30, and she has told insiders she will be devastated if every last member of the county bar has not called or visited her at her office or home to sing Happy Birthday to her by the time the Ides of March roll around.

Finally, from an author who chooses to remain anonymous, concerning a trial experience with a lawyer who will sue if he doesn't remain anonymous, comes this effort: (to be sung to the tune of "If I Only had a Heart" from the Wiz of Oz):

I'm a lawyer, I'm a lawyer
yes, it's true I am a lawyer
With a big black lawyer case.
And I'm here for my trial
With a big bad lawyer smile
On my big bad lawyer face

Asked and answered, asked and answered
Was it really asked and answered,
Oh, it's driving me insane.
It is May or December?
Yes, I'm sure I could remember
If I only had a brain.

Though I'm sure there's some relation
The judge says no foundation
For the proof I want to share.
I could have him in my pocket,
Ride this case just like a rocket
If I only had prepared.

Oh, it's over, yes, it's over
Got the judgement and it's over
And it really is a shame
That the other lawyer's meanness
Just blotted out my genius
but I'm really not to blame

(Repeat Verse one to qualify for CLE credits, which have been applied for).

LASER PROJECT

As mandated in 1994 legislation, the Office of State Superintendent of Public Instruction, the Office of the Attorney General and the WSBA have developed a volunteer-based, conflict resolution/peer mediation training program for Washington schools and communites. Washington Ecology Chair **Christine Gregoire** and WSBA President **Edward Shea** co-chair the program. LASER goals are for expansion of peer mediation programs in the Seattle school district and statwide. LASER needs volunteer lawyers to "adopt" a school. In return for free mediation training, lawyers train student mediators and provide followup and support. For more information and to volunteer, contact **Diane May** at the LASER Project, (206) 389-2401.

LAW FUND REPORT
by **LAUREN MOORE**

Thank you to the lawyers and staff of Davis Wright Tremaine for being the first law firm in the state to make a pledge for LAW Fund's 1996 Annual Campaign (January 2, 1996). Davis Wright Tremaine has contributed more than $120,000 to LAW Fund since its first annual campaign in 1992, and has been extraordinarily supportive through in-kind contributions of volunteer time, pro bono legal counsel, furniture, meeting space, supplies, and administrative support. Special thanks to **Brad Diggs**, **Pam Cone**, **Margaret Sinnott**, **Mark Hutcheson** and **Mark Roberts**.

Thank you to **William Kinsel**, and Whirlpool Financial Corporation for supporting the designation of LAW Fund as the recipient of a *cy-pres* award. Thanks to their work and the advice and support of **David Leen**, **Ron Roseman**, **Stan Bastian**, **John Powers** and other LAW Fund Board members, LAW Fund was the recipient of a generous award, along with other worthy beneficiaries including the Legal Foundation of Washington, Chelan/Douglas Counties Community Action Center, Washington State Trial Lawyers Association, and the Washington State Attorney General's Office.

To learn more about LAW Fund or to make a contribution to our 1996 Annual Campaign, please contact: LAW Fund, 1326 Fifth Avenue, Suite 815, Seattle, WA 98101, or call (206)623-5261. LAW Fund is a 501(c)(3) not-for-profit corporation, and your contributions are tax-deductible.

Lifelong Seattle resident **Peter Lukevich** *is an attorney by day and the host of KLSY's* Lights Out *— one of the nation's longest-running request and dedication radio programs — by night. For more than five years, he has talked with listeners around the Pacific Northwest and British Columbia.*

PIERCE COUNTY REPORT
by **TONI FROEHLING**

Congratulations to the Enlightened County to the North. They have their system working well. If you go up to the big 9th floor courtroom looking for someplace to try your case, you'll wait for DAYS. The rumor that the county was going to pick up the tab for all those extra billable hours spent waiting, however, is absolutely TRUE. Mail all billings to the King County Executive's office. Don't worry, OUR case management will be different.

It also seems as if there is an unprecedented number of us lining up to take the place of the retiring judges. Maybe we should just let those going out of office pick their successors. That would surely cut down on the confusion. The extra vacancy could be filled by lottery, or alphabetical order or something.

The new format for electing officers and trustees to the Pierce County Bar Association is now one election old. Comments or suggestions should be directed to **Kit** at the bar office, **Don Powell,** or **Chris Keay**, our new fearless leader.

