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News

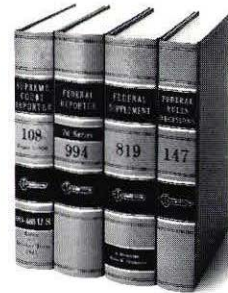
Vol. 47, No. 12, December 1993



STORIES AND REMINISCENCES: A YEAR'S END MISCELLANY
ODDS AND ENDS FROM THE PAST • THE DUTY AND THE BREACH • THE GIFT
AND A PRACTICE ALERT
THE DIFFERENCE BETWEEN RIDING THE WAVE OR FLOUNDERING IN THE SURF:
TAX PLANNING IN THE WAKE OF THE REVENUE RECONCILIATION ACT OF 1993

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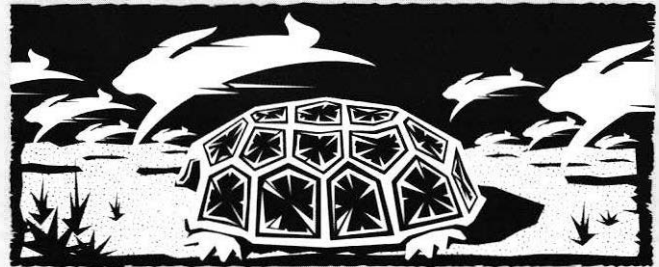
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PRACTICE ALERT

THE DIFFERENCE BETWEEN RIDING THE WAVE OR FLOUNDERING IN THE SURF: TAX PLANNING IN THE WAKE OF THE REVENUE RECONCILIATION ACT OF 1993 <i>by Joe F. Yonek and Robert K. Buchanan, Jr.</i> Part II of the author's exploration of changes in the tax code and how to best conduct business with those changes in mind. (See page 53 of the November 1993 <i>Bar News</i> for part I, "The 1993 Tax Act: The Act Will Have Some Whistling Dixie and Others Singing the Blues.")	46
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Ed Knight, Environmental Planner for the Swinomish Tribe, took this winter photo of the North Fork of the Nooksack River.

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Letters to the Editor of reasonable length are invited. They should be typed on letterhead and signed. The editor reserves the right to select communications or excerpts therefrom for publication and to edit any letter as may be appropriate.

More Satisfied Readers

Editor:

Lindsay Thompson's report on the September 9-10 WSBA Board of Governors' meeting reported that the Supreme Court has approved RPC 8.4(g), which Mr. Thompson characterized as banning "sexual harassment." In fact, this does not accurately describe the new Rule of Professional Conduct. What is prohibited is for an attorney to commit "a discriminatory act as prohibited by law on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status, where the act of discrimination is committed in conjunction with the lawyer's professional activities."

As can be seen, the new RPC actually prohibits conduct that is at the same time broader, as well as more specifically defined, than that described by Mr. Thompson.

MARY ALICE THEILER
President
King County Bar Association
Seattle

Editor:

After listening to new WSBA President Stritmatter address the last WSBA Annual Meeting, I find it ironic that the cover of the October *Bar News* shows him holding a book entitled *Access to Justice*. Following the debate on the resolution to limit the use of mandatory bar dues, Stritmatter announced he would work as hard as he could to prevent a bar-wide referendum on an issue as fundamental as what uses our bar dues are put to. Stritmatter would deny the vast majority of our membership access to a vote on this important issue. He wants "greater inclusion" in bar affairs, but apparently not greater access in deciding how our money is spent. Bar leadership appears to be frightened of another display of grassroots power, after the results of

the last referendum (on the bar dues increase). Stritmatter's solution for alienated members is to toss out a proposal for a "task force" to "study" WSBA governance. I wonder if Louis XIV appointed a committee to study France's governance ("Let them eat cake forces").

The point is not whether the "nonessential" programs supported by mandatory dues are worthwhile (I personally think they are), but whether members should be able to elect supporting—and receiving the benefits of—the Young Lawyers Division, the *Bar News*, etc. The cost-benefit analysis so earnestly propounded by our executive director (no doubt the *Bar News* is a bargain at \$6.63 a year) is simply irrelevant to this basic issue of choice.

Additionally, the anonymous (!) *Bar News* coverage of the debate on the resolution makes unfair and mocking characterizations of the resolution's proponents. In particular, describing Governor Long as driven by personal demons, while depicting President Stritmatter as a noble leader of enlightened initiative, displays gross bias, without the writer even having the courage to put his or her name on the line.

TOM CAMPBELL
Bainbridge Island

(Editor's response:

I wrote it.

The report of the Annual Meeting was written to follow "The Board's Work," as in past years. At layout time there wasn't enough room for both "The Board's Work" and the Annual Meeting report. Rather than run the annual meeting report a month later—given the importance of the debate—the WSBA Communications Department came up with a way to add an extra signature—four pages—in the center of the magazine. This allowed the addition of the Annual Meeting report and an account of the conferring of awards at the lunch meeting before the Annual Meeting. This expedient resulted in the separation of the Annual Meeting report from "The Board's Work," and thus made it unclear who wrote the report. As soon as I saw it in print, I said to staff, "Somebody's going to come along and box my ears for appearing not to sign this.")

What will the Press have to say this year about lawyers?



Last December, headlines read:

Lawyers Take Stand for Poor through Legal Aid Donations

The Spokesman Review, Spokane

Lawyers Give to Legal Fund to Help Poor

The News Tribune, Tacoma

LAW Program Raising Money to Hike Services

The Herald, Everett

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Seattle - WA State Convention & Trade Center - 12/3
Spokane - Cavanaugh's Inn at the Park - 12/10
6.5 CLE Credits \$135
- Essentials of Real Estate**
Video Replay with Moderator
Walla Walla - Lohrmann Law Office - 12/9
Moses Lake - Ries & Kenison - 12/14
Aberdeen - Phillips, Krause & Brown - 12/15
Port Townsend - Jefferson County Sup. Ct. - 12/20
6.25 CLE Credits \$115
- Million Dollar Closing Arguments**
Aberdeen - Phillips, Krause & Brown - 12/9
6.0 CLE Credits \$110
- Collection of Judgments**
Seattle - WA State Convention & Trade Center - 12/16
Spokane - Cavanaugh's Inn at the Park - 12/16
6.5 CLE Credits \$130
- Why Choose Federal Court?**
Seattle - Seattle Hilton - 12/17
6.5 CLE Credits \$130
- Best of CLEsm 1993**
Seattle - Seattle Hilton - 12/23
Spokane - Cavanaugh's Inn at the Park - 12/23
6.5 CLE Credits \$125
- The Art of Distribution Law Advocacy**
Seattle - Seattle Sheraton Hotel & Towers - 12/30
6.0 CLE Credits \$140

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JANUARY

- How to Probate an Estate and Handle Post Mortem Matters**
Spokane - Cavanaugh's Inn at the Park - 1/7
Seattle - Seattle Sheraton - 1/21
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- Appellate Advocacy**
Seattle - Seattle Sheraton - 1/7
6.75 CLE Credits \$240 (includes Deskbook); \$75 (prior Deskbook purchasers)
- Essentials of Real Estate**
Video Replay with Moderator
Vancouver - Horenstein & Duggan - 1/14
6.25 CLE Credits \$115
- Damages Strategies in Commercial & Tort Litigation**
Video Replay with Moderator
Moses Lake - Ries & Kenison - 1/18
6.25 CLE Credits \$125
- Corporate Counsel Institute and EXPO**
Seattle - Westin Hotel - 1/28
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- Discovery Plans and Strategies**
Seattle - Hilton Hotel - 1/28
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- Northwest Law Office Management Institute and EXPO**
Seattle - Westin Hotel - 1/28
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Let's Run Those Elitists to Ground

Editor:

I am impressed by Carl Maxey's letter in the September *Bar News*. Carl has recognized a great new group: the "economically handicapped." I would presume that this group is people with new lawyers, and lawyers of minority background. The problem is Carl does not go far enough. CLE credits are expensive. Further, they are usually held on Friday, which means the loss of three working days.

With this in mind, to lower the cost, all CLEs should be held on Saturday in community college auditoriums.

Further, transportation is expensive. Attendance at CLEs should be required by foot, bicycle or public transportation. This would prevent attendance at CLEs by that last great minority, white, Anglo, older males (WAOMs) in expensive motor vehicles.

The transportation provision should be included in the CLE affidavit, and we should retain private investigators to provide surveillance of attendance at CLEs to report to the bar ethics committee on modes of transportation.

PAUL M. WILLIAMS
Edmonds

More on Computers

Editor:

It looks as if most law firms now use computers.

A review of discovery rules, recognizing the advent of the computer, could be studied by the WSBA Court Rules & Procedures Committee, including a possible addition that would require service of not only the paper copy of the written discovery tool, but also a floppy disk into which the written discovery has been downloaded, so that the responder could more easily answer the written discovery through the use of the responder's computer.

I am sending a copy of this letter to the *Bar News*, the *KCBA Bar Bulletin*, the Court Rules & Procedures Committee and the president and vice president of the Western Washington Federal Bar Association, suggesting that, until a rule might be promulgated, we

all—as a professional courtesy—provide a floppy disk to our opponents whenever we serve written discovery of more than a page or two.

In fact, I am asking my secretary to so proceed with discovery in my cases and to prepare a memo for my signature recommending that lawyers in this office so proceed.

JAMES S. TURNER
Bellevue

Editor:

If the Supreme Court were just a court, being its "executive officer" would not generate conflicts of interest for the Chief Justice. One cannot go far astray ordering office furniture and assigning parking spaces for so small an organization as the Court itself. However, the Supreme Court is more than just a court—it is the "judicial branch" of state government. Over

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the past few decades, the "judicial branch" has come to include large, bureaucratic organizations, including the Office of the Administrator of the Courts, the State Law Library, the Commission on Supreme Court Reports, and the Washington State Bar Association. Being Chief Justice isn't as simple as it used to be.

The components of this bureaucracy have various goals which are not necessarily consistent with the primary function of the Supreme Court itself, which is to impartially resolve disputes

between litigants. Inevitably, agencies which employ thousands of people, which are major consumers of goods and services, and which create and dispose of property, will tend to adopt positions on various legal issues. When they do, the Chief Justice, having roles as Chief Justice/Executive versus Chief Justice/Judge, has a conflict of interest.

A prime example is the dispute which has arisen concerning ownership of computerized case law databases created by the Supreme Court Commis-

sion on Law Reports. Chief Justice Andersen, wearing his hat as Chairman on the Commission, has decided that the databases are property and that they cannot be copied without payment of a substantial sum to the Commission.

To patent and copyright lawyers, this is of concern. It creates a new form of intellectual property, i.e., "common-law" copyright which allows the state to prohibit copying of judicial opinions. How this fits in with Article 21, Section 4 of the state constitution—which makes opinions "free for publication by any person"—or the Federal Copyright Act's preemption of common-law copyrights, is not explained. Even so, the Chief Justice's public position on this issue must now be considered by any prudent intellectual property attorney who advises clients concerning ownership interests in non-copyrightable, public-domain data. The Chief Justice has effectively "made law." And he did so on an *ex parte* basis to serve the proprietary and revenue interests of the Supreme Court bureaucracy.

Another conflict of interest has arisen in the context of a contract between the Administrator for the Courts and West Publishing Company. The Administrator, who operates under the supervision of the Chief Justice, recently signed a contract with West Publishing Company which, by its own terms, is confidential. Although the contract involves hundreds of thousands of dollars in public funds and property, the Administrator refuses to disclose its terms. When such a position is adopted by a representative of the Supreme Court, what lower court will beg to differ?

How can such conflict-of-interest problems be eliminated? Perhaps the best we can do is encourage careful consideration of Canon 4 of the Code of Judicial Conduct. Canon 4 permits judges to serve as officers and members of government agencies devoted to the improvement of the legal system, *provided that* "in doing so they do not cast doubt upon their ability to decide *any* issue which comes before them" (emphasis supplied). The phrase "any issue" should be construed to include issues pertaining to the availability of computerized law databases, and to the applicability of the Public Records Act to non-adjudicative

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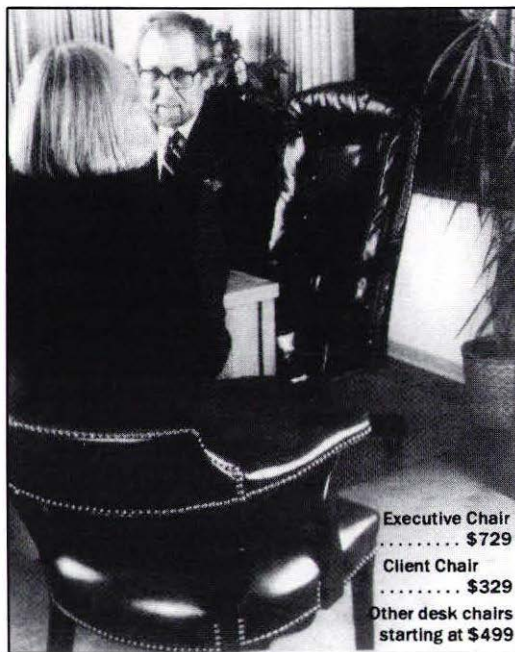
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Thoughtful and Timely Words

Editor:

I happened upon this letter, by Joan O'Neill, submitted to the *Multnomah Lawyer*. I found these such thoughtful and timely words, regarding our beleaguered profession, that I received permission from her to submit the letter to the *Bar News*.

GEORGIA KRAVIK
Seattle

The *Multnomah Lawyer's* articles on "Lawyers and Careers . . . in Transition," are interesting. Numerous legal periodicals seem to be exploring this topic, also. However, I would like to say a word, loudly and clearly as one who loves practicing the law, and who transitioned *into* the practice of law. I spent many rewarding years as a teacher and administrator before I became a lawyer. Yet I have never enjoyed any career as much as I enjoy the practice of law. It is exciting and demanding. It brings me into contact with some of the most wonderful, intellectually stimulating, gifted and witty people in the world. These people not only work hard, but they expend untold energy and money, making the world a better place and helping others.

There is not a profession in the world that doesn't involve stress and long hours. Every profession, business and charity has to worry about the bottom line. Every family has to concern itself with caring for dependent members. Law provides a living that enables us to care for more than just ourselves. I am concerned when I read lawyers saying law brings out the worst in them, as if the profession itself were the problem. Some persons in the world are called to tend peaceful and serene Japanese gardens and create patterns for contemplation. Others, while appreciating and enjoying those contemplative times, are also called to wrestle, box, long-distance race, try to orbit the earth or practice litigation and law. Let each of us find the way in our life that is harmonious for use, but in doing so, let us not denigrate a wonderful profession.

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LESTER O. STRITMATTER ON PROFESSIONALISM

by **Paul L. Stritmatter**
WSBA President

Lester O. Stritmatter, my father, was my mentor. While law school taught me the intricacies of the rule against perpetuities, my father taught me the basics of professionalism.

Dad had been a sole practitioner for many years. I joined him in 1970, and we were law partners for 12 years. My second day on the job, we had a long discussion about professionalism. He told me that as a lawyer, my word must be my bond. He explained that, of approximately 40 attorneys in Grays Harbor County, I could be sure of the word of all but two of them. He told me how to deal with those two attorneys and how I should never break my word to another attorney or there would then be three lawyers in Grays Harbor County who would have to be dealt with differently. He underscored the simple lesson that I should treat all other lawyers the way I would want them to treat me. In a job that is often confrontational, such action is the essence of professionalism.

He explained that for most clients, if a problem is so great that they must seek the assistance of a lawyer, it is probably the predominant issue in their lives. As a professional, it was my responsibility to treat each client with respect, with dignity, and to show compassion for his or her problems. It was then my professional responsibility to handle those problems in a fair and dispassionate manner, while always forcefully protecting the client's rights.

He taught me that the privilege of being a lawyer carried with it the responsibility to support and promote our system of justice. It carried with it the responsibility to volunteer my time to my community and to my bar association. He taught me that it was a privilege to be allowed to handle the problems of others, and that it was up to me as an individual attorney to uphold the honor and dignity of the law as a learned profession.

I loved my father. But just as much, I respected him as a lawyer and for the

high ideals he held regarding the law as a calling. Over the years, as we practiced law together, I faced a variety of issues that called for practical solutions in dealing with other lawyers and assuring the proper handling of the causes of my clients. I often went to my father with these issues, and he never failed, after a calm and rational discussion, to suggest a method of solving the problem in a professional manner that would uphold the dignity of the law.

He died in 1982. He was a kind and gentle man. He was the epitome of a professional. He would be sad to see the decline in professionalism that we experience among lawyers today.

I am sure that at least one of the reasons that each of us decided to go to law school was a desire to join a learned profession—one that was held in respect by society. Didn't we all want to stand with Thomas Jefferson, Abraham Lincoln, Clarence Darrow and Thurgood Marshall in a tradition that would make us proud? What has happened to us? Why is it that mere civility between lawyers has become such a problem that we are now considering rules to mandate conduct which should simply be matters of common courtesy? One member told me recently, "We just don't seem to like one another anymore." How can this happen to people who are supposed to be professionals? Is it any wonder that the public thinks it doesn't like us when we treat one another in this way?

Additionally, this lack of civility does not promote the cause of our clients. It detracts from the potential of problem-solving and leads to more litigation. As lawyers, we should solve problems, not create them. Clients who come to us angry about issues and relationships with others should be able to count on dispassionate advice and advocacy to secure an appropriate resolution of the issue. In the courtroom, the lack of civility diminishes the likelihood of success. You don't have to



Lester O. Stritmatter

be nasty to be effective. You don't have to be rude to make your position known. You don't have to be hostile in order to firmly advocate for your client. An impartial fact-finder is inevitably turned off by such conduct.

The practice of the profession of law does not mean winning at any cost. The art of advocacy can and should be effectively practiced without personalizing the matter through attacks on opposing counsel or their clients. No client has the right to demand such conduct of his or her attorney; no attorney should accede to such demands or expectations on the part of his or her client.

So where did the problem start? Who knows!?! There's enough blame to be passed around, if blame is what you want. I've heard many different explanations. "It's because of economic pressures." "The other guy started it, and if I don't respond in kind, I will appear weak." "It's young lawyers who have not been properly trained." "I probably won't ever oppose this attorney again anyway, so it doesn't make any difference." "It's society as a whole, and the profession is only reflecting the attitude of everyone." "Arnie Becker started the problem on 'L.A. Law'."

It doesn't matter how it started or why it started — it simply needs to stop!

Where do we go with this issue? It is hard to predict. The solution is in our hands, not anyone else's. And it starts with each of us individually. Let me make some simple suggestions.

1. Let's be aware and start facing



the issue. Talk about it at bar meetings. Talk about it with opposing counsel. Bring the issue into the open and deal with it.

2. The Washington State Trial Lawyers Association and the Washington State Defense Trial Lawyers have jointly proclaimed March as Professionalism Month. They will be promoting programs to draw attention to the issue and to provide guidance and training on the subject. The WSBA Board of Governors will be addressing the promotion of professionalism at its December meeting, and I am confident that it will join in the support of this idea.

3. Professionalism should become part of our mandatory training. CLE programs should all be required to include a component on professionalism, just as we do with ethics.

4. County bar associations should take a lead in this issue. After all, most professional confrontations are between members of the same local bar. The state bar could provide materials, training, backup and support, but the lead would be the responsibility of the local bar.

5. More professionalism training should be given to new admittees. New lawyers need to be taught their responsibilities in professionalism from Day Two. Whether it be through skills training, articling or a mentoring program, it is imperative that young lawyers be taught how to carry on the basic tenets of a learned profession.

6. Law schools should make professionalism a mandatory course for graduation. We, as members of the bar, must be willing to give our time to the schools to help teach these students the meaning and substance of being a professional.

7. And both first and last, it is up to each of us in our daily actions as attorneys to bring back civility and professionalism to the practice of law. Be courteous to one another. Follow the Mark Honeywell rules of professionalism in dealing with one another. Avoid discovery abuses. Seek to solve problems; don't create them. Individually, we can assure that we make a collective difference to bring back professionalism to the point where my father would be proud.

