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# WASHINGTON STATE BAR NEWS



Grant Armstrong

State Bar President 1964—1965



# MEMORANDUM

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# EDITOR'S NOTE

## Washington State Bar News


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The minority whip lashes out at those who would suggest disclosure requirements for lawyer-legislators, page 2. He must be putting us on with his conclusion that such requirements would effectively drive all 33 lawyers out of the state legislature. There must be a middle ground, page 5.

The new Discipline Rules for Attorneys have been promulgated without fanfare. A major innovation is the Disciplinary Board which frees the Board of Governors to concentrate on ever increasing policy matters, page 25. The state bar committee responsible for drafting the revisions did not have before it the proposals for automatic suspension and publicity. Letters to the editor are encouraged. The letters column can either languish or be the most lively part, depending on you.

An excellent article, which deals with one of the recommendations of the Kramer Report, starts on page 6, *The Coroner's Jury: A Deception in Washington Law*.

Prognostications of when the judges of the Court of Appeals will be appointed and when the hearing of cases will commence are found on Page 19.

Professional Corporations, Part III, appears on page 12. The June 11th Wall Street Journal reports that the fifth circuit has recently upheld a Florida medical corporation for federal tax purposes. "The IRS says it hasn't decided whether to appeal the decision. One tax authority believes the taxmen are stymied. 'They've gotten clobbered on this,

## THE MINORITY WHIP



Sen. James A. Anderson

and they're close to giving up,' he predicts. To date, the Government has lost in three circuit courts and several district courts. With such agreement among lower courts, the tax authority maintains, the IRS isn't likely to obtain a Supreme Court hearing unless it can win at least one lower court to its side. "They're finished," the tax expert declares. "The service is running out of circuit courts."

*Stare decisis* has taken a beating in recent state supreme court cases, Page 21 . . . Substantive programs for the State Bar Convention are announced, Page 9 . . . A lawyer-newspaperman joins the state bar staff, Page 10 . . . A variety of programs are available for activist law students this summer, Page 11 . . . No, Alfred McBee is not the only country lawyer; see the cover story, Page 4.

# LETTERS

## Return of a Lawyer-Legislator

Editor:

The longest session of the Washington State Legislature in this century has now adjourned. As I write this, I am seated at the desk in my law office surveying the shambles of a once orderly law practice. If you have a particularly good imagination, perhaps you can envision it. Ready? All right, just imagine, if you can, what your law practice and bank account would be like if you were to just close up shop and leave for four months. Got it? Okay, then make it twice as bad as you just imagined and you'll have it pretty close to the way it is for those of us who try to practice law and also serve in the Legislature.

A recent edition of the Washington State Bar News happened to be on top of the nearest stack of files and unopened correspondence on my desk. This seemed like a good safe place to start going through things. After all, there couldn't be any motions for default or letters from unhappy clients in that. In glancing through it — and you certainly do have a first class publication now — I happened upon your editorial suggestion that each lawyer-legislator should perhaps be required to publicly list all clients and income.

As it happens, I was one of the members of the Joint Interim Committee on Legislative Ethics which wrote the Code of Ethics adopted by the last Legislature. One of the proposals that was given a good deal of consideration by the committee was along the lines you suggest; that is, that all clients together with the client's problem and the fee he paid should be listed by lawyer-legislators as a public record.

The reason that such a rule was not adopted was the Committee felt that it would have substantially

the same effect on a lawyer-legislator's law practice as putting a sign on his office door reading "Smallpox, Keep out!" Public listings like "Joe Glotz, defense of bastardy proceeding" or "Samuel Spelvin, threatened alienation of affections action" and the like were envisioned. The Committee was doubtful that people would choose as a lawyer one who would be required to put their names and problems into the public domain. They also felt that this would penalize the honest man without having any appreciable effect on the dishonest person who could simply set up dummy corporations or the like if he wanted to cover up receiving money for his vote. Having both investigated and prosecuted bribery cases as a deputy prosecutor (and successfully I might add) I was inclined to agree with that viewpoint. I felt it was a bit like trying to cure a headache by cutting off one's head.

Let me say, Ed, that I have now completely changed my mind. I have seen the light. We do need such a rule. Put me down as being four square in favor of it!

Of course, no one who earns his living as a lawyer in private practice would be able to continue to serve in the Legislature — but then maybe that too would be good.

This idea I have always had about a man having a duty not only to fight for his country when called upon to do so, but also to contribute to his government in such fashion as best he can, is probably a quaint relic of the past anyway. Who knows, maybe I'd be contributing just as much and saving myself an awful lot of work besides, if I were to confine my political efforts to slamming down the newspaper or switching channels whenever I encountered any political news or views with which I disagreed. Then if this civic effort proved too exhausting, I could always repair to the refrigerator for a can of cold beer and unburden myself to a righteous epithet or two about those "damn politicians who always tax too much and never appropriate enough," etc., etc., etc.

If we were to eliminate the lawyers in the Legislature by a rule such as this, the lawyers and the Bar Association would then be able to sit down and discuss the intricacies of garnishment reform, professional corporations, the need for additional judges, and the like, with non-lawyers rather than with the lawyer-legislators who presently serve on the House and Senate Judiciary Committees. Lawyers, as everyone knows, are uniformly highly regarded by everyone, particularly by non-lawyer members of Legislatures. After all, it has been centuries since William Shakespeare wrote in Henry VII, "The first thing we do . . . let's kill all lawyers."

One thing I am positive of and that is that anybody else coming along to take my place could do a much better job than I have been able to do in trying to explain to a nine-year-old son over the telephone why working in Olympia on the state's four billion dollar budget was more important than being home to watch a Little League game, or explaining to a six-year-old daughter how a chance to save the Intermediate Appellate Court Bill was more important than a promise that "Daddy will be home next Sunday for sure." I'm certain that somebody else's logic would work better on this than mine seems to do.

I do foresee two potential problems, however, in getting rid of all lawyers in the Legislature and I think that in fairness I should mention them.

One problem is with respect to the disillusionment that will be visited on our successors. I mention this because disillusionment is never a pretty thing to see. They will discover in short order that since they are now a part of "The Legislature" they will now be the butt of every criticism of what "The Legislature" does even though they may have flatly opposed what it did. Neither should it take them very long to find out what it really means in this time that columnist Jim Bishop has described as "the age of the great put down" to have surrendered the

## THE PRESIDENT'S CORNER

protection accorded their names and reputations by our laws against libel and defamation (see *N.Y. Times vs. Sullivan*, 376 U.S. 254). I particularly mention this since it usually comes as something of a rude shock to a man who, for example, has a good record of service to his country and to his community to suddenly discover that merely by virtue of becoming a member of the most representative body of government he has now automatically become what Harry Truman called the music critic. Then again, if they prove to be thoroughly ethical legislators, as the vast majority are (and just wait until they try to find somebody who will believe that one) they'll find that whatever their business, occupation or profession may be, it will suffer rather than profit from their legislative service for the simple reason that much of the time they aren't around to attend to it.

Unfortunately, Ed, there is one other slight problem I foresee. That has to do with me and the other lawyer members of the Legislature supporting a rule change that would in effect require the lawyers trying to earn a living in private practice to withdraw from the Legislature. That is, that this would undoubtedly increase each of their incomes by some 25% to 30% each year in which the Legislature meets, and this would in all likelihood be such a direct financial interest in the measure that they would be prohibited from voting on it by the new Code of Ethics.

Having unburdened my soul, I will now take leave of the luxury of sounding off and get back to the next thing on the stack of work in front of me — by golly, it is a motion for default!

JAMES A. ANDERSEN  
Seattle

*James A. Andersen is a partner in the Seattle law firm of Clinton, Moats, Andersen & Fleck. A former King County Deputy Prosecutor, he has served eight years in the House and three years in the State Senate where he is the Minority Whip.*

These are days of violent attack by certain militants on the American capitalistic system. It is suggested that our system be replaced with some brand of communist oriented socialism. Undertones of this character pervade certain of our college dissension, racial riots and other unrest throughout the country.

Before those who, finding themselves thoroughly dissatisfied with our American way of life, embrace an untried substitute they would do well to reflect on the following comparison of our country with Russia, which I came upon recently:

“In order to be equal to Russia today, we in the United States would have to:

Abandon three-fifths of our steel capacity.

Abandon two-thirds of our petroleum industry.

Scrap two out of three of our hydroelectric plants.

Forget over 90 percent of our natural gas.

Eliminate 95 percent of our electric motor output.

Rip up 14 of every 15 miles of our paved roads.

Destroy two of every three miles of our railroads.

Sink eight of every nine of our ocean-going ships.

Junk 19 out of every 20 of our cars and trucks.

Slash all paychecks by three-fourths.



Transfer 60 million Americans back to the farms.

Destroy 40 million TV sets.

Rip out nine of every ten telephones.

Tear down seven of every ten houses.”

The accompanying commentary went on to admonish and encourage us:

“While we hear nowadays how we are losing the race to Russia in production of one item or another, let's not forget the facts.

“We're in first place and we're going to stay there!”

I cannot personally verify the statistics but the point is clear. The asserted objective sounds like Hertz in its running feud with Avis.

*Payne Starr*

## QUOTES QUOTED

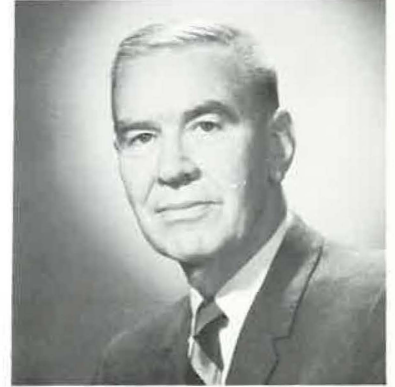
... It is no defense to charge that Murray Bloom's book contains nothing new; that he has simply published a rehash of all of the tired old charges against the profession. As long as the charges have an element of truth in them, as long as we have failed to correct the deficiencies of our system, we should not be surprised if our shortcomings are repeatedly called to our attention. On the contrary, we may take some satisfaction in knowing that our profession is so vital to society that the need to criticize exists.

We are, after all, a self-proclaimed service fraternity, above the morals of the market place. The missteps of our dishonest members, the malfunctions of a legal system which we have created, reflect to the discredit of each of us and those members of the profession who are more anxious to exploit the deficiencies of the order than correct them do little to advance the cause of justice for each member of society . . .

Jerold L. Miles, "What's the Trouble with 'The Trouble with Lawyers'?" 44 The Los Angeles Bar Bulletin 301, 302 (May 1969):

## THE COVER

In August of 1964, the Board of Governors of the Washington State Bar Association elected **Grant Armstrong** as its president. For the next year he led the State Bar in its effort toward self-improvement and in providing services for its members. This man who was elected our Bar Association's President has been aptly referred to as a



"country lawyer," an appellation approved by Armstrong himself who thoroughly enjoys the somewhat relaxed pace of life in southwestern Washington. In fact, his entire professional life has been spent in Chehalis where he is currently a partner in Murray, Armstrong & Vander Stoep, a firm with a general, probate and trial practice.

Grant Armstrong is a lifelong Republican, a fact which should not surprise too many people but which surely disappoints his Democratic friends. Politics has been one of his leading interests and he has done much in the political field — except hold public office. Not that he has not tried, however. In the mid-30's Armstrong ran for county prosecutor but that wasn't a very prosperous time for Republicans. He lost. Now he believes this may have been a blessing in disguise for him.

A graduate of the University of Washington Law School, Grant Armstrong continues to be an avid Husky fan. Certainly his avidity was aided substantially between 1950 and 1957 when he enjoyed the privileges which come with being a Regent of the University. These privileges included a seat on the fifty-yard line at all University of Washington football games.

An active civic and religious leader in his community, Grant Armstrong and his wife, Elbe, not surprisingly, have many close friends, some of whom enjoy playing a round or two of Sunday afternoon golf with their friend, the "country lawyer."

CAMDEN M. HALL

## THE LAWYER-LEGISLATOR

In the Washington State Legislature, 33 of its 148 legislators are lawyers. The charge has been made that payment to a non-lawyer legislator for legislative persuasion would be considered bribery whereas such a payment to a lawyer-legislator or his law firm can be termed a retainer.

The proposal has been made that some type of disclosure procedure be adopted so that the lawyer-legislator is required to disclose all his legal income for the year and the clients who paid him, the thought being that potential conflicts of interest would come to light.

