

LIFE BEGINS A Publication of the Washington State Bar Association Senior Lawyers Section

Volume 6 Summer 2004 Number 2

Challenging April 2004 Annual Meeting and Seminar

By Robert Berst

Resounding Success

More than 200 senior lawyers filled our Sea-Tac Marriott convention room to overflowing capacity on Friday, April 16, 2004. The committee expected about 125 attendees. To their shock and surprise, about 2-1/2 weeks before the seminar, we had 150 registered. The panic button was pressed and the committee working with the bar association and Marriott were, in the end, able to accommodate over 200.

What a Bargain

One more time, at the urging of the founder of the Senior Lawyers Section, Phil DeTurk, and with the approval of the committee, the seminar tuition was \$100. Included in this cost were morning beverages and pastries, a spectacular lunch buffet in the atrium, and a hosted reception. The lunch, which followed our established pattern, included Caesar salad and Italian-style antipasto to start, a choice of salmon, chicken, or both, assorted vegetables, and then, to top it off, an amazing variety of desserts.

Reception

The reception immediately followed the seminar and was once again hosted by James C. McClendon and the Pacific Financial Group, of which he is the president. Again, we surprised Jim by having even more people than last year enjoying his gracious hospitality.

Members' Comments

This year the committee made a special point of requesting comments on the evaluation forms. Oh, boy! Did we get them! One speaker had fairly high marks: "If enthusiasm was the only criterion, he would get a 5." Another di-



(I to r) Ken Eikenberry, Dave Hiscock, Dave Dorsey Phil De Turk, Bud Kight

rected to Ray Siderius: "Presented with zeal." About our former Washington State Bar Association President, Steve DeForest: "Delightful, humorous, entertaining, and true in detail and fact" and "Please have him again!" About Colonel Betz speaking on current estate planning issues: "Well done and important for this section" and "Absolutely great."

We received, and of course will consider, some suggestions for next year's program: Selling a practice – marketing, pricing, ethical concerns; can you afford to retire – how to determine.

You see, as was mentioned at the seminar, the evaluation forms are read by the committee and help to guide us on future programs and speakers.

CLE Credits

The seminar was approved for 6.25 credits, including 1.5 hours of ethics credit.

continued on next page

6 8

In This Issue

Challenging April 2004 Annual Meeting and Seminar	1	New Affirmative Defenses for Builders
ADMINISTRATIVE ALTERNATIVE DISPUTE RESOLUTION: The Feds Do It — Do You?	3	Midway Atoll
Cruise Taken by One for Benefit of All Members	4	The Washington State Bar Association Honors Its 2004 50-Year Members

Challenging April 2004 Annual Meeting and Seminar from previous page



Pete Francis, Chair, Senior Lawyers, Seminar Co-Chair



WSBA Past President Steve De Forest



Scott Osborne, Speaker

Attendance and Apologies

First and most important, the committee apologizes to all those who wanted to attend but could not because of the space limitation. The committee has some thoughts, but no real answers, on why the attendance was so great this year. Various plans are under discussion for next year.

WSBA Presence

This year's seminar event coordinator was Steve Rosen. He seems to perform some magic. He must live with his computer, because it seems as though one will receive an answer before the transmission is complete. In any event, thank you, Steve, for coordinating with the hotel, your staff, the committee, and the attendees. Also on the scene were Mark Sideman, WSBA CLE Director, and Stacey Hurd, CLE Program Coordinator, working front desk.



Including our excellent luncheon speaker, the Honorable Robert F. Utter, Justice Washington Supreme Court (Retired), we had thirteen speakers on a wide variety of subjects. As usual, the committee attempts to present subjects that are particularly germane to senior lawyers, and which may not be presented at most other seminars.

Program Planning

Thomas Wampold

Each of the members of the Senior Lawyers Section committee works at a team effort to select and put our seminar programs together. Thanks go to each committee member for all their efforts.

Pete Francis, Section Chair, Seminar Co-Chair G. Lawrence Salkield, Chair-Elect Joanne Primavera, Treasurer, Seminar Co-Chair Dudley Panchot, Secretary Robert Berst, Newsletter Editor, Seminar Co-Chair Philip DeTurk Roderick Dimoff Wes Foss Frederick Frederickson Herbert Freise Kenneth Selander



Luncheon Speaker Hon. Robert Utter, Justice, Washington State Supreme Court (retired)



Ray Siderius, Speaker



Phil De Turk, Founding Member, Senior Lawyers Section/Speaker

Administrative Alternative Dispute Resolution: The Feds Do It - Do You?

