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Vol. 51 No. 7, July 1997

The official publication of the Washington State Bar

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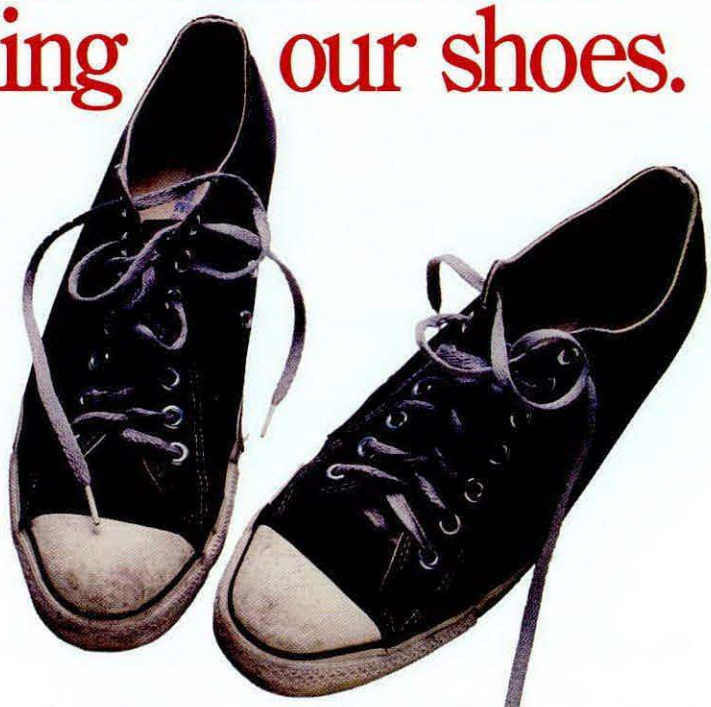

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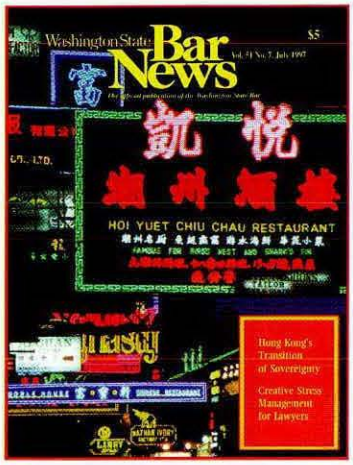

Changes in Hong Kong law

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Washington State Bar News

Vol. 51 No.7, July 1997

The official publication of the Washington State Bar

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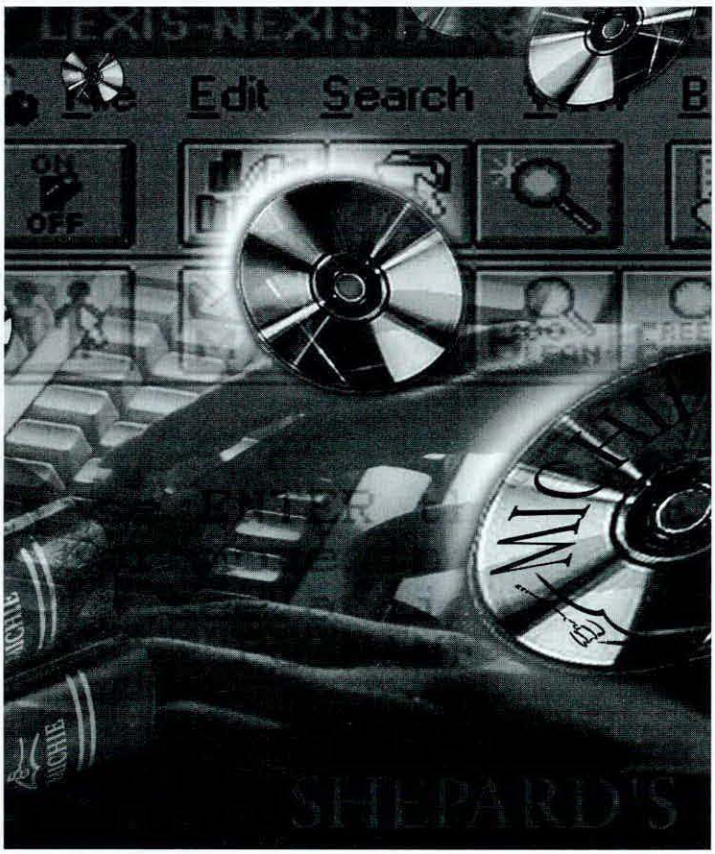

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Why *Not* Shoot the Messenger?

Editor:

Executive Director Harwick pleads that we not shoot the messenger carrying the mail with the letter suspending the licenses to practice law of (generally) young lawyers who cannot pay their student loans. Why shouldn't we?

The President, Executive Director and Board of Governors were able to muster the courage to challenge, with the "pro bono" help of Davis Wright, the Legislature's declaration that the Bar Association should allow its employees to vote to be represented by a union, but cravenly kowtow to the Republican Nazis when they demand that the Bar Association suspend lawyers for failure to repay student loans. How any honest observer could suggest that unionization of a work force, which had real and substantial grievances over its treatment by our "leaders," is a matter deserving a lawsuit to protect the vital doctrine of separation of powers, but that who can practice law is not, is well beyond my powers of comprehension.

BRUCE D. MACLEAN
Seattle

Share the Wealth

Editor:

I thought your readership would be interested in the following letter our Yakima office recently received from Spokane attorney Marcia Meade. It reads:

> I have recently received a good fee on a case. I want to share it.
>
> I know how hard all of you work in the Yakima Valley providing legal services. I also appreciate the impact of federal cuts to your organization. I wish I could be giving more. Hopefully in the future I shall. Enclosed is check no. 20347 for a donation to Columbia Legal Services. This is just a small recognition of the tremendous amount of quality work those of your organization are providing to the community.
>
> Respectfully,
> DAWSON & MEAD
> Marcia M. Meade

Ms. Meade's letter could not have come at a more opportune time. During these past few years, we have witnessed an all-out attack on the notion that our civil justice system should be open to all, regardless of their means or the substance of their legal claim. In Congress, the fate of the woefully underfunded Legal Services Corporation hangs by the thread of a few House members willing to take a stand for equal justice. Despite modest gains this past session, state funding continues to fall well short of need. As a consequence, the core of staffed legal-

Readers are invited to submit letters of reasonable length to the editor. They should be typed on letterhead and signed. Due date is the 15th of the month for the second issue following. 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.

service lawyers in Washington state has plummeted to an all-time low of 74, while the pool of eligible clients has risen to a staggering 1.2 million people, and the need for legal representation has been exacerbated by the passage and implementation of landmark legislative initiatives such as welfare and immigration reform.

Legal services is a model public-private partnership that requires the continued support and investment of all who cherish our democracy's promise of "equal Justice under Law." The WSBA and its membership have a long history of supporting equal justice. Never has this support been more needed or appreciated than now.

Over the years, many WSBA members have contributed time and money to efforts to preserve civil legal services for the poor; and for this we are deeply grateful. As the struggle for equal justice continues, I'd like to encourage WSBA members to follow Ms. Meade's example and, in addition to supporting local pro bono efforts, commit a portion of substantial contingent fee awards, class action *cy pres* residuals, or judicially enhanced lodestar awards toward the effort to ensure equal justice for people in poverty.

Contributions can be made to the Legal Aid for Washington Fund (LAW Fund), a nonprofit foundation established to raise funds for civil legal services. LAW Fund's address is: Legal Aid for Washington Fund, 1325 4th Ave., Ste. 531, Seattle, WA 98101-2525.

JAMES A. BAMBERGER
Spokane

Oppenheim Disparaged

Editor:

I have read the *Bar News* for many years and appreciate the hard work that goes into selecting the topics and writing the articles. Great bells of alarm went off, however, when I read the Oppenheim article ("Scoping Out the Medical Record: The Key to Understanding Medical Care"). Mr. Oppenheim certainly does not have the "key" he speaks of. Beginning over 20 years ago, he has left a record of concern, as follows:

1976: Medical staff privileges terminated at two local hospitals

1980: Medical license suspended (substance abuse)

1980: Conviction on two counts regarding possession and distribution of controlled substance

1981: Medical license reinstated with restrictions (probation)

1987: Released from probation

1991: Medical license indefinitely suspended; suspension stayed with conditions, including not working in any emergency room, obtaining psychotherapy, working only with a proctor, and requiring a female chaperone with all female patients or relatives of patients

1991: Testifying under oath in two separate Washington courts that his license to practice medicine had been reinstated when it had not been reinstated. His testimony in a King County Superior Court case caused Judge Marsha Pechman to order his testimony transcribed and referred to the Medical Disciplinary Board, the Attorney General and the King County Prosecutor.

1992: Request for license reinstatement denied; 1991 condition still stands

Moving from Oppenheim's record, the article itself is a litany of innuendo and misleading information about health professionals. I do not believe that Oppenheim knows what he is talking about; can he know what "good doctors" do? The record indicates he has had no hospital privileges for many years. His article shows he lacks knowledge about current health care and

hospital practices. For example, he refers to "incident reports" and claims they are discoverable. For over ten years, these reports have been called "Quality Management Memos" and are generally *not discoverable* under the Health Care Quality Improvement Act.

He refers repeatedly to the need for a physician order for services provided by non-physician health care professionals, *e.g.*, nurses, physical therapists, social workers and dietitians, when, in fact, these professionals maintain independent scopes of practice and routinely provide consultative services to patients and physicians, without any physician order.

He intimates that patient consents are obtained callously, without proper explanation. This is a great insult to the medical profession. In fact, physicians take great care to fully inform patients and families about the risks and benefits relating to proposed procedures. Physicians know these consents go to the heart of the matter and they take them seriously.

As for medical records, he claims that physicians "write frankly deceptive, sanitized versions of facts . . ." In fact, medical records are created contemporaneously. Therefore, physicians would have no need or desire to expend time and energy creating a deceptive record. He indicates that physicians see lawyers as the bogey men and that physicians modify their practice methods with lawyers in mind. This is simply not true. Medical records are created to provide factual information about medical events so that current and future caregivers will have information necessary to benefit the patient.

He uses an "all or never" attitude throughout. All physicians are not always bad; no more than all attorneys are always good.

He repeatedly impugns the integrity of physicians and other health care professionals. For example, use of unique medical language is characterized as somehow wrongful. Every profession has its own language. (We lawyers certainly do.) and it is not unique to medicine. Use of technical terms does not equate with suspicious or negative intent. Oppenheim alludes to improper billing practices but physicians are not normally involved in the billing process; that is primarily a hospital function. Oppenheim advises that we assume records have been altered or laundered. For this proposition his only cite is himself! Some people will make exculpatory statements in a medical record, but in fact this is rare. Physicians seek to be honest, despite Oppenheim's inferences of dishonesty and deceit.

He states that absence from the record equals non-occurrence. In fact, practitioners are encouraged to chart completely. Most hospitals have standard procedures and standing orders that reflect standards of care applicable in every similar case. These orders may not be included in the medical record, even though they are legitimate and the care in fact occurred. Examples are routine post-operative nursing protocols for vital signs, dressing checks and ambulation.

Just as Oppenheim says it is time to call the doctor for a "definitive understanding," it is also time to be sure that doctor is a properly licensed and credentialed doctor who knows whereof he speaks.

JOHN P. PAYSENO
Seattle

Editor's Note: If I had known of Elliott Oppenheim's medical licensing difficulties, I would not have chosen the article for publication in the Bar News.

MCLE Feedback Requested

Editor:

Many Bar members recently had the enjoyable experience of reporting their mandatory CLE credits for the triennium. Many probably think that there must be ways to make the MCLE program more user-friendly, make reporting easier — and they're right. At the direction of the Supreme Court, an MCLE Task Force was formed in June 1996, chaired by J.J. Leary. We have been (quietly) working on a number of reforms that will be recommended to the Board of Governors. We first want to solicit input on what the Task Force has already done and our remaining agenda.

As a reminder, the Washington Board of Continuing Legal Education ("MCLE Board") is an independent board of attorneys and lay people, appointed by the Supreme Court, which approves courses for MCLE credit and determines whether attorneys have fulfilled their MCLE requirements. It is separate from the WSBA CLE Department, which is a CLE course provider just like other nonprofit and commercial entities. The MCLE Task Force includes representatives from the MCLE Board, the WSBA, small and large law firms, other course providers and other interest groups.

Course Approval. One of the major responsibilities of the MCLE Board and its staff is approval of courses for CLE credit. Currently, each course is individually approved, and approval may still be pending when the course is offered. Attorneys who attend courses that have not been approved (typically because the course is offered out of state or is not directed primarily to attorneys), may ap-

ply for course accreditation. Even if a course itself cannot be accredited because it is not primarily a course for attorneys, individual attorneys may still receive "nexus" credit for attending the course if the course relates to their particular practice of law. The Board receives about 5,000 requests form individual attorneys for course approval annually, and approximately 2,500 applications for approval from CLE program providers.

The Task Force has recommended several changes that will make course approval faster and more certain. First, experienced providers can become "accredited sponsors" whose courses will automatically be approved. We expect law schools, commercial providers, the WSBA, bar sections and other professional groups to become accredited sponsors. Second, the rules will recognize that cross-disciplinary courses, such as in the areas of tax and estate planning, can be approved even if they are not "primarily" for lawyers. This should greatly reduce the need for "nexus" applications. Third, we are recommending that in-house legal education (including law firm-sponsored seminars), with the same level of quality as current CLE courses, be freely approved. These reforms should make more CLE -approved courses (and self-study materials) available to attorneys and remove the perception that some providers receive preference in the approval process.

Comity. Washington, Oregon, Idaho and Utah have adopted a "comity" provision which will allow attorneys licensed in more than one state to satisfy all their CLE requirements by meeting the requirements of their home state. For example, if you are licensed in Oregon and Washington but practice primarily in Washington, you would satisfy both your Oregon and Washington CLE requirements by obtaining 45 hours of Washington CLE during the triennium. You would not have to worry about whether the course you want to take is also accredited for Oregon CLE.

Reporting. One of the most frustrating aspects of current CLE compliance is simply remembering which courses you took and whether they were CLE-approved, to make sure you have enough hours. While CLE providers report attendance to the CLE Board, the attorney certification procedure still relies on self-reporting of CLE credits.

The Task Force is considering requiring CLE providers to distribute and collect a standard attendance form on which the attorney will verify attendance at the course. These computer-readable forms will then be sent to the WSBA, which will maintain a database of CLE attendance. Once or twice a year, you will receive a report showing your CLE credits on record in the current reporting cycle. You will then be able to correct or supplement it with credits earned by self-study or writing, as allowed under the current and revised MCLE rules. This will also give you plenty of warning to get in the required CLE hours before your reporting cycle ends. Several state bars and CPA organizations already use this system.

Future of MCLE. The Task Force still has several items on its agenda. The Task Force is concerned with whether mandatory CLE is fairly and efficiently administered. Ideally, it should present a minimal administrative burden to attorneys compared to the educational value they receive from the courses and materials. We believe that the recommendations outlined above move in that direction. The Task Force invites comments on our work from Bar members, CLE providers and other interested parties. Other issues that we will be examining include:

- What is the best relationship between the MCLE Board, the WSBA and the Supreme Court?
- Should the MCLE Board continue to hear appeals of attorneys who fail to meet MCLE requirements?
- What financing sources should support the MCLE Board and the WSBA staff who certify courses and compliance?
- Should pro bono work be eligible for CLE credit?
- If certain requirements are met, should "advance sheet" sessions be eligible for CLE credit?

Please write or fax the MCLE Task Force c/o Cathy Blinka at the WSBA, 2101 4th Ave., 4th Fl., Seattle, WA 98121-233,, fax (206) 727-8320.

JEFF BELFIGLIO
Bellevue

All Work and No Play Make Jack and Jill Dull Lawyers

Sherrie Bennett

by **Sherrie Bennett**
Bar News *Editor*

As July arrives, the thoughts of less driven segments of the population turn to fly-fishing, roasting marshmallows over a campfire and sitting on the dock of the bay watching the tide roll away, wasting time. But here we sit in our offices, worrying about why the client hasn't supplied us with the information necessary to answer the overdue interrogatories, where to find the case law to support that crucial point in the brief that must be filed this afternoon and when the income to cover next month's overhead is going to surface. Probably the last thought on our minds is taking a little time off to smell the roses.

Until recently, I thought the best approach to getting the most work accomplished was to just work harder and longer. I found it difficult to schedule time off and worried during my time away that some disaster which only I could fix was occurring back at the office. My inability to leave my work behind negatively affected the quality of personal relationships and left me without the ability to recharge my batteries. I had a lesson to learn the hard way.

Two Augusts ago, on a hot Saturday evening, I drifted off to sleep pleasantly anticipating spending the next day relaxing with my children and then driving down the coast to visit a friend. I was awakened in the middle of the night by an intruder who had broken into my home and seemed bizarrely intent upon killing me slowly by tossing me around my bedroom and repeatedly assaulting me. As my life flashed before me, I was overcome with a sense of sorrow at the things I would not get the chance to do, that I was leaving unfinished: I would never teach my daughter how to make chocolate chip cookies, watch my son hit that longed-for home run or explore Bill Nye The Science Guy's web page with my kids. I would not get the opportunity to tell my parents how much I appreciated their Herculean investment of time and energy in me, or have the chance to express the true depth of my affection for my friend. What did *not* flash through my mind during that moment of clarity was regret at not having finished interrogatories or briefs, or sorrow that I had not put in a few more hours on that upcoming trial. In that perspective-shaping moment, what I had accomplished during my working hours seemed not nearly as important as what I had not accomplished during what should have been my playing hours.

In the aftermath of that traumatic event, I have experienced many changes in attitude and latitude. The realization that no one is guaranteed a future has made it much easier to focus on and savor every detail of the present moment. And my skin has taken on the density of elephant hide (a handy attribute for a *Bar News* editor), as I am no longer so concerned about what people who do not know me or walk in my shoes think about me.

I believe the changes that I have made make me a smarter and better lawyer. Whether as a result of acquiring true wisdom or just as a result of rewiring neurological circuits, I have discovered that more *can* be accomplished in less time. The process of reprioritizing to make room for the really important stuff has had a synergistic effect on the way I practice law. I have reevaluated why I do things the way I do, and whether the way I do things is getting me the results I want. I also find it easier to look at alternative methods of getting the same results with less effort. And I have gotten better at encouraging clients to walk away from conflicts that are unlikely to get them where they want to go.

But perhaps the most important thing I have learned in the process of reordering my life is that pausing occasionally to recharge your batteries results in possessing batteries that are fully charged and work more efficiently. A balanced law practice can be achieved only when you allow yourself the necessary "luxury" of time to savor people and places far removed from the everyday practice of law.

So in the spirit of summer pursuits, I remind you of these words from Bertrand Russell: "One of the symptoms of an approaching nervous breakdown is the belief that one's work is terribly important." And try to keep in mind that a vacation is something you take when you can't take what you've been taking any longer.

