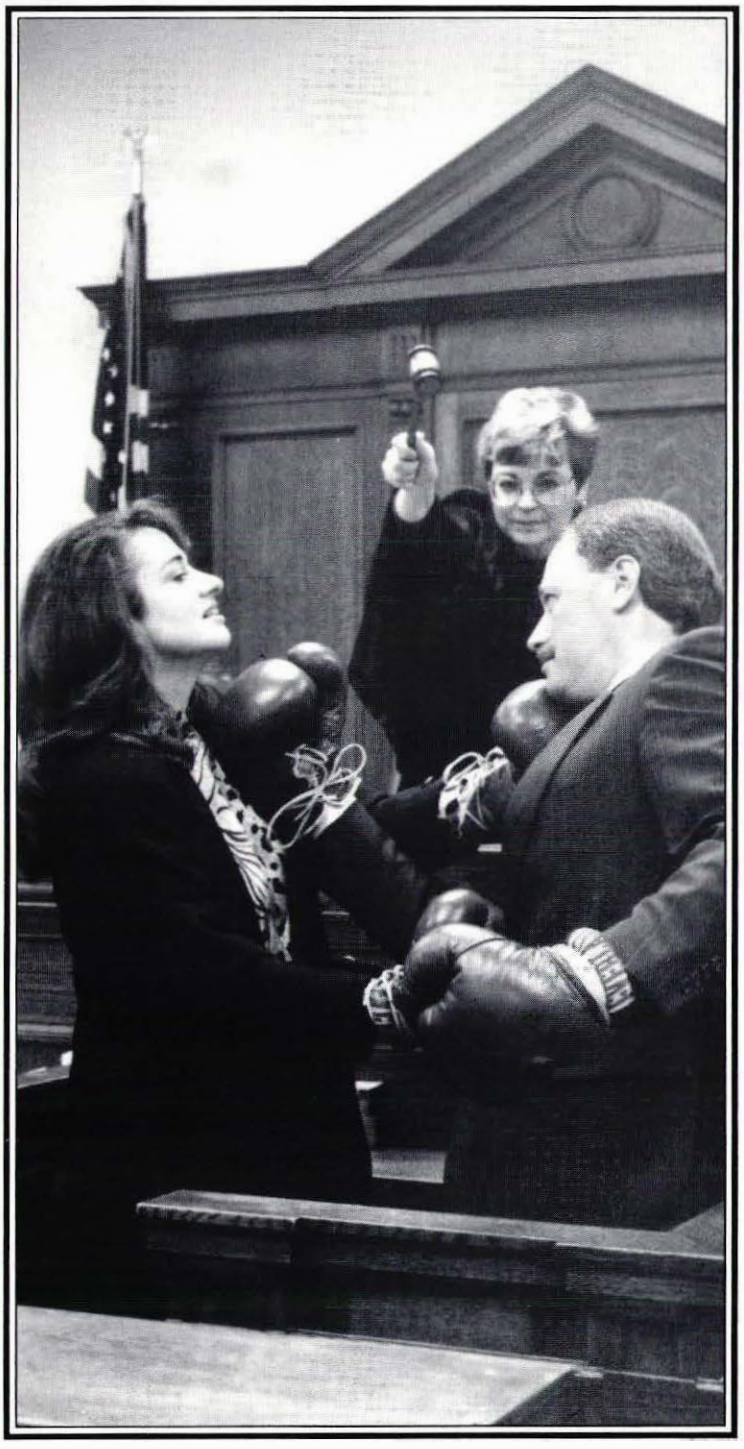
Washington State Bar News
Vol. 47, No. 5, May 1993



SPECIAL ISSUE: PROFESSIONALISM

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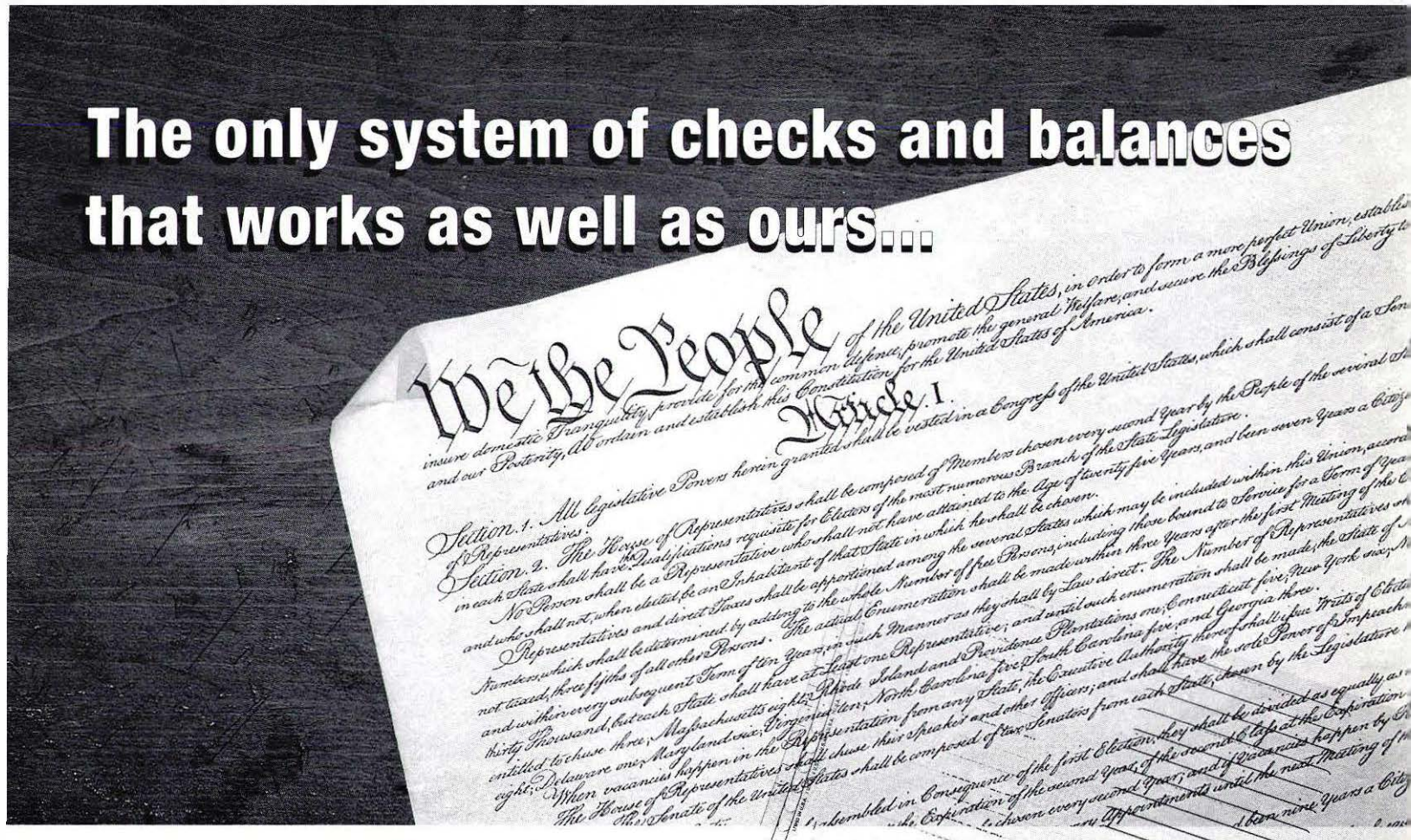

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Special Issue: Professionalism

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DEPARTMENTS

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.

JTF FOR SOMALIA RELIEF OPERATION GROUND FORCES RULES OF ENGAGEMENT

NOTHING IN THESE RULES OF ENGAGEMENT LIMITS YOUR RIGHT TO TAKE APPROPRIATE ACTION TO DEFEND YOURSELF AND YOUR UNIT

A. YOU HAVE THE RIGHT TO USE FORCE TO DEFEND YOURSELF AGAINST ATTACKS OR THREATS OF ATTACK.

B. HOSTILE FIRE MAY BE RETURNED EFFECTIVELY AND PROMPTLY TO STOP A HOSTILE ACT.

C. WHEN U.S. FORCES ARE ATTACKED BY UNARMED HOSTILE ELEMENTS, MOBS AND/OR RIOTERS, U.S. FORCES SHOULD USE THE MINIMUM FORCE NECESSARY UNDER THE CIRCUMSTANCES AND PROPORTIONAL TO THE THREAT.

D. YOU MAY NOT SEIZE THE PROPERTY OF OTHERS TO ACCOMPLISH YOUR MISSION.

E. DETENTION OF CIVILIANS IS AUTHORIZED FOR SECURITY REASONS OR IN SELF-DEFENSE.

REMEMBER

1. THE UNITED STATES IS NOT AT WAR.
2. TREAT ALL PERSONS WITH DIGNITY AND RESPECT.
3. USE MINIMUM FORCE TO CARRY OUT MISSION.
4. ALWAYS BE PREPARED TO ACT IN SELF-DEFENSE.

JTF SJA SER#1 2 DEC 92

A Phoenix in Somalia?

Editor:

Here is an update on developments in Somalia. The news this month (March 1993) concerns the efforts to reestablish the Somali court system. Last month, I mentioned that we had our first contact with a Somali attorney, and since that time, Dr. Abulquadir Hajji Mohammed has been working for our Somali language newspaper as a legal correspondent. He has also been acting as an interpreter at our meetings with the Somali jurists.

One month ago, at our headquarters in South Mogadishu, we met with two former judges who had been appointed by the "political committee." This is a Somali group representing the two major factions in Mogadishu. Two weeks ago, I realized that a representative of the U.S. Liaison Office, Phillip Ives, had been meeting with another group of jurists in North Mogadishu. In Somalia the term "jurist" is broader than the term as used in the United States; in Somalia, it includes anyone who is a law school graduate.

After my discussion with Mr. Ives, it became clear that I had been meeting with a group that might not be truly representative of the legal community. In Somalia, this can be a real problem, because the U.S. must avoid giving the appearance that we favor one group over another. The problem is created by the deep factional, political and clan and tribal divisions in Somalian society. In fact, one of the local papers accused UNITAF (my headquarters) of meeting only with VK judges, to the exclusion of all others. Phillip Ives and I quickly realized that we had to coordinate our efforts.

On March 3, a meeting was held as the UNOSOM (United Nations Operations in Somalia) headquarters for all lawyers and former judges in Somalia. Before the meeting, we had a complaint from the political committee that we were sponsoring a "competing" group, but we made it clear that we wanted a nonpartisan, voluntary organization that would complement their committee.

The meeting was a great success. Thirty-nine jurists attended the meeting, some from distant towns. There were two former Supreme Court judges and three former law professors in attendance. It was the largest meeting of jurists in more than two years, and an emotional reunion for many of them. All but three or four of the attendees understood English, but most were more comfortable speaking in Somali. There was general agreement that the rule of

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law must replace the law of the gun in Somalia. There was further agreement that the reestablishment of the courts must be the highest priority. At the end of the meeting, a committee of eight jurists was elected to conduct further meetings. Today (March 7), I transported four jurist representatives on a survey to select a site for a jurist association headquarters. We hope to convert and clean up an abandoned public building for their use.

I am optimistic that the process we have begun can continue. As security improves, I hope the courts and legal system can rise from the ashes.

F.M. LORENZ
Colonel, USMC
Office of the Staff Judge Advocate
Unified Task Force Somalia

Modifying Drug-sentencing Laws

Editor:

As Fred Diamondstone noted in the January *Bar News* article, "Drug Sentencing Law Reform?," the standard-range sentence for a first-time delivery of cocaine, heroin or methamphetamine is 21-27 months. He neglected to mention that the standard range for a first-time offender convicted of possession of cocaine, heroin or methamphetamine is 0-90 days. Community-based treatment is available to the latter offenders through the First-time Offender Sentencing Alternative. Thus, the present law makes a distinction between those who are merely addicted to life-threatening drugs and those who have chosen to profit from selling death to others. Whether those who perpetuate and profit by the destruction of human beings through drug use are amenable to treatment or not, the public demanded a harsh penalty for them as opposed to the penalty for mere users of those drugs.

Mr. Diamondstone's article implies that drug dealers are as amenable to treatment as drug users. What is his basis for concluding that the failure rate for treatment of drug dealers will be as slow as 30 percent, or even 50 percent, as his article suggests? Not all drug dealers are users. A drug dealer may not be motivated by addiction, but by greed or hopelessness. Can it cure hopelessness?

It is tempting to conclude that a less-expensive treatment alternative to incarceration is a more-effective solution to drug-dealing. But effectiveness of the sentence and the cost of the sentence must be addressed separately. What is the best solution? What is the cost? Are we willing to pay for it? Let's be honest about our motivations if, once again, we modify the drug-sentencing laws.

JOAN T. CAVAGNARO
Seattle

Drinking and Driving: A Proposal

Editor:

I humbly salute our brother Neil Buren for sharing his considerable insight and inestimable labor in an effort to inspire our attention to the evils of impaired driving. He argues that more severe sanctions must be imposed upon the offending drivers.

I have no confidence whatsoever that his solution will work, and I respond, shamelessly, showing my ignorance. I do so in the sure and certain knowledge that our dear readers will share their abundant and superior insight with equal abandon.

Is there a profession better fitted to advise our citizenry on this task better than the bar? Beginning with the drafting of our constitution, no voices than those of lawyers have been more strident in alerting citizens to the attrition of their freedoms by their well-meaning government. But also, no group has more effectively served the public in crafting criminal statutes designed to curtail various forms of social conduct perceived to be evil. The pendulum has swung between these competing views through the years.

But I digress. Back to the task at hand. Mr. Buren and others have exhorted us to heap more punishment on those who are detected in violation of the magic .10 standard. In practice, such approach simply has done little to rid our highways of the willful, irresponsible, and foolish—let alone the addicted—alcoholic.

I am now convinced that, as a society with any conscience at all, we can no longer justify the preservation to the individual of the right to enjoy the constitutional luxury of the "freedom" to drink and then drive. It is apparent that, as individuals, we are doing so at a frightful cost to the whole. Where and how is the line of compromise to be drawn between the individual and the rights of the whole?

I suggest that we simply quit the exercise altogether! I would advise the passage of a section making it a civil infraction to operate a motor vehicle with *any* amount of alcohol whatsoever in the driver's system. The sanction provided should be immediate, embarrassing and credible. It would permit identification and restraint of the hopeless alcoholic and the casual drinker and driver alike. There is little doubt that both must share in creating the deadly statistics of homicide and carnage on the highways.

Before those who do not know my political bias reach for an affidavit of prejudice, may I admit that I have practiced exclusively in the defense bar for the last 20 years? Although as a younger and more hopeful social engineer, I enjoyed a brush with the responsibilities of a prosecutor and trial judge, my experience (and, thus, my bias) has arisen largely from the "hands-on" and intimate contact with offenders, their families and victims of death and injury. Lest my remarks be regarded as the danger-

ous ruminations of a "law and order" fanatic, I will hasten to assure the reader that my liquor cabinet has always been well-furnished and, indeed, I have a reputation among my peers of passionately resisting the slightest intrusion into the lives of my clients.

However, from these experiences, I have come to believe that the only thing that will work is to ask all of society to give up, once and for all, their ("God-given"?) right to drink and then drive and (horrors) to give up the individual's constitutional due-process right to effective judicial protection from public embarrassment in the summary display of their infraction. The loss of their pleasure driving for a short period, with judicial supervision, is a small price to pay.

To my mind, the loss of sales by the liquor and restaurant industries and enforcement of dramatic changes in our habits across our collective society would be an excellent trade-off. I think it would afford a real chance to effect a dramatic reduction in senseless bloodshed, to say nothing of the enormous economic savings throughout society.

The Problem: Drinking drivers cause collisions, carnage, disability and death of the innocent and guilty alike. The inefficiency of present detection methods leave much to be desired, with too many offenders remaining at their dangerous pursuit until it is too late. The present system of detection and prosecution of impaired drivers presents an enormous cost, not only to the taxpayer, but also the individual, and his or her family.

Our Shame: With compassion for the suffering of the good people of Somalia we have sent troops abroad at great risk to their lives, while being content with laws impotent to protect the lives of our own children.

The Error of Our Ways: Leave our present statutes intact, but enact and enforce a humiliating sanction in the operation of a motor vehicle by a driver whose breath reveals *any alcohol in the system whatsoever!*

The Sanction: Limit the first infraction to having our license immediately punched; our auto license plate "redlined"; and the immediate loss of the privilege of pleasure driving for ninety days, with a maximum fine of $250.

Due Process: Surrender to our police the right, and ask them to accept the burden, of deciding to demand a breathalyzer exam when, in their judgment—aided only by their senses—it is *possible* that a driver has driven with any alcohol in his or her system.

The Price: Let us formally and finally confess the hypocrisy that society can no longer afford the preservation of civil due process under these circumstances. After all, we have already tolerated a more severe sanction in entrusting our police with the right to confine a drunk driver to a *jail cell* (without effective judicial review) until he or she has sobered up.

The Benefits: The proposed experiment seems to threaten little risk. In my judgment, it would appreciably reduce the instances of cruel financial hardship bound to follow even the filing of a charge of DWI now routinely imposed upon the family of the drinking driver.

Conclusion: It is hoped that the mere suggestion of such a radical approach might stir more respected and astute minds to the task of refutation. Such an exchange would create sufficient furor that the heat of conflict would illuminate the shadows of our collective public conscience. Having thus shamelessly revealed the workings of my mind, I challenge others to do the same, knowing that our legislators read very well indeed; it is just possible that something good might come of such an exchange.

ROSS R. RAKOW
Goldendale

In re: Sales Tax on Professional Services

Editor:

I just read the Washington State Bar Association's position against a sales tax on professional services in the January 1993 Olympia Report.

Legal work will not go in-house or out-of-state because of this tax. Legal work may move away from private firms for any number of reasons (e.g., hourly rates, quality, convenience, expertise, personality), but I doubt this tax would be one of them. As for the inequity of such a tax, it is no more inequitable than the state's sales tax. Why shouldn't the client pay tax on legal service when he or she must pay tax on the aspirin or the Maalox required after the service is renders?

Finally, where is the nightmare of administration? The professionals of the state of Hawaii (where I am also licensed to practice) have been subject to an excise tax on services for years. Their nightmares, if any, are considerably more

substantive than dealing with taxable billings x tax rate = tax payable to state.

The retailers of the state of Washington have dealt with this problem under much more difficult conditions and have survived. My guess is, the lawyers of this state (with the help of their billing personnel) will also solve this complex calculation.

If there are substantive reasons why professional services should not be taxed, let's hear them. If these are the best arguments the Association can muster and a tax on services is still an anathema, then let's take on the difficult, but worthier tasks of determining (i) where state spending should be controlled so we may live within our means, and (ii) whether an income tax would be more appropriate than these consumption taxes.

STACEY J. HENDRICKSON
Renton

In re: CR 2A (as amended)

Editor:

This letter is to address changes proposed to CR 2A. As a general observation, by an attorney who does nothing but trial work, changes to the rule are not necessary.

CR 2A (as amended) is nothing more than a litigation-increasing rule change. In 28 years of trial practice, I have had two situations where the settlement of a cause of action was not properly communicated between two or more attorneys. Both of those cases were resolved without any further litigation. Now, the proposed rule change permits lawsuits over miscommunications and misunderstandings as they relate to "settlement of a cause" and will give a license to have misunderstandings.

Without going into a great deal of discussion of various examples, let me point out one where I know litigation will be fostered. In tort litigation, claimants' attorneys have a tendency to bypass defense counsel and call directly to insurance companies. Offers are made between multiple entities, but sometimes the same offer is not communicated to each entity. While circumstances like that have been resolved because of the necessity of a written agreement, now a claimant can pick and choose which "offer" appears to be best.

ODINE H. HUSEMOEN
Longview

Get a Life!

Editor:

To the bozo or bozette who penned the drivel, "When a Loved One Retires," *Bar News*, February 1993, GET A LIFE!

The emotionally challenged author of this masterpiece, as opposed to one of our more renowned colleagues, obviously should have stayed at home to bake cookies. I suspect that the more emotionally stable of our membership will have a difficult time comprehending the inability of a lawyer to adapt to the workplace absent some sort of emotional bonding with senior staff.

More to the point, I would hope the Board of Governors and our membership will remember this article before the next solicitation of a dues increase. I, for one, find it particularly troubling that any fraction of my dues subsidized the composition and publication— in what purports to be a professional journal—of such irrelevant trivia.

LARRY W. ZEIGLER
Richland

In re: *Bar News* Censorship

Editor:

On January 7, 1993, I wrote a critical letter about the leadership and direction of the state bar.

The letter was the voice of most of those who practice under the blanket of the Association.

I distributed that letter in a limited fashion. It was expressed that the bar journal was not independent, but an arm of the executive and the Board of Governors and further that there was no way the letter would be printed.

No one goes to the state bar convention, so there is no avenue available for a member of the bar to voice discontent at the way our dues are spent and the manner in which our affairs are handled.

Issue after issue, the president and executive are allowed to justify and glorify the "Board's Work." Your censorship of free expression is another example of the sickness pervading the State Bar organization.

NEIL J. HOFF
Tacoma

(Editor's note: The Bar News *editorial deadline is listed in the masthead every month. It currently notes that the editorial copy deadline is the 15th of the second month preceding month of publication. So Mr. Hoff's January 7 letter, which arrived before the January 15 deadline for the March issue, was scheduled for—and appeared in—the March issue. The March issue was at the printer when Mr. Hoff wrote his March 8 letter, printed above. It was scheduled for the May issue, whose deadline was March 15.)*

A True Story

Editor:

Because of the weighty issues facing the Bar Association, it's time for comic relief. The following is a true story.

Recently, a lady called and excitedly announced that her husband was in a wheelchair, on oxygen, and dying fast. She wanted a will prepared immediately. Suddenly, there were loud noises in the background, and the line went silent. I thought, "Oh-oh, it's too late already."

After a lengthy pause, the lady came back on and said, "Oh, never mind, I guess I was just standing on his oxygen tube."