THE WORLD IS OUR BUSINESS

As we again race toward the holiday season, the festivities will surely remind us of our good fortune to be lawyers, community leaders and parents, enjoying the benefits of life in our bountiful society.

Many people here in Washington state, however, have not been as fortunate as we. As I write these words, thousands of children and senior citizens are not receiving adequate amounts of food, and many more are not receiving balanced nutrition. These people live all around us. They are down the street from you and me as well as in cars, motels, shelters and itinerant labor or migrant farm labor camps. Although our paths may not cross daily, we are not separate from them.

As a collaboration among colleagues, our profession has the opportunity to help the hunger crisis from becoming even more tragic. Across the state, The Lawyer's Campaign for Hunger Relief is seeking contributions from lawyers and their staffs by means of the brochure enclosed in this issue of the *Bar News*. This is the third annual campaign, and the all-volunteer Board members and the advisors to the Campaign hope that during this year we can attain the \$100,000 level in total contribution receipts. More than \$60,000 has been donated thus far. Can you help us reach our goal? Will you contribute the equivalent of just one billable hour? This Campaign distributes 100 percent of your donations to the six worthy organizations identified on the brochure, so every penny will directly feed the hungry or go into programs that increase access to food sources.

Providing breakfasts and lunches to

poor children in schools will help meet their basic needs so that they can learn and effectively compete with those more fortunate. Collectively, we can help senior citizens realize that their contributions to Washington state are not forgotten. Our efforts alone will not stem poverty, but there is great value in keeping that goal in mind.

For 13 years now, the students at Hoquiam and Aberdeen high schools have raised money and collected food for our less fortunate in Grays Harbor County. Using the spirit and enthusiasm of youth coupled with competition, these two small local schools have collected phenomenal amounts of donations — last year, more than \$58,000 — from a community suffering the pain of high unemployment and a lack of business growth. In 13 years, they have collected more than \$300,000 all in the space of two-week drives around Thanksgiving. Their action is a source of inspiration to me personally, and it is an indication of what we can do to help those in need of something as basic as food. As professionals, we also should step up to a position of leadership in dealing with this unfortunate problem in our society.

We not only help others when we give, but we also help ourselves. In this case, we can hope to improve our public image as well. The publicity which will be generated from the efforts of the Lawyers' Campaign can only be an asset to each of us in our future relations with the communities where we live and work.

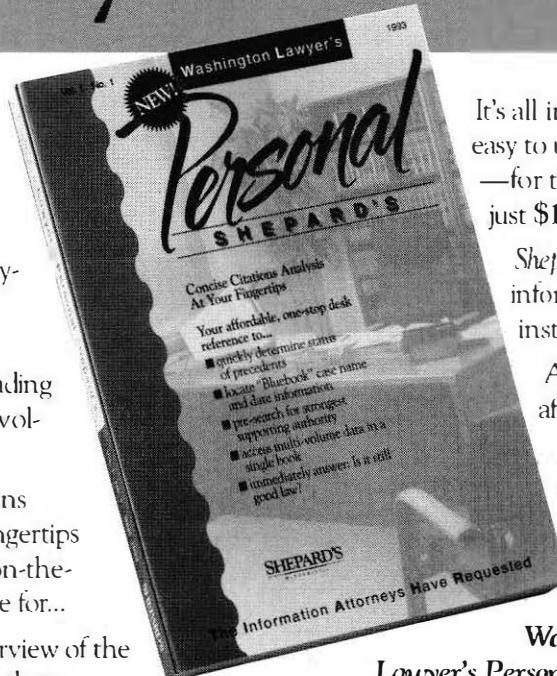
In this season of giving, don't pass by the disadvantaged in our communities. As Ebenezer Scrooge said after his transformation: "The world is my business!" Let us make it our business as well.

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“LIKE LOOKING AT THE STARS”

In one of these columns some months ago, I commented that seeing the WSBA's financial history was like looking at the stars—what you saw happened years ago. Well, I've got some news about Alpha Centauri which, if I remember my astronomy correctly, is the closest star to our solar system. [If I'm wrong, I'm certain someone will correct me.]

The WSBA finished its 1993 fiscal year on September 30, 1993. We had to “hold the books open” for another 30 days to pay all the bills that were attributable to that fiscal year and then we made a series of accounting entries like adjusting the value of book inventories or the amount attributable to the employees' accrued vacation. Now the outside auditors engaged by the Board of Governors will come in, review the books, and issue an audited financial report. Unfortunately, that report isn't completed until January, but it will be dutifully reported to the WSBA membership in a spring issue of *Bar News*.

If you're still with me, I'm about to tell you about the **preliminary 1993 year-end results—a significant contribution to the underfunded WSBA reserve—perhaps as much as \$500,000.** I tell you this knowing that many of you will wonder why we thought we needed a fee increase last year. The answer is simple; the fee increase was needed to get the WSBA reserves up to 10 percent of our annual budget as recommended by those outside auditors and to continue existing programs.

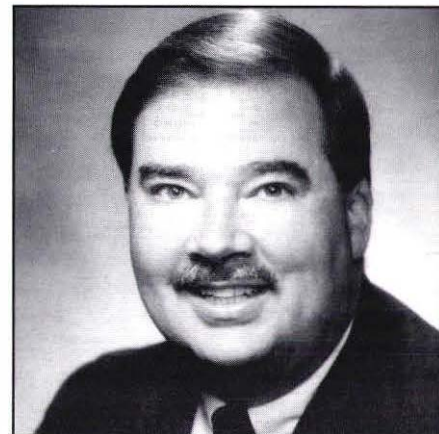
Like the proverbial shark that has to keep moving or drown, there is no such thing as a status quo for the WSBA. We are adding approximately 1,000 members a year. The demands for lawyer discipline climb inexorably. And the cost of living goes up. So when the referendum rolled back the dues increase last fall, we eliminated six staff positions and cut programs (law-related education for the public, the annual convention, the *Resources* directory, etc.) In terms of expenses, this kept fiscal year '93 expenses at nearly the

same level as fiscal year '92 expenses. Adjusted for cost-of-living increases, expenses for fiscal year 1993 were lower than for fiscal year 1992.

The real story for fiscal year '93 was the increase in non-dues sources of revenue. The most dramatic increase in revenues came in the CLE arena. CLE revenues were up nearly \$500,000—a 40 percent increase over the previous year. *Bar News* revenues were up \$60,000. And a variety of user fees for law clerks, letters of good standing and higher bar exam fees yielded another \$90,000 in revenues.

So why did we cut programs? Because most of the increase in revenues—the CLE revenue—is volatile and shouldn't be spent before it's earned. The primary cause of the WSBA's deficit in fiscal year '92 was spending \$250,000 of anticipated CLE revenues that never materialized. Even now, the Board of Governors' policy is that CLE should plan to break even, so the spectacular success of the past year is something of a windfall.

So what does all this bode for next year? It allows us to maintain current programming. It doesn't allow restora-

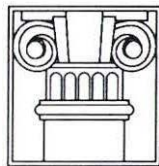


Dennis P. Harwick

tion of any of the programs that were cut. It doesn't allow for funding of any significant new programs. It doesn't allow for significant expansion of the lawyer discipline system (which is sure to be a recommendation of the ABA evaluation team that recently reviewed the Washington lawyer discipline system). But it does give us some breathing room.

The good news is that it builds the WSBA's reserve to nearly the level recommended by our outside auditors. So, enjoy the view of the nearest star. It's still blurry as seen through the Hubbell space telescope of preliminary figures. I don't know about you, but I enjoy this view!

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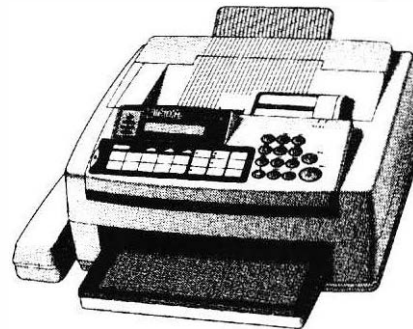
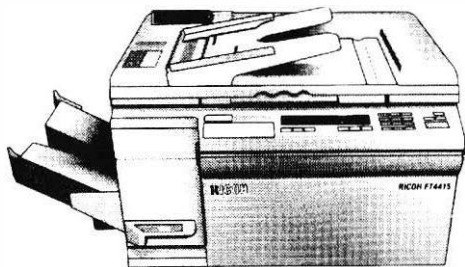
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ODDS AND ENDS FROM THE PAST

by C.M. McCune

This account, covering almost 60 years of practice, will touch briefly on the peaks and valleys that bring pleasure or despair to a lawyer, but rarely bring regrets that he chose the profession.

At the U of W School of Law I missed moot court, an afternoon activity, since I was holding down two jobs—a graveyard shift washing dishes six nights a week, and, five afternoons a week, at Allen, Froude & Hilen, mostly acting as the in-house, a 1933 version of Lawyers Messenger Service. On Saturday mornings, I attended the ritual of case-setting. Thus it was that, when I tried my first case, my trial experience consisted of dodging in and out of court with a bundle of papers. It was not surprising that while I was wearing my house counsel hat and brought a collection action for The Bon Marché, Judge Hoar looked down in a kindly way and said, “Young man, you’re going to be practicing in these courts for a long time. It’s not too soon for you to learn that when you question a witness you stand over there.”

At Allen, Froude & Hilen, neophyte lawyers were usually paid \$75 a month. I received \$25. When the NRA came, they laid me off for two months until they made certain my part-time position would not result in its requirements applying to the firm.

I probably wasn’t worth more. Given classes and my other job, I am sure I fell asleep in my library chair. Indeed, that was probably why I fell over in it. The firm took the \$10 cost of repair out of my salary.

It was when I first went to work for Jones & Bronson, just before the war, that I first knew the joys of practicing law in a truly friendly firm. Actually, they were looking for someone like me with a stomach ulcer to cover for attor-

neys absent during the war. I had a great time.

The firm was on the sixth floor of the Colman Building. At the opposite end of the hall were the magnificent library of McMicken, Rupp & Schweppe and four or five great guys. Along with Dave Hamlin from the fifth floor, John Rupp, Jack Gose, Bernard Reiter and Maurice McMicken, there was a period when we often lunched together. If someone new turned up, we might saunter with him down to the Old Curiosity Shop and see if he could find something my wife of 60 years says she will kill me if I describe.

For many years, at both Jones & Bronson and—after 1945—in my University District office, I carried a fairly heavy trial practice. While it is likely to appear to an old-timer that the courts are bogged down in red tape, the younger chaps in our office seem to adapt to it very well. I must admit that the judges today are head and shoulders above many of those in my time.

Of the many good judges, Judge Batchelor was one. I may have been prejudiced by his sending me a letter commending my trial work. He was a sentimental old cuss who kept his stuffed fox terrier on top of a filing cabinet.

Judge Todd, who usually recessed in time to make the last race at Longacres, I liked the least. When one of my cases was assigned to him, my client remarked on the way to court that he knew Judge Todd. I responded that he might very possibly disqualify himself. Nothing more was said. It was a case I should have won and in fact did, but every ruling was in my favor. Opposing counsel could do nothing right. I could do nothing wrong. I was bothered. Many months later I ran into my client. “Just how well do you know Judge Todd?” He responded, “We play poker together almost every Saturday

night.”

I always thought Judge Ronald, who was blind and, I suppose, at least 90 years old, was a good judge and did well in handling short and not-too-complicated matters. He was a beautiful man who spent his life in public service.

This is not to say that I’m against mandatory retirement. In the days when it was necessary to establish a residence period in divorce actions an attorney could depend that at the conclusion of the testimony Judge Hall, who handled the default divorce calendar and—in his time—was a good jurist, would wake up and ask, “What about the residence?” It was best to simply repeat the testimony.

Judge Roger Meakim, with his smart cracks, left much to be desired. One case I had before him involved the sale of a juke box route. It had been badly misrepresented to my client by the real estate salesman. After listening to my client’s testimony Judge Meakim remarked, “By what right does he believe a real estate salesman? By the very nature of his profession he has to lie.”

The court report was late with the record. The judge’s remarks did not appear. I called the reporter about the omission. He advised that he had been reporting in Judge Meakim’s court for years and that the judge simply didn’t permit his offhand remarks to go into the record. I thought my case was strong enough to secure a reversal without challenging the judge. I was wrong.

Judge Henry C. Agnew was eventually a good friend. We even tried a case together. Some time before that I served him with his wife’s divorce papers. He was seated at his desk and, looking up, said, “Young man, I’ve been waiting for this for twenty years.” This was during my days with the Allen office.

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Henry Agnew was subject to the ups and downs of the criminal practice, and still later I repossessed the furnishings out of his recreation room for The Bon Marché. He brought to the bench an almost unparalleled knowledge of evidence, perhaps the equal of Judge Enyeart.

Judge Howard M. Findley was somewhat irascible and often acted as presiding judge. I always felt, after the scars had healed, that he rendered a genuine service to the bar. In those days we depended heavily on J. Gratton O'Bryan's two-volume set of forms. Most of us did so rather sloppily. Judge Findley took great pleasure in verbally ripping up our motions and hides. In doing so, he probably contributed more than any other judge to the drafting of adequate pleadings.

One could be hard-put to criticize the members of the federal judiciary now serving in Seattle. 'Twas not always so. Judge Bowen was a holy terror. The woman knitting quietly on the last row soon received a quick visit from the bailiff. Embarrassment was often the lot of an attorney who presented an order approved by opposing counsel. "Why isn't he in court?" "But he signed it, your honor." "What proof do you have that this is his signature?"

At one time the judge developed a penchant for appointing me as counsel in indigent criminal matters—without fee, of course. This went on for some time until I persuaded him to release a particularly unsavory suspect on his personal recognizance. My unwanted client promptly went over the hill. The judge was critical, primarily of my innocent faith in the suspect. At least it was my last appointment.

Judge Bowen's chambers were on the sixth floor, and he had his bailiff maintained an outdoor-type doormat outside the entrance. Not only that, but the center was lined up meticulously with the door jamb on the hall side of the door. Perhaps I am too harsh solely because the judge was eccentric. I can cite no example of a miscarriage of justice in his court.

It has been a good life. I still enjoy, as I believe it was John Rupp who once said it, returning to the office and finding out what's in the trap.

Next to the nightmare that my ad-

mission has been found defective and I was doomed to take the bar exam again, the following event stands out as causing stark terror.

At least through the forties and early fifties, an attorney could remove an entire court file from the courthouse for a few days under a court order. As I recall, pre-signed orders were available at the clerk's windows. Without such an order, files could be picked up for an *ex parte* matter to a department. In addition, it was quite common to put a slip in the file drawer and take files out of the building without an order.

Thus it was that I put my briefcase, containing four such files, on the car roof while I opened my car door for a client, then drove off. Most of that night was spent trying to decide whether I should use a shotgun or carbon monoxide. Staggering bleary-eyed, into the office the next morning, I found a call waiting: "Did you lose a briefcase in the middle of Third Avenue?"

Like most law offices today, overhead is killing us. I look with nostalgia

back to 1948, when Bob Yothers and I leased—for 20 years—an entire upper floor on University Way for \$80 per month plus half the taxes. On the other hand, we might take in a thousand dollars in a good month.

I suppose I should include a word of advice to new lawyers, most of whom are technically far better prepared than was I (I also relish an opportunity to talk with them while trying to avoid an old man's tendency to reminisce).

Many years ago, I upset a much older lawyer on a technicality. Out in the hallway he commented, "You are young. What you just did wasn't going to make or break your case, but do it often enough and you will most certainly lose your most precious asset—the trust of your fellow attorneys." Observing today's bar, I sense this caution many again be in order.

Now in his fifty-seventh year of practice, C.M. McCune is a shareholder in McCune, Godfrey & Emerick, Inc., P.S., Seattle.

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THE DUTY

by **Thomas E. Tyner**

MORRIS WRIGHT, P.C.
125 Alaskan Way
Seattle, Washington 98110

15 March 1992

Great Northern Bank of Seattle
125 Fifth Avenue
Seattle Washington 98101

Attention: Robert Myers
Manager

Dear Mr. Myers:

We represent Rita Lambert. You may remember that Ms. Lambert's daughter, Stephanie, won the \$100,000 grand prize on the KUSD Back to School radio contest last August. Because Stephanie was only 15 at the time, Ms. Lambert received the money in trust for her daughter. Ms. Lambert is not a financially sophisticated individual. Upon receiving the check for the \$100,000, she approached your bank last September in order to find a suitable investment for the money. She dealt with one of your officers named Steven Goodhouse. Incredibly, Mr. Goodhouse convinced Ms. Lambert to place the entire \$100,000 into an ordinary savings account! The money sat in the account for six months! It earned interest at the minuscule rate of 4% per year. The money would still be wasting away in the account if Ms. Lambert had not been talking to one of our attorneys about another matter one day, and happened to mention the story of the \$100,000. We immediately advised Ms. Lambert to move the funds to a higher paying investment, which she has now done.

Both Ms. Lambert and this firm are shocked and astounded that your employee would deliberately steer Ms. Lambert away from any of the many higher paying investments into a criminally low paying savings account. It is obvious that you had an untenable conflict of interest in this case, and wantonly chose to ignore it in order to gain access to my client's substantial deposit at minimal cost to yourselves so that you could turn around and lend it out to your own borrowers at unconscionably high rates of interest, thereby enriching yourselves to the detriment of my client. This is detestable behavior, and is a flagrant and premeditated breach of your fiduciary duties to Ms. Lambert. Even the most incompetent banker would have had the common decency to see that Ms. Lambert's money was invested in the stock market or a mutual fund or even a time deposit account, any one of which would have produced a higher return than the savings account.

Ms. Lambert is furious that you treated her so shabbily and took such deliberate advantage of her lack of financial sophistication. She has insisted that we intervene on her behalf to recover what is rightfully due her as the direct result of your fraudulent, tortious and intentional negligence. Accordingly, she makes the following demands:

1. The difference between the 4% interest earned on her savings account for the six months you had it and the amount she would have earned on the moneys had they been more prudently invested in a mutual fund such as the Waverly Fund, which, according to the *Wall Street Journal*, returned investor's 19% on their money last year.
2. Ms. Lambert's attorneys fees, currently aggregating \$5,000, and accumulating at the rate of \$300 an hour.
3. The sum of \$25,000 as compensation for the emotional distress caused her when

AND THE BREACH

she became aware of the fact that you had taken advantage of her and breached your fiduciary duty to her.

Ms. Lambert is adamant about receiving compensation from you for your errors and omissions, and she has authorized me to file a lawsuit on her behalf immediately if you refuse her demand. BE WARNED, and conduct yourself accordingly.

Sincerely,

Patrick J. Wright

TRAVIS J. JOHNSON
Attorney at Law
Franklin's Tower
200 Madison Avenue S.E.
Seattle, Washington 98104

March 21, 1992

Patrick Wright
Morris Wright, P.C.
125 Alaskan Way
Seattle, Washington 98110

Dear Mr. Wright:

My old friend Bob Myers at Great Northern Bank of Seattle asked me to respond to your March 1 letter to him. I've known Bob since I opened my law practice back in 1953. To put it mildly, he was surprised by your letter. I think he felt like Lincoln did after he lost his first race for Congress. Honest Abe told reporters that he was too old to cry, but it hurt too much to laugh.

I've had a chance to talk to both Bob and Steve Goodhouse. Talking to them about Ms. Lambert was an enlightening and informative experience for me, and something I would have highly recommended to you as a course of action to consider prior to writing your letter, but that's all water under the bridge now, isn't it? Both Bob and Steve remember Ms. Lambert well. You will be pleased to know that their recollection of the events of last September and your own recitation of those events overlap pretty closely in many respects. They differ on a few important points, however, but then Bob and Steve have a leg up on you in that regard since they were there that day in September and you weren't. It is not disputed that Ms. Lambert is Stephanie's mother, that she came into the bank carrying a check for \$100,000 last September, and that when she left, the money was in a savings account in trust for little Stephanie. Beyond that, your story and that of Bob and Steve go their separate ways.