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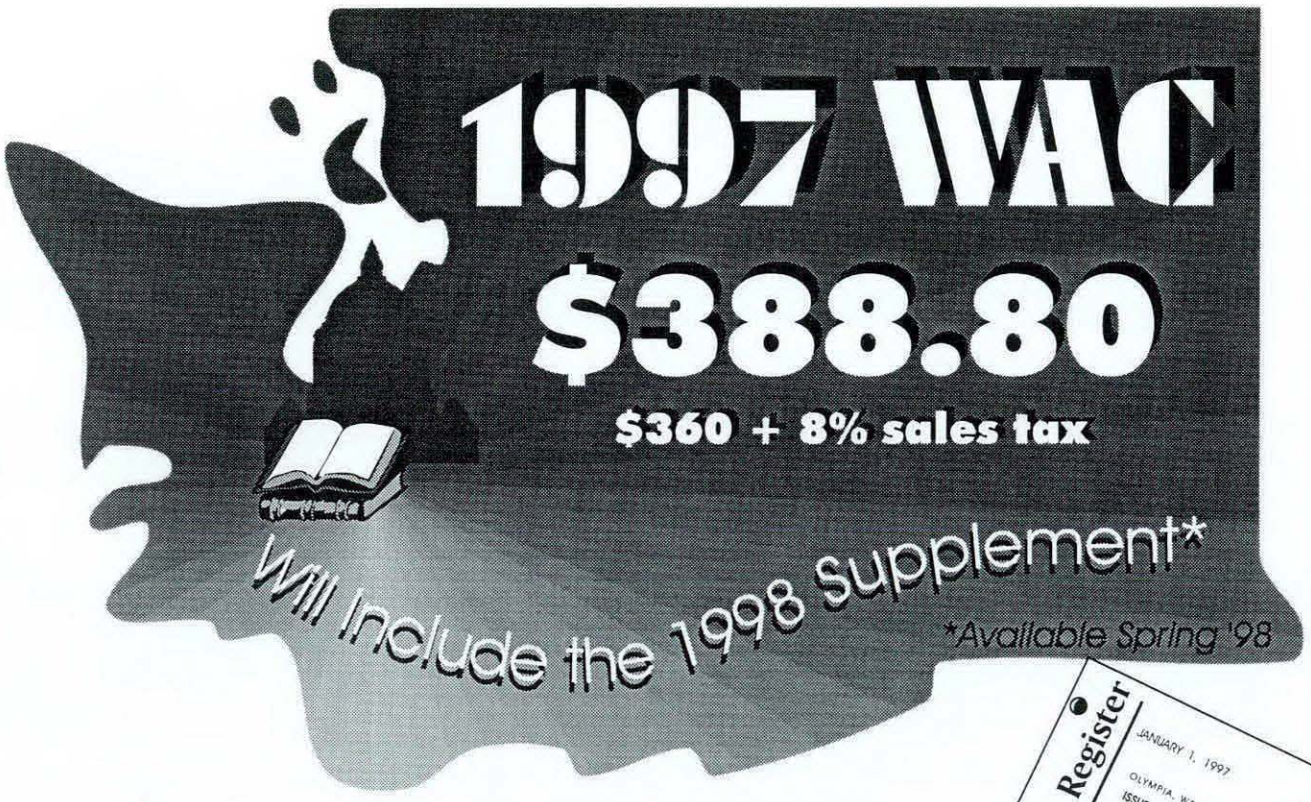

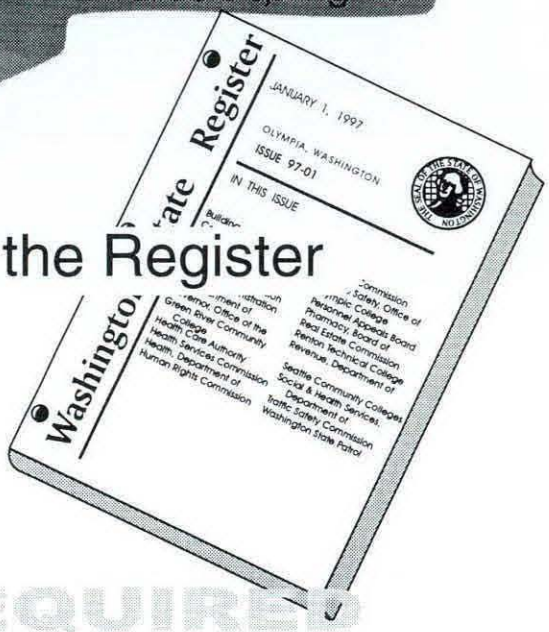

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" . . . 'cause it's the right thing to do."

by **Tom Chambers**
WSBA President

Everyone meets in Olympia at the cafeteria of the Legislative Building. Tables overflow out into the marbled halls. Around them are clusters of men and women conferring, consulting, and — in some cases — consoling. It is February 1997, and I am at one of these tables. It is one of several trips that I have made to Olympia on behalf of the Bar to support the good ideas and fight the bad.

Legal Services, the braveheart, is in a battle for its life. It has been severely wounded by budget cuts. It has been forced to close most of its offices and lay off most of its employees. It has regrouped and reorganized. It now faces a bundle of strings attached to its funding which will strangle the ability of its lawyers to provide basic services to their clients.

Pat Dunn is in charge of my table. He is a member of our association but works as a full-time lobbyist on behalf of various groups. He is the lobbyist for the Equal Justice Coalition. He is providing this service, I am told, *PRO BONO*. I am struck that he is the coach and we are the team. Dunn outlines the strategy, hands out assignments, and tries to anticipate the unexpected. We are to meet with Dick Thompson, a lawyer and budget chief for Governor Gary Locke, also a lawyer. Dunn instructs me not to say anything. "It is enough that the president of the Bar is on the team," he says.

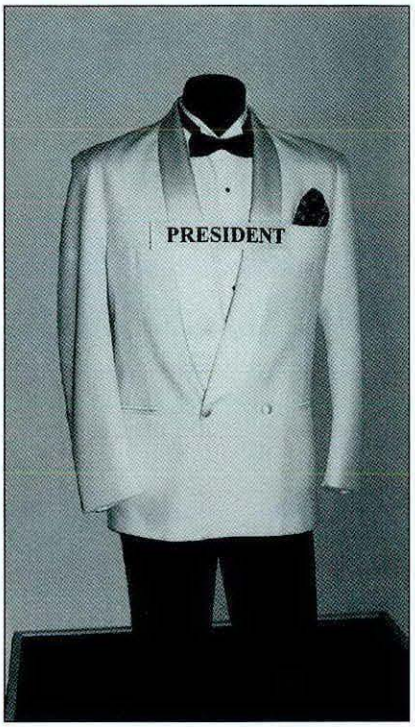
"I'm a damned visual aid," I think to myself. "I'm just a mannequin with a sign around my neck that reads, 'President.'" I rationalize that I'm really the team mascot. That's cool. In the meeting, Dunn is true to his word. Several questions are directed my way, and he intercepts them and deftly passes them off to others.

After the meeting, I have a brief moment alone with him.

"I understand that you are doing this pro bono?"

"Yes," he acknowledges.

"Why are you doing it?" I pry.



"'Cause it's the right thing to do," he replies directly — a simple, honest answer. I may never forget it.

If you consider serving in the legislative arena for little or no pay, then Marlin Appelwick is one of the pro bono giants of our time. I estimate that he has spent more than half of his time each year, every year, fighting for concepts like the Bill of Rights, Separation of Powers, and Access to Justice. Somehow I know that if I ask Marlin why, his answer would be, "'Cause it's the right thing to do."

Legal Services, although still battered, was able to fend off most of the assaults and receive a life-saving infusion of money. Thank you, Governor Locke, Budget Chief Dick Thompson, and Everett Billingslea (the Governor's general counsel). Thank you to the lawyers in the Legislature who helped fight the battle — Representative Marlin Appelwick, Representative Larry Sheahan, Representative Mike Wensman, Senator Steve Johnson, and Senator Adam Klein.

The real heroes are the brave Legal Services lawyers who have fought in the trenches, in some cases for decades, for very little pay. Their clientele are poor and need help for basic needs such as housing, medical care, or freedom from physical abuse. These lawyers work under the most adverse conditions, including the year-to-year threat that their jobs will be eliminated.

Access to Justice must never become a commodity available only to those who can purchase it. It is an essential promise of our democracy. As lawyers, we have a special obligation to preserve this promise and give it meaning. Working together, we can see it done. Ways in which lawyers can help now:

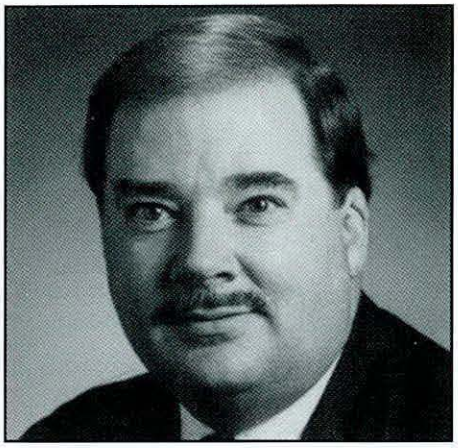
1. Join the Equal Justice Coalition; a non-partisan effort dedicated to insuring continued federal and state support for Legal Services. The number is (206) 447-8168.

2. Sign up with your local volunteer-lawyer program. There are 23 opportunities for all lawyers to help locally within the context of their legal practice and area of legal expertise. Contribute not only your time, but also your money. For information on how to participate, contact Joan Fairbanks, Access to Justice Manager with the Washington State Bar Association, (206) 727-8282.

3. Contribute to LAW Fund. If every lawyer in Washington state gave at the suggested level of $200 per year, we would raise around $4,000,000 in additional funds for Legal Services. The number is (206) 623-5261 (Visa or Mastercard).

4. Come to future statewide Access to Justice Conferences. The leadership of the Bar Association, Access to Justice Board, Legal Foundation, Columbia Legal Services, Northwest Justice Project, and local bar leaders attended this year's conference in Yakima on June 20-22. Learn more of what you can do to help.

If anyone asks why, just tell them, "'Cause it's the right thing to do."



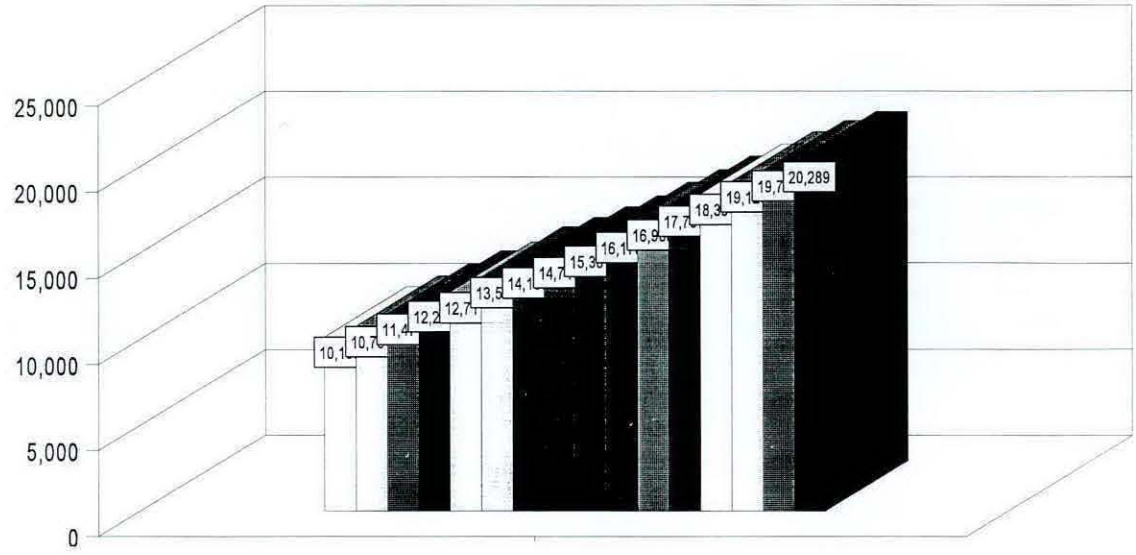
Dennis P. Harwick

How We Have Grown!

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

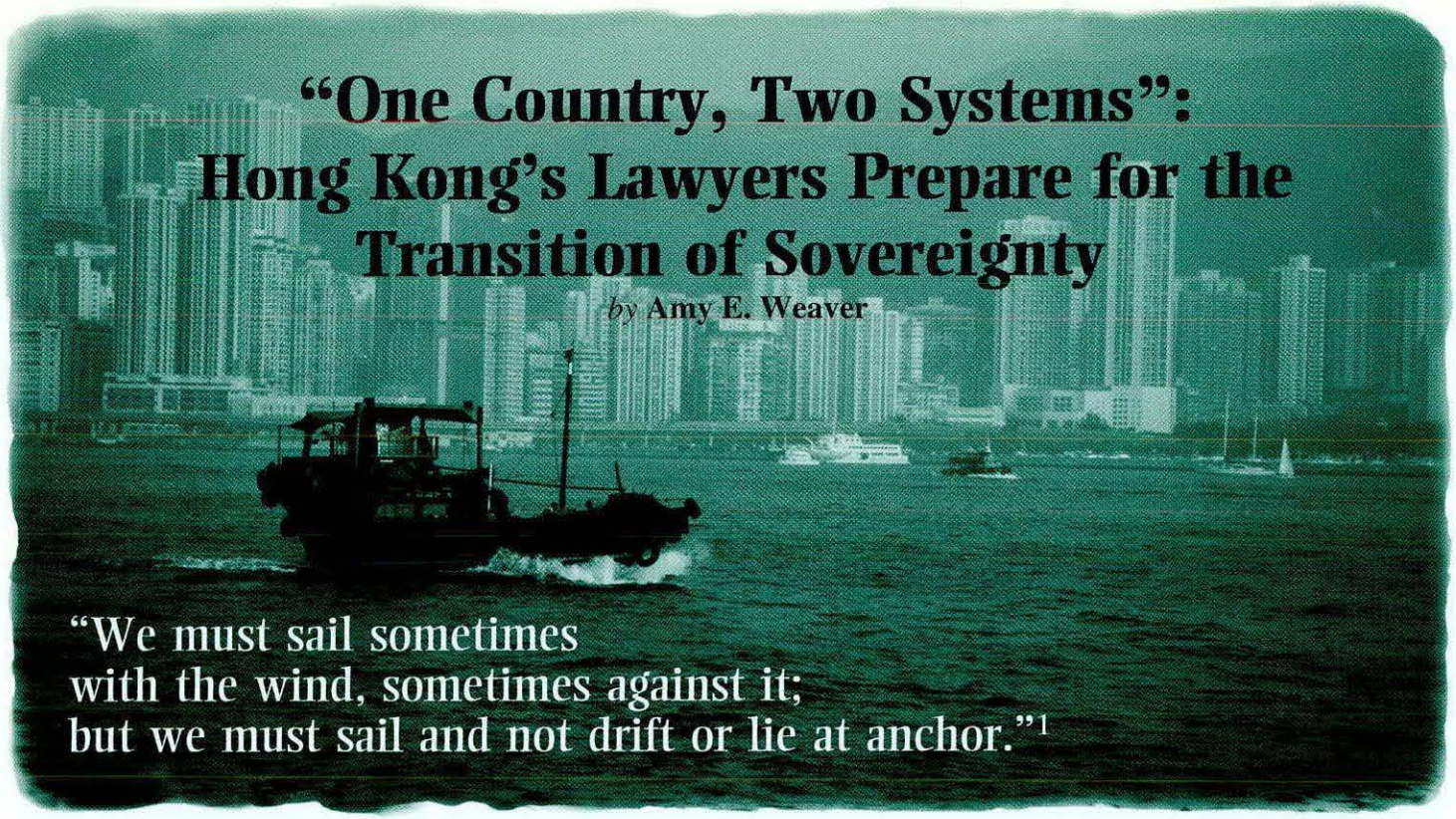
Year	Active Membership
1981	9,467
1982	10,136
1983	10,754
1984	11,471
1985	12,207
1986	12,711
1987	13,585
1988	14,133
1989	14,747
1990	15,381
1991	16,178
1992	16,908
1993	17,707
1994	18,394
1995	19,120
1996	19,756
1997	20,289

WSBA Active Membership Growth: 1981-1997



"One Country, Two Systems": Hong Kong's Lawyers Prepare for the Transition of Sovereignty

by **Amy E. Weaver**



"We must sail sometimes
with the wind, sometimes against it;
but we must sail and not drift or lie at anchor."[1]

Introduction

Hong Kong is a city obsessed with time. Every day the newspapers show how many days are left until July 1, when Hong Kong will cease to be a British Crown Colony and become a Special Administrative Region of the People's Republic of China. The newscasts often show the huge countdown clock in Beijing's Tiananmen Square as the seconds tick by.

For some people, the remaining time cannot pass quickly enough. Many people see July 1st with its fireworks extravaganza, media frenzy and celebrations as marking the final righting of a 156-year wrong forced on China by the humiliating Opium Wars. For others, the clock marks the time left until they fear their civil rights will be curtailed and their future less secure.

Never before has the world witnessed the peaceful ceding of a democratic capitalist territory to a communist ruler. The magnitude of the planning and coordination necessary to accomplish this change in sovereignty is massive,[2] and the tasks given the legal profession have been perhaps the most challenging. The legal profession is being rocked by a new constitution, a new language to be used in court, and fundamental judiciary changes. Yet, as each new challenge has appeared, Hong Kong's legal community has risen to the occasion.

Background

Hong Kong Island and the southern tip of the Kowloon peninsula were ceded "in perpetuity" to the British in 1842 and 1860, respectively, as a result of concessions forced by the Opium Wars.[3] The New Territories, which comprise 92 percent of Hong Kong's land mass, were later "leased" for a period of 99 years. This lease expires July 1, 1997.[4] China never recognized these agreements, calling them unequal treaties left over from another era and maintaining it could reassert sovereignty over the whole of the territory at any time. In 1982, in response to growing uneasiness over the expiration of the New Territories lease, the United Kingdom and China embarked on a two-year series of negotiations over the "1997 question."

The result was the Sino-British Joint Declaration, signed in December 1984, [5] which provides for the return of all of Hong Kong (including the ceded sections) to China on July 1, 1997. Both countries registered the declaration with the United Nations as a binding international agreement. This transaction was between just two parties: the United Kingdom and the People's Republic of China. The people of Hong Kong were not a party to (nor meaningfully consulted about) this decision on their future.

The Joint Declaration promises that Hong Kong, which will become a Special Administrative Region of China, shall enjoy "a high degree of autonomy" and that the current social and economic systems and lifestyle in Hong Kong will remain unchanged for 50 years. More detailed policies were left to be spelled out in a "Basic Law" to be enacted by the National People's Congress.[6]

The Basic Law, completed in 1990, enshrines the principle of "one country, two systems"[7] and carries a promise that capitalist, democratic Hong Kong will be able to continue its way of life as a region of communist China. A team of Beijing-appointed representatives from Hong Kong and the mainland prepared the document to serve as the mini-constitution of Hong Kong, replacing the British Letters Patent and the Royal Instructions. The document went through several drafts, and one public consultation period, over six years.

Challenges for the Legal Profession

In order to ensure a smooth transition and the continuation of the rule of law, the legal profession has been working for years to put in place the necessary legislation and guidelines. As part of the "two systems" concept, both the Joint Declaration and the Basic Law promise that the "laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained,"[8] with the exceptions of those laws in conflict

with the Basic Law. Although this language may seem to forecast few, if any, changes for Hong Kong's legal profession, the reality is more daunting.