A 1967 law established the Board of Legislative Ethics and charged it with the responsibility for drafting an ethics code. The Board is composed of four senators, four representatives and eight lay members, appointed by the legislature. The ethics code as adopted by the legislature last February does not require lawyers in the legislature to make disclosures as to their income from their law practice. After lengthy arguments, the legislature rejected such a requirement in the ethics code.

The Senate Board of Ethics published its first periodic report on May 9th which included four opinions. Advisory Opinion No. 69-2 relates to the lawyer-legislator relationship. The question was whether a senator could vote on a bill authorizing professional services corporations, where he is a partner in a law firm among whose clients is a professional group interested in the bill.

The professional group paid a relatively small monthly retainer to the law firm for routine ordinary legal work. The senator did not handle any part of the group's law matters. He did not sponsor the bill. A member of his firm did make a factual presentation on behalf of the bill at a senate committee hearing and charged a legal fee for such services on the basis of the time spent. The senator did not attend the hearing, or otherwise take part in the committee's consideration of the bill, and engaged in no lobbying activities on behalf of the bill. Under a specific provision of his partnership agreement, the senator was excluded from sharing in any fee paid to his firm for representing any client before the legislature.

In ruling on the question, the board quoted the pertinent part of Joint Rule 1(a)(1) of the Code of Ethics:

“A legislator shall not vote on or influence legislation in committee or on the floor of

either House, where he has a personal interest which is in conflict with the proper discharge of his duties . . .”

“Personal interest was defined as follows:

“A legislator has a personal interest which is in conflict with the proper discharge of his duties if he has reason to believe or expect that he will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity.”

“However, a legislator does not have a personal interest which is in conflict with the proper discharge of his duty if no benefit or debts are incurred to him as a member of business, profession, occupation or group to a greater extent than to any other member of such business, profession, occupation or group.”

It would seem that the mere fact that his partnership agreement precluded him receiving any of the fee would preclude a finding of “personal interest” in such a situation. However, the board also found the following circumstances to be “particularly important” – the senator did not himself handle this client's legal business and did not personally represent the client in any manner before the legislature or any committee thereof and engaged in no lobbying activities therefor.

It was also noted that the senator took no part in any consideration of the bill in the legislature, nor did he vote on this bill on the floor of the Senate or lobby the bill at any stage of the proceedings.

Under these circumstances, it was the opinion of the Board that there was no violation of the Code of Ethics. This opinion should upset the lawyer-legislator much more than any disclosure requirements.

Once the Board had satisfied itself that no monetary benefit would accrue to the legislator, then he should be free to influence the legislature on or off the floor and vote on the measure.

The argument is made by Senator Andersen (page 2) that a client of a lawyer-legislator would not want his bastardy proceeding made public. Any rule requiring disclosure could provide that it be to the Board of Legislature Ethics and not the the legislative body or to the public. Or the rule could be similar to RCW 42.22.050 which requires each legislative employee, agency officer, and such employees thereof (as the agency head may by regulation provide), who is an officer, agent, member of, attorney for, or who owns an interest in the firm, corporation, association, or other business entity which is subject to state regulation, shall file a sworn statement with the Secretary of State disclosing the nature and extent of his relationship or interest. Said statement is to be kept in confidence and to be disclosed only to the members of the legislature or any legislative committee which may be

organized for the purpose of ascertaining a breach of this code, and this also to be disclosed to any other authority having the power of removal of any public official or servant.

In addition, if there is any follow-up on any disclosure, under current rules of the Legislative Board of Ethics, hearings conducted by the boards shall be in closed session and the fact that hearings are to be held shall be regarded as confidential information — unless the accused legislator requests a public hearing.

Canon 49 of the Canons of Professional Ethics of the Illinois State Bar Association and Chicago Bar Association states in part:

“A lawyer whose duties as an elected member of a public legislative body require that he participate in the legislative process, but who has clients with interests in anywise distinguishable from those of the general public, which interests will be directly or indirectly benefited or adversely affected by proposed or pending legislation, *shall make public disclosure* to the legislative body of the fact that he has clients whose interests will be so affected, and shall (without disclosing the name of the client) state the nature of the interest in the client.

“In addition, if the lawyer represents a client or group of clients who constitute all or a substantial portion of the real or legal persons directly affected, adversely or beneficially, by the proposed legislative action, *he shall not participate* in the legislative processes of the legislative body or its committees, if the exercise of discretion is involved. The duty of the lawyer to serve his public office with undivided allegiance shall not be altered by the public disclosure.” (emphasis supplied.)

Under the canon it may be that the bastardy case may never have to be disclosed, let alone the name of the client. This canon has not driven lawyer-legislators out of the Illinois Legislature. Approximately 50% of the Illinois State Legislators are lawyers.

Lawyers pride themselves on demanding for themselves standards above those of the market place. Why should there be any reluctance to carry through the disclosure standard as to the lawyer-legislators either as a canon or as a provision in the legislature's code of ethics?

E.B.R.

## THE CORONER'S JURY: A DECEPTION IN WASHINGTON LAW

By WILLIAM H. RODGERS, JR.



Photo by John D. McLaughlin

*William H. Rodgers, Jr., is an Assistant Professor of Law at the University of Washington. He is co-chairman of the Contemporary Legal Problems committee, Young Lawyers Section, Seattle-King County Bar Association. This article is based on a paper prepared for that section in response to the Report of the Washington State Commission on the Causes and Prevention of Civil Disorder.*

party. Upon scrutiny, this dual role of the jury is exposed as an unfortunate residue of a bygone era. The coroner's jury has outlived its usefulness both as an instrument for conducting medical examinations and assisting in legal determinations.

### **A Medical Investigative Device**

Perhaps in the days before the advent of modern medicine, the coroner could gain some guidance by consulting the views of a panel of citizens as an aid to deciding who the deceased was, and when, where and by what means he came to his death. Reliance upon an inquest where a jury was empanelled was obviously helpful because the coroner functioned originally in a society that had no police, no public prosecutor, no organized medical profession and no science of toxicology. If a decision as to the presence of poison turned upon an assessment of the agony disclosed by the countenance of the corpse, nothing was lost by drawing upon the collective wisdom of a jury. When medical professionals could supply no answer, the coroner and his jury, however inadequate, were as well equipped as any for the job.

Great strides in medical science have eliminated the need for the jury as a medical investigative device. The factual inquiry into the circumstances of death today can be made competently only by qualified medical personnel. An examination must be conducted by a physician having a wide knowledge of disease and the operations of the human body; he must, in addition, have some awareness of the legal consequences of his findings. In many cases autopsies must be performed by qualified pathologists. In King County, for example, approximately twenty-five per cent of deaths arising under the jurisdiction of the coroner require an autopsy. The unquestioned need for heavy reliance upon medical expertise in the investigation of deaths explains why adoption of the medical examiner system is deemed to be incompatible with the retention of the jury for determining the medical aspects of a suspicious death.

### **Identifying the "Guilty" Party**

The coroner's jury is equally incompetent to fulfill its other stated function, that of identifying the "guilty" party in a suspected case of homicide. Manifestly, the consequences of such a verdict are not those usually associated with a formal adjudication of guilt. RCW 36.24.100 states that the coroner shall issue a warrant for the arrest of a person charged by the jury. Consequently, the coroner's jury actually functions as a magistrate making a preliminary determination to issue a warrant for the arrest of a suspected offender. Despite the invitation to determine "guilt," its finding amounts only to a threshold determination of probable cause justifying the apprehension of the suspect.

Consistent with this limited function, the proceedings before a coroner's jury are conducted with none of the indicia of procedural due process usually asso-

Within recent memory, the media in the City of Seattle gave wide publicity to the verdict of a King County coroner's jury finding "excusable homicide" in the case of a man who shot and killed a 17-year-old boy who had fled after being challenged while he was siphoning gasoline from a parked automobile. Whatever the actual facts, the verdict was construed by many as meaning that a private citizen could kill in defense of property without fear of criminal sanction.

This is not the first time in King County that the coroner's jury has rendered a verdict on a legal question of vital contemporary concern. Indeed, it may be said that the coroner's jury is the single institution in the State of Washington that regularly issues authoritative pronouncements on the sensitive and recurring legal question of when the law allows the sacrifice of a life to further other interests.

That this institution makes mistakes is all too clear. As will be developed in this article, it is beyond debate that it is contrary to the law of this state for a private citizen to kill another who is suspected of stealing gasoline from an automobile.

### **The Function of the Coroner's Jury**

The office of coroner, while its historical origins are obscure, can be traced at least to the twelfth century. The primary purpose of the office, continuing from the early days to the present, has been to investigate the cause and manner of deaths occurring under unnatural or suspicious circumstances. Washington law gives the coroner jurisdiction over the bodies of all deceased persons whose deaths are sudden, accidental or otherwise suspicious. RCW 68.08.010. Approximately thirty-five per cent of the deaths occurring within King County fall within the jurisdiction of the coroner. 1963 King County Coroner's Ann. Rep. 2.

Under present Washington law, which parallels provisions in other jurisdictions, the verdict of the coroner's jury must set forth "who the person killed is, if known, and when, where and by what means he came to his death; or if he was killed, or his death was occasioned by the act of another by criminal means, who is guilty thereof, if known." RCW 36.24.070; see also RCW 36.24.040 (describing duty of coroner's jury).

From this definition it appears that the jury in theory has two interrelated functions: to discover the medical circumstances of the death and, if necessary, to make a legal judgment identifying the "guilty"

ciated with a formal inquiry into guilt or innocence. The proceedings are non-adversary. The coroner, or more likely, the prosecutor acting as the coroner<sup>1</sup>, need present only selected evidence. Cross-examination of witnesses is unlikely since no one will be present to advocate the views of a potential defendant who may not yet be identified. Participation by those opposed in interest to the state, though possible, may take place only with the concurrence of the coroner, although the jurors themselves may ask questions. Lawyers cannot argue about the instructions that are given to the jury. Errors in those instructions are immune from review. The verdict of the jury is not binding in any subsequent civil or criminal proceeding.

Under the circumstances allowing the coroner's jury to return a verdict of "excusable" or "justifiable" homicide is an unmitigated perversion of criminal justice. If the finding of the jury is, as it purports to be, merely a preliminary determination of whether probable cause exists to arrest a particular defendant, any verdict on self-defense or justification would be wholly irrelevant. Whether a man who takes the life of another legally is excused is a sophisticated question of criminal law requiring a careful assessment of competing interests. In a criminal case after a full trial, any issue of justification usually is submitted to the jury under careful instructions from the court. The prosecutor of course may himself decide to refrain from prosecuting if the facts disclose that the homicide was excusable under the law. The issue of excuse, however, *never* should be resolved by a magistrate who is simply determining whether probable cause exists to arrest the defendant.

Inviting the coroner's jury to render a verdict — or, more accurately, a legal judgment — of "excusable" or "justifiable" homicide may be highly damaging to a number of people. Initially, the non-adversary nature of the hearing prevents a fair adjudication of guilt or innocence, since there is no guarantee that all the evidence on both sides will be presented fairly. A jury finding that a killing was not excusable amounts to a public condemnation of the slayer without benefit of a full hearing; the adverse publicity may prejudice unduly any subsequent trial on the merits. A verdict that a homicide was "excusable" may be equally pernicious, especially when the deceased is condemned as a felon without representation or a hearing. Surely the relatives and friends of the victim are entitled to a fair hearing on whether he was shot down as a fleeing bandit or an innocent pedestrian.

### The Public is Misled

The inability of the courts to review the coroner's instructions to the jury means that any error of law will remain uncorrected and misleading legal judgments by a coroner's jury may be dangerous to

the safety and stability of the community. Following the verdict in the gas-siphoning case, each member of the public is now informed that he has a license to kill petty thieves, or worse, innocent people suspected of being petty thieves. That this does not happen to be the law is beside the point, since the verdict of the coroner's jury is acclaimed far more widely than the fine print of the Revised Code of Washington. As a consequence, we may expect an increase in the summary executions of a number of citizens who, under the law, are supposed to be protected against becoming fair game for the well-armed vigilante. Encouraging self-help is also of no benefit to the executioner, who may be subjected to prosecution; an opinion of a jury, it should be pointed out, cannot formally repeal the finer points of the substantive criminal law.