DAVID L. BOVY
Seattle

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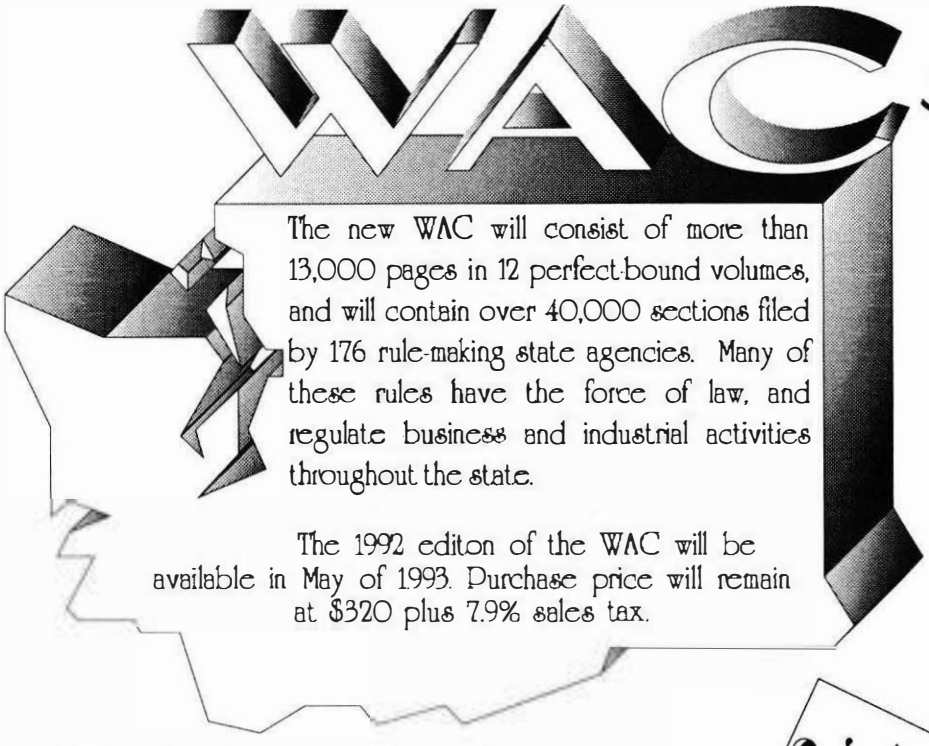

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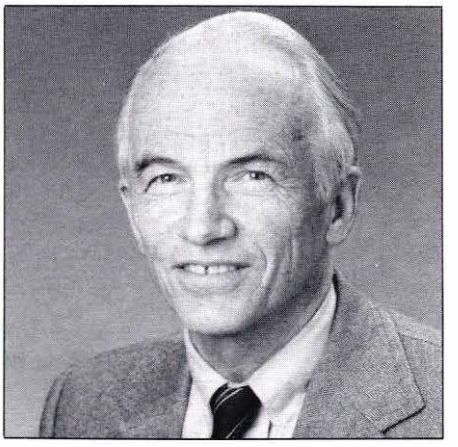
TIME TO DUST OFF THE OATH



Stephen E. DeForest

by **Steve DeForest**
WSBA President

Upon being sworn in, each lawyer takes the same oath. APR5(d) provides, in part:

(4) I will maintain the respect due to the courts of justice and judicial officers.

(5) I will not counsel, or maintain any suit, or proceeding, which shall appear to me to be unjust, or any defense except as I believe to be honestly debatable under the law, unless it is in defense of a person charged with a public offense. I will employ for the purpose of maintaining the causes confided to me only those means consistent with truth and honor. I will never seek to mislead the judge or jury by any artifice or false statement.

* * *

(7) I will abstain from all offensive personalities, and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged.

(8) I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay unjustly the cause of any person.

What each of us pledged to do was not an evanescent undertaking, but a lifetime responsibility. The lawyer's oath was never meant to be placed on a shelf to gather dust. From time to time we need to reconsider our individual commitment and to rededicate ourselves to the pledge which we made in the oath of admission. Reflecting upon how you might answer the questions raised below may help you to assess the extent to which you are meeting this responsibility.

The privilege of practicing law carries with it the obligation not only to maintain our legal system, but to improve it. Changes in human affairs and imperfections in human institutions make necessary constant efforts to adopt, modify and refine our system of justice. The system should function in a manner that commands public respect and encourages the use of legal remedies to achieve redress of grievances. By reason of education and experience, lawyers are especially qualified to recognize deficiencies in the legal system and to initiate corrective measures. It is an individual as well as collective responsibility.

• What have you done recently to discharge that obligation?

The provision of pro bono services for the disadvantaged and needy, and participation in civic and community activities, have always been part of the professional responsibility of a lawyer. In return for a license to practice law, we owe a substantial debt to society. The grant of exclusive power to resolve disputes and enforce the law carries with it the obligation to give time, talent and money back to the public to advance the ends of justice. The denial of access to the legal system by the indigent is a denial of justice to a significant segment of society.

• As a custodian of a public system of justice, what are you doing to assure access to that system?

Being a professional also includes how we relate to each other. As the preface to the Principles of Decorum states, a lawyer's conduct should be characterized at all times by professional courtesy and professional integrity in the fullest sense of those terms. Conduct that is uncivil, abrasive, hostile or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully and efficiently. Such conduct not only tends to delay or deny justice, but also makes the practice of law less satisfying. The lack of civility is not a courtroom or litigation phenomenon; it extends throughout the practice.

• Have you taken a few minutes recently to think about how you measure up to the basic standards of professionalism?

Most law firms and agencies of a sufficient size to have periodic performance reviews do not include professionalism as a component of that review, based upon a small sampling of law firms which I made last year. Typically such

evaluations include legal skills (legal knowledge, research, analysis, writing and oral ability), work habits (energy, motivation, efficiency, promptness), personal characteristics (common sense, judgment, attitude), and client and management skills. Professionalism appears to have been overlooked.

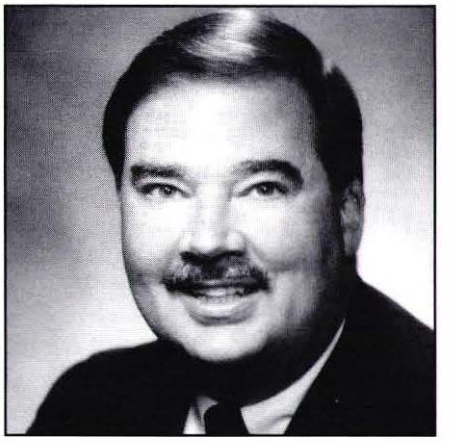
If you practice in association with other lawyers, do you have any procedure for being evaluated, and is professionalism one of the criteria?

If the foregoing applies to you, and the answer is in the negative, I urge you to add a professionalism component to your evaluation form. Depending on the format used, that section might be as simple as assessing the extent to which the lawyer being evaluated demonstrates a high degree of professional ethics and conduct. It might also make reference to the professional courtesy guidelines of your local bar association, or the Courtroom Decorum and Practice Guidelines described elsewhere in this issue. Identifying specific characteristics, such as courtesy, civility to other counsel, integrity, respect, fairness, promptness, and appropriate behavior and attire would add emphasis to those values.

Each of us is judged as a professional by our own conduct and by the conduct of every lawyer. The latter may be unfair, but when one of us fails, the rest are diminished to some degree in the eyes of the public. That fact makes it even more important that all of us work to live up to our duties and responsibilities as members of this bar. It is not an easy task. It requires a continuing investment of time and the foregoing of remuneration.

The privilege to hold ourselves out as lawyers mandates an individual commitment by each of us. Without it, our self-respect and respect for our profession will decline, and more lawyers will become dissatisfied with their work. If we do not take positive steps to improve our profession and our professionalism, the day could come when we are reduced to attempting to deflect legislative proposals to regulate our services, as if they were simply those of a licensed trade. If we continue to take a myopic view of professionalism, we will lose the independence we so cherish and too often take for granted.

SOLICITATION OF WSBA AWARD NOMINATIONS 1993



Dennis P. Harwick

Each year at this time, I ask members of the Washington State Bar Association to look around and identify those members of our profession and the public who deserve the recognition and thanks of the Washington legal profession. If you know of someone who fits the criteria set forth below, please send me a letter of nomination and relevant information by July 1, 1993, so that I can forward that information to the Board of Governors' Awards Committee for consideration. Awards will be presented at a luncheon on Friday, September 10, 1993, immediately preceding the annual business meeting.

Award of Merit	This is the WSBA's highest honor. It was first given in 1957. In general, the Award of Merit is given for long-term service to the bar and the public, although it has also been presented in recognition of a single, extraordinary contribution or project. It is given to individuals only—both lawyers and nonlawyers.
The President's Award	As the name implies, this award(s) is given for special accomplishment of service to the WSBA during the term of the current president.
Board of Governors' Award for Professionalism	This honor is awarded to a member of the WSBA who exemplifies the spirit of professionalism in the practice of law. "Professionalism" is defined as the pursuit of a learned profession in the spirit of service to the public and in the sharing of values with other members of the profession.
The Angelo Petruss Award for Lawyers in Public Service	This award is named in honor of the late Angelo R. Petruss, a senior assistant attorney general, who passed away during his term of service on the Board of Governors of the WSBA. The selection criteria look for a significant contribution by a lawyer in government service to the legal profession, the system of justice and the public.
Outstanding Judge Award	This award may be presented to a judge from any level of court. It is presented for outstanding service to the bench and for special contribution to the legal profession.
WSBA Pro Bono Award	This award is presented to a lawyer, nonlawyer, law firm or local bar association for outstanding efforts in providing pro bono services to the poor. This award is based on cumulative efforts as opposed to a lawyer's or law firm's pro bono hours or financial contribution.

more

WSBA Courageous Award	This award is presented to a lawyer who has demonstrated exceptional courage in the face of adversity, thus bringing credit to the legal profession.
The Affirmative Action Award	This award is made to a lawyer or a law firm making a significant contribution to affirmative action in the employment of ethnic minorities, women and the disabled in the legal profession within the state of Washington.

It is important to note that presentation of these awards is made only when there are truly deserving recipients. Some years, no award is given in some categories. Send nominations to WSBA Executive Director: ATTN: Awards, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599 by July 1, 1993.

* * *

Responses to My Suggestion for House Counsel and Emeritus Membership Statuses:

I'd like to thank the dozens of people who responded to my invitation to comment on a proposal to create two new WSBA membership categories—house counsel and emeritus. To my relief, the vast majority of responses supported one or both of the suggestions. A few people thought it was the worst idea they had ever heard. I've tried to acknowledge all of the responses and will share your thoughts with the Board of Governors.

Pro Tem for Seattle Municipal Court Judges and Magistrates

Seattle Municipal Court is seeking applicants for judge and magistrate pro tem. Resumés with references are due on or before August 2, 1993.

Requirements: Admitted to Washington practice for five years; criminal-law experience; residency in the city of Seattle (pro tem judge only).

If selected: Person is restricted from practicing in SMC; 24 hours' unpaid training.

Compensation: $200/day base. Women/minorities encouraged to apply.

Inquiries: (206) 684-8709.

The Profession Hits the Skids: Lawyer-client Sex. Why We Should Ban It.

by **Vickie Norris**

The Rules of Professional Conduct Committee is considering the adoption of an amendment to Rule 8.4 of the Rules of Professional Conduct. The amendment would prohibit a lawyer from commencing a sexual relationship with a client during the lawyer-client relationship. The language of the amendment currently under consideration is as follows:

> RULE 8.4 MISCONDUCT
> It is professional misconduct for a lawyer to:
>
> * * *
>
> (h) engage in sexual relations with a current client, unless consensual sexual relations existed between them before the lawyer-client relationship commenced.

There are lawyers who will shake their heads at the need to consider enactment of such a rule. However, it should be remembered it is not the lawyer's personal freedom to have a sexual relationship with a client at issue, rather the focus should be on the harm to the lawyer-client relationship created by such behavior.

The following is a look at the history of this proposed rule with an emphasis on the erosion of the principles of professionalism when sex is interjected into the lawyer-client relationship.

History: What are other lawyers doing?

The *ABA Journal* in November 1992 printed an article entitled "Dangerous Liaisons," reporting a survey of randomly selected lawyers on their experiences with sexual relations with clients. The survey sample was 1,500 lawyers from all over the United States. The rates of return for two different forms asking separate questions were 32.5 percent and 35.2 percent, considered to be a typical rate of return.

Thirty-one percent of respondents knew one or more instances where lawyers had been sexually involved with clients. More significantly, a clear majority, 72 percent, felt that becoming sexually involved with a client would create problems with the professional aspect of the relationship. Lastly, two out of three respondents felt that the Canons of Legal Ethics should address this conduct, and approximately one-half of the respondents felt that sex with clients should be prohibited.

The authors of the survey concluded:

> . . . sexual relationships between attorneys and clients occur with a frequency that would seem to merit the profession's consideration, that attorneys seem to feel that such relationships are inherently prejudicial, and that the canons should address these relationships and perhaps prohibit them.

In July 1992, the American Bar Association adopted Formal Opinion 92-364 entitled "Sexual Relations with Clients." The opinion is based on the Model Rules of Professional Conduct and contains an excellent analysis of the problems created by having sexual relations with a client.

The opinion is summarized as follows:

> A sexual relationship between lawyer and client may involve unfair exploitation of the lawyer's fiduciary position, and/or significantly impair a lawyer's ability to represent the client competently, and therefore may violate both the Model Rules of Professional Conduct and the Model Code of Professional Responsibility.

California adopted an ethics rule which provides that lawyers shall not:

> 1. Require or demand sexual relations with a client incident to or as a condition of any professional representation; or
> 2. Employ coercion, intimidation, or undue influence in entering into sexual relations with a client; or
> 3. Continue representation of a client with whom the lawyer has sexual relations if such sexual relations cause the lawyer to perform legal services incompetently in violation of rule 3-110.

In September 1992, the Oregon State Bar adopted a resolution proposing a more prohibitive rule:

> A. A lawyer shall not have sexual relations with a current client of the lawyer unless a consensual sexual relationship existed between them before the lawyer/client relationship commenced.
> B. A lawyer shall not have sexual relations with a representative of a current client of the lawyer if the sexual relations would, or would likely, damage or prejudice the client in the representation.
> C. . . . "sexual relations" means:
> (1) Sexual intercourse; or
> (2) Any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the lawyer for the purpose of arousing or gratifying the sexual desire of either party.
> D. . . . "lawyer" means any lawyer who assists in the representation of the client, but does not include other

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firm members who provide no such assistance.

In 1991 the Illinois State Senate sent a resolution to the State Supreme Court which stated in part:

> WHEREAS, Emotional detachment is essential to the lawyer's ability to render competent legal services, yet it is extremely difficult to separate sound judgment from the emotion or bias that may result from a sexual relationship between a lawyer and his or her client during the period that an attorney-client relationship exists,
>
> * * *
>
> This body urges the Illinois Supreme Court to adopt a rule of professional conduct prohibiting attorney-client sexual relationships during the period of the attorney-client relationship, unless the client is the spouse of the attorney, the sexual relationship predates the commencement of the attorney-client relationship, or some situation exists in which the court deems the prohibition would not detract from the attorney's representation of the client . . . .

In 1992, the Chicago Bar Association asked the Illinois Supreme Court to adopt a new ethics rule governing sexual relations between lawyers and clients.

Here in the state of Washington, the Rules of Professional Conduct Committee was asked by chief disciplinary counsel Leland G. Ripley to consider adoption of either a formal opinion or an amendment to the RPCs. A subcommittee tried its hand at a formal ethics opinion and a draft opinion was reviewed by the Committee. The Committee concluded that an opinion on this topic would be without any force or real effect. They agreed with the suggestion of Committee member Richard B. Kilpatrick that it was appropriate to adopt a "simple, bright-line rule which states that no lawyer may enter a sexual relationship with an existing client."

The Committee's proposed rule, which is based on part (A) of the Oregon rule, was reviewed by the Board of Governors in Tacoma during open session February 12, 1993. The Board asked that the rule be returned to the RPC Committee for further refinement and/or definition.

The problem:
Sexual relations with a client can be exploitive, breach fiduciary obligations and create conflicts of interest.

Part of the Hippocratic Oath states:

> I swear by Apollo the Physician and by Aesculapius to keep the following oath: I will prescribe for the good of my patients and never do harm to anyone. In every house where I come I will enter only for the good of my patients keeping myself far from all intentional illdoing and all seduction, and especially from the pleasures of love with women or men, be they free or slaves.

Mental-health professionals have long been concerned with the impact of sexual relations with clients. These groups have enacted ethical principles which have defined such relations as unethical and have completely banned such relationships. In 1990, The American Medical Association found all sexual relationships between doctor and patient to be potentially exploitive and detrimental to the physician's medical judgment and to the patient's trust.

With respect to all licensed healthcare-related professions, RCW 18.130.180(1) and (24) provide that it is unprofessional conduct to have sexual contact with a client or patient. The Washington Supreme Court has also construed this statute in a way which may have applicability by analogy to the legal profession. In the case of ***Haley v. Medical Disciplinary Board***, 117 Wn. 2d 720 (1991), the Court affirmed the Washington State Medical Disciplinary Board's imposition of discipline for unprofessional conduct involving a physician who had commenced a sexual relationship with a *former* patient who was a minor. Specifically, the court relied upon RCW 18.130.180(1), which provides that "the commission of any act involving moral turpitude, dishonesty or corruption relating to the practice of the person's profession" to support a finding of unprofessional conduct. (The language in this statue is very similar to that found in Rule 1.1 of the Rules of Lawyer Discipline.)

The Court summarized its findings by stating:

> Dr. Haley's conduct indicates unfitness to practice medicine in two ways: it raises concerns about his propensity to abuse his professional position, and it tends to harm the standing of the profession in the eyes of the public, which both lead to reasonable apprehension about the public welfare. [p.736]

In finding Haley's conduct unprofessional, the Court specifically rejected the need to rely upon Board findings that Haley violated other statutes involving child abuse and furnishing alcohol to a minor. The Court focused on the abuse of trust of the patient developed during the course of the physician-patient relationship, and the overall harm to the profession inherent in the conduct.

The ethical guidelines of The American Academy of Matrimonial Lawyers, adopted September 1991, state, in part: "an attorney should never have a sexual relationship with a client or opposing counsel during the time of representation." Obviously, the divorce and child custody arena provides the backdrop for potential abuses. The clients are often emotionally and economically devastated, needing not only the representational expertise of the lawyer, but also personal counseling and direction. A lawyer who initiates sexual activity with a client whose world has been turned topsy-turvy by tremendous losses, not the least of which may be the client's self-esteem, can only be called predatory. If the lawyer has little or no interest in a long-term relationship with the client, then the lawyer has only obtained personal advantage and potentially inflicted further conflict and emotional damage on the client, all in violation of the lawyer's fiduciary obligations to the client.

While domestic lawyers frequently come under the gun for sexual misconduct with clients, these abuses can occur whenever there is an unequal balance of

power between lawyer and client. Clients who are seeing lawyers in connection with losses involving family members (probate) or personal freedom (criminal charges, deportation) or losses of job, business opportunity or reputation often are not in a position to make sound financial or personal judgments about their course of action. Emotional vulnerability should serve only to heighten the lawyer's responsibility to maintain a strictly professional relationship. (Similar concerns about lawyers taking advantage of the emotionally impaired or vulnerable client have prompted Governor Tom Chambers to propose a rule to the RPC Committee which would provide restrictions on lawyers to solicit individuals who have recently sustained tragic losses.)

As succinctly stated in the ABA Formal Opinion 92-364:

> If the lawyer permits the otherwise benign and even recommended client reliance and trust to become the catalyst for a sexual relationship with a client, the lawyer may violate one of the most basic ethical obligations, i.e., not to use the trust of the client to the client's disadvantage.

The concept that as part of a lawyer's fiduciary responsibility, the lawyer shall not do anything which will exploit a client's trust for the lawyer's benefit should certainly not be novel to lawyers. This same principle underlies the rules that seek to prevent lawyers from taking financial advantage of a client.

RPC 1.8 CONFLICT OF INTEREST; Prohibited Transactions; Current Client provides the limitations under which a lawyer may transact business with a client, recognizing that such transactions are initially prohibited unless there is a showing that the transaction is fair, reasonable and the client was afforded the opportunity to seek independent advice concerning the transaction. These provisions are meant to protect clients from lawyers who would abuse their ability to influence their clients for their own financial gain. Considering the numbers of lawyers who are subject to discipline annually for trust account breaches, as well as outright thefts from their clients, such rules are unfortunately a necessity to maintain the integrity of the profession.

Can it be argued that the emotional and physical well-being of the client is any less important than his or her financial well-being? The trust, confidences and secrets placed with the lawyer, provide the unethical lawyer with the opportunity to manipulate a client sexually for the lawyer's own benefit.

When the relationship is unequal, as often is the case, the client may not feel able to rebuff lawyer advances. The client may be in awe of the lawyer's status and power and, in the absence of a clear rule, may have no understanding or notice of the problems that the sexual relationship can create for the lawyer-client relationship. The client may also fear retaliation, losing the lawyer in a needed representational capacity and breaches of lawyer-client confidentiality should the client decline the sexual relationship.

It is fundamental that a lawyer be able to render objective advice to a client. Obviously, a sexual relationship with a client could impair a lawyer's ability to provide straightforward—or even competent—advice to a client. Literally, the lawyer may not be able to exercise "independent professional judgment and render candid advice," (RPC 2.1) when the best thing the client could do is *not engage* in the relationship with the lawyer, but the lawyer has his/her own agenda in mind. As rather ironically observed by Professor Geoffrey C. Hazard, Jr. in his article, "Lawyer-Client Sex Relations Are Taboo," *Nat'l L.J.* April 15, 1991,

> If the sexual relationship is emotionally serious, the lawyer cannot be dispassionate about the client's legal problems. If the relationship is not emotionally serious, the lawyer may be exploiting the client.

Additionally, a sexual relationship creates other conflicts of interest. ABA Formal Opinion 92-364 explores the conflicts potentially present in the corporate setting, where the lawyer's client is the corporation. If a sexual relationship occurs between the lawyer and a representative of the corporation, a conflict could occur if the lawyer learns information detrimental to the sexual part-

ner, but which should be reported to a higher authority in the corporation, if the lawyer were to be competently representing the corporation.

The Solution: Bite the Bullet, and Ban it.

In discussing this topic with lawyers, I have heard pros and cons expressed about the need for such a rule. Lee Ripley has reported that many clients with complaints of this nature are discouraged from filing a Bar complaint when they learn there is no specific rule prohibiting such behavior. This should come as no surprise in the wake of the Thomas-Hill hearings. There have been numbers of studies documenting the general tendency to underreport or fail to report rape and sexual harassment. The same dynamics are in place with respect to the reluctance of a client to report that his or her lawyer has taken sexual advantage. The testimony of E. Jeanne Metzger during the hearings before the Illinois Senate Judiciary Committee in 1991 demonstrates the basis for this reluctance: "People frequently ask me: How could I let my lawyer do it? Why did I agree to have sex with him? And if I didn't resist him, was I not then a willing partner rather than a victim?" This reluctance is only exacerbated when there is no clear rule prohibiting commencing a sexual relationship with an existing client.

The Preamble to our Rules of Professional Conduct states in part:

> . . . The Rules of Professional Conduct point the way to the aspiring and provide standards by which to judge the transgressor. Each lawyer must find within his or her own conscience the touchstone against which to test the extent to which his or her actions should rise above minimum standards. But in the last analysis it is the desire for the respect and confidence of the members of the legal profession and the society which the lawyer serves that should provide to a lawyer the incentive for the highest possible degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction.

The Preliminary Statement of the RPC states in part: "These rules state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action."