We hope everyone has purchased tickets to the latest play put on for the benefit of pro bono legal services. Contact **Elsie Powell** for yours. If this article is printed after the play . . . contact her anyway, and send a check. Ask her about the special discount for members of the Bar.

This month's "Bubba" was originally going to go to the prosecutor's office for even thinking about prosecuting the guy who spent $6,500 on a full-page ad in the *News Tribune* to write a poem to his estranged wife. The theory was that this somehow violated a no-contact order. But since that is somewhat of a sensitive topic, the award goes instead to . . . The **Lee Pendergrass** School of Economics**.** Lee recently opined as to how we didn't need to be increasing local bar dues to raise money. His idea was to put a big coffee can in the bar office and just ask for donations when we ran short. I like it. That how you collect fees, Lee?

SOUTH KING COUNTY BAR ASSOCIATION REPORT
by **JUDITH EILER**

This column begins with the Paul Harvey line, ". . .the rest of the story." Your reporter was roasted to the point of well-doneness. It seems that the world of reporting is rife with miscommunication. I was duly elected secretary of the South King Bar Association last spring. My opponent, **Ronald C. Mattson**, ran on a single-issue platform: He wanted to write the *Bar News* column. Conveniently enough, when it came time for my first column, I was headed to Europe, so, in a fit of generosity, I delegated what little authority I had and gave Mr. Mattson his wish. Imagine my shock when I read his October column, wherein he loudly (can you be *loud* in print?) proclaims that he is burdened by "doing the honor" of the column. So much for my granting any more wishes!

Babies in the news: Soon to be moms:

PROFESSIONAL & CLASSIFIED ADVERTISING INFORMATION:
Please see page 4

our vice president, **Theresa Ahern**, and Trustee **Kenlynn Gallinger**; not to be left out soon-to-be dads include attorney **Carlos Sosa** and ACA attorney **Scott Saeda**.

Judge **Woody Leverette** from Federal Way Division is fully recovered and back on the bench from his triple-by-pass surgery. Don't ask to see all his scars and full history unless you have plenty of time.

The Curran Firm has a full "skybox" view of the new Regional Justice Center building being built in Kent. The word on the street is that thus far it looks more like rubble than a building. Watch for updates.

King County Superior Court Presiding Judge **Dale Ramerman** reported that the Superior Court is not quite up to the "virtual RJC." South King had hoped that with the magic of computers the calendars for the South could be put in place before the Regional Justice Center was up and ready, thus giving us the court before the building. I guess the thought of all those judges and attorneys wearing those funny gloves and goggles didn't appeal to the RJC image.

Coming attractions: March 1996 - Dinner with the Supremes, Olympia; then moving from the Supreme to the farcical - April 1996 - Texas line-dancing at Gerry Andal's; May 1996 - new-officer induction - Emerald Downs (if it's ready).

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T. David Copley will continue to emphasize commercial litigation and employment law.

Rob J. Crichton will continue to emphasize commercial litigation.

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January 1, 1996

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The firm possesses and utilizes West CD-ROM libraries: Government Contracts (BCA, Comp. Gen., FAR and Regs., U.S.C.F.C. Cases and etc.), USCA and Washington, along with Westlaw and also the 1996, 16-volume set by McBride and Touhy, Government Contracts: Law, Administration and Procedure

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*U.S. Patent Agent

THE ATTORNEYS AND STAFF

OF

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are pleased to announce that

JOHN A. BENDER has become a shareholder in the firm. Mr. Bender is resident in the Seattle Office and will continue to practice in the areas of securities, commercial and business litigation.

C. PAUL DAGLE has become a shareholder in the firm. Mr. Dagle is resident in the Portland Office. His practice emphasizes affordable housing, partnership syndications, general business and corporate law, as well as securities and corporate finance.

CHARLES J. INGBER has become a shareholder in the firm. Mr. Ingber is resident in the Portland Office. His major practice areas include estate planning, taxation, probate administration and general corporate law.

MARY JO NEWHOUSE has become a shareholder in the firm. Ms. Newhouse, a registered nurse, is resident in the Seattle Office. She will continue to practice in the areas of medical malpractice defense, civil litigation and hospital and health care law.

we are also pleased to announce that

PATRICK H. VANE has joined the firm, resident in our Seattle Office.

