

Washington State **Bar**  
**News**

\$5

Vol. 50 No. 6, June 1996

*The official publication of the Washington State Bar*



**Dean Koontz**  
on  
**Asset Forfeiture Laws**

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*From our multi-level  
Table of Contents . . .*

**Query by Form**  
Decisions/RCW

Case Name, Cite or RCW Citation: \_\_\_\_\_

Year: \_\_\_\_\_

Caption: \_\_\_\_\_

Headnote: \_\_\_\_\_

Trial Court Judge / County: \_\_\_\_\_

Counsel: \_\_\_\_\_

Author of Majority Opinion: **Hale**

Opinion: **Hood Canal**

Name of Dissenting Justice: \_\_\_\_\_

Dissenting Opinion: \_\_\_\_\_

Name of Concurring Justice: \_\_\_\_\_

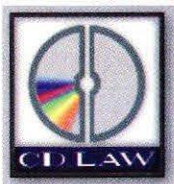
Concurring Opinion: \_\_\_\_\_

*. . . to our Forms  
Search Screen . . .*

*. . . to the ability to send  
nicely formatted text  
to word processing . . .*

The screenshot shows a word processing application window titled 'Decisions/RCW 1 of 2'. A context menu is open over the text, with 'Copy' selected. The menu options include: Undo, Cut (Ctrl+X), Copy (Ctrl+C), Paste (Ctrl+V), Clear, Select All (Ctrl+A), Paste Selection to Query (Ctrl+=), Copy in WP Format? (checked), and Preserve Block Quotes?. To the right, a search results window is visible with buttons for 'Next Hit (F4)', 'Next Hit Rec (F9)', 'Prev Hit Rec (Shift+F9)', 'Prev HyperTk (Ctrl-B)', 'Hit List Window', 'Search Window', 'Form Query Window', and 'TOC Window'. The main text in the word processor reads: '... certain-the beauty of Mason County. It and sea that sweeps tled Olympics then curves f fir, hemlock, spruce of salal, huckleberry, uriant wild shrubbery , dappled with quiet and changing by the swift-flowing, sometimes peaceful, sometimes turbulent, Skokomish, Lillivaup, Hamma Hamma, Duckabush and Dosewallips that enter it. Marked by broad and friendly beaches, flanked to the east by the rugged, eternal peaks of the Cascades and the verdant San Juan Islands to the north, it is truly a land of charm and beauty. We take no risk in pronouncing it a place of enchantment. Came one day into this verdant place, the assessor of Mason County in 1958, and, struck by the wonder of it all, he did what any assessor would do, he promptly raised the taxes in this wonderland. It was not the increase, but rather its sudden and dramatic nature which invited this litigation, for the

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(Continues Winter Quarter)

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Ann Wilson, Short Cressman, Seattle

##### Property Dispositions & Transactions

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##### Tax Research

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# Washington State Bar News

Vol. 50 No. 6 June 1996

*The official publication of the Washington State Bar*

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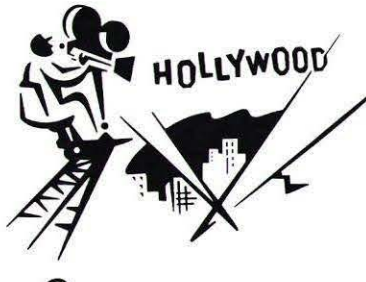
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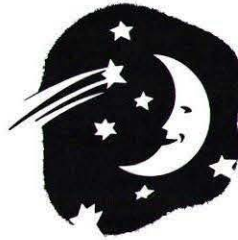
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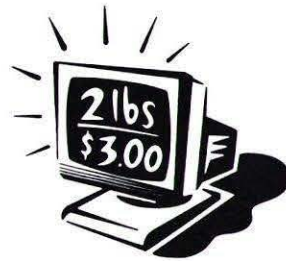
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### Asset Forfeiture

Editor:

I'm in receipt of your letter to my publisher, requesting the right to reprint selected material from *Dark Rivers of the Heart* in your periodical. They left it to me to grant permission, and I am happy to do so. The asset forfeiture laws are in violation of all the basic principals on which this country and its legal system were founded, and I'm happy to do anything I can to make people *think* about the issue.

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DEAN KOONTZ  
California

### Law Practice Sales

Editor:

I concur with Michael Keller's article on "Law Practice for Sale" in the February issue of the *Bar News* and echo Edward C. Beekma's letter in the April 1996 issue.

When will the Supreme Court change the rules to allow the sale of a law practice *and* when will they follow the lead of other states that allow trade names that are not the names of dead partners?

PRESTON L. JOHNSON  
Federal Way

Editor:

I could not agree more with Michael Keller's February 1996 article regarding the sale of an individual's law practice. There is no reason for our Bar Association and the Supreme Court to wait any longer to make the changes necessary in the Rules of Professional Conduct.

We would be no less professional if we could sell our practices. Our peers in other professions long ago recognized the economic realities of life; it is time for us to do so.

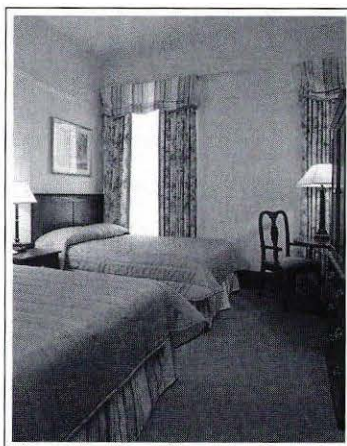
THOMAS D. COUGHLIN  
Stanwood

Editor:

By now many have read the various comments concerning selling a law practice in the State of Washington. While the results as of this date do not prove it, I have been actively involved in attempting to get the State to enact an RPC 1.17 in Washington. This rule has become part of the code of professional conduct in a number of states and generally reads as follows:

A lawyer or a law firm may sell or purchase a law practice including good will, if the following conditions are satisfied: (The conditions may vary from state to state, but generally the individual selling the practice must cease to engage in practice in the general area of the sale, and the practice is sold as an entity to another lawyer or law firm, with notice to the clients respective to the

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sale including information concerning the transfer of their file should they wish to do so, with a final notice that the fees being charged a client will not change.)

This professional rule has been adopted in a number of states. I was contacted by a Donald C. Rikli in September 1994. He asked me to represent the Senior Law Committee of the American Bar Association in its effort to establish this particular professional rule in all 50 states. I then wrote to various individuals to determine how I should proceed in the State of Washington. Soon thereafter, I was given the name of George W. Cody (who practices law in the same community as Mr. Keller), the chair of the Rules of Professional Conduct Committee.

In February 1995, I was notified that the Committee had met on January 27, 1995, at which time the Committee decided to appoint a subcommittee to draft an ethics opinion on the sale of the law practice. Peter Jarvis, who practices with Stoel Rives in Portland, Oregon, but is both a Washington and Oregon attorney, was appointed chair of that subcommittee.

Apparently Mr. Jarvis and members of his subcommittee felt that the legal ethics opinion would eliminate the need for another rule of which "our state already has too many."

Time passed, and I continued to correspond with Robert Welden of the Washington State Bar Association, Mr. Jarvis, and others in an effort to move this project forward. Soon after Mr. Keller's letter was published in the *Bar News*, I contacted him. I sent him material and thereafter he wrote his article for the Bar Association. Still the subcommittee moved slowly.

Eventually, a legal ethics opinion was drafted. It was later referred out of the subcommittee and approved. It was to be presented to the Board of Governors of your Bar Association in February 1996. That meeting was held in Vancouver, Washington. Due to extensive flooding, individuals involved in presenting the material to the members of the Board were unable to get to Vancouver.

For reasons not yet understood by me, the entire matter has now been continued until the May meeting of the Board of Governors in Spokane. Supposedly this

is so that the proposed ethics opinion can be disseminated among a number of the Bar Association members. To date, this has not taken place, although I have been provided with a copy of the proposed ethics opinion.

That opinion is extensive; a lot longer than Professional Rule 1.17 would have been. It does seem to cover the situation adequately albeit your readers may not agree.

Since the *Bar News* has established deadlines, this particular letter may not be printed until the June issue. It is therefore possible that this matter has now been resolved. If not, I am sure the continuance for future consideration was done for some laudatory reason.

However, at present, it would certainly appear that the matter is on its way to some sort of resolution. If your readers are dissatisfied with the way this is being

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resolved, then I suggest they immediately write to the board member representing their district.

I feel that the legal opinion of *Walsh v. Brazeau*, 62 WnApp 739, 815 P2d 828 (1991) should also be read. This case involved the sale of a law practice which was a *fait accompli* by the time that the difficulties between the two lawyers took place. It had been felt by some readers of the opinion that as a result thereof, the judiciary had taken the position that rules were not necessary in this state. I leave you to your own conclusion after you have read the decision.

Eventually something will be done in the State of Washington. Hopefully it solves the problem for all solo practitioners — and other lawyers for that matter — who are interested in the future sale of their law practice.

PHILIP DETURK  
Puyallup

### Bang, Bang

Editor:

Mr. Cumbow replied to my letter about his review of *The Theme is Freedom*, by M. Stanton Evans, by claiming to be merely the neutral conduit of Evans's ideas, and accusing me of shooting the messenger. I note the editor piled on by captioning my letter, "But the Messenger is so much easier."

When Mr. Cumbow in his review called Evans "[o]ne of our most erudite journalists," and claimed, "No one who thinks, speaks or writes seriously about America, its freedoms, its economic system, and the state and direction of contemporary law can afford not to read [Evans's] book," I was astounded. Far from considering Evans an erudite journalist, I had long thought him a right-wing loony tune, and I was absolutely convinced I could easily spend the rest of my life thinking seriously about American freedoms without reading what Medford Stanton Evans has to say about them.

But, in fact, I accepted Mr. Cumbow's challenge and read *The Theme is Freedom*. Evans has stumbled into a fairly interesting historical dispute about the philosophical underpinnings of the American form of government. Did they stem from religious tradition or Enlightenment philosophy? Although I have managed to read fairly extensively about the subject in addition to reading Evan's book, I still

do not consider myself knowledgeable enough to express any strong opinions about this rather esoteric matter. I will say *The Theme is Freedom* is written with the same paranoid sensationalism that afflicted Evan's [earlier] book [on the alleged "murder" of Senator Joseph McCarthy]. Evans is unable to disagree with historians and commentators without postulating their views result from generations of an academic conspiracy to further what Evans calls "the liberal history lesson."

For more scholarly and restrained accounts of the subject, I recommend *The Moral Tradition of American Constitutionalism* (Duke University Press 1993), by H. Jefferson Powell, Professor of Law and Divinity at Duke University, a book Powell wrote to "develop a Christian theological analysis of American constitutionalism." *Id.* at 12. I also recommend *The Roots of American Order* (Open Court 1974, by Russell Kirk.) Kirk, whom Evans calls "the founding father of the modern conservative intellectual movement," *The Theme is Freedom* at 344, said in 1974 pretty much everything Evans has to say now, and in a more engaging, scholarly manner at that.

But back to Mr. Cumbow's review. He disclaims responsibility for calling Justice Holmes "a founder of modern liberalism," implying he was merely repeating something Evans had written. But Evans didn't write that. What Evans did write is Holmes is one of the "icons of the modern liberal movement." *Id.* at 63. There is a difference. Where I come from, we do not in fact shoot messengers — if they deliver messages accurately. BANG. Mr. Cumbow writes that Enlightenment political philosophy led directly to the concentration camps and the gulags. Evans did not say that, either. He said only that government without limitations leads to tyranny, hardly a remarkable observation. BANG again. Mr. Cumbow used the vehicle of his review to inveigh against all sort of perceived "liberal" evils. For instance, he denigrates the "Great Books" as tools of a "predominantly liberal academia." What's wrong with the "Great Books," for crying out loud? He refers to multicultural education as "the new tribalism of diversity." Just exactly what sort of image is that phrase supposed to conjure up? That's not Evans; that's Cumbow. BANG BANG BANG.

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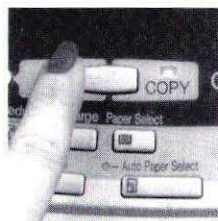
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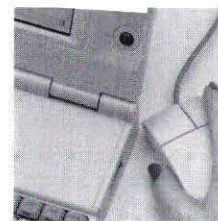
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the *Bar News* is scheduled to lose upwards of \$270,000 this year. That being the case, it would be a fairly easy shot to say that Mr. Cumbow, as the chair of the *Bar News* Editorial Advisory Board, would have better served the Bar by selling advertising instead of taking up space with his right-wing flummery. But I will not take that shot. I rather enjoy political give and take, and would not mind at all seeing these pages lit up with some politics. I ask only that the level of analysis exceed the usual fare of radio talk show hosts.

BERNARD H. FRIEDMAN  
Olympia

*Robert Cumbow replies:*

*My goodness, Mr. Friedman has more bangs than Imogene Coca — though decidedly less cute ones. I don't believe my paraphrasings of the argument of Mr. Evans's book were inaccurate. As I read him, Evans does not view the "liberal history lesson" as "an academic conspiracy," but rather as a predisposition of predominantly liberal teachers and writers to favor Classical and Enlightenment texts and philosophies over the more religion-based approaches of the Middle*

*Ages and the American Colonial Period (pages 18-21 of the Evans book). Moreover, Evans does not make the unremarkable observation that "government without limitations leads to tyranny," but the more daring (and less pleasant to Mr. Friedman's ears) allegation that the denial of religion-based objective standards of right and wrong in favor of the moral relativism that grew out of Enlightenment liberalism lies at the core of both communist and fascist totalitarianism (chapter 3 of the Evans book).*

*As to my own views, which Mr. Friedman believes he has rooted out of the text of my review, it's hardly true that I "denigrate" the "Great Books." I teach the Great Books, for (as Mr. Friedman says) crying out loud, and I'm sure he would be surprised to learn that the books I teach are predominantly Classical and Enlightenment texts.*

*My phrase "the new tribalism of diversity," is "supposed to conjure up" the image of a society fragmenting into groups who stress their differences from one another over the values they all share as Americans. It is, I think, a legitimate extension of Evans's view of a society in which "children may be taught the pre-*

*cepts of neopagan nature worship" but not the Biblical precepts to which the founders of American freedom adhered (page 129 of the Evans book).*

*On a more material level, Mr. Friedman is advised that the chair of the Editorial Advisory Board of the Bar News neither sells advertising nor makes decisions regarding the content of the publication. Those are the respective domains of advertising director Jack Young and editor Hal White, both of whose tireless contributions to the publication far exceed my poor power to add or detract.*

*Mr. Friedman and I agree on at least one thing: we both like to see these pages lit up with political debate. Seeing my work dismissed as "right-wing flummery" amuses me as much as it doubtlessly amazes my students and friends; and I can't say I much mind being branded with the same iron as "radio talk show hosts." (Just exactly what sort of image is that phrase supposed to conjure up?) As Matthew Paris, the tortured intellectual of Barry Unsworth's Sacred Hunger, says when accused of being brother under the skin to a simple-minded, fiddle-playing Irish seaman: "I don't disdain the connection, if he doesn't."*

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## What Time Is It?

by Edward F. Shea

WSBA President

When the Chicago Bulls huddle at the entrance to the floor of the basketball court just before the game, they each raise an arm in towards the center, joining hands and one of them exhorts, "What time is it?" to which they respond in growing unison, "Game time — hunh!" I like to believe that it forces them to confront the seriousness of their task, to concentrate on winning and to recognize that they are committed to doing it together.

It was a quiet Sunday in the Tri-Cities, and I was watching the Bulls so I did not hear it drop. But it did — the last grain of sand in the upper chamber of the hourglass. And not just any hourglass, but in particular, the one by which the public measured our effort to handle the backlog of discipline cases at the State Bar office. Later, I learned what had caused the emptying of those few remaining grains of sand. That was the Sunday that *The Seattle Times* published an article with a subheading that read: "Bar Association inundated with complaints; some of them languish for years." Throughout the article, there were column headers which were equally disturbing, like "Bar swimming in complaints." It was then predictable that the wire services would pick up the story, and one did, and several other newspapers published shorter versions of the *Times* story.

"Bar Association takes years to investigate lawyers," condemned that headline in *The Spokesman Review*.

"Lawyer complaints can languish for years," yelled the bolded headline in the *Tri-City Herald*.

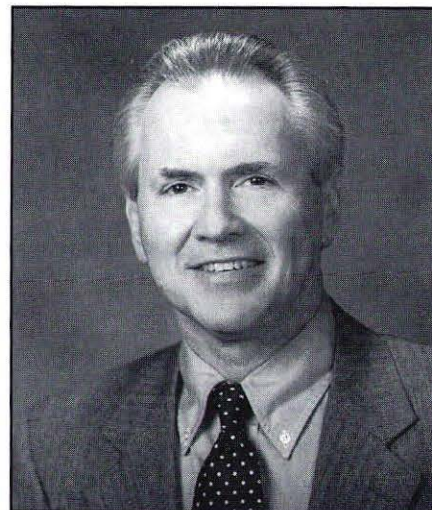
I responded to these wire service pieces by sending a press release with materials clearly and simply detailing the Bar's efforts to deal with this problem. Regrettably, but perhaps predictably, they did not receive the coverage that the negative articles received.

The Bar has been working on this problem for several years. As you know, in the last 18 months, we have increased lawyers on staff at the Office of Disciplinary Counsel from six to 16. The determination of the Board of Governors to eliminate the backlog is evident not only in this staff increase and the allocation of more



than \$400,000 to the budget of that office, but also in the priority the Board has given to acting on the recommendations of the Joint Task Force on Discipline. For months, there have been articles and news items in the *Bar News* reporting our progress on that task. We will have taken final action on those recommendations at the May meeting of the Board and will be taking appropriate budget action to fund any necessary changes in the disciplinary system at the Board's June meeting.

