The Official Publication of the Washington State Bar

Washington State Bar News

Vol. 49, No. 3, March 1995

PROFESSIONALISM

Educating the 21st-century Lawyer

Trial-lawyering: a Business or a Profession?

Good Public Relations Begin at Home: The Lawyer's Commitment

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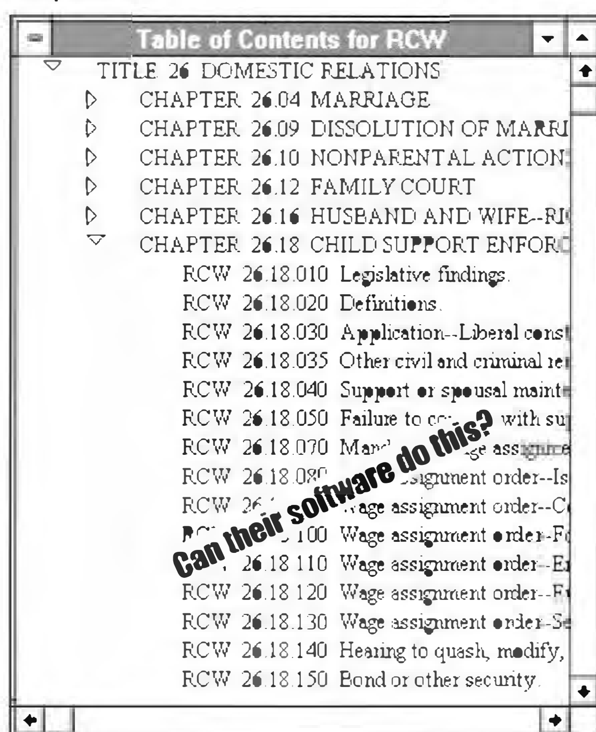

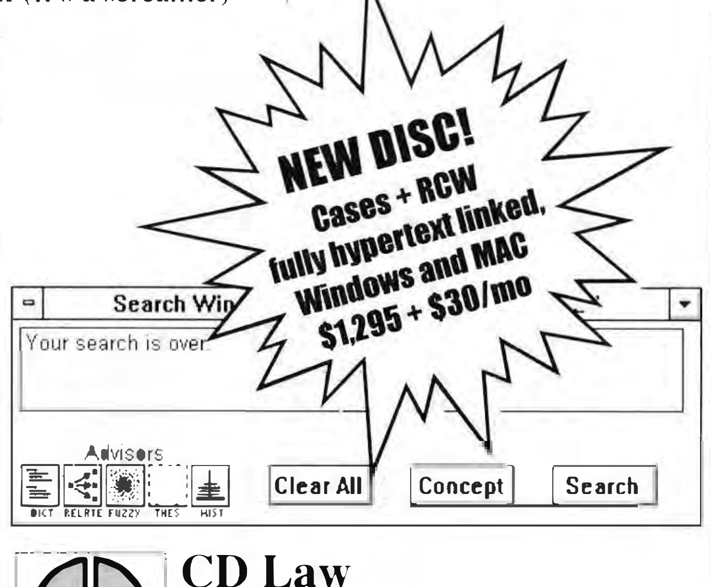

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ART CREDIT

COVER: "High Five, Fire Line," by Don Pollack, 1990, oil/canvas, 42" x 60". West Art and the Law. The artist says, "I am examining man's effort to exert control on nature while presenting it in such a way as to imbue the scene with the essence of what makes nature potent, mysterious and ultimately untameable."

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After accepting the resignation of the incumbent, to take effect in September, the WSBA Editorial Advisory Board is accepting applications for the position of editor. The *Bar News* editor is a part-time, independent contracting position. Applicants must be licensed members of the WSBA in good standing. Submit writing resumé and writing samples, if available, to *Bar News* Editor Search, Washington State Bar Association, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599. Applications must be received not later than April 15, 1995. Information on the duties and compensation of the editor can be obtained from the WSBA Communications Department.

Readers are invited to submit letters of reasonable length to the editor. They should be typed on letterhead and signed. The editor reserves the right to select excerpts for publication or edit them as may be appropriate.

Disciplinary Reform Needed

Editor:

In skimming my January 1995 *Bar News*, I found issues addressed in "Letters" to which I felt that I must contribute. Mr. Velikanje and I have had similar, but opposite experiences. I was first admitted to the practice of law in Illinois, a state where the Bar Association is a voluntary professional organization. The Illinois Supreme Court, through its Attorney Registration and Disciplinary Commission, exercises directly its inherit power to control the practice of law. My "Bar Card" is not issued by the ISBA, but by the Supreme Court's ARDC. When I have inquired other states, including Washington, about licensing matters, I have always started at the highest court of that state, because it is consistent with my first experience with the regulation of legal practice. I have always been referred to the proper location for my inquires, and I would hope that in a serious matter such as Mr. Velikanje described, he found or was referred to the proper authority. I suspect that he might get an answer similar to what he described if he were to contact the ISBA, but he wouldn't be promptly sent in the right direction. What he described is not "lack of control," but merely the placing of that control in a place that is not consistent with his experiences. I personally am uncomfortable with the unified bar, because of my background in the practice of law, but I am not sufficiently concerned to press the issue.

I also wish to address Mr. Dewell's excellent commentary on lawyer discipline. I agree almost completely with his positions. I would like to see the disciplinary system better funded and staffed [even though I know that may mean an increase in dues, which I can not afford] because I believe that a speedy and accurate resolution of these matters is crucial to the integrity of the profession. I read the disciplinary notices of both Bars to which I belong, and have developed the belief that in both states, the process takes too long. I am sickened when I read that another attorney has been arrested or convicted of a crime. Some matters are not dealt with criminally, but are still serious, and may place the public and the reputation of our profession at risk. To have a case take a lengthy period of time to be resolved is not fair to anyone involved, or to the vast majority of honest attorneys.

This applies even more strongly when one is subjected to a serious complaint. Anyone that has suffered through such an experience will remember for the rest of their lives the pain and stress. I was a victim of such a complaint when a convicted defendant complained about my conduct as a prosecutor immediately after pleading guilty. Although the matter was resolved in my favor, and probably as quickly as could be expected, it seemed to drag on forever. Thus the experience of obtaining the records of that incident for my application to the Washington State Bar Association was a painful experience. Because of that and similar experiences suffered by several attorneys of my acquaintance, I also favor limiting the immunity for filing a complaint to those persons who file a complaint having a good faith basis for it. It appears to me even under the current system, an attor-

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  See February for Spokane listing
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  Seattle – Sheraton Seattle – 3/17
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- **How to Compel Discovery**
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- **Youth Anti-Violence Act**
  Seattle – WA State Convention Center – 3/17
  Yakima – Cavanaugh's – 3/24
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- **Hanging Out Your Shingle**
  Seattle – Sheraton Seattle – 3/22
  5.5 Credits $145

- **2nd Annual Employment Law Institute**
  Seattle – Sheraton Seattle – 3/24
  6.5 Credits (est.) $150

APRIL

- **Negotiation and Settlement Advocacy**
  Olympia – Westwater Inn – 4/6
  Seattle – Washington Athletic Club – 4/7
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  Seattle – WA State Convention & Trade Ctr. – 4/21
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- **The Annual Civil Litigation Institute**
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  6.75 credits $145

- **A Second Look: Planning, Drafting and Resolving Problems Under the 1994 Probate and Trust Bill**
  Seattle – WA State Convention & Trade Ctr. – 4/19
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- **Financial and Retirement Planning for Professionals and Executives**
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ney who filed a complaint without such a basis would be exposed to discipline for violation of certain RPC's regardless of any assertion of immunity. Given the effect of such actions, and considering that an attorney should know what constitutes a good faith basis for pursuing any legal action, this would be the better result.

DOUGLAS R. MITCHELL
Cheney

Accurate Information on the Discipline Task Force

Editor:

Howard Todd writes in support of the mandatory dues referendum (*Bar News*, January 1995) that the WSBA's request for an evaluation of its disciplinary system was prompted by "bar leaders casting about for new reasons to justify increasing membership assessments." That is incorrect. The WSBA wanted its system analyzed by an experienced independent source. While lauding the dedication and accomplishments of paid and volunteer lawyers in administering the system, the ABA urged that the disciplinary department be independent of the WSBA, funded by money set aside for discipline, and that specific steps be taken to expedite the investigation, prosecution and adjudication of grievances. The WSBA had no hidden agenda in asking the ABA to conduct the evaluation. The ABA and WSBA are not in lockstep as Mr. Todd implies.

The 17-member Task Force on Lawyer Discipline (including nonlawyers and three Supreme Court justices) unanimously rejected the ABA recommendation that discipline be under the direct supervision and control of the Supreme Court. All members voted that the WSBA continue to administer discipline under the RLDs. Anticipated skyrocketing costs were a factor in rejecting the ABA proposal.

I composed the "draft order" which Mr. Todd states would require the WSBA to assess its members up to $115 for discipline. $75 of annual membership fees now fund discipline. Any increase will depend on what improvements in the system are to be made. Whether future funding will continue as is (dues) or by assessment not subject to referendum is a decision for the Supreme Court. Determining how much money to spend on discipline is and will remain with our elected governors.

Mr. Todd goes on to say, "Since current membership fees are already sufficient to meet the bar's disciplinary and other regulatory functions, the proposed assessment would provide a windfall for the WSBA's nonregulatory programs." That is incorrect. For example, there is a backlog of at least 300 grievances in which investigations have been completed and dismissals warranted. Yet, because of understaffing, letters containing the rationale for dismissal have not been issued and, thus, grievants and attorneys have not been notified.

Accurate information regarding the ABA evaluation with its and the Task Force's suggested remedies can be found in "Redefining Lawyer Discipline in Washington: A Multifaceted Approach" dated December 1994, obtainable through your Governor, which will receive broad dissemination.

J. DONALD CURRAN
Member, Joint Task Force on Lawyer Discipline of the Washington Supreme Court and the WSBA
Spokane

More on Fish Stories

Editor:

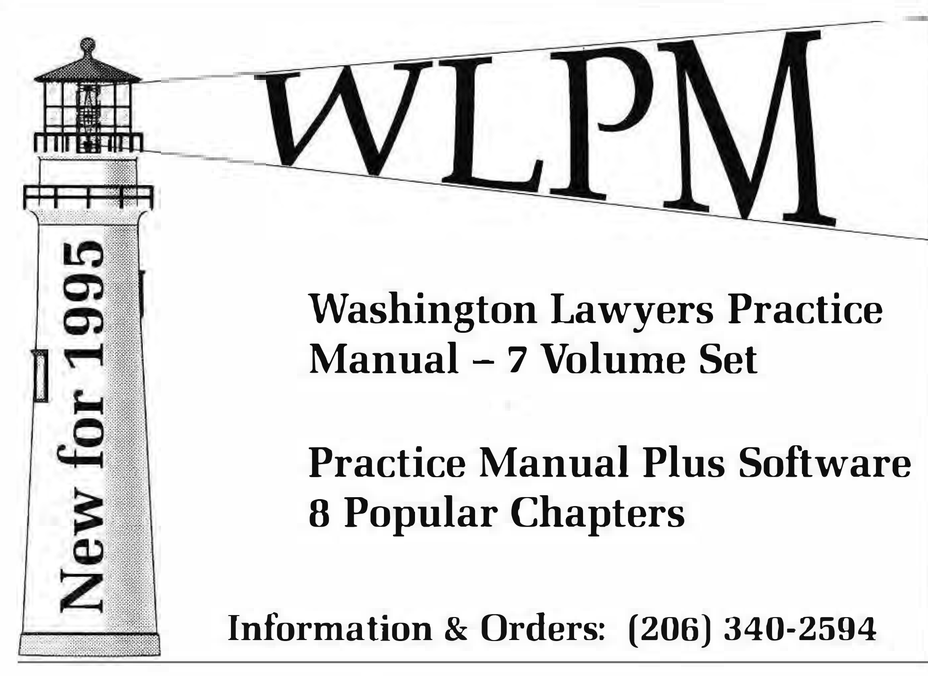
In response to Mr. Bennett's fish story last month, "The Day I Cross-Examined God," I would be delighted if you will print, as my rebuttal, this old familiar poem:

> He was born in an obscure village . . . He worked in a carpenter shop until he was 30 . . . Then he became an itinerant preacher. He never held an office. He never had a family or owned a house. He didn't go to college. He had no credentials but himself . . . Nineteen centuries have come and gone, and today he is the central figure of the human race. All the armies that have ever marched, and all the navies that have ever sailed, and all the parliaments that have ever sat, and all the kings that have ever reigned have not effected the life of man on this earth as much as that . . . ONE SOLITARY LIFE.

It should remind us that His coming was predicted eight hundred years before his arrival and death, which was also predicted, and according to His word as revealed in scripture, any of us *can* come before the Father, and in reality, but only through the blood of His Son who hung on the cross for us, and only because God appointed Him to be a wonderful counselor and advocate for us before Him. Thank God.

God Bless Washington and its lawyers.

PETER G. WALES
Virginia Beach, VA



OUR NOBLE

by **Ronald M. Gould**
WSBA President

This month, the WSBA and other lawyers' organizations celebrate "professionalism," a reminder of the noble calling we share.

Why has law for centuries been considered a noble profession?

Some point to the role of law in society:
Laws protect persons and property; they advance individual rights, as well as collective stability; they uphold fundamental values of personal liberty. Laws shield the young and the aged from exploitation; they guard the possessions of the poor and powerless as well as the intellectual property of large corporations. They ensure that contracts may be enforced. They give certainty to commerce. Laws protect individuals from deceptive claims, negligent acts and unreasonably dangerous products. They protect corporations from malfeasance or neglect from within. In every area of human endeavor, our courts provide a remedy against those who violate the law.

Others point to the grand spirit of the law:
Laws, at best, combine ancient wisdom with modern philosophy to meet human needs. They provide certainty and stability for customary affairs but admit of change to meet the challenges of new times.

Justice William Story wrote, "The common law, as a science, must be forever in progress; and no limits can be assigned to its principles or improvements." He observed that "the common law is never learned" because "the human mind cannot compass all human transactions."

He saw the common law as a human system that approached, but could never reach, perfection. Of common law he said:

> It is its true glory, that it is flexible, and constantly expanding with the exigencies of society; that it daily presents new motives for new and loftier efforts; that it holds out forever an unapproached degree of excellence; that it moves onward in the path towards perfection, but never arrives at the ultimate point.

Ultimately, common law and statutes do not write or interpret themselves, and laws are not self-enforcing. In our system, the lawyer—aided by a wise judiciary composed of lawyers—is both guide and engineer. Here is the eminent Roscoe Pound in an historic address in 1934 celebrating the dedication of the Law Quadrangle at my University of Michigan Law School:

> Law is something more than an aggregate of laws. Laws are rules. But law is much more than a body of rules . . . . Law arises from the application of these laws and the endeavor of lawyers to make of them a coherent system, operating according to an ideal, and furthering justice.

We help our clients to understand the law. We pursue—even battle for—their rights. We represent government agencies charged with the responsibility of ensuring the enforcement of laws. We work for people and companies who must survive and prosper in a regulated society. We prosecute and we defend those charged with crimes. We negotiate on both sides of every important private agreement. We mediate to resolve disputes. We invoke the judicial process when it is needed to protect or advance clients' legitimate interests. As a practical matter, we lawyers are involved with issues in the hearts of our clients and at the heart of society.

It is thus that lawyers are properly concerned with developing and maintaining a clear conception of ethics, a strong sense of professionalism and an array of skills to be used for the benefit of clients and society.

PROFESSION

Ronald M. Gould

Consider again the view of Justice William Story, who wrote:

> The perfect lawyer, like the perfect orator, must accomplish his duties by familiarity with every study. It may be truly said that to him [or her] nothing, that concerns human nature or art, is indifferent or useless.

So it remains today. We are concerned with society, with art, with politics, with commerce and with human rights.

It is in this context that we should consider professionalism. In this issue of the *Bar News*, you may ponder Bob Cumbow's call for a return to broader education of 21st-century lawyers. Our common law reflects what a jurist of another age, Lord Hale, described as "the wisdom, counsel, experience, and observation of many ages of wise and observing [persons]." Story cites sources ancient beyond our recognition in describing the common law as "the gathered wisdom of a thousand years."

Take a look at Barnett Kalikow's discussion of "The Lawyer's Commitment," a WSBA contribution to the efforts of lawyers to show our professionalism in our dealings with clients, as important to professionalism as our dealings with adversary parties.

Review Sally Favors' comments about how legal-support personnel contribute to professionalism.

Reflect upon Judge John Coughenour's warnings of the grave danger in viewing the law as nothing but a business. If more lawyers will only consider the views he advances, they will remember that law is indeed noble.

In 1934, Justice Harlan Stone warned of the risks that big business would lead to the overspecialization of lawyers:

> At its best the changed system has brought to the command of the business world loyalty and a superb proficiency and technical skill. At its worst it has made the learned profession of an earlier day the obsequious servant of business, and tainted it with the morals and manners of the market place.

These risks of market place manners face all lawyers, whether they represent business clients, tort claimants or government agencies.

How, then, do we maintain professionalism in modern times?

We do it the old-fashioned way, by having a unified commitment from lawyers to advance the interests of the profession. We all need to be concerned with ethics, professionalism, access to justice, collegiality in the profession and other values embodied in the Washington Supreme Court's GR 12 and in the individual oaths we take at admission to the bar. We must strive to recognize and honor human values in our dealings with other lawyers. We need, on a unified basis, to recognize that our differences with our colleagues are not as significant as the common responsibilities that bind us together.

Ron

Erratum: In "How May Lawyers Help Prevent Youth Violence?" in the February 1995 *Bar News*, page 11, the sentence reading "The Bar Association itself should consider policies that facilitate child care for working mothers," should have read ". . . working mothers and fathers."

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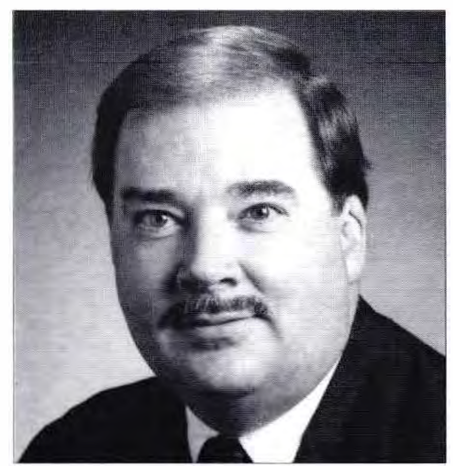
The Association of Trial Lawyers of America

Annual Financial Report—Same Boring Good News

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



Dennis P. Harwick

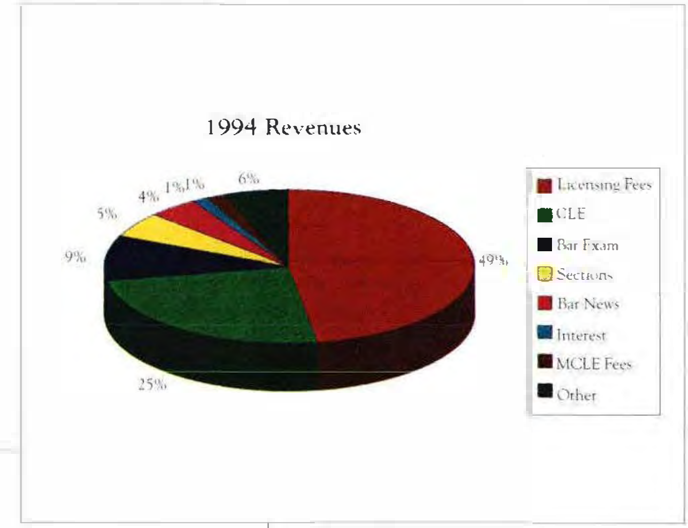
It's hard to make a financial report interesting when there's nothing unusual to report. The WSBA's 1994 fiscal year was pretty much a repeat of the successful fiscal year '93: non-dues sources of revenues up; expenses controlled; surplus achieved. The WSBA doubled its financial operating reserves and set up separate reserves for WSBA Sections and CLE.

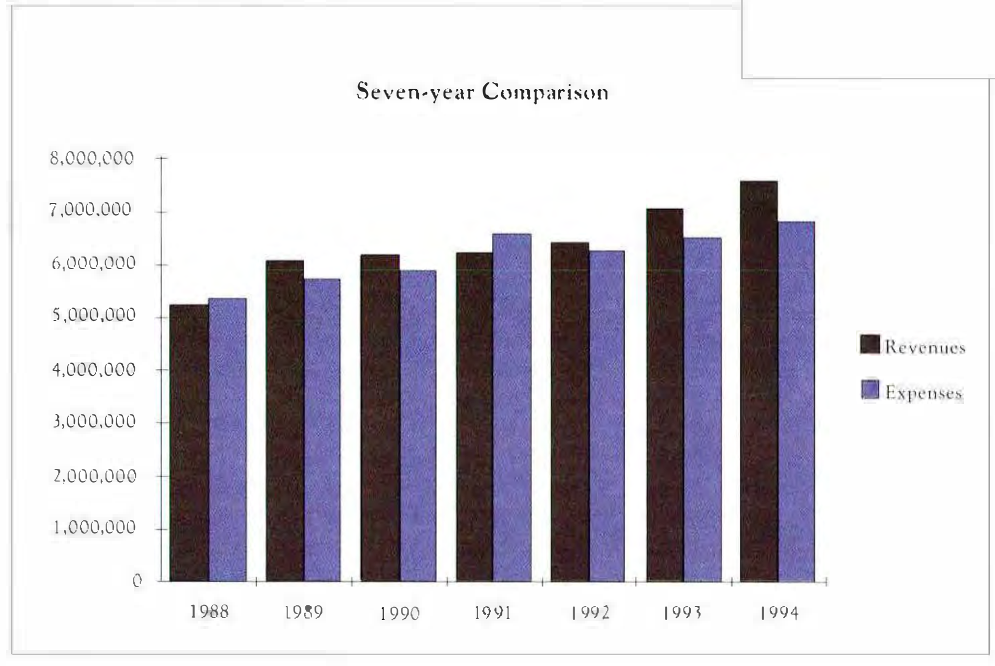
The following financial reports are derived from the Independent Auditor's Report submitted by BDO Seidman, the WSBA's outside auditors, to the Board of Governors. Copies of the audited financial statements are available upon request from Pat Dieken, Director of Administration and Finance, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599.