### The Law of Justifiable Homicide

In practice, however, coroner's juries have reshaped dramatically the law of homicide in the State of Washington. A brief recitation of a lawyer's version of what the statutory and case law on the subject purports to be points up the utter lawlessness of the verdicts of a number of coroner's inquests:

Washington law highly values human life. A citizen may use deadly force to protect himself or a member of his family only when he has reasonable grounds for believing that the aggressor is about "to do some great personal injury to the slayer" or the one he protects and there is "imminent danger of such design being accomplished." RCW 9.48.170. Similarly, a killing is justified only where necessary to prevent a "felony" upon the slayer's person or upon a dwelling or place of abode in which he is present. *Ibid.* That is, the intended victim may shoot to kill the rapist, the homeowner may take the life of the arsonist.

But the petty depredations of a halloween mischiefmaker will not justify the use of deadly force. Indeed, one who sets a spring gun resulting in injury to a trespasser commits a felony punishable by not more than twenty years' imprisonment. RCW 9.41.180. Lastly, a private citizen seeking to effect an arrest, like a police officer, may resort to deadly force only where necessary to apprehend a fleeing felon. The argument that this rule would encourage the reckless slaying of an innocent man was answered recently by the Washington Supreme Court, "We think this danger is minimized by the fact that the private citizen cannot successfully use the excuse statute in defense against a manslaughter charge, simply by asserting that he *thought* the person fleeing had committed a felony." *State v. Clark*, 61 Wn. 2d 138, 144, 377 P.2d 449 (1962). In other words, a private citizen is not privileged to make a mistake when he chooses to resort to deadly force to apprehend a fleeing felon.

### Legislative Reform

The destructive tendencies of the coroner's jury

(continued on page 17)

<sup>1</sup> In 22 of Washington's 39 counties the prosecutor acts as ex officio coroner. 1963 King County Coroner's Ann. Rep. 2.

# WASHINGTON STATE BAR NEWS

## Board of Governors Election Results

Vernon R. Pearson, Tacoma, was elected in the Sixth Congressional District to succeed Brooks K. Johnson, Tacoma, on the Board of Governors. John S. Lynch, Olympia, was elected in the Third Congressional District to succeed Lee J. Campbell, Chehalis.

Both newly elected members have served as presidents of their local bars. Lynch headed the Thurston-Mason County Bar Association in 1947-48, and Pearson led the Tacoma-Pierce County Bar in 1965.

Lynch, of the firm of Lynch & Lynch with offices in 208 Thurston County Savings and Loan Building, was graduated from the University of Washington with both bachelor's and law degrees in 1933 and was admitted to the bar that year. He is a Seattle native.

Pearson, born in Bantry, North Dakota, is of the firm of Davies, Pearson, Anderson, Pearson & Gadbow, with offices in 1205 Rust Building. He was admitted to the Washington State Bar in 1951 after being graduated from Jamestown College in 1947 and University of Michigan Law School in 1950.

Both new board members will begin three-year terms at the close of the State Bar Convention in Seattle, September 4-6.

## John Huneke To Be WSBA President



A Spokane lawyer with a long record of bar and civic leadership has been selected as the new president of the Washington State Bar Association.

He is John Huneke, member of the firm of Paine, Lowe, Coffin, Herman & O'Kelly, with offices in the Spokane and Eastern Building. The firm's Harold W. Coffin served as state bar president in 1955-56.

Huneke was graduated from the University of Washington Law School in 1935, after receiving his bachelor of arts degree from Stanford University in 1932.

He served as a member of the bar's Board of Governors from 1963 to 1966, was on the Board of Bar Examiners from 1954 to 1957, was president of the Spokane County Bar Association in 1951, and was an instructor at the Gonzaga University Law School from 1946 to 1950.

Huneke, whose father was the late Judge William A. Huneke of Spokane, has an attorney-son, Edward W. Huneke of Seattle.

## Seminars at State Bar Convention

The program has begun to take shape for the State Bar Association's annual meeting at the Washington Plaza Hotel in Seattle on September 4, 5 and 6, 1969. P. Cameron De Vore, program chairman, has announced the slated seminars and their chairmen:

- Credit cards: Growing legal problems (Charles Sayre)
- 1969 statutes: A report of significant legislation and a complete legislative checklist. (Quinby R. Bingham)
- Cutting red tape: Practical techniques for obtaining government financing for small business. (Floyd Newland)
- A Preview: The new WSBA-CLE videotape film concerning practical problems under the UCC, with Professor Richard Cosway and members of the Bar in the cast. (Richard Cosway)
- Damages: Computing and proving them in contract and non-tort cases. (Alan A. McDonald)
- Professional Corporations and a tour of various Seattle law firms. (Richard C. Reed and Paul R. Cressman)
- Campus Disorders: A stimulating panel discussion with a university president, a student from an Ivy league university, and several other participants. (Payne Karr)

## Attorneys' Fees Cut in Juvenile Court

The United State Supreme Court held in *In re Gault* that a juvenile has a constitutional right to be represented by counsel in juvenile delinquency proceedings which may lead to commitment in a state institution. If the juvenile is unable to afford counsel, court-appointed counsel must be provided unless waived by the child and his parents.

This may well be diluted as a result of recent action of the Juvenile Court Committee of the King County Superior Court. In the past court-appointed attorneys received \$15 an hour for legal services both in and out of the courtroom. Because the Juvenile Court budget for appointments was over extended \$7,000 as of June 1st, compensation will be limited to the time an attorney spends in court, at a rate of \$15 an hour, with a minimum payment of \$30 and a maximum of \$300.

Judge Charles Z. Smith, a member of the committee, told young lawyers at their annual meeting that he hopes there will be howls of protest and letters to the Juvenile Court Committee from attorneys that can be used in efforts to obtain more funds from the County Council. He observed that the new public defender system may be providing representation in Juvenile Court but he hoped that it would not be at the expense of young lawyers who have committed themselves to helping indigents.

## Survey of Young Lawyers

The Young Lawyers Section of the Seattle-King County Bar Association has mailed a questionnaire to the some 700 young lawyers in King County.

The questionnaire is to be answered anonymously and covers various facets of a young lawyer's career—position, professional activities, adequacy of placement services and professional income.

The survey is being conducted in cooperation with fourteen other Bar Associations throughout the country.

## Roy C. Mitchell Named Director of Professional Activities

The Board of Governors has created a new Washington State Bar Association position — director of professional activities — and appointed a veteran newspaperman-lawyer to fill it. Roy C. Mitchell, for 21 years an editor on the city desk of the Spokane Daily Chronicle, joined the State Bar staff in Seattle, June 1. He will direct activities in the fields of Continuing Legal Education and public relations.

Payne Karr, State Bar President, recently reported at a Seattle-King County Bar Association luncheon: "We hope to better convey to the public some of the excellent, unselfish, worthwhile things that we in the legal profession do."

Mitchell was graduated cum laude, second in his class, in 1951 from the Gonzaga University Law School. He earlier had attended Kansas Wesleyan University and Kansas State College before receiving his B.A. degree from Gonzaga. After three and a half years' service as an Air Force code and cipher expert, mostly in the Southwest Pacific, in World War II, Mit-

## Oregon Establishes Court of Appeals

The Governor of Oregon has selected the five members of the new Oregon Intermediate (Appeals) Court created by the 1969 Oregon legislature. The new court, the first major change in the Judicial System since Oregon became a state, will be responsible for hearing criminal, probate, guardianship, juvenile and domestic relations appeals from the Circuit Court. The salary was set at \$25,000 each.

## Army Seijas

The State Supreme Court has granted the petition of Army Seijas for reinstatement as a member of the Washington State Bar Association. *In re Seijas*, 75 W.D.2d 812 (1969). In accordance with the Discipline Rules for Attorneys, this action of the court is subject to his taking and passing the attorney applicant's examination as prescribed by Rule 4 of the Admission to Practice Rules.



chell was employed as copy editor by the Seattle Times. He then joined the editorial staff of the Chronicle.

For the past two years he has directed the Chronicle's newspaper in the classroom program, a cooperative education effort of Spokane-area schools and the Chronicle. In 18 school-months, he talked before 16,000 students and teachers. During the Inland Empire Education Association convention in Spokane in April, Mitchell was honored as the "lay citizen of the year" in education by Phi Delta Kappa, men's national honorary.

## IN MEMORIAM

Newton Henton, 80, Spokane, died June 2, following two weeks' hospitalization for a heart ailment. He was a graduate of the University of Washington Law School and began his practice in Spokane following military service in World War I.

Retired Judge Thomas G. Jordan, 76, Clarkston, died May 19 at Tri-State Memorial Hospital. (See Superior Court News.)

Edward J. Lehan, 62, Spokane, died June 12. A graduate of Gonzaga University Law School, he was former chief civil deputy prosecutor for Spokane County.

Carl L. Randall, 81, Seattle died June 10. A 1913 law graduate of the University of Missouri at Kansas, he practiced in Seattle from 1919 until his retirement.

## LAW SCHOOL SUMMER VOLUNTEERS

Through the Legal Aid Society of the Student Bar Association of the University of Washington, 1st and 2nd year law students are being asked to volunteer their services to assist several organizations this summer. The first issue of the *Legal Aid News* summarized the projects as follows:

1. **Seattle Legal Services Center.** In addition to the students hired for the summer under the UW work/study program, staff attorneys need volunteer assistance with interviewing, research, investigations and drafting of pleadings.

2. **Model Cities.** The model cities Law and Justice Task Force needs research done with regard to law enforcement and administrative agencies in particular. An amicus brief will be written in the voting residency requirement case. As to the legal needs of model city residents, such institutions as insurance companies, labor unions and collection agencies, will be studied.

3. **Yakima.** Test cases which were filed and initially acted upon

in Yakima Valley last summer are still being litigated. More research is needed for the public housing authority and voting rights cases.

4. **Operation Equality.** The Urban League of Seattle has received special funding for a project headed by Staff Counsel Sidney Strong to litigate housing cases. He will be focusing on housing discrimination, credit impediments to the purchase of housing, and the organization and representation of groups with housing and consumer problems.

5. **Vista Attorneys.** To the surprise of many people in Seattle there are now about 6 VISTA attorneys in the area busily representing individual clients and groups, drafting and lobbying for legislative changes and generally helping groups of citizens to become more effective advocates for law reform in many different areas. Most of them have come from outside the Seattle area but have immediately become members of the bar and become active in community affairs.

6. **Lawyers Committee For Civil Rights Under Law.** Black capitalists and other individuals and groups are receiving the help of another group of volunteers — these from among the ranks of the downtown Seattle Bar.

7. **Public Defender Association.** Seattle will soon have a group of attorneys providing full-time representation for indigents in misdemeanor cases in Municipal Court.

8. **Ad Hoc Project.** Mr. Charles Ehler is also conducting a long-term investigation of the work of the State Employment Security Department which annually recruits farm laborers in Texas for work in Washington. This practice has resulted in an excess in labor supply for Yakima growers and possibly puts the state in the position of subsidizing low farm wages. He would particularly like the assistance of a law student trained in economics to develop economic data and background material on possible violations of federal and state laws.

## WASHINGTON LAWYERS APPEARING IN ALASKA COURTS

The word was that Washington lawyers were experiencing difficulty in representing clients in Alaska due to the fact that the Alaska Bar Association has been routinely opposing motions for appearances of out-of-state lawyers.

"Not true," says Stanley Hewitt, Executive Director of the Alaska Bar Association. Rule 81 of the Civil Rules of Alaska provides that a lawyer admitted to practice in another state may serve on the Alaska Bar Association and the State Department of Revenue and file with the court a motion to appear and participate in a particular action or proceeding.

When this motion is served, the Association routinely serves interrogatories on the out-of-state attorney. In some cases, where the attorney has not in any way appeared before the courts of Alaska or administrative agencies, the Association has consented to a stipulation to permit the appearance.

The purpose of both the interrogatories and the stipulation is to ascertain whether or not there has been an abuse of Rule 81 by an out-of-state attorney. Hewitt states:

"By this is meant that the out-of-state attorney has actually a substantial law practice in the State of Alaska but is not authorized to practice law here. The purpose of a pro hac vice appearance is to permit an out-of-state attorney to appear before the courts of another jurisdiction in a particular matter or proceeding. However, it is not a license to practice within the state on any type of a steady basis or to maintain a substantial practice within the state without being licensed therein. If this is discovered by way of the interrogatories, the Bar Association does oppose the motion to participate."