It is ironic that we have the lofty ideals expressed in the Preamble to the Rules of Professional Conduct and yet do not have a rule which would make it clear to the more obtuse of our brothers and sisters that commencing sexual relations with a client would violate "minimum levels of conduct."

Many lawyers would agree that the public perceives the morals, ethics and integrity of the profession to be on the decline. This perception is only strengthened when the profession cannot reach a consensus on so basic an issue. This perception is justified when lawyers argue against a rule by warning that it will give rise to "false reports" by "vindictive" clients. While any rule or law can be subject to abuses, this potential should not be treated as a reason for not enacting it. This argument harkens back to a time, not so long ago, when a charge of rape could not be brought in the absence of corroborating evidence because the testimony of a rape victim was presumptively unbelievable.

Fortunately, the legal profession has the ability to wash this dirty linen clean by making a definitive statement in the form of a clear rule that commencing a sexual relationship with existing clients is inconsistent with the high ethical standards under which lawyers who call themselves "professionals" should operate. Those standards include providing objective legal advice and being a safe depository for a client's trust, confidences and secrets without risk of exploitation of the emotionally dependent or vulnerable client.

References:

"Keeping Sex Out of the Attorney-Client Relationship: A Proposed Rule, 93" *Colum. L. Rev.* 887. John M. O'Connell

American Bar Association Formal Opinion 92-364.

ABA Journal, November 1992.

Unfair Advantage. Joanne Pitella.

Dangerous Liaisons. J. L. Bernard.

Everett attorney ***Vickie Norris*** *is on the WSBA Board of Governors.*

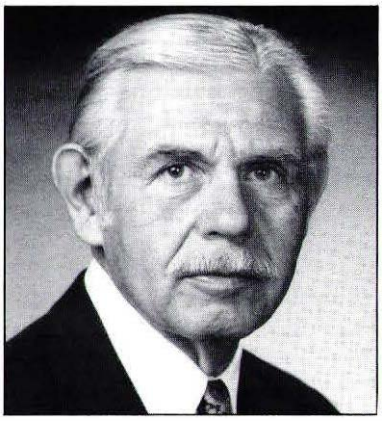
NOTES FROM THE ACADEMY

Edited by **Professor William B. Stoebuck**, *University of Washington School of Law*

Real property. (*Case 1.*) In 1876 railroad owned land in fee simple. It conveyed this land to Wilkeson in fee simple, but deed contained "exception" for "a strip of land two hundred feet wide. . . to be used for a right of way." In 1985 railroad abandoned right of way, causing whatever interest it had to pass to Winkelman, then owner of land over which right of way passed, pursuant to federal statute. Winkelman conveyed some of land traversed by right of way to Harris by deed that excepted right of way. Later Winkelman gave deed to Ski Park Farms, purporting to convey to them "That portion of the Burlington Northern Railroad Company's . . . right-of-way, now abandoned." Who owns the former right of way? *Held*: Ski Park Farms owns former right of way in fee simple. Deed from railroad to Wilkeson excepted fee simple absolute, not merely an easement. Though some prior Washington decisions have held similar language creates only railroad easement, in this case parties' intent was to except fee simple. When railroad abandoned right of way, by force of federal statute, this caused its interest to pass or revert to Winkelman. When Winkelman conveyed to Harris and excepted right of way, this excepted the fee simple, which Winkelman then conveyed to Ski Park Farms. (*Comment*. On meaning of language in railroad's deed, decision should be compared with earlier Washington decisions, especially *Veach v. Culp*, 92 Wn.2d 570, 599 P.2d 526 [1979], and *Swan v. O'Leary*, 37 Wn.2d 533, 225 P.2d 199 [1950]. There may be some inconsistency here.—W.B.S.) ***Harris v. Ski Park Farms, Inc.***, 120 Wn.2d 727, 844 P.2d 1006 (2/11/93).

(*Case 2.*) Common grantor of three parcels of land to three grantees also conveyed to each grantee a fractional interest in a strip of land, described by metes and bounds, which led to these three parcels. Each of three deeds said interest in the strip of land was "for road purposes." (Parties admit that the three deeds conveyed shares as tenants in common of strip of land in fee simple, and not merely easements in the strip. *Quaere* if they should have admitted this?—W.B.S.) Later one grantee acquired some adjoining land, thus enlarging its total area of contiguous land. Then that grantee sold to Defendant, who subdivided this larger parcel into three tracts and purports to convey to each of grantees of these three tracts an interest in roadway strip. Other landowners who own shares in roadway strip challenge right of their co-owner, Defendant, to convey shares in its share. *Held*: Defendant may convey shares in its share to its grantees, and its grantees may enter upon and use roadway area. Governing principle is that one who, like Defendant, is a tenant in common of land may convey shares in his share, thus bringing in his grantees as tenants in common. All tenants in common have equal rights of possession and use. ***Butler v. Craft Eng Construction, Inc.***, 67 Wn.App. 684, 843 P.2d 1071 (Div. 1, 10/5/92).

—*W. B. Stoebuck*



William B. Stoebuck

Editor's Note: This is the final "Notes from the Academy" column, which Bill Stoebuck has graciously edited for many years. Thanks for a fine contribution and a job well done!

WWL-King County: Town Meeting—Gender Bias Survival Skills
Tues., May 18, 5-7 p.m.
55th Floor Conference Room
Two Union Square Building
601 Union Street, Seattle

Interactive discovery of common gender bias experiences; concrete suggestions on how to deal with these situations. Jean Verville and Kathy Cooper Franklin: findings of the Washington state Task Force on Gender and Justice in the Courts & the Ninth Circuit Gender Bias Task Force; the Glass Ceiling Initiative for the Office of Federal Contract Compliance. Rosemary Daszkiewicz: practical observations on gender bias in the legal environment.
WWL members: complimentary
Public: $10

CIVILITY AND RULE 11

by **Shawn Otorowski**

For litigators, the verdict is in! Civility between opposing counsel has deteriorated to the level that it is being critiqued by judges and lawyers locally, regionally and nationally. This article summarizes the findings of the recently published Ninth Circuit Rule 11 Study Committee ("Rule 11 Committee") Report which concludes that Rule 11 is a primary factor in the decline of civility.[1]

First things first, however. What is civility, and what are the other factors contributing to its decline? The Committee on Civility for the Seventh Federal Judicial Circuit defines civility as "professional conduct in litigation proceedings of judicial personnel and attorneys."[2]

A review of the Seventh Circuit committee's report identifies five primary contributing factors in the decline of civility. Those factors are:

- the dramatic increase in the numbers of practicing lawyers;
- economic competition for clients and winning results;
- the expansion in scope and in enforcement of Civil Rule of Procedure 11;
- the conversion of the practice of law from a profession to a business, causing lawyers to concentrate on the bottom line; and
- a decrease in programs historically developed for purposes of providing mentoring and other skills training to younger lawyers.

These same factors were cited recently in a summary report from the Subcommittee on the Quality of Life for Lawyers to the Torts and Insurance Long-range Planning Committee. Although there is no agreement on the degree of the impact of each factor, the overwhelming perception is that Rule 11 has had a substantial impact. This perception was the catalyst for the Ninth Circuit Judicial Conference Executive Committee's approval of a study of Rule 11.

From the outset, the goal of the Rule 11 Committee was to find answers to several important questions, including: how often are Rule 11 sanctions imposed; identifying the types of cases in which they are most frequently imposed; how often sanctions are requested or threatened, but not imposed; and how, if at all, has Rule 11 affected the practice of law? Due to limited resources, the Rule 11 Committee was unable to conduct its own survey. Therefore, the findings of the Rule 11 Committee were based on data generated from studies conducted by three independent sources. The data on which the Committee relied was generated by the American Judicature Society ("AJS") survey, the Federal Judicial Center survey and Professor Melissa Nelkin's survey. The AJS surveyed attorneys in three districts in each of the Fifth and Seventh Circuits and five districts in the Ninth Circuit. The Federal Judicial Center surveyed judges nationally and reviewed case files in five districts. Nelkin surveyed Northern California District Court judges, magistrates and lawyers. Comparison of the data generated from these sources reflected wide disparities. Disparities appeared in virtually every aspect of Rule 11 practice, including the frequency of threats of seeking sanctions, the number of applications for sanctions, the rate of denial of the motions, if granted, the nature and size of the sanctions; and various due-process considerations.

The Frequency of Sanctions, When Imposed

Turning first to the issue of frequency, the AJS survey suggests that much of the variance is attributable to the size of the metropolitan areas. Attorneys practicing in larger cities have experienced more threats and had more sanctions imposed than attorneys in smaller metropolitan areas. The AJS survey shows, however, that 85.7 percent of the Ninth Circuit attorneys who reported being involved in a case where sanctions were requested were involved in a single incident. Specifically, 6.2 percent of the attorneys in the Ninth Circuit have reported having been involved in a case in which Rule 11 sanctions were imposed over the last year. In comparison, the rate of frequency reported for the Fifth and Seventh Circuits were 7.6 percent and 9.9 percent, respectively.[3]

The Federal Judicial Center survey of judges disclosed a significant variation between judges in terms of willingness to impose sanctions. Within the Ninth Circuit, that survey found that 21.4 percent of the judges had not imposed sanctions in the past year; 25 percent imposed sanctions once or twice during the same time period, but approximately 26 percent had imposed sanctions five or more times. In comparison, the Federal Judicial Center review of cases offered a different estimate of the percentage of cases in which sanctions were imposed. In the District of Arizona, sanctions were imposed in 2.2 percent of the cases. The statistics for the other four districts were: 2.0 percent for the District of Columbia, 2.0 percent for the Northern District of Georgia, 2.4 percent for the District of Michigan, and 3.1 percent for the Western District of Texas. The data also revealed that the Ninth Circuit appears to be less willing to impose sanctions than the Fifth or Seventh Circuits. Thus, a larger percentage of the motions in the Ninth Circuit are denied (67.2 percent) versus 47 percent in the Fifth Circuit and 45 percent in the Seventh Circuit.

The Nature of Sanctions

Similarly, the nature and number of sanctions that are imposed in the Ninth Circuit vary from those in other circuits. Nonmonetary sanctions were awarded in the Ninth Circuit in 5.6 percent of the cases. In comparison, nonmonetary

sanctions were granted in 12.9 percent of the Fifth Circuit cases and in 14.3 percent of the Seventh Circuit cases. The types of nonmonctary sanctions included an oral reprimand, the requirement that counsel take a continuing legal education class, the striking of pleadings, a report by the judge to the disciplinary authorities, a dismissal of the case, disqualification of counsel and limits on discovery.

Clearly, the chart (above, right) reflects that the number of large monetary sanctions, i.e., more than $25,000 awarded in the Ninth Circuit is significantly less than in the Fifth and Seventh circuits.

Last, but certainly not least, there was a remarkable variation between circuits as to who received monetary sanctions. This issue is worthy of note because the Judicial Conference of the United States, through its Rules Committee, has recently approved a proposal to amend Rule 11. The amendment would expressly authorize the payment of sanctions to the court. This proposed amendment will undoubtedly impact all circuits based on the following data. Litigants in the Ninth Circuit receive awards in 42.9 percent of the cases. In the Seventh Circuit, litigants receive payment in 50 percent of the cases, and 59 percent in Fifth Circuit cases. In the Ninth Circuit, prevailing counsel and/or the court were more likely to be paid the sanction than in any other circuit. Specifically, where monetary sanctions are imposed, the court received payment in 8.3 percent of the Ninth Circuit cases. In comparison, the court received payment in 6.4 percent of the Seventh Circuit cases and 4.9 percent in Fifth Circuit cases. Hence, the proposed amendment may encourage awards to the court versus payment to the litigants and their counsel.

Focusing on variations in the amounts of monetary sanctions, the data revealed the following differences:

AMOUNT	Fifth Circuit	Seventh Circuit	Ninth Circuit
$0-$1,500	38.5%	47.7%	46.2%
$1,500-$3,000	9.6%	12.3%	8.9%
$3,000-$5,000	13.4%	16.2%	18.0%
$5,000-$10,000	9.7%	10.7%	11.5%
$10,000-$25,000	11.5%	15.4%	11.6%
Over $25,000	17.3%	7.7%	3.8%

The Basis for Sanctions

The filing of a frivolous action or claim accounted for 19.1 percent of sanctionable cases in the Ninth Circuit. Interestingly, the Federal Judicial Center's reading of cases concluded that the complaint was the most frequently targeted pleading. Discovery abuse was the basis for sanctions in 14.6 percent of the cases in the Ninth Circuit. Discovery abuse was the basis for sanctions in 17.6 percent of the cases in the Fifth Circuit, but only 9.9 percent of the cases in the Seventh Circuit. In the Ninth Circuit, the filing of a frivolous pleading/motion accounted for sanctions in 13.5 percent of the cases. Although there is some ambiguity in the data, it appears that plaintiffs, including their attorneys, are sanctioned almost twice as often as defendants.

Types of Cases

Of interest are the types of cases where sanctions are involved. The "winning categories" (meaning the type of cases where sanctions were imposed with a higher rate of frequency) were cases involving civil rights (22.5 percent), bankruptcy (15.7 percent), contract matters (12.4 percent) and personal injury (6.7 percent). Once again, the results for the Ninth Circuit are inconsistent with the results in the Fifth and Seventh Circuits. For example, in the Fifth Circuit, personal injury represented 25.7 percent of the cases and bankruptcy accounted for only 2.9 percent of the cases. The Rule 11 Committee was unable to find an apparent explanation for the differences.

Due-process Considerations

One of the most remarkable distinctions between the Ninth, Fifth and Seventh Circuits was the opportunity for counsel to be heard on oral argument on motions for sanctions. The Rule 11 Committee queried, but could not resolve, whether there was a connection between the ability to argue the motion and the result. In examining all cases where sanctions were requested, in contrast to cases where they were imposed, argument was heard in 48.8 percent of the Ninth Circuit cases. Oral arguments, on the other hand, occurred in only 18.4 percent of the Fifth Circuit cases and 22.5 percent in the Seventh Circuit cases. In cases where sanctions were imposed, oral arguments were heard in 67.8 per-

cent of the Ninth Circuit cases. This compares with 51.5 percent in the Fifth Circuit and only 40.7 percent in the Seventh Circuit. The Rule 11 Committee wondered if the disparity between allowing oral argument and the imposition of sanctions reflected varying beliefs about the value of oral argument. The above recitation of percentages is a small reflection of the disparities among the circuits in the interpretation and application of Rule 11. Further studies should be encouraged so that further conclusions can be reached as to the reasons for the disparities. Just as the origins of incivility are difficult to enumerate and understand, the solutions are varied and complex.

In furtherance of its goal, the Rule 11 Committee made 12 recommendations. Those recommendations were:

1. Steps should be taken to consolidate all of the rules and statutory provisions dealing with sanctions into a single provision.
2. Steps should be taken to amend Rule 11 to reduce the disparities among the circuits in its interpretation.
3. Due process in the form of notice and hearing should be provided before Rule 11 sanctions are imposed.
4. The proposal to expand Rule 11 to sanction "presenting or maintaining a claim, defense, request, demand, objection, contention, or argument" is undesirable and should be opposed.
5. Rule 11 should be revised to make sanctions discretionary, rather than mandatory.
6. The objective of sanctions, meaning deterring improper conduct, should be clearly stated in the text of the rule.
7. The proposal to include a 21-day "safe harbor" period to Rule 11 should be opposed.
8. It supports the proposed amendment to Rule 11, which states: "If warranted, the court may award to the prevailing party... the reasonable expenses and attorney's fees incurred in presenting or opposing the motion."
9. It supports the proposal to amend Rule 11 so that "[i]f requested, the court, when imposing sanctions, shall recite the conduct or circumstances determined to constitute a violation of this rule and explain the basis for the sanctions imposed."
10. It supports the proposal to amend Rule 11 to permit sanctions against law firms.
11. It supports further study of Rule 11.
12. Efforts should be undertaken to evaluate the impact of Rule 11 suffered due to the lack of the ability to compare the quality of practice between places where the Rule is rigorously enforced versus places where it is not.

A number of the recommendations reflect the Rule 11 Committee's views on changes presently under consideration by the Judicial Conference of the United States Rules Committee. The Rule 11 Committee is opposed to the amendment which would expand the scope of Rule 11. The present scope of Rule 11 is focused only on documents that are filed with the court. As presently worded, Rule 11 permits sanctions only for filing pleadings, motions or papers. The proposed amendment would allow sanctions for "presenting or maintaining a claim, defense, request, demand, objection, contention or argument." The proposed amendment would allow for sanctions to be imposed for argument found in any piece of paper. The Rule 11 Committee opposes the amendment because it felt that the expansion would accelerate the already significant amount of satellite litigation involving Rule 11.

The Rule 11 Committee also opposes the proposed amendment to create a 21-day safe-harbor provision. As drafted, the safe harbor provision provides that sanctions could not be imposed *if* the offending pleading or motion was withdrawn within 21 days after service of a Rule 11 motion. In simple terms, the onus would be on the party objecting to the material to file a Rule 11 motion, thereby invoking the 21-day time period. The Rule 11 Committee feels that this amendment would be an unnecessary shifting of the burden and cost as it would encourage the reckless filing of frivolous pleadings and motions. Moreover, the committee reasoned that the offending pleading or argument would have already done its damage and would not necessarily be cured by withdrawing the offending document.

One of the proposals, supported by the Rule 11 Committee, is the amendment to include a proviso which would state: "If warranted, the court may award the prevailing party on the motion [for sanctions] their reasonable expenses and attorney's fees incurred in presenting or opposing the motion." In essence, the amendment would clarify that a party who succeeds on a motion for sanctions, under appropriate circumstances, should be able to recover the costs incurred because of the wrongful conduct. A second amendment supported by the Rule 11 Committee is that sanctions be awarded against law firms, not simply the individual lawyer executing the offending pleading. The committee concluded that law firms should also be a responsible entity.

The final proposed amendment which the committee supports was the inclu-

sion of the language: "If requested, the court, when imposing sanctions, shall recite the conduct or circumstances determined to constitute a violation of this rule and explain the basis for the sanctions imposed." The proposed amendment should help send a message to lawyers of what conduct is or is not permissible. Similarly, the Rule 11 Committee felt that fairness dictates that a party and its counsel are entitled to know the factual basis for the discipline.

As noted earlier, Rule 11 is only one of the factors identified as contributing to the decline of civility. As such, additional recommendations have been made for restoring civility to our profession. In its final report, the Committee on Civility of the Seventh Federal Judicial Circuit recommended the adoption of standards for professional conduct. The standards fall into four major categories: lawyer's duties to other counsel; lawyer's duties to the court; the court's duties to lawyers; and a judge's duties to another. A total of 53 standards have been proposed. In order to enforce the proposed standards, the committee recommended that as a precondition to admission to the bar and/or participation in a particular case, each lawyer certify in writing that they will adhere to these standards of civility. To ensure widespread dissemination of the standards and full compliance, the Seventh Federal Judicial Circuit and Committee recommended adoption of the standards by law students, law schools, and it also proposed various courses of action by bar associations. The 53 standards are worthy of review by us all. Our Association would be well served by adopting these same standards.

In conclusion, if anything is clear, it is that the problem of incivility is not attributable to a single attitude or conduct. It is not an easy issue to resolve. On the other hand, lawyers are trained problem solvers. There is no better group to resolve the issue which is impacting our profession.

Endnotes

[1]A copy of the Rule 11 Study Committee Report can be obtained through the office of the Circuit Executive of the United States Courts for the Ninth Circuit, 121 Spear Street, Room 204, P.O. Box 193846, San Francisco, CA 94119-3846. The report of the Committee was approved by the Judicial Council of the Ninth Circuit at its August 3, 1992 meeting in Sun Valley, Idaho.

[2]143 F.D.R. 371, 374-76 (1992).

[3]The one important limiting factor is that the AJS study measured only attorneys involved in cases as opposed to the number of cases on the docket where sanctions were imposed. Therefore, you could have two attorneys reporting on the same case.

Shawn Otorowski *is a partner in the Seattle law firm of Schwabe, Williamson, Ferguson & Burdell. She is a Gonzaga University School of Law graduate and has been involved in a variety of bar and professional activities including appointment to the Ninth Circuit Rule 11 Study Committee.*

Do You See What I See? Observations from the Bench

by Hon. **Anne L. Ellington**
and **Rosemary Daszkiewicz**

Professionalism is the legal catchword of the '90s. It has become, at the very least, fashionable for commentators to decry the lack of professionalism and civility in the practice of law. A series of explanations has been offered to explain this phenomenon: some claim it is a direct result of the entrepreneurial aspects of the practice of law; some experienced lawyers blame new lawyers for "changing the rules"; some new attorneys believe experienced practitioners are training them by example to become pit vipers; some believe it is only a matter of "style" and not a serious problem; others wonder if this is the last bastion of "the old-boy network" lashing out against changes which have ended the control they held over our profession for so many years.

All interesting theories, but we wondered what was actually happening from the perspective of the one group that sees a little bit of all of us. How alarming is the view from bench? Has the profession done its best to turn the courtroom into a bloody battlefield? Or are there just a few pit bulls giving the rest of us a bad name?

The WSBA Ad Hoc (read: unfunded) Committee on Professionalism sent an informal questionnaire to the superior court judges in Pierce, Snohomish, King and Spokane counties to try to determine if the judges were observing various types of unprofessional conduct on a regular basis. Not meant to be a scientific polling instrument, the questionnaire simply asked the judges to rank a series of problems as most to least common in their courts, including lack of respect for the court; lack of civility/courtesy to opposing counsel; unpreparedness; failure to be punctual; inappropriate attire; arguments between counsel, instead of directed to the bench; personal comments, sarcasm and ridicule in pleadings; unfounded accusations of unethical conduct; misuse/abuse of discovery; and hardball tactics. In addition to the rankings, numerous judges provided detailed comments about their observations and concerns.

The responses varied. Some judges reported few or no problems. Some felt that particular segments of the bar exhibited particular problems more or less frequently than others. For example, while many judges identified punctuality as a general problem, several commented that while punctuality was a problem for criminal attorneys, the problem was with the system and not the practices of the attorneys themselves. Some judges reported many problems which overlapped the categories in the survey, such as personal comments and sarcasm among counsel, lack of courtesy to opposing counsel and unfounded accusations of unethical conduct by counsel.

Even if the problems are not universal, or even if each judge does not perceive the same conduct in the same fashion, every attorney should be aware of and responsive to the concerns which the judges identified. After all, the responses were anonymous. What might be tolerated in one courtroom might be wholly unacceptable in another. An attorney would be taking a tremendous risk in assuming that any particular judge was tolerant of marginal conduct.

Moreover, while judges strive to ensure that their decisions are based on a reasoned deliberation of the law and evidence presented, judges are also human. And when an advocate belittles opposing counsel or misrepresents authority in briefing, acts pompous and overbearing in argument, or appears to be using every conceivable tactic to stall or unnecessarily prolong discovery, a judge may be inclined to be quite strict with such counsel when an evidentiary issue arises which has good arguments on both sides or when making other discretionary decisions. In plain fact, discourteous counsel may forfeit the natural goodwill of the court.