Miscellaneous Financial Tidbits:

— 1994 revenues were up 7.3% over 1993, while expenses were up only 4.6%;
— since 1988, WSBA revenues have grown 45%, while expenses have increased only 27%;
— there hasn't been a dues increase since 1987;
— most of the increases in revenues have been in "non-dues" sources of revenues;
— WSBA dues account for less than half of the WSBA's revenues;
— for the second year in a row, the outside auditors had no significant suggestions to put in a management letter (they didn't even issue one in 1993); and
— fiscal year 1995 (which started October 1, 1994) looks like a repeat of the successful years 1993 and 1994.

Same old boring good news!





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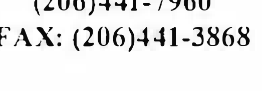

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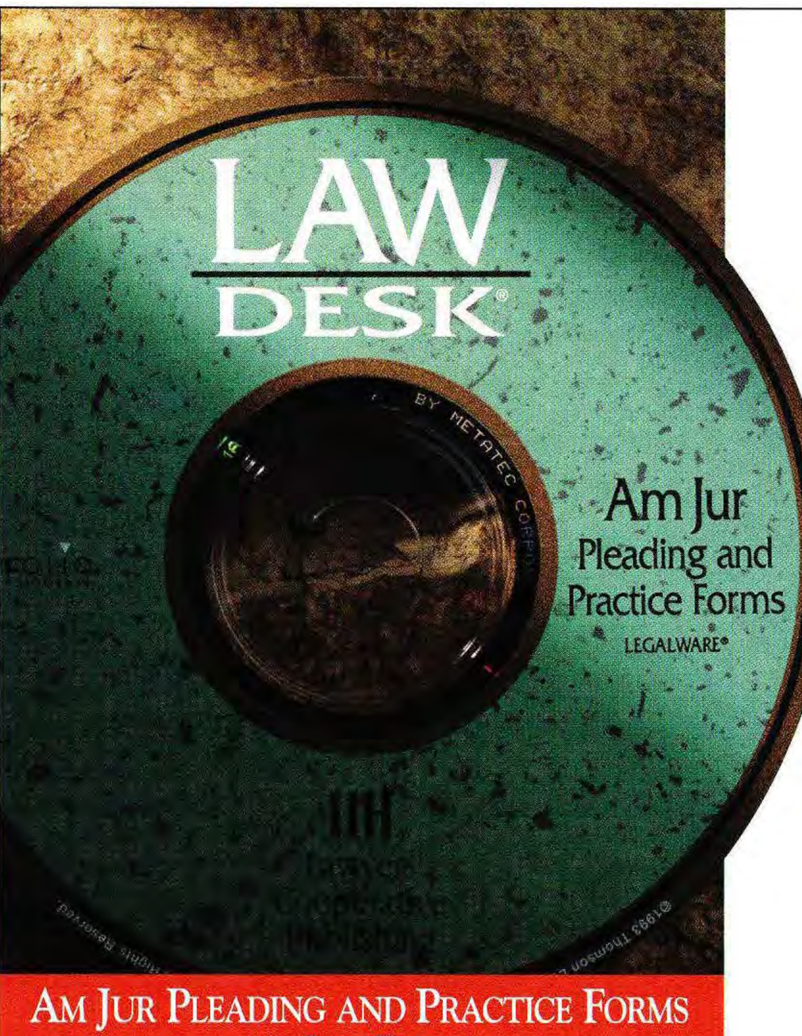
WSBA Revenues/Expenses/Fund Balances

	1994	1993	1992	1991	1990
Revenues					
Licensing Fees	**3,610,103**	3,459,595	3,311,696	3,161,134	2,999,637
Access to Justice	**9,800**				
Administration (interest earned)	**103,306**	68,656	65,218	106,357	137,796
Admissions/Bar Exam Fees	**707,444**	731,041	640,519	579,973	621,989
Audits (random and for cause)	**2,128**				
Bar News	**337,951**	309,418	255,525	267,737	246,590
CLE - Publications	**352,353**				
CLE - Seminars (combined pre-FY94)	**1,534,681**	1,753,037	1,244,676	1,367,231	1,491,765
Communications	**39,869**	28,026	33,347	30,361	
Convention	**0**	1,094	159,678	107,617	172,822
LAW-BBS (electronic bulletin board)	**28,566**				
Lawyers Referral Service	**0**	0	31,086	38,415	49,415
Law-Related Education/MENTOR	**6,412**	28,843	31,663	31,434	
Mandatory CLE Fees	**110,089**	110,967	120,851	111,575	
Membership Records	**63,014**	56,497	55,266	30,455	
Resources Directory	**88,599**	6,752	28,901	45,156	42,487
Sections	**412,458**	349,350	280,165	264,908	245,896
Young Lawyers Division	**48,242**	42,338	31,105	24,453	18,587
Other Income	**132,477**	123,900	116,606	62,221	152,811
Total Revenues	**7,587,492**	**7,069,514**	**6,406,302**	**6,229,027**	**6,179,795**
Expenses					
Access to Justice	**92,674**	15,359	14,993	29,812	
Administration	**695,828**				
Admissions/Bar Exam	**585,366**	362,104	357,887	418,053	286,621
Audits	**114,864**				
Bar News	**482,050**	281,200	291,890	292,872	257,575
Client's Security Program	**109,826**	100,000	8,751	34,609	35,920
CLE - Publications	**284,398**				
CLE - Seminars (combined pre-FY94)	**1,437,100**	1,206,832	917,750	963,722	924,801
Communications	**154,952**	36,742	63,584	73,369	191,038
Convention	**0**	20,771	132,771	159,484	192,590
Court Rules	**15,786**				
Discipline	**1,005,660**	45,972	52,925	100,218	58,021
Fee Arbitration	**19,997**				
LAW-BBS (electronic bulletin board)	**22,884**				
Law-Related Education/MENTOR	**6,605**	18,293	44,210	72,615	
Lawyers' Assistance Program	**229,355**	13,728	21,436	24,508	21,902
Lawyer Referral Service	**0**	0	23,597	21,502	19,991
Leadership	**266,513**	129,867	107,626	153,299	146,367
Legislative Activities	**164,996**	40,114	33,252	37,066	32,619
Local Bar Support	**34,871**	588	12,476	12,103	
Mandatory CLE	**106,056**				
Membership Records	**261,994**	40,631	32,470	35,586	
Resources Directory	**43,428**	43	64,993	66,556	60,384
Sections	**339,886**	245,096	227,309	250,817	237,765
Young Lawyers Division	**121,966**	98,233	92,025	84,507	83,045
Other Expenses	**30,319**	104,553	126,478	150,778	209,991
Salaries	*	2,134,869	2,149,647	2,129,965	1,829,217
Employee Benefits	*	611,111	596,136	538,577	460,164
Rent, Taxes, & Utilities	*	387,845	394,625	394,390	355,374
Postage and Supplies	*	198,098	176,980	132,067	207,065
Equipment Rent & Maintenance	*	190,977	158,942	190,677	127,050
Depreciations & Amortization	*	156,252	102,537	85,950	67,100
Interest	*	36,539	29,283	19,845	27,161
Insurance	*	29,030	29,046	28,530	30,371
Professional Fees	*	15,847	18,375	21,088	49,366
Loss of Asset Dispositions	*	7,306	2,279	17,664	0
Write-down of Fixed Assets	*			48,175	
Provision for deferred compensation	203,000				
Total Expenses	**6,830,374**	**6,528,000**	**6,284,273**	**6,588,404**	**5,911,498**
Revenues Over (Under) Expenses	*757,118*	*541,514*	*122,029*	*-359,377*	*268,297*
Fund Balance - beginning of year	724,811	183,297	61,268	420,645	152,348
Fund Balance - end of year	1,481,929	724,811	183,297	61,268	420,645

*Allocated to various programs based on staff time sheets



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EDUCATING THE 21ST-CENTURY LAWYER

by **Robert C. Cumbow**

The movie *Jurassic Park*, which by now has surely reached every American household, gives us a typical image of the lawyer as perceived by contemporary consciousness. He begins as a negativist, telling tycoon John Hammond why his real-dinosaur theme park won't work, based on cost overruns, construction delays, and tort liability. When he sees, however, that there's gold in these prehistoric hills, he is transformed into a "bloodsucking" opportunist: "We're gonna make a fortune outta this place!" When things go bad, he's the first to turn tail, covering his own by seeking safety in a portable toilet while abandoning two small children to the fang and claw of T-Rex. Of course, we all know how he ends up.

Lawyer-bashing is nothing new. Dick the Butcher's "The first thing we do let's kill all the lawyers" and Mr. Bumble's "The law is a ass, a idiot" loom larger in our era than they did in their own. Thomas More, a lawyer himself, had no room for lawyers in his *Utopia*. Lawyer-bashing is rooted not in mere resentment of lawyers as a necessary evil, but in the disillusioned belief that the entire judicial process is out of touch with the human needs and values it was meant to serve. H.L. Mencken defined a courtroom as a place where Jesus and Judas would meet as equals, with the odds on Judas.

The Symptom: the 20th-century Lawyer

The current critical perception of lawyers by the public at large is reflected in the way lawyers are regarded by their clients and by the professional staff they work with, as well as the way lawyers look at themselves.

Our society rewards lawyers with high incomes and social power, and it glamorizes them in movies, TV series and news coverage. Yet it almost universally reviles them as overpriced, out-of-touch with clients' real needs, interested only in money and wedded to a system no longer capable of delivering justice. The contemporary image of the lawyer is that of one who wins outrageous settlements for frivolous claims, one for whom zealous representation means winning whether right or wrong, one who readily argues either side of an issue to achieve his client's desired end without regard to truth, justice and values.

Clients do not regard lawyers the same way patients regard doctors. For one thing, patients perceive doctors as the necessary (and necessarily expensive) solution to their problems, but they rarely see doctors as the *cause* of those problems. When a person needs a lawyer, however, it is often because someone else's lawyer has created a problem.

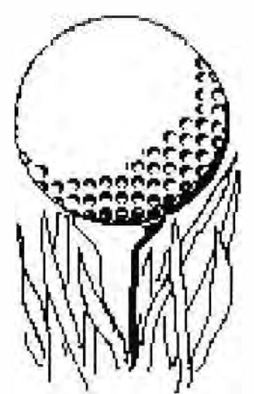
Lawyers may also be critically perceived by their co-workers, the paralegals, legal secretaries, clerks and messengers who are the lifeblood of any law practice, public or private. These folks often view lawyers as arrogant and self-important—and not surprisingly. Many young lawyers have been high achievers all their short lives, have won success and praise in academic environments, and often have never worked with a support staff until the day they walk into a law firm. Not knowing how to handle the situation, they can too easily cling to the image of themselves as a breed apart, to be waited on by a serving class. Some who step into that role remain there for their entire careers.

Some lawyers perceive themselves almost as critically. Many who leave the profession cite frustration with the lack of personal reward in the practice. Not material reward, mind; departing lawyers don't complain about money. Nor do they knock the long hours, the hard work, or the heavy burden of responsibility—those come with the territory. They don't leave because they can't get away with practicing bad law, but because they see too little opportunity for practicing better law. It's not that bad lawyers drive out good. There are still far more good ones than bad ones, due largely to high professional standards and strict enforcement of professional ethics. But bad lawyers will be less inclined to leave a profession in which they can flourish; good ones, especially the young and idealistic, will be less inclined to stay.

What illness has produced these symptoms, and what is its cause? Largely, it is the fact that law has been separated from its moral underpinnings. Law has religious beginnings; the first organized codes of law were those of theocratic states. With time, states became more secular, more religiously diverse and, gradually, more tolerant. Despite the religious ideals underlying the establishment of our own nation and its guiding principles, it is impossible for law in today's United States to be pinned to any specific religious viewpoint (especially when Constitutional provisions designed to protect religion from government are now interpreted to make government not equally tolerant but equally censorious of all religions). But where law is no longer specifically religious it must, nevertheless, embody some consensual value system; otherwise it is mere politics, mere economics. And where law is merely political and economic, justice is pragmatic, arbitrary, and ultimately evanescent.

Law is nothing, said Wendell Phillips, unless close behind it stands a warm, living public opinion. Yet much of our contemporary case law, from tort judgments to constitutional interpretation, has turned its back on public opinion, and lawyers and judges have paid the price in the form of a severe devaluation of the esteem in which the legal profession and the judicial process are held. Justice Wil-

When Par is unacceptable.



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liam Brennan viewed the law as "a means to serve what we think is right"—and one can only assume that by "we" he meant all of us.

We cannot, by reliance on law, escape the duty to judge right and wrong, said Alexander Bickel. Yet much of contemporary legal practice does precisely that. The law is viewed increasingly as merely a process for achieving a desired end; concepts of right and wrong, if they emerge at all, do so only retrospectively: the successful litigant doesn't win because he is right; he is right because he wins. J.P. Morgan's famous remark is even more typical today than when he spoke it a century ago: "I don't want a lawyer to tell me what I cannot do; I hire him to tell me how to do what I want to do." (What a contrast between Morgan's comment and Edmund Burke's of a century earlier: "It is not what a lawyer tells me I may do, but what humanity, reason, and justice tell me I *ought* to do.") Today's legal profession has, by and large, become what Morgan wanted, not what Burke envisioned.

Too many contemporary lawyers buy into the notion that law is not justice nor inquiry into truth, but a mere mechanism for dispute resolution. This position is disingenuous. Lawyers don't just *use* the law to achieve ends for their clients; they *make* law every time a particular end is achieved, and one position is upheld at the expense of another. Every time a court rules, every time a transaction is agreed upon, even every time a settlement is reached, precedents are set that, binding or not, will be followed by other judges, other lawyers, other clients.

Today's lawyers, indeed, may be regarded in much the same terms as the maligned genetic engineers of *Jurassic Park*, "so preoccupied with whether or not they could that they didn't stop to think if they should." Law is not made in a test tube. It is made effectively and well only in the context of a given value system. Indeed, law itself is essentially conservative: it is at its best when it describes how to enact and apply an existing ethos, and at its worst (and least effective) when trying to create a new one. That is why, for example, the Emancipation Proclamation was successful and Prohibition was a disaster. The Emancipation Proclamation embodied an ethos that had already been chosen by the majority of the nation; even the Confederacy did not fight the Civil War so much to preserve slavery as to defend state sovereignty and the right to choose. Prohibition, by contrast, with no societal consensus or conviction behind it, wreaked the same kind of havoc as many of today's tort settlements, and had the same general impact: to breed widespread contempt for the law. Law pushes society well; when it tries to pull society, it falls on its face. While such legislative measures as a "loser pays" system to stem the litigiousness of our age may help restore to the law a measure of social respect, the only real way to change the way we make law is to change the way we make lawyers.

We cannot, by reliance on law, escape the duty to judge right and wrong . . . Yet much of contemporary legal practice does precisely that. The law is viewed increasingly as merely a process for achieving a desired end; concepts of right and wrong, if they emerge at all, do so only retrospectively: the successful litigant doesn't win because he is right; he is right because he wins.

The Problem: How Lawyers Are Made

Law schools today select for high intelligence and achievement, then employ as key mechanisms isolationism, elitism, and limited contact with the non-law-school world (families are often the first and worst casualties of the law school experience). The irony is obvious: Law deals with protecting people, advising people, resolving disputes among people; yet law students rarely if ever see any people—in sharp contrast to medical students, who from their very first year see patients, learn to meet their needs and deal sensitively with them.

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trained more like doctors, because lawyers are, like doctors, caregivers. They are entrusted with nothing short of the moral health of their society. What Willard Gaylin said about politics is—or should be—even truer of the practice of law: it is the translation of values into public policy. In a greater sense, lawyers should not be "trained" at all—they should be educated. The concept of lawyer "training" goes hand in hand with the view of law as a kind of technological process, and law school as a sort of vocational institute. The model is still Harvard—though less the Harvard of fact than the Harvard of repute, immortalized in *The Paper Chase* and *One-L*. Professor Kingsfield's heirs and imitators still want their students to learn to think like lawyers; but today much of that thinking seems to take place in a moral void. Today's lawyers are taught to consider what *behavior*, what *policies* the law should reinforce, not what *values*. The standard fare in a "Professional Responsibility" course consists of nothing more than reviewing the canons of professional conduct and having entertaining discussions about what to do in certain intriguing hypothetical situations. The thrust of such a course is limited to training lawyers to keep themselves out of trouble; it teaches them nothing about ethics or values in the larger sense, and less than nothing about serving their clients within the larger context of a responsibility to society. Is it any wonder, then, that they approach their profession as a body of techniques devoid of any framework for distinguishing permissible from impermissible ends?

In large part, the modern misdirection of legal education arises from the modern misapprehension of the role of law. Lawyers do not exist merely to apply the law made by legislators. If legislators wrote all the laws we need we would have no use for lawyers. The legal system exists to find and interpret the law, and thereby to *make* law. And this applies not only to litigators but to business lawyers as well, who make law in the way they draft contracts, structure transactions, and advise clients on the protection of their interests.

If law is effective only when made and applied within the context of a larger system of ethical values, then it is apparent that what the law does is to make the abstract concrete. And this enables us to recognize at once the anomaly of modern legal education, for it does exactly the opposite: it makes the concrete abstract. Wanting its students, with skulls full of mush, to learn to think like lawyers, it emphasizes the intellectual adventure of law to the exclusion of both the concrete human dimensions of law as actually practised and the understanding and acceptance of a value system that, alone, gives meaning to such practice. Contemporary law school is like a ladder with its upper and lower rungs missing. The middle is fine, but there is no foundation at the one end and no practical application at the other.

At the top of the ladder, today's law school graduate enters upon legal practice with no notion of how to talk with a client, determine and meet that client's needs, how to work with other attorneys (whether adversaries or allies), how to

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work with and treat professional support staff such as secretaries, clerks, paralegals. At the bottom of the ladder, a young lawyer today obtains from law school little or no sense of the foundations of law as practiced and applied in the United States: no sense of Mosaic, Egyptian, Hammurabic, Roman, Islamic, Ecclesiastical, or Napoleonic law—and very little sense even of English Common Law, the primary model for our own system. Today's law school graduates have no notion of the philosophical, cultural, and theological underpinnings of law and justice as those concepts have come down to us. They do not know what to make of the concept of Natural Law—if indeed they have ever heard of it at all. They read cases, few of them more than a century old. They do not read the Book of Job, or Plato's *Republic*, or Aristotle's *Ethics*. They do not read Paul, Augustine, Aquinas, Machiavelli, Hobbes, Monte-squieu, Locke, Madison, Jefferson, Paine, Thoreau, Marx, or any of the thinkers whose work has informed our notion of individual and social justice.

Sir Walter Scott wrote that "A lawyer without history or literature is a mechanic, a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect." Today's law students are trained to be masons. The law is presented to them not as an institution, a way of life, the embodiment of the ethos of our society, but rather as a tool to achieve whatever end is desired—J. P. Morgan's dream lawyer.

A basic lesson of administrative law as taught in law schools today is that any person or group can use the legal process to block a particular governmental or societal action, even when that action has the approval (and works to the benefit) of the greater number. This is not to suggest that the legal process should not be used to assert minority points of view; it should. But today's law students learn to regard the law as *merely* a tool, a system of tactics for protecting one set of interests at the expense of another by creating obstacles in the form of protracted delay, procedural complexity, and increased cost. As in George Lucas's *THX-1138*, when the allotted budget is exhausted, the chase is called off; the only trick is to make sure you're the fugitive who escapes, not the pursuer who's forced to give up the chase. In such a context, law becomes a game, with no more important value than achieving a desired result by wearing down or outsmarting one's opponent. Principles such as the zealous representation of one's client and everyone's right to counsel have become an excuse for making law a technology rather than a humanism, and the lawyer an artisan rather than an artist.

Wanting its students, with skulls full of mush, to learn to think like lawyers, modern legal education emphasizes the intellectual adventure of law to the exclusion of both the concrete human dimensions of law as actually practised and the understanding and acceptance of a value system that, alone, gives meaning to such practice.

The Solution: The 21st-century Law School

Creating the 21st-century Lawyer cannot begin with reforming law practice. Law is not only a mission; it is also necessarily a business. Established law firms and practitioners cannot be asked or expected to become laboratories of experiment, to risk giving up a competitive advantage in order to bring about professionwide change, no matter how ultimately beneficial that change might be to both lawyers and their clients. Similarly, a small firm or new practitioner undertaking to change practice values risks being eaten alive by competitors.

What must be done is to reform law *school*.

The faculty is critical. Assuming a three-year law program and a 30-year career for law professors, one law professor can shape, several waves, several generations, of young lawyers. Thus law schools must employ faculty who embrace, rather than shrink from, the ideological underpinnings and policy implications of the black-letter law they teach—faculty whose ap-

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proach to law is informed by an understanding of and commitment to an underlying value system that defines and directs the law itself.

In terms of overall structure, law schools should consider a three-and-a-half or even a four-year program and the possibility of post-degree practice requirements. No one would expect a physician to enter private practice upon receipt of an M.D. Yet a large number of today's law school graduates embark upon individual private practice with even less grounding in the fundamental values and the practical realities and responsibilities of their profession than the average med school graduate. A longer academic program could serve to supply the bottom rung of broader grounding in the values on which our system of law is based; post-degree requirements could supply the missing top step of practice management and client service.

The post-degree work I envision is not simply donating service to the community . . . it can also too easily be mere tokenism, mere condescension for students, whose elitism and aloofness may be reinforced by occasional self-congratulatory contact with needy, real-world clients.

The bottom rung is provided by required coursework designed to create responsible professionals grounded in the ominous ethical responsibility they are undertaking, and prepared to be personally accountable for their practice and application of the law. This is necessarily different from—and prerequisite to—the "professional responsibility" course focused purely on standards of professional behavior. Required courses designed to ground all law students in the philosophical and moral foundations of law and justice would involve reading and discussing formative works of ancient, Judaeo-Christian, Islamic and other thought systems on the nature and application of law. By deliberating on the fundamental and timeless questions about truth, justice, and right behavior, beginning law students would be expected to form a fundamental framework for testing and applying the legal principles and techniques derived from later studies of case law and clinical coursework.

This broadened basic legal education should be augmented, in the third year, by opportunities for international learning experience and exposure to other countries' legal systems, through student and faculty exchange programs, and by frequent use of guest lecturers, special seminars, and short courses. This, of course, complements the standard Harvard-style case law coursework, which would still be retained in the form of required and elective substantive courses.