By James W. Sherry, Industrial Appeals Judge

Reprinted with our appreciation and with the permission of the author from "Administrative Law," Volume 22, Number 2.

Federal law authorizes and encourages federal agencies to use alternative dispute resolution (ADR) processes to promote expeditious settlement of administrative disputes in which the government is a direct or interested party. Authorized ADR processes include: conciliation, facilitation, mediation, fact-finding, mini-trial, arbitration, and the use of ombuds. The central motivating factors for federal ADR is that it will often result in a better, cheaper, and faster resolution of disputes than litigation assuming the parties select an appropriate ADR method and participate in good faith.

In 1990, Congress enacted legislation to eliminate the ambiguity in existing law regarding the authority of federal agencies to use ADR processes to resolve disputes. The Administrative Dispute Resolution Act of 1990 specifically permitted federal agencies to use ADR processes in virtually all types of programs and actions. The Act contained a sunset provision, so Congress reenacted and amended the 1990 Act in 1996. The Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571-584, does not mandate that agencies use the ADR processes, but does impose four requirements. The Act requires federal agencies to:

- develop an ADR policy;
- appoint a senior official, dispute resolution specialist, to lead the development and implementation of ADR policy;
- provide ADR training for the specialist and other key employees; and
- review and amend standard contract and grant agreements for inclusion of clauses providing for the use of ADR in resolving disputes arising under them.

The 1996 Act provides that ADR is only appropriate if the parties voluntarily participate in such processes. The Act also recognizes that ADR is not appropriate for the resolution of all disputes. The Act includes six circumstances in which agencies must consider not using ADR, but does not specifically prohibit the use of ADR in any particular circumstance. Agencies should consider not using ADR when: (1) there is a need for a decision with precedential value, (2) there is a need for the establishment of important govern-mental policy, (3) there is a need for consistency in decisions, (4) resolution of the dispute may significantly

affect third parties, (5) a full public record of the proceeding is important, and (6) there are issues of continuing jurisdiction.

The 1996 Act includes a confidentiality provision for dispute resolution communication or any communication provided in confidence to the neutral. The Act also includes specific exceptions to the confidentiality of ADR communications. These confidentiality provisions attempt to strike a balance between the critical need for confidentiality, if sensitive settlement discussions are to result in agreements, and the need for openness in government proceedings to preserve public legitimacy.

Having read this far, you may be questioning why you are reading this article. You may be questioning whether federal administrative ADR is relevant to you or a state agency that employs you. After all, administrative processes are by definition alternatives to resolving disputes in court (ADR). What more needs to be said or done?

The answer to your queries is simple. You are reading this article because you care about good service delivery. In addition, the Governor, Legislature, constituent groups, and parties to your administrative proceedings are constantly/continuously challenging you to provide more efficient and effective services including dispute resolution services. As the Feds have recognized, institutionalized administrative proceedings may become more formal, costly, and lengthy over time. Therefore, it is important for agencies to review their administrative processes from time to time to ensure that those processes satisfy their needs and the needs of the public. That process review should include a review of ADR methods to determine if some of those methods are adaptable or adoptable. Have you looked at the benefits of ADR lately?

James W. Sherry has worked as an Industrial Appeals judge (IAJ) for the State of Washington, Board of Industrial Insurance Appeals, since 1990. He was a hearing judge for two years before promoting to his current position as a review mediation judge. IAJ Sherry has mediated several important cases at the Board, one of which included approximately 130 appeals filed by a provider whose bills for services the Department of Labor and Industries rejected. Mr. Sherry has also made several presentations about mediation at CLE seminars sponsored by the Board and the Washington State Bar Association, and he will be a lead presenter at the upcoming AdminLaw Section CLE.

Cruise Taken by One for Benefit of All Members

By Phil DeTurk

"...cruising across the Canal, on a Sunday afternoon."

I did too; sat in the saltwater pool while the Veendam traversed the Panama Canal on Sunday October 12, 2003. Just like Columbus, facing the unknown, this was my first venture in this venue. But unlike the same Christopher whose day it was, I expected little danger on this structured cruise.

It all began when I was selected by the Senior Law Committee to find out if such travel was feasible for the entire group of WSBA seniors. The idea would be that, if so, CLE hours would be offered under a similar presentation in a future year.

While there were five season-ending cruises offered by Holland America, as it positions its cruise ships away from the Alaskan waters, where they sailed all summer, to the Caribbean for the winter season, I could choose only one. Thus it was that I embarked from Vancouver on September 28th on the Veendam; one other ship left from Seattle around the same time. These five ships had different terminal ports, with mine slated for Tampa, Florida, 20 days later.