Mr. Vane, a practicing attorney for more than 15 years, serves as Provost for the northwest region of Golden Gate University and is former Resident Dean of the University's Graduate School of Taxation. Mr. Vane will be practicing in the areas of tax, business, corporate law and estate planning.

and

JOHN S. SUNDSMO, Ph. D. has joined the firm as a Patent Agent resident in our Seattle office.

Mr. Sundsmo holds a Ph.D. degree in Microbiology/ Immunology from the University of Washington. He has 10 years university experience in cancer and heart/lung disease research as well as 7 years of industrial experience with biotechnology and genetic engineering companies. He has practiced as a Patent Agent before the U.S. Patent and Trademark Office for 6 years in the chemical, biotechnology and pharmaceutical area.

Donald E. Hacker, Jr., Inc., P.S.

is pleased to announce that

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March 1, 1996

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January 1, 1996

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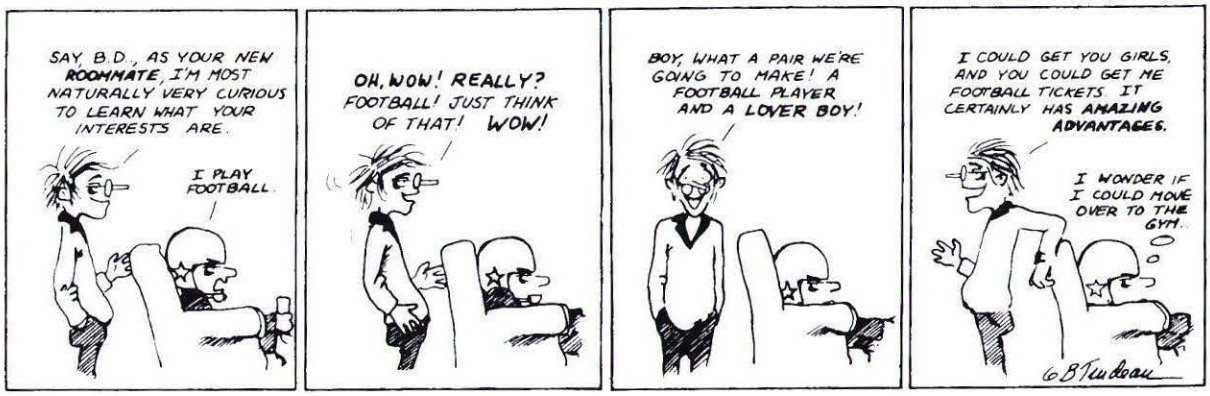
Bar News & WSBA Members Turn 50 — We Call it:

The Doonesbury Syndrome



by ***Jay Goldstein****, Editorial Advisory Board Member*

You could say Michael doesn't get it. Political correctness and consciousness raising were yet to enter the new lexicon of modern culture. Later, of course, Michael Doonesbury reveals himself to be more Charlie Brown, nebbish of the college set, than lover boy. And B.D.? Well, he and Boopsie get each other.

The comic strip chronicles the '60s generation and their struggle as the '60s turned into the '70s, '80s and '90s.

Just like us. And with WSBA's *Bar News* turning 50 this year, the Bar News takes a look at a few representative WSBA members as they turn the calendar one more time.

Our half a century birthday lawyers, 627 of them, represent the first wave of boomers, the first wave of the largest group of WSBA members — 40.1% are age 40-49 — and their struggle from law school in the 60s to their more grown up years that followed. For the record, 65.2% of us are between ages 32 and 50, with 74.9% below 50, 21.9% over 50, and 3.2% turning 50 this year.

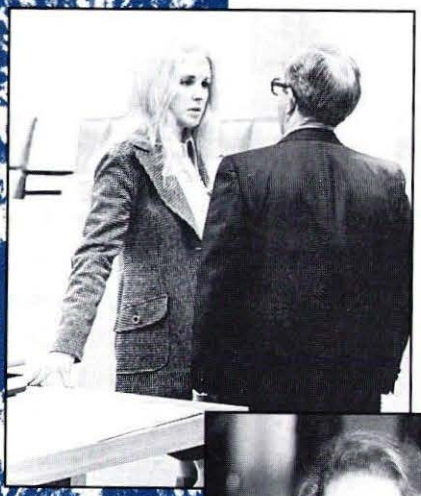
Ever since we could change television channels by ourselves, we have marveled self-indulgently at how we ruled the planet, or at least how surely we would once we took over. We mused (gloated?) over the changes we would enact when we finally toppled the establishment. But times change.

