Volume 25, Number 2
February 1971

WASHINGTON STATE BAR NEWS

OFFICE OF THE PUBLIC DEFENDER

SAINT GEORGE SLAYING THE DRAGON

MEMORANDUM

TO: All State of Washington Attorneys

RE: The Unique Facilities and Flexibility of the Metropolitan Press, Seattle, a Service Oriented Printing Company

The Metropolitan Press has earned the reputation as the state's leading legal-financial printer and color lithographer. This reputation has been accomplished progressively since the Company's founding in 1905 by people who believed in the highest standards of quality, integrity and service as they apply to the printing industry.

A partial listing of services in our Legal & Financial divisions include:

LEGAL DIVISION

(Pertaining to the printing and disposition of appellate briefs)

- Brief drafts are edited to conform to the current rules on appeal.
- Index and case authority are prepared for you automatically with special attention to the correct form of citations.
- Briefs are printed either letterpress or offset; are served for you on opposing counsel (either personally or by our affidavits of service duly prepared and notarized) and we file the requisite number of copies. The above services take place in most instances within 48 hours after receipt of copy.
- We specialize in appellate briefs for the Washington, Idaho and Oregon State Supreme Courts; The Washington State Court of Appeals; The Ninth Circuit Court of Appeals; The U.S. Supreme Court; The U.S. Court of Claims; and the Interstate Commerce Commission.

FINANCIAL DIVISION

(Pertaining to documents required for the issuance of securities to the public)

- Financial printing for SEC encompassing registration statements and prospectuses requires a thorough knowledge of the complex rules and regulations and in many cases, overnight production of the documents involved.
- The Metropolitan Press has produced the documents for the majority of full registrations originating from this state.
- We are also specialists in the production of offering circulars, Regulation "A"'s, engraved and lithographed stock certificates, debentures and bonds; indentures; merger agreements; proxy statements and proxies; and annual and interim shareholder reports.

The Metropolitan Press
appreciates your business;
solicits your continuing business;
and invites your referral of new business.

Please call MUtual 2-8800 collect — MUtual 2-8801 in the evening after 5 p.m.

s/BARRY J. REISCHLING
Manager, Legal-Financial Divisions
CRAFTSMAN-MET PRESS
(Metropolitan Press)
Fairview Avenue N. & Valley, Seattle, Washington 98109

(paid advertisement)

Editor's Note

Washington State Bar News

Published by
WASHINGTON STATE BAR ASSOCIATION
505 Madison Street Seattle, Washington 98104
EDMUND B. RAFTIS, *Editor*

Material, including editorial comment, appearing herein represents the views of the respective authors and does not necessarily carry the endorsement of the Association or of the Board of Governors. Direct all copy to Edmund B. Raftis, Editor, 1608 Exchange Bldg., Seattle 98104.

Published monthly, except August-September combined. Subscription price is $5.00 a year, 50¢ a copy. Subscription included with active membership. Back issues $7.50 per volume, $1 per issue.

United Graphics

CREDITS

Cover, Steve Marts
- *3, 4, 13, 15, 17 John D. MacLauchlan*
- *5 The Seattle Times*
- *7 Fred Milkie Photographers*

Index

On the cover is a photo of the sign which hangs over the entrance to the **Public Defender Office in Seattle**—a modern-day Saint George and the Dragon by sculptor Richard S. Beyer. The subject, traditional in art, turns up again and again—the miracle plays, Spenser's *Faerie Queene*, a Pioneer Square gent slaying a dragon as seen through the eyes of a sculptor in two-dimensional form. Public Defender John Darrah writes of the uniqueness of the office he heads (page 5).

* * * *

Judge Robert Utter had a list of proposed reforms in hand when he spoke to a SKCBA luncheon in December on **"Let's Really Get Tough on Crime" (page 7). His proposals** relate to the subject of corrections. Among other things, Judge Utter proposes that the legislature extend the Juvenile Probation Subsidy Program, which has been such a success, to adult offenders.

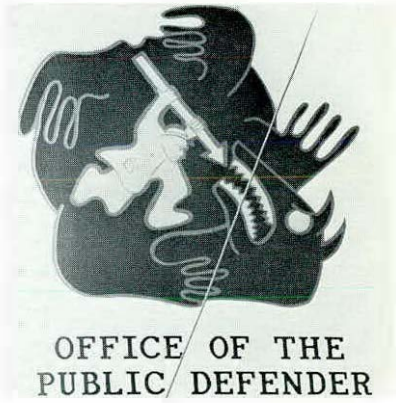
* * * *

The best kept secret of 1970 was the **New Federal Civil Rules On Discovery** (page 9). The article merits a close reading because a study is underway to consider embodying the same changes in the state civil rules.

* * * *

The Board of Governors took some major steps at its last meeting. **The Code of Professional Responsibility** was adopted as the Special Committee reported it out (*Bar News*, October '70) with the exception of recommendation ten. If the State Supreme Court agrees, the State Bar will allow group legal services, an area in which the ABA had taken a very restrictive stance.

The Spokane County Bar Association originally proposed a revamping of the **Clients' Security Fund** (*Bar News*, May '69) and changes have now been made in this



area by the Board (page 31).

* * * *

Minimum bar fee concept in probate matters called into question (page 3); the law schools are in their world and the bar is in its world (page 13); Jim Dolliver tells how the Governor makes judicial appointments (page 15); to the arbitrator his hair style conjured a mental image of John the Baptist as a teenager (page 16); Bill Lowry discusses extraordinary writs (page 25).

Welcome back to columnist Connie Bolden. Having submitted a column on books for several years, he will now have a monthly column on the Judicial Council (page 27). No less than 20 ideas in the office practice tips column this month (page 28). Harvard Law Dean (recently named Harvard President) disagrees with Ralph Nader (page 29).

Letters

Occasionally Exciting

Editor:

This is just a short note expressing my appreciation for the hard work which you have obviously undertaken in connection with the publication of the monthly *Washington State Bar News*. Under your editorship, the *Bar News* has been a stimulating and occasionally exciting publication.

Much of the content of the *Bar News* has been controversial and contained material with which I did not agree. This is as it should be. One of your objectives should be to "stretch" your readers' minds and bring to their attention law-related information (not necessarily just discussion regarding the activities of the Bar Association itself) with which we might not otherwise come in contact.

At least from this quarter I would like to say—Keep up the good work!

CAMDEN M. HALL

Seattle

Unequal Representation

Editor:

You printed a very fine letter by Tom Alberg in December *Bar News* which constructively suggested the change of the unequal representation of the Board of Governors of the Washington State Bar Association.

In contrast, we find that the President of the Association in responding in the December *Bar News* refused to make even a moral commitment to the principle raised by Mr. Alberg. If it is unfair and unequal representation, then the President, if he is sincere in his desire to change the Bar for the best, ought to move forward with vigor in suggesting to the Board of Governors that the situation be ameliorated.

Instead, we have a rambling statement about how things used to be and how attorneys vote as lawyers rather than the place they represent. If that alone is the criterion, then I suggest that you can just go down the phone book and pick out seven attorneys and forget whom they represent.

However, if the Board of Governors is supposed to be representative of the Association, then it strikes me that the points raised by Mr. Alberg ought to be pursued and that we ought to have a change in the system.

LEMBHARD G. HOWELL

Seattle

Palpable Garbage

Editor:

Several days ago I found the attached insurance tract, dealing with the problem of drinking drivers and sponsored by the Western Insurance Information Service in California and reprinted from "Family Weekly Magazine," attached to the wall and therefore, apparently under the aegis of the King County Superior Court, Juvenile Division, at 1211 Alder Street in Seattle.

I furnish the entire document for your attention so that you will realize that the following paragraphs which I ask that you publish, if you consider newsworthy, are not wrenched from context:

> "In my home town of Denver, a man whose blood-alcohol tested .20 percent in a chemical analysis struck another car and killed both its occupants. After a year of legal sparring, he was acquitted by a jury because his lawyer cast doubt upon the technical competence of the police chemist. Such things shouldn't happen, yet they do almost daily.
>
> "3. A blood-alcohol test (known as "implied consent" in the four states which now have it) should be mandatory in every traffic accident. The results of this test should be admissible and incontrovertible in court. It can be made easily and accurately.
>
> "4. There should be a mandatory jail sentence for all drivers found 'under the influence,' with no plea of extenuating circumstances permissible!"

I am distrubed that our local Juvenile Court would allow a document with statements like this to exist on its official premises, for the attention of young juvenile traffic offenders and their parents.

These recommendations are palpable garbage, from both constitutional and common sense standpoints and any thinking lawyer or layman would immediately recognize them for just that.

We can all agree with the goal of getting drunks off our highways and stopping the tragedies that occur due to drunk drivers, but these sort of recommendations are deplorable at best, and of course the pamphlet which one observes from the footnote is over ten years old and doesn't even mention the modern Washington implied consent law.

I say let's pay closer attention to such public spirited documents, even though they support a desirable end result.

DON M. GUILLIFORD

Seattle

The President's Corner

On December 10 the Board of Governors met at Yakima for what turned out to be a real working session. With the Legislature meeting in January, we had only a short time to work out not only the balance of the legislative program but also the final details on the proposed judicial article. (See The Board's Work, page 4.)

On the following day, city and county bar presidents from throughout the state met with the Board to discuss problems of general interest to all of the various bar associations. There was an excellent attendance. The morning session was devoted to reports from committees, and the afternoon session to a roll call and presentation of projects and problems.

Probably the major problem which came up for discussion was advanced by **Stan Bruhn**, President of the Skagit County Bar Association, who raised the question of a completely new approach to fees in the handling of probate matters. Stan's position was that a probate fee predicated solely on the amount of the estate was unrealistic, since it failed to take into consideration any of the other factors, such as time, responsibility and results. The various other county and municipal bar presidents who addressed themselves to this question seemed to be in accord with Stan's approach, and as a result it was requested that the state bar committee on minimum fees take a look at the entire matter and give a report before the summer presidents' meeting.

One of the reports at the morning session was given by **Fred Palmer**, Chairman of the Disciplinary Board. Fred was the first and only Chairman of that board, which has been in existence for a little over two years. I am not singling him out over the other members, since the amount of work is tremendous and all have borne their fair share. Fred, however, did steer the board through the first two years and contributed greatly to the success of the program. His experience, both as a past member of the Board of Governors and a past President of the Washington State Bar Association, had given him a real grasp of the problems and the remedies, and his willingness to work at anything for the advancement of the bar and the public made him an ideal chairman.