In addition, discourteous counsel may lose credibility with the court. Many rulings are based on the representations of counsel as officers of the court; when those representations are not trusted, counsel's ability to persuade is greatly affected. Discourteous counsel thus do no favors for their clients.

By contrast, an unfailingly civil, polite advocate may find a bailiff or clerk is willing to go out of the way to be helpful or may receive only the mildest of reproofs when a 12 o'clock deadline is missed once by an hour or two. While these may be viewed simply as niceties, and while they will probably not change the ultimate outcome of the case, these small courtesies and pleasantries might make the practice of law more bearable.

What, then, did the surveys reveal? The good news is that most attorneys are appropriately respectful to the court. However, bailiff and court staff abuse were identified as real problems. One judge commented, "Many attorneys curb their feelings toward the court but let loose on the bailiff. They don't realize how they hurt themselves." Another noted that "Abusive and discourteous behavior to court staff, particularly bailiffs and clerks is of significant frequency and concern." What do the attorneys who engage in this conduct think? That a judge does not speak with his or her bailiff and clerk and learn who has been overbearing, rude or out of line? And do such attorneys not recognize the disadvantage of having sacrificed the friendly and cooperative reception given to courteous counsel? Bench staff are able to smooth the waters and simplify procedures. They, too, are human, and

an attorney who gives offense will pretty much be on her own, navigating rougher waters. And while attorneys are respectful to the bench, unfortunately, this respect does not extend to the other "officers of the court" against whom they are trying a case. "I haven't observed any particular lack of respect to the court, but increasingly I've had to call counsel into chambers over their insulting remarks to opposing counsel," reported one judge. In the rankings, the three most frequently cited problems included "lack of courtesy/civility to opposing counsel," "personal comments, sarcasm, ridicule and other personal attacks in briefs and other pleadings" and "argument between counsel, as opposed to argument directed at the court."

Misuse/abuse of discovery, unpreparedness and hardball tactics were the next three most common problems as ranked by the judges. After that were problems with punctuality, unfounded accusations of unethical conduct and lack of respect to the court. (The least prevalent problem was one of inappropriate attire in court, which will doubtless be a relief to the fashion cops among us.)

While the rankings were interesting, equally interesting were the comments many judges chose to provide. For example, several reported problems stemming from a "win at any cost" mentality, or an attitude that one's client rides the white horse:

It has been my experience that unprofessional conduct occurs when the lawyers lack a sense of perspective because they either personalize the litigation or adopt the view that their client is the "good guy" and the other side—both client and lawyers—are "bad guys." Once this attitude occurs all or most of the above conduct is present.

Win at any cost frequently takes place over the merits of the case. This carries adversary practice too far from reality. [In domestic relations cases] the lawyers adopt their client's emotional state, at worst, or succumb to the temptation to argue over every detail without regard to the court and often without meaningful preparation.

Problems with briefing and a lack of straightforwardness with the court were also frequently cited:

One that I've been disturbed by is [the] lack of forthrightness, e.g., claiming that something was given or identified when it was not, sneaking in exhibits which were not agreed [to] beforehand, etc.

Increasingly . . . counsel are misciting case authorities in briefs to the court—either the case is not good authority, only tangentially related to [the] issue for which it is cited or has been distinguished in later case. . . . Rarely do attorneys bring to the court's attention contrary authority.

I find I spend far too much time doing research lawyers should have done.

Of course, courts can directly address these concerns and are doing so. Several judges commented that they directly control this type of misconduct in their courtroom. (One judge said, "Perhaps I'm dreaming, but I like to think I can control these things.") Many judges now tell attorneys in chambers—or even on the record—when the level of discourteous, unprofessional behavior becomes excessive. The practicing attorney author of this piece recently observed a judge strongly admonish counsel for the level of rhetoric and personal attacks which had crept into the briefing and which the judge had noted in deposition transcripts. Even from the point of view of observer, this had a profound impact. Facing such a comment when one is the source of the problem would be particularly unpleasant and embarrassing.

In addition to the more serious problems judges reported, many included specific comments about small courtesies which they find helpful. These are generally simple steps an attorney can take which can help lend dignity to the court process and make the judge's job a bit simpler. For example, judges would like to eliminate "computer-generated briefings of inordinate length, marginal application and in more or less raw form not tailored to address issues in the case at hand." A judge also suggested that attorneys should be careful not to let the jury see what's written on their note pads as they question witnesses. Courtesy copies for the court are universally appreciated, including a set of exhibits in bench trials. One judge, commenting on "inappropriate attire," wrote that "a prosecutor wore a musical Christmas necktie to the arraignment calendar, and it inadvertently played during arguments for bail reduction." (It was not clear from the survey whether the Christmas jingle was secretly appreciated.)

This survey was not meant to be a decisive analysis of the problems of professionalism, or even a complete description of problems judges identify. Nonetheless, the message is clear. The "view from the bench" is not one of alarm, but it is one of concern. While most attorneys are courteous and professional, many are not. The present movement in the bar to encourage conduct which is professional and courteous is a movement both timely and justified. And the attorney who complies with those standards has much to gain.

The Honorable ***Anne L. Ellington*** *is on the King County Superior Court bench.*

Seattle attorney ***Mary Daszkiewicz*** *is counsel to the Northwest Womens Law Center.*

RPC, BC?

by **Lindsay Thompson**

Consideration of an amendment to the Rules of Professional Conduct making it a disciplinable matter for Washington lawyers to have sexual relations with clients has been interesting on two grounds. First, everyone commenting on it so far seems most concerned to carve out an exception for him/herself. The winner so far has been the Washington Association of Prosecuting Attorneys, which has argued that the rule, as drafted, would prevent hot-blooded young prosecutors and cops from falling in love while trying a case ("She was testifying in an unlawful bus conduct case. I was asking the questions. By the time she got through the jurisdictional element, there was only one question left: 'Can we have dinner tonight?'").

The happily coincidental arrival of *The Norton Book of Classical Literature* (New York: W. W. Norton & Co., Bernard Knox, editor, 1993) in the mail provided a reminder that there is very little new under the sun, even though one of the reasons for the RPC amendment is that there is perceived to be a "pressing problem" to be addressed. In Book I of "The Art of Love," by Ovid (43 B.C.-A.D. 17), the section titled, "Where to Find A Woman" offers these observations (p. 742):

Here's what to do. When the sun's on the back of Hercules'
Lion, stroll down some shady colonnade,
Pompey's, say, or Octavia's (for her dead son Marcellus:
Extravagant marble facings, R.I.P.),
Or Livia's, with its gallery of genuine Old Masters,
Or the Danaids' Portico (note
The artwork: Danaus' daughters plotting mischief for their cousins,
Father attitudinizing with drawn sword).
Don't miss the shrine of Adonis, mourned by Venus,
Or the synagogue—Syrian Jews
Worship there each Sabbath—or the linen-clad heifer-goddess's
Memphian temple: Io makes many a maid what *she*
Was to Jove. The very courts are hunting-grounds for passion;
Amid lawyers' rebuttals love will often be found.
Here, where under Venus' marble temple the Appian
Fountain pulses its jets high in the air,
Your jurisconsult's entrapped by Love's beguilements—
Counsel to others, he cannot advise himself.
Here, all too often, words fail the most eloquent pleader,
And a new sort of case comes on—his own. He must
Defend *himself* for a change, while Venus in her nearby
Temple snickers at this reversal of roles.

The translation is by Peter Green. For some handy background reading, see Hugh Spitzer's article, "Caesar Would Have Arbitrated!" *Bar News*, April, 1993.

TERROR IN CONDON HALL

by **Russell A. Austin, Jr.**

Professor Warren Shattuck terrorized several generations of law students at the University of Washington. He taught first-year contracts and several related second- and third-year courses for nearly 40 years.[1]

Professor Shattuck had the power to reduce even a good student's brain to Jello, and to turn strong men into quivering blobs, all by merely asking a question. I can certainly state from personal experience that I put in twice the time preparing for Professor Shattuck's courses than for any other, as did most students.

All students hoped their names had been left off the list of those enrolled in Shattuck's class, and all prayed that they would not be called upon to participate in a Shattuck grilling. Some people probably lucked out. But if you were called on, and if you gave a correct (or satisfactory) answer,[2] you could figure you would continue to be called on for each successive question until you screwed up. The wrong answer was met by a withering look and another student's name. That successor student then remained on the firing line until he[3] missed. My recollection is that I was on the firing line once for almost two weeks, and I think I was so relieved to finally miss that I reduced my study time for the following day to only a couple of hours. That was in lieu of going out and getting drunk, which is what I really wanted to do.

But I digress.

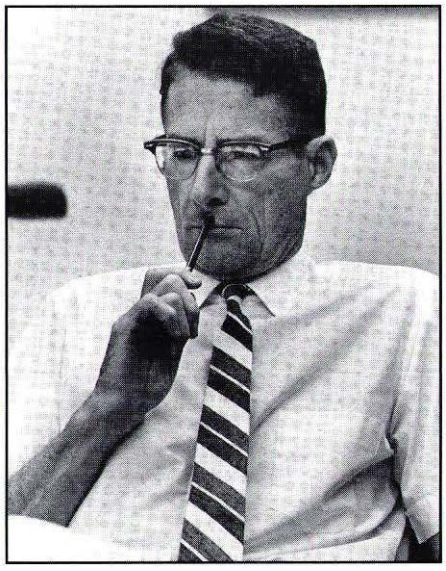
Professor Shattuck had a very definite questioning format. He would mumble a long string of facts, sometimes in the form of a question. Other times, the student would have to figure out what part of the facts had been the question. But when the pattern was set out, he'd say, "Mr. Smith?" Smith was supposed to have already assimilated the facts and be able to respond promptly. Any delay, and it was another name; and never was the student's name given *before* the facts of the question, because then he would be able to listen carefully and be thinking about the question as it developed. *Surprise* was a key element in the Shattuck method.

And if the student didn't respond rapidly enough, or if he confessed he didn't know, it was, "Mr. Brown?" And if anybody called upon had the temerity to ask Professor Shattuck to repeat the question, it was the withering look, then, "Mr. Green?"

The story goes that a certain student named Smith arrived at class one day and found Professor Shattuck already lecturing. So Smith quietly took an aisle seat in the back row, hoping not to call attention to his arrival. He was reputed to have been prepared, having studied the material for the day at great length. But Professor Shattuck's questions, as well as his lectures, were not always easy to understand. And I'm not speaking of concept, but of delivery.[4]

Smith was just opening his notebook and getting organized when he heard, "mumble, mumble, mumble, mumble, mumble, mumble, Mr. Smith?" He was dumbfounded. He hadn't heard or understood the question, and he knew better than to ask that it be repeated. So, dutifully, Mr. Smith rose and said, "Professor Shattuck, I'm sorry, but I'm not prepared today." To which Professor Shattuck clearly, and slowly enunciated: "Just..how..prepared..do...you...have..to...be... Mr....Smith...to...close...the...door?"

To the general public, Professor Kingsfield in *The Paper Chase* may have seemed frightening. But to those of us who survived Warren Shattuck, we know that Kingsfield was a pussycat.



Professor Warren Shattuck

Endnotes

[1]University of Washington School of Law, 1935-73; Hastings School of Law, 1974 to the present.

[2]There were few "correct" answers, if any. But others were accepted as close enough to be satisfactory.

[3]Note the masculine gender. My class only had two "she" students, and they were in the other section.

[4]I recall asking a third-year student, during my first exposure to Professor Shattuck, what kind of an accent he had. The student responded that he didn't know, but other students over the years had raised the same question and investigation revealed that Shattuck had been born, raised and schooled locally, so he was presumably lecturing in English. There were many who doubted that. Some suggested a speech impediment. But nobody ever learned for sure.

***Russell A. Austin, Jr.**, aka WSBA #459, practices in Seattle. His recollections of eccentric King County judges appeared in the December 1992* Bar News.

Notices of Interest to WSBA Members

WSBA Disciplinary Notices:

Suspended: By Washington Supreme Court order dated March 11, 1993, lawyer **B. Peter Barndt** (WSBA #6871, admitted 1976) has been suspended from the practice of law for five years, with the execution of the last four years of the suspension suspended provided that, during the four years, Barndt performs all patent-associated work under the supervision of his named supervisor and that he commits no further violations of the PTO Code of Professional Responsibility. The Court ordered the suspension effective November 13, 1992. [March 17, 1993]

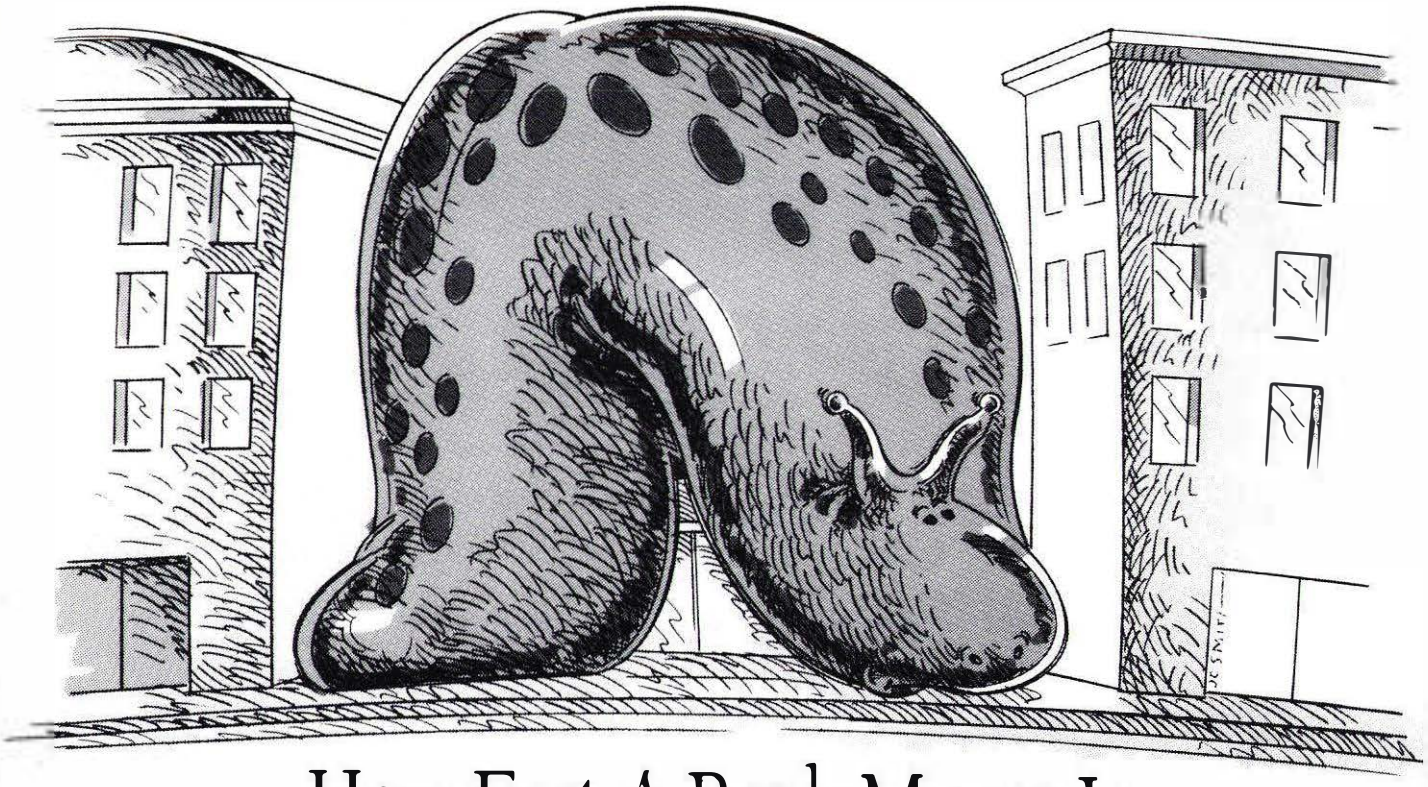
Public Notices

United Kingdom Fulbright Award in European Community Law Announced:

The United Kingdom Fulbright Commission, in association with Allen & Overy, a leading U.K. and international law firm, has announced the availability of a new professional fellowship in European Community Law for 1994-95. The grant period is for *four months*. The grantee will be provided the opportunity to pursue three months of study and work experience in London and one month of experience in Brussels.

Requirements: applicants must hold U.S. citizenship; must hold law degrees and be qualified and practicing lawyers between three and six years, with some demonstrable experience of, or interest in, aspects of EC law; ability to obtain leave from work for the fellowship and return to U.S. for employment at fellowship's end.

The grant is for US$1,000 per month in addition to roundtrip travel. The fellowship period is from the beginning of October, 1994 to the end of January, 1995. The grantee will spend three months in London as a nondegree student at University College, London and will follow up to four L.L.M. courses—principally in EC law, but with flexibility to follow other L.L.M. courses selected by the candidate. Tuition costs are covered by Allen & Overy. About 60 percent of the London time will be spent on L.L.M. course work, with 40 percent spent at Allen & Overy. The grantee will spend one month in Brussels at the Allen & Overy office there, cost of travel between London and Brussels borne by the firm. Allen & Overy will provide assistance in finding housing, but costs for accommodations will be covered by the grantee. Deadline for application is August 1, 1993. Other requirements apply. For information or application, contact Dr. Karen Adams (202) 686-6245 or Ms. Thitaya Rivera (202) 686-6239, or write to the U.K. Fellowship in European Community Law, Council for International Exchange of Scholars, 3007 Tilden Street, N.W.,



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Washington State Bar Association
Board of Governors Election
Districts 3, 6, 8, and King County at Large

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Board of Governors'
Candidate Biographical Information
(as supplied by the candidates)

Board of Governors' Candidate Biographical Information

(as supplied by the candidates and edited to meet the 100-word limit)

Third Congressional District

(Uncontested)

MARY E. FAIRHURST

Mary E. Fairhurst is an Assistant Attorney General. Mary earned her B.A. and J.D. from Gonzaga University. Mary clerked two years for the Washington Supreme Court. At the Attorney General's Office, Mary worked in the Revenue Division, was Assistant to the Attorney General, and is currently in the Transportation Division.

Mary has been president of the Washington Women Lawyers' State Board, Co-chair of the WSBA's Opportunities for Minorities in the Legal Profession Committee, and currently serves on the WSBA's Character and Fitness Committee. She is a member of Governmental Lawyers and Thurston County Bar Associations.

Sixth Congressional District

DANIEL L. HANNULA

Daniel L. Hannula is a partner in the firm of Rush, Hannula & Harkins in Tacoma. He graduated from the University of Washington with a B.A. in 1974 and attended law school at the University of Washington, receiving his J.D. in 1977.

Mr. Hannula is a past president of the Tacoma-Pierce County Bar Association. He is currently a member of the Washington State Judicial Conduct Commission and the Board of the Washington State Trial Lawyers Association.

He is a member of the Panel of Arbitrators of the American Arbitration Association and past Chairperson of the Pierce County Mandatory Arbitration Committee.

MICHAEL V. RIGGIO

Michael V. Riggio is a Tacoma native. He graduated from the University of Washington and UPS ('76 JD), joining the Pierce County Prosecutor's office after the Navy in 1987. In 1989 he joined Graham & Dunn as a litigation associate in their Tacoma office and became a shareholder in the firm in 1993. His practice emphasizes defense work in aviation, maritime law, and commercial practice.

Mike has taught at UPS School of Law continuously since 1984. He is presently Chair of the WSBA Legal Services to the Armed Forces Committee. He resides in Gig Harbor and splits his time between his Seattle and Tacoma offices.

Eighth Congressional District

SHERYL GARLAND

Sheryl Garland is a shareholder at the Bellevue law firm of Revelle Hawkins P.S. Sheryl was appointed by the Washington State Supreme Court to serve on the Gender and Justice in the Courts Implementation Committee and she currently serves on the WSBA Court Congestion and Improvement Committee.

She is the immediate past president of the State Board of Washington Women Lawyers. For several years she also served on the Board of Directors of Youth Eastside Services, a United Way organization. Sheryl is married with one young son, Kyle.

STEVEN G. TOOLE

Toole is a 1975 graduate of the University of San Diego Law School, practicing in the Seattle area since 1976. His practice has included family and criminal law and civil litigation. Currently, his sole proprietorship in Bellevue is limited to plaintiff's personal injury work.

Toole is currently President of EKCBA and a member of WSTLA's Board of Governors. He Co-chaired SKCBA's Judicial Screening Committee for two years and regularly volunteers at the two Eastside legal clinics.

He sees the budget crisis, streamlining services, increasing membership participation and improving the availability of pro bono legal services as pressing issues facing the WSBA.

King County at Large

RODERICK DIMOFF

Occupational Background: 1955 UW Law Degree and Bar admission. Two years in the US Army, returned to Seattle; full time plaintiff injury, criminal defense, general private practice and legislative bill drafting (1957-71); Hearing Examiner/ALJ for Employment Security Appeals and Office of Administrative Hearings (1971-93); Superior Court Arbitration in four counties (1981-93); pro bono for SKCBA.

Recent Volunteer Work: Harborview Trustee (1985-90), WSBA Corrections Committee (1990-93); learning about LAP (1991-93); SKCBA committees.

Goals: Keep professional governance to a minimum; encourage association staff to unionize; encourage "outsider" opinions from within the association.

LINDA J. DUNN

Dunn is a partner at Levinson, Friedman, Vhugen, Duggan & Bland, responsible for all areas of litigation in complex product liability cases and personal injury. She served as an Assistant Attorney General for the Labor and Industries Division of the Attorney General's Office and was the Chief of the Consumer Protection Division.

She served as President of the Seattle-King County Chapter of Washington Women Lawyers, as chair of the Judicial Evaluation Committee, and later as President of the state organization. She has served on the WSBA Lawyer Advertising Committee and as a monitor for the Office of Disciplinary Counsel.

Advance Notice:
1994
WSBA Board of Governors
Elections:

King County at Large (currently represented by Mike Larson)
Fifth Congressional District (currently represented by Joe Nappi)
First Congressional District (currently represented by Wayne Blair)

Suite 5M, Box L-F, Washington, D.C. 20008-3009.

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 April 1993 is 3.13%. The maximum allowable interest permissible for **May 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* on page 39 in October, 1987 for 1982-84; page 37 in June 1989 for 1984-85; and on page 47 in June 1992 for 1986-92.

State Law Library: Books Recently Catalogued:

Listed below are some of the new titles recently acquired by the State Law Library, and available for loan by phone from (206) 357-2136, or by mail from Washington State Law Library, Temple of Justice, P. O. Box 40751, Olympia, WA 98504-0751. A quarterly *Books Recently Cataloged* list, generally containing 150-200 new titles, is also available. Copies may be obtained by mail from the above address.