Rule 81 provides among other things that the out-of-state attorney

must associate with local Alaska counsel. All documents requiring signature of counsel for a party must bear the signature also of local counsel. Local counsel is primarily responsible to the court for the conduct of all stages of the proceedings and his authority is superior to that of the out-of-state attorney. Hewitt states:

"We have discovered that many out-of-state attorneys have not read Rule 81 and therefore did not understand their limitations when being within the jurisdiction of the courts of Alaska and did not so advise their clients. What occurs here is that Alaska counsel have in the past not been able to enter into stipulations or in any way proceed with a case in Alaska, since they must first get the permission of out-of-state attorneys before doing so. This has met with quite a number of delays."

ring business to insure immediate deduction and avoid possibilities of having to capitalize the indebtedness in the corporation.<sup>28</sup>

#### 4. Partnership as Lessor.

Sometimes depreciable assets could be retained by the partnership and leased to the corporation. This spreads the income to two entities, retains depreciation for the individual, but each situation must be examined on its own merits.

#### 5. Fiscal Year Opportunities and Problems.

If the partnership reports on a basis of a year other than the calendar year, termination of the tax year can bunch as much as 23 months income in one year. Conversely, by choosing a fiscal year for the corporation, taxable income can be postponed as much as 11 months in certain instances.<sup>29</sup>

### D. Tax-Problems in Connection with the Operation of Professional Corporations

#### 1. Accounting Elections

New corporations can elect their own accounting method.<sup>30</sup> Normally, law corporations would probably choose the cash method rather than accrual since it postpones income and allows more flexibility in timing income and deductions. Accelerated depreciation may be elected by the corporation.<sup>31</sup> Cash basis corporations, however, must actually pay their contribution to the profit sharing and pension plans prior to year end,<sup>32</sup> whereas accrual corporations may obtain a current deduction even though the payment is made after the end of the year, but before the tax return is due to be filed.<sup>33</sup>

#### 2. Personal Holding Company Problems

Some small law corporations could be Personal Holding Companies,<sup>34</sup> but no penalty tax<sup>35</sup> would be payable to the extent current income is distributed.<sup>36</sup> In most cases, the corporation's income will not be preponderantly personal holding company income,<sup>37</sup> and if this is the case the penalty tax will

### B. Keogh Act Inadequate

The Keogh Act<sup>19</sup> providing for self-employment retirement benefits was so watered down that the benefits are deficient when compared with the tax benefits of corporate employees. Even under the relief amendment effective January 1, 1968, the following limitation of benefits render the act virtually inadequate: annual deduction for profit sharing and pension plans limited to \$2,500<sup>20</sup>; no carryover is allowed for unused deductions<sup>21</sup>; immediate vesting for all participant employees and requirement to allow all full-time employees with three years employment to participate makes the plan extremely expensive because of increased payroll costs<sup>22</sup>; instead of capital gains treatment for distribution, only a less-favorable modified ordinary income treatment is allowed<sup>23</sup>; death benefits are not excluded from the Federal estate tax.<sup>24</sup>

### C. Tax Problems in Converting a Partnership or Proprietorship to a Professional Corporation.

#### 1. Non-taxable Exchange of Assets to Corporation.

The transfer of assets to the corporation for stock can be tax-free if the transferors control the corporation (80%) after the transfer.<sup>25</sup>

#### 2. Receivables Could be Immediately Taxed if Transferred.

Generally, receivables arising from services rendered, transferred to the corporation in exchange for stock, are considered property that can be transferred in a non-taxable exchange. However, the service could contend that such transfer is taxable to the transferor under statutory authority in IRC 482 or IRC 446 (b) or under an assignment of income theory.<sup>27</sup> Care should be exercised in transfer of receivables, particularly if a change from cash to accrual basis accounting occurs.

#### 3. Accrued Expenses.

Unpaid expenses should be paid by the transfer-

<sup>19</sup> IRC 401 et. seq.; IRC 72(n).

<sup>20</sup> IRC 404(e).

<sup>21</sup> IRC 404(a)(9)(B).

<sup>22</sup> IRC 401(d)(2)(A); IRC 401(d)(3).

<sup>23</sup> IRC 402(a)(2); Reg. 1.72-18(a).

<sup>24</sup> IRC 2039(c); Reg. 20.2039-2(c).

<sup>25</sup> IRC 351.

<sup>26</sup> Thomas D. Briggs, 15 T.C.M. 440 (1956).

<sup>27</sup> Bittker and Eustice, *Federal Income Taxation of Corporations and Shareholders*, §3.17.

<sup>28</sup> *Holdcroft Transportation Co. v. Comm'r*, 153 F.2d 323 (8th Cir 1946).

<sup>29</sup> R. E. Hughes, Jr., 42 T.C. 1005 (1964).

<sup>30</sup> IRC 446(c).

<sup>31</sup> Reg. 1.167(b)-0(a).

<sup>32</sup> Reg. 1.404(a)-1(c).

<sup>33</sup> IRC 404(a)(6).

<sup>34</sup> IRC 542(a); A corporation must meet two tests to qualify as a personal holding company. The first involves an income test. At least 60% of a corporation's adjusted ordinary gross income (this includes certain income from personal service contracts) must be personal holding company income. The second test involves stock ownership. More than 50% of the corporation's stock must be owned, directly or indirectly, by 5 or fewer individuals.

<sup>35</sup> IRC 541

<sup>36</sup> Bittker and Eustice, *supra*, note 27 at §6.25

<sup>37</sup> IRC 543.

not apply even if the profits are not distributed.<sup>38</sup> The type of income which must be scrutinized is income from "personal service contracts" but this problem can generally be avoided by prudent wording of the contracts.<sup>39</sup> A special problem "personal service contract" might occur in a one-man corporation in which current distribution of all income in the form of salary could solve the problem. Subchapter S solves all personal holding company problems.<sup>40</sup>

### 3. Collapsible Corporation Problems.

If a substantial portion of the corporation assets consist of unrealized receivables, the corporation would be "collapsible." If a corporation is collapsible, the sale, redemption or trade of the corporate stock will be taxed at ordinary income rates as opposed to capital gains rate.<sup>41</sup> If the transferor owns less than 5% of the stock the collapsible provisions would not apply.<sup>42</sup> Actually, the "collapsible corporation" problem for a law corporation would be no greater than the present "collapsible partnership" problems are for law partnerships.

### 4. Problems of Unreasonable Salaries.

Internal Revenue Service might attempt to disallow portions of salaries paid to professional shareholders as being unreasonably excessive. However, the matter has been litigated with regard to a doctors' corporation in favor of the taxpayer. There it was held that no salary was "unreasonable" to the extent that the salaries of all the professionals did not exceed the gross billings to patients for services rendered.<sup>43</sup> Seemingly, there is no real danger here, unless other corporate income such as income from real estate rentals is attempted to be distributed and deducted as salaries.

### 5. Dissolution Problems.

Dissolution of the professional corporations will usually be a taxable event and the gain in many cases will be taxes at capital gains tax rates.<sup>44</sup> The problems that will exist in connection with the dissolution are typical of the problems that exist in the dissolution of other closely held service corporations.

### E. Subchapter S Election Advisable in Many Cases.

Many professional corporations will qualify under Subchapter S, which in effect passes through the corporate income to be taxes to the individuals, retaining many tax benefits of the corporate entity.<sup>45</sup>

Subchapter S eliminates such problems as personal holding company penalty tax, unreasonable accumulations of surplus tax, "unreasonable" salary problems, double tax on liquidation or sale, double tax on dividends and "thin" incorporation problems.<sup>46</sup>

Subchapter S, on the other hand, obtains many of the advantages, such as profit sharing, pension and thrift plans, employee annuity plans, group life insurance plans, sick pay plan, accident and health insurance plan, overhead expense disability insurance, deductible medical expense payments, deferred compensation, death benefits to widow, choice of fiscal year.<sup>47</sup>

However, certain corporate tax benefits are *not* available to Subchapter S corporations: stock options, stock bonus, employee stock purchase plans, intercorporate dividend credit,<sup>48</sup> stock dividend credit.<sup>49</sup>

Further, there are other Subchapter S disadvantages, such as: the loss that may be passed through to the stockholder from the corporation cannot exceed the adjusted basis of the stockholder's interest in the corporation.<sup>50</sup> Since a corporation cannot carry forward a loss from an electing year to a non-electing year,<sup>51</sup> losses in excess of stockholder's adjusted basis incurred while the corporation elects Subchapter S may be lost. Other disadvantages are no capital loss pass-through,<sup>52</sup> ten shareholder and other ownership limitations,<sup>53</sup> technical filing and qualification requirements.<sup>54</sup>

Moreover, in a high bracket tax paying professional practice, failing to elect under a Subchapter S may provide greater business and practical opportunities for accumulation of capital.

However, the advantages of Subchapter S may prove to be valuable and practical for many professional corporations.

<sup>46</sup> 7 Mertens, *Law of Federal Income Taxation* §41B.22: Bittker and Eustice, *supra*, note 27 at §14.10.

<sup>47</sup> Rev. Rul. 66-218, 1966-2 Cum. Bull. 120; 7 Mertens, *supra*, note 46 at §41B.22.

<sup>48</sup> IRC 1373(d)(2).

<sup>49</sup> IRC 1375(b).

<sup>50</sup> IRC 1374(c)(2).

<sup>51</sup> IRC 172(b).

<sup>52</sup> IRC 1377(b).

<sup>53</sup> IRC 1371(a)(1).

<sup>54</sup> IRC 1372.

## BOOKS ON FORMING PROFESSIONAL CORPORATIONS JUST PUBLISHED

The King County Law Library received on June 2 two copies of *Attorney's Guide to California Professional Corporations* published by the California Continuing Education of the Bar. Although it relates to the California Act, it offers material which would be of assistance in forming professional corporations under Washington's Act. The 310-page book includes suggested clauses for articles of incorporation, by-laws and profit-sharing and pension plans, with annotations.

<sup>38</sup> IRC 542(a)(1).

<sup>39</sup> Regs. 1.543-1(b)(8)(ii) and (iii).

<sup>40</sup> Bittker and Eustice, *supra*, note 27 at §14.10

<sup>41</sup> IRC 341(a).

<sup>42</sup> IRC 341(d)(1).

<sup>43</sup> *Klamath Medical Service Bureau v. Comm'r*, 261 F.2d 842 (9th Cir. 1958).

<sup>44</sup> IRC 331; IRC 333; IRC 337.

<sup>45</sup> IRC 1371-IRC 1378; Subchapter S is applicable to corporations which do not have more than 10 shareholders or more than one class of stock.

# NEWS AROUND THE STATE



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## BENTON-FRANKLIN REPORT

By ED MCKINLAY

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Pasco continues its reputation as center of legal learning, having hosted the Continuing Legal Education Seminar on Federal Taxation May 17th at the Sahara Motel. The event was attended by well over 37 people, several of whom appeared to understand what was being said. The occasion was marred by a mishap in the afternoon when several participants, seated next to the rostrum, were slightly injured by falling debris from a "collapsible corporation." The remainder retired to the cocktail lounge and practiced corporate spin-offs, split-offs and split-ups, many achieving a stepped-up basis, and at least one accomplishing a complete liquidation.

The establishment by the Legislature of a new judgeship for Benton and Franklin Counties has called forth a wealth of judicial talent that until this time had apparently been hidden under a bushel. The zeal with which the self-announced candidates have sought the endorsement of the Bar and the blessing of the Governor has astonished the local press and public. This is the first occasion to our knowledge on which so many lawyers have tripped over the judicial robes before they even got into them. (Note: Will the successful candidate kindly forget the foregoing?)

At the request of many people from Olympia we are taking up a collection to send Stanbery Foster on an all-expense-paid, one-way trip to the Galapagos Islands. Contributions may be sent to the undersigned. (Cable Address: STANFOSFUND, Pasco.)

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## COWLITZ REPORT

By ODINE H. HUSEMOEN

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The newly elected officers of the Bar Association are: Dave C. Spencer, Longview, president; Odine H. Husemoen, Longview, vice-president; and Henry R. Dunn, Kelso, secretary-treasurer.

