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WASHINGTON STATE BAR NEWS

George W. McCush State Bar President 1965–1966

MEMORANDUM

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INDEX

EDITOR'S NOTE

Lawyers experienced consternation when they read a headline in the March 9th Sunday edition of *The Seattle Times* – "Most Lawyers Incompetent, Says Judge Revelle." The article began – "Most of King County's lawyers are incompetent in the courtroom, Judge George H. Revelle believes." The speech, given at a Seattle-King County Bar Association luncheon, is still a subject of comment. What he really said starts on page 5.

Although his observations relate only to King County, they may serve as a prod to other county bar associations to take a hard look at their trial bar. The Seattle-King County Bar Association has named a committee to review the proposed reforms.

The Seattle Times doesn't approve of the latest six-two decision of the U.S. Supreme Court in the criminal law field, page 22. Justice Robert C. Finley has a point of view on whether the high court has gone too far, page 7. The two new presidential appointees to the high bench may be espousing a similar point of view.

Professional Corporations, Part II appears on page 16. The Wall Street Journal reported May 14th that the IRS has lost another case in the Tenth Circuit involving a medical professional corporation and that "a decision is expected 'any time now' on a similar case in the Fifth Circuit. IRS will await that ruling before assessing its position, the service says."

SJR5, which would have established a commission on judicial qualifications for discipline and removal of judges, passed the senate but not the house. Unfortunately pressures were brought from certain quarters which account for its failure of passage.

Will the premium for mandatory malpractice insurance become a part of the State Bar dues? President Payne Karr responds on page 12.

ABA President-elect Bernard Segal selected Tacoma as the site for his law day address. While in our State he spoke out on shortage of young lawyers, crime, preventive detention, "The Trouble With Lawyers" and campus disorders, page 9. Special thanks are due John McLauchlan who made a special trip to Tacoma to take the picture to give more statewide coverage.

The cover story series on past state bar presidents continues, page 4 . . . An added feature is the tear-out ethics opinions, in the center of this issue, which should be removed and placed in your black desk book furnished by the State Bar Association . . . Law Day offered excellent material for quotes quoted, page 4 . . . George Prince and James Leach double-team Cornelius C. Chavelle, page 2 . . . Proof reading averted the following headline appearing on page 12, "Attorneys Of Any State Bar Eligible for Admission to D.C. Bar Without Faking D.C. Bar Exam" . . . Stanbery's off-color mermaid joke was left in, page 19 . . . Don't miss reading the Skamania Report, especially the last paragraph, page 20.

LETTERS

Bail Reform

Editor:

This letter is in response to the letter of Cornelius C. Chavelle in the April edition of the Washington State Bar News regarding Bail Reform. In his letter Mr. Chavelle states, "of late our newspapers have been filled with accounts of defendants who have been released on their personal recognizance or on a nominal amount of bail, who have immediately gone out and robbed or committed other offenses involving injury to persons or property." It is correct that the newspapers have been filled with accounts of persons committing other offenses while awaiting trial; however, it is not correct to state that these persons have been released on their personal recognizance or on "nominal" bail. In fact, it has been the experience of the Municipal Court of the City of Seattle Department Number One, where the personal recognizance system has been used to a great extent, that the persons so released do not commit other offenses while awaiting trial.

The only jurisdiction in which the Federal Bail Reform Act has been adequately tested is the District of Columbia. In an article in The Nation magazine, March 24, 1969 entitled, "Bail for the Rich, Jail for the Poor" Harry Subin, Associate Director of the Vera Institute of Justice, and formerly staff attorney in the Office of Criminal Justice, United States Department of Justice analyzes the experience of the District Court for the District of Columbia. While the whole article should be read because of its thoroughness, the following excerpt seems most germane:

> "The Act appears to have raised the overall rate of release, the result, most likely, of bringing the problem of the inadvertent detention of good risks to the attention of the judges. It does not appear, however, to have much affected the use of money bail in serious felony cases. As always, a substantial number of the releases in such cases, and all but a handful of those in detention, were faced with the requirement of posting a money bond.
>
> "The traditional bail system, therefore, continued to thrive under the Bail Reform Act. In view of this, it was somewhat surprising that a number of the District's judges and prosecutors began to protest openly that the Act was forcing them to release dangerous criminals. They cited particularly dramatic instances of crimes committed by defendants released pending trial. They did not point out, however, that while only one-fifth of all defendants who were released gained their freedom by posting money bail, nearly half of all the crimes charged against released defendants were committed by those let out on money conditions. The Bail Reform Act could hardly be held responsible for the crimes committed by these defendants who would, presumably, have been released even were there no such Act."

There is no question that the causes of the rising crime rate must be determined and eliminated; however, there are as yet no facts which indicates that proper Bail Reform is one of these causes.

JAMES G. LEACH

Seattle

Editor:

Mr. Chavelle to the contrary notwithstanding, I still submit that (1) bail may legally be required only to secure defendant's appearance at trial and (2) the defendant whose continued liberty threatens the public should receive, not preventive detention, as some now urge, but a speedy trial, hopefully leading to conviction which will authorize commitment. The right to a speedy trial has long been thought of as a right of the defendant, as it is; but it is also a right of the public which the public should now insist on more than formerly. Thus re-arrest of a defendant out on personal recognizance or on bail would seem to justify resetting his case for trial at an earlier date, rescinding any continuance that he may have obtained.

As Judge Birdseye points out in your April issue, shortening the period between arrest and trial imposes added burdens on the prosecuting attorney who is already overworked and understaffed. The King County commissioners should be praised for recently authorizing more deputy prosecutors, and encouraged to give still more help if needed. The prosecuting attorney in his turn should continue to demand adequate financial support and, rather than opposing bail reform, should add it to the list of reasons for his having a larger budget.

GEORGE N. PRINCE

Seattle

Deterrence of Crime

Editor:

Question 1. We should not favor mandatory minimum prison terms imposed by statute. By doing so, we would seem to be evidencing distrust in our judges upon whose judgment we should be relying. If our experience with marihuana offenses is any indication, the mandatory minimum features will gather dust as well as disrespect for the law.

Regarding questions 2 and 3 answers depend on one's attitude toward the function of the Department of Institutions. Is it simply to keep convicted felons out of circulation or is it to attempt to help these men take productive places in society? I do not hesitate to say that neither judges nor the Board are generally too lenient, but I am shocked to see the meager resources allocated by the rest of us to the extremely important functions of probation and parole counselling.

Many thanks to the Editor for raising the issues. Perhaps this asso-

ciation can now provide some leadership in defining and pursuing goals in this area.

JOHN M. DARRAH
Assistant U.S. Attorney
Western District of Washington
Seattle

Editor:

I strongly favor increased sentences for individuals convicted of committing "inherently dangerous" (Query the *Bouie* vagueness of such a definition) misdemeanors or felonies while armed with any firearm. This is sensible application of deterrent where it **counts**, applying the police power with a rifle instead of a shotgun, and is vastly preferable to costly and useless legislation inconveniencing honest sportsmen in Washington . . .

DON M. GULLIFORD
Seattle

Editor:

Public and legislative opinion always move in the direction of mandatory and minimum sentences limiting the discretion of courts and parole boards. There is the cathartic effect in legislating "firmly" against the law violator and in claiming that the courts and the parole boards are too lenient. They call this "backbone."

Apparently this "backbone" disappears in any meaningful discussion about what is wrong with our city, county and state jail systems. We still hold to the medieval philosophy that repression and destructive punishment are effective crime deterrents. We make only small gestures in the direction of humane, uplifting and rehabilitative jail housing and treatment.

We in Spokane are only now about to get a jail that will be better than the local dog pound.

May I suggest that you take a poll of the Bar on this question:

> Do you favor making provision for connubial visits between married penitentiary inmates and their spouses?

ROBERT D. DELLWO
Spokane

THE PRESIDENT'S CORNER

Our lives as lawyers are totally absorbed in dealing with people. Daily we are in touch with clients and with other lawyers. High on the list of daily contacts is our relationship with those with whom we practice law and with our secretaries. In court, we deal with judges, with juries and with witnesses.

Beset by occasional and inevitable disappointment in such relationships, I am sure many of us are tempted to envy those in industry who handle tangible products produced by machines, not by people. But their lives are not free from the same difficulties that confront us. Or so it seems from these observations of Mr. John L. McCaffrey, former President of the International Harvester Company who writes:

> "What corporation presidents think about at night is not the profit and loss statement, but the problem of getting people to work together effectively.
>
> "Guiding a business isn't easy but it's absorbing. The trouble with industry is that it is full of human beings . . . you will learn that a drill press never sulks and a drop hammer never gets jealous of other drop hammers. This cannot be said for people.
>
> "You will find out that you have, with people, the same problems of preventive maintenance, premature obsolescence, or complete operational failure that you have with machines. Only they are much harder to solve.

> "Problems change, techniques change rapidly, machines can be transformed in a period of months—but, unfortunately, people change slowly if at all. And you cannot re-arrange or retool the human part of your business with the same frequency as you re-arrange or retool the plant.
>
> "People are unquestionably the major problem of the presidents of companies in the United States. If you are the executive officer of your company, your success in handling people will bespeak the progress of your corporation."

I wonder if the ability of every lawyer to deal with people, always thoughtfully and fairly, is not the most significant single element of his effectiveness.

Payne Tarr

QUOTES QUOTED

. . . Baccalaureate addresses since my boyhood years have dwelt on the speed of material change, on the rapidity with which one can cross the continent, communicate by voice and electric or electronic impulse and destroy our material civilization. But I suggest to you that the disorders which plague and perplex us today are less the result of change than the effect of resistance to change.

The King Prejudice that Thoreau spoke of a century ago, has reigned another hundred years, and too many of our institutions have come to be in the words of John W. Gardner, "managed for the benefit of the people who run them."

Former Health, Education and Welfare Secretary John W. Gardner gave three Godkin lectures at Harvard University last March. He said in part:

> "Some believe that the race issue has been overemphasized recently. It hasn't. Slavery was the heaviest burden the national conscience has ever borne. The burden was thrown off . . . but inequality remained . . . that mocked the most ardent professions of the American ideal . . . A reckoning was bound to come and it has come in this generation."

Aristotle recognized that poverty was the parent of revolution and crime and that "even when laws have been written down, they ought not always to remain unaltered."

Samuel Johnson called the law the last result of human wisdom acting upon human experience for the benefit of the public. As such, common law and statutory law have grown and continue to grow dynamically in a constantly changing order.

★ ★ ★

Refusal of persons of influence and power to listen to and redress in a peaceful, lawful manner legitimate grievances of the people is directly productive of violence. Legitimacy of a grievance is, of course, sometimes a subject upon which reasonable minds may differ; but such differences are no justification for violence in a truly democratic society among a reasonable people.

As wisely stated by Dr. David L. McKenna of Seattle Pacific College:

> "Youth needs to learn the value of respect for authority, while adults need to learn the value of authority that can stand the test of criticism and social change."

Violence is thought by some to be necessary just to get attention. Violence to attract attention to grievances is just as hurtful to and intolerable by society as violence for any other reason and tends to become a cloak to envelop and spread webs of crime which, if unchecked by law paralyze all means of orderly change; and equality and justice are lost entirely in a fog of naked force.

Justice and equality then depend upon courageous people, eager and willing to consider new ideas, people who are humane, receptive and tolerant, who are not afraid to make decisions and choose the side they support, and on law which guarantees and protects individual rights, law which protects the people and their property from lawless invasion both at the hands of criminals and at the hand of government itself . . .

—From the remarks of Alfred J. Schweppe, Law Day, May 1, 1969, Presiding Judge's Department, King County Courthouse.

THE COVER

In many respects, the Integrated Bar as we know it in Washington is the work product of George McCush. It was he who served as chairman of the 1933 committee which first considered the reorganization of the State Bar Association. He was then appointed by the Supreme Court to the State Bar Commission to implement the newly enacted State Bar Act. Logically, he was next elected to the first Board of Governors of the reorganized State Bar Association to represent the Second Congressional District.

George McCush's concern for and participation in the Bar Association did not terminate there. In 1940, he was appointed by the Board of Governors to the Committee of Law Examiners and served in that capacity for fourteen years. In 1965, he was named president of the Washington State Bar Association.

The son of pioneer Bellingham parents, he has lived and worked in Bellingham nearly all of his life. His dedication to his local community is nearly as great as his dedication to the Bar. He has served as Chairman of the Bellingham City Planning Commission and in 1960 as president of the Bellingham Chamber of Commerce. As president, he followed in the footsteps of his father, the late William McCush, a Bellingham banker, who held that office in 1931.

George McCush has practiced law in Bellingham since 1927 and is a partner in the firm of McCush and O'Connor. He is active in numerous fraternal and civic groups including Rotary, Masons and the Bellingham Yacht Club.

It is clear that there are few men who have surpassed George McCush in their life long deducation to a profession and community.

CAMDEN M. HALL

THE DISAPPEARING ART OF ADVOCACY

by **GEORGE H. REVELLE**
Judge, King County Superior Court

There is a major development in the practice of law over the last fifty years or so that appears to have been observed by many persons but has not been the subject of much public or professional attention. This is the fact that today there are an increasing number of lawyers who appear in court and try cases but who are not qualified to do so.

Despite the far-reaching character of this development, there has been a general disinclination to grapple with it. Now, however, Warren E. Burger, a Judge of the United States Court of Appeals for the District of Columbia Circuit, has spoken out to the profession. Judge Burger's pronouncement stands put like a beacon, if for no other reason than that someone finally has had the courage to say in public what many have had in their minds for a long time.

Judge Burger stated that the legal profession has very poor standing in the eyes of the public and that the principal reasons for this were "the incompetence, the misconduct and the bad manners and lack of training of a great many lawyers who appear in the courts". He went on to state that 75 per cent of the lawyers appearing in the courtroom were deficient by reason of either poor preparation or a sheer incompetence in trial work and that many jurors had been critical of lawyers for their bad courtroom manners and their abuse of witnesses. Judge Burger declared that the reason for this 'decline of the trial bar' is the basic change that has taken place in legal education in the shift from law office training to law school training -- the impact of this change was greater on the trial bar than other branches of practice.

To me, however, the significance of incompetence in trial work goes far beyond merely providing a poor image of the legal profession. Its main significance is the injury caused the public -- the waste of time, the needless increase in expense of litigation, the unnecessary congestion of the courts and clogging of their calendars, the waste of taxpayer's [sic] money, the poor presentation of cases, and the discoloration of the administration of justice.

If these charges are realistic, then we may well ask -- where does the main responsibility lie for doing something about incompetence in trial work and the great injury that it causes to the public? I submit that it rests primarily on the judiciary and that the judiciary should face up to it and look it squarely in the eye.

There is today a responsibility on the part of the judiciary to exclude from trial work those lawyers who assume to try cases without adequate qualifications therefor -- a responsibility for protecting the public from the practice of law by incompetents, whether they be laymen or lawyers. Indeed, there is only a shadow line between the practice of law by nonlawyers and the practice of law by incompetent lawyers.

Photo by John D. McLauchlan

HON. GEORGE H. REVELLE

Moreover, the cases portray with full force that it is the judiciary's responsibility to protect the public against both. For the courts have inherent power to admit to the Bar and to disbar, to discipline lawyers and to investigate their professional conduct. F. Trowbridge vom Baur, "Revitalizing the Trial Bar," 55 *A.B.A. Journal* 138 (1969).

Amen, Amen, and Amen.

But what of King County in 1969?