Many of you have probably decried such a method of travel and relaxation. I know I felt that way until we undertook just such a trip on my now departed wife's 50th birthday. That one was scheduled for the Greek Islands.

Due to the *Achilles Lara* affair, we ended up spending our trip in the China Seas instead. Of course that meant a cruise in a later year so that we could, in fact, visit those formerly unobtainable islands. Now, in 2003 I was setting out on my eighth such adventure.

What do you do on a cruise? There are so many activities it is difficult to pick just the few, which I am going to share. From the early AM exercise hours until the disco dancing after 11 p.m., there are things to do on a ship. This doesn't allow for the numerous day trips available at extra charges when the ship is in another port. So my days at sea comprised breakfast in my room or sit-down style in the main dining, room before bridge lessons, followed by computer or library time.

Another sit-down meal (or one could go through the buffet in another eating area) at which there were no less than eight choices of entrees, then perhaps a movie - usually just below the first-run status - or swimming, lazing on the deck, or participating in some group contest (this cruise had one based on the survivor theme which was for younger people). Or there was bingo and, when at sea, the casino where you could lose real money (or win, too).

Normally dinner was a dress-up affair, with five formal and seven informal nights. The rest were casual, but once again if you just wanted to eat in your room, or go through the buffet, they were available, with no dress code.

After dinner, and there were two seatings for those who wanted to do the more ceremonious meals, there would be more movies (two different films a day), as well as a show.

The latter featured regular show people, some of whom would come on board and leave while we moved from one port to another. Plus, there was the regular group of entertainers who put on four different presentations during our 20 days.

There was also an Indonesian night, an amateur presentation, and still another featuring crewmembers from various countries. During the Canadian Thanksgiving we were entertained by the numerous people from north of the border who were on this cruise.

Another way to be entertained was to attend the night chamber music groups, whose eclectic numbers were close to jazz at various times. Drinks were available at several bars for \$2.50 each. There were numerous continued on next page

CLE Credits for Pro Bono Work?

Limited License to Practice with No MCLE Requirements?

Yes, it's possible!

Regulation 103(g) of the Washington State Board of Continuing Legal Education allows WSBA members to earn up to six (6) hours of credit annually for providing *pro bono* direct representation under the auspices of a qualified legal services provider.

APR 8(e) creates a limited license status of Emeritus for attorneys otherwise retired from the practice of law, to practice *pro bono* legal services through a qualified legal services organization.

For further information contact Sharlene Steele, WSBA Access to Justice Liaison, at 206-727-8262 or *sharlene@wsba.org*.

Cruise Taken by One for Benefit of All Members from previous page

private cocktail parties for which bottles had been purchased at the ship's well-stocked liquor store. Or bottles could be brought aboard from the places visited, although there did not appear to be any bargains there.

Regardless of these many occurrences, there would always be rooms available for the CLE presentations. On average there could be two hours a day when a ship was at sea. Speakers could come from the various participants, since each of us has some particular talent upon which one could be willing to share with the listeners, with updated notes on the subject.

Ten Ports of Call Visited

This particular cruise stopped at ten different ports exclusive of the Tampa arrival. Some were quite well done, while others left a lot to be desired. It would certainly appear that personal tastes would dictate which such offshore adventures would be chosen. Usually there were at least eight such available, with no less than two being for the rugged type; that is people who wanted to bicycle or snorkel or hike up mountains. There was golf, but few takers, as I played twice, with no others from the ship, in what were hot and humid conditions in both Mexico and Jamaica.

There were also historical trips, which enabled one to better understand another country. I found the one in Nicaragua to several cities, the large lake and volcanoes very interesting. A river cruise to see exotic birds, as well as a crocodiles, was illuminating in Costa Rica.

The time in Panama was extremely worthwhile. My side trip allowed for a 50-mile bus journey to the Chagras River, which during the canal construction 90 years ago had been a ferocious body of water. Now it is quite docile due to the dam. My group visited a resort open to all tourists. We ascended to the highest point of Panama by a skitype chair, which brought us to a summit from which we then climbed 13 stories to the top of a viewing tower where the canal and river were easily seen.

Few of the passengers took this trip, however, opting to go into Panama City with its 50 or more buildings of over 50 stories each, or just staying on the ship enjoying the weather. Each person could choose their own form of activity when the ship berthed.