Use of Chinese in Court

The Basic Law mandates that "[i]n addition to the Chinese language, English may also be used as an official language by the . . . judiciary of the Hong Kong Special Administrative Region."[9] Despite the fact that 96 percent of the Hong Kong population speaks the Cantonese dialect of Chinese as a first language, the judicial and legal system has functioned almost purely in English for more than a century, with approximately two-thirds of the judiciary fluent in English only. This system has been harshly criticized with good reason,[10] but the prospect of the sudden shift to allowing the use of Chinese in court has created deep worries among legal practitioners.

The concerns range from logistics to the future of the common law in Hong Kong. Some details need to be ironed out before a new language can be introduced in court. Many typical legal terms, for example, have no Chinese equivalent. There is still no consensus on how a lawyer should address the bench in Chinese. As another example, the current Jury Ordinance requires prospective jurors to demonstrate a sufficient knowledge of English; there is no requirement that a candidate understand Chinese. A bill pending before the legislature would amend the ordinance to require that the "person has a sufficient knowledge of the language in which the proceedings are to be conducted." But this leaves many questions unanswered: Because it would be nearly impossible for a trial to be conducted purely in Chinese at this stage, will all jurors need to be bilingual? Or will there be three separate lists of jurors for different cases — English-only, Chinese-only, and bilingual? Is this type of division desirable? Moreover, what is meant by "Chinese"? Cantonese is spoken in Hong Kong, but will litigants have the right to choose another dialect such as Mandarin or Hakka?

In addition, many lawyers worry that a sudden change to Chinese will adversely affect their practices. Although the impact is most severe for the approximate 30 percent of the Hong Kong lawyers who do not speak Chinese, the problem extends to the entire legal profession, who all received their legal education and training in English. A recent survey found 80 percent of Cantonese-speaking solicitors fear a greater use of Chinese in written communication will make them less efficient. More than 60 percent worried that increased use of Chinese will affect the quality of their work.[11]

An equally troubling concern is that a sudden shift to the use of Chinese may cut off Hong Kong from its common law history. Hong Kong law is based on the English common law and rests heavily on case precedent. This case law is not being translated into Chinese, nor is it likely that it can be or will be. When conducting a case in Chinese, it may become increasingly difficult to cite and rely on common law precedent.

Many of these problems may be temporary as logistical arrangements are ironed out and practitioners grow accustomed to using Chinese in their legal practice. The legal profession has made great strides in the last six months to address the use of Chinese in court with seminars, law school courses (including a mock trial conducted in Cantonese) and seminars. But some of the problems are serious and will take continued efforts to resolve.

Translation of Laws

Another outgrowth of the Basic Law is that Hong Kong ordinances must finally be available in both Chinese and English. This means that the 517 remaining English-only ordinances,[12] which constitute more than 21,000 pages of text, must be translated into Chinese — an extraordinary undertaking. As lawyers are well aware, not all laws are models of clarity and brevity; older laws are often nearly unintelligible. The Offenses Against the Person Ordinance of 1865, for example, has one 236-word sentence and several other sentences run more than 200 words. Hong Kong legal draftsmen are faced with creating a modern Chinese version of English laws based on sometimes 100-year old legislation. This is made more difficult by the fact that the new Chinese legislation is being written to mirror the sentence structure of the English version, which has led to complaints that some Chinese translations may be incomprehensible.

Moreover, many statutes originally written in English contain deliberate ambiguities. Translators must try to find exactly the right word in Chinese to convey the proper room for interpretation. In others, certain concepts or words simply do not exist in Chinese and translators have been forced to coin new terms.

Two recent cases demonstrate the difficulties of applying an ordinance when discrepancies exist between the English and Chinese versions. In *The Queen v. Tam Yuk Ha*,[13] the defendant appeared to be guilty under the English version of an ordinance, yet not guilty under the Chinese version. The court applied the Chinese version because it was less ambiguous. In the second case, *Chan Fung Lan v. Lai Wai Chuen*,[14] a word not present in the English version of the Estate Duty Ordinance appeared in the Chinese text. The court applied the English version, holding that if the Chinese text of a piece of legislation is clearly incorrect, then it should not be followed.

Neither case satisfactorily resolved the problem of how to interpret conflicting texts. Both versions of an ordinance are "authentic" and thus are assumed to have a common meaning. According to Hong Kong's Interpretation and General Clauses Ordinance, the court must "reconcile" the texts,[15] but precisely how to do so remains to be determined. In both of the above-described cases, the courts chose to follow one version without any reconciliation. That leaves litigants wondering whether non-selected text remains good law and whether, to know one's rights and obligations, all ordinances must be read in both English and Chinese.

Remarkably, the translation project is operating on schedule and all ordinances should be available in Chinese by July 1. But legal interpretation in the inevitable cases where the texts differ, and eventual amendments to the interpretation statute, are some of the many challenges still facing the legal profession.

Transitions in the Judiciary

Before July 1, Hong Kong litigants seeking the highest level of review appeal to the Judicial Committee of Her Majesty's Privy Council in London. One of the most visible and welcomed changes to Hong Kong's legal system is a new local Court of Final Appeal. The first Chief Justice, who is legally required to be Hong Kong Chinese and may not hold a foreign passport,[16] will be barrister Andrew Li, who has been widely praised for his independence and character.

Although many lawyers welcome the new court, there are serious concerns about its jurisdiction. The Court of Final Appeal is referred to as having the right of final adjudication, but that right is limited in several ways. First, the Basic Law specifies that the court will not have jurisdiction over "acts of state." In such cases, the court must seek a binding certificate from the Chief Executive, who in turn must seek a certifying document from the Central People's Government of China regarding questions of fact.[17] How broadly "act of state" will be defined is unclear: a narrow definition could be similar to the political question doctrine in the United States, but a broad definition could divest the Court of its jurisdiction over a wide range of important cases.

Additionally, the ultimate power of interpretation of the Basic Law is not vested in the court but in the Standing Committee of the National People's Congress, a political body, which will interpret the

law in its legislative capacity. This is a drastic departure from the usual common law practice. Again, it is not clear how this provision will play out. Will the Standing Committee exercise its power in all constitutional cases? How will the China-based Standing Committee make its decisions — based on the common law or Chinese law? One commentator has recommended that judges suggest opinions to the Standing Committee to ensure the drafting integrity of legal opinions.[18]

Many questions need to be answered. In the meantime, the Chief Justice-designate's first (and most watched) decision will certainly be whether the Hong Kong judiciary will continue to wear the traditional wigs and robes in court.

Provisional Legislature

The most controversial legal and legislative issue this year is the "Provisional Legislature" which will replace the Hong Kong Legislative Council ("LegCo") on July 1, 1997. LegCo is Hong Kong's version of Parliament. Traditionally, all 60 seats were appointed by the British-run administration. In the early 1980s, the government began creeping towards a limited form of democracy for the body. After highly controversial legislation pushed by Governor Christopher Patten and passed by LegCo in 1994,[19] all 60 seats were democratically elected for the first time in 1995. China vehemently opposed the reforms, which it argued were contrary to the Basic Law and to promises made by Britain.

The 1995 legislature was elected to serve a four-year term through the transition until 1999,[20] an arrangement commonly referred to as the "through-train" model. As a result of the electoral reform, however, the Beijing-appointed Preparatory Committee voted in March 1996 to disband the current LegCo as of July 1, 1997, and replace it with a temporary Provisional Legislature. The United Kingdom objected stridently and urged China to join it in bringing the issue before the International Court of Justice for resolution. China declined.

Many members of the legal profession were outraged by China's action, which the Bar Council argued was a blatant breach of the Basic Law. The Basic Law promises that the first legislature "shall be constituted by elections," will sit for two years (presumably to allow current members to finish the second half of their four-year term) and will continue the system of geographical, functional, and election committee selection. The Provisional Legislature, in which members will sit for one year, was selected by a 400-member Selection Committee in what Governor Patten referred to as a "bizarre farce." Democratic legislator Martin Lee called it the "darkest day for Hong Kong" since the June 4, 1989 massacre in Tiananmen Square.[21]

Both branches of the legal profession have been outspoken about their concerns regarding the Provisional Legislature.[22] In particular, the Bar Association last September overwhelmingly passed a resolution showing it did not support the establishment. Now that the legislative body has been functioning in Shenzhen (PRC) since January, there is uncertainty about the legality of laws it passes both before and after July 1. This is complicated by the fact that one of the first responsibilities of the Provisional Legislature will be to endorse the nominations of the new judiciary. Both legal societies have urged that a lawsuit be filed soon challenging (or at least determining) the legality of the legislature in order to clarify any uncertainty.

Legislation

To ensure a smooth change in sovereignty, a tremendous amount of legislation has had to be written, amended and passed by LegCo. This task has kept government lawyers, legal draftsmen and legislators busy for years and nearly frantic as the days until the transition shorten. The sheer number of laws being amended is daunting. All ordinances must comply with the Basic Law and must have local authority. The Attorney General's Chambers reviewed all 660 ordinances and suggested amendments to 540. Thirty-three major ordinances were previously United Kingdom legislation that had been extended to Hong Kong, including the Habeas Corpus Act and the Copyright Act. All these had to be redrafted and codified into local law. Countless other statutes had references to the United Kingdom or cited ultimate authority in the Crown.

As the legislative year draws to a close, there are still 51 bills in line to be passed in June, of which six have yet to be introduced into LegCo. In comparison, only about 100 bills have been passed in the

last nine months. As LegCo will be replaced by the Provisional Legislature, any legislation not passed by June 30 will automatically lapse, possibly leaving a legal vacuum in certain areas. The final sitting of LegCo (usually a four-hour affair) is currently scheduled to last three to five days in hopes of passing as many bills as possible.

Civil Liberties Concerns

In early April of this year, the Chief Executive-designate C.H. Tung put forward a "Consultation Paper" proposing sharp restrictions on the Societies and Public Order Ordinances,[23] which govern public demonstrations and organization associations.

The reaction from the legal community was swift. Groups such as the Bar Association, the Law Society, Justice (the International Commission of Jurists), Human Rights Monitor, and many others, wrote long and detailed analyses of how the proposals were unnecessary, legally undesirable and incorrect. As a result the Chief Executive's office amended its original proposals, giving way on several important issues. The final version of the law, however, still contains several aspects (most notably the vague definition of "national security") that concern many in the legal profession. How these new laws will be applied and what this indicates for the future are causing great uncertainty.

The right of assembly and the right of association are not the only civil rights areas under threat of restriction. The Basic Law speaks generously of the rights of Hong Kong residents and incorporates by reference the International Covenant on Civil and Political Rights. The final version of the Basic Law, however, was completed only months after the June 1989 Tiananmen Square democracy movement, during which more than 1,000,000 Hong Kong residents took to the streets in support of the student protesters. As a result, two last-minute provisions were included (1) requiring legislation creating the crimes of "treason, secession, sedition, subversion . . . or theft of state secrets" and preventing foreign political organizations from operating in the region or having ties with local political organizations[24] and (2) allowing the Standing Committee of the National People's Congress to apply China's national laws in case of "turmoil within the Hong Kong Special Administrative Region."[25]

There is grave apprehension over these provisions. One can be certain, however, that when the new legislature begins to legislate in these areas, the legal profession will again make its voice heard.

Other Issues

Many other issues must be resolved — some major, some minor. A newspaper recently published an article predicting chaos in criminal trials that straddle the transition.[26] In theory, cases are prosecuted in the name of the Queen, who will lose her standing after June 30. Lawyers fear that this will cause the cases to have to be restarted or aborted. Although the Basic Law provides that contracts, documents, certificates, and obligations shall continue to be valid after the transition,[27] it is unclear whether this provision applies to criminal prosecutions. The problem will certainly be cleared up quickly, but it is an interesting example of the legal issues that keep springing up just weeks before the transition.

Conclusion

Although the challenges to the legal profession are numerous, this article is not aimed at predicting the demise of the rule of law in Hong Kong. To the contrary, the commitment of the legal profession to solving the problems that are within its power to solve and pushing to end the uncertainty in areas outside its control is enormously impressive. Indeed, many lawyers have done so at great financial cost and by giving generously of their own time.

The challenges will continue well after the fireworks show on July 1. If the rule of law continues unabated it will be the ultimate tribute to the members of Hong Kong's legal profession.

End Notes

[1] Oliver Wendell Holmes (1894) (quoted by Governor Christopher Patten, Hong Kong: Transition, at the opening of the 1996/97 Session of the Legislative Council, 2 October 1996).

[2] Depending on your political beliefs, July 1 is referred to as the "transition," "handover," "takeover" (hostile or otherwise), "change in sovereignty," "reunifi-

cation" or "return." Even T-shirt sellers are promoting these differences. On the way to work I pass a store selling T-shirts saying "July 1, 1997: Welcome Back to the Motherland." Not far away, another stand sells shirts with a large bar-code across the chest, below which it says "Hong Kong: Best Used Before 7/1/97."

[3] Hong Kong Island became a British colony under the Treaty of Nanking (1842); Kowloon joined the colony under the Convention of Peking (1860).

[4] Convention of 1898 (1898).

[5] The Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong, 19 December 1984 (ratified May 27, 1985).

[6] Joint Declaration 3(12).

[7] The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, Adopted on 4 April 1990 by the Seventh National People's Congress of the People's Republic of China at its Third Session.

[8] Joint Declaration, article 1, Annex 1; Basic Law, article 9.

[9] Basic Law, Article 9.

[10] *See,* e.g., Derry Wong, "Linguistic Discrimination," *Hong Kong Lawyer*, May 1997 ("If the law is not available to the majority of the local population in a language which they can understand, can it be said that the law has treated them and protected them equally?").

[11] Gren Manuel, "Solicitors demand rethink on courts," *South China Morning Post*, April 27, 1997.

[12] All legislation has been written in both languages since 1989.

[13] *The Queen v. Tam Yuk Ha*, Supreme Court of Hong Kong (Appellate Jurisdiction), Magistracy Criminal Appeal No. 933 of 1996, October 30, 1996.

[14] *Chan Fung Lan v. Lai Wai Chuen*, Supreme Court of Hong Kong (High Court, Miscellaneous Proceedings) No. MP 4210, December 31, 1996.

[15] Basic Law, article 90.

[16] Basic Law, article 19.

[17] Michael C. Davis, "Constitutionalism in Hong Kong: Politics versus Economics," 18 *U. Pa. J. Int'l Econ.* L. 151, 159 n.28 (1997).

[18] Interpretation and General Clauses Ordinance, section 10B.

[19] The electoral reforms included lowering the voting age from 21 to 18; increasing the number of functional constituencies from 21 to 30; and giving all employees within each functional constituency the right to vote (not just the most senior representatives). The result was to add more than one million votes to the electoral system.

[20] Although the seats are elected democratically, it is not a form of democracy familiar to Americans. Of the 60 seats, 20 are elected by direct geographical elections, 10 are by an election committee (comprising elected members of the district boards), and the remaining 30 are by "functional constituencies." The functional constituency representatives are elected by an electorate grouped by profession. For example, there are LegCo members representing the legal profession, medical profession, finance, tourism, and labor, among others.

[21] See Chris Yeung, "Patten calls vote by 400 'bizarre farce,'" *South China Morning Post*, December 22, 1996; Clarence Tsui & Louis Wan, "'Darkest hour' for Democracy," *South China Morning Post*, December 22, 1996. The 60 members were selected by a 400-person Selection Committee, which in turn had been selected by the Beijing-appointed Preparatory Committee. As evidence of the vote trading, 51 of the 60 members chosen were members of the Selection Committee. Ten people chosen for the body had run for office in the democratic elections of 1995, but had lost.

[22] Hong Kong, like the United Kingdom, has a divided legal profession. The 3,876 solicitors make up the Law Society; the 637 barristers are represented by the Bar Association.

[23] This was instigated by a February announcement by the National People's Congress that it would repeal provisions of Hong Kong's Bill of Rights and several other ordinances that it considered to be in violation of the Basic Law (how the provisions violate the Basic Law was not explained).

[24] Basic Law, article 23.

[25] Basic Law, article 18, para. 4.

[26] Cliff Bundle and Patricia Young, "July 1 court chaos fear," *South China Morning Post*, May 19, 1997.

[27] Basic Law, article 160.

WSBA member ***Amy Weaver*** *is a 1995 graduate of Harvard Law School and former law clerk to the Hon. Eugene A. Wright of the Ninth Circuit Court of Appeals. As a Luce Scholar, she has spent the past year as the legislative assistant to Hong Kong Legislative Councillor Margaret Ng, who represents the legal constituency.*

Creative Stress Management: What To Do Before You Reach Professional Paralysis

by **Barbara Harper**
and **Donna L. Spilis,** *with excerpts from Chel Avery's "How to Get Unstressed: The Bare Facts"*

In our society, symptoms of stress often go undetected until they yield negative physical, professional or interpersonal consequences. Failure to heed stress warning signs is not unique to the legal profession, but it does reflect the institutional denial of lawyers' humanity. The analysis of data from a stratified, random sample of 10 percent of the practicing lawyers in the State of Washington demonstrates that one-third of the lawyers suffer from psychological, behavioral and physical symptoms that indicate the presence of depression, alcohol abuse or cocaine abuse. Similar data have been collected in other jurisdictions.

What is Stress?

Stress is a physiological and psychological response to negative or positive environmental change. Research has shown that the body adapts to psychological denial by creating physical symptoms to take up the slack that one cannot handle emotionally. The only problem with that solution is that, over a period of time, the body gets overloaded. If we continually repeat our stress patterns, the body will permanently "lock into" the "fight or flight" response. The body will adapt to the distress until it reaches a state of exhaustion or death. We no longer even need a stimulus or stressor to activate the stress response. We begin to feel continually alerted and threatened. We are always weary and depressed. We feel jumpy, irritable and angry. We feel despair and hopelessness.

How you respond to a stressor depends on how the event is perceived. Events that elicit stress in one lawyer (a 70-hour work week, disagreements with opposing counsel, etc.) may have no negative effect on another.

Stress response may be caused by an event that is perceived as positive; stress, when channeled correctly, can maximize performance. A certain amount of stress can be stimulating. It makes life interesting and challenges us to solve problems innovatively. To deal with stress effectively, we need to start by identifying times and situations which trigger the stress response.

See the Legal Practice Stress Inventory below to analyze your own particular stressors and potential stress level.

Legal Practice Stress Inventory

Here are some common sources of job stress reported by lawyers. Assign each a number according to how often you feel that way or have that sense or experience:
0 = never / 1 = sometimes / 2 = frequently / 3 = almost always

____ Inadequate time to complete jobs satisfactorily
____ Competition — turning every encounter into a win-lose situation
____ Self-criticism — focusing on weaknesses, rather than strengths
____ Absence of recognition or reward for good job performance
____ Powerlessness — the failure to see available choices
____ Hurrying — constant pressure to perform better and faster
____ Comparison of achievement, or lack of them, to those of peers
____ Pessimism
____ Unrealistic expectation that life should be problem-free
____ Inability to work with others because of basic differences in goals and values
____ Lack of control over or pride in the finished product
____ Prejudice and bigotry expressed by colleagues of a different age, sex, race or religion
____ Concerns related to being responsible for employees
____ Not being able to use personal talents or abilities effectively or to full potential
____ Fear, uncertainty, doubt

TOTAL: A score of more than 10 suggests that you are under considerable stress. You may need to change your response to your work.

