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Washington State **Bar**
News

Vol. 50 No. 5, May 1996

The official publication of the Washington State Bar

Nursing Homes and Long-term Care

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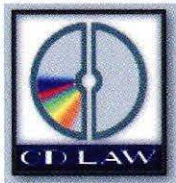
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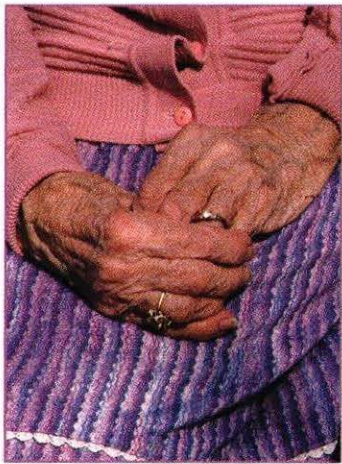
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Washington State Bar News

Vol. 50 No. 5 May 1996

The official publication of the Washington State Bar

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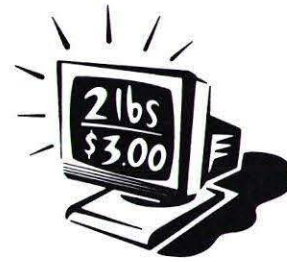
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Repressed Memories

Editor:

This letter is written in response to the January 1996 Elizabeth Loftus article you were so "proud" to publish. Loftus' opinions were presented as nearly uncontroverted facts rather than as her opinions in a hotly debated field. Moreover, the *Bar News* failed to inform the reader that many professionals challenge Loftus' credentials or expertise to render any opinion in this area.

While Elizabeth Loftus is a well-known *defense* expert in delayed discovery cases, she is *not* a traumatic memory expert. She is quick to criticize various treatment techniques of therapists, but she herself has never diagnosed or treated a client for any mental disorder because she is not a clinical psychologist. Her article, while on the surface appearing balanced and scientific, lacks empiricism and objectivity. She completely ignores the body of science and numerous cases that disprove her categorical conclusions.

An article on delayed discovery cases should justifiably address both the concerns about false accusations (a small percentage of the statistically underreported cases of child sexual abuse) and the damaging nature of incompetent therapy. But that is far from the whole picture. Loftus patently ignores over a century of multidisciplinary medical and scientific studies that link traumatic events and neurosis, including her own study of sexual abuse survivors in which 31% of the subjects had forgotten all or part of the abuse event and later recalled it. These studies demonstrate time and again that a personally experienced traumatic event may result in partial or total memory loss of the traumatic event. Loftus herself was victim to such a traumatic memory loss, as she describes it on page 149 of her book, *Witness for the Defense*.

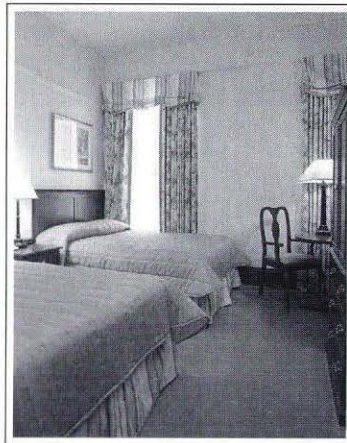
The problem with this and other Loftus articles, as well as her testimony, is her failure to acknowledge the vast body of literature about traumatic amnesia and dissociative disorders. Instead, she replaces the long history of the study of traumatic memory with "false memory

syndrome," "imagination inflation," and other catchy sounding "disorders" which are self-promoting terms coined not by the psychiatric or medical profession, but by Loftus and others involved with the False Memory Syndrome Foundation. Not only is the replacement of traumatic memory science with false memory literature misleading, it is inaccurate.

Numerous recent studies by experts who have studied trauma, show that a significant percentage of child sexual

abuse victims report forgetting some or all of the abuse, often for extended periods of time. Herman and Schatzow found that 64% of the women they interviewed reported a period of partial or total amnesia. Brier and Connate found that 59.3% of their male and female subjects reported amnesia for their sexual abuse before the age of 18. Pope and Feldman-Summers found that 40% of their subjects were partially or totally amnesic for the abuse at one point in time. Both the

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Herman and Pope studies inquired about corroborating evidence. In the Herman study, 74% of the subjects were able to provide independent corroborating evidence. In the Pope sample, one-half were able to obtain independent corroborative evidence.

Dr. Linda Meyer Williams utilized public hospital records to interview 129 women who had been treated for sexual assault injuries as children in an emergency room. Seventeen years later, 38% were amnesiac for the abuse. There are now biological studies which demonstrate that traumatic memories are stored differently in the brain than are non-traumatic memories.

In a recent case, Loftus conceded (on cross-examination) that dissociation from a traumatic event is a recognized phenomenon. *State of New Hampshire v. Hungerford*. Although Loftus discussed the decision in *State of New Hampshire v. Hungerford*, where the court disallowed testimony regarding recovered memories based on the Frye-Daubert criteria, her *Bar News* article contained no mention of *State of New Hampshire v. Walters*, where the court used the transcript from *State of New Hampshire v. Hungerford*, and admitted expert testimony regarding traumatic amnesia.

The conclusions Loftus draws from her own work as well as other studies in the field of memory represent questionable science. She offers a one-sided version of the history of these cases in the courts and omits cases on dissociated memory that have been won based on very strong evidence. Multiple cases tried in this state demonstrate the fallibility of Loftus' categorical statements — cases in which there was extensive corroboration of the defendants' abuse of the plaintiffs, as well as other children. In at least two of these cases that Loftus fails to discuss (*Crook v. Murphy* and *Alley v. Alley*), she was an expert or a consultant. In the *Alley* case, an independent witness who read about the case in a newspaper came forward to testify that the plaintiff had told her of the abuse as a young child. The plaintiff had forgotten this encounter as well as the memories of abuse.

Loftus also fails to disclose the very substantial income she generates from her expert testimony.

While there is nothing necessarily wrong with being an expert witness for one side, we are disappointed that the *Bar News* chose to present the views of this

controversial witness as though they represented neutral scientific facts without allowing those who hold opposing views and who are experts in the field of traumatic memory to present them to the readers of the *Bar News*.

We hope that in publishing this letter, you correct your error to at least a small degree.

BARBARA JO LEVY, ET AL.
Seattle

Dr. Loftus responds:

The reply by Levy et al. to my January Bar News article on Repressed Memory Litigation, while welcome for reminding readers that there is a debate, is sadly replete with mistakes and misunderstandings regarding the scientific study of human memory. Much of this misinformation has been exposed by two Harvard University psychiatrists in several recent publications. Dr. Harrison Pope and Dr. James Hudson (1995) examined all of the studies which attempted to test whether extensive memories of horrible childhood sexual abuse can be repressed. Their conclusion: "... present evidence is insufficient to permit the conclusion that individuals can 'repress' memories of childhood sexual abuse." (p. 126). In other

words, no cogent scientific support for some of the claims being made in repressed memory trials today.

While the debate goes on (and some people will never be able to be convinced that they are mistaken), my purpose in writing the article was in part to illustrate how well-meaning legislators could pass a special statute of limitations allowing, indeed requiring, courts to hear disputed claims of decades-old "events" without appreciating the impact of such lawsuits on the truth-finding function of courts and on the lives of people required to defend dubious claims at great expense and mental anguish. Perhaps the law should be subtitled: The Law of Unintended Consequences.

I have examined hundreds of cases involving claims of repressed memory. These are not cases in which people have known all along about their brutalization or cases in which people have been simply reminded recently of some past trauma that they previously have preferred not to think about. These cases sometimes involve bizarre claims, such as detailed "memories" of abuse from the first year of life, or more than 1,000 rapes allegedly completely repressed until after psychotherapy. I wish I could

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explain to the (mostly female) individuals bringing these accusations that while I may doubt the veracity of bizarre 'memories' acquired during psychotherapy, and while I consider it a moral obligation to continue to voice such doubts, I do not mean to trivialize the women's anguish. Accusations of grotesque sexual crimes are horrifying for both accused and accuser. Both can have a strength of conviction and be suffering deep pain. The statements that scientists make sometimes seem very impersonal. They may even seem callous. But this does not mean that I do not know, as a human being, as a woman, and as someone who knows what it is like to be ridiculed publicly, that there may be more to each story than generalizations from research can reveal. But scientific generalizations are what I can offer. I can say, using my knowledge of objective studies as a base, that it is virtually impossible to distinguish true from false allegations without corroboration, or that some allegations are close to scientifically impossible. While it may be painful for people to hear scientific opinion, I know that it has to be voiced, to prevent further pain

to others. I wish it to be understood that I am not unfeeling about these dilemmas, only committed to what I continue to think is right, based upon the best science and rational knowledge that we have.

In their effort to attack the messenger of scientific opinion, Levy et al. have also presented Bar News readers with incomplete information and even misinformation that must be corrected:

In the Alley case, both sides tried to hire me as an expert, and due to conflicts I could not work on the case at all and know nothing about the alleged "corroboration" of the plaintiff's memory.

Levy et al. seem bothered by the "substantial income" that they speculate I might receive through legal consultation. While I take on pro bono cases each year, it is true that I often am compensated for my time. This fact never seemed to bother Levy's partner, who has retained my services as far back as 1978. In any event, perhaps I'll consider reducing my consultation fees when Levy starts practicing law for free.

It was most interesting to me that

nonscientists would refer to my "questionable science." I have been awarded three honorary doctorates by prestigious universities for my scientific research. This very body of scientific work was never before a problem in the numerous court cases on which I have consulted for Levy and company or their law partners.

Finally, the lack of common decency shown by Levy et al. in raising the subject of my own experience at age 6 of sexual abuse by a baby-sitter is beyond measure. Since I am forced to respond to this unpleasant subject let me say something that Levy already knows: the abuse is something I have always remembered. Why Levy chose to mislead readers by distorting the description of my experience would only be speculation.

I tried to convey an important message in my Bar News article. The message that is so important at this time in our society bears repeating in stronger language so that it isn't lost in a sea of insults and innuendo. Berkeley professor Frederick Crews (1996) has mined no words: The kind of recovered memory therapy that has led to the sort of bizarre revelations that have become litigated recently "smacks more of ideological zeal than of scientific discovery," "its diagnostic logic is patently fallacious," "its boast of therapeutic efficacy remains unsubstantiated," "it has brought widespread tragedy to many of its clients, their families, and other falsely accused parties," and "it has clogged our courts with dubious prosecutions that subtract needed resources from the punishment of real molesters while unfairly tainting the credibility of victims who have always remembered their brutalization." These therapeutic methods constitute malpractice, Crews charges, and their toleration by equivocating professional bodies deserves to be regarded as a scandal. The glossing over of these realities with misrepresented research, with slanderous innuendo against conscientious individuals, and other diversionary tactics should likewise not be tolerated.

More on Capital Punishment

Editor:

I read with interest and dismay your editorial in the February 1996 issue of the

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Bar News. You seemed to say that unless a majority of our association is opposed to the death penalty, members of our association who try to overturn death sentences in their representation of clients sentenced to death should not be recognized for their work. You were specifically referring to the WSBA Courageous Award given to Seattle attorney Tim Ford. In my opinion, you mistakenly characterized the award as celebrating "institutionalized divisiveness," rather than professional excellence in the face of adversity.

Our association is one of professional advocates who operate within a legal system that generally has at least one plaintiff and one defendant, each on opposite sides from the other. The sides that we typically represent may promote a bias in some of us, or it may not. Either way, our collective biases are irrelevant to the question of any one particular advocate's professionalism.

Mr. Ford was recognized for his dedication as an advocate on behalf of those that he represented. Even in the face of potential threats to his own personal safety, due to his representation of hated

or unpopular clients, he continued to zealously advocate on behalf of those clients.

We do not need to know what a majority of our association feels about the death penalty in order to recognize a fellow attorney who has acted in the finest traditions of our profession. Advocates who represent hated or unpopular clients are more in need of our recognition and encouragement than those representing clients who hold the majority point of view.

We must recognize courtesy, dedication, and excellence in professionalism, regardless of which side of the "vs." our clients happen to be on.

JOHN M. "JACK" JONES
Olympia

Courthouse Security

Editor:

The extensive recommendations of the task force ["Courthouse Security Draft Report," March *Bar News*] seem to do an excellent job of ensuring nothing bad ever happens again at any courthouse here in Washington. Unfortunately, there seems to have been no consideration of the fact that bad things rarely happen in Washington courthouses. I particularly

enjoyed the reference to prisoner transport in public hallways increasing "the ability to transfer weapons to prisoners." Has this *ever* happened in Washington? Implementation of these standards will force county and local governments to divert scarce resources from the streets where murders and other violent crimes more frequently occur.

I have no doubt that many attorneys and most courthouse employees were unnerved by the shooting one year ago at the King County Courthouse. That tragedy, the first time a shooting had ever occurred there, ended when several jail officers subdued the shooter. As I read the paper today, I see more shootings have occurred in Puget Sound. None of these incidents ended when armed officers from the Sheriff's office, or any other agency, subdued the perpetrators. Instead, local law enforcement only managed to show up long after the threat was gone. Given most courthouses' proximity to jails and police stations and the usual presence of jailers and testifying officers, I submit that courthouses are already safer than the streets. Why then this huge diversion of resources to the courthouse? Is

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it media driven? Is it based on the assumption that the state should follow the federal government's lead? Or is it simply the product of people and a system which do not have to make trade-offs?

According to a *Seattle Times* article on

November 15, 1995, it takes an officer in southeastern King County an average of 20 minutes to respond to a high-priority call such as domestic violence with a weapon. In response to this, King County proposes to spend several million dollars

a year on courthouse security, and Seattle hundreds of thousands of dollars a year, for buildings located next door to a police station and typically filled with armed law enforcement. This reaction is justified by platitudes like "These facilities were built for the peaceful resolution of disputes but they have become the focal point for violence," and "Citizens are entitled to access to the judicial system without fear for their personal safety." (King County Executive Gary Locke, King County Superior Court Presiding Judge Anne Ellington, quoted in David Schaefer, "Locke Wants Building Security Broadened," *The Seattle Times*, May 5, 1995, at B3.) What I do not see (and I recently ran an on-line search looking for) is any hard data describing the incidents of crime in courthouses versus the surrounding area, or versus the entire State. My own unsupported response, since I cannot find any data, is that the neighborhood surrounding the King County Courthouse is both more a focal point for violence and a source of fear for those seeking justice than anything that happens inside its doors.

My view is at least supported by anecdotal evidence gathered after last year's

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shooting. Again according to *The Seattle Times*, in the months prior to the shooting court security officers recalled this "violent" incident — a mother and daughter fighting. Other incidents — a half dozen disruptive people were removed from a courtroom, and a woman arrived to be arraigned with a weapon in her purse. No mention of a weapon in the mother-daughter fight, no mention of any force to remove people from the courtroom, and no mention of the circumstances surrounding the woman with a weapon, including if she had a permit or had voluntarily disclosed the weapon. The same article cites the many "incidents" which occur in the courthouse, including many people with permits carrying weapons, and some 500 "fights, assaults, or threats of violence." (What a great way to pad statistics. What is the reality — five fist fights, 15 assaults (i.e., fear of offensive touching), and 480 threats?) How may violent incidents actually occur in courthouses, how does weapons screening stop them, and how does that compare to the rest of the city?

Simply stated, the Courthouse Security Task Force sounds like a solution in search of a problem. Until such time as evidence can be presented justifying this level of security, the efforts of any task force are a misallocation of resources and will likely reduce the safety of the citizens of Washington.

THOMAS M. DONAHUE, JR.
Seattle

Still more on Jury Nullification

Editor:

Scott W. Olson's analysis of the jury's role in a constitutional republic misses the historic and constitutional purpose of the jury (*Bar News*, March 1996, page 7).

The jury was meant by the Founders to be a counterforce against the Legislature in order to protect the rights of minorities. The jury was never meant to be the rubber stamp of the Legislature. The will of the majority is not the proper measure of morality and freedom in a constitutional republic. Rather, the protection of civil liberties is the proper measure of morality and freedom.

This assumes, of course, that the jury is a true cross-section of the community. Juries which have been skewed by eliminating those who oppose the law at issue

in the case are never cross-sectional or constitutional juries. HJR 4205, the jury nullification bill, ends the practice of striking for cause jurors who oppose the law at issue, thereby creating truly cross sectional juries.

Contrary to Mr. Olson's assertions, jury verdicts did end slavery in Massachusetts. *Slew v. Whipple* started a chain of verdicts culminating in the Quock Walker case in 1783, decades before the industrial revolution, wherein the jury banned slavery by their interpretation of a state constitutional provision. See "The Political History of Jury Nullification" by Godfrey Lehman.

Jury verdicts also overthrew prohibition. As professors Alan Schefflin and Jon Van Dyke have noted: "Because of the high acquittal rate in prohibition cases during the 1920s and early 1930s, prohibition laws could not be enforced. The repeal of these laws is traceable to the refusal of juries to convict those accused of alcohol traffic." Schefflin and Van Dyke, "Jury Nullification: The Contours of a Controversy," 43 *Law & Contemp. Probs.* 51, 71 (1980). See also the comment of the court in *U.S. v. Dougherty*, 473 F. 2d 1113, 1130 (D.C. Cir. 1972). Jury nullification rendered alcohol prohibition unenforceable, thereby persuading politicians to submit repeal of the 18th Amendment to the people.

It is naive to assume that community

opposition to laws results in sweeping victories for those politicians who oppose such laws. Let's get real about the accountability of the Legislature to constituents. Many legislators do not follow their platforms after elected and many vote for laws that their constituents would never endorse. Also excluded from the process are those who abstained from voting and those who did not vote for the incumbent legislator.

Further, legislatures can be every bit as oppressive as kings. Witness the Alien and Sedition acts, the Fugitive Slave Act, alcohol prohibition, drug prohibition and the tax laws, all of which were imposed on us by legislatures. Jury veto power works as a check against legislative oppression. Juries, randomly selected from a jury pool which is a fair cross section of the community, are a much better microcosm of the community than legislators who are bought and sold by special interests.

If the Legislature truly represents the will of the people, their laws will survive jury scrutiny.

PATRICIA MICHL
Sumner

Responses to Letters

Editor:

I read with dismay the "Letters to the Editor" portion of the January 1996 *Bar News*. The *Bar News* editor is using this

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section . . . to debate with letter writers on such subjects as jury nullification, Catholic judges (believe it or not) and judicial screening committees.

I believe this is inappropriate for three reasons:

1. *It is out of place.* "Letters to the Editor" is an opportunity for *readers* to have their say, to inform other readers about something worthwhile, or to comment on or criticize an article, editorial, or previous letter to the editor. The editor should very rarely reply to a letter. An editorial is the place where the editor states his or her opinion. Mr. White has been given a place, called the "Editor's Page." I suggest that is more than sufficient.

2. *It is unfair.* The editor gets to see the letter, take his time to formulate a response, and deliver that response, all without fear of any meaningful rebuttal due to the lengthy delay between letter receipt and publication. Compare this with the way the voters' pamphlets are prepared: there, each side is given the other's statement and a chance to rebut, so the reader sees the entire debate. If you are going to argue with people, it is unfair not to let them respond meaningfully.

3. *It is inappropriate.* No officer, employee or agent (whether an "independent contractor" or not) of our beloved mandatory Bar Association should use our not-so-beloved mandatory dues and our official publication to promote his or her personal opinions.

[For example,] in February, Mr. White wrote his personal reply to another letter about jury nullification. But worse, on the Editor's Page, Mr. White wrote "I am ashamed of the frivolous lawsuits brought by my brethren . . ." I don't bring frivolous lawsuits, and neither do any of my brethren. If Mr. White's brethren bring frivolous lawsuits, he ought to find another family. In the meantime, I resent anyone giving the official WSBA stamp of approval to the Big Lie about frivolous lawsuits, which is utterly contradicted by all halfway objective observers outside the insurance industry and the manufacturers' trade groups, who are promulgating the Big Lie in an effort to take away the Constitutional rights of my clients. I don't need to read this in the official publication of my Bar Association. A

more proper response was that of former WSBA President Paul Stritmatter, who called on Slade Gorton to resign from the WSBA after Gorton said America's manufacturers needed to be protected from being held responsible to the people they hurt, because of "money-grubbing lawyers."

Then [in the Editor's Page] Mr. White expressed "contempt" for Judge Zilly's decision in the Mitchell Rupe case, calling it "silly." I wish someone would stop talking about Mr. Rupe's weight and start talking about the fact that his death sentence was vacated because the jury wasn't told in the penalty phase of his trial that a key prosecution witness had failed a polygraph test. That little tidbit of information might well have caused one juror to doubt the wisdom of killing Mr. Rupe. I expect one-sided, sensationalistic reporting from the *National Inquirer*. I expect something more from the *Bar News*.

My point is not to agree or disagree with Mr. White's opinions, although as you can probably tell I disagree with a lot of them; rather, my point is that the editor is using my mandatory dues to disseminate his private, not-terribly-well-informed opinions. [This letter has been edited for length.]

DAVID S. HELLER
Seattle

Your letter prompted me to count the number of my replies vs. the number of letters which have appeared in the Bar News during my tenure as editor. I have responded to nine out of 63 letters (15%). This is not, I propose, an abuse of editorial discretion.