On January 7, 1991, the State Law Library began circulating the video collection of the Office of the Administrator for the Courts (OAC), which has more than 150 titles and over 175 videos. A catalog of titles is available from OAC; call Judicial Education at (206) 753-3365, ext. 3248, for a copy.

When requesting materials, please include the author, title, and call number.

BANKRUPTCY

Alix, Jay and Elmer E. Heupel. *Financial handbook for bankruptcy professionals: a financial and accounting guide for bankruptcy judges, attorneys, and accountants.* 1991-1992 ed. St. Paul, MN: West Pub. Co., c1992. Pp. 734. ***KF1527.A65 1992***

CHILDREN'S RIGHTS

Purdy, Laura Martha. *In their best interest?: the case against equal rights for children.* Ithaca, NY: Cornell University Press, 1992. Pp.269. ***HQ789.P87 1992***

COMPUTER CONTRACTS

Hoffman, Paul S. *The software legal book.* 1991 rev. Croton-on-Hudson, NY: Shafer Books, c1991-. 2 vol. (loose-leaf) ***KF905.C6H63 1991***

County Bar Association Meeting Times: Here is a list of the meeting times of Washington county bar associations. Meeting times are subject to constant change; corrections and additions should be sent to the Editor, *Bar News.*

Adams	As announced
Benton/Franklin	Monthly, 3d Thursday
Chelan/Douglas	Monthly, 2d and last Tuesdays
Clallam	Monthly, 1st and 3d Fridays
Clark	Monthly, 2d Monday
Cowlitz/Wahkiakum	Monthly, 2d Monday
East King	Monthly, 3d Thursday
Ferry	As announced
Grant	Monthly, 1st Friday
Grays Harbor	Monthly
Island	Every other month, 3d Wednesday
Jefferson	Monthly, 2d Monday
Kitsap	Monthly, 1st Friday
Kittitas	Every Friday
Klickitat/Skamania	Annual meeting in October
Lewis	Monthly, Friday
Lincoln	Monthly, 1st Tuesday
Mason	As announced
Okanogan	Monthly, 2d Tuesday
Pacific	Monthly, 1st Friday
Pend Oreille	No information
San Juan	Monthly, 1st Monday
Seattle/King	Monthly, 1st and 3d Wednesdays
Skagit	Monthly, 1st Wednesday
Snohomish	Monthly, last Friday
South King	Monthly, 3d Thursday
Spokane	Monthly, 2d or 4th Friday or as announced
Stevens	As announced
Tacoma/Pierce	Monthly, 2d Thursday
Thurston	Monthly, 3d Wednesday
Walla Walla	Annual meeting as announced
Whatcom	Monthly, 1st Wednesday
Whitman	Monthly, 2d Friday
Yakima	Every Friday

HANDICAPPED—EMPLOYMENT

Naeve, Robert A. and Ari Cowan. *Managing ADA: the complete compliance guide.* New York: Wiley Law Publications, c1992-. 2 vol. (loose-leaf) ***KF3469.N34 1992***

LAW OFFICES

Robbins, Richard L. *The automated law firm: a complete guide to software and systems.* 2d ed. Englewood Cliffs, NJ: Prentice Hall Law & Business, c1992-. 1 vol. (loose-leaf) ***KF320.A9R6 1992***

WITNESSES

Loftus, Elizabeth F. and James M. Doyle. *Eyewitness testimony: civil and criminal.* Foreword by Melvin M. Belli, Sr. 2d ed. Charlottesville, VA: Michie, c1992. Pp. 483. ***KF9672.L63 1992***

Note:

Telephone numbers for regular CLE providers and other groups presenting listed events are listed on page 36. Contact them for further information

May 1993

1 Law Day USA. The theme for the event is "Justice For All—All for Justice."

5 Seattle: (Evening) Current Issues in Criminal Law, Series I. *Sponsored by* WSBA CLE.

6-8 Stevenson: Environmental/Land Use Section midyear meeting and seminar. *Sponsored by* the section/WSBA CLE.

6-8 Winthrop: WSBA Young Lawyers Division midyear meeting. *For information:* Sheri Borgford, (206) 727-8200.

7 Boise: Ethics. Also presented 5/14 in Idaho Falls and 5/21 in Coeur d'Alene. *Sponsored by* Idaho Bar Foundation.

7 Seattle: Public Procurement and Private Construction Law midyear meeting and seminar. *Sponsored by* the section/WSBA CLE.

7 District Court Update. *Sponsored by* Spokane County Bar Association. *For information:* (509) 623-2665.

7-8 Spokane: WSBA Board of Governors meeting.

7-9 Seattle: Basic Mediation Skills. *Sponsored by* UW School of Law.

12 Seattle: (Evening) Current Issues in Criminal Law, Series II. *Sponsored by* WSBA CLE.

13 Idaho Falls: Health Care Proxies, Powers of Attorney and Living Wills (video). Also presented 5/20 in Coeur d'Alene. *Sponsored by* Idaho Bar Foundation.

14 Seattle: Use of Computers in the Law Office. *Sponsored by* UW School of Law.

14 Seattle: Copyright Law as Applied to the Arts. *Sponsored by* Washington Lawyers for the Arts. *For information:* (206) 292-9171.

14 Seattle: Staying Out of Hot Water—Managing Client Trust Accounts. *Sponsored by* WSBA CLE

14-16 Richland: Business Law midyear meeting and seminar. *Sponsored by* the section/WSBA CLE.

15 Deadline for copy for July 1993 *Bar News*.

15 Introduction to Computer-assisted Legal Research. *Sponsored by* UW School of Law.

17-19 Yakima: Support Staff Training Program. *Sponsored by* WAPA.

18 Seattle: WWL King County Town Meeting: Gender Bias Survival Skills. *For information:* (206) 622-5585.

18 Seattle: Advanced Real Estate Law in Washington. *Sponsored by* National Business Institute, Inc.

19 Seattle: (Evening) Current Issues in Criminal Law, Series III. *Sponsored by* WSBA CLE.

20 Seattle: Inside the Aryan Nations. *Sponsored by* Northwest Coalition Against Malicious Harassment/U.W. Dept. of Sociology. *For information:* (206) 233-9136.

21 Seattle: Meeting the Needs of the Elderly and Their Caregivers. Also presented 5/25 in Spokane. *Sponsored by* WSBA CLE.

21 Seattle: Northwest Women's Law Center annual gala dinner and presentation of Florence Merrick and Founder's awards. *For information:* Tracy Foltz, (206) 682-9552.

21 Spokane: Legal Malpractice. *Sponsored by* Spokane County Bar Association. *For information:* (509) 623-2665.

21 Tacoma: Commercial Litigation. *Sponsored by* TPCBA.

22 Portland: Regional Legal Writing Conference. *Sponsored by* Northwestern School of Law and Legal Writing Institute. *For information*: (503) 768-6711.

22-23 Seattle: National Lawyers' Guild regional conference: Resisting the Police State in the 1990s. *For information:* (206) 622-5144/622-5151 (messages).

24-25 Seattle: Third Midyear Environmental Law & Management Conference—New Directions at EPA. *Sponsored by* Northwestern School of Law. *For information:* (503) 768-6629.

25 Spokane: Meeting the Needs of the Elderly and Their Caregivers. *Sponsored by* WSBA CLE.

25 Wenatchee: Adoption Law (moderated video replay. *Sponsored by* WSBA CLE.

26-27 Portland: Third Midyear Environmental Law & Management Conference—New Directions at EPA. *Sponsored by* Northwestern School of Law. *For information:* (503) 768-6629.

27 Spokane: Meeting the Needs of the Elderly and Their Caregivers. *Sponsored by* WSBA CLE.

27 Seattle: WSBA World Peace Through Law seminar. *Sponsored by* the section/WSBA CLE.

27 Seattle: The Traumatic Brain Injury Case. *Sponsored by* WSTLA.

28 Seattle: Partnership/Limited Liability Companies. *Sponsored by* WSBA CLE.

Business Advisory Services, Inc. (206) 223-5400
CLE International (206) 621-1938
Idaho Bar Foundation (208) 342-8958
National Business Institute, Inc. (715) 835-7909
Lewis & Clark Law School (503) 768-6642
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 Assn (WSTLA) (206) 464-1011, (800) 732-9251

28 Seattle: Taxation of Employee Benefits. *Sponsored by* WSBA CLE.

June 1993

4 Seattle: 10th Annual Pacific Rim Computer Law Institute. *Sponsored by* WSBA CLE, et al.

4-6 Vancouver, WA: Real Property, Probate & Trust Midyear Meeting. *Sponsored by* WSBA.

5 Seattle: Evidence and the Art of Trial Advocacy: Making and Meeting Objections. *Sponsored by* UW School of Law.

10 Seattle: Tax Planning by the Numbers. *Sponsored by* WSBA CLE.

10-12 Jackson, Wyoming: Family Restructuring at the End of the 20th Century. *Sponsored by* the North American Conference of the International Society of Family Law. Contact (801) 378-2617.

11 Olympia: Adoption Law (moderated video replay). *Sponsored by* WSBA.

11 Seattle: Indian Natural Resource Law. *Sponsored by* UW School of Law.

15 Deadline for copy for August 1993 *Bar News*.

17 Seattle: Mini Series: School & Recreation Law, Bankruptcy for P.I., Business Torts, Construction Law. *Sponsored by* WSTLA.

18 Tacoma: Protecting Your Practice from Malpractice Claims, Discipline and Litigation: Letters, Agreements and Practical Advice. *Sponsored by* WSBA CLE.

18-19 Leavenworth: WSBA Board of Governors meeting.

Also: WSBA Young Lawyers Division Board meeting.

18-19 Boise: Fundamentals of Estate Planning. *Sponsored by* Idaho Bar Foundation.

19 Seattle: Insurance Law Institute. *Sponsored by* UW School of Law

19 Seattle: Insurance Law Institute. *Sponsored by* UW School of Law.

22 Seattle: Forming and Maintaining a Tax-exempt Corporation. *Sponsored by* Washington Lawyers for the Arts. *For information:* (206) 292-9171.

23-25 Chelan: Summer Training Program. *Sponsored by* WAPA.

24 Seattle: Charitable Gift Planning: Charting the Course. *Sponsored by* Washington Planned Giving Council. *For information*: Carolyn Black, (206) 632-6881.

25-26 Chelan: 1993 Litigation Section Midyear meeting and seminar: Strategies for Winning at Trial. *Sponsored by* the section/WSBA CLE.

25-27 Yakima: 1993 Family Law Section Midyear meeting and seminar. *Sponsored by* the section/WSBA CLE.

July 1993

15 Deadline for copy for September 1993 *Bar News*.

21-23 Sun Valley: Idaho State Bar Annual Meeting, including nine CLE programs.

22-25 Coeur d'Alene, ID: WSTLA 1993 Annual Meeting & Convention.

30-31 Winthrop: WSBA Board of Governors meeting.

August 1993

6-7 Stevenson: WSBA Young Lawyers Division Board meeting. *For information*: Sheri Borgford, (206) 727-8200.

15 Deadline for copy for October 1993 *Bar News*.

20 Seattle: International Trade Law. *Sponsored by* UW School of Law.

21-28 King Salmon, Alaska: Chiropractic/Legal Seminar, Katmai Lodge. *Sponsored by* Margullis, Luedtke & Ray, attorneys, Tacoma. *For information:*, Sherilee M. Luedtke, (206) 627-7222.

22-24 Leavenworth: Juvenile Train-

ing Program. *Sponsored by* WAPA.

September 1993

9-10 Seattle: WSBA Board of Governors meeting.

10 Seattle: WSBA Annual Meeting. NOTE: WSBA convention in Victoria has been cancelled.

10-11 Sun Valley: Advanced Estate Planning. *Sponsored by* Idaho Bar Foundation.

15 Deadline for copy for November 1993 *Bar News.*

17 Tacoma: Effective Discovery—Planning/Implementation. *Sponsored by* TPCBA.

17-18 Coeur d'Alene: Northwest Bankruptcy Conference. *For information:* Idaho Bar Foundation.

October 1993

1 Boise: Litigation CLE. Also presented 10/8 in Coeur d'Alene and 10/15 in Twin Falls. *Sponsored by* Idaho Bar Foundation.

7 Coeur d'Alene: How to Handle Basic Copyright and Trademark Problems (video). Also presented 10/14 in Twin Falls. *Sponsored by* Idaho Bar Foundation.

15 Deadline for copy for December 1993 *Bar News.*

15 Tacoma: Estate Planning. *Sponsored by* TPCBA

21 Lewiston: Appellate Advocacy (video). Also presented 10/28 in Idaho Falls. *Sponsored by* Idaho Bar Foundation.

22 Lewiston: Trends in Real Estate. Also presented 10/29 in Idaho Falls and 11/5 in Boise. *Sponsored by* Idaho Bar Foundation.

November 1993

12 Boise, Idaho: Criminal Jury Instructions. Also presented 11/19 in Moscow. *Sponsored by* Idaho Bar Foundation.

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

19 Tacoma: Appellate Practice. *Sponsored by* TPCBA.

December 1993

3 Idaho Falls: Annual Law Update. Also presented 12/10 in Boise and 12/17 in Lewiston. Sponsored by Idaho Bar Association.

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

15 Deadline for copy for February 1994 *Bar News*

Inside the Aryan Nations

HUB West Ballroom, UW campus.
Thurs., May 20, 7 p.m.
$10
Sponsored by
UW Dept. of Sociology &
Northwest Coalition Against
Malicious Harassment

WSBA MEMBER SERVICES

COLD Needs Hot Help

Spring brings the annual ritual of seeking appointment to WSBA executive standing committees. While the number of executive committee places is limited, the Computerization of Law Division (COLD) has a number of projects under way which will prove both challenging and of immense help to Association members, says Third Congressional District Governor Steve Tubbs.

"What kind of projects are we talking about? Well, we're working on a number of things," Tubbs says. "For example, if you enjoy writing, we need volunteers to write blurbs in various publications throughout the state—the *Bar News*, the *SKCBA Bar Bulletin*, section newsletters and the like. If you enjoy teaching, we need help setting up seminars and users' groups to offer instruction on the use of COLD media.

"If you like drafting, you can assist with the development of a forms bank. If you like administration, you can help develop and coordinate projects with the association and sections. If you enjoy negotiation, you can work on developing agreements with state agencies for access to their databases. There's computer-related legislation the section is interested in and which needs drafters."

COLD is a Bar Association division with links to virtually every area of association operations and activities. Besides the important work of bringing computerized data within the reach and purse of all Washington lawyers, it can be an interesting way to make useful connections leading to those hard-to-get-executive committee appointments.

COLD has a volunteer coordinator, Ron Steingold, at (206) 462-0575. You can call him, or write him, or leave a message on the WSBA electronic bulletin board. Or, says Tubbs, you can contact your district's Board of Governors member—they're listed in the *Bar News* every month (see page 4).

WSBA POLICIES

Glasnost, Bar Style

On March 26, the WSBA BOG approved a new method for committee membership selection, applicable in FY 93-94, beginning next October. The reform, which originated in the WSBA Young Lawyers Division, was developed "to cure the perennial problem of having more people wanting to serve on committees than we had committee positions, and to insure greater participation within our committee structure by members," said WSBA president Steve DeForest.

Most committees will consist of 11 "funded" positions, whose out-of-pocket expenses will be reimbursed by the WSBA (two committees will have 22 such positions) and an unspecified number of "unfunded" positions. An unfunded member has full voting rights but is not reimbursed by the WSBA for expenses. Unfunded positions will be appointed by the WSBA president-elect.

"This process should allow more members, with differing and varied backgrounds, to participate . . ." said WSBA executive director Dennis Harwick.

For further information on the appointment process, call the WSBA Department of Public Affairs, (206) 727-8212.

COURTROOM DECORUM AND PRACTICE GUIDELINES—INTERIM REPORT

by **Mary F. Gallagher Dilley**

The Washington State Bar Association Long-range Planning Task Force identified lawyer competency and professionalism as central missions of the bar. From that mission statement came the Courtroom and Decorum and Practice Guidelines—drafted by the Court Congestion and Improvement Committee to address *professionalism in litigation.* They were circulated for comment to local and specialty bar associations, bar committee and section members and the Washington law schools. The comments, briefly summarized in this report, have been carefully considered by the committee and are incorporated into the most recent revision of the guidelines. This latest revision follows this report and is open for further comment.

Who Is the Court Congestion and Improvement Committee, and What Is It Doing?

This committee is comprised of 18 members, 14 of whom are attorneys from across the state appointed by the Board of Governors. The Office of Administrator for the Courts is represented by a liaison member selected by that agency. The judicial branch is represented by the following members: Justice Richard Guy, Supreme Court; Judge Karen Seinfeld, Division II of the Court of Appeals; Judge Robert Harris, Clark County Superior Court, Superior Court Judges' Association; and Judge Charles V. Johnson, King County Superior Court, Presiding. The committee works on projects, as assigned by the Board, in addition to projects generated by the committee. Recent projects have included continued work in development of Case Processing Time Standards, review of the ABA Standards for Appellate Jurisdiction and study of the impact of pro se parties on the justice delivery system.

The Need For Guidelines

Many recognize a *deterioration of the public attitude* toward lawyers and a loss in the sense of pride lawyers feel about their profession. The nature of the adversarial justice system itself generates competing and complex obligations as each lawyer works with obligations to self, clients, adversaries and the justice process. The process and the performance of duties require effective advocacy and zealous representation. It is well-acknowledged that the process is confrontational. Professional behavior does not preclude confrontation. Lawyers are expected to be zealous advocates and to promote their clients' interests in opposition to others. Strategy and active planning, to minimize weaknesses and maximize strengths, require use of varying tactics. These factors combine to tempt lawyers to stoop to rude and abusive behavior which impedes the search for truth. Without some guidelines, the process tends toward chaos.

The committee's intent in drafting the guidelines is to enhance professionalism in litigation practice by providing both lawyers and judges with a safe harbor for litigation conduct. A lawyer who adheres to the guidelines will conform to acceptable Washington practice. It is anticipated that individual judges may choose to depart from them as local practice dictates. When completed and accepted, the guidelines will be an *educational tool* found in such places as the "Judges' Notebook" for each county. They are not intended to be used as a basis for litigation or for sanctions or penalties but as a reference and a guide.

Guideline Comments

The comments reflect that judges must set the standard for and enforce courtroom decorum. This leads some to question why the bar association should become involved in the matter. Several judges have observed that litigation decorum is a joint undertaking. The bench needs the participation of the bar in formulating mutually acceptable standards of behavior. The bar association can obtain input from a broad spectrum of the bench and bar and assist in formulating guidelines which incorporate the best thinking from all segments. Jointly developed guidelines will be particularly helpful to newer judges who may lack extensive trial experience. Comments from the bench affirmed that the guidelines were important and a step forward in the evolution of attorney behavior.

Some have questioned whether guidelines will be helpful. One commentator observes, "regardless of the guidelines, the good lawyers do not need them, and the bad lawyers simply ignore them." But the process of articulating and publishing guidelines educates and uplifts the level of practice and contributes to the making of more "good lawyers."

Concern was expressed that the guidelines fundamentally misconceive the nature of litigation. The guidelines are premised on the philosophy that an atmosphere of dignity and mutual respect best advances the process of determining truth and administering justice. Some questioned this philosophy, articulating the view that the adversary nature of litigation requires abrasive tactics to root out the truth, and that an adversary should not be respected unless that respect has been earned. These comments have helped to sensitize the committee to the concern that guidelines must not overly restrict the ability of lawyers to use surprise and rhetorical devices to ferret the truth out of untruthful witnesses. The committee has redrafted many of the guidelines to accommodate lawyers whose personal styles legitimately probe and test witnesses and evidence to effectively present their clients' positions.

Some asserted that today's guidelines inevitably tend to become tomorrow's disciplinary rules, and that the guidelines will be used to punish or discipline lawyers of whom a judge disapproves. The committee has strengthened the statement in the preface that the guidelines are not to be used for disciplinary purposes, or to set a standard of practice for professional liability.

Much concern was expressed about the guidelines restricting movement in the courtroom. The original draft specifically addressed standing, approaching witnesses and the bench, remaining at counsel table and approaching and placing objects on the jury rail. Many observedthe structured formality to be a hindrance to efficiency in the courtroom and articulated the belief that movement was necessary to keep the attention of the jury and reduce unnecessary interruptions. Freedom of movement was seen as an individual-style issue as well as an area best subject to local courtroom practice. In response, the committee has placed the movement guidelines in the "Preference of Individual Judges" section. An admonition has been added directing counsel to determine the preferences of individual judges.

Several guidelines were identified as controversial. Generating the most reaction was the guideline directing avoidance of facial expressions or other conduct expressing opinion. There must be a balance between freedom of expression and theatrical, nonverbal behavior which expresses an opinion on a witness's testimony or a ruling of the court. Concern was expressed that a strict limitation results in the perception that lawyers are unfeeling and uncaring. Reaction may be spontaneous, necessary and appropriate at times. The committee asks what the limit should be on telegraphing opinions to a jury through body language.

Loss of tactical advantage and ability to represent a client vigorously were identified as justifications for the elimination of the guidelines covering respectful reference to opposing counsel and to opposing good-faith arguments. Although ridicule of opposing argument may be an *effective tactic*, the committee questions whether it is an *acceptable one*. Counsel can effectively dismantle an opposing argument by civil, polite and exact argument without personally humiliating opposing counsel. What is acceptable courtroom behavior in this area? The committee is seeking direction from the bench and bar.

Proper apparel guidelines also generated a wide range of comment. Concern was articulated about the overbreadth and general nature of the guideline noting that it should be very specific to be workable. In drafting the revised guideline, the committee recognized the need to preserve the dignity of the proceedings and the flexibility necessary to accommodate differing cultures, economic levels and personal styles. The revised guideline is a simple direction that dress not detract from the dignity of the proceedings. To do more results in what Governor Alva Long describes as the appearance that participants were produced by "yuppy Xerox machines."

Discrimination and deferential treatment were addressed by the guideline proscribing the exhibition of familiarity by use of first names. Some thought the initial approach was too far-reaching and criticized its application in dealing with children and with the jury on voir dire. In the latest revision, specific exception is made for these two situations. General use of first names is perceived to be significant by those studying gender and racial issues. Thus, the temptation to use first names to demean and discredit testimony and argument necessitate a general prohibition.

What's Next

The production of an *educational tool* outlining accepted professional standards during the litigation process is the goal of the committee. Comments on the latest revision, which follows this report, are being solicited from the bench and bar; input from both is critical. The comments will be carefully considered and the guidelines tailored in response. The committee believes the revision process itself will focus attention on professional issues and raise the level of awareness. Active participation and comment will result in a valuable *safe-harbor* standard. Forward comments to: Mary F. Gallagher Dilley, Court Congestion and Improvement Committee, PO Box B, Vashon WA 98070.