While noting the Board's adoption of significant revisions to the way discipline is handled by the Bar, the *Times* challenged our commitment to real change by asking, "But a key question remains: Are Washington's 19,566 practicing lawyers willing to pay for it?"



Edward F. Shea

Jan Peterson, a former Board member and former chair of the Board's Discipline Committee, said in a related piece in the *Times* article, "It's asking people to tax themselves and that's always difficult . . . But this is a self-regulating, self-disciplining profession, and I think most lawyers are willing to pay to maintain that rather than have it turned over to some state agency."

Well, are we? In several columns I have written about the fact that there are gathering forces that are determined to solve the backlog whatever that might require. They include members of our Supreme Court, which has the ultimate responsibility for the discipline system, your Board of Governors and vigorous critics within our membership. In response to the article in *The Seattle Times*, one member wrote that he was outraged and embarrassed. He had read the article in the *Bar News* about the changes to the system and the costs and summarized his feelings by saying, "In other words, the current revenues barely fund a program that does not work. It does not take a rocket scientist to figure out that if we are going to eliminate a three-year backlog, it is going to take money right now." And it will.

While we have added staff and have started revising the methods and procedures that we employ in the Office of Disciplinary Counsel which do not require Supreme Court approval, there is much that remains to be done. It will cost money, but it must be done.

What time is it?

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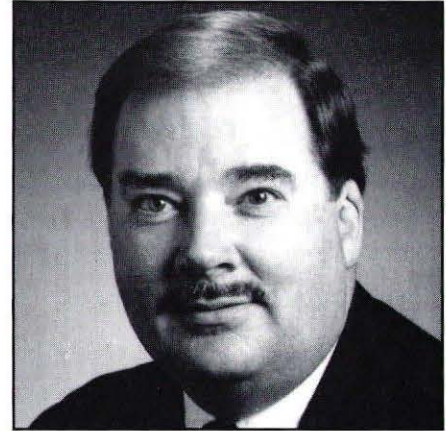
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# A Shameless Plug for *Resources*: The WSBA Directory/Reference Book

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



Dennis P. Harwick

Yesterday the 1996 edition of *Resources*, the WSBA's annual directory and reference book, hit my desk. As I thumbed through it, even I was surprised

at how much useful information there is in it. In a shameless plug to sell copies of *Resources*, I am republishing my "Publisher's Memo" here.

## Publisher's Memo

Welcome to the 1996 edition of *Resources*, the Washington State Bar Association's membership directory and reference manual. As usual, you will find a lot of information in *Resources* — more than most people suspect. It's more than the membership roster. It's a directory for state and federal courts. It's a listing of WSBA programs and services (more on that later). It's a compilation of Ethics Opinions and CLE forms. It even tells you how to access another WSBA resource — the electronic bulletin board (L.A.W. BBS) and the WSBA web site (<http://www.wsba.org>).

As Executive Director of the WSBA, I've always been careful not to overstate what your Bar Association can do for you. Call me old fashioned, but I'm a stickler for making sure that we can deliver what we promise. So what I'm about to say comes as close to bragging as I get.

**The WSBA is a terrific bargain for its members.** No other state bar association delivers as much to its members for what Washington lawyers pay in dues/license fees — and *we have the numbers to prove it*. We deliver our programs and services at the lowest price and the leanest staff to member ratio of any comparable unified bar association.

Elsewhere in *Resources* you will find a listing of WSBA programs and services. Much of what we do, however, people take for granted, e.g.,

- administering the bar exam to nearly 1,500 people a year,
- licensing over 23,000 lawyers a year, (approximately 20,000 of which are active members)
- handling thousands of telephone calls a day at the WSBA office (4,000 - 5,000 calls a day — really), and
- keeping the Legislature from doing bad things to the legal profession.

In addition, we support 21 Sections and the Young Lawyers Division, along with 27 committees, a couple of boards, and some major task forces. We are the premier provider of Continuing Legal Education in the state of Washington — with over 10,000 registrants last year! We help hundreds of lawyers through the Lawyer's Assistance Program and field hundreds of inquiries from the media and the public through our Communications Department. And we do it with a staff that's smaller or the same size as bar associations 30-40% bigger than we are!

A list of that staff and their phone numbers can be found on page 320 of this directory. If you have a problem or a question, give us a call. Remember, if I didn't believe we could answer your questions or help you with your problem, I wouldn't be bragging about it!

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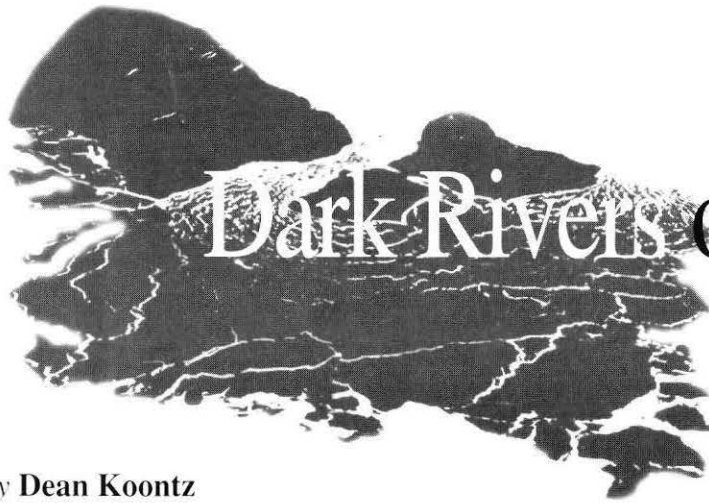
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# Dark Rivers of the Heart

*For almost any reader of current fiction, Dean Koontz needs no introduction. He has written many popular novels, including his most recent bestseller, Intensity, which is prominently featured in bookstores around the nation. The following excerpt is from his preceding novel, Dark Rivers of the Heart, which deals in part with asset forfeiture laws.*

by Dean Koontz

**A**t Parker Center, after leaving his car in a visitor's stall, he took an elevator from the garage and, using his FBI credentials, went up to the fifth floor. The appointment was with Captain Harris Descoteaux, who was in his office and waiting.

Roy had spoken briefly to Descoteaux from Malibu, so it was no surprise that the captain was black. He had that almost glossy, midnight-dark, beautiful skin sometimes enjoyed by those of Caribbean extraction, and although he evidently had been an Angeleno for years, a faint island lilt still lent a musical quality to his speech.

In navy-blue slacks, striped suspenders, white shirt, and blue tie with diagonal red stripes, Descoteaux had the poise, dignity, and gravitas of a Supreme Court justice, even though his sleeves were rolled up and his jacket was hanging on the back of his chair.

After shaking Roy's hand, Harris Descoteaux indicated the only visitor's chair and said, "Please sit down."

The small office was not equal to the man who occupied it. Poorly ventilated. Poorly lighted. Shabbily furnished.

Roy felt sorry for Descoteaux. No government employee at the executive level, whether in a law-enforcement organization or not, should have to work in such a cramped office. Public service was a noble calling, and Roy was of the opinion that those who were willing to serve should be treated with respect, gratitude, and generosity.

Settling into the chair behind the desk, Descoteaux said, "The Bureau verifies your ID, but they won't say what case you're on."

"National security matter," Roy assured him.

Any query about Roy that was placed with the FBI would have been routed to

Cassandra Solinko, a valued administrative assistant to the director. She would support the lie (though not in writing) that Roy was a Bureau agent; however, she could not discuss the nature of his investigation, because she didn't know what the hell he was doing.

Descoteaux frowned. "Security matter — that's pretty vague."

If Roy got into deep trouble—the kind to inspire congressional investigations and newspaper headlines — Cassandra Solinko would deny that she'd ever verified his claim to be with the FBI. If she was disbelieved and subpoenaed to testify about what little she knew of Roy and his nameless agency, there was a stunningly high statistical probability that she would suffer a deadly cerebral embolism, or a massive cardiac infarction, or a high-speed, head-on collision with a bridge abutment. She was aware of the consequences of cooperation.

"Sorry, Captain Descoteaux, but I can't be more specific."

Roy would experience consequences similar to Ms. Solinko's if he himself screwed up. Public service could sometimes be a brutally stressful career — which was one reason why comfortable offices, a generous package of fringe benefits, and virtually unlimited perks were, in Roy's estimation, entirely justified.

Descoteaux didn't like being frozen out. Trading his frown for a smile, speaking with soft island ease, he said, "It's difficult to lend assistance without knowing the whole picture."

It would be easy to succumb to Descoteaux's charm, to mistake his deliberate yet fluid movements for the sloth of a tropical soul, and to be deceived by his musical voice into believing that he was a frivolous man.

Roy saw the truth, however, in the captain's eyes, which were huge, as black and liquid as ink, as direct and penetrating as those in a Rembrandt portrait. His

eyes revealed an intelligence, patience and relentless curiosity that defined the kind of man who posed the greatest threat to someone in Roy's line of work.

Returning Descoteaux's smile with an even sweeter smile of his own, convinced that his younger-slimmer-Santa-Claus look was a match for Caribbean charm, Roy said, "Actually, I don't need help, not in the sense of services and support. Just a little information."

"Be pleased to provide it, if I can," said the captain.

The wattage of their two smiles had temporarily rectified the problem of inadequate lighting in the small office.

"Before you were promoted to central administration," Roy said, "I believe you were a division captain."

"Yes. I commanded the West Los Angeles Division."

"Do you remember a young officer who served under you for a little more than a year — Spencer Grant?"

Descoteaux's eyes widened slightly. "Yes, of course, I remember Spence. I remember him well."

"Was he a good cop?"

"The best," Descoteaux said without hesitation. "Police academy, criminology degree, army special services — he had *substance*."

"A very competent man, then?"

"'Competence' is hardly an adequate word in Spence's case."

"And intelligent?"

"Extremely so."

"The two carjackers he killed — was that a righteous shooting?"

"Hell, yes, as righteous as they get. One perp was wanted for murder, and there were three felony warrants out on the second loser. Both were carrying, shot at him. Spence had no choice. The review board cleared him as quick as God let Saint Peter into Heaven."

Roy said, "Yet he didn't go back out on the street."

"He didn't want to carry a gun any more."

"He'd been a U.S. Army Ranger."

Descoteaux nodded. "He was in action a few times — in Central America and the Middle East. He'd had to kill before, and finally he was forced to admit to himself he couldn't make a career of the service."

"Because of how killing made him feel."

"No. More because . . . I think because he wasn't always convinced that the killing was justified, no matter what the politicians said. But I'm guessing. I don't know for sure what his thinking was."

"A man has trouble using a gun against another human being—that's understandable," Roy said. "But the same man trading the army for the police department—that baffles me."

"As a cop, he thought he'd have more control over when to use deadly force. Anyway, it was his dream. Dreams die hard."

"Being a cop was his dream?"

"Not necessarily a cop. Just being the good guy in a uniform, risking his life to help people, saving lives, upholding the law."

"Altruistic young man," Roy said with an edge of sarcasm.

"We get some. Fact is, a lot are like that—in the beginning, at least." He stared at his coal-black hands, which were folded on the green blotter on his desk. "In Spence's case, high ideals led him to the army, then the force . . . but there was something more than that. Somehow . . . by helping people in all the ways a cop can help, Spence was trying to understand himself, come to terms with himself."

Roy said, "So he's psychologically troubled?"

"Not in any way that would prevent him from being a good cop."

"Oh? Then what is it he's trying to understand about himself?"

"I don't know. It goes back, I think."

"Back?"

"The past. He carries it like a ton of stone on his shoulders."

"Something to do with the scar?" Roy asked.

"Everything to do with it, I suspect."

Descoteaux looked up from his hands. His huge, dark eyes were full of compassion. They were exceptional, expressive eyes.

"How was he scarred, how did it hap-

pen?" Roy asked.

"All he ever said was he'd been in an accident when he was a boy. A car accident, I guess. He didn't really want to talk about it."

"He have any close friends on the force?"

"Not close, no. He was a likable guy. But self-contained."

"A loner," Roy said, nodding with understanding.

"No. Not the way you mean it. He'll never wind up in a tower with a rifle, shooting everyone in sight. People liked him, and he liked people. He just had this . . . reserve."

"After the shooting, he wanted a desk job. Specifically, he applied for a transfer to the Task Force on Computer Crime."

"No, *they* came to *him*. Most people would be surprised—but I'm sure you're aware—we have officers with degrees in law, psychology, and criminology like Spence. Many get the education not because they want to change careers or move up to administration. They want to stay on the street. They love their work, and they think a little advanced education will help them do a better job. They're



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committed, dedicated. They only want to be *cops*, and they —”

“Admirable, I’m sure. Though some might see them as hard-core reactionaries, unable to give up the *power* of being a cop.”

Descoteaux blinked. “Well, anyway, if one of them wants off the street, he doesn’t wind up processing paperwork. The department uses his knowledge. The Administrative Office, Internal Affairs, Organized Crime Intelligence Division, most divisions of the Detective Services Group — they all wanted Spence. He chose the task force.”

“He didn’t perhaps *solicit* the interest of the task force?”

“He didn’t need to solicit. Like I said, they came to him.”

“Before he went to the task force, had he been a computer nut?”

“Nut?” Descoteaux was no longer able to repress his impatience. “He knew how to use computers on the job, but he wasn’t obsessed with them. Spence wasn’t a nut about anything. He’s a very solid man, dependable, together.”

“Except that — and these are your words — he’s still trying to understand

himself, come to terms with himself.”

“Aren’t we all?” the captain said crisply. He rose and turned from Roy to the small window beside his desk. The angled slats of the blind were dusty. He stared between them at the smog-cloaked city.

Roy waited. It was best to let Descoteaux have his tantrum. The poor man had earned it. His office was dreadfully small. He didn’t even have a private bathroom with it.

Turning to face Roy again, the captain said, “I don’t know what you think Spence has done. And there’s no point in my asking —”

“National security,” Roy confirmed smugly.

“— but you’re wrong about him. He’s not a man who’s ever going to turn bad.”

Roy raised his eyebrows. “What makes you so sure of that?”

“Because he agonizes.”

“Does he? About what?”

“About what’s right, what’s wrong. About what he does, the decisions he makes. Quietly, privately — but he agonizes.”

“Don’t we all?” Roy said, getting to his feet.

“No,” Descoteaux said. “Not these days. Most people believe everything’s relative, including morality.”

Roy didn’t think Descoteaux was in a hand-shaking mood, so he just said, “Well, thank you for your time, Captain.”

“Whatever the crime, Mr. Miro, the kind of man you want to be looking for is one who’s absolutely certain of his righteousness.”

“I’ll keep that in mind.”

“No one’s more dangerous than a man who’s convinced of his own moral superiority,” Descoteaux said pointedly.

“How true,” Roy replied, opening the door.

“Someone like Spence — he’s not the enemy. In fact, people like that are the only reason the whole damn civilization hasn’t fallen down around our ears already.”

Stepping into the hall, Roy said, “Have a nice day.”

“Whatever side Spence settles on,” said Descoteaux with quiet but unmistakable belligerence, “I’d bet my ass it’s the right side.”

Roy closed the office door behind him. By the time he reached the elevators, he’d

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decided to have Harris Descoteaux killed. Maybe he would do it himself, as soon as he had dealt with Spencer Grant.

On the way to his car, he cooled down. On the street, Roy was sufficiently in control again to realize that summary

execution wasn't an appropriate response to Descoteaux's insulting insinuations. Greater punishments than death were within his power to bestow.



By the following Monday morning in February, Captain Harris Descoteaux, of the Los Angeles Police Department, would not have been surprised to discover that he had died the previous Friday and had been in Hell ever since. The outrages perpetrated upon him would have occupied the time and energies of numerous clever, malicious, industrious demons.

At eleven-thirty Friday night, as Harris was making love to his wife, Jessica, and as their daughters — Willa and Ondine — were asleep or watching television in other bedrooms, an FBI special-weapons-and-tactics team, in a joint operation between the FBI and the Drug Enforcement Administration, raided the Descoteaux house on a quiet street in Burbank. The assault was executed with the stalwart commitment and merciless force exhibited by any platoon of United States Marines in any battle in any war in the country's history.

On all sides of the house, with a synchronization that would have been envied by the most demanding symphony orchestra conductor, stun grenades were launched through windows. The blasts of sound instantly disoriented Harris, Jessica, and their daughters, and also temporarily impaired their motor-nerve functions.

Even as porcelain figurines toppled and paintings clattered against walls in response to those shock waves, the front and back doors were battered down. Heavily armed men in black helmets and bullet-resistant vests swarmed into the Descoteaux residence and dispersed like a doomsday tide through its rooms.

One moment, in romantically soft amber lamplight, Harris was in the arms of his wife, gliding back and forth on the sweet dissolving edge of bliss. The next moment, passion having turned to terror, he was staggering around in the infuriatingly *dim* lamplight, naked and confused. His limbs twitched, his knees repeatedly buckled, and the room seemed to tumble like a giant barrel in a carnival fun house.

Though his ears were ringing, he heard men shouting elsewhere in the house: "FBI! FBI! FBI!" The booming voices

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weren't reassuring. Addled by a stun grenade, he couldn't think what those letters meant.

He remembered the nightstand. His revolver. Loaded.

He couldn't recall how to open a drawer. Suddenly it seemed to require superhuman intelligence, the dexterity of a torch juggler.

Then the bedroom was crowded with men as big as professional football players, all shouting at once. They forced Harris to lie face down on the floor, with his hands behind his head.

His mind cleared. He remembered the meaning of FBI. Terror and confusion didn't evaporate, but diminished to fear and bafflement.

A helicopter roared into position above the house. Searchlights swept the yard. Over the furious pounding of the rotors, Harris heard a sound so cold that he felt as if ice had formed in his blood: his daughters, screaming as the doors to their rooms crashed open.

Being required to lie naked on the floor while Jessica was rousted from bed, equally naked, was deeply humiliating. They made her stand in a corner, with only her hands to cover herself, while they searched the bed for weapons. After an eternity, they tossed a blanket to her, and she wrapped herself in it.