You state that you would like to limit the editor's forum exclusively to the Editor's Page. This might be workable if, in fact, I regularly used that venue. However, I do not believe an editor should contribute such a page if he or she has nothing relevant to say. Consequently, there have been only three such pages in the past six months.

In any event, your vision of a letters department differs significantly from mine. I (and, judging from letters, most others) appreciate discourse in such pages, rather than monologues. In my opinion, this prompts readers to think and interact with the magazine. An ex-


cellent example would be Tom Stahl's letter in the January Bar News regarding jury nullification. He stated his supporting viewpoint, and I offered an opposing perspective. He then wrote a responsive letter, which appeared without comment in the March issue. In my opinion, Mr. Stahl's cogent rebuttal to my objections enriched the magazine and furthered intelligent dialogue.


It is this type of discourse which I believe invigorates a magazine and enlightens its readers. That is why I include responses from other individuals in this department, and that is why I include letters which disagree with my opinions — such as yours. Isolated monologue, safe from differing viewpoints (editorial or otherwise) is not the path to a vital, thought-provoking publication. Rather, it is the avenue of those who wish to minimize discourse when it disagrees with their opinions.

I submit that as long as our dues are used to publish both of our opinions, our association is well served. - Ed.

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Common-law Courts?

by **Edward F. Shea**
WSBA President

In the late 1970s and early 1980s, in different parts of the country, individuals who objected to the decisions of courts and various public officials began to form into groups. Often, these groups referred to themselves or were referred to by others as Posse Comitatus. "In the early 1980s the Posse Comitatus, an extremist group born of the farm failures of that time, formed a 'Township of Good Faith' near Walla Walla with its own courts, militia, and rules." *The Seattle Times*, May 8, 1995.

The members of the Posse Comitatus would file liens on the property of public officials whose decisions had offended them. For those judges and public lawyers who found their real property encumbered by such liens, the process of removing them was long, complicated and costly. Critics of the Posse Comitatus movement believe those were the exact results the movement sought to achieve. After a couple of years of heightened activity, the movement seemed to disappear or at least became significantly less active both here and in the West.

In recent times, however, some groups have renewed debate about the proper jurisdiction of state and federal courts over the lives, liberty and property of the citizens of this country. That renewed debate is protected by the First Amendment to the United States Constitution. Not only are groups organizing to debate the jurisdiction of the courts, they are also forming their own courts — "Common-law Courts" or "citizens' courts." While freedom of speech is found in the United States Constitution, the establishment of common-law courts by the various groups is not; at least, it has not been recognized by any serious constitutional scholars.

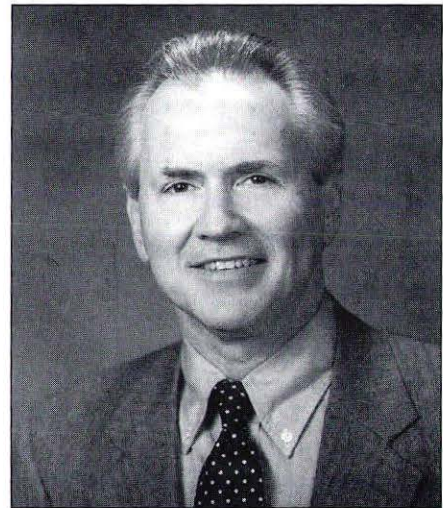
According to, "A law of their own." (common-law courts) an article published in *Newsweek* magazine on September 5, 1995, "Common-Law courts have sprung

up in at least 11 states in the farm belt and the West over the last year, organized by a cross-section of people bent on directly challenging government. In living rooms, bingo halls and conventional centers, dozens gather weekly to form juries, present evidence, and issue kangaroo-court indictments, liens, arrest warrants — and even death sentences. None of this has the force of law."

In Kansas, Texas, Louisiana, Montana, Colorado and even here in Washington, citizens have formed these rump courts and have acted on the decisions of these "courts" by issuing liens as well as subpoenas and other purported "official court documents." It may seem comic until the lien shows up in the auditor's office encumbering the property of a lawyer or public official.

In Garfield County, Montana, it reached unacceptable limits after which the Garfield County Attorney brought actions against several men and women who actually attempted to take over a courthouse. The Montana legislature acted to make it a felony to impersonate or intimidate local officials. "It is worrisome," says Attorney General Joe Mazurek of Montana. "Where they begin to cross the line between being an annoyance and making threats of violence is where the concern becomes great." *USA Today*, September 17, 1995, Weekend Edition, Officials Fear Actions of Extremists' 'Citizens Courts' Vigilante Action Reported in West, Farm Belt States." That same article reported that in Colorado some citizens' court supporters have been charged with threatening and harassing public officials.

It has turned out to be more than a harmless exercise to some. A Montana municipal court judge was the subject of continued harassment after hearing a routine traffic ticket case of a supporter of citizens courts. The harassment was ex-



Edward F. Shea

treme, and the police eventually warned her that a murder contract had been placed on her head. The judge, a divorced mother of three, said after hearing of the threat, "Who in their right mind would choose to serve their community when the community becomes defenseless in the face of such terrorism?" *USA Today*, Weekend Edition, September 17, 1995.

So what have these "common-law" or "citizens'" courts done? They have declared hundreds of people to be state, not federal, citizens. They have rejudged cases already tried in regular courts, and they have attached liens to the properties of many, including public officials, with whom they disagree or judges who have taken actions that they disapprove of. And it is not just in Oklahoma, Colorado or Montana that these courts and these issues have arisen.

Recently, there has been a revival of "citizens" or "common-law" courts here in Washington. In the *Seattle Times* on May 8, 1995, the headline read: "Many Groups in Far Right are More Interested in Legal Battles." That article reported that in the past three years, a couple of hundred people have filed papers with the Secretary of State's office renouncing federal jurisdiction over them.

The people involved in these discussion groups as well as citizens' and common-law courts are people who look very much like the average people in any town in this state. What they have in common is apparently a conviction that government, including the judicial system, is

DANKA

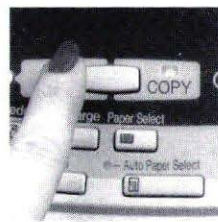
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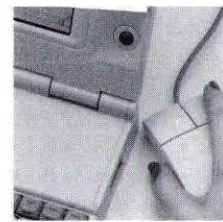
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against the people and the constitution. And they are not only discussing matters; they are taking action.

In central Washington, one district court judge found that a disgruntled citizen who appeared before her in traffic court on a routine traffic matter had filed liens against her and other public officials in the county. That same article also reported that one individual had filed a \$200,000,000,000 lien against the governor and all statewide elected officials for failing to take their proper oath of office.

The tactic of filing liens and the complexity of having them removed led the Washington Legislature to pass laws to deal with the issue. In 1986, the problem had reached such proportions that the Legislature found it necessary to enact RCW 60.70 — Limitations on Nonconsensual Common-law Liens. With the recent revival of those tactics by individuals angry over governmental or judicial decisions, the Legislature once again acted by revising RCW 60.70 to deal with the complexity and cost faced by public officials whose property has been subjected to these invalid liens. The Office of the Attorney General compiled a detailed history of the need for the revision of RCW 60.70, which is available through the Attorney General's office as are pleadings it has developed in response to removing these liens.

Several individuals aware of that filing of the lien for some \$200,000,000,000 in 1994 began to issue "Certified Money Assignment Drafts" which were being used for payments of items as large as custom built boats, houses and automobiles as well as credit card balances, utility and cable bills. In June of 1995, the Attorney General's Office issued a "consumer alert" which warned that such documents were being issued as payments for purchases. It noted that the \$200,000,000,000 lien was not only invalid but had been ordered stricken by the Thurston County Superior Court.

Those in public office assume heavy obligations, but enduring the filings of such illegal liens is not one of them. Fair comment on the judicial system is one thing, but illegal lien filings and other conduct intended to harass and intimidate public lawyers and judges must be opposed. The threat to the life of the judge in Montana is an example of conduct that is intolerable. We condemn such activities

in Sicily, Colombia and elsewhere when honorable judges and prosecutors are killed in retaliation for vigorous prosecution of the criminal laws — and we should. We deplore the conduct in various countries where lawyers are sanctioned and imprisoned for their advocacy of basic human rights — and we should.

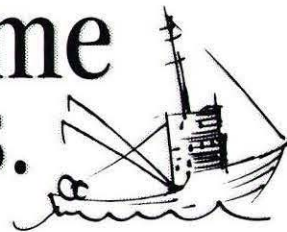
When we know that our fellow lawyers in public office and the judges within the

judicial system are being subjected to coercion and harassment, we must recognize our affirmative professional responsibility to speak out against this harassment and to educate the public about the true value of our judicial system and law — and we will.

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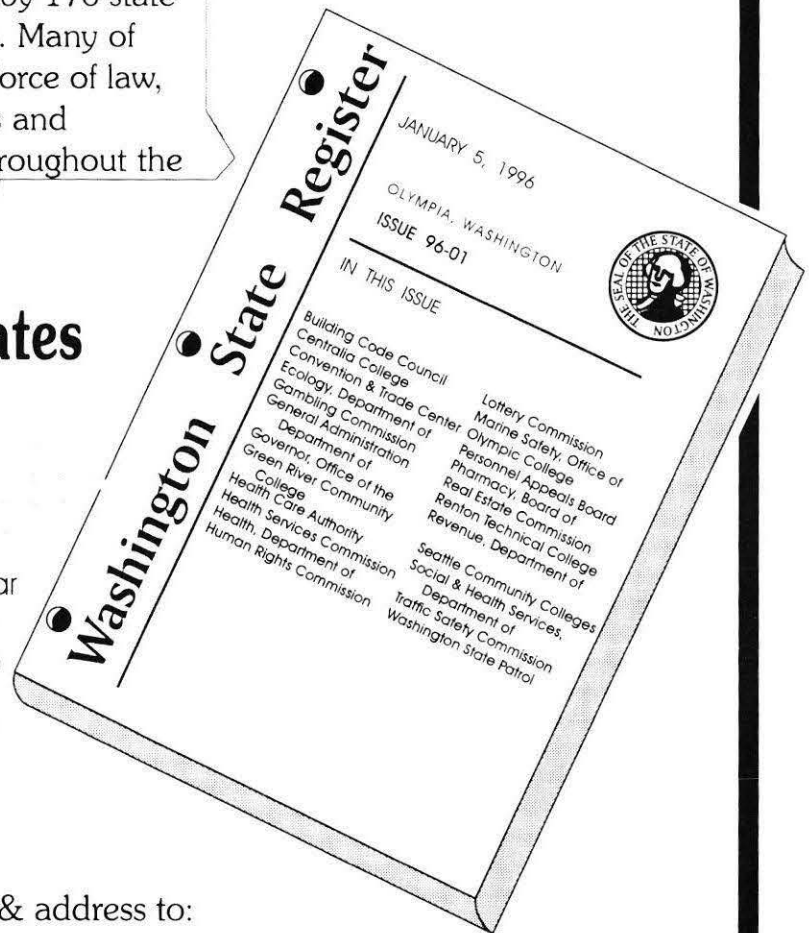
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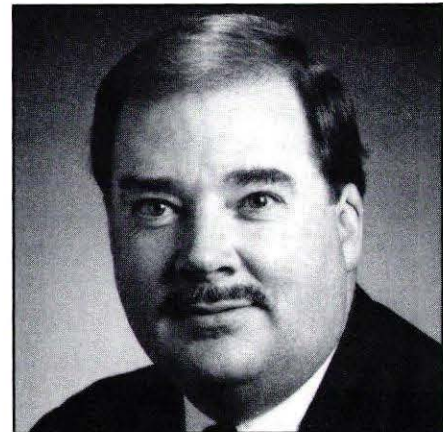
Solicitation of WSBA Award Nominations - 1996

by **Dennis P. Harwick**

WSBA Executive Director

Each year at this time, I ask members of the Washington State Bar Association to look around and identify those members of our profession and the public who deserve the recognition and thanks of the Washington legal profession. If you know of someone who fits the criteria set forth

below, please send me a letter of nomination and relevant information **by June 3, 1996**, so that I can forward that information to the Board of Governors' Awards Committee for consideration. Awards will be presented at a luncheon on Friday, September 6, 1996, immediately preceding the annual business meeting.



Dennis P. Harwick

Award of Merit	This is the WSBA's highest honor. It was first given in 1957. In general, the Award of Merit is given for long-term service to the bar and/or the public, although it has also been presented in recognition of a single, extraordinary contribution or project. It is given to individuals only — both lawyers and nonlawyers.
President's Award	As the name implies, this award(s) is given for special accomplishment or service to the WSBA during the term of the current President.
Board of Governors' Award for Professionalism	This honor is awarded to a member of the WSBA who exemplifies the spirit of professionalism in the practice of law. "Professionalism" is defined as the pursuit of a learned profession in the spirit of service to the public and in the sharing of values with other members of the profession.
Angelo Petrucci Award for Lawyers in Public Service	This award is named in honor of the late Angelo R. Petrucci, a Senior Assistant Attorney General, who passed away during his term of service on the Board of Governors of the WSBA. The selection criteria looks for a significant contribution by a lawyer in government service to the legal profession, the system of justice, and the public.
Outstanding Judge Award	This award may be presented to a judge from any level of court. It is presented for outstanding service to the bench and for special contribution to the legal profession.
WSBA Pro Bono Award	This award is presented to a lawyer, nonlawyer, law firm, or local bar association for outstanding efforts in providing pro bono services to the poor. This award is based on cumulative efforts as opposed to a lawyer's or law firm's pro bono hours or financial contribution.
WSBA Courageous Award	This award is presented to a lawyer who has displayed exceptional courage in the face of adversity, thus bringing credit to the legal profession.
Affirmative Action Award	This award is made to a lawyer or a law firm making a significant contribution to affirmative action in the employment of ethnic minorities, women, and the disabled in the legal profession within the State of Washington.

It is important to note that presentation of these awards is made only when there are truly deserving recipients. Some years no award is given in some categories.

Send nominations to: WSBA Executive Director

**ATTN: Awards
500 Westin Building
2001 Sixth Avenue
Seattle, WA 98121-2599**

by June 3, 1996

Nursing Homes &



Long-term Care:

A Primer

by Jeff Crollard

An old client of yours stops by for advice on a routine matter. In the course of your meeting, you discover that his wife has suffered a stroke and is now in a nursing home. Recently, the facility has told him that her Medicare coverage has run out and she must move to a part of the building with fewer services.

Or, to make it more personal, your father has Alzheimer's dementia and lives in a nursing home. He often gets confused, states he "has to go to work" and becomes combative when the staff tries to stop him from going outside. The facility says it cannot meet his needs. You are asked to move him.

On any given day, more than 48,000 people in Washington State live in long-term care facilities: nursing homes, boarding homes and adult family homes. One in three of us has a chance of spending some time, perhaps our last days, in a nursing home or similar facility. As lawyers, we may interact with these facilities for a variety of reasons, such as estate planning, reviewing admission contracts, or evaluating a possible p.i. case. Nearly everyone, either personally or through a family member, will one day come into contact with a long-term care facility.

This article is a primer on resident's rights in long-term care (LTC) facilities. The focus is principally on nursing homes; issues most likely to require a lawyer's help; the applicability of antidiscrimination laws; and a 1995 law giving access to tort remedies for abused or neglected residents. A more detailed version of this article is available from the author.¹

Background

Nursing homes (NHs) are licensed and regulated by the Washington State Department of Social and Health Services

(DSHS). It is the state's licensing, enforcement and operating standards which are of greatest interest to practitioners and residents.² The state regulations are the best single compilation of the laws affecting NHs. These regulations incorporate much of the underlying federal law.³

Nearly all NHs in Washington are Medicaid and Medicare "certified." These programs pay for approximately 65% of all NH care. In certified facilities, the federal and state rules apply to all residents, regardless of their payment source.⁴

In 1987, federal law changed fundamentally, shifting the orientation of NHs from a medical model to a resident-centered model and establishing a powerful set of resident rights. These include the right to be free from unwarranted chemical and physical restraints, the right to a homelike environment, and the right to individualized care. In Washington, these have been extended to residents in adult family homes, boarding homes and veterans homes. These basic rights are set out in RCW 70.129.

Adult family homes (AFHs) are also licensed and regulated by DSHS. Typically, these are single family homes and may have two to six impaired or disabled residents. They provide services ranging from assistance with personal care to skilled nursing care.⁵ Statewide, two-thirds of their residents are private pay, with costs ranging from \$1,000 to \$3,500+ a month. It is a violation of the Consumer Protection Act to operate an unlicensed AFH.⁶

Boarding homes (BHs) are licensed and regulated by the state's Department of Health. These facilities range in size from three to two hundred residents, but typically average 12 to 24. One third of BHs are group homes for the develop-

mentally disabled. BHs provide "domiciliary" care. Residents can, however, arrange for more intensive "limited nursing services."⁷ BHs may appear under a number of different names, with "assisted living facility" the currently fashionable term.

DSHS also enters into contracts with some BHs to purchase additional services for department clients. These are called assisted living services, adult residential care, or enhanced adult residential care services.⁸ When a problem arises in a BH, one may want to contact the Department of Health and DSHS, given the overlapping jurisdiction. Call DSHS (for NHs, AFHs, assisted living, etc.) @ (800) 562-6078. Call DoH @ (800) 526-6297.

Admission Issues

After a person decides to move into a long-term care facility, the first question may be: Which one? Consumers are often uninformed about the different levels of care and the quality of different facilities. A place to begin is with the most recent inspection of the facility, called a "survey," and the facility's complaint history. These documents are public records, available both at the facility and from the state agency.⁹

A second source of information is the state's long-term care ombudsman program, which was established by federal and state law¹⁰ to advocate on behalf of LTC residents. The ombudsman program has approximately 180 volunteer ombudsmen dispersed throughout the state and is often familiar with conditions within the facilities. The ombudsman can be contacted at (800) 562-6028. Information may also be available through groups such as Alzheimer's associations or the Senior Information and Assistance staff at the local Area Agency on Aging.

Third, strongly consider visiting the facility. Visits should occur at various times and on the weekend, when short-staffing is more common. One should also talk to family members of the other residents and, if possible, attend a family or resident council meeting.

Applicants are given an admission agreement and packet, which covers a number of legal issues, including residents' rights. The prospective resident should receive a statement of his or her rights; the facility rules; the services available and specific applicable charges; and how to contact outside agencies and advocates. This is supposed to be given in written and oral form, in a language the resident understands.¹¹ Facilities cannot require residents to sign a contract or agreement that purports to waive any right of the resident, including a waiver of potential liability for losses of personal property.¹²

LTC facilities vary in their compliance with these requirements. The following admission contract terms, among others, would be illegal:

- Requiring a "responsible party" or "guarantor" to assume personal financial responsibility for the resident's care (illegal in Medicaid/Medicare certified NHs).¹³
- Requiring a deposit or "minimum stay" from a Medicaid or Medicare eligible NH resident.¹⁴
- Seeking a blanket consent for future medical treatment or stating that the resident will comply with doctor's orders or nursing care decisions of the facility.¹⁵
- Waiving or limiting the facility's liability for injury to the resident.¹⁶

Some NHs preferentially admit Medicare residents, principally because Medicare reimbursement rates are higher than Medicaid rates (even though Washington's Medicaid rates have been upheld as reasonable and adequate.)¹⁷ This constitutes Medicaid discrimination. NHs are required to have only one waiting list and may not deny or delay admission because of a person's Medicaid status.¹⁸ Medicaid discrimination also violates the Consumer Protection Act,

“ Nearly everyone, either personally or through a family member, will one day come into contact with a long-term care facility. ”

which provides for potential treble damages, attorney's fees and costs.¹⁹

Issues During the Resident's Stay

The overarching standard in NHs is that the facility must provide "the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being" of each resident.²⁰ What this means in practice is less easy to state. However, in all LTC facilities the resident has important rights, including the right to:

- Be free from physical or chemical restraints used for discipline, convenience, not required to treat medical symptoms, or applied without consent. In AFHs and BHs, restraints cannot be used at all.²¹
- Choose activities, schedules and health care consistent with his or her interests, and make choices about things that are significant to the resident.²²
- Be fully informed in advance about one's care and treatment, and participate in planning such care and treatment to the maximum extent possible.²³ (*Practice tip:* Often there has not been a thorough assessment of the resident's needs and interests. Residents and family members have the right to be involved in this process and it is the best, non-adversarial way to solve problems.)²⁴
- Have personal privacy in

medical treatment, personal care, mail and telephone, visits and group meetings.²⁵

- Access to all records pertaining to the resident, including separate accountings within 24 hours, and a copy of records within 2 working days at a cost not to exceed the community standard.²⁶
- Food that is nourishing, palatable, well-balanced, and which reasonably accommodates cultural and ethnic preferences.²⁷
- In NHs, not to be transferred between Medicare and Medicaid beds because of a change in payment status.²⁸

In some facilities, the underlying problem is insufficient, poorly trained (and underpaid) staff. The law on staffing is vague, but not without meaning. NHs are required to have sufficient staff, on a 24-hour basis, to provide care to all residents in accordance with the residents' care plans. NHs have to provide sufficient staff to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.²⁹

In addition, NH staff must receive appropriate ongoing training. The facility must assess the specific training needs of employees, address those needs, and determine whether the needs of certain residents require special staff training.³⁰ For instance, facilities are specifically required to train their staff to care for residents with cognitive impairments, which includes dementias.³¹

Mental health services must also be provided or arranged for by the NH, although this need is often addressed inadequately. Federal law requires facilities to provide services and treatment that are of a lesser intensity than acute inpatient psychiatric care, emergency respite care or crisis services.³² In Washington, the services may be provided by a therapist from a Community Mental Health Center, a private professional, or directly by facility staff. The ultimate responsibility to provide or arrange for the necessary treatment lies with the NH.³³ (*Practice tip:* Often the provision of additional mental health services, or the treatment of medical conditions that exacerbate difficult behaviors, will resolve problems and

avoid litigation.)