When stress becomes chronic or overwhelming, a lawyer may experience negative physical symptoms and changes in personality and/or behavior. Managing stress is the process of taking responsibility for perceptions, attitudes and beliefs and learning how they bring out stress reactions. The process includes recognizing that stress is NOT a sign of weakness but an opportunity to reevaluate and manage problematic events successfully.

Stress management may begin with recovery from substance addictions such as drugs, alcohol, cigarettes, food or caffeine. It also may begin with our recovery from process addictions, such as co-dependency, relationships, sex, gambling, work, worry, money, etc. Effective stress management is not learned quickly or easily . . . it is a lifetime process.

Techniques for Coping with Stress

Often, the easiest way to remove stress is to escape it. Ask yourself how much stress you can get rid of by making a few simple changes:

1. Ask yourself what activities or events make you feel tense or frustrated. See if you can change or avoid those events. (If you hate driving home in rush hour, try taking the bus or scheduling your commute during off-peak hours, for example.)

"Learn your own energy rhythms and try to work with them."

2. Learn your own energy rhythms and try to work *with* them. If you are a morning person, use that time for your more challenging work. If you are an owl, try to use the morning for routine tasks that you could do in your sleep.

3. Plan your time schedule in advance. If you have too much to do, decide what's most important and what you can eliminate.

4. Allow a little extra time for everything. Leave a few minutes early when you are going someplace so you won't have to hurry. Leave some time in your day for the unexpected.

5. Learn to say "no." As in "No, I'm sorry, but I can't help you. I have too much work of my own to do."

6. Examine your own attitude and ask yourself how you may be creating unnecessary pressure for yourself. For example, do you always try to beat the red light? Do you always have to do better at an activity than the next person? Pick one area and try practicing a more casual attitude. Maybe next time you play a game with friends, you could forget about winning and concentrate instead on helping other players improve their performance, or on playing just for the fun of it. If you find yourself getting comfortable with this approach, look for other areas before you can begin reducing the pressure you put on yourself.

7. Look at the underlying values that influence the choices you make. Do you always take every opportunity to advance your career because you believe you owe it to yourself and your family? Ask yourself what you would most *like* to do. Now

ask yourself what will be the consequences of *not* doing what you think you *should* do. Are they all that bad? What difference will it make five years from now? This is not to suggest that you become irresponsible, but that you decide for yourself what your real responsibilities are.

8. Plan around major life changes as much as you can. Go easy on yourself when a big event happens to you. If possible, space big events out so they don't happen too close together. For example, don't change careers while you are going through a divorce.

Equip Yourself to Cope With Stress

As a certain amount of stress is inevitable, it pays to improve your physical health and your body's ability to handle the stress response . You may not choose to incorporate all of the following ideas into your life right away, but whatever you do will help.

1. Exercise regularly in some vigorous activity that develops the heart and lungs. Twenty to forty minutes of strenuous exercise three to five times a week can work wonders for your ability to cope with stress.

2. Eliminate smoking and eliminate or reduce caffeine in your diet. Both produce a stress response in your body which can exaggerate any other stress reaction.

3. Reduce salt in your diet. Salt increases the amount of fluid your body retains, which can lead to nervous tension and a raised blood pressure.

4. Eat plenty of fresh fruits and vegetables, nuts, beans and whole grain foods. Eat regular meals and a variety of foods. Remember breakfast so you will have sufficient energy through the morning.

5. Get as much sleep as you need. Try to sleep on a regular schedule for more consistent rest.

6. Learn a relaxation technique and practice it regularly to increase your ability to stay calm. Suggested techniques include meditation, biofeedback, autogenic training, deep breathing and progressive relaxation training.

7. Develop an "escape" activity, a hobby which is strictly for your own enjoyment and which you can use to get pleasure on a regular basis.

8. Develop a support network of people who care about you and whom you care about. This might be your family, a circle of friends, or an ongoing support group that is formed for this purpose. Lawyers can frequently benefit from belonging to a group of individuals who are working together to solve particular problems they have in common, such as alcoholism,

"Visualize the stressful situation as you would like it to be. This might give you some ideas about what changes you can make."

adjusting to divorce, single parenthood, etc.

Meeting Stress Head-on

There are times when you know you are experiencing stress, regardless of measures you have taken to escape or prevent it.

What can you do to deal with a particular stressful situation while it is happening?

1. Practice deep breathing in tight situations. Exhale slowly as far as you can and then slowly fill your lungs from the diaphragm. Hold for a few seconds and repeat.

2. Close your eyes and relax. Visualize yourself in a pleasant place, lying on a beach, enjoying the vista from a mountain peak, or whatever scene represents peacefulness to you. Or visualize the stressful situation as you would like it to be. This might give you some ideas about what changes you can make.

3. Take a break. Go for a walk, do a few stretching exercises, or do something distracting for a moment. Then come back to the situation in a calmer frame of mind.

4. Ask yourself how important is the situation which is causing you stress. If someone has been rude to you, for example, does it really matter? Can you decide not to let it bother you?

5. If the problem is important, confront it directly wherever possible, especially if it is likely to recur. If someone is being unfair to you, is pressuring you or is causing you stress in some way, can you talk to the person about it? Even if the source of stress is too much for you to change single-handedly, you will feel better if you do something. Letting off some steam will reduce feelings of helplessness.

6. If you can't confront the problem directly, talk it out with a sympathetic listener, a friend or counselor. Or write it out in a journal or in an angry letter that you will throw away later.

7. Work off the steam. Lift weights, go for a brisk walk, smash a cushion, or find a private place to collapse.

What *Not* To Do

Here are some notoriously unproductive methods for handling stress:

1. Don't use alcohol or other drugs to cope with stress. The relaxation, extra energy or escape that chemicals seem to provide is only temporary. In the long run, the physical strain they cause your body, and the emotional and social strain that result from possible dependence, will probably be a greater source of stress than the one you are dealing with now.

2. Don't repress negative feelings. There are appropriate and inappropriate ways of expressing anger, fear, frustration and sorrow, but it is never worth the price to keep strong feelings locked inside where they continue to cause stress. Find a place where these emotions can be released appropriately. Talk with a friend or seek professional help.

3. Don't compare yourself with others. Everyone is different, and you may not know how dysfunctional a peer truly is despite appearances to the contrary. Be yourself.

Stress is a pervasive problem that all lawyers have to deal with. It can inspire productivity or lead to exhaustion.

Lawyers reporting a wide range of distress symptoms have reduced, and are reducing, their distress while ending their isolation. For more information on stress reduction techniques and support groups, call the Lawyers' Assistance Program at (206) 727-8268.

Lawyers' Assistance Program Celebrates 10 Years of Service to Bar Members

Ten years ago, the WSBA's Lawyers' Assistance Program was officially begun. With the help of hundreds of lawyer volunteers, the program has grown and matured over the past decade. Designed to assist lawyers with physical illness, emotional problems or alcohol and drug addiction, the program aims to raise the awareness of the legal community as to potential causes of lawyer impairment, treatment resources and prevention. LAP staff investigate confidential third-party referrals, meet with lawyers requesting assistance to assess the degree of the lawyer's impairment and together determine a course of assistance. Peer counselors trained by LAP staffers provide constant support and encouragement to lawyers in crisis and recovery. The personal lives and professional experiences of these peer counselors motivate them to assist and serve as confidants, offering empathy and reassurance. They spend hundreds of hours a year giving free counseling.

As an indication of the volume of work accomplished by LAP, here are some statistics from LAP for the first half of fiscal year 1997:

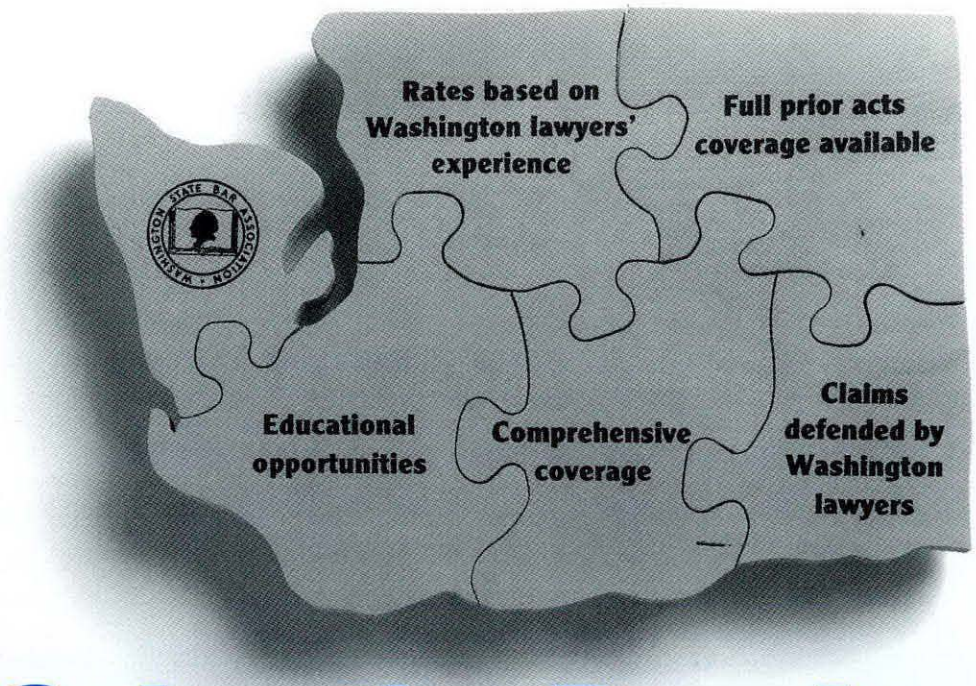
New Cases:	64
Presenting Problem:	
Mental Health:	49
Alcohol:	16
Drugs:	10
Types of Consultation or Treatment:	
Client Treatment:	646
Peer Counselor Consultation:	105
Third-party Consultation:	17
Client attendance at Group Treatment:	47
Career Information Consultations:	77
Job Support Group:	187
Total contacts with clients or those involved with cases:	1,260

Most lawyers self-refer to LAP. No one knows about requests for services, as contacts with LAP are kept confidential under RLD 12.17, adopted in 1987. Initial assessment and peer counseling are free. Ongoing counseling is based on a sliding fee scale. LAP also works with third parties — judges, law partners, co-workers — who are concerned about a particular lawyer's ability to practice.

LAP staff and peer counselors are also available to give presentations at your office or county bar meetings. Topics include drug and alcohol abuse, stress, depression, communication skills and grief and loss, among others.

❖ ❖ ❖

For more information about Lawyers' Assistance Program services, or to volunteer to become a Peer Counselor, please call (206) 727-8268.



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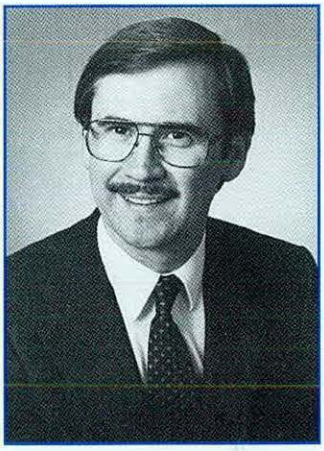
Profiles in Courage: 1997 WSBA Award Winners

Bernice Bacharach

Bernice Bacharach received a Lifetime Service Award for her pioneering 53-year practice as the first woman attorney in the Wenatchee Valley. She is also the only recipient of the University of Idaho Law School Faculty Award of Merit. With a broad range of practice, she has added a new dimension to practice in Washington state.

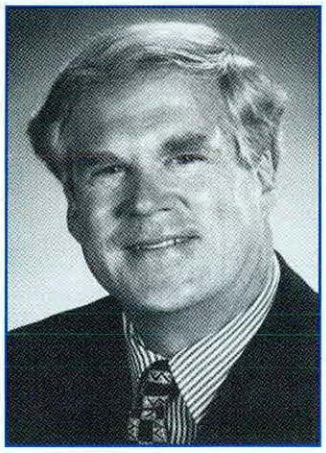
Judge **Nancy Ann Holman** received the Outstanding Judge Award. Judge Holman, who was the first woman to sit on the Superior Court bench anywhere in the State of Washington, served with distinction for more than 25 years before retiring from the bench in January 1997. She also recently received the St. Thomas More award from her alma mater, Boston College Law School, where she was the only woman in her law school class. She was also recently honored by Women of WSTLA and Washington Women Lawyers.

C. Robert Ford received the WSBA Award of Merit for his long-term service as a citizen member of the Disciplinary Board and Fee Arbitration Panel. Known for his attention to detail and the commitment to read every word of the thousands of pages of disciplinary records, Ford brought a special concern for consumers to the process.



Joseph P. Erickson

Another award of Merit went posthumously to the late **Joseph P. Erickson** of Kennewick, who was an indefatigable moving force responsible for the founding of the General Practice Section of the WSBA. He was unflagging in his prolific correspondence and advocacy of equipping all practitioners in solo practice and small firms to achieve the highest levels of professionalism in their practices.



Patrick W. Dunn

Ragan L. Powers

The President's Award went to **Patrick W. Dunn**, **Ragan L. Powers** and **Bruce W. Reeves** in recognition of their tireless efforts to obtain legislature funding for civil legal services. Patrick Dunn donated many valuable hours at the peak of his lobbying season. Ragan Powers from the Equal Justice Coalition also worked tirelessly to educate legislators on the importance of legal services funding. Bruce Reeves is president of the Washington Senior Citizens' Lobby.

The Pro Bono Award went to the **Clark County Volunteer Lawyers Program** for its outstanding efforts in providing pro bono civil legal services to indigent citizens.

Christine O. Gregoire

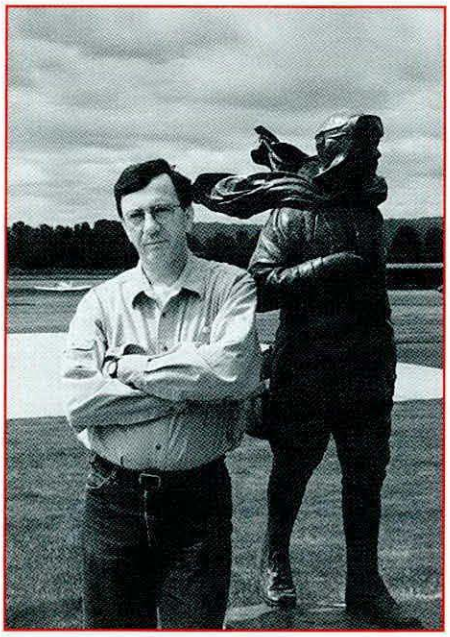
Attorney General **Christine O. Gregoire** received the Award for Professionalism for her quiet, consistent and categorical incorporation of the values of professionalism into the operations and culture of the Attorney General's office and into the legal profession as a whole. During her tenure as Attorney General, she has taken a leadership role on important public policy issues, such as ethics in government, increased use of alternative dispute resolution, the environment and issues affecting children and families.

The Affirmative Action Award went to the **Puget Sound Area Minority Clerkship Program** in recognition of the program's contributions in creating and advancing career opportunities for minorities in the legal profession.

The Courageous Award was presented belatedly to **Rhesa E. Mansfield**, who represented John and Sally Goldmark in the landmark case, *Goldberg v. Tonasket Tribune, Okanagon Independent et al.*, several decades ago.

Assistant Attorney General **John Wulle** received the Angelo Petruss Award for his service in training others to assist low-income individuals who would not otherwise receive legal assistance, and speaking at community forums on legal issues.

John Wulle at the Pearson Air Museum



Patrick Hardy

Also receiving an Award for Professionalism was **Patrick Hardy**, an Auburn public defender, who recently represented a Caucasian nationalist charged in a skirmish outside a Ku Klux Klan induction ceremony. The Board cited Hardy for his belief in a "blind justice wearing a colorless robe."

Resolutions Received for 1997 WSBA Annual Business Meeting

The following resolutions were received by the WSBA and will be considered at the 1997 WSBA Annual Business Meeting at 2 p.m. at the WSBA office on September 12, 1997. The resolutions will be considered by the WSBA Resolutions Committee at is meeting on September 4, 1997. The purpose of the Resolutions Committee is to make a recommendation to those attending the Annual Business Meeting. The Resolutions Committee consists of: Lee Kraft — Chairperson, John H. Caldbick, William R. Fleck, Stephen L. Pfeifer, Edward B. Ratcliffe, Robert R. Redman, John M. Riley, John G. Schultz, Stacey L. Smythe, Phillip L. Thom, and Ted D. Zylstra.

Written responses and comments to the proposed resolution should be sent to the attention of the WSBA Executive Director, 2101 Fourth Avenue — Fourth Floor, Seattle, WA 98121-2330, by August 29, 1997.

The following is the text of the resolutions and the proponents' explanatory statement as received:

Resolution No. 1

Be it resolved:

That the Executive Director of the Washington State Bar Association shall begin negotiations with the various Bar Associations of the other states for mutual agreements that allow experienced attorneys of good standing to apply and receive admittance to the Bar of the State of Washington with similar reciprocal agreements for admission to such other state Bar Associations for experienced attorneys of good standing in the Washington State Bar Association. Upon obtaining such agreements, the proposals shall be submitted to the Washington Supreme Court for their approval.

Resolution No. 2

Be it resolved that the above resolution shall be submitted to a vote of the active members of the Washington State Bar Association, pursuant to article VII (J), of the Washington State Bar Association Bylaws.

Proponent Explanatory Statement

This resolution directs the Board of Governors to send the question of whether or not the Washington State Bar Association shall become a reciprocal Bar to a referendum for a vote by all of the active members of the Bar Association.

At present, most jurisdictions permit reciprocal admission without a full bar examination. The majority of states now require five years of practice and evidence of good character for reciprocal admission. Some reciprocal states require a shorter "Attorney" exam.

Washington attorneys are denied reciprocal admission status in the 33 jurisdictions that have adopted reciprocal standards. These states include Alaska, California, Colorado, Connecticut, District of Columbia, Idaho, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin and Wyoming.

A WSBA committee was appointed to study this matter in 1983. This year another committee was appointed to study the matter.

While the sponsors of this resolution favor reciprocity, the purpose of the resolution is to send the question to the active members of the Washington State Bar Association for decision in a Referendum.

This is too important a question to be decided by the Board of Governors or delayed for another ten years of committee study. ◆

Clip and Save

Resources Directory Correction

On page 487 of this year's directory, we inadvertently printed the wrong phone number for the Order Processing Department.

For questions on ordering WSBA publications, call (206) 727-8278.

We apologize for the error.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in June 1997 is 5.06%. **The maximum allowable interest rate permissible for July 1997 is therefore 12%.** Compilations of the average coupon equivalent yields from past auctions of 26-week treasury bills and past maximum interest rates of the past 10 years appear on page 32 of the June 1997 *Bar News*.

Board of Governors Election Results

WSBA members in two districts and King County voted on three Board of Governors positions last month. Ballots were counted and results announced on June 9.

Walter Krueger won the First Congressional District position by a vote of 356 to Stewart A. Estes' 286 votes.

J. Richard Manning won the King County at Large position with 1,658 votes to James Rigby's 819 votes.

In the Fifth Congressional District, **Richard C. Eymann** was uncontested and automatically won the seat.