Harris was eventually permitted to sit on the edge of the bed, still naked, burning with humiliation. They presented the search warrant, and he was surprised to find his name and address. He had assumed that they had invaded the wrong house. He explained that he was an LAPD captain, but they already knew and were unmoved.

At last Harris was permitted to dress in gray exercise sweats. He and Jessica were taken into the living room.

Ondine and Willa were huddled on the sofa, hugging each other for emotional support. The girls tried to rush to their parents but were restrained by officers who ordered them to remain seated.

Ondine was thirteen, and Willa was fourteen. Both girls had their mother's beauty. Ondine was dressed for bed in panties and a T-shirt that featured the face of a rap singer. Willa was wearing a cut-off T-shirt, cutoff pajama bottoms, and yellow knee socks.

Some officers were looking at the girls in a way they had no right to look. Harris

asked that his daughters be allowed to put on robes, but he was ignored. While Jessica was taken to an armchair, Harris was flanked by two men who tried to lead him out of the room.

When he again requested that the girls be given robes and was ignored, he pulled away from his escorts, indignant. His indignation was interpreted as resistance. He was hit in the stomach with the butt of an assault rifle, driven to his knees, and handcuffed.

In the garage, a man who identified himself as "Agent Gurland" was at the workbench, examining a hundred plastic-wrapped kilos of cocaine, worth millions. Harris stared in disbelief, with a growing chill, as he was told that the coke had been found in his garage.

"I'm innocent. I'm a cop. I've been set up. This is nuts!"

Gurland perfunctorily recited a list of constitutional rights.

Harris was infuriated by their indifference to everything he said. His anger and frustration earned him more rough handling as he was escorted out of the house to a car at the curb. Along the street, neighbors had come onto their lawns and porches to watch.

He was taken to a federal detention facility. There he was permitted to call his attorney — who was his brother, Darius.

By virtue of being a policeman, and therefore endangered if confined with cop-hating felons, he expected to be segregated in the lockup. Instead, he was put into a holding cell with six men waiting to be charged on offenses ranging from interstate transportation of illegal drugs to the hatchet murder of a federal marshal.

All claimed that they were being railroaded. Although a few were *obviously* bad pieces of work, the captain found himself more than half believing their protestations of innocence.

At two-thirty Saturday morning, sitting across from Harris at a scarred Formica-topped table in a lawyer-client conference room, Darius said, "This is total bullshit, total, it stinks, it really *reeks*. You're the most honest man I've ever known, a straight arrow since you were a kid. You made it *hell* for a brother to measure up. You're an annoying goddamned *saint*, is what you are! Anyone who says you're a cocaine dealer is a moron or a liar. Listen, don't worry about this, don't worry for a minute, a second, a

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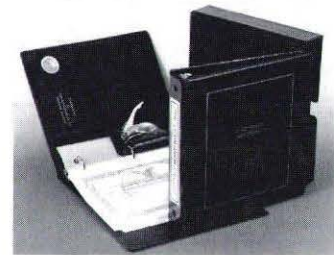
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"Don't worry about them," Darius said. "They're staying with Bonnie and me. They're all right."

"How can they evict them?"

"Until the Supreme Court rules on other aspects of forfeiture laws, if it ever does, eviction can still take place prior to the hearing, which is unfair. Unfair? Jesus, it's worse than unfair, it's totalitarian. At least these days you get a hearing, which wasn't required till recently. You'll go before a judge in ten days, and he'll listen to your argument against forfeiture."

"It's my house."

"That's no argument. We'll do better than that."

"But it's my house."

"I have to tell you, the hearing doesn't mean much. The feds will pull every trick in the book to be sure it's assigned to a judge with a strong history of endorsing the forfeiture laws. I'll try to prevent that, try to get you a judge who still remembers this is supposed to be a democracy. But the reality is, ninety-nine percent of the time, the feds get the judge they want. We'll have a hearing, but the ruling is almost certain to be against us and in favor of forfeiture."

*"It's becoming a major source of funding for law enforcement. Once liquidated, eighty percent of seized assets goes to the police . . . , twenty percent to the prosecutor."*

Harris was having difficulty absorbing the horror of what his brother had told him. Shaking his head, he said, "They can't put my family out of the house. I haven't been convicted of anything."

"You're a cop. You must know how the forfeiture laws work. They've been on the books ten years, growing broader every year."

"I'm a cop, yes, not a prosecutor. I get the bad guys, and the district attorney's office decides under what laws to prosecute."

"Then this will be an unpleasant lesson. See . . . to lose your property under forfeiture statutes, you don't have to be convicted."

"They can take my property even if I'm found innocent?" Harris said, and he was sure that he was having a nightmare based on some Kafka short story he'd read in college.

"Harris, listen very closely here. Forget about conviction or acquittal. *They can take your property and not even charge you with a crime.* Without taking you to court. Of course, you *have* been charged, which gives them an even stronger hand."

"Wait, wait. How did this happen?"

"If there's evidence of any nature that the property was used for an illegal purpose, *even one of which you have no knowledge*, that's sufficient probable cause for forfeiture. Isn't that a cute touch? You don't even have to know about it, to lose your property."

"No, I mean, *how did this happen in America?*"

"The war against drugs. That's what the forfeiture laws were written for. To come down hard on drug dealers, break them."

**pru-dent (prōod'ənt) adj.**

**pru-dent (prōod'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

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Darius was more subdued than on his previous visit that morning. His hyperkinetic nature was expressed not primarily in his usual, voluble flow of words as much as in his ceaseless fidgeting.

Harris was as alarmed by the change in his brother as by what he was learning. "This evidence, the cocaine, was *planted*."

"You know that, I know that. But the court has to see you prove it before it'll reverse a forfeiture."

"You mean, I'm guilty till proven innocent."

"That's the way the forfeiture laws work. But at least you've been charged with a crime. You'll have your day in court. By proving you're innocent in a criminal trial, you'll indirectly have a chance to prove forfeiture was unjustified. Now, I hope to God they don't drop the charges."

Harris blinked in surprise. "You hope they *don't* drop them?"

"If they drop the charges, no criminal trial. Then the best chance you'll ever have to get your house back is at the upcoming hearing I mentioned."

"My best chance? At this rigged hearing?"

"Not rigged exactly. Just in front of *their* judge."

"What's the difference?"

Darius nodded wearily. "Not much. And once forfeiture is approved in that hearing, if you didn't have a criminal trial in which to state your case, you'd have to initiate legal action, sue the FBI and the DEA, to get the forfeiture overturned. That would be an uphill battle. Government attorneys would repeatedly attempt to have your suit dismissed—until they found a sympathetic court. Even if you got a jury or panel of judges to overturn the forfeiture, the government would appeal and appeal, trying to exhaust you."

"But if they dropped the charges against me, how could they still keep my house?" He understood what his brother had told him. He just didn't understand the logic or the justice of it.

"Like I explained," Darius said patiently, "all they have to show is evidence the *property* was used for illegal purposes. Not that you or any member of your family was involved in that activity."

"But then who would they claim was stashing cocaine there?"

Darius sighed. "They don't have to name anyone."

Astonished, reluctantly accepting the full monstrosity of it at last, Harris said, "They can seize my house by claiming someone was dealing drugs out of it—but not have to name a suspect?"

"As long as they have evidence, yes."

"The evidence was planted!"

"Like I explained already, you'd have to prove that to a court."

"But if they don't charge me with a crime, I might never get *into* a court with a suit of my own."

"Right." Darius smiled humorlessly. "Now you see why I hope to God they don't drop the charges. Now you understand the rules."

"Rules?" Harris said. "These aren't rules. This is *madness*."

He needed to pace, work off a sudden dark energy that filled him. His anger and outrage were so great that his knees were weak when he tried to stand. Halfway to his feet, he was forced to sit again, as if suffering the effects of another stun grenade.

"You okay?" Darius worried.

"But these laws were only supposed to target major drug dealers, racketeers, Mafia."

"Sure. People who might liquidate property, flee the country before they went to trial. That was the original intent when the laws were passed. But now there are two hundred federal offenses, not just drug offenses, that allow property forfeiture without trial, and they were used fifty thousand times last year."

"Fifty thousand!"

"It's becoming a major source of funding for law enforcement. Once liquidated, eighty percent of seized assets goes to the police agencies in the case, twenty percent to the prosecutor."

They sat in silence. The old-fashioned wall clock ticked softly. The sound brought to mind the image of a time bomb, and Harris felt as though he were, in fact, sitting on just such an explosive device.

No less angry than he had been but more in control of his anger, he said at last, "They're going to sell my house, aren't they?"

"Well, at least this is a federal seizure. If it was under the California forfeiture law, it'd be gone ten days after the hearing. Feds give us more time."

"They'll sell it."

"Listen, we'll do everything we can to overturn before then...." Darius's voiced trailed away. He was no longer able to look his brother in the eyes. Finally he said, "And even after assets are liquidated, if you can overturn, then you can get compensation—though not for any costs you incurred related to the forfeiture."

"But I can kiss my house good-bye. I might get money back but not my house. And I can't get back all the *time* this will take."

"There's legislation in Congress to reform these laws."

"Reform? Not toss them out completely?"

"No. The government likes the laws too much. Even the proposed reforms don't go far enough and don't have wide support yet."

"Evicted my family," Harris said, still gripped by disbelief.

"Harris, I feel rotten. I'll do everything I can, I'll be a tiger on their ass, I swear, but I ought to be able to do *more*."

Harris's hands were fisted again on the table. "None of this is your fault, little brother. You didn't write the laws. We'll . . . just cope. Somehow, we'll cope. The important thing now is to post bail, so I can get out of here."

Darius put the heels of his coal-black hands to his eyes and pressed gently, as if trying to banish his weariness. Like Harris, he hadn't slept the previous night. "That's going to take until Monday. I'll go to my bank first thing Monday morning—"

"No, no. You don't have to put up your money for bail. We've got it. Didn't Jessica tell you? And our bank's open Saturdays."

"She told me. But—"

"Not open now, but it was earlier. God, I wanted out today."

Lowering his hands from his face, Darius met his brother's eyes with reluctance. "Harris, they've impounded your bank accounts too."

"They can't do that," he said angrily, but no longer with any conviction. "Can they?"

"Savings, checking, all of it, whether it was a joint account with Jessie, in your name, or just in her name. They're calling it all illegal drug profits, even the Christmas Club account."

Harris felt as if he'd been hit in the face. A strange numbness began to spread

through him. "Darius, I can't . . . I can't let you put up all the bail. Not fifty thousand. We have some stocks —"

"Your brokerage account's impounded too, pending forfeiture."

Harris stared at the clock. The second hand twitched around the face. The time-bomb sound seemed louder, louder.

Reaching across the conference-room table, putting his hands over Harris's fists; Darius said, "Big brother, I swear, we'll get through this together."

"With everything impounded . . . we have nothing but the cash in my wallet and Jessica's purse. Jesus. Maybe just her purse. My wallet is in the night stand drawer at home, if she didn't think to bring it when . . . when they made her and the girls leave."

"So Bonnie and I are putting up bail, and we don't want any argument about it," Darius said.

*Tick . . . tick . . . tick . . .*

Harris's entire face was numb. The back of his neck was numb, pebbled with gooseflesh. Numb and cold.

Darius squeezed his brother's hands reassuringly once more, and then finally let go.

Harris said, "How are Jessica and I going to rent a place if we can't put together first month, last month, and security deposit?"

"You'll move in with Bonnie and me for the duration. That's already been settled."

"Your house isn't that big. You don't have room for four more."

"Jessie and the girls are already with us. You're just one more. Sure, it'll be tight, but we'll be fine. Nobody'll mind if it's a bit of a squeeze. We're family. We're in this together."

"But this might take months to get resolved. My God, it could take *years*, couldn't it?"

*Tick . . . tick . . . tick . . .*

Later, as Darius was about to leave, he said, "I want you to think hard about enemies, Harris. This isn't all just a big mistake. This took planning, cunning, and contacts. Somewhere, you've got a smart and powerful enemy, whether you realize it or not. Think about it. If you come up with any names, that might help me."

Saturday night, Harris shared a windowless four-bed cell with two alleged murderers and with a rapist who bragged about assaulting women in ten states. He

slept only fitfully.

Sunday night, he slept much better, only because he was by then utterly exhausted. Dreams tormented him. All were nightmares, and in each, sooner or later, there was a clock ticking, ticking.

Monday, he was up at dawn, eager to be free. He was loath to let Darius and Bonnie tie up so much money to make his bail. Of course, he had no intention of fleeing jurisdiction, so they wouldn't lose their funds. And he had developed a prison claustrophobia that, if it continued to worsen, would soon be intolerable.

Though his situation was dreadful, unthinkable, he nevertheless took some solace from the certainty that the worst was behind him. Everything had been taken away—or soon would be taken. He was at the bottom, and in spite of the long fight ahead, he had nowhere to go but up.

That was Monday morning. Early.



*Washington's asset forfeiture law is located at RCW 69.40.505 & 506. The federal statute is at 21 U.S.C. 848 & 881.*

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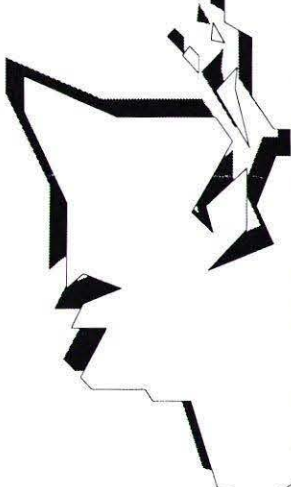
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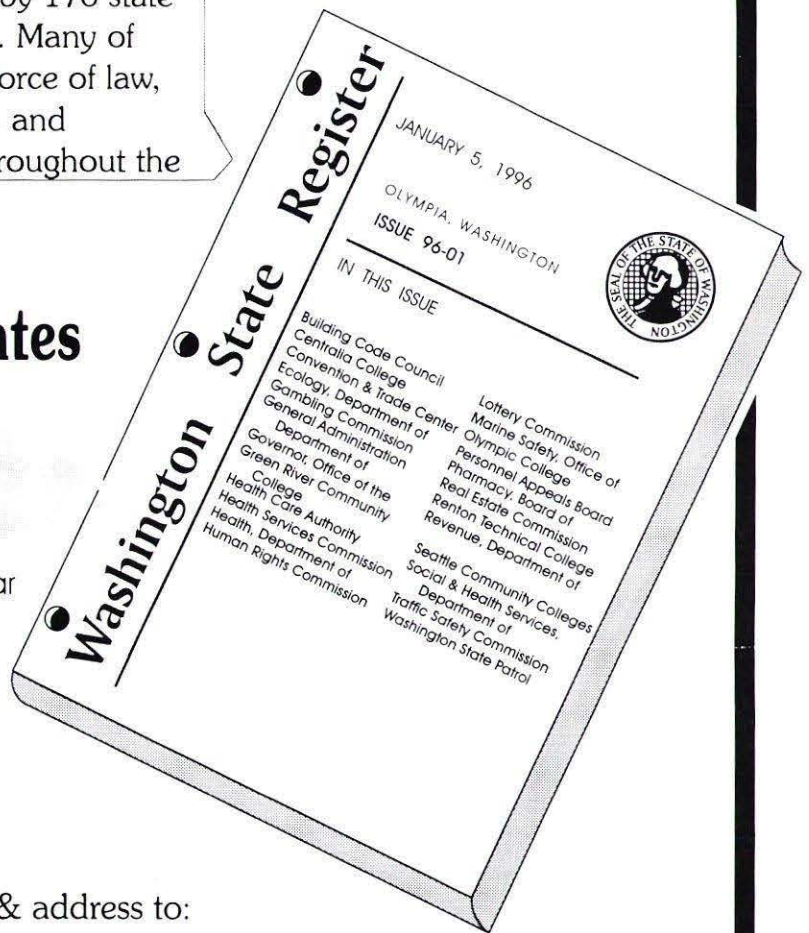
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# Is the Good Lawyer an Oxymoron?

by Jim Bond

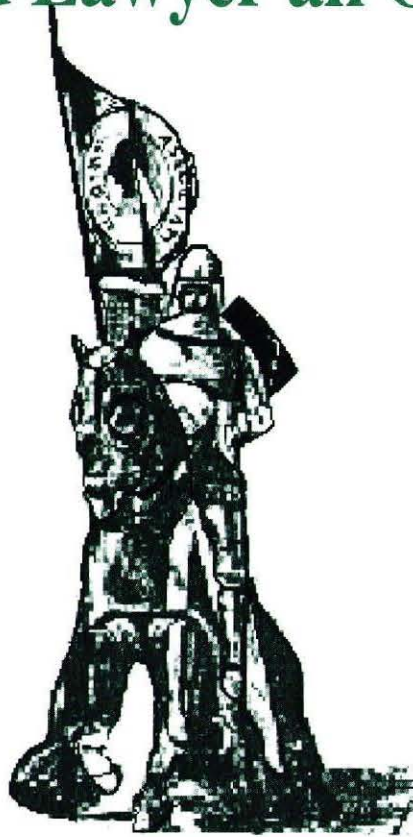
**H**ave you ever been asked why scientists prefer to use lawyers rather than rats in their experiments? I have, and I didn't know the answer. My interrogator gleefully supplied it. First, there are more lawyers than rats. Second, people care more about rats. Third and finally, there are some things you can't get a rat to do! This is just one of countless lawyer jokes that portray us as worthless, conniving cheats.

Frankly, this hostility toward lawyers has always puzzled me. No one suspects doctors of spreading viral infections so that they will have patients to treat. No one accuses priests of disguising themselves as serpents and tempting us into sin so that they'll have confessions to hear. Yet otherwise responsible persons portray lawyers as parasites who feed on the troubles of others. Lest you think me paranoid, remember the rat joke. It wouldn't "work" — that is, no one would laugh — if you substituted priest or doctor for lawyer.