Or as WSBA birthday boy Steven Tubbs noted recently, quoting Pogo, another comic strip character, "We have met the enemy, and they is us."

Mr. Tubbs, former WSBA Board of Governors member and current partner with Schwabe Williamson & Wyatt in Vancouver, highlighted the irony common to many boomers. In his college years at the University of Washington he participated in the University District Movement including the march down the freeway to the courthouse. Up the establishment was a common thought of the times. "And what could be more establishment than being a member of WSBA's Board of Governors?" he asks rhetorically.

On the other hand, Mr. Tubbs reflects another theme central to many boomers. "Just because I grew up and joined the establishment," he says, "does not mean I have turned my back on the ideals of my youth." Mr. Tubbs notes that he has not changed political parties nor his goal upon graduation from law school. "I still find helping people the most satisfying aspect of practice," he continues. "I try to keep the thank you notes from clients when they feel I went beyond my professional responsibility on their behalf."

Mr. Tubbs finds the current political rhetoric disturbing, but he asks a good boomer question: How does his disturbance with the current political rhetoric compare with the difficulty that the establishment of, say 1968, had with the rhetoric of the time? Unknown.



Supreme Court Chief Justice Barbara Durham in a 1972 **Bar News** *photo, and today*

Ellen Dial would probably agree with this cartoon. The former '60s folk singer entered law school as another form of social activism.

"Initially," says Ms. Dial, "I believed that many of the most important policy questions were being decided by law suits and the activist U.S. Supreme Court: environmental issues, civil rights, and women's rights, for example. But once in law school I became fascinated with other aspects of the law and legal procedures."

Ellen Dial, 1969

She would have opted out of the movement for a career teaching law until one of her mentors, Washington Supreme Court Justice Charles Horowitz, convinced her to try her hand at law practice.

"But there weren't any jobs just out of law school with the ACLU or the Sierra Club," she continues, "so instead I got a job I liked."

Ellen Dial today

Ms. Dial, a partner with Perkins Coie, handles real property transactions and formerly chaired WSBA's Real Property, Probate and Trust section. She notes that her skills, not being litigation, offer little opportunity to create law through the courts.

Like many boomers, Ms. Dial notes her discomfort when viewing the '60s historically rather than as a breathing body that has changed over time. Her college age daughter just took a course in '60s culture, and Ms. Dial has mixed feelings. "The '60s were a dramatic, trouble-filled time," she reflects. "The Viet Nam War was the defining event of people my age. You weren't able to duck the issue; no matter what side you took, it affected your relationships."

Steve Crossland then

At least boomers ask the question.

Stephen Crossland knows about character. Raised in Cashmere in the heart of central Washington's apple belt, Mr. Crossland went to law school to escape the corporate world. "'The Graduate' and 'plastics' really spoke to me about my need to leave corporate employ," Mr. Crossland says.

"I wanted to help people and to work with people to solve their problems," he continues. "I was too independent for the corporate world. Then, when I graduated from law school, the important issues for me were geographic: where would I practice. I wanted to practice in a place where I felt comfortable, where I could raise a family, and where I had a sense of roots. That led me back to my hometown, Cashmere."

With no job possibilities there, Mr. Crossland hung out a shingle, and he had to ask the office products merchant about pleading paper and other intricacies of law practice. The firm is now known as Johnson, Gaukroger and Crossland, with offices in Cashmere, Wenatchee, Waterville and Chelan.

Steve Crossland now

Schooled in the San Francisco Bay area, Mr. Crossland found his eyes agog during the general social upheaval taking place all around him during college.