(L. to R.) The President, Jack Lynch, Olympia, and George M. Martin, Yakima

On Sunday night, December 20, Fred died at his home. He was a long-time friend and a man for whom I have always had a tremendous admiration. On the following Wednesday, there was a memorial service in the Presiding Judge's Department of the Yakima County Court House. Fellow lawyers, judges from the superior court, appellate court, federal court and various friends from throughout the state completely filled the courtroom. Except for those of us who knew Fred, it is hard to imagine a man whose death evoked such sorrow as was felt at the service. I am sure each mourner found it difficult to speak—after all, what is left to be said that hasn't been said a thousand times, sometimes for those who are totally unworthy of the words. Perhaps what set Fred apart was that the words were so genuine and the grief so obvious. The world is better for his having been here.

The Board's Work

In a session of almost landmark importance, the Board of Governors at its December meeting in Yakima:

√ Approved the new Code of Professional Responsibility, which would replace the 50-year-old Canons of Ethics.

√ Tentatively approved, with suggested amendments, the Bar's version of a new Judicial Article for the State Constitution.

√ Approved sweeping, liberalizing changes in the Bar's Clients' Security Fund.

√ Approved the substance of suggested improvements in the still-new Rule 9, on Legal Interns.

The New Code

The Code of Professional Responsibility, which would replace the 50-year-old Canons of Ethics, now will be submitted to the state Supreme Court for consideration. If the court approves the Code, it will become the law of the profession for all lawyers in this state. More than 20 states already have adopted the ABA-proposed Code.

The Board of Governors, in approving the new Code, adopted nine of the ten changes from the ABA version recommended by a special State Bar committee headed by **George W. Martin** and **Howard Pruzan** of Seattle. (The State Bar Office early in 1970 sent to each lawyer in the state a copy of the ABA version of the Code; the Washington Bar Committee's ten recommended changes were published in the October 1970 *Bar News*. Change No. 10 was not approved by the Board.)

Perhaps the most "revolutionary" change involves Disciplinary Rule (DR) 2-103(D) (5). Long the subject of much national debate, it virtually has become citable by number; it pertains to group legal services.

In general, the ABA decided after much discussion at its 1969 Dallas convention to permit group services only "to the extent that controlling constitutional interpretation at the time of rendition of the services requires . . . " The proposed Washington State rule, as recommended by the special committee and approved by the Board of Governors, would permit nonprofit group legal services by lawyers.

The services would have to be arranged by a written agreement under which the lawyer would retain his professional independence, would have the individual member and not the sponsoring organization as a client and would receive no personal promotional publicity, and the sponsoring group would not derive a profit or commercial benefit from the lawyer's providing of legal services.

"The old Canons of Ethics have done well in serving the public interest," **Robert O. Beresford** of Seattle, State Bar president, said. "But the changed and changing conditions in our legal system and urbanized society require new statements of professional principles. Thus the new code includes more specific consideration of the way in which our professional activities affect the welfare of society as a whole."

Judicial Article

The Board over a two-day period considered at length the proposed new judicial article of the State Constitution; **E. Frederick Velikanje** of Yakima, chairman of the State Bar's Committee on Revision of the Judicial Article, attended both sessions. Final consideration of the proposed article, as amended by the Board, was scheduled for a later Board session, probably in late January. Other groups in the state, including the Judicial Council and the Association of University Women, also are preparing suggested changes in the judicial article.

The Bar's version, as tentatively approved at the Yakima Board meeting, calls for the "Nebraska Plan"

(continued on page 31)

The Board of Governors: (L to R) John J. Ripple, John S. Lynch, Storrs B. Clough, Kenneth P. Short, President Robert O. Beresford, John S. Moore, and Neil J. Hoff (Not pictured—Charles I. Stone).

SEATTLE DEFENDER OFFICE FOR MISDEMEANANTS

By John M. Darrah

Public Defender of Seattle

The public defender office that opened in Seattle in November, 1969, has already established itself as unique. Unlike almost every other defender office throughout the country, this one started at the misdemeanor level rather than with felonies. For the citizens who conceived the idea and directed the planning through the Model Cities Law and Justice Task Force, the reason was important. They were concerned not so much with the relatively small felony case load in Superior Court where attorneys were already provided, but rather with the tremendous volume of defendants passing through Seattle's municipal courts and jail on traffic and minor criminal charges.

In the black community, it seemed there was virtually no one unaffected by the experience of appearing on his own case or with a friend in the formal atmosphere of the courtroom. Poor defendants appeared before the bar of justice unaware of what the maximum penalty was for the crime charged, lacking advice as to how to plead, not knowing whether character or other witnesses would be helpful, and ignorant of what to expect in the way of court procedure—an experience not calculated to give the defendant confidence that he would get a fair shake. Thus, no matter how impartial and courteous the judge might be in any particular instance, the

Reprinted from The Legal Aid Briefcase, Vol. 29, No. 2 (1970) by special permission;

defendant, his family, and his friends would come away with, at best, the feeling that he had obtained hurried justice, and frequently that the entire system was stacked against him. For these reasons, the citizen planners decided they wanted lawyers for the poor in municipal court.

Across the country, it is the rare case where a defender office is adequately funded. This is certainly true at the misdemeanor level where, typically, offices that provide counsel in such cases have one attorney assigned to one court, handling each case on a spur-of-the-moment basis. In Seattle's program, Model City funds provided 90 per cent of the first-year budget of $235,000. With this money, we hired a most unusual combination of people: nine legal personnel (including one clerk), four secretarial (including one trainee), and seven investigators. Forty per cent of the staff is black, and four of the twenty have been in prison for felonies. Because the need for high-level criminal investigation did not exist at the municipal court level, the staff has no law-enforcement experience except what has been picked up by two men at the Seattle Police Academy.

While some criminal investigation is done by the staff as requested by attorneys, the main functions are: (1) interviewing the client for background information and a brief description of the facts and (2) attempting to solve the immediate needs of those held in jail. The interview takes place either in jail or at the defender office, a block away.

This procedure enables the staff to locate and help persons who need non-legal services without requiring the services of an attorney. Solving immediate needs includes obtaining release on personal recognizance (judges will consider the presentation of our investigator), referral to such resources as medical, civil legal services, job counseling, or simply running errands or contacting friends for persons in jail. This service, whether in the jail or at the office, from 8:30 a.m. to 11:00 p.m., is the hallmark of the program and says to the person in trouble that there is someone who cares.

All of this effort frees the attorney to concentrate upon the legal needs of his client. He has at least one conference with his client before trial and time to prepare for the trial itself. Conceptually, it combines efficiency with the well-prepared, personalized service that one would expect from a retained attorney.

In most cities in the United States, the defender office is an arm of county government, with non-lawyer employees covered by civil service. Although such a scheme is contemplated by enabling legislation in Washington, Seattle's program was set up as a private, non-profit corporation under contract with the city. The purpose of this was twofold: first, to preclude, to the extent possible, interference or influence by public officials in the running of the program; and second, to reinforce the impression of independence in order better to obtain the trust of the client.

The public obviously must retain some control over any group that uses tax funds. In Seattle's case, fiscal control is exercised through Model City accounting requirements. In addition, some measure of political and policy control is obtained through appointments by the mayor to the corporation's board of directors. The five members so appointed are balanced, on the one hand, by five residents of the Model City Neighborhood Area and, on the other, by five representatives of the county bar association.

Closely related to its political independence and, again, generally unparalleled in other defender offices, is the law-reform responsibility. The city contract and operating plan require that the operation will not only provide assistance to individuals in jail and in court but will also identify problem areas in the criminal justice system and take appropriate steps to correct them. Such reform includes raising issues on appeal to the Superior Court and beyond, suggesting changes in ordinances to the city attorney and the city council, and, if necessary, taking affirmative action in court.

Numerous problems have already been selected for discussion with the courts and the police. The open-charge procedure whereby defendants are held for days without charge and without bail with no intervention by any judicial officer led first to discussions with appropriate city and county officials and then to affirmative action in court. A dismissal for inappropriate class action is being appealed. In another case, the defender intervened in a lawsuit and successfully argued the unconstitutionality of Seattle's traffic bail system. On appeal to the state supreme court, the case has just been affirmed.

One problem area in the system of justice has been a tendency for policemen on demonstration duty to crack heads to disperse people, making few or no arrests. Following the Chicago Seven contempt sentencing in February, there was a demonstration at the federal courthouse in Seattle—resulting in many broken windows and bloody heads. Our office commented about the police action, both commending and condemning parts of it. A local paper, conceding the conservative tone of the statement, editorialized against such action by the defender office because it was beyond the scope of its duties. At the same time, John D. Robb, chairman of the ABA Standing Com-

(continued on page 21)

LET'S REALLY GET TOUGH ON CRIME

By Robert F. Utter

Judge, Court of Appeals, Division 1

According to the Gallup Poll, 56% of those sampled indicated concern for crime as the problem of top national priority this year. Five years ago, 41% indicated this was their number one concern. This concern is well taken.

The impact of crime is hard to appreciate. Experts place its total direct cost to our society at close to 30 billion dollars a year. The temptation to comment on all aspects of the problem is great for any speaker. I will, hopefully, however, resist that temptation and limit my remarks today to the area of corrections; the problem of what to do with prisoners after they are caught.

An efficient corrections program is needed but its impact should not be oversold. There is no evidence the volume or rate of crime is so related to penal policy that it is dependent upon and varies with changes in correctional programs and practices.

The volume of crime is related to such factors as the density and size of the community population; the age, sex, and race composition of the population; the economic status and relative stability of the population; strength and efficiency of the police force and even seasonal weather conditions. All these things are outside the control of a corrections program.

After having said all this, the public is still entitled to demand that the effort at apprehension and control of those who are violating laws is functioning in its most effective manner. We must do our best with all aspects of the problem, if the end result is to achieve some control of the impact of crime in our time.

Radical Change of Emphasis Needed

The goals of any corrections program should be to provide for the protection of society and the rehabilitation of the offender. Both these goals tie in with each other, for unless we are committed to maintaining all men in prison for life who are apprehended, the fact is that well over 90% of all men apprehended return back to society after processing through our corrections program.