Not that I'm suggesting you or Ms. Lambert is not telling the truth as best as the two of you can recall it. That would be a serious charge. A lying tongue is one of seven abominations to God, if you believe the Bible, (the other six being, of course, a proud look, hands that shed innocent blood, a heart that devises wicked imaginations, feet that run swiftly to mischief, a false witness that speaks lies, and he that sows discord among his brethren). Far be it from me to accuse anyone of committing an abomination. I do think Ms. Lambert may be "over-remembering" the events of that day a bit. We're just happy to have this opportunity to set the record straight.

It seems that Ms. Lambert didn't actually approach Steve Goodhouse that day. In fact, she didn't come to Bob's bank seeking investment advice at all. What she did do was approach Betty Stafford, one of Bob's tellers, and ask Betty to cash the check for

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her. That's right, cash it as in exchange for a thousand hundred-dollar bills. Betty needed Steve's approval to even look at a check of that size. When Steve came over to approve the transaction, he advised Ms. Lambert that it was unwise to be carrying \$100,000 in cash on one's person, even in Seattle. Ms. Lambert let Steve know that it was her intention to use some of the cash to buy a new car on the theory she could get a better deal if she flashed some cash money at the dealer, and then use part of it to buy some lottery tickets. The rest she was going to take home until another good idea came her way. Steve suggested at that point that the two of them chat at Steve's desk, which they did.

To make a long story short, Steve told Ms. Lambert that the check was made out to her in trust for Stephanie, and that he was therefore not in a position to simply cash it for her. Instead, he suggested she open a trust account for Stephanie and deposit the check in the account until she had a little more time to consider her investment options. Ms. Lambert agreed that Steve's idea made sense. She did, however, insist that the money be immediately available to her, without penalty or cost of any type, in case she needed it when a red-hot investment opportunity came her way. Steve told Ms. Lambert that he had such an account, but that the trade-off for such high liquidity was a lesser interest rate. He then suggested she contact an accountant, a financial consultant, an attorney, or maybe all three, about the money. We don't know if she followed Steve's recommendation, except, of course, that she did contact you at some point.

In any event, both Steve and Bob feel that they did Ms. Lambert a great service, and I'm inclined to agree with them. Her money, or, more accurately, Stephanie's money, was in a safe, secure, FDIC-insured account earmarked for Stephanie's benefit. It is undoubtedly true that there were other investments available at the time which would have offered Ms. Lambert and Stephanie a higher rate of return. There probably still are. But Ms. Lambert herself ruled out any time deposit or other investment that carried with it penalties for early withdrawal or that costs anything to get out of. The stock market, to follow up on one of your helpful suggestions, is neither entirely liquid nor risk-free. Do you really think it would have been wise to suggest Ms. Lambert take her \$100,000 to a stock broker rather than stick it in a savings account? Keep in mind we are talking about a woman who had her heart set on "investing" her daughter's money in a new car and lottery tickets. One might just as easily complain that we didn't sell her ocean front property, gold coins or fine art, all of which have their proponents. Steve helped Ms. Lambert make a wise short-term investment decision. Instead of thanks, he got your letter. Mark Twain said that if you picked up a starving dog and made him prosperous, he wouldn't bite you, and that that was the principal difference between a dog and a man. Well, today, the dog bit Steve.

I don't mean to sound flippant because I know this is a serious matter. But, I cannot share your professed horror and indignation at the thought of a woman entering a bank with a check for \$100,000 and emerging a half-hour later with the money safely on deposit in a savings account. Worse things than that happen every day at the restaurant where I eat my lunch, but you don't see me writing nasty letters to the cook. In fact, opening the account at Bob's bank also entitled Ms. Lambert to a free checking account, free traveler's checks, a free safe deposit box and a variety of other free or discounted services. If we did the math on the value of all those ancillary services and compared it to the actual return on a similar investment in stocks, bonds or mutual funds after deducting commissions and fees, I'll bet you owe us money!

Someone may indeed have taken advantage of Ms. Lambert, but it was not Bob, Steve or Great Northern.

In conclusion, we believe we did right by Ms. Lambert and Stephanie and deserve praise rather than scorn, but so be it. We'll settle for graceful silence on your part. Needless to say, we respectfully decline your invitation to offer to "compensate" your client for the agonies we inflicted on her. Ditto for her attorney fees, although the term "inflicted" hits a little closer to home in that context, doesn't it? \$300 an hour? That's a nice deal if you can get it.

This little episode reminds me of Shakespeare's Othello. Othello, you will recall, was warned about his wife, Desdemona's, previous infidelities by his "friend" Iago. Iago told Othello: "Look to Moor if thou hast eyes to see: she has deceived others and

may so thee." I offer you the thought free of charge and apropos of nothing, though we are hard upon the Ides of March.

I hope our position is clear even if my prose isn't. If I've missed anything, I reserve the right to blame it on word processing.

Very truly yours

Travis J. Johnson
Attorney at Law

MORRIS WRIGHT, P.C.
125 Alaskan Way
Seattle, Washington 98110

30 March 1992

Travis J. Johnson
Attorney at Law
Franklin's Tower
200 Madison Avenue S.E.
Seattle, Washington 98104

Dear Mr. Johnson:

I received your letter and was not amused or enlightened. I think your clients are lying to save their own asses. They steered my client to a lousy investment, grabbed her money, and probably laughed about what a great scam they had pulled off. They won't get away with it. We intend to file suit immediately. We'll name Mr. Meyers and Mr. Goodhouse personally as defendants in case the bank decides their conduct is outside the scope of their duties as bank officers.

I couldn't help but note that your letter doesn't challenge any of the legal arguments I made. You must be conceding that I am correct and you have no case. The court will no doubt see it the way we do, and it will return a verdict in my client's favor for fraud and breach of fiduciary duty. We'll see you and your clients in court.

Sincerely

Patrick Wright
Morris Wright P.C.

TRAVIS J. JOHNSON
Attorney at Law
Franklin's Tower
200 Madison Avenue S.E.
Seattle, Washington 98104

April 5, 1992

Patrick Wright
Morris Wright, P.C.
125 Alaskan Way
Seattle, Washington 98110

Dear Mr. Wright:

Thank you for your letter of March 30. You sound a bit miffed. I really don't think

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there's any need to call my clients liars. They have made no bones about what they did with Ms. Lambert. They thought, and still think, it was a good idea at the time to open the savings account, and I agree with them. You are free to disagree with us, and I imagine you will, but can't we do so without calling each other names or slinging mud? After all, neither of us is running for public office.

You are right about your legal arguments. I didn't address them. It was not an oversight on my part. I didn't think it would be necessary to do so once I correctly explained the facts to you. I was wrong. When I was in law school, we learned that practicing law was simple. There were the facts, and there was the law. You applied the facts to the law as best you could and hoped you didn't bump into the furniture on your way out of the courtroom. I didn't think the facts of this matter supported the legal theories mentioned in your letter, and I chose to save us both some time by ignoring you. But, if you'd feel better about it, I'd be happy to address your legal theories. For what it's worth, I think your legal arguments are wrong for at least the following reasons (there may be other reasons too, but I'm running low on stationery):

1. You said the bank had a conflict of interest. There was no conflict of interest. Bob and Steve are bankers. They sell banking services. They sold Ms. Lambert a banking service, i.e., a deposit account. And all is still right with the world.

2. You said our deposit rates were unconscionable and criminal. Our deposit rates are plastered over half the billboards in Seattle. They pretty much reflect current market rates. So do our loan rates, which are at historic lows, by the way. Neither of the rates are "unconscionable" or "criminal" by any stretch of the imagination. I say this, of course, knowing I have no idea what an unconscionable rate would be even if one jumped out and bit me.

3. You said we breached a fiduciary duty to Ms. Lambert. There was no breach of fiduciary duty because there was no duty to breach. (I didn't lose you did I? As you may recall from law school, a bank and its depositor stand in a debtor-creditor relationship towards one another. One cannot be a debtor-creditor and a fiduciary at the same time. Otherwise, no lender could collect its loans from its debtors because to do so would breach its fiduciary duty to act in its borrower's best interest. Besides, the bank never offered to be Ms. Lambert's financial advisor. All it did was stop her from dropping \$100,000 at Fast Eddie's Street Rods. In some places, they give medals for that.

4. You said Bob and Steve acted incompetently. Neither Mr. Myers nor Mr. Goodhouse is incompetent. In fact, Mr. Myers has an MBA from a fancy East Coast school famous for its lousy football teams. And I have it on good authority that Mr. Goodhouse can program his VCR to record television shows that are on when he isn't even home! Talk about being competent! Both Bob and Steve are skilled and dedicated professionals, and well aware that different types of investments produce different returns depending on a variety of factors such as liquidity, risk and the phases of the moon. They have both also heard about the Great Depression.

I could go on, but modesty and a sense of fair play require me to invoke the mercy rule at this point and stop addressing your legal arguments.

Please serve all court papers directly on me. I will accept for the bank and for Bob and Steve. If I'm not here, my secretary Norma will accept all papers on my behalf, even though she'll say she won't, and she'll snap at the process server. She's still upset that the Mariners fired Jim Lefebvre.

Very truly yours,

Travis J. Johnson

TRAVIS J. JOHNSON
Attorney at Law
Franklin's Tower
200 Madison Avenue S.E.
Seattle, Washington 98104

May 1, 1992

Patrick Wright
Morris Wright, P.C.
125 Alaskan Way
Seattle, Washington 98110

Dear Mr. Wright:

At the risk of waking a sleeping dog, I am writing because it has been nearly a month now and I still have not been served with the Summons and Complaint you promised me. It's not that I particularly want my clients to be sued, you understand, but if you intend to do so as you made clear you did in your previous correspondence, we'd like to get on with it. On the other hand, if your client has had a change of heart, we'd like to know that, too, so we can all get on with our lives. It is the beginning of baseball season, after all.

I'd be most grateful if you could let me know where we stand in this matter at your earliest convenience.

Many thanks.

Very truly yours,

Travis J. Johnson

MORRIS WRIGHT, P.C.
125 Alaskan Way
Seattle, Washington 98110

7 May 1992

Travis J. Johnson
Attorney at Law
Franklin's Tower
200 Madison Avenue S.E.
Seattle, Washington 98104

Dear Mr. Johnson:

In response to your letter of April 17, please be advised that this firm no longer represents Rita Lambert. Ms. Lambert dismissed us the same day she and we were served with a Summons and Complaint from the guardian ad litem for Stephanie Lambert. Contrary to our advice, Ms. Lambert made a speculative investment with Stephanie's money, and now both Ms. Lambert and our firm are being sued for breach of fiduciary duty and, in our case, malpractice by Stephanie and her guardian. We intend to cross complain against Ms. Lambert for our fee from our previous work on her behalf, which has never been paid. Under the circumstances, I'm sure you can understand why we consider our dealing with the bank in this matter over.

Please call me if you'd like to discuss this matter further.

Sincerely,

Patrick Wright

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TRAVIS J. JOHNSON
Attorney at Law
Franklin's Tower
200 Madison Avenue S.E.
Seattle, Washington 98104

May 13, 1992

Patrick Wright
Morris Wright, P.C.
125 Alaskan Way
Seattle, Washington 98110

Dear Mr. Wright:

It was a pleasure talking with you on the telephone today. I have informed my clients that there will be no lawsuit regarding Ms. Lambert, and they were greatly relieved. I am very sorry your involvement with this matter took such an unpleasant turn. By the time you unwind the mess, it will have cost your firm a bundle in time, energy and expense. The temptation for me to say I told you so is almost overpowering, and it is a tribute to my character that I am able to refrain from doing so. I agree that it's a shame that Ms. Lambert appears to have unwisely spent her daughter's money. But who knows, maybe she'll turn out to be a whiz at running the bowling alley and be able to make restitution to Stephanie someday.

One thing my 40 years as an attorney has taught me is that not everyone who walks in your door is a client, and not every set of circumstances that occur in life give rise to a cause of action. Sometimes the best business you do is the business you let walk out your door. There is already enough misfortune and misery in the world without lawyers adding to it by convincing every person with a hard luck story that they have a cause of action against someone.

I could go on, but it's Wednesday, and I take my granddaughter to the Zoo on Wednesdays to see them feed the elephants. Quite an entertaining sight, actually. The world will somehow manage to get by without me even if my weekly Zoo runs cause me to come up short in my quest for 2,000 billable hours this year (just as I have for the past 40 years in a row). But, my granddaughter Lauren can't get to the Zoo without me. So, I'm off to the Zoo. See you in the monkey cages.

Best wishes,

Travis J. Johnson
Attorney at Law

L.A.W. BBS: RECENT IMPROVEMENTS

Haven't been on L.A.W. BBS lately, or haven't been on at all? Recent improvements make it worthwhile to log on—again or for the first time.

New Municipal Codes: Tacoma, SeaTac and King County have been added, and the Des Moines Municipal Code has been revised. These join the previously available codes of Bainbridge Island, Chelan, Redmond, and Pierce County, and the Bellevue Land Use Code.

New Tax Rulings: 1993 updates to the Excise Tax Bulletins and Washington Tax Decisions databases were posted in September, as were the 1993 Session Laws relating to state taxation. (Session Laws are in database TAX_SL93.) Department of Revenue's emergency regulations are expected shortly, if not already posted.

All of these databases are searchable, so you can find the section you need even if you don't know the exact citation. Other databases still available on L.A.W. BBS include Washington case law, court rules, administrative and WSBA rulings, corporations, contractor licenses, Washington lawyers, and WSBA Community Law Deskbook.

L.A.W. BBS also has many files and forms that you can review or copy to your computer - they could save you hours of research and drafting. If any of the following areas interest you, have a look for yourself (recent additions within each category are too numerous to mention separately): corporations & partnerships; domestic relations; landlord-tenant; collections; security interests & liens; wills and probate; criminal & traffic; bankruptcy; personal injury; maritime; commercial transactions; real estate transactions; international law; environmental law; tax law; and miscellaneous.

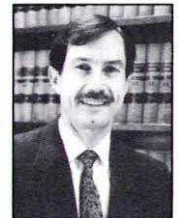
Tempted but don't know how to gain access? No problem. Just check the yellow pages in the back of the 1992 WSBA *Resources*, or call the WSBA at (206) 727-8276.

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Trial Practice Rules

Bryant v. Palmer Coking Coal Co.,
67 Wn. App. 176 (1992)

Motions to Vacate

Vaughn v. Chung,
119 Wn.2d 273 (1992)

Service of Process

Romjue v. Fairchild,
60 Wn. App. 278 (1991)

Insurance

Tissell v. Liberty Mutual,
115 Wn.2d 107 (1990)

Child Support

Marriage of Sacco,
114 Wn.2d 1 (1990)

Business Torts

Hoffer v. State,
110 Wn.2d 415 (1988)

Workmen's Compensation

Dennis v. Dept. of Labor and Ind.,
109 Wn.2d 467 (1987)

Real Estate

American Federal Savings v. McCaffery,
107 Wn.2d 181 (1986)

Child Custody

In Re Dombrowski,
41 Wn. App. 753 (1985)

Personal Injury

Jensen v. Beard, 40 Wn. App. 1 (1985)

Property Division

In Re Marriage of Lindsey,
101 Wn.2d 299 (1984)

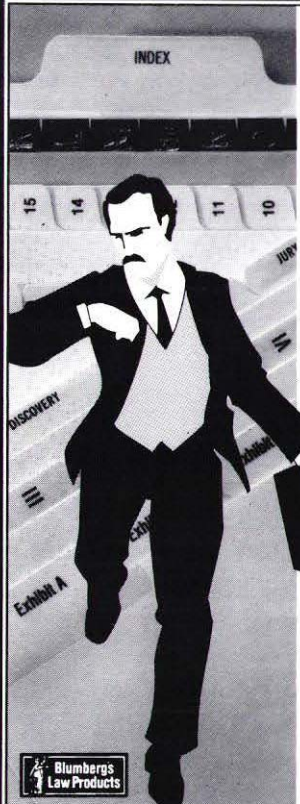
Product Liability

Gammon v. Clark Equipment Co.,
38 Wn. App. 274 (1984)

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AMCB



by Lindsay T. Thompson, *Editor*, Bar News

Ellensburg, October 22, 1993

Present: The president and Board of Governors, save Governor Dan Hannula, absent due to illness. **Also present:** Jonathan Bowman, Lesbian & Gay Legal Society of Puget Sound; Barbara Clark, Legal Foundation of Washington; Rosemary Daszkiewicz, WSBA Young Lawyers Division; Mary Jo Diaz, Government Lawyers Bar Association; Zanetta Fontes, King County Bar Association; Dennis P. Harwick, WSBA executive director; Scott A.W. Johnson, King County Young Lawyers Division; Jim Kaufman, Washington Association of Prosecuting Attorneys; Rick Kimbrough, WSBA General Practice Section; Nancy Krier, Washington Women Lawyers; Alva Long, South King County Bar Association; Judge Ray E. Munson, Court of Appeals, Division III; Narda Pierce, Solicitor General of Washington; Ed Shea, Washington ABA delegation; Johnette Sullivan, Administrative Law Judges' Association; Lindsay T. Thompson, *Bar News* editor; and Robert D. Welden, WSBA general counsel.

Preliminaries: The Board began the meeting in executive session. Among the topics they discussed were the monthly report on bar disciplinary matters; the newly received report of the ABA team that studied the WSBA disciplinary system; an application for Rule 9 Supervisor status; a recap of 1993 Client's Security Program payments; a report from the Attorneys' Professional Liability Committee; and the minutes of their last executive session, September 9, 1993.

Announcements from the Back Benches: President Paul Stritmatter gavelled his first meeting to order at 9:20 a.m. and called on Alva Long, who, some months after he announced he would be their liaison when his term on the Board ended in September, nagged the South King County Bar Association into electing him. Long announced that his Annual Referendum, this year on his motion to limit the expenditure of WSBA dues to the funding of mandatory programs (plus the nonmandatory Lawyers' Assistance Program, and, apparently, any other program that can barter its way into a definition of mandatoriness, as he explained the resolution to me the evening of October 21), defeated at the September Annual Meeting, would be deferred a year. "We're waiting to see what the Board governance review committee comes up with, and what the [pending member surveys on bar issues] say," Long told the Board. The resolution will have to be reintroduced and acted upon at the 1994 Annual Meeting before it can be offered as a referendum.

President's Report: The president told the Board that, since taking office in September, he has been on the road visiting bar groups. He's been to meetings of the South King County Bar Association, the Lincoln County Bar Association and the Skagit County Bar Association. As the Board meets around the state, he is setting up meetings with lawyers in the area; he reported that on October 21 he spent two hours with nine lawyers in Wenatchee, drawn from firms, government and legal services. He spoke to the Superior Court Judges' Association conference.

Stritmatter told the Board he's completed making appointments to WSBA committees—including some 500 additional places created by the new open-membership policy—and sent a letter to each one, asking for a commitment to serve actively. Twenty-six have declined appointment, and over 300 have accepted, with acceptances coming in at 20 a day. He and members of the Board of Governors had an October meeting with heads of WSBA sections and committees; and he spent a day with WSBA legislative liaison John Fattorini to go over issues likely to arise in the Legislature come January.

Stritmatter also proposed that the Board add an hour to its agenda each meeting for some "brainstorming" about ideas, something reserved in the past for the Board's annual one-day planning retreat. They agreed to try it out at the next meeting.

Executive Director's Report: Dennis Harwick told the Board summer bar exam results contradict the recent *Washington Journal* headline that the pass rate had dipped to 73.8 percent. "It's right in the middle of the traditional range for the summer exam," he remarked, noting that range has run from a high of 77.9 percent in 1991 to a low of 61.6 percent in 1989. The average pass rate since 1987 is 70.47 percent. Nine hundred sixty-two people took the exam; 710 will be sworn in. General applicants (74.4 percent) beat out attorney applicants (71.5 percent).