The top rung consists of clinical coursework as well as post-degree experience. When I speak of post-degree requirements, I mean more than sitting in a half-day CLE a few times a year. I mean something more akin to medical internship. Most of today's graduating law students never have the benefit of serving a judicial clerkship. Even those who do, although they gain substantial experience and knowledge of procedure as well as substantive law, acquire no practical client service or practice management skills. And law students who serve as clerks or summer associates at law firms do so more to get a taste of the culture and atmosphere of that firm (and to be sized up by the firm's partners) than to build practical professional skills. Indeed, their work is generally limited to research and memo-writing not appreciably different from what they do in law school legal-writing classes.

The post-degree work I envision is not simply donating service to the community, either. Although that has an important value, it can also too easily be mere tokenism, mere condescension for students, whose elitism and aloofness may be reinforced by occasional self-congratulatory contact with needy, real-world clients. No, what is needed is a more ambitious program of learning to deal with clients of all types as human beings; to recognize, identify, and serve their needs, and to accept the responsibility of guid-

ing those clients' course of action within the context of a social ethos. Such post-degree work must be designed to give new lawyers the skills and the courage to advise clients against courses of action that, even though not illegal, represent bad social policy or are inconsistent with the values to which the lawyer, as an exemplar of the social order and an officer of the court, is empowered and obliged to protect.

In law school, interviewing skills are limited to a day or two of exercises in trial and pretrial courses (which are not required for all law students), where students focus on obtaining facts from the client and preparing witnesses. What is needed is required coursework and clinical experience for all law students in talking to clients, learning to treat them as human beings, to know and be sensitive to their needs, and to give them the most valuable advice, even when that advice is contrary to what the client believes to be his or her own interest. Teaching resources for such coursework and internship include other lawyers (winners and losers), judges, former jurors, clients who are happy with their lawyers, clients who are not happy with their lawyers. Advanced work should also include courses or internships in specific fields under the mentorship of practitioners in those areas who understand the day-to-day procedural realities, real-life challenges and client needs associated with those areas of law.

In short, law school must become an institution not just for learning substance and technique, but also for acquiring professional and social responsibility—at both the foundational and the practical end of the ladder. How to measure its effectiveness? Although absolute certainty is not attainable, the law school of the 21st century can go far in measuring its own effectiveness through use of a continuing self-evaluation process directed toward both students and the educational program itself.

Each entering law student now writes a personal essay at application time, but these are used chiefly to gauge basic writing ability and to get a sense of personal motivation and seriousness about the task at hand. These essays are never used as the basis for a continuing evaluation of both the student and the legal-education system, and they should be. Law students should review their own personal essays after each year of law school and write a new one assessing where they are in their development toward legal professionalism. These become tools for continuing self-analysis and self-criticism, forming a habit that should continue in the new lawyer's professional practice. But the essays are also a basis for the school's formal evaluation of student progress, for its continuing assessment of its own techniques. They can also be a good tool for keeping in touch with the student after graduation; it is conceivable that the 21st-century law school would ask each graduate to write an annual letter assessing the lawyer's own professional development in relation to what was learned—or not learned—in law school. This provides a basis for the school to revise its own curriculum to become even more effective and responsive to perceived needs, and it is also a mechanism for unifying the school's alumni and creating a close-knit community of law practitioners, teachers, school administrators and students.

The Goal: The 21st Century Lawyer

If successful, such a law school will, over a fairly short time, create an attractive alternative to the lawyer who is so ill-perceived today:

A lawyer who is respected by associates and adversaries alike.

A lawyer who likes being a lawyer.

A lawyer who is guided not by what can be done but by what should be done.

A lawyer who is not hated, but honored, by the society that is served, because the lawyer contributes to the preservation, not the erosion, of the values upon which that society so desperately depends.

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*Editorial Advisory Board member **Robert C. Cumbow** practices with Perkins Coie in Seattle.*

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TRIAL-LAWYERING: A BUSINESS OR A PROFESSION?

by Hon. **John C. Coughenour**

Lawyer-bashing is not a new phenomenon. However, the things I have been reading lately in newspapers, other popular periodicals and legal journals lead me to believe that the public's perception of the legal profession has changed in recent years. Indeed, the numbers in one recent study are cause for real concern: only six percent of corporate users of legal services surveyed believed that all or most lawyers deserve to be called "professionals." How can this be?

I am convinced that the public's changing view of our profession is due in large part to an attitude held by a growing number of lawyers themselves; that the practice of law is just a business, no different from any other commercial enterprise in which success is measured by financial reward. In essence, the public's view of the legal profession is a reflection of the way the profession views itself.

The practice of law has changed.

The phenomenon of lawyers thinking of their practice as a business instead of as a profession certainly seems more prevalent today than it was 20 years ago. A number of factors have contributed to this development: the enormous growth in the number of lawyers in practice—a jump from 300,000 to approximately 800,000 since 1960; increased overhead costs in large firms with huge support staffs and escalating associate salaries; the pressure for more and more billable hours; clients actively reviewing billing statements that reveal everything down to the most minute detail; clients, and lawyers, moving from firm to firm, thereby eroding the concepts of client and firm loyalty; and lawyer advertising.

Gone are the days when partners could reap large profits without concern for efficient management. Gone, too, are the days in most of our cities when each trial lawyer knew every other trial lawyer in town and appeared before judges often enough to know—and be known by—them all. In many cities, trial lawyers have become virtually anonymous to one another and to the courts, and some conduct themselves accordingly.

Furthermore, partners in today's law firms, increasingly concerned only with the bottom line, force associates to bill more and more hours. A 1,500-billable-hour year was once quite respectable. Now, many firms require, or at least encourage, associates to bill 2,000 or more hours per year. Those additional hours come hard. It is difficult for young lawyers to fulfill their obligations to society or to even lead meaningful lives outside of the office. In the race for billable hours, young lawyers are likely to neglect pro bono work, their family and their friends as well. As a result, our communities, our profession and our families all suffer. Many a lawyer's personal tragedy has been caused, at least in part, by being overly concerned with billing hours and making money. All too often, such obsessions lead to broken homes, alcoholism, drug abuse, and depression.

Despite the seemingly irresistible changes occurring within the legal profession, it is important for the Bar to combat the notion that the practice of law is nothing more than a commercial enterprise. The view that law is just another business leads to more than a loss of prestige and social status for lawyers. It discourages pro bono efforts, causes disillusionment among our brightest young lawyers, makes the practice more difficult and disagreeable, and—worst of all—sets in motion forces that all too often lead to personal tragedies.

Moreover, lawyers who view themselves not as members of a learned and respected profession, but rather as commercial entrepreneurs concerned primarily with profit maximization, are more likely to forget their responsibilities as officers of the court. They are more likely to employ unreasonable and unprofessional tactics in litigation, to engage in irresponsible billing practices at the expense of clients and to solicit clients in an unseemly manner which discredits all lawyers.

The view that law is nothing but a business is dangerous.

It is incumbent upon all of us, as members of the legal profession, to work to dispel the notion that the practice of law is a business. It is not a business; it is a profession.

A former law clerk once asked me, "What's the difference between a business and a profession?"

I responded, "If you don't know the difference, you're part of the problem."

Another judge answered the question better:

> A profession is not a business. It is distinguished by the requirements of extensive formal training and learning, admission to practice by qualifying licensure, a code of ethics imposing standards qualitatively and extensively beyond those that prevail or are tolerated in the marketplace, a system for discipline of its members for violation of the code of ethics, a duty to subordinate financial reward to social responsibility, and, notably, an obligation on its members, even in nonprofessional matters, to conduct themselves as members of a learned, disciplined, and honorable occupation.

What can be done to change this view that the law is nothing but a business?

I have often wondered whether we

should consider limiting access to the profession and whether that might be in the public interest. Limiting access to the profession, however, is probably unworkable, if not illegal. Other suggestions I have heard might help. They include an increased commitment to pro bono work, active enforcement of ethical codes, and adoption and enforcement of strict rules against deceptive and distasteful advertising as well as unseemly solicitation of clients.

In any event, it is important to start with the attitudes of lawyers themselves. When colleagues express the view that the law is just a business, each of us should be prepared to join the issue and to meet it head on. For without a collective mindset on the issue of professionalism among its members, the Bar cannot expect the public to view lawyers any differently from the way it views used-car salesmen. Nor, without such a commitment from its members, can the Bar expect to remain a profession.

Without a collective mindset on the issue of professionalism among its members, the Bar cannot expect the public to view lawyers any differently from the way it views used-car salesmen. Nor, without such a commitment from its members, can the Bar expect to remain a profession.

If we need inspiration, we need only remember our profession's proud heritage. It was primarily lawyers who drafted the Declaration of Independence, the Constitution, and the Bill of Rights. These lawyers' words have been the source of inspiration to others throughout the world. It was lawyers who conceived the concepts of due process, freedom of assembly, freedom of religion, freedom of speech, and freedom of the press. It was lawyers who litigated *Brown v. Board of Education* and *Miranda*. It was a lawyer who wrote the Emancipation Proclamation.

The legal profession has supplied this country with more presidents, senators, congressmen, cabinet members, state legislators, mayors and other civic leaders than any other profession, occupation or calling. Many of our nation's heroes—Thomas Jefferson, Abraham Lincoln, Franklin Roosevelt and Woodrow Wilson, to name a few—were lawyers. Similarly, it is lawyers and judges to whom the press comes running when it perceives a threat to its freedoms. Throughout our nation's history, it has been lawyers, more than any other group, who have stepped forward to provide the leadership that has made this country what it is today—a model among nations.

I joined the legal profession almost 30 years ago, yet I still remember the pride I experienced at my swearing-in ceremony. At that moment I was finally a true professional. I have that same feeling of pride today, tarnished only slightly by the passing of the years and the loss of my youthful enthusiasm, but seasoned and strengthened by the experiences of nearly three decades at the bar and on the bench.

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I urge all of you to join me in defending our profession—the source of my pride and the source of pride each of you should enjoy. The future of our profession lies in our own hands. Each and every one of us, in an important and meaningful way, has an opportunity to contribute to the public's appreciation of (or disaffection with) our profession. Every time a lawyer deals with clients, particularly in litigated matters, he or she touches their lives in a profound way.

Likewise, each and every one of us has an important opportunity, and an affirmative duty, to contribute to our colleagues' appreciation of the professional nature of legal practice. Every time we deal with another lawyer, our actions influence that lawyer's view of the profession. Whether that lawyer will come away from the experience with a greater respect for the profession, rather than a sense of disillusionment, depends largely on our conduct. There will certainly be times when we are confronted with clients and other lawyers who will pressure us to behave unethically and who will tax

Every time we deal with another lawyer, our actions influence that lawyer's view of the profession. Whether that lawyer will come away from the experience with a greater respect for the profession, rather than a sense of disillusionment, depends largely on our conduct.

our commitment to professionalism. And there will, no doubt, be times when we encounter lawyers who contend that the practice of law is just another business. How one conducts oneself in these situations can be the mark of a true professional.

Describing the practice of law, Justice Brandeis once said:

> It is an occupation which is pursued largely for others and not merely for oneself. It is an occupation in which the amount of financial return is not the accepted measure of success.

The bar has an obligation to attempt to locate the point at which private interest ends and consideration of public interest begins. Not to do so would result in the conversion of law practice from a profession to a service trade.

We have an obligation to ensure that Justice Brandeis's words ring as true years from now as when he uttered them. Each of us must constantly work to prevent financial gain from becoming the measure of success in legal practice and remain ever mindful of our duties to serve the public interest. That is the only way that the practice of law can continue to be a profession, and not become just another business.

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John C. Coughenour *serves on the Federal District Court Bench.*

Good Public Relations Begin at Home "The Lawyer's Commitment"

"The fault, dear Brutus, is not in our stars, but in ourselves . . . ."

by **Barnett N. Kalikow**

A year ago in this space we wrote about the disaffection that many lawyers were experiencing with the profession: the fact that record numbers were leaving the profession: the fact that lawyer bashing was at an all time high and even those who were formerly friends of the profession were finding fault. We suggested that part of the problem was not perception, but reality: Clients' most frequent complaint is that the lawyer will not return phone calls or otherwise keep them informed, and this bodes ill for all who call themselves service professionals.

What can we do about it? The organized bar cannot do this job alone. If image and perception were the problem, then better image making might be the solution and the State Bar Association might have the key to at least part of that solution. But where reality is much of the problem, the solution lies in the hands of each lawyer, each practice, each client meeting.

We must remind ourselves that returning phone calls is in some ways just as important as forensic skill: in some ways more important to the well-being of the clients we are trying to serve.

We must remind ourselves that informed consent is just as important to the legal profession as to the medical profession. Of course most good practitioners keep their clients informed of what they are doing—and why—but look closely and you will find a strong residue of the thought, "the client will be happy as long as I get the right result," when explanations may be time-consuming. We no longer accept that approach from other professionals because sometimes the process can be painful, and there can be consequences—side effects, if you will—that must be explained to a client as part of his being fully informed. And polls show that the client will *not* be happy.

What the State Bar can do is try to give us the tools to help make our practices and our client meetings a source of pride for the lawyer and satisfaction for the client. One such tool we have called "The Lawyer's Commitment," the text of which is set forth below. It is a set of promises that we can give to a client at the beginning of representation so that she knows what she should expect from a lawyer and counselor at law. We hope that law students and newly admitted members of the bar will become aware of these simple guidelines of professionalism. We hope lawyers will keep a copy around or posted in their waiting rooms to remind themselves as much as their clients of what is to be expected of a professional lawyer. We hope that lawyers will give them to clients at the first meeting so that the client knows what kind of service to expect.

The Board of Governors has approved funding to make a free copy of "The Lawyer's Commitment" available to all who want it. Mail in the order form below to Lawyers' Commitment, WSBA, 2001 6th Ave., Ste. 500, Seattle, WA 98121.

Former Okanogan County Prosecuting Attorney ***Barnett Kalikow*** *practices in Olympia.*

ATTN: SHARLENE STEELE
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THE LAWYER'S COMMITMENT

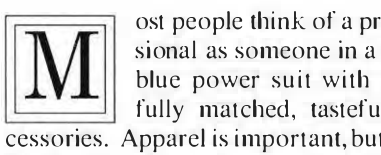
I am a professional. The aim of my professional training and experience is to represent you; to fulfill your goals and to aid you in solving problems. I recognize that, as I strive to be a problem solver, I must always keep my eye on *your* goals and seek the means that best achieves them.

To those ends, I make the following commitment:

1. To treat you with respect and courtesy.
2. To take the time to understand what you want.
3. To exercise my highest level of skill to help you achieve that goal.
4. To take the time to explain what I'm doing and why I'm doing it.
5. To keep you informed of the actions I am taking on your behalf.
6. To return your phone calls and answer your written inquiries promptly.
7. To charge reasonable fees for my services and to explain the basis for fees and other charges before we begin our relationship.
8. To strictly preserve your confidences.
9. To best represent you and the system of justice by treating opposing parties and their counsel with courtesy and fairness and in accordance with the highest standards of the legal profession.
10. To represent my fair share of indigent persons and those who cannot adequately speak for themselves, and to serve the community in which I practice as both a leader and a worker.

Professionalism and Legal-Support Personnel

***by* Sally Favors,** *Certified Professional Legal Secretary*



Most people think of a professional as someone in a navy blue power suit with carefully matched, tasteful accessories. Apparel is important, but professionalism is much more than attire.

Within the legal community significant characteristics of a legal-support professional include ethics, integrity and conscientiousness. Legal staff members are involved in confidentiality issues every day. The professional legal support member grasps the absolute necessity of being ethical.

Nancy M. Monson, a legal assistant with Bogle & Gates' Bellevue office, defines professionalism as "the ability to handle a given situation calmly, intelligently, and tactfully." She believes a professional is someone highly skilled and not arrogant, with a certain amount of warmth and concern for the clients involved in the situation as much as for the handling of the situation itself.

Mavis McLaverty, office supervisor of the Skagit County prosecuting attorney's office, defines a professional as someone "honest, courteous, willing to take on responsibility, and [who] treats people with respect and as you'd like to be treated, whether a client or colleague."

Professionals are those "who like what they do and are good at what they do, which is reflected in their work," according to Sue Vlosich, administrative manager for the Pierce County prosecutor's office. She says professionals are always challenging themselves and have a sense of pride in their jobs: "Professionals are honest, dependable, perform to the degree expected, and know what they are doing in their chosen field." A professional is always reliable and can be counted on to get the job done.

Attire is part of the professional image. McLaverty feels appropriate office dress is vital in a professional situation because "you're perceived as you are dressed. It's not what you wear but how you wear it." In her office, what is important is that clothing be neat, clean and tidy.

What signifies professionalism to office administrators when looking at job applicants? McLaverty says, "Enthusiasm, honesty, openness, appropriate dress, and a willingness to accept responsibility for a variety of tasks." According to Vlosich, it's "the basics: timeliness for the interview, appearance appropriate for the job, and displaying a good attitude." She also looks for someone who knows what he or she can and can't accomplish and says, "The basic desire to do well in job performance comes through in appearance and speech patterns during the interview."

How does a legal support staff member become more professional? Monson says, "Learn, learn, learn." Professionals attend seminars, even on their own time, and read trade magazines and journals, self-help books, and motivational or inspirational materials. Also, the best lessons are learned by example. Those who want to get ahead watch the people they believe possess professionalism. How do the professionals behave? How do they respond or react? Those who wish to gain professional status should imagine themselves in the same or similar situations and ask what they would do or if their response or reaction would be different.

Professionalism is an attitude, an aura of vitality, energy, and enthusiasm for the job. It is the unmistakable confidence that comes from knowing how to handle any situation. It is more than just a veneer or facade—it is the extra edge that makes the individual stand out from others who are just doing their jobs.

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Sally Favors, *Certified PLS, has been a legal support professional for more than 20 years in California and Washington. She is now employed at the Office of the Pierce County Prosecuting Attorney in the Civil Division. She is a past president of WALS (1991-1993) and TPCLSA (1986-1988).*

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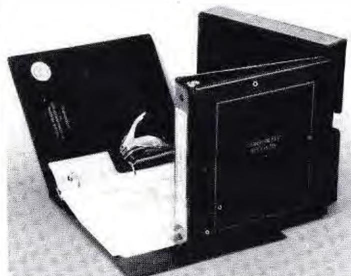

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Attention, Contract Attorneys!

by **Elizabeth Bottman**

How small is your office? I'm a contract attorney, and my home office—at fewer than 70 square feet—might win the prize for the tiniest. The bookcase on top of my computer desk is stuffed with CLE manuals, boxes of stationery, telephone directories and volumes of court rules. But it serves me well.

I love my work because it gives me the freedom to do what I enjoy, which is legal research and writing. The life of a contract attorney can be lonely . . . and too quiet at times. For me, there are no courtroom dramas, no weeping clients, because I don't usually go to court, and all my clients are attorneys. On the other hand, they have all paid me in full. My relationships with them have been pleasant and low in stress. That is not always so for an attorney with a dissolution or litigation practice.

This is my list of the advantages and disadvantages of working as a contract attorney.

Advantages:

1. Your practice can be quite varied, and almost always interesting. One day, you may write a memorandum to an attorney on an esoteric legal issue. The next, you may draft materials for a legal deskbook.

2. You can do more legal research and writing than you'd be asked to do at almost any law firm. For attorneys who love research and writing, as I do, contract work is ideal.

3. You can work part-time. This is ideal if you have small children.

4. You are your own boss. You don't have to listen silently while partners yell at you. Attorneys who hire other contract attorneys are, for the most part, polite to them. If they are rude, we're free to say good-bye. There will be other clients.

Disadvantages:

1. The pay is terrible. Even if you charge a good hourly rate, your annual income will be lower than you can make, for comparable legal experience, at almost any law firm or corporation in town. Remember, you're not being paid when you're sick or on vacation, and you must provide your own fringe benefits, such as health insurance.

2. If you're working hard, you're at the law library or working on your computer. You will need to make a conscious attempt to meet other people by attending bar functions, or meeting people in other ways. For example, join the board of your favorite nonprofit association.

3. You won't become famous. The trial brief which you write for a litigation attorney probably will carry his or her name, not yours. Your job is to help your client look good, not to become a star.

Are you a contract attorney, or interested in practicing as one?

A newly formed LAP group for contract attorneys is meeting to help them break out of their isolation, and talk about how to make work more enjoyable. We meet at 11 a.m. on the third Wednesday of each month on the 4th floor in the LAP offices.

Some of the topics which may be discussed at future meetings are:

How can you improve your legal research skills, both computer and manual?

How can you keep abreast of changes in the law, when you practice in a wide number of areas?

When should you decline work because it involves an area of law in which you are not qualified to practice?

When should you decline work because of conflicts of interest?

How do you recognize conflicts of interest among your attorney-clients?

How do you price your services and market yourself to other attorneys?

If you're a contract attorney or are interested in exploring this style of practice, you're invited to the next meeting of the LAP Contract Attorney group at 11 a.m. Wednesday, March 15 on the 4th floor of the Westin Building, 2001 Sixth Avenue, Seattle WA 98121. All information exchanged in these groups is confidential. If you have questions, you are welcome to telephone Barbara Harper at the LAP, (206) 727-8265; or me at my home office, (206) 526-5777.

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We know that these problems have a profound and devastating effect on immediate family members. More recently, we have become aware of similar debilitating consequences to firm members, friends and judges . . . the extended legal family.

The Lawyers' Assistance Program provides a confidential, nondisciplinary range of services to our members who are experiencing professional impairment as a result of their own –or a fellow lawyer's—disability. That assistance, if accepted in a timely manner, is designed to prevent disciplinary problems for the impaired lawyer, to protect the client, to support the lawyer's family and professional associates and to strengthen the profession.