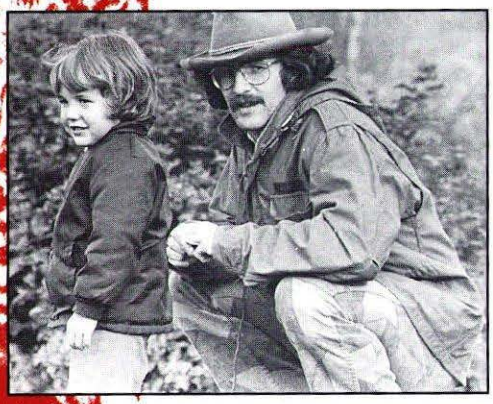
The '60s have special relevance for Mr. Crossland and lawyering. "Atticus Finch, the lawyer in 'To Kill a Mockingbird,' was a role model for all of us," Mr. Crossland remembers. "His attitude toward life was piercingly relevant because he believed in doing what was right. That's a goal for me and for all of us raised in the '60s."

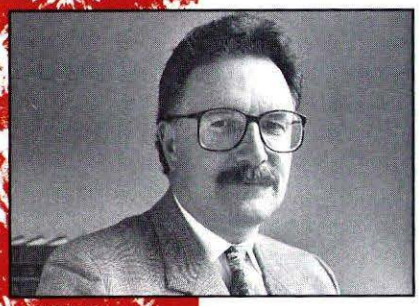
Meet Rebecca Coufal. Ms. Coufal says she is not an idealist and never was. She went to college in the '60s but found herself more intent on English literature and marriage than on social activism. Nonetheless, she thinks of herself as an early hippie, having moved in 1969 to the hills of northeastern Washington with her young family, living on 200 acres in the boonies.

Which is where she found herself in 1982, divorced with four kids, and no training for any real job outside the home. She would not say that law school beckoned.

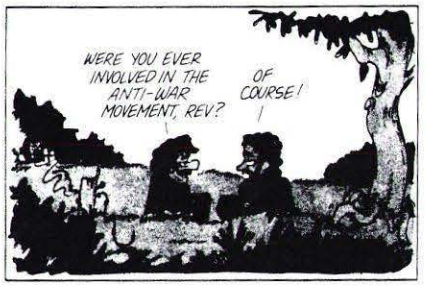
"I went to law school to make a living," says Ms. Coufal. "I didn't expect to get in, but I did." In fact, she went straight through in less than three years at Gonzaga, commuting from west of Chewelah. And she thoroughly enjoyed her law school experience. "I had been up in the hills with no one to talk to."

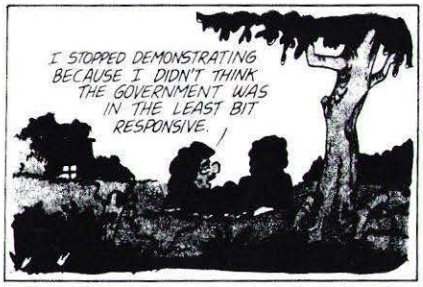
After law school she worked for a federal magistrate followed by a stint for a downtown Spokane law firm. She now practices solo, her practice revolving around social security, workers' compensation issues, employment law, and criminal defense.

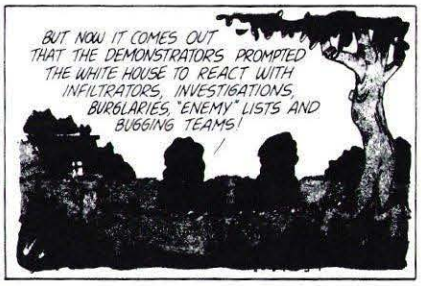


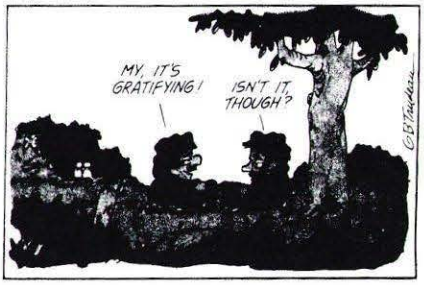


Michael Withey with son John (above) and today (below)









That sounds like Michael Withey, who says, "I got involved in law as a tool for social change."