What might explain this phenomenon? That's the question I want to explore. Let's return once again to that rat joke: *there are more lawyers than rats*. Are there too many lawyers? Frankly, I don't know — anymore than I know whether there are too many beauticians, plumbers, professional basketball players, or environmental engineers. In a market economy, the law of supply and demand determines how many persons work at what jobs.

I do know that there is a huge demand for lawyers in this country — because we Americans are committed to protecting individual liberty and promoting social justice. Let me explain. Lawyers are freedom's trustees. In a society in which individuals may order their own affairs, lawyers necessarily play a critical role. The childless couple who wish to adopt a baby, the entrepreneur who wants to establish a partnership, the inventor who wants to patent a design, the factory worker who believes that she has been unfairly passed over for promotion — these humble and independent souls all turn to the lawyer for help.

Lawyers are our shining knights in armor: we ask them to do battle for us.



*Lawyers are our shining knights in armor.*

Thus, professor Charles Fried describes the lawyer as the client's legal *friend*. The friendship metaphor is illuminating. "Being there" or "being present" to the needs of a friend is the very definition of friendship; we routinely put the needs of our friends ahead of others, and we certainly don't expect a friend to stand up for someone who is injuring us. That is why lawyers are zealous advocates for their clients.

After all, our rights are worth — when they are threatened — just what some lawyer makes them worth. Our civil liberties are those which some lawyer, respected by his neighbors, will stand up to defend. Let me give a concrete example. The Civil Rights Revolution was launched from a law school — Howard — by a law school dean — Charles Houston — and several of his students, including the young Thurgood Marshall, who later became our first black Supreme Court Justice. Together, they devised the litigation strategy that ultimately resulted in the historic 1954 desegregation decision, *Brown v. Board of Education*. The *Brown* decision in turn produced a constitutional

revolution that has profoundly reshaped America. What is too little understood is that the litigation strategy and the subsequent revolution required hundreds of individual lawyers in small towns and big cities all across this country to take up the cause of civil rights, usually for little or no financial gain, and often at great risk to themselves and their families.

I know the difference law can make in an area like civil rights because I was a foot soldier in the subsequent revolution. In the summer of 1964, shortly after I had graduated from college and just before I entered law school, I went to Mississippi with 600 other young men and women to build community centers in black areas, to teach black school children American history, and to help register black adults as voters. The white-owned newspaper in Holmes County, where I worked, described me as a beatnik from "Greenwitch" village who had been sent there by Martin Luther King to organize "nigger rape squads." Three of my co-workers were brutally slain and their bodies left to rot in an earthen dam, presumably as a warning to the rest of us. We were scared but not scared away. Still, we did not succeed in registering one black voter that summer. The next year, Congress passed the Voting Rights Act, the Justice Department sent Federal Marshals into the South to register blacks, and within another year Holmes County had elected a black sheriff.

That is why the late Justice Jackson could say: "A free and self-governing Republic stands as a monument (to the legal profession)." Thus it has ever been. I sometimes have to remind my doctor friends that when their professional predecessors were using leeches to cure General Washington's cold, mine were drafting the Declaration of Independence and the Constitution.

But lawyers are more than the guarantors of our freedom. They are also the architects and administrators of the good society. Let me elaborate. We as people decided over the last quarter century that we wanted a healthier, safer, and fairer world. We passed clean air and clean water acts, put airbags in cars, took asbestos out of buildings, and insisted on smoke alarms; we forbade discrimination in pub-

lic accommodations, housing and employment; and we promised equal opportunities for all.

Lawyers played a critical role in the effort to build this better society. While lawyers themselves, as private citizens, had widely varying views on the issues raised by these initiatives, they were obliged, as professionals, to use their skills on behalf of their clients' views. Thus, lawyers drafted the laws; lawyers advised those who enforced them and those who complied with them; and lawyers resolved the inevitable disputes about the meaning and application of the laws.

That latter point may explain why, as the rat joke has it, lawyers enjoy such a bad reputation and engender so little affection. While everyone agrees that a healthier, safer, fairer world would be a better world, we often disagree about how to get there. And because human judgment is inherently fallible and God's truth is sometimes beyond our understanding, we often use an adversarial system to help make the "get there" decisions, whether in the courtroom or the legislature. But wherever made, these decisions are often beset by factual and philosophical conflicts. The adversarial system rests on the assumption that we're more likely to reach the right decision if advocates for each side appear before a neutral decision-maker and argue passionately on behalf of their respective clients.

Whatever the validity of the assumption that the truth will emerge from the adversarial system, the adversarial system puts lawyers in a bind. The adversarial system almost always produces a winner and a loser. Inevitably, the loser tends to blame both lawyers and the system. Moreover, the winner is seldom happy, even with her lawyers, and is also often critical of the system. Victory almost always comes at a price in lost time and emotional stress, and it's tempting to make lawyers and the legal system a scapegoat for our anger and frustration.

Consider this current problem. One of the most controversial issues in family law today is how child custody cases should be decided. Even if one agrees that the appropriate goal in a child custody case is the best interests of the child, it is clear that notions of parental rights, historic presumptions about the beneficial role of mothers, an interest among some racial groups in rearing their own to preserve their cultural identity, and a preference for maintaining blood or family relationships, influence the development and application of child custody law. Moreover, any definition or application of the "best interests" test is likely to reflect contemporary mores, which are always in flux. Moreover, everyone seems to believe that their version of contemporary mores is right.

However wisely a custody battle is resolved, you can bet that one or both of

the parents are angry at both the system and their lawyers. Although priests and doctors may also work in emotionally charged and morally ambiguous circumstances, they at least are not ordinarily blamed for creating the circumstances that require their help. Moreover, the penitent denied heaven and the patient lost to the grave do not linger to excoriate priest and doctor for their incompetence.

My point, I hope, is clear. Though sin and disease flourish, we still consider priests and doctors good persons. We know that doctors sometimes botch an operation and that priests occasionally violate their vows. Yet we do not judge either profession by their all too human failures. Lawyers are human, too; and like all of us, they are imperfect and subject to the temptations of the world. We in the legal profession are keenly aware of those among us who fail because we try simultaneously to discipline them, protect their clients, and — in the best Christian tradition — rehabilitate them. The rat joke is thus wrong on the third count as well. Lawyers are not simply hired guns who will do anything and everything their client demands. Our Code of Professional Responsibility requires us to act ethically and fairly; and lawyers who violate its command may be fined, suspended, or disbarred. I'm particularly proud that our students at the Seattle University School of Law assist the state bar in investigating complaints against lawyers and recommending sanctions. Indeed, the American Bar Association last year recognized our Professional Responsibility Clinic as the best law school program in the country.

On balance, law and lawyers have served us well; as have doctors and priests. Let us remember that at their best, doctors preserve our physical well-being; ministers save our souls; and lawyers protect our liberties and help us build better communities. As John W. Davis, a former President of the American Bar Association, pointed out:

We build no bridges; we raise no towers; we construct no engines; we paint no pictures . . . but we smooth out difficulties; we relieve stress; we correct mistakes; we take up other (people's) burdens. And by our efforts we make possible the life of men (and women) in a peaceful state.

Let me conclude with a vignette from



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Robert Bolt's *A Man for All Seasons*, the story of Sir Thomas More's titanic clash with Henry VIII. Pressed between the commands of his king and the demands of his conscience, More finds himself in the existential quandary in which we all live — wanting justice, seeking justice, but often unsure of what it requires in particular circumstances. A former servant has turned on More, who is still the Lord Chief Chancellor; More's family implores him to arrest the servant because, although he has done nothing illegal, he is a bad man. More refuses and is accused by his son-in-law Roger of setting man's law above God's. More denies the charge and explains: ". . . let me draw your attention to a fact: I'm not God. The currents and eddies of right and wrong, which you find such plain sailing, I can't navigate."

When More then adds that he would give even the Devil benefit of the law, Roger explodes: "I would cut down every law in England to get at the Devil." More cries out:

And when the last law was down, and the Devil turned around on you — where would you hide, Roger, the laws all being flat? This country's planted thick with laws from coast to coast — man's laws, not God's — and if you cut them down — and you're just the man to do it — do you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil the benefit of law, for my own safety's sake.

More is a model of the good lawyer — the kind of lawyer who works within the law to advance his client's interests. Everyone — whether rich or poor, powerful or weak, healthy or sick, established or outcast — is entitled to be heard. Often, however, they cannot speak for themselves. There is much honor and no shame in giving voice to their pleas. That is the privilege and the obligation of the good lawyer — and that is why the good lawyer is no oxymoron.



*This speech was given at a recent Seattle University alumni/ae breakfast by law school dean Jim Bond.*

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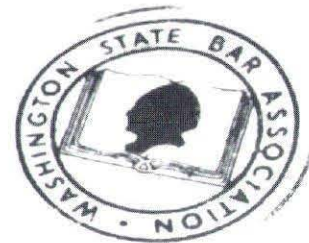
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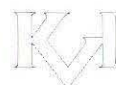
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by Hal White, Editor, *Bar News*

**The President's Report.** President Ed Shea opened the May 3-4 meeting in Spokane by commending WSBA Chief Disciplinary Counsel Barrie Althoff and Communications Director Mary Elizabeth Stritmatter for their prompt response to a recent article in the *Seattle Times* regarding deficiencies in the WSBA's disciplinary system. In short, the problems were fixed before the story even ran. On the topic of WSBA discipline, President Shea also relayed a conversation with Supreme Court Justice Phil Talmadge. According to Shea, Justice Talmadge stated that if the WSBA didn't properly fund and administer attorney discipline, the Supreme Court would likely impose an assessment on each member and administer attorney discipline itself.

**The President-elect's Report.** After general introductory remarks, President-elect Tom Chambers deferred to Governor Peter Ehrlichman, who requested that the Board table its consideration of WSBA governance issues (specifically, whether WSBA membership should vote on expanding the Board of Governors, and whether out-of-state members should be permitted to vote). The Board acquiesced and tabled these issues until its June meeting.

**The Executive Director's Report.** WSBA Executive Director Dennis Harwick then briefly discussed the latest bar exam results: 73.5% of applicants passed, with Seattle University enjoying bragging rights for the highest graduate passage rate among Washington's law schools. Harwick reported that the Supreme Court also approved the Board's request to increase bar exam late-filing fees.

At the Director's request, the Board also changed the CLE pricing structure to provide an optional discount to section members at WSBA CLEs cosponsored by WSBA sections. Harwick also updated the Board on the upcoming move of the WSBA's offices. Because the present building has insufficient space and faces a rent increase, a favorable lease has been negotiated at the "Fourth & Blanchard" building in Seattle. The move will be completed by Dec. 1, 1996.

**Appointments.** Scott Miller and Jeff Tolman were reappointed as WSBA representatives to the ABA House of Del-

egates. Margo Keller was reappointed to the Commission on Judicial Conduct; Harold D. Clarke, III, was reappointed as her alternate. Ken Davidson, Phyllis Selinker, and Paul Stritmatter were nominated for reappointment to the Access to Justice Board, and Judge Jim Gavin of Yakima was also nominated to replace Judge Susan Agid on the AJB. Finally, the Board approved a letter of recommendation in support of Theresa Doyle in her effort to be appointed by Governor Lowry to the Sentencing Guidelines Commission.

**Criminal Law Practitioners.** Bill Redkey then delivered the "Ad Hoc Committee's Report on How the WSBA can be More Responsive to Criminal Law Practitioners." This committee was established by former WSBA president Ron Gould to study how the WSBA could be more responsive to the needs of criminal law practitioners; however, it evolved into the narrower issue of how the Criminal Law Section could be more effective for its members. Among other findings, the committee determined that the section is not as effective as it could be; does not communicate effectively with its members; does not represent itself on WSBA committees or at Board of Governor meetings; inadequately participates in and/or sponsors CLE programs; and fails to interact with the WSBA's lobbyist on legislative issues. The committee provided a number of recommendations, and commended the WSBA for its concern, but concluded that any real change needed to come from the section itself. Bill Redkey agreed to act as a future liaison between the section and the Board. Copies of the report are available through the WSBA.

**Legal Services Report.** Ada Shen-Jaffe, Jim Bamberger, Michelle Whetsel and Pat McIntyre provided the Board with the annual Legal Services report. An overall history of legal services in Washington was provided, along with summaries and updates of the Northwest Justice Project, Columbia Legal Services, and other groups integral to Washington's legal services network.

**The Local Line.** Pam De Rusha, president-elect of the Spokane County Bar Association, provided the Board with information regarding her association. To the envy of any volunteer bar organization, the Spokane County Bar boasts a membership of 1,075 attorneys: 95% of

Spokane County's lawyers. The bar provides a variety of services to its members, including a lawyer referral service, annual holiday and professionalism dinners, a judicial candidate bar poll, a volunteer lawyer program, and an association newsletter.

**Gonzaga Law School Racism.** In a repeat of incidents occurring last year at Gonzaga Law School, racist and threatening letters were forwarded to three black law students. Law School Dean John Clute, Marcella Fleming and two of the affected students addressed the Board regarding how the university is responding to these incidents. The Spokane Police Dept. and the F.B.I. are investigating this matter, and a \$26,000 reward (which can be awarded anonymously) has been offered to help discover the identity of the responsible individual(s). The Board reaffirmed its strong condemnation of these incidents.

**Law Practice Sales.** WSBA Counsel Bob Welden then led an abbreviated discussion of the Rules of Professional Conduct Committee's proposed opinion allowing the sale of law practices. The Board accepted the committee's recommendation, and the text of the opinion will appear in the August *Bar News*.

**Gay/Lesbian Discrimination.** Dave Horn informed the Board that the Rules for Professional Conduct Committee had not yet completed its deliberations regarding whether RPC 8.4(g) should be amended to delete the "prohibited by law" clause in that rule. The deletion of this language would prohibit discrimination by attorneys against gays or lesbians regardless of the lack of local laws proscribing such conduct. In an effort to solicit the viewpoints of all members on this topic, President Shea encouraged members to contact either him or their governors regarding possible freedom of religion and speech ramifications of the proposed change. The Board anticipates a recommendation from the RPC committee prior to the Board's June 7-8 meeting.

**RLD 11.1.** Governor Peter Ehrlichman, Chief Disciplinary Counsel Barrie Althoff, and Disciplinary Counsel Randy Beitel then presented a revised amendment to Rules for Lawyer Discipline 11.1. The proposed revision attempts to prevent premature access to disciplinary complaints while permitting information to be shared at an earlier time than is cur-



## WSBA's Job Hunter Support Group

Washington lawyers changing jobs or careers, or those looking for their first job, are welcome to join the WSBA Job Hunter Support Group at the WSBA Tuesdays at noon for a brown bag lunch.

**Guest Speakers:** About half of the group's meetings feature speakers on topics of interest to job hunters of all ages and stages. Recent guests have included:

- a business consultant speaking on starting a solo practice;
- a professional career counselor discussing career transition strategies;
- a lawyer giving tips on networking;
- an attorney describing his start in family practice;
- a law firm recruiter explaining the hiring process from the employer's point of view;
- a contract attorney sharing her practice development experiences; and
- a legal newspaper editor outlining freelance writing opportunities for lawyers.

**Round Table Discussions:** When no speakers are scheduled, those attending participate in guided discussions on the ups and

downs of the job hunt, share experiences and gain support and assurance in an open yet confidential setting.

**Practical Benefits:** Attendees often come away with revised job search strategies, helpful suggestions, networking contacts, or renewed self-confidence in their ability to find satisfying and rewarding work. They also have access to the latest job announcements collected by the bar association, and many people get valuable job leads either from the WSBA listings or by word-of-mouth.

One of the most valuable benefits is the opportunity to meet and talk with other lawyers facing job search challenges. The job hunt or career change, whether voluntary or not, can often be frustrating and depressing.

**No Reservations Required:** Whether you are looking for a job lead, or want to share your personal, family, or professional experiences with others, you are invited to join the group in the Lincoln Room at the WSBA offices. You may call (206) 727-8268 to find out the agenda for the next meeting. The Lawyers' Assistance Program also publishes a quarterly newsletter containing articles of interest and a schedule of upcoming meetings. To receive the newsletter, or for more information about LAP, please call Joyce Elven at the above number.

rently available. Drafts of the revised amendment can be obtained through the WSBA offices, and an article on the proposal will appear in the July *Bar News*. Comments will be accepted until August 1. The Board will vote on the proposal at its September 5-6 meeting. In a related action, the Board endorsed as "an aspirational goal" the simultaneous implementation of the disciplinary changes adopted at its March meeting (described in the April *Bar News*) as opposed to implementing the disciplinary changes *in seriatim*. As a result of this decision, the Governors added two disciplinary staff positions for the 96-97 fiscal year.

**WSBA Endorsement of Organizations.** On Saturday morning, the Board considered whether to endorse two organizations: "The Lawyers Committee for Human Rights," and "Kids Voting Washington" (an organization which attempts to instill an ethic of informed voting in children). The governors declined to endorse the former because by-laws prohibit the WSBA from commenting on actions taken by foreign governments. The Board tabled its consideration of the latter in order to consider the broader question of whether the WSBA should endorse any organization.

**Adding "Qualified" to the WSBA's gubernatorial list.** The Board discussed

whether it should add the category of "qualified" to the list of candidates which the WSBA provides to the Governor when court vacancies occur. Currently the Board only recommends individuals whom it feels are "well-qualified." The Governors opted to retain the single category, preferring to forward only exceptional candidates to the Governor. In a related matter, Ted Armbruster, representing the Washington Association of Administrative Law Judges, asked the Board to forward a letter to Governor Lowry reminding the Governor of the importance of appointing a qualified Chief Administrative Law Judge when filling that vacancy. The Board agreed to this request.