If you are concerned about negative consequences caused by your or a colleague's distress, call us at (206) 727-8268.

by **"Ace" Welden**, *Cub Reporter*

Tacoma, February 17 - 18, 1995

Present: The president and the governors. *Also present:* Mark Adams (WSBA member); Thomas A. Campbell (Wash. Assoc. of Criminal Defense Lawyers/ South King County Bar Assn.); Dale Carlisle (WSBA Business Law Section); Joe Erickson (WSBA General Practice Section); Evelyn Fielding (Government Lawyers Bar Assn.); Zanetta Fontes (King County Bar Assn. Trustees); Hon. Janice A. Grant (Washington Administrative Law Judges, Friday); Janet Helson (Lesbian/Gay Legal Society of Puget Sound); Jim Kaufman (Washington Prosecuting Attorneys Assn.); Nancy Krier (Washington Women Lawyers); Tom Miller (WSBA Human Resources); Millicent Newhouse (King County Bar Assn. Young Lawyers); Bill Phillips (Washington Defense Trial Lawyers Assn.); Narda Pierce (Solicitor General of Washington/Attorney General's Office); Michelle Sales (Legal Foundation of Washington); Hon. Karen Seinfeld (Court of Appeals); Bradford Steiner (WSBA Young Lawyers Division/Washington ABA delegation); Robert B. Taub (WSBA Family Law Section); Hon. Brian Tollefson (Superior Court Judges Assn.); and Robert D. Welden (WSBA General Counsel).

Social and Other Notes: *Bar News* Editor Lindsay Thompson having been called away on business, cub reporter "Ace" Welden was assigned to cover the entire Board meeting for the first time. The Board met at the invitation of the Hon. Robert Bryan in the federal courthouse in the restored and expanded Union Station. The meeting was in the comfortable and bright jury waiting room which also provides lots of comfortable seating for the observers in attendance. During a break, Judge Bryan led a tour of the courthouse.

As customary, most of the Board members attended the (87th!) annual Tacoma-Pierce County Bar Lincoln Day Dinner.

Who Should Accredit CLE? Following an extended executive session which included a discussion regarding jurisdiction of the Board of Governors to consider appeals from program accreditation decisions of the State Board of Continuing Legal Education, the topic continued into open session. Present for the discussion were CLE Board chairperson Malcolm Lindquist, former WSBA Executive Director and former CLE Board Executive Secretary John J. Michalik, and General Counsel Bob Welden. This issue arises when the CLE Board, which is appointed by the Supreme Court, denies full or partial credit to a CLE program. This became a hot issue in 1993 when the CLE Board awarded only partial credit for a seminar put on by the state Trial Lawyers Association. At that time, Welden wrote an opinion letter pointing out that APR 11, which establishes the mandatory CLE requirements, sets out extensive procedures for a WSBA member to appeal to the Board of Governors from a decision by the CLE Board on member *compliance* with the CLE requirements, but has no provision for appeals from *accreditation* decisions.

Michalik noted that in the past, the Board of Governors had considered accreditation appeals, and he stated that was the intent of the rules and regulations, which he helped draft. Welden, however, noted that there might be a conflict of interest, and possibly some antitrust implications, if the Board of Governors was to determine whether CLE providers competing with WSBA CLE programs should be awarded accreditation. Governor Toole pointed out that it would be awkward if the WSBA CLE Department (which has to apply for credit like anyone else) were appealing a decision to the Board of Governors.

After discussion, the issue was handed over to a committee consisting of Lindquist and governors Perey and Fairhurst to make a recommendation to the Board.

Whither the Court? Chief Justice Barbara Durham, who was slated to meet with the Board later in the day, requested that the Board appoint two members to serve on a commission she and Governor Lowry established to review judicial reform. Additional members would be appointed by the Supreme Court (5), the Governor (5), the legislature (4), and the lower courts (3).

Several persons offered to serve on the Commission. The governors debated whether it was more important to have geographic (urban/rural) or sexual diversity with its two appointments. The Board

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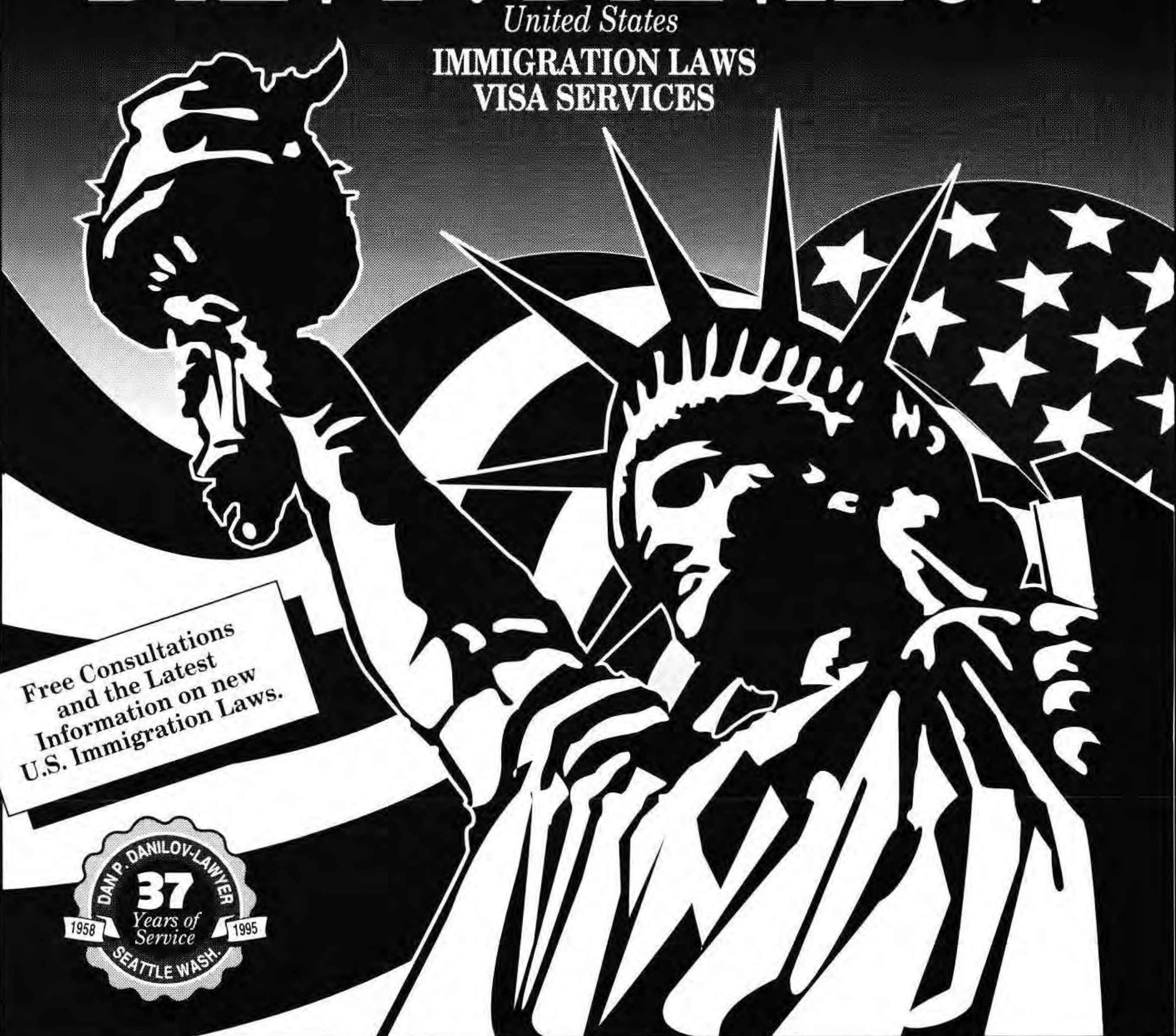

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IMMIGRATION QUESTIONS ABOUT NATURALIZATION

By Dan P. Danilov and Allen E. Kaye

What is naturalization?
Naturalization is the process by which a legal permanent resident becomes a U.S. citizen.

I'm already married to a U.S citizen. Doesn't that mean I automatically become a U.S citizen?
No. A spouse can only petition for you to become a legal permanent resident. If you want to become a U.S. citizen, you must apply yourself.

Why should I become a U.S. citizen?
1. U.S. citizens can vote, serve on juries, hold political office, and qualify for all government jobs.
2. Citizens travel freely (whereas green-card holders may lose their residency if they spend long periods of time abroad).
3. Citizens can never be deported.
4. Citizens may petition for more relatives to become permanent residents in the U.S.,such as their married sons and daughters and their brothers and sisters. Also, their close relatives can immigrate more quickly.
5. U.S. citizens may be subject to less restriction on estate taxes. And U.S. citizens who retire abroad receive full social benefits (whereas permanent residents receive only 50%).

Why wouldn't I want to become a United States citizen?
1. In some cases, individuals may lose their native nationality . Individuals may also lose property rights.
2. When reviewing the application of naturalization applicants, the INS may discover past fraud, or other reasons to begin deportation proceedings.

Who can naturalize?
Immigrants with green cards (legal permanent residents) who have been legal permanent residents for five years, or three years if married to a U.S. citizen, and who are over 18 years old are eligible to apply for citizenship. In addition, the individual must have been a resident of the state where he is applying for citizenship for at least three months, most must be able to speak, read and write basic English, and demonstrate basic knowledge of U.S. history and government. In some cases, children under 18 naturalize automatically with their parents. Applicants who are eligible to file for citizenship can file three months before they are eligible. This would be three months before the five year period mentioned above (or the three year period for those married to U.S. citizens).

Must I have lived in the United States continuously in order to naturalize?
Residents must not have any absences for a long or regular period of time, except in cases of emergencies. In most cases, residents must demonstrate that they were physically present in the U.S. for 2 1/2 years (or 1 1/2 if married to a U.S. citizen) immediately before applying for naturalization.

Are there any additional requirements for naturalization?
1. Residents must demonstrate good moral character for five years prior to applying for citizenship. (many criminal convictions are seen as evidence of a lack of good moral character.)
2. Men who lived in the United States when they were under 25 years old should have registered for the draft.
3. Legal permanent residents should file taxes each year.

If I have received public benifits, can I still naturalize?
Yes, but the INS will study your case closely. Receiving public benifits is not a problem unless there was fraud.

How do I naturalize?
1. Residents must complete the INS form N-400, submit their fingerprints, 3 3/4 profile photographs, and a check or money order for $90 made out to the INS. Applications should be submitted to your local INS office.
2. Once the application has been processed, applicants will be called for an interview.
3. At the interview, the application will be reviewed and the applicant will be asked to state allegiance to the U.S. Most applicants will also be tested on their knowledge of US history and basic English.
4. If they pass the interview, applicants will be sworn in as naturalized citizens approximately three to six months (in Seattle applicants are sworn in on the same day) and given a naturalization certificate.

Do I have to take the test in English?
People who are over 50 and have been a permanent resident for 20 years or more, or are over 55 and have been a permanent resident for 15 years may take the examination in whatever language they choose. All other applicants must read, write, and speak basic English. This requirement does not apply to any person who is unable to comply because of physical or developmental disability or mental impairment.

What sort of questions are on the test?
The test covers the basic U.S. history and civics, asking applicants to name the first president, to explain the different branches of government, and other similar questions. Applicants may take a written test of civics instead of undergoing the oral examination during the interview. The requirement that an individual demonstrate a knowledge of the history and government of the U.S. does not apply to any person who is unable to comply because of physical or developmental disability or mental impairment. The Attorney General (INS) can provide for "special consideration" concerning the U.S. civics requirement for persons who have been permanent residents for at least 20 years and who are over 65 years of age.

This material was prepared by Catholic Charities Immigration Program of San Jose CA. and edited by the authors with updates in some parts.

The New York Times
Seattle Post-Intell
U.S. TO ENCOURAGE LEGAL IMMIGRANTS TO GET CITIZENSHIP
A new alien policy

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SPECIAL REPORT

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5 Reasons To Become A U.S. Citizen

1. Voting.
Only the United States citizens can vote in federal, state, local, and school board elections. In the United States, elections matter. Voters decide on which candidates best represent them. Anyone can propose a law (a proposition). State funding for education, health services, libraries, prisons, transportation, etc., are decided by which candidates are elected and which propositions are passed.

In the United States, elections are often decided by a handful of votes. This is not true in some countries, where election fraud is common. If the 6.5 million permanent residents in the United States eligible for citizenship became citizens and voted, many of the new laws hurting immigrants would not be proposed in the first place. Generally, politicians only listen to those who they legally represent, i.e., voters. They do not pay much attention to the daily needs of non-voters, as non-voters cannot directly affect elected officials.

2. Participation.
Only citizens can be candidates, so that the immigrant experience itself, issues of funding for English classes, important ethnic celebrations, bilingual education, etc., can be represented in person.

Participation in many local government commisions is limited only to United States citizens. These commisions often develop important policy decisions affecting the lives of immigrants.

Only citizens can serve on juries. Without ethnically diverse juries, criminal injustices are routinely committed against minority groups.

3. Opportunity
Only citizens qualify for all government jobs and all scholarships, improving income and abilities. In spite of rumors and false information, most nationalities do not lose any opporunities in their home countries when they become U.S. citizens. Nationals of Mexico, for example, (1) do not lose any property rights in that country by becoming a U.S. citizen, and (2) can easily become a citizen of Mexico again after they have been U.S. citizens, if they choose to do so.

4. Benefits
Existing laws favor U.S. citizens over permanent residents in regards to public benefits. For example, a U.S. citizen retiring in Mexico receives 100% of his or her social security benefits, whereas a permanent resident form Mexico retiring in Mexico receives only 50%.

The U.S. legislature is currently proposing laws which would cut over 70 federal and state benefits programs provided now to permanent residents. In California a similar law, Proposition 187, has already passed. Only citizens will be able to protect themselves from these cuts.

5. Immigration
U.S citizens can petition for their parents, married sons and daughters, and brothers and sisters. Immigrants with only a green card cannot. These close family members can immigrate more quickly, too. Once both parents are citizens, their minor children automatically become citizens, without having to naturalize later. Wheras citizens can travel freely, permanent residents may lose their residency if they spend long periods of time abroad. Also, U.S. citizens can never be deported (whereas permanent residents can) and never need to renew their immigration documents.

NATURALIZATION FOR U.S. CITIZENSHIP

Admission into the United States as a permanent resident does not mean that you will automatically get U.S. citizenship. U.S. citizenship is obtained in one of two ways: by birth in the United States or by naturalization. Anyone born in the United States and subject to its jurisdiction, even though the parents are not citizens, is a U.S. citizen by birth. Also, children who were born abroad to parents who are U.S. citizens are citizens of the United States.

Anyone not born in the United States who wishes to become a U.S. citizen must apply for naturalization.

Statutory Requirements
To apply for naturalization, you must be 18 years old or older, a lawful permanent resident of the United States, and must have lived in the U.S. continuously for at least five years, or three years if you are the spouse of a U.S. citizen. You should have held a Form I-551 Alien Registration Receipt Card during this period. You must be a person of good moral character (i.e., you must not have been arrested or convicted of a crime involving moral turpitude for five years). You must be able to read, write, and speak English and have a knowledge of the history and government of the United States. At the examination, you will be required to write in English a sentence like "The flag is red, white, and blue," and you will have to say you believe in and value the principles of the U.S. Constitution.

In 1978, Congress changed the regulations to allow people who have been legal permanent residents in the United States for 20 years and who are at least 50 years old to qualify for U.S. citizenship without having to demonstrate proficiency in English. This also applies to people over the age of 55 who have been legal permanent residents for at least 15 years. However, they still need to know the basics of United States government and history, and must take a test in their native language with the assistance of an interpreter.

To apply for naturalization, file a Form N-400 Application for Naturalization along with the filing fee of $90.

Service In U.S. Armed Forces
Both a person who performed honorable wartime service in the U.S. armed forces before October 15, 1978 and someone who is the surviving spouse of a citizen who died while on active duty with the U.S. armed forces are eligible to apply for naturalization.

If you can meet the above requirements, your first step is to have your fingerprints taken by the Immigration and Naturalization Service (INS) or your local police or sheriff's office. When you receive your fingerprints chart, be careful not to smudge the ink on it. Put the chart into an envelope and take it and two color 2" x 2" (5 cm x 5 cm) photographs of yourself with your right ear showing to the INS office in your area.

Form N-400 (4 pages)

In order to set the process in motion, you must then file your Form N-400 Application for Naturalization with the INS office where you live. You will be notified to appear at a preliminary examination at the INS office to make sure that your application and supporting documents are correct. Witnesses are no longer required.

You will be required to take an oath and a simple test about U.S. history and government. The test usually involves answering a series of questions by a Naturalization Examiner, as well as an English reading and writing test.

After the preliminary hearing is completed at your local INS office, you will be sworn in and granted U.S. citizenship. If you wish, you may be sworn in the U.S. District Court, but you must wait for a later hearing date.

Oath Of Allegiance To The United States
The final hearing to become a U.S. citizen takes place in the office of the local INS office where the formal ceremony is completed and you take the Oath of Allegiance to the United States of America. Your relatives and friends are welcome to attend the court hearing. At the close of the ceremony you will receive a Certificate of Naturalization. Welcome to the United States of America!

Who Can Apply For A Certificate Of U.S. Citizenship?
There are certain groups of people who do not have to apply for naturalization because they already hold a special right to U.S. citizenship. These groups include children of U.S. citizens or permanent residents born outside the United States and women who lost their citizenship through marriage to a non-citizen. Those who qualify in these groups can apply for citizenship by filing a Form N-600 Application for Certificate of Citizenship. The fee is $90.

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INS Naturalization Test

Questions and Answers

Q: What are the colors of our flag?
A: Red, white and blue.

Q: How many stars are on our flag?
A: 50

Q: What color are the stars on our flag?
A: White

Q: What do the stars on our flag mean?
A: One for each state in the union.

Q: How many stripes are on our flag?
A: 13

Q: What colors are the stripes on our flag?
A: Red and White

Q: What do the stripes on our flag mean?
A: They represent the original 13 states

Q: How many states are in the Union?
A: 50

Q: What is the 4th of July?
A: Independence Day

Q: What is the date of Independence Day?
A: July 4, 1776

Q: From whom was independence declared?
A: England

Q: Which country did we fight during the Revolutionary War?
A: England

Q: Who was the first President of the United States?
A: George Washington

Q: Who is the President of the United States today?
A: Bill Clinton

Q: Who is the Vice-President of the United States today?
A: Al Gore

Q: Who elects the President of the United States?
A: The electoral college

Q: Who becomes President of the United States if the President should die?
A: Vice-President

Q: For how long do we elect the President?
A: Four years

Q: What is the Constitution?
A: The supreme law of the land

Q: Can the Constitution be changed?
A: Yes

Q: What do we call a change to the Constitution?
A: An amendment

Q: How many changes or amendments are there to the Constitution?
A: 27

Q: How many branches are in our government?
A: 3

Q: What are the three branches of our government?
A: Legislative, Executive and Judicial

Q: What is the legislative branch of our government?
A: Congress

Q: Who makes the laws in the United States?
A: Congress

Q: What is Congress?
A: The Senate and House of Representatives

Q: What are the duties of Congress?
A: To make laws

Q: What kind of government does the U.S. have?
A: Republican

Q: Which President freed the slaves?
A: Abraham Lincoln

Q: In what year was the Constitution written?
A: 1787

Q: What are the first 10 Amendments to the Constitution called?
A: Bill of Rights

Q: Name one purpose of the United Nations.
A: For countries to discuss and try to resolve world problems; to provide economic aid to many countries

Q: Where does Congress meet?
A: The Capitol Building in Washington, D.C.

Q: Whose rights are guaranteed by the Constitution and the Bill of Rights?
A: Everyone (citizens and non-citizens living in the U.S.)

Q: Who elects Congress?
A: The people

Q: How many Senators are in Congress?
A: 100

Q: Can you name the two Senators from your state?
A: Slade Gorton and Patty Murray

Q: For how long do we elect each Senator?
A: 6 years

Q: How many Representatives are in Congress?
A: 435

Q: For how long do we elect the Representatives?
A: 2 years

Q: What is the executive branch of our government?
A: The President, Cabinet and Departments under the Cabinet members

Q: What is the judicial branch of our government?
A: The Supreme Court and the lower federal courts

Q: What are the duties of the Supreme Court?
A: To interpret laws and decide cases

Q: What is the supreme law of the United States?
A: The Constitution

Q: What is the Bill of Rights?
A: The first 10 Amendments of the Constitution

Q: What is the capital of your state?
A: Olympia

Q: Who is the current Governor of your state?
A: Mike Lowry

Q: Who becomes President of the United States if the President and the Vice-President should die?
A: Speaker of the House of Representatives

Q: Who is the current Chief Justice of the Supreme Court?
A: William Rehnquist

Q: Can you name the thirteen original colonies?
A: Connecticut, New Hampshire, New York, New Jersey, Massachusetts, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, Rhode Island and Maryland

Q: Who said, "Give me liberty or give me death"?
A: Patrick Henry

Q: Which countries were our enemies during World War II?
A: Germany, Italy and Japan

Q: What are the 49th and 50th states of the Union?
A: Alaska and Hawaii

Q: How many terms can a President serve?
A: 2

Q: Who was Martin Luther King, Jr.?
A: Civil rights leader

Q: Who is the head of your local government?
A: Mayor

Q: According to the Constitution, a person must meet certain requirements in order to be eligible to become President. Name one of these requirements.
A: Must be a natural born citizen of the U.S.; must be at least 35 years old by the time he/she will serve; must have lived in the United States for at least 14 years

Q: Why are there 100 Senators in the Senate?
A: Two for each State

Q: Who selects a Supreme Court Justice?
A: Nominated by the President and approved by the Congress

Q: How many times may a Congressman be elected?
A: There is no limit

Q: What are the 2 major political parties in the U.S. today?
A: Democrat and Republican

Q: How many states are in the U.S.?
A: Fifty

Q: Name one right guaranteed by the First Amendment.
A: Freedom of speech, press, religion, peaceable asssembly and requesting change of the government

Q: Who is the Commander-In-Chief of the U.S. military?
A: President

Q: What month do we vote for the President?
A: November

Q: Which President was the first Commander-in-Chief of the U.S. military?
A: George Washington

Q: Who has the power to declare war?
A: Congress

Q: How many times may a Senator be re-elected?
A: There is no limit

Q: How many Supreme Court Justices are there?
A: Nine

Q: Why did the Pilgrims come to America?
A: For religious freedom

Q: What is the head executive of a state government called?
A: Governor

Q: What is the head executive of a city government called?
A: Mayor

Q: What holiday was celebrated for the first time by the American colonists?
A: Thanksgiving

Q: Who was the main writer of the Declaration of Independence?
A: Thomas Jefferson

Q: When was the Declaration of Independence adopted?
A: July 4, 1776

Q: What is the basic belief of the Declaration of Independence?
A: That all men are created equal

Q: What is the national anthem of the United States?
A: The Star-Spangled Banner

Q: Who wrote the Star-Spangled Banner?
A: Francis Scott Key

Q: Where does freedom of speech come from?
A: The Bill of Rights (1st Amendment)

Q: What is the minimum voting age in the United States?
A: Eighteen

Q: Who signs bills into law?
A: The President

Q: What is the highest court in the United States?
A: The Supreme Court

Q: Who was the President during the Civil War?
A: Abraham Lincoln

Q: What did the Emancipation Proclamation do?
A: Freed the slaves

Q: What special group advises the President?
A: The Cabinet

Q: Who helped the Pilgrims in America?
A: The American Indians (Native Americans)

Q: What is the name of the ship that brought the Pilgrims to America?
A: The Mayflower

Q: What were the 13 original states of the U.S. called?
A: Colonies

Q: Name 3 rights or freedoms guaranteed by the Bill of Rights.
A: Rights of freedom of speech, press, religion, peaceable assembly and requesting change of government; the right to bear arms (the right to have weapons or own a gun, though subject to certain regulations); the government may not quarter, or house, soldiers in the peoples' home during peace time without the peoples' consent; the government may not search or take a person's property without a warrant; a person may not be tried twice for the same crime and does not have to testify against him/herself; a person charged with a crime has some rights, such as the right to trial, to have a lawyer and the right to trial by a jury in most cases; protection against excessive or unreasonable fines or cruel and unusual punishment

Q: What is the introduction to the Constitution called?
A: The Preamble

Q: Name one benefit of being a citizen of the United States.
A: Obtain a federal government job; travel with a U.S. passport; petition for close relatives to come to the U.S. to live; vote

Q: What is the most important right granted to U.S. citizens?
A: Right to vote

Q: What is the U.S. Capitol?
A: The place where Congress meets

Q: What is the White House?
A: The President's official home

Q: Where is the White House located?
A: Washington, D.C.