Additional trips were taken in Cartagena, Columbia, and Jamaica. The ones I chose were not as time or information-filled as others available. In the former, I visited a castle and museum in the old city, whereas others went out into the country meeting some of the people of that country. In Jamaica, some decided to take a trip from the top of a mountain to the sea by bicycle. I played golf.

Our last stop before Florida was Grand Cayman. This is a small island with miles of ocean-fronting buildings, which were either hotels or condos. Our van trip passed these en-route to a turtle farm. This was worth seeing; the small turtles that can be easily picked up, grow into very large terrapins in four years; then most are harvested for soups and meats. Some are released into the sea to later mate and produce more small turtles as the cycle continues.

The island has over 100 banks, which are staggered throughout the city of Georgetown. One could walk around the town, with its ten blocks of buildings, where stores, restaurants, and financial centers existed.

Since there were five cruise ships from different lines in the port at one time, numerous tourists wandered around in ninety-degree heat to buy souvenirs or see a banker.

From Tampa, one could fly back to Washington, or else engage in visiting parts of Florida. I left that city in a rented automobile driving to Pinehurst, NC, in nine hours. I have a condo there, so this entire journey was another way to get to NC from WA.

Prices for this escapade were as low as \$1,500 per person, with inside cabins (no views) to much higher rates with large cabins that have verandahs attached. Sea-view rooms for a couple could be had for around \$2,000 each. Depending on the fullness of the ship weeks before the scheduled departure, there may be bargains as the cruise line does not like sailings with empty cabins.

On this particular cruise, which stopped in San Pedro, CA, just outside of Los Angeles, three days from BC, a number of people from Canada took a very inexpensive Sun./ Wed. cruise leaving the ship in Calif.

Yet at an average of \$200 per day per person, which included all the food you wanted, an adequate bedroom, entertainment, and travel to foreign ports, one could hardly do better on any vacation.

The rub is that this ship did call on foreign ports. According to section 274 (h)(2) of the IRS Code, cruises like this are not tax deductible. A person can deduct no more than \$2,000 per year of business expense so long as the purpose of the cruise is business related, the ship is registered in the US (most are not), and all of the ports of call are in the US.

If the other criteria are met, a cruise from Seattle to San Diego could produce business-expense deductions. More favorably viewed would be one from Portland east on the Columbia River to the Snake and back. As long as adequate hours aboard are spent at meetings, such an affair might meet the criteria of the Code (an example is where the professional spends six hours each weekday in seminar meetings).

Forgetting the tax implications, if enough members of our organization are interested, we could procure cabins

continued on next page

Cruise Taken by One for Benefit of All Members from previous page

reasonably well-priced. We can offer a minimum of 15 CLE hours. We can cruise for anywhere from 10 to 20 days visiting ports similar to those mentioned herein, ending up in

Florida (usually Fort Lauderdale).

In summary, I felt that the meals were outstanding; so many choices, many were never partaken. No one went hungry on this trip. Some of the ports of call were poorly selected with inadequate time to enjoy them; Cabo San Lucas was the main offender in this regard.

While numerous shows were presented, they generally were not of interest to me. I did enjoy three movies, including *The Pianist*. The two swimming pools and various hot tubs were bigger than the ship's average. The cabin televisions included CNN, but in order to watch the baseball playoffs, we had to hope the main bar, with its five television sets, would pick up the Fox presentation of the Yankees and Boston series. We missed almost all of the Chicago Cubs' efforts to make the World Series.

We had several rough-water days, when travel on the tenders was quite difficult, especially for those without all of the maneuverability they once possessed. So some fell or slipped and suffered minor injuries requiring medical treatment. This can always happen, but there were few warnings about such conditions ahead of time.

Leaving the ship in Tampa was very organized. I was debarked by 10:00, at the Tampa airport by 11:00, and left the area with my Hertz vehicle by 11:30.

All in all, it was a nice venture undertaken for all of you. One night we had a free cocktail hour thrown by HAL for those who had sailed before. The winner of the award for the most days on board a company ship had over 500, which adds up to almost 18 months at sea. I would certainly not chose to spend so much time (and money) on such a method of vacationing. Going on a cruise once every four years or so is adequate, whether with CLE hours or not.

WSBA SERVICE CENTER

800-945-WSBA (9722) 206-443-WSBA (9722) questions@wsba.org Monday-Friday, 8 am to 5 pm

New Affirmative Defenses for Builders

By Hazel Bergtholdt - Herrig, Voigt & Stoll, LLP

Reprinted with our appreciation and with the permission of the author from "Construction Law," Fall 2003.