The new Governors will assume their positions at the Bar's Annual Meeting on Friday, September 12, at the Bar offices, 2101 Fourth Avenue — Fourth Floor, Seattle, WA 98121-2330. President-elect Mary Fairhurst also will assume her position as President at that meeting. The annual meeting is open to everyone. ◆

Pending Appointments

Non-lawyers are needed to fill several upcoming WSBA board vacancies.

Two positions are open on the Disciplinary Board (reviews recommendations by the Office of Disciplinary Counsel and hearing officers for disciplinary action).

One position is open on the Mandatory CLE Board (approves courses and educational programs which satisfy the education requirements of the mandatory CLE rule).

Two positions are open on the Lawyers' Fund for Client Protection (reviews claims for reimbursement of financial loss sustained by reason of an attorney's dishonest actions).

These are all three-year terms running from October 1, 1997, to September 30, 2000.

Also, the Limited Practice Board has an opening for a WSBA member to complete the remainder of a four-year term ending December 31, 1998. The board oversees administration of and compliance with the Limited Practice Office Rule (APR12) and meets every other month.

Anyone interested in any of these appointments should contact their Governor or write to the Executive Director at the Bar office by July 20, 1997. ◆

Announcement

WSBA Presidential Selection

The Board of Governors of the Washington State Bar Association (WSBA) is seeking applicants to serve as President of WSBA for 1998-1999. Pursuant to Article IV(A)(2) of the WSBA, the President for that term shall have his or her primary place of business within King County.

Applications for 1998-99 President of the WSBA will be accepted through July 15, 1997, and should be limited to a current résumé, a concise application letter, and selected references. Endorsement letters received by July 31, 1997 will be considered by the Search Committee and the Board of Governors. Applications and endorsement letters should be sent to the WSBA Executive Director, 2101 Fourth Avenue — Fourth Floor, Seattle, WA 98121-2330.

Interviews will be conducted between August 15 and August 31, 1997, at the offices of the Washington State Bar Association. In addition to the interview in August before the Search Committee, finalists will be invited back to the September Board of Governors meeting for an interview before the full Board of Governors, in open session. Applicants are discouraged from conducting active campaigns for this office.

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

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

The commitment begins as President-elect. In September 1998, at the WSBA's annual business meeting, the candidate will assume the position as President of the Association. The candidate will be expected to attend two-day Board meetings every six weeks, as well as attend numerous subcommittee, section, regional, national and local meetings. During his or her service, the candidate will also be required to meet with members of the Bar, the courts, the media, and public and legal interest groups, as well as be involved in the Bar's legislative activities. Appropriate time will need to be devoted to communicating by letter and telephone in connection with these responsibilities. ◆

International Law Section on Trans-national Practice & Foreign Business & Investment

by Emmanuel P. Tangas, Chair of International Law Section's Foreign Business & Investment Committee

The WSBA International Law Section has undergone an injection of "new blood" and embarked upon ventures designed to expand the scope of international practice by Washington attorneys.

1. COMMITTEE ON TRANS-NATIONAL PRACTICE (CTP).

The CTP has engaged discussion with the Law Society of British Columbia concerning a reciprocal relaxation of licensing requirements for foreign legal consultants in Washington State and the Province of British Columbia.

Discussions are presently focused upon modifying the Admission to Practice Rules of both parties. The goal is to enable Washington attorneys to advise clients in B.C. on Washington and U.S. law, and vice versa for B.C. lawyers. The chief obstacles in this regard are (1) the million dollar bond required by the Law Society to protect B.C. clients from foreign attorneys absconding with trust funds, and (2) the requirement in Washington APR 14 that a Foreign Legal Consultant must reside in Washington State to be licensed. At the present time the prospects of eliminating these obstacles are hopeful.

2. COMMITTEE ON FOREIGN BUSINESS AND INVESTMENT (FBI).

The FBI is marketing its recently published third edition of the FBI guide, *Doing Business in Washington State*.

The guide is comprised of 27 chapters, with each chapter written by an experienced practitioner in the particular legal field. Chapters include such topics as: choosing a legal entity, establishing a corporation, federal taxing of international transactions, immigration law, NAFTA from the U.S. perspective, securities regulation, and customs and international trade laws.

The FBI is promoting the guide as an indispensable reference manual. It is designed for the legal practitioner or business person desiring a comprehensive overview of issues and topics commonly affecting business and investment in Washington State. The FBI and the section in general are especially enthusiastic about the third edition, because, for the first time, a separate translation of the guide is available in Japanese.

Many Washington companies, organizations, and law firms have found the guide a

Continued on page 32

WSBA CLE and KVI-Reliance Malpractice Insurance Discounts Now in Effect

Washington lawyers can now get discounts on their liability premiums by attending WSBA CLE programs.

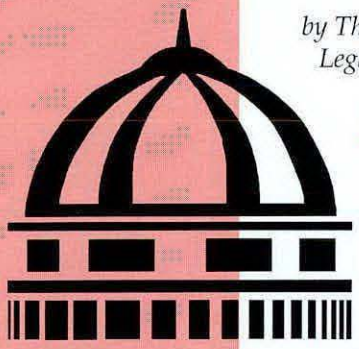
Kirke-Van Orsdel, Inc., the only lawyers' liability insurance program sponsored by the WSBA, will provide WSBA members with a 5% discount for each WSBA CLE seminar they attend, up to a 10% discount per year.

KVI and its underwriter, Reliance National Insurance Company, recognize participation in the Bar's CLE programs as an important loss prevention practice and will give a credit against premiums. At the end of each WSBA seminar, certificates of completion will be given to attendees upon request to enclose with their next renewal or initial application.

For more details, call the CLE Department at (206) 727-8202. ◆

State Legislature Approves $2 million Increase for Legal Services

by Theresa Harrington, Legal Foundation of Washington



In a strong show of bipartisan support for the concept of equal justice for all, both houses of the Washington State Legislature supported increased funding for legal services for people in need. The budget included a $2 million increase over the 1997-99 biennium, raising the appropriation from $4.8 million to $6.8 million.

The bill was passed unanimously by both the House and Senate. The types of client representation allowable with state money were changed significantly, and a bipartisan legislative oversight committee was established to ensure accountability and compliance with state regulations and restrictions.

Key legislators from both sides of the aisle played important roles in working out budget and legislative compromises. The Equal Justice Coalition thanks all the legislators who worked on this important issue for their dedication and hard work to ensure that funding for legal services remains a priority in Washington.

The increase in funding recognizes the loss of resources for legal services due to federal cuts of more than $4 million per biennium. It also recognizes the tremendous growth in Washington state's poverty population, now estimated at 1.2 million people. While the increase will help Legal Services programs avoid further staff layoffs and office closures beyond the tremendous cuts they experienced in 1996, there still remains a huge unmet need for these services in our state. The EJC now turns its attention back to bolstering federal funding. ◆

Kids Advocacy Panel Needs Volunteers to Help Children Retain SSI Benefits

by Dinnen Cleary, Columbia Legal Services

Columbia Legal Services and Northwest Justice Project are collaborating to form the SSI Kids Advocacy Panel. The panel will link volunteer attorneys with the families of children who have received SSI termination notices for representation on appeal. Approximately one-fourth of the one million children nationwide currently receiving SSI, a cash assistance program for disabled low-income children and adults, are having their cases reviewed under new rules which make it more difficult to qualify. Some will lose their benefits as early as July 1.

About 3,500 children in Washington are having their cases reviewed and conservative projections estimate that about half of them will have their benefits terminated. A substantial number of termination decisions could be reversed on appeal if these children are represented by counsel. However, unless attorneys are willing to undertake appeals on a pro bono basis, many of these children will go unrepresented.

Although familiarity with Social Security and disability issues would be helpful, prior experience representing SSI claimants is not essential. Extensive support and resources will be provided, including formal training, for which CLE credit will be sought, and access to attorneys with expertise in Social Security law.

If you are interested in joining the SSI Kids Advocacy Panel, or would like more information, please contact Dinnen Cleary at Columbia Legal Services, (425) 259-3421, ext. 209, or Sandra Robinson at Northwest Justice Project, (360) 352-5657, ext. 15. ◆

International — *Continued from page 31*

beneficial tool for their clients, employees and colleagues. The utility of the guide has been proven by the fact that the previous two editions sold out quickly. With the influx of foreign investment that has recently poured into Washington State, the FBI expects the third edition to find an eager market.

The cost for the third edition of *Doing Business in Washington State* is: English version — $32.50 each (WA residents must add $2.80 sales tax); Japanese version — $47.50 each (WA residents must add $4.09 sales tax).

Send check or money order to: Order Processing, WSBA, 2101 Fourth Avenue — Fourth Floor, Seattle, WA 98121-2330. ◆

Limiting the Scope of Your Representation: Questions of Cost, Candor and Disclosure

by **Barrie Althoff**
WSBA Chief Disciplinary Counsel

Introduction

In a recent article, I discussed some ethical and practical considerations involved in providing your client with only a limited legal representation, concluded that "unbundling" of legal services from the traditional full "bundle" of legal services is ethically permissible, and described some reasons you may want, or be required, to limit your representation and some of the risks associated with limited representation. (*See*, Althoff, "Limiting the Scope of Your Representation: When Your Client Wants, or Can Afford, Only a Part of You," *Washington State Bar News*, June 1997.) This article explores some related issues.

Under Rule 1.2(a) of the Rules of Professional Conduct ("RPCs"), your client determines the scope and objectives of your representation, but only after the client has consulted you and you have explained any proposed limitations in your representation in a manner that your client can appreciate their significance and has consented to the limitations. Absent such a limiting decision, the "default" scope of representation is, in effect, the "full services" approach. Depending on the nature of the representation, those services would generally include, for example, consultation, legal and factual research, drafting documents or pleadings, negotiation, advocacy, court appearances, and so on. Just as you are obligated to advise your client of appropriate alternatives to litigation, however, you are obligated to discuss with your client the scope of your representation and of alternatives to a "full-service" representation.

Some clients may want you to limit the scope of your representation so they can more directly control the work, or because of a do-it-yourself mentality or of a distrust of lawyers. To a large extent, however, the trend towards unbundling of legal services is a response to the simple fact that many clients simply cannot afford "full-service" legal representation and thus must settle for something less, largely representing themselves. Since they clearly have a right to represent themselves, your assisting them to do so is not assisting the unauthorized practice of law.

Your limited representation of clients — even on a pro bono basis — is, of course, still the practice of law by you. Your representation remains fully subject to the RPCs and other ethical standards. The standard ethical provisions of, for example, competence (RPC 1.1), diligence (RPC 1.3), communication with your client (RPC 1.4), reasonable fees (RPC 1.5), confidentiality (RPC 1.6), and avoidance of conflicts of interest (RPC 1.7-12) all remain applicable. Similarly, by limiting your representation you cannot indirectly do, or assist your client to do, anything that you could not do directly in a full-representation situation. For example, you cannot ghost-write frivolous pleadings for your client to file since RPC 3.1 directly prohibits you from filing frivolous pleadings, nor can you assist your client to make misrepresentations to the court or opposing counsel/clients in violation of RPC 3.4 or RPC 3.5, or destroy evidence in violation of RPC 3.4(a).

Undisclosed Ghosts and Scripts, Candor, and Unanswered Questions

When you provide limited representation to a client, but do not disclose that involvement to others, difficult ethical issues arise. In such a case your client appears to a court and to others to be an unrepresented *pro se* client. If your involvement is not disclosed, are you being fair and candid to the court and to others? Is your unbundling of your legal services by assisting your client through undisclosed services, by which you obviously intend to help your client obtain access to justice at a price your client can afford, in fact conduct that is prejudicial to the administration of justice?

Where one party is represented by counsel and the other is acting *pro se*, it is generally agreed that the *pro se* party's pleadings are to be interpreted liberally, and that the *pro se* party should be given somewhat greater latitude in court (including, for example, perhaps some leniency by the court in the party's making and responding to objections, and perhaps in allowing pleadings to be handwritten or on irregular-sized paper). This is proper since the goal of the proceeding is justice. Where a litigant who appears to be acting *pro se* is in fact represented by counsel, however, that person is clearly not entitled to such liberality or latitude. Thus, if your name never appears on the pleadings and you never make an "appearance," but you script what your client will say in court or you ghost-write your client's pleadings, the court and the opposing counsel/client would have no rea-

son to know that they were not dealing with a truly *pro se* litigant unless your client volunteered the information. There is little doubt that your client will make a better presentation to the court, and that the pleadings you draft for your client will be more competent, than if you had not assisted your client, and thus your client will have been well served by you and will have a more complete access to justice. But has the system of justice itself been well served?

You have an obligation of candor to the court under RPC 3.3 and to opposing counsel/clients under RPC 3.4. Under RPC 8.4(c), you may not "engage in conduct involving dishonesty, fraud, deceit or misrepresentation," and under RPC 8.4(d) you may not "engage in conduct that is prejudicial to the administration of justice." Are you obligated under these rules to advise your apparently *pro se* client to inform the court and opposing counsel/client of your limited role, of your ghost-writing? If your client fails to do so, is that failure a "material fact" which you yourself need to disclose to the court under RPC 3.3(a)(2) so as "to avoid assisting a . . . fraudulent act by the client?" If your client fails to disclose your involvement, must you withdraw from even your limited representation? Is your undisclosed ghost-writing conduct which involves "dishonesty, fraud, deceit or misrepresentation" prohibited under RPC 8.4(c)? Compare, for example, *ABA Informal Opinion 1414* (June 6, 1978) and *Association of the Bar of the City of New York Opinion 87-3* (March 23, 1987), [which conclude that "active and substantial assistance" to a client by undisclosed ghost-writing is a misrepresentation to the court and opposing counsel and that you would have to withdraw if the client failed to disclose your involvement] with *Arizona Opinion 91-03* (January 15, 1991) which raises but does not answer the question of when a counsel must disclose such involvement to the court and others and it appears through a dissent declined to adopt the ABA and City of New York positions.

Is such undisclosed ghost-writing "conduct that is prejudicial to the administration of justice" prohibited under RPC 8.4(d)? Is it a violation of your duty as a lawyer under Rule 11 of the Civil Rules (and Rule 11 of the Federal Rules of Civil Procedure) to sign every pleading? In *Johnson v. Fremont County,* 868 F. Supp. 1226 (U.S.D.C., Co. 1994), for example, Judge Kane concluded that such undisclosed ghost-writing was a lack of candor and was evasive of FRCP Rule 11's requirement that a lawyer sign pleadings. If your client does not disclose your role in ghost-writing pleadings and you yourself then do disclose your role to the court and others, are you violating your duty not to disclose confidences and secrets of your client? Should it instead be the responsibility of the court and opposing client/counsel to ask the apparently *pro se* client whether he or she is in any way being assisted by counsel, and if so to what extent? Is such a question an invasion of the attorney-client privilege? Should CR 11 be amended, as Judge Kane proposed as to FRCP 11, to require lawyers who are not making an appearance, but who are ghost-writing pleadings, to co-sign pleadings or otherwise disclose their role?

Even outside the context of litigation, your undisclosed role as an attorney may

raise ethical issues. For example, your limited representation might consist of discussing with your client what the client might say to the opposing client in negotiations. Of itself, such limited representation is certainly permissible since your client may communicate with anyone, whether that person is represented by counsel or not. (Cf. *California Formal Opinion 1993-131*, *ABA/BNA Lawyer's Manual on Professional Conduct*, 1001:1602; *WSBA Formal Opinion 84* (1960), *1997 Resources* 387). If you know that the opposing client is represented by counsel, however, it might well be contended that your "scripting" for your client constitutes an indirect communication with a represented third party in violation of RPC 4.2's prohibition of a lawyer communicating with a person represented by counsel. Cf., *WSBA Formal Opinion 26* (1953), *1997 Resources* 379 (unethical for lawyer to send client to discuss case privately with judge, or to knowingly permit client to do so, without disclosure to opposing counsel).

Because of the many uncertainties regarding your ethical obligations when your client proposed to use your services on an undisclosed basis, you may want to insist to the client that where your role is anything other than merely nominal it be disclosed to the court and to third parties, and that if the client does not do so you are authorized to do so. You may also want to add such a provision to your written agreement with the client.

Attempts to Gain Immunity or Limit Liability

While limiting your services likely reduces your fees to your client, it also limits your ability to oversee and solve your client's legal problem. Nevertheless, your client may still perceive you as having an ongoing responsibility and, if the client does not attain a desirable resolution of the legal problem, the client may try to hold you responsible in a subsequent malpractice action or bar grievance. In short, you may have traded a reduced fee for an increased likelihood of liability. Thus you may be tempted to try in your representation agreement to limit in advance the scope of your liability for malpractice claims, or to seek in advance a grant of immunity from your client for any aspects of the case in which you do *not* represent the client. RPC 1.8(h) provides that a lawyer "shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement . . . ." While this prohibition is likely intended to apply to services you intend to perform for the client, as opposed to listed services you specifically agree you will not perform, the strictures of the rule may well still apply, and certainly will apply if you actually perform any of the services you initially said you would not perform. Further, if the rule does apply, since your client is usually seeking limited representation because he or she cannot afford to pay for full representation, it is highly improbable that the client will be able to afford being independently represented in any such agreement to limit liability for mal-

practice. Thus any attempt on your part to prospectively limit your liability will likely be ineffective. It is also questionable whether many lawyers consulted by such a client as to the advisability of signing such a waiver/immunity agreement would recommend the client sign it. The best you can do is to take great care to document very carefully exactly what you and your client agree you will and will not do for your client, and what the risks of such limitation are to your client.

Conclusion

With many clients unable to pay for legal services, unbundling your services is less an option than a necessity. To do so, you must carefully discuss with your client the limited scope of your representation in a manner that your client can understand the significance of the limits, making sure that the limits do not make it impossible for you to fulfill your ethical obligations. Then make sure you document those discussions and secure your client's written consent to the limitations. You should also explain to your client the applicable ethical standards and insist that, if your representation is to be other than minimal, it be disclosed by the client to the court and third parties.

Editor's note: In response to a reader suggestion, notices from the Commission on Judicial Conduct and WSBA Office of Disciplinary Counsel will now be included in the Ethics column.

Commission on Judicial Conduct

In Re the Matter of Justice Richard B. Sanders

Following the filing of a Statement of Charges alleging that Justice Richard B. Sanders violated the Code of Judicial Conduct, the Commission held a fact-finding hearing on March 18 and March 19, 1997. Members of the Commission present as fact-finders were Dale Brighton, Vivian Caver, Harold D. Clarke III, Honorable H. Joseph Coleman, Honorable Susan A. Dubuisson (Presiding), Honorable William E. Howard, Connie Michener, Pamela T. Praeger and Todd Whitrock.

Justice Richard B. Sanders (Respondent) was present and represented by his attorney, Paul J. Lawrence of Preston, Gates and Ellis. Disciplinary Counsel were Don Marmaduke and Steven Wilker of Tonkon, Torp, Galen, Marmaduke and Booth.

The Commission has carefully considered the testimony of the witnesses, the exhibits admitted, arguments and briefs of counsel and the amicus brief. Before entering the Findings, Conclusions, and Order, the Commission wishes to acknowledge that our system of selecting judges requires an informed electorate. Toward creating an informed electorate, judges may freely speak and express views on issues of interest to the public so long as the time, manner and content of the remarks do not diminish public confidence in the integrity and impartiality of the judiciary.