Q: What is the name of the President's official home?
A: The White House

Which President is called the "Father of our Country"
A: George Washington

Q: What Immigration and Naturalization Service form is used to apply to become a naturalized citizen?
A: Form N-400, "Application For Naturalization"

Q: In what month is the new President inaugurated?
A: January

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finally settled on Phil Winberry (Seattle) and David Savage (Pullman), but also voted to recommend that Colleen Kinerk (Seattle) be appointed by the Supreme Court or the Governor.

Is Anyone Safe While They're in Session? WSBA legislative representative John Fattorini met with the Board briefly on Friday, but because of the press of business the only item tended to on Friday was consideration of a request from Washington Court of Appeals Judge Elaine Houghton that the Board support (i.e., lend Fattorini's lobbying efforts to) a budget line item to continue funding of the Minority and Justice Commission, which conducts research into work force recruitment and diversity training. The Board unanimously agreed to support the request.

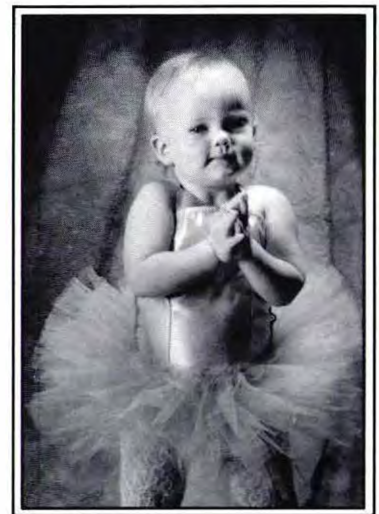
The Search for Just the Right Word(s): Earlier in the year, President Gould appointed an ad hoc committee to study issues concerning part-time employment and family leave policies with the goal of developing model employment policies that could be considered by law firms statewide. Committee chairperson Rich Wallis presented model part-time and family and medical leave policies which had been sent out to various sections, bar associations, and others for comment. Wallis noted that one of the comments received was that the term "part-time" might be stigmatizing, reflecting a lower level of employment commitment. Responding to this thinking, the committee added a note to the model policy that a law firm might substitute "less than full-time," "alternative work schedule," or "modified work schedule."

It was moved to "adopt and disseminate" the model part-time, or work-hour-deprived, policy, but strenuous debate ensued over the effect of "adopting" a policy. Governor Handmacher objected that by adopting a model policy, the Board was implying that law firms should conform to it. Someone moved to change to "endorse" the policy which was accepted by the maker of the motion. Governor Perey noted that he used an ABA model partnership agreement adopted by their House of Delegates, but Handmacher reminded him of the difference between a voluntary and mandatory bar. After further discussion along these lines, a motion was made to change "endorse" to "adopt," which failed by a 5-4 vote. The main motion was then approved unanimously by voice vote.

Then the Model Family and Medical Leave Policy was considered. After a much shortened debate with echoes of the earlier one, it was moved, with Handmacher seconding, to endorse the model policy. After Governor Ehrlichman noted that he and Governor Hannula, voting in the minority previously, wanted to be on record in support of the motion, it was unanimously approved.

A Visit from the Chief Justice: Chief Justice Barbara Durham met with the governors to discuss her thoughts on court restructuring and reform. She said that the Commission on Judicial Reform would be working with a "clean slate" and was expected to consider issues including a voters pamphlet and consideration of a judicial selection and retention system rather than direct election, noting the recent race between Justice Guy, who actively campaigned around the state, and opponent Kevin Dolan, who didn't campaign at all and nearly won.

In her State of the Judiciary speech in January, she had proposed reducing the number of Justices from nine to seven. There is now a proposed constitutional amendment, being considered by the leg-



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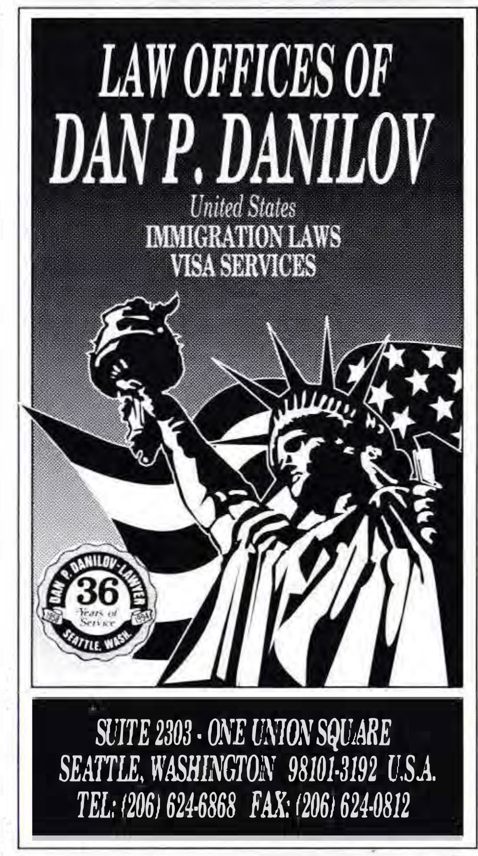

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islature, which would reduce the size of the Supreme Court to seven and would provide for election of the Chief Justice by the Court, rather than the current system which makes Chief Justice the senior of the Justices, next up for election, who has never been Chief before (which is how Justice Barbara Madsen will become Chief Justice after Durham's term ends). She said that a majority of the Court supports the whole package, but that the same majority might not support the same parts of the package.

She said that under the proposal, the Court would be reduced by attrition. "Justice Utter and I offered to shoot each other to take care of the right and left problem—but we declined to enforce that."

WYLD President Brad Steiner asked whether reducing the number of Justices wouldn't reduce opportunities for diversity on the Court. Durham responded that Justice C.Z. Smith had examined the experience of other states with fewer than nine members on their supreme courts, and concluded that the size of the court would not affect the opportunities for diversity.

Governor Handmacher asked whether reducing the Court would result either in an increased workload for each Justice, or a reduction in the number of cases accepted by the Court. Durham gave what she termed her "Scarlett O'Hara response": "As God is my witness, we will get our opinions out."

Governor Toole asked what the Court thought of the proposal that the WSBA rate statewide judicial candidates in contested elections, including the Supreme Court. Durham said that was one of the issues to be discussed by the Commission.

Onward to the Referendum: Last month, pursuant to the Bylaws, a committee was appointed to conduct the referendum to "limit use of mandatory dues to mandatory functions." Governor Ehrlichman reported that the Committee had two recommendations for the Board to act on: first, that ballot statements of 750 words pro and con be submitted by February 28, and 250-word responses be submitted by March 15. Second, that the word limit be strictly enforced; that signatures were not required but, if included, would be counted in the word limit; that type requirements comply with RAP 10.4

except they be single-spaced; and that no graphs or charts could be included. After discussing some of the requirements of RAP 10.4, reference to that rule was limited to type size only. The Board unanimously adopted the recommendations. Ehrlichman said that at the next Board meeting the committee would have recommendations on the ballot title, the text of the ballot, and election count monitoring. The Board has set the referendum mailing date for May 15.

Earlier in the meeting, WWL President Nancy Krier announced that the WWL Board voted unanimously to oppose the referendum.

"We're in the Money . . ." Treasurer Handmacher reported that after a long period of careful management of WSBA resources, a surplus had been built up to the extent that the Board can finally consider spending money. He said the surplus had been generated across the board by all departments in the bar controlling expenses and generating revenues. "It may look like we're being spendthrift, but we now have the funds to address problems that have been needing attention for some time."

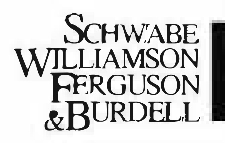
The Budget and Audit Committee had two proposals. First, to allocate $11,111.60 to allow *Bar News* to include an insert with "late-breaking" bar news. The Board unanimously approved it.

Second, as would be discussed in the annual discipline report, there is a proposal to add staff to the discipline department. The Committee recommends authorizing $200,000 to hire up to 4 full time attorneys, 2 contract attorneys, and several volunteer attorneys. It was noted that the Joint Task Force on Discipline had recommended that this be addressed immediately rather than waiting for full consideration of all of the Task Force recommendations. The Board unanimously approved this allocation.

More on Preventing Youth Violence: Following up on sessions in Yakima and Seattle exploring ways lawyers might help prevent youth violence, Governor Hannula introduced a panel, including Sylvia Anderson, executive director of the Big Brothers/Big Sisters of Tacoma-Pierce County; Bonnie Pinckney, supervisor of volunteer services/family involvement, Tacoma Public Schools; and Governor Linda Dunn, a member of Mothers Against Violence in America (MAVIA). They each emphasized the importance of one-on-one involvement between youths and adults in mentoring and tutoring. The chief requirement in all of these programs is personal commitment. Even a small amount of time, given on a regular and committed basis, can make a difference, sending the message that someone cares about this youth or child.

Anderson spoke of a program in Arizona in which lawyers were matched with children. Pinckney emphasized that no special training or experience is required. When asked whether lawyers could play a role in the Big Brothers/Big Sisters program, Anderson said she would be "hysterically receptive" to any volunteers.

Dunn said that MAVIA is active in specific areas: education, family violence, media violence, gun violence and public



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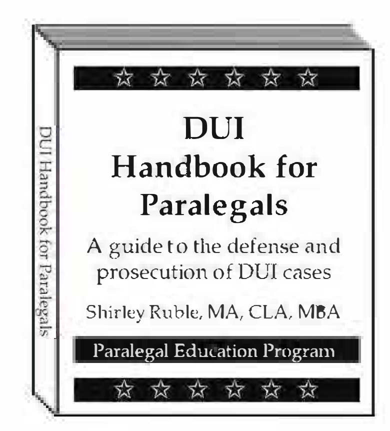

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The Board will be looking further into what the organized bar might do, but "Ace" says, "Why wait? Volunteer to commit a little bit of your time today."

Annual Discipline Report: Governor Peterson, chairperson of the Board's discipline committee, reported that the Joint Task Force report had gone out to persons involved in the discipline system and to local and specialty bar associations with a request for comments by May 1. Already, "helpful and instructive" responses had been received.

The Board discussed the proposal to eliminate most or all of the confidentiality provisions in the grievance/discipline process (see "The Board's Work," *Bar News*, November 1994, p. 36); discussed publishing expanded discipline notices in *Bar News* to include a broader description of what the lawyer did to get into trouble; approved a small change to RLD 5.4 to clarify that only a respondent lawyer, and not a grievant if a lawyer, could protest an admonition; and approved a recommendation to the Supreme Court on amendments to the ABA Sanctions Standards as adopted by the Court.

Finally, Disciplinary Board vice chair Andy Becker, Chief Disciplinary Counsel Barrie Althoff (making his first appearance before the governors), with disciplinary counsel Maria Regimbal, and Counsel to the Disciplinary Board Karen Tall, presented the annual discipline report. Althoff explained that fewer than four in 1,000 lawyers in Washington received discipline in 1994. He thought that reflected both that lawyers in Washington are doing a good job, but also that because of the substantial case backlog built up over time, the Disciplinary Department is not prosecuting enough lawyers. He said the backlog erodes public confidence in lawyers' ability to police themselves, and it has an adverse effect on staff morale. He calculated that there is a current nine-month backlog, or the equivalent of one lawyer working for 16 years.

Althoff proposed adding staff as had earlier been discussed in the budget report. He said that use of contract lawyers would prevent the hiring of unnecessary permanent staff who might not be needed after the backlog had been eliminated. He also suggested that using "committed" volunteer lawyers who agreed to give at least 40 days' service to the bar, including "retired lawyers" and lawyers from large firms, could help at little added cost. Governor Handmacher said that this could be accomplished with existing resources, and he expressed the hope that any future proposal could also be accomplished with existing funding. He also raised the question of the effect of this on the rest of the system, such as increasing cases going to the Disciplinary Board. Althoff responded that that was five to six months down the road and could be dealt with. After discussion, the Board unanimously approved hiring four new permanent lawyers, two contract lawyers, and payment of necessary overhead expenses for volunteers.

And the winner is . . .: Last month the Board heard from the Presidential Search Committee to select the president-elect, who according to the Bylaws is to be elected from Eastern Washington. This month the three candidates, James Danielson (Wenatchee), John Schultz (Kennewick), and Ed Shea (Pasco) each met with the Board. While the three candidates, all former Board members, each had his own thoughts about the WSBA and the role of president, it was clear that any one of the three was well qualified to serve as president. However, a choice had to be made, and after the votes were cast, Ed Shea was named president-elect, to succeed Ron Gould as president at the conclusion of the business meeting on September 8, 1995.

Fattorini Returns: John Fattorini returned on Saturday to continue his discussion with the Board on issues of interest before the Legislature. He reported that the Supreme Court constitutional amendment was moving slowly, that there was some criticism of it, and that there were some concerns about possible attempts to add term limits to it. There was some discussion on whether the Board should take a position on the bill. Fattorini noted that in her appearance before the Board, the Chief Justice had not asked the Board to take a position. Governor Pat Williams echoed that, saying, "bullets are being shot, and we have not been asked to put our heads up into the range of fire." The issue was referred to the Legislative Committee.

In other legislative business, Fattorini said that legal services' legislative budget is in trouble, and that supporters are trying to show legislators that state funding supports chiefly family law cases, and that it is activities supported by fed-

eral funds that draw criticism. He said that the Executive Committee of the Environmental Land Use Section had written a good letter explaining the reasons they oppose Initiative 164, a first for the Section. He reported that a balanced-budget amendment had been introduced, and that the Board had opposed a similar bill in 1982.

Linda Dunn noted that COLD had raised a concern with a bill which would revise the Statute Law Commission, including removing a WSBA member from the designated Commission members. She agreed to monitor its progress.

Wrap-Up in Tacoma: In other business, President Gould reported that he had been meeting with various bar groups to talk about the referendum. Governor Toole, who chairs the Board Committee on Communications with Minority and Specialty Bars, said he had been meeting with those groups and advising them of various appointment opportunities for committees and task forces. Executive Director Dennis Harwick presented a proposal from the president of the Oregon State Bar to consider regionalization of things like admissions, bar exams, and discipline. President Gould was authorized to designate a bar member to look in the proposal and report back. Craig Schauerman (Vancouver) has resigned from the state Board of CLE, and a new member will have to be appointed to serve his term (ends September 30, 1996). Linda Portnoy (Seattle) was appointed to a vacancy on the Statute Law Commission; Kirk Bromiley (Wenatchee) was appointed to the Limited Practice Board; and Kathleen C. Field (Lynnwood) was appointed to a vacancy on the Board of Directors of Evergreen Legal Services. The Board heard from Tacoma Pierce County Bar Association presidents George Kelley (outgoing) and Joe Quinn (incoming) on activities of their bar, including the county bar convention held in September with 125 registrants plus their families, and consideration of establishing a county bar foundation. President Gould announced that he had appointed an ad hoc committee composed of prosecutors and defense attorneys to examine issues regarding the Criminal Law Section (i.e., Is it too defense-oriented? A chronic debate). And Brad Steiner reported on his attendance at the ABA midyear meeting in Miami. He liked it.

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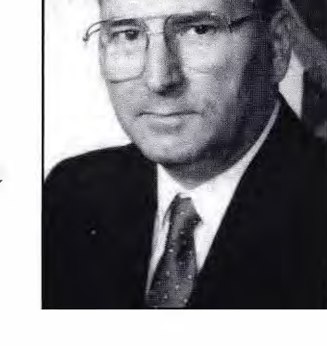

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Small selection of cases examined:

U.S.A. vs. Hugo Fernando Castillon Alvarez (world's largest cocaine arrest; 20 tons; $2 billion street value)

People vs. Michael Su Chia (convicted of killing two federal drug agents and wounding another in Pasadena)

U.S.A. vs. John Z. DeLorean (DeLorean car manufacturer)

DeRita vs. Scott (estate of "Three Stooges" comedy team)

Estate of Hedayat Eslamania (murder victim in "Billionaire Boys Club" case)

Jane Seymour Flynn (marriage dissolution for "Dr. Quinn" actress)

Frustaci vs. Malik, M.D. (medical malpractice suit over septuplets birth settled for $2.7+)

Joseph E. Gallo ($100 Million suit between Gallo winery brothers)

Carl Galloway, M.D. vs. CBS (sued Dan Rather & 60 Minutes)

Estate of Francis Hammer (contest over $250 million art collection of Armand Hammer, President of Occidental Oil Company)

Howard Hughes vs. John H. Meir (dispute about purchase of mines)

Doris Jackson vs. Lee ("The Shirelles: contract dispute)

Michael Jackson vs. Steve Howell (business dispute)

Morgan Anthony Lamb (his wife disguised herself and took State Bar examination for her husband)

People vs. Bobby Joe Maxwell ("Skidrow Slayer" accused of 11 murders)

Taff vs. Steve Reeve (Superman V movie plagiarism suit)

Alan Robins (political corruption case of U.S. Senator)

Attorney Lynn Stites ("Alliance" case; up to $200 million alleged bloating of legal billings to insurance companies by a group of attorneys)

Brian Wilson vs. Irving Music ("Beach Boys" founder sued and won a $10 million judgment)

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Notices of Interest to WSBA Members

WSBA Disciplinary Notices

Suspended: Seattle lawyer **Bernice Funk** (WSBA #14349, admitted 1984) has been ordered suspended for a period of six months by Supreme Court order entered December 30, 1994, effective immediately. The Court's action is based on a disciplinary hearing and review by the Disciplinary Board.

The discipline is based upon the finding that Funk violated RPC 1.14(a)(2) by removing approximately $3,100 in disputed client funds from her trust account, between August 1991 and February 1992. In the course of property litigation, she had her client place these funds (representing mortgage payments) into Funk's trust account after the lender had refused to accept the payments. Shortly thereafter the client terminated Funk without resolving either the disposition of the trust account funds or payment of her fees.

Although Funk and her client discussed using some of the trust account funds to satisfy Funk's fee balance, no agreement was reached. Nevertheless, without foreclosing on her attorney's lien, Funk removed the funds from her trust account to pay her fee balance without her client's knowledge or consent. Following filing of the grievance, returned the client's funds with interest.

Public Notices

Attorney General's Office Opinion Released

The Attorney General's Office has issued the following opinion:

Counties - County Treasurers - Noxious Weed Control Boards - Mosquito Control Boards - Authority of county treasurers to collect service charges for special assessments: (1) County treasurers are authorized to collect a service fee for collecting "special assessments, fees, rates or charges" as defined in RCW 36.29.80, but not for general taxes; (2) mosquito control district assessments authorize under RCW 17.28.255 are "special assessments, fees, rates or charges" and a county treasurer may charge the district a service fee for collecting such assessments; (3) assessments levied by a county legislative authority for noxious weed control under RCW 17.10.240 do not constitute "special assessments, fees, rates or charges" under RCW 36.29.180, because they are levied by the county itself and not by a special district; therefore, the county treasurer has no authority to charge a service fee for collecting such assessments; (4) RCW 43.09.210, which generally requires that one local or state agency or fund be compensated for services performed by another, is superseded by more specific statutes for purposes of determining a county treasurer's authority to charge service fees for tax

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Cite as AGO 1994 No. 24. Brian E. Buchholz, Assistant Attorney General, is author of the opinion.

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 February 1995 is 6.38%. ***The maximum allowable interest rate permissible for March 1995 is therefore 12%.***

Compilations of the average coupon equivalent yields from past auctions of 26-week treasury bills, and past maximum interest rates of the past 10 years appear on page 48 of the June 1994 *Bar News*.

WSBA Judicial Recommendation Committee to Schedule Interviews:

The WSBA Judicial Recommendation Committee is currently accepting applications from attorneys and judges seeking consideration for appointment to fill potential appellate court vacancies. Interested candidates will be interviewed by the Committee at its spring meeting to be held on April 28, 1995. The deadline for receipt of questionnaires by the WSBA offices is 5 p.m., Monday, April 3, 1995.

The Committee's recommendations are reviewed by the WSBA Board of Governors and then referred to the Governor for review when appointments are made to fill vacancies on the Washington Court of Appeals and Supreme Court.

If you are interested in scheduling an interview, please contact the WSBA at 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599, telephone (206) 727-8200, to obtain a questionnaire. Please specify whether you need the questionnaire designed for a judge or an attorney.

Computer Law:

If your practice emphasizes representation of individuals and companies involved in computer-related activities, you are invited to join PS-CL-BA, the Puget Sound Computer Law Bar Association.

Contact Joshua Foreman, via e/mail to (206) 524-5028 or JNfesq@cuit.pscu.com, or by fax to (206) 622-3965.