I suggest that you and I should plead quilty. This quote of vom Baur is a valid observation of our advocacy today. By advocacy I mean the art of pleading the cause of another, of persuading, of supporting or recommending active espousal of an idea or a result. The most sophisticated act of advocacy occurs in the arena of combat in the courtroom. All else in the office and on the street comes easy if you can handle the courtroom scene. Why? Principally because the courtroom has an advocate meeting an advocate face to face. Out of this crucible comes justice.

The Standard of Trial Practice in King County

As a judge who has observed hundreds of trials and lawyers in fourteen years, I have a duty to call this to your attention.

One of the surprising things I observed shortly after assuming the position of judge was the phenomena that as a lawyer I had no idea of how trials were conducted except as I personally tried them. The lawyers I opposed seemed to prepare, present and conclude trials in the same manner as I did. Those who consider that they are good advocates will now say, "What is Revelle fussing about?" My answer is that the good advocate meets the good advocate and hasn't the slightest idea what the standard of practice

is. There are no well-defined or well-known standards.

After I had conducted the first approximately one hundred trials I became convinced the standard of trial practice was low and exceeded by only about 5 per cent of the lawyers of King County. The tragedy was and is that the great majority of trials were by lawyers not of the 5 per cent, not of the so-called defense bar or so-called plaintiff's bar. These specialists do not begin to try the most cases. I need only remind you that tort cases amount to only about 30 per cent of our trials. Divorce trials and criminal trials swamp our court. There are not now or ever will be enough specialists to handle this great volume. Yet the public is intitled to competent advocacy which will produce just results.

Steps Taken by the Bench

Thus, we judges have a clear responsibility to report the situation, stir up those who can do something about it and take specific steps ourselves.

Some of this we have done. The King County bench has:

– Gone to schools and seminars for judges, lawyers, appraisers, psychiatrists and social scientists;

– Created, installed and promoted use of jurors' questionnaires so that all lawyers have the same factual information for voir dire;

– Created and used jurors' handbooks;

– Participated on its own time to update rules, simplify procedures and create and use Pattern Instructions;

– Promoted a settlement calendar;

– Used pre-trial procedures such as divorce pretrial affidavits;

– Instigated divorce custody investigation service;

– Employed law students, graduates and new members of the bar as law clerks/bailiffs in a limited internship program.

Possible Steps To Be Taken by The Bench and Bar

But this is not enough. We need your help. We must join together and be creative with new and expanded approaches to raise the standard of advocacy.

Possible solutions, some new, some old, are suggested by Mr. vom Baur. I shall mention these and others of my own briefly, hoping one of these will catch fire here and result in a joint bench-bar committee on Trial Advocacy to chart a course for both of us.

Clerkship

First, consideration should be given to a revival of the old clerkship or apprentice system. New Jersey does it. Or a trial clerkship to provide training in trial work only could be created.

Examining Board for Trial Lawyers

Second, before or after admission to the bar but before a law graduate would be permitted to try cases in courts, he should be required by you to go through a trial clerkship of six months to a year, pass an examining board of lawyers and judges. In the meantime, admission to the bar should enable him to engage in office practice, though not in trial work.

(Parenthetically, this is where every lawyer here has thought, lawyer-like, of 100 reasons why these won't work. Is it too much to ask that you think of reasons to make them work?)

A Bar Association Advocacy Committee

Third, with respect to a presently admitted member of the bar who has shown by his conduct that he is unqualified to try cases, a judge, or committee of judges, should refer the matter to the appropriate bar association advocacy committee along with a transcript of the trial involved and comments of the judge in writing for a closed door critique. This should be most effective with one of the greatest weaknesses - lack of preparation. For example, why shouldn't the lawyers concerned know immediately after the trial of 90 per cent of the cases I have tried that I needed, and they suffered from, not following the rule of filing a trial brief?

Some of the acts of incompetency I frequently observed are:

–Assume the judge knows more than he does;

–Seldom are briefs of the law or memorandum of authorities submitted by both parties or even one;

–One-sided arguments are made without reference to opposition's points;

–The trial court or jury is not offered any alternatives;

–Apparent that witnesses have not been interviewed. Facts of case are not known or are not developed in useable form;

–Failure to use cheap pre-trial procedures available;

–No knowledge of what equipment will be in the courtroom or is available free;

–No experience or practice with visual aids.

A Continuous Trial Institute

Fourth, the committee on continuing legal education should set up a continuous trial institute on a regular basis, adequately financed, adequately staffed and on the scene of actual trials. I have long felt that the Board of Trustees of this association, who must still have some of my dues money in that $50,000 reserve they have, should spend most of it on improving the standard of practice rather than just count it every four months. I am aware of present fine efforts by the ABA, Washington State Bar, Defense Research Institute and ATLAS in the continuing legal education program. These fit their purpose but miss trial advocacy entirely. Take the current ATLAS seminar in Las Vegas March 14-15. Its program subjects concern - not trial advocacy - but how to get more money out of their "one client defendant - the insurer". Or look at the current WSBA Real Estate program on Basic Real Estate Law - not a trial

(continued on page 26)

HAS THE HIGH COURT GONE TOO FAR?

Has the U.S. Supreme Court, with recent decisions affirming the rights of individuals in criminal law proceedings, leaned over too far and stepped on the rights of society?

The answer of Robert C. Finley, justice of Washington State Supreme Court, is an emphatic "yes." While Justice Finley is not alone in criticism of the high court's recent criminal law decisions, he stands out as sort of a maverick among the critics.

Authority of the Court

He has no quarrel with the Supreme Court's right or authority to make the decisions. He observes:

"There is no question about the authority or power of the court. It is the proper agency for interpreting the Constitution. But I do question its judgment and discretion in several recent decisions."

Justice Finley dismisses the charge that the court has overstepped its role. He philosophizes:

"There are two schools of thought on the court's role. One believes the Constitution deals in specifics and operates automatically, and the court's only job is to find the law. The other recognizes the need for a sociological and legal evaluation of the Constitution's function.

"I subscribe to the latter. To say that the Constitution is self-executing is rather mystical . . . it's almost folklore. If the Constitution were so clear, we would have had all the answers years ago. And we could replace the Supreme Court with a small computer."

For part of the confusion surrounding the high court's role, Justice Finley blames the Supreme Court members themselves. He accuses them of hiding behind the Constitution, and not owning up to the fact that it is the men interpreting the Constitution who change it and adapt the law, not the Constitution itself. He continued:

"The better part of valour for the Supreme Court justices would be to be forthright about their role in interpreting the law . . . and accept clear-cut utter responsibility. The responsibility as individuals would be a prime restraint on the court. It recognizes

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This article is based on "Has High Court Gone Too Far?" by Don Carter (Seattle Post Intelligencer, February 27, 1969), "Who is on Trial – The Police? The Courts? or the Criminally Accused?" by Justice Robert C. Finley (57 The Journal of Criminal Law, Criminology and Police Science 379), and judicial opinions of Justice Finley.

HON. ROBERT C. FINLEY

that, while the human being is capable of great things, he is also capable of mistakes in judgment."

He adhers to Supreme Court decisions, even though he may not agree with their reasoning. *State v. Davis, 73 Wn.2d 281, 438P.2d 185 (1968).*

Criticism

Justice Finley does not allow his respect for the authority of the court to diminish his belief that plenty of criticism is necessary. He charges:

"There are a great many people who feel very strongly that the Supreme Court is kind of set apart. But the Supreme Court justices, in their constitutional role, should be no different than presidents, governors and legislators. The justices should be subject to the criticism of lawyers, laymen, and political science people.

"In terms of law and order in our American communities, the dangers are too great and the stakes are too high for me to accept without qualms and to simply try to 'learn to live with' the full thrust of the decisions of the Court majority in the search and seizure, confession, and right to counsel area. Even the bounds of stare decisis are not such that prior rules and decisions become impregnable to the forces of reason, logic and practicality.

"Ping Lui, a sometime Chinese jurist, poet, and thinker, who lived, as some say, in the Fourth, or perhaps it was in the Sixth or Seventh Ming Dynasty, once concluded a dissertation on the law and the judicial process with the rather pertinent philosophical musings that:

> Protocol, seniority, and the trappings of authority are distracting. They may even confer a tentative acceptability or respectability upon judicial resolution of problems of human relationships. But to be worth the candle, the judging function must be a search for truth. In such a perspective the attributes of authority, even the personal element in the authorship of

judicial decisions, have little universal value. Time, experience, and workability will provide the ultimate test as to the truth and value of judicial decisions.

Should not the troublesome decisions discussed herein be judged by the same standards?"

An Overview

Justice Finley's principal objections to the recent criminal law decisions are based on his belief the high court has "failed to take an overview" of the effects and applications of its decisions.

"While the Supreme Court is deciding a specific case involving the circumstances of, often, a single individual, it is also establishing precedents which will affect the whole nation."

"In a sense, every due process decision strikes a balance between order and liberty, between the rights of the individual and the rights of society. It is somewhat difficult to capsulize the apparent value structure and judgment which moved the bare Court majority of five in *Miranda* to weight the scales so heavily in favor of the individual who is in the custody of the police as a suspect–as one about whom their investigation has revealed probable cause to effect his arrest. The basic underlying value judgment seems implicit in a quotation from Justice Schaefer of the Supreme Court of Illinois–which Chief Justice Warren cites with approval in *Miranda:*

> 'The quality of a nation's civilization can largely be measured by the methods it uses in the enforcement of its criminal law. Schaefer, *Federalism and State Criminal Procedure,* 70 Harv. L. Rev. 1, 26 (1956).'

"It seems to me that the proposition, as quoted, is deficient and inadequate. It is but another flashy phrase, another cliche, which obscures more than it reveals. In my judgment *Miranda* involves an unrealistic emphasis upon what the majority deems to be a 'higher quality civilization'. A more proper frame of reference (in terms of indicating the balance to be struck) might be: 'The quality of a nation's civilization can largely be measured by the extent to which it is able to maintain law and order while utilizing methods of law enforcement which are not unreasonably inconsistent with fundamental principles inherent in the concept of due process of law'. At least the competing values, those of society and those of the individual, are cast in a balance-like context by the latter phraseology rather than unduly emphasizing the allegedly superior interests of the individual.

"The problem of 'the one and the many' is older than Plato in its philosophical, juristic, tribal and even familial connotations. But the Court majority opinion in *Miranda* quotation from Justice Schaefer, fail to give more than lip service or bare recognition to the interests of 'the many'–those of society."

Lack of Emperical Data

On the *Escobedo* decision, Justice Finley charges the court made its decision "without study and data on whether or not it would weaken law enforcement."

"In *Miranda* it is somewhat heartening to note that the Court is at least willing to consider the meager statistical records and data concerning police standards and practices which are presently available in conjunction with its decision to directly assume authority for upgrading those standards and practices by judicial pronunciation and articulation. Unfortunately the only *current* report referred to by the majority was that of the 1961 Commission on Civil Rights. Other studies referred to by the court majority, such as the report of the National Commission on Law Observance and Enforcement, Report on Lawlessness in Law Enforcement (otherwise known as the Wickersham Report) are of dubious validity since they deal with police practices in the 1930's. Even Chief Justice Warren admits the inadequacy of the data before the court: '[T]he examples given above [of police excesses and brutality] are undoubtedly the exception now, but they are sufficiently widespread to be the object of concern.' Similarly, the 'manuals' referred to by the majority in their dissertation on existing police interrogation techniques are not specific guidelines set out and followed by particular police departments–but are textbooks, which admittedly have a widespread circulation, but there is no data indicating that they are specifically, or even generally, followed by any number of law enforcement agencies. Nevertheless, in the light of the previous willingness of the current court majority to generalize as to standards of police administration on the basis of little or no empirical data, the willingness of the Court in *Miranda* to consider even the sparse statistics available is gratifyingly constructive.

"Is there today in the United States an even remote possibility of a real, appreciable and widespread, tendency toward the so-called 'police state'? It would seem reasonable to suggest that it might take the cooperation of at least a few others in positions of power in order for law enforcement–the police–to rule supreme, unchecked and unchallenged. **There is considerable question in my mind as to whether numbers of local, state or federal law enforcement officials in positions of responsibility and authority have clearly and consistently demonstrated 'secret-police-like' characteristics. I certainly see no evidence of such 'tendencies' on the part of an entire police force in any given locality or area."**

Sporting Theory of Justice

In the *Mapp* Case, Justice Finley says the court seemed to apply "a sporting theory of justice on the criminal side of the law."

"Given even a technical, and unintentional, violation of the applicable laws of arrest, the accused can claim that all that has subsequently transpired is irrevocably 'tainted'. Comparisons or analogies as to the

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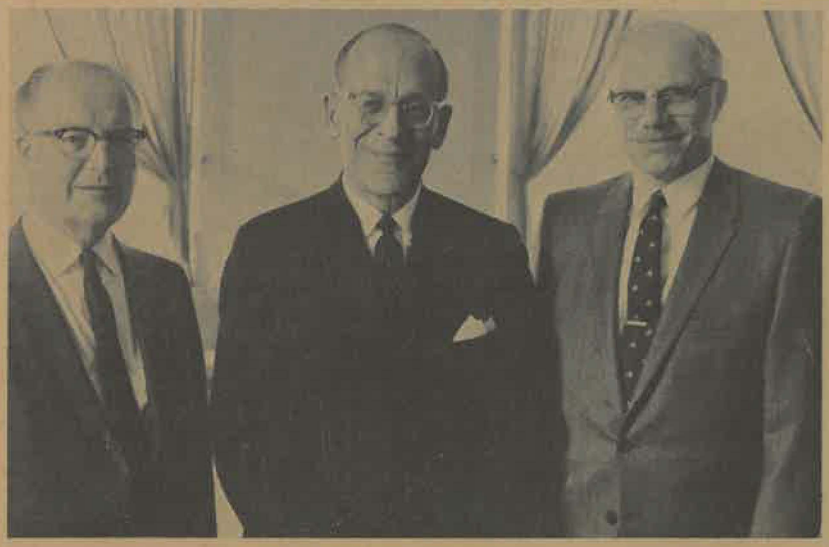

Photo by John D. McLauchlan

ABA President-elect Bernard G. Segal addressed the Pierce County Bar Association and the Rotary Club at a Law Day luncheon at the Winthrop Hotel. Left to right: **Joseph H. Gordon**, ABA Treasurer, Tacoma; **Bernard G. Segal**, Philadelphia; and **Charles Gleiser**, President of the Pierce County Bar Association.

Segal Comments on the Legal Profession and American Society

In a press conference in Seattle and in luncheon speeches in Seattle and Tacoma, Bernard Segal, President-elect of the ABA expressed views on various subjects:

Shortage of Young Lawyers. There is a serious shortage of young lawyers in urban areas for recruitment by large law firms. Only 50% are currently going into private practice. Some are going into government service in order to be exempt from the draft. However, the major reason is that young lawyers are more concerned in involvement. One firm in New York has employed an editor of one of the major law reviews at $18,000 a year. It is doubtful that the other New York firms will meet this figure, but will continue to offer $15,000. The bothersome aspect of spiraling starting salaries is that someone is going to have to pay for it.

Crime. "We have to get at the root causes of crime or our number one domestic crisis will become our number one domestic destroyer . . . In my view, we are paying the price today for many years of neglect--neglect of our youth, neglect of our system of correction, and neglect of the agencies for the administration of justice and of law enforcement.

"As fear of crime mounts, and frustration at failure to stem crime sets in, it is natural to look for scapegoats. The courts have been easy targets. For one thing, the public is baffled when it sees a guilty man go free because of what to the layman seems to be a mere technicality. For another, courts cannot strike back. And it is so

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Spokane Bar Makes Proposals to Upgrade Quality of the Legal Profession

At a recent meeting of the Spokane County Bar Association, its Committee for Discipline, Public Relations and Responsibilities of the Bar Association to the Public submitted a report and recommendations.