Harwick gave the Board preliminary 1992-1993 year-end results on attendance and income for the CLE Department. Attendance was up 33 percent over the previous year and gross revenues were up nearly 50 percent. Board Phrasemaker Vickie Norris expressed pleasure at learning the CLE program had gone from being "a sucking vortex" to a "spewing fountain of funds." Prominent past critics of CLE in the audience, faced with news CLE has done what they demanded it do, were silent.

In other matters, Harwick told the Board the Lawyers' Campaign for Hunger Relief had netted over \$1,500 in contributions and pledges from its booth at the 1993 Annual Meeting, and that the Supreme Court had waived the seven-years-in-practice-in-Washington-to-be-on-the-Disciplinary-Board-rule and appointed Ted Spearman of Seattle, who has a distinguished record as a lawyer over many years but has been in this state fewer than the required number. Merit won out.

Time Flies When They're Not in Session: The Board heard a telephone report from WSBA legislative liaison John Fattorini in Olympia. Among matters being considered by the WSBA Legislative Committee, he reported are bills to make "hefty changes" to Chapter 11 of the probate code, including technical amendments to correct legislative errata and bring state law into conformity with the federal tax code; and a report from the Corrections Committee on proposed changes in criminal sentencing from the Sentencing Guidelines Commission. He predicted not much is likely to happen on the corrections front in the coming session, heading as it is into a fall election season for the Honorables. He predicted another effort to enact the limited liability company act, now law in 17 states, but held up here last session.

by the trial lawyers, who get cross-eyed at the oxymoronic notion of limited liability.

Fattorini added that in addition to the new committee appointments policy's expansion of the Legislative Committee, he had sent notice of the Committee's meeting plans to the King, Tacoma-Pierce and Spokane County Bar Associations; the Asian, Hispanic and Government Lawyers Bar Associations; the Lesbian & Gay Legal Society of Puget Sound; Loren Miller Bar Association; Washington Women Lawyers; Washington Associations of Criminal Defense Lawyers and Prosecuting Attorneys; the District and Municipal Court and Superior Court Judges' Associations, Evergreen Legal Services and the WSBA Young Lawyers Division.

Our Own Continental Congress: The president announced he has appointed 20 people to a task force to study and make recommendations on the governance of the Bar Association. Governor Wayne Blair and Moni Lewis of Evergreen Legal Services in Yakima will co-chair the Task Force; Members will be Greg Dallaire, Seattle; Lori Molander, Bellevue; C.C. Bridgewater, Kelso; Ruth W. McIntyre, a lay member from Seattle; Brian Stiles, Sedro Woolley; Gordon McHenry, Seattle; Joe Erickson, Kennewick; Delaine Swenson, Walla Walla; Lisa Lowe, Vancouver; Rick Ockerman, Kirkland; John McKay, Seattle; Pat LePley, Bellevue; Joe Nappi, Spokane; Jim Handmacher, Federal Way; Mary Fairhurst, Olympia; Sally Savage, Pullman; Ada Shen-Jaffe, Seattle; Fred Montoya, Spokane; Evelyn Fielding, Olympia; and a superior court judge to be designated. The Board approved the list and \$10,000 from contingency funds to pay for the task force's work. Co-chair Blair, having promised that for once, this WSBA task force will communicate and coordinate with the *Bar News*, coverage of its work in progress should make it possible to inform and involve the membership in an important undertaking.

If You Haven't Got Anything Good To Say About Any-

thing, Come Over and Sit By Me: One of the more interesting examples of the limits of free thought among the politically correct in the bar has been an idea—floated by the president in a recent speech, and picked up by Governor Vickie Norris—that the bar should look at the idea of “articling”: the term applied to a post-graduate skills-training requirement of Canadian, English and practically all the other lawyers in the English-speaking world. Governor Mike Larson, who from his position on the Board writes a newspaper column in the *Washington Journal*, fired off a pre-emptive screed there and sent out copies of it to all the Board. Young Lawyers Division president Rosemary Daszkiewicz passed out copies of a “Memorandum on Articling” and a whiny article from the UPS School of Law newspaper, “The Latest in Requirements for the Bar: Indentured Servitude” based, it said, “on a letter distributed by Rosemary Daszkiewicz, president-elect of the Young Lawyers Division of the Washington State Bar Association, and an interview with past graduates from Canada who participated in the British Columbia articling system. Individuals interested in voicing concern,” it concluded, “should reply to Ms. Daszkiewicz before the Board of Governors’ meeting is held on October 22-23, 1993. . .”

Up stepped Governor Vickie Norris, who offered a motion to create a task force to look into articling as part of a consideration of whether lawyers admitted to practice in Washington are really equipped with the practical skills they need to make a competent go of it.

Larson criticized the motion as a stigmatization of young lawyers and questioned whether there is even a problem that needs addressing. “I’m sure there are some incompetent lawyers. The thing that scares me is that this proposal is too inclusive.” He preferred putting bar resources into other problems.

Daszkiewicz said the proper focus of any study should be

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February 1, 1994.

the recent ABA report on legal education. She said the Young Lawyers Division was "extremely prejudiced" against articling. Skills training and mentoring programs are another matter, she added. No one said anything about the voluntary mentoring program WSBA sponsored a couple of years ago that almost no one signed up for.

King County Young Lawyers Division representative Scott Johnson said articling is an interesting idea but probably not appropriate to think about. He wondered if young lawyers would just go to some other state, take the bar exam, spend some time in practice and then come back to Washington, take another bar exam, and gain entry around the articling requirement because they aren't new lawyers any more.

Governor Wayne Blair thought a look needed to be taken at a wider array of issues touching on attorney competence. The president mentioned that when he ran the idea past the judges' conference, they were very interested in it, and when he talked about it with the Skagit County Bar Association, people asked why there wasn't a skills-training question—drafting a motion or something—on the bar exam. The meeting he had at Wenatchee generated some interest in improving mentoring for young lawyers, and the dean of the UPS law school wrote Stritmatter to "express concerns" about such ideas, the president concluded.

Norris agreed with Blair. "We need to look at all possible solutions, even those that are unpalatable to interest groups," and made her motion to create the task force. Governor Steve Toole wondered if the task force would, or should,

study mentoring and articling programs. "Anything that will enhance practical skills should be looked at," Norris replied. Governor Joe Nappi said he thought he'd support the motion but wanted to emphasize the concerns Governor Larson had expressed. Rosemary Daszkiewicz then asked why a lay person was proposed for membership on the task force. "Why not a law student? They have an incredibly vested interest."

Governor Joe Nappi, a former bar examiner, complained about the sudden focus on the bar exam, which, he said, runs just fine by itself and didn't need studying any more. Governor Jan Peterson said a lay person on the task force made a lot of sense: "This is a consumer issue."

Governor Mike Larson then took another run at the issue, expressing concern that the bar can't afford another task force just now. Legals P.S. representative Jonathan Bowman told the Board he was a new lawyer and had found practical training in the law school curriculum good as far as it went, but limited, and that taking what was available foreclosed other course choices.

Legal Foundation director Barbara Clark thought she recalled the Board having looked at all of this before, and wondered how this fit into the bar's priorities, given that resources are slim. She thought a person from legal services needed to be on the task force, to study it from the angle of access to justice. Zanetta Fontes urged adoption of the motion, saying this sort of study is needed.

Bar counsel Bob Welden noted that lots of lawyers take

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the bar exam from other states, so looking at what Washington law schools do for practical skills training isn't the end of the analysis, and that some of the topics discussed as grist for the task force mill had been studied piecemeal before, but never as a whole. He noted that UW law students recently adopted the requirement that they have to study ethics, but deferred its application until three years hence, when they would all be gone.

Joe Nappi suggested putting the whole topic off a month, to see what the law school deans think of the idea. I jumped in with a general denunciation of the notion that an idea could be so horrible it shouldn't even be talked about, and said it was all interest-group politics. Young Lawyers, for example, are already admitted, so all this froth about it being a slap in the face to them is silly. A general pause ensued of the sort that usually follows my remarks ("If he's so damned smart, why isn't he on the Board?"), and then the discussion picked up where I interrupted it and moved on.

By now so many people had weighed in with things they wanted looked at or not looked at, several Board members expressed some confusion over just what the task force would be mandated to accomplish. Governor Mary Fairhurst cut the knot, proposing that the task force first study and report on whether there is a problem with skills training and practical competence among new lawyers serious enough to warrant further study on how to fix the problem. Governor Toole suggested an early break for lunch to rework the language of the motion, and that's what the Board did.

After lunch with members of the Kittitas County Bar Association, the Board returned to the task at hand and passed a resolution creating a task force to see if persons seeking admission to the bar are adequately prepared with the necessary practical skills for the practice of law in this state. It would have up to 14 members, and report on its six months after the president appoints, and the Board approves, the membership.

The Board approved the motion 9-1-1. Larson opposed and Governor West Campbell, who arrived late because of a trial, abstained because he had not heard the whole debate.

Should You Have to Be a Lawyer to Be in the Bar Association? A recurring topic of conversation in Board circles is whether WSBA membership should be expanded to include paralegals. At the Board's request, general counsel Robert Welden produced a memo considering the question in terms of whether it is even possible under the State Bar Act, RCW Chapter 2.48. He concluded nonlawyers can be only honorary members, and they cannot serve on committees, boards, task forces and the like. After some discussion, the Board referred the question to its long-range planning committee, the Young Lawyers Division and the Legal Assistants' Committee for consideration and advice.

Court Rules: The Never-ending Tale: Members of the Board took up complaints from the plaintiffs' and defense bar about the Court of Appeals, Division I's decision in *Piaya v. Durham Construction Co.*, 69 Wn.App. 578 (April 26, 1993), which muddies the water as to who gets paid how much for testifying about what. After a good bit of tooth-baring and snarling about whether doctors feed on, or are victims of, the system, the Board somewhat grudgingly re-

ferred to the Court Rules and Procedures Committee the question whether the *Piaya* case requires amendment of CR 26(d).

Finances: Turning A Corner? Dennis Harwick gave the Board a rough cut of the year-end 1992-1993 financial statements for the Association. With revenues up and costs cut, the Board may be able to restore the Association's depleted rainy-day reserves with a contribution of up to \$547,000. It'll probably be less, Harwick said, as there are bills still outstanding that will have to be paid; but all in all, the year turned out well.

How did it happen? Adjusted for cost-of-living-increases, 1992-1993 expenses were slightly lower than 1991-1992, while revenues went up. More members meant \$120,000 more in fee revenue. Higher bar exam fees and user fees for law clerks, letters of good standing and the like are starting to produce the goods: \$90,000 in additional revenue last year. *Bar News* ad revenues were up \$60,000. CLE revenue was up nearly \$500,000 from last year. Final, unaudited figures will be available at the next meeting.

Well, Governor Jim Handmacher said, if things are this good, let's appropriate another \$24,000 to the Client's Security Program to pay some claims in full that we previously prorated. After some discussion yea and nay, Governor Mary Fairhurst argued persuasively that it is not the right time. "People will look at this and say, 'See, the first time they get some money back in their pockets, they just can't resist spending it.'" The motion failed, 4-6.

Wrap-up in Ellensburg: In other action, the Board approved a request from the Public Procurement and Private Construction Law Section to raise section dues \$3 in 1994-1995, and they requested some clarification of some bylaw amendments requested by the Indian Law Section. They received a report from WSBA general counsel Robert Welden, which found that to the extent WSBA bylaws follow the provisions of the state Open Meeting Act, WSBA and Board of Governors committees should be open and minutes of work kept. They heard a report on the status of Supreme Court consideration of a rule amendment to include trust accounts of Limited Practice Officers in title companies to IOLTA provisions. The Board appointed Governor Vickie Norris co-chair, with attorney Tom Russell, of a coming BoGo retreat to examine the CLE operations of the bar. The Young Lawyers Division CLE chair was added as a participant in the event. The Board appointed Jim Doerty of Seattle to the JUVIS Advisory Committee, a state body that works with the computerization of juvenile-offender information; deferred until the December meeting deciding the appointment of a successor to Governor Dan Hannula, who resigned from the State Commission on Judicial Conduct when elected to the Board (interested persons should contact their governors, listed in the front of this magazine); and appointed Kevin Kelly of Seattle to the board of the Legal Foundation of Washington, to serve from January 1, 1994 to December 31, 1995.

The Board also reviewed a preliminary analysis of the telephone member survey done by the Gilmore Research Group, but they deferred any serious discussion until the final analysis and the additional mailed-in results from the



Bar News pullout of the survey are in. They discussed whether to try to get involved, at the last minute, in efforts to stop the adoption of amendments to the Federal Rules of Civil Procedure which will, if they go into effect, significantly change discovery in civil cases. They decided not to. They also elected Governor Mike Larson treasurer of the Association for 1993-1994.

The Supreme Court sent back several previously Board-recommended court rule amendments for further study or clarification; the Board sent them back to the Court Rules Committee.

Coming meetings: December 3-4, 1993 in Seattle; January 7-8, 1994 in Olympia; February 11-12 in Tacoma; March 25-26 in Bellingham; April 8-9 in Seattle; May 6-7 in Spokane; June 17-18 in Vancouver; July 29-30 in Ocean Shores; and September 8 in Seattle.

Notices of Interest to Bar Members

WSBA Disciplinary Notices:

Reprimanded: Des Moines lawyer **John C. O'Rourke** (WSBA #3068, admitted 1957) has been ordered reprimanded. The discipline is based on his failure to diligently pursue a client matter which he had undertaken, his failure to maintain an advance fee deposit in a trust account, his failure to provide the client with a timely accounting for the client's fee deposit and his failure to respond to his client's inquiries as to the status of their matter [October 7, 1993]

Reprimanded: Olympia lawyer **Thomas E. Doyle** (WSBA #10634, admitted 1980) has been ordered reprimanded pursuant to a stipulation for discipline, approved by a Review Committee on October 8, 1993. The discipline is based upon his commission of theft in the third degree (shoplifting), a misdemeanor.

Suspended: Everett attorney **Allison J. Lyon** (WSBA #8484, admitted 1978) was ordered suspended by the Washington Supreme Court effective Octo-

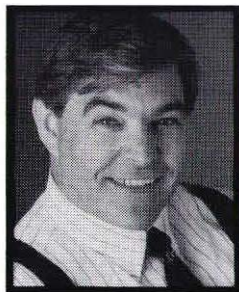
ber 8, 1993 for a period of ninety (90) days with reinstatement conditioned upon Disciplinary Counsel's notification to the Supreme Court that Lyon had cooperated in all pending investigations. Lyon's disciplinary suspension resulted from his neglect of three clients' legal matters, including an appellate case in which he failed to appear for a client's oral argument, failed to advise that client of an adverse decision in her case, failed to promptly execute a Notice of Withdrawal when requested, and failed to return the client's records when requested. In an unrelated criminal matter, Mr. Lyon failed to promptly account for and deliver client funds on completion of his representation. In a third matter, he failed to proceed with post-conviction relief as requested by the client. Lyon's discipline also resulted from his repeated non-cooperation with the State Bar investigation of the grievances. Upon reinstatement, Lyons is subject to two years' probation, which requires monitoring of his practice to ensure

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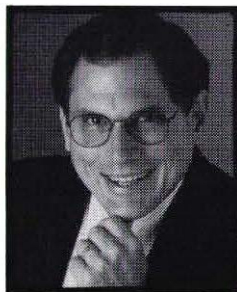
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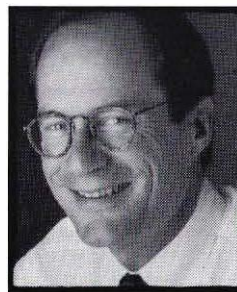
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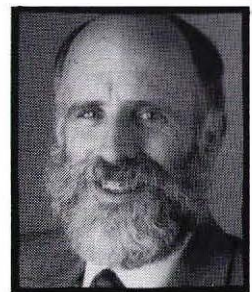
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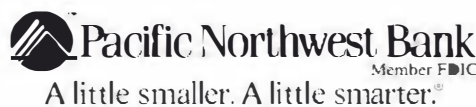
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his communication with clients and a regular review of pending matters to ensure timely legal services to clients. [October 18, 1993]

Disbarred: Tacoma lawyer **Kenneth Jennings** (WSBA #15794, admitted 1986), was ordered disbarred from the practice of law in the State of Washington by Supreme Court Order dated September 21, 1993, effective immediately. The discipline is based upon Jennings' representing a client in a dissolution action and accepting a retainer fee for that representation while suspended from the practice of law in the state of Washington; knowingly representing himself to the Court and to others as a practicing lawyer while he was suspended from practicing law in this state; being convicted of unlawful imprisonment, a Class C felony; and failing to cooperate with the Washington State Bar Association's investigation of these matters. [October 1, 1993]

Disbarred: Pursuant to a Stipulation to Discipline, Lacey lawyer **Michael E. Rowswell** (WSBA #9541, admitted 1948) was disbarred by Order of Supreme Court entered August 31, 1993. Rowswell's stipulation recited that if a hearing were held regarding his professional conduct, the evidence would establish he had not maintained client funds in excess of \$10,000, but less than \$20,000 in trust during 1992, and had knowingly created a shortage of client funds in his trust account. He further stipulated that he had neglected several clients' legal matters and had not responded to their respective legal needs. [September 17, 1993]

Commission on Judicial Conduct Notices

Order of Reprimand: The Commission on Judicial Conduct and Judge **Kenneth R. Eiesland**, Clark County District Court, have entered into a stipulation to a reprimand for violation of the Code of Judicial Conduct. The parties agreed that from as early as February 1, 1990 and continuing through at least March 21, 1992, Eiesland used the telephone in his court chambers to make numerous long-distance calls to Portland, Oregon on what he considered to be a toll-free line for personal matters not related to the business of the court. In addition, he made

at least one call to a location other than Portland on a personal matter not related to the business of the court. Clark County paid for the calls; thereafter, he reimbursed the county for the calls.

Eiesland also asked court personnel to prepare personal correspondence, using county equipment and supplies, on three to five occasions over the eight years he has served as a district court judge. Court personnel complied with each request.

Examples of the improper use of court equipment and staff include the preparation at public expense of private correspondence and minutes of homeowners' association meeting minutes. The Commission sent Eiesland a Statement of Allegations concerning this conduct on February 10, 1993. Thereafter, he reimbursed Clark County for the use of staff and equipment.

The Commission noted that Eiesland has received no prior discipline for any violation of the Code of Judicial Conduct; that he cooperated with the Commission by promptly filing his response to the Statement of Allegations; and that he indicated his telephone calls were few in number and that he thought the calls he made to Portland, Oregon were free.

The Commission and Eiesland stipu-

lated that his conduct was a violation of Canons 1, 2(A) and 3(B) of the Code of Judicial Conduct. The Commission was represented by Curtis M. Janhunen, and Eiesland by Steven W. Thayer. *In Re the Matter of Hon. Kenneth R. Eiesland, Judge, Clark County District Court*, Case No. 92-1270-F-41 [October 1, 1993].

Order of Admonishment: The Commission on Judicial Conduct and Judge Michael F. Moynihan, Whatcom County Superior Court, have entered into a stipulation to a reprimand for violation of the Code of Judicial Conduct. The parties stipulated that on December 9, 1992, Moynihan wrote a letter and affidavit on behalf of a child living in the Moynihan family home, a minor of no relation, addressed to the American Schools of Correspondence, Chicago, Illinois. He represented himself as a superior court judge in both the letter and affidavit; both of which were titled, "In the Superior Court of the State of Washington for Whatcom County." The letterhead exhibited Moynihan's official address and telephone number.

Ethics Advisory Opinion No. 86-15 (October 17, 1986) advised that it would not be proper for a judge to use official stationery for personal business matters since it could give the

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appearance of exploiting the judicial position, or to use official stationery to correspond with another court on behalf of a family member as it could lend the prestige of the office to advance the private interests of the family member. It would be proper for a judge to have personal stationery which bears the title "judge" so long as it could not be confused with the judge's official stationery and is not used to exploit the judicial office. The personal stationery should omit the judge's official address.