***Mary F. Gallagher Dilley**, an administrative law judge, is currently serving as chair of the Court Congestion and Improvement Committee. She is president-elect of the Washington Administrative Law Judges' Association and has served as president of the Government Lawyers Bar Association.*

COURTROOM DECORUM AND PRACTICE GUIDELINES

Preface To Principles Of Decorum

The pursuit of justice is a solemn undertaking, and conduct during the litigation process, both within and outside the courtroom, must at all times satisfy the appearance as well as the reality of fairness and equal treatment. Dignity, order, formality, and decorum are indispensable to the proper administration of justice.

Conduct that may be characterized as uncivil, abrasive, abusive, hostile or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully and efficiently. Such conduct tends to delay and often to deny justice.

Attorneys are privileged to participate in the administration of justice in a unique way, and are responsible to their own consciences, to their clients, to one another, and to the public to conduct themselves in a manner which will facilitate, and never distract from, the administration of justice.

A trial is a truth-seeking process designed to resolve human and societal problems in a rational and efficient manner. A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms. A judge's conduct should be characterized at all times by courtesy and patience toward all participants.

Application

The purpose of these guidelines is to provide lawyers, judges, and parties with a reasonable standard of conduct in judicial proceedings.

All participants in judicial proceedings should voluntarily adhere to these principles. These standards shall not be used as a basis for litigation or for sanctions or penalties. Nothing in these standards supersedes or detracts from existing codes or rules of conduct or discipline or alters existing standards by which lawyer negligence may be determined.

Courtroom Decorum

General Courtroom Conduct

Always be prompt.

Stand when the judge enters or leaves the courtroom.

Stand when addressing or being addressed by the court, and when making objections.

Refer to opposing counsel in courteous and respectful terms.

Treat opposing counsel's good-faith arguments seriously and with respect, and avoid personal attacks.

Do not interrupt. Wait your turn.

Enhancing courtroom decorum is a cooperative venture among bench and bar. It is appropriate to call to the attention of opposing counsel any perceived violations of these guidelines.

After the court has ruled, do not argue further without leave of the court.

General Trial Conduct

Stand during opening statement and closing argument.

Do not approach the bench except by permission.

Remain at the counsel table or the lectern while examining witnesses, except when otherwise permitted by the court.

Do not approach a witness without the court's permission.

When you receive permission, do not get inappropriately close to the witness.

When permission is granted for the purpose of working with an exhibit, return to the counsel table or the lectern when finished with the exhibit.

Stand when the jury enters or leaves the courtroom.

Offers of and requests for stipulations are appropriate to facilitate the presentation of a case, but should not be employed as rhetorical devices to communicate to the jury a party's willingness or unwillingness to stipulate.

Do not ask the reporter to mark testimony in the presence of the jury without the court's permission. All requests for re-reading of questions or answers shall be addressed to the court.

During trial, do not exhibit familiarity with witnesses, jurors, or opposing counsel. Avoid the use of first names or nicknames except for children. Do not refer to another adult by an expression or label which may be considered demeaning, such as "girl," "gal," or "boy." Do not address jurors individually or by name, except during voir dire.

Do not attempt to curry favor with jurors through fawning, flattery, or pretended solicitude. Make suggestions regarding the comfort or convenience of jurors to the court out of the jury's hearing.

During the argument of opposing counsel, remain seated at the counsel table and be respectful. Never divert the attention of the court or the jury.

Treat everyone in the courtroom with fairness, consideration, and respect.

Avoid expressing an opinion about the testimony of a witness through facial expressions or other conduct which exhibits any opinion concerning testimony of a witness, a ruling of the court, argument of counsel, or reading of a verdict.

Do not touch, or place objects on, the rail of the jury box.

Do not leave the courtroom while court is in session, unless absolutely necessary, and then only with the court's permission.

If there is a live microphone at the counsel table, do not confer with others nor rustle papers near the microphone.

When practical, give the court advance notice of any legal issue which is likely to be complex, difficult, or which may provoke argument.

Before offering answers to interrogatories or requests for admissions extracted from several separate documents, prepare a document showing each question and answer or admission and give copies to the court and opposing counsel.

Opening statement is not an opening argument. Confine opening statements to the expected evidence. Do not use opening statement to argue the case or instruct on the law.

In opening statements and in arguments to the jury, do not express personal knowledge or opinion concerning any matter at issue, *e.g.*, do not give an opinion on credibility.

Address the court; do not engage in colloquy or argument with other counsel.

Always be prompt.

Only attorneys, parties, court personnel, and witnesses, when called to the stand, are permitted within the bar of the courtroom, unless otherwise allowed by the court.

Scheduling

When practical, consult opposing counsel before scheduling hearings and discovery appearances in an effort to avoid scheduling conflicts. Assert a scheduling conflict only if the requested time is not available. Do not allege conflicts for the purpose of obtaining delay or any unfair advantage.

If opposing counsel fails promptly to accept or reject a time offered for hearing or discovery appearance, raises an unreasonable number of conflicts, or consistently fails to comply with this standard, agreement is not required.

Where time associated with scheduling agreements could cause damage or harm to a client's case, then a lawyer is justified in setting a hearing or discovery appearance without first consulting

with opposing counsel.

Give notice of cancellation of appearances and hearings to all involved at the earliest possible time.

Examination of Witnesses

When examining a witness, avoid undue repetition of the witness's answer.

Do not use objections for the purpose of making a speech, recapitulating testimony or attempting to guide the witness.

If a witness was on the stand at a recess or adjournment, have the witness ready to proceed when court is resumed.

Attempt to anticipate witness scheduling problems and discuss them with opposing counsel and the court.

Exhibits and Documents

Premark exhibits for identification prior to trial where appropriate.

If possible, have photocopies of an exhibit for the court, opposing counsel, and the witness. Avoid illegible copies if possible.

Where practical, show documents and other exhibits to opposing counsel before using them in court.

Return all exhibits to the clerk at each adjournment.

Offer exhibits in evidence when they become admissible.

Whenever referring to an exhibit, mention the exhibit number.

After an exhibit has been admitted, mark on it only with the court's permission. Avoid unnecessary markings. When referring to locations or features on exhibits such as maps or diagrams, indicate the locations by appropriate markings if they are not readily apparent from the documents.

Hand all exhibits to be marked to the clerk (and not to the court reporter).

Give to the clerk all papers intended for the court.

Show the exhibit to opposing counsel prior to offering the exhibit in evidence.

Proper Apparel

All persons attending court should be dressed so as not to detract from the importance and dignity of court.

When appearing in court, all attorneys and court officials should wear appropriate attire.

Witnesses and parties appearing for trial should be dressed in neat clothing.

Admonitions to Clients and Witnesses

Advise clients and witnesses of the formalities of the court and the appropriate guidelines. Encourage their cooperation. This applies both to attorneys and to pro se parties.

Preferences of Individual Judges

Counsel are advised to determine the preferences of individual judges with respect to movement within the courtroom. Some judges may expect counsel to adhere to some of the following guidelines.

Stand when addressing or being addressed by the court, and when making objections.

Stand during opening statement and closing argument.

Do not approach the bench except by permission.

Remain at the counsel table or the lectern while examining witnesses, except when otherwise permitted by the court.

Do not approach a witness without the court's permission.

When you receive permission, do not get inappropriately close to the witness.

When permission is granted for the purpose of working with an exhibit, return to the counsel table or the lectern when finished with the exhibit.

Do not touch, or place objects on, the rail of the jury box.

Do not leave the courtroom while court is in session, unless absolutely necessary, and then only with the court's permission.

If there is a live microphone at the counsel table, do not confer with others nor rustle papers near the microphone.

Courtrooms equipped for videotaped reporting may require special precautions, such as remaining near a microphone, not rustling papers near a microphone.

Standards of Professional Courtesy Regarding Depositions and Discovery

General Guidelines of Courtesy, Civility and Professionalism

Make reasonable efforts to conduct all discovery by agreement. Consider agreeing to an early voluntary exchange of information and a plan for discovery.

Comply with all reasonable discovery requests in a timely manner.

Attempt to resolve, by agreement, any objections to matters contained in opponents pleadings and discovery requests.

Stipulate to facts unless there is a genuine dispute.

Do not use any form of discovery, or the scheduling of discovery, as a means of harassing opposing counsel or the client.

Conduct yourself in a professional manner and treat other lawyers, the opposing party, and all involved with courtesy and civility at all times. Clients should be counseled that civility and courtesy are required.

Be punctual in fulfilling all professional commitments and in communicating with the court and other lawyers.

Do not quarrel over form or style; concentrate on matters of substance and content.

Clearly identify for other counsel or parties, all changes made in documents submitted for review.

A lawyer who feels another lawyer has violated these standards should, in a kind and courteous manner, attempt to discuss the matter with opposing counsel, in private, as soon as reasonably practicable.

Depositions and Negotiations

Follow the Courtroom Decorum Scheduling Guidelines.

Conduct yourself with dignity and do not make groundless objections in depositions, negotiations and other proceedings.

Advise clients regarding appropriate behavior, attire and other matters involved with depositions and other proceedings.

Take depositions only when actually needed to ascertain facts or information or to perpetuate testimony.

Do not engage in any offensive conduct during a deposition that would not be allowed or not be appropriate in the presence of a judge.

Do not obstruct questioning during a deposition and do not object to deposition questions unless necessary under the applicable rules to preserve the objections for resolution by the court.

During depositions, ask only those questions reasonably believed to be necessary for the prosecution or defense of an action. Do not ask repetitive or argumentative questions nor make self-serving statements.

Requests for Production

Avoid designing production requests in a manner which places an undue burden or expense on a party.

Respond to document production requests reasonably, and do not strain to interpret the request in an artificially restricted or overly broad manner to avoid disclosure of relevant or nonprivileged documents. Do not produce documents in a manner designed to hide or obscure the existence of the particular documents.

Interrogatories

Do not design interrogatories in a manner that would place an undue burden or expense on a party.

Respond to interrogatories reasonably and do not strain to interpret them in an artificially restricted manner to avoid disclosure of relevant or nonprivileged information.

Objections

Base discovery objections on a good faith belief in their merit and do not object solely for the purpose of withholding or delaying the disclosure of relevant information.

* * * * *

A Modest Proposal for Improvement of Our Legal System

by **Randolph I. Gordon**

It is evident that, despite the honing and polishing of a millennium of the Common Law, our legal system is flawed. As a practitioner, it occurs to me that we are overlooking many approaches which, if applied to the legal system would undoubtedly improve it greatly while being more nearly consistent with human nature.

Physical Violence is Vastly Underrated.

It is plain to me that the value of physical violence perpetrated by one party upon another is vastly underrated as a method of dispute resolution within our legal system. Public resources and private funds have been, respectively, squandered and exhausted in the futile pursuit within the legal system of the simple gratification so readily afforded by physically thrashing one's opponent. The rules need not be complex. They have already been set out by the Marquess of Queensberry.[1] Standard gloves weighing at least 141.75 grams and the standard 20 foot (6.1 meter) square should suffice for two-party suits in superior court. A tournament style grande melee or tag-team approach could be easily adapted for multi-party suits in superior court. Arm wrestling should satisfy the requirements of most district court litigants; who has the stronger grip in small claims courts. Those who desire an appeal will be appropriately deterred by a rematch with a choice of brass knuckles or nunchaku and the certain knowledge that they will have to face the same opponent who has just finished thoroughly whipping them. Fairness is assured by maintaining the standard weight classes between parties and next of kin with appropriate handicapping: flyweight, bantamweight, featherweight, lightweight, welterweight, middleweight, light heavyweight, and heavyweight.

The Nabbering Nabobs of Negativism Will Deny the Virtues of Physical Violence.

Undoubtedly, those with vested interests in the existing system will dismiss out-of-hand the notion that physical violence is a superior method of dispute resolution, referring to it as absurd, ridiculous, or even lawless. Such derogatory, conclusory characterizations, however, should not deter the open-minded from a review of the merits. Common Law apparatchiks and bureaucrats will raise technical "deficiencies" or "principled" objections which, invariably, prove insubstantial upon close scrutiny. Physical violence, however much demeaned by the creatures of the existing legal apparatus, fares quite well in any side-by-side comparison with the current legal system.

Physical Violence is Fast.

It is self-evident that dispute resolution by means of physical violence is far more expeditious than civil litigation. It would not be an overstatement to say that civil litigation is designed for the purpose of frustrating the natural expression of physical violence. While several three-minute rounds are probably sufficient to resolve most pecuniary disputes under $10,000, even the most complex litigation can be simplified and resolved by a physical beating of only slightly longer duration.[2] Avoidance of pain, like impending death, wonderfully concentrates the mind. Undoubtedly a standing eight count does much to separate the wheat from chaff respecting the issue at stake.

If one were to be totally forthright, it would not be inaccurate to state that the civil lawsuit, in modern practice, is a euphemism for a set of prolongation techniques whose effect is to increase the financial and/or emotional burden on one or both parties to the point where resolution on the merits becomes impossible. A simple example will suffice. No experienced trial lawyer can state with confidence the following three facts respecting one of the simplest of legal proceedings: (i) a promissory note for a given sum can be routinely and reliably enforced in superior court with fees less than the face amount of the note; (ii) the attorneys fees necessarily incurred in its collection will be awarded in substantial part by the court; (iii) the judgment, if any, can be collected. The truth is, a claim of fraud in the inducement, counterclaims for antitrust, business losses and emotional distress, repeated charges of frivolous litigation or malicious prosecution, voluminous interrogatories and requests for production, discovery motions accompanied by demands for sanctions and terms, irrespective of merit, will, more often than not, defeat any financial benefit to the creditor. The creditor who sought collection on a note will rapidly face disruption of business, the risk of bankruptcy, exorbitant attorneys' fees, and ceaseless frustration. Can it credibly be contended that even a poorly refereed fistfight in the back alley would not more quickly resolve the issue and improve the prospects for collection? I think not. The "deadbeat" debtor would not relish the prospect of back-to-back thrashings by a series of indignant, well-muscled creditors.

Physical Violence Has Salutary Effects Upon Society.

The failure of the civil justice system

to deliver civil justice has a profoundly demoralizing effect. A gumball machine which was as unreliable would soon be surrounded by crying children and removed from the shopping center. No one can observe a businessperson learning for the first time that a promissory note is literally worth less than the paper it is written on—having just paid a lawyer to learn that lesson—and that the law can deliver no remedy with reliability, without sensing its poignancy. A person works hard for years to build a business and then is deprived of its benefits with no effective redress. The innocent is subjected to the predations of pettifoggers who leave nothing, even reputation, intact. The lessons learned thereby undermine confidence in a just world. This dispirited individual passes this acquired apathy and hopelessness to his or her offspring, who immediately conclude that life is unfair. Expectations are lowered, and the prospects for a just world draw ineluctably farther from our grasp.

By contrast, the salutary effects of physical violence as a method of dispute resolution will be felt throughout society. Workers in and out of the home, businesspeople, homeowners, landlords, students, supervisors, and laborers will all readily appreciate the importance of physical conditioning, strength, and endurance. Paunch will yield to punch. The common and disreputable social phenomenon of the beautiful young woman marrying the old, rich businessman or politician, protected by the litigiousness of lawyers and the audit of accountants, will yield to the genetically sound matching of pulchritude and pugalistic prowess. The fittest will survive. To avoid proxies and unfair advantages, corporate entities could be represented by the CEO or member of the board. While it is true that the corporation may choose its representative on brawn, this advantage over the consumer is not likely to be nearly so one-sided as the present financial advantage manifested by a phalanx of lawyers. A well-conditioned and dedicated plaintiff could hold his own against the seasoned corporate fighter, particularly one exhausted by class actions. Granted, this may be a decided disadvantage to the disabled, elderly, and handicapped, but what does the civil justice system have to boast about in this respect? At least such a system of proxies does not disadvantage minorities and the poor, a decided improvement.

Physical Violence Lends Predictability to Commercial Transactions.

Another salutary feature of physical violence is its predictability as compared with civil litigation. A person can readily determine at the outset of the business venture if the other party is going to be in his weight class or not. It is far more difficult to know whether the individual is litigious and has a legion of attorneys. Finally, contract law can readily stipulate the weight classes of the parties involved and stipulate whatever stand-ins are agreeable. The selection of a particularly powerful arbitrator capable of physically brutalizing and intimidating the breaching party would also be efficacious. Absent such agreements, of course, the parties to the contract must, themselves, resolve the matter through physical violence.

The Tradition of Physical Violence is Worth Preserving.

On its face, the argument that the present civil-justice system is worth maintaining because it is venerable is ill-conceived. But, more to the point, the maintenance of social order by physical violence is far more ancient, dating back to our primate ancestors and beyond. There is simply no basis for concluding that social order would not be equally well maintained if might made right. In fact, domination of society by the physically mighty would be a stabilizing influence. Individuals fighting within a given weight class are more readily able to improve their ability through training than they are able to equalize the economic disparities which currently advantage the wealthy in the courthouse. The state could continue to have brutal police officers beating motorists, legal executions, and an elite force of physically imposing individuals seeing to the strict enforcement of the laws. Interrogations of suspects would be much simpler, and the additional confessions extracted in anticipation of beatings would significantly reduce the costs of complex forensic evidence.

Physical Violence is Consistent with Common Law Tradition.

Anyone familiar with the Common Law tradition is well aware that the penalty for the contumacious refusal to answer the charge at arraignment was the *peine forte et dure*—to be prest to death with heavy weights laid upon the body.

This was the penalty to which Giles Corey, aged 80, was subjected when he refused to dignify the charges against him during the Salem witch trials. At the same time as the Normans introduced jury trials, trial by ordeal was in use. Why arbitrarily venerate one tradition rather than the other? The advocates of the Common Law and the modern system of civil justice literally forget themselves when they discard one of the traditional forms of justice—physical violence. It is so quick, so easy, and so satisfying that only a Victorian prejudice against anything physical can explain its absence from modern adjudication. A poster of a young man failing to register for the draft being attacked by a drill sergeant with the words: "It's quick. It's easy. It's the law." would undoubtedly communicate well the intended message without the modern-day obscurantist tendencies.

Physical Violence is More Economical.

When one observes a courthouse and its physical plant, the maintenance crew, judge, jury, court clerk, bailiff, court reporter, teams of lawyers, and witnesses involved in a dispute, it is impossible to resist tallying up the costs. In most cases, the amount society expends in dispute resolution is greater than the amount at issue. In fact, in many cases, simply the fees of the attorneys combined exceed the amount at issue. It is unnecessary to contemplate the sad waste of prime downtown commercial space, let alone the opportunity cost to society of having so many of its educated citizens dedicated to a fruitless enterprise. Is this rational? Even allowing for post-resolution hospital bills following a poorly refereed fight, can it genuinely be argued that the social costs of physical violence are greater than the disruption of social life engendered by "civil justice?" The doctor witness called from his patients, the businesses which grind to a halt, the prolonged disruption in the lives of the parties, depriving children of the mental health of both parents, the financial consequences of "victory" or "defeat"—all increase the social costs far beyond the physical injuries which might be sustained in a fair fight.

It is unnecessary to even consider the social waste associated with parties to a failed marriage engaging in petty squabbles over property. Physical violence a la Marquess of Queensberry is far more gratifying and direct. It gives the parties what they want but were previously constrained from obtaining. I say, take it out back.

Physical Violence is More Honest.

The civil-justice system at present thrives on illusions perpetuated by certain benefited classes. Any layperson who survives litigation will readily admit to an education. Invariably the lessons learned when expressed do not sound like the promise recited at the end of the Pledge of Allegiance: ". . .with liberty and justice for all," but like the injunction Dante read on the Gates of Hell: "Abandon All Hope, Ye Who Enter Here." The popularity of litigation can be attributed only to an elaborate "bait and switch" operation in which the participant expects Solomonic justice

and is given a split baby. The courthouse is littered with split babies—the common parlance for compromise decisions in which no one wins. Long forgotten is the parable from which the term arose: King Solomon never split a baby; he simply threatened to, knowing that in a dispute over maternity, the true mother would yield her claim to the false claimant rather than see her child killed. King Solomon threatened physical violence to an innocent child—and achieved justice. Someone won. In the modern courtroom, it is far more common that both sides lose than that either side wins. If this truth were widely known, the courthouse would be emptier than the Kingdome on a sunny day.

Physical Violence Better Fulfills the Needs and Expectations of the Parties.

Anyone involved in a domestic-relations practice recognizes that such litigation engenders more heat than light. Lawyers, accustomed to imposing their views upon their clients, believe that the clients wish to effect an equitable division of property and establish appropriate maintenance, support and parenting arrangements. They conclude, parentalistically, that their purpose is to shepherd the client through the thickets of the law in order to achieve these goals. In truth, they miss the point. The parties simply wish to hurt each other. I see no merit in preventing it.

The myriad slights and injuries within a failed marriage, the secret offenses and humiliations, wasted compromises, broken promises, endless accommodations, physical and emotional assaults, simply cannot be addressed by a division of property rendering all past inequities irrelevant. More often than not, these unresolved, unvented animosities, like glowing embers, remain in their superheated state prepared at any moment to burst into flame. As a consequence, disputes continue to flare between the parties, often requiring the further waste of public resources to address them. The continued discomfiture created by these unresolved feelings of hostility manifest themselves in the dealings of the parties, inuring to the detriment of the common parenting which often must proceed. The present system provides only an imperfect opportunity for the venting of these feelings or legitimate desires for revenge: defamation protected by qualified immunity in a war of affidavits. While, to the credit of the existing system, it is true that such libelous affidavits inflict enormous psychic injury by attempting to filch from the other party his or her "good name" which, as Iago, points out: "Is the immediate jewel of their souls,"[3] it is only an indirect gratification of the desire to inflict pain. What battered spouse would not much rather see the abuser subjected to a sound beating at the hands of a champion within the same weight class? Even school children know that "sticks and stones may break my bones/but words will never harm me." The deterrent effect that being thoroughly thrashed would have on the batterer ought not to be underestimated. Instead, we have erected a system of protective orders to which the police give only half-hearted enforcement and a system which gives advantage, more often than not, to the economically dominant spouse, further disempowering the victim.

As attorneys, we are sworn not to proceed with litigation for purposes of "malice" or "lucre." It is my judgment that, in truth, elimination of these two motivators would substantially eliminate civil litigation. It is impossible in the above discussion to exhaustively review the advantages of physical violence over the current system of litigation. It is my hope, however, that my colleagues in the Bar will consider in an open-minded fashion the virtues of violence at least as an alternate method of dispute resolution on a trial basis. If civil litigation is unprepared to deal with disputes arising from malice and lucre, it should move aside to permit room for a time-tested technique: physical violence.

Endnotes

[1] John Sholto Douglas, 8th Marquess of Queensberry (1844-1900), originator of the code of rules governing modern boxing. With the aid of one John G. Chambers, the Queensberry rules were drafted (1865), gradually adopted in both Britain and the United States and, by 1889, standardized. The Federal Rules of Civil Procedure are newcomers by comparison.