The question that must be asked and answered with as much honesty and intelligence as we can muster is—"How effectively are we now achieving these goals with our present program?"

My own belief is that we need a radical change of emphasis as well as some adjustment in the mechanics of our present programs if we are to succeed. There are some cases where we have been too sentimental about the possibility of changing the offender with our current techniques and where the public has truly not been offered protection from the offender who is unable to control himself.

Our current system is an offense oriented system, not an offender oriented system and the maximum sentence is based on the offense committed rather than on the capacity of the offender for change. The present system carries with it an implied promise of parole for the offender within a reasonable time.

This is unrealistic in some cases and for this reason I strongly support legislation which would create a dangerous offender category. This would provide, in effect, an indeterminate sentence where the court, in its discretion, after a thorough investigation into the background of the offender, may impose this sentence if the defendant is a persistent felon offender, a professional criminal, or a dangerous, mentally abnormal offender, or has manifested his dangerousness by using a firearm in the commission of the offense or flight therefrom, or for some other reason presents an exceptional risk to the safety of the public.

This, however, applies to a relatively small number of men who come through our system of justice. In *The Honest Politician's Guide to Crime Control,* Morris & Hawkins point out that *prison wardens across the nation agree that only 15% of the prison population needs to be separated from society for safety reasons.* For the others, we must have the courage to examine whether our current system of severance of positive community ties and placement in institutions away from the areas where men reside is an effective means of providing for either community protection or rehabilitation.

Recidivism

The recidivism rate of various treatment programs tells an interesting story. Those prisoners placed in work release programs in King County have a recidivism rate of approximately 10%. That rate of men on probation is approximately 20% and that of men placed in institutions, close to 50%. This is true in the face of a vast favoring of prisons in the dollar budget. On a national level, 4/5 of the correction budget is spent and 9/10 of correctional employees work in penal institutions, where only 1/3 of all offenders are confined. The remaining 2/3 are under supervision in the community, receiving 1/5 of the correctional budget and 1/10 the allocation of correctional employees.

Deterrence

Another problem that needs to be dealt with, with equal honesty, is the effect of a policy of deterrence implicit in a rigid penitentiary sentence for those who are involved in crime. There is simply nothing to show it has been an effective general tool and on the contrary many believe it to have no broad effect.

The most effective deterrent, I submit, is consistent enforcement of laws the community is determined to have enforced, swift apprehension and trial, sentencing closely related in time to the commission of the offense and a sentence appropriate to both protect the community and rehabilitate the offender.

The Costs of Isolation

I am not advocating an immediate abolition of all prisons. Secure facilities must be preserved for the dangerous offender. They should be far smaller in size if we need deal with only 15% of our current population in them. Our present system does not provide a realistic chance for success for men when they are released from state institutions. Well over 80% of the men released from state institutions have no family or individual financial resources to fall back on when released. They leave with $40 provided by the Department of Institutions. With the exception of a very few, they were able to earn a maximum of 12¢ an hour by work within the institutions. Any savings they have are deducted from the $40 provided. They are ineligible for unemployment compensation and if under 50 and physically employable, are also ineligible for any public assistance benefits. Employment has never been easy for the ex-offender on returning to the community. In these times, it is even more difficult.

(continued on page 21)

THE NEW FEDERAL DISCOVERY RULES IN CIVIL CASES

By Irving R. M. Panzer

It seems to be one of the better kept secrets of the year that the Discovery portions of the Federal Rules of Civil Procedure, Rules 26-37, were significantly amended effective July 1, 1970. Some of the best known concepts of discovery (such as "good cause" for production of documents) have been deleted; almost all time limits have been lengthened; disputes among the courts have been settled on such matters as insurance coverage, discovery of experts, and asking for the contentions or opinions of your adversary; sanctions have been stiffened. Virtually all discovery has been liberalized. Some discovery procedures are entirely different from those that governed for over 30 years. Yet little attention seems to have been paid to the new rules, and members of the bar are apparently being constantly surprised by the changes.

Insurance

The great country-wide split on disclosure of insurance coverage is now settled by new Rule 26(b)(2) which permits routine discovery of "the existence and the contents" of insurance agreements. This goes further than some courts which have permitted only discovery of the *limits* of the insurance, and of course overrules all previous decisions refusing discovery of insurance. The information obtained through this new rule is not "by reason of disclosure" admissible at the trial.

Trial Preparation Materials

The rule of *Hickman v. Taylor*, 329 U.S. 495 (1947), commonly called the "work product of the lawyer," has never previously been stated in the Rules; it has been judge-made law, and the courts have differed on some applications of the principle—most notably over whether the materials in questions must have been prepared only by an attorney, or whether the protection of the rule extends also to others (investigators, agents, adjusters, etc.) doing the same sort of thing.

New Rule 26(b)(3) now incorporates the *Hickman* doctrine pretty much as most courts have laid it down. A litigant may obtain discovery of materials "prepared in anticipation of litigation or for trial" only upon a showing that he "has substantial need of the materials in the preparation of his case and that he is unable without extreme hardship to obtain the substantial equivalent of the materials by other means." The rule applies beyond lawyers; it covers virtually any person who prepares such materials. If the special showing is made and discovery is ordered, the court "shall protect against disclosure of the mental impressions, conclusions, opinions, or legal therories" of the attorney or other preparer of the materials.

Mr. Panzer is a member of the District of Columbia Bar and an Adjunct Professor of Federal Procedure at Catholic University Law School. *Reprinted from 37 D.C. Bar Journal Nos. 8-12 (1970);*

A special provision in this new section overcomes the District of Columbia rule, laid down in *Safeway Stores, Inc. v. Reynolds*, 176 F.2d 476 (App. D.C., 1949), that a party cannot obtain production of his own previously given statement without an extraordinary showing. This much condemned case is overruled by a new provision stating that a party may obtain his own previous statement *without* the special showing required for trial preparation materials. A "statement" is defined to include more than writings; it includes recordings, transcriptions, etc.

It will be noted that the words "good cause" do not appear in the new rule. Those words were never part of the *Hickman* principle, as such, but because the procedure for obtaining documents was under Rule 34, which itself required "good cause," there was confusion as to whether it was *Hickman* or Rule 34 (or both) that imposed the "good cause" burden. The new rule avoids those words and spells out specifically the showing one must make.

Sequence and Timing of Discovery—the "Priority" Rule

A rule conceived in the Southern District of New York, and later copied widely all over the country, dealt with the question of who should go first, when both parties have served notice of depositions. This "priority" rule (applicable only to depositions, not to other forms of discovery), which was solely judge-made and had no basis in the Federal Rules, was that the first party to serve a notice of depositions had the right to exhaust all of his depositions before his opponent could proceed with any of *his* depositions. New Rule 26(d) now knocks out the "priority" rule and provides that the fact that a party is conducting discovery shall not operate to delay any other party's discovery. It also provides that "methods of discovery may be used in any sequence." The court may, on motion, order otherwise.

Supplementation of Responses

A vexing problem in discovery has been whether information given in response to questions, early in the case, must be supplemented when later or different information is acquired by the responder. Some attorneys have put at the beginning of their interrogatories a phrase (presumably of no legal effect whatsoever) such as: "These interrogatories are to be regarded as continuing, and you are required to supplement your answers," etc. Some courts seem to have issued local rules to that effect. The Federal Rules were silent.

New Rule 26(e) settles the problem. There now is *no* duty to supplement, except in the following instances: (1) where one has been asked the names and addresses of witnesses known to the answerer, including experts to be called by him at trial (and the substance of the expert's testimony); (2) where the earlier answer is now known to have been incorrect, or rendered incorrect by later developments; (3) where a duty to supplement is imposed by order of the court or agreement of the parties; or (4) the obvious situation of the interrogator submitting new requests for supplementation.

Experts

Is an expert retained by your opponent subject to discovery at all? If so, does it make a difference whether or not he is to be a witness at trial? Are only his "facts" discoverable, or can you obtain his "opinions" too? Must you pay him for the discovery? Must you reimburse your opponent for fees paid to the expert? Is an expert within the "work product of the lawyer" doctrine? On these and other aspects of the "expert" situation, the courts have been hopelessly split, and remedy by Federal Rule seemed desirable.

New Rule 26(b)(4) lays down specific guideposts for the discovery of experts. It repudiates the idea that experts are privileged and not subject to discovery, or that they are within the "work product of the lawyer" rule. It divides experts into those expected to be called as trial witnesses, and those retained in preparation for trial but not to be used as witnesses at the trial. The rule permits discovery of "facts known and opinions held" by both classes of experts.

As to those who will be witnesses at the trial, a party may be compelled through interrogatories to identify each such expert, state the subject matter of his testimony, the substance of the facts and opinions to be testified to, and give a summary of the grounds for each opinion. Further discovery "by other means" may be ordered by the court, on motion, and this could include deposition of the expert. Under this portion of the new rule, the court "shall" require the discovering party to pay the expert a reasonable fee for time spent in responding to discovery, and "may" require the discovering party to pay the other party a fair portion of the fees and expenses he has incurred with regard to the expert.

As to experts who are "retained or specially employed . . . in anticipation of litigation or preparation for trial" (which excludes—and precludes—discovery against experts who were informally consulted in preparation for trial, but not retained or specially employed), but are not expected to be called as witnesses, discovery may be had only upon a

showing of "exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means." With regard to physicians, however, the familiar provisions of Rule 35(b) on reports of medical examinations control here. The court "shall" require the discovering party to pay the expert a reasonable fee and to pay the other party a fair portion of his fees and expenses.

Depositions

The deposition rule, Rule 30, is considerably amended. Leave of court to take a deposition was formerly required only if the notice was served within 20 days after commencement of the action. The 20 day period is now changed to 30 days, and this period runs not from the commencement of the action but from service of the summons and complaint on the defendant.

Even the initial 30 day period for leave of court does not apply if plaintiff gives a new special notice created by new Rule 30(b)(2)—a statement (signed by the attorney) that the person to be examined is about to go out of the district and more than 100 miles away or leave the United States, or on a voyage to sea, and will be unavailable for examination unless his deposition is taken now. The attorney must set forth facts to support his special notice.

