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News**

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Vol. 51 No. 1, January 1997

The official publication of the Washington State Bar

Legislative Preview

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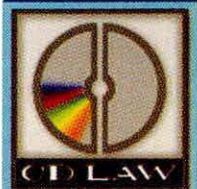
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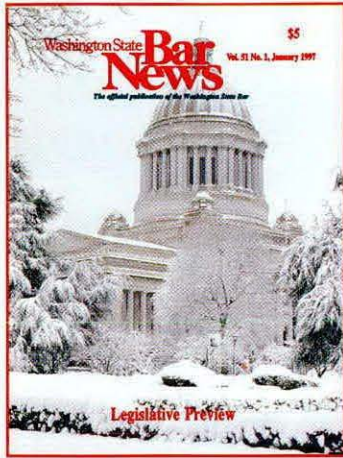
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Washington State Bar News

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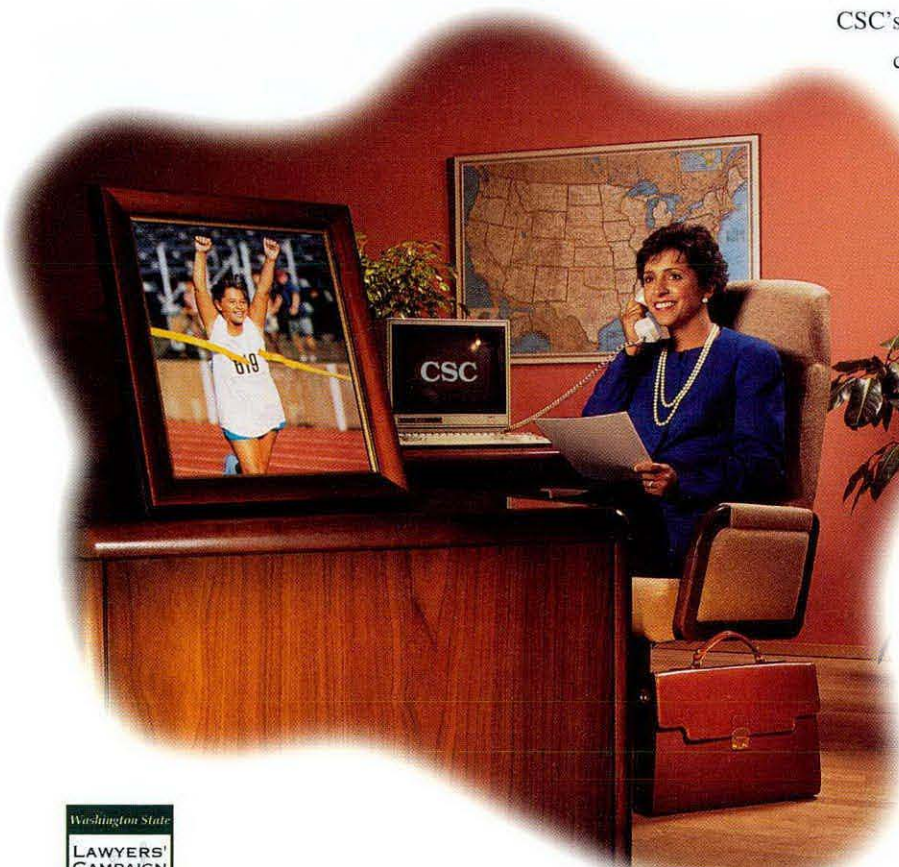
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In re: RPC 8.4g and h

Editor:

I hope the *Bar News* will publish a balanced discussion of the proposed changes to RPC 8.4 which seek to improve the existing rule against discrimination in the legal profession.

These rule changes present important issues and your readers deserve a fair discussion of them and the reasons why they have been endorsed by the Washington State Bar Association (and its Rules of Professional Responsibility Committee, and Opportunities for Minorities in the Legal Profession Committee), the Attorney General of the State of Washington, the King County Bar Association, the Asian Bar Association of Washington, the Lesbian and Gay Legal Society of Puget Sound, and Washington Women Lawyers.

Over the past year, the *Bar News* has been noticeably one-sided and negative in its news and editorial coverage of efforts by bar organizations and individuals to eliminate discrimination. The December issue printed two particularly inflammatory letters expressing such views.

While I disagree with those views, I have no quarrel with the decision to publish them. (I recognize that other people think the *Bar News* should decline to print letters that are more hateful than thoughtful.) Obviously such viewpoints exist or else there would be no need for the bars efforts to eliminate bigotry within the profession.

My objection is to the refusal to print the other side of the issue. The outgoing editor has refused repeated requests to publish any articles about the work of the King County Bar Association's Task Force on Lesbian and Gay Issues in the Legal Profession ("Task Force").

Instead, in response to one of the December letters questioning the existence of discrimination in the profession, the outgoing editor said that the findings and recommendations of the Task Force were not objective and should be disregarded because the Task Force was "2/3 gay or lesbian and the balance presumably sympathetic to the agenda of same."

The Task Force Report, released in September 1995, was the culmination of nearly two years' work by a diverse group of thoughtful and respected judges and lawyers.

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



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More than 1,000 copies of the Task Force Report were distributed throughout Washington to judges, bar leaders, managing partners, and hundreds of other interested people. The release of the Task Force Report was covered by nearly every major newspaper in the state and by several local radio and TV stations. Even the *Portland Oregonian* ran a big article about it in its Sunday paper.

The Report received widespread and near-universal acclaim. The WSBA Board of Governors unanimously commended the members of the Task Force and encouraged all judges and lawyers to review the Report.

Despite widespread coverage elsewhere, the work of the Task Force has not been covered in the *Bar News*. The editor's rejection of such stories leaves *Bar News* readers with no information about the significance and impact of the Task Force Report, nor the ability to judge the validity (and objectivity) of its findings of discrimination. To decline to discuss the work of the Task Force is questionable journalism; to then attack it is grossly unfair.

The shift in editorial emphasis by the *Bar News* over the past year reminded me of talk radio shows. Few people tune them in expecting to hear a thoughtful exchange of differing views. The typical show's host routinely ridicules viewpoints

and callers who do not agree with his perspective.

Because diatribe draws more listeners than dialogue, talk shows tend to be outrageous and provocative. Listeners seeking something with more intellectual substance or who do not agree with the host's views can always tune out and find another station.

The *Bar News*, however, is the only official publication of the Washington State Bar Association. As such, it should return to the days when it provided a forum for the thoughtful exchange of differing views — not just those favored by whoever happens to be the current editor.

SCOTT A. SMITH
Seattle

Editor:

I oppose the proposed RPC 8.4(g) and (h), which would censor speech by lawyers by making it a bar offense to "engage in conduct . . . manifesting prejudice on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual 'orientation' or marital status." Speech on any of these topics makes an attorney vulnerable to a bar complaint and bar punishment.

The purpose of freedom of speech is to encourage animated debate of all ideas so that the public can evaluate them and

accept what they like. Unhampered speech allows those who disagree to exchange and incorporate ideas. Radical ideas often are accepted by the mainstream. The process encourages peaceful change. If debate is censored, there is no exchange of ideas, and no compromise.

If there is ever to be harmony among races, religious groups, sexual groups, they will have to talk. Talk means debate. Debate often brings out strong feelings, and sometimes antagonisms vanish. With this rule, there can be no honest debate, no expression of disagreement. Prejudices will fester. The rule makes it illegal to criticize gays. Those who are hostile to gays will stay that way.

This rule inhibits lawyers even beyond its broad letter. Since most lawyers do not want to be punished by the bar, they will avoid comment on any of these many subjects. The rule is extremely broad because it applies to what a reasonable person would interpret as manifesting prejudice. It means no one can comment on sex and gender issues, certainly a major topic, on "creed," no matter how bizarre the creed, or how much you dislike it, on disability, even if you are in a personal injury case, or on "marital status." You can't say you think it's wrong to have children without being married, and you can't say marriage is an oppressive institution.

This rule will intimidate lawyers who are defending claims brought by members of groups described in the rule, because they will fear that what they say in defense of their client will lead to a bar complaint. Perhaps this is intentional. The rule will particularly intimidate lawyers who are defending lawsuits brought by members of groups who are suing as members of these groups. Class actions cannot be defended when the class has something to do with these groups. Of course, contingency fee plaintiffs cannot say their clients are unable to function because that would disparage the disabled.

Freedom of speech is protected in the Constitution by the right to petition for redress of grievances, the right to counsel provided by the Sixth Amendment, by the right to a jury trial, and of course, by the freedom of speech clause of the First Amendment. The founders of this country felt that it was better not to allow the government to regulate political speech.



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The phrasing of this administrative regulation suggests that it is an attempt to enact into law the policies of the left wing of the Democratic party. The authors seem to want to divide people into various groups, all vaguely identified or identified by implication, and silence anyone who wants to criticize their policies.

This frightening regulation will profoundly change the practice of law in Washington. It should be rejected.

ROGER B. LEY
Seattle

Cameras

Editor:

Thank you for printing the speech by Steven Brill, founder of Court TV, about the move to ban cameras from the courtroom. The printing of thoughtful articles on the subject are especially important in the aftermath of the O.J. Simpson trial.

Opponents of cameras in the courtroom often confuse two entirely separate elements of the news coverage — the sometimes circus-like atmosphere outside the courtroom with the legal proceedings inside. Taking cameras from inside the courtroom won't cure the shenanigans which sometimes occur outside, i.e. the trying of cases by lawyers on the courthouse steps; the breathlessly salacious reporting by a sensationalist media. On the other hand, keeping cameras inside the courtroom enables the public to hear the evidence and be educated on the law. People can hear (and often see) the witnesses for themselves — every stammer, every evasive answer, every confident reply. The information isn't filtered through the bias inevitable in the reporting of even the most responsible journalists. Of course, people also see the problems in the system, such as grandstanding lawyers and weak judges. However, the fact that these weaknesses are on display (as they were in the Simpson criminal case) is all to the good. It should provide the impetus for change. Elect more competent judges. Strengthen the Rules of Professional Conduct.

Unfortunately, instead of instigating change, the Simpson criminal case has resulted in a push to shelve the means by which the things needing change were brought to light. And even more unfortunately, the judge in the Simpson civil case

has only compounded the problem by banning courtroom cameras and depriving the public of a first-hand view of how a trial arguably should be run. The judge has also deprived the public of the kind of information needed to understand, and perhaps accept, whatever the verdict will be. The result will be a public less educated and even more cynical about its legal system than it was before.

The lesson from the Simpson case is clear. Don't kill the messenger. Fix the system.

CHERYL A. NEILSON
Olympia

Assisted Suicide

Editor:

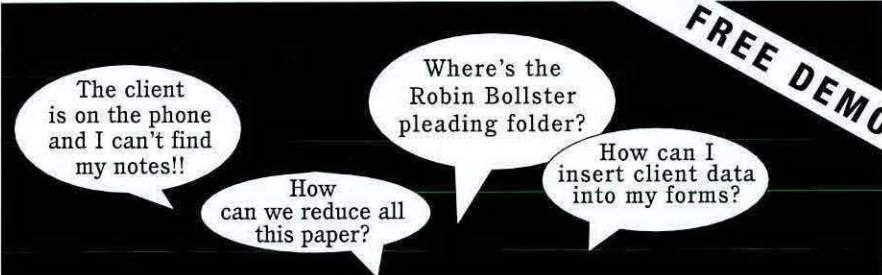
While recently reading Judge Robert H. Bork's book, *Slouching Towards Gomorrah*, I was painfully reminded of the fallacious reasoning presented in *Compassion in Dying v. Washington* (August Bar News). Judge Bork quotes Elizabeth Kristol: "The 'Right to Choose' is precisely what assisted suicide is not about." Quite to the contrary; the ultimate decision is placed in the hands of an expert, the doctor, and as Judge John Noonan in the Ninth Circuit Panel opinion points out, "Most patients do what their doctors recommend."

Judge Bork goes on to explain that beyond the strong influence of the doctor's recommendation there are a number of other factors that make the noble concept of individual freedom to choose life or death with dignity and autonomy a myth. First, it is naive to expect the patient to be able to make a rational decision; in most cases he or she will be in a weakened condition if not flat on his or her back.

Next there is the influence of relatives and finances. This situation places the doctor in a definite conflict-of-interest dilemma. If the doctor recommends against death, he or she may be seen as a "money hungry physician" who is just trying to "line his or her pockets." On the other hand, if the doctor complies with the "wishes" of the patient who may be under the subtle (sometimes not-so-subtle) undue influence of relatives to cut expenses, the doctor may be unknowingly contributing to the premature death of a distressed patient who has been caught in a trap. The patient's "wish" to die is really a disguise; the patient secretly and fervently hopes that someone who loves him or her will disagree, but their pride and dignity will actually lead to their involuntary death. A horrible fate.

Then there is the Netherland's "slippery slope" experience. In 1973 it was against the law for a doctor to take the life of a terminally ill patient, but by 1990 the

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law had evolved from allowing doctors to kill patients with terminal illnesses to killings where there was an incurable illness, and finally to allow the doctor to kill without the patient's consent. In 1990 about half of the 11,800 doctor-inflicted deaths were without the patient's consent. This expansion of the law was never anticipated by the originators. It never is!

The emotional argument of compassion for the suffering also rings hollow. Pain management has progressed to the point where most pain can be tolerably controlled. Further, if a person really wants to take his or her life there are an abundant number of options. I'm reminded of the college dean who allegedly sat in his car with a bottle of champagne and a hose connected to the exhaust. Apparently the death was painless and successful.

Once the sanctity of human life has been lost and doctors become killers as well as healers the ultimate destination of

this folly is beyond the vague imagination of those who now champion these ideologies.

THOMAS A. TUTTON
Port Townsend

Indecency & the Internet

Editor:

Joseph Faber's scholarly and well-documented article, "Indecency on the Internet," somehow omits any reference to the relevance of so-called indecent materials to the purposes behind the First Amendment. I have always believed the amendment's purpose was to protect the free and unrestricted discussion of political issues.

As a boy and a young man back in the 1930s, I do not recall thinking, "If only Americans had access to pornographic pictures and literature, they would be happy, and freedom would reign in the nation." I do not recall that the lack of

access to such materials in any way restricted the free and open debate of political issues.

There were some serious differences of opinion over how to deal with the Depression and the oncoming World War II. But that we could not view or read about naked men and women engaging in miscellaneous sexual activities or listen to swear words over the radio, did not in any way restrict discussion of the political issues of the day.

What, then, is Mr. Faber's concern?

RICHARD L. MEIGS
Olympia

Presidential Picture

Editor:

President Chambers cross-dressing as a nun would be considered by many to be a bad habit.

MICHAEL L. WINSLOW
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All Good Things . . .

by **Hal White**
Bar News Editor

. . . must come to an end, and for me, the editorship of the *Bar News* has been a very good thing, indeed. Unfortunately, this will be my last issue as its editor.

As all attorneys with working spouses will attest, it is not easy to nourish a marriage when each partner has his or her own career. It is particularly difficult when one's spouse has a wonderful job opportunity — out of state. However, if no compromises are made in a marriage, it will not last. Consequently, I write my final Editor's Page from the sunny clime of Houston, Texas; home of my wife's new job.

Other than to explain a departure which, for me, was all too soon, I wanted to take this opportunity to reflect on the past 16 issues, and to thank some truly outstanding individuals for whom credit is long overdue. First, a reflection.

All of us, I think, want to feel that we have left our surroundings a little bit better for having been there. This is what I have tried to accomplish as editor of the *Bar News*. I attempted to do this in three ways.

First, I believe that as attorneys we should wrestle with issues of import — not always remain mired in the minutiae which can frequently dominate a legal career. Consequently, each month I attempted to offer at least one such issue for discussion and reflection. Issues such as judicial campaigns, sex-offender incarceration, dissolution reform, managed health care, problems of the elderly and disabled, asset forfeiture laws, physician-assisted suicide, discovery abuse, courtroom cameras, church-state relations, and others.

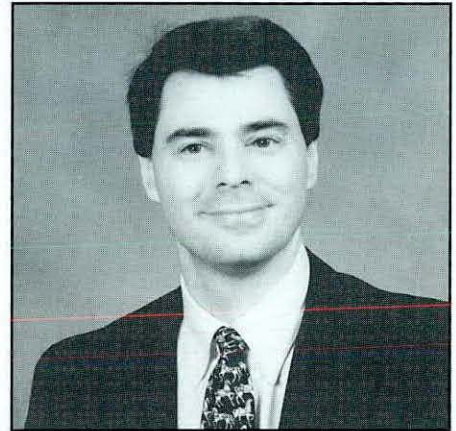
Secondly, I wanted to help us become better attorneys. Thus, while the *Bar News* can't become a monthly deskbook, I did want to fill niches in the law that weren't

readily available in other forums. Hence, I initiated the "Computers & the Law" and "Ethics & the Law" columns to address these needs.

But all departments and articles are just so much wasted ink if the magazine is uninteresting — and therefore unread. Consequently, as my third goal, I tried to make the *Bar News* more reader-friendly. I revamped the "Table of Contents" and "Calendar" department and added the less serious — but hopefully still appealing — "Allegedly Humorous" and "Our Court-houses" departments. I also tried to include more topical subjects — not only in "Briefly Noted," but also through articles such as "The Supreme Court Candidates Speak Out," "Legislative Preview" and "The Argument for Mandatory Arbitration." Moreover, I endeavored to make the magazine interesting in other ways: by including articles by authors such as C.S. Lewis and Dean Koontz, by soliciting member feedback with the introduction of the "Fax Poll," and by increasing discourse in the Letters Department.

However, in my zeal to promote such discourse, I initially interjected too much of my own thought into the letters discussion. This prompted a few readers to suggest that I shouldn't take the salutation of every letter quite so literally (smile). Upon reflection, I realized that they were right. I hope that my initial excesses in that area can be forgiven, and chalked up to a naive but well-intentioned drive to make our magazine more vital. All editors (hopefully) grow in their job, and I'll be the first to admit that my initial learning curve was steep.

These three goals, then, were what I hoped to accomplish — and why I wanted to accomplish them. Each month, I wanted the *Bar News* to provide fresh, useful, and thought-provoking reading. In making these changes, I realized that any failures



Hal White

would be displayed in front of 20,000 members — not an appealing prospect for someone who was so nervous during his first Board of Governors meeting that he sat in his car during the luncheon — but I also knew that I couldn't succeed unless I was willing to take such risks. And, to the extent that I was successful, there are a few individuals who deserve much of the credit.

Initially, I want to thank Mary Elizabeth Stritmatter, the former WSBA Director of Communications. When I assumed my duties as editor, I had heard that Mary Elizabeth was very vocal in her opinions — which, in fact, she was. But I soon learned that she was also exceedingly professional, knowledgeable, helpful and friendly. All editors should be blessed with such co-workers.

I also want to thank Dennis Harwick. It is a prerequisite for executive directors to be a lightning rod for criticism. Our director is no exception. He is the recipient of complaints from all of the 20,000 attorneys in our association. In spite of this, Dennis has never failed to be anything but witty, cooperative and helpful throughout my tenure as editor. He is a true asset to our association.

It was also my privilege to become acquainted with the members of the 1995-97 Board of Governors. And it was a privilege. When I initially assumed my editorial duties, my personal view of our ruling body was sparse and uninformed — yet I was aware that many people had a somewhat negative view of our Board. Consequently, I was pleased when I saw the thought and care which went into many of the decisions of that body. I urge

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all members of our association to attend at least one Board of Governors meeting. It will strengthen your respect for our association. At least it strengthened mine.

The *Bar News* editor is overseen by the WSBA Editorial Advisory Board. In my experience this board has been both supportive and helpful. However, I specifically wish to thank its chair, Bob Cumbow. Perhaps the highest praise I can give Bob is that I respect him more each time I speak with him. No editor could wish for a more competent EAB chair.

Finally, I would like to give a heartfelt thanks to the WSBA *Bar News* staff: Doree Armstrong, Jack Young, and Jennifer Klamm. Doree and Jack are the Editorial Assistant and Advertising Manager, respectively, and provided many useful suggestions to the production of each month's *Bar News* — in addition to performing their regular duties flawlessly. Jennifer is the *Bar News*' Managing Editor. It is her thankless task to try to implement the frequently unrealistic requests of the editor — usually after deadline. Month in and month out, she is the main force behind the production of the *Bar News*. To the extent that our magazine is successful, she is largely responsible.

And I wish to thank each of you for allowing me to serve as your editor. It has brought me memories which I will cherish a lifetime.