[2] One of the longest cinematic fight scenes, featuring John Wayne in "The Quiet Man," took less than 25 minutes in total and resolved innumerable subtle cultural and social disputes.

[3] *Othello*, Act III, Scene iii, ll. 156-60.

Bellevue attorney ***Randolph I. Gordon*** *is a frequent contributor to the* Bar News.

THE PROFESSIONAL'S PROFESSIONAL:
KITSAP COUNTY CELEBRATES MERRILL WALLACE'S 60-YEAR CAREER

Merrill Wallace *(l), speaking at the Kitsap County Bar February 5 luncheon, with Kitsap County Bar president* **Thurman Lowans** *(r).*

The February 10, 1993 issue of Port Orchard's *The Independent* carried a photo of Bremerton lawyer Merrill Wallace looking at his bookshelves. Among the rows of *Washington Reports* was volume 172, *Washing Reports*, first series, published in March 1933. When that volume came out, Merrill Wallace had been practicing law for about a month.

Today, the *Washington Reports* has grown by about a hundred thousand pages. The First Series stopped in 1939 at volume 200; the Second Series is up to volume 120, and the *Court of Appeals Reports* now runs to 67 volumes.

And in Bremerton, Merrill Wallace is still practicing law in the office he moved to in January 1934. The 83-year-old was honored by his colleagues of the Kitsap County bench and bar in February ceremonies. Kitsap County Bar president Thurman Lowans presented Wallace with a plaque marking his six decades as a lawyer. Skagit County Superior Court presiding judge William J. Kamps presented Wallace with a framed order of recognition signed by all seven of the county's superior court judges.

Kitsap County auditor Karen Flynn told the luncheon audience the oldest document recorded in her office is one from Wallace, dated 1934. Michael Mjelde, manager of the Land Title Company office, noted that Wallace has been doing business with the company since 1939.

Lawyers and judges lined up to praise Wallace. Judge Leonard Kruse, a former law partner, told his audience, "Experience counts for everything, and Merrill is one of the best." Attorney John Bishop, looking over his own 41 years in practice, concluded, "Merrill's word has never been questioned. It's a real privilege for me to be his friend and fellow attorney. William Garland observed he had known Wallace longer than anyone present, from which he'd seen that "Merrill has always shown what a good lawyer is: conscientious, capable, effective, and his word is always good. He is a fine lawyer."

In an interview with JoAnne Merez for *The Sun* in Bremerton, Wallace reminisced about how, but for a burst of greed, he might have ended up a big-time Seattle lawyer. While still a law student at the University of Washington, he worked as a "gofer" for Todd, Holman & Sprague and earned $35 a month. But he gave up the place for a $4.48-an-hour job as a Puget Sound Naval Shipyard laborer.

The money was good while it lasted, but after only ten days, Wallace was laid off. "I was too young to understand a position with a firm like that was gold. Today it's the largest firm in Seattle. Greed. That's what got me." After graduating from law school, he set up shop with another lawyer in Bremerton, then went out on his own in the depths of the Depression. But he managed to make a living, and as soon as he grossed $146 in March 1934, he called his girlfriend, Leona, and told her they ought to get married. "She said yes, and we've been married ever since," Wallace told *The Sun*. "We paid $25 a month on our mortgage, $15 for the furniture, $20 for the office rent and $5 for the secretary. We had $5 a week for our groceries and never ate better. By 1935, I was making so much I spent $1,000 for a Dodge sedan."

Wallace hastened to add, however, that lawyering is about more than money. "For some, the mark of a good lawyer is not how he served his client, but how many millions of dollars he got in a settlement. I don't think that's right." He noted that he has had some clients since the late '30s and '40s, and they have become "like members of the family."

Wallace's recollections of "the good old days" will surprise many a harried new lawyer who thinks things have never been so hard. "It was dog-eat-dog in those days," he said of the 1930s. Competition was so savage that a couple of them carried guns and menaced each other from time to time. Lawyers bugged other lawyers' offices. When all else failed, lawyers tried to get each other disbarred. "I kept out of it," Wallace recalled.

Besides practicing law, Wallace served nine years on the Bremerton School Board and spent time on the Olympic College board of trustees. He was the first president of the Kitsap County Bar Association and even ran for office a couple of times. He was philosophical about losing: "You had to have connections to get appointed to anything in those days. I couldn't get appointed, and I couldn't get elected. I decided I had to work," he joked. "I was no Clarence Darrow, but I've loved every minute of it."

And, Merrill Wallace added, he has no intention of retiring.

The Bar News *thanks Bremerton's* Sun *and* Independent *for permission to use their material in this article.*

THE DELICATE BALANCE

"Work!!!" Maynard G. Krebs, "The Dobie Gillis Show," circa 1960.

I recall being envious of Bob Denver's oft-repeated derogation of "work" as a positive life value whenever an endeavor was suggested which might interfere with his dedication to the pursuit of the insignificant or irrelevant. Next, I would inevitably feel guilty for wasting my valuable time as an up-and-coming lawyer watching such a frivolous program!

In my maturity, as a person first and a lawyer somewhere down the list, I conclude that being driven perfectionists virtually defined by our work, is the norm for lawyers.

Most of us pursue "The Law" for one of two reasons: either a desire to help others by fixing them or their stuff or for recognition, acknowledgment or approval, however it's measured—money, adulation, peer approval or what our guts tell us is "success." Perhaps it's a default career, foisted on us by relatives or busybodies we had no power to refuse.

It now seems to me that the trouble in each genesis of our finding ourselves in the practice of law is the message—from every direction and from our internal expectations—that our performance must be uniformly excellent, effective, and that no stone be left unturned. In short, the perfect result is always expected in a system that, by definition, has one result that is not perfect. Be it for our personal gain or for that of the clients we represent, we do not have permission to be ordinary. For this reason, I believe, the public holds lawyers in contempt: we don't deliver them from evil every time, and we are constant reminders of the fallibility of humankind in a system of living that measures success only by a number of "wins."

How can any "good" lawyer find time to relax, unwind, slow down, or refocus, etc. without violating either internal or external expectations?

I am convinced from personal experience and observation, that it is forced from outside our control, by dramatic and life-threatening events, or by our deciding to practice life rather than just practice law.

Those familiar with the writings of Robert Bly and others in the "men's" movement understand the concept that our "wounds"—hurts, losses, personal tragedies—are, actually, our greatest gifts: We are given opportunities to change, to test ourselves, and to be able to understand others' pain. I think I became a better divorce lawyer after I experienced my divorce. In the same vein, my heart attack in 1982, when I was but 45, gave me permission to take some of the stress out of my practice; I got rid of many of the cases and clients causing me the most grief. I now believe it's O.K. to disengage from clients.

My wife and I decided that our savings for a retirement property would be better spent on current playtime, so we bought our first sail boat. The therapy of tinkering with anything on a boat (or with whatever your bliss) is worth far more than simply the time spent!

In 1988, in Canada on our third boat, I had a much more serious heart attack (M.I.) followed by a quadruple by-pass. The understanding at a visceral level that surviving it left me a further gift, caused me to accept fully and with profound gratitude, my new opportunity to improve the quality of my life. Now I'm even more selective in the cases I take. Our kids (nine in our blended family) are all adults and no longer require our financial support, so both of us work only half-time, she as a nurse—to keep us in medical insurance!

So, how does one find the second way to amending perfectionist behavior, avoiding heart attacks and other cataclysmic avenues into recovery? It comes from practicing behaviors that nurture us in daily living. I used to read self-help books voraciously, saying to myself "My God, I think I've got it!" and not changing one thing in the way I behaved. Head knowledge is of little use unless it's put to work, so I started relaxing in my office, learning several easy techniques. I took an inexpensive course in assertiveness so I could establish boundaries and learn methods of saying "no" without meaning "maybe." I tried to take longer times off each year; they became more comfortable as I recognized that the world can get along just fine without my being in a particular place. (And that was pre-fax and other instant-communication innovations.) By giving myself small assignments in preserving my mental, physical and emotional resources, and by developing a habit of practicing nurturing behaviors, even though they sometimes felt scary and wasteful of valuable time, I have gradually achieved an equilibrium between work and play.

And do I always find the perfect fulcrum in the delicate balance between duty and self-preservation? No. I no longer have to, nor do I expect myself to, do everything perfectly.

* * * * *

Nota Bene

LAP is a confidential service providing assessment and referral for a broad range of problems confronting lawyers. These include stress, burnout, depression, career dissatisfaction, alcohol and drug abuse. Contact the Lawyers' Assistance Program at (206) 727-8268.

Every Tuesday at noon in the WSBA Presidents' Room, (4th floor, Westin Building), LAP sponsors a free job hunters' support group for WSBA members who are actively involved in the search for a new position. This is a drop-in group focusing on the exchange of ideas, job leads, and job-finding ideas.
This month there will be two programs with speakers:
May 11 - Networking for Successful Transitions, Jim Latting.
May 25 - Business Appraisal & Strategies, Steve Jenks.

Call Joyce Elven at (206) 727-8268 for information.

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CRIMINAL SENTENCING REFORM: A SECOND OPINION

by **John Ladenburg**
Pierce County
Prosecuting Attorney

Upon reading Fred Diamondstone's article on drug sentencing laws in the January *Bar News*, one would be immediately convinced that the laws need drastic overhaul and that prosecutors and police are preventing it for no reason. One might also draw the conclusion that Washington state's drug crime has continued unabated since the mid-1980s despite tougher sentences and that as a result, Washington state has a very high incarceration rate that is crippling state finances. Finally, one might conclude that drug selling is really nonviolent, victimless crime. The only problem with these conclusions is that there are virtually no facts to back them up.

First, let us examine the issue of whether the drug law revisions of 1989 have had any impact on drug crime. The 1989 Drug Omnibus Act increased the penalties for selling cocaine, heroin and methamphetamine. The penalty for a first-time conviction for being a drug dealer went from 12-14 months in prison to 21-27 months in prison. No other drug laws were changed. The penalties for possession of drugs, selling and growing marijuana, all remained the same, except for possession of PCP which moved up from 0-30 days to 0-60 days. The act also included funding for drug treatment both in and out of prisons, for drug education in the schools, and for the construction of prisons.

The 1989 Drug Omnibus Act was brought about by a public outcry over the huge increase in drug crime in our state. Suddenly, in the mid-1980s, our state was invaded by armed drug-dealing gangs. The state numbers show a startling pattern. In 1984 the state superior courts handled a total of 2,128 controlled substances cases. In 1985 that number jumped 23.5 percent to 2,630, then in 1986 it jumped another 18.6 percent to 3,121, then it jumped a whopping 52.8 percent in 1987 to 4,772 cases. The trend continued in 1988 with an incredible increase of 56.6 percent to a total of 7,474 cases statewide! Is it any wonder why the citizens demanded action? It was clear our system was not responding to the problem. Drug crime had gone from a total of about 14 percent of all felonies to almost 31 percent of all felonies![1]

The Drug Omnibus Act was a measured approach to the problem. It increased the penalties for drug dealers, but left the drug possession penalties alone. People convicted for drug possession often are drug addicts and the Act provided for additional treatment funding to try to reduce the addicted population. The Act also provided for drug education in the schools and for funding for community mobilization to combat drug crime in neighborhoods. After the Act was passed it began to have an immediate effect on drug crime. In 1989, when it became effective mid-year, drug crime increased 21.9 percent to 9,114, an increase that was less than half of 1988. In 1990, the drug crime filings in Washington State actually *fell* by 16.5 percent to 7,613 and in 1991 they fell an additional 2.2 percent to 7443.[2] Most people seeing these numbers realize that this state did not just get lucky. The policy of the Drug Omnibus Act of 1989 of mandating prison time for drug dealers, while providing for increased treatment for users, is working. The facts speak for themselves.

Now, let's examine the myth that Washington state has a prison population problem and it is caused by the fact that we are locking too many people up who should be out on the streets. The state of Washington accurately predicted its population for prisons when funding the Drug Omnibus Act of 1989. In a news release in 1989, Governor Booth Gardner issued the projections for the prison increase along with a construction plan.[3] That news release prison number is within a small percentage of today's figure. Further, the prison construction plan has been carried out, and today we have a 1,000-bed facility at Airway Heights that the Department of Corrections does not plan to open in order to save the operating costs. Current numbers from the Department of Corrections show no prison overcrowding until 1996, and then only if no new beds are brought on line.

Is the prison increase in population and in drug dealers due to some kind of "harsh" enforcement and overly long sentences? Hardly; look at the numbers above. Yearly drug felonies increased in Washington state from about 2,000 to more than 9,000 in just five years. All this , before any penalties were increased.

Finally, when penalties were increased, it was just for drug dealers of cocaine, methamphetamine and heroin, not for users (possession cases). The inescapable fact is that we would have seen a huge increase in prison admissions of drug felons simply because we were seeing a huge increase in this criminal activity. The enhanced penalty for drug dealers added to the increase, but it certainly did not create it.

Are sentences too long? Let's take a typical drug dealer selling crack on the streets, who is caught and convicted for the first time. The previous law (1988) would have provided for a sentence range of 12-14 months, less good time. Now, the range is 21-27 months. If the individual pled guilty to one count of selling drugs, he would have been sentenced after spending one to two months in jail. If the judge gave the dealer a sentence of 24 months (mid-range), he would get credit for the time served of two months in jail and be sent to prison for the re-

maining 22 months. The prison would credit him with good time up front and list him as having a 16-month sentence total, with 14 left to serve. State prisoners are eligible for work release when down to their last six months, so after being in prison 10 months, our drug dealer would be out on work release. Under previous law, many drug dealers were eligible for work release within one month of hitting the prison!

Now, what about the perception that Washington state has a high rate of incarceration that is ruining our state finances and needs to be reduced to save money? In the February issue of *Governing* magazine, Washington is compared to all states and to the nation in several important categories. First, how do we compare in incarceration rate, that is, how many persons are in prison and jail per 100,000 population? These figures are gathered by the FBI and the Bureau of Justice Statistics. Out of the 13 Western states, Washington ranks 10th, with only Montana, Hawaii and Utah having lower rates of incarcerations. [4]

What about the state corrections spending rate then, that is, the per capita state spending on corrections? Surely, this must be too high if we need to reduce prison population to save money. According to the Bureau, Washington state ranks ninth out of the 13 Western states in per capita corrections spending.

How about the crime rate, then? Surely we must have a low crime rate to be able to not have to spend money and lock up criminals. The numbers tell a different story: we rank fourth of the 13 Western states in crime rate (serious crime per 100,000). Not only that, but we rank eighth in crime rate in the nation! Should we be looking to our prisons to balance the state budget when we have one of the highest crime rates in the nation and are not even in the top half for corrections spending or incarceration rates? [5]

Is drug-dealing a victimless crime? Should we lock up drug dealers? Certainly, no one in law enforcement who is familiar with the increases in the violent crimes of murder, assault and child abuse that have been associated with increased drug trafficking could support the notion that dealing drugs is harmless. Many thought that this moldy "'60s" thinking was gone for good. The selling of illegal drugs leads directly to increases in many violent crimes as witnessed by our increase in these areas after increases in drug crime. Finally, no one who has ever held a "crack" baby in his or her arms or tried to help an addicted 14-year-old prostitute will support the idea of drugs as a victimless crime.

There are several bills currently in the Washington State Legislature related to sentencing. Not all of these bills are sentencing alternatives as opposed to sentencing reductions. The Washington Association of Prosecuting Attorneys supports sentencing alternatives for nonviolent offenders. This support is conditioned on those alternatives actually being funded and put into place rather than the mere promise of future action. W.A.P.A.'s proposal is being considered along with the proposal of the Sentencing Guidelines Commission. There is hope that the slight differences in these proposals can be ironed out and one proposal supported by both.

On the other hand, we have the proposal of the Department of Corrections. That proposal is not sentencing alternatives, but is merely sentencing reductions. The Department of Corrections proposal is geared to saving money by simply reducing the sentences of currently imprisoned felons and slowing prison admissions in the same manner. This proposal would not offer any alternatives such as drug treatment, job training, education, work release or day fines, but would just shove felons out the door earlier. The proposal reduces the sentences for 21 felonies, such as residential burglary, dealing marijuana, theft, forgery, auto theft, and possession of drugs. Some of the sentences for these crimes would then have a maximum term of 10 days in jail when combined with sentencing-alternative proposals. For example, if the sentence reduction and sentences alternatives pass, a conviction for second-degree burglary, which currently has a minimum of 30 days and maximum of 90 days, would have a maximum of 10 days! The new maximum sentence would be one-third of the current minimum, a startling reduction. Such short-sighted reductions to save money actually end up costing more when the real cost of increased crime is calculated. [6]

The Department of Corrections proposal represents an extremely dangerous precedent for Washington. It also insures a resultant increase in crime, since we can fully expect 40 percent of these felons to return to crime and be recommitted to prison within three years. The cost to local government of hiring the police, prosecutors and judges to recapture and incarcerate these felons will be many millions more that the Department of Corrections saves. The state may save millions in the first year, but the local city and county governments will pay several times those savings in increased costs. It is simply a transfer of costs, at an increased level, from the state to the locals. The worst news is that this phony cost-saving will come at the expense of public safety. [7]

Endnotes

[1] Report of the Courts of Washington, 1987, 1988, 1989, 1990, 1991, Office of the Administrator for the Courts, Olympia, WA.

[2] Report of the Courts of Washington, 1989, 1990, 1991, *supra*.

[3] Press release, Office of the Governor, date April 1989.

[4] *Governing*, February 1993, at p. 42.

[5] *Governing*, February 1993, *supra*.

[6] *See:* David P. Cavanaugh and Mark A.R. Kleiman, "A Cost Benefit Analysis of Prison Cell Construction and Alternative Sanctions," May 1990, U.S. Department of Justice.

[7] *See:* "The Case for More Incarceration," U.S. Department of Justice, Office of Policy and Communications, 1992, NCJ-139583.

A Coordinated Response to the Decrease of IOLTA Funds

by **Yvette Hall Warbonnet**

The number of poor people in Washington state who cannot afford access to our justice system has increased dramatically in the past decade from approximately 550,000 to 702,000 poor people. Special populations, such as poor people in state mental health, juvenile, long-term care and corrections institutions and farmworkers have increased as well, adding more than a quarter of a million more statewide, to reach almost 986,000. The nature and extent of poverty in the low-income community has become more extreme, more rural and isolated and more intractable as well, making legal advocacy more difficult and resource-intensive.

Since the mid-1980s, the Legal Foundation of Washington, which administers IOLTA (Interest on Lawyers' Trust Accounts) funds, has been a mainstay of support for the access to justice community, awarding funds to pro bono programs, the three Legal Services Programs of Washington (Evergreen Legal Services, Puget Sound Legal Assistance Foundation and Spokane Legal Services Center), and many other providers of legal services for poor people.

The Legal Foundation of Washington has wisely insisted on coordination of service delivery and effort between members of the access to justice community in order to maximize limited resources.

In 1992, the funding picture for civil legal services for the poor was changed by two important developments. The first was the passage of legislation increasing the civil filing fee for superior court and allowing legal-service programs of Washington to receive, subject to significant restrictions, a portion of the funds generated by that increase. The second was the precipitous decline in IOLTA funds for grants from the Legal Foundation of Washington due to falling interest rates paid by banks on IOLTA accounts. Legal Foundation grants of IOLTA dollars have become a lifeline for many local bar-sponsored pro bono programs. Grants range from $10,000 to almost $40,000 per year for individual pro bono programs. Significant reductions in IOLTA funds would jeopardize the financial stability, and in some cases the very survival, of many programs.

According to Jim Bamberger, Director of Spokane Legal Services Center, "By 1992, pro bono programs had become integrated into the service delivery mechanism providing civil legal services for low-income citizens in this state. The directors of the three legal-service programs met and determined that there must be a way to financially support pro bono programs. Without that support, it was recognized that many programs would be harmed, and that gaps in the civil legal-service delivery system would occur."

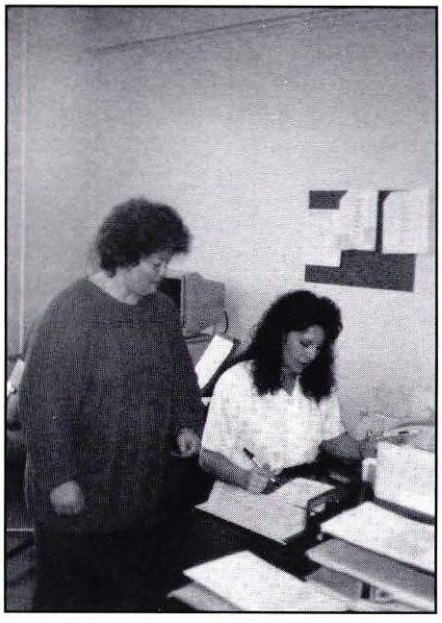
The legal-service directors shared their idea with the Legal Foundation of Washington as to how the three legal-service programs could help maintain a strong pro bono component in the state's access to justice community. The legal services-program offered to match each IOLTA grant given to local-bar pro bono programs. This approach greatly reduced the harmful effect of reduced 1993 IOLTA funds on pro bono programs.

Local-bar-affiliated pro bono programs sent copies of their IOLTA grant proposals to Jim Bamberger, who provided "start-up" administration for this coordinated effort. Pro bono programs receiving 1993 support from the Legal Foundation were automatically eligible for the matching grants. Because this is an entirely new approach, the legal-service programs of Washington do not have the existing administrative capacity to establish this matching-grant approach as an ongoing program. The programs have therefore hired a consultant to perform the necessary administrative and project set-up tasks. Margaret O'Donnell, the consultant hired by the programs, was formerly with the ABA Center for Pro Bono and is a nationally recognized expert and supporter of pro bono programs.

Bamberger indicated that her role will be to negotiate contracts with the pro bono programs and provide technical assistance to individual pro bono programs. She will travel throughout the state to meet with individual pro bono coordinators to work out the details of this project. These site visits will also be an opportunity for individual pro bono coordinators to obtain technical assistance. The legal-service programs are disbursing funds on a quarterly basis, as does the Legal Foundation of Washington. The total cost of the Pro Bono Supplemental Grant Program to three legal-service programs is approximately $250,000 for 1993.

Phyllis Selinker, the director of Snohomish County Legal Services, the bar-sponsored pro bono program for Snohomish County, indicated that staff reductions to her program would have been unavoidable without the matching grant provided by the legal-service programs. "My budget is already bare bones. We had already cut out of our budget library, training and travel monies when we received a 10 percent reduction of our funds from the Legal Foundation for 1992." A cut in staff time would have meant one of the two staff members would have been reduced to half-time. If the director's time had been reduced to one-half, it would have meant the end of the pro se dissolution clinic which has run successfully since 1988. A cut in the administrative assistant's time would have required either closing neighborhood clinics held in three locations each week, or cutting out pro bono case referral and follow-up services currently provided by the administrative assistant.