Until now, the Federal Rules have never squarely faced the question of how to take the deposition of a corporation, partnership, association, government agency, or other organization. By inference from old Rule 26(d), which now is Rule 32(a), on use of depositions, and Rule 37(d) on sanctions, it became clear that an "officer or managing director" could be called for deposition by a mere notice served on the corporate party. And this method is still available; in fact a "director" has been added to Rule 37(d), as noted later herein. But new Rule 30(b)(6) adds a new and direct method for depositions from an organization. A party may name the corporation, partnership, government agency, etc., as the deponent and designate the matters on which he requests examination. (Ordinary deposition notices, of course, do not have to specify any matters to be discussed.) The organization must then designate "one or more officers, directors, managing agents"—or it may name "other persons who consent to testify on its behalf"—and may set forth, for each, the matters on which he will testify. Such persons *shall* testify as to matters "known or reasonably available to the organization." This new device is aimed at the frustrating situation sometimes occurring when each successive deponent disclaims knowledge of matters obviously known to the organization.

Formerly it was questioned whether one could, by mere notice without subpoena or a Rule 34 motion, make a party deponent bring documents to his deposition. Now that Rule 34 is changed to eliminate the requirement of a motion, new Rule 30(b)(5) permits a deposition notice to a party deponent to be accompanied by a Rule 34 request for the production of "documents and tangible things" at the deposition. Presumably such a deposition should not be scheduled on less than 30 days notice, since Rule 34 gives a party 30 days to respond to a request.

"Good Cause"—Production of Documents

The words "good cause," around which lawyers have rallied for over 30 years, have now disappeared completely from the Rules (aside from Rule 35—physical examinations—where it is retained). The entire theory and the procedure for the production and inspection of documents have both been changed dramatically. With trial preparation materials removed from Rule 34 and placed in Rule 26, with a special showing required as stated above, the new Rule 34 deals with all other documents (and "things," and entry upon land or other property) by refusing to impose "good cause" or any other burden. The theory is that documents, aside from trial preparation materials, are no more sacrosanct than other forms of evidence, such as oral testimony or written answers, and presumably should be routinely produced.

The other dramatic change in Rule 34, in addition to deletion of "good cause," is the elimination of the motion procedure as the initial step. Formerly, production of documents had to be initiated by a *motion* by the discovering party, which automatically led to a day in court, unless informally settled. In line with attempting to make virtually all discovery operate extrajudicially, new Rule 34 provides that production of documents is sought by a *request* sent to the other party and filed in court. The other party must, within 30 days, serve a written response stating that inspection, etc., will be allowed, or stating objections and the reasons for the objections. (He may also seek protection, under the protective order rule, formerly Rule 30(b) but now Rule 26(c), on the grounds of privacy, secrecy, undue burden or expense, etc.) If he objects and refuses to allow inspection, the discovering party may seek to compel discovery by a motion under the sanction rule, Rule 37(a), asking for an order. With sanctions stiffened against those who unjustifiably seek or make necessary the assistance of the court, the theory is that both parties will think long and hard, and presumably

will work something out unless they are sure that going to court is well justified.

Interrogatories

Many changes have been made in Rule 33 dealing with written interrogatories. First, the time limits have been increased. Formerly, the answering party was given 10 days to object, 15 days to answer. These periods were unrealistically short, as every practicing attorney knows, and the new rule allows 30 days to serve answers or objections (45 days, however, must be allowed after service of the complaint and answer on a defendant). With the increased time allowed for defendant to answer or object, it is now unnecessary to obtain leave of court—formerly required if plaintiff wished to serve interrogatories within 10 days after commencing suit. Undoubtedly this will lead to the serving of interrogatories along with the summons and complaint, as is done in some states, and this practice is specifically permitted by the new rule.

Formerly interrogatories could only be served upon "adverse" parties. There never was any reason for this; it was not true of any other discovery rule; and the word "adverse" is now deleted.

The procedure for going to court on objections is entirely changed. Formerly, an objection was itself a court-invoking procedure, the equivalent of a motion. Under the new rule, if objections are made, nothing happens unless the interrogating party makes a motion under Rule 37(a), the sanctions rule, to compel answers. But although the burden of invoking court assistance has been shifted to the interrogating party, this does not alter the existing obligation of the objector to justify his objections.

An important change now contained in new Rule 33(b) is that an interrogatory is not necessarily objectionable merely because it involves "an opinion or contention that relates to fact or the application of law to fact." The courts had been hopelessly split on whether interrogatories must be limited to "facts" or whether one might attempt to elicit an opinion, a contention, or even a legal conclusion from an opponent. The amendment settles it in favor of the courts which had held that the attempt to distinguish between "fact" and "law" is difficult at best, and that often opinions or contentions can be useful in sharpening the issues. Oddly, this change is not an across-the-board change in the discovery rules (it appears only in Rule 33), and thus would not appear to apply to despositions. A somewhat analogous change, however, was made in the admissions rule, Rule 36, as will be seen.

A new provision added to the interrogatory rule is the "Option to Produce Business Records," new Rule 33(c). It is an attempt to meet the frequent objection that interrogatories dealing with business records are often alleged to be oppressive, or unduly burdensome or expensive. The new rule provides that where the "burden of deriving or ascertaining the answer is substantially the same" for the interrogator as for the answerer, the answering party may specify the records from which the answer is to be obtained and afford the interrogating party reasonable opportunity to examine or copy those records and derive his own information.

Requests for Admissions

Rule 36, dealing with requests for admissions, a rule not sufficiently employed by the bar, has been thoroughly overhauled as to both scope and procedure. Formerly a request for admission had to relate to "relevant matters of fact." In line with the scope-expanding amendments to Rule 26(b)(1) (in which "relevant facts" is changed to "any discoverable matter") and Rule 33(b) (opinions or contentions may be elicited), the words "of fact" have been deleted and the request may now be for "any matters . . . that relate to statements or opinions of fact or of the application of law to fact." Examples given by the Advisory Committee are requests to admit that an employee acted within the scope of his employment, or that the premises were under the control of defendant. If admitted, this narrows the issues and shortens the trial, thus serving the basic purpose of discovery.

As was done throughout the new rules, the time to respond has been lengthened (formerly 10 days, now 30 days—except that a defendant is given 45 days from the commencement of the action), and the request to admit may be served together with the summons and complaint without leave of court.

A question frequently arising is whether an answering party who lacks information may so respond without making any effort to find out, or whether he must go out and reasonably inform himself. The split in court decisions is now resolved in Rule 36 by a provision that the answering party may not give lack of information as a reason for failure to admit or deny unless he states that he has made reasonable inquiry. It is curious that this provision is not included in Rule 33, the interrogatory rule, where it would seem to be equally applicable.

Until now, answers to requests for admissions had to be sworn, and could be signed only by the party. The amended rule deletes the requirement of a sworn answer, and permits either the party or his attorney to sign. This change in procedure assimilates the

(continued on page 23)

WASHINGTON STATE BAR NEWS

County Bar Presidents Meet in Yakima

Procrastination and failure to communicate with clients—those are the underlying causes of most public complaints against lawyers in this state.

Thus **Fred C. Palmer** of Yakima, speaking as chairman of the *State Bar Disciplinary Board*, reported at a December meeting of many local-bar presidents in Yakima. His talk on the work of the board was his last formal service to the Bar, which he had served as president, governor and committee member through many years. He died of a heart ailment several days later.

In his talk he praised the "thorough and excellent" reports made to the Disciplinary Board by Local Administrative Committee members throughout the state, commented that the seven board members' work has been "extremely praiseworthy, and absences from meetings are rare," and said our discipline system is far ahead of those of Bars in the East.

He explained the Disciplinary Board's work: It meets monthly, considers agenda of 80 to 150 pages; it can dismiss complaints on the basis of LAC reports and recommendations; it orders written censures and oral reprimands; it is making increasing use of "admonishment" to lawyers whose cases do not warrant further disciplinary procedures, and the board seeks, in the few cases of senility or nervous breakdown, to get the complained-against lawyers to go onto the inactive list.

He was one of a series of speakers who addressed the bar presidents. The others:

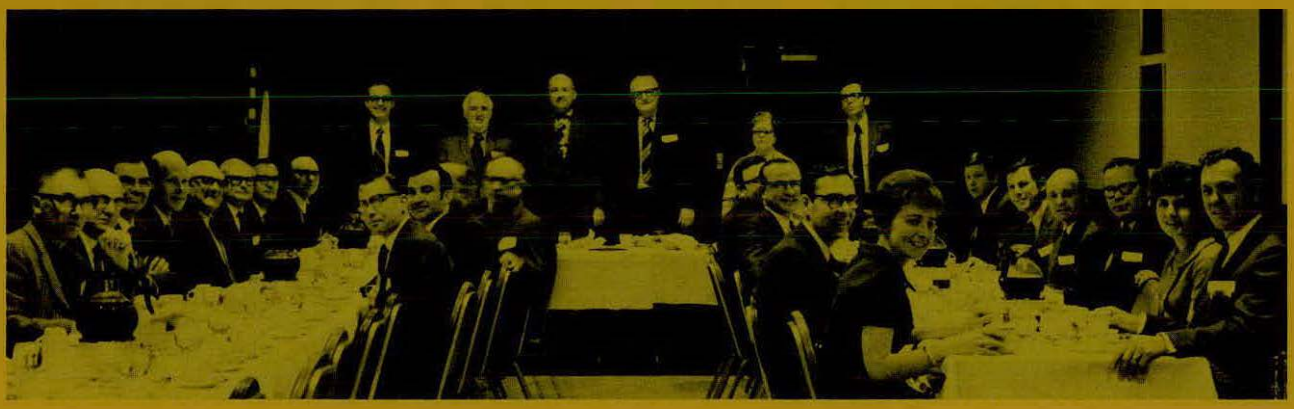
Robert F. Brachtenbach of Yakima, appearing for **Paul E. Sinnitt** of Tacoma, chairman of the *Legal Education Liaison Committee*: The committee has met with the state's law-school deans and is seeking closer liaison between the schools and the Bar; the deans say recent law graduates are better qualified and don't want a practice-oriented legal education; fewer than half the University of Washington law faculty are State Bar members; the deans say they are not informed of the bar's needs; the deans perhaps should be ex officio members of the committee; cooperation between the bar and law faculties should be increased—"They're in their world and we're in our world."