**In-House Counsel/Counsel Emeritus.** The Board voted to resubmit its request to the Supreme Court which would admit out-of-state in-house and emeritus counsel to the limited practice of law in Washington without sitting for the bar. The Governors felt that the advantages of allowing such admissions (e.g., attracting new companies to Washington if in-house counsel didn't have to sit for an additional bar exam) outweighed any disadvantages of this proposal. A small task force will meet with the Supreme Court in order to address the Court's concerns in this matter.

**CLE Comity.** The Board then approved,

in principle, "The Boise Protocol." This agreement will allow bar members in Utah, Oregon, Idaho and Washington to fulfill mandatory CLE requirements in any of the participating states by fulfilling the MCLE requirements of the state where the lawyer maintains his or her principal place of practice. The Washington MCLE Board will develop specific language amending APR 11, and submit its recommendations to the Governors for approval and ultimate recommendation to the Supreme Court.

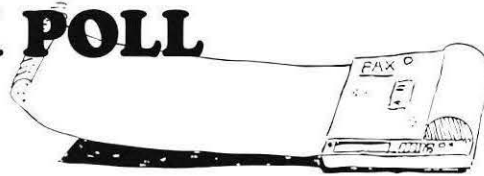
**APR 12 IOLTA Trust Accounts.** The Supreme Court has been asked to reconsider its decision to submit LPO trust accounts to IOLTA regulations. Due to notice problems, the Board could not vote on whether to reaffirm its commitment to such accounts. Consequently, it will conduct a special telephonic meeting on May 6, 7 or 8 to vote on this issue.

**Dues Increase.** In the most important topic of the day, the Budget & Audit Committee presented the Board with its recommendations regarding future funding of WSBA programs. The Committee recommended an increase of \$89 over the next four years. The Governors received the Committee's recommendation, and will accept member comment prior to its formal vote on this recommendation at its June meeting.



**THE WASHINGTON STATE BAR NEWS**

**FAX POLL**



What is your opinion regarding jury reform? Please check the statements which most reflect your opinions, 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.

Should the number of peremptory challenges be eliminated, reduced or remain the same?

Eliminate \_\_\_\_ Reduce \_\_\_\_ Remain the same \_\_\_\_

Should jurors be allowed to ask questions through the judge?

Yes \_\_\_\_ No \_\_\_\_

Should jurors be allowed to take notes during trials?

Yes \_\_\_\_ No \_\_\_\_

Should voir dire be abolished, restricted or remain the same?

Abolish \_\_\_\_ Restrict \_\_\_\_ Remain the same \_\_\_\_

Should judges more strictly enforce the scope of questions during voir dire?

Yes \_\_\_\_ No \_\_\_\_

Should occupational exemptions from jury service (doctors, lawyers, firefighters, etc.) be eliminated?

Yes \_\_\_\_ No \_\_\_\_

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 July *Bar News*.)

Fax your response by June 14 to:

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Or, mail your response by June 11 to:

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*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 WSBA endorsement of products or services. The results:

1. 12% believed that the WSBA should endorse products and services.
2. 88% believed that the WSBA should *not* endorse products or services.

Overall, 26 valid responses were received.

### *Your Comments:*

"We have enough image problems without being considered in the same league as those fine folks that endorse the 'Poulin Weed-Eater Bowl.'"

*Tim Weaver, Yakima*

"I would avoid using any product endorsed by WSBA."

*Madison Jones,  
Houston, Texas*

"Given the current public opinion of attorneys, would companies *want* an endorsement by the WSBA?"

*Victoria Blackwell, Vancouver*

"The Bar Association is a professional organization. It can raise enough money to run programs if its programs have support of the vast majority of its members."

*Basil Badley, Camano Island*

"I'll give you guys the benefit of the doubt. I'll assume this is a late April fools joke."

*Doug Garrou, Seattle*

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



## Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in May 1996 is 5.35%. **The maximum allowable interest rate permissible for June 1996 is therefore 12%.** Compilations of the average coupon equivalent yields from past auctions of 26-week treasury bills, and past maximum interest rates of the past 10 years appear on page 72 of the June 1995 *Bar News*.

## WSBA Presidential Selection

For details on WSBA presidential selection procedures, see page 60 of this issue.

## 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 2:00 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 5:00 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 Riley, William Fleck, Stacey Smythe, Lee Kraft, and John Caldbrick.

## Vehicles Awarded Through Divorce

The Department of Licensing (DOL) requests assistance in a matter regarding vehicle owners who are involved in a divorce. Rightful owners may encounter problems when renewing the annual license or when selling the vehicle if it is not correctly titled.

The method preferred by the DOL is to describe the vehicle being awarded by year, make, license plate number and/or vehicle identification number (VIN) in the decree.

These vehicles may be titled in the name of the individual not awarded the vehicle, or both parties may be shown as co-owners. Sometimes a proper release from the party not granted ownership of

the vehicle is not readily obtainable. In these cases the DOL accepts a copy of the divorce decree in order to release interest and process a transfer of title. If the year and make of the vehicle is included, the Department will accept a Certificate of Fact from the person wishing to transfer the title. Lately, however, the DOL has been experiencing increasing problems when the vehicle being awarded is not described in any manner in the divorce decree.

In that case, one of the following procedures may apply:

- The DOL will require the person awarded the vehicle to obtain a notarized release of interest from the ex-spouse, which may create a hardship for the person awarded the vehicle; the Department cannot issue title in the applicant's name without the release.
- If the ex-spouse is neither available nor willing to sign a release, the person awarded ownership must obtain a court order that properly describes the vehicle before the ownership change can be reflected on the title. The time and expense associated with a court order is, at best, an inconvenience.

## Disbarred

Former Lacey lawyer Michael D. Barckley (WSBA No. 7874, admitted

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1977) was ordered disbarred effective March 8, 1996, by Washington Supreme Court order. Barckley stipulated to the discipline of disbarment.

The disbarment was based on Barckley's misuse of the funds of a probate estate, for which he was executor and lawyer. In September 1991, Barckley was named executor of the estate of a client whose will he had drafted. The primary beneficiary of the estate was a charity. In his capacity as executor, Barckley received assets of the estate, including interest payments on a bond, the final paycheck of the decedent, and bank accounts. Between October 1991 and June 1993, Barckley used estate assets to pay \$6,000 to an unrelated client whose lawsuit was dismissed for want of prosecution; to pay variable sums to his general creditors, including consumer credit card companies; and to pay his office expenses. Additionally, between February 1992 and May 1994, Barckley disbursed to himself four checks totaling \$9,000 for attorneys' and executors' fees, without evidence of his or his firm's entitlement to such sums. Barckley also delayed the transfer of a substantial estate asset, a fuel tax bond, to the charity. As of fall 1994 Barckley had been replaced as executor and lawyer for the estate. Barckley closed his Lacey law practice in 1994.

Barckley stipulated that his conduct in disbursing estate funds to himself, and/or

for his benefit, violated ethical rules prohibiting acts of dishonesty and moral turpitude in violation of RLD 1.1(a), and RPC 8.4(b) and 8.4(c). Barckley's conduct in disbursing the funds and not maintaining them in trust accounts also violated the trust account rule, RPC 1.14.

Barckley is required to make restitution to the heir of the estate in the sum of \$19,220.43 (\$16,809.93 principal sums misused by Barckley, and \$2,410.50 paid or authorized by the new executor for legal fees for investigation and proceedings to resolve the missing funds issue). The disciplinary decision further provides that if Barckley is the subject of a civil judgment or other restitution order related to claims by the estate, he is to pay such restitution or make arrangements to pay such restitution as a condition of reinstatement to practice law in the State of Washington.

The Association was represented by disciplinary counsel, Kenneth S. Kagan. Respondent represented himself.

Seattle lawyer George Marion Cole (WSBA No. 3874, admitted 1966) has been ordered disbarred effective April 10, 1996, by order of the Supreme Court. (Please note that this is not Bellingham lawyer George R. Cole, WSBA No. 5575, a member in good standing.) The order was entered after a default hearing and recommendations of disbarment by the Hearing Officer and Disciplinary Board.

The disbarment resulted from conversion of client funds, neglect of client matters, and trust account improprieties.

In 1984, Cole was retained by a client to obtain U.S. and foreign patents for an invention. Cole obtained the U.S. patent in 1986 and made applications for patents in Europe, Japan and Canada. Cole never completed the work on the European patent and allowed the U.S. patent to lapse by failing to pay a required fee. Cole arranged for a Japanese law firm to obtain and perfect the Japanese patent, but thereafter did not respond to letters from this firm nor did he pay its \$2,734 bill. The client had previously given Cole a retainer that included approximately \$3,000 for fees and costs associated with obtaining the Japanese patent. Cole intentionally converted this \$3,000 to his own use.

The Japanese law firm wrote directly to the client in October 1991. The client and the client's corporate attorney called and wrote Cole several times without response. In early December 1991, Cole agreed to meet with the corporate attorney. Cole told the corporate attorney that there were no problems with any of the client's patent applications other than the Japanese patent. In fact, the U.S. patent had expired due to Cole's inaction.

The client hired another patent attorney to assist him in reinstating the U.S. patent. Cole did not respond to repeated requests from both the patent attorney and the corporate attorney for assistance nor did he turn over his files as requested. The corporate attorney filed suit against Cole on March 25, 1992.

Cole failed to appear at an April 9, 1992, show cause hearing regarding his failure to turn over the client's files and the court entered an order requiring him to turn over all his files to the corporate attorney. The Hearing Officer found that Cole violated RPC 8.4(b) (criminal act, theft, that reflects adversely on lawyer's honesty or trustworthiness), RPC 8.4(c) (dishonesty, fraud, deceit or misrepresentation), RPC 1.14(a) (client funds to be maintained in trust account), RPC 1.1 (competent representation), RPC 1.3 (diligence), RPC 1.4 (communication with client), and 1.15(d) (duties on termination of representation).

The Hearing Officer also found that Cole violated RPC 1.14 by failing to maintain contemporaneous client ledgers or other records of client funds and by with-

## APPEALS

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drawing funds from his pooled client trust account without clear evidence of entitlement to those funds.

The Hearing Officer was Andrew K. Dolan of Seattle. The Association was represented by Disciplinary Counsel Anne I. Seidel. Cole was not represented.

Seattle lawyer Jack J. Ackerman (WSBA No. 327, admitted 1968) was disbarred by order of the Washington Supreme Court entered on March 20, 1996, effective immediately, entered after a disciplinary hearing and review by the Disciplinary Board. Ackerman was also ordered to pay costs and expenses associated with his disciplinary proceedings, in the amount of \$12,315.56. In May 1995, Ackerman had been suspended from the practice of law pending the outcome of his disciplinary proceedings.

The disciplinary proceedings were based primarily on Ackerman's actions in representing two clients. In one client's case, Ackerman endorsed and negotiated a settlement check, deposited it to his trust account, and then misappropriated the money to the use of himself and others, all without authority or entitlement. Ackerman misrepresented to his client that he had not received the client's funds.

In the second client's case, Ackerman set aside proceeds from the settlement of the client's case because of a dispute over whether he, his client, or his client's employer were entitled to those funds. Ackerman represented to the client that the funds belonged to the client. At Ackerman's direction, the client declared the interest from those funds in figuring his federal income tax obligations for several years. After several years, Ackerman appropriated that money to the use of himself and others without authorization and entitlement, and misrepresented to his client the status of those funds. After an appellate decision awarded the money to his client's employer, Ackerman failed to make agreed upon payments on his client's behalf, resulting in a lien being placed against his client's home. Ackerman then agreed to a settlement of the employer's claim to those funds, without first obtaining his client's agreement to that settlement. Ackerman subsequently misrepresented to the employer's lawyer that a payment of the settlement funds had been misplaced.

The discipline was also based on

Ackerman's commingling of his own and third parties' funds with client funds, and repeated misuse of other client funds and misappropriation of other clients' funds to the use of himself and others not entitled to that money.

The above actions violated Rules of Professional Conduct 1.2, 1.3, 1.4, 1.14, 3.3(a)(1), 4.1, and 8.4(b) and (c), and subjected Ackerman to discipline pursuant to Rules for Lawyer Discipline 1.1(a), (i) and (p).

The Association was represented by disciplinary counsel Jean K. McElroy. Respondent was represented by Kurt Bulmer. The hearing officer was John E. Hanson of Bellevue.

## Reprimanded

Bellevue lawyer Julian Joseph ("Jay") Nuxoll (WSBA No. 3506, admitted 1965) was, on January 29, 1996, ordered reprimanded by the Disciplinary Board for violating ethical rules regarding conflict of interest and truthfulness in statements to others.

Nuxoll represented a debtor in a Chapter 7 bankruptcy proceeding. The bankruptcy trustee proposed to settle three claims that were assets of the debtor. As part of his representation of the debtor, Nuxoll tried to broker a loan for the debtor to enable the debtor to buy these three

claims from the trustee. After speaking unsuccessfully to at least thirty people in an attempt to find a lender, Nuxoll advised another client to lend \$16,250 to the debtor. Nuxoll told the client the loan was "the best investment in the world right now." He did not disclose to the client his role as an advocate for the debtor, the debtor's impoverished financial condition, or the risks of realizing on the bankruptcy assets. The client agreed to make the loan, and thereafter, Nuxoll prepared the documents for the loan transaction, including the promissory note. Nuxoll did not obtain written consent from either the lender or the debtor to his representation of the other party in the loan transaction. The hearing officer found that Nuxoll's representation of the lender was both directly adverse to, and materially limited by, his representation of the debtor and therefore violated RPC 1.7(a) and (b). The debtor was unable to repay most of the loan.

Nuxoll told the attorney for the bankruptcy trustee that a third party (the lender) was "purchasing the claims and was going to own them totally." In fact, at the time of this conversation, Nuxoll knew that the third party was not purchasing the claims, but was lending funds to the debtor so the debtor could purchase the claims. The attorney for the trustee then by letter informed the Bankruptcy Court that the third party was purchasing the claims. Nuxoll was sent a copy of this letter, but

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he did not inform the court or the attorney for the trustee that the third party was not purchasing the claims. The hearing officer found that Nuxoll violated RPC 4.1 (truthfulness in statement to others) and 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

The Disciplinary Board adopted the hearing officer's findings in full. In addition to ordering a reprimand, it ordered Nuxoll to pay the third party the unpaid balance of the principal plus interest.

The Hearing Officer was Nancy Preg of Seattle. Nuxoll was represented by Daniel Brink. The Association was represented by Disciplinary Counsel Anne I. Seidel.

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### Censured

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Alaska lawyer Wilfred D. Bennett (WSBA #8084, admitted 1978) has been ordered censured by the Supreme Court as reciprocal discipline. By order entered October 30, 1995, the Supreme Court of Alaska approved Bennett's stipulation for discipline by consent. By order dated

April 3, 1996, the Supreme Court of Washington adopted the Order of the Supreme Court of Alaska approving a letter of censure.

The stipulation before the Alaska Bar Association Disciplinary Board finds that Bennett violated Rule 8.4(c) of the Alaska Rules of Professional Conduct which provides that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation. The stipulation describes conduct by Bennett while he was a partner at the law firm of Perkins Coie in 1993 and 1994 practicing law in Anchorage, Alaska. Bennett represented Client A and Client B in labor matters. In-house counsel for Client A authorized only Bennett and a specified associate attorney to work on Client A matters assigned to Perkins Coie, and Bennett agreed to this restriction. Despite the restriction, and without Client A's knowledge or consent, Bennett assigned two other associate attorneys to work on Client A matters. The two associates prepared law firm billing records showing the work they did for Client A. Bennett

changed the records to show that the work had been done by the specified associate. Bennett adjusted time and billing rates and Client A did not claim any overcharge.

In-house counsel for Client B authorized only Bennett or a specified associate attorney to work on Client B matters assigned to Perkins Coie, and Bennett was aware of this policy. After the Client A matter was disclosed, Bennett advised the general counsel for Client B that he had altered billing records to show that he had performed legal services for Client B when, in fact, some services had been performed by associates. As with Client A, Bennett adjusted the time and billing rates so that Client B was not overcharged.

Disciplinary Counsel Felice P. Congalton represented the Washington State Bar Association in reciprocal discipline. Wilfred D. Bennett did not oppose reciprocal discipline.