"Early in 1992 the Legal Foundation warned all its grantees to expect deeper cuts in 1993 than had been received in 1992," said Selinker. "Many of the smaller pro bono programs were saved by the matching grants that the legal-service programs provided for 1993." The decision to hire Margaret O'Donnell was welcomed by the pro bono commu-



Judy Lewis, administrative assistant, and Kathy Allman, legal assistant for Snohomish County Legal Services, reviewing cases ready for pro bono referral.

Director Phyllis Selinker reviews court pleadings with a client from Snohomish County Legal Services' pro se dissolution clinic.

nity according to Selinker, because she is a recognized expert in this field and will be a real resource to the pro bono community in the state.

This step has expanded the partnership between our state's legal-service programs and pro bono programs in the delivery of comprehensive legal services to low-income people.

Yvette Hall War Bonnet, Directing Attorney of the Evergreen Legal Services office serving Snohomish County and a member of WSBA Legal Aid Committee.

NEWS FROM HOME

Debra A. Jenks was recently made a partner in the firm of Boose Casey Ciklin Lubitz Martens McBane & O'Connell in West Palm Beach, Florida. She continues to concentrate in the area of securities litigation defense.

Allen T. Miller, Jr. has joined the Olympia law firm of Connolly, Holm, Tacon & Meserve. He's the new head of the firm's environmental, land use and natural resources practice. Miller comes from the Ecology Division in the Washington Attorney General's office; he also serves as an adjunct professor in the University of Puget Sound School of Law.

Preston Thorgrimson Shidler Gates & Ellis announced in February that five lawyers in the firm had become partners: **Scott L. David, David E. Fennell, Michele A. Gammer, James L. Phillips** and **Louis H. Trieger**. Joining the firm as associates in recent months have been **Jennifer L. Belk, Christopher C. Canterbury, Kenneth R. Davis 2d, Dean George-Falvy, Fred W. Green, Richard A. Montfort, Anne Diehl Rees, John D. Sullivan, Lori A. Terry, Mary L. Williamson**, and **Chapin E. Wilson 3d**.

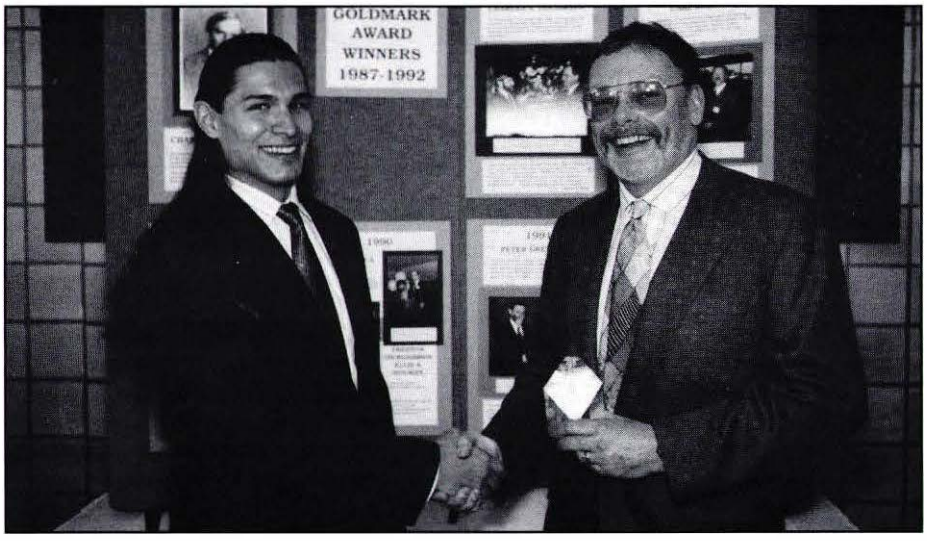
Keller Rohrback in Seattle reported some changes earlier this year. **Michael Woerner** was named a member of the firm, and **John Coe** joined the firm as an associate.

Nancy Higgins, a Boeing attorney, was a panelist in a two-day San Francisco program, "The Woman Advocate," presented by the ABA Section of Litigation and Prentice-Hall Law & Business March 4-5, 1993.

Frank W. Draper was named managing partner of the Seattle office of Lane Powell Spears Lubersky in February. His practice centers on maritime and aviation law, particularly negligence litigation.

Joseph L. Hammer has joined Foster Pepper & Shefelman's Personal Planning Group. He practices in the firm's Bellevue office.

Michael M. Fleming and **Denny F. Wong** have become of counsel to Ryan, Swanson & Cleveland in Seattle. **Kandice G. Tezak, Katherine J.**



Michael E. Taylor *(r), reservation attorney for the Confederated Tribes of the Colville Reservation, received the 1993 Charles A. Goldmark Award for Distinguished Service from the Legal Foundation last January. He was honored for his tireless work to preserve Indian rights, advance Indian government and forge institutions to support tribal self-government. Also introduced was the Legal Foundation 1993 summer Goldmark intern,* ***Scott J. Sufficool*** *(l), a second-year student at UW School of Law. He will work with a statewide project of the three federally funded legal-service programs in Washington to evaluate legal needs of Native Americans.*

Alexander and **David J. Dove** are new partners in the firm, and **Julia M. Bolz** and **Hana A. Lenda** have joined the firm as associates.

Carol Jean Thompson has joined Reese, Baffney, Schrag, Siegel & Hedine in Walla Walla, the firm reports.

Back in Seattle, **Kevin P. Hanchett** has become a partner of Lasher Holzapfel Sperry & Ebberson. **Ronald E. Braley** is the new managing partner for the firm.

Karen E. Glover, a business lawyer at Preston Thorgrimson Shidler Gates & Ellis, has been elected chair of the board of directors of the King County United Way.

Dean V. Butler has been elected a Fellow of the American College of Trust and Estate Counsel. Butler is a partner with Foster Pepper & Shefelman in Seattle.

Sylvester Ruud Petrie & Cruzen has announced the opening of a new office in Edmonds. **Gary East**, a firm partner, is the lawyer-in-charge. The firm has also announced that **Mark D. Deife** has become a partner. A member of the Idaho and Washington bars, he joined the firm in 1987.

Betts, Patterson & Mines named five new associates in January. **Deborah A. Crabbe**, **Wendy S. Groffe**, **Ilene A. Lund**, **Sean R. Matt** and **Elizabeth K. Maurer** are the lawyers newly arrived.

Charles C. Gordon has been elected a fellow of the American College of Trial lawyers. He is a partner with Perkins Coie in Seattle, and has been with the firm since 1971.

Thomas D. Adams, in the Seattle office of Bullivant, Houser, Bailey, Pendergrass & Hoffman, has been named a partner in the firm.

Two lawyers have been named partners of Foster, Pepper & Shefelman in Seattle. They are **Thomas F. Ahearne** and **Robert C. Seidel**. **Bruce A. Koppe**, former general counsel and secretary of Security Pacific Bank Washington, has become of counsel to the firm.

Lane Powell Spears Lubersky has also named new partners: **Warren E. Babb, Jr.**; **Grant S. Degginer**; **Stuart D. Heath**; **Sheryl Anderson Moore**; **Jane Rakay Nelson**; **Tim D. Wackerbarth** and **Douglas E. Wheeler**.

CHELAN COUNTY REPORT GEEZER DIVISION

by CHARLES W. CONE

Barney's Restaurant in East Wenatchee, overlooking the Columbia River and the BN switchyard, was the location of the festive St. Patrick's Day meeting of the OPWPLICCB1960 meting.

William H. Neukom*, vice president for law and corporate affairs and secretary of Microsoft Corporation, has been named a Life Fellow of the American Bar Foundation. Fellow chair* ***Richard L. Thies*** *(l) made the presentation at a recent meeting of the group in Boston.*

At the business meeting, which followed an attitude adjustment hour, it was moved, seconded and passed that any member having three successive unexcused absences would be assessed a $100 fee which would be contributed to aleing members.

Excuses are recognized for the following reasons: Maui, Kauai; death; surgery; divorce or separation (recent); lack of sobriety; memory loss as to date, time or location of meeting; poverty; disinterest or other things to do.

Bernice Bacharach was voted "Olde Phart of the Month" and received the traveling trophy. T-shirts bearing the organization's logo were distributed to all members and mailed to those absent. The next meeting will be held in June. Time and place as yet undisclosed.

CLARK COUNTY REPORT

by **JOHN F. NICHOLS**

The Name Game

I'm sure all "big" cities have the problem of similarly named attorneys causing confusion with the legal system. Apparently this symptom of legal expansion has now afflicted good old Vancouver, USA. The cause of the syndrome has been traced to extensive interbreeding among the Clark County hill folk and/or nepotism.

We all know about the "Johnson" theory of political expediency, and as such we have our own judge, **Barbara Johnson**; together with **Eric Johnson**; **Richard Johnson** and achieving the difficult double-double **Linda Langsdorf Johnson**, sibling of **Mike Langsdorf**.

Our version of the Jackson 5 minus 2 features siblings: **Earl** "Moon Walker" **Jackson**; **Peter** "Tito" **Jackson**; and **Jill** "Janet" **Jackson-Kurtz**. They are currently touring Battle Ground with stops in La Center and Amboy.

The Vancouver **Bennetts** didn't have the same father but had different mothers and, in fact, they don't even like each other: Judge **Roger**, **Robert E. L.** and **Art**. We also have the battling **Potters**, who are not related; but are very close in a metaphysical way in that they are men who like to hug: **Hugh**, **Bronson** and **Rick**.

Next, we have the category of those who are related only by law: Mr.& Mrs. **Miles** & **Miles** (**Marcine** and **Bill**) and **Jill Jackson Kurtz** (*supra*) and **Dave Kurtz**. And that new admittee, **Terry Greenen** and Mr. **Terry Greenen-Ron Greenen**. Not related or even spelled the same, is **Alison Greene**, who prefers to go by **Sheckey** Greene. Space does not permit those couples who, while married, cannot agree on their last names. You know who you are, and I suggest mandatory mediation.

Fathers and sons: **Bill** and **James Dunn**; **Hugh** and **Roger Knapp**; **John David** and **John E. Morse**; and **Doug** and **Tom Foley**; O.K., the Foleys are not related, but they look old enough to be fathers.

Brothers and sisters: **J.D.** & **Nancy Nellor**.

Brothers and others: **Steve**, **Scott** & **Cynthia Horenstein**.

Brothers: The **Thayers**; you know who you are.

Not brothers, not sisters, not anything: **Tom** "Tater" **Phelan** and **Margaret**. Finally, defying any category: **Dale Read**, **Dale Read Jr**. and **Bill Reed**.

Boss of the Year:

Surprise, surprise! Guess who got the Boss of the Year for the second time in three years? That's right . . . **Wayne Nelson**. Wayne expressed well-rehearsed shock in accepting the award at the 27th annual Bosses' Night gala. Wayne, who is not related to Ozzie, works for the same company. When Wayne used to work for Blair Schaffer, he never won Boss of the Year; in fact, he wasn't even nominated. Now, since going over to the P.U.D., he has won twice. It's funny how much nicer a boss you can be when you don't have pay your secretary's salary. Besides, how can you qualify for the award if your name is not in the yellow pages? Next year try for a real award—The Beagle.

PACIFIC COUNTY REPORT

by **JAMES P. FOLEY**

In an effort to wake up the local bar and retaliate against the State Bar Association for not buying dinner anymore, Pacific County Bar Association president **Andy Munson** has resigned. Andy said, in his resignation speech, that he actually resigned ten years ago but no one noticed, so he didn't say anything else. **Jim Foley** was duly elected the new president after a lively, yet succinct, campaign speech, in which he promised to put more bar in the bar and have a party within the next year or so.

Mike Smith was chosen as secretary-treasurer, which immediately set off a debate about who controls the bank account. There was much discussion on whether the new president's term would be the same as his predecessor's (fifteen years). The bar agreed, finally, that the new president will serve until somebody else wants to.

Municipal court judge, prosecutor and solo practitioner **Betsy Penoyar** pointed out that a problem of defendants not being able to reach an attorney on the phone late at night or on weekends has arisen and that the bar should do something about it. The bar unanimously agreed to volunteer **Jim Finlay** for the job of accepting late-night phone calls from intoxicated defendants. Due to his absence from the meeting, Finlay was unable to accept the bar's gracious offer. It was also suggested that if **Pat McKibbin** would take one of those newfangled telephones out on the golf course with him the problem would be minimized.

A survey of recent pro bono efforts by the local bar showed that **Doug Goelz** has been doing lots of pro bono work, none of it intentional. Does that count? He insists that it does.

Retired judge **Herb Wieland** was unable to attend: he's off tracking the Legislature in Olympia for the Judges' Association. Or is he out steelhead fishing?

Superior court judge **Joel Penoyar** gave a report from the bench on what's new and exciting. It was a short report. But very exciting, your honor.

PIERCE COUNTY REPORT

by **GEORGE S. KELLEY**

In what some have described as a "brew haha," there are rumors of a coffee cup design dispute between the small North Tacoma law firm of Sloan, Bobrick and Oldfield and the downtown giant, Gordon, Thomas, et al. It seems that both firms undertook to design distinctive-looking coffee cups to give as perks to clients and for use in their conference rooms. Gordon, Thomas, also used theirs to commemorate the firm's 100th anniversary. Unfortunately, the cups looked remarkably similar, having the same color, shape and design. **Phil Sloan** fired off an angry letter to **Al Malanca,** claiming copyright infringement and unfair trade practice. Litigation in United States District Court was threatened. Unfortunate words were written.

Malanca immediately replied that a search of records in Olympia revealed no trademark registration of Sloan's cup design and that the Gordon, Thomas logo, which stated that the firm had been in existence since 1894, certainly predated Sloan's North End law firm, and even predated the existence of Tacoma's North End. Malanca added that he was there when the North End was discovered, so he should know. He used the words "frivolous" and "sanctions" in his reply.

As of yet, no litigation has been filed, but the coffee cup battle continues to brew.

James Burdue has announced the formation of a partnership with his wife, **Cindy**, who was formerly with the Attorney General's office. The firm will be known as Burdue & Burdue, P.S. It is not known which Burdue name is first on the letterhead.

Carl Skoog claims to have retired. He commenced his practice in 1928. His retirement will start a debate as to who is now the oldest practicing lawyer in the county.

Mike McKasy, in his first president's column in the County Bar Association newsletter, raised the ugly issue of sex with clients. Apparently the problem is being addressed at the state level in a proposed Rule for Professional Conduct. He mentioned that this is a hot topic for family law practitioners. The probate bar considers it to be a dead issue.

Carolyn Mayer has been appointed to the position of courthouse facilitator. This is a person who assists pro se litigants with their paperwork, mostly in the area of family law. Those of you who are having difficulty with the new and ever-changing divorce forms might consider her as a resource.

KITSAP COUNTY REPORT

by **KATHLEEN M.S. WRIGHT**

Officers. Officers for 1993 were installed at a gala event in February held at the Kitsap Golf and Country Club. President **Thurman Lowans** was royally crowned with a fetching gold foil head ornament and outgoing president **Russell Hauge** completed the ceremony by placing a red velvet cape on the presidential shoulders and escorting Lowans

down a red runner to a gold Barca Lounger. A bouquet and scepter enhanced the presentation. Other officers welcomed in a less regal manner were: **William Crawford**, vice president, **Anna Laurie**, secretary, **Michael Kirk**, treasurer. Additional trustees are **Russell Hauge, Susan Daniel, Ron Anderson** and **Patrice Cable.**

Awards. In an effort to instill civility and good taste in the annual installation dinner, a series of service awards were presented for the first time. **Frank Shiers** became the first recipient of the KCBA's Professionalism Award. He was cited for his diligence, compassion and the professional manner in which he has represented clients over the years. The humanitarian award was presented to **Bonnie Bayes McDaniel** as founder of the pro bono program in Kitsap County and for her many and unceasing hours of work representing the indigent, handicapped and underprivileged. The President's Award went to **Ron Anderson**, and, as **Russell Hauge** explained, there are no criteria at all for the award. It goes to whomever the departing president wishes to honor. Russ picked Ron for his dedication to the Bar, especially the annual Law Day festivities, and for his thoughtful and philosophical approach to all legal and any other issues. Retiring Silverdale attorney **Gordon Reynolds** received a standing ovation and a champagne toast from more admirers than he knew he had.

Pro Bono. Added to the ranks of the Volunteer Attorney panel are: **Cynthia Rosa, Barbara West, Elaine Thomas, Tim Kelly, Joan Case, Mike Stowell, Jeffrey Goodwin, David Johnson** and **Steve Dixon**.

Moves. **Diane Russell,** former deputy prosecuting attorney, joins the office of **Robert Beattie. James Parsons** opened an office on Bainbridge Island. **Kendall Kelly** is in Silverdale. **Tom Rutter** is now with Shiers, Chrey, et al. **Kathleen Wright** moved in April to a new "legal" office building on Bainbridge Island developed by personal injury attorney **Chris Otorowski**.

We all whine, but . . . . Some offices are crankier than others. A recent help wanted ad in the Bainbridge *Review*: "LAW OFFICE, P/T, Plaintive Personal Injury Firm . . . ." Perhaps P/T suggests pretty testy?

SOUTH KING COUNTY REPORT

by JANE C. RHODES

It has been a busy winter out in South King County. In Federal Way, the firm of Bonneville, Viert, et al. is receding back to Tacoma; **Tim Jenkins**, the former city attorney, has opened up a practice in Auburn, after spending six months at home as a househusband and is sharing office space with **Elizabeth Berjarano**; **Gary Slater** is a new dad with daughter, **Erin Kathleen Slater**, arriving on February 24; Mayor **Bob Stead** visited Japan representing Federal Way and entered into a sister city agreement with Hanchinohe, Japan; **Judy Eiler** was prematurely aged by more than five years when the *Federal Way City Herald* reported her as being the new 51-year-old judge (she queries whether this is a good way to get an early retirement if she ages six years every two months); and **Paula Pridgeon** will be the labor coach for her daughter, **Dana**, who will make her a first-time grandmother at any minute as of press time.

Auburn also had some news—**Alva Long** has a new boss, **Kenlynn Richards**, who passed the bar last fall and now, "Whatever Kenlynn wants, Kenlynn gets," to quote Alva; **Tom Campbell** has been nominated for a board position on the Washington Association of Criminal Defense Lawyers for the 8th Congressional District; and **Theresa Ahern** is expecting her first child on September 1, which should make the Curran, Kleweno & Johnson attorney retreat to Campbell's at Lake Chelan just two weeks before the due date pretty exciting.

Our annual trip to Olympia for dinner with the "Supremes" was a great event, as usual. We were joined by three guests from the East King County Bar—**Steve Toole** (president), **Valerie Knecht Hoff** (president-elect), and **Marijean Moschetto** (board member). We hope their group can join us for the event next year. We had dinner with Chief Justice **James Anderson**, Justice **Robert Utter**, Justice **Barbara Durham**, Justice **Richard Guy**, Justice **Charles Johnson**, and Justice **Barbara Madsen**, as well as Commissioner **Geoffrey Crooks**. Justice **Robert Brachtenbach** and Justice **Charles Smith** were traveling, and we all missed Justice **James Dolliver** and wish him a full recovery so he can join us again next year.

Plans are underway for the annual South King County Golf Tournament in Enumclaw on Friday, July 30. We may

have a challenge from EKCBA in the works; more on that later. Our installation banquet for new officers and board members will be at the Kingdome on Friday, May 7, which will be a switch from our annual event at Longacres.

WASHINGTON DEFENSE TRIAL LAWYERS REPORT

by **LAURIE D. KOHLI**

The Washington Defense Trial Lawyers will hold a seminar on *Defense Trial Tactics* on Friday, June 4, 1993 at the Stouffer Madison Hotel. The seminar will be chaired by WDTL past president **Jack Soltys**, who has promised to line up an impressive panel of speakers to talk on defense strategies that work in trial. Registration forms for this seminar will be sent, and WDTL members and nonmembers are welcome.

The Boards of WDTL and the Washington State Trial Lawyers Association are developing a "Joint Statement on Professionalism," which parallels in many respects the SKCBA Guidelines of Professional Courtesy. It is anticipated that the Joint Statement may be approved by both boards by June 1993, and will then be circulated among the members of both organizations

WDTL members are reminded to sign up for the June 11 WDTL dinner meeting, which will be an evening on the "Spirit of Washington" dinner train. An entire car has been reserved for the Friday evening event. WDTL members, spouses, friends and others are all invited. Those interested should contact WDTL's executive director, **Nora Tabler**, at (206) 233-2930.

WASHINGTON STATE TRIAL LAWYERS ASSOCIATION REPORT

by **LETHA J. OWENS**
and **LORI D. HANSEN**

Annual Convention

WSTLA's annual convention will be held this year at the Resort of Coeur d'Alene, Idaho and is scheduled for July 22 - 25. The resort is located on beautiful Coeur d'Alene Lake adjacent to the splendid Silver Valley of North Idaho and the pristine waters of the St. Joe River, with available fishing, boating, parasailing, sunbathing, sporting events, historic neighborhoods in which to jog, mountains to climb, shopping, a nearby dog-racing track, a nearby horse-racing track, a world-class championship golf course, not to mention the seven major public golf courses available in nearby Spokane.

This year's convention will include a three-hour presentation by well-known Wyoming attorney **Gerry Spence**. Mount Vernon attorney **Paul Luvera** will present his popular seminar on practice points, and **Mari Clack** and **Linda Urquhart** will teach attendees about personality types and techniques on how to get along with different personalities.

Additional activities for family members include a spouse seminar, hayrides, frisbee golf and a mini-Olympics. A dance will be held for teens at the hotel. As always, the convention will conclude with the President's Dinner and Ball. The convention offers a perfect opportunity to earn CLE credits and break away from the office for a few days.

The Coeur d'Alene Resort is holding rooms for WSTLA until May 31. There are also a limited number of rooms for those wishing to check in early Wednesday, July 21. Early registrants may also want to take advantage of the opportunity to fly fish on the St. Joe River. Spaces are limited, and those interested are encouraged to sign up early. Reservations may be made by calling the Resort directly at (800) 826-2391. Additional information may be obtained through the WSTLA office at (206) 464-1011.

If you have any items you wish to have appear in this column, or have any comments, please contact **Letha J. Owens** at 542-3138 or **Lori D. Hansen** at 637-3067.

IN MEMORIAM

Washington lawyer Simon Wampold, 85, died March 1, 1993 in Montgomery, Alabama. Born in Natchez, Mississippi in 1907, Wampold was a Phi Beta Kappa graduate of the University of Alabama, and later of the Harvard Law School.

Wampold came to Seattle in 1930 and worked as an assistant state attorney general, as well as serving as supervisor of state industrial insurance. Wampold was the founder of the first industrial rehabilitation service in the United States.

A practicing attorney for more than 50 years, Wampold was also active in Democratic Party politics. Survivors include four sons and seven grandchildren.

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