In the letter of December 9, 1992 the judge provided the minor with legal representation. On June 8, 1993 Moynihan was sent a verified statement and Statement of Allegations, and advised that the Commission was pursuing initial proceedings.

On June 1, 1990, Moynihan was admonished by the Commission for an *ex parte* communication. See CJC No. 89-865-F-18.

The parties agreed that Moynihan's conduct violated Canons 1, 2(B) and 5(F) of the Code of Judicial Conduct.

The Commission was represented by its counsel, David Akana. Moynihan represented himself. *In Re the matter of Hon. Michael F. Moynihan, Judge, Whatcom County Superior Court*, No. 92-1427-F-40 [October 1, 1993].

Public Notices

Formal Opinion No. 58 Withdrawn:

The Board of Governors has withdrawn Formal Opinion No. 58 (1959) as it is inconsistent with RPC 1.6(c).

Formal Opinion No. 190 (1993)

Compliance With RPC 1.10 in re: Apportionment of Fees and Notice Requirement to Former Client

The purpose of this opinion is to clarify the meaning of the requirement in RPC 1.10(b) that a disqualified lawyer who is screened from participation in a matter is "apportioned no part of the fee therefrom."

Issues

A. Recent inquiries from members of the Bar have asked whether RPC 1.10(b) requires a disqualified lawyer who is screened from a particular matter pursuant to RPC 1.10 to exclude from the lawyer's compensation the "gross fee" received by the law firm in the screened matter, or only the portion of the fee from the screened matter that represents the firm's "profits."

B. Inquiries have also been made by members of the Bar as to whether compliance with the notice requirement of RPC 1.10(b)(3) violates the prohibition of communicating with a person represented by counsel contained in

RPC 4.2.

Discussion

A. Interpretation of RPC 1.10(b).

The underlying rationale of RPC 1.10(b) is to allow law firms and their non-screened lawyers to fully participate in a matter in which the law firm would otherwise be disqualified and to fully participate in the fee from such matter. The rule prohibits *only* the screened lawyer's compensation being directly tied to the fee from the screened matter. The comments to ABA Model Rule 1.11(a), which prohibits a former government lawyer from receiving any "part of the fee" from the screened matter, supports this rationale:

[The rule] does not prohibit a lawyer from receiving a salary or partnership share established by prior independent agreement. [The rule] prohibit[s] *directly* relating the attorney's compensation to the fee in the matter in which the lawyer is disqualified. (emphasis added.)

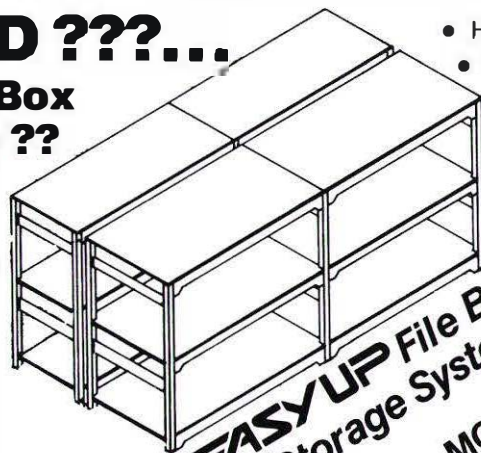
See, *Manning v. Fort Deposit Bank*, 619 F. Supp. 1327 (WD TN 1985) (wherein the court stated that one of the elements to be considered in evaluating whether the screening procedure is adequate is whether the disqualified lawyer "shares in firm earnings" from the screened matter.)

It is the Rules of Professional Conduct Committee's opinion that RPC 1.10(b) allows the law firm to pay its costs, expenses, and overhead (including attorneys' salaries) from the fee received from the screened matter, despite any indirect benefit that a disqualified lawyer may receive from such payments. The disqualified lawyer would be barred from participating in the distribution of the "profit" portion of the fee from the screened matter.

Because there almost as many financial arrangements among law firms as there are law firms, a rule of reason and good faith in calculating the screened lawyer's compensation must be applied by the law firm, consistent with the purpose and spirit of RPC 1.10(b). As the comments to ABA Model Rule 1.11(a) indicate, the pur-

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pose of the rule is to prohibit law firms from including any part of the fee from the screened lawyer in determining the amount of the disqualified lawyer's compensation, whether such compensation is structured as disguised salary, bonus, or other arrangement.

1. Disqualified Equity-holding Lawyers. Regarding a personally disqualified partner, shareholder, or other equity-holding lawyer in a law firm, it is the Committee's opinion that the requirement in RPC 1.10(b) that a disqualified lawyer be "apportioned no part of the fee" from the screened matter means the "earnings" or "profits" received from such matter. The Committee is also of the opinion that a personally disqualified lawyer should not receive less compensation than would otherwise be paid to the disqualified lawyer solely because the law firm takes on the representation of a screened matter.

To illustrate the foregoing, assume that a law firm's fee from a screened matter is \$10,000. Assume further that approximately 30% of the fee represents wages actually paid to firm employees or expenses actually incurred on the matter; another 30% represents a fair apportionment of the firm's overhead; and the remaining 40% represents earnings or profit on the screened matter. Lastly, assume that the screened partner is normally entitled to receive 20% of firm profits. Thus, the screened lawyer's share of the firm's profits would be reduced by 20% of the firm's profit of \$4,000 from the screened matter (i.e., 40% of \$10,000) or \$800.

2. Associates or Other Non-equity Lawyers. In the case of a disqualified associate or other non-equity holding lawyer in the law firm, it is the Committee's opinion that such lawyer may be paid a regular salary, but may not share in any bonus, distribution, or other additional compensation that is directly based upon the fee received from the matter in which the lawyer is screened. A disqualified associate or other non-equity holding lawyer in a law firm may receive a bonus, distribution, or other benefit that is based upon a prior independent agreement or other previously established criteria by

the law firm for determining compensation for similarly situated lawyers, provided such compensation does not include any part of the profit from the screened matter.

3. Accounting Obligations. It is the Committee's opinion that the law firm must put into place such accounting practices and procedures that are necessary to insure that the profits received from a screened matter are identified in such a manner that the personally disqualified lawyer does not share in it. The burden of proof of compliance is upon the law firm.

It is also the Committee's opinion that the determination of the profit portion of the fees received by the law firm from a screened matter may be made at the end of the law firm's accounting period. The law firm is not required by RPC 1.10(b) to segregate or otherwise place the "profit" portion of the screened fee into trust, a reserve account, or other such arrangement.

B. Notice Requirements.

It is the Committee's opinion that the notice requirement of RPC 1.10(b)

does not violate RPC 4.2 because (1) the notice to be provided to the former client is not the "subject matter of the representation," and (2) the notice is "authorized by law" within the meaning of RPC 4.2 because the Rules of Professional Conduct require it.

Notice of Relocation

The Washington Department of Ecology moved in October. Its new address is 300 Desmond Drive, Lacey. Its (800) telephone number and mailing address remain the same. Its new telephone numbers are (206) 407-6000; TDD (206) 407-6006; fax (206) 407-6035.

Contests and Awards

West Publishing Co.: Nominations for the 1994 *West Excellence in Private Law Librarianship Award*, the 1994 *West Excellence in Academic Law Librarianship Award*, and the 1994 *West Excellence in Government Law Librarianship Award* are now being accepted by West Publishing Co. Each award, which may include a \$10,000 prize, will be presented to a law librar-

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ABA CLE: The American Law Institute-American Bar Association Committee on Continuing Professional Education (ALI-ABA), announces its fifth annual CLE Essay Contest, open to all law students. The first prize is an award of \$1,000 and round trip travel and accommodations to the ALI-ABA meeting held in conjunction with the ABA Annual Meeting in New Orleans. The winning essay will be published in ALI-ABA's *CLE Journal and Register*. Essays should address the question, "In an Age of Expanding Communications Technology, Should the

Restrictions Some MCLE Jurisdictions Place on In-Home or In-House CLE Remain?" Essays must be postmarked by April 15, 1993. For more information, contact Mark Carroll, ALI-ABA, 4025 Chestnut Street, Philadelphia, PA 19104-3099.

In re RCW 19.52.120(1): Legal Interest Rate ("Usury Rate"):

The average coupon equivalent yield from the first auction of 26-week treasury bills in November 1993 is 3.35%. **The maximum allowable interest permissible for December 1993 is therefore 12%.**

Compilations of the average coupon equivalent yields from past auctions of 26-week treasury bills, and past maximum interest rates, appear in the *Bar News*, October 1987, for 1982-84; in June 1989, page 37, for 1984-85; in June 1992, for 1985-87; and in June 1993, for 1987-93.

In re: Filing fee increases for Chapter 7, 11, and 13 cases, effective November 26, 1993:

On October 27, 1993, President Clinton signed into law the 1994 appropriations act for the departments of Commerce, Justice, and State, the Judiciary, and related agencies, P.L. 103-121. The new law contains changes in the filing fees for chapter 7, 11 and 13 cases as follows:

Chapters 7 and 13 - The clerk's office will collect a \$130 filing fee (28 U.S.C. § 1930(a)(1) plus a \$30 administrative fee for a total of \$160. This is a fee increase of \$10.

Chapter 11 - The clerk's office will collect an \$800 filing fee for a chapter 11 case that does not concern a railroad (28 U.S.C. § 1930(a)(3)). This is a fee increase of \$200.

A copy of the complete text of 28 U.S.C. § 1930, as amended is available in the office of the bankruptcy clerk.

Free directory of state tax officials:

Tax practitioners and corporate tax professionals who deal with state income taxes and sales taxes can now get a free copy of the "Directory of State Tax Officials," which covers revenue departments in all 50 states and the District of Columbia and lists key personnel, mailing addresses, telephone and fax numbers.

Also included for all states are schedules of corporate filing deadlines and due dates for extension requests and estimate payments and a five-page glossary of state tax terms and definitions. A free copy is available upon request on company letterhead and with a self-addressed envelope with 52¢ postage. Send to State Taxation Institute, Attn: Leslie Roberts, P.O. Box 81143, Atlanta, GA 30366.

Annual Bar Dues/Licensing Deadline:

The annual license fee (bar dues) for all members of the Washington State Bar Association is due on or before February 1, 1994. License fee forms will be mailed to all members in December. If you have not received your form by the end of December, please contact the WSBA Licensing Department (206-727-8210). The license form will also include the annual trust account declaration, as well as the CLE Certification form for those required to report CLE credits this year (those active members admitted 1976 through 1983).

NOTICE TO MEMBERS OF THE WASHINGTON STATE BAR ASSOCIATION

Washington State Bar Association Seeks Applications and Nominations for President of WSBA

The WSBA Presidential Search Committee is seeking applications, resumés and nominations for president of the association.

The Board of Governors elects a president on a rotating geographical basis. This year's selection will come from a list of candidates from King County.

The association encourages WSBA members to send applications, resumés or nominations for qualified candidates from King County. The deadline for such submissions is December 31, 1993. Interviews may be conducted on Saturday, January 15, 1994. Write to: Jan Eric Peterson, Chair, Presidential Search Committee, Washington State Bar Association, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599.

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 National Business Institute, Inc. (715) 835-7909
 National Institute of Trial Advocacy (NITA) (800) 225-6482
 Spokane County Bar Association (Spokane BA) (509) 623-2665
 Tacoma-Pierce County Bar Association (TPCBA) (206) 383-3432
 University of Washington School of Law (UW CLE) (206) 543-0059
 Washington Assn of Prosecuting Attorneys (WAPA) (206) 753-2175
 Washington State Bar Association (WSBA CLE) (206) 727-8202
 Washington State Trial Lawyers Ass'n (WSTLA) (206) 464-1011, (800) 732-9251

Note: Telephone numbers for regular regional CLE providers and other groups presenting events are listed above. Individual contacts are listed with the specific entry.

December 1993

2 Seattle: The Chaos of Divorce Without Marriage, Part Deux. *Sponsored by KCBA.*

2-3 Seattle: Effective Strategies for Dealing with Sensitive Areas. *Sponsored by CLE International.*

3 SeaTac: First Annual Real Estate Institute. *Sponsored by KCBA.*

3 Seattle: History of the Constitution. *Sponsored by UW CLE.*

3 Seattle: Real Estate Institute. *Sponsored by KCBA.*

3 Olympia: Damage Strategies in Commercial & Tort Litigation. *Sponsored by WSBA CLE.*

3 Idaho Falls: Annual Law Update. Also presented December 10 in Boise and December 17 in Lewiston. *Sponsored by Idaho Law Foundation.*

3 Seattle: How to Draft Wills & Other Estate Planning Documents. *Sponsored by WSBA CLE.*

3-4 Seattle: WSBA Board of Governors meeting.

4 Seattle: Federal Appellate Prac-

tice Institute. *Sponsored by UW CLE.*

4 Seattle: Current Issues Affecting Ports and Waterways. *Sponsored by UW CLE.*

4 Tacoma: Annual Year-End Potpourri CLE. *Sponsored by TPCBA.*

6 Bellevue: Business and Consumer Tort Litigation. *Sponsored by KCBA.*

7 Seattle: Basics of U.S. Customs Law. *Sponsored by KCBA.*

7 Seattle: Incorporating Small Businesses. *Sponsored by UW CLE.*

9 Seattle: Drafting Seller Financing Documents. *Sponsored by KCBA.*

9 Seattle: Scientists in the Courtroom: The Role of the Expert Witness. Sponsored by UW Schools of Law and Public Health. *For information: (206) 543-1069.*

10 Bellevue: Damage Strategies in Commercial & Tort Litigation. *Sponsored by WSBA CLE..*

10 Seattle: A Day on Trial. *Sponsored by KCBA.*

10 Spokane: How to Draft Wills & Other Estate Planning Documents. *Sponsored by WSBA CLE..*

10 Seattle: Altered States: Using

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Psychological Evidence for the Defense. *Sponsored by* Washington Association of Criminal Defense Lawyers. *For information:* (206) 623-1302.

11 Seattle: American College of Trial Lawyers' Greatest Hits: Big Cases, Big Lessons. *Sponsored by* UW CLE.

13 Seattle: Rainmaking in a Time of Economic Drought. *Sponsored by* KCBA.

14 Seattle: Buying & Selling Privately Held Businesses. *Sponsored by*

KCBA.

15 Deadline for copy for February 1994 *Bar News*.

15 Seattle: Drafting Real Estate Forms. *Sponsored by* KCBA.

16 Seattle: Breaking the Logjam—Moving Beyond Impasse. *Sponsored by* Settlement Now. *For information:* (206) 545-5165.

16 Seattle & Spokane: Collection of Judgments. *Sponsored by* WSBA CLE.

16 Seattle: Recent Developments in

Labor Laws. *Sponsored by* KCBA.

16 Bellevue: CLE Encore Performance. *Sponsored by* KCBA.

17 Bellevue: Basic Bankruptcy. *Sponsored by* KCBA.

17 Seattle: Why Choose Federal Court? *Sponsored by* WSBA CLE.

17 Seattle: Basic Bankruptcy. *Sponsored by* KCBA.

17 Seattle: Negotiations: Winning Without Trial. *Sponsored by* WSTLA.

18 Seattle: Law, Literature & Film. *Sponsored by* UW CLE.

19 Seattle: Effective Motion Practice. *Sponsored by* Lorman Education Services, (715) 833-3940.

23 Seattle/Spokane: Best of CLE 1993. *Sponsored by* WSBA CLE.

30 Distribution Law Advocacy. *Sponsored by* WSBA CLE.

January 1994

5 Boise: Last Gasp CLE (video). *Sponsored by* Idaho Law Foundation.

6 Seattle: Women in Litigation. *Sponsored by* WSTLA.

7 Spokane: How to Probate. *Sponsored by* WSBA CLE.

7 Seattle: Appellate Advocacy. *Sponsored by* WSBA CLE.

7 Seattle: Children and the Law. *Sponsored by* KCBA.

7-8 Olympia: WSBA Board of Governors meeting.

15 Deadline for March 1994 *Bar News*.

20 Spokane: 16th Annual Insurance Law Seminar. *Sponsored by* WSTLA.

21 Seattle: The New Federal Tax Act. *Sponsored by* WSBA CLE.

21 Seattle: 16th Annual Insurance Law Seminar. *Sponsored by* WSTLA.

21 Seattle: How to Probate. *Sponsored by* WSBA CLE.

21-23 Everett: Defending the Justice System. *Sponsored by* Washington Association of Legal Secretaries. *For information:* Patty Young, (206) 258-3511.

28 Seattle: Corporate Counsel Institute. *Sponsored by* WSBA CLE.

28 Seattle: Annual Law Office Management Institute & Expo. *Sponsored by* WSBA CLE.

28 Seattle: Discovery Plans. *Sponsored by* WSBA CLE.

February 1994

10-12 Coeur d'Alene Resort: Family Law Council of Community Property States Seminar. *Sponsored by*

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Referrals

Idaho Law Foundation.

11-12 McCall, Idaho: Winter Bankruptcy Seminar. *Sponsored by Idaho Law Foundation.*

11-12 Tacoma: WSBA Board of Governors meeting.

15 Deadline for copy for April 1994 *Bar News.*

March 1994

3-5 Sun Valley: Corporate Counsel Workshop. *Sponsored by Idaho Law Foundation.*

11-12 Sun Valley: Workers' Compensation Seminar. *Sponsored by Idaho Law Foundation.*

12 Chehalis: Computers in the Courtroom; Writing Your Procedures Manual; Receptionist—Jack of all Trades; Citations—Update & Review; Complications in Bankruptcy; Misdemeanor Criminal Law. *Sponsored by Washington Association of Legal Secretaries. For information: Holly Underwood (509) 662-3685.*

15 Deadline for May 1994 *Bar News.*

20 Caen, Normandy, France: International Lawyers Defense Competition. *Sponsored by the Bar Association of Caen. For information: Jean-Marie Girault, tel: 31-06-06-44; fax 31-06-06-70; telex 772.372.*

25 Boise: Idaho Law Review. *Sponsored by Idaho Law Foundation.*

25-26 Bellingham: WSBA Board of Governors meeting.

26 SeaTac: WALs seminars. See March 12 Chehalis listings, above.

April 1994

8-9 Seattle: WSBA Board of Governors meeting.

15 Deadline for June 1994 *Bar News.*

22-23 Boise: Idaho Practical Skills Course. *Sponsored by Idaho Law Foundation.*

May 1994

6 Idaho Falls: Elder Law. *Sponsored by Idaho Law Foundation.*

6-7 Spokane: WSBA Board of Governors meeting.

13 Coeur d'Alene: Elder Law. *Sponsored by Idaho Law Foundation.*

15 Deadline for July 1994 *Bar News.*

20 Boise: Elder Law. *Sponsored by*

Idaho Law Foundation.

June 1994

15 Deadline for August 1994 *Bar News.*

17-18 Vancouver, WA: WSBA Board of Governors meeting.

17-18 Boise: Fundamentals of Estate Planning. *Sponsored by Idaho Law Foundation.*

July 1994

13-15 Sun Valley: Annual Meeting of the Idaho State Bar.

15 Deadline for September 1994 *Bar News.*

29-30 Ocean Shores: WSBA Board of Governors meeting.