*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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- 6 **WACDA Annual Conference**  
Chelan  
By WA Assn. of Criminal Defense Attorneys  
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7.75 CLE credits
- 6-7 **Patents in Leading Edge Technologies: Protecting Your Most Valuable Asset**  
Bellevue  
By Law Seminars International  
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15 CLE credits
- 6-8 **Environmental & Land Use Section Midyear Meeting**  
Ocean Shores  
By WSBA CLE & ELUL Section  
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- 6 & 27 **Trial by the Masters**  
Spokane - 6th  
Yakima - 27th  
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7.25 CLE credits (est.) pending
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2.5 CLE credits
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Olympia  
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6 CLE credits
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7.75 CLE credits
- 7-8 **WSBA Board of Governors**  
Pasco  
(206) 727-8244
- 7 & 13 **Reading & Understanding Financial Information**  
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- 8 **Unfair Competition Trademarks & Copyrights**  
Seattle  
By INR (510) 450-1650  
6 CLE credits
- 10 **DUI Defense Intensive**  
Seattle  
By UW CLE (206) 543-0059/  
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7 CLE credits
- 11 **NW Trial Mastery**  
Seattle  
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- 12 **New Anti-Terrorism Bill**  
Seattle  
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1 CLE credit
- 12 **10th Annual Spring Dual Disorder Conference**  
Bellevue  
By Family & Addiction Conf. & Ed. Services (206) 868-7253  
18.25 CLE credits
- 13 **Title Insurance in Washington**  
Seattle  
By NBI (715) 835-8525  
6.5 CLE credits (including 1 ethics)
- 13 **The Cutting Edge in Torts**  
Seattle  
By WSTLA (206) 464-1011  
6 CLE credits
- 14 **Utilizing Contract Employees**  
Seattle  
By Puget Sound Assn. of Legal Administrators (206) 789-2111  
CLE credits pending
- 14 **Discovery of Confidential Records: Law, Mgmt. & Policy**  
Seattle  
By Washington Law Institute  
(206) 726-9337  
6.75 CLE credits pending
- 15 **Federal Appellate Training**  
Seattle  
By UW CLE (206) 543-0059/  
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7 CLE credits (including .5 ethics)
- 18 **Using Technology to Manage Mass Tort Litigation**  
Seattle  
By Elf Technologies  
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7.75 CLE credits
- 18 **Software Licensing Agreements**  
Seattle  
By Professional Learning Center  
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7 CLE credits
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Chelan  
By WA State Criminal Justice Training (360) 753-2175  
16 CLE credits (including 2 ethics)
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- 20 **International Maritime Law Conference**  
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- 21 **Insurance Coverage Law in WA**  
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- 25 **Bankruptcy Issues**  
Tacoma  
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6 CLE credits
- 25 **The Winning Brief: 100 Tips for  
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Briefs, Trial Briefs, and  
Appellate Briefs**  
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- 26 **Leveraging Lawyer Productiv-  
ity: Word Processing Power  
(Word Perfect for Windows)**  
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7 CLE credits
- 26 **WA Workers Comp for  
Self-Insureds**  
Spokane  
By Lorman (715) 833-3940  
6.5 CLE credits
- 26 **Understanding & Using the  
Internet**  
Seattle  
By Rockhurst College  
(913) 432-7755  
6 CLE credits  
(including 1.25 ethics)
- 27 **Leveraging Lawyer Productiv-  
ity: Word Processing Power  
(Word)**
- By Themis (206) 783-4014  
7 CLE credits
- 27 **Divorce Mediation Training**  
Seattle  
By Pacific Family Mediation  
Institute (206) 682-1505  
37 CLE credits
- 28 **Traffic Law**  
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1.25 CLE credits
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Oregon  
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- 19 **Trial Tactics for Success**  
Tacoma  
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- 22 **Interest-Based Mediation**  
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Spokane - 31st  
By NBI (715) 835-8525  
6.5 CLE credits
- 31 **Hazardous Waste in WA**  
Seattle  
By NBI (715) 835-8525  
6.5 CLE credits



## Crisis in our Courts

Steve Bertsch, 320 pp., softcover; \$6.99. Gollehon Press, 1993, (616) 949-3515

reviewed by **Thomas F. Klein**

In his only published title to date, Everett attorney Steve Bertsch takes aim at several troubling aspects of modern legal practice, proposing a broad palette of fundamental reforms. Although the work was originally released in 1993, it has recently been reprinted. Writing with blunt humor, and the hard-hitting authority of an experienced defense attorney, Bertsch appeals to his lay readers to act on his recommendations by writing letters to their Congressional representatives as well as attorneys with whom they are dissatisfied.

### Justice: Courthouse "Crap Shoot"?

Bertsch does not mince words. Comparing today's courthouse to a "crap shoot," he asserts that legal outcomes depend, not on truth, but on jury selection, legal resources, litigation warfare and "Lady Luck." In this system, lawyers only sue tortfeasors who possess significant assets, and unrepresented plaintiffs "quickly fall prey to the wrath of the rules." Those who can afford elite lawyers, jury consultants and \$50,000 to \$500,000 in discovery expenses qualify for "justice" of a different order.

The author is unsparing in his criticism of litigation madness, and its adverse effects on the community. Overzealous malpractice claims drive physicians into practicing defensive medicine and, it might be added, deters them practicing worthy non-conventional procedures. Excessive litigation not only costs Americans millions of dollars annually, but undermines national mores. Bertsch deplores attorneys who "live off suing," always in quest of victims of deep-pocket defendants such as insurance companies, government agencies and corporate defendants like McDonald's. He is particularly critical of lawyers who promote themselves through garish advertisements.

### Excessive Litigation Destroys Respect for Law

The author cites numerous examples of

what he terms "legal bingo," in which lawyers file trivial lawsuits that violate all notions of reasonableness and common sense. If the author had researched his book in 1996, he would have new anecdotal material to draw from. Recent press accounts have highlighted litigants seeking legal protection and compensation for conduct blamed on alcoholism, sexual addictions, overweight syndrome, and even academic aversions to math and test-taking. While such lawsuits apparently sidestep Rule 11 sanctions, they cast a cloud on legal practice, encourage greedy, symbiotic relationships, and undermine public respect for the law.

A former civil and criminal defense attorney, Bertsch is qualified to comment on both sides of the law. He is critical of police who rely too heavily on confessions instead of good detective work, of judges who exhibit prejudice or incompetence, of prosecutors who push the "he said/she said" cases which defendants with modest resources often lose, and of a system that frees criminal defendants who bring overwhelming legal power to bear. Bertsch illustrates his latter point with the William Kennedy Smith rape case in which a competent Florida prosecutor was outclassed by a top-gun defense team, and later maligned in the media for her efforts. Had the author written his book a scant 48 months later, he would have many more examples to choose, including the Simpson murder case and the first murder trial of the Mendendez brothers.

### Lawyer's Working Definition of Jury

The author reserves his severest criticism for the jury system, which he has long sought to reform. He begins with two definitions of a fair jury: (1) The common-law ideal of an impartial, indifferent, competent citizen panel which renders a truthful verdict based on the evidence; and (2) the lawyer's definition of "a group of people who vote for my client."

Needless to say, real juries too often

fulfill the latter, not the former, definition. Although the purpose of voir dire and the peremptory challenge is to filter jurors for qualifications such as age, residency, language proficiency, basic competence and absence of felony convictions, and to screen obvious prejudices, prosecutors and trial lawyers operating under the adversarial "ethic" parlay these guidelines into bloody weapons to serve their clients.

### Voir dire: A relative newcomer

Against the backdrop of Anglo-Saxon legal history, the notion of voir dire is new. Introduced in the U.S. approximately 150 years ago, it is not practiced in England or Canada, and is certainly not the historical norm, as the author reminds the reader. Indeed, Bertsch believes the practice is antithetical to democratic principles: It invades the privacy of citizens, wrongly presumes they are prejudiced, and subjects them to unreasonable and demeaning inquiries. Another disadvantage that the author does not develop is the enormous cost of voir dire in terms of court time and legal expenses.

According to the author, criminal and plaintiff attorneys have historically preferred similar jurors: Occupationally, they like waiters, bartenders, entertainers and social scientists; demographically they prefer women and Democrats; ethnically, they favor French, Italian, Irish, Jewish, black, and Spanish-speaking jurors. Conversely, prosecutors and defense attorneys prefer farmers, bankers, engineers, insurance employees and male Republicans as well as Germans, Russians, English and Scandinavian jurors. Teachers and attorneys may be shunned by both sides.

To add insult to injury, jurors are dumped unceremoniously for nearly any reason at all, including height, sex or skin color, if an attorney feels that chemistry might affect the outcome. Further, lawyers may target individual jurors just to make examples out of them and intimidate other jurors into buying their perspectives. Although such tactics are le-

gally shunned (e.g., *Batson v. Kentucky*), they are apparently difficult to control from the bench. In reality, they are applied sporadically and inconsistently, and the results are not always reliable. Frequently, jurors catch on to the game, and manage to distort or camouflage their prejudices to remain on the jury.

### Menu for Reform

The reader should not conclude from the author's intense criticism that he is "anti-jury." To the contrary, Bertsch is an articulate advocate of the jury system as a guarantor against state totalitarianism. He believes his proposals would help a dysfunctional system operate more effectively. Among his more interesting ideas:

- End voir dire as we know it by abolishing peremptory challenges, and permitting attorneys to dismiss jurors for cause only. Allow litigators to ask only a small number of straightforward questions to identify obvious bias or lack of objectivity. If a prejudicial response is received, then allow attorneys to follow up with more probative questions.

- Forbid attorneys from playing to jurors' emotions by making unfounded insinuations during voir dire and closing statements, e.g., that their client has been treated prejudicially. Also, the courts could adopt a "theater" instruction, permitting trial judges to remind jurors that

*See page 35 for  
this month's fax  
poll on jury  
reform.*

trial is theater, and that to do their job effectively, they must carefully screen all the information they receive (both verbal and nonverbal) for *adversarial* bias.

- Control "junk science" by restricting the use of expert witnesses or "hired guns." Although the author does not present a specific solution, one option would be to give trial judges and juries the option to call and question independent experts under certain circumstances.

- In civil cases involving complex technical concepts and terms of art too difficult for most lay juries to grasp, the courts could provide panels of judges and/or experts in lieu of juries.

- Prioritize access to the courts. According to the author, courts should hear first-time filers and claims against frequent defendants who use the system to conceal bad practices, then hear "frequent filers" and "compulsive suers" as scheduling permits.

- Implement stiffer penalties for per-

jury, including false allegations and testimony, especially in "he said/she said" cases based on credibility.

- Standardize tort damage awards. Under the author's regime, the legal value of human life would no longer vary wildly according to legal talent and subjective emotions, but made uniform by statute, similar to industrial insurance. He would limit "general" damages without evidence of intentional, reckless or grossly negligent conduct. Finally, he would control jury subjectivity by having the judge instruct them to simply *categorize* damages (e.g., none, minimal, average or extraordinary). Based on the jury's finding, the court would set standardized awards.

### Public Needs More Authentic Dialogue

Provoking dialogue is a critical first step towards reform. As Bertsch notes, the media too often fails to illuminate the courthouse, focusing instead on sensational cases without offering essential information on the legal and evidentiary concepts. As a result, Americans are not well-educated about the processes taking place in court, or the ways they are manipulated by counsel. The author cites famed (and recently jailed) trial lawyer F. Lee Bailey who once stated on *Nightline* that lawyers who whine about bad publicity may be "blowing smoke" for their clients. In reality, high-profile media stories often lead to acquittal. After complaining about biased press coverage, the same lawyers hit up juries with dramatic warnings of prejudice, hoping to persuade at least one panelist to prove his fairness and impartiality by voting to acquit. Potential jurors must understand that attorneys are trained as advocates, not mentors of truth.

### Conclusion

Steve Bertsch is more than an armchair critic. He has defined his practice by representing clients who he believes have been victimized by the system, and has advocated changes to civic groups and the Legislature for years. His book brings some much-needed and innovative proposals to the table of reform.



*Thomas F. Klein* clerks for King County Superior Court Judge Anthony Wartnik.

## UNIVERSITY OF WASHINGTON SCHOOL OF LAW TRIAL ADVOCACY PROGRAM INSTRUCTORS

The University of Washington School of Law invites applications for part-time faculty instructors to teach in the Trial Advocacy Program during Winter and Spring Quarters of 1995. Instructors are responsible for teaching small sections in which students perform simulated trial exercises. Instructors also participate as needed in demonstrations of trial techniques for the entire class. Applicants must have extensive trial experience and demonstrated teaching ability.

Please apply by sending a cover letter and resume no later than October 15, 1994, to Roland L. Hjorth, Associate Dean, School of Law JB-20, University of Washington, Seattle, WA 98195. The University of Washington is an affirmative action/equal opportunity employer.



## Law Offices & the Internet

by James Cameron

This article on how a small and a large firm each use the internet combines two separate interviews, the first with Gregory Siskind, an attorney in a six-member firm, and the second with Lew Rose, whose firm comprises more than 200 attorneys.

### “Can you give us a little background on your firm’s entry into the Internet? Were you primarily responsible for this?”

**Gregory Siskind:**

Siskind and Susser is an immigration firm with offices in Nashville, Memphis and Toronto. We have six attorneys handling nothing but immigration matters which makes us the largest immigration firm in the Southern U.S. The firm started with just myself (not even support staff) in April 1994 when I left a large Nashville firm to open a solo immigration practice. I had already been an active participant in an immigration-related newsgroup and knew that the Internet was a great way to make contact with potential clients. My practice is strictly federal in nature and rarely requires a personal appearance, so there is no reason I cannot assist clients anywhere in the U.S. or, for that matter, the world. I had heard about Mosaic and the World Wide Web and decided to develop a home page for my practice. I launched a modest home page in June 1994 and at the time I recall just a few other firms already having home pages — Venable, Heller, and maybe one or two more. After I started to publicize the site and added my monthly immigration law newsletter to the site, I started to notice a pick up in traffic. We also began distributing our newsletter via e-mail and offered a subscription form on our Web site. We estimate that more than 15,000 people now read the newsletter every month either at our Web site or via e-mail subscription.

**Lew Rose:**

Our first Internet venture began in August 1994. When faced with the onset of the baseball strike, I found myself with a bunch of free leisure time off from my fantasy baseball league pursuits. I bought a computer and a friend told me about Netcom. After fooling around with Lynx (a Unix text based web browser), I decided to set up a web page at Netcom. I taught myself HTML, with the help of a

few kind subscribers at Netcom, and set up the first iteration of the Advertising Law Internet Site. I decided not to tell the firm about it but used the firm’s logo at the site anyway. I was confident that the site would be viewed as an asset to the firm if I did it correctly. In October 1994, I decided that Netcom’s web service was not adequate and transferred the site to Web Communications. Using their tutorials and technical assistance, the site grew dramatically. I changed the whole site from a hypertext version of my bio to the current format, which provides lots of information at the top of the site, and buries the marketing information about me and the firm a few levels down. In February 1995, *PC Magazine* listed the site in its Top 100 Web sites issue. I used that article as a vehicle to inform the Firm about my efforts and was asked to make a presentation to the partnership at that time. The response was overwhelmingly enthusiastic and many lawyers at the Firm wanted to contribute to the effort. The firm gave our efforts a budget and the support of its marketing department.

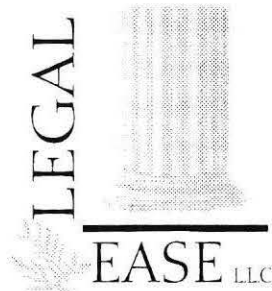
One of my partners, Bob Waters, de-

veloped the Telemedicine Law Home Page around that time. His efforts were also enthusiastically received by the medical community and the Firm. We decided to hire a professional web designer at that time to give the site a uniform look and feel. We hired Net Creations ([www.netcreations.com](http://www.netcreations.com)) for this effort and they did a terrific job for us. Since then, we have continued to expand the Firm’s commitment to the WWW. We have added sites on intellectual property piracy, the new telecommunications bill, qui tam law, and more are on the way.

### “What general results have you achieved through your Website and other Internet marketing activity?”

**Gregory Siskind:**

We started to schedule consultations via telephone with people who found me on the Internet, and many of those consultations led to retainers. Now we get more than half of our business from the Internet and it is the main reason we have grown so quickly. Even with competition from



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other immigration firms, our traffic continues to grow and many of our Internet clients have sent us referral cases.

**Lew Rose:**

Arent Fox is committed to using this media and staying at the forefront of it. We are currently exploring the use of several new technologies at our site, which we hope to unveil soon. We have already established the InfoNet, a Web bulletin board where surfers can ask lawyers questions about the topics covered by the site and get an answer for free. We plan to upload about 6 more sites this year.

**"Is the fact that you 'specialize' in immigration law a factor here?"**

**Gregory Siskind**

Yes... and no. At the beginning, being an immigration lawyer was the most important issue. The number of people on the Internet several years ago was not nearly as large as it is now. Developing a local clientele on the Internet was not realistic when I got started. But now, the number of Internet users increased dramatically, and the Internet community has become much more diverse.

**"What are some of the chief advantages to a firm of being online?"**

**Gregory Siskind:**

Marketing on the Internet has clearly been a plus for us and could be for many other firms. The firm has the ability to provide much more detailed information about itself through this medium. Providing useful content on a page can help

position a lawyer as an expert in his or her field. Internet marketing can also be considerably less expensive. For instance, if you distribute your newsletter via the Internet, you have no printing or postal expenses. A firm can also constantly update its message on the Internet. With conventional marketing, updating marketing materials can be incredibly expensive. Of course there are a number of other advantages as well. Communicating via the Internet will change the way we practice law. Since most of my clients are out of town, I frequently use e-mail to keep in contact. We not only send simple messages via e-mail, we also use the attachment feature to quickly send drafts of documents, since clients can make changes directly and e-mail the document back to us. When digital signatures become accepted by the courts, it may not be necessary to even use the mail. We have also started to use Internet voice and video-conferencing as well. While these technologies are still emerging, don't be surprised if telephones go the way of postal mail. The Internet can be a useful tool for researching. Most federal resources are available on the Internet and state resources are becoming more and more plentiful. Most of the resources are free and search features are becoming more sophisticated. Finally, the Internet will become a more useful tool for networking branch offices and lawyers out of the office. We use a remote control program called Timbuktu which allows us to log into our server computer via the Internet. This is considerably less expen-

sive than directly dialing in to the server since there are no long distance charges to pay.

**Lew Rose**

I believe that e-mail, not the Web, is the killer application. The ability to communicate with clients, prospective clients, local counsel, and opposing counsel by e-mail is extremely helpful and quite efficient. Of course, you must be careful to answer your e-mail promptly. Many firms have set up web sites with e-mail links to their lawyers but the lawyers don't check their e-mail regularly. That is a big mistake.

**"What types of firms or practice areas do you believe will benefit the most?"**

**Gregory Siskind:**

Clearly, firms with national practices and sophisticated clientele are already seeing marketing benefits. But the advantages for most firms are so great that I think a firm would be foolish not to give serious consideration to getting online.