Client's Indemnity Fund

It was first recommended that the By-Laws of the Washington State Bar Association be amended to establish a contractual obligation on the part of the Client's Indemnity Fund to indemnify victims of defaults by lawyers. The obligation would include defaults by attorneys acting as trustees, executors, administrators, etc., but such right would be secondary to the obligation of compensated sureties. The compensated sureties would be barred from recovery. To insure integrity of the Fund, it was recommended that the Bar Association contribute to the Fund to bring it up to a level of $150,000.00 or $200,000.00. The present 5/10 limitations would be eliminated and a single limit of $100,000 per lawyer would be established.

Requirement of Bond

It was further recommended that consideration be given to enactment of legislation or, preferably, court rules to provide either or both of the following:

(1) Notwithstanding the terms of non-intervention wills providing that the executor shall not be bonded, on the application of a creditor or

(continued on next page)

Spokane Bar *(continued)*

beneficiary, or by the court on its own motion, bond shall be required; or,

(2) In all instances where attorneys may be serving as executors or court-appointed fiduciaries, they shall be bonded.

Disciplinary Proceedings Publicity

Recommendations were then made regarding proceedings involving the disbarment or suspension of attorneys. It was the opinion of the committee that the Board of Governors should be vested with discretion in such areas to release, and should release, information regarding the pendency of proceedings of status thereof in those cases where the acts complained of have already received notoriety or publicity and where the guilt of the accused attorney may appear patient or persuasive.

Thomas Malott, committee chairman, poignantly expressed the reasons for that recommendation. In his words, "The shroud of secrecy is galling to the public and to many members of the Bar. It is difficult to explain why or how we—members of a profession which from the time of the memory of man has fought for the right of fair, speedy and public trial—can urge that in our own cases we are justified in maintaining incredibly slow and cumbersome processes with secret hearings and secret results in all cases except in those cases where the Supreme Court may order suspension or disbarment. In other cases (and the majority) where sanctions short of suspension or disbarment are imposed, the practice has been to protect the transgressor. Not even the complainant is advised of the results!"

Suspensions

The committee then recommended that simultaneously with the institution of disciplinary proceedings, in those cases where it appears that continuation of practice may lead to more incursions or in any other case where it is not to the best interests of the association or the public that he continue to practice during the pendency of such proceedings, procedure should be adopted for suspension of the right to practice law on Order to Show Cause directed by the Supreme Court.

Creation of Office and Tribunal

Realizing that it is not realistic to expect members of the Bar to serve as informers, nor realistic to expect members of the local administrative committees to seek out violations, it was strongly recommended that the Board of Governors create an office or division devoted to thea area of compliance with the standards of the profession.

Since there is presently no effective way of handling matters such as delays, neglect, overcharges, conflicts of interest, and other areas of "minor infractions", it was recommended that the Board of Governors consider the feasibility of adopting, as part of its disciplinary procedure, a plan whereby, in cases involving infractions which would not warrant proceedings culminating in disbarment or suspension, complaints could be referred to a tribunal especially created for the purpose of summarily disposing of such matters on the basis of fines or forfeitures.

Bar News

Finally, it was recommended that the *Bar News* give more publicity to the Ethics Committee of the Washington State Bar Association and its opinions. It was the committee's opinion that the mere awareness of the existence of such a committee would serve as a constant reminder that we are guided by principles of professional standards.

Unanimous Adoption

All of the committee's recommendations were enthusiastically endorsed by a unanimous vote of the Spokane Bar. The committee was directed to submit the report to the Board of Governors of the Washington State Bar Association and was authorized to request the Board of Governors to appoint a special committee to refine the committee's recommendations for implementation and adoption by the Supreme Court and the Washington State Bar Association. The committee's action has since been the subject of at least three laudatory editorials. The latest, appearing in The Spokesman-Review, concluded with these words:

"The Spokane action reflects favorably upon the Bar for two reasons: It seeks to raise the requirements of lawyer responsibility and it acknowledges and publically deals with a problem that is professionally embarrasing. The good effect of the action should far outweigh the bad effect of admitting that there could be bad apples in any barrel.

"It is not possible ever to safeguard absolutely against potential human shortcomings. What the attorneys here have recorded themselves in favor of doing, however, seems to be effective and well-directed toward the end of self-regulation. If there is any further step that could be taken, it possibly would be in the direction of more rigorous screening at the time of admission to the Bar."

THOMAS R. CHAPMAN

NOMINATIONS

As of presstime, nominating petitions have been received from the following:

Third Congressional District to replace Lee Campbell, Chehalis – R. DeWitt Jones, Vancouver; John S. Lynch, Olympia.

Sixth Congressional District to replace Brooks K. Johnson, Tacoma – Vernon R. Pearson, Tacoma; Paul Sinnitt, Tacoma

TRI-STATE BAR EXAM?

The Board of Governors of the State Bar of California has referred to its Committee of Bar Examiners for study and report the matter of a common bar examination for the States of California, Oregon and Washington.

SEGAL *(continued from page 9)*

much easier to charge courts with coddling criminals than it is to make the hard decisions, take the drastic steps, and raise the large sums of money needed to improve the administration of justice and to eliminate the root causes of crime."

Preventive Detention. "We cannot solve the crime problem merely by cries for stiffer sentences or preventive detention for repeated offenders. There is a limit to the stiffness of a sentence in a society dedicated to the principle that the punishment must fit the crime--and the Eighth Amendment imposes a constitutional ban on cruel and unusual punishment. Besides, preventive detention is fraught with danger to our hard-won concepts of liberty and due process."

The Trouble with Lawyers. "Murray Teigh Bloom did no research and shot from the hip." For example, the eating club for lawyers in a plush hotel in Philadelphia is pure fiction. As to whether the middle class is victimized by the American legal profession, legal fees at this time are by and large not too high for the middle class--but we're going in that direction fast. We've got to avert it because obviously people are as entitled to have legal advice as they are to have medical service.

"I think that the legal profession will be restructured in the next decade." There are "infinitely too few lawyers to service the poor"; for example, divorce in the fatherless home. The big answer is the introduction of paraprofessionals.

Campus Disorders. "I have very strong views on this, as I am a life trustee of the University of Pennsylvania." The trustees started meeting three years ago with students before they asked. Guideliness for dissent were established, something that most universities have not done. They set forth that dissent must not interfere with the orderly conduct of classes or with any other university function; students are required to use the university premises as if they were their own.

Students are generally protesting things that don't involve themselves. Six hundred students recently protested the displacement of ghetto residents by reason of university expansion. Meeting until 3:00 A.M., the university agreed that it would raise $10,000,000 and the students would contribute $75,000 to alleviate displacement problems. *The New Republic* stated "everybody won."

Protest exists because there have been large promises and no performance. There is a communications gap. "We criticize students too much." Those under 25 years of age constitute 25% of the population. Guidelines must be established. Dissent must be encouraged. The communication lines must be open. Students must be told they will be suspended if they violate the guidelines. There can be no amnesty to students who engage in destruction or violence. If a law is broken, the violator must be prosecuted in accordance with due process.

"I shrink from legislative proposals that would deny to a student scholastic aid for the rest of his life if he has broken the law." If that student is poor and he thereby is denied higher education, additional problems will be created. Once a student has paid a penalty for his offense, he should be allowed to continue his education. There is a serious danger of too much generalization. "I see sweeping the country a feeling on the part of many people that all dissent is bad because of a few violent uprisings. Each circumstance should be treated on its own merits."

"Let's face it, the university has ceased to be a teaching institution. When I taught, I would teach an hour and then remain an hour afterward to talk with students. Now an instructor rushes off to work on his book, 'publish or perish,' or go work in the research laboratory. Students have every right to protest the fact that the university has become a center for research grants and book writing."

Preventive Detention

U.S. Senator Joseph D. Tydings of Maryland has introduced a bill to amend the 1966 Bail Reform Act by allowing preventive detention of defendants considered dangerous to the community if released on bail.

The measure was prompted by D.C. Crime Commission statistics that nearly one third of the suspects released on bond are charged with new crimes within 30 days of their release. These statistics raise a constitutional problem, since the sole original purpose of setting bail is to guarantee a defendant's appearance at trial. The Bail Reform Act was designed to adhere to this purpose, and prevent detention of suspects who could not raise bail because of indigency.

Senator Tydings' bill would provide for special bail hearings whenever the prosecutor requests preventive detention for defendants charged with committing a felony involving "serious bodily harm" while the suspect was free on bail for another charge, charged with armed robbery, or named in a government affidavit as likely if released to pose "a substantial danger to other persons or to the community." The bill would also provide for trial of defendants within 30 days of their confinement.

In Senate subcommitte hearings, Chief Judge Harold H. Greene of the Court of General Sessions imposed alternatives to preventive detention: 1. adding one to five years in prison to sentences for defendants found guilty of committing felonies while free on bail; 2. adding at least eight judges to D.C.'s courts to diminish trial delay; 3. allowing judges to consider a suspect's danger to the community in deciding conditions for release until trial; 4. increasing supervision and adding a curfew for potentially dangerous defendants, and strictly penalizing violators; and 5. greatly enlarging the D.C. Bail Agency staff.

These suggestions are in accord with the recommendations of the D.C. Crime Commission. Two thirds of the Commission members also favored preventive detention.

MANDATORY MALPRACTICE INSURANCE

Payne Karr, State Bar President, spoke on "The Law Practice in Turmoil – Will the Fallout Hit You?" on May 7th at a noon luncheon of the Seattle-King, East King and South King County Bar Associations. A portion of his talk was on the proposal for mandatory malpractice insurance.

At the outset, he stated that there was "minimal interest" on the part of insurance companies to write a group policy for malpractice insurance for lawyers. The only proposed plan, which has been reduced to writing, was considered by the Board of Governors at its last monthly meeting. Under the terms of the plan, the insurance company insisted that coverage be mandatory with the following exceptions: (1) attorneys employed by corporations – e.g., house counsel and deputy prosecutors; (2) law clerks for judges; (3) attorneys engaged in part-time practice, i.e., less than 20 hours a week.

The coverage would be $100,000 – $300,000. The premium for the first year would be $111. (This would be in addition to the $50.00 annual dues already paid by members of the State Bar.) All claims, not only claims which arise after the effective date of coverage, would be covered under the proposed plan.

No state in the union has adopted a compulsory plan of malpractice insurance for lawyers. Massachusetts does have compulsory automobile insurance. It is understood that claims doubled after its enactment. If this happened in the area of compulsory malpractice insurance, it is evident what would happen to the annual premium. If the premium rates went out of sight, the compulsory plan were abandoned, and other carriers had withdrawn from the state in making this offering, a serious problem would face lawyers in obtaining malpractice insurance.

As reported on page 95 of the December issue of the *Bar News*, over 50% of the members of the Bar Association voted in the poll on mandatory malpractice insurance conducted in September of 1968. The vote was nine to one in favor of mandatory coverage.

The Board of Governors is not ready to say that the proposed plan should be or will be adopted. There is the question of whether there should be any exclusions at all. In closing, **Payne Karr** remarked, "If you have the answer, the Board would like to hear from you."

ETHICS OPINIONS WHICH MERIT REREADING

The inquiries received by the State Bar office frequently involve three problem areas–commingling of trust funds, holding oneself out as a partner and telephone directory listings. Three opinions of the Legal Ethics Committee of the Washington State Bar Association, which are contained in your deskbooks and pertain to these problems areas, are summarized as follows:

Commingling of lawyer's and client's funds. *(Opinion No. 86–Dec. 1960):*

In the absence of specific and definite knowledge and consent of the client, it is unethical for a lawyer to deposit client's funds in his personal or office account.

There is no distinction to be made when such deposits are expected to be disbursed to the client, less fees and costs, within the next day or so after the deposit is made.

Firm Name Where No Partnership Exists *(Opinion No. 55–Dec. 1959):*

It is unethical for lawyers, who office together but who practice individually, to adopt a firm name and hold themselves out to the public as a partnership, when in fact they are not.

Telephone Listing in Another City *(Opinion No. 92–June 1961):*

It is not improper to list a firm name or names of individual members of the firm in the classified section of a telephone directory serving a nearby area in which neither the firm office is located nor any of the members reside, where the firm is practicing in the classified area.

The opinion is based on the assumption that the listing will be in a telephone directory serving an area so near the office of the attorney that it is correct to say he does have an actual practice (not merely isolated clients) in that nearby area, i.e., he is not attempting to develop new territory through a telephone listing. Bearing on his bona fides might be the availability of resident lawyers in the nearby area where the telephone book is published.

Attorneys of Any State Bar Eligible for Admission to D.C. Bar Without Taking D.C. Bar Exam

The Judges of the United States District Court for the District of Columbia recently voted an important amendment to the Rules relating to admission there of attorneys who are members of a bar of another jurisdiction.

Generally under the terms of the amendment, attorneys who after passing a written examination have been admitted to the bar of a court of general jurisdiction in any state or territory may upon proof of fitness and good moral character be admitted to the Bar of the District of Columbia without examination providing that they meet the educational and residence requirements of the Rules of the District Court.

The amended Rule on admission applies to applicants from all jurisdictions including those jurisdictions which refuse to admit members of the District of Columbia Bar without examination or who impose previous practice requirements.

Disciplinary Hearings Open to the Public?

In Michigan, the state supreme court granted a petition of the State Bar of Michigan to open formal grievance committee hearings to the public and news media for the first time. The action was effective April 1. The ruling stipulates that preliminary informal sessions of the committees, to examine into the merits of complaints of ethical violations against lawyers, will continue to be conducted in private.

The unusual action came after a bill was introduced in the state legislature to place licensing and policing of the legal profession in the hands of the state department of licensing and regulation (which now licenses doctors and other professionals), instead of the supreme court and the integrated state bar. The examiners in the department would be required to license graduates of accredited Michigan law schools without a bar examination.

The entire controversy stemmed from an alleged conspiracy in an estate matter in a rural Michigan county. A weekly news magazine publisher charged certain local lawyers had "completely corrupted the court", in that area and later criticized the bar and bench for moving too slowly in disciplinary proceedings. The publisher was cited and sentenced for contempt of court. Following this judgment, which is being appealed, newspapers across the state took up the story. The legislative activity followed.

A special Michigan bar grievance committee has been investigating the charges since last spring. On one occasion, a hearing was cancelled because one of the accused attorneys claimed he was critically ill. Independent medical proof verified this claim. Later reports that he was continuing to practice law prompted the grievance committee to file in the local court a petition to show cause why the attorney should not be suspended until he was able to appear before the committee. A hearing on the petition was scheduled for April 18.

The committee said it believed under existing rules it had the authority to seek a temporary suspension of the accused's right to practice. However, the State Bar also has petitioned the Supreme Court for specific authority to that end through an amendment of the present rule. The Supreme Court has not acted on that petition.

In Louisiana, the state bar association said it lacks authority to take any disciplinary action with respect to New Orleans Distict Attorney James Garrison because, as an elected official, he is outside the jurisdiction of the bar. The statement was issued in the wake of published criticisms of Garrison's handling of the prosecution of Clay Shaw, who won a speedy jury acquittal of charges of conspiracy in the assassination of President Kennedy.

President George B. Hall of the Louisiana Bar said the state constitution provides that elected constitutional officers can be removed only by impeachment, by citizens' suit in court, or recall vote. He said "it is important that everyone know that it is not a question of the Bar Association being negligent or derelict in not investigating a situation where action may seem warranted; we simply have no jurisdiction in such instances."