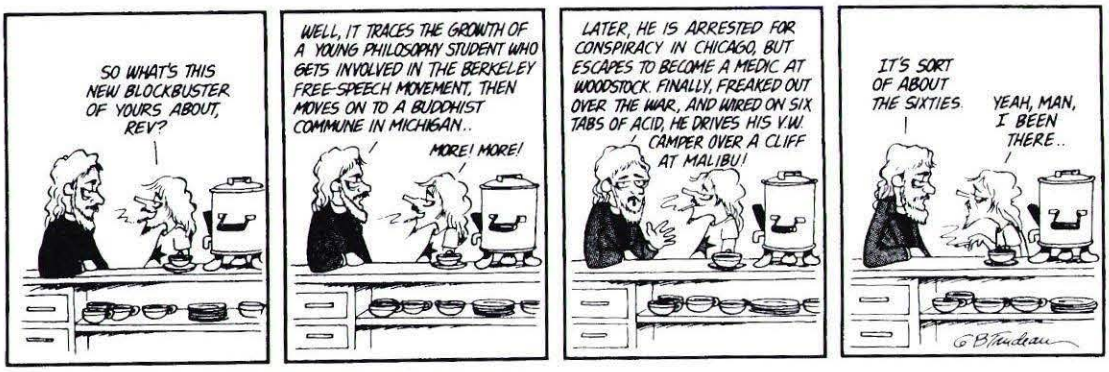
Soon after law school Mr. Withey founded a legal collective known as Smith, Caplin and Withey that lasted for 10 years. The collective sought to "break down the hierarchy," as Mr. Withey says, representing draft resistors, people beaten up by the police, and generally practicing "cutting edge" civil rights law — street law at its '60s best.

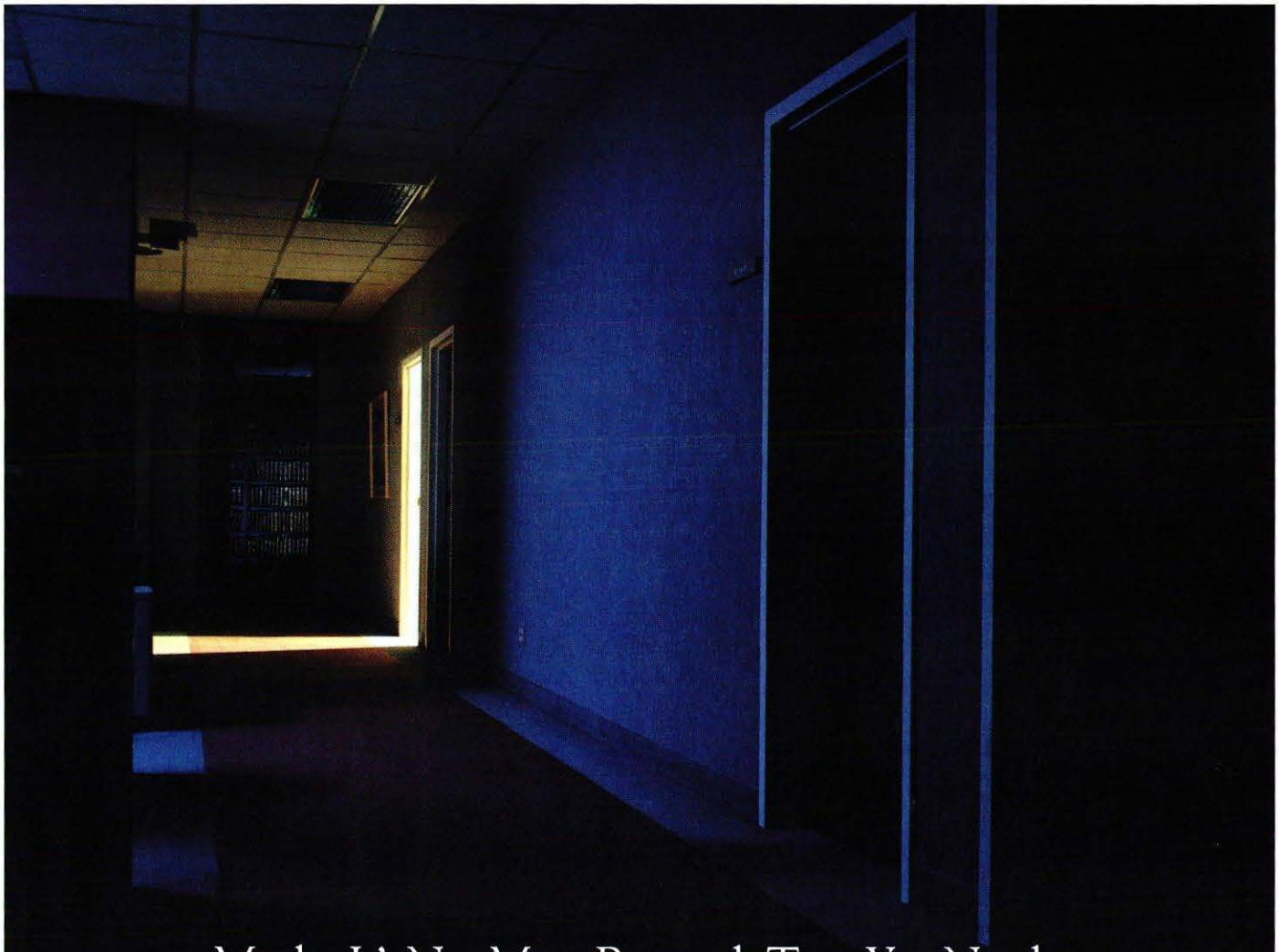
The hierarchy that Mr. Withey has broken down in court includes Ferdinand Marcos, the Seattle Fire Department, and the Boeing Company, among others.

