



Thanksgiving

Before we rush from Thanksgiving into the Christmas season, I hope all of you took the time and effort to "be thankful." One thing for which we all should be thankful is the remarkable weather. Need I remind you that we live in South Dakota? I could handle riding horseback (outdoors) on Thanksgiving Day every year.

"Y2K"

November was another month of travel, but for business rather than bar purposes. I attended a legal seminar in San Diego that was for attorneys who represent telephone cooperatives. It is always a privilege to interact with attorneys from all over the country who face many of the same issues we face here in South Dakota. One of the presenters at the seminar was a Washington, D.C. attorney who explored some of the "Y2K" (year 2000) issues. Not only do law firms face the challenge of making sure their own computer pro-

grams will successfully bridge the potential "Y2K" gap, we have the additional duty of advising clients (corporate clients in particular) of the potential liability to them for failure to make a smooth transition into the year 2000. From the perspective of representing banks or telephone companies, for example, it does not take a lot of imagination to foresee possible liability problems. This is one deadline that lawyers need to address before the last minute.

Election

I was also in Washington, D.C., right after the election. In that political hotbed, the most discussion seemed to center around the newly elected governor of Minnesota. That particular election certainly caught the attention of everyone across the country.

Public Service

This past month I participated in one of those dreaded parental duties--parent teacher conferences. One of my daughter's teachers was having her class do a murder trial, and I was asked to be the judge. I contacted two young lawyers in the Pierre area to help each side prepare for trial. The trial was held in the courtroom of the Sully County courthouse in Onida. That experience was interesting from my perspective, because I have never been a judge in a murder trial before--even a "mock trial." I tried to put together jury instructions, with some help

from a local judge, and then at the last minute, I threw the whole set of pattern criminal instructions in my car -- in case I forgot something. Of course, I had forgotten a few things in my preparations for the trial. Also things come up in a trial that one never anticipates, so it was a good thing I drug the entire set of instructions to the trial. I hope the students learned something from this experience; I know I did. It is not easy being a judge. It is hard to remain impartial when one side or the other is struggling to present a case. Sometimes, I wanted to step down from the bench and take over. I imagine judges have those same thoughts as they sit on the bench. You never really appreciate someone else's role until you try to fill it.

State Bar of California

The headline of the Bar Leader (an ABA publication for Bar Association Officials) for the fall, 1998 issue is "Bar in Crisis: No Money, No Staff--State Bar of California in Bad State." The corresponding article in the publication reveals that the headline is not overstating the case. The California Bar continues to be in a state of crisis, just over one year following the start of the train wreck caused by Governor Wilson's veto of the Bar Association's authority to collect dues.

Once again, I am happy to be from South Dakota, where I believe our Bar Association is functioning very efficiently. We will continue to strive to serve the needs of our members. That is

one of the reasons I value your input. Please, keep the suggestions and comments coming--I appreciate hearing from you.

Happy Holidays,

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INTER ALIA

by Tom Barnett

There are several important notices contained in this issue of the State Bar Newsletter. Please note that the Certificate of Trust Account Compliance appears immediately following this page. All active members of the State Bar, excluding judges and out-of-state lawyers who have not represented a SD client during 1998 must complete the certificate and sign it. All members of a law firm, including partners, associates and "of counsel" must sign it. A new provision has been added concerning professional liability insurance. The Certificate of Compliance now requires lawyers to advise whether they have insurance. The information contained in an **accurately** completed certificate **is not nor will it be public**. Also, printed in this Newsletter are new Rules adopted by the Supreme Court. Effective January 1, 1999, lawyers will have to advise their **clients** of the absence of insurance. Further, advertising purchased after January 1, 1999 will have to state the absence of insurance.

It is estimated, nationally, that about 30% to 40% of practicing lawyers do not have professional liability insurance. We think that the statistic in SD is lower, but have no empirical data to support that belief. The current certificate will document the situation in SD for 1998. We will then compare the statistics after 1999 to ascertain the change. Obviously, the disclosure requirement embraces the concept that the absence of insurance is a material fact which should and now, pursuant to Supreme Court rule, must be disclosed to clients. It will also have the effect of encouraging those lawyers who have elected to practice without insurance, to purchase insurance rather than make the disclosure.

For those lawyers who nevertheless elect to practice without insurance, please note the disclosure requirements, particularly as they apply to your office letterhead. For those lawyers concerned about the cost of insurance, the market is and has been "soft" for the past 7 or 8 years. A sole practitioner should be able to purchase insurance for no more than \$1800 per year -- less per lawyer for law firms. At least one insurance company (ALPS) offers discounts for attendance at CLE programs and risk management.