The Commission interprets the Code of Judicial Conduct so as to encourage the public's ability to obtain information about the legal system and about individual judges. The Commission also recognizes that when a judge's right to free expression is implicated in an alleged ethical violation, the code must be narrowly construed so as to limit the judge's behavior only to the extent necessary to preserve the integrity and independence of the judiciary. This decision is entered with full consideration of these rights and interests.

Findings of Fact

The commission finds by clear, cogent and convincing evidence that:

1. On December 12, 1996, Respondent was sworn in as a justice of the Washington State Supreme Court. On January 26, 1996, a formal swearing-in occurred at the Temple of justice in Olympia.

2. On January 26, 1996, Respondent was introduced at the Washington State March for Life at the Washington State Capitol in Olympia and made the following remarks:

Introduction: "I'm going to do something very different. Today, we had a Chief Justice of our State Supreme Court sworn in at 10:30. I would like now to introduce Justice Richard Sanders."

Respondent: "Well, I'm not quite Chief Justice, but I am a Justice. That's plenty good enough for me. I want to give all of you my best wishes in this celebration of human life. Nothing is, nor should be, more fundamental in our legal system than the preservation and protection of innocent human life. By coincidence, or perhaps by providence, my formal induction to the Washington State Supreme court occurred about an hour ago. I owe

my election to many of the people who are here today and I'm here to say thank you very much and good luck. Our mutual pursuit of justice requires a lifetime of dedication and courage. Keep up the good work."

3. Respondent did not appear at the March for Life rally as a result of an invitation to speak, but arranged in advance on his own initiative to either appear personally or to have his statement read to those in attendance.

4. Respondent appeared at the event carrying a red rose, which he should have known to be a symbol of the pro-life movement.

5. The 1996 Washington State March for Life event was a political rally. Speakers urged those in attendance to work for the election of a pro-life governor and pro-life legislators. The enactment of pro-life legislation was also actively promoted.

6. Respondent failed to make adequate inquiry into the nature of the 1996 Washington State March for Life event. Unless the nature of the event and the activities planned for the event are known, prudence requires that a judge or justice make an inquiry in advance of the event to assure that a judge's presence and participation does not violate the Canons. A minimal inquiry would have revealed that this event was a political rally.

7. At the time he addressed the March for Life event, Respondent was not a "candidate for election to judicial office" as that term is used in Canon 7.

8. All justices and judges in this state have the right to publicly express their views on controversial issues, so long as they do so within the standards of the Code of Judicial Conduct. Viewed in the context of this event, Respondent's actions went beyond the mere expression of his opinion. By his presence, his act of carrying the pro-life symbol (a red rose), and his statements he aligned himself with a particular organization involved in pursuing a political agenda. Respondent gave the appearance that he, a justice of the Washington State Supreme Court, supported the agenda advocated by March for Life. Respondent's statement was not in the context of explaining his role as a justice or responding to questions in the course of campaign activity authorized by Canon 7(A)(2); the statement was made during the course of a political rally wherein he spoke as a supporter of the cause. None of Respondent's colleagues who testified described their participation in any similar activity, nor did any of them suggest that such behavior by a judge or justice would be appropriate.

9. Respondent was not "singled out for sanction."

10. Respondent's participation in this event leads to the appearance of partiality on issues that may come before the Supreme Court in the future.

Having made its Findings of Fact, the Commission now makes the following conclusions:

Conclusions

1. The Code of Judicial Conduct, adopted by the Supreme Court, is presumed to be constitutional. As interpreted, its provisions promote a compelling state interest in maintaining an independent and impartial judiciary, while respecting a judge's right to free expression. Respondent did not violate the Code by

expressing an opinion. However, Respondent did violate the code by the manner and in the context in which he made his statement.

2. Respondent violated Canon 1 by failing to personally observe high standards of judicial conduct and by diminishing public confidence in the judiciary.

3. Respondent violated Canon 2(B) by improperly lending the prestige of his office to a particular organization engaged in advancing the interest of one side of a political controversy.

4. Respondent violated Canon 7(A)(5) by engaging in political activity other than to improve the law, the legal system, or the administration of justice.

5. Respondent's acts were not within the scope of either Canon 4 or Canon 5.

6. Pursuant to Rule 6 CJCRP(C), the following mitigating factors were considered by the Commission before determining the appropriate discipline to be imposed:

a. The misconduct appears to be an isolated incident.

b. The misconduct occurred out of the courtroom.

c. The justice had been on the bench little more than a month prior to the incident and had not previously served as either a judge or justice. The justice may not have had the opportunity to reflect upon the fact that his actions as a justice may have a more significant impact on public confidence in the legal system beyond that which he experienced as a private citizen and lawyer.

d. There has been no prior public disciplinary action concerning the justice.

e. The justice cooperated with the Commission investigation and proceeding.

7. Pursuant to Rule 6 CJCRP(C), the following aggravating factors were considered:

a. Although this was an isolated incident, Respondent's apparent failure to even consider the ramifications of the Canons on his behavior suggests the potential for repetition.

b. While Respondent was not acting in his official capacity, he was clearly identified as a justice of the Supreme Court prior to making his remarks.

c. The justice exploited his judicial position by lending the prestige of his judicial office to offer public support to an organization conducting a political rally.

From these considerations, the Commission enters this

ORDER

Based upon the foregoing Findings and Conclusions, the Commission finds that the Respondent has violated Canons 1, 2(B) and 7(A)(5). The Commission orders that the Respondent be REPRIMANDED. Further, Respondent is hereby ordered to complete the following course of corrective actions:

1. Respondent shall attend and certify his attendance, within six months after this Order becomes final, a course in Judicial Ethics to be approved in advance by the Commission.

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Dissent:

I would admonish rather than reprimand. In all other respects, I agree with the findings and conclusions.

The incident is serious because of its impact on the public's confidence in the judiciary. But the misconduct is an isolated incident occurring over fourteen months ago, which does not appear to have been repeated. In addition, the impact of the First Amendment on the Code of judicial Conduct is a debatable issue. Clarifying in a written admonition that respondent's activity violated the canons and cautioning against repeating the behavior is thus more appropriate than a reprimand and a corrective course of action under these circumstances. To impose a higher level of discipline focuses on punishment rather than deterrence and serves no useful purpose.

s/Hon H. Joseph Coleman

Disbarred

Tacoma lawyer Stephen C. Hemmen (WSBA No. 8918, admitted 1979) was ordered disbarred effective April 24, 1997, by order of the Supreme Court.

The discipline imposed was pursuant to a January 13, 1997, Stipulation for Disbarment. Hemmen's disbarment was based upon his misuse of client trust funds and abandonment of his law practice without taking steps to protect his clients' interests.

I. Procedural History

In late April or early May 1995, Hemmen abandoned his law practice without notice to his clients. He took no steps either before or after abandoning his practice to protect his clients' interests. Thus, on May 19, 1995, on Disciplinary Counsel's motion, the Disciplinary Board appointed Tacoma lawyer Shawn Briggs as custodian of Hemmen's client files and counsel to protect Hemmen's clients' interests under Rule for Lawyer Discipline

("RLD") 8.6. Later, on June 2, 1995, Hemmen was suspended from the practice of law for the nonpayment of dues. Disciplinary charges were filed against Hemmen on February 13, 1996 and the disciplinary hearing was set for January 23-24, 1997.

On January 13, 1997, Hemmen signed a Stipulation to Disbarment. The stipulation provides for payment of $1,500 in attorney's fees and $385.60 in administrative expenses. The stipulation also provided for the following restitution:

Payee
Restitution Amount

Client C's Chiropractic Clinic $622.50 plus any interest which may have accrued
Client D $560
Client E $300
The Estate of Client B $1,750
WSBA Fund for Client Protection, $460 as assignee of Client F
Client G $300

II. Facts

A. Misappropriation of Client A's Funds

Client A's bankruptcy plan provided that the client would pay a creditor a quarterly payment of $7,500. Client A arranged to have all quarterly payments paid out of Hemmen's trust account. Client A would give Hemmen a check which would include the amount to be paid the creditor, Hemmen would deposit the check into his trust account, then Hemmen would write a $7,500 check to the creditor's attorney.

On April 22, 1995, Client A gave Hemmen a $7,500 check for his May 1, 1995 quarterly payment. Hemmen did not deposit the check in his trust account and failed to make the May 1, 1995 quarterly payment to Client A's creditor's attorney. Instead, on April 28, 1995, Hemmen cashed the check in return for $997 in cash and a $6,500 "official" check payable to Hemmen. Hemmen cashed the $6,500 "official" check on May 8, 1995. On May 22, 1995, using a $4,300 cashier's check made out to himself and $3,203 in cash, Hemmen purchased a cashier's check payable to Client A's creditor's attorney, and sent it by certified mail to the creditor's attorney.

Hemmen also failed to make arrangements to represent Client A's interests at a May 25, 1995 bankruptcy hearing.

B. Abandonment of Practice and Misuse of Client Trust Fund.

Client B.

In January 1995, Client B, a long-time client, asked Hemmen to file a Petition for Appointment of Guardian of Client B's husband. Client B gave Hemmen a $1,000 check at that time as an advance on attorney's fees. Hemmen deposited the $1,000 check into his general-business account, rather than into his trust account. On March 6, 1995, Client B asked Hemmen about the status of the guardianship, and he asked her for an additional $750, which she paid by check. Hemmen cashed the $750 check the same day. Hemmen never filed Client B's Petition for Appointment of Guardian prior to abandoning his practice.

Client C

Hemmen obtained a $10,750 personal injury settlement on behalf of Client C, and agreed to pay Client C's costs and chiropractic bill out of his 33% contingency fee portion of the settlement. Hemmen did not pay the chiropractic bill, nor did he retain sufficient funds in his trust account to pay the bill prior to abandoning his practice. Hemmen acknowledged his responsibility to supervise his staff's handling of trust account matters.

Client D

In March 1995, Client D retained Hemmen to file a Bankruptcy Petition on her behalf. Over the next month, she paid Hemmen his quoted fees of $560. Hemmen did not deposit Client D's payments into his trust account and treated them as earned fees. However, Hemmen never filed Client D's Bankruptcy Petition prior to abandoning his practice.

Client E

In March 1995, Client E paid Hemmen $300 toward his quoted fee of $500 to file a Petition for Dissolution and a Motion for Restraining Order. Client E says Hemmen told her she could pay the balance of attorney's fees once the divorce was final. Hemmen did not deposit Client E's $300 payment into his trust account and treated the money as earned fees. Hemmen failed to file either the Petition for Dissolution or the Motion for Restraining Order prior to abandoning his practice.

Client F

In October 1994, Client F paid Hemmen $610 to file a Chapter 7 Bankruptcy Petition ($450 in fixed attorney's fees and $160 for the filing fee). Hemmen deposited the $610 into his trust account. In November 1994, Client F told Hemmen to hold off on doing any work. Hemmen wrote himself a check for $450 out of his trust account one week later, and deposited the check into his general-business account as an earned fee. Both the trust account ledger and the general-business

account ledger allocated the $450 to Client F's case. In February 1995, Hemmen used the remaining $160 in trust to buy a $160 money order and made it payable to the U.S. Bankruptcy Court. In March 1995, Client F told Hemmen she no longer wanted to file for bankruptcy and asked for a partial refund. Client F was never able to contact Hemmen thereafter, and Hemmen abandoned his practice without giving her a refund.

Client F discovered the $160 money order in her client file when she retrieved it from the RLD 8.6 custodian. However, neither the bank nor the U.S. Bankruptcy Court was willing to negotiate the money order on Client F's behalf until February 1996, after the Association and the appointed RLD 8.6 custodian stepped in to assist her. Client F also was reimbursed $450 from the Lawyer's Fund for Client Protection. (The Lawyer's Fund for Client Protection is administered as a trust by WSBA pursuant to Admission to Practice Rule 15.)

Client G

In March 1995, Client G paid Hemmen $300 toward his quoted fee of $800 to file a Bankruptcy Petition on his behalf. Hemmen did not deposit the $300 in his trust account. Two weeks later, Client G gave Hemmen two $100 savings bonds, along with financial paperwork, to assist Hemmen in preparing the Bankruptcy Petition. Hemmen did not file the Bankruptcy Petition prior to abandoning his practice. Later, when Client G tried to retrieve his file from Shawn Briggs, the RLD 8.6 file custodian, he discovered that his original financial paperwork was missing, as were the two $100 U.S. Savings Bonds. In 1996, Hemmen's estranged wife found the savings bonds in one of the boxes stored with her and returned the savings bonds to Client G.

II. Stipulated Violations

Hemmen stipulated that the Association had sufficient evidence to meet its burden of proving by a clear preponderance of the evidence the following violations of the Rules of Professional Conduct ("RPC") and the Rules for Lawyer Discipline ("RLD"):

1. Hemmen's abandonment of the practice without notice to his clients violated RPC 1.3 (requiring a lawyer to act with reasonable diligence and promptness in representing a client) and RPC 1.4 (requiring a lawyer to keep clients reasonably apprised of the status of their matters and to promptly comply with reasonable requests for information), and subjects Hemmen to discipline pursuant to RLD 1.1(i).

2. Hemmen's cashing of Client A's $7,500 check and personal use of the money was an act involving moral turpitude and dishonesty in violation of RLD 1.1(a); an act of dishonesty in violation of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and/or constitutes a conversion of client funds in violation of RPC 1.14(a) (requiring all funds of clients paid to a lawyer or law firm, including advances for costs and expenses, to be deposited in a trust account), and subjects Hemmen to discipline pursuant to RLD 1.1(i).

3. Hemmen's misconduct, as stipulated, constitutes conduct demonstrating unfitness to practice law, and subjects Hemmen to discipline pursuant to RLD 1.1(p).

The hearing officer was William Garling, Jr. of Seattle. Hemmen represented himself. The Bar Association was represented by disciplinary counsel Leslie Ching Allen.

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Seattle lawyer Michael H. Gale (WSBA No. 8897 admitted 1979) has been disbarred from the practice of law effective April 24, 1997. The disbarment was pursuant to a stipulation.

In the stipulation, Gale admitted that in 1984 he proposed to a client that the client employ all of his office staff through a corporation established by Gale. Gale advised the client that this would enable the client to establish his own benefit plans without discriminating against employees, since the client would have no employees. Gale helped the client establish a separate plan for himself. Under the terms of the arrangement, the client paid Gale a monthly sum representing the gross payroll obligation for the staff then employed, including FICA, FUTA, Medicaid, Washington State Employment Security, Washington State Department of Labor and Industries taxes, Washington B&O taxes, medical reimbursement, uniform costs, vacations, and sick leave. Gale prepared the payroll and issued payroll checks to each employee including an accounting for the deductions. Gale pur-

ported to create a 10% purchase money pension plan for the employees, when in fact, Gale did not create a pension plan for the employees. (He created a 25% purchase money pension plan for the client individually.) Annually, Gale prepared and sent to each employee a W-2 form which in all respects appeared to be accurate. Gale did not file the Social Security Administration copies of those W-2 forms with the Social Security Administration. Between 1985 and 1996, Gale misappropriated all of the money given to him by the client except the net pay amounts paid to each employee. Gale prepared annual statements of contributions and allocations of earnings and falsified brokerage statements to support earnings calculations for each employees' "pension" funds. On two occasions, Gale paid a withdrawing employee's "pension" funds with a cashier's check. On one occasion, a withdrawing employee left her funds in the "plan." On a more-or-less annual basis, Gale advised his client that he was still in compliance with the anti-discrimination laws regarding the two plans. Over the 12-year period, the client funds misappropriated by Gale totaled $287,944.73.

Gale stipulated that his conduct summarized above violated RPC 8.4(b), which prohibits a lawyer from engaging in a criminal act that reflects adversely on the lawyer's honesty or trustworthiness, RPC 8.4(c), which prohibits a lawyer from engaging in acts involving dishonesty, fraud, deceit or misrepresentation and RPC 4.1, which prohibits a lawyer from knowingly making false statements to a third person and failing to disclose material facts to a third person. Gale must make restitution of $287,944.83 and any additional restitution he may be ordered to pay in any criminal proceeding, and pay discipline costs and expenses of $1,000.

Gale appeared *pro se*, although he was assisted by counsel. The Association was represented by disciplinary counsel William G. McGillin.

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Seattle lawyer Nelson L. Christensen (WSBA No. 1589, admitted 1967) has been ordered disbarred by the Washington Supreme Court following review of a Stipulation to Discipline. Christensen had been on interim suspension since June 21, 1995. The discipline is based on Christensen's abandonment of his practice and mishandling of more than $300,000 of client funds.

Abandonment of practice

Christensen operated a law office as a sole practitioner with a general practice oriented to real estate matters. In early 1995, serious shortages in Christensen's trust funds began to surface.

On Friday, May 12, 1995, Christensen left his office and flew to New Zealand. Prior to his departure, he did not inform his clients of his intention to be away from his office or to leave his practice. He also did not so inform his employee or any of the other lawyers in his office suite nor did he notify his clients of his inability to continue their representation, nor did he make any arrangements for any other lawyer to assist his clients in retrieving their files or continuing their representation. Christensen took no action to protect the interests of his clients during his absence. Christensen returned to Seattle 15 months after he left, in August 1996.

Mishandling of Client Funds

Matter 1:

Mr. Christensen was retained to act as the escrow/closing agent for the sale of an apartment building. In connection with that closing, in 1995, Christensen received into his trust account $91,973.17, from which various disbursements were to be made to effectuate the closing. Christensen made disbursements totaling $82,104.03 in connection with this closing; the remaining $9,869.14 was not disbursed. In the settlement statement provided to the parties, Christensen stated that several disbursals had been made when, in fact, those disbursals had not been. Christensen converted to his own use, by paying to other clients or disbursing for his own benefit, the $9,869.14.

Also in connection with this transaction, Christensen negotiated a Sales Commission Agreement whereby the purchaser agreed to pay to the real estate agent a sales commission of $40,000. On May 9, 1995, the purchaser delivered to Christensen the signed Sales Commission Agreement, along with the purchaser's check for $40,000, payable to the Nelson Christensen Trust Account. On May 9, 1995, Christensen deposited the $40,000 into his trust account. Christensen then converted those funds by using them to make disbursals from his trust account to other clients and for Christensen's own benefit.

Christensen told the real estate agent that he could not disburse the funds from his trust account until Friday, May 12, 1995, and made an appointment for the agent to return at 2:30 p.m. on that day. When the agent arrived for his appointment, Christensen was gone, having departed his office for the flight to New Zealand hours beforehand. Christensen has not disbursed the funds to the agent.

Matter 2:

Christensen was retained to act as the escrow/closing agent for the sale of a tavern. In connection with that closing, in 1995, Christensen received into his trust account $21,341.59 from the purchaser. The escrow instructions provided that $19,047.45 of these funds were to be disbursed to the owners of the building housing the tavern, for back rent and taxes owing. Christensen made disbursals in connection with this closing totaling $1,836.77; the remaining $19,504.82, including the money due the building owners, was not disbursed in connection with this closing. Christensen converted this money to his own use by paying to other clients or disbursing for his own benefit.