Use of J.D. in Public Announcements Forbidden

The ABA Standing Committee on Professional Ethics again has held that public use of "the term 'doctor' or J.D." by a practicing lawyer is unethical. The committee in Formal Opinion 321 says such use is prohibited by Canon 27.

The opinion issued March 1 said:

"An attorney may not on letterheads, business cards, shingles, directives, in speech or in informal writing use any degree designation (LL.B., J.D., Ph.D., etc.) or the term Doctor or other equivalent word except (1) in reputable law lists; (2) on academic occasions and in academic circles and then only in accordance with the practice and customs of the degree-granting schools, or (3) when dealing with lawyers and others abroad from countries in which lawyers are referred to as 'Doctor' the appropriate academic term may be used."

Use Esquire. The committee said the term "esquire" should be used to designate all members of the profession.

"Until the time comes when the J.D. degree is the universal degree for the initial study of law (as the M.D. degree is in medicine) we can see no reason to permit the professional use of this degree, so as to distinguish its holder as compared with others who hold a different degree," the committee said.

Latest Rejection. The committee reported it had rejected efforts to include additional degree designations "time after time." It said if a change is to be made, it would have to come through changes in the Canons of Professional Ethics. A tentative draft of the proposed new Code of Professional Responsibility does not mention the J.D. degree among information allowed in announcements to the general public.

Bill Authorizes Nine More Superior Court Judges

Gov. Dan Evans has signed into law a bill granting additional Superior Court judges for King, Pierce, Snohomish, Benton-Franklin, Mason-Thurston and Yakima Counties. The increased number of judges by county were: King, 22 to 26; Pierce, 8 to 9; Benton-Franklin, 2 to 3; Snohomish, 5 to 6; Mason-Thurston, 2 to 3; and Yakima, 4 to 5.

IN MEMORIAM

Eugene F. Hooper, 67, Seattle, died May 8 of a heart attack as he prepared to leave the County Courthouse. A 1926 graduate of the University of Washington Law School, he was in private practice until 1951 when he was appointed a deputy prosecutor. He was head of the domestic-relations department.

THE COURT OF APPEALS

A bill establishing the court of appeals, authorized by the voters in November, was signed May 8th by Gov. Dan Evans.

Evans will appoint the new judges, who will serve until the first state election. That election will be in November, 1970, unless the Legislature reconvenes and approves an annual elections bill, which would result in the judges facing election in November.

Politics

Newspaper accounts reflect the politics which governed the final version of the bill.

"At no time in this session has politics been more prominent than yesterday during Senate debate over the legislation to set up a new court-of-appeals system . . . Shortly after the bill came on the floor a move was made to split the administrative headquarters of the new court. A Spokane senator, **Robert Twigg**, insisted there should be an eastern division in his city rather than one headquarters in Seattle, from which the judges would travel as needed. With support from Pierce County (apparently a deal had been made) Senator's Twigg's amendment passed. Then the Pierce County group pulled enough votes to have another amendment passed setting up a third office of the court in Tacoma." *The Seattle Times.* April 25, 1969.

"After prolonged debate, the Senate voted 28 to 15 to table a proposal by Senators **Fred Dore** and **R. R. Greive**, both D–Seattle, that judges on the new court be initially elected, rather than appointed. Dore argued that letting the governor appoint the first 12 judges to the new bench would give Evans 'awesome power'. He said: 'I think it is totally undesirable for a single man to have the awesome power to make 12 judicial appointments at a single time.' Sen. **William Gissberg**, D–Lake Stevens, said he had faith that 'Evans would not appoint members of one political party to this important bench. In fact it grieves me to even have to stand up on this floor and talk about it.' Sen. **James Andersen**, R–Bellevue, said it would be 'entirely inappropriate for the governor to appoint 12 Republican lawyers or judges.' He said the bill represents a compromise in setting up guidelines that direct the governor to take into account diversity of political philosophy as a factor in making appointments." *Seattle P-I.* April 25, 1969.

"The bill passed the Senate 43 to 6. Passage came after the upper chamber voted 26 to 23, for an amendment sponsored by Sen. Fred Dore which would require the 12 judges, who will serve on the court, to run for election this November, if a bill to set up annual general elections is approved by the legislators. Sen. **Wes Uhlman**, D–Seattle, said requiring the judges to stand for election this fall would 'damage the ability of the governor to find talented people willing to take the jobs'." *Daily Journal of Commerce.* April 28, 1969.

On April 30, 1969, the bill was passed by the House 94 to 0, without debate after the House concurred in amendments made by the Senate.

"Any eventual decision to reduce the number of Supreme Court judges would not affect present judges but would only apply as judges retired, according to Sen. Wes Uhlman. He added that in the next session of the legislature when the backlog of the Supreme Court is out of the way, 'We'll look seriously to reducing the Supreme Court to seven or maybe even five judges'." *The Seattle Times,* April 25, 1969.

Summary of the Measure

1. **Location**: The first division will be headquartered in Seattle and will have six judges, four of whom will be from King County, The second division will be headquartered in Spokane and will have three judges. The third will be headquartered in Tacoma and will have three judges. The court may hold sessions in such of the following cities as may be designated by rule: Seattle, Everett, Bellingham, Tacoma, Vancouver, Spokane, Yakima, Richland and Walla Walla.

2. **Qualifications**: A judge of the court shall be – (1) admitted to the practice of law in the courts of this state not less than five years prior to taking office; and (2) a resident for not less than one year at the time of appointment or initial election in the district for which his position was created. The annual salary will be $25,000.

3. **Panels**: The court shall sit in panels of three judges and decisions shall be rendered by not less than a majority of the panel. Judges of the respective divisions may sit in other divisions and causes may be transferred between divisions, as directed by written order of the chief justice of the State Supreme Court.

4. **Jurisdiction**: The court shall have exclusive appellate jurisdiction in all cases except:

   (a) cases of quo warranto, prohibition, injunction of mandamus directed to state officials;

   (b) criminal cases where the death penalty has been decreed;

   (c) cases where the validity of all or any portion of a statute, ordinance, tax, impost, assessment or toll is drawn into question on the grounds of repugnancy to the Constitution of the United States or of the state of Washington, or to a statute or treaty of the United States, and the superior court has held against its validity;

   (d) cases involving fundamental and urgent issues of broad public import requiring prompt and ultimate determination; and

   (e) cases involving substantive issues on which there is a direct conflict among prevailing decisions of panels of the court or between decisions of the supreme court; all of which shall be appealed directly to the supreme court.

The recommendations of the Weinberg Committee were reported in the March issue of the *Bar News*. (c), above, reflects its recommendations, whereas (d) does not.

5. **Certification**: HB 183 was also amended to include the recommendation of the Weinberg Committee on certification. Whenever a majority of the court before which an appeal is pending, but before a hearing thereon, is in doubt as to whether such appeal is within the categories set forth in subsection (d) or (e) above, the cause shall be certified to the supreme court for such determination.

6. **Appeal or Review**: When the court acquires jurisdiction of any cause and makes a disposition thereof, there shall be a right of appeal to the supreme court when the court reverses a judgment or order of the superior court by less than a unanimous decision. In all other cases, appeals from the court to the supreme court shall be only at the discretion of the supreme court upon the filing of a petition for review. No case, appeal or petition for a writ filed in the supreme court or the court shall be dismissed for the reason that it was not filed in the proper court, but it shall be transferred to the proper court.

7. **Opinions**: All decisions of the court shall be given in writing and the grounds of the decisions shall be stated. All opinions of the court shall be published.

8. **Manner of Election**: The governor will appoint the judges, who will hold office until the second Monday in January of the year following the first state general election following the effective date of this act. In making the original appointments the governor shall take into consideration, among other factors, "diversity of political philosophy".

LEGISLATIVE ENACTMENTS

Corporations: (SB229–C58 L69E). It provides a method for taking valid corporate action when the addresses of the shareholders of record are lost, destroyed, incomplete or inadequate; expands the right of a corporation to indemnify a director, trustee, officer, employee or agent, who is threatened by or involved in legal proceedings. As to corporations existing prior to July 1, 1967, it preserves rights of cumulative voting and certain rights as to voting class shares.

Garnishment Reform: (SSB168–C L69E). Limits pre-judgment wage garnishments; increases wage exemption; and other provisions.

Husband and Wife: (HB110–C121 L69). The earnings and accumulation of the husband shall be available to the legal process of creditors for the satisfaction of debts incurred by him prior to marriage. Similarly, the earnings and accumulation of the wife are so available as to debts incurred by her prior to marriage. The separate debt must be reduced to judgment within three years of the marriage of the parties to be a basis for claim against such earnings and accumulations. Amends RCW 26.16.200.

Interest Rate on Civil Judgment: (SB121–C46 L69). Increases rate of interest on money judgments from six per cent to eight per cent unless parties have otherwise agreed by written contract in which event the maximum rate is ten per cent.

Liens: (SB525–C84 L69E). Notice, that materialmen's lien may be claimed, is changed from "not later than sixty days after the date of the first delivery" to the "notice shall cover the material . . . furnished . . . during sixty days preceding the giving of such notice as well as all subsequent materials . . . furnished . . .", amending RCW 60.04.020. (SB910-C82 L69) Provides a uniform procedure for foreclosure of statutory leins.

Mutual Corporations Act: (SHB581–C120 L69E). Corporations may be organized under this act for any lawful purpose including but not limited to mutual, social, cooperative, fraternal, beneficial, service, labor organization, and other purposes; but excluding purposes which by law are restricted to corporations organized under other statutes.

Public Defender. (SB920C94 L69) Authorizes counties to establish such a system.

Venue, Change of: (SB123–C144 L69E). In acting on any motion for dismissal without prejudice in a case where a motion for change of venue has been made, the court shall, if it determines the motion for change of venue proper, determines the amount of attorney's fee properly to be awarded to defendant and, if the action be dismissed, the attorney's fee shall be set off against any claim subsequently brought on the same cause of action, amending RCW 4.12.090.

Wills, Proof of: (SB410–C126 L69E). Any or all of the attesting witnesses to a will may, at the request of the testator or, after his decease, at the request of the executor or any person interested under it, make an affidavit before any person authorized to administer oaths, stating such facts as they would be required to testify to in court to prove such will, which affidavit may be written on the will or may be attached to the will or to a photographic copy of the will. The sworn statement of any witness so taken shall be accepted by the court as if it had been taken before the court.

Bills which failed of passage:

- Discipline and Removal of Judges. SJR5
- Grand Jury Reform. SB503
- Establishing a Medical Examiner System and abolishing office of Coroner. HB 515.

In the April issue of the Bar News, the general provisions of Washington's recently enacted Professional Corporation Act were discussed. It was pointed out the tenth circuit held in the Empey case that the Commissioner's so-called "Kintner" Regulations are invalid and that professional corporations are bona fide corporations for Federal Income Tax purposes. Empey is particularly relevant because, out of the five cases cited in the article, it is the only one involving a lawyer member of a law firm. The other cases involved doctors of medicine. Parts II and III of this article will discuss the tax aspects of professional corporations.

V Tax Aspects

A. Benefits

A list of the most important tax benefits for the corporate professional, not presently available to the self-employed or partnership professional, are as follows:

1. Qualified Profit-Sharing Plans, Pension Plans, and Thrift Plans.

Amounts of up to 25% of the annual compensation of all professional employees (including professional-stockholders) and all other participating employees, can be contributed to qualified profit-sharing and pension plans, and deducted currently by the corporation.[1] Further, the contribution is not currently taxable to the participants. In a case decided by the 9th Circuit, that court has held that professional salaries were reasonable and therefore deductible as long as they did not exceed the gross billings for services as a result of the professional employees' services rendered.[2] Therefore, assuming that the entire net income of the practice is distributed as compensations except for the contribution to the plan, 20% of the net income before the contribution (25% after the contribution) can be set aside for tax deductible profit sharing plan and pension plan contributions.[3]

Further, since income earned from the assets of the qualified retirement plans is exempt from income tax, the earnings from moneys contributed to the plans can be compounded annually tax-free.[4]

Additional income tax benefits accrue to the participants when the accumulated funds in the plans are distributed at retirement, disability, termination, or death. If a participant receives the money in a lump sum at termination of employment, he obtains favorable long-term capital gains treatment.[5] If he takes the money as an annuity upon retirement, he gets favorable annuity rule treatment.[6] If he is still an employee at date of death, his interest in the retirement plan can pass to his beneficiary free of the Federal estate tax.[7]

The following schedule shows the significant tax savings achievable from the qualified retirement plans. The table assumes that a professional persons saves 25% of his salary over a 30-year period.[8] As an example, a professional with a net income of $25,000 per year over a 30-year period could accumulate retirement assets of $296,500 by means of retirement plans. Without the plans, he would accumulate only $165,700. The tax savings for the period would be $130,800. As the tax bracket for the professional increases, the savings increase in even greater proportions:

Annual Net Taxable Income Average Over 30-Year Period	No Retirement Plan; Total Amount of 30-Year Accumulation After Taxes	Retirement Plan; Total Amount of Total 30-Year Accumulation After Taxes	Total 3-Year Tax Savings Attributable to Retirement Plans
$ 12,000	$111,000	$ 137,000	$ 26,600
25,000	165,000	286,600	121,600
50,000	209,600	573,200	363,600
75,000	253,100	859,800	606,700
100,000	283,000	1,146,300	863,300
125,000	306,300	1,432,900	1,126,600

A Thrift Plan can also be added to the pension or profit sharing plan. The contributions to the thrift plan are from the participant's portion of the compensation, are voluntary in nature, and are generally limited to 10% of the total compensation of the employee participant. The contribution accumulates tax free, and upon distribution the accumulations receive the same favorable capital gains treatment or annuity treatment.

Qualified plans have been approved by the Internal Revenue Service where there is only one participant, the sole-owner employee.[9]

2. Deductible Accident and Health Plans and Sick Pay.

A Group Health Plan, providing for disability in-

1 IRC401-407, 501

2 Klamath Medical Service Bureau, 261 F.2d 842 (9th Cir 1958).

3 For example, if net income before compensation to the shareholders is $100,000, and if comepnsation paid to shareholders is $80,000, the contributions to the plan can be $20,000, so that the taxable income to the orporation is thereby reduced by zero.

4 IRC 501.

5 IRC 402(a)(2).

6 IRC 402(a)(1).

7 IRC 2039(c).

8 Other assumptions for the table are: 6% accumulation rate and married taxpayer. Tax has been computed at 1968 rates and it has been assumed that the surtax will continue indefinitely.

9 Rev. Rul. 55-81, 1955-1 Cum. Bull. 392.

come, hospitalization benefits, and major medical expense benefits may be adopted by the corporation. Expense of these plans is deductible by the corporation[10] and tax free to the participants.[11] A partnership cannot deduct such amounts where they are paid to proprietors and partners in professional firms as they are not considered to be employees. Further, benefits paid by the corporation's wage continuation plan are excluded from the shareholder-professional's gross income up to $100 per week.[12] The $100 sick pay exclusion is not available to attorney partners in law partnerships or proprietorships.[13]

3. Deductible Group Term Insurance Plans.

Corporation group life insurance plans, deductible to the corporation[14] and non-taxable to the participants[15] can be established in amounts of up to $50,000 per participant attorney. This plan can include premiums for group life, accidental death and dismemberment, weekly indemnity and medical expense plans.

4. $5,000 Employee Death Benefit.