AFHs and BHs likewise must have adequate, trained staff to meet the needs of their residents.³⁴ However, as in NHs, they can deny admission to, or discharge, a resident whose needs they cannot meet.³⁵ In accordance with antidiscrimination law, however, the question remains whether the resident's needs *could* be met through the provision of "reasonable accommodations." This issue is addressed in the next section.

Finally,³⁷ confusion may arise over who can speak on behalf of an incompetent or incapacitated resident. Washington law clearly delineates a hierarchy of authorized surrogate decisionmakers, and provides that the resident should participate to the maximum extent possible.³⁶ Guardians must give substantial weight to the express wishes of an incompetent person; and where there is disagreement among surrogates of equal authority, court intervention would be appropriate and prob-

ably required.³⁷ (*Practice tip:* An excellent free booklet is available from DSHS, "Your Legal Right to Make Decisions About Health Care & Advance Directives in Washington State.")

Discharge Issues

Residents cannot be discharged unless: (1) their needs cannot be met; (2) the services are no longer needed; (3) safety or health is endangered; (4) for nonpayment; or (5) the facility closes.³⁸ Under most circumstances, residents are entitled to 30 days written notice before a discharge, with the form of the notice set by law.³⁹

Residents in Medicaid or Medicare certified NHs, regardless of their individual payment source, are entitled to request an administrative hearing to contest a discharge.⁴⁰ Hearing requests, which can be in letter form, should be sent to: Office of Appeals, DSHS, P.O. Box 2465, Olympia, WA 98507-2465; phone: (360) 753-7061; FAX: (360) 664-0414. An appeal can be made within 90 days, but if filed before the discharge occurs, the discharge is suspended pending the outcome of the appeal. The hearing is held before an administrative law judge and may be appealed to the Superior Court.⁴¹

Residents in AFHs and BHs do not have the same statutory right to an *administrative* hearing. However, under the common law, the facility would have to file an unlawful detainer or ejection action if the resident does not leave. Residents cannot be locked out or forcibly removed.⁴²

When faced with a discharge — as in the example of one's father with Alzheimer's who wanders and becomes "combative" — it is important to determine whether the facility has fulfilled its obligations to meet the resident's needs and to consider antidiscrimination laws and the concept of "reasonable accommodations." If the needs can be met or the danger removed by reasonable accommodations, the facility must do so.⁴³

To provide a brief summary of a complex area, all LTC residents would be covered by the antidiscrimination laws as "handicapped" or "disabled" individuals.⁴⁴ These laws apply to LTC facilities;⁴⁵ exhaustion of administrative remedies is not required;⁴⁶ and the laws can be used as a defense to a discharge or in affirmative litigation.⁴⁷

In a recent Third Circuit decision, the federal laws were used to successfully

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challenge an NH's refusal to admit an Alzheimer's resident who had a history of combative behavior.⁴⁸ The court held that the applicable standard was whether the facility could make reasonable accommodations to meet the resident's needs without either fundamentally altering the nature of its program or incurring undue financial burden. The same standard would apply to discriminatory discharges.⁴⁹

In two recent Washington State administrative fair hearings, the ALJs refused to authorize the discharge of two NH residents with dementia. One resident was considered a "wanderer" and the second resident was touching other residents sexually without their consent.⁵⁰ The discharges were denied because the NHs had not fulfilled their obligations under the antidiscrimination and NH laws. The holdings are summarized in the final paragraph of one of the decisions, *In re E.R.*:

As a skilled nursing facility, [it] is required to develop and consistently apply an appropriate care plan. [It] is required to make reasonable staffing accommodations for Appellant. If [it] is doing what it is required to do, then Appellant's sexually assaultive behavior will be eliminated. If [it] is doing what it is required to do, then Appellant does not represent a danger to the safety of others at the facility. Another way of saying this is that the safety of the individuals in [it] is not endangered by [E.R.], but is endangered by the failure of [it] to have an appropriate care plan for [E.R.] which is consistently applied and by the failure to make reasonable staffing accommodations.

When residents are threatened with discharge from an AFH or BH, an important question is whether their needs exceed the capability of the AFH or BH. This question can be difficult to answer because of the wide range of services offered in different AFHs and BHs. Nonetheless, under the antidiscrimination laws, residents have the right to bring in additional services — short of fundamentally

changing the nature of the facility — and to have the AFH or BH make reasonable accommodations in regard to policies, staffing and environment.

Practice tip: Since the alternative may be more expensive care in an NH, DSHS has a financial incentive, and now a statutory obligation,⁵¹ to try to approve funding for additional services for Medicaid eligible residents in AFHs and BHs. A request should be made to the resident's case manager to increase services. By

allowing the resident to remain, one can avoid the dangers associated with "transfer trauma."

When affirmative litigation is brought under antidiscrimination laws, a broad range of remedies is available. The Americans with Disabilities Act provides a private right of action for damages, injunctive relief, reasonable attorney's fees, litigation expenses and costs.⁵² The Fair Housing Amendments Act allows an award of actual damages, *punitive* dam-

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ages and injunctive relief to a prevailing plaintiff, and an award to the prevailing party of reasonable attorney's fees and costs.⁵³ Moreover, the prevailing party under Washington's Law Against Discrimination may recover damages, injunctive relief, reasonable attorney's fees and costs.⁵⁴

Tort Issues

Injured residents, like anyone else, can also sue under tort law. Traditionally, however, the damages award, because of the plaintiff's advanced age or absence of lost earnings, is too low to interest many attorneys in a contingency fee arrangement. Abused and neglected residents, therefore, often do not have meaningful access to the courts.

RCW 74.34 was amended in 1995 to address this problem.⁵⁵ Now a resident of a LTC facility, or a person receiving long-term care services (such as home health care), can sue for abuse, neglect, exploitation and abandonment. The prevailing plaintiff is entitled to recover damages, attorney's fees and broadly defined costs. The statute states in part:

In an action brought under this section, a prevailing plaintiff shall be awarded his or her actual damages, together with the costs of the suit, including a reasonable attorney's fee. The term "costs" includes, but is not limited to, the reasonable fees for a guardian, guardian ad litem, and experts, if any, that may be necessary to the litigation of a claim brought under this section.⁵⁶

The cause of action is available against individuals and entities in the business of running LTC facilities or providing LTC services, not against well-meaning but unskilled family members or friends.⁵⁷ Employees of LTC facilities or services, and other specified individuals, are also required to report suspected abuse, neglect, exploitation or abandonment to DSHS.⁵⁸

The purpose of this change in the law is to "assist frail elders and vulnerable adults . . . with the protection of the courts" and to "improve access to the courts for victims of abuse, neglect, exploitation, and

abandonment."⁵⁹ Because the amendments to RCW 74.34 were remedial, affect no vested rights (no one had the *right* to abuse or neglect someone), and create no substantive new claims, the statutory cause of action should be available retroactively.⁶⁰ The alternative to this would frustrate the purpose of the act for years.

The cause of action, and a petition for a protective order and accounting, may be brought by the plaintiff or by a family member, guardian, or legal fiduciary.⁶¹ This provision avoids the need for first filing guardianship petitions where the injured person, due to mental incapacity, is unable to seek a protective order or initiate suit. The suit can also be initiated or maintained after the death of the plaintiff for the benefit of the surviving spouse, children or other heirs.⁶²

Conclusion

Our elderly and disabled population, whether they are clients, family members or ourselves, are sometimes exceptionally vulnerable. They deserve to be given good care and treated with respect, and in the words of our state legislature, to "be treated with courtesy, and to continue to enjoy their basic civil and legal rights."⁶³ This can best be done by being knowledgeable and vigilant about their rights.

Endnotes

¹Columbia Legal Services, 101 Yesler Way, Suite 301, Seattle, WA 98104, (206)464-0838.

²RCW 18.51; RCW 74.42; WAC 388-97; WAC 388-98.

³42 U.S.C. §§1395 - 1395ccc, particularly §1395i-3; 42 U.S.C. §§1396 - 1396s, particularly §1396r; 42 C.F.R. 483; 42 C.F.R. 488; and 42 C.F.R. 431 Subpart E.

⁴42 C.F.R. §483.12(c); 42 C.F.R. §483.202; *see also* 57 Fed. Reg. 56501 - 56502 (Nov. 30, 1992); WAC 388-97-230(2). State law formerly defined "resident" as a Medicaid funded resident, but now the definition covers all residents in the facility. RCW 74.42.010(8).

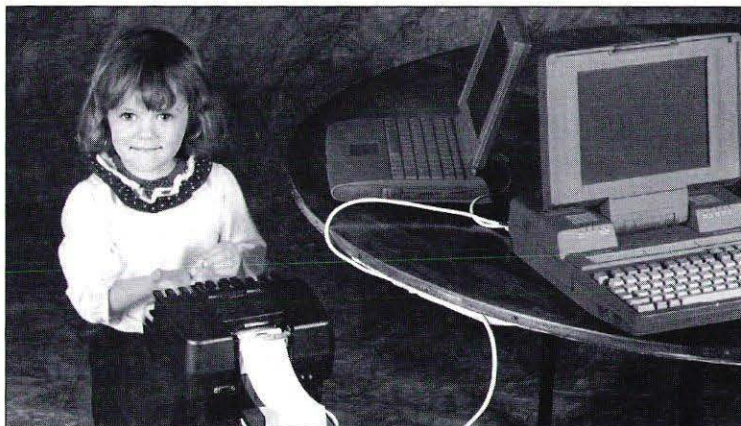
⁵RCW 70.128 and WAC 388-76. The statute was amended by Laws of 1995, Ch. 260 and by Laws of 1995, 1st Spec. Sess., Ch. 18. Proposed amendments to the regulations have been published.

⁶RCW 70.128.055; The CPA remedy was added by Laws of 1995, 1st Spec. Sess., Ch. 18, §21.

⁷RCW 18.20 and WAC 246-316.

⁸RCW 74.39A and WAC 388-15 (pending). The statute was amended by Laws of 1995, 1st Spec. Sess., Ch. 18. Regulations are

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⁹RCW 18.51.260, .290 and WAC 388-97-070(10); RCW 70.129.070, .090(2) and WAC 388-76-087(8); RCW 70.129.070; RCW 18.20.120 (as amended).

¹⁰42 U.S.C. §3058g; RCW 43.190; and WAC 388-18 (currently being amended).

¹¹42 C.F.R. §483.10(b); RCW 70.129.030; WAC 388-97-070(4).

¹²WAC 388-97-070(3)(c) and RCW 70.129.105.

¹³42 C.F.R. §483.12(d); WAC 388-97-230(3).

¹⁴42 C.F.R. §483.12(d)(3), §489.22, §489.53(a)(2). NHs may not even accept a gift or donation as a precondition of admission, expedited admission, or continued stay. 42 C.F.R. §483.12(d)(3). The law on deposits and minimum stays for AFHs and BHs is at RCW 70.129.150.

¹⁵This violates the resident's rights to be informed of his or her medical condition, to participate in care planning, and to refuse treatment. RCW 74.42.040; WAC 388-97-055 and -060; 42 C.F.R. §483.10(b)(4). These rights are ultimately based in constitutional law. See e.g., *In re Colyer*, 99 Wn.2d 114 (1983); *Cruzan v. Missouri*, 110 S.Ct. 2841 (1990).

¹⁶Residents have the right to a safe environment, free from all abuse, and to receive care and services that promote their quality of life. 42 C.F.R. §§483.13(b), .483.15(h), .483.30; RCW 70.129.005; RCW 70.129.130. Facilities have the duty to protect their residents, who are physically or mentally impaired, from reasonably foreseeable risks of harm. *Shepard v. Mielke*, 75 Wn.App. 201 (1994). Given the vulnerability of residents, and their weak bargaining position vis-a-vis facilities, waivers of liability for injury or losses would be void as against public policy. *Wagenblast v. Odessa School District*, 110 Wn.2d 845 (1988).

¹⁷*Folden v. Washington State*, 744 F.Supp. 1507 (W.D. Wash. 1990) *aff'd*. 981 F.2d 1054.

¹⁸RCW 74.42.055.

¹⁹RCW 74.42.055(5); RCW 19.86.090.

²⁰42 C.F.R. §483.25; WAC 388-97-110(2).

²¹42 U.S.C. §1396r(c)(1)(A)(ii); 42 U.S.C. §1396r(c)(1)(D); 42 C.F.R. §483.13(a); RCW 70.129.120; WAC 388-97-075; WAC 388-76-220(1) and -465(17); WAC 246-316-010(44). Since restraints can only be used to treat medical symptoms in NHs, they are a form of treatment and the informed consent laws apply. WAC 388-97-075(5). Excellent articles on restraints include: Evans & Strumpf, "Tying down the elderly: a review of the literature on physical restraint," *J. Am. Geriatr. Soc.*, 1989, 37:65-74; Miles & Meyers, "Untying the Elderly: 1989 to 1993 Update," *Clinics in Geriatric Medicine*, 1994; Vol. 10, Iss. 3: 513-525; Tinetti et al., "Mechanical

restraint use among residents of skilled nursing facilities: Prevalence, patterns, and predictors," *JAMA*, 1991, 265:468-471; Garrard et al., "Evaluation of neuroleptic drug use of nursing home elderly under proposed Medicare and Medicaid regulations," *JAMA*, 1991, 265:463-467.

²²42 C.F.R. §483.15(b); RCW 70.129.140(2); WAC 388-97-080(3).

²³42 U.S.C. §1396r(c)(1)(A)(i); RCW 74.42.040(2); WAC 388-97-055(8)(b). The right to participate in health care decisions is governed by state law. 42 C.F.R. §483.10(d)(3). In BHs and AFHs, the right to participate in planning care and treatment is restricted by statute to competent residents. RCW 70.129.140(2)(e) & (f). This statute is inconsistent with the guardian's duty under the common law to give substantial weight to the express wishes of an incompetent person. *In re Ingram*, 102 Wn.2d 827, 840-842 (1984).

²⁴42 C.F.R. §483.20; WAC 388-97-090; RCW 70.128.007(4) & (5), as amended by Laws of 1995, 1st Spec. Sess., Ch.18, §19; WAC 388-76-475; RCW 70.129.140(2); WAC 246-316-260.

²⁵42 C.F.R. §483.10(e); RCW 70.129.050; WAC 388-97-070(8).

²⁶42 C.F.R. §483.10(b)(2), §483.10(c)(4)(ii); RCW 70.129.030(2); WAC 388-97-070(4)(b). These response times are shorter than, and take precedence over, the ones set forth in the Uniform Health Care Information Act, RCW 70.02. The federal NH law preempts contrary provisions in RCW 70.02, and the more recent, specific provisions of RCW 70.129.030(2) would also take precedence. See 42 C.F.R. §483.1; RCW 70.02.900(1). RCW 70.02.090, which allows a health care provider to deny access to health care information, is likewise not controlling over the resident's right "to access all records pertaining to himself or herself." 42 C.F.R. §483.10(b)(2)(i); RCW 70.129.030(2)(a).

²⁷42 C.F.R. §483.35; WAC 388-97-120; WAC 388-76-530; WAC 246-316-170(2).

²⁸42 U.S.C. §1395i-3(c)(1)(A)(x); 42 U.S.C. §1396r(c)(1)(A)(x); WAC 388-97-070(18). In Washington State, all Medicare certified beds are also Medicaid certified. When a Medicaid eligible resident is in a Medicare/Medicaid bed, and runs out of Medicare coverage, the facility must accept the Medicaid rate as payment in full for the resident's care. 42 U.S.C. §1396r(c)(5)(A)(iii); 42 U.S.C. §1320a-7b. Supplementation of the rate is Medicaid fraud, a crime. 42 U.S.C. §1320a-7b(d).

²⁹42 C.F.R. §483.20; RCW 74.42.360; WAC 388-97-165.

³⁰WAC 388-97-170.

³¹42 U.S.C. §1396r(b)(5)(E).

³²42 C.F.R. §§483.25(f), .45, .120(c); WAC 388-97-130.

³³*Id.*

³⁴RCW 70.128.130(9), as amended by Laws of 1995, Ch.260, §6; WAC 388-76-160(7); WAC 246-316-050(1)(e).

³⁵RCW 70.129.110(1); WAC 388-76-160(6); WAC 246-316-240.

³⁶RCW 7.70.065. In order, the hierarchy is: court appointed guardian, durable power of attorney, spouse, adult children, parents, adult siblings. See RCW 74.42.040(2); WAC 388-97-055. See also endnote 23.

³⁷*In re Ingram*, 102 Wn.2d 827, 840-842 (1984); *In re Hamlin*, 102 Wn.2d 810, 820-821 (1984); *In re Grant*, 109 Wn.2d 545, 566-567 (1987).

³⁸42 C.F.R. §483.12(a); RCW 74.42.450; WAC 388-97-270.

³⁹*Id.*

⁴⁰42 C.F.R. §483.204; 57 Fed. Reg. 56501 (Nov. 30, 1992).

⁴¹WAC 388-97-270(3)(c), -270(10); WAC 388-08-575.

⁴²Residents in AFHs and BHs have all the indicia of tenancy. See e.g., *Tacoma v. Smith*, 50 Wn.App. 717, 720-721 (1988); *Barnett v. Lincoln*, 162 Wash. 613, 618-620 (1931); *Smith v. Dorchester Hotel Co.*, 145 Wash. 344 (1927). The state's unlawful detainer and ejectment statutes provide the exclusive remedy for owners to obtain possession of their property if the person in possession will not peaceably leave. *Spencer v. Commercial Co.*, 30 Wash. 520, 525-526 (1902); *Petsch v.*

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Willman, 29 Wn.2d 136 (1947); *Roberts v. Speck*, 169 Wash. 613, 616 (1932). The case of *Sunrise Group Homes v. Ferguson*, 55 Wn.App. 285 (1989) held that boarding homes are exempted from the Residential Landlord-Tenant Act, RCW 59.18 et seq., but did not alter a century of common law prohibiting lockouts and non-judicial, self-help evictions.

⁴³42 U.S.C. §12182(b)(3); 28 C.F.R. §36.208(c); 42 U.S.C. §3604(f)(3)(B).

⁴⁴42 U.S.C. §3602(h); 42 U.S.C. §12102(2); 45 C.F.R. §84.3; *Wagner v. Fair Acres Geriatric Center*, 49 F.3d 1002 (3rd. Cir. 1995).

⁴⁵42 U.S.C. §12181(7); ADA Handbook, October 1991, III-29, 30; 29 U.S.C. §794(b); *Casa Marie, Inc. v. Superior Court of Puerto Rico*, 752 F.Supp. 1152, 1168 (D.P.R. 1990) *vacated on other grounds* 988 F.2d 252, 257 n.6 (1st. Cir. 1993); *Potomac Group Home v. Montgomery County, MD.*, 823 F.Supp. 1285,

1294-96 (D. Md. 1993); *Glanz v. Vernick*, 756 F. Supp. 632, 636 (D. Mass. 1991).

⁴⁶42 U.S.C. §3513(a); 28 C.F.R. §36.501, §35.172, discussed in *Petersen v. University of Wisconsin Board of Regents*, 818 F.Supp. 1276, 1278-280 (W.D. Wisc. 1993).

⁴⁷*Rodriguez v. Westhab Inc.*, F. Supp. 425, 427-428 (S.D.N.Y. 1993).

⁴⁸*Wagner v. Fair Acres Geriatric Center*, 49 F.3d 1002 (3rd. Cir. 1995).

⁴⁹*Roe v. Sugar River Mills Associates*, 820 F.Supp. 636, 640 (D.N.H. 1993); *Cason v. Rochester Housing Authority*, 748 F.Supp. 1002 (W.D.N.Y. 1990).

⁵⁰*In re E.R.*, Office of Administrative Hearings, Docket No. 1293 A-211 (March 16, 1994); *In re A.B.*, Office of Administrative Hearings, Docket No. 0394 A-415 (July 22, 1994).

⁵¹RCW 74.39A, as amended by Laws of 1995, 1st Spec. Sess., Ch. 18, §2.

⁵²42 U.S.C. §12188(a), §12205, §2000a-3(a).

⁵³42 U.S.C. §3613(c).

⁵⁴RCW 49.60.340(6).

⁵⁵Laws of 1995, 1st Spec. Sess., Ch. 18, §§82 - 88.

⁵⁶*Id.* at §85(3). The new law does not provide attorney's fees to a prevailing *defendant*, but they can be assessed under RCW 4.84.270 if the plaintiff recovers nothing on a claim of \$10,000 or less, or recovers the same or less than offered by the defendant.

⁵⁷*Id.* at §85(1).

⁵⁸RCW 74.34.030, as amended by *Id.* at §88.

⁵⁹RCW 74.34.010 and .100, as amended by *id.* at §§82 and 83.