Matter 3:

Christensen was retained in March 1994 to probate an estate. In December 1994, Christensen received into his trust account $194,113.16 for disbursal to the heirs and to pay his fees of $7,000. After paying his fees and making disbursals to several of the heirs, Christensen converted to his own use by paying to other clients or disbursing for his own benefit funds in his trust account in the amount of $107,994.91 due the heirs.

On March 24, 1995, Christensen provided one heir with a $70,000 check drawn on his general office account. When that check was deposited by the heir on April 14, 1995, it was returned to her unpaid due to insufficient funds. On April 5, 1995, Christensen provided the same heir with a check drawn on his general-office account in the amount of $28,941.20 which was honored by Christensen's bank. On May 9, 1995, Christensen provided this heir with a cashier's check for $20,000 which Christensen obtained by a check drawn on his trust account in the amount of $20,003 using the funds of other clients.

The remaining balance of $59,050.71 due the heirs remains unpaid.

Matter 4:

Christensen was retained to act as the escrow/closing agent for the sale of real property. In connection with that closing, in 1995, Christensen received into his trust account $45,407.51 from the purchasers, from which various disbursements were to be made to effectuate the closing. Christensen disbursed a total of $38,431.55 in connection with this closing; the remaining $6,975.96 was not disbursed. In the settlement statement provided to the parties, Christensen stated that several disbursals had been made when in fact those disbursals had not been made. Christensen converted to his own use, by paying to other clients or disbursing for his own benefit, the remaining $6,975.96.

Matter 5:

Christensen was retained to act as the escrow/closing agent for the sale of real property. In connection with that closing,

in 1995, Christensen received into his trust account $47,143.83 from the purchasers, from which various disbursements were to be made to effectuate the closing. Christensen disbursed a total of $44,241.85 in connection with this closing; the remaining $2,901.98 was not disbursed. In the settlement statement provided to the parties, Christensen stated that several disbursals had been made when in fact those disbursals had not been made. Christensen converted to his own use, by paying to other clients or disbursing for his own benefit, the remaining $2,901.98.

Matter 6:

On March 18, 1994, Christensen was appointed as special administrator of an estate; he was later appointed personal representative of the estate. In the course of his duties as personal representative, Christensen came in to possession of $158,314.87 of funds belonging to the estate.

Without the knowledge, authorization or permission of the court, the attorney for the estate, or the heirs of the estate, Christensen removed funds in his accounts from the estate and/or diverted funds received on behalf of the estate and converted to his own use estate funds in the amount of at least $57,000 by transferring the funds to non-estate accounts where they were disbursed for the benefit of other clients and/or the benefit of Christensen.

Matter 7:

Christensen was retained to act as escrow/closing agent in the sale of real property. In connection with this escrow, in 1995, Christensen received into his trust account $3,000 as earnest money. No disbursals were made in connection with this escrow. Christensen converted the escrow funds by paying these funds to other clients or disbursing these funds for his own benefit.

Matter 8:

Christensen was retained to act as escrow/closing agent in the sale of a business. In connection with this escrow, in 1995, Christensen received into his trust account $10,000 as escrow money. No disbursals were made in connection with this escrow. Christensen converted the escrow funds by paying these funds to other clients or disbursing these funds for his own benefit.

Matter 9:

Christensen was retained to act as the attorney for a purchaser in a real estate sale and exchange pursuant to IRS Code Section 1031. In 1995, the purchaser deposited $25,543.34 to Christensen's trust account to be used in this transaction. No disbursals were made in connection with this transaction. Christensen converted these escrow funds by paying these funds to other clients or disbursing these funds for his own benefit.

Matter 10:

Christensen was retained to act as escrow agent in the sale of a motel. In 1995, the purchaser deposited $50,000 into Christensen's trust account as escrow money. No disbursals were made by Christensen in connection with this transaction. Christensen converted these escrow funds by paying these funds to other clients or disbursing these funds for his own benefit.

Matter 11:

Beginning in at least 1990, Christensen provided a variety of legal services to a husband and wife. The husband passed away in 1993, when the wife was in her mid-70s. Christensen maintained an attorney-client relationship with the wife until the time of Christensen's departure to New Zealand in May 1995.

Prior to 1993, the couple had invested proceeds from the sale of their home into an investment company. By 1993, the couple was dissatisfied with this investment and sought to terminate it. In October 1993, Christensen contacted the couple and suggested they invest in a piece of residential real estate as soon as they obtained a refund from the investment company, which they agreed to do. Christensen then wrote to the investment company and advised the company that he would pick up the check himself. Christensen obtained a check from the investment company made out to himself in the amount of $52,696.70, which he deposited into his trust account on October 18, 1993. This transaction is referred to as "Loan 1."

Christensen did not execute a deed of trust or a promissory note in regard to "Loan 1" although he did draft and the couple did sign a document entitled "2nd Deed of Trust Agreement." This document described the transaction as an investment of $52,000 for 12 months, with monthly interest payments at 12%. The monies in "Loan 1" were not, in fact, used for investments but were in fact used by Christensen to fund disbursements to other clients. Christensen did not advise the couple that their money in "Loan 1" would not be used to fund any investment in real estate but was, in fact, a loan to himself which would be used to make disbursals to other clients. Christensen did not advise the couple to seek independent counsel concerning the transaction in "Loan 1." The monies borrowed in "Loan 1" have not been repaid.

In March 1994, Christensen approached the then widowed wife and suggested that she invest $60,000 in additional real estate, which she agreed to do. Christensen received an additional $50,586.11 from the widow, which he deposited into his trust account on April 11, 1994. This transaction is referred to as "Loan 2."

Christensen did execute a promissory note for "Loan 2" and executed, but did not record, a deed of trust for this transaction. The monies in "Loan 2" were not, in fact, used for investments but were, in fact, used by Mr. Christensen to fund disbursements to other clients. Christensen did not advise the widow how her money in "Loan 2" would actually be used. Christensen also did not advise her to seek independent counsel concerning the transaction in "Loan 2." The monies borrowed in "Loan 2" have not been repaid.

In June 1994, Christensen approached the widow requesting an additional loan of $25,000. She gave Christensen a check for $25,000 which he deposited into his trust account on June 23, 1994. This transaction is referred to as "Loan 3." Christensen did not advise the widow to seek independent counsel in regards to "Loan 3." Christensen used the monies received in "Loan 3" to fund disbursals to other clients. On July 8, 1994, Christensen repaid "Loan 3," with interest, using the funds of another client.

On January 24, 1995, Christensen went to the home of the widow, who had returned that same day from a hospital stay due to her heart condition, and requested an additional $40,000 loan. She gave Christensen a $40,000 check, which he deposited into his personal account on January 25, 1995. This transaction is referred to as "Loan 4." The monies obtained through "Loan 4" were then used to purchase a cashier's check to disburse funds to another client whose funds had previously been deposited in Christensen's trust account. Christensen did not advise the widow to seek independent counsel in regards to "Loan 4." The monies obtained through "Loan 4" have not been repaid.

Matter 12:

On April 22, 1995, Christensen issued three checks payable to himself. One check was drawn in his capacity as personal representative of the estate described above in Matter 6 in the amount of $20,000; two checks were drawn on his personal checking account, one in the amount of $37,000 and one in the amount of $35,000. On the same day, Christensen, without endorsing the three checks, deposited them into his general office account at his bank. At the time he drew and deposited these three checks, Christensen knew that there were not sufficient funds in the accounts on which they were drawn.

Christensen used the deposit of the three checks totaling $92,000 to fund in part the purchase on the same day of a $133,000 cashier's check for use in completing an escrow transaction for which he had previously received funds into his trust account but had converted to his own use.

On April 25, 1995, the three checks totaling $92,000 were dishonored for insufficient funds.

The bank having insufficient recourse against the cashier's check, suffered a loss and filed suit in King County Superior Court. On June 27, 1995, the bank obtained a judgment against Christensen in the amount of $85,405.57.

Misconduct

Christensen's abandonment of his practice violated Rule of Professional Conduct ("RPC") 1.4, RPC 1.15(a)(2) and/or RPC 1.15(d).

Christensen's conduct as described in Matters 1 through 9 in converting funds constitutes acts involving moral turpitude and/or dishonesty and/or corruption and/or violated RPC 8.4(c) and/or RPC 8.4(d) and/or RPC 1.14.

Christensen's conduct as described in Matters 1 through 9 in misrepresenting to parties that disbursals had been made and that money was available to make disbursals constitutes a violation of RPC 1.4(a) and/or RPC 1.4(b) and/or RPC 8.4(c) and/or RPC 8.4(d).

Christensen's conduct in entering into four loan transactions with clients on terms which were not fair and reasonable and/or without fully disclosing in writing all terms of the loan and/or without providing the clients with a reasonable opportunity to seek the advice of independent counsel violated RPC 1.8(a).

Christensen's conduct in misrepresenting the nature of two loans made to him by clients violated RPC 8.4(c).

Christensen's conduct in drawing and depositing checks he knew to be insufficient for the purpose of obtaining certified funds from a bank constitutes an act involving moral turpitude and/or dishonesty and/or corruption and/or violated RPC 8.4 (c).

Christensen's conduct in abandoning his practice and as described in Matters 1 - 12 above demonstrate an unfitness to practice law pursuant to RLD 1.1(p).

Stipulation

Christensen and the WSBA stipulated that he should be disbarred. The parties further stipulated that prior to applying for reinstatement to the practice of law, Christensen shall make full restitution. Full restitution was agreed to be $394,200.60, as well as satisfaction of any additional civil judgments or court ordered restitution assessed against Christensen based on the facts outlined above.

The hearing officer was G. Douglas Ferguson. Disciplinary Counsel Maureen Devlin and Randy Beitel represented the WSBA.

◆

Long Beach lawyer Catherine C. Morrow, formerly of Seattle (WSBA No. 2699, admitted 1971), was disbarred by the Washington Supreme Court effective April 24, 1997. The discipline, imposed following a hearing, is based upon the hearing officer's findings and conclusions that Morrow committed 38 counts of ethical misconduct. She was also ordered to pay $15,520 in costs and ex-

penses, and $115,214.05 in restitution.

In the first matter, a trust of just over $102,000 was established, with Morrow as trustee, for the benefit and care of the elderly father of Morrow's friend. Morrow repeatedly violated the terms of the trust by invading the trust principal without prior authorization of the trustor. Within 11 months, Morrow had disbursed essentially all of the trust principal without authorization, $39,000 of that amount to herself. Morrow did not keep accurate records and made misrepresentations to the trustor to hide these disbursals. The beneficiary of the trust was injured in July 1989 and required live-in care. Due to Morrow's disbursals from the trust principal, from August of 1989 on, there was less than $2.50 in the trust to be used for his care.

In the second matter, Morrow represented a client in an uncontested dissolution. Morrow never prepared a requested tax return for this client. Also, the parties had agreed to sell their home, take a small disbursal from the sale proceeds, and deposit the remaining approximately $40,000 in a joint account in the names of the husband and Morrow (in trust for her client). The deposit was made in May 1990. On one occasion, the former husband withdrew just over $8,600. Beginning in September 1990, on 22 separate occasions, Morrow withdrew money from this account without authorization, using withdrawal slips containing Morrow's signature and a forged signature for the former husband. Morrow withdrew approximately $31,000, using some of this money to pay for the care of the beneficiary of the trust in the first matter, and the remainder apparently for the benefit of herself or others.

In the third matter, after the death of the beneficiary in the first matter but before the misappropriations were discovered, Morrow handled the probate of the beneficiary's estate, which consisted primarily of a house. Morrow made misrepresentations to the court to have herself appointed personal representative of the estate. Morrow sold the house for about $115,000. Morrow did not pay all of the creditors' claims for the estate, but she did pay about $5,000 to the mother of the deceased's heirs, $51,600 to the trustor of the trust in the first matter (representing that it was the remainder of the trust principal, plus interest), and $28,900 to the client in the second matter (claiming that it was the client's share of the client's own house sale proceeds, plus interest).

In addition to these three client matters, Morrow failed to cooperate with disciplinary counsel's investigation of these matters. Also, Morrow was suspended for failing to pay her licensing fee, but she did not provide her clients with the required notice of her suspension, and she continued to practice law while she was suspended. Further, in 1990 and 1991, Morrow filed the required Declarations of Compliance with Rule of Professional Conduct (RPC) 1.14 (Trust Account Declarations), but based on the information gained in this investigation, they contained false or misleading statements.

Morrow's actions violated RPCs 1.1, 1.3, 1.4, 1.14, 3.3(a)(1), 8.4(b) and 8.4(c). They also violated Rules for Lawyer Discipline (RLD) 2.8, 8.1, 8.2, and 8.1, and subject Morrow to discipline pursuant to RLD 1.1(a), (i), (j), (l) and (p).

The hearing officer was Dennis Seinfeld

of Tacoma. Respondent was represented by Thomas Fitzpatrick and Michael Bolasina. The Bar Association was represented by disciplinary counsel Jean Kelley McElroy.

◆

Spokane lawyer Howard M. Nichols (WSBA No. 17823, admitted 1988) has been ordered disbarred effective April 24, 1997, by order of the Washington Supreme Court. The order was entered after a disciplinary hearing and recommendations of disbarment by the hearing officer and disciplinary board. Nichols was also ordered to pay costs and expenses associated with his disciplinary proceedings, in the amount of $5,239.36. Nichols had been suspended from the practice of law in December 1994, following his entry of a plea of guilty in the United States District Court, Eastern District, to one felony count of conspiracy to distribute more than five kilograms of cocaine, in violation of 21 U.S.C. — 841(a)(1) and 846.

After a disciplinary hearing, Nichols was found to have personally participated in distributing, or to have reasonably foreseen the distribution of, between 15 and 50 kilograms of cocaine between September 1990 and September 1994. In addition, Nichols was found to have used cocaine, during that time period, in violation of court orders imposed after Nichols' 1990 DUI arrest prohibiting his use of alcohol and illicit drugs. These actions subjected Nichols to discipline pursuant to Rules for Lawyer Discipline 1.1(a), (b), (c), (i) and (p).

The hearing officer was Timothy Esser of Pullman. Respondent was represented by Maryann Moreno. The Association was represented by disciplinary counsel Anne I. Seidel and Mark Lough.

◆

Wenatchee lawyer Elias S. Tsipras (WSBA No. 17823, admitted 1988) was disbarred by order of the Washington Supreme Court entered March 5, 1997, effective immediately. Tsipras did not respond to the Association's Amended Formal Complaint, and an Order of Default was entered on June 20, 1996. A default hearing was held on August 12, 1996.

The disbarment was based on Tsipras' negligent handling of several clients' matters, his misuse of his IOLTA trust account, his affixing a client's name to an affidavit and notarizing it without authorization to do so, and his abandonment of his law practice.

The negligent actions for which Tsipras was disciplined included failures to: properly commence an action prior to the expiration of the applicable statute of limitations; file an uncontested child custody petition; take action on a matter in six months' time; appear for a support obligation motion hearing and making untrue statements about the status of that case to the client; file an adoption and name change matter; and file pleadings in a child custody and support matter, causing the client to be held in contempt. Tsipras abandoned his Wenatchee law practice in April 1991, necessitating the appointment of a custodian to notify Tsipras' clients of the abandonment.

The misuse of his IOLTA trust account included failure to maintain accurate records of his IOLTA trust account, commingling of his own funds with client funds and failure to withdraw fees when earned, and overdrawing the IOLTA trust account on several occasions.

Tsipras also filed an affidavit in Spokane County Superior Court in response to an action to collect child support to which he had affixed the signature of his client and notarized it, without the permission of the client to sign the affidavit on the client's behalf.

The above actions violated Rules of Professional Conduct 1.3, 1.4(b), 1.14(a) and (b), 3.4(b), and 8.4(b), (c) and (d) and subjected Tsipras to discipline pursuant to Rules for Lawyer Discipline 1.1(a), (i) and (p).

The Association was represented by disciplinary counsel Mark Lough. Respondent did not appear at the hearing. The hearing officer was Kristian E. Hedine of Walla Walla.

Reprimand

Vancouver lawyer Todd H. Hutchinson (WSBA No. 14389, admitted 1984) has been ordered reprimanded by order of the Disciplinary Board entered on March 27, 1997, following a default hearing. The discipline is based upon his providing assistance to non-lawyers practicing law in Washington, negligently making false statements in an affidavit in a collection case resulting in entry of a default judgment against the creditor without proper notice, and failing to file an answer or otherwise participate in the disciplinary proceedings against him. Hutchinson is also required to pay restitution to the debtor for attorney fees incurred due to Hutchinson's actions.

Hutchinson represented an Oregon credit company in debt collection actions in Washington, including the action that resulted in this discipline. While representing the credit company against one debtor, Hutchinson signed documents containing false statements of material fact concerning whether the debtor had filed and served an answer, and caused those documents to be filed in the Washington court proceedings. Based on those documents, Hutchinson obtained a default judgment against the debtor without proper notice to the debtor. This incident resulted from Hutchinson's practice at the time of signing pleadings prepared by non-lawyer employees of the credit company without reviewing any files or documents maintained by the credit company and without maintaining a file himself.

Hutchinson's actions violated Rules of Professional Conduct (RPCs) 1.1, 1.3, 3.1, 3.3(a)(1), 3.3(f), 3.4(c), 8.4(c) and 8.4(d), and subject him to discipline pursuant to Rules for Lawyer Discipline (RLDs) 1.1(i) and (j).

The hearing officer was Steven W. Hale of Seattle. The Bar Association was represented by disciplinary counsel Jean Kelley McElroy.

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

Spokane lawyer Claude K. Irwin, Jr. (WSBA #5206, admitted 1973) was ordered suspended from the practice of law pending the outcome of disciplinary proceedings by Supreme Court order entered April 29, 1997.