Notice to Youth in Government Alumni

For 50 years, high school students from across Washington have taken over the Capitol for four days a year to learn what it feels like to run the state. YMCA Youth & Government wants to get those students from the last half century together to celebrate the program's anniversary and share stories of how their lives have gone since their days in the Student Legislature. Many who participated have gone on to membership in the WSBA. Interested parties are encouraged to contact the state office at PO Box 193, Olympia, WA 98507, (360) 357-3475.



Defenders of the People: Government Lawyers

by **Tom Chambers**

WSBA President

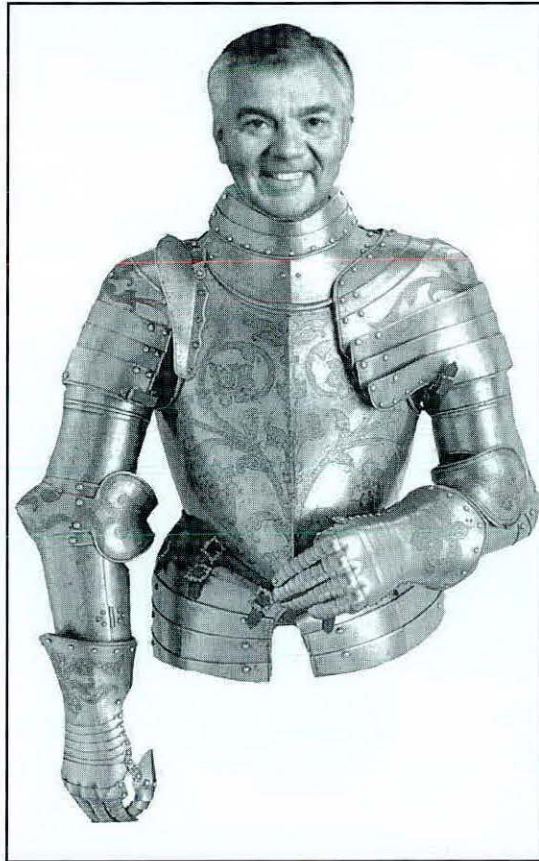
Imagine a group of highly specialized attorneys excelling at diverse practices. That may sound a bit like a big downtown law firm with many departments. Now imagine that these lawyers — numbering in the thousands and in all parts of our state — each have but one client. That could only describe government lawyers.

I am struck by the depth and variety of government lawyers' practices. One attorney might be hard at work representing a coalition of water districts, while another works for the Fish and Wildlife Commission. Acting on the behalf of consumers throughout the state, another may prosecute doctors. Elsewhere another represents the judiciary. And while it is true that government lawyers serve just one client, it can also be said they serve millions of clients, since they represent the interests of all citizens of our state.

I stand before you in a suit of armor this month as a tribute to my colleagues in the Tort Claims Office who fight courageously for their Sovereign.

I don't see myself as one who jumps on a bandwagon, and I certainly did not choose this month's topic because the next president of the Bar Association, Mary Fairhurst, is an Assistant Attorney General. Rather, I am writing about public sector lawyers as a reminder of the variety of practices in Washington. Across the state we have legal-service lawyers and corporate lawyers, prosecutors and public defenders, sole practitioners and shareholders. Whether you join a 100-lawyer firm or hang out your shingle and go it alone, you face issues common to all attorneys. This look at government lawyers shows how diverse, yet similar, we all are.

As lawyers, we all face the same core issues: integrity of the profession, ethics, professionalism and judicial selection. All of us strive to improve both our own legal skills and the level of practice across the state. When we come together as a Bar Association, we must work toward those common goals. However, we must also



design by Alan Troy Hunter

realize that when lawyers come together as an organization, we bring varied points of view and differing concerns.

Consider, for example, pro bono work. We all agree that it serves the public and enriches our profession. Lawyers in the private sector often take on pro bono projects with the full support of their firm, able to use computers, fax machines and conference rooms — not to mention support staff — provided by the firm.

Public-sector lawyers face a very different picture. Washington law prohibits them from using any state office, staff or supplies for anything other than statutorily mandated activities. To their credit, government lawyers have found other ways to take on pro bono work.

Other differences arise in the realm of licensing fees. All lawyers pay a mandatory assessment into the Client Protection Fund, which insures theft against trust accounts. Government lawyers have no such accounts. And then there are CLEs. To many government lawyers, it seems

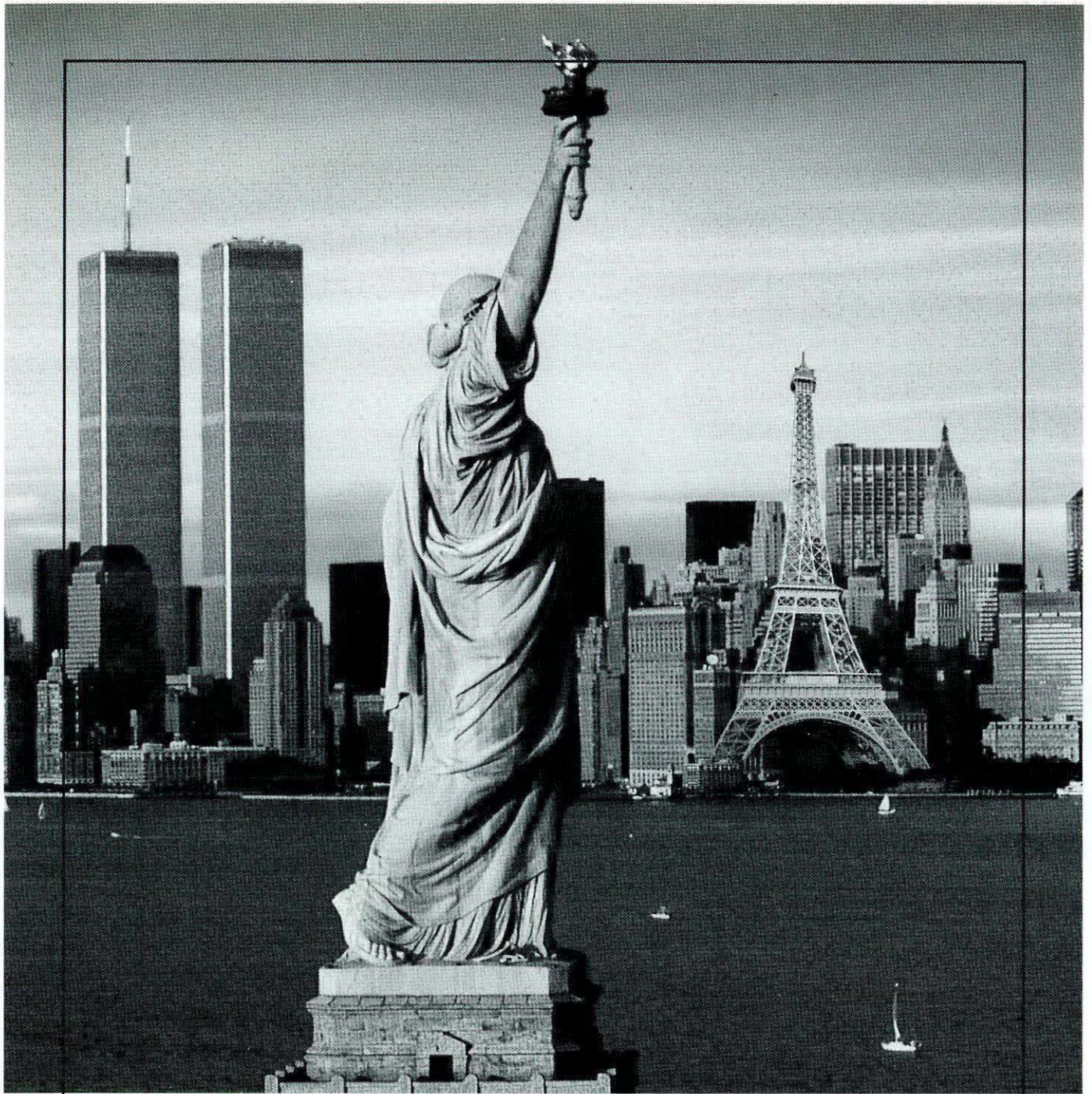
that there are far more seminars designed for estate planners and family law practitioners than for public-sector attorneys.

These differences and many others led to the founding of the Olympia-based Government Lawyers Bar Association (GLBA). GLBA offers many CLEs that address issues unique to a government attorney's practice. In addition, the organization developed a trust fund that helps defray the costs of pro bono work. Also, the charge of GLBA is to represent government lawyers' positions to the Legislature — and, yes, to the Washington State Bar Association, too.

I know that some government lawyers believe that the Bar Association has been neither understanding of nor responsive to their specialized practice or needs. Over the past decade, the Government Lawyers Bar Association has been building a bridge between government lawyers and the rest of the Bar. I also know that government lawyers' attitudes toward the WSBA have improved greatly in the past two years. That change can be explained in four words: Mary Fairhurst, Christine Gregoire.

A past member of the Board of Governors and president-elect of the Bar Association, Mary Fairhurst is a true leader. Government lawyers have in Mary not just an ear, but a strong voice. Attorney General Gregoire, personally and through her representative, Solicitor General Narda Pierce, created a vital communications link between the AG's office and the Bar Association. Leaders such as Mary Jo Diaz, current president of the GLBA, set an example of how one unique group of lawyers can be represented within the integrated Bar.

I hope you will join me in saluting government lawyers this month for the work that they do — and for reminding us that there are many separate, identifiable groups within our ranks. Your Bar Association must strive to meet the needs of every one.



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Solicitation of WSBA Award Nominations - 1997

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

Each year I ask members of the Washington State Bar Association to look around and identify those members of our profession and the public who deserve the recognition and thanks of the Washington legal profession. This solicitation is earlier than usual this year because we've moved the Awards Luncheon up a couple of months.

If you know of someone who fits the criteria set forth below, please send me a letter of nomination and relevant information *by March 7, 1997*, so that I can forward that information to the Board of Governors' Awards Committee for consideration. Awards will be presented at a special luncheon on Saturday, June 21, 1997, in Yakima.



Dennis P. Harwick

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

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

Send nominations by March 7, 1997, to

*WSBA Executive Director, ATTN: Awards
 2101 4TH AVE — 4TH FL
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The Passing of the Pen

This issue of *Bar News* also marks the passing of the Editor's pen from Hal White to Sherrie Bennett. Hal served as *Bar News* Editor from the October 1995 edition through this edition. He made a choice last fall to follow his spouse to Texas when she was offered a career

opportunity that couldn't be passed up. During his tenure, Hal sparked interest and controversy with his ideas and opinions. Like most jobs, however, his hard work on the day-to-day details of *Bar News* have gone largely unrecognized — and they shouldn't. He made

changes in *Bar News* that improved it and moved it forward with changing times.

We owe Hal much for his contribution to *Bar News* and the Washington State Bar Association. Good luck on that Texas bar exam!

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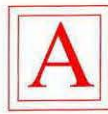
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- How to Handle & Win Your First Trials**
1/16 - Olympia - Westwater Inn
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- How to Handle & Win Your First Trials**
1/24 - Seattle - Bell Harbor Int'l Conference Ctr.
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Allegations of child sexual abuse will forever change the lives of the child and the accused, their family, friends and neighbors. The legal consequences of allegations of sexual abuse are gravely serious—separation of parent and child, placement of children into a life of foster care, dissolution, termination of parental rights, and imprisonment.

At the heart of the legal response to allegations of child sexual abuse are the statements of children. The last decade has brought an explosive increase in research regarding the reliability and accuracy of children's statements. As a result, we know that there are a variety of factors in child victim-witness interviews that can materially affect the reliability and accuracy of children's statements; that an adequate record of the initial investigative interviews of child witnesses is necessary to determine the reliability of the child's statements; and that appellate courts are reversing convictions based on untrustworthy and suggestive adult interview techniques.

What should the legal profession expect of lawyers who interview children about sex abuse allegations and initiate legal action based upon these statements? What is the historical background that has led to our current responses to child sexual abuse allegations? And how might these responses be improved to advance the interests of justice?

Reforms During the 1970s and 1980s

Our response to child sex abuse changed dramatically during the 1970s and 1980s. Before then courts, politicians, and societal institutions generally avoided dealing openly with abuses of children. Instead, in the early decades of the twentieth century, such matters were entrusted to private charitable organizations. However, things began to change in the 1960s, and by the 1970s lawyers, child advocates, social workers, psychologists, and others began energizing a child-protection movement. These groups worked for legislative reform to encourage protection of children. This led in 1974 to the passage of the Child Abuse Prevention and Treatment Act (CAPTA).

All 50 states adopted CAPTA, which conditioned millions of federal dollars on compliance with such requirements as mandatory reporting of child abuse by several categories of professionals. As a

Beyond Advocacy: Professionalism in Child Sex Abuse Interviews

by **John H. Hill**



result of the provision of federal grants and the national unity in child abuse laws, child abuse reports increased dramatically, especially those of sex abuse, a category singled out for additional funding. A variety of social service agencies sprang up at state and local levels. The most productive and innovative of these were able to tap into federal contract and grant monies. At the same time that social workers began investigating child sex abuse cases, many private agencies, such as therapy programs, began to play a role in the investigation of child abuse. Agencies reliably reporting sex abuse could expect federal money for treatment programs and new referrals from state case-workers.

Also during the 1970s and 1960s, legislation and case law facilitated the prosecution of accused sex offenders. The hearsay statements of children became admissible under ever-broadening circumstances. Children were frequently denied contact with any authority figure who did not believe in the accusation. Heavy-handed state intervention into families, and powerful affiliations between welfare workers, therapists and prosecutors became the norm. More recently, Washington enacted a "two strikes" sex offender statute mandating a life sentence without possibility of parole. A "one strike" law for sex offenders is pending consideration in this year's legislative session.

Despite strong public support for these changes, the last decade has brought increasing awareness of the dangers of over-reaching by prosecution, CPS, and other child advocates. In several cases across

the county, public attention has focused on once-accepted child interview techniques which, based on our expanded knowledge of the dynamics of child suggestibility and memory, now raise grave concerns of false allegations, wrongful prosecutions, wrongful convictions, and lifelong damage to innocent children and the accused. Dr. Roland Summit, a leader in the child advocate-protection field, testified as follows regarding the role of the child interviewer:

The investigator must wait to build a trusting relationship and hope to find some way to pry open the window of disclosure. This usually required multiple interviews, ingratiation, and separation from suspected perpetrators. Direct questioning may be unproductive unless coupled with confrontation, presenting the child with reassurance that the examiner already knows what happened. The investigator provides either a hypothetical based on experience with other cases, or assures the child that another victim has already broken the secret. . . .

Today most knowledgeable child interviewers would avoid techniques such as confronting the child with their expectation about what happened, or providing the child with actual or hypothetical information about the alleged events, because they have been proven to be highly suggestive and can lead to unreliable results. Multiple interviews are discouraged and are known to damage reliability and accuracy. Nevertheless, Dr. Summit's statement is representative of the maxims of many child advocates, such as: "children don't lie about sex abuse," "children cannot be led to disclose having been sexually abused if it didn't happen," and "children must always be believed."

The Problem of False Allegations

The stage was set. Huge amounts of federal money had been provided to child advocates, treatment providers, child protectors, and special prosecutors. The supply of child abusers, like witches and communists, seemed endless. The problem of child sex abuse increasingly found its way into the divorce courts where allegations based on statements by children to divorcing parents seemed com-

monplace in parental declarations and affidavits.

The effort took on the unshakable power of political correctness. Actions from any quarter challenging the accuracy of childrens' statements of sexual abuse were aggressively scrutinized as harmful or even "abusive" to children. The more aggressively the problem was attacked, the more funding and political support the effort received. Child abuse networks were armed with lawyers, guns (political support groups) and money. This combination led to some of the most controversial prosecutions in our national history, all of them based on the statements of children to child protection professionals during investigative interviews. A few examples:

California: California courts recently ordered reversals in several cases emanating from Bakersfield, California. These and other cases were recently documented by Forrest Sawyer on the ABC television news program "Turning Point" (November, 1996).

The documentary revealed how the lives of Scott and Brenda Kniffen and their children, Brandon and Brian (now in their teens), were destroyed by child protection-advocate professionals in pursuit of the childrens' disclosure of sexual abuse. The interviews followed what many be-

lieve is an all-too-common pattern—protective custody of children suspected of being abused, repeated and suggestive questioning, and supplying misleading facts (i.e., "Your brother already told us. Tell us and you can go home." etc.)

The Court's reversals were based primarily on recent revelations in social-service literature combined with the recent discovery by the defense of small recorded portions of the many repeated interviews with the Kniffen children. The reversals came only after the Kniffens had served 12 years of 240-year sentences from a "tough" Bakersfield judge.

The *Kniffen* case was only the beginning of several prosecutions from Bakersfield—each progressively fantastic, resulting in multiple and repeated convictions and sentencing by tough prosecutors and judges.

The cases began to collapse upon themselves when children, during questioning, accused a prosecutor, a sheriff, and a social worker. Perhaps because of the action of the California courts years later, the prosecutor indicated that he regrets making the tape recording of the interviews.

California: Virginia McMartin, with the assistance of her daughter, Peggy McMartin Buckey, managed the McMartin Preschool in Manhattan Beach,

California. Peggy's husband Ray, who was a test engineer at Hughes Aircraft, helped build the school and constructed play equipment. One day the mother of one of the children who attended the preschool questioned her two-year-old son who, after repeated questioning, said that Ray Buckey "took his temperature." The mother concluded that the "thermometer" was Buckey's penis.

The boy was subjected to repeated rounds of questioning by his mother. The story became expanded and embellished. Detectives started phoning parents whose children attended the day-care center. Ray had by then taken a job at the school.

Police sent a letter to two hundred families urging parents to question their children about whether they had seen or experienced anything at the day-care center. Parents questioned children; stories of games like "tie up" and "horsey" emerged; ambiguous statements were interpreted as abuse. Repeatedly questioned, children embellished their stories and named other "victims." Confronted with this information, other children "disclosed."

At last the children were referred by prosecutors to Kathleen "Kee" MacFarlane, a social worker who worked at Children's Institute International (CII). MacFarlane had previously been hired as a sex abuse specialist by the National

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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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Center for Child Abuse and Neglect (NCCAN), shortly after the adoption of CAPTA.

MacFarlane involved the children in therapeutic interviews using hand puppets, and "anatomically correct" dolls. The sessions, many of which were videotaped, were markedly leading and suggestive; the stories became increasingly bizarre. In addition to more "typical" information, including fondling, oral sex, vaginal penetration and sodomy, children said that Ray had killed pets while dressed variously as a clown, a fireman, Santa Claus and a policeman. One of the children talked about a "goat man," people dressed as witches, being buried in a coffin, being on a train where men in suits hurt him, staples in his ears and nipples and tongue, scissors in his eyes, animals being chopped up, being hurt by a lion, a baby being chopped up, and having to drink the baby's blood. Another child talked of being forced to drink urine and eat feces with chocolate sauce, a story that was adopted by other children.

In 1984, NCCAN—McFarlane's previous employer—provided her with \$146,000 to interview and examine the McMartin children. Peggy Buckey and Ray went to trial in 1987, charged with 218 counts. The trial dragged on for 28 months, which made it the longest and

most costly such trial in American history. In 1990, Peggy was acquitted of all charges, and Ray was acquitted on some counts and received a hung jury on others. By then Ray Buckey had been in jail for five years. Ray's second trial resulted in another hung jury and ultimate dismissal.

Minnesota: In the spring of 1984, when a television special "Something About Amelia" heightened public awareness about incest, and the *McMartin* case exploded in the media, 24 people in Jordan, Minnesota, were arrested on charges of being part of a child pornography and sex ring. Defendants included a deputy sheriff, police officer, and others who were accused of molesting their own children and swapping them around. Eventually the children accused their parents of murdering babies, making children drink babies' blood, and throwing bodies into the river. The case included claims that people were charged in retaliation because they spoke out against the prosecutions. But the Jordan case was notable for the fact that prosecutors acted responsibly. In early 1985, only a year after the allegations emerged, the state attorney general's office reported that the cases should be dismissed because of badly flawed investigations, including the lengthy and repeated questioning of children.

New Jersey: In 1985, Kelly Michaels was arrested after she quit her job at the Wee Care day-care center in Maplewood, New Jersey. Children were questioned repeatedly after one made an abstract statement. Ultimately their disclosures included claims that Michaels had raped them almost daily for seven months using forks, spoons, twigs, and Legos. Some of the later interviews were recorded. They said she had put peanut butter on her genitals and had them lick it off; that she made them eat her feces and drink her urine; that she forced them to play naked sex games; that she had threatened to kill them and their parents if they told. Yet no staff members saw, heard, smelled, or suspected anything. Despite the improbabilities of the testimony, Michaels was convicted in 1988 and sentenced to 47 years in prison.