⁶⁰*See, e.g., Marine Power v. Human Rights Comm'n*, 39 Wn.App. 609, 617 (1985); *Godfrey v. State*, 84 Wn.2d 959, 964 (1975); *State v. Heath*, 85 Wn.2d 196, 198 (1975); *Haddenham v. State*, 87 Wn.2d 145, 148 (1975).

⁶¹*Id.* at §86. The reach of a protective order is set forth in RCW 74.34.130.

⁶²*Id.* at §86.

⁶³RCW 70.129.005.

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Jeff Crollard is a staff attorney with Columbia Legal Services (formerly Evergreen Legal Services, Puget Sound Legal Assistance Foundation, and Spokane Legal Services Center) and is the primary attorney for the Washington State Long-term Care Ombudsman Program. He dedicates this article to his father, retired attorney Homer Crollard.

Recommendations of the Walsh Commission

by **Ruth Walsh**

The people shall judge. An apt concept but one which over the years has come to be forgotten in a system of government where elections feature voter participation by sometimes up to 50% less for judicial candidates. Why do voters fail to cast ballots in judicial elections? This disturbing question was one of the main reasons that Washington Chief Justice Barbara Durham addressed the issue in her January 23, 1995, State of the Judiciary address. In her address, the Chief Justice stated:

... the integrity of the judicial system depends on the quality of its members. Yet how we choose quality judges has been a source of confusion ... two-thirds of the voters (we) polled said that they lacked sufficient information to intelligently choose judicial candidates ...

In order to address this problem, the Chief Justice and the Governor jointly appointed 24 citizens to the commission which was given the name Walsh Commission, after its Chair, Ruth Walsh.

The Commission met for the first time on March 31, 1995. Recognizing the complexity of issues contained in the Chief Justice's charge, the Commission formed four subcommittees to review specific aspects of the judicial selection process: Judicial Qualifications, Judicial Selection, Judicial Performance, and Voter Information. The Commission and its subcommittees held more than 25 work sessions, reviewed research materials and heard testimony from diverse interests including the business community, labor and education groups, bar associations (including county, specialty and minority), judges (state and federal), governors' counsel, the media and others.

The Commission sought information from other states that have addressed the issues being considered and held a video-teleconference with citizen groups in Ari-



zona and Colorado. The teleconference allowed the Commission to hear about the experience in those states where citizen-based judicial selection systems are in effect and the perceived effects that the similar systems in those states have on judicial accountability to the populace as well as judicial independence.

In addressing the varied issues before it, the Commission looked at the history of judicial selection and related issues in Washington. Washington's current system for selecting judges was adopted in 1912. Since that time, 34 states have reviewed the way in which their judges are selected and have chosen to adopt a system of selection and election which provides heightened citizen control of the judiciary while at the same time insuring a more independent judiciary. None of the 34 states that have modified their judicial selection and retention systems over the past 50 years have gone back to their former systems.

The Washington system of selecting and electing judges has resulted in a Judiciary where over 60% of the sitting judges

initially reach the bench by appointment (either by the Governor or local government authority in the case of the District Courts). Initial appointments occur when a judge leaves the bench in midterm, either because of resignation, retirement or death. Judges who are initially appointed must stand for election at the next primary election which sometimes is only a few weeks or months after appointment. Incumbent judges who run for election after initial appointment are reelected 90% of the time.

The Commission concluded that the present method employed in this state to select and retain judges presented problems in three areas. First, there is no assurance under the current appointment system that qualified lawyers receive appointments to fill judicial vacancies. Second, voters assert they lack sufficient information to make informed choices about judicial candidates. Third, the escalation of costs associated with judicial elections threatens judicial independence.

With respect to the issue of insuring that qualified lawyers reach the bench, the Commission concluded that the public would be better served by a system that specified minimum qualification for judicial office, that was open and public, and which contained safeguards to insure that partisanship was removed from the appointive process. Washington citizens currently benefit from none of these safeguards.

While the Commission believes that Washington's judges as a group are generally of high quality, the current process does not insure that a particular judicial aspirant will possess sufficient judgment or legal qualifications or other attributes of a quality judiciary including ethnic, cultural or geographic diversity.

The Commission heard over and over that the lack of familiarity with judicial candidates left voters frustrated and less likely to vote in judicial elections. A constantly expressed theme was that the current information available in the voters pamphlet was inadequate. The lack of information coupled with inconsistent and confusing election statutes was considered by the Commission to be a major deficiency of the present system.

Another concern with the present system identified in the Commission's investigation was the increasingly large amounts of money being spent in judicial elections. Judges must maintain impartiality on all matters that come before them. The public must be confident that the system used to get judges to the bench does not include undue influence from any individual or group that may have had a hand in the judge's campaign for appointment or election. In the past, judicial elections have not been noted for expenditures of large amounts of money. The recent past, however, would suggest that a change is taking place and the amount of spending on judicial election campaigns is increasing. It now is estimated that candidates for trial court positions in the more urban areas of the state will spend between \$50,000 and \$80,000 or more to secure election, and the costs associated with elections to the appellate courts are even higher.

The Commission completed its investigation into the current judicial selection system by concluding that the citizens who want a quality judiciary face problems in several areas: assurance of qual-

ity judges in the selection process, lack of voter information to insure judicial accountability, and increasing potential for an erosion of judicial independence because of the influence of money on the judicial election process. To address these issues, the Commission developed a series of recommendations, divided into three major subject areas:

Qualified Judges

1. *All candidates for judicial offices shall have been active members of the state bar and/or shall have served as a judicial officer for at least the stated time periods:*

Supreme Court/Court of Appeals

- 10 Years

Superior Court - 7 Years

District Court - 5 Years

Currently only judges at one court level, the Court of Appeals, have a length of practice requirement - 5 years. Citizen testimony heard by the Commission strongly supported the concept of minimum length of practice requirement. The experience requirements recommended by the Commission are intended to help assure the citizenry that judges have the requisite qualities when they reach the

bench including balance, sensitivity and good judgment, qualities achieved only through experience in one's profession. Although the experience requirements recommended by the Commission are substantial, they are not unusual when compared to those required in other states which have addressed the issue.

2. *All candidates for judicial office shall have resided in the judicial district or county for the stated time periods immediately preceding candidacy:*

Supreme Court - 7 years in state

Court of Appeals - 5 years in judicial district

Superior Court - 5 years in judicial district

District Court - 2 years in county

Judges should be familiar with the communities they wish to serve and the community should be familiar with them or at least have the opportunity to know about them. To facilitate such opportunities, the Commission concluded that minimum residency requirements were appropriate.

3. *Judges shall initially be selected either by appointment from recommendations made by nominating commissions*



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or by contested elections. Subsequent elections shall be by retention election only.

Voters are serious about wanting to carry out their responsibilities as citizens. The consistently heard complaint is that judicial appointments and elections as currently carried out in Washington do not allow the citizenry to play a responsible role in our participatory democracy.

The voters express their greatest frustration in the process used to select new judges because there is no judicial track record to review for information about performance in office. If the voter is to be educated about candidates who have not previously served in a judicial office, they must engage in a more deliberate process which requires more time than the average voter has available. Voters find themselves voting on the basis of name, second hand information, a catchy slogan, or not voting for judicial candidates at all.

To address these concerns, the Commission developed this recommendation to address how judges are selected for judicial office and the procedure by which the public has input into the process. The procedure of initial selection through a nominating commission process is followed by the requirement that appointed judges face the electorate in a contestable election at the first primary election immediately following the initial 12 months in office. To facilitate voter information about judicial candidates, the process would be supplemented by the imposition of a judicial evaluation process to provide information to voters in advance of elections and a process whereby judicial candidates would supply information about their background and experience.

All subsequent elections would be by a retention vote only. No opposing candidates would be permitted to run against the incumbent. To enable the public to participate fully in retention elections, information will be available concerning the judge's performance. The question before the voters will be a simple, but sharply focused one: Does the judge's performance warrant his or her continuing to serve as a judge?

4. *Volunteer citizen nominating commissions shall be created to review and compile a list of recommended candidates from which the appointing authority shall fill all judicial openings.*

The nominating commission approach

to selecting judges is in place in 30 states. Its purpose is to open the process and involve citizens in the recruiting and assessing of candidates for appointment to judicial office.

The Commission proposal envisions that nominating commission members would serve in voluntary capacities and would be nonpartisan. Commissions would be created for every court level and judicial district, encompassing over 800 citizens. The Commission recommended that the nominating commissions be racially, geographically and gender balanced and that members serve staggered terms. A majority of commission members would be nonlawyers and no member would be allowed to seek or hold public or judicial office while serving on the commission. Commissions would meet only when there was a judicial vacancy.

The Commission believes that adoption of this recommendation will put in place several improvements to the present system including:

- Provide an independent vehicle to conduct a more thorough investigation of the qualifications of judicial aspirants;
- Allow for more citizen input into the selection process and increase the voice of the nonlegal community;
- Lessen the impact and influence of political and pressure groups on the selection process; and

- Create a more open process.

The nominating commission process will enable nonlawyer citizens to be involved in the selection process for 100% of Washington's judges, a marked increase from the process currently in place, where more than 60% of the judges initially reach the bench through an appointive process which lacks significant citizen input or involvement.

Voter Information and Judicial Accountability

1. *A process for collecting and publishing information about judicial performance shall be created under the authority of the Supreme Court.*

It is important that judges be provided with confidential feedback regarding their performance to assist them in performance improvement. No such mechanism currently exists. At the same time, information collected near the end of the judge's term and the judge's response should be available to the public in a judicial voters' pamphlet prior to the election. Performance information categories could include legal knowledge, integrity, communication skills, decisiveness, impartiality, interpersonal skills and administrative ability.

2. *A process for collecting and publishing information about candidates for judicial office shall be created under the authority of the Supreme Court.*



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Because the Commission recommends the continuation of initially contestable elections to provide a window of opportunity to those who are not able to secure a recommendation from a nominating commission or be appointed by the appointing authority, it is necessary to have a mandatory process in place to provide independent uniform information to the voters about such candidates. The use of published criteria and a standard disclosure statement would provide voters with relevant and verified information which currently is not available, and in a standard format to make candidate comparison easier.

3. *The Supreme Court shall authorize the publication of a judicial voter pamphlet and encourage other methods for distributing judicial candidate information.*

A constant refrain heard by the Commission was that there is insufficient information about judicial candidates available to those citizens who wish to make informed decisions when voting for judicial positions. As a result, as many as 50% of voters do not vote for judicial candidates even though they are on the

same ballot as other contested public offices. Widely disseminated information about candidates should encourage a more informed electorate to cast votes in judicial election contests, whether contested or retention.

4. *More information shall be made available to students, the public and news media about the nature of the judicial system and the character of the judicial office.*

Public awareness and knowledge about the judiciary is not as great as that for the other two branches of government. Education would seem to be a key and should start at the earliest possible time in the educational process.

Judicial Independence

Canon 7 of the Code of Judicial Conduct shall be revised to impose limits on campaign contributions by persons or organizations and impose aggregate limits on expenditures by a judicial candidates campaign committee.

The Commission struggled with the questions surrounding judicial campaign finance and the constitutional issues raised in any effort to gain control of the ever

increasing costs of judicial campaigns and the resulting threat to judicial independence. The Commission heard testimony which indicated that money can and does have an effect on the judicial election process. The Commission concluded that the Supreme Court should be asked to amend Canon 7 to limit campaign contributions from individuals and organizations consistent with the constitutional constraints set forth by the U.S. Supreme Court. The Commission was influenced by the recent action of the Ohio Supreme Court which included such limits in a revision of Canon 7 in that state.

Implementation

The Commission recommended the following immediate actions:

- Legislative committees should hold hearings to review the recommendations;
- the Supreme Court should take action to adopt rules to implement a Judicial Voter Pamphlet, performance information process and judicial campaign reform; and
- political leaders should give voters an opportunity to consider these recommendations by approving the prerequisite constitutional amendments.

Conclusion

The proposals advanced by the Commission will be the subject of much debate and discussion over the next several months. The irony of the current system is that even though the citizens should be in charge of the judicial selection process through the exercise of the vote, they are excluded from the process by the closely guarded initial appointment process that currently exists, and by the lack of meaningful information available upon which to base their votes on judicial candidates. In short, citizen control of the judicial branch is frustrated by the current system.

Adoption of these recommendations is a step towards restoring to citizens the control they have expressed the desire to reclaim.

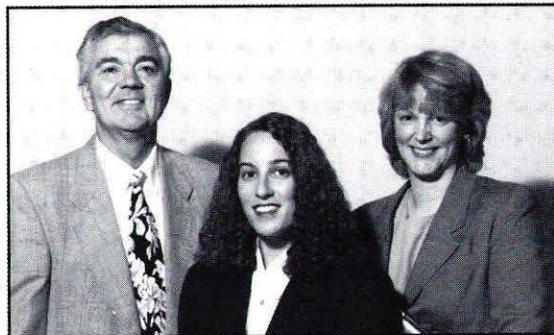
For a copy of the Commission's full report, write or call: The Temple of Justice, P.O. Box 41174, Olympia, WA 98504-1174; (360) 357-2121.

In addition to serving as chair of the Walsh Commission, former KOMO-TV news anchor Ruth Walsh has served as a citizen member on various WSBA committees, and is currently working on her doctoral degree at Seattle University.

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The 1996 Legislative Session*

by Patrick Aylward

Despite the importance of WSBA legislative efforts to its membership, this process seems to be shrouded in mystery to many members. This article attempts to shed light on that process and give a brief "report card" on the last legislative session.

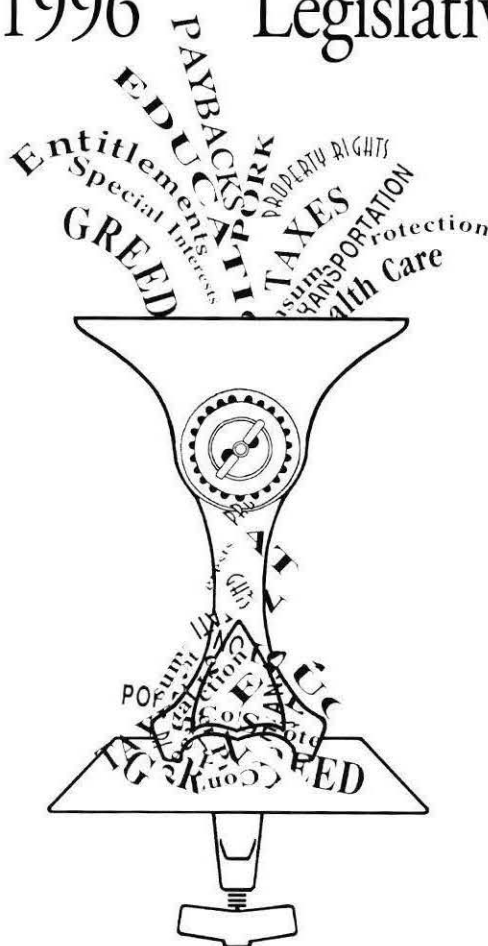
The Process

The primary participants in the WSBA legislative program are the WSBA Sections and Committees, the WSBA Legislative Committee, the Board of Governors, the Executive Director and the WSBA Legislative Representative.

The "eyes and ears" of these efforts are the sections, committees and legislative representative. Our current representative is John Fattorini, who has served admirably in this capacity for several years.

In addition to his own contacts in Olympia, the legislative representative contacts the WSBA sections and committees in the spring of each year to prepare for the following legislative session. He needs to know what legislation is being prepared within the Bar, and what might be "on the table" from other sources that the WSBA may wish to support, oppose, or participate in during the discussion and drafting stages. These inquiries are repeated throughout the summer and fall.

The Legislative Committee begins meeting in the early fall and continues meeting through the end of the year and sometimes into the beginning of the legislative session. The Committee researches legislation and provides recommendations to the WSBA Board of Governors. These recommendations are valuable for several reasons. The Legislative Committee is larger than the Board of Governors, and by virtue of its size has more diversity in terms of geography, practice and expertise. Due to the Board's multiple areas of responsibility, the Legislative Committee also has more time to focus on individual legislative issues. The Committee also ensures that all proposals have been circulated to all groups which may support or oppose any given legislation, so the Board will have a grasp of all the issues surrounding a proposed bill and not be surprised with new information after taking a position. For example,



it is not uncommon that legislation which addresses one perceived problem creates new or unanticipated problems in another area of practice. During this review, input is sought not just from within the bar but also from industry representatives. After the Governors act on the recommendations of the Legislative Committee, John Fattorini uses his considerable talents to carry out the directions of the Board.

During the legislative session, when things are moving too fast for full meetings of the Legislative Committee or the Board of Governors, matters are referred to specific sections and committees for rapid comment. The Section/Committees Comment Policy adopted by the Board of Governors in 1993 is as follows:

WSBA Section/Committee Comment Policy

The Board of Governors, the Executive Director, the Legislative Committee, or the Legislative Representative are authorized to refer legislative proposals or proposed court rule changes to Sections or Commit-

tees of the Washington State Bar Association for their consideration, and Sections and Committees are authorized to appear before the Legislature or a committee or the Legislature, or to comment on any proposed rule change pursuant to Supreme Court Rule 9(f), upon the following conditions:

1. The Section or Committee will not take a position unless that position is the opinion and position of at least 75% of the total membership of the governing body of the Section or Committee.

2. The Section or Committee shall not advocate a position in opposition to a legislative or rule proposal or position of the Board of Governors without prior written notice to the Board.

3. The Executive Director, the Board of Governors, the Legislative Committee, and the Legislative Representative shall, as appropriate, be advised on an ongoing basis of decisions, positions, and actions of the Sections or Committees.

4. The Section or Committee shall represent to the legislature or the Chief Justice that their views and opinions are those of the Section or Committee only, and not the official position of the Washington State Bar Association unless the Section or Committee has the written approval of the Board of Governors to represent the Association.

5. The Section or Committee representatives shall cease to advocate the position of the Section or Committee if requested to do so by the Executive Director, the Board of Governors, the President of the Bar or, in the case of comment on legislative proposals, the Legislative Committee or the Legislative Representative.

To keep abreast of all the activity during the session, the WSBA President, interested members of the Board of Gov-

* "If you like laws and sausages, you should never watch either one being made." — attributed to Prince Otto von Bismarck

ernors, the Executive Director, the chair of the Legislative Committee and the Legislative Representative conduct weekly conference calls.

Matters Considered by the WSBA This Year

The Dual-agency Bill

The Washington State Bar Association, through the Real Property, Probate and Trust Section of WSBA, has been working with the Washington Association of Realtors for several years to codify relationships between Real Estate brokers and agents and the sellers and buyers with whom they work. The WSBA opposed the original draft of the bill as proposed by the Washington Association of Realtors, viewing it as not providing enough protection for the consumer. This year agreement was reached on a bill. The bill sets out certain non-waivable duties to all parties. It then lays out the duties of a seller's agent, a buyer's agent, and dual agents. The bill also changes some common law rules regarding imputed knowledge and vicarious liability. The WSBA supported the final revision, the bill passed the House and the Senate and was signed by the governor.

Brokers' Liens

Commercial Real Estate Brokers pushed for the creation of a property lien to secure payment of their commissions. The WSBA opposed the bill because,

traditionally, liens have been granted only to those who physically improve property and add value to it; for example, workmen and materialmen. Historically, those who are important to the process, but do not add inherent value to the property — for example, brokers, appraisers and attorneys — have not been given a lien on the property for their efforts. This bill died, but will probably be back next year.

Real Property Forfeiture/Foreclosure

There has been a bill proposed in the last two Sessions that would eliminate the separate foreclosure procedures established by statute for dealing with mortgages, deeds of trust and real estate contracts. The WSBA opposed the bill and it died again this year. The WSBA's opposition is based primarily on the premise of "if it ain't broke, don't fix it." There was no groundswell of support from any industry group for the change. The bill as proposed would be a substantial departure from the current statutory scheme and it would also be a departure from the uniform act that has been discussed, but not adopted, around the country. It was felt that the bill needed to be more completely circulated and discussed before Washington State struck out on its own in what is essentially a national market.

Limited-liability Companies

This bill, which can best be described in this limited space as a technical corrections bill to the Limited Liability Compa-

nies statute, was supported by the WSBA, passed the House and Senate, and was signed by the governor.

Corporations

The Corporate Act Revision Committee proposed legislation to resolve the inconsistencies and ambiguities between RCW 23B.17.020 (the two-tier pricing legislation) and RCW 23B.19 (the anti-takeover legislation). The WSBA supported the proposed legislation, and it has been signed by the Governor.

Health Care Decisions Act

The Elder Law Section worked hard on its proposal to provide more guidance in the area of health care decisions. This legislation would have provided more direction to authorized representatives regarding health care decisions, determining patients' wishes and the minimum requirements for a valid health care directive. The WSBA supported the final revision, but the bill died.

Child Victim/Witness Interview Procedures

One proposal that sparked a lot of interest and debate was the proposal for a pilot project to establish protocols for interviewing child victim witnesses. The prosecutors and defense bar locked horns on this one. Although all parties agreed that more training and involvement of experts were laudatory, they were on opposite ends of the pole on mandatory videotaping, and on whether interviews should be conducted under the control of law enforcement or some other authority. The Board of Governors took no position, and left the prosecutors and defense bar free to explain their positions in Olympia. The bill died.