Lee J. Campbell of Chehalis, *Legislative Committee*: The committee analyzes bills affecting legal subjects and the Bar and makes recommendations to the Board of Governors, which decides the Bar stand on proposed legislation; the sole criterion is "whether the legislation is detrimental or beneficial to the public"; he briefly reviewed the list of proposed bills in the current legislature.

J. Shan Mullin, Seattle, *Internship Committee*: There have been no complaints, either about interns or supervising attorneys, during the short life of the legal-intern program; there have been 94 interns so far, with 23 of those since admitted to the bar; UW now has 48, Gonzaga University 22, University of Idaho 9 (in the Pullman Legal Aid Office).

J. David Andrews of Seattle, *Public Relations Committee*: He said the State Bar's PR program cannot succeed without local-bar help, and urged every president to appoint a local PR chairman; the

(continued on page 15)



Jury Selection In Civil Trials Speeded In L.A.

A 10-month experiment to cut court congestion by freeing judges from presiding over routine civil jury selections has been pronounced successful.

Presiding Superior Court Judge Joseph A. Wapner said the program, which permits a commissioner to supervise as many as four jury selections simultaneously, is being acclaimed by lawyers and judges alike in Los Angeles County.

"Every such jury selection frees one or two hours of judicial time which can be used to handle other matters," declared Judge Wapner.

The State Judicial Council, which oversees all of California's courts, has drafted tentative rules to permit the Los Angeles program to be used throughout the state.

Before January, 1970, Superior and Municipal Court judges in the county presided over each civil trial jury selection, a task which judges and lawyers complained slowed the court calendar.

Now, lawyers have the option whether they wish to interview prospective jurors among themselves without a judge present but with a special commissioner close at hand to iron out any differences.

King County Superior Court Presiding Judge **Stanley C. Soderland** has written Judge Wapner, requesting a complete description of the process. The court's jury committee intends to give serious consideration to adopting the plan in King County.

Judge Soderland said one of the problems in implementing the system here is finding space for conducting the jury selections. Another problem is deciding who would supervise the system. Counties are limited by state law to three court commissioners.

In Memoriam

Charles I. Dobrin, 66, Seattle, died of a heart attack December 15 while driving his automobile. A 1933 graduate of St. John's University Law School in New York, he was admitted to this state's bar in 1943.

William H. Harris, 83, Seattle, died December 27. A 1913 graduate of the University of Washington School of Law, he had retired this past year from Carkeek, Harris, Harris, Myers & Vertrees.

George H. Holt, 56, Seattle, died December 28. A 1941 graduate of Gonzaga Law School, he was a deputy prosecutor assigned to domestic relations in the King County prosecutor's office.

James E. McIver, 54, Seattle, died January 2 from a heart attack. A graduate of Howard University Law School, he was admitted to the Bar in 1952. A highly respected leader in Seattle's black community, he was appointed in 1952 as an assistant attorney general in the Industrial Insurance Division—first member of his race to occupy a legal position in that office. He was president of the Seattle Chapter of NAACP in 1955.

Burton Johnson, 35, Olympia, died of a heart attack at his home in Tumwater December 20. A graduate of Washington Law School, he was admitted to the bar in 1962. He was on Gov. Albert D. Rosellini's staff from 1961 until 1964. He was an assistant attorney general in 1965 and 1966 and worked for the Joint Interim Committee on Highways until 1967. He suffered a severe heart attack in 1968. He was a partner in Owens & Johnson.

Ronald Kurilo, 26, Seattle, died December 26 in an automobile collision in Southeastern Oregon. He was a deputy King County prosecutor since his graduation from Willamette University College of Law in 1969.

Fred C. Palmer, 60, Yakima, died of a heart attack at his home on December 20. A University of Washington Law School graduate, he was admitted to the bar in 1936. The son of a pioneer Toppenish merchant, he was president of the Washington State Bar Association in 1957-58 and was a member of its seven-man Board of Governors in 1954-56. At the time of his death he was chairman of the State Bar's Disciplinary Board, and through the years he had served the Bar and the law in many capacities. He was a member of the American College of Trial Lawyers. He was a partner in Palmer, Willis, McArdle & Meyer.

William J. Millard, 87, retired State Supreme Court Justice, died December 13 in an Olympia hospital. Millard was appointed to the court in 1928 and was elected in 1930 and re-elected in 1936 and 1942. He was defeated for re-election in 1948. In 1956, he was elected to serve an unexpired term on the court and served from December of that year until January, 1957. In 1960, Millard was the Republican nominee for lieutenant governor. He lost to Democratic Lt. Gov. John A. Cherberg. Born in Mississippi, Millard came to Olympia in 1917 as state law librarian. He is survived by a son William J. Millard, Jr., an attorney in Seattle.

Daniel B. Trefethen, Sr., 93, Seattle, died December 11 of an apparent heart failure. He was the oldest practicing attorney in Washington. A 1901 graduate of Harvard University, he was an active practitioner over the years, having given free legal assistance to the aged during the past several years. He was a regular attender at SCKBA luncheons and dinner meetings up to the time of his death. He is survived by a son, Daniel B. Trefethen, Jr., an attorney, who lives on Bainbridge Island.

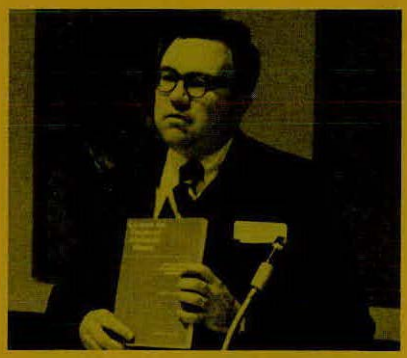
(continued from page 15)

presidents were urged to be familiar with and to use the new Bar policy on replying to an unjust published attack on the law, the courts, justice and lawyers; he urged the presidents to plan a local PR program at least once a year, and explained current projects of the State PR Committee.

Llewelyn G. Pritchard, Seattle, *Young Lawyers:* He described two new program areas—prison reform, and a study of the reform and modernization of the legal profession, including how legal services are provided to the public, specialization and group legal services; closer liaison with law students is being sought.

Will L. Lorenz, Spokane, *Continuing Legal Education:* The committee is studying proposed changes in the nature of the CLE program to "put life back into the program"; it's difficult to determine the education wishes and needs of the majority of lawyers, and letters and questionnaire results are inconclusive; experimentally, the committee will sponsor only single spring and fall seminars this year and seek to learn how a published-materials program would serve the Bar's needs; most lawyers want trial-practice seminars, and the spring seminar will concentrate on Washington Civil Practice Before Trial and the fall seminar on Civil Trial Practice.

J. David Andrews



Llewelyn G. Pritchard

Will L. Lorenz

The Governor's Office and Judicial Appointments

How does Governor Evans decide upon his judge appointments?

Many of the state's local-bar presidents, the State Bar Board of Governors and assorted other Bar leaders at their December meeting in Yakima were given a glimpse into the judge-selection process by **James Dolliver,** the governor's assistant and a lawyer.

Dolliver also gave the bar leaders a news-making preview of major legislation which the governor will seek, particularly that dealing with ecology and the environment.

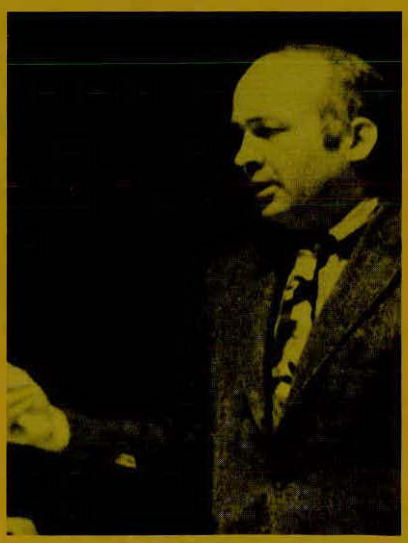
Present salaries for judges tend to limit the lists of lawyers who aspire to the bench, Dolliver said. He said he hopes the legislature will "recognize the need for more attractive salaries."

He listed four important factors which the governor considers when selecting a judge:

1. First, a man must "look to be a good prospective judge." This, of course, is "iffy" and mostly a matter of judgment.

2. The man must have prospective "electability"—can the man be elected? Of Governor Evans' many appointments, only three subsequently have been defeated in elections.

3. The man must have bar approval; the bar is the key recommending group. In their Superior Court recommendations, "some bars are good, some not so good," Dolliver said. He said the local bar should give the governor a list of all qualified and interested lawyers, without any pre-selection. He praised King County's method of recommendation. And the final list should be submitted through the State Bar, since only the State Bar has the records for checking.



James Dolliver

4. The appointee needs local support—he must have no "violent nonacceptability." Appointments are not "cleared" with the Republican Central Committee, Dolliver said, although "politics is a factor" and "there is communication."

A Decision on Hirsuteness

Has one of your business clients had trouble in arriving at a consistent policy on length of employees' hair? Precedent is provided by this decision written by a Seattle attorney arbitrator:

This is a hair case. In varying degrees, both sides are wrong.

Gary Monner is 19 years old. He is a high school graduate. He presents a clean appearance, is reasonably articulate and is sufficiently co-ordinated to have lettered in two sports, football and baseball, while attending one of the larger local metropolitan high schools. His current hair style has created a problem. To the arbitrator his hair style conjures a mental image of John the Baptist as a teenager.

He has worked for Real Parts Company in Seattle since October, 1968. His title is picker. He was terminated by the Company on June 10, 1970 for allegedly refusing to get a haircut. He would like to return to work. The employer has indicated at a meeting with non-management employees that it would take Monner back if he would get a haircut.

The Company says that it is in a highly competitive business. The Company says that as a part of its effort to win jobbers over, it conducts guided tours of its facilities to demonstrate its capacity for service. It says that it cannot tolerate spooky looking individuals working in the stacks in the warehouse frightening the customers, in this instance the jobbers on the guided tours. The Company says it took a stand because at least eight individuals in the stockroom are growing, or starting to grow, long hair (presumably to the delight of its competitors).

What is the attitude of young Monner?

Like many teenagers he has been able to find the answers in a relatively short period of time to questions that legal scholars, philosophers and theologians spend a lifetime examining. The principal problem that he has resolved to his satisfaction is that of his personal "rights." One can only hope that he will spend more time examining the other side of the equation, i.e., his personal responsibilities.