**"Many existing law firm Web sites are little more than electronic brochures, with little to differentiate one from the next. Do law firms understand how to make effective use of all of this new technology?"**

**Gregory Siskind:**

Most firms have not yet figured out how to effectively use the World Wide Web. In my new book, I have included a section where I list what I consider to be the best law firm home pages. I reviewed nearly 500 sites and had a great deal of difficulty coming up with just 20 sites to include. A strong web site should combine excellent, useful content, an attractive layout, provide lots of e-mail links and be technically sound (e.g. it should be designed to load quickly, all the links should work, etc.). Very few sites pass this test. Furthermore, most firms do not effectively publicize their Internet presence. A Web site is not like a print ad or a television spot where seeing the advertisement is often incidental to what the reader or viewer was really seeking. If no one knows your site is on the Internet, it will not be seen. I suspect that the firms that understand these fundamentals are already noticing a boost for their practices.

**Lew Rose**

Most do not. Most law firm sites are



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simply electronic yellow page ads. Such sites may draw a few visitors out of curiosity but will not, ultimately, be successful. Visitors to web sites like to interact with the site. That is why we put up the InfoNet and why we will be building on that in our next upgrade.

**“Is the development of a successful Internet presence a learning process, requiring experimentation and time?”**

**Gregory Siskind:**

Anyone who expects quick results with minimal efforts is not being realistic. We get as much business as we do because we devote hundreds of hours to the effort every year. Our site has evolved greatly as we have learned more and more about the medium and about our Internet clientele. A firm should view Internet marketing as a long-term endeavor.

**Lew Rose**

The most important tool is the log. You need to see what visitors are looking at, what they are avoiding, and how long they are staying at the site. With that information, you can decide what areas of the site to develop, and which to downsize. We try a lot of things. Not all of them work. But a tweak here and a tweak there and you may have something at the end. For example, we originally required visitors to have a password to post questions on the InfoNet. We discovered that such a requirement significantly discouraged use of that technology so we abandoned the password protection.

**“Do you anticipate more sophisticated use of the Internet by law firms in terms of expanded client services or marketing?”**

**Gregory Siskind:**

Of course. We are already seeing a maturing and as more and more firms have models for success, the effectiveness of the Internet will become much more noticeable.

**Lew Rose**

We are constantly checking new Web technologies to see if they might enhance our ability to service our clients. So far, the real opportunities to use that technology are few and far between because many clients are just now getting on the Web. That will change quickly, however, and we hope that our early presence on the web will continue to be an asset.

**“What are some of the elements of your strategy that have been the**

**most effective?”**

**Gregory Siskind:**

One of the keys to our success has been the fact that we effectively integrate a number of Internet tools. We are active in newsgroups and always post our Web address in our signatures. We provide e-mail links on our Web page and a subscription form for our e-mail list. We also have adapted our infrastructure to meet the needs of our Internet clients. Every person in our office has Internet access. We have a dedicated connection to the Internet so we can take advantage of Internet communication tools that require wider bandwidth. We treat e-mail like telephone calls and respond to inquiries quickly rather than letting mail pile up. And, most importantly, we put a lot of time into integrating the Internet into our practice.

**Lew Rose**

1. Building a site that is focused on content and which is constantly being updated with new information.
2. Making the site interactive.
3. Hiring a professional web designer.
4. Putting in a lot of personal time to ensure quality.
5. Carefully picking the lawyers who monitor the site to make sure that they respond to questions in a timely manner and understand the technology.

**“Any final comments?”**

**Gregory Siskind**

I'll be in Seattle in August to speak at a CLE program focused on offering client services through the World Wide Web and other electronic media. You can obtain additional information by calling (206) 783-4014. Also, I am just finishing up my new book, *The Lawyer's Guide to Marketing on the Internet*, which will be published by the American Bar Association. The book provides a comprehensive review of developing a marketing strategy for the Internet, setting up an effective home page, publicizing an Internet presence and avoiding pitfalls such as ethical violations.



**James Cameron** [jcam@internos.com; (206) 789-4831] provides consultation on the integration of Internet technology into the law firm and design and development of web sites for client-oriented services and marketing purposes.

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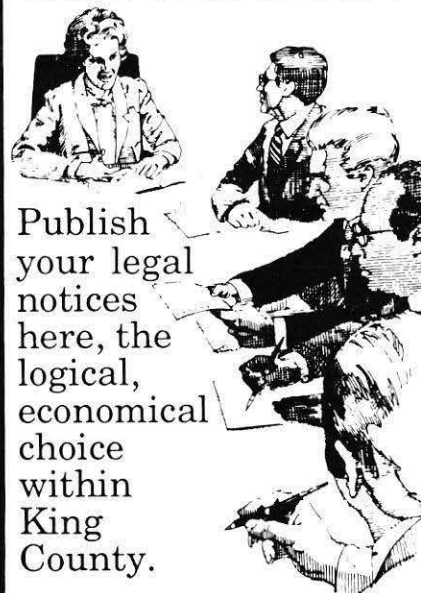
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## Who is Your Client?

by **Randy Beitel**

*WSBA Disciplinary Counsel*

Who is your client? If you pause before answering, you may be headed for trouble. As a lawyer, your primary duties are to your clients. These include the duty to represent your client competently and diligently, preserve the confidences and secrets of your client, and avoid conflicts with your client. All of this is impossible to do if you are not sure who the client is.

### **The Client is Not Necessarily the Person Who Pays Your Fee.**

Payment of, or an agreement to pay, a fee is neither a requisite of, nor a bright-line test for, an attorney-client relationship.<sup>1</sup> Lawyers are often paid for their services by persons or entities other than the client they represent. This does not, however, alter the lawyer's ethical duties to the client.

The rules in this area are straightforward. Rule of Professional Conduct ("RPC") 1.8(f) allows a lawyer to accept compensation from a person other than the client only if:

- (1) The client consents after consultation;
- (2) There is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and,
- (3) Information relating to representation of a client is protected as required by rule 1.6.

RPC 5.4(c) similarly provides that:

A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

The following situations involving third-party payment can frequently lead to confusion.

### **The Lawyer Hired by the Insurance Company.**

Consider the lawyer hired by an insur-

ance company to defend the insured against a tort claim under a reservation of rights agreement. Under the insurance contract the insurance company is paying for the defense. Does that mean that the insurance company has the right to call the shots? Not necessarily. The Washington Supreme Court has held that "In a reservation of rights defense, RPC 5.4(c) demands that counsel understand that he or she represents only the *insured*, not the company."<sup>2</sup> This includes providing full and ongoing disclosure to the insured concerning the action, disclosing to the insured all offers of settlement, and allowing the insured to make the ultimate choice regarding settlement.

### **The Fee-paying Parent.**

The common expectation of a parent who pays for their adult child's criminal representation or dissolution proceeding is that, at a minimum, the fee-paying parent should be kept advised of the status of the matter. However, RPC 1.8(f) precludes an attorney from sharing the confidences and secrets of a client with their fee-paying parent without the client's permission.<sup>3</sup> Disputes as to whether the client authorized the lawyer to share the client's confidences and secrets with the fee-paying parent are fertile ground for bar grievances. Thus, while RPC 1.8(f) only requires consent, not written consent, any lawyer entering into such an arrangement is well advised to have written consent from the client allowing the parent to pay the fee and stating explicitly whether the lawyer is authorized to share client confidences and secrets with the fee-paying parent.

### **The Lawyer Who "Does" the Closing.**

As Division One of the Court of Appeals has noted, "It is not an unusual practice in commercial transactions for an attorney for one of the parties to assume the escrow duties for both parties."<sup>4</sup> When a lawyer performs the duties of an escrow, who is the client? It is sometimes said that an escrow agent's

client is "the escrow." In Washington the escrow agent has a duty to act strictly in accordance with the escrow agreement.<sup>5</sup> The Washington Supreme Court has held that when an attorney acts as escrow agent, the attorney must also meet the ethical standards of the legal profession.<sup>6</sup> This generally means that the attorney escrow agent must refrain from giving legal advice to the parties to the transaction, and can only suggest that the parties consult their own counsel. The exception is where the attorney escrow agent also represents one of the parties to the transaction; however, in this instance that role must be fully disclosed and consented to by the unrepresented party. The best advice is that given by Division One of the Court of Appeals:

[T]he effect of language in closing documents may be subject to more than one interpretation. This is why *Bowers v. Transamerica Title Insurance* [v. *Transamerica Title Insurance*] requires an [escrow] agent to advise the parties that they may seek independent legal advice rather than requiring an escrow agent to dispense such advice himself or herself.<sup>7</sup>

The difficulty is that most unsophisticated parties do not understand why more than one lawyer is needed — they suspect lawyers are just making more work for themselves. A lawyer escrow agent who succumbs to the pressure to answer legal questions at closing may find him or herself in an ethical violation.

### **Who is the Client in a Probate?**

In probating an estate, an attorney-client relationship exists between the attorney and the personal representative of the estate.<sup>8</sup> But what about the major heirs and beneficiaries who are not the personal representative? Are they clients as well? Does the attorney owe them a duty? The Washington Supreme Court has held that, as a matter of malpractice liability, "a duty is not owed from an attorney hired by the personal representa-



tive of an estate to the estate or to the estate beneficiaries."<sup>9</sup> But what ethical duty does an attorney have to the major heirs and beneficiaries, many of whom probably think that the attorney is their lawyer? Rule of Professional Conduct 4.3 requires that:

When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

An attorney may find it useful to write to the heirs and beneficiaries, and explain that under Washington law he or she represents only the personal representative; thus, the attorney cannot respond to individual questions, and any inquiries should be directed to the personal representative. The attorney will, of course, need to prepare the personal representative client to deal with such calls.<sup>10</sup>

<sup>1</sup> *Bohn v. Cody*, 119 Wn.2d 357, 363, 832 P.2d 71 (1992). See discussion at Jean Kelley McElroy, "When Does a Client Become a Client?" *Washington State Bar News*, March, 1996, p. 42.

<sup>2</sup> *Tank v. State Farm*, 105 Wn.2d 381, 388, 715 P.2d 1133 (1986) (emphasis in original).

<sup>3</sup> You must keep both the confidences and the secrets of the client. The Rules of Professional Conduct define "confidences" as "information protected by the attorney-client privilege under applicable law." "Secret," however, has a much broader scope and is defined as "other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client."

<sup>4</sup> *Hulbert v. Gordon*, 64 Wn.2d 386, 395, 824 P.2d 1238 (fn. 6)(1992).

<sup>5</sup> *National Bank v. Equity Investors*, 81 Wn.2d 886, 910, 506 P.2d 20 (1973).

<sup>6</sup> *Bowers v. Transamerica Title Ins.*, 100 Wn.2d 581, 588, 675 P.2d 193 (1983).

<sup>7</sup> *Hulbert v. Gordon*, *supra* at 398.

<sup>8</sup> *Estate of Larson*, 103 Wn.2d 517, 520-21, 694 P.2d 1051 (1985).

<sup>9</sup> *Trask v. Butler*, 123 Wn.2d 835, 845, 872 P.2d 1080 (1994). The Court at 842-43 adopted a new six-part balancing test for claims by non-clients.

<sup>10</sup>For a fuller discussion of "client identity" problems, see Chapter 3 of G. Hazard, *Ethics in the Practice of Law* (1978).

## YAKIMA COUNTY REPORT

by DEBORAH S. MALANE

*News From Abroad . . .*

(Or, do you solemnly promise to abjure the glamour of evil ???)

Your gentle editor was recently asked that question at her nephew's baptism while acting as godmother (a role for which she assumed she had a great affinity). As the priest asked the question of her, she wistfully thought of the things she would have to give up . . . high heels . . . short skirts . . . red lipstick . . . and . . . and LAS VEGAS!!! It appears that some members of the Bar have not made that same solemn, selfless promise as your gentle editor . . .

There has been a rash of Las Vegas sightings in the last few months, and all of the tales that have reached the ears of your gentle editor have the whiff of brimstone about the. Our sources tell us that those three caballeros, **Tony Menke**, **Rocky Jackson** and **Scott Beyer** recently had the annual firm retreat of Menke, Jackson & Beyer in Las Vegas. No wives were allowed to attend. Rocky allegedly won large sums of money gambling, and an inordinate amount of firm time, energy and money was spent plotting to get backstage after the **Sheena Easton** concert they attended. They, one and all, assured my sources that the *entire* trip was *strictly* business, but were unable to present a coherent consensus on just exactly was accomplished in the way of business planning. As if their fall from grace were not enough of a cautionary example, **Barry Woodard** of Bjur & Woodard and **Joe Brusic** of the prosecutor's office also went to Las Vegas, a down there they met **Doug Haynes** (formerly of the prosecutor's office but now, or at least he was before his fall from grace, with a law firm in Louisville, Kentucky).

Not to be outdone in the lemming-like migration to moral depravity, **Kelly Olwell** of the prosecutor's office and **Jennifer Supke** of the department of assigned counsel just *happened* to be in Law Vegas that very same weekend. Again, no spouses or significant others were allowed to attend, and your gentle editor shudders at the thoughts that inevitably come to mind (at least to a mind like hers), despite the assurances of all in-

olved that the coincidence was entirely credible, and that they were just having good clean fun in a strange town where no one knows them and anything goes.

The only redeeming news concerning these junkets it that, showing the wisdom and maturity that come with advanced age, **Morrie Shore** of Velikanje, Moore & Sore went to Lake Tahoe during this same general period, but did take his wife with him.

Congratulations to **Robert Inouye** on his appointment as part-time superior court commissioner. The *Yakima Herald Republic* reported that Bob's salary would be \$3,440 per *week*, which seemed a little generous to your gentle editor for 20 hours of work, it *is* hard to find good help. I'm sure that Bob will prove to worth every penny.

This just in: **J. Adam Moore** was elected a Fellow of the American College of Trial Lawyers at its spring meeting in Tucson, Arizona.

## KLICKITAT COUNTY

**Lawrence Watters** spent three months in Ireland on a fellowship in environmental law. He is counsel to the Columbia River Gorge Commission and teaches in the environmental law program at Northwestern School of Law.

## SKAGIT COUNTY

Sedro-Woolley attorney and municipal court judge **Brian Stiles** of Stiles & Stiles Inc. has been appointed as new legal counsel for Public Hospital District #304. The district's long-time legal counsel, **Hugh Ridgway**, passed away early this year.

## IN MEMORIAM

**James Edward Beaver**

University of Puget Sound School of Law founder James Edward Beaver died in Tacoma at age 65. He was on the law faculty of the UW and Indiana University before helping start the UPS law school in 1972; he remained on the faculty there after its sale to Seattle University in 1994. Active in Republican politics, he was



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known for his zeal for academic freedom and skepticism of authority. He was a member of the federal and several state bars. He is survived by his son, James; daughters, Anne and Melany; a brother, William; and sisters, Mary E. Haucke and Loretta Anderson. Remembrances can be sent to the James E. Beaver Memorial Scholarship Fund at Seattle University School of Law, 950 Broadway, Tacoma WA 98402.

**Joseph Nappi, Sr.**

Former Gonzaga University School of Law professor Joseph Nappi, Sr. died January 28. The youngest of eight children from a Syracuse, New York, family, he came west during the depression to Newport with the Civilian Conservation Corps. During an intramural football game, a scout from Gonzaga spotted him, and he received a football scholarship playing quarterback. He then attended Gonzaga School of Law and during the Second World War was commissioned in the Navy, learned fluent Japanese and went to Japan as a legal intern to help defend Japanese war criminals. He finished at Gonzaga in 1948 and, in 1949, became adjunct professor there. He became a full-time professor and taught there for 45 years. He received numerous awards, including the Gonzaga Law Medal. He was active in the Catholic church, the community and the Spokane County Bar Association, serving as its president in the late 1960s. He is survived by his wife Laura; sons Joseph, Jr. and Robert; daughters Lucia, Carol Lynn, Janice and Rebecca; and many grandchildren and great-grandchildren. Memorials can be made to the Alzheimer's Association, Eastern Washington Chapter, 5125 N. Market, Spokane, WA 99207.

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is Of Counsel to the firm

effective March 11, 1996

Mr. Trachtenberg will continue to practice in the areas of  
complex and multi-party construction disputes and  
resolution as well as handling surety and fidelity matters

Groff & Murphy  
1191 Second Avenue, Suite 1900  
Seattle, Washington 98101  
(206) 628-9500  
(206) 628-9506 fax  
trachtenberg.gmlaw@mcimail.com

SEBRIS, BUSTO & MARSHALL, P.S.

is pleased to announce, with both great pride and sadness, that our partner

CANDY S. MARSHALL

has joined  
WALKER RICHER QUINN, INC.  
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Director of Human Resources.

We wish her well.  
Our firm will now be known as

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Telephone (206) 454-4233  
Fax (206) 453-9005

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AND  
AS ASSOCIATES WITH THE FIRM

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JON W. MACLEOD

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The Opening of His Law Offices*

*Effective May 1, 1996*

*Mr. MacLeod formerly was a partner  
with Foster Pepper & Shefelman.  
He will continue his practice emphasizing  
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counseling and litigation.*

Jon W. MacLeod  
1420 Fifth Avenue  
Suite 3510  
Seattle, Washington 98101  
206-689-5626  
206-689-5649 fax

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A LAW PARTNERSHIP

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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.

Partners

Thomas N. Bucknell  
Jerry N. Stehlik  
Edwin K. Sato

Of Counsel

James W. Stubner, Jr.  
Mark Roth

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(206) 587-0277 — fax



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 and  
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THE FIRM WILL EMPHASIZE TAX, BUSINESS AND ESTATE PLANNING

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has become President  
 of the firm

January, 1996

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Fax (305) 381-9982

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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.

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

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**Douglass A. North**

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**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 dis-  
course 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  
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**Leland G. Ripley**  
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disciplinary grievances, as well as  
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### DSHS Liability

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(503) 229-0360 (fax)

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### Asher B. Wilson

Attorney - CPA  
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awilson@eskimo.com

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### Divorce Representation for Attorneys Family Law

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## CLASSIFIEDS

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

**1996, perfect condition: RCWA** \$1,200; WA Digest 2nd \$1,200; WA Reports 2nd and WA Appellate Reports \$2,250; WA Shepard's \$500. Contact Joe Holeman (206) 627-7212.