The widow of a deceased shareholder attorney can be paid up to $5,000 death benefit, deductible to the corporation and tax free to the widow.[16]

5. Low Tax Rate of $25,000 Annual Income Accumulated by the Corporation

The first $25,000 of annual income accumulated by the corporation is taxed at 22%. This tax sheltered accumulation would be taxed much higher in many cases if it were immediately distributed as compensation to the attorneys in high tax brackets. Such shelters which accumulate over the year to more than $100,000 total could be subject to a penalty tax, however, if such excess were beyond the reasonable needs of the business.[17]

6. 85% Dividends Received Credit.

If the corporation received $100 in dividends, it would have to pay tax only on $15, under the 85% corporate dividend credit statute.[18]

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[10] Rev. Rul. 56-632, 1956-2 Cum. Bull. 101.
[11] IRC 106.
[12] IRC 1-5(d).
[13] IRC 105(g).
[14] L.O. 1014, 2 Cum. Bull. 88.
[15] IRC 79.
[16] IRC 101(b).
[17] IRC 531-537.
[18] IRC 243.

This article is an excerpt from "Professional Corporations" by Paul A. Peterson, H. Bradley Jones, and Byron F. White which appeared in 43 **Journal of the State Bar of California** *884-899 (1968). Reprinted with permission.*

Next month: Professional Corporations – Part III: Keogh Act Inadequate.

A comparison of Retirement Plan Provisions under H.R. 10 (The Keogh Act) and Professional Corporations is found in a recent article. Kline D. Strong, "Retirement Planning Considerations for Professionals" 15 *The Practical Lawyer* (Feb. 1969, No. 2), 43-53. The author of the article concludes: "These comparisons demonstrate that, in terms of tax savings and flexibility, retirement plans available to professional corporations hold a distinct advantage over those presently available under H.R. 10."

John A. Hamill, Seattle, in a letter to the editor pointed out that the following statement in Part I was imprecise: "Professional corporations do not have limited liability." He pointed out that a professional corporation as a distinct legal entity has liability no greater than any other corporation.

As to liability of a director, officer, shareholder, agent or employee of a professional corporation, Mr. Hamill wrote:

"My personal tentative view (which is subject to change in the event that I ever defend a lawyer) is that the sentence quoted from Section 7 of the Professional Service Corporation Act means that a lawyer who, in the factual context, has both the right and the power to exercise professional control over the sub-agent may become vicariously liable to a third person even though his professional colleagues would not regard him as being "at fault" with respect to the supervisory conduct. The foregoing, in my judgment, is the **most** that the quoted portion of the statute may mean.

"Viz-a-viz a partnership a professional service corporation would clearly have less and therefore "limited" liability. For example, if an associate in a law firm were guilty of malpractice, each partner pretty clearly would be vicariously liable for the harm caused even if that partner had never seen, heard of, supervised, talked to, or known about the particular associate involved."

Section Seven provides: *"Nothing contained in this act shall be interpreted to abolish, repeal, modify, restrict or limit the law now in effect in this state applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional service and the standards for professional conduct. Any director, officer, shareholder, agent or employee of a corporation organized under this act shall remain personally and fully liable and accountable for any negligent or wrongful acts or misconduct committed by him or by any person under his direct supervision and control, while rendering professional services on behalf of the corporation to the person for whom such professional services were being rendered. The corporation shall be liable for any negligent or wrongful acts of misconduct committed by any of its directors, officers, shareholders, agents or employees while they are engaged on behalf of the corporation, in the rendering of professional services."*

NEWS AROUND THE STATE

CHELAN REPORT
By **GRANT A. MUELLER**

On May 23rd, the annual spring dinner was held with spouses as well as attorneys being invited. The results of the annual Chelan County Bar election were announced: The officers elected for the coming year are **Jerry Hanna**, president, **Bernice Bacharach**, vice president, and **Bud Kight**, secretary-treasurer.

John Carlson, Bill Hamilton, Jim Lynch, and **Dave Whitmore** spoke to the local senior and junior high schools on May 1 in recognition of Law Day. As to response, it was suggested that Bar Association members should make themselves available for similar discussions at other times of the year.

COWLITZ REPORT
By **ODINE H. HUSEMOEN**

Cowlitz County again mourns the loss of a pioneer attorney in the recent death of Cowlitz County District Court Judge, **Lester Huntington**, 75. He died recently of burns suffered in a fire in his home. Judge Huntington is survived by his son, **Ronald Huntington**, who has been appointed by the Cowlitz County Commissioners to fill the unexpired term of his father, commencing June 1, 1969. Ronald Huntington had been practicing law in Kelso, formerly with his father, and recently in the firm of Huntington & Borders.

Plans are now being formulated for the construction of a public safety type building containing courtrooms, prosecuting attorney, sheriff and clerk offices, as well as combining Longview, Kelso and county jail facilities. If the present plan meets with voter approval, a new structure will be built near the present courthouse in Kelso.

Arthur Reed of Kelso, has been serving as Justice Court Judge pro tem while the post was being filled.

KITSAP REPORT
By **HELEN GRAHAM GREEAR**

Jim Roper (with Greenwood, Shiers and Kruse) thought of the sneakiest way to get free front page newspaper publicity. He dropped his cow down into the well. You heard me. The cow is down in the well, and his wife Sharon is a member of the Olalla Volunteer Fire Department, so she calls the Fire Department and they try to lift the cow out of the well, but that won't work, so they take the big fire hose and FLOAT THE COW OUT OF THE WELL. By this time every newspaperman and photographer within ten miles is on the Roper farm taking pictures and writing like mad. You remember. It was on every front page. The Ethics committee met once a week for a month, but couldn't hang anything on him. A stroke of genius, I call it.

Well, it's pretty hard to top that, but a few other little things have happened, like **Dick Schultheis** and family going to the South Seas and coming back, very brown, to toss off references to Tahiti and the Fiji Islands; speaking of Schultheis, his firm has taken in as a partner their former associate **Douglas Fox**, and the firm name is now Schultheis, Maddock and Fox. The magnificant Fox estate, with the beautiful baroque Victorian house, is one of the show places of Kitsap County, and you can see it from the Southworth ferry.

The military claimed **Robert Frewing** of the Prosecuting Attorney's office full time, so **Jay Roof** has been added to the Prosecutor's staff, and the County Commissioners have authorized another deputy.

Our Law Day was pretty impressive. On May 1 the Bar fanned out over the high schools and I could write a whole column just on that. That same evening we presented a panel discussion on Criminal Justice at Olympic College, the participants including Superior Court Presiding Judge **Robert H. Bryan**, local attorney **William H. Fraser**, Prosecutor **Myron H. Freyd**, Mayor Glenn Jarstad of Bremerton, and Professor of Law (University of Washington), **John Junker**. On May 5 we had our Law Day court ceremony, which included an address by **John Bishop**, the swearing in of our new County Clerk Robert L. Freudenstein, and the presentation by the Bar of our Liberty Bell Award for 1969 to the retiring County Clerk Margaret Smith, who has served in various capacities in the Court House for almost 30 years. **Phil Best** of Wallace and Fraser, our Law Day Chairman, did a fine job.

Ho, hum, it's Spring! As Solomon said some years ago in one of his famous Songs:

> "For lo, the winter is past, the rain is over and gone;
>
> "The flowers appear on the earth.
>
> "The time of the singing of birds is come,
>
> and the voice of the turtle is heard in our land;
>
> "The fig tree putteth forth her green figs, and the vines with the tender grape give a good smell.
>
> "Arise, my love, my fair one, and come away."

Anybody for coming?

OKANOGAN REPORT
By **RICHARD E. JOHNSON**

New officers for the Okanogan County Bar after the April 22nd election are: President, **James R. Thomas**, Okanogan; and Secretary, **Robert V. Flock**, Omak.

Bob Flock's invitation party was held at Bill Cottrell's lodge at Palmer Lake. Invited guests included the Ferry County Bar and **Earl W. Foster**, Sea-First trust attorney, who conducted a trust seminar.

OLYMPIA REPORT
By **STANBERY FOSTER**

The Annual Bar Dinner, described by Secretary **Pat Sutherland**

as "the 73rd Annual Testimonial Banquet," held at the Tyee May 2nd, was a huge success. Ninety-two judges, lawyers and their wives were in attendance to hear Seattle's Chief of Police, Frank Ramon, ask the bench and the bar to keep the public informed, in understandable language, what our system of law is and how it operates. A reasonable request and a long overdue program. Less *sine qua non* and more *res ipsa loquitur,* in English. Chief, I don't believe we could be any closer to the same target. That is the very point of Law Day and it should happen more frequently than once each year. Incidentally, **Steve Bean,** Law Day Chairman, and his crew, did yeoman service, covering almost every school in the county with a hep message.

A very quotable quote from the California Court of Appeals in *Hawthorne v. Gunn,* 11 P 2d 411 (1932): "A girl sitting on a young man's lap assumes certain risks but not that of collision." And a catering service advertising in a Seattle newspaper – "Planning a wedding is half the fun."

Olympia attorney **Gerry Alexander** is the new Exalted Ruler of B.P.O.E. 186, Olympia. and Supreme Court Clerk **William M. Lowry** is the President of the Olympia Kiwanis Club. Congratulations.

A native of Franklin County was describing the way the Sagebrush Socrates, **Ed McKinlay,** goes from barber shop to barber shop, getting estimates, when the April issue of this Fearless Journal arrived. (The mail service is better now). Ed is a difficult person to understand – it is not easy to decipher what he means. Just like the Indian saying "How" to the mermaid. This same Franklin County native confided it was generally believed that Ed ate his last missionary some time ago but, apparently, his appetite is dependent upon his recollection. It is so true that all my correspondence lessons from Bills & Notes to Vendor & Purchaser were inundated. It's the Water. On the other hand, I received real assistance and insight on the prior alphabetical subject of Annexation long ago, when a small child. As I was standing beside the Skookumchuck one day, I spied a bottle (Olympia) floating toward shore. Retrieving it, I found a pathetic note inside from a pioneer, way upstream, which read:

> "Don't dam the Skookumchuck just so it can be annexed to the Port of Kahlotus. The country must be saved from such as they. It says so right in the Farmer's Almanac. HURRY!"

PIERCE REPORT
By **DAVID E. SCHWEINLER**

Richard D. Turner, formerly an associate of the firm of Comfort, Dolack, Hansler & Billett, has become a partner in that firm.

On Law Day, the Tacoma-Pierce County Bar Association presented programs throughout the City and County, and had fine cooperation from all of its members. The Program Chairman was **Edwin J. Wheeler,** of the firm of Witt, Hutchins, Plumb & Wheeler. He was assisted by **Robert Beale,** of the firm of Murray, Scott, McGavick & Graves; **Duane E. Erickson;** and **Frederick B. Hayes,** Chief Civil Deputy, Prosecuting Attorney in Pierce County, Washington.

SEATTLE-KING REPORT
By **LLEWELYN G. PRITCHARD**

Keith Dysart has left the Attorney General's office to become associated with the law firm of Ashley, Foster, Pepper & Riviera.

James B. Gorham, a Deputy Prosecuting Attorney in King County since 1967, has been named Director of the Legal Services Center. He succeeded **Bertram L. Metzger, Jr.** who had been acting Director of the Center and who left to join the staff of State Attorney General **Slade Gorton.**

David L. Williams has joined the Pacific National Bank in the Trust Department. Williams is a former Deputy Prosecuting Attorney for King County and has been in private law practice for the past five years . . . **Eugene A. Wright** has been named to the Editorial Advisory Board of the Journal of the American Judicature Society – . . . **Robert D. Morrow** has been re-elected Washington State chairman of the Defense Research Institute at a recent Board of Directors' meeting in Phoenix.

John N. Rupp has been named to the Advisory Board of the *American Bar Association Journal* . . . **Harold S. Shefelman** has been re-appointed to a third six-year term as the University of Washington Regent . . . **James B. Picton** has been assigned to Volunteers Service to America at the Jackson-Clegg Community Action Association Prestonsberg, Kentucky. **Charles Mertel** has left the legal department of Boise Cascade to join the Seattle firm of Guttormsen, Scholfield, Willits & Ager.

George S. Lundin, Landon R. Estep, Richard I. Sindell and **Donald D. Haley** have announced that, effective April 1, 1969, they will practice law under the firm name of Lundin, Estep, Sindell & Haley in their new offices at 2525 Seattle-First National Bank Bldg . . . The Young Lawyers Section will elect two new trustees on June 3rd. The nominees are **Tom Alberg, Bob Mussehl** and **Bill Rodgers .**

SNOHOMISH REPORT
By **CHET BENNETT**

One cannot help but feel the quiet tension as we go to press, as it appears that a new District Court Judge is about to be appointed to fill the position of **Mark Patterson,** who is resigning to become a partner in a firm with **Gerald Gates** and **Gene Hunter.** Snohomish County commissioners will have a judicial plum to hand out sometime before July 14, when he leaves the bench.

The only announced candidate is Deputy Prosecuting Attorney **Don Priest.** However, anyone interested may submit his name to the Bar Association and be voted on, according to **Joe Meagher.**

Besides that, there is to be the appointment of a new Superior Court Judge. We have five now, **Tom Stiger, Ed Nollmeyer, Phil Sheridan, Herb Swanson** and **Al**

Holte. I considered running, but between my duties as Bar News scribe and pocket parts inserter at my office, I couldn't work it in.

Old **Buzz Miller**, easily one of the nicest chaps one could hope to meet, is leaving the Prosecutor's Office to practice with **Don Senter.**

SPOKANE REPORT
By **THOMAS R. CHAPMAN**

The Gonzaga University Law School held its annual legal argumentation contest this month in the Spokane County Court House. Presiding were Supreme Court Justices **Marshall A. Neill, Orris L. Hamilton** and Chief Justice **Robert T. Hunter.**

Senior John Messina won the medal competition. Argument was on the constitutionality of the implied consent law.

The Spokane Young Lawyers sponsored a seminar on the Purchase and Sale of a Small Business on May 10 at Gonzaga University. The speakers were **Larry Small, George Shields, Lynn Seelye** and Bob Beschel.

SKAGIT REPORT
By **PAUL LUVERA, JR.**

Eugene Anderson and his new partner **Steve Mansfield,** a recent University of Washington graduate, have formed a partnership in Anacortes. **Earl R. Angevine** has withdrawn as an associate of Bannister, Bruhn & Luvera to become a deputy prosecuting attorney for Skagit County and a new partner in the Mount Vernon firm of Smith, Follman & Angevine. **K.R. St. Clair** has resigned as deputy prosecutor to go into private practice in Mount Vernon in the Professional Building. **John D. Leinen,** formerly with Allstate Insurance Company, has become a new associate of Bannister, Bruhn & Luvera in Mount Vernon. **Charles R. Twede** and his partner **Al Rode** have moved into a new building in Burlington.

Recently, Skagit County had a special jury term for condemnation cases. Called back into active duty to preside was retired Judge **A. H. Ward.** To complete the staff was a retired court reporter, a retired clerk and a retired baliff.

Skagit County Law Day was under the capable direction of **Earl F. Angevine** this year. Earl made plans for a Liberty Bell award, a courthouse program, programs at the various schools of the county, and for our annual public Law Day forum held at the local junior college.

A "spirited" meeting of the local association was held on April 25th at Hope Island to discuss the appointment of lawyers in criminal cases under the direction of chairman **Paul Luvera, Jr.** A committee was formed to prepare specific recommendations for the court to consider. In addition to Paul Luvera, **Harry Follman, John H. Anderson, Eugene C. Anderson** and **Charles Twede** were appointed to the committee

SKAMANIA REPORT

The following article appeared in a recent edition of the Skamania County Pioneer. It would surely cause lively discussion (especially the last paragraph) at any free press-fair trial conference.