He is not mean nor bitter. He is simply young, inexperienced, egocentric and scrupulous to the point of absurdity.

On June 8, 1970 George Johnson, Personnel Manager, asked Monner to get a haircut as a personal favor to him—no order was issued. Monner again refused. At 3:30 p.m. on the following day Johnson called him in and ordered him to get a haircut. They bargained back and forth. Finally, it was agreed that Monner would get a wig or a haircut and would have two days to accomplish this. One thing is clear. Johnson reserved the right to pass on the wig. Presumably, he wished to avoid the even more upsetting possibility that Monner might parade about the warehouse in his new wig looking like Harpo Marx.

Management has the right to establish reasonable rules and regulations relative to the personal appearance of its employees. The rules must be articulated in some fashion. They are not the private preserve of management to be announced, interpreted or applied at the whim of individual managers. What is a reasonable rule or regulation will vary from industry to industry. Monner's hair style may not be regarded as particularly outlandish in academia, in the arts or in the ladies wear department of a fashionable store. It is regarded as anathema in the world of piston rings, water pumps and spark plugs.

George Johnson was asked what is acceptable to the Company by way of hair style. He responded announcing the rule he should have announced to Monner. He said, "As long as the hair is manageable it is ok—if it is combable."

The arbitrator believes that Real Parts Company acted precipitously in discharging Monner, without adequate notice, for violating an unclear rule governing personal appearance.

If Real Parts Company wishes to establish a rule requiring male employees to maintain their hair at a length which is combable to the shape of the head and which when combed retains that posture, they are free to do so.

In order to avoid additional confrontations the arbitrator concludes that all Company personnel should be given at least ten (10) days' written notice of the existence of the rule set forth above, in order that those presently in violation of the rule may have sufficient time to comply. In the future it is suggested that a more appropriate remedy for failure to comply with a personal appearance rule is suspension from the job for a period of time, rather than the ultimate penalty of discharge. Obviously, there may be employees to whom suspension is not meaningful. In such a situation discharge may be the only remedy.

It is the arbitrator's conclusion that Monner should be reinstated at the earliest possible time and that he should be reimbursed with full pay and allowances for the period he would have worked from the date of discharge to the date of reinstatement.

□

BENTON-FRANKLIN REPORT

Establishment of a legal aid office for persons of minority race was given support on December 2 by the Richland Human Rights Commission, in the form of a resolution unanimously passed asking for the support of the Richland City Council in securing the office.

Crane Bergdahl, 27, Pasco, has been appointed by the Kennewick City Manager to be Kennewick police court judge, replacing a 16-year veteran, Judge **Robert S. Day**. Judge Day resigned because of personal and business reasons. The Tri-City Herald characterized Judge Bergdahl as "a tall, blond, mod dresser who really doesn't look like a judge."

CLARK REPORT

Ten thousand dollars has been made available to start a legal aid program in Clark County during 1971, according to the Clark County Economic Opportunity Committee.

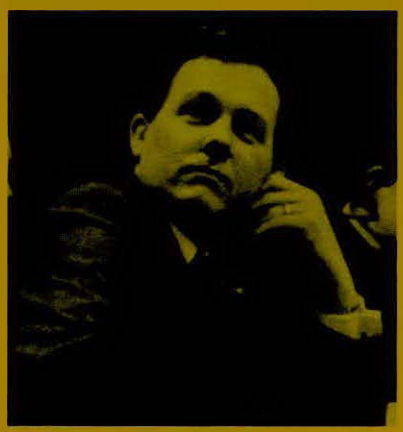
It is anticipated that an EOC employee will be screening applicants and referring those selected to attorneys who participate in the program. The Clark County Bar Association has approved the program in principle. The first-year goal is serving 60 clients per month, although it is estimated that there is a need for legal aid to serve 300 clients a month in the county.

EOC Director Walter Merrell said, "We have tried to develop a modest legal aid program that will work." The EOC hopes to stir enough local participation in the legal aid program to make it eventually self-sufficient.

EAST KING REPORT
By CHARLES F. DIESEN

James Dailey, who moved to Redmond when he left the Attorney General's office a little more than a year ago, has helped organize and is the first president of the Redmond Rotary Club. **Bob Tjossem** of Kirkland has been elected president of the Greater Kirkland Chamber of Commerce.

The firm of Powell, Livengood, Dunlap and Silvernale of Kirkland, has two new attorneys. **John A. Hallock**, who had been with the trust department of the Seattle-First National Bank, joined the firm about November 15, 1970. **Robert J. Kelly**, 1970 graduate of the University of Washington who had previously clerked for the firm, has also joined as an associate. . . **Hugh Stroh**, a June, 1970, graduate of Gonzaga, has hung out his shingle as a sole practitioner in the Eastgate area.



Jay Nuxoll

Forty members of the East King County Bar Association turned out for the December meeting at the Holiday Inn, Bellevue. The high attendance was attributed to **Jay Nuxoll's** organizing a "girlie show" because as he said; "Chirstmas comes but once a year."

GRAYS HARBOR REPORT
By JOHN L. FARRA

The Honorable Judge **Paul Manley**, Justice of the Peace, has announced his retirement. The two newly elected Justices of the Peace are **Paul Fournier**, Montesano, and **Thomas Parker**, Aberdeen.

James Stewart and **Ralph Thomas** have become the first two attorneys in the Grays Harbor County to take advantage of incorporation of their law firm.

Work is progressing on the building of a new County Courthouse for Grays Harbor County. The new Courthouse will be on the lots adjacent to the present courthouse.

Richard Johnston, Montesano, has recently returned with his bride from Pango Pango.

ISLAND REPORT
By TED D. ZYLSTRA

Clarence L. Wright will take over as Judge of the Island County District Justice Court on January 1, 1971, replacing **Joseph E. Kramer**, who is retiring.

The local Bar Association is holding meetings with the Board of County Commissioners to facilitate studies for future needs for the courthouse facility, and to explore methods of financing a new structure.

LINCOLN REPORT

The Lincoln County Bar Association had its regular monthly meeting in Davenport and elected the following new officers: President, **Lawrence Libsack** of Odessa;

Secretary-Treasurer, **Philip Borst** of Wilbur.

The new officers took office on January 1, 1971.

Willard A. Zellmer of Davenport is the retiring President, having served for the past two years.

It is to be further noted that Zellmer, who is in his nineteenth year as Prosecuting Attorney of Lincoln County, did not seek re-election this year and retired from that office on January 11, 1971. Philip Borst of Wilbur is the newly elected Prosecuting Attorney. It is believed that Willard is one of the senior Prosecuting Attorneys of the State in point of years of service and has served under three successive Superior Court Judges. He will be practicing privately with the law firm of Underwood, Campbell & Zellmer of Davenport and Spokane.

PIERCE REPORT
By **DAVID E. SCHWEINLER**

ANNOUNCEMENTS

Thomas H. Oldfield, a graduate of the University of Washington in 1970, and **David J. Manger**, a graduate of Willamette University, Salem, Oregon, in 1968, have associated with **Willis C. Oldfield** for the general practice of law.

Edward E. Gibson, formerly Assistant Prosecuting Attorney for Pierce County, announces the opening of his office for the practice of law at 401 Tower Building, Seattle, Washington.

Gary E. Gasaway, Gonzaga, 1970, has become associated with the law firm of Griffin, Boyle & Enslow.

PROGRAMS

On November 12, 1970, the regular bi-weekly meeting of the Tacoma-Pierce County Bar Association was held at the Old Tacoma Elks Club. The speaker was **Jack N. Berry**, whose topic was "Practice Before the State Parole Board." On December 10, 1970, the Association heard Professor **Charles E. Corker**, whose topic was "Implications of the Lake Chelan Decision."

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

Hats off to **William H. Gates, Jr.**, former president of the King County Bar Association, who has agreed to serve as Chairman of the Seattle Public Schools 1971 Annual Levy Campaign. Many lawyers in the Seattle area will be working in support of Bill's efforts.

Roger M. Leed and **Bennett Feigenbaum**, who are members of the State Council of Electoral Reform, issued a minority report to the Council's Campaign Expenditures Reporting Act, indicating that the failure to require reporting by advertising media could develop into a major loophole. The Council had considered a provision calling for commercial advertisers, such as newspapers and radio stations, to report within 15 days after each election the sources, nature and cost of political advertising carried. Over the objection of Messrs. Leed and Feigenbaum, the Council decided to delete this provision from its recommendations after media representatives argued that it would cause unnecessary paperwork.

In the continuing saga of **Alva C. Long**, visiting Superior Court Judge **W. R. Cole** dismissed a lawsuit that could have prohibited corporations from initiating actions in Small Claims Court. Judge Cole indicated that he agreed with Mr. Long's contention that Small Claims Courts were designed as a forum for people and that corporations have an advantage in them, but indicated that any change in policy would have to be made by the legislature.

Jim Anderson, 32, has left the King County Prosecutor's office to join Branson, Hardwick and Conrad in Kent. . . **Thomas P. Delaney**, who has been in practice in Seattle for several years, has begun practice with **Allen Spratlin** in Grand Coulee.

Moriarty, Olson, Campbell & Brindle and **Long, Mikkelborg, Wells & Fryer** and **Richard F. Broz**, recently resigned King County Superior Court Judge, have formed the firm of Moriarty, Long, Mikkelborg & Broz at 2801 Seattle-First National Bank Building (MA 3-5890).

Thomas B. Russell, former Northeast District Court Judge, has taken a position as an Assistant U.S. Attorney in Seattle.

Russ Pearson has joined Clinton, Moats, Andersen & Fleck as an associate . . . J. **Porter Kelley** has joined Wolfstone, Panchot & Bloch as an associate . . . **William B. Matthews** has withdrawn from Christensen, Sanborn & Matthews to open a separate office at 1414 Hoge Building. **Ron D. Havelka** has been added as an associate to the firm which will now be called Christensen & Sanborn.

Wolfstone, Panchot & Bloch have announced that **J. Byron Holcomb** has joined their firm as an associate. . . **Darrell E. Lee** and **James E. Anderson** have left the prosecutor's office, Lee to practice in the Seattle or Port Angeles area and Anderson to practice in South King County.