On April 23, 2003, the Washington State Senate passed Substitute House Bill 2039 which will add a new section to RCW chapter 4.16. The apparent purpose of this section is to give builders certain affirmative defenses to claims made by owners and to prevent the courts from continuing to use the "Discovery Rule" when determining whether a construction contract suit has been filed timely.

A. The Situation Prior to RCW 4.16 Revision:

Prior to April 23, 2003 certain courts, like that in *Architectonics Construction Management, Inc. v. Khorram,* 111 Wn.App 725, 45 P.3d 1142 (2002), were apparently applying a new "discovery" rule when interpreting both the statute of repose and statute of limitations in construction contract cases. Under this analysis, it must be determined if the defect was discovered within the six year statute of repose. Then it must be decided if the suit, based upon the defect, was filed within six years of discovery. Additionally, prior to this new law, there were no special affirmative defenses applying only to construction defect cases.

B. The New Law

The legislative notes to Substitute House Bill 2039 acknowledge that it was written to prohibit the use of the "Discovery Rule" by the courts. The Bill adds a new section to chapter 4.16 of the Revised Code of Washington which adds eight affirmative defenses.

This new law applies to builders involved in activities defined in RCW 4.16.300 which include:

"...all claims or causes of action of any kind against any person, arising from such person have constructed, altered or repaired any improvement upon real property, or having performed or furnished any design, planning, surveying, architectural or construction or engineering services, or supervision or observation of construction or administration of construction contracts for any construction, alteration or repair of any improvement upon real property."

1. Affirmative defenses

The affirmative defenses listed in Substitute House Bill 2039 can be divided into two groups: (1) those that apply to contracts with homeowners only; and (2) those that apply to any kind of construction contract.

New Affirmative Defenses for Builders from previous page

The defenses which specifically apply to homeowner contracts only include:

- 1. Homeowners' unreasonable failure to mitigate the defect by: (1) not allowing the builder the chance to remedy it; and (2) failing to give builder timely notice to remedy the defect after homeowner discovers it. (1)(b)
- Homeowner's failure to follow written builder's or manufacturer's maintenance recommendations. (1)(
 c)
- 3. Homeowner causing the defect by ordinary wear and tear, misuse, abuse, neglect, or use of the structure constructed for something other than what it was intended. (1)(d)

Those defenses which apply to all construction contracts include:

- 1. Defects caused by unforeseen acts of nature, such as: "...weather condition, earthquake, or manmade event such as war, terrorism, or vandalism." (1)(a)
- 2. Defects for which builder has obtained a valid release. (1)(e)
- 3. Defects which builder has corrected. (1)(0
- 4. Defects, regardless of the time of discovery, where a suit was not filed within the later of: (1) six years after substantial completion of construction; or (2) six years after work being terminated. (1)(g)
- 5. Preservation of defenses for disputes not covered by this section. (1)(h).

2. Exclusions

Any claim for personal injury or wrongful death arising from a construction defect is excluded from this section.

C. The Revision Clarifies the Statute of Repose but Further Confuses Matters with Additional Defenses.

The new law clarifies that the six year statute of repose will not be subject to the "discovery rule" by clearly excluding "discovery" from the section:

"In contract actions the applicable contract statute of limitations expires, regardless of discovery, six years after substantial completion of construction, or during the period within six years after the termination of the services... (emphasis added) RCW 4.16(l)(g)

Many of the other defenses, especially those designed solely for contracts with homeowners, are not so clear. The court will need to decide what the legislature meant by:

- a homeovvner's unreasonable failure to minimize or prevent damages in a timely manner
- timely access being required to be given to builder for repairs
- timely notice to a builder being required after discovery of a violation by homeowner
- showing that a homeowner had written notice of builder's maintenance schedule
- "reasonable maintenance schedule"
- "substantial compliance" with builder's maintenance schedule
- "valid release" for a particular violation
- "substantial completion" of construction
- termination of services

It is also not clear how these defenses will interrelate. For instance, will the repairs, which some of the affirmative defenses require, further extend the statute of repose spelled out in (1)(g)? This would only serve to discourage builders from completing repairs.

In clearly defining one issue facing builders, the legislative has potentially opened up even more questions with the additional affirmative defenses tacked onto this bill.

Speak Out!

Wanted: Lawyers to volunteer to speak to schools and community groups on a variety of topics. For more information about the WSBA speakers bureau call Amy O'Donnell at 206-727-8213.