WSBA WYLD Annual Achievement Awards:

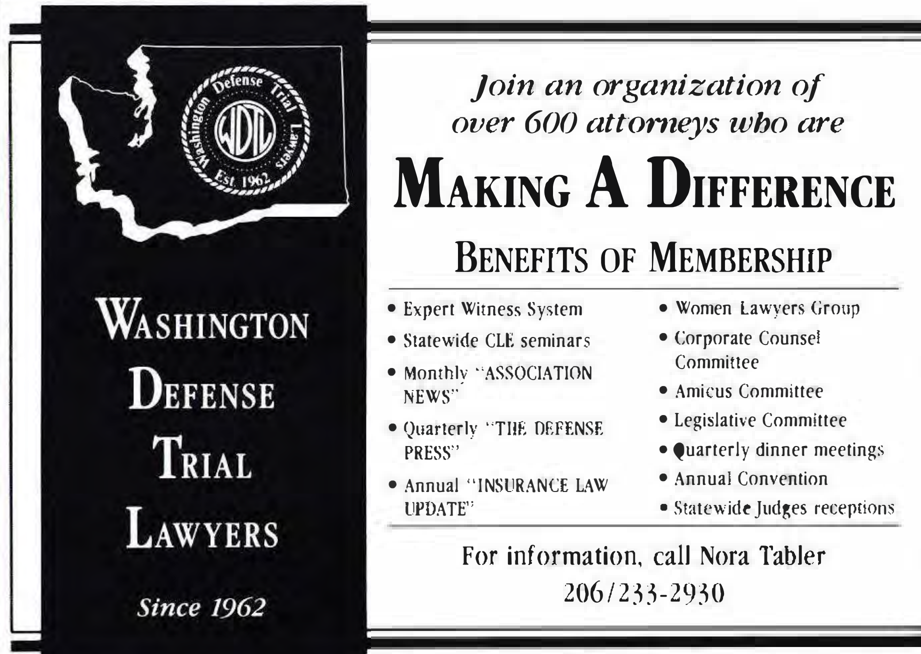
The WSBA Young Lawyers Division Board of Trustees solicits your nominations for its 1995 Annual Achievement Awards, to be presented at the April midyear meeting at Skamania Lodge: Outstanding Young Lawyer of the Year, in recognition of extraordinary contributions and achievements by a young lawyer; The Thomas Nevill Pro Bono Award, in recognition of outstanding efforts in providing pro bono services to the poor; and the WYLD Professionalism Award, in recognition of an individual who exemplifies the spirit of professionalism in the practice of law. Nominations should be in the form of a brief letter explaining the reason for the nomination and must include the name, address and phone number of the nominator and nominee. Please address all letters to Jerome Y. Roaché, Bellevue City Attorney's Office, PO Box 90012, Bellevue, WA 98009-9012 [phone: (206) 455-6822]. The deadline for nominations is March 15, 1995.

Foreign Agricultural Land Owners Have 90-day Reporting Rule:

According to Gordon Lederer, Acting Chair of the State Committee of the Consolidated Farm Service Agency (CFSA) Office, foreign owners of U.S. agricultural land are required, by law, to report their holdings, acquisitions, dispositions, leases of 10 years or more, and land use changes within 90 days to avoid federal penalties and monetary fines. "The Foreign Disclosure Report must be filed if all or part of the agricultural land is sold, or if the title is transferred to another person." Failure to report could result in a civil penalty of up to 25 percent of the fair market value of the interests held in the agricultural land, he said.

As of December 31, 1993, foreign investors reported owning 386,889 acres of Washington agricultural land. For reporting purposes, agricultural land is any tract of more than 10 acres now in farming, ranching, forestry or timber production. This includes land in agricultural use when purchased, as well as land later converted to agricultural use. Foreigners who own or have an interest in 10 acres or less need to report only if annual proceeds from the sale of agricultural products grown on these acres exceed $1,000.

For more information, contact the local CFSA office, listed in the telephone directory under U.S. Government, Agriculture, Department of."



CALENDAR

March 1993

3 Seattle: How to Avoid Unenforceable Contracts. *Sponsored by* WSBA CLE.

3 Seattle: Violence in Law. *Sponsored by* WSTLA.

3-4 Seattle: Northwest Bankruptcy Institute. *Sponsored by* WSBA CLE.

3/7-8/95 Seattle: Mandatory Guardianship Training for Ex-parte Guardian ad Litem list (Note new date). *Sponsored by* KCBA.

8 Seattle: Cardozo Society dinner featuring Alex Kozinsky. *Sponsored by* the Jewish Federation of Greater Seattle. *For information:* Barbara Maduel, (206) 448-8479, ext. 263.

8 Seattle: International Trademark Strategies. *Sponsored by* Foster Pepper & Shefelman. *For information:* (206) 447-2881.

9 Seattle: Workers' Compensation. *Sponsored by* WSTLA.

9 Spokane: Smithmoore P. Myers Professionalism Award dinner (RSVP by March 2). *Sponsored by* SCBA.

9 Spokane: The Positive Side of Professionalism. *Sponsored by* SCBA.

9 Seattle: The New Frontier of Takings Law, and What it Means to You. *Sponsored by* UW CLE.

9 Spokane: Ethics & Professionalism. *Sponsored by* SCBA.

10 Seattle: How to Compel Discovery (half day). *Sponsored by* WSBA CLE.

10 Seattle: Revisions to the Probate Code (half day). *Sponsored by* WSBA CLE.

10 Spokane: Advising the New or Expanding Business. *Sponsored by* WSBA CLE.

10-12 Phoenix: Sunbreak Seminar. *Sponsored by* WDTL.

11 Longview, WA: WALS seminars on legal search, estate planning and probate. Also in Yakima March 25. *For information:* Diana Osborne, (206) 259-5106.

15 Deadline for nominations for WSBA YLD Annual Achievement Awards. See "Digest" for details.

15 Deadline for May 1995 *Bar News* copy.

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National Business Institute, Inc. (NBI) (715) 835-7909
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Washington Defense Trial Lawyers (WDTL) (206) 233-2930; fax (206) 628-6611
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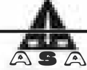

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On-line: Records Management in an Electronic Age
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Sessions 1 & 3: Donald Skupsky, J.D., CRM on the legal requirements for microfilm, computer optical disk records/records management and records retention programs.
Session 2: John Paul Deley (FTC) on developing a vital records program.
Session 4: Joan Feldman (computer forensics), *Joeann Gallagher* (legal copy) and *Roger Winters* (KC Sup. Ct. Records) on records & information management in the electronic generation.

Sponsored by ARMA. CLE credit pending.
For information: Suzann Lombard (206) 483-8928/Barbara Benson (206) 543-7950

17 Seattle: Putting It All Together (7th in a basic-skill series). *Sponsored by* UW CLE.

17 Seattle: Advising the New or Expanding Business. *Sponsored by* WSBA CLE.

17 Seattle: The Juvenile Violence Act. *Sponsored by* WSBA CLE.

20-24 Phoenix: WSTLA Spring Break. *Sponsored by* WSTLA.

22 Seattle: Hanging Out Your Shingle. *Sponsored by* WSBA CLE.

23 Seattle: Professional Seminar. *Sponsored by* WDTL.

23-25 Phoenix: Spring Break. *Sponsored by* WSTLA.

24 ABA Pro Bono Publico Award nominations due. *See details* page 49.

24 Spokane: Employment Law/ Discrimination. *Sponsored by* SCBA.

24 Seattle: Employment Law Institute. *Sponsored by* WSBA CLE.

24 Yakima: The Juvenile Violence Act. *Sponsored by* WSBA CLE.

25 Yakima: WALS seminars. See March 11, above.

30 Olympia: Negotiation and Settlement Advocacy. *Sponsored by* WSBA CLE.

30 SeaTac: Arbitration/Mediation: Just the Basics. *Sponsored by* WSTLA.

30 Seattle: Survey of Restatement of Suretyship. *Sponsored by* DWT.

31 Seattle: Negotiation and Settlement Advocacy. *Sponsored by* WSBA CLE.

31 Seattle: Guns N' Lawyers. *Sponsored by* WACDL.

31 Tukwila: Laboratory Tests for the Legal Professional. Sponsored by PESI/National Federation of Paralegal Associations. *For information:* (800) 843-7763.

31-April 1 Bellingham: WSBA Board of Governors meeting.

April 1995

3 Deadline for receipt of questionnaires from lawyers and judges interested in being interviewed by the WSBA Judicial Recommendation Committee for appointment to appellate court vacancies. *See details in "Digest."*

7 Tukwila: On-line: Records Management in an electronic age. *See details opposite.*

7 Seattle: Sixth Annual International Law Institute. *Sponsored by* WSBA CLE.

12 Seattle: Recruiting Staff—Brown Bag Round Table. *Sponsored by* WSBA LPM Section. *For information:* (206) 789-2111

14 Spokane: Attorney General's Update. *Sponsored by* SCBA.

15 Deadline for applications for *Bar News* editor position.

15 Deadline for June 1995 *Bar News* copy.

15 Seattle: New Defense Lawyer Workshop. *Sponsored by* WDTL.

20 Seattle: Lawyer as Detective II. *Sponsored by* KCBA.

20-22 Long-term Services in the '90s: Life-affirming or Life-limiting? National Legal Center for the Medically Dependent & Disabled 10th anniversary special program on elder-law issues. *For information:* (414) 288-3802.

27 Seattle: Nuts and Bolts of Insurance, Part 2A. *Sponsored by* KCBA.

27 Recent Developments and Assorted Issues in Real Estate and Construction Finance. *Sponsored by* DWT.

27 Seattle: Cultural Diversity—joint ALA-WSBA LPM Section meeting. *For information:* (206) 789-2111.

28 Spokane: General Real Estate. *Sponsored by* SCBA.

May 1995

4 Seattle: How to Create a DOS Document System for Your Law Practice. *Sponsored by* WSBA CLE.

5 Seattle: Estate Planning for Midsized Estates and Small-business Owners. *Sponsored by* KCBA.

5 Seattle: How to Create a Windows Document System for Your Law Practice. *Sponsored by* WSBA CLE.

12-13 Spokane: WSBA Board of Governors meeting.

15 Deadline for July 1995 *Bar News* copy.

18 Treatment of Unexpired Leases and Executory Contracts in Bankruptcy. *Sponsored by* DWT.

19 Spokane: Family Law Update. *Sponsored by* SCBA.

20-21 Lake Chelan: WSBA Bar Leader Conference.

June 1995

15 Deadline for August 1995 *Bar News* copy.

16-17 Lake Chelan: WSBA Board of Governors meeting.

22 New Article 8 of UCC. *Sponsored by* DWT.

23 Spokane: Federal Law Update. *Sponsored by* SCBA.

30 Seattle: Products Seminar. *Sponsored by* WDTL.

July 1995

15 Deadline for September 1995 *Bar News* copy.

28-29 Winthrop: WSBA Board of Governors meeting.

August 1995

3-6 Whistler, B.C.: WSTLA Annual Meeting & Convention.

15 Deadline for October 1995 *Bar News* copy.

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Committee Appointment Opportunities for WSBA Members

The Board of Governors of the Washington State Bar is called upon to make appointments to various boards, commissions and committees listed below. These vacancies are in addition to those on standing committees of the WSBA, for which a separate mailing goes out each member annually. Some timeframes for application are shorter than others; as a result of the need to start this service at some point in time and the desire to include as many openings as possible. Over time all openings will be listed at least three months prior to Board action.

Members are encouraged to apply for any and all positions that are of interest. Applications may be directed to Dennis P. Harwick, Executive Director, WSBA, 500 Westin Building, 2001 Sixth Avenue, Seattle, Washington 98121-2599, or to members' representatives on the Board of Governors. Members of the Board of Governors, the congressional or other districts they represent, and their city or residence are listed on the masthead of the *Bar News*.

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***Commission on Judicial Conduct*: One Seat**
(Call for applicants-March; Board action-May)

The four-year term of G. Douglas Ferguson (Seattle) expires June 16, 1995. The four-year term of Margo T. Keller (Tacoma) expires June 16, 1996. The Commission is authorized under RCW Chapter 2.64. Members are eligible for appointment to one additional term, for a total of eight years' service. For more information: David Akana, executive director, P.O. Box 1817, Olympia, Washington 98507, tel. (206) 753-4585.

***Judicial Information System Committee (JISC)*: One Seat**
(Call for applicants- April; Board action-June)

The three-year term of James S. Turner (Bellevue) and William F. Baron (Seattle), who hold one seat jointly, expires July 31, 1995. The Committee is authorized under the Supreme Court's Judicial Information System Committee (JISC) Rules and RCW Chapter 2.56. Appointments must be of persons who have demonstrated an interest in, and commitment to, judicial administration and the automation of judicial systems and functions. The WSBA Board makes nominations for appointment by the Chief Justice. The Committee meets every other month for three hours. For information contact Rick Coplen, Information Services, Office of the Administrator of the Courts, P.O. Box 41170, Olympia, Washington 98504, tel. (206) 753-3365.

***Statute Law Committee*: One Seat**
(Call for applicants-December; Board action-February)

The six-year term of Bernard J. Gallagher (Spokane) expires March 31, 1995. The six-year terms of Keith H. Campbell (Spokane) and James D. Hamilton (Vancouver) expire March 31, 1997. The six-year terms of Mary F. Gallagher Dilley (Seattle) and John G. Schultz (Pasco) expire March 31, 1999. The Commission is authorized under RCW Chapter 1.08. Five of its twelve members must be lawyers. It is the governing board of the Office of the Code Reviser, which serves as the bill-drafting arm of the legislature and as the codifier and publisher of the Revised Code of Washington. The Committee meets four to five times per year; a per diem of $50 and travel expenses is paid by the Committee. For information: Dennis W. Cooper, Code Reviser, (206) 753-1440.

It's Time to Open the Legal Profession

by **Joe Scalone**

he lay prospective on the issue of nonlawyer practice is not being heard by lawyers of this state. This article addresses that issue from the point of view of the Estate Guarantee Association, whose guiding principle is to maintain the civil rights, constitutional guarantees and political freedoms of all American citizens.

Paralegals are demanded and needed by the public.

A vast number of people in the United States are not receiving the legal representation or counsel that they need. According to "The Legal Needs of the Public," a joint undertaking by the American Bar Association Special Committee to Survey Legal Needs and The American Bar Foundation, the average law abiding American citizen has a 37 percent chance of having a legal problem in the next 12 months. In a 1990 California legislative debate, members of the California State Legislature reported,

> Studies have shown that roughly 80 percent of the legal needs of low-income Americans go unmet, and 130 million middle-income Americans are unable to get help with civil legal problems when they need it because they cannot afford it. This has resulted in a two-tiered system of justice, with only the very rich able to afford legal services and the vast majority being shut out of the legal system.

A 1994 study by the ABA of low and moderate-income households in the U.S. revealed that half of these households confront situations that raise legal issues each year. Most of these problems are never taken to lawyers or other elements of the civil-justice system for resolution.

The ABA report: Nonlawyer Practice in the United States: Summary of the Factual Record Before the American Bar Association Commission on Nonlawyer Practice: Discussion Draft for Comment (April 1994), page E-LNS.3 (hereinafter, the "ABA Report").

Obviously, attorneys, bar associations and probono groups, no matter how well-intentioned, have not met the needs and demands of the American public for legal help.

The law-related service industry is huge, and growing.

The law-related service industry is already big business. Many of these service providers are bigger than even the biggest law firms. The John Deere Company provides a legal service plan to employees through their union. Other unions, such as SPEEA, provide legal forms (such as powers of attorney) directly to their members as a membership benefit. American Express Travel Related Services division offers the Legal Services Plan of America to American Express card holders. TNALA (The National Association For Legal Alternatives) has membership organizations that have done estate plans for more than 250,000 Americans. Paralegal associations have many thousands of members nationwide. The Washington State Attorney General has signed written agreements with some companies recognizing their right to conduct business.

This big business is growing.

> [I]ncreasing numbers of low- and moderate-income persons seek solutions to their legal problems through means other than the employment of lawyers: both *pro se* litigation and self-help for non-court matters have expanded, as has the number of nonlawyers available to provide assistance in both circumstances . . .

(ABA Report, page 1.) Other states have taken action to embrace this trend.

> [N]early half of the state legislatures are considering proposals to authorize or regulate nonlawyer practice, and some consumer groups are actively advocating such legislation.

(ABA Report, page 2.)

In fact, the provision of legal services is widespread, even by persons who would not be thought of as paralegals. Bank trust departments draw trust agreements for bank clients. Every time a bank clerk opens a joint checking account for customers, the clerk completes the signature card by checking the box "joint-tenancy-with-right-of-survivorship" or some other legal title designation for those particular clients. Insurance companies provide insurance trust forms for clients, help them complete the forms and fund the trusts. Tax accountants prepare S-corp resolution forms and other legal business forms.

The paralegal industry is currently unregulated.

There is no law currently that regulates the paralegal industry in the state of Washington. Paralegals who work for lawyers are, in a sense, regulated by the lawyers for which they work. Those lawyers are responsible for the conduct of their employee paralegals. This is proper and should be permitted to continue. Open any phone book, however, and you will see many listings for independent paralegals. While these paralegals may be providing quality law-related services, there is no law regulating the provision of those services and making them responsible for their conduct. There are no state statutes or WAC provisions that license or regulate paralegals.

The paralegal industry has "grown between the cracks."

Since there is no direct regulation, the law-related services industry has been dealt with on an ad hoc basis. It has grown into a large industry between the cracks of the established regulatory agencies.

The Bar Association: The Washington State Bar Association (WSBA) cannot legally stop the paralegal industry. Even through the direct authority of the Washington Supreme Court, the WSBA does not have jurisdiction to regulate

. . . there is no simple legal instrument which necessarily can be differentiated from a complex one, so that its preparation by an unqualified person can be justified.

things that are not the practice of law. The WSBA cannot legally compel nonlawyers to provide law-related services only under the auspices of supervising lawyers. The Washington Supreme Court does not have jurisdiction over the conduct of nonlawyers. Attempts to force such relationships would violate state and federal constitutional provisions as well as state and federal laws against restraints on trade. Bar associations in the past have learned this lesson the hard way by litigating and losing against associations and unions that provide legal services to their members. *N.A.A.C.P. v. Button*, 371 U.S. 415 (1963) (First and Fourteenth Amendments violated by bar association). The state action exception to federal antitrust laws has not protected bar associations either. *Surety Title Insurance Agency v. Virginia State Bar*, 431 F. Supp. 298 (E.D. Va. 1977), *vacated and remanded*, 571 F.2d 205 (4th Cir.), *cert. denied*, 436 U.S. 941 (1978).

In *Surety*, the court rejected the Virginia Bar's claim, reasoning that the Bar's unauthorized practice procedures were not sufficiently related to legitimate state interests in preventing incompetent assistance as to outweigh its anticompetitive consequences. Even if the bar did have jurisdiction and an otherwise solid legal ground to stand on, the WSBA has no budget to litigate against this rising tide of nonlawyer practice. Not only can the bar not stop the law-related services industry, but the Bar's monopoly on the practice of law is seriously threatened.

> Indeed, a growing trickle of investigations and lawsuits by the Justice Department, the Federal Trade Commission, and private parties makes plain that unless the bar voluntarily confronts certain fundamental questions about the proper boundaries of its monopoly, it will be forced to do so.

Rhode, "Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions," 31, *Stanford Law Review* (1981), page 5.

The Attorney General: The Attorney General has jurisdiction over consumer protection violations, not over the provision of law-related services by nonlawyers. Currently the AG has entered into written agreements with some companies doing business in Washington state—giving its blessing to the provision of law-related services by firms that are not law firms on a case by case basis. It is too great a burden to ask the AG to regulate a huge industry on an ad hoc basis. The burden should be taken off of the AG's back and placed properly in the lap of the legislative and judicial branches of government.

The Prosecuting Attorney's Office: State prosecuting attorneys do not have the resources nor the grounds to prosecute the alleged offenders. Criminal prosecutors have their hands full with murderers, rapists, burglars and drunk drivers. They do not have the personnel to prosecute and prove beyond a reasonable doubt the guilt of every person who allegedly practices law without a license. Any prosecutor can tell you that very few of such cases get filed. Even the occasional prosecution of what may be flagrant cases, such as that recent prosecution of a paralegal in Kitsap County (for allegedly settling car accident cases without conveying offers to the parties represented), will not stop many other nonlawyers from providing law related services. That Kitsap County case, by the way, is up for discretionary review by the Supreme Court.

The growth of the law-related service industry will not stop—the public needs and wants it to continue growing. The economic laws of supply and demand have pushed the industry past the current regulatory framework.

Nonlawyers are protected by law.

The practice of law by nonlawyers is a crime and not protected. The provision, however, of law-related services (things that are not the practice of law, but may be related to it) is protected. Free speech and association provisions of state and federal constitutions, for example, allow nonlawyers to provide many law related services such as:

- to discuss laws generally
- to discuss the common and usual method of registration of securities
- to discuss, in general, federal and local taxes, unrelated to specific tax liability
- to lecture before groups on general principles of law
- to provide individual financial analysis for clients
- to investigate case facts
- to conduct title searches
- to assist clients with the preparation of specific factual information for such things as the preparation of tax returns
- to solicit, and to collect and organize specific facts about a client's or prospective client's assets and liabilities
- to act as a witness to the execution of a document
- to notarize a document

There is a growing number of cases all over the country recognizing the rights of nonlawyers to provide these services.

Nonlawyers are not as harmful to the public as some may believe.

There is a widely held mistaken belief that nonlawyers wreak havoc on the innocent public. In a 1974 ABA survey of the public's legal needs, 82 percent of respondents agreed,

> [M]any things that lawyers handle—for example, tax matters or estate planning—can be done as well and less expensively by nonlawyers—like tax accountants, trust officers of banks and insurance agents.