Mary Bernard Is Charged With Rifle Assault

By Roy Craft, Editor
Skamania Co. Pioneer

Mary Virginia Bernard, 46, Prindle, was released from Skamania County jail Monday afternoon after posting $1,000 bail on a first-degree assault charge.

She was arrested Sunday after reporting the "accidental shooting" of Louis Schutt at the home she shared with her sister Mrs. Bernice Hagood.

A .22 calibre bullet had entered Schutt's left cheek, penetrated the ear canal and emerged at the back of his neck, investigating officers reported. Schutt was taken to Vancouver Memorial Hospital and was released at mid week.

Miss Bernard was booked on the charge and bail was set at $10,000, but was reduced to $1,000 on the assurance of her attorney, **Eugene F. Harris** of Camas, that he would be responsible for her appearance. She was remanded to Superior Court by Justice of the Peace Donald Niedert.

Schutt, a friend of Mrs. Hagood, had been residing at the Hagood-Bernard home, according to Mrs. Hagood's report to Sheriff Bill Closner. He was loud and abusive and Miss Bernard intended to fire the shot over his head as a warning, she said.

Schutt was in bed at the time and he raised up just as the shot was fired according to the report.

Skamanians familiar with Schutt's tempestuous courtship of Mrs. Hagood shared the opinion that he had asked for it.

YAKIMA REPORT
By **RANDY MARQUIS**

CHANGES:

Dean C. Smith, 39, of the firm of Smith & Smith in Wapato is President Nixon's appointee to the post of U.S. Attorney for the Eastern District in Spokane. A former deputy prosecutor for Yakima County and municipal judge at Wapato, Smith will succeed **Smithmoore P. Myers,** who plans to return to private law practice.

Yakima County Bar President **Harry Hazel** has now joined the firm of Tunstall, Hettinger, Dohn & Hazel.

Lee C. Delle, age 89, senior member of the local Bar, announces that he is phasing down his practice due to ill health. A large share of his law library is now for sale. He can be contacted at the Miller Bldg. in Yakima.

Fred E. Porter and **Kelly Deaderick** are now sharing offices in the Miller Building. Fred was formerly associated with the firm of Tunstall, Hettinger & Dohn, and Kelly was deputy prosecuting attorney.

Gary C. McGlothlen, former Assistant City Attorney, has now accepted a deputy post in the Yakima County Prosecutor's office.

(continued from page 8)

'sporting theory of justice' become all too appropriate regarding state, as well as federal, cases involving criminal law administration. A violation by the police of the 'rules of the game' on the initial 'kick-off' precipitates a prolonged postponement, if not a forfeit, of the 'contest'. Undue emphasis upon the rules seems a bit out of focus when one considers that the ultimate objective of criminal justice is supposedly a search for the truth.

"On the civil side of the law we have long accepted the proposition that 'a search for the truth' is the objective of the law rather than emphasis upon the technical 'rules of the game'. Can we afford to be more fictional and less candid on the criminal side of the law?

"Does not the exclusion of 'tainted evidence' have the effect of authorizing or permitting some type of ad hoc *judicial clemency* (for those who would otherwise be convicted if the evidence had been legally obtained), which is extra-legal, extra-constitutional, and presently beyond even the clemency power and authority of the executive branch of government? Is not the 'fruit of the poisonous tree' doctrine an emotional offspring of the glib and appealing, but not necessarily valid, cliche that it is far better that one hundred guilty men go free than that one innocent man should suffer? Is it rational that letting one hundred guilty men go free will protect one innocent man? What are the probabilities of turning fewer criminals loose and still not punishing one innocent man?"

Policing the Police

In taking on the job of "policing the police," Justice Finley says the court was "acting to fill a void in state laws, which haven't done an adequate job of regulating the police and courts."

"The courts do have a responsibility and the authority for taking corrective action respecting overzealous, overly aggressive police practices which complicate and negate the prosecution of law violations and/or may unreasonably deprive the law violator of life, liberty, and the pursuit of happiness without due process of law. **Corrective action, however, does not necessitate turning criminal offenders loose as a form of shock treatment for the police.** Such judicial experimentation has too little, if any, propensity to produce the intended results; and furthermore, in my judgment, such experimentation is too inimical to other social values and too dangerous to society and law-abiding citizens to be indulged by the judiciary.

"In this vein, corrective action might well include the use of **contempt citations** and the initiation of court proceedings against the offending public officials in specific criminal cases involving instances of overreaching, over-zealous police activities.

"Another plausible alternative to judicial efforts to regulate inappropriate police conduct would be **legislative establishment of state commissions on police administration.** Such a commission would be composed of high caliber, nonpartisan professional and lay people. The commission would be authorized to receive complaints of allegedly serious misconduct by the police, involving, for example, denial of counsel, unreasonable search and seizure operations, and other transgressions of the constitutional rights of criminal defendants. This quasi-judicial administrative body would hold public hearings and take testimony in order to properly evaluate complaints of infringement of due process rights by the police. In appropriate circumstances the commission would be authorized to require police administrative officials to impose disciplinary measures in the form of reprimand, censure, or suspension without pay for the offending law enforcement officer. The commission could conceivably be further empowered to assess compensatory damages against a municipality, county, or state for aberrational conduct of law enforcement officers.

In addition, such things as better training for policemen, improved tenure, and increased compensation and retirement benefits might also have a surprisingly constructive and corrective effect.

Action by the Legislature

"The legislature should rule that evidence seized by unlawful search is admissable in court. While making the offending law enforcement officer or the appropriate governmental entity e.g. the city, county or state liable for damages relative to an unlawful search."

Would this proposal be acceptable to the Supreme Court?

"That is a large question but I have a hunch, that if the states find a way to do the job, the court would find it acceptable."

Because of the high court's "lack of judgment and discretion ," should Congress limit its powers?

As Justice Finley sees it, there isn't much Congress needs to do about the nation's top court:

"It is inevitable that time will change the present court.

"Hopefully, Mr. Nixon will appoint the kind who think more along the lines of the present dissenting group – more like Justice Byron White and less like Justice William O. Douglas – in the criminal law field."

Attorneys and judges are invited to forward to the editor memorandum decisions in or brief digests of recent noteworthy Superior Court cases involving new developments in, departures from or refinements of existing Washington law or unusual awards of damages.

Familiar Court Pattern

In a series of decisions in criminal and civil-rights cases between 1957 and 1967, the United States Supreme Court established a pattern of imposing restrictions on police procedures.

Some provisions of the Crime Control and Safe Streets Act, passed last year, reflected widespread concern that the net effect of these decisions has been to contribute to a mood of permissiveness and to the rising crime rate.

The high court yesterday issued yet another decision* that appeared to be a part of the familiar pattern. The court reversed the rape conviction of a young Mississippi resident because his fingerprints, used to convict him, were taken during an illegal arrest.

One dissenter in the court's 9-to-2 decision, Justice Potter Stewart, held that fingerprints, which he likened to the color of a man's eyes, should be treated differently from evidence such as weapons or stolen goods.

The other dissenter, Justice Hugo L. Black, expressed sentiments undoubtedly similar to those of the administration and a majority in Congress when he said:

"I think it is high time this court, in the interest of the administration of criminal justice, made a new appraisal of the Fourth Amendment and cut it down to its intended size. Such a judicial action would, I believe, make our cities a safer place for men, women and children to live."

There can be little doubt that there will be a "new appraisal of the Fourth Amendment" when the passage of time gives Nixon appointees a majority on the court. Mr. Nixon has said he intends to name only "strict constructionists" of the Constitution to the court.

But the day of the "Nixon court" may well be distant. The question meanwhile is whether the court will declare unconstitutional the pertinent provisions of the aforementioned 1968 Crime Control Act. In other words, does Congress have the power to prevent the court from handcuffing the police?

Before former Attorney General Ramsey Clark left office he instucted federal law-enforcement agents not to invoke the new congressional provisions, thus lessening the chances that a test case would be made soon.

The new attorney general, John N. Mitchell, can be expected to take an opposite tack.

A showdown approaches on the court curbs. Yesterday's decision may have had the effect of hastening that development.

Editorial
The Seattle Times
April 23, 1969

**Davis* v. *Mississippi*, 37L.W.4359 (4/22/69).*

THE COURTS

SUPREME COURT PRACTICE

by **WILLIAM M. LOWRY**
Supreme Court Clerk

In last month's issue of the *Bar News*, cases then set for hearing *en banc* during the May 1969 Session were summarized. Since then, three additional cases have been set for hearing by the *en banc* court:

CIVIL

40508 **Industrial Relations**: Is issue of "lay off" versus "strike" a question of fact or law? Also involves payment of attorney fees from unemployment compensation fund.

39339 **Guardian** (Rehearing): Can general guardian prosecute action for annulment, or in alternative divorce, on behalf of ward found to be competent to understand the marriage ceremony?

CRIMINAL

40514 **Bookmaking**: Does a conviction for bookmaking violate equal protection when parimutual betting authorized?

Cases set for hearing by a department during the May 1969 Session of possible interest to the Bar are summarized below:

CIVIL

39679 **Maritime Law**: What is the duty of an employer to a seaman charged with a serious crime in a foreign jurisdiction?

39296 **Contributory Negligence**: Is it error to deny motion to strike affirmative defense of contributory negligence where action for damages is by four-year old, not by parents?

39732 **Real estate Commission**: When earned?

39882 **Pension**: Pension rights of retired policeman were changed. Does taking under old law constitute an election?

39916 **Probate Limitation of Action**: Are alleged heirs barred in action against administration by running of statute of limitations on final decree or is decree void since alleged heirs not notified?

40552 **Adoption**: Can the father of an illegitimate child challenge an adoption consented to by the mother?

40633 **Long Arm Statute**: Can Washington resident bring action in Washington to rescind contract to purchase land in Brazil when land advertised in Washington paper from Indiana resident?

CRIMINAL

40257 **Admissions**: Admissibility of when made in
39745 absence of counsel.
40189

40263 **Search & Seizure**: Admissibility of evidence found in car stopped for minor traffic violation.

40305 **Search & Seizure**: Police tipped that defendant had stolen goods. Placed house under surveillance. Police entered house without warrant when they observed unidentified goods being carried in. Are goods seized admissible?

40327 **Witnesses**: Is it error for the court to permit
40451 prosecution witnesses, of whom the defense has no notice, to testify?

40451 **Evidence**: Is defense entitled to surrebuttal to controvert testimony of a surprise state witness?

40494 **Evidence**: Admissibility of testimony of an accomplice threatened with habitual criminal charge if he would not testify. Is it an abuse of discretion to refuse to allow wife to testify in behalf of her husband unless she is excluded from court during testimony of other witnesses?

40209 **Sentence**: Is a sentence for selling narcotics to a minor void when neither the information nor judgment suggest a minor was involved?

SUPERIOR COURT NEWS

by **RICHARD F. BROZ**

Judge, King County Superior Court

The trial bench of this state continues to lend strong support to the program of The National Conference of State Trial Judges, founded in 1957, to promote the administration of Justice in the trial courts of the United States. King County's Judge **George H. Revelle** is chairman of the editorial board of The Trial Judges' Journal, the Conference's quarterly publication. Judge **Charles A. Stafford**, Skagit County, Judge Revelle, and former Judge **Eugene A. Wright**, King County, are on the faculty of The National College of State Trial Judges, which is sponsored by the National Conference.

Some twenty-five percent of the state judges who sit in the nation's general jurisdiction trial courts have graduated from The College, which percentage figure is well exceeded in Washington.

Court Administrator Al Bise states that Judge **Robert D. McMullen** of Clark County, Judge **Patrick McCabe** of Asotin-Garfield-Columbia counties, Judge **Delbert R. Scoles** of Stevens-Pend Oreille counties, Judge **Alfred O. Holte** of Snohomish County, and Judges **Richard F. Broz**, **James J. Dore**, and **Warran Chan** of King County, have been accepted for enrollment in the college at the University of Nevada this summer.

★ ★ ★

The Christian Science Monitor is running an informative series of articles on Juvenile Courts, authored by nationally recognized Howard James.

Mr. James' articles, entitled "Children in Trouble: a National Scandal," represent an in-depth study of juvenile courts and procedures throughout the United States, and focus upon serious inadequacies throughout the nation's juvenile courts, including Washington's. Pertinent remarks of Judge **Morell E. Sharp**, King County, are contained in the April 12-14 edition of the Monitor, which runs the third article of the series.

★ ★ ★

Parole Board revocation procedures are under consideration as a result of recently enacted legislation. Chapter 98, Laws of 1969 (formerly Senate Bill 346), providing for the arrest, detention and fair hearing on the revocation of parole, further provides for an "on-site hearing" before one or more members of the parole board in the locality "reasonably near the site of the alleged violation of parole." The alleged violator shall be entitled to be represented by an attorney of his own choosing, and at his own expense. Indigents, on proper showing of indigency, may at the "on-site hearing" be allowed the services of an attorney appointed by the local Superior Court judge and compensated by the Board of Prison Terms and Paroles.

The Act requires that the Board of Prison Terms and Paroles adopt rules governing the formal and informal procedures authorized by the Act. With reference to these proposed rules and anticipated procedures, the Parole Board extended to the judges of the Superior Court, defense lawyers, prosecuting attorneys, officials of the Department of Institutions, the Attorney General, and others, an invitation to sit with them on April 22, 1969 in an "idea session." Judge **Hewitt Henry** and Court Administrator **Albert C. Bise** attended the meeting, and Parole Board chairman, Bruce Johnson, has agreed to submit advanced rough draft copies of any proposed rules to Court Administrator Bise, who will bring them to the attention of Judge **George Revelle**, Chairman of the Parole Board Liaison Committee of the Superior Court Judges' Association.

NEWS FROM THE COURTS OF LIMITED JURISDICTION

by **THOMAS B. RUSSELL,** *Judge*
Northeast District Justice Court

In the March edition of the *Bar News,* part of this column was devoted to explaining the effects on a defendant's driver's license that can be produced by his refusal to submit to a breathalizer exam and that can be produced by a conviction of driving while under the influence of intoxicating liquor. One of the points made in that column was that if a driver had refused the test but had requested a hearing on his refusal, he could receive an occupational driving license after his conviction for driving while under the influence. That statement is correct as far as it goes but it doesn't go far enough.

While the defendant could receive an occupational license, it would only be good until his hearing on his refusal is completed, if the outcome of the hearing is to uphold the revocation of his license. At that point, the occupational license is invalid because his license to drive is revoked under Initiative 242 and there is no right to an occupational license. It would only be in the case that his hearing officer upheld his refusal and did not revoke his license that the occupational license would be of any use to the driver after the hearing.

★ ★ ★

Defendants charged with the class of crime known as misdemeanors remain in a Land of Oz as far as right to appointed counsel is concerned. As of the first of January, most of the King County Justice Courts had funds budgeted to pay appointed counsel and were proceeding to do just that. Last month, King County's Prosecuting Attorney issued an opinion that this budget item was not a justifiable expense in light of the state statutes pertaining to justice court expenses and particularly in light of RCW 10.01.110, which directs payment in felony cases and to "such other proceedings and at such other time as may be constitutionally required." So the benevolent King County plan comes to a halt while attention focuses on Olympia where the Washington Supreme Court in the case of *Seattle vs. Hendrix,* is in the process of deciding whether counsel are constitionally required for misdemeanor defendants.