Midway Atoll

By Claude M. Pearson

January 28, 2004 – Not long ago I did a program for the Tahoma Audubon Society, which was interested in acquiring a copy of some film taken on the portable periscope camera of the submarine I served on. The camera took high-quality 8 mm film that lay in a storage canister for almost 50 years, in the possession of my skipper, John M. Bowers, Naval Academy Class of 1938. After his death, his widow had the film converted to color video and brought copies to a reunion celebration. The purpose of the periscope camera was to photograph Japanese islands, fortifications, and in verifying our ship sinkings. In the hands of the Pogy camera officer it recorded many scenes on Midway of the mating ritual and nesting habits of the birds of the Atoll. Here is the text of my talk to the Society.

MIDWAY ATOLL

A perfect place for nesting albatross and tired, stressed-out submariners.

The scenes of Midway lagoon and the nesting albatross you are about to see were taken on the motion picture camera of the USS Pogy (SS 266) a World War II fleet-type submarine that made more than a dozen stops at Midway on its war patrols against the Japanese Empire. The movies of the nesting gooney birds were taken in the winter-spring months of 1945.

In 1944 and 1945 when I served as Torpedo and Gunnery Officer of the Pogy, I did my first bird watching at age 23. To me, Midway was a very dull and boring place where the entertainment during our rest period was to watch the antics of the gooney birds, lie in the sun, and drink beer.

Midway is sub-tropical, on the same latitude as the Hawaiian Islands, of which it is the most western atoll. In 1942, when Japan tried to seize Midway in their attempted conquest of America, it was the scene of one of the greatest naval victories of all time, ranking in decisiveness with the famed Battles of Trafalgar and of Lepanto. After the battle, there was no news of Midway because the submarine service was then the Silent Service.

After the battle, Midway's only importance to the Great Sea War was as the most western base for the submarine campaign against the enemy and as a rest camp for tired and stressed-out 23 year olds, like myself, who had volunteered for submarine duty.

In 1937, Pan American Airways built a hotel on Midway to house about 50 persons who were passengers on PanAm's China Clipper, a big, four-engine amphibious plane that landed on Midway's lagoon for refueling and overnight stop on its weekly flights to and from Alameda, California, and Hong Kong, China. The Pan American Hotel on Midway was taken over by the Navy and re-named the Gooneyville Lodge. It could accommodate the officers of five re-fitting submarines.

Submarine duty in wartime was several things, but it was mostly hard and uncomfortable work, especially in a sub-tropical climate. One of my shipmates wrote these mocking words about that duty:

Are you homesick for the good old days on the boats? If so, try these steps to recall those wonderful times:

- Go to sleep on a shelf in the closet with the curtains drawn, after a couple of hours have your wife shine a flashlight in your eyes and mutter: "Sorry, wrong bunk."
- 2. Don't eat anything that doesn't come out of a can or that you can't mix with water.
- 3. Spend two months in a series of dark places like a movie theatre, basement or other enclosed place.
- Spend six hours sitting in your car, with engine running and your hands on the steering wheel, and don't go anywhere.
- 5. Take readings on your light and water meter every fifteen minutes for four hours.
- 6. Strap a broken-up bicycle on your kitchen floor.
- 7. For the proper noise level put a gasoline lawnmower on your living room floor and run it for six hours.
- 8. Get up at midnight and eat a peanut butter and jelly sandwich on stale bread that's been frozen for a month.
- Remodel your bathroom, dividing your bathtub in half and lowering the showerhead to chest height.
 Turn off the water while you soap down. Store garbage and your dirty laundry in the other half of the bathtub.
- 10. Take your dirty laundry to the most crowded laundromat you can find and then dry your wet clothes on the diesel stack of a semi-truck.
- 11. Fill your humidifier with oil and set it on high.

For eons, Midway Atoll's only inhabitants were nesting birds. The Laysan Albatross was the most numerous. For the last hundred years, the birds shared their island with the Americans who established a Trans-Pacific cable

Midway Atoll from previous page

station there in 1906 and built a Naval Base there when war threatened in 1940. Now in 1998, the birds are to have their island restored to their exclusive use. It is a perfect place for them and there are no more tired submariners.

In 1945 I spent three, month-long rest periods on Midway between war patrols, arriving tired and underweight with spirits flagging. It was a delightful place for rest and renewal. Watching the antics of the mating and nesting gooney birds was an endless comedy. Graceful in flight, they were clumsy klutzes when trying to land, holding their feet forward to act as brakes and often landing short and rolling head over tail. If they were funny landing their takeoffs were even more hilarious, legs flailing, trying to gain flight speed to get enough lift for their heavy bodies. Many take-offs had to be aborted with the same effect as the rough landings. They did not appreciate being laughed at, because they are essentially dignified birds and, airborne, they are among the most graceful of birds. Eggs were nested everywhere including the Airstrip. Before Air Operations, a bevy of sailors carefully placed the eggs off the runway and the following morning they were back in the exact nesting spot as the day before.