But in 1993, the New Jersey Court of Appeals ruled that Michaels had not received a fair trial, in part because the judge had questioned the children in a less than impartial way—in his chambers, while the children sat on his lap, whispering into each other's ears, playing ball with them, "encouraging and complimenting them," while the jury watched from closed-circuit television. The New Jersey State Supreme Court later upheld the appellate decision, and

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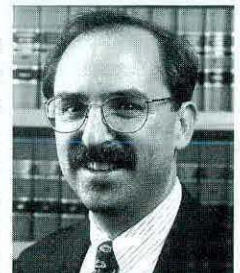
Stephen W. Hayne

Past President, Washington Association
of Criminal Defense Lawyers;
Past Chair, Washington State Bar
Association and Washington, State Trial
Lawyers Association, Criminal Law Sections;
Voted a "Top 10" Trial Lawyer in poll of 100
Judges (Washington Law Journal)



Jon Scott Fox

Past Chair, Washington State Bar
Association, Criminal Law Section;
Founder and Board Member, Washington
Association of Criminal Defense
Lawyers; National Speaker, BAC
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wrote that the case was rife with "egregious prosecutorial abuses." The court found that all 20 children had been threatened, bribed or led, and that none of their statements had been spontaneous.

In its deliberations, the New Jersey Supreme Court considered a lengthy amicus brief written by Dr. Stephen Ceci, a professor and research psychologist at Cornell, and Maggie Bruck, assistant professor at McGill, and signed by several dozen prominent North American psychologists. The amicus brief by Ceci and Bruck is important because it specifically addressed and reviewed the social science literature pertaining to the effects of different interviewing techniques on the reliability of children's reports, and described the effects of interview factors on the reliability and accuracy of children's statements—as well as the necessity of having an accurate recording of initial investigative interviews of children regarding sexual abuse. The brief provided a series of examples from the transcripts and recorded interviews that "substantially increased the risk that the children's subsequent reports were more reflective of the interviewer's suggestions." The factors present during the interviews were:

1) interviewer bias; 2) repeated questions; 3) repeating misinformation; 4) emotional tones during the interview; 5) imposition of peer pressure; 6) implanting misleading or false suggestions and information; 7) interviews by adults with high status (e.g., a policeman who tells the child "I'm a policeman, if you were a bad girl I'd punish you wouldn't I? Police can punish bad people"); 8) improper use of anatomically correct dolls; and 9) source attribution errors and other suggestive techniques.

Pierce County: In 1989, Judy and Kaare Sortland were charged with multiple counts of rape, sexual molestation, and indecent liberties against several children who attended their Hugs and Kisses Day Care in Tacoma's north end. The charges against them were separated into two separate proceedings before different judges. Like other cases cited above, the allegations and testimony became more and more bizarre as the children continued to be questioned. The children said the Sortlands had defecated on telephones, scared them with guns and masks, and penetrated them with rubber articles. Suggestive and repetitive interviewing tech-

niques ultimately resulted in rejection of both prosecutions after sensational publicity and media attention. The first trial resulted in acquittal by a jury. The remaining charges were dismissed by a judge who harshly criticized the faulty investigative interview methods, and the failure to adequately record the initial investigative interviews of the children.

King County: On October 1, 1985, three-year-old Beth Ann Swan emerged from the bathroom of her day care with her dress still partially tucked into her tights. An employee who had been hired the day before, a woman with a history of drug and alcohol abuse, prostitution, and a history of alleging sexual abuse (she believed that her own two children had been sexually abused, and related that she herself had been sexually abused by three or four hundred men,) said to Beth Ann, "[You mustn't leave your dress like that.] It's not OK for people to see our private parts."

"Uh huh, mommy and daddy" do, said Beth Ann, who had just been potty trained. "Well, what does mommy and daddy do?" asked the employee, who felt that this revelation might be the tip of the iceberg. She took Beth Ann with her into one the

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voluminous research by social scientists during the last decade. Not surprisingly, much of the literature appears polarized and prone to subjective interpretation by advocates. So what does our present state of scientific knowledge permit us to say about the reliability of a child's report? Ceci and Bruck's recent publication, *Jeopardy in the Courtroom, A Scientific Analysis of Children's Testimony*, 1995, summarized the answer as follows:

"Although young children are often accurate reporters, some do make mistakes—particularly when they undergo suggestive interviews; and these errors are not limited to peripheral details, but may include salient events that involve children's own bodies.

Measures can be taken to lessen the risk of suggestibility effects. To date, the factors that we know most about concern the nature of the interview itself: its frequency, degree of suggestiveness, and demand characteristics.

- A child's report is less likely to be distorted, for example, after one interview than after several interviews. (The term "interviews" includes any conversations between adults and children about the target event.)

- Interviewers who ask non-leading questions, who do not have a confirmatory basis (i.e., an attachment to a single hypothesis), who do not inculcate a negative stereotype about the defendant, and who do not repeat close-ended, yes/no questions within or across interviews are

more likely to obtain accurate reports from children.

- Interviewers who are patient and non-judgmental, and who do not attempt to create demand characteristics (e.g., by providing subtle rewards for certain responses), are likely to elicit the most accurate reports from young children.

* * *

- Results sometimes vary dramatically among studies, and children's behaviors sometimes vary dramatically within studies. Thus, even in studies with significant suggestibility effects, there are always some children who are highly resistant to suggestion. We have seen this in our own studies, and we have also seen it in transcripts of forensic and therapeutic interviews. In some cases, no matter how much an interviewer may try to erroneously suggest that a false event occurred, some children will consistently resist and not incorporate the interviewer's suggestion. This aspect needs to be made known to courts. On the other hand, although suggestibility effects tend to be most dramatic after prolonged and repeated interviewing, some children incorporate suggestions quickly, even after one short interview (e.g., Clarke-Stewart et al., 1989, as reported in Goodman & Clarke-Stewart, 1991; Lepore & Sescio, 1994). This aspect also needs to be made known to the courts. Ceci & Bruck, id. at pp. 271-273."

Recording Child Victim Witness In-

terviews. Additionally, available information suggests that there is a growing consensus from experts from all sides of the issue of child testimonial accuracy that investigative interviews of children must be recorded. It is increasingly recognized that we cannot rely on adults' reports of their conversations with children to form the basis of legal proceedings. The evidence of what occurred at such interviews is crucial to rule out the potential influences of coaching and suggestion. The relevant literature stresses the importance of preserving the initial interviews.

The 45 researchers-signators of the amicus brief submitted in the *Michaels* case summarized the issue this way:

The failure to have audio or videotaped records of the initial interviews with children makes it impossible to determine the accuracy of their subsequent statements. Summaries of missing interviews and/or electronic recordings of later interviews in which children make allegations do not substitute for missing original interviews. Written summaries of unrecorded interviews are subject to a number of distortions, especially if the interviewer is questioning a number of children and parents daily. It is a well documented fact in the psycholinguistic literature that when asked to recall conversations, most adults may recall the gist, but they cannot recall the exact words used, nor the sequences of interactions between speakers. This linguistic information rapidly fades from memory, minutes after the interactions have occurred (see Rayner & Pollatsek, 1990, for a review).

As will be seen in the following material, the need for recording investigative interviews with children is also recognized and recommended by experienced prosecutors, many leaders in the child advocate field, criminal law practitioners, family law practitioners, and state and national legislative bodies.

The Response of Other Jurisdictions

That mistakes have been made which called for corrective action by child pro-

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tection advocates is not seriously denied. Paul Stern, a nationally regarded prosecutor and child sexual abuse expert from Snohomish County, in a November, 1996, ABC "Nightline" segment, stated that "mistakes" had been made during the last ten years of "overzealousness," "overcharging," and "overreaching." Unfortunately, the response in Washington state could be characterized as being one of denial and organized resistance to change.

The responses in many other jurisdictions, however, have demonstrated an openness to improvement and achieving integrity in the interview process without compromising the need to protect children. One example is the Child Victim Witness Investigation Pilot Project. This was a comprehensive three-year effort conducted at various sites in California with a focus on efforts to improve investigation of child abuse. The project was conducted under the auspices of the California Attorney General's office, by legislative directive, and focused on child interview specialist training, establishment of multidisciplinary victim centers, and videotaping investigative interviewing. The project was completed in 1994, and a Research and Evaluation Report, available through the California Attorney General, provides essential information for efforts of other jurisdictions to improve the integrity of child investigators. The report includes recommendations which endorse videotaping interviews, notes that the benefits of videotaping outweigh the detriments, and states that most professionals in the project, although initially skeptical, were enthusiastic about the continued videotaping of child victims.

In Oregon, reform also came from the legislature. In 1993, Oregon passed comprehensive legislation pertaining to Investigation of Child Abuse and Rape (ORS 418.746-751). This legislation provided a state fund for the training and education of persons investigating child abuse, development of local interagency multidisciplinary teams specially trained in child sexual abuse investigations, and a statewide child abuse team. Oregon further established in ORS 418.780-418.796 funding for Regional and Community Child Abuse Assist Centers. The purpose of such centers is to "insure that every child reasonably suspected to have been subject to child abuse receives a skilled, complete and therapeutic assessment." Funding requirements for such

centers mandate that they be neutral, and that assessments include a "videotaped interview by trained professionals for the purpose of determining whether the child has been abused." Many other regions around the country have also developed child interview protocols and have discovered the advantages and need for videotaping.

The news in our state is not as refreshing, and seems mired in the polarization of advocacy and the adversarial contest. Perhaps the best evidence of this are the recent events occurring in Wenatchee. Amidst a nationwide furor reported by publications including the *Wall Street Journal*, *Washington Post*, *Washington Times*, *New York Times*, *Chicago Tribune*, *Oregonian*, *Seattle P.I.*, *Seattle Times*, *Spokesman Review*, *Tacoma News Tribune*, *Newsweek*, *Time*, *Reader's Digest* and various television networks and documentaries including CNN and "Date-line NBC," and despite requests for an independent federal investigation by 2,000 Wenatchee citizens, Washington's governor and the Speaker of the House of Representatives, Washington's Attorney General staff and child advocate leaders openly supported the "sex-ring" prosecutions. In Chelan County, the lead detective admitted destroying his notes and those of CPS workers, and no tapes of child or adult interviews were made or maintained. A senior CPS supervisor is reported to have said that the Attorney General's office alluded to the lessons of

McMartin and recommended that his department avoid the use of videotapes. Apparently the lesson learned is that when recordings are made, the result is a "Not Guilty" verdict; where no tapes or notes are kept, defendants are typically convicted.

Further evidence that steps must be imposed to protect the integrity of the investigative process is provided by the fact that all elected prosecutors in Washington intentionally refuse to audio or video record child interviews. This is despite the fact that some communities already have funding and facilities available to conduct videotaped interviews. For example, Snohomish County deputy prosecutor Paul Stern has stated: ". . . videotaping is counterproductive to full disclosure and an accurate truth determination by the ultimate fact finder. . . . Instead, a verbatim transcript is made. . . ." Unfortunately, it is apparently the interviewer who is responsible to make the transcript; a procedure broadly criticized as self-serving, self-protecting, and subject to inaccuracies.

In Pierce County, notes are taken during an interview by employees of the prosecutor. The interview is later summarized in a report. This is the procedure in most of Washington's counties. In Pierce County the prosecutor has also implemented a written policy authorizing the destruction of notes taken contemporaneously with an interview—specifically requesting that, "If the written report ac-

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curately comports with the notes, please destroy the notes.”

Proposed Washington Legislation

During 1995, I prepared legislation designed to improve the treatment of child victims in legal proceedings and to better assure the reliability of child victim-witness sexual abuse interviews and investigative procedure. Specifically, the proposal would establish and fund investigative *pilot* and demonstration projects in two counties that applied for it. The projects would incorporate essential elements for improving and streamlining investigative procedures as they affect child victim witnesses. Those elements included:

- Interviewing children in a child-oriented setting.
- Using a child interview specialist to conduct comprehensive interviews with children.
- Developing interdisciplinary child interview protocols and procedures, including videotaping, for the coordination of child interviews when a child is involved in a criminal, dependency, domestic relation, delinquency, and/or related domestic violence proceedings.
- Memorializing the interview process by videotaping to eliminate or minimize the need for subsequent interviews.
- Conducting multidisciplinary team reviews to make recommendations on child abuse interviews/investigations, and the needs of child victim witnesses.
- Ensuring that initial medical evidentiary examinations of suspected child abuse victims are conducted by medical professionals with expertise in diagnosing child abuse.

This proposed legislation was submitted for approval to the WSBA Criminal Law and Family Law sections and was approved by the super majorities required for legislative recommendations by WSBA sections. It was also approved by the WSBA Legislative committee with the proviso that videotaping would not be mandated in all of a pilot project's cases but only as deemed appropriate by the contemplated multidisciplinary team. The WSBA Board of Governors declined to take a position regarding the proposal, however, because of active and aggressive resistance by the Washington Association of Prosecuting Attorneys (WAPA) and the Attorney General's Office (which provides legal advice to CPS in depen-

dency investigations). The resistance appeared primarily due to the videotaping aspect of the pilot project. The legislation was sponsored in the Senate by Senator Mary Hausen (D), and in the House by Representative Suzette Cooke (R), chair of Children and Family Services.

Supporters of the bill presented the testimony of a senior sexual assault prosecutor for Multnomah County, Oregon who endorsed the proposal and described the Oregon videotaping experience. The experiences of other prosecutors were also provided from around the country, e.g., San Diego, as well as the experience regarding videotaping in British Columbia and Great Britain. In all of these cases, videotaping ultimately led to improved interviews, provided superior documentation, avoided the need for multiple interviews, avoided the pitfalls of overzealousness and suggestiveness, was used as an evidentiary tool more by prosecutors than by defense, and enhanced case resolution.

WAPA aggressively resisted the proposed legislation, mainly because of the videotaping provision. WAPA representatives produced newly elected Kitsap Prosecutor Russell Hauge to testify that he had recently represented defendants accused of sexual abuse and that the only possible evidentiary use of videotapes at trial was to discredit and impeach the children — a statement which was untrue but politically compelling. Moreover, the bill was characterized as mandating videotaping — rather than creating a pilot study which utilized videotaping only to the degree recommended by the individual project. Additionally, Lucy Berliner, Research Director of the Harborview Sexual Assault Center in Seattle, distributed a position paper opposing the legislation and videotaping.

In response, the legislature directed the Evergreen Institute of Public Policy to conduct a study with recommendations to the legislature. Two consultants were retained by this Institute to provide research regarding the study. Lucy Berliner—on record as opposing such legislation—was contracted to provide research regarding literature review, investigative protocol and standards, and videotaping. Patricia Toth, former director of National Center for Prosecution of Child Abuse and senior prosecutor in Snohomish County, was contracted to provide research about training and specific care studies from four to six Washington counties. Based on these findings,

the Institute will present recommendations to the legislature.

Responsibilities of the Legal Profession

We know: (1) that the conduct of child victim witness interviewers can affect the reliability and accuracy of children's testimony in legal proceedings; (2) that child protection advocates/interviewers have sometimes engaged in conduct that has affected the reliability and accuracy of children's statements about sexual abuse and led to false allegations; and (3) that it is necessary to accurately record investigative child interviews in order to determine whether a child's statement has been subject to suggestive influence affecting their credibility.

The facts about forensic child interviews are best known to those of us within the legal profession. False allegations and their consequences are always brought through the actions of lawyers. Don't we have an obligation to protect the public's confidence in legal proceedings based on a child's statement of abuse by assuring the integrity and reliability of the investigatory process? The *ABA Model Rules of Professional Conduct* provides:

Rule 3.4 A lawyer shall not (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

It is unethical for one party to obstruct another party's access to evidence. Are not contemporaneous notes of a child's interview potential evidence about the reliability of that child's testimony? Isn't justice obstructed when physical evidence (notes) are destroyed?

Rule 5.3, 5.2 An attorney has direct and vicarious professional responsibility for the acts of nonlawyers that the attorney orders or ratifies, or having knowledge of an ethical violation fails to mitigate the consequences of the violation. (Summary)

Although little formal attention has been given to the conduct of a lawyer's investigators, child interviewers often act either as a representative of the lawyer (e.g., prosecutorial employee) or, perhaps in

the case of attorneys general, as their client and under their advice.

The *ABA Standards for Criminal Justice — The Prosecution Function*, provides:

3-1.1(c) The duty of the prosecutor is to seek justice, not merely to convict.

3-1.4 Duty to Improve the Law — It is an important function of the prosecutor to seek to reform and to improve the administration of criminal justice. When inadequacies or injustices in the substantive or procedural law come to the prosecutor's attention, he or she should stimulate efforts for remedial action.

Relevant to these standards is the concept that the prosecutor and attorney general's office are often in unique control of sex abuse investigations and interviews. Is it not their duty to assure an adequate investigation and preserve vital evidence relevant to the credibility of a child? Should it not be unethical for a prosecutor to avoid preservation (recording) of evidence because they believe it may damage their case?

The serious consequences of child sexual abuse — separations of parent and child, imprisonment, placement of children into foster care — are effectuated through the legal system. It is the legal profession which will be accountable to the public for legal actions based on "overzealous," "overreaching," and "overcharged" investigative interviews of children leading to false allegations. The legal profession cannot allow the adversarial zeal demonstrated during the last decade to jeopardize its integrity in matters of such serious consequence. The legal profession must take a lead in assuring that legal actions and testimony based on investigative child interviews withstands public scrutiny when it comes to professional conduct and preservation of vital evidence.

The words of University of Vancouver professor John Yuille, Ph.D., R. Psych., an internationally recognized and published researcher in child abuse investigation and a consultant for Canadian and British law enforcement in the area of child abuse investigation protocols, seem particularly appropriate. These comments follow his testimony in Olympia:

Yesterday I had what was for me an unusual privilege, an opportu-

nity to testify before a senate committee of a state legislature. The Washington State Senate committee is considering a bill to enable two pilot projects aimed at improving the response to allegations of child sexual abuse. . . . I have helped to set up similar protocols in many parts of the United States, much of Canada and in Europe. I have provided more than eighty training programs for police and child protection workers in various parts of the world. A considerable amount of research has been conducted to assess the feasibility and efficacy of this approach to child abuse investigations I anticipated that my testimony before the Washington State Senate committee would be routine. Since the proposed model is widely used and it has been empirically tested, Washington state would be venturing into well charted territory. To my surprise I found that there is deep seated opposition to the model, in particular to video taping the investigative interviews. The opposition appears to be led by prosecutors. The most surprising aspect of this is that the opposition is based on myth not facts. For example, the prosecutors voiced the concern that the video tapes would be used by defense attorneys to discredit child witnesses. The concern has been addressed in the many jurisdictions that employ taping and it simply is not true. In communities that have used video taping for years, for example, Washington's two neighbors, Oregon and British Columbia, the opposite is true. There are higher confession rates with video taping. The taping benefits the prosecution, not the defense. The most convincing numbers in this regard come from England. Video taping of child abuse interviews is mandated in England and Wales. Both the prosecution and the defense have the right to introduce the video tape during a criminal trial. Of 640 requests to introduce a video of an investigative interview at trial in one year in England, only three (3) were made by the defense, the rest were by the prosecution. The facts are very clear: videotaping benefits the

prosecution, not the defense.

* * *

Child abuse allegations are an area of investigation that must be handled with care. Anyone who conducts these investigations must be accountable for the methods and techniques he or she employs. Video taping is a way to ensure accountability. It guarantees that the allegations of the child and the manner in which they were obtained is preserved. It seems to me that it is fundamental in a democracy that an adequate record of such investigations is preserved. The current practice in your state is that investigations are carried out without accountability. No record is kept of interviews; notes are destroyed. This is not defensible and it creates an environment that makes the Wenatchee situation possible.

Fifteen years ago Washington state was a leader in developing responses to the abuse of children. However, much has changed in this field in the past decade and a half. The challenge is to adapt to these changes and not assume that what was once leadership permanently remains progressive.

Dr. Yuille, who resides in Canada and lectures and testifies in the U.S., Canada and Europe, concluded by indicating his disappointment with the extreme level of polarization he saw in the Washington legal profession when it came to matters of child sexual abuse. "I don't understand it. It appears to be an American phenomenon," said Dr. Yuille.

The legal profession should take the lead in changing this phenomenon by promoting the integrity of the investigative process, by supporting legislative reform, and by recognizing that the truth should transcend adversarial advantage.

◆ ◆ ◆

Jack Hill is director of the Pierce County Dept. of Assigned Counsel and a member of the Governor's Child Protective Services Symposium Workgroup. He has also been recently appointed to the Washington State Dept. of Health Sexual Offender Treatment Provider Advisory Committee.