Indigent Appellate Defense

This bill created an independent agency of the judicial branch called the Office of Public Defense, to provide indigent appellate services. The WSBA supported the proposal, it passed both houses, and was signed by the governor.

Uniform Unincorporated Non-Profit Association Act

There has been a proposal to spell out the pertinent legal principles that would apply to unincorporated nonprofit associations such as churches, neighborhood associations, charitable organizations and social clubs. Current common law is rather

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sparse. This matter has been on the agenda of the Legislative Committee three times and comment is still being sought from interested sections, committees, and affected groups. The Board of Governors has not yet taken a position. This legislation was introduced, but died.

Personality Rights Legislation

There was a proposal submitted to the Legislative Committee that would protect the right of publicity. The right of publicity is defined as the right of an individual to protect his or her name, likeness, image, signature, photograph, voice or other distinctive characteristics from non-authorized commercial use by others. Currently neither the Washington State Legislature nor the Washington Courts have explicitly recognized or elaborated on this right. As our state becomes home to an increasing number of influential and well-respected personalities, this is becoming an issue. However, the Legislative Committee had concerns that the legislation as drafted might be too broad and might have some unintended consequences. The legislation was also submitted late in the review process. Thus, the Board of Governors decided to wait until the Legislative Committee examined the proposed legislation and distributed it for comment prior to the next session.

Family Law

Health Care Expenses. The Family Law Section proposed legislation that would annualize health care expenses and remove health care expenses from the child support tables. The WSBA supported these proposals. They both died.

Child Support Presumptions. The Family Law Section proposed raising the ceiling on presumptive income up to \$7,000. The WSBA supported this position. This proposal died.

Day Care Expenses: The Family Law Section also proposed legislation to allow for the recoupment of day care and other special child-rearing expenses. The WSBA supported this legislation, it passed the House and Senate, and was signed by the governor.

Child Support/Suspension of Occupational Licenses: The Family Law Section opposed giving administrative agencies the ability to suspend occupational licenses for failure to pay child support.

The Section felt that the circumstances surrounding such failures needed to be examined and that this examination should be undertaken by a Court. The WSBA agreed and opposed the legislation. The bill died but will probably be back.

Visitation by Sexual Abuse Perpetrator: The Family Law Section supported changes to existing legislation prohibiting a sex offender from having any visitation with his or her children. The Section felt the legislation was too broad. It could, for instance, prevent someone who had been convicted of statutory rape at a young age from visiting his or her children of a later marriage after the marriage ended in divorce after twenty years. The WSBA supported this position, and legislation addressing this problem passed the House and Senate and was signed by the governor.

Legislation Previously Considered by the WSBA

Limited Partnership Act

This bill revised withdrawals from and dissolutions of a Limited Partnership. This was supported by the WSBA, passed the House and Senate, and was signed by the governor.

Community Property/IRA

This bill revised provisions relating to the transfer of the community property interest in an IRA at the death of an account-holder spouse. The WSBA again supported this bill. It died.

Estate Tax Penalties

This bill allowed the state to waive penalties on certain estate tax returns when the delinquency was the result of circumstances beyond the control of the responsible person. The WSBA again supported this bill. It again died.

Real Estate Appraisers

This bill addressed a number of items regarding real estate appraisers. The bill originally created a real property lien for appraisers. The WSBA successfully opposed the lien portion of the bill, and successfully excepted lawyers from the regulatory portions of the legislation. The balance of the bill was passed and signed.

Student Loans/License Revocation

This bill suspended professional licenses (including licenses to practice law) for failure to repay student loans. The WSBA opposed the license provision in

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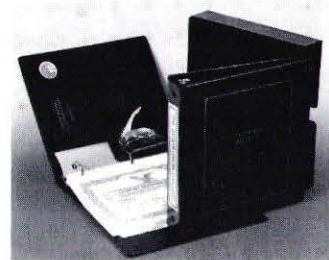
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this bill because of the separation of powers issues involved. The bill passed both Houses and was signed with language that avoided the separation of powers issue; i.e., it left the authority to regulate the practice of law with the Supreme Court.

B & O Tax

This bill reduced the Business & Occupation tax by reducing the 1993 service-rate increases by 50 percent. The WSBA supported this bill. The bill passed the House and Senate. The governor vetoed

it. The House and Senate overrode the veto.

Dissolution Jurisdiction

This bill resolved some jurisdictional problems when a couple separated and one moved out of the state before a dissolution was filed. The WSBA supported this bill and it passed.

Other Legislation of Interest Adverse Possession/Prescriptive Easements

This bill abolished adverse possession

and prescriptive easements. This is a perennial issue. Because this bill was introduced late in the session, this issue did not reach the Legislative Committee or the Board of Governors, but was referred to the Real Property, Probate and Trust Section, which successfully opposed the bill.

Development of Inherited Property

This bill allowed inherited property to be subdivided in contravention of subdivision laws. This was referred to the Real Property, Probate and Trust Section which successfully opposed the bill.

Excise Tax

This bill implemented excise tax changes needed as a result of *Jeffers and Lyons v. Oklahoma*. The bill passed and was signed.

Child Support/Post-Secondary Education

There were a number of bills introduced which prohibited mandatory child support for post-secondary education of adult children. The Family Law Section opposed these bills and they all died. This is a perennial issue which will appear again.

Quiet Title Actions/Arbitrations

This bill required mandatory arbitration for quiet title actions. This was referred to the Real Property, Probate and Trust Section which successfully opposed the bill.

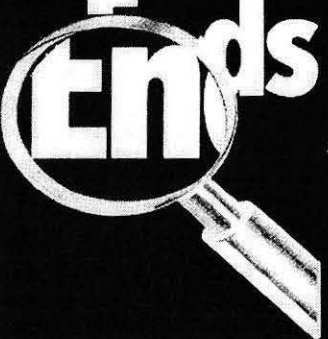
Summary

This report is necessarily cursory. The final WSBA Legislative Committee Report to the Board of Governors reported on 27 bills on which the WSBA had taken a position and 173 bills which had been referred to various sections and committees for comments. For further information on bills of particular interest, contact your Board of Governors representative, the executive committee of the Section involved in the area of law which interests you, Mr. John S. Fattorini, Jr., WSBA Legislative Director, 1001 S. Eastside Suite A, Olympia, WA 98501. (360) 943-9977, or J. Patrick Aylward, Jeffers, Danielson Law Firm, 317 North Mission Street, Wenatchee, WA 98801. (509) 662-3685.



Pat Aylward is the chair of the WSBA Legislative Committee.

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by **Hal White**
Editor, Bar News

President's Report. WSBA President Ed Shea opened the March 22-23 meeting in Tacoma by providing a report on the Western States Bar Conference which he recently attended with Executive Director Dennis Harwick and Governor Peter Ehrlichman. He also commended WSBA Legislative Section chair Pat Aylward and Legislative Representative John Fattorini for their efforts during the recently concluded legislative session. (An article by Pat Aylward on the 1996 session appears on page 33 of this issue.)

President-elect's Report. WSBA President-elect Tom Chambers reported on his attendance at the "Bar Leadership Institute" in Chicago. He was joined by the incoming leaders of the Spokane and Tacoma-Pierce County Bar Associations.

Executive Director's Report. WSBA Executive Director Dennis Harwick reported that the WSBA had recently completed yet another administration of the Washington State Bar Exam, this time inflicting three days of misery on 444 applicants. He also updated the Board on the search for a new CLE director, a process which has winnowed 80 applications down to six, two of which are local. No decision is expected before June 1. Harwick then provided statistics regarding the LAP and CLE programs. During the preceding fiscal year the WSBA sponsored 63 CLE programs, and the Lawyers' Assistance Program provided assistance to 2,362 attorneys in mental health (depression, stress, etc.), substance abuse, and job-support areas.

Board of Governor Elections. The Director also reported that three of the four Board of Governor races were literally over before they started, because only Don Powell of Tacoma filed for the Sixth District; Marijean Moschetto of Bellevue for the Eighth District; and Mary Alice Theiler of Seattle for the King County spot. Melissa Denton of Olympia and Maria Ludolph-Heikkala and Terry Lee of Vancouver have filed for the Third District position. Ballots will be mailed on May 15, with June 7 as the response deadline. A run-off election will be held if one candidate does not receive a majority of the vote.

Executive Director Performance Evaluation. Governor Linda Dunn updated the Board on her subcommittee's evaluation of Dennis Harwick's perfor-

mance as Executive Director. The evaluation is ongoing, but the Governor noted that Harwick was recently selected as president-elect of the National Bar Executives Association, and received an award from the ABA for his support of the WSBA Lawyers' Assistance Program. Governor Dunn also thanked Harwick for his leadership during the past twelve months, a period which included the WSBA referendum and significant changes in the WSBA attorney-discipline process.

The Walsh Commission Report. Chief Justice Barbara Durham and Walsh Commission member Phillip Wineberry then presented the recommendations of a commission headed by Ruth Walsh concerning Washington's judicial selection process. An article on these recommendations appears on page 29 of this issue.

The Local Line. Daryl Graves, president-elect of the Tacoma-Pierce County Bar Association, addressed the governors regarding the concerns and priorities of his association. Like many bars, Pierce County is struggling with volunteer legal services funding. The bar is also attempting to increase its membership, currently 50% of local attorneys, by augmenting the services it provides to its members. To that end, it is increasing the number of CLEs it is sponsoring, particularly at its increasingly successful annual convention.

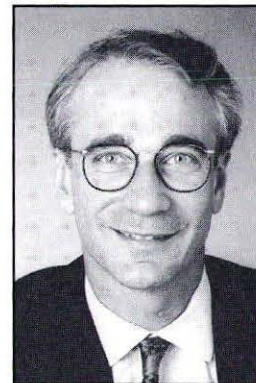
Presidential Selection Process. Gov-

ernor Steve Toole then led a discussion concerning the procedures for selecting WSBA presidents. The Board adopted various minor amendments regarding this process.

Washington Young Lawyers' Report. Pam Cairns, President of the Young Lawyers Division of the WSBA, offered a brief update of her division's projects and upcoming events. She also proposed two changes to the WYLD bylaws: a redistricting plan which would reduce the number of WYLD trustees to 15 and alter the regions from which they are elected; and a change in the qualifications of future WYLD presidents, which would allow "an individual to serve as President-Elect and President as long as they are 36 or under at the time they become President-Elect," rather than barring individuals from this office who turn 37 during this period. The Board approved both changes.

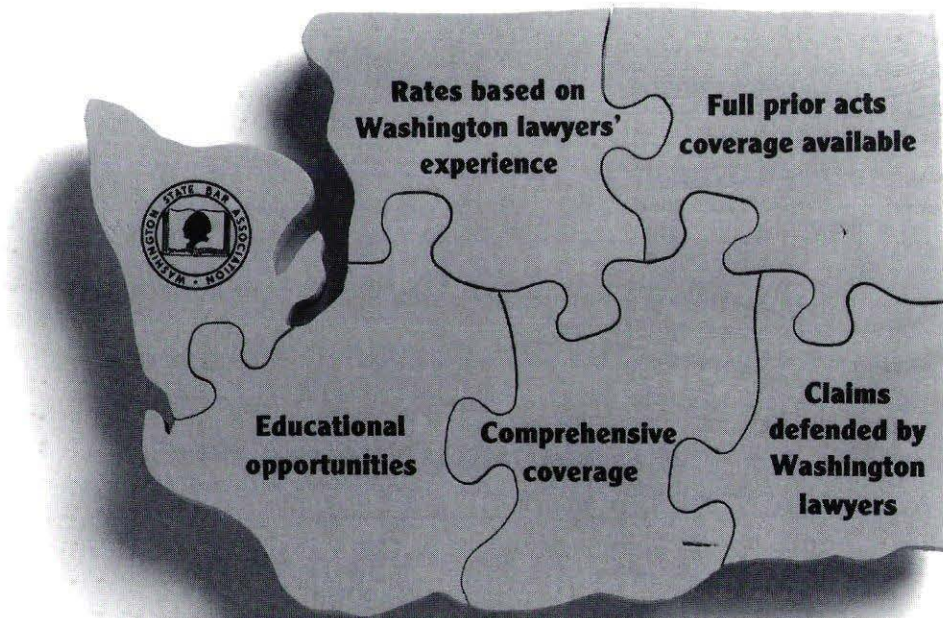
Seattle University Ethics Clinic Project. Seattle University professor John Strait, WSBA Chief Disciplinary Counsel Barrie Althoff, and Senior Disciplinary Counsel Maria Regimbal then asked the Board to reapprove the S.U. Law School's Ethics Clinic Special District Counsel Project. This project utilizes S.U. law students — under the direction of a faculty member who is designated as a WSBA Special District Counsel — to investigate selected WSBA disciplinary complaints. This program educates future lawyers, provides manpower for com-

Michael E. Kipling has joined the firm of **Stokes, Eitelbach and Lawrence, P.S.** as a shareholder.



Mike practices chiefly in the area of commercial litigation, and has extensive experience in anti-trust, securities, intellectual property, and trust matters, as well as contract and business tort claims. Mike is a 1977 graduate of Harvard Law School (cum laude) and graduated Phi Beta Kappa from the University of Michigan. Prior to joining Stokes, Eitelbach and Lawrence he worked for the Federal Trade Commission and is a former shareholder with Graham & Dunn. Mike is a member of pro bono matters for the

ACLU, principally regarding First Amendment issues.



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plaint investigation, and is a model for other states nationwide. The Board endorsed this request.

Rules for Lawyer Discipline 11.1. Barrie Althoff and WSBA Disciplinary Counsel Randy Beitel then fielded questions on proposed revisions to RLD 11.1. In 1995, the Board approved changes to this rule which would have allowed the WSBA to release information regarding disciplinary complaints prior to the resolution of such grievances. The WSBA had previously been barred from providing such information — regardless of information released by the complainant — and this had led to the perception that the WSBA was “covering-up” a complaint. However, upon reviewing this proposal, the Washington Supreme Court requested that the governors reevaluate this revision in light of recent WSBA disciplinary changes.

Upon reconsideration, the Board weighed the public’s perception of this process against the damage an attorney might suffer if the existence of what could be a frivolous complaint were revealed. After lengthy discussion, the Board asked the disciplinary committee to attempt to draft a revision which would address both concerns.

Public Sector Lawyers. At the invitation of Ed Shea, the Board approved a request to fund the travel expenses of one public-sector attorney to attend the ABA’s Government Sector Lawyers Leadership Institute Conference in Washington, D.C.

Appointments. The Board confirmed the appointment of Allen Norman to the Fee Arbitration Panel; Howard Fischer to the MCLE Task Force; Robb Bakemeier and Julie Farris to the Law Clerk Program Review Committee; and Kim Dunn to the Board for Judicial Administration. The Board also seeks candidates for one position on the Commission of Judicial Conduct. Interested applicants may contact Dennis Harwick at the WSBA.

Legislative Wrap-up. WSBA legislative representative John Fattorini then presented a report on recent legislative enactments. An article on the 1996 session appears in this issue.

Court Rules. Walt Krueger, chair of the Court Rules and Procedures Committee, presented several rule changes to the governors for their consideration. The Board endorsed proposed modifications to IRLJ 2.6, which clarifies how defen-

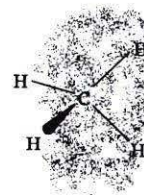
dants may obtain the attendance of a witness; CrR 4.2, which amends the guilty plea form; and IRLJ 3.2, which explains when a defendant may appear through an attorney. Judges Bob McBeth and Sam Cozza, representing the District and Municipal Court Judges’ Association, provided input on behalf of their association.

WSBA Funding. Wrapping up the

Tacoma meeting, President-elect Tom Chambers led a brief discussion on the future of WSBA funding. The Revenues Task Force of the Budget and Audit Committee will present its findings on this topic at the May 3-4 meeting in Spokane, and the governors will vote on its recommendations at the June 7-8 meeting in Pasco.

☆☆☆ **BOG candidate biographies: page 57** ☆☆☆

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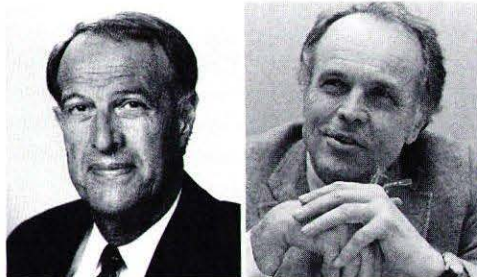
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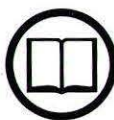
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Attorney General Opinions

Platting & Subdivisions - Counties - Cities & Towns - Effect of 1969 Platting Act on Land Platted Before Enactment.

1. The requirements of Chapter 58.17 RCW, enacted in 1969 and relating to platting and subdivisions, apply to land platted before 1937 under chapter 58.08 RCW or its predecessor statutes.

2. Cities and towns may accept plats and subdivisions filed pursuant to the 1937 platting act (chapter 58.16 RCW, repealed in 1969), but are not obligated to do so. (AGO 1996 No. 5)

Liquor - Liquor Control Board - Wineries - Breweries - Authority to Liquor Control Board to Appoint Vendor to Sell Limited Line of Spirituous Liquor

The Liquor Control Board does not have the statutory authority to appoint a winery or brewery as a liquor vendor to sell only the spirituous liquor that the winery or brewery produces. (AGO 1996 No. 4)

Real Property - Taxation - Counties - Homesteads - Effect of Homestead Declaration and Declaration of Allodial Ownership on Property Tax Liability.

1. A recorded declaration that a property owner holds real estate in "allodial freehold" is ineffective to exempt the real estate from property taxes levied under state law.

2. A declaration of homestead filed on real estate pursuant to chapter 6.13 RCW does not prevent the foreclosure and sale of real estate for unpaid property taxes, as property taxes are not "debts of the owner" and thus are not rendered exempt from execution by RCW 6.13.070. (AGO 1996 No. 6)

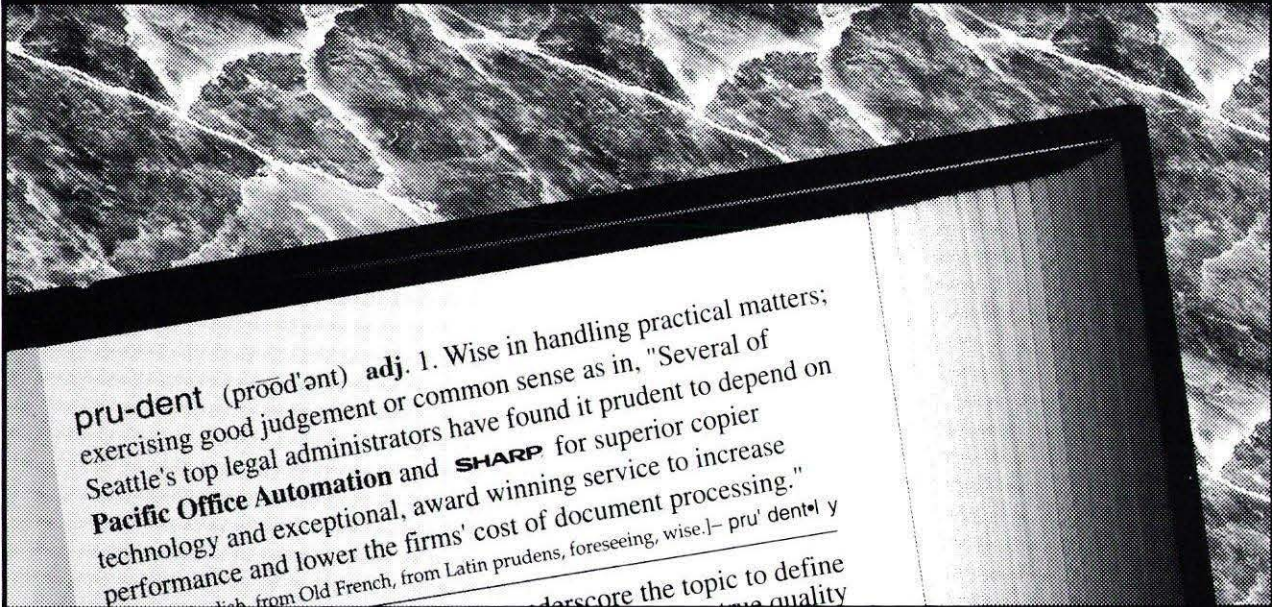
9th Circuit Update

In a successful attempt to secure committee passage of a bill to split the 9th Circuit Court of Appeals, Sen. Slade Gorton acquiesced to the demand of Arizona Sen. Jon Kyl and included Arizona and Nevada in the proposed 12th Circuit. Phoenix was also designated as the headquarters of the new circuit. This legislation will now be considered by the full Senate.

WSBA Trial

A consolidated trial date of Dec. 2, 1996 has been set for two lawsuits filed by former LAP director Andy Benjamin against the WSBA and Dennis Harwick. Benjamin seeks damages pursuant to alleged violations of his civil rights under 42 U.S.C. 1983 and the U.S. & Washington Constitutions. The actions were filed last year under King County Cause Nos. 95-2-21299-9 and 95-2-02652-4.

pru-dent (prōōd'ənt) adj.



pru-dent (prōōd'ənt) adj. 1. Wise in handling practical matters; exercising good judgement or common sense as in, "Several of Seattle's top legal administrators have found it prudent to depend on **Pacific Office Automation** and **SHARP** for superior copier technology and exceptional, award winning service to increase performance and lower the firms' cost of document processing." from Old French, from Latin prudens, foreseeing, wise.|- pru' dent| y underscore the topic to define quality

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LOCALLY OWNED AND NATIONALLY RECOGNIZED

Thomson Buys West

On February 26, the Toronto-based Thomson Corp. announced its purchase of West Publishing Co. for \$3.425 billion. Thomson also owns Bancroft-Whitney, Clark Boardman Callagahn, and Lawyers Cooperative Publishing. Completion of this sale hinges upon approval by the antitrust division of the U.S. Justice Department.