County District Court Judge Ronald Huntington has been appointed judge of the Kelso Municipal Court. He succeeded his father, the late Judge Lester Huntington, to the District Court post June 1.

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## LEWIS COUNTY REPORT

By H. JOHN HALL

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Comes now the Lewis County Bar Association, and respectfully submits its annual report to the members of the Washington State Bar Association: Two new members were added to the local association during the past year. H. John Hall has joined Lee J. Campbell in the firm of Campbell & Hall, and Brian M. Baker has associated with J. Dorman Searle.

Law Day on May 1, 1969, found several members of the local bar active with the schools and the public. The Honorable D. J. Cunningham, Judge of the Lewis County Superior Court, and The Honorable James B. Gober, District Court Judge, appeared on local television and radio. Laurel Tiller, the local bar association president, conducted a moot court proceeding at Pe Ell High School. James S. Turner and H. John Hall spoke to students at Toledo High School and W. F. West High School in Chehalis, respectively, trying to convince the younger generation that marijuana and sex are not the only things in life to enjoy.

Brian M. Baker was recently appointed as legal counsel for the Washington State J.C.'s . . . During the year, Laurel Tiller took over the reins as Centralia Municipal Court Judge upon the resignation of Jack Cunningham . . . Progress is invading the county. An indication is the need for a special jury term during June and July for condemnation cases.

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## PIERCE REPORT

By DAVID E. SCHWEINLER

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### ANNOUNCEMENTS

Frank O. Witt, Oklahoma Law School of 1967, formerly with Commonwealth Title Insurance Company, has become associated with Donal D. Sherfy for the general practice of law. Their new offices are in the Esquire Building, 730 South Fawcett, Tacoma.

After spending the past sixteen months in the United States Air Force as a result of the reserve callup after the Pueblo incident, Edward Haarmann returns to the private practice of law and will again be associated with Robert H. Peterson in the Rust Building . . . Vernon R. Pearson, who is active in citizens' school-support groups, has been named to the State Board of Education.

### PROGRAMS

On April 24, 1969, three speakers presented a comment and review of recent Washington Decisions. They were John A. Rorem, Monte E. Hester and Dennis Harlow.

On May 8, 1969, Albert R. Malanca was the speaker at the bi-weekly meeting of the Tacoma-Pierce County Bar Association. His topic was, "The Medical Privilege and Acceleration of Its Waiver."

On Tuesday evening, May 27, 1969, a seminar was held at the Sherwood Inn. The topic was "Personal Injury Practice Before Trial." The moderator was William J. Rush, and the Plaintiff's viewpoint was presented by Ellsworth I. Connelly and Michael J. Sterbick. The Defendant's viewpoint was presented by Albert R. Malanca and Claude M. Pearson. The program was preceded by a dinner and cocktails and the program was well received by the eighty practicing attorneys in attendance.

On June 5, 1969, the biweekly meeting of the Tacoma-Pierce County Bar Association was pleased to have as its speaker Mr. E. M. (Sandy) Murray, whose topic was "Incorporation of the Professional Association."

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## SEATTLE-KING REPORT

By LLEWELYN G. PRITCHARD

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John Lackland has become an Assistant Attorney General and assigned as one of the attorneys for the University of Washington.

Ashley, Foster, Pepper & Riviera announce the removal of their offices to the 44th Floor of the Seattle-First National Bank Building . . . Ford E. Smith has announced the removal of his office to 2810 Seattle-First National Bank Building . . . Beresford & Booth have announced the new location of their offices at 2901 Seattle-First National Bank Building.

With so many firms going to the new "Tall One" the prize for moving-day originality goes to Mr. and Mrs. Robert P. Piper who have invited the lawyers and wives of Karr, Tuttle, Campbell, Koch & Campbell to a party to relieve their "moving day blahs."

Richard R. Albrecht, Chairman of the King County Board of Freeholders, was the recipient of the Seattle-King County Municipal League's "Outstanding Citizen" award for 1969. Albrecht, Bennett Feigenbaum, Assistant General Attorney for the Pacific Northwest Bell and Chairman of the League's Social Problems Committee, and Don G. Abel, Jr. have been elected to three year terms on the Board of Trustees. Mr. James Gay retained his Presidency of the League and Richard Riddell and William H. Gates, Jr. were elected First Vice-President and Third Vice-President, respectively.

Don McMullen was knighted by Miss Joyce Stepanek, Miss Washington, as she sent him off to crusade on behalf of the American Cancer Society's King County Unit . . . F. Lee Campbell has been renamed Vice-Chairman of the Defense Research Institute's Aerospace Committee, Martin L. Wolf is Co-Vice Chairman of the Practice and Procedure Committee. Ronald E. McKinstry and Clarence H. Campbell were also appointed to Defense Research Institute Posts . . . A. Wesley Hodge, Donald C. Dahlgren and Jerome L. Hillis have announced

the formation of the law firm of Hodge, Dahlgren & Hillis, with offices in the Norton Building, Seattle. Also with the firm are Bruce D. Brunton, John E. Phillips, Donald C. Cole and Mark Clark.

John B. Bereiter, Kent City Attorney, has been elected president of the South King County Bar Association. . . . Donald D. Haley, a former Hearing Examiner with the Washington State Board of Industrial Insurance Appeals, and a partner in the Seattle firm of Lundin, Estep, Sindell & Haley, is the new president of the Seattle branch of the National Association for the Advancement of Colored People . . . Cecil W. Minaker, after being with the Internal Revenue Service for 18 years and the Small Business Administration for the past 12 years, has retired and opened a law office in West Seattle. It has also been announced that Thomas R. Winter, formerly Special Assistant to the Chief Counsel, Internal Revenue Service, will be associated with him.

Seattle attorney Liem Eng Tuai has been elected a Seattle City Councilman to succeed the late Paul Alexander . . . Michael Mines has become a member of the firm which will now be called Hullin, Roberts, Mines & Fite.

James J. McBride and Matt Sayre announce their association in the general practice of law under the name of McBride & Sayre, 4741½ Rainier Avenue South . . . Jerome Farris has been elected Chairman of the Washington Citizens Council of the National Council on Crime and Delinquency. Other new Board members include Cornelius C. Chavelle.

The new officers of the Seattle-King County Bar Association are: William H. Gates, Jr., President; Bradley T. Jones, First Vice-President; Jack P. Schofield, Second Vice-President; Michael R. Green, Treasurer; Gale D. Barbee, Secretary; and James P. Curran, William Dwyer, Jerome Farris and Edmund B. Raftis, Trustees.

Tom Alberg and Bob Mussehl were elected to three year terms as trustees of the Young Lawyers Section . . . Francis E. Holman, William

M. Holman and J. Richard Manning have formed a partnership under the firm name of Holman & Holman, 920 Logan Building (MU 2-8020) . . . Lawrence L. Shafer and Douglas L. Cowan, Jr. have formed a partnership under the firm name of Shafer & Cowan, 200 Metropole Building (MA 4-7460).

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## SKAGIT-ISLAND REPORT

By DAVID WELTS

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All the excitement of drawing wills, contracts, deeds and the like must take a back seat this time of year because of our annual golf - picnic (etc.) with the Whatcom County Bar Ass'n,

The tournament is scheduled for Bellingham this year but we have always performed well on the road. As this document reaches you, the results of our competition will be but a few days old and may still be occupying space in the sports pages.

Those Whatcom boys play a lot of golf but seem to lose their competitive edge for this affair, treating it as primarily a social occasion. Al Evans will be tough, you can bet; unbeatable if he listens to his wife Claudia, who just happens to be one of the two or three best lady golfers in the state. We may have her play for Skagit.

Whidbey Island must not be all salmon fishings with Howard Patrick's commercially marketed lure anymore. Judge Charles Stafford has been busy indeed hearing cases in Island County's second jury team this year. And we understand there are more to follow.

Our last jury team produced the following example of the layman's frustration with the law. One juror had been chosen for three cases: a settlement after three days of testimony, a mistrial, and a successful challenge to the sufficiency of the evidence. Passing counsel, a former schoolmate, on his way from the courtroom remarked: "Can't you lawyers ever do anything right?"

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## SNOHOMISH REPORT

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The Snohomish County Bar Association has recommended **Dennis Britt, Paul Hansen and Tom McCrea**, all of Everett, for appointment to the additional Superior Court positions created by the Legislature.

The county's representative on the new Court of Appeals should be selected from Superior Court Judges **Alfred Holte and Herbert Swanson, Charles R. Denney and McCrea**, the bar members voted.

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## SPOKANE REPORT

By **THOMAS R. CHAPMAN**

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**Joseph Nappi** was elected president of the Spokane County Bar Association, succeeding **John E. Snoddy**. Nappi served as vice president this year. The new vice president is **John E. Heath, Jr.** Also elected were **Del Cary Smith Jr.**, secretary, and **Frank Hayes Johnson**, treasurer. **Charles F. Scanlan** was nominations committee chairman.

The firm of **Wells & St. John** has announced that **David P. Roberts** has been made a member of the firm. The partnership has changed its name to **Wells, St. John & Roberts**. The firm has also opened a branch office in the Tri-Cities area at 1313 West Clark, Pasco. The office is open on Tuesdays.

**Richard H. Humphreys, Jr.**, is now associated with **Cheadle, Clanton & Woepfel . . . David L. Broom**, recently of Spokane, has joined his alma mater, the University of Washington, as assistant director of development and assistant director of the Alumni Fund . . . **John P. Murray**, former chief civil deputy in the Spokane Prosecutor's office, has joined the firm of **Randall & Danskin . . . Richard F. Wrenn**, former Spokane County Deputy Prosecutor, and most recently assistant attorney general in Olympia, has returned to Spokane to become Chief Deputy in the Spokane County Prosecutor's office.

At the annual awards convocation at Gonzaga University, Supreme Court Justice **Robert C. Finley** was named 1969 recipient of

the Gonzaga University Law Medal. The award was established in 1962 to commemorate the 50th anniversary of the founding of Gonzaga Law School.

### LIBERTY BELL AWARD

The recipient of the Spokane County Liberty Bell Award this year was **Mrs. Ina H. Johnston**, widow of **Eric A. Johnston**, long-time president of the Motion Picture Association of America. The citation lauded her dedication to the community and cited her long service to a number of civic organizations and her memberships on the boards of four colleges, including the board of regents of Gonzaga University.

### BAR BANQUET

The annual Bar Banquet and Golf Tournament was recently held at the Spokane Country Club. Emerging victorious in the battle of the balls were **Stan Bennett**, low gross, **Jim Fish**, low net; and **Art Hansen, Calloway**.

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## WALLA WALLA REPORT

By **RALPH L. JONES**

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At the Walla Walla County Bar Association meeting held Wednesday, May 28, 1969, **Keylor Smith** was elected president for the year 1969-70. **Arthur Eggers** was elected vice-president, and **Madison R. Jones** became our secretary-treasurer.

**Carl L. Johnson** was Law Day Chairman and many of the local Bar members spoke at the county's high schools.

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## WHATCOM REPORT

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**F. W. Durnan, Lynden**, as a member of the Local Government Law Section of the Municipal Home Rule Committee of the ABA, recently prepared that portion of the section's report for Washington and Montana.

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## YAKIMA REPORT

By **RANDY MARQUIS**

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### INSTALLATION OF 1969-70 OFFICERS:

At the May 26 meeting of the Yakima Bar, President **Harry Hazel**

yielded the gavel to incoming president, **Alan A. McDonald**. Other new officers are **Robert A. Felt-hous**, Vice President, **Terry Brooks**, Secretary, and **Warren L. Dewar, Jr.**, Treasurer.

### ACQUISITIONS AND CHANGES:

**Bruce P. Hanson**, formerly of the **Tonkoff** firm, and **C. James Lust**, formerly of the **Halverson** firm, have recently joined forces in the firm of **Hanson & Lust**. Their new location is 10 North 10th Avenue, Suite 102.

**Donald Shaw** resigned from the Prosecuting Attorney's office on May 31, 1969, and is now associated with the firm of **Tonkoff & Dauber**.

**Thomas P. Delaney** was recently appointed Deputy Prosecuting Attorney in the slot vacated by **Kelly Deaderick**. Tom formerly practiced in Spokane for many years and was recently attorney in charge at the U.S. Department of Labor in Seattle. He is a graduate of Gonzaga Law School and a member of the Washington and Montana Bar Associations.