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Legislative Preview

by Ellen Conedera Dial

The WSBA Legislative Committee meets each fall to consider legislative proposals from Sections, Committees and other bar-related organizations that request support from the WSBA on specific items of legislation. The Committee makes recommendations to the Board of Governors on whether the WSBA should support, oppose or remain neutral on particular bills. During the session, as a part of the overall legislative program of the WSBA, the Chair of the Committee works with the WSBA President, the Board, John Fattorini (the WSBA Director of Legislative Programs), and interested sections and committees to organize the presentation of written comments and oral testimony on bills. The Legislative Committee — which started with 29 members but will be increased to 33 — has met twice as of the writing of this article, and will have conducted a third and final meeting on December 13.

This article is intended to describe the legislative agenda of the WSBA for the forthcoming session as we see it today, and the efforts of the WSBA to coordinate its efforts with those of other bar-related organizations.

WSBA Initiatives

Before the election, the WSBA had identified at least two issues that it would emphasize this session — funding for legal services and the unauthorized practice of law. It remains to be seen whether enough support can be garnered in the newly constituted legislature to maintain or increase funding for legal services, but we can expect that the Association will actively support increased funding. The WSBA has already given its support to a proposal from the Consumer Protection Committee to make the unauthorized practice of law a *per se* violation of the Consumer Protection Act.

Certainly there are other issues that might emerge in the next legislative session that would also be of concern to members of the WSBA, such as any proposal for a roll-back in B&O taxes. With the uncertainties associated with the recent election, however, no clear agenda on issues that are so heavily influenced by

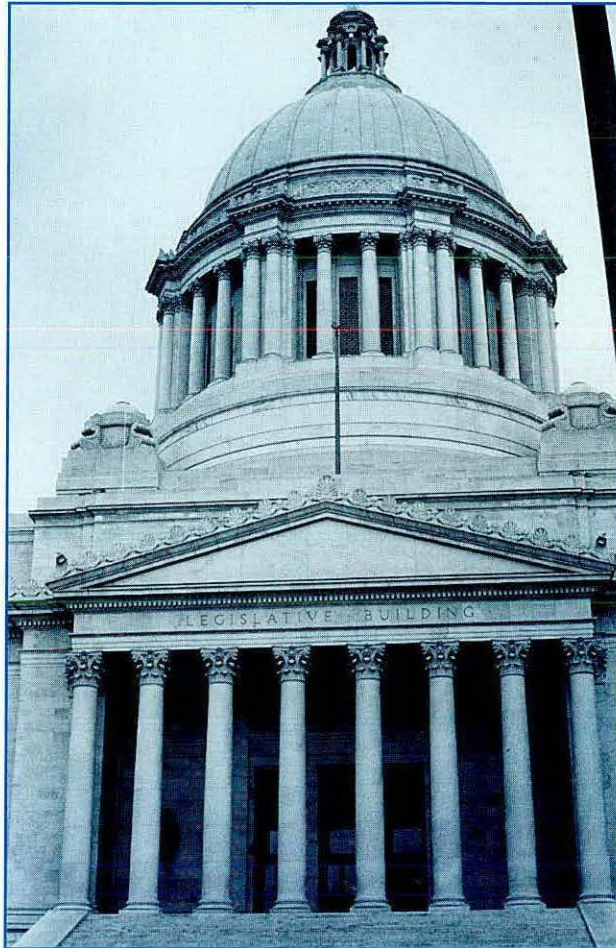


photo by Cheri Brennan

the makeup of the legislature has yet emerged.

The Unauthorized Practice of Law.

The Consumer Protection Committee proposes a bill to amend RCW 2.48 by adding a new section that would make the unauthorized practice of law a *per se* violation of the Consumer Protection Act ("CPA"). This bill will be actively supported by the WSBA. Primary responsibility for enforcement would be through private actions rather than state enforcement. The Board of Governors has committed to work with the Consumer Protection Committee and the CLE division to provide education and training for lawyers on how to bring CPA actions against those engaged in the unauthorized practice of law. The Attorney General's office, initially concerned that this amendment would require additional funding for state enforcement, now supports this proposal with that commitment by the Board. This bill will also include an expression of legislative intent to the effect

that the WSBA will establish and maintain an attorney referral and training service to advise members of the public.

Recommendations to the Board

The Committee has recommended to the Board of Governors that the WSBA support the following additional new bills in the next legislative session.

Non-unanimous Shareholder Consent. This proposal to amend RCW 23B.07.040 is sponsored by the Business Law Section and was prepared by that section's Corporate Revisers Committee. It allows for actions by written consent of fewer than all shareholders of nonpublic companies when no meeting has been called. It is limited to non-public companies, and is effective only when the company has affirmatively elected in its articles of incorporation to take advantage of the non-unanimous consent provision. This proposal is intended to bring Washington's statute into conformance with Delaware law and to provide more flexibility in making certain types of shareholder decisions. *Contact Person: John M. Steel*

RCW 23B.19.040 (Certain Anti-Takeover Provisions). In 1996 the legislature amended RCW 23B.10.040. A typographical error in the bill, compounded by changes by the code reviser that were apparently intended to clarify an ambiguity caused by the typo, led to a possible interpretation that the restriction on a target corporation engaging in significant business transactions is subject to two new exceptions. The issues involve the correct application of the fair price rules. The Business Law Section's recommendation is to amend the section again to remove the ambiguity, and to clearly provide that fair price is an additional requirement in the transactions, not an alternative to board approval. *Contact person: C. Kent Carlson*

Protection of Personality Rights. This proposal is supported by the Intellectual and Industrial Property Section. It is intended to prohibit infringement of an individual's right to his or her name, likeness, image, signature, photograph, voice and other distinctive characteristics, and to provide appropriate remedies for in

fringement. This bill will bring Washington into a group of approximately 15 states which have adopted legislation in this area and will provide greater certainty in this area of the law. *Contact person: O. Yale Lewis*

Amendments to Probate Code. This proposal by the Real Property, Probate and Trust Section was prepared by its Probate Law Task Force. It embodies extensive changes to Title 11 and is the result of years of work by the Probate Law Task Force. The changes concern, among other things, procedures for creditors' claims, inventories, homestead and family allowances and nonintervention powers of personal representatives. It also adds provisions concerning testamentary dispositions of non-probate assets. *Contact person: Mark W. Roberts*

One-member Limited Liability Companies. This proposal is supported by the Business Law Section, and would permit one-member Limited Liability Companies. This amendment is motivated by proposed Internal Revenue Code regulations that will permit favorable tax treatment for one-member LLCs, and by the practice in other states which permit single-member LLCs. Apparently, single-member Oregon LLCs are already doing business in Washington. *Contact person: Donald E. Percival*

Commercial-brokers' Lien Bill. The Committee referred to the Board for discussion the question of what position, if any, the WSBA would take on a proposal by the commercial realtors for a lien to secure commissions. The commercial realtors' division of the Washington Association of Realtors has introduced legislation in the past two years that would create a lien on land to secure commissions. The WSBA and the Real Property Probate and Trust Section have opposed this legislation. A task force from the Section has proposed an alternative that would give commercial realtors a lien on escrow proceeds (for sales) or rents (for leases) to secure commissions. The Section does not want to proceed without some indication from the Board whether any lien for commissions would be supported, whether the WSBA would remain neutral or whether the WSBA is likely to oppose such a bill.

The Committee's December Agenda

Due to the *Bar News* printing deadline,

this article was prepared prior to the Committee's final meeting. However, the Committee will have considered the following matters at its December 13, 1996, meeting:

Uniform Unincorporated Nonprofit Associations Act. A modified version of the Uniform Unincorporated Nonprofit Associations Act is proposed that is intended to create greater certainty in the legal treatment of unincorporated associations. Interested groups have worked together over the past year to address a number of issues arising from early drafts of the proposal. The Committee has asked for comments from the Washington State Trial Lawyers' Association, as well as interested WSBA Sections.

Abuse of the Elderly. The State Attorney General's office has asked for WSBA support for amendments to the statutes concerning abuse of elderly persons in nursing homes and other residential facilities. The Attorney General's Office is working closely with the Elder Law Section to prepare a bill that will have that Section's support.

Other Family Law Proposals. The Family Law Section has asked for support for further amendments to RCW 26 that include changing the definition of a "minor modification" of a parenting plan to allow more changes in overnight schedules, and allowing deductions of voluntary pension payments up to the federal limit from gross income for purposes of calculating child support. Also, anticipating that the legislature may move again this year to limit the authority of courts to order postsecondary educational support, the Section would like WSBA approval of an alternate bill that could be introduced (if necessary), that would require the court to provide postsecondary support if certain facts are found. The Committee has also asked for the position of the family law sections of other bar associations on these provisions.

Other matters that the Committee is expected to act upon in December is a proposal to amend RCW 4.84.250 to raise the cap to \$25,000 on civil matters in which the prevailing party may receive attorney's fees; a proposal from the Attorney General's Office to amend the state tax laws; a proposal to amend the Professional Service Corporations Statutes to permit certain types of trusts to be shareholders; and revisions to the Guardianship Statutes.

Coordination With Other Organizations

At its second meeting, held on October 25, representatives of a number of bar-related organizations met with the WSBA's Legislative Committee to discuss the organizations' respective legislative agendas for the forthcoming session. This was the first meeting of its type, and was called at the request of WSBA President Tom Chambers. Representatives attended from the following organizations: Office of the Administrator for the Courts, Washington Association of Prosecuting Attorneys, District Court Judges Association, Office of the Attorney General, 46th District Legislative Office, Columbia Legal Services, Washington Association of Criminal Defense Lawyers, King County Bar Association, Washington State Trial Lawyers, Superior Court Judges Association, Washington Defense Trial Lawyers, Columbia Legal Services and the Access to Justice Board.

Many specific proposals were described at the meeting. However, two common themes emerged. First, for all involved in the justice system, the issue of funding will be paramount. From the funding of the courts to funding of the juvenile justice system and legal services, just getting enough money into the system to make it work will be a top priority. Many recommendations for improvements to the system, some requiring more money, were also discussed. Second, since the meeting occurred before the election, many were not yet prepared to decide which initiatives would be pursued until the makeup of the House and Senate were clear.

The Legislative Committee will continue to work towards improved coordination of the WSBA's efforts with those of other bar-related organizations. Questions concerning WSBA's legislative program can be addressed to John Fattorini, Director of Legislative Programs, at 1001 S. Eastside, Suite A, Olympia, WA 98501.



*Ellen Conedera Dial chairs the WSBA
Legislative Committee.*



by Charles Jackson

November 22-23, 1996
Bellingham

Executive Session: The Board dealt in executive session with a litigation update, the discipline proceedings docket, a request from the Office of Disciplinary Counsel to file a petition with the Supreme Court, a request for a Rule 9 intern supervisor, and minutes of the October 4, 1996, executive session.

October Meeting Minutes: Following self-introductions by the Governors, staff, liaisons and guests, the Board approved the minutes of the October 4-5 regular meeting.

President's Report: Tom Chambers reported proposing to the Supreme Court that the Board of Governors and the Justices routinely meet four times each year. He is hopeful that the Justices will agree, but the request remains an aspiration. He has additionally proposed to the Justices that they allow presenters from the WSBA to introduce and comment to the Court on future WSBA proposals for ruling-making as a regular practice. The concept seemed to generate mixed reactions by the Justices. He will continue his efforts to secure its adoption.

President Chambers announced the establishment of a legislative committee from the Board in anticipation of an active legislative session in 1997. The Board's committee will meet weekly during the legislative session in order to enable the Bar to respond immediately to legislative developments. He alerted Governors that emergency meetings of the Board may be necessary for the Association to respond effectively to events in the Legislature.

Governor Whitson has been named chair of the Membership Services Committee. Executive Director Dennis Harwick also serves on the committee. Its remaining membership is to be named by Governor Whitson. President Chambers reported continuing work to establish the Public Relations Committee.

The president's report included memoranda from Leonard W. Schroeter and WSBA ADR Section Chair John A. Macdonald. Schroeter urged the Board to avoid a rush to embracing mandatory Alternative Dispute Resolution on a fast track. Macdonald presented a draft rule authorizing mandatory ADR in nonfamily law civil litigation and urged its consideration by the Board.

President Chambers observed that the King County Bar Association and King County Superior Court are forming a task force to address ADR issues. He is asking the two to include representation by WSBA on that task force. He understands that the Task Force is assembling a five-member subcommittee to study issues presented and to make recommendations.

He also reported that Past President Lowell Halvorson has requested the Supreme Court to adopt a rule authorizing limited practice in family law. The request has been referred to Justice Guy's Domestic Relations Committee. President Chambers has asked the Court to refer the request to the Bar Association.

President-elect Mary Fairhurst commented on representing President Chambers at the Supreme Court and WSBA Joint Legislative Committee meeting. She also reported that the Long-range Planning Committee, which she chairs and on which Governors Whitson and Theiler, Pam Cairnes from Washington Young Lawyers Division, and Zanetta Fontes of King County Bar Association sit, has begun meeting.

She reported she was at the first presentation of proposed amendments to GR 9 to the Supreme Court by the Joint Task Force on Lawyer Discipline. The WSBA is represented on the Task Force by the Discipline Committee, which is chaired by Governor Ehrlichman and which includes Governors Perey, McMullen and Moschetto and Seattle counsel Jan Peterson and Wayne Blair. WSBA Chief Disciplinary Counsel Barrie Althoff made a presentation to Supreme Court of the Task Force's proposals to improve lawyer discipline and to make disciplinary information more accessible to the public. Executive Director Harwick, as part of his report, called attention as a related note to the *Seattle Post-Intelligencer's* November 21st editorial commending the WSBA for opening its disciplinary records.

President-elect Fairhurst distributed a memorandum summarizing accomplishments in volunteer conflict resolution and mediation by the Lawyers and Students Engaged in Resolution (LASER) Project. LASER is a volunteer program implemented by the WSBA as a consequence of the Legislature's enactment of RCW 28A.300.280 and failure to fund the program. She asserted that the credibility of and endorsement by the WSBA have

proven and continue to be critically important to recruiting for and promoting this commendable volunteer effort to resolve conflicts in the school community without resort to violence.

President Chambers cited a newspaper article describing the Washington State Medical Association's initiative to reduce domestic violence. He is inquiring of the Medical Association how the WSBA might complement that endeavor.

Executive Director's Report: Dennis Harwick documented the Supreme Court's approvals on November 14 of amendments to WSBA Bylaws (1) regarding procedure for nominating and eligibility to vote for governors and (2) setting incremental increases to annual membership fees for 1997 through 2000. He announced that the move of the administrative offices is to occur over the weekend of December 13 and 14. The staff plans to suspend operations around 11 a.m. December 13 and resume operating at the new facilities December 16.

Additional Announcements: Governor Whitson attended the Municipal and District Court Judges Association meeting on November 8 as liaison from the Board. The agenda there included in part: increasing jurisdictional limits of litigation claims; staff salaries; anti-harassment (as distinguished from domestic-violence) issues; relocating probation officers from the judicial to the administrative branch; affidavits of prejudice at the district court level; and record expungement and confidentiality issues.

He attended the ABA Leadership Forum, whose primary emphasis focuses on delivery of legal services to low-income persons and indigents in the face of public-funding cutbacks. The ABA Access to Justice Section will be contacting state bar associations to solicit local sponsorship of a "Tele-Lawyer" program in the local bars' names. He thinks that the program sounds like a lawyer-referral service and cautioned that it should be closely scrutinized when presented to the WSBA.

With regard to Mandatory Arbitration and Alternative Dispute Resolution, he questioned including on the committee lay members who are involved in alternative dispute resolution and offered that he would oppose inclusion of a MAR/ADR meeting with the Association annual meeting.

President Chambers curtailed debate

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of a proposal for a rule to deal with lawyers who are in default on their student loans, noting that the topic will be on the Board's January 1997 agenda.

Legislative Report: John Fattorini, Director of the WSBA Legislative Department, summarized 1996 state legislative election results and the makeup of legislative committees of key interest to the WSBA. He brought to the Board for its consideration ten legislative proposals for 1997 and noted that he expects the Legislative Committee to forward three more after the Committee's December meeting.

Legislative Committee chair Ellen Dial and Fattorini requested that the Board support the Committee's following recommendations for legislation in 1997:

1. An act relating to non-unanimous shareholder consent provisions, to conform Washington's statute with Delaware law. John Steel from the Business Law Section reviewed the proposal, which allows for action by written consent of fewer than all shareholders of nonpublic companies when no meeting has been called.

2. Revision to RCW 23B.19.040 to correct unintended consequences of the code reviser's modification of the last amendment to the statute and to retire certain anti-takeover provisions, which was also commented on by Steel.

3. Amendment to the Washington Limited Liability Company Act to permit one-member Limited Liability Companies. The proposal is supported by the Business Law Section and was described by Steel.

4. Legislation to protect personality rights. Supported by the Intellectual and Industrial Property Section, this proposal is intended to create certainty in protecting an individual's right to his or her name, likeness, image, signature, photograph, voice and other distinctive characteristics. Yale Lewis, representing the Section, discussed the proposal and replied to the Board's several questions and comments.

5. A proposal from the Real Property, Probate and Trust Section's Probate Law Task Force to change Title 11 extensively. The proposal alters, among other things, creditors' claims procedure, inventories, home-

stead and family allowances and non-intervention powers of personal representatives. Mark W. Roberts, from the Real Property Probate and Trust Section outlined the proposal's principal changes and history and reasoning behind them. A proposed provision to authorize testamentary disposition of certain non-probate assets encountered spirited opposition among the Board; Ellen Dial consequently opted to delete the provision.

6. Technical amendments to RCW 6.15.020 (affecting IRAs) and to RCW 83.100.070 (regarding estate tax penalties) supported by the WSBA in the last session but not acted on; these will be reintroduced in 1997. Seattle attorney James H. Hicken offered brief comments on ramifications of desired amendments.

7. Legislation to make the unauthorized Practice of Law a per se violation of the Consumer Protection Act. The proposal was presented by Consumer Protection Section chair Doug Walsh. Noting a potential separation-of-powers issue in a portion of the language and sensitive to the Attorney General's budgetary concerns over the concept, the Board agreed to substitute wording authorizing private right of enforcement without prejudicing the authority of the Attorney General to enforce.

8. An amendment to RCW 26.19.080 to provide that children's health care expenses be accounted for annually rather than monthly. Proposed by the Family Law Section and supported by the WSBA in 1996, the amendment has now been modified slightly to reference the Internal Revenue Code and is supported by the Section for introduction again in 1997. The Board amended the proposal to specify that IRC reference be to the later IRC.

9. Deadman's Statute. The Legislative Committee recommended to the Board that it hold off on seeking legislation to repeal the Deadman's Statute until the Supreme Court acts on the new court rule proposed last year to supersede the statute.

10. A bill to create a real estate broker's lien on real property. The Legislative Committee sought the Board's direction on what position,

if any, to take on a proposal by commercial realtors to create a right of lien to secure broker's commissions. Observing that the Real Property, Trust and Probate Section opposed the proposal in 1995 and 1996, Dial stated that the Section is working with the realtors' committee to explore alternatives to a lien right.

The Board voted its support for recommendations 1 through 4, 5 as amended, 6, 7 as amended, and 8. It tabled recommendation 9 until the January 1997 meeting and deferred action on recommendation 10 after discussion which opposed creating a new class of encumbrance on real property held in fee.

Minority and Justice Commission Funding Request: Governor Mary Alice Theiler, substituting for Judge Elaine Houghton and speaking as a member of the Supreme Court Minority and Justice Commission, asked for and received the Board's support for the Commission's biennial budget request to the Legislature for a \$200,000 increase, bringing the Commission's appropriate request to a total of \$800,000.

Court of Appeals Funding Request: The Honorable Mary Kay Becker from Division One of the Court of Appeals brought a request from the Court of Appeals to the Board for WSBA support of the Court's full budget request in the 1997 Legislature. The Board voted to support the request.

B.C. Law Society and Canadian Bar Association: Brian Ralph, secretary of the Law Society British Columbia (who is essentially Dennis Harwick's counterpart in B.C.), and Cari-Lynne Findlay, vice-president of the B.C. branch of the Canadian Bar Association addressed the Board and liaisons at lunch on Thursday, profiling the dual structure of the British Columbia Bar. They highlighted challenges and issues confronting the B.C. Bar, which include: the chilling effect that the recently imposed services tax on attorney's fees is having ("giving a whole new meaning to advance fee deposit"); entry by U.S. title insurance firms into real property conveyancing; and the insurance industry's effort to introduce no-fault insurance in Canada.