Jim Ellis, founder of the Forward Thrust organization, became the first Northwesterner to be named to the board of trustees of the multi-billion-dollar Ford Foundation.

In spite of several injuries (broken arm, broken finger, and appendicitis!), the touch football

team of associates (and one virile partner) from Perkins, Coie, Stone, Olsen & Williams finished "the season" with a perfect 4-0 record. They began with a 36-0 rout of Culp, Dwyer, Guterson & Grader, followed by a 36-0 victory over a team from Roberts, Shefelman, Lawrence, Gay & Moch. The mighty Perkinites then struggled through a close game, beating a team from Bogle, Gates. Dobrin, Wakefield & Long by only 18-12. Alas, Bogle did not know when to quit. In a rematch, Perkins clobbered Bogle, 30-0. (Rumor has it that the Perkins firm now refers to their new associates as "draft choices.") Better watch out for Karr Tuttle, whose Hiring Committee has been talking to a broad-shouldered, swivel-hipped, scatback.

SPOKANE REPORT
By **THOMAS R. CHAPMAN**

Erik K. Nayes (U. of Idaho '70) has become associated with Witherspoon, Kelley, Davenport & Toole.

Gordon Bovey and Mark Vovos formed a new partnership with offices in the Broadway Centre Building. Suite number 303, telephone FAirfax 6-5220.

WALLA WALLA REPORT

On January 1, 1971, two of the oldest law firms in Walla Walla, Gose, Gose & Reser and Sherwood & Tugman, whose predecessor partnerships were pioneer law firms in the eastern part of Washington, merged to become Sherwood, Tugman, Gose & Reser, with offices in both 601-612 Baker Building and the Seattle-First National Bank Building, Walla Walla. The firm has arranged to have telephone communication systems between the two offices of the new partnership. The members of the newly merged firm are Cameron Sherwood, William M. Tugman, Phelps Gose and Yancey Reser.

The Gose firm's predecessors included Gose & Gose, the father and uncle of the late Thomas P. Gose, former president of the Washington State Bar Association, and, later, Pedigo, Watson, Neal & Gose.

The Sherwood firm was preceded by Evans & Watson, and, earlier, by Dunphy, Evans & Garrecht. Marvin Evans, who died in 1949, was associated with Cameron Sherwood from 1936 to 1949; John Watson, once a member of both of the merging firms, is now retired and residing in Portland; Thomas Dunphy was the father-in-law of former Superior Court Judge Glenn T. Bean, of Walla Walla County; Francis E. Garrecht was appointed the United States District Attorney for Eastern Washington and later served as a Judge of the 9th Circuit Court of Appeals.

WHATCOM REPORT
By **ERNIE BENTLEY**

The Whatcom County Bar Association has added two new members to its rolls. Carl Roehl, Jr., has entered private practice with his father in the Bellingham National Bank Building. Carl received his J.D. degree from the University of Montana. Gary Rusing, a recent graduate from the University of Washington, has entered private practice with James Flynn.

The threatened strike by the legal secretaries, over closing on holidays, shook the entire economy of our county. Bar Association President, Frank Atwood, wisely appointed a committee to study the problem.

YAKIMA REPORT
By **RANDY MARQUIS**

ACQUISITIONS:

Neil C. Buren, a native of Yakima, has associated with the firm of Tonkoff, Dauber & Shaw. Neil graduated from Whitman College, Walla Walla, in 1961 and received his J.D. from the law school of the University of Washington in 1964. He served as deputy prosecutor in King County prior to a four year stint in the Judge Advocate General's Corp., U.S. Army, where he was recently discharged at the rank of Captain.

ATTORNEYS IN THE NEWS:

Charles Flower was recently named to the key post of state committeeman in the Democratic Party. He is also a member of the Democratic Central Committee.

LEGAL SERVICES TO THE POOR:

President Robert Felthous announces that the Yakima Bar is now on record as supporting a program of legal services for the disadvantaged to be funded by the Office of Economic Opportunity or other outside agencies. The Bar, however, decided against placing its stamp of approval on a program recently drafted by the local United Farm Workers Service Center.

Several local attorneys were recently featured in a televised documentary concerning needs of the poor for legal services respecting civil matters. The program, produced by Tom Pearson, Minister, Yakima First Presbyterian Church, featured the talents of Warren Dewar, Charles Lyon, Lonnie Suko, Doug Peters and Mike Schwab. VISTA lawyer. Facilities were donated by KIMA-TV.

Briefly Noted

Gov. Dan Evans thinks the Legislature should consider **reducing the size of the State Supreme Court** from nine to seven or possibly even five justices now that the appellate court has relieved the pressure on the state's highest court. Evans disclosed the idea in a year-end interview with United Press International, although he said he has not yet decided to formally propose the plan to the Legislature.

The way such a step could work, Evans said, would be to eliminate one of the court seats each two years and have the three justices who come up for re-election run for two positions with the odd man out. In 1972, that would mean that Justices Orris L. Hamilton and Hugh J. Rosellini and incoming Justice Charles T. Wright would have to vie for two seats on the court.

"Justification of nine judges, prior to creation of the appellate court, was to permit two five-judge panels to hear cases," Evans noted. "But now it seems that more and more cases before the Supreme Court must be heard by the full court anyway." The governor made it clear he has not decided whether to ask for the reduction as an executive request, "But I think it's an idea that deserves consideration."

* * *

The Pierce County Bar Association has raised its hourly rate under its **minimum bar fee schedule** to $35. The Seattle-King County Bar Association has an hourly rate of $25 under its schedule.

* * *

The Food and Drug Administration of HEW has established a **"dial-a-message"** service (583-0108) to provide instant information on hazardous products and other emergency warnings. The FTC has established a **"Buyer Beware" message** service (583-0213) to educate the public against frauds and deceptive practices.

* * *

Morell Sharp has accepted an appointment by Attorney General John Mitchell to head a 90-day study of the 50 state-court systems.

"Chief Justice Burger and a number of others have called for this study in hopes of solving several problems," Sharp said. "Each state has a different system so that means there are 50 different systems," he said. "The way it is now, a man could, just for example, get five years in prison for an offense in New York and only one year if he had been tried in Washington. A lot of our work will go into that and it is hoped that we will be able to make some recommendations to bring uniformity to the systems of the various states," he added.

He said he does not expect to remain in Washington, D.C., longer than 90 days. "Bellevue is my home and I expect to return," he said.

* * *

Since the state's **implied-consent** law became effective in December, 1968, a total of 4,693 motorists have refused to take blood-alcohol tests when requested by an arresting officer. 1,559 requested administrative hearings of their cases. Provision for the hearings was made in the law.

If a person who refused to take the breath test requests a hearing within 10 days of his arrest, the suspension of his license is held up pending the final outcome. There have been 1,451 hearings. In about 75 per cent of the cases the revocation was upheld. Of the 1,451 administrative hearings held, 362 appeals were carried on to the Superior Courts. So far about 150 have been heard and the conviction rate has been about 2 to 1.

Unlike a regular driving-while intoxicated conviction, persons who refuse to take blood-alcohol tests on request and have their driver licenses revoked are not eligible for special occupational licenses during the revocation period.

* * *

United States District Judge **William J. Lindberg** has announced that he will retire in March after almost 20 years on the federal bench. Judge Lindberg's successor will be appointed by President Nixon, subject to Senate confirmation.

Judge Lindberg emphasized that he will continue to try cases but on a reduced level. In retiring, Judge Lindberg will go on "senior status," continuing to receive full pay. Federal-court appointments are for life. "An additional judge will relieve the caseload," Judge Lindberg said. "The workload has been getting increasingly heavy. If a person does not retire, he reaches a point where his judgment is not what it should be."

Judge **George H. Boldt** will become chief judge of the district. Judge Lindberg, 66, was appointed to the bench June 1, 1951, by President Harry Truman. He became senior judge for the Western District of Washington July 29, 1959, succeeding Judge **John C. Bowen.**

* * *

RCW 35.20.090 will become effective January 1, 1972, unless it is amended by this session of the Legislature. Under the statute, **jury trials** would be provided on demand in **Seattle Municipal Court.** If it is allowed to go into effect, the ABA has estimated that Seattle will require eight to ten additional Municipal Court departments. There are currently three.

Seattle Public Defender
(continued from page 6)

mittee on Legal Aid and Indigent Defendants, termed the statement "courageous" and hoped that more defender offices would involve themselves in such issues. While the statement did nothing to endear the office to local law enforcement, it established for the public defender office an independent image that was recognizable to people in every walk of life.

An old city ordinance forbidding the wearing of any part of an armed forces uniform was contributing to tensions between youth and the police. It seemed that though many pea jackets, field caps, khaki shirts, and the like were worn about the streets, nothing called police attention to them so much as long hair. One defender appeal went before a jury that acquitted the defendant. The judge, a retired colonel, complimented the jurors on their decision and advised the city attorney not to use the ordinance except in cases of impersonation. Now the municipal court is dismissing such cases. Other cases involving youth-police confrontations have had high acquittal rates on appeal.

Recently the prosecutor took offense at a misdemeanor dismissal by a justice-court judge following a hung jury. Affidavits of prejudice were filed by his office in all cases then pending before that judge for preliminary hearings in felony cases. When the judge refused to step aside, the prosecutor promptly filed all such cases in Superior Court to deprive the judge of jurisdiction. This step operated also to deprive defendants of a preliminary hearing. The defender office promptly took the matter to a Superior Court judge who remanded it for the hearing required by the justice-court rules. That ruling is now before the Supreme Court of Washington.

On the drawing board for the program are: (1) proposals for changes in the appeal-bond practices in municipal court; (2) community-education efforts on basic criminal procedures; (3) use of paraprofessionals in all work not required to be done by lawyers; and (4) a grant application for use of a criminologist to advise defendants on pleas and prepare pre-sentence reports specifying alternatives to incarceration.

Despite these distinctive aspects of Seattle's program, the question of its value in terms of its cost must still be answered. Even if the expenses could be reduced through experience and more efficient trial schedules, the cost for misdemeanor representation would still be high. The question of cost as well as priorities is further raised by a newly executed contract whereby the defender program will represent 75 per cent of the King County indigent felony defendants.