August 1994

15 Deadline for the October 1994 *Bar News.*

16 Coeur d'Alene: Criminal Jury Instructions. *Sponsored by Idaho Law Foundation.*

September 1994

8 Seattle: WSBA Board of Governors meeting.

9 Seattle: WSBA Annual Meeting.

9 Boise: Criminal Jury Instructions. *Sponsored by Idaho Law Foundation.*

15 Deadline for November 1994 *Bar News.*

16-17 Sun Valley: Advanced Estate Planning. *Sponsored by Idaho Bar Foundation.*

23-24 Boise: Practical Skills. *Sponsored by Idaho Law Foundation.*

30 Idaho Falls: Criminal Jury Instructions. *Sponsored by Idaho Law Foundation.*

October 1994

6-8 Coeur d'Alene Resort: Northwest Bankruptcy Conference. *Sponsored by Idaho Law Foundation.*

14 Idaho Falls: Law Office Management/Ethics. *Sponsored by Idaho Law Foundation.*

15 Deadline for December, 1995 *Bar News.*

21 Coeur d'Alene: Law Office Management/Ethics. *Sponsored by Idaho Law Foundation.*

28 Boise: Law Office Management/Ethics. *Sponsored by Idaho Law Foundation.*

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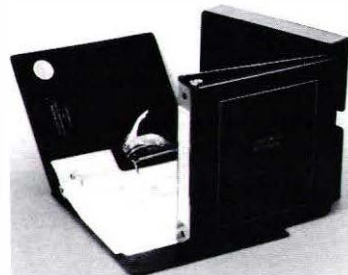
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Effective (date to be set), the Washington State Bar Association shall not use the revenue it derives from mandatory dues assessments except to administer and carry out functions necessary to regulate the practice of law in Washington State, to-wit, admissions (including the bar examination), licensing, discipline, monitoring compliance with continuing legal education and trust account regulations, and administering the lawyers' assistance program.

The resolution would limit the use of mandatory fees to regulatory purposes. It follows the example of the District of Columbia Bar, whose membership restricted the use and amount of mandatory dues during the early 1980's. See, 431 A.2d 521 (D.C. App. 1981). The resolution's objective is to meet the bar's public responsibilities from its mandatory fees, while encouraging the development of a voluntary bar, supported by voluntary dues, fees, and contributions, which would be responsible to and representative of the state's lawyers.

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RETIREMENT PLANNING FOR THE SMALL PRACTICE, PART 2

NONQUALIFIED PLANS

by Kent Tarpley and Lynda Schuler

If you would like to put away a little more for retirement for yourself or your key employees, a nonqualified deferred-compensation plan takes over where other qualified pension, profit-sharing and 401(k) plans end.

The benefits of a deferred-compensation plan for small practices include:

- You select who participates in the plan.
- You gain a competitive edge to attract and keep key personnel.
- Your business gains a tax deduction when benefits are paid.
- Your business recovers benefit costs.

Deferred-compensation plans benefit you and your key employees with:

- Increased retirement income
- More employment security
- Tax savings through deferred current income
- Possibility for both death and disability benefits

Two popular types of deferred compensation plans are supplemental executive retirement plans (SERP) and voluntary deferred-compensation plans.

A *Supplemental Executive Retirement Plan* provides retirement income without reducing the employee's earnings, since the employer pays all the costs. Selecting the proper funding vehicle enables the employer to recover all costs through a cash accumulation program designed into the SERP.

The retirement benefit distribution can be contingent on the employee's remaining with your firm until normal retirement age.

A *Voluntary Deferred Compensation Plan* gives your key employees the opportunity to defer current earnings and income taxes. In return, the employee receives income payments at retirement.

Money used to fund a deferred-compensation plan is not currently deductible to your business, but future benefits are deductible as compensation when paid out. This can occur in a variety of ways. Employees generally

pay income taxes on benefits as they receive them.

Since a deferred compensation plan is a nonqualified plan, IRS approval is not required. There is generally no minimum or maximum level of benefits as long as total benefits are "reasonable" compensation.

Deferred-compensation plans may include early retirement discount schedules and vesting schedules for employees who leave your practice before retirement. You may also structure your plan as "golden handcuffs," tying your most valuable employees to your practice.

Many businesses find deferred-compensation plans an attractive substitute or supplement to IRS-qualified retirement plans.

Annuities: Attractive Opportunities

If you're interested in long-term financial planning, consider an annuity. Annuities provide a great deal of flexibility in building tax-deferred retirement income or meeting other long-term financial goals.

Annuities resemble certificates of deposit (CDs), but they have several important differences.

Unlike CDs, annuities have the added advantage of earning tax-deferred interest. That is, the institution pays the interest that accumulates on a tax-deferred basis and you don't pay income tax on your money until you receive it. Depending on how you withdraw the money, the tax savings could be significant.

Annuities are either *qualified* or *nonqualified*. Qualified annuities are purchased with pre-tax money. They generally are used to fund Individual Retirement Annuities (IRAs) SEPs, 401(K)s or profit-sharing and may be tax deductible under certain eligibility guidelines. The amount you use to purchase the annuity (the principal) and the interest you earn both accumulate, tax-deferred. However, any money you withdraw or receive is subject to income taxes.

Nonqualified annuities are purchased with money that you have already paid taxes on, and interest earned is not taxed until you receive it.

Fixed annuities are similar to CDs because they guarantee a set interest rate for a specified time. Most companies offer you a choice of interest rate guarantee periods.

Annuities may be structured in a variety of ways. A Single Premium Deferred Annuity is purchased with one lump sum, usually at least \$5,000. A Flexible Premium Deferred Annuity is just that—flexible. This type of annuity gives you freedom to deposit money at your own pace.

Most annuity contracts are long-term plans designed to provide you with retirement income. To encourage you to let your money grow, most contracts charge surrender fees if you cancel your contract or withdraw a large portion. Typical surrender charges decline to zero percent over a period of time.

When you're ready to receive your retirement income, you will have the option of "annuitizing" your contract. Annuitizing means that you choose to receive your money in a series of equal payments—monthly, quarterly, semi-annually, or annually. They can be structured to last for your lifetime or for the combination of two lives—those of you and your spouse—or for a specific period of time. Some annuities even allow you to systematically withdraw money without having to annuitize the contract.

Although annuities offer enticing tax benefits, they make better long-term investments than short-term tax shelters. If you make a withdrawal from your annuity before to age 59-1/2, you may pay a 10 percent IRS penalty in addition to regular income taxes.

Unlike life insurance policies, annuities are designed to provide income for retirement rather than passing money on to your estate. Annuities can be structured to provide a death benefit to your beneficiary without going through probate, but your beneficiaries will be required to pay federal

income taxes on the earnings.

One of the most positive employee relations steps you can take is to have a meeting where everyone participates in the discussion of what retirement options are available. This will do two things: (1) it shows employees their opinions and input count and (2) eliminates the need for you to "sell" the plan to them.

No matter how large or small your contribution, a retirement plan is a long-term commitment which you must initiate now. Every plan, qualified or nonqualified, is unique. Each depends on the particular situation of a firm and its employees.

Kent Tarpley and Lynda Schuler, CLU, ChFC, are associates of Financial Strategies Group in Seattle.

For the first part of this article, see "Retirement Planning for the Small Practice, Part I: Qualified Plans," November 1993 Bar News, page 36.

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by Jeff Tolman

December 24, 4 p.m. The minutes seemed like hours. "Won't this afternoon ever end?" Karol asked. In an hour her kids would be returned from being with their Dad, her ex-husband Larry, to start their Christmas with her. She could hardly wait.

The days had flown by far too quickly. Bill could hardly believe his time with his daughter Mary was over. "Bye, honey. I love you!" he yelled as his child waved out the window of his ex-wife's car. "B . . . y . . . e . . ." What now? He and Mary had had their best week together since his divorce. But his visitation ended, as it always did, and he was alone. What now? In contemplating the divorce he had considered the big things. Would his life be better without the stresses of his marriage? Could he afford the divorce? What kind of visitation would he likely get? He had not thought through the details—like how it would feel to wave good bye to his child and not see her for two weeks. Should he have tried harder to keep the marriage together? Right now he would say "yes," no doubt. "Guess I'll go to the office," Bill said to himself. "There will be plenty to keep me busy after a week off."

December 24, 5:45 p.m. Karol was crying uncontrollably, part out of anger, part out of sheer sadness. "I am not bringing them back," Larry had said. "Their stepmother and I will keep them for a couple of extra days. I know that your lawyer is out of town and the courts are closed. There is nothing you can do. Merry Christmas." Karol wondered if it was a worse sin to consider killing someone on Christmas Eve than a non-holy day. Then she realized that she didn't care, and the tears began again in full force. "Get control," she thought. "Do something! But what?" Suddenly, in desperation, she pulled out the phone book and began calling every law office in the yellow pages.

Most of the files and notes on Bill's desk had to wait. Either contact with his client or opposing counsel was

needed. Certainly he wasn't going to try that today. At least they can have a decent holiday, he thought, as he began dictation on the files he had ignored while he and Mary were together. Suddenly, and surprisingly, the phone rang. "The Law Offices of Bill Zlatos," he answered.

"You are in!" a trembling voice said. "Will you help me *please*?"

His first reaction was to flee. "I'm sorry Ma'am, the office is closed until Monday. Could you please call back then?"

"PLEASE," she muttered, "it's my children . . . and Christmas." "I'm sorry, but . . ."

"He won't bring them back . . . and I don't want to be without them on Christmas. Please help me."

"Join the club," he thought. But something, maybe the season, or his understanding of how devastating Christmas is without the kids, or simply his respect for the law, stopped him.

"Come over to my office, and I'll see what I can do," he said and gave her directions.

December 24, 9:00 p.m. The past three hours were a blur. Karol and he had met, and immediately he knew he must help her. She was one of those people who always played fair. She had not bad-mouthed the system, her attorney or even her ex-husband as they put together the documents. She simply wanted her kids for Christmas. The rules were set in the Divorce Decree and had to be abided by . . . by everyone involved. Together they had put together documents for a court order. She gave him the information. He typed the forms. She made copies and coffee. The senior county judge had been understanding when Bill called. She had been through this before and was happy to sign the order returning the children. The judge had even called the clerk to make certified copies and a deputy to serve the order and remove the children peaceably. As they left the judge's home with the deputy, Bill and Karol each apologized to her family for the intrusion.

"You need your kids," the judge's eight-year-old daughter had said, "That's what Christmas is all about."

GIFT

December 24, 9:30 p.m. The expected anger was there: the anticipated violence was not. The two deputies had served the order and were now escorting the children into Bill's car.

"I'll see you in court Monday, you

Karol's ex-husband was yelling, more angry that his gambit hadn't worked than that the kids would be with her. When the kids were in his car and Bill's car had left Larry's driveway, the tears Karol had been holding back came rolling out.

The children tried to comfort their Mom by saying, "We're glad to be with you, Mom," but the tears just kept coming.

Bill broke the awkward moment.

"Kids, I'm Bill Zlatos. I've been helping your Mom get you back. As you can see, she is awfully glad to see you. I'll drive you home now. Your Mom can get her car at my office tomorrow."

December 24, 10:05 p.m. His car pulled up to his new client's modest home. Modest, yes, and festive. A snowman dressed as Santa Claus stood in the yard. Christmas lights surrounded each window. The Christmas tree lined with balls and popcorn showed through the frosty front window. "A real Christmas home," he thought, "like I used to have."

"Here you go," he said as the kids exited the car. "Have a wonderful Christmas with your Mom."

"Can you come in Mr. Zlatos?" the seven year old boy asked. "No, I can't. I have to go home."

"Do you have kids?"

"Yes, but they are with their Mom. She and I are divorced."

"Then you don't have to run home," Karol said. "Can't you come in for a minute? God knows you deserve a cup of coffee."

He started to say "no," but the Christmas house overcame his urge. Even five minutes of Christmas spirit was better than none. "OK, but only for a minute."

December 24, 11:00 p.m. "Good bye Sarah and Maci and Bud. Have a Merry Christmas," Bill said as he and Karol exited the house.

It had been fun. While Karol prepared dinner he had spent time with the kids. Playing Christmas charades with the kids had made everyone relax and laugh. Talking with the kids about Christmas and Santa Claus and his children had made him realize how much he missed the moments of Christmas. Mary's bright eyes and anticipation. Wrapping and hiding the presents from an ever-searching child. Buying a gift with Mary for her Mom. These moments burned at his heart. Put together now they might balance off his ex's shortcomings.

At the time, though, he had been overcome by the individualistic clichés: "I've got to be me." "Be all that you can be."

Now, he would trade the whole lot for a chance to reconsider his decision, for a chance to play Christmas charades with Mary and her Mom again. Karol and her kids were a nice family, and he had felt very comfortable having such a late dinner with them. They had made the time go fast and kept his mind off his loneliness. Now, as the children got ready for bed, it was time to leave.

"Thank you hardly seems enough," Karol said. "Obviously you can imagine the difference you have made in my Christmas. If there were some way I could give your kids to you, believe me, I would. You are welcome to come over in the morning. The kids would like it. So would I. We'll open presents about nine."

"Thanks, but don't count on me. If I do come, I'll call you first. I'm glad it all worked out," he said and drove off. In his rearview mirror the Christmas house shone behind an exhausted but happy Mom.

December 24, 11:59 p.m. He walked into his house and saw the answering machine light blinking. The first message was from his daughter—a loud "MERRY CHRISTMAS, DAD!" The second a similar message to him from Karol's kids. As Bill removed his coat, he realized the gift he had given, and received, that night. He had given a Mom the kids she had a right to on this special night, and they had given him a little family Christmas. It was an odd gift exchange, much like O'Henry's

Gift of the Magi. It was a good gift, though, too, for everyone. An envelope addressed to "Bill" fell from his coat pocket. Karol must have written it while he and the children were playing charades and placed it there when she retrieved his coat from the closet. He opened it.

"Bill: I can't thank you enough—for giving up your Christmas Eve for me, a stranger. For giving up your time without knowing if you would ever get a dime, just because you felt it was the right thing to do. Enclosed is what I can pay and hope is fair. You have done so much for me. Thanks again. Karol."

Two additional items were in the envelope: a check for \$750 and a letter to Bill's kids, summarizing what he had done for her family and telling them how lucky they were to have a dad like Bill. As Bill lay in bed he realized what a wonderful Christmas Eve it had been for him, and how more than ever before the spirit of Christmas burned in him. "Maybe I will go see Karol and the kids. Or maybe I'll see if I can drop by Mary's Mom's home," he thought as he dozed off, dreaming of his favorite Christmases past with Mary and her Mom.

Children's Catalog



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Children's Home Society
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by David M. Sandhaus

I recently wrote a review for the *Bar News* about *WordPerfect 6.0 for DOS*. That article generated some inquiries about some performance issues I noted in my review. Here is my response to

those inquiries.

Requires Hard Disk

WordPerfect 6.0 for DOS, unlike previous versions of *WordPerfect*, requires a hard-disk system. *WordPerfect 6.0*

will not run on a two-floppy system.

Incompatible File Structure

WordPerfect files and prior versions are not compatible with the 6.0. Therefore, 6.0 has a file conversion facility that updates all your older *WordPerfect* files to 6.0 format. As I mentioned in my article, *WordPerfect 6.0* took more than four minutes to convert 13-page, graphic-loaded 5.1 file. That is unacceptable, but it does not typify normal legal word processing situations.

A typical 13-page legal document without graphics would take approximately 30 seconds to convert to a 6.0 document on a 486, 66 MHz computer with 16MB of RAM. I believe that to be an acceptable level of performance, since documents are normally converted on the fly (that is, as needed), rather than an entire office's documents being converted in one sitting.

Macro Conversion Issues

WordPerfect 6.0 includes a macro conversion program that converts some 5.1 macros to 6.0. You access the macro conversion program by typing "MCV.EXE" while at the DOS prompt in your \WP60 directory. The conversion program then prompts the user for the input filename of the macro to be converted and its output file name (the name of the new 6.0 macro). The conversion program displays a message as it converts the 5.1 macro to 6.0.

WordPerfect claims that 90 percent of your *WordPerfect 5.1* macros can be converted to 6.0. Ten percent of your macros will never convert. *WordPerfect* says that all *WordPerfect 6.0* DOS macros run in *WordPerfect For Windows* (that's a claim I would want to test before relying on it). However, *WordPerfect For Windows* has 800 more commands in its macro language than *WordPerfect For DOS 6.0*. In addition, *WordPerfect* is getting ready to release a 2,000-page manual on creating macros in *WordPerfect 6.0* for DOS.


The reason that *WordPerfect 5.1* macros don't all convert to 6.0 is that

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UPDATE

WordPerfect macros are keystroke compliant, while 6.0 are "tokenized" commands. Keystroke macros operate by recording every keystroke required to get a result. For example, a macro in 5.1 to justify left would memorize the keystrokes [SHIFT-F8], 1, 3, 1.

However, *WordPerfect 6.0* and *WordPerfect For Windows* use tokenized macros i.e. macros that only record the results. Therefore, a macro to left justify a document would forgo all the keystrokes and just apply the appropriate formatting code to the document. This is the way virtually all Windows and graphical programs create macros because it is impossible to map mouse movements or other keystrokes.

WordPerfect for Windows or Word for Windows?

I received the following inquiry from David E. Vis, an attorney in Bellingham: I am trying to decide whether I should be using WordPerfect for Windows or Word for Windows. My primary areas of practice include bankruptcy and domestic law. Could you explain advantages and disadvantages for each?

The short answer is that a consensus of word processing reviewers has ranked *Word For Windows* as a better word processor than *WordPerfect For Windows*. However, by the time you read this article, *WordPerfect 6.0 for Windows* and *Word 6.0 for Windows* will be on the market and may change this equation.

Generally, *Word For Windows* is considered a better implementation of Windows, interacts better with other Windows applications, and is better at long-document production. *WordPerfect For Windows* is better at file management. Therefore, if your firm does a great deal of appellate work, *Word* might be the product for assembling complex briefs. Or, you may like *WordPerfect* if finding lost files and correctly tracking documents by information, such as who received "blind copies," is important to you.

However, there are factors to con-

sider other than which word processor is reviewed as the highest when you are buying software. For example, with which word processing software will it be easier to find knowledgeable operators when hiring a new secretary or getting temporary help? For which

word processing program is it more likely that legal specific applications will be written? I think, right now, the answer is *WordPerfect*, since somewhere between 80-90 percent of all law offices currently use some version of it.

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30-DAY MONEY BACK GUARANTEE

The Difference Between Riding the Wave or Floundering in the Surf: TAX PLANNING IN THE WAKE OF THE

by **Joe F. Yonek**
and **Robert K. Buchanan, Jr.**

The tax code changes inflicted by the Revenue Reconciliation Act of 1993¹ ("RRA 1993" or "Act") may not be as dramatic as the title suggests, but there are pitfalls and opportunities arising from the new law of which practitioners should be aware. This article focuses on strategies to help alleviate clients' tax burdens for 1993, and it offers general suggestions regarding tax refund opportunities and prospective tax savings stemming from the Act. While the article focuses predominantly on tax strategies for individuals, it also touches briefly on changes affecting business.

One of the most-talked-about aspects of the new tax law is the introduction of markedly higher marginal income tax rates. (See Table A for a comparison between the new 1993 rates and those of 1992.) To add insult to injury, Congress made the tax rate increases retroactive to January 1, 1993.

The news is not all bad, however. Though Congress has wielded a big stick with this year's increases, it has also provided salve for the inflicted wounds. Taxpayers may elect to pay the tax attributable to the RRA 1993 tax increase in three yearly installments, the first of which is due no later than the filing of their 1993 tax returns. The final two installments will not accrue interest, and taxpayers should take advantage of this interest-free loan. While income tax rates were also increased for estates and trusts (see Table B), the installment allowance is not available to them.

Higher tax rates on ordinary income will surely spark new interest in tax-deferral mechanisms, and the utilization of the comparatively low capital gains tax rate. The deferral of income (and thus, tax) into years beyond 1993 may be triggered by the desire of those taxpayers teetering on the edge of a higher income tax rate margin to remain subject to a lower rate, or by a desire to buy one additional tax year to develop a tax-minimizing strategy.

If income deferral is the focus of one's strategy, there are many approaches to be considered. Because, in most cases, individual taxpayers declare income only when it is received, a relatively simple approach is to negotiate with an employer to obtain a deferral of the payment of compensation until 1994. This can also be an effective way to defer bonuses otherwise paid in December.