Whatcom County Bar Association: Whatcom County Bar Association President Hugh Lewis welcomed the Board to Bellingham on behalf of the local Asso-

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ciation. He described the Association's strides toward improving public perception of the bar through its well-received and expanded pro bono program. He reported that within the last year the program, dubbed "Legal Assistance by Whatcom (LAW) Advocates," has logged almost \$600,000 of volunteer lawyer time. The program is now gearing to fund a staff attorney and legal assistant to provide services primarily in the family law domain.

Appointments: The Board took up Board appointments that had been tabled at the October meeting. Seattle practitioner Marilyn Endriss was appointed to a four-year term on the Supreme Court's Washington Pattern Jury Instructions Committee. The Board appointed Christopher Johnson of Spokane to the Supreme Court's Rule 12 Limited Practice Board. Appointment of a second member was tabled until Saturday, when the Board elected Brian Kelly from Chehalis to that position after Governor Lee pressed for geographic diversity in appointments.

Responding to the request by Patrick McIntyre, executive director of the Northwest Justice Project, to appoint three replacements to the Project's Board of Directors, the Board named Colleen Kinerk from Seattle and James Douglas from Seattle to three-year terms and Scott Collins, also from Seattle, for one year.

Action to fill two vacancies on the Supreme Court's Board for Judicial Administration was tabled until January. The Board authorized President Chambers to appoint two WSBA representatives to the Washington Association of Legal Support Professionals' Joint Education Committee. The Honorable Ted Small, judge of the Chelan County Superior Court, was nominated to the Access to Justice Board.

GR 9 (Lawyer Discipline) Amendment: Governor Ehrlichman and Chief Disciplinary Counsel Barrie Althoff reported meeting with Justices Smith, Guy and Johnson and meeting a second time along with President-elect Fairhurst with Justices Guy and Smith and Chief Justice Durham to present the work and recommendations by the WSBA for improving lawyer discipline. They found the Justices supportive of all that has been done. Althoff announced he was mailing an abridged volume containing background to the proposed amendments as well as the proposed amendments proper to Bar leaders the following week. The WSBA has asked the Justices to expedite approval of the amendments to take effect in

March 1997 and believes that the Court will honor the request.

Amicus Brief Policy: The Board amended WSBA policy regulating comments by WSBA sections or committees to the Legislature or a committee of the Legislature by expanding it to cover amicus briefs. The amendment mandates giving notice to the adverse party, the BOG and the executive director at the earliest opportunity of intent to file an amicus brief in order to permit that adverse party opportunity to seek review by the BOG or any WSBA section or committee. Governor Theiler called for the Board to establish a standing Amicus Committee to deal with requests for review. The Board by vote approved the committee. The Governors next voted to deny Seattle attorney David Leen's request that the WSBA file an amicus brief in *Perkins v. CTX Mortgage Co.*, in King County Superior Court.

Classification of WSBA Employees: The Board approved a motion to request the State of Washington to clarify the classification of WSBA employees as employees of a political subdivision, not as state employees, for purposes of participation in the Public Employees Retirement System (PERS) and the Health Care Authority (HCA). The Board also adopted a resolution authorizing and approving participation by eligible WSBA employees in State Deferred Compensation Plans.

Martindale-Hubbell Request for Membership List: The Board voted not to make an exception to the WSBA Mailing Label Policy, thereby denying Martindale-Hubbell's request to purchase the WSBA membership list in electronic format.

Complaints Against Governors: Governor Theiler proposed to the Board a specific procedure for investigating the fitness of a governor, governor-elect or the president to serve in event of receiving a complaint against that governor. The procedure was approved, calling for an allegation not without merit or substance on its face to be investigated by a committee of two former governors, to be appointed in executive session, who are not from the same District as and who have not sat on the Board with the governor who is the subject of the allegation. Under the protocol a matter which if sustained would be a violation of the Rules of Professional Conduct is to be referred to Disciplinary Counsel to be dealt with as deemed appropriate.

FY '96 Financial Report: Dennis Harwick opened the second day of the

meeting with a brief commentary on current-year finances. He shared that the preliminary unaudited accounting contains no surprises. While it currently projects completing FY '96 about \$80,000 under budget, he cautioned that additional expenses are anticipated to reduce that figure somewhat by year end. He related that auditors Dodd Wing and Co. have arrived to commence the annual review of accounts.

'97 Annual Meeting: Tom Chambers suggested coupling some form of conference of interest to members with the annual meeting at Yakima to create a meaningful format conducive to improved attendance — without reverting to the former convention format. The Board debated scheduling the annual meeting to coincide with the June 21-22 Board meeting before voting not to move it from September and settling on scheduling the annual award luncheon for the time of the June Board meeting with the Access to Justice Board and the Bar Leaders Conference.

Law Clerk Task Force Report: Dennis Harwick included in the November Board Meeting Book — which was distributed to the Board — Law Clerk Task Force Chair Frank V. Slak, Jr.'s, August 1996 letter report. Slak advocated retaining the Law Clerk Program but called for it to become financially self-supporting. Harwick informed the Board that the Task Force's final report will be before the January 1997 meeting.

Committee Reports: President Chambers recounted having asked committee chairs for statements of what the committees hope to accomplish this year and for their corresponding time lines. He found the responses sufficiently informative that he included them in the November Board Book and encouraged the Board to review them.

Bar News Editor Interviews: Editorial Advisory Board chair Robert Cumbow outlined for the Board the EAB's work to find a successor to Hal White. That Board narrowed a field of 17 applicants to two finalists. The finalists, both with substantial journalistic experience, were Sherrie Bennett and Rebecca Earnest. Cumbow presented and the Board interviewed Ms. Bennett and then Ms. Earnest. Upon concluding the interviews the Board returned to executive session to evaluate the candidates. Their selection is reported in Executive Director Harwick's column in this issue.



Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in December 1996 is 5.24%. The maximum allowable interest rate permissible for January 1997 is therefore 12%. Compilations of the average coupon equivalent yields from past auctions of 26-week treasury bills and past maxi-

mum interest rates of the past 10 years appeared on page 41 of the July *Bar News*.

30-day Ban on Airplane Crash Victim Solicitation

Congress recently enacted a ban on the solicitation of airplane crash victims by lawyers for a period of 30 days following the accident. The statute, Title VII, Sec-

tion 702 of P.L. 104-264, which became effective October 9, 1996, provides, in part:

In the event of an accident involving an air carrier providing interstate or foreign air transportation, no unsolicited communication concerning a potential action for personal injury or wrongful death may be made by an attorney or any potential party to the litigation to an individual injured in the accident, or to a relative of an individual involved in the accident, before the 30th day following the date of the accident.

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Notice of Board of Governors Election

Three positions on the WSBA Board of Governors will be up for election this year, i.e., the Governors representing the First and Fifth congressional districts, along with one of the King county at Large positions. These positions are currently held by Peter Ehrlichman (First District), Patricia Williams (Fifth District) and Ron Perey (King County at Large).

The WSBA Bylaws provide that any member in good standing, except a member previously elected to the Board of Governors, may be nominated for the office of Governor from the Congressional District in which such member is entitled to vote by filing a petition signed by at least twenty (20) active members of the WSBA then entitled to vote in that district. This represents a modest change, i.e., all out-of-state active WSBA members are now eligible to vote in the district of the address of their agent within the State of Washington for the purpose of receiving service of process as required by APR 5(e) or, if specifically designated to the Executive Director, within the district of their primary Washington practice.

Nominating petitions are available from the Office of the WSBA Executive Director from Brynn Hancock at WSBA, 2101 4th Ave, 4th Fl, Seattle, WA 98121-2330; (206) 727-8244. Petitions must be received by the Executive Director of the WSBA by 5 p.m. on March 1, 1997. The Board of Governors determines the official dates of the election. Ballots are usually mailed around the first of June and

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■ WHAT DOES AN I.R.C. §1031 EXCHANGE MEAN TO THE OTHER PARTY?

Attorneys and Real Estate Professionals often call our office asking:

1. How will an exchange impact their client who is buying from, or selling to, an Exchanger?
2. What does it mean for their client to "cooperate" in an exchange?
3. How, if at all, does an exchange alter a transaction?

Our first article attempts to answer these questions. This issue also explores the advisability of a refinance as a tool for pulling cash out of an exchange property and addresses some seasonal tax issues.

As always, we at Western American Exchange Corporation welcome any questions you or your clients may have after reading this Newsletter. Please call us.

■ TAX DEFERRED EXCHANGES CAN BENEFIT BOTH THE EXCHANGER AND THEIR BUYER AND SELLER

The Exchanger obtains obvious benefits from the use of Western American Exchange Corporation as a Qualified Intermediary for their tax-deferred exchange (simplicity, nominal expense, expertise, etc.). However, the Buyer of the relinquished property and the Seller of the replacement property (both referred to as the "Other Party") may also reap some real benefits from the Exchanger's use of Western American Exchange Corporation.

• **THREE-PARTY, TWO-PROPERTY EXCHANGES**
Commonly employed prior to the use of Qualified Intermediaries, in this case the Other Party facilitated the exchange. They may appear as a party to the exchange agreement, acquire a property in which they have no

interest, appear in the chain of title, become liable for the environmental condition of the property, wrangle with financing issues, etc., in order to complete the Exchanger's exchange.

• **QUALIFIED INTERMEDIARY EXCHANGES**
With the use of a Qualified Intermediary, the only requirement regarding the Other Party is a notice to them of the exchange.

Most Qualified Intermediaries in the Pacific Northwest use an assignment document in which the Exchanger assigns to the Qualified Intermediary their rights in the purchase agreements for the relinquished and replacement properties. These assignments, generally

Continued Next Page

Continued

executed at the closing table, are critical to establishing an exchange. Most Qualified Intermediaries require a signature from the Other Party establishing the Other Party's receipt of the required notice and releasing the Qualified Intermediary of liability for the transaction. The Exchanger and Other Party must proceed directly against one another should the transaction fail to close satisfactorily.

- **PRACTICAL ISSUES FOR THE OTHER PARTY**
As a practical matter, using a Qualified Intermediary causes little impact on the Other Party.

Earnest Money Agreement - The Earnest Money Agreement may include a clause securing the Other Party's "cooperation" in the exchange, i.e., their signature on the assignment document. The clause will often assure the Other Party that the exchange will be at no expense to them, nor will it delay the transaction. The Exchanger may also release the Other Party from any liability for the exchange.

Deed - The Qualified Intermediary will request the insertion of language on the deed that indicates the property is being transferred as part of an exchange.

Closing Documents - The closing documents will show the Qualified Intermediary as the party to the transaction. The Exchanger will read and approve all closing documents.

- **LEGAL ISSUES FOR THE OTHER PARTY**
The use of a Qualified Intermediary greatly reduces risk to the Other Party. First, it is no longer necessary for the Other Party to deal with (i.e. hold title to or involve themselves with financing of) any property other than that which they wish to purchase or sell. Second, they are not a party to the exchange agreement, and thus need not concern themselves with the particulars of the exchange.

The Exchanger's tax liability may be a negotiating point. For example, the Exchanger agrees to delay the closing on the replacement property while the Seller works out issues regarding the property or attempts to structure their own exchange. The parties may agree that the Seller will be responsible for some portion of Exchanger's tax liability if the delay causes Exchanger's exchange to fail.

Regardless of negotiated liability, it is conceivable that an unhappy Exchanger may make a claim against the Other Party for tax consequences suffered by an Exchanger due to a failed exchange. However, Western American Exchange Corporation is unaware of any such cases or claims at this time.

- **SUMMARY**

The use of a Qualified Intermediary relieves the Other Party of responsibility for the practical requirements of an exchange and greatly reduces the legal risks. Use of a Qualified Intermediary even permits exchanges where the Other Party actually refuses to cooperate.

- **DIRECT DEEDING**

In exchanges using a Qualified Intermediary, the Exchanger deeds directly to the Buyer of the relinquished property. When the replacement property closes the Seller deeds directly to the Exchanger. Regulations issued in 1991 clarify that the Qualified Intermediary need not take actual title to the relinquished or replacement properties for there to be an exchange. Treas. Reg. §1.1031(k)-1(g)(4)(iv).

Qualified Intermediaries do not want to appear in the chain of title for every exchange property, especially in these days of heightened environmental liability. This ability to deed directly between the parties makes exchanges possible and inexpensive, even with contaminated properties.

■ REFINANCING BEFORE OR AFTER AN EXCHANGE

Exchangers who have a large cash equity in their relinquished property will often want some of that cash for purposes other than purchase of replacement property. If structured properly, Exchangers may withdraw funds without jeopardizing the entire exchange. Unfortunately, any cash paid to the Exchanger at the time of an exchange will always be taxable as the receipt of "boot." Boot is anything received by the Exchanger that is not like-kind property. Boot is taxable.

The question then posed is, **what about refinancing the property?** Refinancing a property to obtain cash is a non-taxable event. However, a refinance, if part of an integrated transaction that includes an exchange or in anticipation of an exchange, may be taxed as the receipt of boot. In *Fredericks v. Commissioner*, T.C. Memo 1994-27 CCH Dec. 49,629(M) the IRS attempted to tax a refinance which took place less than a month before the exchange. The Exchanger prevailed on the facts when they proved the refinance, begun two and one-half years earlier, was coincidental with the exchange.

There is no authority to differentiate between a refinance prior to an exchange and a refinance after an exchange. However, various commentators express the opinion that a post exchange refinance should have no tax consequence whether integrated with, or immediately following, the exchange. The rationale is two-fold: 1) The Exchanger **remains liable** for a refinance **after** the exchange but is **relieved from liability** for a refinance **prior** to the exchange. 2) A refinance after the exchange does not increase the Exchanger's net worth.

In the absence of a clear statement from the IRS, Western recommends that Exchangers consult with their tax advisor and consider refinancing well in advance of an exchange or sometime after the exchange. A refinance should not be a condition of

transfer of the relinquished property nor should it be part of the relinquished property escrow.

■ TAX SEASON ISSUES

- Taxpayers must report their exchange on the tax return for the year in which the exchange begins. The exchange is reported on Form 8824, "Like Kind Exchanges." This form requests dates of exchange transactions, the date properties were "identified," and financial information obtained from the final escrow settlement statement.
- For the sale of depreciable rental or business property the taxpayer will also need Form 4797, "Sale of Business Property." For the sale of non-depreciable investment property the taxpayer will need Form 1041 Schedule D, "Capital Gains and Losses."
- Refer to *Rev. Rul. 72-456* and *Treas. Reg. 1.1031(*k)-1(g)(7)(ii)* for tax treatment of closing costs in an exchange. *Rev. Rul. 72-456* deals specifically with brokers' commissions but is considered a guideline for treatment of other closing costs. The basic rule is that closing costs reduce realized gain on the relinquished property, reduce boot received, and are added to the basis of the replacement property.
- Remember, if the taxpayer relinquished property after mid-October they have less than 180 days in which to complete their exchange. The actual deadline is the date their tax return is due, typically April 15th. In this situation the taxpayer must file for an extension to obtain a full 180 day exchange period.
- Be aware that generally the IRS has three years in which to audit a tax return. However, the statute of limitations is extended if a taxpayer fails to report more than 25% of their gross income. The tax savings from a deferred exchange often activates this extension.

■ UPCOMING CLE SEMINARS

Western American Exchange Corporation is proud to present the following seminars on tax deferred exchanges. These courses have been approved by for 3.0 hours CLE credit in WA:

Tuesday, January 21, 1997

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Tuesday, January 28, 1997

9:00 a.m. - 12:00 p.m.

Washington Athletic Club, Seattle

Although these seminars are presented at no cost, space is limited and advance reservations are required. Please call (206) 621-1031.

Western American cannot provide advice about the specific tax consequences or advisability of an exchange. Western American advises anyone considering an exchange to seek the counsel of their tax advisor and attorney.

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counted approximately the first of July.

Note: The *Bar News* intends to include in its May issue a section carrying statements of 100 words or less from all the nominated candidates. Those statements should accompany the nominating petitions.

King County Arbitration Program Saved

The Metropolitan King County Council affirmed and funded the King County Superior Court's Mandatory Arbitration Program — in place since 1980 — for 1997. Hundreds of lawyers and more than a dozen legal organizations joined together in an effort to preserve the program. (See the October 1996 *Bar News*, page 15).

Pierce County Code Supplement

The July 1996 supplement to the Pierce County Code is now available for \$75.85 by mail (Attn: C. Schmidt, Pierce County Council, County-City Bldg., Rm. 1046, 930 Tacoma Ave. S., Tacoma, WA 98402) or in person at the council office for \$72.35 (206) 596-6695).

Suspended

Sequim lawyer Jason Kays (#20438, admitted 1991) has been ordered suspended for 60 days effective October 23, 1996. The discipline is based upon Kays' conviction for Malicious Mischief in the Second Degree (a felony), Fourth Degree Assault (a misdemeanor), and Harassment (a misdemeanor). Following his reinstatement, Kays will be on a two year probation.

Respondent was represented by David Goodson. The Bar Association was represented by Disciplinary Counsel Anne I. Seidel.

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.

Interim Suspension

Bremerton lawyer Eric H. Lind (#12141, admitted 1981) was ordered sus-

pended from the practice of law pending the outcome of disciplinary proceedings by Supreme Court order entered November 19, 1996.

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

Joanne S. Abelson represents the Association in this matter. Mark G. Beard represents the respondent.

In Memoriam

Joseph M. Cooney: Longtime Spokane County Bar member Joseph Cooney died November 18. He was known for "taking everyday cases and helping the little guy."

John W. Dayhoff: Born in Washington, D.C., John Dayhoff practiced law in Tacoma for 24 years. He died August 27.

Calmar M. McCune: Nicknamed "mayor" of Seattle's University District, Calmar McCune died October 16 after heart surgery at age 85. He was renowned as a leader in promoting low-income housing and community development, chronicled in "From Romance to Riot," published this year.

Tom Maloney: Spokane attorney Tom Maloney died of cancer in mid-October. A traditional lawyer, he never turned away a person for lack of money.

Paul Petterman: Bellevue resident Paul Petterman died in October at age 89. He practiced law in Seattle from 1936 to 1983.

Nancy E. Schaps: PTSA and PTA

activist Nancy Ellis Schaps died in Bellevue at age 46 in February 1996 after a four-year battle with breast cancer. Born in Everett, she resided on Mercer island for 21 years.

Donald G. Simpson: Life-long Vancouver resident Donald George Simpson died June 20, 1996, of coronary artery disease at age 80. He served as clerk for Supreme Court Justice William O. Douglas, as attorney with 101st Airborne in World War II and as a lawyer for the last 50 years.

Cameron Sherwood: Colville native Cameron Sherwood died May 1 at age 96. He practiced first privately in Seattle, then with the U.S. Attorney, Western District, and finally in Walla Walla for 40 years.

Patrick Steele: Long-time Tacoma lawyer and politician Patrick Steele died in September after a long illness at age 84. After receiving the Purple Heart in World War II, he returned to Tacoma as a lawyer, public servant and patriarch of the Tacoma Narrows Airport.

Striker, Scott: Spokane attorney Scott Striker died in late October. He was with the Spokane Office of the Public Defender.

James Wilson: James B. Wilson, University of Washington chief counsel during some of its stormiest years, died in October at age 70 of a heart attack. He traveled to Mississippi in 1964 and '65 to counsel Black Americans on voting rights and met with anti-war and civil-rights protesters at the UW to prevent campus violence.

APPEALS

John Mele has the experience, enthusiasm and flexibility you need in an appellate lawyer. Mr. Mele worked on over 80 decisions during his clerkship with the Washington Court of Appeals. In private practice, he has addressed nearly every civil issue on appeal, from contract interpretation to equal protection, offers of judgment to jury instructions, slip-and-fall liability to lost profits. In the last five years alone, he has worked on over 60 appeals before Washington and Oregon appellate courts, and the 9th and 10th Circuits. Mr. Mele is available for consultation, briefing and argument, and will consider a variety of fee arrangements.