### ATTORNEYS AND JUDGES IN THE NEWS:

Judge **Ray Munson** was recently elected chairman of the Yakima Valley Council on Alcoholism at its fifth annual meeting.

Judge **George H. Mullins** has been elected president of the **Sundown M Ranch Corporation** which operates the **Alcoholic Rehabilitation Center** near **White Swan, Washington**. Other officers elected include **James Hovis**, vice president

**Fred C. Palmer** has been installed as **Yakima County Campaign Chairman of United Good Neighbors**.

### COURTHOUSE EXPANSION:

Sometime in the next five years this city's downtown "skyscraper club" will have a new member with the addition of four more stories to the **Yakima County Courthouse**. That's the prediction of **Yakima County Commissioner Cliff Onsgard**. Onsgard believes that a combination of city-county jail and court facilities will be moved into the old section of the courthouse, and the new section, completed in 1964, will be expanded from its present four to eight stories.

have not gone unnoticed. Currently in progress is a nationwide movement to replace the ancient office of the coroner with a modern counterpart, the medical examiner.

In 1954, the National Conference of Commissioners on Uniform State Laws drafted a Model Post-Mortem Examination Act. Sixteen states have enacted reform systems along the lines of the Model Act. An additional thirteen states have adopted medical examiners for significant parts of their population.

Elimination of the coroner's jury has been a necessary corollary of the movement to adopt the medical examiner system. Judicial decisions recognize that investigation by the medical examiner has supplanted the ancient inquisition of the coroner with all its procedural complements. *Lipiec v. Zawadzki*, 346 Mich. 197, 77 N.W. 2d 763 (1956); see *In re Senior*, 221 N.Y. 414, 117 N.E. 618 (1917). The Model Act makes no provision for a jury. Most of the reform states have discarded the jury. And in Washington, D.C., a recommendation by the Young Lawyers Section of the Bar Association, that the coroner's jury be abolished, has inspired a general movement to institute a medical examiner in the District patterned after the Model Act.

In the 1969 session of the Washington State legislature, House Bill 515, which would have effected significant reforms by abolishing the coroner's office in favor of the medical examiner system, passed the House 84-10, but died in the Senate Medicine and Dentistry Committee. Committee Chairman William Day, a Spokane chiropractor, reportedly frankly admitted to being unfriendly to the bill. He stated it would be too expensive, contending that to put the medical-examiner system into effect would cost counties and the state about \$3.35 million a biennium. It should be pointed out, however, that retention of an inquest jury system that legally serves no purpose in itself results in an inexcusable waste of time and money.

#### Why is the Coroner's Jury Still Viable?

Since the jury is nearly defunct with respect to its stated functions under Washington law and plainly destructive in its present operations, one would assume that the institution would have passed into oblivion long ago. That the coroner's jury, amidst great controversy, has resisted steadfastly its predictable demise raises serious questions about the interests it presently serves. Indeed, the viability of the institution may be explained only by examining carefully its use in this jurisdiction.

In the absence of a grand jury convening regularly, prosecutors in the State of Washington are disadvantaged because they must function without the subpoena power. They lack the authority to compel witnesses to testify in the course of an investigation. Although magistrates regularly issue subpoenas to re-

quire the attendance of witnesses at a preliminary hearing to determine whether a defendant should be held for trial, full investigation by the prosecution may be hampered by the presence of defense counsel. While this minimal inconvenience can be tolerated in most instances, in a big case, such as a murder case, the prosecutor may be unwilling to rely upon the preliminary hearing as the primary discovery device.

The coroner's inquest neatly fills this void. In potential homicide cases the coroner may subpoena witnesses to compel testimony. Thus the prosecutor, who largely controls the inquest, has at his disposal an excellent discovery device in homicide cases.

House Bill 515 recognized the value of this proceeding. Section 27 states that "any prosecuting attorney, having reason to believe that a death has been caused by illegal means, or upon request by the chief medical examiner or a medical investigator, is authorized to hold a prosecuting attorney's inquest upon such death. The prosecuting attorney is authorized to issue subpoenas, requiring attendance of witnesses and the production of documents at any such inquest, and may administer oaths and affirmations. **The object of each such inquest shall be to obtain and preserve for the use of the prosecuting attorney information which will enable him to determine whether criminal proceedings should be instituted against any persons responsible for death.**" (emphasis added)

Whether the prosecutor should be empowered to subpoena witnesses prior to the initiation of criminal proceedings and, if so, whether that power should be confined to homicide cases is a question deserving careful consideration by the bench and bar. It is clear, however, that allowing an advisory verdict by a coroner's jury neither restricts nor expands the prosecutor's discovery power.

#### The Coroner's Jury Should Be Eliminated

H.B. 515 is commended for explicitly recognizing the inquest as a discovery device. Unfortunately, however, Section 31 amends, in minor respects, the definition of a "jury of inquest" and thus by implication suggests that the use of the jury will survive despite the adoption of the medical examiner system. Retention of the inquest jury would render a distinct disservice to legal reform in the State of Washington. It is strongly recommended that future versions of H.B. 515 be redrafted expressly to eliminate the jury and preclude its participation in the inquest spelled out in section 27.

The only plausible point made in favor of retaining the coroner's jury is that it affords an excellent vehicle for the prosecutor to expose to the public all the circumstances of a controversial killing. Following the Watts riot in 1965, coroner's inquests were held in thirty-two riot-connected deaths.<sup>2</sup> District Attorney Younger's report to the Governor's Commis-

<sup>2</sup> In 26 of the 32 cases the verdict was justifiable homicide; in 4, criminal homicide; in 1, homicide with no other explanation; and in 1, death by accident.

sion on the Los Angeles riots strongly defended the practice as the "best available procedure to permit public scrutiny of the facts of the homicide by an independent representative body — the Coroner's jury." (p.31).

The jury of course in no way contributes to the commendable objectives of informing the public about a newsworthy case; the verdicts are a source of confusion rather than insight. The prosecutor's inquest anticipated by H.B. 515, functioning without a jury, could serve equally well as an educational forum. Any inquest, moreover, is an expensive and cumbersome method of explaining to the people why a case will not be prosecuted. In addition, one may at least question whether the people's right to know justifies making a public spectacle out of a proceeding that may be grossly unfair to a number of individuals. The grand jury, a more dependable institution for charging a person with crime, conducts its proceedings in the strictest of secrecy, largely out of a concern for protecting the rights of the participants. Finally, most, if not all, refusals to prosecute could be explained adequately by the prosecutor after an informal investigation behind closed doors.<sup>3</sup>

### Coroner's Jury is a Political Tool of the Prosecutor

Understandably, a public explanation by the prosecutor would require him to place his reputation and legal judgment on the firing line. His reluctance to do so explains why the coroner's jury has endured despite its major failings. Publication of the verdict that a homicide was "justifiable" or "excusable" offers the prosecutor an institutional escape route for justifying a refusal not to prosecute. Legally, the verdict of a coroner's jury that a killing was "excusable" is meaningless. It adjudicates no rights of the defendant. It decides nothing that will be binding on anyone in a subsequent criminal or civil proceeding. It carries no greater weight than would an off-the-cuff opinion by, let us say, half-a-dozen members of the Jaycees, CAPI, or the International Association of Machinists that a certain killing in the community was legally "excusable."

Politically, however, the coroner's verdict is of great value to the prosecutor. The clear implication conveyed to the public is that a jury verdict that a homicide was "excusable" somehow represents the considered wisdom of one of our most revered institutions. That the prosecutor would contradict the jury by later prosecuting would appear to be indefensible. Perpetuating these misapprehensions about the oddities of this particular "jury" is to the advantage of the timid prosecutor.

It is easier to hide behind the verdict of a group of citizens than to inform the Negro community that the officer who killed the Black Panther was acting in the line of duty; or to inform incensed voters that the home owner who killed in defense of the gasoline in his automobile was fully justified under the law. Relinquishing responsibility somehow appears more palatable if the public is led to believe the verdict of the coroner's jury carries greater weight than the legal opinion of six citizens randomly selected from the street. Political expediency alone encourages the prosecutor to perpetuate the fiction that a half-dozen jurors in a formless proceeding can somehow control his informed legal judgment to exercise his discretion against prosecution.

### CONCLUSION

As an investigator of sophisticated medical facts, the coroner's jury is hopelessly ill-equipped; in a modern society only properly trained medical personnel can investigate homicides with the requisite competence and skill.

As a decision-maker on the issue of probable cause for arrest, the coroner's jury is an expensive duplicate of the magistrate or the grand jury.

As an adjudicator of questions of guilt or innocence and of culpability, the coroner's jury is utterly undependable, highly dangerous and ultimately hypocritical. It is undependable because the proceedings before the coroner's jury are non-adversary in nature, procedurally faulty, susceptible to undue control by the prosecutor and coroner, and unreviewable in the courts. It is dangerous because the findings of a coroner's jury may defame unfairly a potential defendant and prejudice his defense and may mislead the public by fostering faulty notions about the function of the jury and the respect to be accorded to its pronouncements.

Lastly, retention of the coroner's jury is hypocritical because it rarely functions as an adjudicatory institution of any consequence. Its primary mission, as distinguished from its proclaimed purpose, is to provide an escape mechanism for the prosecutor to explain why he did not exercise his discretion to prosecute in a certain case. But the decision not to prosecute by a political officer is a political decision. Responsibility for that decision should be clearly communicated to the electorate. Perpetuating an out-moded institution that permits the prosecutor to shunt that responsibility onto an untrained, ill-equipped jury is both unwise and unproductive. Elimination of the coroner's jury will remove an institutional imbalance that we have tolerated too long.

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<sup>3</sup> Concededly, some of these arguments suggest, first, that the prosecutor's inquest recognized by H.B. 515 be conducted in secrecy, or second, that it be eliminated altogether. These issues need not be confronted, however, to justify abolition of the inquest jury.

# THE COURTS

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## SUPREME COURT PRACTICE

By WILLIAM M. LOWRY

*Supreme Court Clerk*

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The Washington State Judicial System of appellate review, unchanged since statehood, is about to confront the practicing attorney with a new tribunal. The 1969 Legislature, pursuant to the November 1968 Constitutional amendment, has created a Court of Appeal. The court will be composed of twelve judges functioning in three divisions headquartered in Seattle, Tacoma and Spokane. Argument will be heard by panels of three judges.

The Court of Appeals will commence the hearing of cases as soon as the judges are appointed, court rooms arranged and implementing rules promulgated. It now appears that the judges will be appointed in August. Court facilities and employees are now being obtained. Implementing rules may be promulgated as early as July. It is hoped that the Court of Appeals will commence the hearing of cases on September 8, 1969.

What will be the impact on the attorney seeking appellate review? With respect to appeals filed or to be filed prior to the effective date of the implementing rules, cases not yet argued in which appellant's opening brief is on file are now being reviewed. Those that do not fall within the new statutory original jurisdiction of the Supreme Court will be transferred to the Court of Appeals. Nearly three hundred will probably be transferred initially. As soon as appellant's opening brief becomes available in the other pending cases filed in the Supreme Court prior to the effective date of the implementing rules, they will be similarly handled. The implementing rules, in accordance with the statute, will provide that appeals not falling within the original jurisdiction of the Supreme Court shall be filed with the division of the Court of Appeals which geographically includes the Superior Court from which the appeal stems. However, the Supreme Court has authority to transfer cases between divisions to equalize the work load.

The statute provides that the administration and procedures of the court shall be as provided by rules of the Supreme Court. At the outset the court was faced with the question of whether to attempt to develop improved rules on appeal for the Court of Appeals or to make present rules on appeal applicable to the Court of Appeals. Although the court fully recognizes the value of basic changes in the rules on

appeal, the decision was made to adopt the present Supreme Court Administrative and Rules on Appeal for the Court of Appeals. The same rules, insofar as practicable, with the same numbers will be promulgated for the Court of Appeals. This decision was made for two reasons: first, the necessity of time, and second, to make the transition as easy as possible. The rules are to be considered interim. An in depth study is in progress by the Judicial Council with not only the objectives of a logical and sequential approach incorporating the use of modern technology and avoiding traps and pitfalls, but also, where practical, the inclusion of the common law on procedure. The completion of this study is, however, not yet in sight.