Censured

Spokane lawyer Cynthia E. McMullen (WSBA #09027, admitted 1979) was ordered censured for violations of Rules of Professional Conduct 1.7 (b), 1.8 (a) and 5.1(c) pursuant to a stipulation which was approved by the Disciplinary Board on January 30, 1996. Between January 1985 and January 1988, McMullen and her law partner and spouse, Dennis McMullen, entered into three unsecured loan transactions with a firm client. The facts underlying the stipulation are stated in the *Matter of the Disciplinary Proceedings Against Dennis O. McMullen*, 127 Wn.2d 150, 896 P.2d 1281 (1995), and are summarized in the *WSBN Discipline Notice October 1995*, page 41.

The Association was represented by disciplinary counsel Maria Regimbal. Respondent McMullen was represented by Richard McWilliams.

Suspended

Seattle lawyer A. Graham Greenlee (WSBA #890, admitted 1968) has been ordered suspended from the practice of law for thirty days pursuant to a stipulation for discipline approved by the Supreme Court March 8, 1996, and effective that date. Greenlee failed to consult with and keep clients informed about proposed settlement offers, in violation of RPC 1.2(a) & 1.4(a); continued to claim to represent them when he had reason to know his services might have been terminated, in violation of RPC 1.2(a); and, after being discharged, failed to release his client file after being asked to do so by the clients and their new lawyer in violation of RPC 1.15(d).

Greenlee represented a woman and her minor children, who were injured in an

automobile collision, in pursuing personal injury claims against the other driver's insurance carrier. The clients retained Greenlee on September 25, 1992. Nine months later, on June 22, 1993, the clients retained a new lawyer and caused a letter to be sent to Greenlee, terminating his services immediately and requesting a copy of their client file. Greenlee denied receiving that letter. No proof of mailing or receipt exists.

Throughout Greenlee's representation, he never discussed with the clients the dollar value of their claims or the amount of any offers which should be made or rejected. The clients never authorized him to accept or reject any offers or amounts. On June 24, 1993, Greenlee for the first time spoke to the opposing insurance carrier's adjuster, who made offers of settlement for each client in specific dollar amounts. Greenlee did not communicate those offers to the clients.

The clients' new lawyer left phone messages with Greenlee's secretary that he was substituting in the matter and needed the clients' file. Greenlee became aware that a lawyer had phoned indicating he was the clients' new lawyer. Without verifying whether the clients had discharged his services or not, Greenlee spoke with the insurance adjuster on July 13, 1993, rejected the adjuster's prior offers of settlement, proposed specific counteroffers of settlement, and allowed the adjuster to propose counter-counteroffers of settlement. Greenlee never dis-

cussed any of the offers or counteroffer of settlement with the clients.

On July 15, 1993, the new lawyer again requested the file. Greenlee responded that he would not deliver the file until the clients satisfied his possessory lien for fees. He demanded one-third of the insurer's last settlement offer to satisfy his lien. The new lawyer then attempted to obtain the clients' records from the insurance company, but Greenlee refused the insurance company permission to release the records. Greenlee never released the clients' file. The new lawyer reconstructed the clients' file and settled the clients' claims in November 1993. Greenlee claimed that throughout the file dispute, he was unaware of Formal Ethics Opinion 181 which indicates that a lawyer's duty to protect a client's interest by surrendering client papers supersedes the lawyer's statutory rights to assert a possessory lien in most instances.

Greenlee stipulated to remove from his contingent fee agreement the clause which provides that in case of discharge by a client, Greenlee's fees or lien for fees will be based on a percentage of the last bona fide offer of settlement made.

Disciplinary Counsel Joy McLean and Maria Regimbal represented the Bar Association; Ron Abernethy represented the respondent lawyer.

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

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THE WASHINGTON STATE BAR NEWS

FAX POLL



The Budget Committee of the Board of Governors is studying the possibility of endorsing products and services. Arguments in favor of this concept include the generation of nondues-related revenue and the possibility of discounted benefits to members. Arguments against this idea involve the problem of a mandatory association endorsing products or services which all members may not agree with, and the perception that the WSBA is "selling out" to outside organizations.

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

- 1) _____ The WSBA should endorse products and services.
- 2) _____ The WSBA should *not* endorse products or services.

If the WSBA were to endorse products or services, which of the following would you consider using?

- Credit card/financial services
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- Life insurance
- Telephone/long-distance service
- Overnight delivery services
- On-line electronic information services
- Office supplies/software
- Travel packages

Comments/Other _____

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

Fax your response by May 14 to:
(206) 727-8320
Or, mail your response by May 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 "jury nullification." We asked you to check one of four statements which most reflected your views. The results:

1. 61% strongly opposed jury nullification.
2. 4% somewhat opposed jury nullification.
3. 29% strongly supported jury nullification.
4. 6% somewhat supported jury nullification.

Overall, 52 valid responses were received. HJR 4205, the resolution which would have expressly permitted jury nullification, died in the Legislature.

Your Comments:

"This is a land under the law, not under the whims and caprices of 12 individuals, however well-intentioned. Judges are bound by the law; the public is bound by the law; even the President. Why not the jury?"

Charlie Wiggins, Bainbridge Island

"This check [jury nullification] against government power allows jurors to apply community standards of conduct in the moral vacuum sometimes created by a literal application of law."

*Michael Nance,
Seattle*

"Juries sometimes ignore the evidence. To instruct them that they also could ignore the law would be complete travesty. Laws should be changed in the Legislature, not in the jury room."

Barbara Corey-Boulet, Tacoma

"Jurors should follow the law; but should a jury find a law as unconscionable as slavery, or helping a person end their life when they are in daily agony, I am glad in those cases we do not reverse the jury's decision."

Scott Jablon, Tacoma

"Since when did we decide to turn over the legislative process to a jury of 12?"

James E. Lake, Tacoma

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



Every Lawyer's Duty to Cooperate with Bar Investigations

by **Mark Lough**

WSBA Disciplinary Counsel

Our Supreme Court has made clear that one of the important distinctions between the practice of law as a learned profession and the conduct of a trade or business is the ability of lawyers to investigate their own misconduct and to discipline themselves. Admission to practice law in this state imposes on every lawyer the obligation to cooperate in this process of self-discipline. (Rule 1.2 of the Rules for Lawyer Discipline ("RLD")). The core of this obligation is the requirement that lawyers cooperate with investigations undertaken by the Bar Association.¹ Under the RLDs, every lawyer has a duty to respond promptly to any inquiry or request for information relevant to the Bar Association's investigations into alleged or apparent misconduct by a lawyer. RLD 2.8(a).

Why is Cooperation Important?

Compliance with the duty of cooperation is among a lawyer's most important responsibilities to the profession; therefore, noncompliance can lead to the imposition of severe sanctions. In *In re Clark*, the Supreme Court explained the reasons for the importance placed on the duty of cooperation:

Compliance with these rules is vital. The practice of law has been a profession of the highest order since its inception and it must continue to be so. Internal investigation and self-discipline are at the very heart of a profession, as distinguished from a trade or business. The bar association's investigation of a complaint is an integral part of the machinery for handling charges regarding the ethics and conduct of the attorneys admitted to practice before this court. Public confidence in the legal profession, and the deterrence of misconduct, require prompt, complete investigations. The process of investigating complaints depends to a great extent upon an individual attorney's cooperation. Without that cooperation, the bar association is deprived of information necessary to determine whether the lawyer should continue to be certified to the public as fit. Obviously, unless attorneys cooperate in the process, the system fails and public confidence in the legal profession is undermined. If the members of our

profession do not take the process of internal discipline seriously, we cannot expect the public to do so and the very basis of our professionalism erodes. Accordingly, an attorney who disregards his professional duty to cooperate with the bar association must be subject to severe sanctions. Moreover, unless non-cooperation brings such sanctions, attorneys who are guilty of unprofessional conduct might be tempted to stonewall to prevent serious violations coming to light.

In re Clark, 99 Wn.2d 702, 707-708, 663 P.2d 1339 (1983); accord, *In re McMurray*, 99 Wn.2d 920, 665 P.2d 1352 (1983).

What Does Cooperation Mean?

RLD 2.8(a) explains the scope of a lawyer's duty to cooperate with Bar Association investigations. The information lawyers must provide is extensive. Under RLD 2.8(a) a lawyer must promptly:

- Furnish in writing, or orally if requested, a full and complete response to inquiries and questions;
- Permit inspection and copying of his or her business records, files and accounts;
- Furnish copies of requested records and accounts;
- Furnish written releases or authorizations where needed to obtain access to documents or information in the possession of third parties, including medical, psychiatric, and psychological information if necessary; and
- Comply with all discovery conducted pursuant to RLD 2.6.²

Disciplinary proceedings, by which the Supreme Court inquires into the continuing fitness of the persons it has admitted to the bar, are *sui generis* and serve the important purpose of protecting the public. Given the nature of disciplinary proceedings, limitations on disclosure that may apply in other kinds of proceedings do not apply in bar investigations. For example, RLD 2.8(d) provides that "A lawyer may not assert the attorney-client privilege or other prohibitions on revealing client confidences and secrets as a

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ground for refusing to provide information during the course of an investigation."³ Lawyers may also be required to produce information protected in other contexts by the physician-patient privilege. RLD 2.8(a). Lawyers may, however, refuse to produce information under a proper assertion of their own privilege against self-incrimination. RLD 2.8(c). These broad requirements of cooperation "are necessary to allow the bar association to efficiently and effectively investigate complaints of attorney misconduct." *In re Yamagiwa*, 97 Wn.2d 773, 780, 650 P.2d 203 (1982).

What Will Happen If I Don't Cooperate?

Failure to cooperate promptly with a bar investigation is misconduct. RLD 1.1(j); RLD 2.8(b)(3). A failure to cooperate that continues for more than thirty days can result in the issuance of a "ten-day" letter to the lawyer pursuant to RLD 2.8(b), requiring a response from the lawyer within ten days. Failure to comply with that request can result in the issuance of a subpoena to the lawyer for deposition pursuant to RLD 2.8(b). If such a subpoena is served, the lawyer can be ordered to pay the actual costs of the service, the costs of any deposition actually conducted, and fees in the amount of \$200. RLD 2.8(b).

Under the ABA Standards for Imposing Lawyer Sanctions, which have been adopted in Washington State, failure to cooperate with a Bar Association investigation is an aggravating factor to be considered in determining the appropriate sanction for a lawyer who has committed misconduct. ABA Standard 9.22(e), (f).

Failure to cooperate with an investigation, whether or not the underlying grievance is found to have merit, is also an independent ground for imposing discipline. In *In re Clark*, *supra*, the Supreme Court imposed a six-month suspension for a lawyer's failure to respond to a grievance that was eventually dismissed. In various cases, the Supreme Court has mentioned the following conduct as evidence of noncooperation: (1) disregarding subpoenas issued by disciplinary counsel,⁴ (2) failing to respond to letters from disciplinary counsel requesting information,⁵ (3) failing to respond to requests for a conference and failing to attend scheduled conferences,⁶ and (4) failing to provide requested records.⁷ Whether disci-

pline is appropriate in specific other circumstances and, if so, at what level, are determinations that can only be made after considering all of the facts.

Endnotes

¹The ultimate responsibility for lawyer discipline in Washington rests with the Supreme Court. The Supreme Court has, however, delegated portions of the lawyer discipline process to the Washington State Bar Association. See RLD 2.1. The Supreme Court delegated to Disciplinary Counsel the duty to "[t]ake cognizance of any alleged or apparent act of misconduct by a lawyer, whether by grievance or otherwise, and investigate the same or assign the same for investigation to special district counsel." RLD 2.6.

²RLD 2.6(d) provides that "Where disciplinary counsel deems it advisable prior to the filing of a formal complaint to conduct the deposition of a lawyer being investigated . . . or to issue requests for admission to a lawyer being investigated, he or she may do so."

³The Bar Association is, however, required by RLD 2.8(d) to preserve the privilege to the extent possible unless the client consents.

⁴See, e.g., *In re Clark*, 99 Wn.2d 702, 707-708, 663 P.2d 1339 (1983); *accord*, *In re McMurray*, 99 Wn.2d 920, 665 P.2d 1352

(1983); *In re Yamagiwa*, 97 Wn.2d 773, 650 P.2d 203 (1982).

⁵See, e.g., *In re Clark*, 99 Wn.2d 702, 707-708; *In re McMurray*, 99 Wn.2d 920; *In re Yamagiwa*, 97 Wn.2d 773; *In re Talbot*, 107 Wn.2d 335.

⁶See, e.g., *In re McMurray*, *supra*.

⁷See, e.g., *In re McMurray*, *supra*; *In re Robinson*, 89 Wn.2d 519.

PLEASE JOIN OUR CELEBRATION

Eastside Legal Assistance Program (ELAP) cordially invites bar members and other friends to our 7th Annual Luncheon celebrating the importance of pro bono work. Please join us from noon 'til 1:30 on Thursday, May 23, at the Best Western Bellevue Inn, when special guest speaker Dr. Margarethe Cammermeyer shares her experiences as a beneficiary of pro bono services. Luncheon cost is \$17.95.

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The editor solicits feedback regarding the continuation of "Around the State," particularly whether organizations or counties with their own newsletters warrant space in this department.

KING COUNTY

Jeff E. Jared has begun a solo law practice in Kirkland, sharing an office with longtime Kirkland attorney **Douglas Leonardo**.

Curt H. Feig has joined the Seattle office of Philadelphia-based Cozen and O'Connor.

Peter G. Dawson and **David M. Dawson** have formed the new Seattle firm of Dawson & Dawson P.S.

Seattle attorney **C. William Bailey**, who practices with Lane Powell Spears Lubersky, has become a Fellow of the American College of Trial Lawyers.

This year's Lawyers Basketball League Champion is Johnson & Associates, a team composed entirely of law school grads who work in firms of 10 or fewer lawyers. Winning team members are **James H. Clark**, **Michael S. DeLeo**, **Anthony C. Johnson**, **Eric S. Nelson**, **Charles T. Paglialonga**, **Shannon Smith** and **Bradley P. Thoreson**. Seed & Berry finished second in the league after defeating six-time champion Mundt/Stokes.

Jessica A. Eaves, **Christopher G. Weinstein**, **Elizabeth A. Lee**, **Brian J. Deagle**, **Roger M. Townsend** and **Diana M. Dearmin** have joined Williams, Kastner & Gibbs LP as associates; **Rodney L. Umberger** has joined as a senior associate; **Curtis R. Smelser** has been named partner; and **Amy Thompson Forbis** has joined the firm as of counsel.

First Assistant U.S. Attorney **Susan Barnes** has joined her former colleagues in the U.S. Attorney's office — **Mike McKay** and **Bob Chadwell** — at the Seattle law firm of McKay, Chadwell & Matthews.

Donald S. Cohen, a former acting dean of UPS law school, has been named managing attorney at the Seattle office of Gordon, Thomas, Honeywell.

Seattle-based Keller Rohrback recently welcomed **David Rosenfeld** as an associate, and **T. David Copley** and former Celtic basketball player **Rob Chrichton** as partners.

Former Washington Appellate Defender **Jonathan S. Cole** is now the EPA Assistant Director for Legal Counsel &

Resource Management, Office of Criminal Enforcement, Forensics and Training in Washington, D.C.

José E. Gaitán was named the 18th president of the 20,000-member Hispanic National Bar Association at their international convention in Puerto Rico.

The northwest regional law firm of Ater Wynne Hewitt Dodson & Skerritt P.C. has named **Greg Harris** as principal-in-charge of its Seattle office.

At Ryan Swanson & Cleveland, former partners **Richard L. Cleveland** and **William R. Friedhoff, Jr.**, have become of counsel, and **Julia M. Bolz**, **Robert W. Bryan**, **Michael M. Fleming**, **Richard P. Lentini** and **John P. Mele** have become partners of the firm.

Mark Hillman and **Susan Alexander** have joined the Bellevue law firm of Hawkins Jeppesen Hoff P.S. as associates.

Ramsey M. Al-Salam has become partner with Seattle's Seed and Berry L.L.P.

Samuel S. Chung, **John D. Sullivan** and **Alison Wachterman** have joined the Seattle law firm of Short Cressman & Burgess P.L.L.C.

Vito de la Cruz has joined De la Cruz, Carney & Marchi P.S. as partner.

Seattle defense lawyer **Sheryl Willert** has been reelected a director of the 20,000-member Defense Research Institute.

Bainbridge Island's **Kyle B. Lukins**, of Bogle & Gates, has joined the board of directors of Family Services, a United Way agency which offers counseling and support for families during difficult emotional times.

In February, **Gerald G. Tuttle** and **Kathleen Elvins Gorham** opened the new law firm of Tuttle & Gorham in Issaquah.

Heidi L. Holman has joined Foster Pepper & Shefelman as an associate.

SPOKANE COUNTY

Lucinda S. Whaley and **Patricia C. Williams**, both principals with Spokane-based Winston & Cashatt P.S., have been elected as officers of the Federal Bar Association for the Eastern District of Washington.

In March, Gonzaga University School of Law's Women's Law Caucus presented the 1996 Myra Bradwell Award to U.S. Magistrate **Cynthia Imbrogno**.

KLICKITAT COUNTY

In February, **Don S. Willner** opened a part-time law office in Trout Lake. He continues his full-time litigation practice in Portland.

PIERCE COUNTY REPORT

by **TONI FROEHLING**

Welcome to the new *Pierce County Bar News* Editorial Board. Our fearless leader, **Chris Keay**, has endeavored to put together an editorial board which, we hope, will broaden our source of information by allowing for more input from the membership. Even a better reason to sign up and pay your dues . . . you might get to say something.

We can all understand that when you open a new office, there might be, at first, a struggle for new clients. However, **Dave Bufalini** apparently has taken the art of attracting people to a higher level. Seems as if he recently had one of his clients park in the waiting room . . . car and all . . . right through the wall. Good news was that Dave and staff were out, so no one was hurt. Bad news was that she didn't hire him. "A" for effort, Dave.

Our own **Jim Lopez**, who was last reported as winning games pitching in Florida, is now mentoring young Puyallup arms. He is working for Puyallup High School as their pitching coach. Good spot for him as the Puyallup school superintendent is a former pitcher in the bigs.

With the recent construction of the temporary (?) jail in the parking lot, we have now reached a milestone in Pierce County. There are more official government cars parked near the courthouse than real-people cars. Funny how the price in the neighboring lots went up and how many more tickets are being written on neighboring streets. New Proposed Local Rule . . . If your bar number is four digits or fewer, the county shall provide you a parking space. Free.

I was afraid I was going to have to accept this month's Bubba, for arguing a recent case in the Court of Appeals with two different color socks on. But I have been saved, and this month's award goes to my partner **Skip Mayhew** who, I was reminded, once argued a motion before the Hon. **Waldo Stone** with one black shoe and one brown one.



BLAIR, SCHAEFER, HUTCHISON & WOLFE

is pleased to announce that tax attorney

SCOTT W. SWINDELL, LL.M.

has joined our firm as an associate.

Formerly with The Bessert Law Firm of Vancouver, Mr. Swindell will continue to emphasize general representation of business organizations, counsel on business taxation, and planning for complex estates and business succession matters. Licensed to practice in Washington and Oregon, he will work within our firm's Business & Commercial Section.

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Welcomes James W. Stubner, Jr. to the firm

Mr. Stubner was formerly general counsel to the Sabey Companies and will continue his practice in corporate, commercial and real estate law and transactions. Mr. Stubner has joined the firm of counsel.

BUCKNELL STEHLIK continues to specialize in complex commercial litigation, arbitration and mediation, lender liability law, business reorganization, creditor-debtor issues and now offers the transactional expertise of Mr. Stubner.

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Of Counsel

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is pleased to announce that

Margo S. Easton

has joined the firm as a partner

effective March 18, 1996

Ms. Easton will continue to practice
in the areas of construction litigation and
dispute resolution, government procurement,
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HERSHNER, HUNTER, ANDREWS,
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is pleased to announce that

ROBERT A. STOUT

has become a partner of the firm

Rob practices primarily in the areas of Securities, Corporate Law and Business Transactions. He joins us from the Portland office of the Perkins Coie law firm.

We feel particularly fortunate to have Rob join us — not only is he a very able lawyer — he is also a quality person and a nice guy.

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April 1, 1996

HORENSTEIN & DUGGAN, P.S.

is pleased to announce that

LEANNE M. BREMER

and

ALBERT F. SCHLOTFELDT

have become shareholders in our firm.

Ms. Bremer will continue her practice emphasizing land use planning and real estate transactions. Mr. Schlotfeldt will continue his practice emphasizing construction law, real estate, and commercial litigation. Both are licensed in Washington and Oregon.