JOHN MELE

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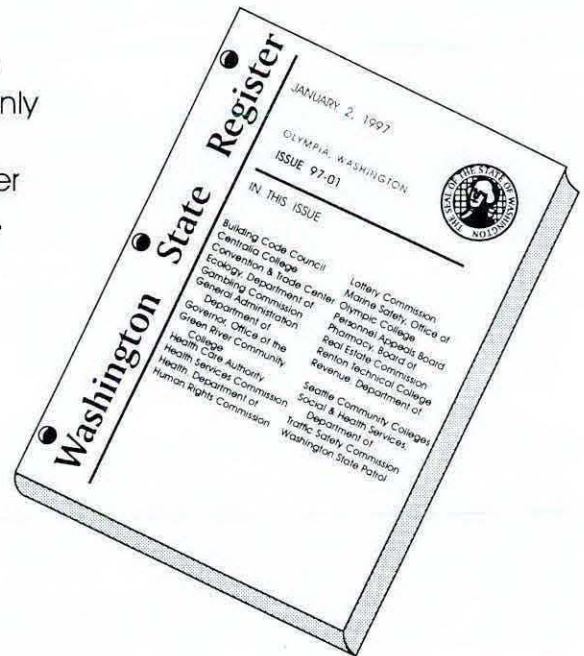
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- 17 **4th Annual Sinking Creek Water Law Symposium**
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Practical Suggestions to Avoid Problems With Fees, Part 1

by **Joy McLean**, *WSBA Disciplinary Counsel*

This article continues a series on lawyers' fees. Prior articles discussed legal issues. This article suggests some practical ways to avoid problems with fees, and focuses on the formation of the attorney-client relationship.

Determine the Extent of Your Client's Experience With Lawyers

If the client has never been to a lawyer, discuss how lawyers, as business people, operate. Even if the client has never used legal services before, she or he may have incorrect expectations based on television ads, the experience of a family member, or movies. If the client *has* previously been to a lawyer, you need to understand what that experience was like for the client so that you can either duplicate it or avoid it. Also, if appropriate, differentiate for the client the type of service

you may be rendering from the previous experience. For example, if the client's prior lawyer handled a personal injury case, and you are handling a boundary dispute, explain the differences in fees and projected course of the case.

Talk about Fees with Clients

Talk to your client about your fees and costs. Do not leave this important aspect of the attorney-client relationship exclusively to staff. Clients are ready to hear about fees, and they want to hear about it in person from you, not by letter or from your assistant. Remember, however, that clients often feel uncomfortable in coming to a lawyer, and some may find lawyers intimidating and may expect to find you arrogant and lacking empathy. Disappoint them in these expectations!

Take the lead in talking to your client about fees and putting them at ease. Do

not be shy about discussing fees with clients. Your discomfort with the subject will be sensed by the client who, in turn, will hesitate to raise questions or concerns about fees with you. Most people value what they have to pay for, and the expect to pay for good legal services. Generally, if clients seek you out in the first place, they will not be discouraged by the reality that you must earn a living. If that troubles them, you want to know this before you agree to represent them — and likely before you end up performing involuntarily free legal services for them.

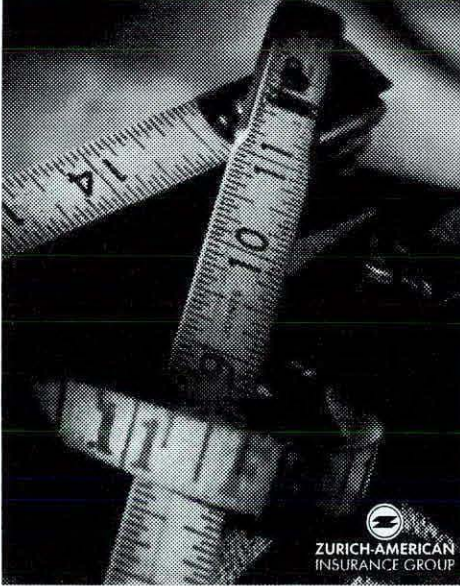
Try to standardize your fee agreements and information. The more your fees are set up with forms and checklists, the more clients sense that all this is "institutionalized" and not personal to or directed at them. It also assures that you cover completely with each prospective client the important aspects of your fees and costs.

The pattern of communication should start with your initial consultation. Thus, the consultation should be in-person, uninterrupted, and with an interpreter if the client has difficulty communicating in English (making sure to comply with the confidentiality provisions of RPC 1.6). At the initial consultation, consider telling the client, "If you ever feel I am not doing a good job, I am charging you too much, my staff or I am not treating you well, or you are bothered by something in my representation of you, I would like us to talk about that. I cannot tell you I will be able to resolve the concern to your satisfaction, but I want to have the opportunity to try to do so." This will let the client know that he or she can talk to you and that you welcome him or her doing so. It may also save you from having a disciplinary grievance filed against you by a client whose real intent in doing so is merely to get you to pay attention to his or her concerns.

Don't Start Work Without a Signed Fee Agreement

Establish a procedure to make sure that your fee agreement is signed before you begin representing the client. Sometimes in defending against a grievance a lawyer

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relies upon a fee agreement signed only by the lawyer; this is not always helpful since assent is a basic element of contract law.

Consider asking the client to sign a fee agreement at the initial consultation, even if the client is uncertain whether to start the representation; and perhaps insert a notice above the client's signature line which states the fee agreement is not effective until the client pays the entire advance fee deposit stated in the agreement. If the client is unwilling to sign at that time, or the case involves something other than an advance fee deposit, give the client a copy of the agreement and tell the client that you will not start representing the client until the copy is signed and returned. This requires you and your staff to diligently insist that the agreement be returned before you start work.

These procedures are much more effective if: 1, you ask your prospective client to read the fee agreement at the initial consultation; 2, you leave the room to allow him or her to do so without pressure; and 3, you then personally explain the agreement to the client. The prospective client is more likely to trust you if you willingly talk up front about fees and the less attractive aspects of the fee agreement, and if you frankly discuss

the benefits and detriments with the client. If you doubt the client's literacy, read and explain the agreement to the client, and make a note of the reading and explanation on the agreement and have the client initial it.

Don't Forget to Address Costs

Costs are as important to address in a fee agreement as the basis or rate of the fee. Explaining the difference between fees and costs helps the client understand the lawyer's meaning and use of the term "costs" in subsequent bills. A list of typical costs (for example, medical reports, court filing fees, service of process fees, newspaper publication costs, etc.) also helps the client understand the meaning of "costs." A recitation of RPC 1.8(e)'s requirement that the client remains ultimately liable for any advanced costs is recommended. Since whether payments or advances on the bill should be applied to costs or fees is a frequent source of disciplinary inquiry, clarifying this issue in the fee agreement is advisable.

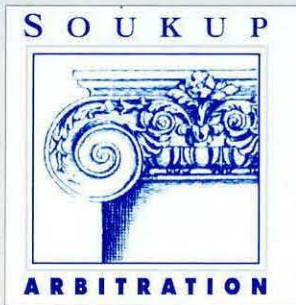
Remember That Your Fee Agreement Will be Construed Against You

Because fee agreements will generally

be construed against you (the author), clauses giving an advantage to you, such as shifting more risk in contingent fee cases to the client, giving you presumptive entitlement to client funds coming into your possession, or providing that a fee is nonrefundable, may be considered unethical without clear evidence of your client's knowing agreement and fairness to your client. See Anne Seidel, "Nonrefundable Retainers and Advanced-fee Deposits," *Washington State Bar News*, September 1996.

Who Are You Going to Call?

If you need advice regarding a specific clause you propose to insert into your future fee agreements, you may ask the professional responsibility counsel in the WSBA Licensing Department to give you her informal opinion — although she cannot formally review or "approve" entire fee agreements. She can be reached by leaving a voice mail message at (206) 727-8284. You may also request an informal written ethics opinion regarding a particular proposed clause in your fee agreement (but not for the entire agreement) from the WSBA Rules of Professional Conduct Committee. To request an opinion, write to the Rules of Professional Conduct Committee at the WSBA.



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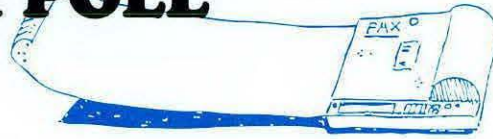
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THE WASHINGTON STATE BAR NEWS

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What is your opinion regarding reducing the Washington Supreme Court from nine to seven members? Proponents contend that more than seven justices presents an unwieldy number, and that eliminating two positions through retirement would result in reduced judicial expenditures and increased efficiency. Opponents argue that reducing the number of justices will decrease the racial, sexual and/or geographic diversity on the court.

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

1. ____ I strongly support reducing the size of the Supreme Court.
2. ____ I somewhat support reducing the size of the Supreme Court.
3. ____ I am undecided, but I believe the issue should be studied.
4. ____ I somewhat oppose reducing the size of the Supreme Court.
5. ____ I strongly oppose reducing the size of the Supreme Court.

Comments/Other: _____

Name and city of attorney (required): _____
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RESULTS

of

THE WASHINGTON STATE BAR NEWS

FAX POLL



In last month's *Bar News*, we asked your opinion regarding the pending rule change before the Washington Supreme Court to amend RPC 8.4(g). The results:

1. 53% strongly supported the proposed changes.
2. 1% somewhat supported the proposed changes.
3. 2% were undecided, but believed the concept should be studied.
4. 1% somewhat opposed the proposed changes.
5. 43% strongly opposed the proposed changes.

Overall, 189 valid responses were received. It appears that some eastern Washington members received their copies of the *Bar News* later than usual. Moreover, the "Fax Poll" fax line was down for the last three days of the voting period due to the relocation of the WSBA offices. Thus, the above results heavily favor western Washington voters. Nevertheless, the number of responses constitutes a new "Fax Poll" record.

Your Comments:

"This type of rule goes beyond the regulation of the practice of law into regulating thought and speech to serve the politically correct goal of the day. All lawyers are expected to act as professionals, and if a judge observes clearly offensive or unprofessional conduct by a lawyer...the judge can deal with it on an individual basis. Otherwise, lawyers should be subject to the same state or federal anti-discrimination law as everyone else."

Lisa Scott, Bellevue

"Members of the bar, who presumably dedicate their professional lives to advancing justice and equal protection under the law for all, should be the leaders in battling discrimination of all kinds."

Lisa Stone, Seattle

"Far too vague a standard and subjective a standard for disciplinary sanctions to be applied."

Mark Bucklin, Seattle

"Sexual orientation has as much bearing on a lawyer's ability to practice law as the LSAT. Discrimination of any kind is wrong."

Kathy Lynn, Seattle

"The Bar should stick to preventing lawyers from stealing their client's trust funds and putting on a few CLEs. The members do not need the Bar to dictate our morals or anyone's social policy."

Timothy Robbins, Everett

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



Personal Jurisdiction in Cyberspace

by Gary A. Kendra

First Amendment, contract and intellectual property concerns tend to dominate discussions of legal aspects of the Internet. However, civil procedure questions — jurisdiction, choice of law and venue — rank among the most unique and troubling legal issues surrounding the use of the Internet and on-line communications technology.

In the last few months, both the Sixth Circuit Court of Appeals and the U.S. District Court for the Southern District of New York have rendered opinions involving Internet and electronic-related jurisdiction. Several other cases involving jurisdictional issues are also in progress.

In *CompuServe v. Patterson*, 89 F.3d 1257 (6th Cir. 1996), the Sixth Circuit held that a provider of shareware sold through the CompuServe network was subject to personal jurisdiction in Ohio even though his contacts with Ohio were almost entirely electronic.

In *Bensusan Restaurant Corporation v. King*, DC SNY, (96 Civ 3993 9/9/96), a New York restaurant brought suit for trademark infringement against a Missouri nightclub with the same name (“The

Blue Note”) which advertised on the World Wide Web. The maintenance of a Web site accessible by New York residents was the only significant tie to the forum state. The District Court dismissed the case based on a lack of personal jurisdiction.

These decisions were issued in the aftermath of a ruling by the Sixth Circuit in *U.S. v. Thomas*, 706-07 (6th Cir. 1996). In that case, the court upheld a district court ruling that a California couple that operated an adult bulletin board in California — but accessible in Tennessee (and every other state) — could be prosecuted under Tennessee obscenity standards.

Jurisdiction and choice of law are among the most problematic aspects of the Internet — a worldwide medium in which state and national boundaries are largely irrelevant. The law in this area is truly novel; *CompuServe*, *Bensusan* and *Thomas* are literally the first federal decisions in this area. While the decisions involve unique factual settings, they highlight the growing importance of jurisdictional issues in the electronic arena.

Many goods and services can be sold electronically via bulletin board services

and the Internet. Software licensing, subscriber or fee-based services, and electronically initiated direct mail-type sales are increasingly common.

The whole notion of electronic commerce, contracting and digital payments envisions a world-wide marketplace where customers, merchants and third-party networks engage in a variety of activities — all by electronic means in lieu of face-to-face or traditional mail-order transactions.

Likewise, intellectual property, First Amendment and other litigation relating to Internet usage is springing up daily. Companies are actively seeking parties, often in remote jurisdictions, who post material which is protected by federal trademarks or copyrights on the Internet. Moreover, headlines regarding Internet scam artists and use of the network to transmit child pornography or other inappropriate content are common.

Against this background lies the issue of where suit can be brought in cases surrounding the Internet. The answer is of critical importance to legislators, law enforcement agencies, businesses and individuals considering venturing to the Internet or protecting their rights in cyberspace. The *CompuServe* and *Bensusan* cases are illustrative of this dilemma.

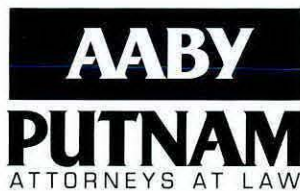
In the *CompuServe* case, Patterson, a Texas resident who allegedly had never been to Ohio, developed a software utility that was marketed and sold through the CompuServe on-line service. CompuServe is headquartered in Ohio, and the software was transferred electronically by Patterson to CompuServe’s computers in Ohio.

Patterson also electronically entered into a boilerplate CompuServe “Shareware Registration Agreement,” containing terms providing for Ohio law. Like many electronic contracts, Patterson indicated his assent by typing or clicking on “Agree” at various points in the document.

A dispute arose between CompuServe and Patterson over CompuServe’s alleged violation of proprietary rights. Patterson wrote several threatening e-mail messages and accused CompuServe of unfair trade practices. CompuServe then filed a de-

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claratory judgment action in Ohio, apparently to preempt litigation in Patterson's resident state of Texas.

The district court determined that the electronic links between Patterson and CompuServe were "too tenuous to support exercise of personal jurisdiction." The Sixth Circuit reversed, holding that Patterson was indeed subject to personal jurisdiction in Ohio. The court held that, under long standing precedent, personal jurisdiction is appropriate where:

- The defendant purposefully avails himself to the privilege of acting in the foreign state;
- The cause of action arises from the defendant's activities there; and
- There is a substantial enough connection with the state to make the exercise of jurisdiction over the defendant reasonable.

The Sixth Circuit found that Patterson purposefully submitted himself to Ohio's jurisdiction by contracting with CompuServe to sell and market his services under agreements governed by Ohio law, electronically submitting software to CompuServe for sale of over a period of several years, and using the CompuServe network to market his products.

The court also found that the other due process requirements were met. According to the court,

Someone like Patterson who employs a computer network service like CompuServe to market a product can reasonably expect disputes with that service to yield lawsuits in the service's home state.

However, the Sixth Circuit took it upon itself to note what it was not holding. According to the court, it was *not* deciding:

- Whether Patterson would be subject to jurisdiction in any state where his software was purchased or used;
- Whether Patterson could be sued in Ohio for a computer virus caused by his software; or,
- Whether CompuServe could sue any subscriber to its service for nonpayment in Ohio — such as the native Alaskan who never left home.

The *CompuServe* opinion raises a number of jurisdictional questions. For example, the practice of "mirroring" sites is becoming quite common in order to overcome system overload. A mirrored site is another computer network where a particular electronic file can be accessed and downloaded. (Indeed, the location of a

file is more a function of convenience rather than necessity. Files on a computer in Malaysia are accessed the same way over the Internet as files on a computer in Ohio.) Would the result in *CompuServe* be different if the software resided in CompuServe computers in California (for example) rather than Ohio?

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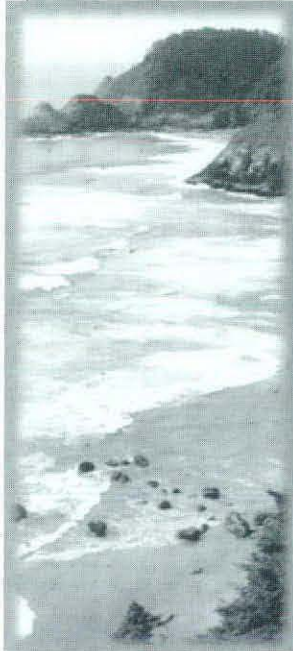
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The CompuServe electronic contract (undoubtedly a boilerplate agreement that is rarely negotiated by small vendors) provided for Ohio law. Would the same result hold true if the agreement didn't contain a choice-of-law provision?

Also, what if the CompuServe shareware licensing services were operated out of a state other than CompuServe's home state? After all, the court felt it necessary to note that Ohio has a strong interest in resolving a dispute involving an Ohio company.

The *Bensusan* case raises a number of jurisdictional issues as well. In *Bensusan*, the plaintiff (Bensusan Restaurant Corp.) operated a New York jazz club known as "The Blue Note." Bensusan obtained a federal trademark for the name "The Blue Note." The defendant King operated a small club in Columbia, Missouri, also called "The Blue Note."

In 1996, King created a World Wide Web site originating from a server in Missouri to promote his club. The site is accessible around the world to anyone with Internet access. The site allegedly contains "a fanciful logo which is substantially similar to the logo utilized by [Bensusan]." Bensusan sued King in New York for trademark infringement, trademark dilution and unfair competition.

Applying the traditional jurisdiction tests outlined above, the New York District Court determined it lacked personal jurisdiction over the defendant. According to the court:

King has done nothing to purposefully avail himself of the benefits of New York. King, like numerous others, simply created a Web site and permitted anyone who could find it to access it. Creating a site, like placing a product in the stream of commerce, may be felt nationwide — or even worldwide — but, without more, it is not an act purposefully directed toward the foreign state.

The *Bensusan* decision, like *CompuServe*, may be limited by its particular facts. For example, King did not conduct any business in New York or actively seek to encourage New Yorkers to access his site. Would the result be different if King advertised in traditional

print-based media circulated in New York or tourist promotions directed at New Yorkers?

Likewise, King submitted an affidavit stating that 99% of his patronage and revenue was derived from local residents of Columbia, Missouri. Would the result be different if, for example, a sizable portion of King's revenue was derived from out-of-state residents (as in the case of mail-order businesses with customers in a particular state whose only direct contact with a state is through Web site advertising)?

The decisions in *Thomas*, *CompuServe* and *Bensusan* illustrate the problem of applying traditional jurisdictional analysis to disputes originating in cyberspace. The issues are far from settled, and are currently being litigated in a variety of settings.

For example, the Minnesota attorney general has brought a consumer protection lawsuit against a service called "Wagernet," which offers betting on sporting events held throughout the world. According to the attorney general, the site is illegal in Minnesota and "hits" can be traced to residents of the state.

The case is being defended, in part, on a lack of personal jurisdiction. According to defendant's counsel, having an Internet web site is no different than having a telephone number that can be called from Minnesota. As a result, there is no basis for jurisdiction in Minnesota.

While *Thomas*, *CompuServe* and *Bensusan* are among the first cases grappling with the issue of personal jurisdiction in cases involving the Internet, they certainly won't be the last; thus offering problems — and opportunities — for all of us.



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



Legal Classics Revisited

Anatomy of a Murder vs. *The Rainmaker* as Best Book: Either Way, the Reader Wins

reviewed by **Philip H. DeTurk**

Robert Traver's *Anatomy of a Murder* (St. Martin's, 1958) and John Grisham's *The Rainmaker* (Doubleday, 1995), have a lot in common. Each was written by a sometime member of the bar; each involves a sole practitioner who relies on help from another lawyer as its hero, and each has, as its main theme, a trial in which medical testimony — or the lack thereof — is the key to the story's success.

In *Anatomy*, the psychiatric testimony of a 35 year-old doctor on the "irresistible impulse" (or dissociative reaction), is presented to show that the alleged murderer was not guilty due to his temporary insanity. The People's doctor also testified, but was successfully cross-examined by Paul Biegler — the upper Michigan former State's Attorney.

In *Rainmaker*, the oncologist for the plaintiff — seeking damages for the wrongful death of her son — explains that bone marrow transplants are an accepted medical procedure. The defense is dissuaded from presenting its out-of-town expert, thanks to some manipulation by the young plaintiff's lawyer.

The doctor who testified for the State in *Anatomy* was named W. Harcourt Gregory, and was a somewhat ill-prepared — and definitely unsuccessful — expert. In *Rainmaker* (Grisham's sixth book) the hero, Rudy Baylor, mentions fellow law students he dislikes: men with names like W. Harper Whittenson, J. Townsend Gross, F. Franklin Donaldson IV and James Straybeck. In contrast, Baylor notes that he "suffered three years of law school without an initial to place before his name or numerals to stick after it."