In fact, it is the public who have, by necessity, created the demand for affordable alternative quality legal services. Many lawyers may have anecdotes about deficient work done by nonlawyers, but from the public's point of view, such stories are exceptions to the rule. What is more, there are an equal or greater number of anecdotes about lawyers who have not provided quality work. In her analysis of the available data in 1979 from 42 states, Professor Rhode concludes that of 1188 inquiries, investigations, and complaints to bar committees regarding lay

activity, "only 2% arose from an injured customer's complaint." The California Department of Consumer Affairs has reported that in nearly 20 years that independent paralegals have been in business without any regulation, complaints about them have been "almost nonexistent." See *Response to Report [on] Legal Technicians*, (Letter to State Bar of California from the CA Dept. of Cons. Affairs, March 8, 1989), cited in a law suit filed by paralegals against the Kentucky Bar Association in February 1994, Federal District Court for the Western District of Kentucky, Louisville Division, Case # C-94-0119-L-S). The paralegals in that case point out that this should be contrasted with the nearly 100,000 complaints filed against U.S. lawyers in 1988 (according to *HALT, Attorney Discipline National Survey*, (Washington, D.C., 1986). It is lawyers, and not the public, who are shouting to rid society of nonlawyer practice. Yet the public is shouting to rid society of lawyers. Lawyers continue to sell luxury cars; the public simply wants reliable transportation at an affordable price.

The practice of law is not "everything a lawyer can do."

Perhaps part of the reason why the industry has not been previously acknowledged is for lack of an adequate definition of the practice of law. In our state there is no definition of the practice of law in the statutes (see RCW 2.48.180), the ethics rules (Rule of Professional Conduct 5.5) or the jury instructions (WPIC). The case law in Washington is about as clear as pea soup. The dicta definitions in many cases reach far beyond the facts. In *Wash. Etc. Assn. v. Wash. Assn. Etc.*, 41 Wn. 2d 697 (1952), for example, the Court states,

> . . . there is no simple legal instrument which necessarily can be differentiated from a complex one, so that its preparation by an unqualified person can be justified.

Yet the court enjoined only the preparation of the part of a deed that details liability of the parties with regard to mortgages, and specifically did not enjoin the preparation of fill-in-the blank forms (to be filled in with the names of the parties and the legal descriptions).

Read together with the other Washington cases, it is perhaps impossible to say what the practice of law is. Last year, a member of the Consumer Protection committee of the WSBA was asked to review the definition of the unauthorized practice of law in Washington. In a letter to the chair of that committee, which detailed a thorough analysis of the case law, the member concluded,

> In view of this ever changing nature of the semantics relating to the meaning of unauthorized practice of law, I do not believe that the term is sufficiently or specifically defined to a point that would allow a bar committee to do much about it because the meaning of the term is not known.

Later he states,

> It would seem to me that the definition of unauthorized practice in the

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> opinion of many lawyers, especially members of and [sic] unauthorized practice committees, really is 'the doing by one not licensed to practice law of things that irritate one who is licensed to practice law'.

He writes that the largest purveyors of the unauthorized practice are lawyers themselves.

> Probably the largest field that I am aware of is the activity of law clerks, legal interns, paralegals, secretaries and other employees of lawyers which in fact is the practice of law and which generally is totally unsupervised by any attorney . . . [Attorneys] themselves are the ones that are begetting the unauthorized practice.

While there may be exceptions delineated in the ethics rules for attorneys to allow their employees to assist them in the practice of law, there is no such exception in the criminal code (RCW 2.48.180).

For the sake of lawyers and the public, a clearer line must be drawn between what is permissible and what is not. Task forces in specialized areas (such as bankruptcy, personal injury, estate planning, real estate, etc.) comprised of lawyers and nonlawyers (such as accountants, insurance agents, paralegals, bankers, etc., depending on the area) should be set up to draw a list of permitted activities (law related activity that is not the practice of law) within each area of specialty. These activities should then be permitted by qualified persons through legislation or WAC code provisions (such as the licensing of specialized paralegals). Since the Supreme Court has ultimate jurisdiction over the practice of law, acknowledgment should be made that if any one activity is pronounced to be the practice of law by the Supreme Court, then the remaining parts of the statute(s) would stand on their own. The task forces would be replaced by boards, similar to the boards that oversee other licensed professions, that would provide permanent oversight.

Some members of the Bar seem to have taken the view that the practice of law includes everything a lawyer can do. This is as absurd as defining death as "that which is the subject of services by morticians." Certainly, this type of circularity, if used in a statutory context would be declared vague and overbroad, even in a commercial context. Practically speaking, you do not need a brain surgeon to pierce an ear. In actuality there are many things, as noted previously, that nonlawyers can do that do not constitute the practice of law. The EGA does not advocate the practice of law by nonlawyers. It does advocate affordable quality legal services for all Americans.

The solution: acknowledge nonlawyers and allow lawyers more freedom.

Ask not what is best for lawyers, but what is best for consumers. The EGA supports a two-pronged approach to the problem: licensing paralegals and reforming the ethics rules.

License paralegals.

Licensing of nonlawyers (paralegals) through legislative action to provide law-related services (and not to practice law) would acknowledge that such persons have the right to provide such services and would make them responsible for the work that they do. Employees of lawyers, who are under the direct supervision of lawyers, would not be required to be licensed, though they could be if desired. An amendment to the criminal code should be enacted to make it clear that lawyers are not engaged in complicity to unauthorized practice with their own employees. Independent paralegals would be licensed after meeting minimum qualifications. There are over seventy businesses and occupations, from manicurists to plumbers, licensed under Title 18 of the Revised Code of Washington. Paralegals would be added there. Ethics rules, such as the Model Code of Ethics and Professional Responsibility of NFPA (the National Federation of Paralegal Associations) could be applied to these paralegals on a mandatory basis. The EGA has written proposed legislation for the licensing of paralegals and has submitted it to various state legislators. Their response has been favorable. This sort of legislation has been seen as a good measure for consumers.

Reform the ethics rules: "Get the law off the backs of lawyers!"

If paralegals are licensed to provide law-related services, then the relationship between lawyers and paralegals must be redefined so that lawyers can work with nonlawyers (paralegals) to provide better access by the public to quality legal services.

An extensive study by the Federal Trade Commission (FTC) clearly showed that, the fewer the restrictions there are on lawyers, the lower the prices of legal

services, without any compromise in quality of the services provided. *Report of the staff to the Federal Trade Commission; Improving Consumer Access to Legal Services: The Case for Removing Restrictions on Truthful Advertising* (November 1984). As in any other business, competition in the market places helps ensure quality. According to the FTC report,

> [A]dvertising of legal services, as is generally true for goods and other services, tends to lead to lower prices, stimulates competition, and may enable millions of Americans to find an affordable attorney who can help them resolve or prevent legal problems.

Lower prices will mean more clients and better public image for attorneys. The same FTC study concludes that lawyers should be permitted to:

a) advertise openly as long as the advertising is not false or deceptive;

b) initiate communications with prospective clients directly for the purpose of obtaining professional employment unless:

1) the attorney knows that the state of such person is such that the person could not exercise reasonable judgment in employing a lawyer;

2) the attorney is told that the person wishes no contact; or

3) the attorney knows that the communication involves coercion, duress or harassment;

c) communicate a specialty as long as he or she is actually a specialist; and

d) use any firm name as long as it is not false or deceptive.

The changes to Washington State rules proposed by the EGA would permit these same sort of activities, and, in addition, the association with nonlawyers, by lawyers, provided that the consumer of legal services is informed of such relationship. Each of the proposed changes is inherently required by law and beneficial to the public.

Lawyer advertising: Lawyer advertising is not as restricted in Washington as it is in other states. The EGA has proposed no rule changes regarding lawyer advertising.

Specialization: Lawyers should be permitted to say that they specialize, as long as they actually do specialize, since a statement of specialty is constitutionally protected speech, not illegal, deceptive or fraudulent. Our own Washington State constitution says that citizens should be permitted to freely speak, being responsible for the abuse of that right. Abuse would be illegal, deceptive or fraudulent speech. There is nothing illegal, deceptive or fraudulent about the statement by a public defender "I am a criminal-law specialist." Is a maritime attorney not a maritime-law specialist? Is an environmental law attorney not an environmental-law specialist? Attorneys are permitted to say that they are "experts" in a certain field, or that they "emphasize" a certain practice, or that a certain type of law is all they do and all they have ever done, but not permitted to say that they "specialize." Isn't this a distinction without a difference, certainly not a difference that the public can understand, especially when they pick up a phone book and see lawyers "specialists" in every field?

Client Contact: Direct contact with prospective clients by attorneys is recognized in the FTC report as protected free speech. In the FTC proposed model code (the last two pages of this lengthy report), it is suggested, as the EGA has done in its proposal, that the default should be to allow attorneys direct contact with consumers, unless certain circumstances dictate against it. Again, constitutional free-speech rights should allow such conduct under certain conditions. Restriction of the right to communicate should be the exception, not the rule.

Firm Names: The EGA proposed no changes in the firm name rule, because the EGA was unaware of the FTC report until after the proposed changes were written. A firm name change rule would, however, comport with the spirit of the other suggested rule changes.

Association with Nonlawyers: The EGA has proposed that lawyers be permitted to associate with nonlawyers in conjunction with the licensing of nonlawyers. If nonlawyers are permitted to provide law-related services, then lawyers should be permitted to work directly with independent nonlawyers so long as consumers are aware of the relationship. This puts the burden of maintaining independent professional judgment on individual lawyers instead of on the Bar Association in the form of an absolute ban.

In reality, lawyers and law firms already work closely with nonlawyers in a variety of settings, hiring independent accounting, insurance, real estate and other experts to provide expertise from the appropriate expert to a given client. Often these relationships are close—such as an attorney who works regularly with a real estate broker on real estate closings or 1031 exchanges.

A lawyer needs to maintain independent professional judgment, but not at the expense of the client's best interest that may be served by a close working relationship with other professionals. Consumers should not be prevented, from choosing to hire a firm who directly employs both attorneys and accountants, for example, to gain the advantage of the professionals working together, so long as consumers are informed of the relationship. Again, freedom to associate should come first, and restrictions on that freedom the exception. Professor Thomas R. Andrews makes a convincing case for the change of this rule in his article "Nonlawyers in the Business of Law: Does the One Who Has the Gold Really Make the Rules?" *Hastings Law Journal* (March 1989).

The EGA has submitted to the Washington Supreme Court proposed ethics rule changes. The Court has requested the Bar to comment on the proposals. The Board of Governors promptly voted to oppose EGA's proposals, and then appointed a task force on nonlawyer practice and asked two committees to look into the issue.

We consider our proposals a first step toward reform of the legal services industry in the state of Washington. If you support an honest, open and comprehensive discussion of this most important issue, please write to: Supreme Court, Temple of Justice, PO Box 40929, Olympia WA 98504-0929, or to your state senator or representative [call (800) 562-6000 for addresses].

The EGA is looking forward to a meaningful public dialogue on this most important issue.

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Joe Scalone *is a staff attorney with the Estate Guarantee Association in Tacoma.*

Debtless in Seattle: The Bankruptcy Reform Act of 1994

by **A. Stevens Quigley**

In the waning moments of the legislative session, prior to returning to the hustings for the final days of this past fall's electioneering, Congress set gridlock aside and passed "reform" amendments to the Bankruptcy Code. President Clinton signed the amendments into law on October 22, 1994, during his campaign swing through Seattle to aid Democratic hopefuls.

Compared to other bankruptcy "reform" bills, the amendments were surprisingly balanced. The pendulum did not seem to swing significantly either for or against any particular bankruptcy constituency.

The following is a synopsis of the amendments which, of course, should be reviewed for precise language. Because the code is an aggregate of amendments, some clarification may be needed on potentially contradictory language.

Dollar Adjustments

The legislation raised a number of pertinent dollar amounts, including increased eligibility limits for debtors filing Chapter 13 petitions, to $250,000 of certain unsecured debts and $750,000 of certain secured debts. Aggregate claim amounts for involuntary bankruptcy petitions, most of the amounts for claim distribution priorities, and the federal exemption amounts were all doubled. The minimum amount of "luxury goods or services" which are presumed nondischargeable under § 523(a)(2)(C) was increased to $1,000 if they are incurred within 60 (rather than 40) days of bankruptcy. Starting on April Fools' Day in 1998, and every three years thereafter, said increased dollar amounts will be adjusted for inflation along with the other amounts for claim distribution priority and cash advances under § 523(a)(2)(C). Trustee compensation was also increased, in part by allowing the Justice Department to prescribe appearance, distribution and other fees.

Other Debtor Eligibility Requirements

To benefit the Small Business Administration, certain small-business investment companies are now prevented from filing for Chapter 7 relief. Municipalities must now be "specifically authorized" to file for Chapter 9 relief.

Nondischargeability Expansions

The new law excepts from discharge under § 523 those debts incurred in the course of a divorce or separation other than those described in § 523(a)(5), unless the debtor's income and property is all reasonably necessary for maintenance and support of the debtor or a dependent, or for "expenditures necessary for the continuation, preservation, and operation of" the debtor's business, or unless the benefit to the debtor of a discharge outweighs detrimental consequences to the spouse, former spouse, or child of the debtor. To prevent discharge of this type of claim, the claimant must timely file a complaint and prevail thereon, as a claimant would for fraud, larceny or willful and malicious injury claims.

The period for aggregating presumed nondischarge-able cash advances was also increased to 60 days.

Post-filing condominium and cooperative dwelling dues during occupation or rental were also made nondischargeable under § 523(a). Debts for borrowed funds used to pay taxes were also made nondischargeable under § 523(a)(1).

Criminal fines were made nondischargeable in Chapter 13 proceedings, but the amendatory language applies to a portion of the code that was deleted along with restitution nondischargeability language from at least one prior amendment. It is hoped that this will be repaired by either the Congress or the courts.

Claim Distribution Priority Expansions

Actual and unassigned alimony, maintenance and support claims were added as a seventh priority for distribution from an asset estate, ahead of most taxes. A third priority for distribution in asset cases was granted to $4,000 of certain sales commissions. Priority claims may now be filed up to the date of distribution; "cause" may need to be shown in some cases. Objection to tardily filed claims is now permitted, except for claims which are allowed to be tardily filed under § 726 or under the Federal Rules of Bankruptcy Procedure. "Governmental units" have 180 days to file proofs of claim.

Other Family Law Matters

Paternity, alimony, maintenance, and support proceedings were excepted from the automatic stay. "Child support creditors or their representatives" may now appear and intervene without charge and without counsel. Liens for actual and unassigned alimony, maintenance and support now may not be avoided under § 522(f). The trustee is prevented from avoiding bona fide payments of actual and unassigned alimony, maintenance, and support claims as preferences under § 547.

House Liens

Cures of defaults secured by liens on principal residences are now allowed in Chapter 13 proceedings up to (and possibly after) foreclosure sale. Modification of payments is now allowed in Chapter 13 proceedings on claims secured only by a security interest in real property that is the debtor's principal residence if the final payment on said claim is due within five years. However, modification of claims under Chapter 11, secured by a security interest in real property that is the debtor's principal residence, has been prevented.

> ***The legislation raised a number of pertinent dollar amounts, including increased eligibility limits for debtors filing Chapter 13 petitions . . . Aggregate claim amounts for involuntary bankruptcy petitions, most of the amounts for claim distribution priorities, and the federal exemption amounts were all doubled.***

Other Lien Issues

The avoidance of the fixing of liens in implements, professional books, tools of the trade, farm animals, or crops of the debtor or dependent, has been made preventable to the extent their value exceeds $5,000, under state law under certain circumstances. Under § 522(f), avoidance of liens (except out of mortgage foreclosure) is now allowed "to the extent" unavoidable liens and available exemptions (absent liens) exceed the value of the property. Pre-filing perfection of security interests is now permitted in postfiling "fees, charges, accounts, or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties," unless the court orders otherwise due to the equities after notice and hearing. Such property is considered cash collateral. Maintenance and continuation of perfection of security interests after filing is no longer automatically stayed. A fixed-interest, fixed-preference or fixed-redemption price as a method of avoiding claim impairment for purposes of Chapter 11 plan confirmation was deleted. The time for reclaiming goods from the debtor by the seller was extended to 20 days.

Creditor Committee and Trustee Appointments

Certain governmental units are permitted to serve on Chapter 11 Committees. At the request of a party in interest, except in certain instances, the statute provides for an election (as in Chapter 7 proceedings) of the trustee in Chapter 11 proceedings within 30 days of the court's ordering a trustee appointed.

Trustee's (and Sometimes Debtor's) Powers and Duties

The trustee is now required to examine a Chapter 7 debtor to ensure that the debtor is aware of the consequences of a discharge, its effects on credit history, alternative relief under another chapter and the effects of reaffirmation. The trustee's avoidance power has been extended to one year after appointment of the initial trustee, if the appointment is within two years of the date of relief, but less than one year is left in said two-year period. Recovery was prevented from a transferee other than an insider under § 547(b)(4)(B). Perfection of a security interest for new value is now defensible from a preference claim if done within 20 days (rather than 10, as before).

Lessees or timeshare interest purchasers, including successors, assignees or mortgagees, are now allowed to treat rejection by the trustee for the lessor or timeshare interest seller as breach of the lease or to continue (and possibly renew or extend) the tenancy and recover any damages due to rejection, but only by offset against rent. The lessor cannot reject shopping center lease terms pertaining to radius, location, use, exclusivity, and tenant mix or balance. Agreement to perform security agreements, leases, or conditional sales contracts of aircraft equipment, vessels, and rolling stock, and cure of any default thereon, typically must now occur within 60 days of filing.

To the apparent exclusion of relief from stay rights, the trustee is now required in a Chapter 11 proceeding to perform obligations under an unexpired lease of personal property, except leases to an individual "primarily for personal, family, or household purposes," unless the lease is rejected or the court excuses performance under this requirement. The assumption of leases is now allowed if the debtor is in default for failure to pay penalty rates or "to perform nonmonetary obligations under the executory contract or unexpired lease." The amount necessary for Chapter 11, 12, or 13 cures "shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law." The Chapter 13 Trustee is now allowed to distribute payments "as soon as is practicable" after confirmation. For "cause," the court may now order that the trustee invest money of the estate in uninsured or non-guaranteed depositories. Recovery against a partner in a partnership (including limited liability partnerships?) proceeding is limited to the extent provided by nonbankruptcy law. Goods purchased pre-filing may be returned in Chapter 11 proceedings after notice and hearing of a motion "made" by the trustee, but not later than 120 days after filing, with the consent of "a creditor," if the return is in the best interests of the estate. The waiting period, unless further extended, prior to the sales of goods upon mergers controlled by the Clayton Act, is now extended to 15 days (from 10 days).

Property of the Estate

Upon conversion, from Chapter 13 to another chapter, property of the estate now consists of the remaining property as of the date of filing, and valuations of property and secured claims shall be as of the date of filing, except as reduced by any post-filing payments. However, if conversion is "in bad faith," property of the estate shall consist of "the property of the estate as of the date of conversion." Certain interests in liquid or gaseous hydrocarbons and proceeds from certain money order agreements are now excluded from the debtor estate.

Expedited Hearings

In most commercial or business Chapter 11 cases, where the noncontingent liquidated dates do not exceed $2,000,000, the court can now order that a creditors' committee not be appointed. If a debtor elects, plans must be filed within 160 days of the date of relief, with a 100 day debtor plan presentation exclusivity period (unless extended). A conditionally approved disclosure statement may be used, and a disclosure statement hearing and the hearing on plan confirmation may be combined.

In certain single asset real estate Chapter 11 cases, relief from stay is to be granted if a plan has not been filed within 90 days of the order for relief that has a

reasonable possibility of being confirmed within a reasonable time, or if the debtor has not commenced monthly payments of interest at the current fair-market rate to certain claimants secured by the subject real property. Relief from stay hearings have to be concluded within 30 days of the conclusion of the preliminary hearing, absent consent or "compelling circumstances."

Provisions Regarding Courts

The bankruptcy court "on its own motion or on the request of a party in interest" may now hold a status conference upon notice and issue orders to promote case expedition or economy, including combining the hearings on disclosure statements and plans and setting dates to file Chapter 11 disclosure statements and plans and to solicit acceptances of plans, for the trustee to act on executory contracts or unexpired leases, and to fix the contents of the notices of hearings on disclosure statements. The bankruptcy court is now allowed to enter injunctive orders in connection with Chapter 11 confirmation where a certain trust is established to compensate asbestos claims.

If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.

The new law excepts from discharge under § 523 those debts incurred in the course of a divorce or separation other than those described in § 523(a)(5) . . . Actual and unassigned alimony, maintenance and support claims were added as a seventh priority for distribution from an asset estate, ahead of most taxes.

In cases where there is a decision not to abstain from hearing a state law claim related—but not arising—under Title 11, or in cases under Title 11 which could not otherwise be commenced in federal court, appellate review is now allowed. It is also allowed from orders extending or reducing the debtor's exclusive periods to file and obtain acceptance of a Chapter 11 plan. Bankruptcy Appellate Panels are to be established in all circuits, absent "insufficient judicial resources" or "undue delay and increased costs to parties." An appellant is now required to opt out of Bankruptcy Appellate Panel jurisdiction at the time of filing the appeal, and any other party to the appeal is to opt out within 30 days after service of the notice of appeal.

Other Automatic-stay Provisions

The automatic stay does not now prevent the creation or perfection of statutory liens for *ad valorem* property taxes, if such tax comes due after the date of filing. Also excepted from the automatic stay are tax audits, issuance of notices of tax deficiency, demands for tax returns, and the assessment of taxes and demand for their payment.

Reaffirmation

A "clear and conspicuous" statement in reaffirmation agreements is now required, stating that reaffirmation is not required, along with a statement (in lieu of a hearing) from the debtor's attorney (if represented) that the debtor was fully advised as to the legal effect and consequences of the reaffirmation.

Administrative Claims

The court may now award reasonable fees for "actual, necessary services" and expenses rendered by the trustee, examiner, professional person or attorney, and paraprofessionals they employed. Some relevant factors are listed, and fees are now to be disallowed for several reasons, including that the time was not "reasonably likely to benefit" the estate or debtor, depending on the case. The U.S. Trustee, in accordance with its national guidelines, is now specifically permitted to object to the applications. The award of the expenses of a member of a committee of creditors or equity security holders is now allowable as an administrative expense.

Service and Notices

Special provisions, often requiring certified mail, are now required for service on insured depository institutions. Notices to creditors now require the name, address, and tax identification number of the debtor, but the omission of this information does not invalidate the legal effect of the notice.

Industrial Strength Law.

Industrial insurance claims, including liens in third-party cases. Social Security disability and Longshore & Harborworkers. Referrals and associations are invited.