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and

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formerly partners with the firm,
have become Of Counsel,

and that

Julia M. Bolz,

Robert W. Bryan,

Michael M. Fleming (formerly Of Counsel),

Richard P. Lentini, and

John P. Mele

have become partners of the firm.

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is pleased to announce that

GRANT B. ANDERSON

LINDA K. NELSON

TIMOTHY M. SCHELLBERG

have become shareholders of the firm, and

J. RICHARD MCENTEE, JR.

has become an associate.

Mr. Anderson, Ms. Nelson and Mr. McEntee formerly worked with the law firm of
ANDERSON BURROWS & GALBRAITH.

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(Responses will be forwarded to you.)

Deadline: Ad copy (typed, doubled-spaced) received with payment first of the month for the issue following (i.e., June 1 for the July issue). No cancellations after deadline. No phone/fax orders.

Send to: *Bar News*, WSBA, 500 Westin Bldg., 2001 Sixth Ave., Seattle, WA 98121-2599.

Notes:

- 1) Position Available ads are automatically posted on a 24-hour jobline [(206) 727-8261] and in placement binders at the WSBA offices for immediate consideration.
- 2) State and federal law allow minimum, but prohibit maximum, qualifying experience, e.g., no ranges.

Pence & Dawson

Bob Dawson announces his availability for trial of plaintiff's personal-injury lawsuits.

(206) 624-5000

Appellate Consultant

Heather Houston

Offering an appellate perspective on every phase of your case.

Thirteen years' experience evaluating, briefing, and arguing appeals. Former law clerk to Justice Robert F. Utter.

Gibbs Houston Pauw

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

Burn Injuries

William S. Bailey, 1991 WSTLA Trial Lawyer of the Year, is available for association or referral of fire, explosion and burn injury cases.

Fury Bailey

1300 Seattle Tower
1218 Third Avenue
Seattle, WA 98101-3021
(206) 292-1700 or
(800) 732-5298

DSHS Liability

Sexual Abuse Claims

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

Seidl & Rizzo

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

PROFESSIONALS

Dental Malpractice & Disciplinary Proceedings

John J. Greaney announces his availability for referral of

- 1) plaintiffs' claims of dental malpractice, and
- 2) representation of healthcare providers in disciplinary matters.

(206) 451-1202, Bellevue

Florida Referrals

Sheila Burnstin Cesarano, a 1977 U.W. Law School graduate, announces her availability for consultation, association, or referrals for Florida cases, including litigation matters. Ms. Cesarano is a partner in Shutts & Bowen, a large, well-established, full-practice firm in Miami, Florida, with offices throughout the state.

Shutts & Bowen
1500 Miami Center
201 South Biscayne Boulevard
Miami, Florida 33131
Telephone (305) 379-9103
Fax (305) 381-9982

Professional Malpractice

Joseph J. Ganz is available for consultation, association or referral of substantial claims of professional malpractice.

11033 N.E. 24th, #200
Bellevue, Washington 98004
Phone: (206) 451-1202

Medical Negligence & Product Liability

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

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

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

State Court Appeals

Thomas C. Sorenson announces his availability for consultation or association on civil appeals in the Washington State appellate courts. Fourteen years' experience in appeals of personal injury, professional malpractice, product liability, and insurance cases.

320 Dayton St., Suite 225
Edmonds, WA 98020
(206) 771-5206

Gregory L. Samuels

Barrister • Attorney
Practicing law in
Washington & British Columbia
(800) 222-6332

Malaysia

Dan Wershow is available for consultation, association or referral in Malaysian legal matters.
Fulbright scholar, 1990.

(206) 223-5500

Appeals

Douglass A. North announces his availability for referral, consultation or association on appellate arguments and briefs.

Douglass A. North

**Maltman, Reed, North,
Ahrens & Malnati, P.S.**
1415 Norton Building
Seattle, Washington 98104
Telephone (206) 624-6271

Agriculture

Consultation, Referrals, Association
Expert Witness
Chapter 12 Bankruptcies
20 years' experience in ag finance,
production, and technology

Michael R. Mitge
(360) 748-8026

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Roger K. Anderson, former legal malpractice insurance defense attorney with Lee, Smart, Cook, Martin and Patterson, P.S., announces his availability for association, consultation or referral of substantial plaintiff's claims of legal malpractice.

11033 N.E. 24th
Suite 200
Bellevue, Washington 98004
(206) 451-1202
fax (206) 454-4289

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Since 1978

John A. (Tony) McHugh

Telephone (206) 624-9100
FAX (206) 464-1496
E-mail: Tonymch@aol.com

Entertainment Law

Neil Sussman is available for consultation and referral on entertainment law matters, including music, film, theater and television.

10727 Interlake Avenue North
Seattle, WA 98133
(206) 363-8070

Japan

Karl R. Boettner, of the Tokyo law firm, Ushijima & Associates, is available for consultation or referral on Japan business law matters

New Aoyama Bldg.
1-1, Minami-Aoyama 1-chome
Minato-ku, Tokyo 107
Tel. 011-81-3-3470-7000
Fax 011-81-3-3470-7007

**Maritime
Arbitrator & Mediator**

Tom McKey, former sr. admiralty partner of Bogle & Gates with 33 years' experience in all phases of admiralty practice and ADR (BS Eng., JD, MA Psych.) is available as a mediator or arbitrator in maritime matters.

(206) 528-1538

tom_mckey@mist.seattleantioch.edu

Mary Jane Ferguson

Appellate Legal Services
Research, Writing & Argument
(206) 525-7268

**Labor and Employment
Law**

William B. Knowles is available for consultation, referral and association in cases involving employment discrimination, wrongful termination, wage claims, unemployment compensation and federal employee EEOC or Merit System Protection Board appeals.

(206) 441-7816

**Vehicle
Crash-Worthiness**

Paul W. Whelan
of the law firm
**Schroeter, Goldmark &
Bender, P.S.**

is available for association or referral in cases related to motor vehicle crash-worthiness, including cases involving fuel-system integrity, such as Chevrolet C/K series pickup trucks.

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

Calif/Wa Dual-licensed

**Michael A. Aronoff
Foshaug, McGoran,
Sawyer & Aronoff, P.S.**

Available for referrals, consultation or association on California matters. Heavy family law background. 20 years' experience in California.

(206) 874-0189
fax (206) 874-8005

**Referrals or
Consultations Invited:**

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

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

**Lawyer Ethics & Discipline
Former WSBA Chief
Disciplinary Counsel**

Leland G. Ripley
First Interstate Center
999 Third Ave., Suite 3330
Seattle, WA 98104-4015
(206) 223-2082
fax (206) 223-1677

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

Appeals

"A discourse on argument on an appeal would come with superior force from the judge who is in his judicial person the target and trier of the argument . . . Supposing fishes had the gift of speech, who would listen to a fisherman's weary discourse on fly-casting . . . if the fish himself could be induced to give his views on the most effective methods of approach?" — John W. Davis

Charles K. Wiggins
Former Judge, Court of Appeals
(206) 780-5033

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Richard Gemson

former adjunct professor of law at UPS and former in-house counsel for North Pacific Insurance Co., is available for consultation, association or referral in matters involving all types of insurance coverage, as well as arbitration and mediation in civil, tort and contract litigation.

**506 Second Ave., Suite 1613
Seattle, WA 98104
(206) 467-7075
fax (206) 623-1432**

**White-collar
Malpractice**

Attorneys
Accountants
Financial Institutions & Lenders
Insurers
Realtors
Securities Brokers

Mark Alan Johnson
6850 Columbia Seafirst Center
701 Fifth Avenue
Seattle, WA 98104-7016
(206) 386-5566
fax (206) 682-0675
toll-free (800) 247-2157

announces his availability for consultation, association or referral of substantial claims of white-collar malpractice.

Asher B. Wilson
Attorney - CPA
Small business and estate planning
(206) 562-3126
awilson@eskimo.com

Divorce Representation for Attorneys

Family Law

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

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

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

Construction Law Arbitration — Mediation

Sherman L. Knight is both an attorney and a licensed architect with years of hands-on experience as a builder/developer.

Mr. Knight is available to arbitrate/mediate all phases of design and construction disputes including contract interpretation, real estate, business formation and dissolution, site disputes, collection and bond claims.

Robertson, Phillips & Knight
1000 Plaza Center
10900 N.E. Eighth Street
Bellevue, WA 98004
(206) 455-2345

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Consultations - Contract
Washington - Alaska - Japan
Dr. John G. Gissberg, J.D.
Certified Fisheries Scientist
(206) 443-3735

CLASSIFIEDS

FOR SALE/WANTED

Washington Reporter by West. Complete set current through 1995. Many books never cracked open. Must sell. Make offer. Call Randy: (360) 376-3076 (home) or (360) 378-4101 (work).

West's Washington Digest. Complete 1995 pocket parts. Reasonable offer buys this set. Julie A. Gaisford (206) 728-0447. Fax (206) 448-2252.

Hansville waterfront: Two 50' x 500' adjacent lots. Stunning view. Wooded, large evergreens. Road and utilities to property. \$85,000 each or \$165,000 together. (360) 417-4531.

Law books for sale: Washington Reports; Washington Appellate Reports; RCWA; Washington Digest; Washington Legal Forms; AMGUR Legal Forms; and bookcases. \$3,500. Please contact Miles McAtee (206) 329-1899.

SPACE AVAILABLE/ NEEDED

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

Downtown Spokane office-sharing. Classy renovated turn-of-the-century building. All office services available including potential referral or contract work. Showers and plenty of parking. Congenial atmosphere. Negotiable terms. Call Sharon at (509) 838-0125.

Pioneer Square office space: Busy, small, general-law office looking for someone to join and enhance practice. One large view office and three small offices available. Close to courts. Conference room, fax, copier, messenger service. Also available for sale: full set of Mertens Law of Federal Income Taxation; CCH Standard Federal Reporter (1995) including Index, Volumes 1-16, Citators and Advance Sheets; CCH (1993) including Index, Volumes 1-13, Citators and Advance Sheets. For more information, call Jim Dore (206) 343-4841.

Prestigious professional office in the heart of downtown Bellevue. Attorneys

and CPAs only. Extensive online CD-ROM Law and Tax Library. For more information call Christine at (206) 462-4999.

Office Space for Rent: Queen Anne area — three furnished lawyer offices with two furnished secretarial stations available in conveniently located office building. Includes receptionist, phone, copier, fax, library, conference room, and free parking. Contact Lisa at (206) 281-9010.

POSITION WANTED

Probate. Established attorney, 20+ years' experience, wishes to associate with retiring attorney. Reply to Box 491, WSBA.

Note: Address all box number replies to Box ____, WSBA, 2001 6th Ave., Ste. 500, Seattle, WA 98121-2599.

POSITION AVAILABLE

Wanted: Contract attorney with two years' criminal experience for research and special projects. Send resumé, availability and rate to P.O. Box 22141, Seattle, Washington, 98122.

Family Law. Seeking F/T Washington attorney with at least three years' experience, strong writing, mediation and advocacy skills who is devoted to improving the practice of family law. Position may include opportunities for writing for publication and pro bono work on regional, national and international children's rights issues. AV-rated law firm. Send letter and resumé to 900 4th Avenue, Suite 1616, Seattle, WA 98164.

Estate planning firm seeking an attorney with extensive estate, gift and generation-skipping tax experience. Send letter and resumé to Gores & Blais, 1420 5th Avenue, Suite 2700, Seattle, 98101. No calls, please.

Attorney. Assistant General Counsel for Port of Portland to assist primarily in marine and aviation departments. Qualifications include membership in Oregon State Bar; four years' practice as a lawyer; experience as in-house corporate or governmental attorney; background in a wide variety of real estate and commercial transactions. Qualified candidates should call the Port of Portland employment office at (503) 731-7400 for application materials. Anticipated closing date is May 17, 1996. The Port is an equal opportunity employer.

Estate Planning: Brett & Daugert,

Bellingham, seeks an experienced associate to join an established estate planning practice. Strong academic credentials and experience in planning and administration of taxable estates required. LL.M. in tax preferred. Confidential inquiries honored. Contact Bruce Smith (360) 733-0212.

Longview firm seeks attorney interested in disability law with primary focus on Social Security disability and some personal-injury litigation work. Will consider lawyers who have successfully passed the recent bar exam and are Washington State Bar Association members. Please send resumé to PO Box 757, Longview, WA 98632.

Attorneys and Law Clerks: Quality attorneys and law clerks sought to fill temporary and permanent positions in law firms and larger companies throughout the greater Seattle area. Interviews begin April 15, 1996. Please contact Legal Ease, L.L.C. at (206) 822-1157.

Employment Attorney: Davis Wright Tremaine seeks an attorney for its Seattle office with a minimum of three years' experience in handling employment and labor law matters, especially employment litigation. Candidates must have excellent academic credentials, writing skills and references as well as the ability to assume responsibilities for client matters. All replies confidential. Send resumé and law school transcript to Debbie Barker, Davis Wright Tremaine, 2600 Century Square, 1501 Fourth Avenue, Seattle, WA 98101-1688.

Chase, Hayes & Kalamon, P.S., a medium-sized Spokane firm with a heavy emphasis on representing health care clients, is seeking an associate attorney with a minimum of two years of experience in health care law and business transactions. Applicants should have strong academic credentials, good interpersonal skills and strong client development skills. Candidates must be admitted to practice in Washington. A performance-based compensation package is provided with partnership track defined at outset. Submit resumé to Karen Sprague, Chase, Hayes & Kalamon, P.S., 601 W Riverside, Suite 1000, Spokane, WA 99201.

AV-rated Seattle firm of 16 with reputation for tenacious and creative litigation, offers opportunity for significant client contact and front line experience in large or small cases for the candidate with outstanding credentials and ambition. Forward resumé and writing sample to Lin Coté, 5600 Key Tower, 700 5th Avenue, Seattle, WA 98104.

Trial attorney — Medium-sized Central Washington litigation firm is looking for a trial attorney to work in specialty or defense medical malpractice. Minimum five years' general trial experience required, not necessarily in malpractice cases. Excellent opportunity. Qualified candidates should direct a resumé to Box 492, WSBA.

WILL SEARCH

Ralph B. Vigil: Anyone having knowledge of a will executed by Mr. Vigil, please contact Jim DeLong at (206) 932-1192.

SERVICES

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

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

Secure file storage: Store inactive files near your office but out of sight. Shurgard Storage Centers offers individual storerooms from \$40/month. Fifty Puget Sound locations. Open every day. First month free for WSBA members. For information (800) 786-7390.

Contract attorney: construction. Former editor with national AIA documents program now available for research, writing and trial preparation. Member, Washington State Bar Association. Joseph A. Dundin (206) 789-3247.

I do your research and writing while you stay in your office: Seattle attorney performs legal research at UW Law Library for lawyers anywhere in Washington State. Will draft trial briefs, motions, memoranda. Clerked in King County Superior Court, U.S. Bankruptcy Court. Elizabeth Dash Bottman (206) 526-5777.

Contract attorney: Overworked? Need help preparing your discovery, legal research or trial brief? Attorney available for writing, research, depositions, trial preparation and courtroom appearances ("all courts — all counties"). Civil

and criminal cases (\$25 per hour). Milan Milatovic (206) 292-1476.

Appraiser — household/estate sales. Antiques, art and general household contents. Twenty years' experience, accredited Senior Member American Society of Appraisers and Fellow of the Royal Society of Arts, Victoria and Albert Museum and Sotheby's training, London. (206) 285-5711.

Worldwide auctions: Households, estates, charities, thoroughbred appraisals, licensed horse trainer. Larry Boos, WA License 202-00. (206) 774-7395, (619) 251-0848. P.O. Box 6055, Edmonds, WA 98026.

Investigations: Quality, efficient investigations and litigation support. Don't settle for mediocre; call experienced professionals. (509) 443-9480. Throughout the Northwest. Offices in Washington and California. Zeiler & Associates, a professional detective agency. 24 hours.

Cash for trust deeds, mortgages, land contracts. Nationwide. Gregory Funding at (800) 331-8347. Fax (214) 393-3319.

Locate anyone. Defendants, witnesses, debtors, heirs, insureds, policy holders, beneficiaries. No charge if not found. Flat fee: \$195. Nationwide investigative search. Manhunt Investigations Inc. (800) 335-HUNT.

MISCELLANEOUS

Orcas Island farmhouse: 30 acres with marine/island views, meadows, stream and waterfalls. Fully furnished, woodstove, sleeps six. Available by weekend, week or month year round. From \$700/week. No smokers. (206) 781-2715.

Big island vacation home, Waikoloa, HI — 5,200 square feet, ocean view, four bedrooms, four baths, all amenities including Jacuzzi. Sleeps 15+; great for groups/reunions. Country club setting, golf course (with substantial discounts), tennis, pool, stables. Beautiful beaches and world class resorts within six miles. 29 miles from Kona. Very reasonable. Call for brochure: (503) 735-0592.

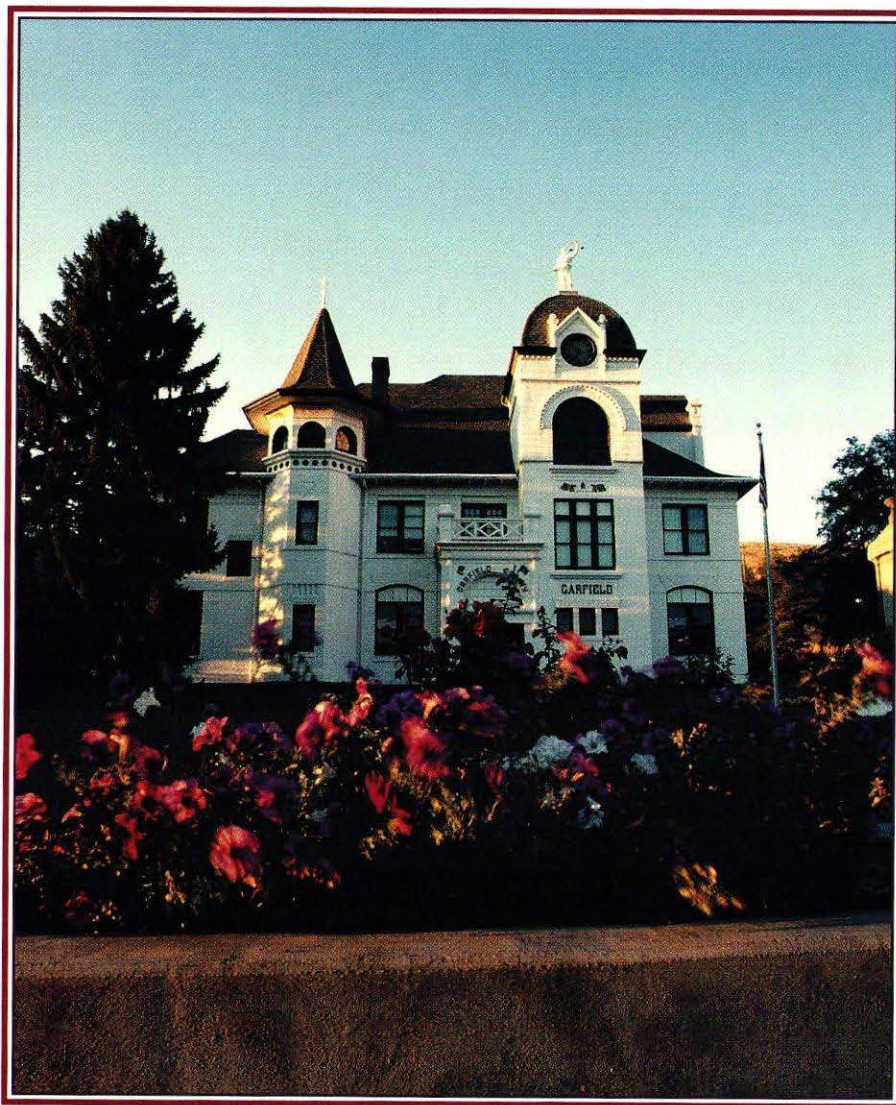
Attorneys wanted: Attorneys wanted for nationwide legal panel for a legal plan distributed through a major insurance company. For an information kit, call LAWSTAR (800) 529-7377.

Hood Canal — Beachfront, breathtaking view, new attached home, two bedrooms, two baths, sleeps six, nicely furnished, fully equipped kitchen, deck, fireplace, w/d, near golf. \$150/night, two-night minimum. No pets. Call (503) 228-3483.



We inaugurate this month a quarterly department featuring the most tangible examples of Washington State's legal history: our county courthouses. Photographer Stan Morse and writer Csilla Muhl, both Washington attorneys, have combined their talents to offer this continuing department to our readers.

Garfield County Courthouse



Built in 1901, the Garfield County Courthouse is a beautiful brick-and-stone structure tucked away in the southeast corner of our state. Garfield County citizens are justly proud of their historic courthouse, which is the third-oldest in the state that is still in use. The current building replaced a frame structure that burned down the previous year, destroying with it much of the local business area. Fortunately, two fireproof vaults containing the records of the Auditor, Clerk and Assessor were preserved, and the vaults remain in use to this day.

The brick and stone used in the construction of this spectacular courthouse came from the Valentine area of Garfield County near the Snake River. Designed by Charles Burggraf of Oregon, and built by August Ilse of Spokane, the structure was erected

for a bargain price of \$18,783. In 1966, this unique, turn-of-the-century building was registered as a National Historic Place. The statue on the front lawn depicts Samuel Cosgrove, who was the only Garfield County resident to become Governor of our state.