Very popular in its day, *Anatomy* was written by "Robert Traver," a Michigan judge whose real name was John Donaldson Voelker (b. 1903) and who also wrote other books, including one called *Small Town D.A.* and, among his

tomes on fishing, one that hearkened back to his great success: *Anatomy of a Fisherman* (1964).

Anatomy of a Murder, later made into a successful movie (still to be seen on old-movie channels) featured James Stewart as the upstate criminal defense attorney. The film's cast included Lee Remick, Ben Gazzara (as "the murderer"), Arthur O'Connell, Eve Arden, Kathy Grant, George C. Scott (the State's Attorney), and Joseph N. Welch as "Judge Weaver." Welch was famous at the time for facing down Senator Joseph McCarthy in hearings which were the "O.J. Simpson" trial of the mid-1950s.

Another celebrity bit-part in the movie was taken by Duke Ellington, who played Pie-Eye, a musician performing at the scene of the murder. The music for the soundtrack was provided by the Duke's orchestra. It is excellent jazz, and can be found on a Sony Music CD (WK 75025).

While this is not a review of *The Rainmaker* except in passing, it is interesting to note that while it is not Grisham's best novel, it is the one that may be most interesting to lawyers. There are a number of laughs in it about law school and large law firms, as well as a very scholarly presentation at page 343 on acute myelocytic leukemia.

If you read *The Rainmaker* you will also learn, at page 362, what the odds are that a person whose insurance claim was denied will contact an attorney: "It was commonly believed that no more than one out of twenty-five would talk to a lawyer. That's the reason they started the experiment (denying all claims involving a certain sum of money). They knew they could get by with it. They could sell these policies to people who are not that educated, and they could count on their ignorance to accept the denials."

The Rainmaker can be purchased for \$25.95 in its present hardcover edition. *Anatomy* retailed for \$4.50; my copy at a used book store went for \$8.00 last year;

and, of course, it is available at most libraries. Regardless of how you procure the book it is worth the trouble to find. It is filled with acerbic comments on the law and lawyers by Voelker, who also sat on the Michigan Supreme Court from 1957 to 1960.

Some examples include: "He's a man of few words, yes, but he uses them over and over . . . when the relentless torrent of his stout boiler-plate rhetoric is turned off, all [listening] . . . are reduced to a state of cataleptic trance" (describing another lawyer in the community, p.15).

"There is no such thing as the unwritten law . . . it is merely another one of those dearly hugged folk-myths that people regularly die for, like the notion that raw rhubarb is good for the clap or that all chorus girls lay or that night air is bad" (p.36). And, "That's what makes the practice of law, like prostitution, the last of the unpredictable professions — both employ the seductive arts, both try to display their wares to the best advantage, and both must pretend enthusiastically to woo total strangers" (p.40).

"Lawyers were something like actors . . . they had to take the script as they found it; they dared not change the words or tinker with the dialogue. When they did, they either became ham actors, on the one hand, or else shysters" (p.90).

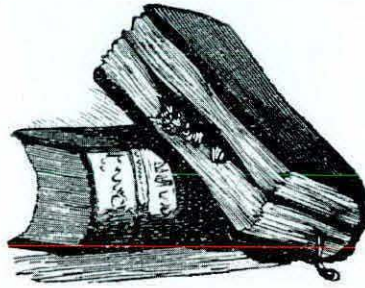
With quotes like those, a review writes itself. The very learned judge, who wished to keep his judicial background a secret from his readers, continued with these zingers: "Lawyers are far too modest; they do not seem adequately to realize their enormous talents for consuming if not wasting time" (p.192). ". . . That shows kindness and a lack of intellectual arrogance — many judges would have flashed their erudition like a pawnbroker's diamond" (p.199). And this classic: "One good speech doesn't deserve another" (p.251).

The section of *Anatomy* entitled "Trial" starts at page 179. It concerns a small

town murder prosecution — complete with jury selection, opening statements, and the like — and is worth reading if you are a young lawyer unfamiliar with the doings of a criminal trial. Various bits of advice appear, all too true in most trials of that sort: “Not a chance...he’s already earned his keep. In a sense he was really our first witness, and perhaps one of the best,” the author says of a potential juror who explained his feelings about the victim before being dismissed from the panel.

“One of the endless fascinations of trying cases...was the unexpectedly sharp word-pictures lay witnesses sometimes painted without even half trying. In fact, it was only when they tried that they failed” (p.237). And “A lawyer seeking to appraise his case in the midst of a trial is like a deceived husband: he is frequently the last person to suspect the true state of affairs” (p.243).

Unfortunately, one disturbing feature about both novels is the ability of the attorneys to have private conferences with the judges trying the case. One takes place at page 244 of *Anatomy*, during which both agree that no one will ever devise a better system to resolve their clashes with one another than through the



use of the jury system, which “achieves a sort of rough democracy in action...”

In *Rainmaker* the judge is so anti-big law firms and insurance companies that he assists in a sort of preordination of the results. He constantly makes *in camera* suggestions to young Rudy Baylor — who is trying his first case — and imposes sanctions on the defense lawyers. This is in contrast to the judge who preceded the new, biased one: he was a fraternity brother of the insurance company’s lead counsel, Leo F. Drummond.

Advice also exists in *Anatomy* as to trial strategy, particularly regarding when to object and when to allow an answer

(made in response to an objectionable question) to stand unchallenged. Thus, we see an unwarranted inference remain in evidence at page 286.

Yet the most important lesson of all takes place in the use of the hypothetical question for the medical witness. Traver sets his question at page 360, and it runs for about 75 lines. From it the doctor is asked if he can reach several opinions. All of it is well-presented, without any more of the numerous objections previously raised by the feisty prosecutor Claude Dancer (George C. Scott).

Throughout the trail Paul has focused on one juror, believing that if that person accepted his arguments, he could convince others on the jury to follow. While he was gratified to learn that his Finnish juror was the foreman, as the talesmen returned with the still-unknown verdict, his thoughts turned to disaster: “[C]ould I have been wrong about him all the time? Could he have been one of those weathervane jurymen, those chameleon sponge-like ones who absorbed and held best the last argument he was exposed to? . . . A thousand doubts assailed me, my thoughts shuttled and fluttered like those, it is said, of a drowning man.”

Of course, justice is done: not once, but twice. The first time takes place with the jury verdict; the second when Paul attempts to collect his fee from the defendant and his wife, the victim of the rape for which the lieutenant murdered the perpetrator.

James Stewart’s portrayal of the up-country attorney earned him the Film Critics’ Award for best performance. The performance led to his sixth Academy Award nomination as well. In 1972 *Anatomy* was turned in to a TV series for Stewart called “Hawkins for the Defense”, in which Lee Remick also starred. It was an ill-fated, little-watched series and was not renewed for 1973.

I enjoyed reading *Anatomy of A Murder* for the second time. Frankly, I had forgotten most of it since I originally enjoyed the book around 1959. I recommend it to all members of the bar.



Philip H. DeTurk practices law in Puyallup and enjoys dusting off classic works of legal fiction for re-appraisal and comparison.

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The Lighter Side of Practicing Law

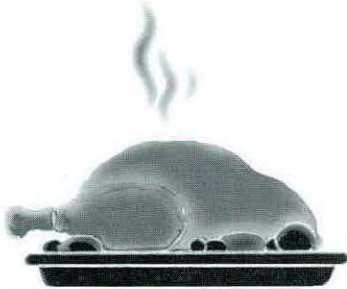
The *Bar News* is pleased to reprint fifteen of the over 100 true courtroom stories collected in *The Lighter Side of Practicing Law*, edited by William F. White. Copies of this book may be purchased by forwarding \$25, payable to "We, the Lawyers," to: William F. White, 205 Berwick Rd., Lake Oswego, OR 97034.



The following anecdote was told by attorney David Randolph Milsten of Tulsa, OK:

The year was 1929, and as an Assistant County Attorney, I was in a crowded courtroom one morning to prosecute a cut-and-dried larceny case involving stolen chickens. The deputy sheriff, who had arrested the defendant, was in court to testify.

My examination was proceeding smoothly, with the deputy recounting the circumstances of the arrest. Then I asked a routine chain-of-custody question: "Where are the chickens now?" When the deputy hesitated I knew I was in trouble. I was about to repeat the question (albeit with reluctance) when the deputy looked at me sheepishly, and said, "I ate them last night for dinner." The laughter in the courtroom was long and loud.



As told by attorney Dennis J.C. Owens of Kansas City, MO:

Some years ago I was cross-examining an elderly lady who was a witness for the defense in a tort case tried before a jury in the Circuit Court of the State Missouri at Kansas City. Most every time she answered my question she would start by saying: "I think . . ." Finally, I asked her: "Why do you always 'Think' when answering my question?" She replied: "I am not an attorney, so I have to think before I speak."

As told by attorney Thomas E. Parrish of Phoenix, AZ:

In the early 1960s, I was an associate in a Phoenix, Arizona law firm which represented a number of bill collection agencies. Routinely demand letters were sent to delinquent debtors prior to filing actions, with copies sent to the respective client. On one occasion after the hiring of a new and inexperienced secretary, I received a telephone call from a client who laughingly informed me that he had just read his copy of the demand letter sent to the debtor and was quite impressed by its strength. We had never before received such a compliment regarding our demand letters, let alone being told that our clients ever read them. So I asked my secretary to bring me the debtor's file to take a look. I was horrified to read the demand letter which concluded:

"If my client does not receive full payment for this delinquent indebtedness within ten days from the date of this letter, we shall be forced to bring shit against you."

I don't recall the reaction of the delinquent debtor, but I am sure he, too, had been impressed.

As told by law professor E. John Wherry, Jr. of Wilmington, DE.

Many years ago, I defended a man charged with first degree murder in the state of New Jersey. While tending bar he admittedly shot three times an unruly and threatening customer with a .22 caliber "Saturday night special"; the fatal shot being in the victim's back.

I asked my client to provide me with character witnesses as to his reputation for truth, peacefulness and law abidingness. In interviewing these witnesses before trial I suggested they express their opinions by the use of different words. At the trial I called as the first of four character witnesses the only one that was wearing a tie. He testified to my client's character as follows:

Q: Mr. G., do you know the defendant, Carl W.?

A: Yes.

Q: For how long have you known him?

A: Ten years.

Q: Do you know his reputation in the community for truthfulness, veracity, peacefulness and law abidingness?

A: Yes, I do.

Q: What is that reputation?

A: Oh, he's a real straight shooter.

I'll let you guess who won the case.



As told by U.S. District Court Judge Robert E. Jones of Portland, OR:

Lawyers will never let me forget my first blooper as a judge sitting on my first jury trial. My last words to the jury were: "Ladies and Gentlemen, you may now retire to the guilty room."

As told by attorney David E. Funkhouser of Mason City, IA:

. . . Attention-getting language is not restricted to appellate lawyers. Some time ago we had Justice King Thompson on the Supreme Court, who stated in an opinion: "It has been said that error crept into the record. Not so here. It came in with bugles blaring and banners flying."

As told by attorney Peter A. Ackerman of West Linn, OR:

I used to be a deputy district attorney. One case I prosecuted involved a man who was rather upset with the state's efforts to intervene in his relationship with one of his children (in order to pro-

tect the child). The man phoned several state agencies and offices, including the governor's office, judges' chambers, courthouses and the State Department of Justice. His message was that there had been a trial in absentia of certain named government officials. They were on trial for capital offenses. The trial was held in India and he was the prosecutor. The verdict was guilty, the sentence was death, and he was selected to carry out the sentence.

He was arrested and taken to the police station for questioning. In the interview, he told detectives that he regularly travels to India, where he sits beneath a tree which, when hit with lightning, sends an energy force down to the mushrooms growing beneath. When he eats these mushrooms, he becomes imbued with the power of God.

"And what about the 'trial?'" asked a detective.

"Yes," the man said, "there was a trial."

"And who was present?"

"Several people."

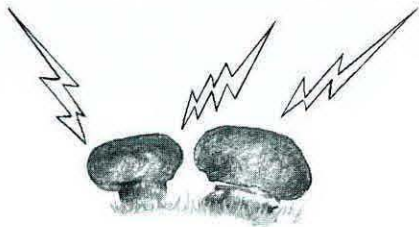
"Was there a judge?"

"God was the judge."

"And was there a jury?"

"God was the jury."

After a pause, the detective said, "So it was a bench trial, then."



As told by attorney John E. Wiley of Morgantown, WV:

Just a few years back here in Monongalia County, West Virginia, due to the repeated urgings of then-local bar President, J. Pat Ball, that more lawyers voluntarily take mental-hygiene cases, Douglas Crane found himself one evening at the local hospital in a commitment proceeding for his new client, a man accused of being mentally ill and dangerously homicidal. As Mr. Crane and the prosecutor were brought to order by the Mental Hygiene commissioner, Mr.

Crane's client, who was shackled and had to be forcibly restrained between two Sheriff's deputies, screamed: "LET ME KNOW YOUR NAMES — I'LL KILL EACH AND EVERY ONE OF YOU AFTER I ESCAPE!"

"I am Susan Tucker, the Monongalia County Prosecutor," the prosecutor said.

"I am Ward D. Stone, the Monongalia County Mental Hygiene Commissioner," said Mr. Stone.

"And my name is J. Pat Ball," asserted Mr. Crane.

As told by Judge Jack A. Richey of Redmond, WA:

A young woman came into my law office and asked me to see her boyfriend in the county jail and decide if I could represent him. I said I would but first required \$100 from her.

The boyfriend hired me to represent him in a jury trial on a charge of "Accepting the Earnings of a Prostitute." The main prosecution witness turned out to be the same young woman who told the jury how she had turned all the money she earned over to the defendant. I wasn't doing very well with cross-examination when I asked, in a rather desperate final effort to discredit the witness, "Isn't it true that you are still a prostitute?" She paused and then answered, "Mr. Richey, I have to pay you some way."

As told by attorney Jack H. Kaplan of Shreveport, LA:

I was representing a grandmother in a custody case against the mother. The facts are that the mother had somewhat neglected the child and the child ran away and with the help of some relatives returned to live with her grandmother. The mother had straightened out her private life and had remarried and sued to get custody of the child, who had refused to live with her. Religion became a big issue in the case. The grandmother, whom I represented, was Pentecostal. The mother was a Jehovah's Witness. I am Jewish, the opposing counsel was Catholic and we were being heard by a Baptist judge.

In my own cross-examination of the mother, I asked about her contact with the

fourteen year-old daughter over the two and one-half years since the daughter had run away from her. She replied that during that period of time she had written her two letters. I then asked her if she had sent the child a present for the past Christmas. She replied that she did not believe in Christmas. I pounded the table and said, "You don't believe in Christmas?" The minute I said it, coming from a Jewish lawyer, I knew what I had said. I looked over at opposing counsel and he had his head turned toward the floor choking back the laughter. I looked up at the judge and the judge had turned his chair to the wall. Before the witness could answer my question, the judge said, "this looks like a time to take a 15-minute recess." When I left the courtroom I went to the lobby of the courthouse to get a coke and there stood the judge and opposing counsel holding onto the coke machine laughing. The judge told me that it was a very serious situation, but he was so amused by the question that he had to call a recess because he did not want to laugh out loud in the courtroom. I later learned after the recess that a Jehovah's Witness does not believe in Christmas as a *gift-giving* time. I had not allowed her to finish answering the question before my reaction.

As told by attorney James B. Smith of Metuchen, NJ:

In 1973, I was Chief of the Civil Division of the U.S. Attorney's Office in Newark, New Jersey. One of the Assistant U.S. Attorneys working with me was William Treadwell, who was very active with the Practicing Law Institute in New York City.

One Thursday the *New Jersey Law Journal* ran a prominent ad announcing that Mr. Treadwell had edited a book about the Federal Rules of Discovery being published by the PLI. The following Monday, Mr. Treadwell appeared in the U.S. District court before the Honorable Lawrence Whipple, a kindly judge with a quick Irish wit. It was Treadwell's task to argue a lengthy discovery motion on behalf of the government. He went on and on arguing his motion. Judge Whipple listened patiently.

Finally, when Treadwell ended, Judge Whipple said: "Mr. Treadwell, aren't you the fellow who wrote that new book about Federal discovery?"

Treadwell, beaming with pride replied: "Why, yes, I am, your Honor."

Judge Whipple then leaned over to his law clerk and, in a clear voice, said, "Cancel my order for that book."

As told by Court Clerk Marilyn M. Slabaugh of Emmett, ID:

During the late 1960s, when I was working as a court clerk in Canyon County, Idaho, for the Honorable District Judge Robert B. Dunlap, it became my task to train new court clerks.

One duty of a court clerk is to swear in the witnesses, and if a witness responded to "So help you God" by saying "I so affirm," the clerk was required to start the oath all over again and end with, "This you do under the pains and penalties of perjury."

On one occasion during a jury trial before Judge Dunlap, a new clerk, who was extremely nervous, had to repeat the oath, and she ended with "This you do under the pains and penalties of death." Judge Dunlap peered over the bench and said, "Isn't that a little stiff?"

As told by attorney Walter M. Cook, of Mobile, AL:

As a young attorney in the 1940s I learned in an unforgettable way how not to try a case by watching the senior partner of our firm in action. He was Dan Thomas, who later became a Judge of the U.S. District Court for Alabama. At the time Dan and I (as his assistant) were in the U.S. District Court defending a railroad whose train had run down a cow caught on the railroad tracks.

As usual the farmer plaintiff testified to the enormous value of his prized cow, and Dan for the defendant railroad put on the train crew to show that it was an unavoidable accident. Dan proved that the train was coming around a curve with little time to see the cow on the tracks. Things were going well for Dan until he put on the stand as his last witness the train's flag man who testified that when he saw the cow on the track he immediately called out a warning to the locomotive's engineer.

Dan's fatal mistake was in an unnecessary follow-up question: "What did the engineer say?" To which the flag man responded: "Watch me hit that S.O.B."

As told by Charles F. Dalton, Jr., of Andover, MD:

Many years ago I was defending a man accused of drunk driving in a District court of New Hampshire. The State Trooper, who had arrested my client, testified. I thought his testimony not too convincing. Not leaving well enough alone, I unwisely cross examined the State Trooper:

Q: Trooper, you testified that when you first observed my client, he had slightly swerved over the center line and for this reason you had stopped his vehicle.

A: Yes Sir.

Q: You also said you detected a slight odor of what you thought to be alcohol and that my client's eyes were watery.

A: That's correct counselor.

Q: Other than those observations were there any other observations which you made of my client which caused you to reach the conclusion that he was driving under the influence of alcohol?

A: He was not wearing pants and his shirt was on backwards.

No further questions. Thank you officer.

As told by attorney Frederick W. Robinson of Corpus Christi, TX:

The following incident occurred in *Pirkle v. Pirkle* in the Domestic Relations Court of Harris County, Texas, during a hearing on a change of child custody about 1970, wherein the Plaintiff husband with his new wife was seeking custody of the children by his former wife.

Counsel for the Plaintiff had called the Plaintiff's new wife to the stand and, on direct examination, asked her if it were not true that the former Mrs. Pirkle had called her a Mexican whore. The witness bristled and said: "Yes it is. And it's a lie. There's no Mexican in my family."

Although this has an unfortunate racial cast . . . the Judge, Ben Woodall, totally lost control of himself and almost went backwards off the bench with a huge guffaw.

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I am interested in a qualified attorney who may want to take over my small-town law practice in Eastern Washington. There is one other lawyer in town; about 4,000 people in the area. I'm going to take a sabbatical of about 15 months beginning approximately July 1, 1997, through September 1998. You could rent the office and equipment. An experienced secretary may stay with the business if you treat her right. If I decide to retire and not pick up the practice again, it would be yours. If I do resume the practice, you could move elsewhere in town or we could share the space and you would probably do fine. Good references are essential. Reply to WSBA Bar News Box 510.

Attorney - administrative law judge — labor relations. Immediate vacancy. Requires law degree; current license to practice law; and five years of experience negotiating and administering collective bargaining agreements, including two years of trial experience in court or before administrative agencies or two years' experience as judge, hearings officer for an agency, or arbitrator. Recruitment closes March 3, 1997; salary \$3,309-\$4,414. Contact Teresa, Oregon Employment Relations Board, 528 Cottage St. NE, Salem, OR 97310; (503) 378-3808, ext. 235. Equal Opportunity Employer.