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Seattle: 206-292-8627 Or toll free: 1-800-223-4529 401 2nd Ave. S. Suite 303 Seattle, WA 98104

Olympia: 360-754-7707 Or toll free: 1-800-225-4529 915 E. Legion Wy Olympia, WA 98501

Student Loans

Governmental units operating student grant or loan programs and "a person engaged in a business that includes the making of loans guaranteed or insured under a student loan program" are now prohibited from denying

> a grant, loan, loan guarantee, or loan insurance to a person that is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, or another person with whom the debtor or bankrupt has been associated, because the debtor or bankrupt is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of a case under this title or during the pendency of the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

Miscellaneous Provisions

Sovereign immunity was abrogated in many instances. Bankruptcy crimes were expanded. A bankruptcy review commission was established. The definition of swap agreements was amended. "Bankruptcy petition preparers" (other than law office personnel) are now regulated, and other technical amendments are in effect.

Effective Date

Except as stated below, the amendments apply prospectively only, and only as to cases filed after enactment, except for the waiver of sovereign immunity, which began immediately. One aspect of the increase in trustee's compensation begins one year later, the aircraft lease, vessel, and rolling stock provisions apply to leases entered in connection with a settlement of any proceeding in any case pending under Title 11, and the elimination of interest on interest applies to agreements entered into after the date of enactment of the amendments.

*Seattle attorney **A. Stevens Quigley** has been practicing bankruptcy law for the past 20 years.*

ABA Invites Nominations for 1995 Pro Bono Publico Awards

Individual lawyers, law firms, government attorney offices and corporate law departments that have demonstrated outstanding commitment to volunteer legal services for the poor and disadvantaged are eligible for five awards to be presented at the ABA Annual Meeting in Chicago. ***Nominations are due March 24, 1995.***

Nominators should choose only one worthy candidate a year.

Nominees have excelled in one or more of the following ways:

a) demonstrated dedication to the development of delivery of legal services to the poor through a pro bono program;
b) contributed significant work toward developing innovative approaches to the delivery of volunteer legal services;
c) participated in an activity which resulted in satisfying previously unmet needs or in extending services to underserved segments of the population;
d) successfully litigated pro bono cases that favorably affected the provision of other services to the poor; and/or
e) successfully achieved legislation that contributed substantially to legal services to the poor.

Nomination packets include:

a) nominee information sheet,
b) candidate's resumé,
c) nomination narrative, including
   - specific documentation/other materials demonstrating the candidate's pro bono contribution: articles, brochures and other documentation and
   - three or fewer names/phone numbers/addresses of supporting references, and
d) letters of support for the nomination.

Note: Format for all materials is seven copies each of unstapled, 8 1/2" x 11" three-hole-punched paper.

The Standing Committee on Lawyers' Public Service Responsibility will review the nominations in April and select up to five awardees.

Inquiries and materials to ABA Pro Bono Publico Awards, Division for Legal Services, Dorothy Jackson, 541 N Fairbanks Ct, Chicago, IL 60611-3314.

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THE JUDICIARY

Judge **C. Kimi Kondo** has been elected Presiding Judge of the Municipal Court of Seattle. Judge Kondo was appointed to the bench in 1990 by Mayor **Norm Rice** and has since been re-elected twice by the citizens of Seattle. She served as a municipal court magistrate from 1986-1990 and as acting presiding judge in 1993.

NEWS FROM HOME

After "many" years in Pioneer Square, **Kenneth Kanev** has moved his office north a few blocks to 1001 4th Avenue Plaza, Suite 2120, Seattle, WA 98154-1109; telephone (206) 223-1991.

David J. Dadoun and **Batur H. Oktay** have joined Foster Pepper and Scheffelman's litigation practice group as associates in the firm's Seattle office. Dadoun comes to the firm from the Federal Trade Commission; Oktay concentrates his practice in intellectual property and litigation. He was previously with a firm in Port Orchard. In addition, **Bradley W. Hoff** has joined the firm's litigation practice group; **Robert Kunold, Jr.**, has joined the corporate finance practice group; **Sharron Seung** is a member of the corporate group; and **Philip N. Tanaka** works in the intellectual property group.

Lane Powell Spears Lubersky has added **Sharleen A. Launer** to its intellectual property law practice. She was formerly a patent attorney at Immunex.

Two lawyers have joined Reed McClure in Seattle recently. **Deborah J. Youngblood** and **Kimberly A. Johnston** are the new associates, Youngblood coming from Bullevant, Houser, Bailey, Pendergrass, and Hoffman; Johnston from Atena Casualty and Surety Insurance Company in Atlanta.

Karen Schienberg of Vancouver's Baum, Etengoff and Buckley has been named to the Board of Trustees of the Washington School for the Deaf in Vancouver.

Mark Carter, a recent graduate of the George Washington University Law Center in Washington D.C., has joined the firm.

The Federal Bar Association of Western Washington has elected **Richard C. Tallman** its president for 1995. He is a partner at the firm of Bogle & Gates in Seattle, having had some white-collar criminal-defense practice group. The association is composed of civil and criminal lawyers who regularly appear in the federal courts.

Meade Emery, a tax partner at the law firm of Lane Powell Spears Lubersky, has been named professor and director of the University of Washington's new graduate-degree program on federal taxation. The program will begin at the University of Washington School of Law this fall. Emery, formerly assistant to the commissioner of Internal Revenue and Legislative Counsel to the joint committee on taxation of the U.S. Congress, will retain his relationship with the firm.

Ross and Taylor, a new commercial real estate firm, will offer legal service for real estate professionals throughout the Puget Sound region, principals **Michael Ross** and **David Taylor** have announced. Ross is a former partner in the real estate group at Schwabe, Williamson, Ferguson, and Burdell. Taylor is a former in-house counsel at First City Washington Inc.

Theodore R. Rogowski, former regional counsel to the Environmental Protection Agency's Region 10, has joined Karr Tuttle Campbell as counsel to the firm. He will work in the firms environmental practice and international trade relation areas.

Richard H. Wollenberg has been named senior vice president for the Longview Fiber Companies, Western Container Division. Lane Powell Spears and Lubersky has added **Gregory J. Duff** to the firm's professional-malpractice defense group.

Foster Pepper and Schefflemen has added two new associates: **Rodger I. Kohn** and **Tamara J. Warren** are the new lawyers in the operation. Kohn practices general commercial litigation and state and federal court and came to the firm from Dallas, Texas. Warren concentrates her practice in real estate transactions and is located in the firm's Bellevue office.

Horenstein and Duggan, P.S., in Vancouver has announced that attorney **Scott J. Horenstein** has been awarded the WSBA Family Law Section's Family Law Lawyer of the Year Award.

Three former attorneys with Williams Kastner and Gibbs have opened their own firm in Bellevue. **Phillip E. Egger**, **Robert I. Betts** and **John F. Sherwood** have opened Egger, Betts, Sherwood, P.L.L.C. All three are fellows in the American College of Trust and Estate Counsel and have some 70 years' combined experience in estate and tax planning and business acquisitions for clients in the Puget Sound area.

Clifton Elliott, a labor and employment law attorney for more than 30 years, has been named a partner at Davis, Wright, Tremaine in Seattle. Before joining the firm in an of counsel role in 1991, Elliott was with the Kansas City law firm of Watson, Sess, Marshall and Enggass.

The American Bankruptcy Board of Certification has announced that **John W. Campbell** has successfully completed the requirements for national certification in both business and consumer bankruptcy law.

Stephen K. Eugster and **Stephen P. Haskell** have merged their practices and are now known as Eugster Haskell Professional Service Corporation in Spokane.

Jim Triplet has relocated his practice to 921 North Adams, Spokane, WA 99201, telephone (509) 326-7046.

Lane Powell Spears Lubersky announced the election of six new partners in January. They are **Michael B. King**, **Michael K. Nave**, **Douglas E. Smith**, **Paul D. Swanson**, **Matthew E. Swaya** and **Timothy J. Tompkins**.

Bullivant, Houser, Bailey, Pendergrass and Hoffman in Portland has announced that **Jeffrey G. Frank** has been elected as shareholder in the firm. He practices in the Seattle office of the firm and concentrates on commercial litigation, property loss subrogation and construction and surety litigation. The firm is also pleased to announce that **Virginia R. Llewellyn** has joined the firm as an associate. She, too, practices in the firm's Seattle office.

Preston Gates and Ellis announced the election of four new partners in January. They are **Thomas E. Backer**, **Konrad J. Liegel**, **Robin L. Nielsen** and **Ruth A. Tressal**. All practice in the firm's Seattle office. In addition, seven attorneys have joined the Seattle office as associates: **Joyce Shui**, **Liam Lavery**, **J. Michael Phillips**, **Eileen Weresch-Doornik**, **Gary J. Kocher**, **Matthew Wells** and **Karen Turner-Wilcher**.

CLARK COUNTY REPORT

by **JOHN F. NICHOLS**

11th ANNUAL BEAGLE AWARDS

Call it Hollywood in Vancouver: the fabulous Kiggins Theater was the forum for the 11th annual Beagle Awards. After 10 years of forced rotating sites, the Beagles have settled on a quasi-permanent home at the Kiggins with a contract good through at least 1995. The searchlights scanned the December night, attracting the hopeful nominees like attorneys parachuting to a plane crash. In keeping with its policy, the Kiggins charged the usual $1.50 admission, only slightly up from that of last year's site. Our honorable emcee, Judge **Barbara Johnson**, followed the theme with a strapless black body suit, a la **Cher**, topped with the renowned string of Beagle Pearls.

It was lights, cameras and litigation as the simulated pewter or tinfoil Beagles were polished to a muted hue, poised in perpetuity adjacent to their respective hydrants, waiting for the anxious recipients. The winners, (complete with the director's cuts) in the various fields of dubious distinction for yellow-page advertising are: . . .

Stand-in of the Year:

Posing for yellow-page ads can be strenuous and downright dangerous at times. Thus no one should castigate Kenneth B. Shellan & Associates for using, as described in the fine print: "non-law firm spokespersons" in their ad. This "spokesperson," looking remarkably like **Leslie Nielsen**, is an apparent graduate from Harvard Law School and/or Police Academy II. The real question is, "Where's the office?" Sure they have "meeting locations" in Clark County and even in someplace called "Yacalt." Hint: **Kenny**, if you're going to be a local, learn the spelling and go for the bibs.

Special Ghost Appearance:

A previous technical awards winner is back with a new twist on an old theme. Brungardt-Lowe & Associates are still floating somewhere in the state. They may be "Tough, smart & know the law," but they still don't have an address while "serving Clark County" through the friendly "hot line." What sets them apart this year is the firm photo featuring **Robert Brungardt** and **Craig Lowe** and an unidentified third person. One must assume that she is "associates" or a "non-law firm spokesperson."

Twins:

Throughout film history a reassuring ploy has been to use the same actor in two roles, e.g.: **Haley Mills**—The Parent Trap; **Patty Duke**—Patty and Kathy; **Arnold** & **Danny Devito**—Twins; etc. Thus this year we have **Arthur D. Miller** and **Allen R. Peters** appearing just about everywhere in full-page telescope and spectacolor. Different names, same location, different phone numbers. And for you **Oliver Stone** buffs, if you add an apostrophe to Al's last name, they would both have '13' letters. Need I say more? Special subliminal kudos for Al's page 35 ad with a silhouette of **Tonya Harding** holding a bat over the head of a construction worker. Good Stuff.

Marketing Award:

(Also known as the making-lemonade-out-of-a-lemon award) To that clever, insidious marketeer: Arden & Brandenburg. A two-time winner of the Beagle of the Year, A&B were trying to "retire" the award. Instead of a new ad, they gussied up the old with this notation, "Two-year winner of the Prestigious Beagle Award." Have you no shame? Don't you know of my royalties? And please, return the Beagle to the proper authorities.

Best Editing Award:

It may not be up there with "Yacalt," but for sheer repetition, we have: Gregg, Langsdorff & Russell; also known as "Langesdorff" in various locations.

Slogan of the Year: No, **Mike Hicks**, I don't care if it "Doesn't hurt to call," you're not getting it again. This year it goes to Marsh, Stichman & Higgins for the simply stated:

"Experience.
Results.
Value.
Now."
NO!

Which barely beat out: "Stop - Reduce - Save" from Morse & Bratt and/or Jenny Craig.

BEAGLE OF THE YEAR

Never in our long, storied history has anyone tried so hard, so blatantly, so shockingly . . . yes, a true Beagle. This year's winner, **John** "Want Results" **Meader** is a modern classic. Starting with the blaring headline, "DIVORCE," to the background shot of a torn picture of a couple on their wedding day. She in full bridal gown, he in mismatched sport coat—an obviously ill-suited pair. Then a sidebar photo of a man being escorted into a patrol car, the same guy that was being arrested in the Mike Hicks ad. And finally, the *coupe de gross*, a foreground profile of John in pensive reflection straight from Rodin's thinker. God help me, I love this ad. It makes this job so much better than slopping Spam in Yacalt.

With the success of these first runs, one can only anticipate next year's sequels. Just think of it, "Want results IV - The final chapter." One can only pray.

(Editor's note: Congratulations to John Nichols, who now contemplates the follies of the Clark County Bar from the other side of the bar. Nichols was elected to the Clark County District Court bench in November and took his seat just before Christmas.)

KITSAP COUNTY REPORT

by **KATHLEEN M.S. WRIGHT**

Bar Installation. As always, a rousing time was had at the annual Bar Installation Dinner in January. **Anna Laurie** is the new president, with an agenda for a leaner, not meaner Bar. Other inductees: **Michael Kirk**, vice president; **Patrice Cable**, secretary; **Andrew Becker**, treasurer. Trustees are **Ron Anderson**, **Darrell Uptegraft**, **John Morgan** and departing president **William Crawford.** Awards given at the festivities included the Professionalism Award to **Russell Hartman**, who coincidentally received the Pro Bono Parking Place this same month, which is probably unrelated, but may be some nefarious plot. The Humanitarian Award went to **Lawrence Soriano**, for his extensive activity in the community as a youth basketball coach for 25 years and an unflagging support of the Bremerton Main Street project, which

needs all the support it can get. The President's Award from **Bill Crawford** went to **Susan Daniel** as a founder of both the Family Law section of the KCBA and the CASA Volunteer program, a shelter for abused women.

Somewhere Over the Rainbow. The most stunning moment of the dinner was a performance by **Constance O'Brien** (no longer **Bartholomew**) of the "Lullaby League" portion of the Munchkin song. Connie, dancing in full ballerina Munchkin attire, was on the losing end of a "quit smoking" bet with **John Mitchell.**

Queen to Bishop's 4. In the continuing chessboard of attorney life, relocations and departures abound. **Cynthia Rosa** is now with Tracy & McDaniel in Bremerton (former partner **Keith Buchholtz** moving to Olympia to be a parental unit). **Janet McCallister** joins **Cheryl Rife** in Silverdale. **Charles D. Creason** is sharing space with **Michael Alvarado** in Poulsbo. **Bridget Kenefick** is a new associate with Olsen & Olsen on Bainbridge. Likewise **Randall Hansen** at the offices of **Marilyn Paja**. **David Rovang** has a new associate in **Kevin Hull. Patrice Cable** is retiring from Armstrong & Cable, which will now be known as Law Offices of David Armstrong, which in turn acquired new associate, **David Roberts**. A call to the two Davids could be interesting for '70s afficiandos of Cheech & Chong. Is Dave there? No, Dave's not here. Wow man, he told me he was going to be there . . . . Let's just hope he's not smoking the socks.

Elevations. As stated in their own engraved announcement, "Botkin & Memovich have news to report: **H. Godfrey Banks** has bullied her way onto the letterhead . . . . Henceforth we will be: Botkin, Memovich & Banks . . ." There are those who say lawyers have no sense of humor?

Pro Bono Report. Attorneys in Kitsap County donated 1,173 hours in 1994 for low income representation and 307 for clinic services. An impressive number for a Bar of approximately 400. Recent "attorneys of the month" in addition to the aforementioned **Russ Hartman**, are **Ron Anderson**, **Kevin Moran** and **Robert Spader**.

Au Revoir. My last column for Kitsap County Report. A fresh, and probably more consistent, reporter will take over next month. **Joan Case** will be providing the reports, presenting the view from Port Orchard and the new area code. It's been fun, and my thanks to **Anna Laurie** for so tactfully relieving me of this pressing responsibility. Joan, you will learn that *no one* tells you any neat gossip anymore because "it might end up in *that* column."

LAW FUND REPORT

by **LAUREN MOORE**

The 1994 LAW Fund Annual Campaign raised more than $300,000 from members of the bar, law firms, corporations, foundations and private individuals. The funds will be distributed to the three organizations which, together, provide civil legal services on a wide range of high-priority legal problems to poor people in all 39 Washington state counties. The organizations are: Evergreen Legal Services, Puget Sound Legal Assistance Foundation and Spokane Legal Services Center. LAW Fund's mission is to ensure access to justice by raising funds to preserve and expand civil legal services for low-income people in Washington state.

The funds raised during 1994 reflect a 20 percent increase over funds raised in 1993. LAW Fund experienced a 65 percent increase in the number of donors participating in the Annual Campaign in 1994 over the number of donors participating in the 1993 Campaign. Thank you to our annual donors and to our new donors—your support is very meaningful.

Thank you, also, to McCaw Cellular as the newest corporate contributor to the LAW Fund Annual Campaign, to Cellular One Communications for the contribution of cellular phones during the LAW Fund Board telethon.

LAW Fund would like to recognize the lawyers and law firms, primarily in Spokane County, that contributed to the special campaign in honor of Jack R. Dean, founding president. Spokane County's campaign in 1994 brought in $30,000—$10,000 more than in 1993.

The LAW Fund 1995 Annual Campaign is underway and in need of your support. For more information, or to make an annual fund contribution, please write LAW Fund, 1326 Fifth Avenue, Suite 815, Seattle, WA 98101, or call (206) 623-5261.

PIERCE COUNTY REPORT

by **GEORGE S. KELLEY**

It is reported that Judge **Grant Anderson** broke his foot practicing for his driver's test for a driver's license motorcycle endorsement. It seems his honor has joined the ranks of those legal people who have purchased Harley-Davidson motorcycles. There are enough of them in the Pierce County legal community to form a subchapter of the Hell's Angels. We wish the judge a speedy recovery and will skip comments regarding the need for training wheels.

At the other end of the legal spectrum we are advised that **Kyron Huigens** is due to be published in the May issue of the *Harvard Law Review*. The title of his article is "The General Theory of Inculpation Based Upon Aristotle's Nicomachean Ethics." While the title is somewhat intimidating, we take comfort that someone in the county possesses sufficient intellectual ability to author such a publication. Movie and TV rights are up for bid.

Judge **Fillis Otto** was honored for her many years on the district court bench at a lunch hosted by her many friends and admirers. She was a casualty of the last election when she must have been mistaken for a Democrat. There was no particular format for the lunch, and many in attendance simply told their favorite Judge Otto stories. She says that she is presently doing civil litigation and mediation. We wish her well.

The Young Lawyers Section elected **Wayne Fricke** president, **Felicia Malsby** vice president/president-elect, **John Breckonridge** secretary, **Robin Wilson** treasurer and **Mark Schumock**, **Kathryn Comfort** and **Martin Duenhoelter** trustees.

Out in Puyallup, Campbell, Dille and Barnett announce that **Dorris J. Combs** has joined the firm as an associate. Also, **Fred Smith** has brought in **Todd Warswick** from Fife to help out in his office.

Finally, **David Bufalini** has left the offices of **John Messina**, et al. to open his own office in the Old Town section of Tacoma, which has more lawyers per square foot than Puyallup.

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(M.S., B.S. Computer Science)

and

Karl R. Hermanns
(M.S., B.S. Chemistry)

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He is licensed to practice law in both Oregon and Washington, and has represented clients in federal and state proceedings in both states. He has also spoken to industry groups on a wide range of topics including officer and director liability; creditor's rights and bankruptcy; credit union formation and regulation; and truth-in-savings regulation.

Mr. Santiago is a member of the American Bar Association; the Oregon and Washington state bar associations; and the Rules Review Committee of the Washington Division of Credit Unions.

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Evergreen Legal Services is seeking an experienced temporary or contract staff attorney for representation of farmworkers in our North Central Regional Office, located in Wenatchee. The position will involve the representation of migrant and seasonal farmworkers and other clients on crossover issues involving civil rights, education, housing and other issues affecting the region's limited-English-speaking population. Admission to the WSBA and two years' experience representing farmworkers is strongly preferred. Ability to speak and write Spanish required. This is a six-month position. Send resumé to Gail Jackson, Human Resources Manager, 101 Yesler Way, Suite 300, Seattle, WA 98104.

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WILL SEARCH

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Lyle Mills Bowman, 3-6-53 — 11-10-94. Longbranch, Washington. File in Pierce County. Contact Amber Peterson or Sandra Peterson Rees (206) 535-3107 or attorney Bruce D. Hovey (206) 564-3295.

Justin M. Paulson: seeking whereabouts of last will and testament for Justin, born 11-1-04. Please contact Connie at (206) 868-1226.

Mary K. Dinslage: seeking will of Mary K. Dinslage, deceased. Contact Suzanne C. Howle, 1250 Bank of California, 900 4th Avenue, Seattle. (206) 682-2333.

Audrey Diane Esarey: searching for the will of Audrey Diane Esarey, d/o/b 5/27/58, of Eatonville. Contact Robin Balsam, Tacoma, (206) 627-7605, guardian. Husband allegedly burned last will.

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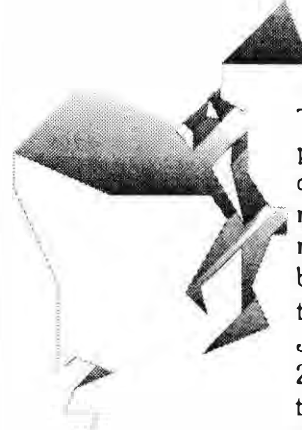

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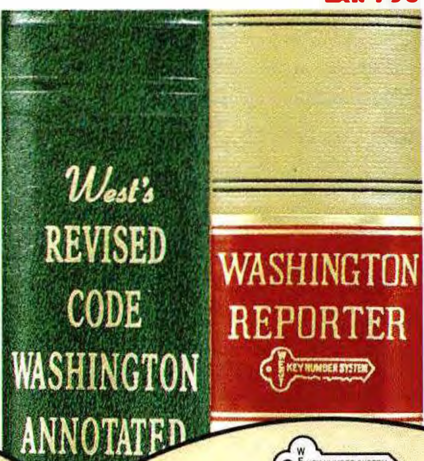

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