Rest, fresh food and the gooney birds restored our spirits and sent us back to sea in the best shape possible to do our duty and endure the tribulations listed above.

Footnotes:

Since my original writing, Midway has become a pristine sanctuary where the lagoon has been dredged and all buildings removed. The U.S. has permitted Japan to build a memorial on Midway to the thousands of their Navy men and aviators who perished in the battle. It will be remembered that they lost all the aircraft and aircraft carriers that had six months earlier savaged Pearl Harbor.

 $Limited\ daytime\ visits\ are\ now\ permitted\ to\ the\ Japanese\ Memorial\ and\ for\ bird\ watching.\ The\ Atoll\ is\ a\ popular\ tourist\ destination\ in\ the\ winter\ and\ early\ spring.$

Recently I learned while visiting Bangor that the Pogy periscope camera continued to be used by the Navy until the development of digital photography in the mid 90s.

Information FOR Your Clients

Did you know that easy-to-understand pamphlets on a wide variety of legal topics are available from the WSBA? For a very low cost, you can provide your clients with helpful information. Pamphlets cover a wide range of topics:

Alternatives to Court **Bankruptcy** Communicating with Your Lawyer Consulting a Lawyer Criminal Law Dissolution of Marriage (Divorce) Elder Law Landlord/Tenant Lawyers' Fund for Client Protection Legal Fees Marriage The Parenting Act Probate Real Estate Revocable Living Trust Signing Documents Trusts Wills

Each topic is sold separately. Pamphlets are \$9 for 25, \$15 for 50, \$20 for 75, and \$25 for 100. Pricing for larger quantities is available on request.

To place your order or for more information, please contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA. Sales tax is applicable to all in-state orders.



Thursday, September 16, 2004

Seattle Marriott Waterfront Hotel 2100 Alaskan Way Seattle

> Reception 5:30 p.m. (no-host bar)

Dinner/program 6:30 p.m.

WSBA office use only:

Date Check No. _ Amount _ No. AAD40916

You are cordially invited to attend The Washington State Bar Association's **Annual Awards Dinner and Business Meeting**

Please join us for an evening of inspiration as we celebrate the accomplishments of the 2004 WSBA Annual Awards recipients. All members of the legal community are invited to attend.

		vv:	SBA NO	
Address_				
Phone	E-mail			
Affiliation/	organization			
20 is \$65 (or a phote limited, so	on by August 20 is \$58 per person (table of per person (table of 10 = \$650). To make yo ocopy) with your credit-card information or please make your reservations early. Reservy September 10, 2004. (Refunds cannot be	our reser check pa ervations	vation, pleas ayable to WS and payme	se return this form SBA. Space is nt must be
Master	Card Visa No		Exp. date	·
	it appears on card			
	e ad di sklus galakki adalah anta adalah kekemb i.			
	(no. of persons) X \$ (price per			TOTAL
Please list	the names of all attendees and indicate me	al choice	es. Be sure to	o include yourself
				vegetarian
			100	
				vegetarian
			salmon	□ vegetarian□ vegetarian
		E Service	salmon	□ vegetarian
		A CONTRACTOR	salmon	□ vegetarian
			salmon	□ vegetarian
would like organizatio	te that this event will not have assigned seat to purchase a table (10 people), you may do on here:	o so by li	sting the nar	ne of your
Send to:	Washington State Bar Association Annual Awards Dinner 2101 Fourth Avenue, Suite 400 Seattle, WA 98121-2330 Phone: 800-945-WSBA or 206-443-WSBA	A• Fax:	206-727-832	20
				elow.