Human-resource attorney - Intel Corporation; 2200 Mission College Blvd.; Santa Clara, CA 95052 — Full-time in Portland, Oregon, or Dupont, Washington. Education Requirement: Juris Doctor, Licensed in Oregon or Washington State, a minimum of seven years' experience (direct or related) in employment/labor law. Trial experience is a plus. Responsibilities: Advising on all aspects of employment law, including discrimination, wrongful termination, wage & hour, traditional labor and state tort laws. Know and accurately apply employment law in business terms, identify changes in law and ensure compliance, supervise and manage litigation/agency charges worldwide, counsel HR and management per requests, understand Intel businesses, propose policy and practice changes in

complex organizations and educate HR/Managers/Employees on legal issues. Contact: Scott Fortmann; HR Attorney; 2111 N.E. 25th Avenue, JF3-343; Hillsboro, OR 97124-5961; (503) 264-3369; Fax (503) 264-3174.

Associate position available with small downtown law firm engaged in general civil trial/maritime/insurance defense practice in Washington and Alaska. Must have at least three years of solid trial practice and civil litigation experience; maritime industry and/or maritime law experience a plus. Must have excellent writing and analytic skills. Please send résumé and writing sample to Smith & Co., 600 University St, Ste. 2020, Seattle, WA 98101.

Small dynamic Seattle law firm seeks an attorney and paralegal, both highly experienced in toxic tort or environmental coverage and defense litigation, and a maritime attorney to quickly assume major responsibilities in pending cases. Extensive experience in discovery and motion practice phases of litigation in Washington is a prerequisite. Qualified individuals, please send a résumé and list of environmental cases previously worked on, and a writing sample (attorneys only) to WSBA *Bar News* Box 511. All inquiries will be treated as confidential.

Anderson Hunter Law Firm position — Associate attorney sought for estate planning and general business practice position. A minimum of two years of related experience required along with excellent references and research and writing skills. Applicants must be hard-working, willing to assume responsibility, team player and must possess strong client relation skills and a large measure of common sense. Please send résumé, letter describing your practice experience and interest, and a short writing sample, in confidence to G. Paul Carpenter at PO Box 5397, Everett, WA 98206.

Real estate lawyer — Foster Pepper & Shefelman, a full-service law firm, is seeking a lawyer with a minimum of three years' real estate experience to join its Bellevue office. Experience in all aspects of commercial transactions, financing and leasing preferred. Part-time or flexible hours a possibility. In return, we offer an excellent fully-paid benefit package (full-time positions) and competitive salary. If this interests you, let us hear from you soon. Foster Pepper & Shefelman; Tyra Roelandt, Recruitment Administrator; 1111 Third Avenue, Suite 3400; Seattle, WA 98101. Equal Opportunity Employer.

WILL SEARCH

Charles E. Funk: Lost will dated May 3, 1984; resident of South Bend, Pacific County; born 12-23-11, died 2-7-93. Contact Sam Stiltner, (206) 292-2101.

SERVICES

Forensic document examiner. Trained by Secret Service/U.S. Postal Crime Lab Examiners. Court-qualified. Currently the examiner for the Eugene Police Department. Only civil cases accepted. Jim Green at (541) 485-0832.

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

Contract litigation attorney. Formerly at Lane Powell. Nine years' experience. Strong research and writing. Reasonable rates, excellent references. Tom Owens, 232-1476.

Windows95™ Child Support Schedule Worksheets \$59: Your PC automatically calculates and prints schedule worksheets. Oregon software (DOS & Windows™) also available. Jim Bumpas (541) 687-0908.

Quality attorneys and law clerks — Legal Ease, L.L.C. specializes in temporary and permanent placement of quality attorneys and law clerks with law firms, practitioners and in-house counsel departments throughout Washington. More than 200 pre-screened attorneys (starting at \$35/hr.) And law clerks (starting at \$20/hr.) Are immediately available to help ease the burden of your heavy practice load and/or provide unique knowledge and experience to you in innumerable practice areas. Your inquiry is welcome at (206) 822-1157.

Rigos Bar Review — Washington law written by Washington lawyers exclusively for the Washington Bar Exam. Classes in Seattle, Tacoma, and Portland. Contacts: 206-624-0716, 102735.3047@compuserve.com, and www.rigosrev.com.

Contract attorney: experienced, accomplished trial and appellate attorney available, 12-plus years' experience. Liti-

gation and writing emphasized. References; reasonable rates. M. Scott Dutton (206) 324-2306, fax (206) 324-0435.

Word processor/secretary — College graduate - Type 80 wpm, congenial computer guru seeks part-time position (two-three days) with Seattle/King County firm. Call Walter (206) 230-9492.

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

Skip tracing — locator: Guaranteed locate or no fee; 87% success rate. Nationwide. Confidential. Many attorney-needed searches. Tell us what you need. Verify U.S.A. (888) 2-Verify.

MISCELLANEOUS

Newport, OR — One-bedroom cottage overlooking Yaquina Bay. Five minutes from Oregon Coast Aquarium, bayfront, and beaches. \$49/night; \$294/week. (541) 265-8553.

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

Lump sums cash paid for remaining payments on seller-financed real estate notes and contracts, business notes, insurance settlements and lottery winnings. Quick, professional service. Referral fees paid. Cascade Funding Inc. (800) 476-9644.

San Juan Island Waterfront: Two large parcels on protected bay. Private, peaceful, wooded, 2.5+ acres each. Moorage or dock potential. Water, power, phone. \$225,000 each. San Juan Real Estate, (360) 378-5858.

Italy - Tuscany - 18th C. Farmhouse in Leonardo's birth town, end of private lane surrounded by sunflower fields, pool; 20 miles west of Florence, completely furnished; sleeps six; weekly \$700-\$1,200. Italy - Tuscany - 18th C. Farmhouse, end of private road on wine and olive estate, views of San Gimignano's medieval towers; 30 miles from Florence; completely furnished; sleeps six, weekly \$700-\$900. Contact Law Office of Ken Lawson, fax (206) 632-1086, telephone (206) 632-1085.

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Start Your New Year off Right . . . Tips for De-Stressing Your Trial Time

Support System

1. *Advise family of trial demands.* Inform family members in advance that you will be very much preoccupied, if not incommunicado, just before and during a trial. Discuss your needs before trial so that your support system will be there when it counts.

2. *Make time for yourself.* Socrates said it best: "The life which is unexamined is not worth living." Make time for yourself — for introspection, meditation, daydreaming, and even self-indulgences. Doing so should relax you, clarify what's important to you, and enhance your enjoyment of life.

3. *Take fulfilling vacations.* The prerequisite is to take vacations. Don't skip them unless you've been assigned a conflicting date for trial that you cannot reschedule. Plan a vacation that will be fun for you and your family. Leave a number for emergencies only. Your mind must be on vacation as well as your body.

4. *Vary your routine.* Routine can be mind-numbing. Change your time of arrival, departure, or lunch; your route to work; your lunch companion; your office furniture or decor. Breathe fresh life into your daily habits.

5. *Expand your horizons.* Remember life before law school? You probably had interests, hobbies, and intellectual pursuits that have lain dormant for years. Create oases for yourself that present opportunities for meaningful respite — this is bound to be healthy not only for you personally, but for you as a lawyer.

Working Smarter

6. *Plan a realistic work schedule.* Don't schedule client conferences too closely together. Do priority and difficult work early in the day. Pace yourself.

7. *Establish realistic expectations.* Even though you should be a zealous advocate, avoid harboring unrealistic expectations about the likely outcome of a case or communicating

such expectations to a client.

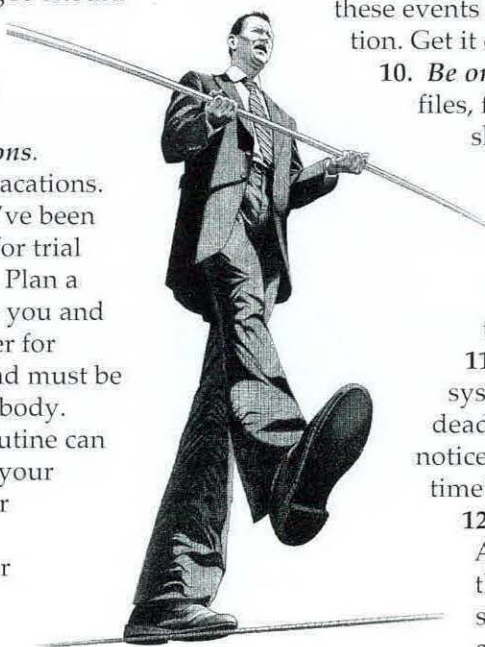
8. *Don't internalize your case.* To be an effective advocate, you must identify with your client. But if you do this to the extent that the client's case becomes your own, you can lose professional objectivity and perspective.

9. *Don't put off the worst till last.* Inherent in our work are annoying and anxiety-producing tasks — returning the call of a difficult client, taking a confrontational deposition, working on a burdensome file, or giving a client bad news. Delay in dealing with these events only exacerbates the situation. Get it over with.

10. *Be organized and focused.* Your files, file cabinet, desk, and office should be tidy and well-organized, enabling you to be efficient and in control of your physical space. Devote all your mental energies to one task at a time.

11. *Be prepared.* Use a tickler system to keep track of case deadlines and give you adequate notice. Anticipate. Set your own timetables.

12. *Review all files regularly.* At least once a month, go through all your files to make sure each case is progressing appropriately.



Teamwork

13. *Get help with work when needed.* Getting help can take many forms, however, when you share responsibility, it is absolutely crucial that the allocation of tasks be clearly understood so that nothing falls through the cracks.

14. *Keep the client informed.* Keep your client up to date on the progress of the case, including positive and negative developments, and on settlement proposals. A well-informed client is more likely to be a satisfied client.

15. *Cultivate staff relationships.* You are only as effective as the people working with you. Praise good performance promptly and appropriately and criticize inadequate perfor-

WSBA On the Move . . .

By the time you read this, the Bar will be installed in its new office at Fourth & Blanchard in downtown Seattle. The new space alleviates the overcrowding and inadequate storage space of the previous office, and will allow us to grow to handle the 1,000 new attorneys added to the rolls of Washington state every year.

Our new address is:
2101 Fourth Avenue
— Fourth Floor
Seattle, WA 98121-2330

Most of our phones remain the same. The main number is (206) 727-8200, fax (206) 727-8320.

Continued on page 68

CLE for Non-Puget Sound Attorneys

WSBA CLE wants to make sure you know of its efforts to make continuing legal education accessible to lawyers who don't live in the urban hub of Puget Sound. First, some demographics: Of the approximately 20,000 active lawyers in Washington, 12,336 of them live in the Puget Sound area (King, Pierce, Snohomish and Kitsap counties). Spokane County has 1,305 lawyers, Thurston and Mason have 968, Skagit and Whatcom have 427, Clark has 416, Yakima has 325, Benton-Franklin has 223 and Chelan and Douglas counties have 168.

According to CLE Director Tom Russell, as a rule of thumb, for a live one-day seminar, we can expect 1 percent of the lawyers in that area to attend. By the time we advertise, produce books, pay for speakers' travel and accommodations, hire the hall, sound systems, beverage service and pay for shipping to the site, 1 percent at many of the smaller locations wouldn't cover the cost of the seminar.

To meet that reality and still deliver good CLE on a regular basis to all areas of the state, WSBA CLE uses the following four methods:

(1) **VIA*CLE** — Phone-based participation in live seminars. The participant stays in their office, gets the course book in advance and is linked to the seminar by phone (through a conference call with a PIN number) with the opportunity to be interactive with the faculty and live discussion. They can choose all or part of the day by signing up for quarter day segments. Full MCLE credits for each segment are available. Upcoming VIA*CLE programs: March 13, 1997 — Employment Law Institute, Washington State Convention and Trade Center, Seattle; August 14, 1997 — Essentials of Advising the Small Business, Seattle Center; September 19-20, 1997 — Criminal Justice Institute, Seattle.

(2) **Live Programs on the Road** — Every year, WSBA CLE takes programs that it thinks will draw a significant attendance to cities outside King County. In the program year just started, we have programs sited in Tacoma, Spokane, Vancouver, Kennewick and Orcas Island. We also are co-sponsoring live programs in Spokane, Richland, Yakima, Olympia and Mount Vernon.

(3) **Video Group Replays** — Videos produced by us for programs we felt would be of interest to a broad segment of the Bar in each area, or which prove to be very popular

for the live program. Every video registrant gets a course book and we have a live moderator at each location. Attendance qualifies for the same full MCLE credits as the live program. In the last fiscal year, we produced 60 live seminars and nine video group replays were sent out to Wenatchee, Olympia, Stevenson and Aberdeen. Replay sites are chosen based on the responses by our liaison lawyers around the state who tell us which programs they think would be of interest to the lawyers in that area.

(4) **Self-study programs** — All lawyers in every region can purchase a course book and tape of the program. There are 16 video programs with course books for seminars from 1994 to present, and 18 audio programs with course books. New programs are added regularly on the same selection basis as the video replays and are retained for as long as they continue to be ordered. While these audio/visual credits qualify for full CLE credits like attendance at a live program, only 15 of the required 45 credits per three-year reporting period may be earned in this manner.

For more information on any of our programs, please call the WSBA CLE Department at (206) 727-8202. ♦

Director Named for New Office of Public Defense

Olympia city prosecutor Lee Creighton has been appointed director of the state's newly-created Office of Public Defense. Creighton, 37, was appointed to the new, \$57,000-a-year position by members of the Washington Supreme Court. An 11-member advisory committee, comprised of retired judges, private citizens and state legislators, will govern and supervise the new agency. Its purpose is to administer criminal appellate indigent defense services, thus removing courts from the process. Before 1996, administration of appellate indigent defense was supervised by the state Supreme Court.

Creighton holds political science, journalism and law degrees from the University of Washington, where he served as president of the student bar association. Olympia's prosecutor since 1989, he also was in private practice in Seattle and held legal intern positions with the Seattle Municipal Research Services Center and the Seattle-King County Public Defender's Association. ♦

Sherrie Bennett Selected as *Bar News* Editor

Sherrie Bennett will take over the editing duties of the *Bar News* magazine beginning with the February issue. Bennett has been a Washington lawyer for 15 years and is a member of the WSBA Bench-Bar-Press Committee and Voluntary Attorneys for Persons with AIDS. She currently is program director and staff attorney for the University of Washington Student Legal Services, where she supervises legal interns, markets and administers the program, and writes a legal advice column for the school newspaper, *The Daily*. She also is a solo practitioner in Seattle, focusing on family law, guardianship, personal injury, and appellate practice.

She has a bachelor's degree in journalism

from the University of Florida, where she graduated summa cum laude and was Communications Student of the Year. She received her J.D. from the University of Puget Sound School of Law, where she was Law Review Associate Editor and author, Student Government Faculty Evaluations Chair, and Editor-in-Chief of the "Amicus" student newspaper.

Following graduation, she was law clerk to Washington State Supreme Court Justice Fred Dore, had a solo practice in Pacific County, Washington, was municipal prosecutor for the City of Raymond, Washington, and was an associate with Sylvester Ruud Petrie & Cruzen in Seattle. ♦

Lawyers Assistance Program Comes in Many Forms

The WSBA Lawyers Assistance Program wishes to remind you of the four specialized groups they offer:

- **Couples Group** — A new group to help attorneys and their spouses/partners with the struggles, stresses and external pressures that complicate people's lives and compromise their relationships. If you find that your relationship tends to come in last on your "To Do" list, then this couples group will help you explore ways to make your relationship more of a priority. Cost is \$30 per session.
- **Women's Book Group** — A weekly book discussion group the first Wednesday of every month, from 12-1:30 p.m. with peers and LAP clinician Jean Johnson. Book selections examine specific challenges in one's personal and professional life, life enhancement and other topics chosen by the group. Cost is \$10 per session, based on the ability to pay.
- **Women Lawyers' Group** — For women who have been in practice 15 years or more and want to join others who speak their language. Meets the first Friday of each month. The group defines its goals as "comparing realities, sharing, sorting, laughing, reflecting and learning from one another." No fee, self led.
- **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 offices on Tuesdays at noon for a brown bag lunch. 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 on starting a solo practice; a lawyer giving tips on networking; a law firm recruiter explaining the hiring process from the employer's point of view; and a legal newspaper editor outlining freelance writing opportunities for lawyers. When no speakers are scheduled, participants use guided discussions on the ups and downs of the job hunt, share experiences and gain support and assurance in an open yet confidential setting. 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. Call for the next meeting's agenda. LAP also publishes a quarterly newsletter with articles and a schedule of upcoming meetings. No fee, self led.

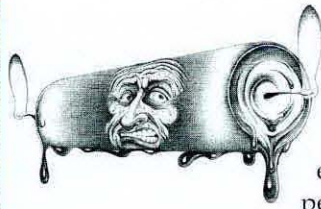
LAP has three clinicians who also provide confidential screening, referral and ongoing therapy for WSBA members. For all LAP functions, call Joyce at (206) 727-8268. ♦

De-Stress — Continued from page 65

mance constructively.

16. Plan ahead. You don't want to wake up the morning you are to pick a jury only to discover that the suit you planned to wear is at the cleaners. Keep things in good order.

17. Expect the unexpected. Whether in the course of a deposition or at a crucial moment



during a trial, you will be surprised (maybe flabbergasted) by testimony contrary to your expectations. Unexpected events do occur.

Expect them. When upsets occur, buy time, think, plan your course of action, then execute it.

18. Seek feedback. Seek feedback from partners about your performance whenever you have completed a significant project.

19. Enhance your professional satisfaction. At least once a year, assess what makes your work fulfilling and list impediments to that fulfillment. If you think making a few changes could promote your professional satisfaction, make them. Likewise, evaluate your stressors. Look for ways to reduce tension and strain.

Safety Valve

20. Discuss your feelings. Litigators know the importance of keeping emotions in check. But litigators do have emotions and must give vent to them or risk being stymied by their own emotional baggage. Make sure you have someone — spouse, colleague, or friend — you can talk to about how you feel about your work and its stresses.

21. Listen to your body. Be conscious of the warning signals your body sends when you feel stress — headaches, malaise, neck pain, queasy stomach, twitching eyes. Change what you can to reduce your level of stress; your body will tell you if the change is working.

22. Have fun. When did you last have a belly laugh? Experience an adventure? Break loose? The possibilities are all around you — it's just a matter of deciding what would delight you and doing it. Enjoy! ♦

Article by Stewart I. Edelstein and Irwin Sollinger, excerpted from The Other Bar, newsletter for The Other Bar, a California nonprofit organization.

"Teamchild" Legal Advocacy Project for Juveniles Earns Praise

"Teamchild," an innovative new legal advocacy project targeting juveniles who have entered the juvenile justice system, received a major boost with the release of its first-year evaluation by Dr. Mark Ezell, an associate professor with the University of Washington School of Social Work, according to a recent press release.

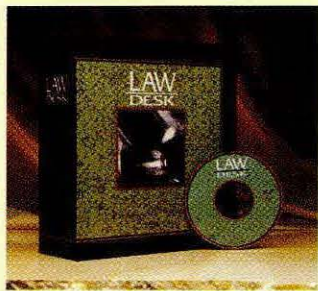
Teamchild is a partnership between the Seattle-King County Public Defender Association, Columbia Legal Services and the Washington Defender Association, which focuses on the underlying causes of youth delinquency. The program targets the entire legal needs of the child by creating a team of civil legal advocates to represent youth who are in trouble. The public defender addresses the criminal law component, while Teamchild advocates address related issues such as education, mental health and social services.

The pilot program began in Seattle in July 1995 and a Spokane program began this year. The program serves children between the ages of 12 and 17 who have become involved with the juvenile justice system.

Teamchild Director Elizabeth Calvin said, "At the public defenders' office, we see so many young people who fall through the cracks in the community. By using a complete evaluation of what *criminal and civil* legal obstacles a young person faces, we can help put the young person back on the right track."

Judge Anthony Wartnik of the King County Superior Court, Juvenile Division, said, "The young people who come before my court are often plagued with serious problems that the juvenile justice system is not equipped to handle. Teamchild is an effective advocate for these kids. Teamchild's work in gaining access to education, health care and a place to live can make all the difference in these kid's lives."

According to the evaluation, 90 percent of Teamchild's clients who were not in school when their cases were opened have been reinstated in school, often in improved special education programs. The project also showed strong results with juveniles with mental health problems. For clients with mental health problems, Teamchild was able to arrange for counseling for more than 40% of its clients and in-patient treatment for over 30 percent. ♦



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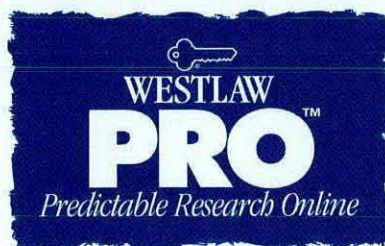
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