Some innovations will, however, obviously be necessary. The statutory right to petition for review from a decision of the Court of Appeals must be provided for. At present, it looks as if the denial by the Court of Appeals of a timely petition for rehearing will be a condition precedent to the consideration of a petition for review. The time for filing the petition will be short — probably ten days after the entry of the order denying the petition for rehearing. The granting of the petition for review will be within the discretion of the Supreme Court. There will be no right to appeal from a decision of the Court of Appeals except when the Court of Appeals reverses a judgment or order of the Superior Court by less than a unanimous decision.

There will also be some changes in Supreme Court procedures. It would appear that pro-tempore judges will not sit again with the Supreme Court except to substitute for a regular judge who is absent or disqualified. Also, except on motion days, the Supreme Court will probably hear all cases *en banc*.

The approach of the interim rules to start the Court of Appeals functioning should have another advantage. Unforeseen problems should be recognized during the interim period. The Judicial Council would appreciate the suggestions of counsel as to the improvement of appellate procedures.

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## SUPERIOR COURT NEWS

By RICHARD F. BROZ *Judge,*  
*King County Superior Court*

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Judge Thomas G. Jordan, retired, from Asotin, Columbia and Garfield Counties, passed away at a hospital near his home in Clarkston on May 19, 1969.

Judge Jordan was born February 22, 1893, in Graves County, Kentucky. He was educated in public schools at Lexington, Mississippi and later attended George Washington University and Georgetown University at Washington, D.C. He received his LL.B. and J.D.



from Georgetown University. He was a member of the Mississippi and Washington State Bar Associations.

In January of 1950, Governor Arthur B. Langlie appointed Judge Jordan to the Superior Court bench for Asotin, Columbia and Garfield Counties and he served in that position until his retirement on December 31, 1968.

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King County's Judge **William J. Wilkins** was the guest of honor at the May 28 meeting of the Seattle King County Bar Association. Bar Association President **Pinckney M. Rohrbach** noted that Judge Wilkins, who will soon complete 30 years of judicial service, is currently president of the National Association of Metropolitan Courts, an association of leading jurists throughout the nation serving in large metropolitan areas. The association's annual meeting will be held in Seattle in October.

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An overflow audience heard **Frank J. Eberharter**, chairman of the Seattle-King County Bar Association's committee on judicial selection, speak on "What Makes a Good Judge" at the Association's May 28th luncheon meeting. The judicial selection committee has been screening judicial candidates as a result of the legislature's approval of four additional superior court judges for King County. The committee has adopted a detailed form of questionnaire to assist in evaluating prospective nominees, an innovation which has attracted interest from other judicial applicant-screening agencies.

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King County's major courthouse remodeling project is moving along with six new courtrooms scheduled for completion by June 2nd. Remodeling of ten eighth floor courtrooms is scheduled for completion by September 2.

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## NEWS FROM THE COURTS OF LIMITED JURISDICTION

By **THOMAS B. RUSSELL**, Judge  
*Northwest District Justice Court*

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From time immemorial members of the Bar and the public assumed that the "crime problem" was met if we offered inducements to secure wise and understanding superior court judges and invested our correctional monies into walled institutions and Parole and Probation Staffs to penalize, supervise and cure the felons, who, after all, were the source of crime. This general attitude was correctly summarized by the Baltimore Criminal Justice



Commission in 1923 when they stated:

"Although it is almost invariably true that the serious offender has a long career in the minor courts, we wait until he graduates from such a career into a full fledged burglar or highwayman before paying serious attention to his conduct."

Then in 1967, The President's Commission on Law Enforcement and Administration of Justice started a lot of the students of crime and its control, to re-think their approach with the following statements in their "Task Force Report: The Courts":

"No findings of this Commission are more disquieting than those relating to the condition of the lower criminal courts . . . Although the business of the lower courts may be 'petty' in respect to the amount of damage they do and the fear that they inspire, the work of the lower courts has great implications . . . While public attention focuses on sensational felony cases and on the conduct of trials in the prestigious felony courts, 90 percent of the nation's criminal cases are heard in the lower courts."

The outstandingly high figure of 90% was hard for many to accept, particularly in the the State of Washington where we had no data on the caseload of our Courts of Limited Jurisdiction. The office of the Washington Court Administrator, **Al Bise**, has published the data that they have collected on the work of these courts for 1968, and these would show the Crime Commission to be just about right in their estimate. The figures from the Court Administrator do not include the work of the many hundreds of Municipal Courts that operate in our state. For the purpose of my summaries, I have secured and added the cases filed in the Municipal Courts of Seattle and Tacoma.

Last year, 6,277 criminal cases were filed in the Superior Courts of the state. 42,030 criminal cases (not including traffic citations) were filed in the Courts of Limited Jurisdiction mentioned above. In short, 87% of the criminal cases filed in the state were filed as misdemeanors. If the 273,067 traffic cases in the courts mentioned above are included in the figures, the percentage rises to 98% of all criminal cases filed in court. Also of interest is the geographic distribution of the cases filed in the District Courts, Justice Courts and Justice of the Peace Courts in the State. 53% of all the cases filed were brought in Snohomish, Pierce and King Counties, while 32% of all cases filed were brought in King County. 89% of all the cases filed were brought in courts subject to the 1961 District Justice Court Act while the remaining 11% were brought in our Justice of the Peace Courts.

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**LEADING STATE  
SUPREME COURT DECISIONS**

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**Evidence:** Under the exceptions to the general rule that evidence of subsequent repairs is not admissible to prove prior negligence, such evidence may be admitted for the limited purpose of showing dominion or control over the instrumentality or to show the practicality of the use of a safeguard. *Brown v. Quick Mix Co.*, 75 W.D.2d 845, — P.2d — (1969), overruling *Kennard v. Mountain View Dev. Co.*, 69 Wn.2d 492, 419 P.2d 154 (1966), insofar as that case holds that evidence of subsequent repairs is admissible only if the issue of feasibility is injected by the defendant.

**Evidence:** Safety codes or standards of safety published by private bodies, which do not have the force of law but which are relevant, trustworthy and necessary, are admissible in evidence on the issue of negligence. *Nordstrom v. White Metal Rolling and Stamping Corp.*, 75 W.D.2d 644, — P.2d — (1969), overruling *Valley Land Office, Inc. v. O'Grady*, 72 Wn.2d 247, 432 P.2d 850 (1967) and *Hartman v. Port of Seattle*, 63 Wn.2d 879, 389 P.2d 669 (1964) (dictum), insofar as they are inconsistent.

**Freedom of Speech:** A committee of plaintiff's church contracted with the city of Tacoma through its agent, the Washington Transit Advertising company, for the display of 20 exterior display signs upon Tacoma transit buses. The signs in question read: "End war in Vietnam . . . Now! by peaceful negotiations. Urge use of resources for peace." The contract provided: "The form, wording and illustration of cards shall not be of a kind of character objectionable to the transit companies . . ." The trial court's holding was affirmed — the refusal to permit the display of the signs violated the free speech and equal protection guarantees of the federal and state constitutions. Justices Hunter, Hill, Rosellini, Hale and McGovern in affirming applied the "clear and present danger" test. Justices Finley, Hamilton, and Neill, who concurred in the result, advanced what was termed "a more refined and preferable application of the clear and present danger test." No convincing showing has been made as to reasonably foreseeable harm to, interference with, or disruption of Tacoma's public transportation system. Cf. *Tinker v. Des Moines Independent Community School Dist.*, 37 U.S. L.W. 4121 (U.S. Feb. 25, 1969). "*Hillside Community Church, Inc v Tacoma* 76 W.D. 2d 64, -P.2d -(1969).

**Juvenile Rights:** The interrogation procedure required by *Miranda* was expanded to apply to the pre-adjudicatory, investigation stage as to juveniles. However, there was evidence, independent of the juvenile's admission, sufficient to support a finding of delinquency. *In re Forest*, 76 W.D. 2d 84, -P.2d -(1969).

**Malpractice:** If malpractice is claimed during a continuous and substantially uninterrupted course of treatment for a particular illness or condition, the statute of limitations does not begin to run until the treatment for that particular illness or condition has been terminated. *Samuelson v. Freeman*, 75 W.D.2d 904, — P.2d — (1969), overruling that part of *McCoy v. Stevens*, 182 Wash. 55, 44P.2d 797 (1935), which rejected the continuing-course-of-treatment concept.

**Malpractice:** Where medical malpractice is asserted to have occurred through the negligent leaving of foreign substance or articles in a surgical wound and which remain in the body after the wound has been surgically closed, the statute of limitations commences to run when the patient discovers or, in the exercise of reasonable care for his own health and welfare, should have discovered the presence of the foreign substance or article in his body. *Ruth v. Dight*, 75 W.D.2d 674, — P.2d — (1969), overruling *Lindquist v. Mullen*, 45 Wn.2d 675, 227 P.2d 724 (1954), insofar as it is inconsistent.

**Real Estate Contracts:** A purchaser under a recorded real estate contract assigned his interest by quitclaim deeds and assignments of contract to third parties. Because the purchaser intended to use the property as security, the instruments were construed to be mortgages. The purchaser defaulted in contract payments to the vendor. The vendor gave notice of forfeiture to the purchaser but not to the third party mortgagees. The vendor has no actual notice of the claims of the third party mortgagees. The mortgages had been recorded. The court held that the mortgagees had the burden of protecting their position by notifying the vendor that they held a mortgage on the purchaser's interest. The recording of the mortgages did not give constructive notice of their existence to the vendor who was an antecedent party in the chain of title. The recording of the mortgages was constructive notice only to those parties acquiring interests subsequent to the filing and recording of the mortgages. *Kendrick v. Davis*, 75 W.D.2d 470, 452 P.2d 222 (1969), overruling *Norlin v. Montgomery*, 59 Wn.2d 268, 367 P.2d 621 (1961), insofar as it is inconsistent.

**Strict Liability:** The court did not "find it necessary to decide at this time whether this court should adopt a rule making sellers other than manufacturers strictly liable for defects". However, the court did discard the terminology of "implied warranty" and adopt the language of strict liability contained in the Restatement (Second) of Torts § 402A, only as to the liability of manufacturers. *Ulmer v. Ford Motor Co.*, 75 W.D.2d 537, 452 P.2d 729 (1969).

## CAN YOU USE ANY OF THESE IDEAS?

1. In addition to the punch and stapler which every practitioner should have in his own office, a ten-key calculator with provision for adding, subtracting, multiplying and possibly dividing, can be utilized effectively on an almost daily basis. The machine should be available in the individual practitioner's office where it can be reached while clients are present or by the attorney during the drafting of documents.



2. With respect to folders for filing, we are experimenting with uncut folders where the index can be placed anywhere across the top of the file. These are considerably less expensive than cut folders and work especially well in office utilizing side filing. They can be purchased with or without fasteners installed. Fasteners now come with adhesive backing which can be easily affixed and which have the advantage in that the fasteners do not extend through the file, hence there is no problem of files catching against the next file.

3. A clock inconspicuously placed behind the chairs customarily occupied by the clients enables the lawyer to keep track of time, and anticipate the need to close a conference without the adverse effect on a client that might result if you were constantly looking at your wristwatch.

4. When a file is ready to be closed, original documents should be returned to the client and any unnecessary papers should be removed. Before the file is placed in dead storage, it should be stamped "Do Not Destroy Without the Consent of \_\_\_\_\_" if it is to be retained on a permanent or semi-permanent basis. If it is anticipated that a file can be destroyed after a fixed period of time, stamp the file "File May Be Destroyed After (date)." When the date for destruction has been reached, send a letter to the client advising him that under the office practice, his file will be destroyed in sixty days unless he instructs to the contrary. After the sixty days have elapsed, get rid of the file. By sending the letter, the attorney is protected against the file having been destroyed without the knowledge of the client and it may give the client incentive to call you with some new legal business.

All of these ideas have been tested and are workable. Please let us have your tips for office efficiency.

RICHARD C. REED

**Will The Practice Be Socialized?** Mr. Raymond Moley said yes. He stated that lawyers would soon find themselves shoulder to shoulder with doctors in the fight against it. He said England was proposing it.

However, Reginald Heber Smith, the author of the fine pamphlet, *Law Office Organization*, and manager of Hale & Dorr, Boston, the firm which grew from seven persons to some two hundred under his guidance, said this was "a sham battle about idealogies." He related that both the Conservative party and the Labor party of Great Britain had legal aid proposals beginning with War II.