The courthouse is located in Pomeroy, a small town of approximately 1,407 citizens situated near the picturesque Blue Mountains and Snake River. In addition to hosting the county fair & rodeo, there are numerous outdoor activities including hunting and fishing. Of note is Pomeroy's annual Tumbleweed Festival, which was known for its groundhog races until local animal rights groups successfully lobbied for the elimination of the event.

Biographical Sketches of WSBA Board of Governors Candidates

These biographical sketches are provided by the candidates. The only contested race is in the Third District. Ballots will be mailed to members in May, and will be due back by June 7, 1996.

King County at Large

Mary Alice Theiler is a founding partner of the Seattle firm of Theiler Douglas Drachler and McKee, where she practices in the areas of maritime and personal injury litigation, and employment law. She was President of the King County Bar Association from 1993-1994, and is a member of the Access to Justice Board, the Minority and Justice Commission, and the Executive Council of the National Conference of Bar Presidents. She is a member of Washington Women Lawyers, the American Judicature Society and the American Arbitration Association. She is a member of the Board of Directors of the Northwest Justice Project. She attended the University of Michigan and Wayne State University School of Law.

Third District

Terrance (Terry) Lee is in solo practice previously employed in both the government and private section. Terry has been a trustee for the Young Lawyers Division and served in a variety of local, state and national organizations. Terry was the leading pro-bono provider for the Clark County Volunteer Lawyer Program in 1993 and 1994. Terry earned his bachelor's degree from the University of Maryland and law degree from Gonzaga University. Terry is married to Mary Ann, with whom he has three children. Terry's experience and insight would result in quality representation for members of his district.

Marla Ludolph-Heikkala is a partner at Landerholm, Memovich, Lansverk and Whitesides P.S., in Vancouver, Washington. Marla

graduated from Willamette University College of Law in 1979. She practices in the areas of worker's compensation, social security disability and personal injury.

Marla's memberships include the Washington State and American Trial Lawyers Association, National Organization of Social Security Claimant's Representatives, and Washington State and Clark County Bar Associations.

She is a trustee of Southwest Washington Medical Center and serves on the Clark County Civil Service Commission, (Chairperson), and the George Fox College, Newberg, Oregon, Board of Trustees.

Melissa Denton practices law with the eminently able firm of Ascher & Denton, PLLC, in Olympia, Washington. Melissa works in the areas of family and employment law. She is President of Thurston County Young Lawyers and is serving her third year on the Board of Trustees of the Washington Young Lawyers division of the statewide Bar. She also thinks she has a life outside of the law, and her husband hopes so. As a current candidate for the Washington State Bar Board of Governors, she urges all lawyers in the third congressional district to vote for her.

Sixth District

Donald Powell is a third generation lawyer. He received a bachelor's degree from the University of Arizona. His 1981 law degree is from the University of Puget Sound, cum laude, top 10%. Practice areas include family law, real property, small business, and other general practice areas. He is a shareholder in the small firm (no one taller than 5'6") of Lozier, Powell & Ripley, P.S. in Tacoma.

Powell is a past president of the Family Law Section of the Tacoma-Pierce County Bar. He has served on many committees and is currently the secretary-treasurer of the TPCBA. He is a founding officer and trustee of the TPCBA.

Eighth District

Marijean E. Moschetto — Marijean began practice with her father's law firm in 1978 after graduation from McGeorge School of Law. She has been active in the East King County Bar Association, having served as a trustee for several years and secretary of the association for 1995 and 1996.

Marijean is particularly proud of her presidency of the Eastside Legal Assistance Program during 1994 and 1995, during which the program launched the Domestic Violence Defense Fund, which provides free legal representation in the temporary order phase of family law cases to income-qualified victims of domestic violence.

She will make a great representative to the Board of Governors. ♦



WSBA Presidential Selection

The Board of Governors of the Washington State Bar Association (WSBA) is seeking applicants to serve as President of WSBA for 1997-1998. Pursuant to Article IV(A)(2) of the WSBA, the President for that term shall reside in that area west of the Cascade mountain range generally known as western Washington, but outside of King County.

Applications for 1997-98 President of the WSBA will be accepted through July 15, 1996, and should be limited to a current résumé, a concise application letter, and selected references. Endorsement letters received by July 31, 1996, will be considered by the Search Committee and the Board of Governors. Applications and endorsement letters should be sent to the WSBA Executive Director, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599.

Interviews will be conducted between August 15, 1996, and August 31, 1996, at the offices of the Washington State Bar Association. In addition to the interview in August before the Search Committee, finalists will be invited back to the September Board of Governors meeting for an interview before the full Board of Governors, in open session. Applicants are discouraged from conducting active campaigns for this office.

The Washington State Bar Association member selected to be the WSBA President will have an opportunity to provide a significant contribution to the legal profession.

While prior experience on WSBA's Board of Governors may be helpful, there is no requirement to have been a member of the Board of Governors or to have had previous experience in Bar activities. The candidate must be willing to devote a substantial number of hours to WSBA affairs and be capable of being a positive representative for the legal profession. The position is unpaid. Some expenses, such as WSBA related travel, are reimbursed.

The commitment begins as President-elect. In September 1997, at the WSBA's annual business meeting, the candidate will assume the position as President of the Association. The candidate will be expected to attend two-day Board meetings every six weeks, as well as attend numerous subcommittee, section, regional, national and local meetings. During

his or her service, the candidate will also be required to meet with members of the Bar, the courts, the media, and public and legal interest groups, as well as be involved in the Bar's legislative activities. Appropriate time will need to be devoted to communicating by letter and telephone in connection with these responsibilities. ♦

Notice of Deadline for Filing WSBA Resolutions

Pursuant to WSBA Bylaw Article VII, Section F — "Resolutions," any ten (10) active members of the Washington State Bar Association may present a written resolution to the Board of Governors for consideration at the WSBA's Annual Business Meeting, which will be held this year on Friday, September 6, 1996, beginning at 2 p.m. at the Seattle Hilton.

Resolutions must be filed with the WSBA Executive Director at least ninety (90) days before the Annual Meeting (by 5 p.m. on Friday, June 7, 1996) and must be accompanied by a written report explaining the resolution. The resolution and explanatory report together shall not exceed a total of one thousand (1,000) words. The Executive Director's office is at 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599.

The Board of Governors will refer any resolutions addressing issues within the purposes of the WSBA to the WSBA Resolutions Committee. Those purposes are set forth in Article I of the WSBA Bylaws and General Rule 12 of the Washington Court Rules.

The Resolutions Committee will hold a public hearing to consider the views of the proponents and opponents of resolutions on Thursday, August 29, 1996, beginning at 1:30 p.m. at the offices of the WSBA (500 Westin Building, 2001 Sixth Avenue, Seattle). Proponents and opponents of resolutions are urged to attend the hearing or to present their views in written form for consideration by the Resolutions Committee.

Proposed resolutions will be published in the July 1996 issue of *Bar News*.

Members of the WSBA Resolutions Committee are: Gary D. Gayton, chair; Ted Zylstra, Jill Kurtz, John Schultz, John M. Riley, William Fleck, Stacey Smythe, Lee Kraft, and John Caldbrick. ♦

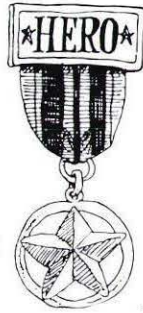
Someone You Should Know:

Retired Judge Dave Soukup is a community hero, and will be honored for it by carrying the 1996 Olympic torch through Kitsap County on May 7. Soukup founded CASA (Court Appointed Special Advocate) in 1977, which trains volunteers to represent the best interests of children in the court system. CASA now has 600 programs in all 50 states. His wife, Beth, nominated him to the United Way, which had the task of sorting through thousands of nominations to choose "community heroes" across the country for the torch bearing honors.

Soukup will carry the torch about a half mile, before stopping to light the torch of the next runner. The torch will come up from Olympia, onto the Bremerton ferry, through Kitsap County, and stop for a celebration at the Seattle Center Flag Pavilion, before leaving the area on May 8 to cross the mountains and head east to Atlanta for the summer games.

"It would be really embarrassing to run so slowly to have the torch burn out while you were running. I'll have a friend running beside me with lighter fluid and a match," he joked.

Soukup, who is 62 and retired from the bench in 1983, was humbled at being chosen for his CASA work. "I get honored a lot for all the work that 38,000 other people are doing because I'm sort of the focal point." He went to the Calgary Olympics in 1988 and always



Dave Soukup keeps the flame alive

wanted to be involved in some way. "The Olympic spirit is wonderful. For a short period of time people come together and share experiences. I think it's wonderful to be involved with the Olympics in any way, so it will really be a thrill for me."

He used to run marathons, and competed as a masters runner with the Snohomish Track Club, which won the team mile at nationals about 20 years ago. He still runs four or five times a week. Each torch bearer gets the right to buy the torch that they carried, for a mere \$275. Soukup was sure he wouldn't refuse.

Soukup started CASA because as a juvenile judge he was seeing hundreds of cases of obviously abused children, whose parents claimed "they fell," yet no one was working strictly on the children's behalf. "As a judge you have to make a decision to take a child out of the only home she's ever known and put her with strangers or do you put her back and pick up the *Seattle Times* or *P.I.* two weeks later and read '3-year-old beaten to death.'" So he gathered and trained volunteers to interview family members, neighbors, doctors, teachers, etc., to find out the best option for the child. The volunteer also follows up and monitors the situation to make sure the child remains safe.

"I was a CASA volunteer myself after I left the bench. If you ask anyone they'll say they made a difference." ♦

Government Lawyers Make Law Day a Habitat for Humanity

More than 70 members of the Government Lawyers Bar Association are joining together for "Habitat for Humanity" projects for Law Day. Law Day is May 1, but the projects are scheduled for May 4, June 22 and 29.

The Government Lawyers Bar's theme for Law Day 1996 is "Lawyers and the Law: Contributing to Our Community." In addition to the Habitat projects, they are also registering attorneys for the LASER Project (Lawyers and Students Engaged in Resolution), which teaches students mediation skills to diffuse situations that could potentially turn violent.

"Both projects, we felt, emphasized a side of attorneys that the public tends to forget, that side that gives voluntarily to the public without recompense," said GLBA Program Chair Kate Walsh. "Sometimes attorneys want to

volunteer in a way that doesn't necessarily concentrate on their professional skills. Habitat specifically focuses on homeless families and actually does something concrete to help people in need. It was really gratifying the huge response we got."

GLBA has three Habitat teams set up. On May 4, the Olympia team of 50 people will paint a home, as well as clear, grade and garden the surrounding property. The GLBA is being joined there by the Thurston County Bar Association. The Tacoma-Pierce County team is also scheduled to work on May 4, by grading and seeding a lawn, and finishing off a driveway and parking area on the eastside of Tacoma. "We got far more volunteers than we could use," said project coordinator Anne Spangler. Because of the huge response, she will have a follow-up day sometime during the summer. The Seattle team is scheduled to work on June 22 and 29 and has room for a few more volunteers (call Amanda Goss at (206) 464-7723). Specifics of the Seattle project had not been set as of press time, but will probably involve painting a house.

For more information on the LASER Project, contact Mary Jo Diaz, president-elect of GLBA, at (360) 753-1815. ♦

MCLE Ethics Requirement Reminder

- Q. What is the effective date for the new CLE ethics credit requirement?
- A. January 1, 1996.
- Q. How many ethics credits are members required to report?
- A. At least **6.00 credits**, included in the 45.00 credit total required every 3 years.
- Q. When will I be required to report ethics credits?
- A. The requirement will be phased in, beginning with **2.00 ethics credits** for Group 2 members reporting for the years 1994-96 by January 31, 1997. Group 3 members will report a total of **4.00 ethics credits** by January 31, 1998 for the years 1995-97. Group 1 will report **6.00 ethics credits** by January 31, 1999 for the years 1996-1998.
- Q. What is the definition of ethics with regard to CLE accreditation?
- A. Legal ethics, professional responsibility and professionalism, including the issues of diversity and anti-bias training.
- Q. How about carryover credits?
- A. **2.00 ethics credits** may be included in the maximum 15.00 carryover credits allowed. ♦

Litigation Section Midyear CLE

The Litigation Section's 1996 Midyear CLE will be at Campbell's Resort and Conference Center in Chelan on June 21-22. The seminar is titled "Evidence Law: Artistry and Advocacy in the Courtroom," and features Professor Thomas A. Mauet.

Professor Mauet is author of *Fundamentals of Trial Techniques*. Since 1980 he has been Professor of Law and Director of Trial Advocacy at the University of Arizona College of Law in Tucson. He has served on numerous regional and national faculties of the National Institute of Trial Advocacy, and has taught and demonstrated trial techniques and evidentiary tactics throughout North America, Australia and New Zealand. He has been an Illinois State Attorney and a U.S. attorney.

To register, call Program Coordinator Jerrie Bennett at (206) 727-8202. ♦

Trial Lawyers for Public Justice is coming to Washington

Trial Lawyers for Public Justice, a national public interest law firm, will hold its TLPJ Foundation quarterly meeting in Seattle on May 11. TLPJ Foundation provides the firm's financial support and education outreach. Current president is Seattle's Mike Withey of Schroeter, Goldmark & Bender.

TLPJ was formed in 1980 at a meeting of the Michigan Trial Lawyers, when Ralph Nader "urged trial lawyers to action and basically invited people to take sabbaticals and volunteer their time to serve in the public interest," explained Linda Dunn, chair of the Washington State Membership Committee. "Seventeen former ATLA presidents and over 200 of the nation's top trial lawyers responded and formed Trial Lawyers for Public Justice." Washington state currently has more than 70 members of TLPJ.

TLPJ's position statement reads: "Trial lawyers for Public Justice is a national public interest law firm that marshalls the skills and resources of trial lawyers to create a more just society. Through creative litigation and innovative work with the broader public interest community, the TLPJ seeks to protect people and the environment, challenge governmental and corporate and individual wrongdoing, guard access to the courts, and inspire lawyers to serve in the public interest."

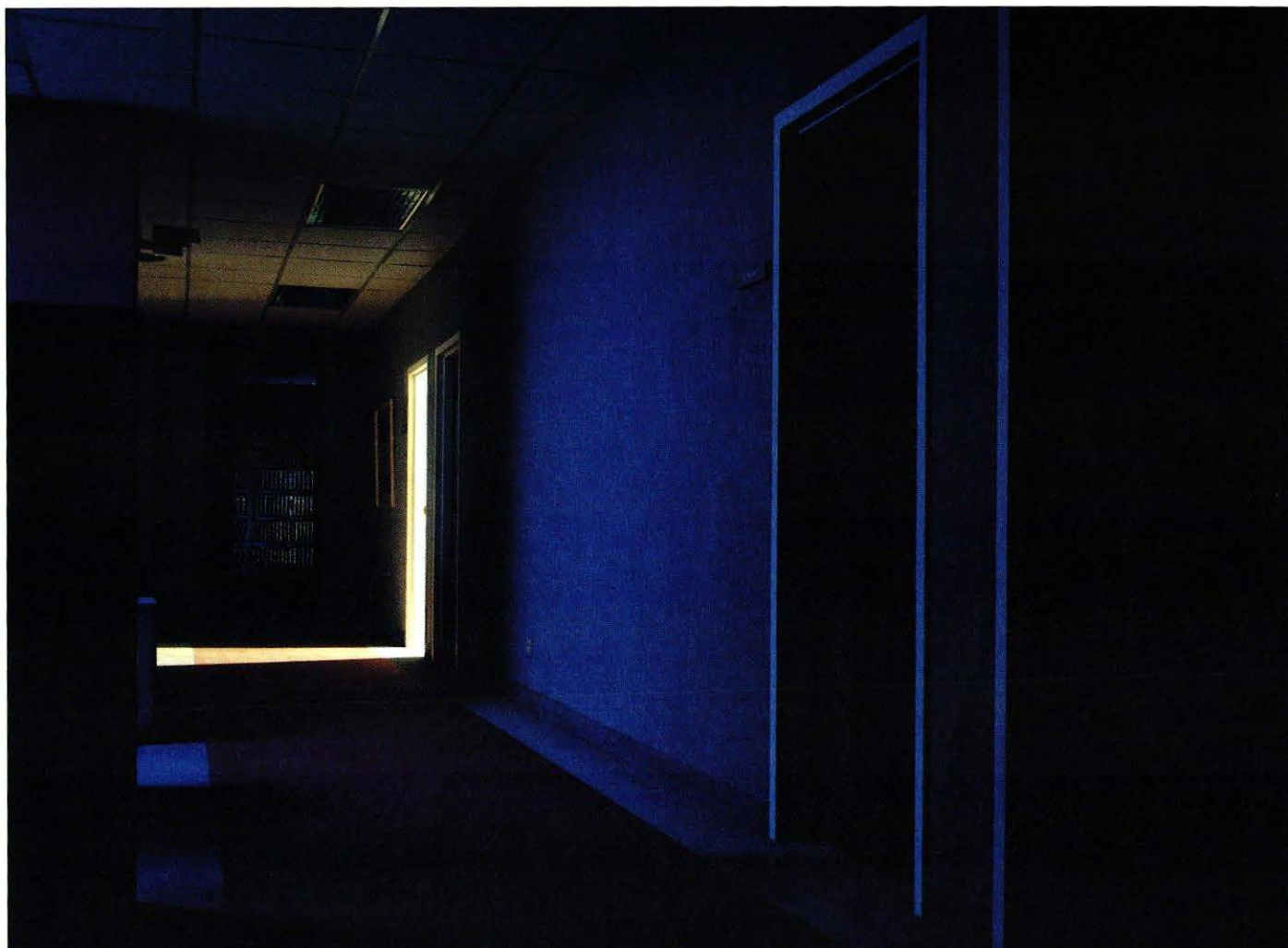
On May 11 the Board of Directors will hold its meeting from 8 a.m. to 5 p.m. at the Madison Hotel in Seattle. The 49 directors will conduct long-range planning.

On May 10, TLPJ is having a reception for Joan Claybrook, president of "Public Citizen," a non-profit public interest advocacy organization with a staff of 75 and an \$8 million budget, which seeks to improve the health and safety of the public, as well as civil rights and liberties, clean and safe energy issues, public availability of information, campaign finance reform, accountability and fairness in the marketplace, and citizen participation in government. It was founded in 1991 by Ralph Nader. The reception will be from 5:30 to 7 p.m. at the Sorento Hotel in Seattle. For more information or to join, contact Membership Committee Chair Linda Dunn, at (206) 624-8844. ♦

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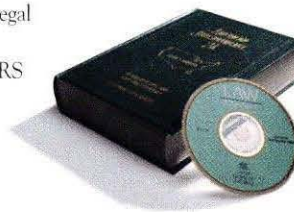


If you have timely Bar-related news, activities or business, or a funny story that would be of interest to your co-members, call, mail or fax it to us and we will help spread the word in upcoming FYI editions. Call us at (206) 727-8203 or fax us at (206) 727-8320.



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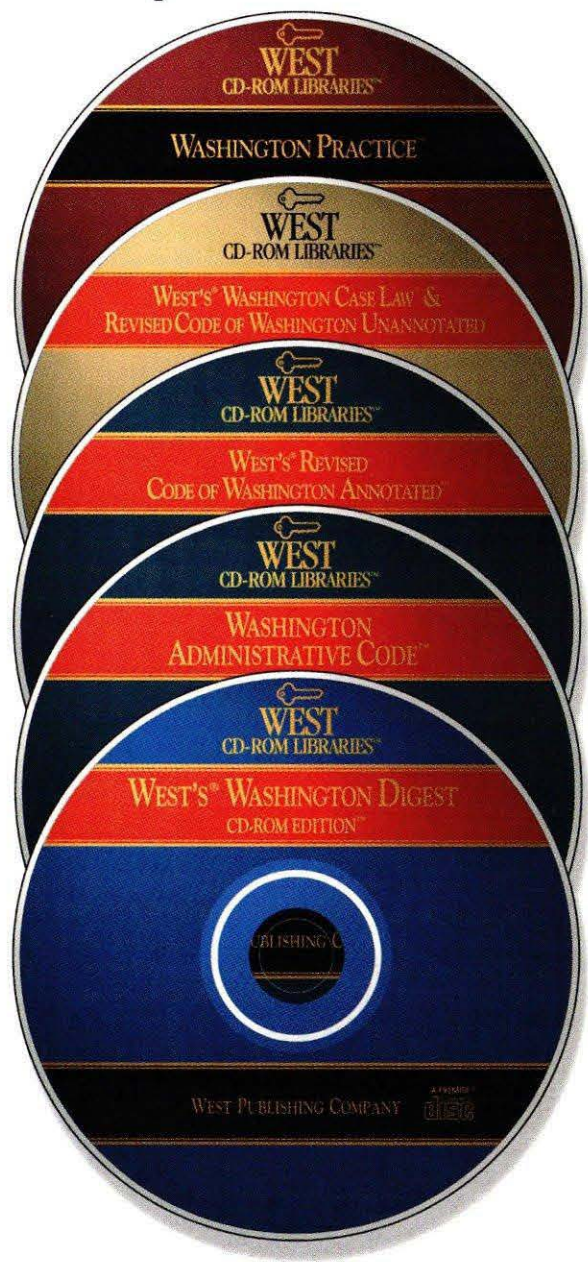


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