## SPACE AVAILABLE/ WANTED

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## POSITION AVAILABLE

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

**McNaul Ebel Nawrot Helgren & Vance P.L.L.C.** is soliciting applicants with a minimum of three years' experience for positions in its real estate and business practice areas. Excellent academic record and drafting skills are required. Please reply to Hiring Administrator, 600 University Street, Suite 2700, Seattle, WA 98101-3143.

**Litigation Attorney — In House.** North Pacific Insurance, one of the Northwest's leading property/casualty companies, is seeking a litigation attorney for its Seattle location. Excellent salary and benefits package. Requires Washington State Bar admission, five years' tort and insurance litigation experience and effective verbal/written communication skills. Please send or fax résumé to North Pacific Insurance, Attention: Human Resources, #26, 1675 SW Marlow Avenue, Portland, OR, 97225. Fax (503) 520-3620. Equal opportunity employer. Committed to diversity.

**Small, aggressive and successful** Olympia firm concentrating on family law is seeking an associate with a minimum of one year's litigation experience. Please send résumé, law school transcript and a short writing sample to *Bar News* Box 494.

**Washington and Oregon.** Seattle, WA and Portland, OR: tax health care consultant. Big Six accounting firm seeking a tax

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**Family Law Associate.** Opportunity with growing Seattle firm for attorney with at least three years' experience in all facets of family law. Must be confident and have excellent people skills. Compensation DOE. Send résumé to: Goldberg, Fancher & Jones P.L.L.C., 221 First Avenue West, #105, Seattle, WA, 98119. Attention: Rick Jones.

## WILL SEARCH

**George Kenneth Little**, resided in Snohomish and Grays Harbor counties. Anyone having knowledge of any will executed after May 14, 1986, please contact attorney Robert Casteel at (206) 744-0411.

**Walter Cado:** Children of Walter Cado (died 2/29/96) seeking lawyer who may have executed legal document for our dad. Call (409) 296-4311 or (614) 252-6625. Fax (614) 258-3188. Expediency is appreciated.

## SERVICES

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**1996 Olympic Games housing.** Beautiful historic home in Madison, Georgia. Close to Athens and Conyers, easy access to Atlanta and Macon. Additional information: (206) 952-8089, fax (206) 874-0160, or email: edj@cerfnet.com.



Retired Judge Dave Soukup from Squamish carries the Olympic torch on one of its legs through Washington State on May 7. Soukup, who founded CASA (Court Appointed Special Advocate) in 1977, was chosen as a torch-bearer by the United Way, which chose "community heroes" for the honor.



## Spokane's Clarke Donates All Fees from South Carolina Murder Case

The Spokane federal defender who served as co-counsel in the Susan Smith murder trial in South Carolina has donated her legal fees of \$83,000 to the South Carolina Post-Conviction Defender Organization. Judy Clarke, chief federal defender in Spokane, was a court-appointed attorney for Smith, who was convicted last summer and sentenced to life in prison for killing her two sons by drowning them in her car. Clarke logged more than 1,000 hours on the case. She also took unpaid leave from her \$115,700-a-year job and paid her own travel expenses between South Carolina and Washington. Her donation will be used to pay for one-year fellowships for recent law school graduates to work on death penalty cases. She is the incoming president of the National Association of Criminal Defense Lawyers. ♦

## Since You Asked

**Q:** If WSBA money is so tight, why are my bar dues used to buy color covers for *Bar News*?

**A:** They aren't. West Publishing pays for a color ad on the back cover of the magazine, which allows us to use color on the front cover at no additional cost. In the printing business, the machines are designed so that color can be used on part or all of each "form" as it goes through the press. For the inside of the *Bar News*, we use a form with eight pages on each side. The cover form only has two pages on each side. So, if an advertiser buys color for its ad, we have the option of using that same color on any other pages on the same side of that form. Thanks to West Publishing paying for color on its back cover ad since January 1995, we have been able to have color covers for a year and a half, at no additional cost to us.

"Since You Asked" is a forum for members to ask questions of the Board of Governors. Send your questions to: WSBA, Board of Governors, 500 Westin Bldg., Seattle, WA 98121-2599.

## New Director of Communications Needed

WSBA's Director of Communications, Mary Elizabeth Stritmatter, has resigned to pursue other career options. Stritmatter has served as director for more than three years. Anyone interested in applying for the position should send a résumé to WSBA or contact Dodie Prescott, WSBA Human Resources Manager, at (206) 727-8245 for required qualifications. ♦

## International Maritime Law Conference Docks in Seattle

Presented by the Pacific Northwest Admiralty Law Institute and the Washington State Bar Association Continuing Legal Education Committee, the International Maritime Law Conference will be held June 20-21 at the Sheraton Hotel in Seattle. Alternating Pacific Northwest cities every two years, Seattle hosted the conference in 1988. Over 200 registrants attended the conference in Vancouver last year, which included maritime attorneys and maritime industry professionals. Registrants from across the U.S., Canada and abroad are anticipated to attend this year.

The conference includes distinguished faculty from the U.S. and Canada; highlights

on criminalization of Maritime Law; trends in Personal Injury Law; and developments in Cargo Law. Guest speakers will be the Honorable John C. Coughenour from the U.S. District Court, Western District of WA, and Thomas M. Russo of Chalos & Brown in New York.

Tuition fee includes course materials, refreshments and lunch on both days; complimentary hors d'oeuvres and dinner Friday evening. The program is approved by the WSBA CLE Committee for 12.25 CLE credits.

Call the WSBA CLE department at (206) 727-8202 for details. (Note: The Pacific Northwest Admiralty Law Institute is comprised of volunteer maritime lawyers.) ♦

# Congratulations to the 322 spring 1996 WSBA Admittees!

- Agee**, Sonia M., Bellevue, WA  
**Ahmed**, Nannette, Seattle, WA  
**Aizer**, Sharon D., Spokane, WA  
**Allan**, Scott B., Issaquah, WA  
**Amaro**, Joe Anthony, Tacoma, WA  
**Andersen**, Steven, Gig Harbor, WA  
**Anderson**, Jeannine R., Portland, OR  
**Anderson**, Mark Barshfield, Tacoma, WA  
**Angeletti**, Cheryl La Showon, Alhambra, CA  
**Angius**, Christopher W., Portland, OR  
**Ariail**, Shari B., Federal Way, WA  
**Atofau**, Elizabeth, Tacoma, WA  
**Atwal**, Satwant K., Tacoma, WA  
**Ayers**, Peter John, Beaverton, OR  
**Balfour**, Edward A., Edmonds, WA  
**Ballard**, Megan J., Seattle, WA  
**Barboza**, Ursula J., Seattle, WA  
**Barker**, Douglas John, Seattle, WA  
**Barlay**, Kevin Matthew, Kirkland, WA  
**Barlow**, Brian D., Moses Lake, WA  
**Bassis**, Andrew Michael, Santa Monica, CA  
**Bath**, Lynne Diane, Bainbridge Island, WA  
**Baxley**, Stephen R., Bellingham, WA  
**Beckstrand**, Scott V., Las Vegas, NV  
**Bell**, Gregory Allan, Seattle, WA  
**Black**, Erin Noelle Douglass, Olympia, WA  
**Blank**, Eric Perkins, Golden, CO  
**Blank**, Maura Scott, Golden, CO  
**Bobzien**, Andrew J., Omak, WA  
**Boeshaar**, Robert V., Renton, WA  
**Bonin**, John Robert, Wenatchee, WA  
**Bortz**, Michael W., Portland, OR  
**Bozkaya**, Terri Denise, Anchorage, AK  
**Brennan**, Philip I., JR., Seattle, WA  
**Briggs**, David William, Seattle, WA  
**Brion**, Jody Patrick, Anchorage, AK  
**Burgess**, Jon Paul, Bismarck, ND  
**Burns**, Dennis Patrick, Tacoma, WA  
**Cahill**, Michael B., Bainbridge Island, WA  
**Caldwell**, Brent T., Seattle, WA  
**Carlson**, Charles D., Portland, OR  
**Carlson**, David A., Portland, OR  
**Carmena**, Julie Christine, Everett, WA  
**Cathey**, Michael Patrick, Seattle, WA  
**Certa**, Pellegrino L., Seattle, WA  
**Chang**, Vivien Kitman Tse, Irvine, CA  
**Chasan**, Daniel Jack, Vashon, WA  
**Chavez**, Mary Patricia, Spokane, WA  
**Chenoweth**, Brian David, Portland, OR  
**Choi**, Young Wook, Renton, WA  
**Christensen**, Neal B., Issaquah, WA  
**Cifrese**, Scott Christopher, Idaho Falls, ID  
**Ciszek**, David Edward, Redmond, WA  
**Clarke**, Linda Catherine, Normandy Park, WA  
**Cleek**, William Todd, Portland, OR  
**Cochran**, Marsh Gordon, Spokane, WA  
**Coffelt**, Wayne Paul, Bloomington, IL  
**Cogswell**, Carolyn H., Hood River, OR  
**Cook**, Justin J., Seattle, WA  
**Cowan**, Mark Andrew, Tacoma, WA  
**Cressey**, Michael Forest, San Diego, CA  
**Criswell**, Richard W., Montesano, WA  
**Davis**, Michael Joslin, Gig Harbor, WA  
**D'Costa**, Maria Isobel, Kirkland, WA  
**Deal**, Michael David, Seattle, WA  
**Defoe**, Steven L., Selah, WA  
**De Meo**, Antonia M., Portland, OR  
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**Denkenberger**, John David, Tacoma, WA  
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**Digalis**, Theresa Carol, Seattle, WA  
**Dikes**, Patti L., San Diego, CA  
**Dirksen**, Thomas A., Kirkland, WA  
**Dopps**, Elaina M., Seattle, WA  
**Droke**, Michael William, San Jose, CA  
**Dyck**, Wendell Raymond, Seattle, WA  
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**Eck**, Amber Lee, San Diego, CA  
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**Elliott**, Kris, Hermosa Beach, CA  
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**Esposito**, Lisa M., Spokane, WA  
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**Fields**, George Andrew, Seattle, WA  
**Finn**, Frederick Wells, Olympia, WA  
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**Flynn**, Cynthia G., Seattle, WA  
**Flynn**, Gavin, Portland, OR  
**Foley**, Joan C., Seattle, WA  
**Frey**, Mary Carol Logan, Pacific Grove, CA  
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**Galloway**, John Scott, Seattle, WA  
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**Geary**, A. Reeve, Wenatchee, WA  
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**Gilpin**, Glenn, Seattle, WA  
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**Hwang**, Audrey, Seattle, WA  
**Ide**, Matthew James, Richmond, VA  
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**Torres**, Rosemary, Sedro Woolley, WA  
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**Wong**, Vicky, St. Louis, MO  
**Wulff**, Yolanka Audrey Emma, Bainbridge Island, WA  
**Yamamoto**, Kumi, Seattle, WA  
**Yelnosky-Smith**, Maryann, Portland, OR  
**Youngs**, Cecilia Yoakum, Mercer Island, WA  
**Yunker**, Noura Samira Elise, Seattle, WA  
**Zafiris**, Gregory A., Portland, OR  
**Ziobro**, John Stephen, Kennewick, WA

## Kitsap County Celebrates Law Week

The Kitsap County Bar Association celebrated Law Day in a big way last month with an entire week of activities, and concluding with a special public ceremony attended by all Kitsap County Superior and District Court judges.

Washington Supreme Court Chief Justice Barbara Durham gave the keynote speech.

Awards went to attorneys John McGilliard and Kim MacDonald for providing free legal services to low-income people

on family law matters. Non-lawyers receiving awards were Kimberly Cox, for teaching clinics on self-help divorces, and Joy Peet, Bremerton manager of Godfather's Pizza, for furnishing free pizzas to volunteers throughout the year. Jerry Fallon received a special award for service to clients who have difficulty reading and writing.

The most prestigious award, the Liberty Bell, is given annually in recognition of outstanding community and public service which has strengthened our system of freedom under the law. The award went to Sam Bossert, a teacher at Bremerton High School.

Bossert initiated the Mentor program, which allows hundreds of students to tour the Kitsap County Sheriff's office, jail, attend trials and spend lunches with Superior Court Judges. He invites attorneys to come in and talk to his classes, as well as police chiefs, deputy sheriffs and judges. Bossert also leads a mock trial program at the school, in which local students participate as judges, prosecutors and defense attorneys. ♦

## 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.

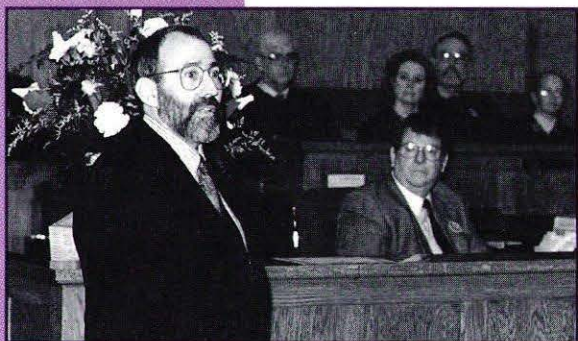
Applications for 1997-98 President of the WSBA will be accepted through July 15, 1996, and should be limited to a current résumé, a concise application letter, and selected references. Endorsement letters received by July 31, 1996, will be considered by the Search Committee and the Board of Governors. 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.

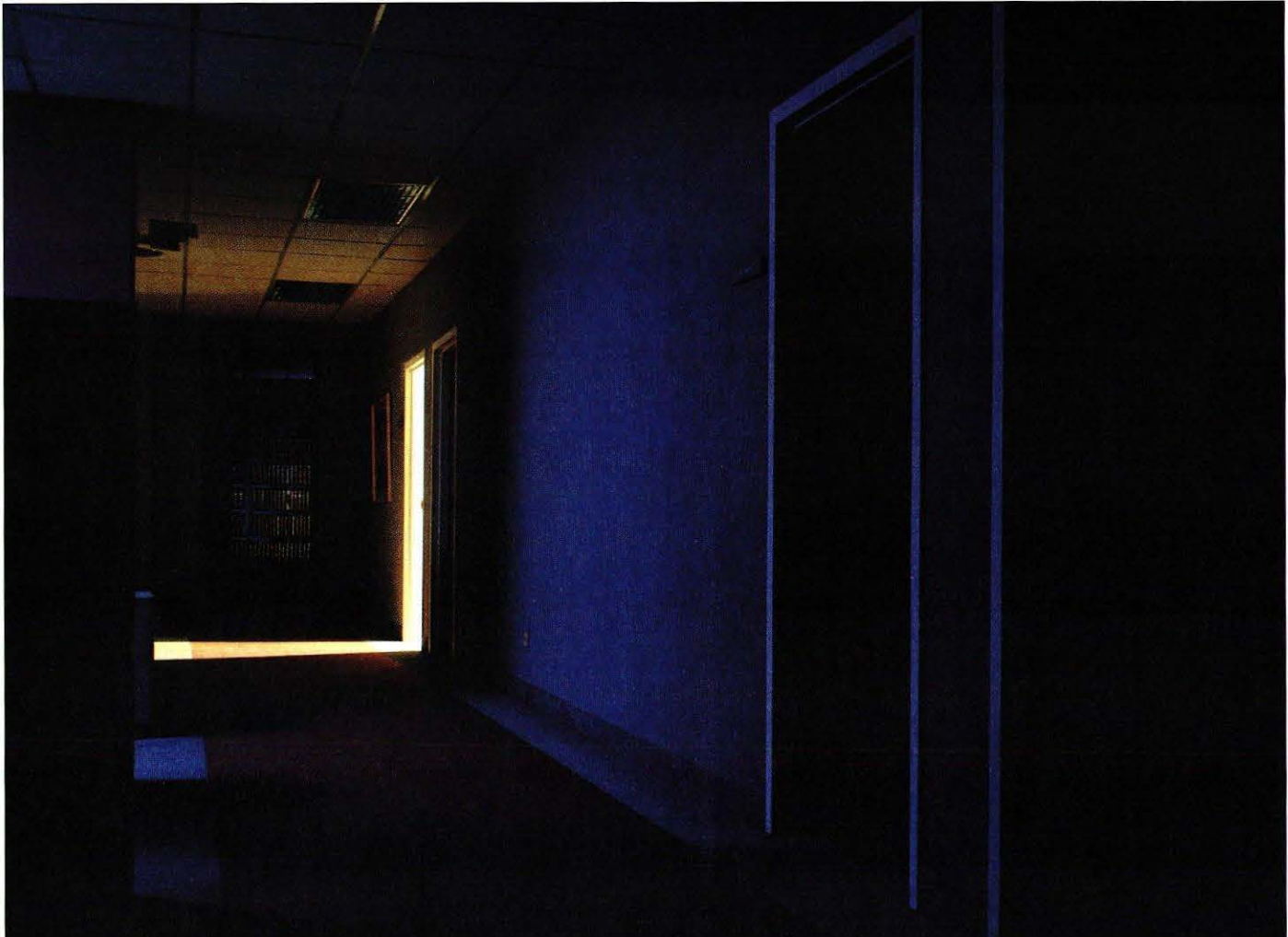
While prior experience on WSBA's Board of Governors may be helpful, there is no requirement to have been a member of the Board of Governors or to have had previous experience in Bar activities. The candidate must be willing to devote a substantial number of hours to WSBA affairs and be capable of being 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. ♦



*Liberty Bell Award winner Sam Bossert from Bremerton High School speaks to the Kitsap Law Day ceremony participants, including Washington Supreme Court Chief Justice Barbara Durham.*

**Correction:** In the May issue of *FYI*, the biographical sketches for WSBA Board of Governor candidates contained one minor error — Donald Powell, candidate in the Sixth District, should have been listed as a founding officer and trustee of the Tacoma Pierce County Bar Association Foundation. The TPCBA itself was founded about 80 years ago, just a bit before Mr. Powell began his legal career.



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