However, one should not systematically defer income into 1994 without first considering the following two changes made by the Act affecting individual taxpayers beginning in 1994. First, 85 percent of Social Security benefits of higher-income taxpayers will be subject to tax in 1994, as opposed to a maximum of only 50 percent be-

ing subject to tax in 1993. Since the 85 percent inclusion kicks in only when certain income thresholds are reached, it may be desirable to accelerate income into 1993 to reduce 1994 income levels.

The second change to consider relates to the Medicare hospital insurance tax. Currently, the tax imposed on both employers and employees is 1.45 percent (2.9 percent on self-employed taxpayers) on income up to \$135,000. The Act eliminates this dollar cap after 1993.

Either of these changes may shift a taxpayer's focus to income acceleration. Adoption of an acceleration or deferral approach is a function of a client's individual circumstance, so the advice of a tax professional should be

TABLE A: INDIVIDUAL INCOME TAX RATES
Tax Rates on Taxable Income Under RRA 1993

Tax Rate	Single	Married Filing Jtly.
15%	0 to \$22,100	0 to \$36,900
28%	Over \$22,100 up to \$53,500	Over \$36,900 up to \$89,150
31%	Over \$53,500 up to \$115,000	Over \$89,150 up to \$140,000
36%	Over \$115,000 up to \$250,000	Over \$140,000 up to \$250,000
39.6%	Over \$250,000	Over \$250,000

Tax Rates on Taxable Income For Tax Years Beginning in 1992

Tax Rate	Single	Married Filing Jtly.
15%	0 to \$21,450	0 to \$35,800
28%	Over \$21,450 up to \$51,900	Over \$35,800 up to \$86,500
31%	Over \$51,900	Over \$86,500

Tax Rates on Taxable Income Under RRA 1993

Tax Rate	Married Filing Sptly.	Heads of Households
15%	0 to \$18,450	0 to \$29,600
28%	Over \$18,450 up to \$44,575	Over \$29,600 up to \$76,400
31%	Over \$44,575 up to \$70,000	Over \$76,400 up to \$127,500
36%	Over \$70,000 up to \$125,000	Over \$127,500 up to \$250,000
39.6%	Over \$125,000	Over \$250,000

Tax Rates on Taxable Income For Tax Years Beginning in 1992

Tax Rate	Married Filing Sptly.	Heads of Households
15%	0 to \$17,900	0 to \$28,750
28%	Over \$17,900 up to \$43,250	Over \$28,750 up to \$74,150
31%	Over \$43,250	Over \$74,150

REVENUE RECONCILIATION ACT OF 1993

sought before any particular strategy is implemented.

Depending on the flexibility of any qualified retirement plan in which clients may be participating, taxpayers should give serious thought to maximizing employee contributions to such tax-deferred vehicles. If a retirement plan contribution is not an option, consideration should be given to a deductible (or nondeductible) contribution to an IRA. Even nondeductible contributions provide the major benefit of tax-deferred income and appreciation attributable to IRA investments.

There is a new, lower cap (reduced from \$235,840 for plan year 1993 to \$150,000 after 1993) on the amount of compensation which may be taken into account for qualified retirement plan purposes. Owners of closely held business with income in excess of the new limitation should consider maximizing contributions for plan year 1993. It may be time for clients with a similar wage scenario but without a retirement plan to consider implementing one before year's end.

Other tax reduction tips not specifically related to RRA 1993 include the following:

- Pay deductible expenses with a credit card by year's end. Even though the credit card bill won't be received or paid until 1994, taxpayers may typically take the deduction when charged.

- Delay the disposition of appreciated stocks, bonds, or other capital assets until next year.

- Transfer income-producing assets to children whose income may be taxed at lower rates. The effectiveness of this tip depends, in part, upon the applicability of the gift tax, the "kiddie" tax, and the manner in which the assets are held.

While the top individual income tax rate now sits at 39.6%, the capital gains tax rate remains capped at 28%, reinstating the kind of tax rate differential (i.e., 11.6%), which existed before the Tax Reform Act of 1986, brought the ordinary income and capital gains tax rates into near parity. Such a differential puts a premium on tax strategies

aimed at converting ordinary income into capital gains.

One way to take advantage of the favorable capital gains rate is for clients to shift their investment focus from

income-producing assets to appreciating assets which will yield capital gains upon disposition. This may include choosing raw land with appreciation potential over income-producing real

TABLE B: ESTATE AND TRUST INCOME TAX RATES

Tax Rates on Estate and Trust Taxable Income Under RRA 1993

<i>Tax Rate</i>	<i>Taxable Income</i>
15%	0 to \$1,500
28%	Over \$1,500 up to \$3,500
31%	Over \$3,500 up to \$5,500
36%	Over \$5,500 up to \$7,500
39.6%	Over \$7,500

Tax Rates on Estate and Trust Taxable Income
For Tax Years Beginning in 1992

<i>Tax Rate</i>	<i>Taxable Income</i>
15%	0 to \$3,600
28%	Over \$3,600 up to \$10,900
31%	Over \$10,900

TABLE C: CORPORATE INCOME TAX RATES

Tax Rates on Corporate Taxable Income Under RRA 1993

<i>Tax Rate</i>	<i>Corporate Income</i>
15%	0 to \$50,000
25%	Over \$50,000 up to \$75,000
34%	Over \$75,000 up to \$100,000
39%	Over \$100,000 up to \$335,000
34%	Over \$335,000 up to \$10,000,000
35%	Over \$10,000,000 up to \$15,000,000
38%	Over \$15,000,000 up to \$18,333,333
35%	Over \$18,333,333

Tax Rates on Corporate Taxable Income
For Tax Years Beginning in 1992

<i>Tax Rate</i>	<i>Corporate Income</i>
15%	0 to \$50,000
25%	Over \$50,000 up to \$75,000
34%	Over \$75,000 up to \$100,000
39%	Over \$100,000 up to \$335,000
34%	Over \$335,000

property or opting for growth stocks, which typically appreciate but pay no dividends, over income-producing securities, such as bonds and high divi-

dend stocks.

Clients who have a more distant investment horizon should consider one of the true tax carrots in the new law.

Under RRA 1993, taxpayers are allowed to exclude 50% of the capital gain resulting from the disposition of stock in certain qualifying small-business corporations. Due to the survival of the 28 percent ceiling on the capital gains tax rate, the effect is an extremely favorable 14 percent tax rate. Of course, certain restrictions apply.


The exclusion is available only to individual taxpayers who purchased the stock in an original issue after August 10, 1993 and hold the stock for a minimum of five years. Among several other restrictions, the target corporation must be a C corporation engaged in the active conduct of a trade or business (i.e., not passive investment vehicles). Furthermore, gain eligible for the exclusion is limited to the greater of \$10 million or 10 times the taxpayer's basis in the stock.

Another provision of the Act allows for an election to defer the tax on capital gains derived from the disposition of certain publicly traded securities if the proceeds are rolled over into certain stock or partnership interests.

Taxes may be completely avoided with the purchase of tax-exempt bonds. Though the yields on such investments are generally lower than taxable investments, they are more appealing in a climate of higher tax rates.

Fortunately, congressional fixation on retroactivity in the Act was not limited solely to provisions detrimental to the taxpayer. A number of tax changes applied retroactively provide tax refund opportunities for taxpayers. The 10% luxury tax on boats, aircraft, jewelry and furs is repealed for sales after 1992. Therefore, 1993 purchasers of such property should request the refund from sellers of property to whom the luxury tax was paid. The low-income housing tax credit, which had previously expired on June 30, 1992, was made permanent by the Act. This not only provides a benefit this year, but also provides a refund opportunity for a portion of 1992 taxes paid.

Employees who included amounts in income from employer-provided educational assistance in the second half of 1992 may now be entitled to a refund. The \$5,250 annual exclusion from income for such expenditures, which expired on June 30, 1992, was



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retroactively reinstated. An additional refund opportunity applies to self-employed individuals paying health insurance premiums. The law allowing the self-employed to deduct 25 percent of health insurance premiums expired on June 30, 1992. However, the Act resurrected this write-off, effective July 1, 1992, providing yet another 1992 tax refund opportunity.

Businesses, too, were affected under the new law. Though the Act imposed higher tax rates on corporate income (see Table C), it offset the bad news for corporations by allowing the amortization of the cost of intangible assets, such as goodwill and covenants not to compete, over a 15-year period and allowing an upfront \$17,500 deduction for certain tangible assets placed in service after 1992. For intangible assets, the Act's transitional rules allow an election to amortize the cost of such assets acquired as far back as July 26, 1991.

Congress also took steps, in RRA 1993, which not only raise revenue but helped stem the tide of public perception that corporate America is provided too many tax perks. These steps include restricting to \$1 million the deductible compensation paid to corporate higher-ups, reducing from 80% to 50% the deductible portion of meal and entertainment expenses, and eliminating the deduction for club dues.

Though the 1993 Act did not bring the same kind of sweeping changes to the tax code as did the Tax Reform Act of 1986, there are still several provisions which warrant a change in path here and there. Due to the dramatic difference, now, between the top income and capital gains tax rates, wealthy clients in these brackets may actually be forging new trails in efforts to skirt the impact of higher tax rates. This skirting is certain to take the form of a restructuring of both investment and compensation strategies. One thing is for sure—the renewed differential which breathes life into many tax code provisions which lay dormant will make life interesting again for tax professionals.

The above discussion is general in nature, and it merely scratches the surface of the new Act. Readers should not rely solely on this discussion, as


some of the strategies may not be appropriate for all taxpayers. The authors recommend that taxpayers seek the advice of a tax professional before implementing any given strategy.

¹Passed as Title XIII of the Omnibus Budget Reconciliation Act of 1993, P.L. 103-66.

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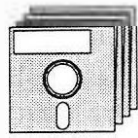


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LAP'S ANNUAL REPORT: SIXTH YEAR 1992-1993

During the sunset review process, LAP was recognized for its outstanding service by several Governors and more WSBA members than any other discretionary program. Recognition of LAP's effectiveness followed during

the King County Bar Association leadership's review of discretionary programming.

The percentage of LAP's self-referred clients continues to remain at approximately 85 percent. They are

motivated to make changes that advance swift recoveries. Factors believed to be responsible for LAP's attracting such a high percentage of self-referred cases include: 1) Supreme Court rules shield client and referrer

LAP STATISTICAL SUMMARY FOR PERIOD BEGINNING AUGUST 1, 1993 AND ENDING JULY 31, 1993 SIXTH YEAR OF LAP OPERATIONS

New Cases:		Self-referred	Third-party	Total	%
Opened not in treatment*	year 5	0	24	24	13%
	year 6	0	11	11	7%
Opened & in treatment	year 5	151	16	167	87%
	year 6	129	12	141	93%
Total cases year 5		151	40	191	100%
year 6		129	23	152	100%
Case Diagnoses:		Year 5	%	Year 6	%
Mental problems (depression, age-related problems, relational, etc.)		160	84%	129	85%
	Alcohol	26	14%	21	14%
	Drugs	5	3%	2	1%
	TOTAL	191	100%	152	100%
Types of Consultation or Treatment:		Year 5	%	Year 6	%
	Client Treatment*	1,715	47%	1,445	47%
	Client Attendance at Group Treatment**	978	27%	956	31%
	Peer Counselor Consultation	320	9%	248	8%
	Third-party Consultation	82	2%	40	1%
	Professional Consultation	381	11%	324	10%
	Career Information & Job Search Support***	147	4%	74	2%
	Total contacts with clients or those involved with cases	3,623	100%	3,087	100%

*Treatment or being treated includes either: evaluation, ongoing peer counseling/staff treatment and follow-up; or evaluation, referral and follow-up.

** LAP staff and contracted staff ran seven support/psychotherapy groups with a maximum number of eight participants for each group.

*** Send packets of materials (Career Resources, Sidebar Newsletter) & Job Search Support Group run by peer counselor.

confidences so that no future prejudice will result from seeking LAP services. 2) Approximately 150 ready-and-willing peer counselors, many of whom have suffered from the same types of distress symptoms, work statewide in assisting with the evaluation and counseling of impaired lawyers. 3) There is a widespread perception that LAP serves as a repository for the names of professionals, institutions and self-help programs that work effectively with impaired lawyers and that the evaluation, referral and treatment services our peer counselors and professional staff provide are practical and effectual. 4) A monthly column in the *Bar News* appears to be widely read by WSBA lawyers, including many potential clients who can identify with the autobiographical accounts. LAP believes that these factors will continue to increase the percentage of clients who self-refer for services.

A phenomenon that became evident in the second year of operations has endured through the current fiscal year: about one-quarter of every year's case

load consists of indigent lawyers who also lack health insurance or funds for treatment. Professional staff provide direct services in many of these cases because the symptoms require professional treatment. Many ongoing cases fall within this category. LAP has established a nonprofit (501 (c)(3)) corporation that, once implemented, will provide a revolving loan fund (RLF) to clients requiring treatment services and free more LAP professional time. LAP is currently producing CLE programming to build a \$100,000 endowment for the RLF. Approximately \$10,000 has been raised. Look for our programming, or if you would like, make a tax-deductible contribution.

Because of the WSBA financial crisis, LAP has been unable to increase staff despite the clear need. LAP has curtailed many of its prevention and educational presentations so that it can meet the continuing needs of the 300+ clients who are being served by the two full-time-equivalent LAP psychotherapists. Although they usually conduct 20 presentations a year, only four

were conducted last year. Presentations usually attract clients into the program. Presenting this on fewer occasions had the effect of reducing new cases in the fiscal year by 20 percent.

Lawyers have proven that they will change harmful behaviors when presented with compelling evidence. Data about the prevalence of lawyer distress indicate that significantly fewer lawyers are smoking cigarettes than other normal-population members. This suggests that other high-risk health behaviors can be reduced through concerted educational and prevention efforts. LAP professional staff would like to continue to devote a larger block of time to working on this. On November 5, LAP coordinated a seminar about increasing professionalism and civility entitled, "Rambo Meets Atticus Finch: The Sequel," in Seattle. We would like to offer it in other areas of the state. If six or more lawyers would like to bring this 4.5-CLE credit seminar to a site of their choice, they should contact the LAP office at (206) 727-8268 for more details.

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AROUND THE STATE

NEWS FROM HOME

Roy Prosterman, professor of law at the University of Washington, was nominated for the Nobel Peace Prize earlier this year, in recognition of his work in creating land reform systems in a number of nations. Seattle Rotary Club honored him in October by granting him their International Citizen

Award.

Karr Tuttle Campbell, Seattle, announced in mid-October that **Andrew H. Mun** has joined the firm as an associate in the business and finance department. A 1993 graduate of the UW School of Law, Mun was associate editor-in-chief of the law review.

John Albrecht, **Jeffrey McNamara** and **Emilia Sweeney** have joined Lane Powell Spears Lubersky's Seattle office. Albrecht moved from Perkins

Coie, and concentrates in the areas of construction disputes and professional liability. McNamara, previously with Weinstein, Fisher & Reilly, Seattle, works in admiralty and maritime law. Sweeney, who practices tort and insurance law, came to Seattle from San Francisco's Murphy Pearson Bradley & Feeney.

Carolyn Purnell, formerly with Weyerhaeuser and the King County Prosecutor's Office, was named acting executive director of Metro, the King County-area regional governmental agency, in October.

Two lawyers with Seattle's Ryan, Swanson & Cleveland have won elections. **Joel H. Paget** has been elected managing partner of the firm, only the fifth person to hold the office in the 97-year history of the firm. **Craig Schuman** has been reelected president of the board of trustees of Seattle Children's Theatre.

Gregory I. Russell was named King County Bar Association's Young Lawyer of the Year in September for his volunteer work in legal assistance and affordable housing.

Seattle lawyer **Malcolm Edwards** has been elected president-elect of the American Academy of Appellate Lawyers, a national, invitation-only organization for lawyers demonstrating proficiency and integrity in appellate advocacy. He will serve as president of the organization starting in September, 1994.

McDonald, Hogue & Bayless has announced **Melton L. Crawford** has joined the firm as an associate. A 1993 *magna cum laude* graduate of the Harvard Law School, he will practice in general litigation with an emphasis in employment and civil rights. **Kathleen Wareham** has become a director of the firm and will continue her practice in estate planning, probate, guardianships and civil litigation.

Ted Bottiger, of counsel to Counsell, Murphy & Bottiger in Tacoma, has been elected chairman of the Northwest Power Planning Council in October. Bottiger served in the Washington Legislature from 1965 to 1987, when he was appointed to the Council by Governor **Booth Gardner**.

Michael F. Fitch, paralegal program faculty member at Edmonds Community College for 17 years, was named

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acting dean of the College of Paralegal Studies at the University of West Los Angeles for 1993-1994. He continues to serve on the ABA standards committee on legal assistants and the board of the American Association for Paralegal Education.

Vivian Luna was named head of the Office of Women's Rights for the City of Seattle in August. She is a past director of the city's Commission on Asian American Affairs, and a member of the Asian Bar Association.

John McKean of Moses Lake has been elected chair of the Grant County Republican Party

Heller Ehrman White & McAuliffe has announced **Richard L. Goff** has returned to his hometown of Seattle to join the firm's litigation department. Goff joined the firm in 1964 and has practiced in the fields of intellectual property, antitrust and unfair competition, environmental laws relating to hazardous waste, public contract bidding and complex class actions.

Bogle & Gates, the Seattle-based law firm, was named Outstanding Corporate Donor of 1993 by the Bellevue Art Museum earlier this year. In addition to its financial support, Bogle has provided free legal assistance to the museum for eight years.

Barbara Barronian joined Pierce County Medical Bureau, Inc. as assistant general counsel in October. A registered nurse, she was previously with the Attorney General's Office, where she represented the Health Care Authority and other state departments.

Davis Wright Tremaine, Seattle, has been selected by the Ministry of Justice of the People's Republic of China to be the first U.S. firm authorized to open an office in Shanghai. Davis Wright has practiced in China since 1981.

The King County Bar Association has hired **Kristin Baldwin** as director of continuing legal education. She was previously associated with the California District Attorneys' Association.

Paul N. Luvera of Mount Vernon has published a new book, *Winning Medical Negligence Cases*, published by the Association of Trial Lawyers of America Press. Luvera wrote the book with attorney William Trine.

David P. Hattery has joined Stoel Rives Boley Jones & Grey's Seattle office as an associate. He practices in the area of construction and design and government contracts law. Hattery worked with Lane Powell Spears

Lubersky before joining the firm.

Foster Pepper & Shefelman has added **John L. Hendrickson** to its land use and real estate group. Before joining the firm, Hendrickson was a partner with Preston, Thorgrimson, Shidler, Gates & Ellis.

Kurt M. Maschoff is a new associate in the Seattle office of Townsend and Townsend Kourie and Crew. The firm, based in San Francisco and Palo Alto, concentrates in intellectual property, antitrust and commercial litigation.

Margaret Madison Phelan has joined the National Academy of Elder Law Attorneys. She is a lawyer with Horenstein & Duggan in Vancouver.

Roger I. Heller, with Seattle's Riddell, Williams, Bullitt & Walkinshaw, was elected to the executive committee of the WSBA Environmental and Land Use Section in September. **Michael C. Schwartz** has joined the firm from Davis Wright Tremaine; he works in the firm's corporate finance section.

Oscar Zabel of Sequim was the subject of a column by **Jon Hahn** in the *Seattle Post-Intelligencer* in September, for completing 66 years in the practice of law.

CHELAN COUNTY REPORT GEEZER DIVISION by CHARLES W. CONE

Report of the September 30, 1993 Meeting of the OPWPLICCB1960

The Fall meeting of the OPBA was held at Barney's by the river in East Wenatchee, at noon on September 30, 1993.

The meeting was begun by Ms. **Bernice Bacharach** asking the Blessing. **Dick Whitmore** led us in the flag salute, and **Jerry Hanna** led us in singing three rousing verses of "When the Roll is Called Up Yonder, I'll Be There."