★ ★ ★

The bench of the Courts of Limited Jurisdiction will lose a strong pillar in July with the forthcoming resignation of Snohomish County District Court Judge **Mark Patterson** who is returning to private practice after July 15. Mark's intelligent approach and capacity for work are known to judges across the state and his efforts to improve the administration of the Everett District Court and District Justice Courts in general have been outstanding and effective. On behalf of the state association of judges, the Washington State Magistrates' Association, he served on the committees concerned with part-time judges and the production of a working manual for all judges of limited jurisdiction courts. In his latter capacity, he wrote two of the chapters, Evidence and Civil Procedure, which are noteworthy not only in the breadth of subject covered but also in the excellence of the treatment of the subject. He also played a major role in the legislative efforts of the Association to have a court improvement package enacted by the 1969 Legislature. Members of the bar might have noticed Judge Patterson's name on the foreward to the article on Wage Garnishments published last April in the Washington Law Review. We hope the Snohomish County Bar can either persuade Judge Patterson to stay on his side of the bench or at least assist the county commissioners in finding another judge of equal outstanding ability to replace him.

★ ★ ★

New Seattle Municipal Court Rule – Change of Venue – effective June 1, 1969: "To provide for better scheduling of cases, applications for change of venue from one department of the municipal court to another department shall be made in writing and filed with the clerk at least ten (10) days before the time set for the trial." Forms are available in the clerk's office.

Attorney General Opinions

AGO 1969 No. 7: *Juvenile Court.*

(1) The supreme court's adoption of the new juvenile court rules does constitute a "nondebatable" emergency so as to justify the expenditure of those county funds which are necessary to implement, and comply with, the rules, under authority of RCW 36.40.180.

(2) The duties which are imposed upon a prosecuting attorney by the new juvenile court rules are such as to render his office and that of the county juvenile probation officer incompatible, to the end that the two positions may not simultaneously be held by the same person.

AGO 1969 No. 8: *County Jail Prisoners.*

The department of institutions presently has no authority, under the provisions of chapter 239, Laws of 1967 (chapter 39.34 RCW), or any other statute, to enter into a contract with a county for the temporary detention of county jail prisoners in any existing state correctional institution for convicted felons.

AGO 1969 No. 9: *Relates to Whether Pinball machines, Punchboards, Card games and Bingo Fall within the Prohibitions of the Antigambling statute of this State.*

OFFICE PRACTICE TIPS

THE NIGHT SHIFT

Most lawyers are complaining that they are battling an ever increasing avalanche of paperwork. Everyone is searching for a way to get more production at a cost within reason. One of the most effective tools we have come across is the utilization of a night shift. After we had our first automatic typewriter for about six months, we began to question whether or not its use during an eight-hour shift justified the rental of $240 per month. Consequently, we considered the feasibility of putting a night shift on the automatic machine. Since it produced a tape and was being touted for revision typing, it appeared that we would be able to play the work back the next day and make corrections without any great time or expense being involved. I discussed the question of the availability of personnel with two restaurant owners, whom we represent, and was surprised to learn that they have twice as many applications for night waitress jobs as they do for day work.

I ran an ad for an experienced legal secretary to work nights and was amazed at the response. We had over a dozen applications of qualified people. We now have two girls on the night shift and have used it continuously for nearly three years. The first girl we hired really wanted to work days and only took the nights on the understanding that she would have the first opportunity to move into an opening on the day shift. All of our other girls have wanted to work nights only. There is a great deal of flexibility in hours, but, normally, the night shift runs from 7:00 to 12:00 P.M. We have our own parking lot lighted with flood lights so that the girls can step out of their cars and into the office. In general, the applicants were young women with legal experience who had small children and did not feel free to leave them during the daytime. They were all very anxious to maintain their skills and to secure additional income for the family. Evening work holds many advantages for them. The family car is home and available for transportation; the husband babysits the majority of the time; and when he does not, there is no trouble finding an evening babysitter, whereas daytime babysitters are in short supply. Our secretary comes to work in her slacks and has no clothing expense. There are no meals to buy. There is a minimum of distraction and a maximum of production. From the standpoint of the firm, we pay at an hourly rate which gives us flexibility in our overhead. We are also securing production from the same machines, the same desks, and the same floor space that we use during the daytime, consequently we need no additional space.

After our program was well established, we learned to our chagrin that the monthly rental on the automatic machine was being increased to $250 and that an additional charge of $130 per month would be made for a second shift. This total charge of $380 per month was one of the reasons that our firm decided to abandon leasing and to purchase our own machine. At this rate we can pay for a $7,000 machine in less than two years and our additional expense is limited to $30 per month maintenance.

At the Third National Conference on Law Office Management held at San Francisco last fall under the auspices of the American Bar Association I attended a small sub-section meeting of approximately 100 lawyers. The question was asked how many had a night shift and we discovered that 12 out of the 100 firms were operating night shifts. One firm in Newark, New Jersey, said that its neighborhood was so tough that a lawyer is on duty every night to walk the girls to and from their cars. Actually, if the girls all park in the same lot and arrive and depart at the same time, this would not be too big a problem. Of course, if a firm has in-building parking, the girls can use the partners' stalls at night.

Our senior partners arrive at the office by 8:00 A.M. with the mail, open it, and leave it on their secretaries' desks. By 4:00 P.M., I am ready to quit for the day and head for the jogging track and the pool. Late appointments cramp my style. Some two months ago, as an experiment, I told my secretary to make no appointments after 4:00 P.M. but to invite these people to drop in on Tuesday evenings between 8:00 P.M. and 10:00 P.M. The response has been unbelievable. The reception room, conference room, and my office have been full of people these last Tuesday nights. Between the fact that most paperwork is done in advance and that I have a night girl available, the work has been done very satisfactorily. The interesting thing has been that no one was in a hurry and all have been appreciative. I am beginning to suspect that every lawyer in a firm should keep evening hours one night a week and that every sole practitioner should have one night a week in the office. I much prefer this to working Saturdays.

For availability of help, economy of operation and boosting of production, the night shift is a most valuable tool.

HARRY E. HENNESSEY

The Disappearing Act of Advocacy

(continued from page 6)

lawyer on the program - and obviously because there is no subject of what will happen to your transaction in real estate if it gets into the courtroom.

A Facility to Research Trial Advocacy Techniques

Fifth, either separately or as a part of an adequate trial institute, there should be a research facility or clearing house of trial advocacy techniques. This research facility could experiment, test and monitor validity of new and old techniques. It could critique actual courtroom performance on a fee basis. Standards need to be developed and disseminated. Trials should be observed and developments shared. For example, one of our most successful advocates, now a judge, maintains that a good advocate feels secure and in command of the situation, knows his facts, no witness is a surprise to him, he knows what courtroom equipment is available and how to use it and he has his strategy planned. I agree with this judge but I don't really know whether these principles are really valid. In addition, if valid, some research facility should be advising on specific means to achieve these objectives. Other matters to be explored could be the use and abuse of visual aids, how can video tape be used for depositions or to preserve the record, what shape, size and equipment should make up the courtroom. How can automatic data processing be used?

More Law Clerks for Judges with Increased Duties

Sixth, shouldn't our King County Library, which is principally supported by filing fees, be authorized to employ six or seven law graduates as a pool of law clerks for judges in the superior and district courts to improve the standard of law applied in trials. Some of that $260,584.29 surplus they have could be devoted to this and to preparing and publishing headnotes for important oral or written memorandum decisions similar to those published in the Seattle-King County Bar News.

A Letter to the Dean

Seventh, you could write a letter to the dean of the law school:

"Dear Dean:

"The judges of our court have asked me to offer assistance in helping to improve the art of advocacy in our courts. Some of us are willing to give time before and after court hours to work with law students and young lawyers to assist them in any way we can.

"Would you and one of your faculty members meet with us for lunch next Tuesday noon to discuss ways and means. The president of the bar association will join us.

Very truly yours."

There you are. Your judges will join you. Let's think and act positively, individually and with imagination to preserve our system of advocacy.

TWENTY YEARS AGO

They were not free from fear then. Harry J. McClean, President of the California Bar Association, was quoted at length in the May Bar News.

"We live in a day of fear. Even a slight sense of realism gives us concern over the future of civilization whether we can escape a third world war within a single generation, whether our constitutional freedom born in travail on Runnimede in 1215 can be preserved."

HONORARY MEMBERS

The Honorable **William C. Brown**, former Superior Court Judge of Okanogan and Ferry Counties, joined as honorary members in the Washington State Bar Association. Honorary members to date in the Washington State Bar Association have been and are: Hon. William O. Douglas, Washington, D. C.; **William A. Reynolds**, Chehalis; **Leander T. Turner**, Suquamish; **A. J. Gillis**, Walla Walla; **J. W. Graves**, Spokane; **Austin Edwards Griffiths**, Seattle; **H. E. Snook**, Seattle; **James A. Williams**, Spokane; **Frank S. Griffith**, Port Blakely; **Frederick R. Burch**, Seattle; Hon. R. L. Maitland, Vancouver, B. C.; Hon. **Mack F. Gose**, Pomeroy; Hon. **W. E. Parker, Yakima; and S. H. Green**, Castle Rock.

CENSUS

The Washington lawyers numbered 2,552. In many places such as Asotin, one lawyer had a monopoly; but Seattle's had a surplus with 1,255. The Bar News carried a long dissertation by the then editor and originator **John N. Rupp.** The subject was shorter judicial opinions.

Quoting Lord Wright of the British House of Lords, Charles A. Beardsley of Oakland, former president of the American Bar Association, and Judge Marshall F. McComb, our editor, Rupp, concluded with the following eruption:

"We once had to read and study every brief that was filed with the Supreme Court of this state during a fifteen-month period, and we came away with the distinct impression that the court could hardly be blamed for being on occasion a clouded mirror."

Further this writer sayeth not.

DAVID J. WILLIAMS

NOTICES

RESOLUTIONS PROCEDURE

Section 5. RESOLUTIONS. Any member may, at least twenty (20) days before the opening day of an annual meeting, or at least two (2) days before the opening day of any special meeting, present to the Resolutions Committee, in writing, any resolution pertaining to the legal profession or to the Association, or to any report of any officer or committee of the Association or other appropriate matter, for consideration at such meeting.

Resolutions of less than 500 words so submitted to the Resolutions Committee at least sixty (60) days prior to the opening day of an annual meeting shall be published in the Washington State Bar News prior to such annual convention.

At each annual meeting the Resolutions Committee shall hold a public hearing on resolutions which have been submitted, which meeting shall be held not less than one (1) day prior to the date of the annual meeting of the Association. At such hearing the proponents and opponents of any such resolution shall be given a reasonable opportunity to be heard. The Resolutions Committee shall, following such public hearing, reject any resolution determined: (1) not to be pertinent to the legal profession or the Association; or (2) not to be appropriate for consideration at such annual meeting of the Association. The Resolutions Committee shall determine whether any resolution submitted prior to its public hearing but later than twenty (20) days prior to the opening day of the annual meeting shall be presented at the annual meeting. The Resolutions Committee shall thereafter report upon each qualified resolution, together with its recommendations, proposed amendment thereto or comments thereon, at the annual meeting or any special meeting called in the manner provided in these By-Laws.

Resolutions submitted from the floor which have not been processed in accordance with the foregoing procedure may only be entertained by the consent of two-thirds of those present and voting at the annual meeting.

At any meeting of the Association at which a resolution shall be submitted by the Resolutions Committee or from the floor, the resolution shall be open to debate and a vote taken thereon. The president shall report to the Board of Governors the action on such resolution for final disposition, should such action be required.

Notice of the purpose and function and personnel of the Resolutions Committee shall be published in the Washington State Bar News not less than sixty (60) days prior to the commencement of the annual meeting. The Resolutions Committee shall, prior to the commencement of the annual meeting of the Association, cause to be prominently displayed at such annual meeting copies of all resolutions being submitted by it at such annual meeting, and, when practicable, cause to be made available to the members of the association at such annual meeting 200 or more copies of each resolution being so submitted by it.

Section 6. ORDER OF BUSINESS. The order of business shall be that set out in the published program; provided, however, that the President or other chairman of the meeting may make such changes in order as he may deem necessary or expedient, from time to time.

Resolutions Committee:

Charles Scanlan, Chrm., Spokane; George W. McCush, Bellingham; Jerome R. Walstead, Longview; Richard H. Riddell, Seattle; Darrell E. Ries, Moses Lake.

STATE BAR ASSOCIATION
ANNUAL MEETING
September 4, 5 and 6, 1969
Washington Plaza Hotel
SEATTLE

GONZAGA LAW REVIEW GETS NEW EDITOR

John Messina, Editor of the Gonzaga Law Review for the past year, recently announced the name of his successor as Editor-in-Chief for the 1969-70 school year. He is John D. Urquhart, Jr., a member of the Gonzaga Law School class of 1970. Mr. Urquhart is a native of Lind, Washington. He received his B.A. degree from Stanford University. He is married and has one child.

Mr. Urquhart will take over the Gonzaga Law Review after a year of innovation. Last winter, the Review, in its fourth year of publication, published its first annual Supreme Court of Washington Note, which was an analytical review of the important cases handed down by our court during the previous year.

This school year will also see the printing of Gonzaga's first two-issue volume. Volume 4, No. 2, is scheduled to be in the mail about June 1st. This issue will feature a lead article by the Honorable **Charles L. Powell**, Judge for the federal court of the Eastern District of Washington, on the federal Omnibus Crime Control and Safe Streets Act. Also included will be a Uniform Commercial Code "Trilogy." This will consist of three articles by attorneys on various Code sections. Mr. **Lawrence Small** of the Washington Bar writes on Article 2, Sales; Mr. Andrew Farley of the Pennsylvania Bar writes on Article 3, Bills & Notes and Mr. **John Heath, Jr.**, of the Washington Bar comments on Article 9, Secured Transactions. In addition, there will be the traditional articles by students covering such diverse areas as State Action, Railroad Crossing Accidents and Conflicts between State and Federal Trade Regulations.

Information about the forthcoming issue of the Gonzaga Law Review can be obtained by writing to: Gonzaga Law Review, Gonzaga University School of Law, Spokane, Washington 99202.

Deadline for the next issue of the *Bar News* is June 6, 1969

NOTICES

Wanted & Unwanted

For Sale: 1 Wash. Terr. through 71 Wn.2d; Wash. Dig. and other misc. vols. W. Stanley Riddle, Jr., 5801 15th Ave. N.W., Seattle 98107. SU 2-1130.

For Sale: the following used sets, in excellent condition and complete as of date of delivery; installment terms (no interest, $30 per month, note and security interest) or 10% cash discount advance payment, all prices F.O.B. your office: CJS, 133 Volumes $750; Fletcher's Cyclopedia of Corporations, 26 Volumes $550; Nichols Cyclopedia of Legal Forms, 12 Volumes $150; contact John A. Hamill, 820 White Henry Stuart Building, Seattle, 98101. MA 3-8932.

Wanted: Gift copies of ABA Journals for 1957-60 inclusive and Vol. 54 No. 10 only for 1968. The Social Science Library, The Library, Washington State University, Pullman, 99169.

Will Information Sought

Anyone having information regarding wills made by Gertrude Miller Bilbrey, who died April 19, 1969, in Seattle, Washington, is requested to communicate with R. Wayne Cyphers, 537 Central Building, Seattle, Washington 98104.

Biennial Report Available

The seventeenth Biennial Report of the Washington State Board of Prison Terms and Paroles is available free of charge by writing the Board at 805 Capitol Center Building, Olympia, Washington 98501. A 53-page report, it contains chapters on "Philosophy, Goals and Objectives," "Meeting the Challenge," "Parole Success Rates," "Historical Development" and "Looking to the Future."