The Washington State Bar Association Honors Its 2004 50-Year Members

Robert Edward Anderson	Spokane	J. Porter Kelley	Bellevue
David Statler Back	Seattle	Eugene Harbord Knapp	Bellingham
John Rodgers Blackburn	Bothell	Gustav George Kostakos	Seattle
Homer Orrin Blair	San Angelo, TX	Edward Marshall Lane	Tacoma
Robert F. Brachtenbach	Cottage Grove, OR	Roger Irwin Lewis	Renton
Stanley Keith Bruhn	Mount Vernon	Scott Bruce Lukins	Spokane
Leonard M. Cockrill	Seattle	James Cooper Lynch	Wenatchee
James Richard Cook	Shoreline	Philip P. Malone	Poulsbo
Martin James Durkan	Renton	Joseph Raymond Matsen	Bellevue
Eleanor Hunn Edwards	Clyde Hill	Keith Donald McGoffin	Tacoma
George J. Fair	, Bellevue	Hugh Richard McGough	Seattle
Carol Anita Fuller	Tumwater	Robert John McKanna	Veradale
Herbert Henry Fuller	Tumwater	John H. McRae	Spokane
Richard L. Gemson	Seattle	James Francis McAteer	Seattle
Warren John Gilbert	Mount Vernon	Michael Mines	Seattle
William Joseph Grant	Spokane	Robert Stanley Mucklestone	Seattle
Harold T. Hartinger	Tacoma	Charles Steele Mullen	Kent
George Michael Hartung	Seattle	Gregory Nelson	Montesano
Raymond Lester Horn	Scottsdale, AZ	John Byron Norton	Tumwater
Douglas Andrew Jacobsen	Blaine	John Leland O'Connor	Spokane
Gordon Leslie Jaynes	Surrey, UK	Paul Martin Poliak	Seattle
Jon Marvin Jonsson	Seattle .	Loren Dunn Prescott	Friday Harbor
			•

Dale Riveland	Shoreline
Wayne Roethler	Longview
D. Scott Sandelin	Camano Island
Richard Alan Satterberg	Burien
Leonard William Schroeter	Seattle
Raymond Huber Siderius	Seattle
Thomas Allen Swayze	Tacoma
Edward W. Taylor	Kirkland
Don Peter William Taylor	Olympia
Donald Leroy Thoreson	Seattle
Phillip Stanley Tracy	Tacoma
Philip Andrew Trautman	Seattle
John Bertram Troup	Tacoma
Charles Edward Tulin	Anchorage, AK
Robert F. Utter	Olympia
Elvin J. Vandeberg	Tacoma
William Emmett Wall	Seattle
John Homer Ward	Sedro Woolley
Herbert Edward Wieland	Raymond
Robert W. Winsor	Seattle
Stanley Wilbur Worswick	Gig Harbor
	_

2003-2004 Senior Lawyers Section

Officers

Chair Peter D. Francis Chari-elect G. Lawrence Salkield Treasurer Joanne M. Primavera Secretary Dudley B. Panchot

Committee Members

Robert A. Berst Philip H. DeTurk Roderick D. Dimoff H. Weston Foss Frederick O. Frederickson Herbert H. Freise Jerome L. Jager Kenneth J. Selander Thomas S. Wampold

WSBA 50-YEAR MEMBER TRIBUTE LUNCHEON -**September 29, 2004**

Senior Lawyers Section Members Are Cordially Invited –

The WSBA will hold its second annual 50-Year Member Tribute Luncheon honoring those individuals who were admitted to the Washington State Bar Association in 1954 and are still members of the Bar. As a member of the Senior Lawyers Section, we hope you will be able to join us!

> Wednesday, September 29, 2004 11:00 a.m. - 2:00 p.m.

Reception/registration & no-host bar, 11:00-12:00 Luncheon & program, 12:00-2:00

> Sheraton Seattle Hotel & Towers 1400 Sixth Avenue, Seattle

Registration deadline: September 22

Cost: \$45 per person

Note: \$40 for early-bird registrations made by August 20

The luncheon will be one of celebration and inspiration as the WSBA honors the accomplishments of our colleagues. For registration information, please contact the WSBA Service Center at 800-945-9722 or visit the website at www.wsba.org.

This is a publication of a section of the Washington State Bar Association. All opinions and comments in this publication represent the views of the authors and do not necessarily have the endorsement of the Association nor its officers or agents.

Washington State Bar Association Senior Lawyers Section 2101 Fourth Avenue, Suite 400 Seattle, WA 98121-2330

Bulk Rate U.S. Postage Paid Seattle, WA Permit No. 2204



If you're not already a member of the Seni	or Lawyers Section for 2003-2004, join now!
Send to: Senior Lawyers Section	Name
Washington State Bar Association 2101 Fourth Avenue, Suite 400 Seattle, WA 98121-2330	Address
	City/State/Zip
Please check one:	Phone #
	E-mail address
Enclosed is my check for \$20 for my annual section dues made	WSBA #
payable to Washington State Bar Association. Section membership dues cover October 1, 2003 to September 30, 2004.	Office Use Only
(Your cancelled check is acknowledgement of membership.)	Date Check # Total \$