The following significant events affecting our association and its members were noted:

1) **Edson Dow** died July 18, 1993. He was a good man, a good citizen, a good lawyer, a good friend and a good sportsman. He will be missed by his family, his friends, his fellow attorneys, the fellowship of his church and the creatures who live in the forests and mountains of eastern Washington, where Edson visited frequently and which he loved fervently. We also miss his wife, **Bernice**, who passed on two weeks later.

2) **Dick Whitmore** attended his 50th high school class reunion, met a childhood playmate and married her after a whirlwind romance. Dick and his wife honeymooned in Great Britain and have planned trips to Yucatan and Poland.

3) **Bernie Burke** reported he had been ill from "spillage of liver enzymes," but is feeling better and is on the mend. A resolution wishing Bernie a pleasant recovery was passed unanimously with only three abstentions.

4) An alleged misdemeanor was

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found *not guilty* in Judge **Robert Graham**'s court.

5) **Bob Hensel** presented all present with sailor hats identifying us as OPBA members.

6) **Dave Whitmore**, who had been neglected by our group, was voted into membership.

7) **Bernice Bacharach** spoke briefly on the dangers of communism engulfing our country.

After that, we adjourned to meet again on December 9 at Mickey O'Riley's Irish Pub and Sports Bar in East Wenatchee.

EAST KING COUNTY REPORT

by **MARIJEAN E. MOSCHETTO**

The holiday season is with us again, bringing with it the East King County Bar Association Holiday Party to be held December 16 at 5 p.m. at the Bellevue Hyatt Regency. This is a free event paid for by your membership dues, so take time and share some cheer.

Aside from the incredible buffet the Hyatt puts on every year, there will be lots going on at the party. EKCBA will announce its 1994 officers as will ELAP. The drawing for the Eastside Legal Assistance Program's Annual Raffle will be held and we will find out who the lucky winner of the Winter Fun-In-The Sun Hawaii trip is. At \$1 per chance, this is not to be passed up.

Also featured will be the Eastside Barristers' Blues Band, wherein Eastside lawyers will heat up the hall with music for the entertainment of the crowd. Cool blues, hot jazz, rock 'n roll, you name it, and maybe they'll play it.

For those of you who missed it, the EKCBA Anniversary Party held in October was a rousing success. Attendees got a chance to view the display featuring pictures of the Eastside when it was undeveloped, be interviewed on videotape for posterity, and chat with practitioners who preceded this generation, including attorneys who practiced on the Eastside since the 1930s. Several speakers related their memories of what it was like to practice law in the past and paid tribute to those who have passed on. Reserve on your calendar now 2003, when the party will be held again and the videotape will be viewed to see which predictions came

true.

In other news, **Geoffrey Revelle**, formerly of Revelle Hawkins, has joined Attachmate as in-house counsel. Geoff has been a past president of EKCBA, last year's president of KCBA, and has been an important figure on the Eastside scene since arriving in the 1970s. We certainly wish him well.

Congratulations are also in order to **Valerie Knecht Hoff**, EKCBA's president for 1994. Having served with Val on the Board of Trustees, I can attest that her ideas will make 1994 a very

interesting year.

Merry Christmas, Happy Hanukkah, and good wishes for the holidays.

GOVERNMENT LAWYERS BAR ASSOCIATION

by **EVELYN FIELDING**

The Government Lawyers Bar Association executive board conducted a planning retreat in August to set goals and objectives for the organization. A

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consultation with the profession.

membership survey has recently been completed to assist the board in this task. Stay tuned for future *Bar News* columns for details of those plans.

In September, GLBA sponsored a luncheon featuring Attorney General **Christine Gregoire** and Thurston County Prosecutor **Patrick Sutherland**, who spoke on the various roles of public sector attorneys.

A terrific GLBA-sponsored CLE is scheduled November 18, entitled "Pointers from the Bench on Practic-

ing in Thurston County Superior Court." Speakers include two superior court judges, the Honorable **Richard A. Strophy** and the Honorable **Richard D. Hicks**, and Deputy Court Administrator **Judy Foster**. The CLE begins at 1:00 p.m. in the Thurston County Courthouse, Olympia. Registration at the door is \$15 for GLBA members, \$30 for nonmembers.

GLBA continues to send a liaison to the WSBA Board of Governors' meetings each month, and provide input to

the board on views from the GLBA membership. This service is provided in addition to many other worthy activities such as low-cost CLEs and monthly programs—all for only \$10 per year. As the year is drawing to a close, members are reminded that the 1994 dues are payable soon, and nonmembers are invited to join. Contact **Evelyn Fielding**, GLBA president, at (206) 459-6947 if you are interested in joining.

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NORTHWEST INDIAN BAR ASSOCIATION REPORT

by **DEBORAH J. BORRERO**

The Northwest Indian Bar Association (NIBA) recently held its third annual meeting at the University of Washington School of Law in conjunction with the law school's annual Indian Law Symposium.

The meeting was opened by vice president **Mary Pearson**, acting for president **Barry Brandon**, who was away on a family emergency. Elections were conducted, and the following individuals were elected to the governing council: president, **Deborah Borrero**; vice president, **Barry Brandon**; treasurer, **Tate London**; secretary, **Michelle Demmert**. Other board members are **John Macarro**, **James McCanna** and The Honorable **Shirley Leckman**. Some of the issues discussed during the meeting were: (1) adopting the NIBA scholarship application; and (2) the creation of a Minority Bar Coalition.

NIBA was formed three years ago by concerned attorneys, law students and tribal court personnel, who were brought together by their common interests of: promoting the sovereignty of Indian communities; providing Indian youth with role models and mentoring; encouraging Indian youth to pursue higher education and serve native communities and supporting all efforts to honor, respect and maintain Indian pride, traditions and culture.

Since its founding three years ago, NIBA has grown to a membership of approximately 50 members and established itself as an active and respected minority bar association within the northwest. NIBA members are from the states of Washington, Oregon and

Idaho and include attorneys in both the private and public sectors, judges, law professors, law students, paralegals and others interested in the goals of the organization. NIBA is also a voting member of the National Native American Bar Association.

For more information about the Northwest Indian Bar Association, please call: (206) 361-6352.

PIERCE COUNTY REPORT

by GEORGE S. KELLEY

A bomb threat canceled the CLE seminar on discovery which was to be held at the Tacoma Club in the First Interstate Bank Building. It seems that the IRS is located in the same building, and the threat was called in by a disgruntled taxpayer. One can imagine the outpouring of public sympathy if a bomb had managed to eliminate the local IRS office and a group of lawyers in one blast. Leno and Letterman would have had monologue material for a month. Program chair **Susan Keers** is thinking about rescheduling in a safer and more sympathetic place, like the Humane Society building.

This leads us to the announcement that **Chuck Granowski** has been elected president of the National Humane Society, following in the paw prints of his retired partner, **Joe Betzendorfer**. Chuck could probably arrange a safe place for lawyers to meet amongst the puppies and kittens.

Jim Halstead appeared in Judge **Thomas Sauriol's** court for his client's sentencing. Halstead had worked out a plea recommendation whereby his client was to receive a four-month sentence. The judge, on learning that the defendant had lied about his past criminal record, increased the sentence to seven months. The defendant was so upset that he had an accident and had to return to jail to change his trousers. Had the sentence been 20 years, Judge Sauriol may have had to enlist the aid of the people who follow the mounted sheriff's posse in parades.

John Dayhoff, chair of the TPCBA unlawful practice of law committee, at the request of committee members **Frank Peters** and **Jim Healy**, asked that the committee be disbanded for lack of business. It really wasn't the lack of business, but the inability of

the bar to do anything meaningful about the would-be lawyers, which caused the committee to disband. The Board of Trustees granted the request. Should this trend catch on with Congress, the budget crisis might soon be solved.

Retired judge **Robert Peterson** gave a talk at the monthly TPCBA lunch on his experience as JAMS arbitrator and mediator. He also said that he had accepted a superior court pro tem assignment of a divorce case where one side is represented by **Mike Turner** and the other by **Herb Gelman**. His former honor is likely to reminded why he took an early retirement from the bench.

SOUTH KING COUNTY REPORT

by THOMAS A. CAMPBELL

This month's meeting lacked a little bit of the local color as **Alva Long** was unable to attend. Long has been appointed by the Board as Special Representative of the South King County Bar to the State Bar Association. Alva's responsibilities as Special Representative kept him away from the meeting this month and we are hoping to see him again soon. In his stead, **Kenlynn Richards** attended. We hope she will report back to Alva. **Ron Mattson** has been showing off his new shoes. These work without the assistance of crutches. **Mike Salazar** seems to get along real well without crutches himself. He just posted a time of three hours twenty-eight minutes in the Seattle Marathon. **Duncan Wilson** and **Sue Simpson** have moved their offices to 1201 Southwest 7th Street in Renton. Unfortunately, this month's column is a little short. Please be sure to contact me if you practice in south King County and would like a notice included here.

WASHINGTON DEFENSE TRIAL LAWYERS REPORT

by LAURIE D. KOHLI

WDTL President **Jeff Tilden** kicked off the Washington Defense Trial Lawyers' 1993-1994 year with a toast at the annual Seattle Judges' Reception. More than 35 state and federal judges attended, including representatives of the Court of Appeals and the Washington Supreme Court. More than 250 Se-

attle area members enjoyed the free cocktails and hearty *hors d'oeuvres*, while mingling with representatives of the bench. As usual, a good time was had by all. WDTL's Yakima Judges' Reception will be held on May 5, 1994 at the Appletree Golf Course, and will be followed on May 6, 1994 with the Spokane Judges' Reception, which will be held at Patsy Clark's restaurant.

WDTL's annual Insurance Law Seminar was held in November in Spokane and in Seattle. The Spokane seminar was chaired by WDTL Insurance Committee Chair **Roy Umlauf** and **Terence Whitten**. Roy also chaired the Seattle seminar, along with cochair **Karen Hornbeck**. Both seminars featured Washington State Insurance Commissioner **Deborah Senn** as the luncheon speaker.

WDTL will hold its first annual Sunbreak Conference in Phoenix, Arizona over the President's Day Weekend, February 17-21, 1994 at the Pointe Hilton at Tapatio Cliffs. The topic will be "Experts and Hearsay," and will feature Professor **Faust F. Rossi**, who succeeded the late **Irving Younger** as the Samuel S. Leibowitz Professor of Law and Trial Techniques at Cornell Law School. Professor Rossi has lectured on trial practice throughout the United States and in England, and in 1992 was awarded the Jacobson Award for Excellence in Teaching Trial Advocacy. He is also the author of the NPI publication, *Evidence for the Trial Lawyer*. This event is not limited to WDTL members, but all attorneys are urged to sign up early for what promises to be a sellout event. Those interested in attending should contact WDTL's executive director, **Nora Tabler**, at (206) 233-2930.

YAKIMA COUNTY REPORT

by GARY G. MCGLOTHLEN

The Yakima County Report, long absent from these pages, will be an added attraction to the *Bar News* on a somewhat regular basis. Comments, rumors, good ideas and otherwise are solicited and welcomed from any who would like to see someone else's name in print. Plans are to highlight an {older} bar member, as well as a newer member of the county bar each month. Those of us with either gray hair or no hair, look around the bar association

meeting and wonder who all the new faces belong to. This will help introduce each to all.

After a hiatus of a year, President **C. James Lust** returned the Yakima County Bar meeting once again to its home at the Jade Tree Restaurant. Bar meetings on the second Friday of each month will have an entertaining program, those on the fourth Friday will have one (1) hour CLE, which may or may not be entertaining.

Ollwell Family maintains family tradition. **Kelley Ollwell**, daughter of ex-chief criminal deputy prosecutor for Yakima County, **Pat Ollwell**, comes to Yakima from being a SeaTac Assistant City Attorney, where she cut her teeth on criminal law. Having both prosecuted and defended, she now brings big city ideas into country court. FAMILY HISTORY HERE! Kelley says, during our interview, that she is absolutely gorgeous and funny as a whip. Editorial comment: She must be nothing like her dad! Sorry, Pat.

Rumor has it that **Glen Warren** and Gateway Computer have come to terms with more RAM horsepower than Glen can control. Anyone wanting to set up a slam dunk, small, computerized office, call Glen. Or better yet, talk to his

secretary to get the real scoop.

Jay Lindh, late of Federal Way, was recently found under a stack of personal injury defense files at Weeks and Skala in the Chinook Tower. Maybe this year they will add his name in the Yellow Pages so he can see where his fingers are walking.

Yakima District Court Judge **Randy Marquis** was elected president of the Yakima Chapter of the Footprint Association. The membership of police officers and business/professional persons exists to strengthen communication and support for one another. More lawyers are needed, but the judge didn't say what for.

As you read this, think of who you would like to see in print. Give me a call with all rumors and hot stories, that can outlast the two-month lead time for this column.

LAW FUND

Thanks to the private bar in Washington state, LAW Fund continues to grow in both volunteer support and dollars raised.

LAW Fund welcomed new board members **Wendy Bohlke** (Belling-

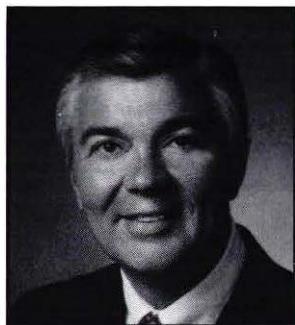
ham), **Martha Konsgaard** (Seattle), **Claude Pearson** (Tacoma), **Jeff Tolman** (Poulsbo) and **Jim Vander Stoep** (Chehalis) at its annual meeting in October. Board officers for 1993-1994 are president, **Mark Hutcheson** (Seattle); vice presidents **Sal Mungia** (Tacoma), **Ed Shea** (Pasco) and **Pat Wagner** (Seattle); secretary, **Paul Stritmatter** (Hoquiam) and treasurer, **Phil Hubbard** (Seattle).

As LAW Fund's second annual campaign comes to a close in 1993, there is still time to get your contributions in so that you can join your 2,000+ colleagues in the bar who have already made individual and firm gifts.

Special thanks to go Reed McClure as the largest firm in the state to contribute to LAW Fund in our Leadership League, which recognizes firms that contribute at least \$200 per attorney in the firm.

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MISCELLANEOUS

Sun Valley—New, four-bedroom, three-bath house just north of town with hot tub and large fireplace; fully equipped; mail service. \$1,100-1,300/week. Vicki Christensen, (503) 224-5560.



“MOVE TO STRIKE!”

by Lindsay Thompson

One of the pleasures of editing the *Bar News* is having the chance to read other states' bar publications. I look with envy upon the big staff and elegant photo art of *California Lawyer*; wonder at the anarchic edge of the tabloid *Alaska Bar Rag*; the cool, elegant design of *Arizona Lawyer*; guffaw at the riotously funny annual April Fool issue of *The Advocate* in Idaho. *Philadelphia Lawyer* is as classy as its name and the legends attached to it suggest.

But, bar none, the thing I most look forward to each month, notwithstanding even that I am a half-Texan, is getting the *Texas Bar Journal*, where federal judge Jerry Buchmeyer holds forth in "Et Cetera."

Judge Buchmeyer's column is simply an anthology of transcript excerpts lawyers send him, with footnoted comments. If you've ever seen Joe Bob Briggs review movies on TV, imagine him as a lawyer, commenting on other lawyers, and client's work, and . . . you get the picture.

For several years Judge Buchmeyer has been wondering in his column, "Which Is Worse? Depositions or Trials?" Lawyers have obligingly provided him scores of examples. Right now it's a dead heat. In the March, 1993 issue, he passed along some testimony from an asset case:

Q. How about firearms? Do you own any firearms?

A. Not anymore.

Q. Okay. Your spouse own any firearms?

A. God, I hope not.

In another deposition, Judge Buchmeyer found one of those questions we ask almost without thinking, but that, this time, took a different bounce:

Q. Have you ever been convicted of a crime involving moral turpitude?

A. Who?

Closer to home, John S. Moore in Yakima wrote last October that "in a pending case, one of the witnesses was being asked concerning stress from chemical drift from the Horse Heaven Hills area in Benton County. At the time of the conversation the witness relates, there was a tract of land owned by one Esther Bowles, in the Horse Heaven Hills area." Herewith the reproduction of the testimony:

Q: Have they caused you stress?

A: Yes.

Q: In what way are you upset with them?

A: Well when I invited _____ down and Mr. _____ came down with them, they all—they both admitted there was chemical on our asparagus, on our Gypsophila, on our alfalfa.

I asked, you know, where did it come from? And _____, extension agent was also there, and he said, he asked them: Well, what direction does the wind come from? And Wayne and John both pointed right at Esther's Bowles

right on the Horse Heavens.

Gloria Hanson, RPR, CSR, Court Reporter in the Superior Court of Whatcom County, reported a couple of items showing how one can impress a client *and* get around those pesky Evidence Rules:

MR. JONES: Your Honor, I object. Counsel is testifying.

THE COURT: Sustained.

MR. SMITH: But, Your Honor, how am I going to get the testimony in?

MR. SMITH: (raising hand to demonstrate to client how to be sworn)

THE COURT: Are you going to testify, Mr. Smith?

MR. SMITH: No, Your Honor. Just showing her what to do. You know, in my questioning I often do give a little testimony, so I plead guilty.

Interest in such matters seems to be growing in Washington. Claudia Palmer's two "Did I Say That?" collections in past *Bar Newses* have been well-received, and lately I've received a number of submissions. If there are more, we'll revisit the topic from time to time in future issues. Send your—or better yet, someone else's—worst moments on the court reporter's tape (or any other stories you've calmed down enough to tell) to Lindsay Thompson, Bar News, WSBA, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599.

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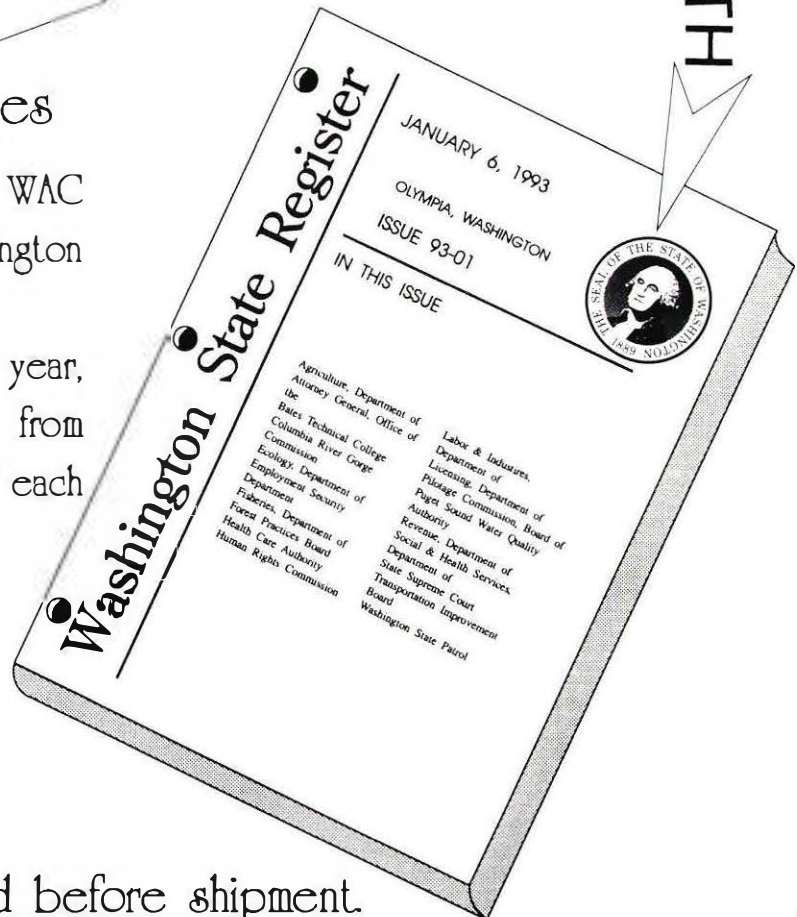
The 1992 edition of the WAC will be available in May of 1993. Purchase price will remain at \$320 plus 7.9% sales tax.

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