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

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☐ $55 **SEGMENT ONE - 764SE1**

9:00 - 10:30 am / 1.5 CLE Credits

Financing: Different Financing During Life of a Business; How Much to Put Into a Business

Thomas Knox - Western Bank (affiliate of Washington Mutual) - Medford, OR

Intellectual Property: Name and Identity (Names and Logos) of a Business; Products - Patents, Trademarks, and Copyrights; Licenses

Susan L. Preston - Weiss Jensen Ellis & Howard - Seattle

☐ $45 **SEGMENT TWO- 764SE2**

10:45 - 11:45 am / 1.0 CLE Credit

Choice and Change of Business Entity: Choice of Entity When Starting Out; Change of Entity During Life of Business; Reasons for Change - Change of Business or Assets, Tax and Liability; Documents and Filings Required

Vicki E. Orrico - George, Hull, Porter & Kohli, P.S. - Seattle

☐ $55 **SEGMENT THREE- 764SE3**

1:00 - 2:30 pm / 1.5 CLE Credits

Employment: Creation and Use of An Employment Manual; Agreements and Their Enforceability; Harassment Suits

Carolyn Ladd - Lane Powell Spears Lubersky - Seattle

Retirement Plans: Qualified (Focus on SIMPLE); Non-Qualified

C. Cameron Pelly - Sedgwick Noble Lowndes - Seattle

☐ $55 **SEGMENT FOUR- 764SE4**

2:45 - 4:45 pm / 2.0 (inc. 1.25 Ethics) CLE Credits

Succession Planning: Agreements; Plans Among Owners versus Family Members

Lawrence Graham - Arthur Andersen, Inc. - Seattle

Ethics: Advising Multiple Owners of a Business

Panel with Question & Answer Format

David Boerner - Professor of Law, Seattle University School of Law - Tacoma
Gail A. McMonagle - George, Hull, Porter & Kohli, P.S. - Seattle
Leland Ripley - Attorney at Law - Seattle

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July

1 **Communication in the Courtroom**
Bellingham
Also in Seattle 7/17, Olympia 7/18, Tacoma 9/16
By Carl Grant (206) 364-5298
6.5 CLE credits

11 **The Estate Planner's Guide**
Seattle
Also video replay with live monitor in Olympia 8/13
By WSBA CLE
6 CLE credits

11 **How to Develop & Use Evidence to Your Advantage**
Spokane
Also in Seattle 7/18
By WSBA CLE & WYLD (206) 727-8202
7 CLE credits (incl. 0.75 ethics)

15 **Keys to Success in a Real Estate Transaction in WA**
Seattle
By NBI (715) 835-8525
6.5 CLE credits (incl. 1 ethics)

16 **Finance & Accounting Issues for In-house Counsel & Other Business Lawyers**
Seattle
By WSBA CLE & Corporate Law Section (206) 727-8202
6.5 CLE credits

17 **Land Use & Environmental Law**
Seattle
By WSBA CLE & ELUL Section (206) 727-8202
7 CLE credits

18 **The Internet for Lawyers and Legal Professionals**
Port Orchard
By Kitsap County Women Lawyers (360) 876-1214
3 CLE credits (incl. 0.5 ethics)

18 **Washington Workers Compensation for Self-insureds**
Seattle
By Lorman (715) 833-3940
5.75 CLE credits

19-20 **WSBA Board of Governors Meeting**
Port Ludlow
(206) 727-8244

21 **Interest-based Mediation — The Process: Philosophies, Proficiency & Procedures**
Spokane
By Fulcrum Institute (509) 838-2799
36.5 CLE credits (incl. 1 ethics)

22 **Adjusting the Automobile Injury Claim in Washington**
Seattle
By NBI (715) 835-8525
6.5 CLE credits (incl. 1 ethics)

23 **Commercial Lending in Washington**

Seattle
By NBI (715) 835-8525
6.5 CLE credits (incl. 1 ethics)

24 **NW Women's Law Center Annual Leadership Breakfast**
Seattle
(206) 682-9552

25 **Employment Discrimination**
Seattle
By WSBA CLE (206) 727-8202
6.75 CLE credits
(incl. 1.0 ethics)

29 **The Finance & Accounting Course for Not-for-profit Organizations**
Seattle
By PES (715) 833-5296
7.25 CLE credits

29 **Law of Internet in Washington**
Seattle
By NBI (715) 835-8525
6.5 CLE credits (incl. 1 ethics)

31 **OSHA Compliance Update**
Seattle
By NBI (715) 835-8525
6.5 CLE credits (incl. 1 ethics)

31-8/3 **WSTLA 1997 Annual Meeting & Convention**
Vancouver B.C. Canada
(206) 464-1011
CLE credits pending

August

1 **How to Identify, Meet & Enforce the Rights of Persons with Disabilities**
Seattle
By WSBA CLE (206) 727-8202
7 CLE credits (incl. 0.5 ethics)

5 **Understanding & Analyzing Financial Statements**
Seattle
By National Center for Continuing Education (904) 561-3506
6.5 CLE credits (incl. 2.5 ethics)

7 **Washington/Federal Estate and Gift Tax Workshop**
Seattle
By PES (715) 833-5296
7.25 CLE credits

7 **How to Handle Estate & Trust Litigation**
Spokane
Also in Seattle 8/15
By WSBA CLE & RPPT Section
(206) 727-8202
6 CLE credits estimated

8 **Essentials of Advising Small Businesses**
Spokane
Also in Seattle 8/14
By WSBA CLE & WYLD
(206) 727-8202
6.5 CLE credits
(incl. 1.25 ethics)

8-9 **WSBA Board of Governors Meeting**
Vancouver
(206) 727-8244

12 **Property Tax Law in Washington**
Seattle
By NBI (715) 835-8525

22 **ADR from the Advocate's Perspective** (AM) **& ADR Skills Training** (PM)
Seattle
By WSBA CLE & ADR Section (206) 727-8202
4 CLE credits AM;
3 or 4 CLE credits PM

26 **Deposition Skills Training**
Seattle
By NITA (219) 239-7770
18.25 CLE credits (incl. 2.25 ethics)

September

5-6 **WSBA Board of Governors Meeting**
Seattle
(206) 727-8244

12 WSBA Annual Meeting (206) 727-8244

16 **Communication in the Courtroom**
Tacoma
Also in Bellingham 7/1, Seattle 7/17, Olympia 7/18
By Carl Grant (206) 364-5298
6.5 CLE credits

17 **Drug Prosecution Training Program**
Leavenworth
By WAPA (360) 753-2175
16 CLE credits (incl. 2 ethics)

RESULTS

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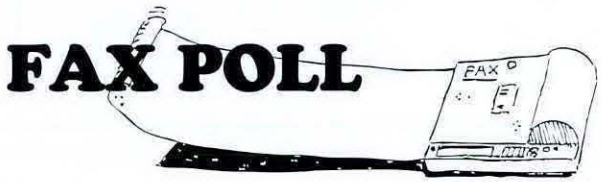

In last month's *Bar News*, we asked your opinion regarding whether or not WSBA members should pay for FOIA requests. The results:

1.	10	(50%)	strongly supported members' paying for FOIA requests.
2.	1	(5%)	somewhat supported members' paying for FOIA requests.
3.	1	(5%)	were undecided, but believed the issue should be considered.
4.	3	(15%)	somewhat opposed members' paying for FOIA requests.
5.	5	(25%)	strongly opposed members' paying for FOIA requests.

Overall, 20 valid responses were received.

"We have engaged far too long in the false belief that the services we provide are 'free.' They are not. Somebody else pays for them. FOIA requesters should pay for what they get."

Lewis M. Shrawyer, Spokane

"Charging restricts information access and unfairly burdens middle and lower income people. [Any implemented charge] should be based on income and provisions should be in place for 'waivers' for information which would be in the public interest."

Shelley Simcox, Roy

"Considering the extreme larceny visited on WSBA members through Bar dues, free *gratis* FOIA services is the very least the Bar can do."

Patricia Michl, Sumner

It is an obvious cost to do business. I don't want my dues used to pay for requests by others."

Paul Stritmatter, Hoquiam

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

Trust Account Overdraft Notification Agreement Bank Participation List

Pursuant to Rule 13.4 of the Rules for Lawyer Discipline and an amendment to RPC 1.14(a) (both effective March 1, 1991) lawyer trust accounts can be maintained only in financial institutions which are approved because they have filed with the Disciplinary Board an agreement to report to that Board in the event any properly payable instrument is presented against a lawyer trust account containing insufficient funds, whether or not the instrument is honored. Following is a list of all approved financial institutions as of June 15, 1997. Direct inquiries regarding the list to the Disciplinary Board, c/o Counsel to the Disciplinary Board, Washington State Bar Association, 2101 4th Avenue, 4th Floor, Seattle, WA 98121-2330, (206) 727-8280.

American First National Bank
American Marine Bank
American National Bank
Asia Europe Americas Bank
Baker Boyer Bank
Bank Northwest
Bank of Bellingham
Bank of California
Bank of Fairfield
Bank of Grays Harbor
Bank of Latah
Bank of Northshore
Bank of Pullman
Bank of Sumner
Bank of the Pacific
Bank of the West
Bank of Vancouver
Bank of Whitman
Bellingham National Bank
Cascade Community Bank
Cashmere Valley Bank
Centennial Bank
Central Washington Bank
Central Valley Bank, N.A.
Citizens First Bank
Citybank
Coastal Community Bank
Columbia Bank
Columbia National Bank
Columbia Savings Bank, Federal Savings Bank
Columbia Trust Bank
Commerce Bank of Washington, N.A.
Continental Savings Bank
Coulee Dam Federal Credit Union
Cowlitz Bank
Credit Union Puget Sound
Edmonds National Bank
Enterprise Bank of Bellevue, N.A.
Evergreen Bank
Farmers and Merchants Bank
Farmers State Bank
First Community Bank
First American State Bank
First Bank of Washington
First Savings Bank of Renton
First Federal Savings Bank of Washington
First Heritage Bank of Snohomish
First Independent Bank, Downtown Office
First Interstate Bank of Washington, N.A.
First National Bank of Port Orchard
First National Bank in Spokane
Frontier Bank/Branch Operations
Global Federal Credit Union
Grant National Bank
Great Northwest Bank, A Savings Bank
Great Western Bank
Heritage Bank
Harbor Community Bank
Home Security Bank
Horizon Bank
Horizon Credit Union
Industrial Credit Union
Inland Northwest Bank
Intalco Employees' Credit Union
InterWest Savings Bank
Islanders Bank
Issaquah Bank
Key Bank of Puget Sound
Key Bank of Washington
King County Medical Society Credit Union
Kitsap Bank
Klickitat Valley Bank
Metropolitan Federal Savings and Loan Association of Seattle
Mid State Bank
Mt. Rainier National Bank
National Bank of Bremerton
National Bank of Tukwila
North Cascades National Bank
North Pacific Bank
North Sound Bank
Northwest Community Bank
Northwest National Bank
Northwestern National Bank
O Bee Credit Union
Olympia Credit Union
Olympic Savings Bank
Pacific First Bank, FSB
Pacific Northwest Bank
Pacific One Bank
Peoples State Bank
Pioneer National Bank
Pioneer Savings Bank
Prairie Security Bank
Prime Pacific Bank, N.A.
Public Employees Credit Union
Puget Sound Bank
Puyallup Valley Bank
Redmond National Bank
Riverview Savings Bank
San Juan County Bank
Seattle-First National Bank
Security Pacific Bank Washington, N.A.
Security State Bank
Silverdale State Bank
Skagit State Bank
Snocope Federal Credit Union
Social and Health Services Federal Credit Union
Sound Banking Company
Sound Savings and Loan Association
Spokane Catholic Credit Union
Spokane Police Credit Union
Spokane Postal Credit Union
Spokane Teachers Credit Union
State National Bank of Garfield
Sterling Savings Association
Summit Savings Bank
Timberland Savings Bank
Towne Bank of Woodinville
Twin County Credit Union
Twin Harbors Credit Union
U.S. Bank of Washington
United Health Services Credit Union
United Savings and Loan Bank
United Security Bank
Valley Commercial Bank
Valley Community Bank
Viking Community Bank
Washington Federal Savings and Loan Association
Washington First International Bank
Washington Mutual Savings Bank
Washington State Bar Association Credit Union
Washington Trust Bank
Whatcom State Bank
Wheatland Bank, The
Whidbey Island Bank
Yakima Valley Bank

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formerly Of Counsel with the firm, and
General Counsel to The Sabey Companies
has joined the firm as a partner

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*Attorneys **Rex Garland**, **Janet Skreen** and **Janet McCallister** received award plaques for substantial help with Kitsap Volunteer Attorney Referral Service.*

*Kitsap Prosecuting Attorney **Russell Hauge** presented engraved achievement certificates to students in Law Day Student Panel Sessions.*

The Kitsap County Bar Association's "Celebrate Your Freedom" Law Week activities included the awarding of a full-tuition college scholarship to a local high school student, and student-panel sessions conducted by high school students on how the law and legal systems can best protect our freedoms. The students had the unique opportunity to quiz Kitsap Superior Court Judges Karen Conoley and William Kemps, Prosecutor Russell Hauge, Deputy Prosecutor J. Jeffrey Jahns, defense attorneys Kevin (Andy) Anderson and James N. Doctor, Undersheriff Mike Davis and Deputy Sheriff Scott Eberhard. Attorneys Jane McCallister, Janet Skreen and Rex Garland received recognition for their service to local low-income clients during the past year.

The Washington Supreme Court is now considering the case of attorney Ralph Seeley, who after more than ten years of battling cancer through radiation, chemotherapy and 12 surgeries, is arguing that he has the right under the Washington constitution to smoke marijuana for medicinal purposes to relive some of the side effects of his treatment.

Attorney Mike Goldenkrantz recently coached a Franklin High School mock trial class to a State Mock Trial Championship, encouraging them to "look for the nuggets of evidence."

Meanwhile, at Tahoma High School, 24 seniors headed to a national civics competition in Washington, D.C., were drilled by state Supreme Court Justice Richard Sanders on topics ranging from what democracy is to procedures to enforce a social contract to how the founding fathers would define property rights.

Pierce County Superior Court Judge Marywave Van Deren and fourth graders at Elk Plain school in Spanaway recently dissected *United States v. Hirabayashi*, the case involving Japanese-Americans prosecuted for violating WW II curfew and exclusion orders. Van Deren asked the students by analogy how they might defend someone who was red-headed if the government suddenly called into question the loyalty of all red-haired people during an international conflict with the "People's Republic of Redheads."

King County Superior Court Judge Brian Gain, chief criminal judge at King County's new Regional Justice Center in Kent, was reportedly amused at the consternation of lawyers and court personnel over the lack of lattes, espressos and mochas in the well-planned and smoothly running facility. Apparently, Judge Gain is not a coffee drinker.

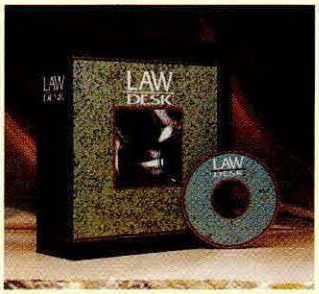
In Memoriam

Jason Richard Maas, Seattle native and long-time attorney, died at age 48 March 19 of cancer. He was active in the Family Law Section and cofounded Hastings Research, a San Francisco research and drafting service for lawyers.

Nancy Polman, Spokane, died at age 37 April 7 of cancer. She served on the board of the Idaho Legal Services Corporation from 1987 to 1995 and chaired the People's Law School in Coeur d'Alene.

William G. Rupprecht, Seattle attorney, died at age 32 on April 19 in Mazatlaán, Mexico. He won the Circumnavigator Award with a global water resource project while at Georgetown University School of Foreign Service in 1987; he practiced immigration law and was committed to the National Association of Public Interest Law.

Lloyd W. Schram, long-time UW faculty and staff member, died at age 84 February 12 of Alzheimer's disease. He was listed in Marquis' "Who's Who of the World" for his many educational contributions and receipt of the Julius Nolte Award for leadership in the National University Continuing Education Association.



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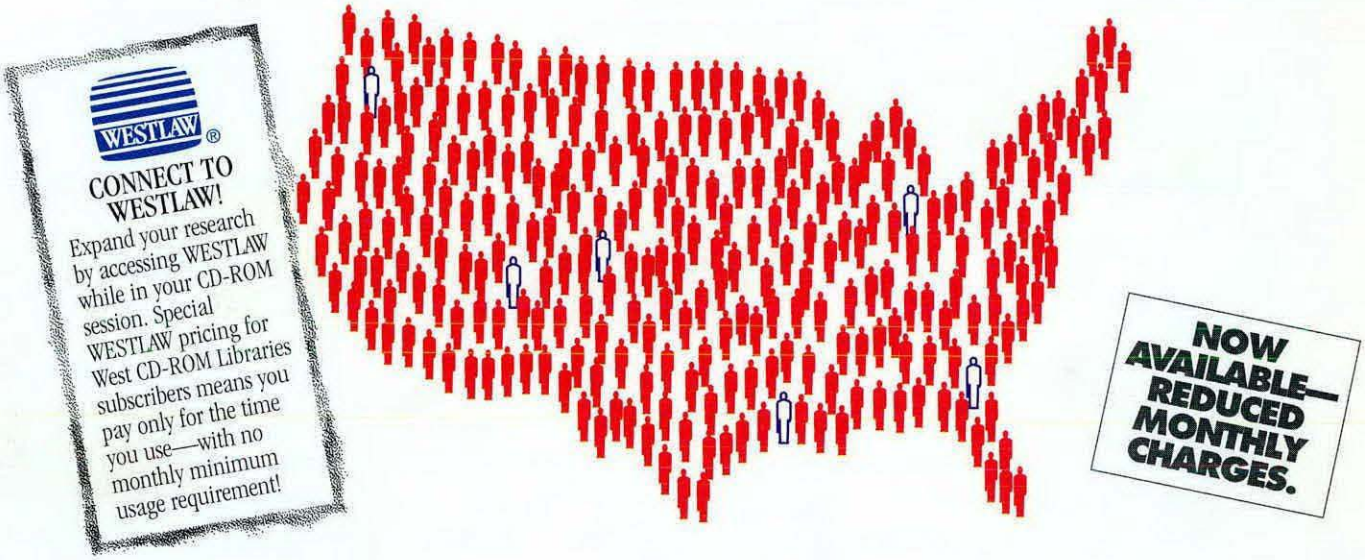

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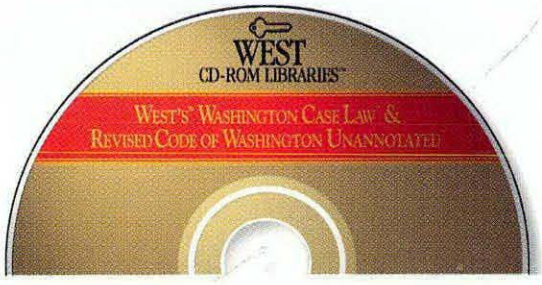

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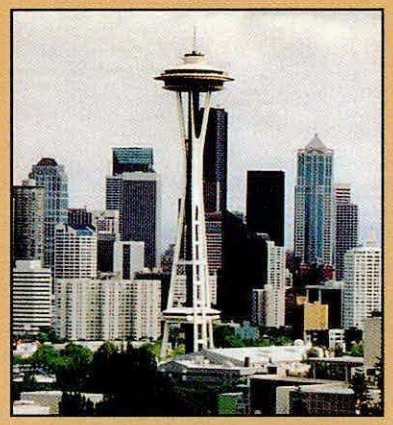

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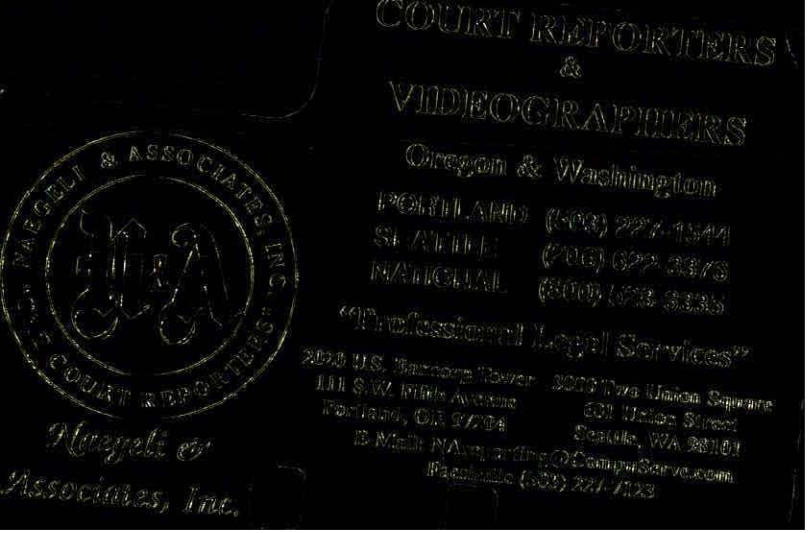
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