Space Available – Flight to Europe '69

While the charter flights of our Bar Association are a sell-out, quite inevitably some of our travelers are required by reason of pressing family need (or an anticipated probate) to bug out – so we do have space that becomes regularly available from time to time. The vacated seats are assigned on a first come, first served basis. So get on that waiting list! Your chances for an early "booking" are excellent and you still have plenty of time for planning and arguing.

Our flights leave from Vancouver, B.C., for London, with return from Amsterdam. First flight departs September 8th and returns October 10th. Second flight departs September 13th and returns October 13th. Round-trip cost is $250 for members of our Bar, their spouses, dependent children and parents living in the same household. Send your check ($250 for each seat) to: Travel Committee, Washington State Bar Assn.; c/o Seattle-First National Bank; P.O. Box 3586; Seattle, Wash. 98124; Attn. Mr. William Mobley, Escrow Agent.

John D. McLauchlan
Chairman, Travel Committee

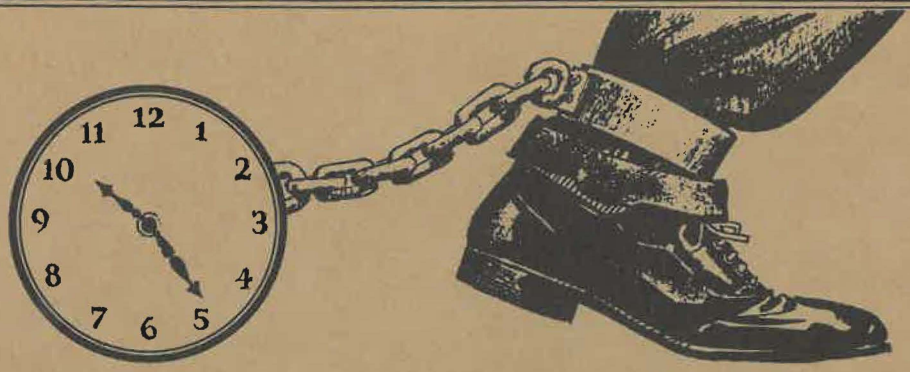
LAWYER PLACEMENT SERVICE

by **DAVID L. BROOM**

The Young Lawyer's Committee of the Washington State Bar Association operates a Lawyer Placement Service at the State Bar Office, 505 Madison Avenue, Seattle, Washington, 98104, and at the Spokane County Law Library, Paulsen Building, Spokane. The service is available to members of the Association and recent law graduates seeking legal opportunities and employers seeking legal personnel. The service is offered without cost to either the applicant or prospective employers. The following are summaries of a few of the many applications on file:

1. Large city O.E.O. Legal Services Office needs Assistant Directing Attorney to assume both legal and administrative duties. Minimum $800 per month.
2. Older lawyer seeks associate for eventual takeover of practice in fast-growing area.
3. Attorney in small eastern Washington community wants man to replace partner who has accepted governmental appointment.
4. Young lawyer associated with firm in large city for three-plus years seeks change. Would prefer Puget Sound area.
5. Woman attorney, J. D. 1969, former secretary and clerk in several Congressional offices applying for employment in this state.

Further information regarding the above can be obtained at either location.



To move forward faster...take a step back

When you next have a corporate filing to handle, step back a pace. Take a hard look at the *earning* time you will use up on clerical details connected with the filing—*earning* time you can better use on law work. Then call C T.

C T can save you time and effort on every step of the filing, from initial research to receipt of evidence the filing is completed. The experience of the quarter million lawyers who have used C T information and services on corporation matters is your assurance of C T helpfulness.

Example: C T's free information (it's for lawyers only) on costs and the statutory requirements governing the filing. Incorporation. Qualification. Amendment. Merger. Dissolution. Withdrawal. Any state. Any Canadian province. In many instances—depending on state, date, type of filing—C T information will help you effect important savings through timed filings. Try us. There's no obligation.

THE CORPORATION TRUST COMPANY • CT CORPORATION SYSTEM • ASSOCIATED COMPANIES

C T CORPORATION SYSTEM, 1218 THIRD AVENUE, SEATTLE, WASHINGTON 98101:

I am a lawyer. Without obligation, please send me more detailed information about C T helpfulness in corporation work.

NAME_____

FIRM_____

ADDRESS_____

CITY_____

STATE_____ ZIP_____

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SUPPLEMENT TO OPINION INDEX

OPINION 133

(December 1966)

No. 133. Restrictions on Practice of Justice Court Judges Pro Tem and Superior Court Commissioners.

Your opinion has been requested on the following:

(1) May a lawyer in private practice, who has been appointed as a justice court judge pro tem in a district court, represent clients in either a civil or criminal action before that court?

(2) Is there a difference whether this representation is before the elected judge of the court or before one of the other pro tem judges?

(3) May the partner of the justice court judge pro tem represent clients in either criminal or civil matters in such court?

(4) May the elected part time justice court judge properly practice before district courts in districts other than his own?

ABA Opinion No. 142 provides that it is improper for a lawyer to practice in a court which he occasionally presides as a judge pro tem.

The Canon of Judicial Ethics No. 31 provides:

> "In many states the practice of law by one holding a judicial position is forbidden. In superior courts of general jurisdiction, it should never be permitted. In inferior courts in some states, it is permitted because the county or municipality is not able to pay adequate living compensation for a competent judge. In such cases one who practices law is in a position of great delicacy and must be scrupulously careful to avoid conduct in his practice whereby he utilizes or seems to utilize his judicial position to further his professional success.
>
> "He should not practice in the court in which he is a judge, neither when presided over by another judge, or appear therein for himself in any controversy."

The first question must, therefore be answered generally in the negative. Too strict an application of the rule, however, may in some areas and in some instances produce an unfortunate result, in that no lawyer would be available to act as judge in the event of the absence or disability of the elected incumbent. We believe that the rule set forth in ABA Opinion No. 142 must be relaxed to fit the requirements and long established practices in our jurisdiction. The problem is somewhat analogous to that of city attorney considered in WSB Opinion No. 68 which followed an ABA Opinion. The rule of that Opinion was subsequently relaxed by WSB Opinion No. 112 and WSB informal Opinion No. 2 to fit local conditions. We conclude, therefore, that those who act as judges pro tem in district courts, frequently or regularly, must comply with the cited Opinion. Those who sit only for short periods of time and on isolated occasions or if no other lawyer is available, would not thereby be guilty of unethical conduct.

WASHINGTON STATE BAR ASSOCIATION

OPINION 133

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>
> "He should not practice in the court in which he is a judge, neither when presided over by another judge, or appear therein for himself in any controversy."

The first question must, therefore be answered generally in the negative. Too strict an application of the rule, however, may in some areas and in some instances produce an unfortunate result, in that no lawyer would be available to act as judge in the event of the absence or disability of the elected incumbent. We believe that the rule set forth in ABA Opinion No. 142 must be relaxed to fit the requirements and long established practices in our jurisdiction. The problem is somewhat analogous to that of city attorney considered in WSB Opinion No. 68 which followed an ABA Opinion. The rule of that Opinion was subsequently relaxed by WSB Opinion No. 112 and WSB informal Opinion No. 2 to fit local conditions. We conclude, therefore, that those who act as judges pro tem in district courts, frequently or regularly, must comply with the cited Opinion. Those who sit only for short periods of time and on isolated occasions or if no other lawyer is available, would not thereby be guilty of unethical conduct.

The foregoing constitutes an answer to the second question presented.

The answer to the third question posed, is answered in the negative. ABA Opinion No. 142 provides that neither a law firm nor a partner thereof can properly accept employment which any member of the firm cannot properly accept. This restriction applies as well to the office associates. (See also WSB Opinion No. 141).

ABA Opinion No. 104 provides that a lawyer who occupies an office with a police magistrate could not accept employment from persons arraigned before such associate.

Consideration of the fourth question necessitates consideration of the provisions of RCW 3.34.140, which provides that any justice court judge may hold a session in any justice court district in the state at the request of the justice or majority of the justices in such district, if the visiting justice court judge determines that the state justice court business in his district will permit him to be absent.

Based upon the authorities cited above, it would appear that a justice court judge sitting in a district other than his own would be subject to the same restrictions as a judge pro tem sitting in the district in which he practices. If in fact the justice sits in a district other than his own, he would be precluded from practicing before the justice court in such district. On the other hand, if the justice court judge does not and has not practiced before the court of the other district and if not precluded from doing so by the provisions of RCW 3.04.010 et seq., he would not be precluded by ethical considerations from appearing before such court. In doing so, however, he should be mindful of the provisions of Judicial Canon No. 31.

By supplemental request, you have requested a ruling as to the rights of a Superior Court commissioner to appear before the Superior Court. While not requested, we believe it would be desirable to consider the status of a judge pro tem in the Superior Court in connection with this opinion.

The legislature of the State of Washington has provided for the appointment of judges pro tem of the Superior Court (RCW 2.08.180), and for the appointment of court commissioners (RCW 2.24.010). The committee is cognizant of the efforts of the judiciary to alleviate the congestion in the courts by the use of judges pro tem, and believes that the practice is in the public interest. If any lawyer who acts as a judge pro tem were thereby precluded from appearing in the Superior Court, few, if any members of the bar would be available to act as judges pro tem.

The same is true of court commissioners. While the court commissioner is not required by statute to be a lawyer, the public interests require that lawyers should not be precluded from acting in that capacity.

Judical Canon No. 31 refers to "one holding judicial position" in Superior Courts of general jurisdiction. It is the opinion of the Committee

that judges pro tem and court commissioners do not hold "judicial position" within the intent of the Canon, and that they are not, therefore, bound thereby.

A long established custom based on the public interest and without ill effect leads the Committee to the conclusion that the practice before the Superior Courts by judges pro tem and court commissioners, does not constitute unethical conduct. No judge pro tem or court commissioner should, however, appear as an attorney in any matter in which he has acted as judge or commissioner, or any matter related thereto.

OPINION 134

(December 1968)

Combining Law Practice and Adjusting Insurance

An opinion has been requested in regard to the propriety of attorneys holding themselves out as such when engaged in the business of adjusting insurance. The Ethics Committee is of the opinion that the two activities cannot be properly engaged in at the same time.

Canons 17, 47 and 35 of the Canons of Professional Ethics together dictate the impropriety of simultaneously involving oneself in the practice of law and adjusting insurance. It is practically impossible to separate the two activities. Insurance claims necessarily involve advertisement and solicitation, though unintentional it may be, which leads to the "feeding" of one's legal practice from contacts made in his insurance work. Washington Ethics Opinion 14 (September 1957), Opinion 37 (October 1954) and Opinion 122 (December 1963) all point out the hazards when there are attempts to combine legal service with another business activity.

If a lawyer is to participate in other business activity, he must withdraw from legal practice and refrain from holding himself out as a lawyer.

OPINION 135

(December 1968)

Combining Law Practice and Real Estate Brokerage Business

An opinion has also been requested as to the propriety of an attorney maintaining a real estate brokerage business while practicing law.

The principles set forth in Opinion 134 and the prohibition against solicitation and advertisement contained in Canon 27 make clear the impropriety in joining these two activities. It is unrealistic to believe that one can keep a real estate business separate from a law practice and avoid the "feeding" of the law practice.

WASHINGTON STATE BAR ASSOCIATION

OPINION 136

(December 1968)

Claim Against Former Client

An inquiry has been directed to the propriety of representing a guardian and his ward in one legal action and then representing the guardian in a later action brought against him by the ward.

Canons 6 and 37 make it unethical to accept employment with a client against a former client where such employment would require the attorney to contend for that which his duty to the former client would require him to oppose, and as to any matter adversely affecting confidences reposed in him by the former client. Washington Ethics Opinion 45 (June 1956) suggests that the use of any information gained in representing the former client, confidential or otherwise, makes the later representation improper.

Representation of the guardian and the ward in the prior action, during which information would undoubtedly be gained from both, makes representation of the guardian against the ward in a later action improper.

OPINION 137

(December 1968)

Dealing Directly With Adjuster

An inquiry has been directed to the question of a plaintiff's attorney dealing directly with an adjuster of the defendant's insurance company after the defendant has appeared by an attorney.

Although Canon 9 would appear to deem improper the conduct in question, A.B.A. Informal Opinion 523 (May 31, 1962) permits direct dealing between plaintiff's attorney and a representative of defendant's insurance company, if the defendant's attorney approves such direct dealings.

It is the opinion of the Legal Ethics Committee of the Washington State Bar Association that settlement negotiations may be pursued between plaintiff's attorney and defendant's insurance company, provided, as is set forth in the above-cited A.B.A. opinion, that the attorney for the defendant has approved.

WASHINGTON STATE BAR ASSOCIATION

OPINION 138

(December 1968)

Patent Attorney – Classified Listing in Telephone Directory

An inquiry has been made regarding the propriety of patent attorneys listing themselves as such under a special heading in the classified section of the telephone directory.

Rather than state here a formal opinion on the matter, it is the intention of the Committee to suggest its position at this time subject to reconsideration after the patent attorneys in the state have an opportunity to state their position.

The present position of the Committee is in line with what is stated in A.B.A. Formal Opinion 286 (September 25, 1952), that the listing by patent attorneys in a special section of the classified section of the telephone directory is not proper and should be terminated. To permit such listing would make most difficult the establishment of guidelines for other specialties in the law, such as taxation, admiralty and the like.

OPINION 139

(December 1968)

Referral of Business

An opinion has been requested concerning the propriety of one no longer practicing law forwarding business to a practicing attorney.

The Committee is of the opinion that the forwarding of such business by a former attorney on a friendly basis without payment for such referral would be proper. Canon 28 precludes the remuneration of a non-lawyer for the referral of business. Canon 34 allows for a division of the fee with another lawyer only where the services are split and the fee is divided on that basis.

One no longer practicing law would have to be considered a non-lawyer within the cited Canons and the referral of business by him to a practicing attorney would have to be without payment to be proper.

WASHINGTON STATE BAR ASSOCIATION

OPINION 140

(February 1969)

Expenses of Litigation

An opinion has been requested concerning the ethical responsibility of an attorney who engages the services of another attorney, or is engaged by another attorney, or who, in connection with litigation retains the services of an accountant, physician, court reporter, investigator, title insurance company, etc., so far as concerns payment by the attorney for witness fees and other services rendered.

Clearly the attorney may not agree to pay such expenses upon behalf of his client without an agreement by the client to reimburse such advances so made. On the other hand an attorney may, subject to the right of reimbursement from the client and the duty of the client to reimburse, advance expenses of litigation, Canon 42.

However, when the attorney has directly and personally ordered or arranged for services in circumstances under which he, the attorney, did not make it clear (if such were his intent) to the person rendering the services that such person must look to the client alone for payment, the attorney has been derelict in his responsibility of preserving a good public image of the legal profession. The primary responsibility of making it clear that the attorney acts in an agency capacity with no personal liability rests upon the attorney. If he has been derelict herein, others may reasonably be misled into believing that the attorney is agreeing to pay or to guarantee the payment of the obligation so created. In this circumstance it would be the ethical obligation of the attorney to pay such indebtedness and then look to his client for reimbursement and assume the risk of nonpayment.

Similarly, when arrangements are made whereby one attorney will become associated with and assists another attorney, in connection with litigation, both of the attorneys should make abundantly clear their respective financial arrangements and the responsibility of the respective attorneys so far as concerns such expenses of litigation to be incurred. It should be made very clear to the client that he, the client, will ultimately be called upon to bear such costs and expenses and the attorneys should endeavor to procure from the client authorization to pay or reimburse the same out of proceeds of the client coming into the control of the attorney.

Public trust and confidence would be greatly endangered and jeopardized by the assertion of a technical defense of "disclosed agency," even if the same be a valid defense.

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