As for '60s ideals and '90s realities, Mr. Withey refuses to categorize those who work for the big firms as turning their backs on their ideals. "I never bought into that."

The president of Trial Lawyers for Public Justice notes that public interest law "is not something external. It's something you are — not your job. It's in the heart, right where you are, if you believe in it. If you're in a large law firm or the prosecutor's office, you can do it, as pro bono work or in other ways."

Now as a partner with Seattle's Schroeter, Goldmark & Bender, he still finds himself on the cutting edge of social activism through the courts, working on Title IX issues on the rights of women, access to justice, and federal preemption issues.





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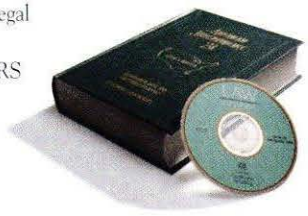

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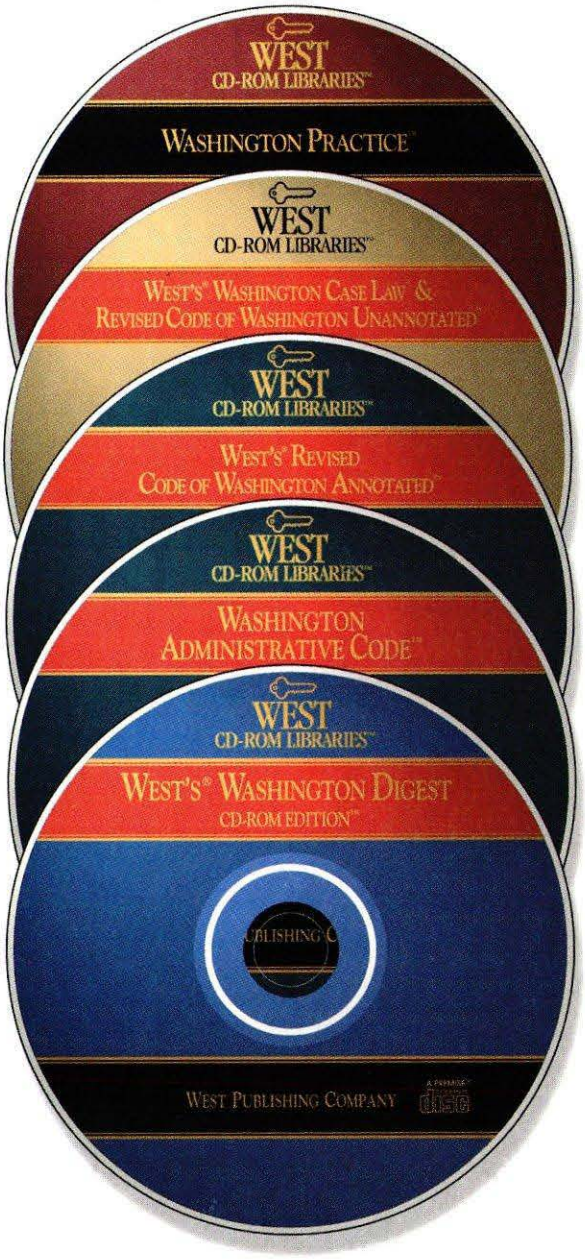

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