He further stated that Tom C. Lund, secretary of the Law Society (now secretary of the International Bar Association) had drafted such a plan which had been approved by the Society. Smith concluded, "The need in the United States is as great as in England and because the demand is moral in character, it must be met in one way or another."

**Judicial Appointees.** Editor Rupp was chided by Elias A. Wright because he had stated in an earlier issue that one of the judicial appointees was recommended by the Bar Association. Mr. Wright reminded that every one of the appointees was recommended and the record should so show, and indeed, with that quotation from his letter, it did.

Incidentally, Elias is now living in the Emma P. Chadwick Memorial Home, Order of Eastern Star at 707 - 228th S.W., Bothell, Washington. He would love to hear from his old friends.

**Women Lawyers Praised.** A Washington male lawyer sent an editorial from the Los Angeles Times. It stated that women lawyers from twenty countries, including the Philippines, Turkey and Uruguay, had convened there.

"The atmosphere of the whole convention was charged with something that mere man-made conventions have little of . . . the thing that made this gathering especially significant was its demonstration that women who know the law, who know the way of the world and all its formal rules — most man-made in all the countries represented—found a rarely beautiful sisterhood in living and thinking together during the convention week. The women lawyers of the world have something precious to contribute to world unity. It is to be hoped that the men will recognize this fact . . ." Forty years ago, upon such showing, gals would say to boys, "Put that in your pipe and smoke it."

DAVID J. WILLIAMS




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## BOOK NOTES FROM YOUR STATE LAW LIBRARY

BY C. E. BOLDEN  
*Law Librarian*

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The Practising Law Institute has recently published a second edition of the 1966 treatise on a subject of particular interest and significance. Flicker, Barbara, ed. **The Community and Racial Crises.** (New York, Practising Law Institute, 1969.)

During the period immediately following the publication of the 1966 edition—based on a forum dealing with the community and racial crisis, held in December 1964—the civil rights movement was characterized by peaceful protests concerning the reasonable demands of the Negro population for access to public accommodations, non-discriminatory hiring practices, and desegregated schools. The thrust of this movement has since changed markedly. In the introduction, E. Donald Shapiro, Director of the Practising Law Institute, states: "Peaceful protests gave way to riots, gradualism to 'Freedom Now,' desegregation to separatism, equality of opportunity to compensatory dual standards, color blindness to Black Power, integration to community control. Both the slogans and the goals had changed."



In addition to retaining a portion of the earlier work, the editor has added substantial amounts of new material which discusses, evaluates, and proposes courses of conduct responsive to these changed trends in racial relations—i.e., recent Supreme Court decisions relating to the boundaries for permissive protest activity, excerpts from the Police Task Force Report of the President's Commission on Law Enforcement and Administration of Justice, the Kerner Commission Report, recent studies of laws against discrimination, and discussions of the most recent legislative and administrative approaches to racial crises.

Certainly, a most timely work of special interest to attorneys, public officials, and law enforcement officers.

Another publication of the Practising Law Institute, of considerable interest to the attorney, has now undergone a third printing. Originally published in

1967, this treatise by authors Richard M. Goodman and Forrest L. Tozer provides a meaningful insight into the standards of care and possible liability of the modern day hospital. **Modern Hospital Liability—Law and Tactics.** (New York, Practising Law Institute, 1969.)

Divided into three major divisions, the authors discuss—among other things—trial strategy for both plaintiffs and defendants, standards of in-hospital care, and the use of texts in the cross examination of expert witnesses. This volume of some 500 pages contains a practical collection of standards, discussions, and law review comments concerning the responsibilities of hospitals and subsequent liability in those instances where the responsibilities are not met. The standards for accreditation as promulgated by the Joint Commission on Accreditation of Hospitals is reprinted, as is the Code of Ethics of the American Hospital Association and the American College of Hospital Administrators.

A workable index and a table of some 275-300 cases provides easy access to specific subject matters.

One of the advantages of writing a column of this type is the freedom to exercise an "author's license" to discuss any particular title he chooses—subject, of course, to the editor's blue pencil. Exercising such license, a recently published monograph by the Associated Press is well worth the mentioning, although it is not strictly speaking a law book. Blakeslee, Alton. **What You Should Know About Drugs and Narcotics.** (Associated Press, 1969.)

Within a framework of some 50 pages, the author has successfully presented a mountain of factual information relating to the use and misuse of many narcotics and drugs which presently seem to be "in vogue." Perhaps it is best said by Mr. John Finlator, Associate Director, Bureau of Narcotics and Dangerous Drugs, Department of Justice: "I am pleased to recommend this accurate and factual publication dealing with the menace of narcotics and drug abuse not only for parents and those interested in teaching drug respect, but for young people who are subject to the drug phenomena in their everyday social contacts . . ."

In a very candid, common sense manner, the author discusses such things as the drug scene in America, the scope and signs of drug use, the major mind-affecting drugs, the appeal of drugs, law and the "mind" drugs, what parents can do, etc.

# NOTICES

## Wanted – Seattle Public Defender

The Board of Directors of the Public Defender Corporation is now receiving applications for the position of Public Defender for the City of Seattle.

The position is a newly created one and will involve duties which are of a legal and administrative nature.

Initially the program will be limited to providing services for indigents charged with violations of City of Seattle ordinances, but it is anticipated that in the future the scope of the office will be expanded to include indigents charged with misdemeanor and felony violations in the Justice Courts and Superior Courts of King County, juvenile court proceedings, parole and probation hearings and other matters relating to criminal processes.

Although it is not required that an applicant be a member of the Washington Bar and there is no requirement as to the amount or type of experience an applicant should have, special consideration

will be given to those persons who have had five years or more experience in the field of criminal law and who are presently members of the Washington Bar. It is also desired that the applicant be willing to serve in the position for a number of years.

The salary to be paid will be between Twenty One Thousand (\$21,000.00) Dollars to Twenty Six Thousand (\$26,000.00) Dollars per annum depending upon the experience and other qualifications of the applicant. In the event that the scope of office is expanded the salary will be increased accordingly.

Attorneys interested in applying for the position should submit a resume of their qualifications together with a brief statement of what their philosophy of office would be if they were appointed to the position of Public Defender, to the Defender Association, c/o Seattle Model City Program, 1700 E. Cherry, Seattle, Washington 98122. Applications are to be submitted by July 15, 1969.

## SPACE OPEN – EUROPE FLIGHT

Recent cancellations caused by changed family circumstances or pressing business matters have required some of our members to cancel their space for the September jet flights to London. We are thus able to accept applications for space on our two deluxe CPA jet flights to London –

First flight departs Vancouver for London September 8, and returns from Amsterdam October 10;

Second flight departs Vancouver for London September 13, and returns from Amsterdam October 13.

The all-time bargain round-trip fare of \$250 is still available to members of the Washington State Bar, dependent children, and parents living in the member's household. To reserve space send \$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 A. Mobley, Escrow Agent.

Deadline for the next issue of the *Bar News* is July 15, 1969

### Will Information Sought

Any one having information regarding any will made by Estylle M. Davis, 1030 Summit Avenue, Seattle, Washington, who died April 12, 1969 in Seattle, Washington, is requested to communicate with Mr. Thomas H. Murphy, 1107 Olympic National Life Bldg., Seattle, Washington, MUtual 2-3333.

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

## 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:

1968 University of Washington Law School graduate, former VISTA volunteer and staff assistant to U.S. Senator seeks general practice position in Seattle.

Older lawyer, who is a former prosecutor, wants part-time general practice. Will do briefing.

Upper 1/3 graduate of eastern law school, formerly with Peace Corps General Counsel Office, desires corporate practice position anywhere in state.

Home office of large insurance company wants attorney for all aspects of surety and bonding, including litigation.

Large Seattle firm wants lawyer 35 or younger with background in securities field. Practice includes some probate and other areas.

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

## DISCIPLINE RULES FOR ATTORNEYS REVISED

In the September 1968 issue of the *Bar News*, it was reported that the Board of Governors had recommended to the State Supreme Court that there be a revision in procedure for disciplinary hearings. The plan submitted by the Board was similar to that of the California State Bar hearing panel.

### The Disciplinary Board

The State Supreme Court has now promulgated new Discipline Rules for Attorneys, which are effective July 1, 1969 (75 W.D. 2d 960-96). The major innovation is the Disciplinary Board (Rule 2.4). The bulk of the disciplinary work now performed by the Board of Governors is transferred to the Disciplinary Board, freeing the Board of Governors to concentrate on the numerous other matters which demand its attention.

The Board of Governors will appoint the Disciplinary Board composed of seven members, one from each congressional district. Members will serve for three year terms. Members must have been active members of the State Bar Association for at least fifteen years. The procedure of local administrative committees, trial committees and three-member hearing panels will continue. The chairman of the hearing panel files the panel's findings, conclusions and recommendations with the Disciplinary Board.

### Stipulations

Another innovation is use of a stipulation (Rule 33). Any disciplinary matter may be disposed of by a stipulation for discipline to be signed by the respondent attorney and by the state bar counsel. No stipulation is effective unless approved by the Disciplinary Board and no stipulation for suspension or disbarment is effective unless approved by the Supreme Court.

### Spokane Bar Proposals

Several proposals by the Spokane Bar in the area of discipline were reported in the May issue of

the *Bar News*. The State Bar's Committee on Disciplinary Procedure did not have the benefit of these proposals at the time the Committee drafted its proposed revision. The State Bar Committee was primarily concerned with establishing a Disciplinary Board.

It might be of benefit to compare the Spokane Bar proposals with the relevant rules. Members of the Bar are invited to express their opinion on the proposals in letters to the editor.

### Publicity

The Spokane Bar recommends that the Board of Governors should be vested with discretion to release information regarding the pendency of proceedings and the 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 patent or persuasive. Rule 11.6 provides:

(a) **Record Confidential.** Unless respondent attorney in writing requests otherwise, the record of a proceeding in a disciplinary matter shall be open only to the Board of Governors, Disciplinary Board, State Bar Counsel, respondent attorney or his counsel, the Supreme Court if filed for review or requested by a member of the Supreme Court, provided however:

(1) Reports made by the Local Administrative Committees and other records of a proceeding in a disciplinary matter may be used by the Board of Governors for the purpose of relieving or mitigating a pecuniary loss sustained by any person by reason of misappropriation, embezzlement or defalcation on the part of any active member of the Association, and for this purpose such report and records shall be open for inspection by such person or persons as may be determined by the Board of Governors, and upon such terms and conditions as may be prescribed by such Board in order that the conduct of a disciplinary matter will not be prejudiced and further confidentiality will be maintained.

(2) A judge of a court of record who has furnished information concerning matters involved in a disciplinary proceeding may, upon his request and in the discretion of the Disciplinary Board, be furnished with a statement of the final

action taken in such proceedings with the reasons therefor.

(b) **Contempt.** Disclosure by any person whomsoever of any part of such proceedings made available to him by these rules, shall subject such person to a proceeding as for contempt.

### Suspensions

The Spokane Bar further recommends 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 in order to show cause directed by the Supreme Court.

Rule 9.1 provides:

(a) **Suspension Automatic.** An attorney shall be automatically suspended from the practice of law upon his conviction of a felony under either state or federal law, whether such conviction be after a plea of guilty, nolo contendere, not guilty, or otherwise, and regardless of the pendency of an appeal; provided, however, that the Disciplinary Board may recommend to the Supreme Court for final disposition the prevention or termination of the suspension if such Board affirmatively finds that moral turpitude was not in fact an element of the crime of which the attorney was convicted, or if the Disciplinary Board affirmatively finds that there is other good cause for preventing or terminating such suspension. Suspension in this manner shall not be a substitute or alternative for disciplinary proceedings against said attorney, but such proceedings shall be commenced by the Disciplinary Board upon said conviction, or prior thereto if reasonable cause therefor exists, and shall proceed without regard to said suspension.

(b) **Duration of Suspension.** When an attorney is suspended upon conviction of a felony as provided in this rule the duration of such suspension shall not exceed final disposition of the disciplinary proceedings commenced against said attorney. When the disciplinary proceedings are fully completed, after appeal or otherwise, the suspension occurring in this manner shall end and such disciplinary action as then occurs shall commence.

WASHINGTON STATE BAR ASSOCIATION

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