Put another way, how can the public justify costly services rendered to those accused of crime? Aside from the usual argument that the defendant is presumed innocent, the rationale of the planners and operators of this program is that the quality and sensitivity of the service may affect the attitude of the accused, not only toward the defender office, but also to the system of justice. We believe that the defendant will be less hostile toward the police, court, and probation officer when he has competent, loyal counsel.

The sign over the entrance to the Defender Office portrays St. George slaying the dragon. To the defendant and attorney alike, it asserts that we offer the best of the adversary system. To the artist who conceived the sign (Rich Beyer, sculptor) it also portrays a man overcoming his problems with the help of a new weapon. The program is essentially an experiment to see if the extra effort and cost that go into effective, aggressive representation can do more than satisfy society's minimum standards of due process.

□

Let's Really Get Tough on Crime
(continued from page 8)

The cost of care is $4,000 per man per year to the State of Washington with the cost expanding to $9,000 a year if the man has a large family and the family is on public assistance during his incarceration. The failure to provide realistic post-institutional support for men until they can be reintegrated back into the community would seem to practically guarantee they must return to crime to provide the basic necessities of food, clothing and shelter.

Narcotics

A judge sentencing a man with a narcotics problem faces a true dilemma. This problem is far more common than currently realized. It is conservatively estimated that 40% of those in the county jail are addicted to or are using hard narcotics. There is no treatment program in institutions in our state for men with narcotics problems. If a judge sentences a man with a narcotics problem to either the county jail or Department of Institutions, there is no assurance that he will be given assistance to realistically meet this problem.

The only alternative available to a judge currently is to place the man on probation, refer him to the Federal Narcotics Treatment Program in Texas, where he is eligible for return to the community in a few

months, and hope nothing happens. In the vast majority of cases, neither alternative can be said to offer either optimum opportunity for rehabilitation or a realistic hope for community protection. These difficulties are not all inclusive. They are only illustrative of some of the problems that exist in a penal system we have looked to for a basic answer.

Size

The very size of the institutions themselves makes effective work with a man as an individual difficult. English standards for institutions state 150 as the optimum size while others regard 60 as the maximum desirable population for a penal institution. By contrast, Walla Walla averaged 1300 inmates last year, Shelton 600 and Monroe close to 700.

Positive Factors

Our current problems are not insurmountable. We start with many positive factors. One positive is the current staff and administration of the Department of Health Services of our state. Within the limits they have been forced to work, they have shown a sincere interest in those whose custody they have been given and a willingness to innovate and develop programs that will meet needs. This has been subject, however, to the willingness of the public to support changes and provide financial support for these changes.

Another positive is the potential we have for citizen leadership in this state necessary to develop realistic and effective corrections programs. Many groups are now working in the area of correction reform. The Bar Association itself represents a group with the potential of exerting enormous leadership. The young lawyers and some members of the more established elements of the bar have already shown their support and interest. This would be more effective, however, if all lawyers brought to bear on the problems of corrections, the same power of analysis they bring to their daily work and realized the problem is a complex one that cannot be solved by simplistic, appealing slogans.

California Probation Subsidy Program

Other states, faced with the same dilemma we face, have chosen to develop much smaller local facilities and concentrate on a development of services within the community. California is one of these. A few years ago the commitment rate from local communities to California's institutions created a problem that called for spending a quarter of a billion dollars by 1980 to house the additional offenders sentenced to prison. California prevented this and has reduced their commitments of adult offenders to state institutions by approximately 50%. This was accomplished by the state paying the committing county roughly $4,000 a year for every offender they did not commit, measured against a base year established before the program was started. Through this program, the state uses the major part of its savings from reduced commitments to provide financial incentives to the counties to consider local alternatives to state prison sentences for felons.

California resolved to try this approach after a study indicated institutional custody was the most costly form of corrections, on some occasions running 10 to 15 times as much as treatment at a local level and further concluding that institutionalization in distant state facilities might be the least effective correctional program in terms of helping reintegrate the offender into society and providing long term protection for society.

Washington Juvenile Probation Subsidy Program

Our own state has developed an immensely successful program similar to this on a juvenile level. One year ago, our juvenile institutions were seriously overcrowded. The cost to our state was $8,000 per child per year committed to our institutions. To meet the problem of increasing commitments, our state projected 35 million dollars for new facilities by 1975. Faced with this prospect, the state in cooperation with the superior court judges instituted a program where local counties would be paid $4,000 a year per child not committed for approved programs instituted at a county level which provided alternatives to commitment of children.

These alternatives included group homes, special tutors, more intensive counseling and other specialized efforts to help the individual offender. Commitments have decreased the first half year from 500 to 300. Approximately a quarter of a million dollars has been paid to counties to develop their local programs. During a ten month period there has been a direct saving to the state of $1,700,000 and a further saving of $35,000,000 in projected facilities that will not now be needed.

Extension to an Adult Program

I believe a change in direction from reliance on large isolated facilities to development of community based facilities could accomplish equally dramatic results in our adult program. If we were willing to examine our emphasis, our progress towards this program could be started now. The support and action, however, must come from the public, aided hopefully by a legal profession who are willing to make a searching reappraisal of our total approach to corrections.

Job Therapy

I am optimistic that the public will support change if properly informed and challenged. Part of my optimism comes from my work with the Job Therapy program, a work that has extended over a number of years. This program developed from a hope that lives of men in our institutions could be changed for the better if we could demonstrate that laymen cared for them as human beings and were willing to visit on a once a month basis while they were in prison and work with them after their release.

These acts have resulted in an increase in success of at least 20% when these men were returned to the community. The outgrowth of this effort has been to seek to provide jobs for them on release and to seek to increase the amount of public awareness of the problems of the offender. There are now over 400 laymen in our state, some of them practicing lawyers, visiting men in prisons through this program. By last month, 320 ex-offenders out of 760 who have sought jobs have found employment through our office. We personally employ at least 6 ex-offenders full time in the office of this program. Truly heartening public response has developed from the generous provision of time and materials to inform the public, made available by news media.

My contacts with men in this program have deeply impressed me with the destructive aspects of our present program, both to men who have the capacity for change and are in the present system and to the society our present system is supposed to protect. It is from these experiences I can say I have faith in the proper response of the public if they are given the true basic facts.

Steps Must Be Taken

As I view it, there are a number of steps that must be taken. From a long range viewpoint, **a group with the confidence of the public and without a commitment to any basic system of corrections must be given the mandate to make recommendations on this subject to the legislature and county governments.** Specific steps to develop local facilities, if they are in fact warranted, in lieu of large state facilities can then be recommended.

There are many things that can be done immediately, if we are truly concerned enough with crime to do more than just talk about it. **The legislative recommendations made by the department of institutions to the current legislature, dealing with ways in which more effective treatment can be provided to men who are in institutions, need to be acted upon.**

I do not believe it is too late to devise some form of **local subsidy plan** available to counties throughout the state to develop adequate **work release facilities** in their local areas in this legislative session.

Our own county work release program is an outstanding success. Unfortunately, it is housed in inadequate facilities and is less than half the size needed to do the job it can do. A facility now exists at the former Firlands site that would be ideal for an interim facility for men in the work release program in the north end of the county if it is made available. A similar building needs to be found in the south end of the county that would enable men to go to their jobs without traveling completely across the county to do so.

The Department of Health Services and LEAA Agency need to be given public support in developing **programs that will fill the void for providing adequate assistance for men when they are released from institutions.** Legislation will be introduced at this session of the legislature that will help alleviate this problem. The current tragic system must no longer be tolerated.

We must as a local community provide the tools to our local law enforcement agencies to do their job. The rejection by the public of the requested bond money to provide basic facilities for law enforcement and community corrections programs in May of this year was a setback neither these agencies or this community can afford. **The citizens of this county must be challenged again to provide the basic tools to our law enforcement agencies to work with.** I am satisfied they will properly respond.

What does all this have to do with being tough on crime? I have always liked the dictionary definition of "tough" as "being characterized by uncompromising determination." If we approach the truly overwhelming problem of crime in our free society with "uncompromising determination," we can make an impact on the problems it has presented.

□

New Federal Rules

(continued from page 12)

admission rule more to pleadings than to interrogatories. Rule 33, however, was not changed in this regard, and answers to interrogatories still must be signed only by the party and must be under oath (although objections to interrogatories are to be signed by the attorney).

A problem peculiar to Rule 36 has been that, until now, the propounder of the request was given no specific way to go to court to clear up any question

about the sufficiency of an answer. Was it a *denial*, for example, if an answerer said: "I refuse to admit the truth of the request?" Was it a "failure to deny," and therefore an admission? Propounders were left in doubt as to how they stood, and many of them simply manufactured one motion or another to get the problem before the court, or took the matter up at pretrial. It was an obvious gap in the rule that needed repair. The new rule provides that a propounder may move to determine the sufficiency of the answer or objection.

Formerly the answering party's objections were the court-invoking procedure, having the effect of a motion. New Rule 36, in line with the 1970 theory, puts the burden of going forward on the discovering party in all cases. But again, as under other discovery rules, this does not change the burden of persuasion on the objections themselves. If an answering party desires to invoke court action, he may move for a protective order under new Rule 26(c).

A final matter to be discussed under Rule 36 is the effect of an admission. The old rule was silent on this point. In theory, one could ask, "What is the good of an admission if you can't rely on it?", and some courts did hold that an admission was conclusive on the party, but other courts permitted the party to rebut his own admission. New rule 36(b) now settles the matter by providing that an admission (which presumably includes a failure to deny, which has the effect of an admission) conclusively establishes the matter admitted, unless the court on motion permits withdrawal or amendment of the admission. Withdrawal or amendment may be permitted when the merits of the action are served thereby, and the party obtaining the admission "fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits."

Sanctions, Rule 37

Rule 37, which contains all the sanctions applicable to discovery, has been beefed up. The Advisory Committee complained that (1) litigants resort too often to court, instead of trying to work things out extrajudicially, and (2) the courts have not sufficiently imposed expenses and attorneys' fees on a party who unjustifiably resorts to court or forces the other party to resort to court. The 1970 amendments have, as we have seen, made it a uniform rule that it is always the interrogating party who must invoke court process if he is not satisfied with his opponent's response, but this throws no light on who is the real culprit (if indeed there is a culprit). The new rule attempts to prod the court into imposing sanctions more often, by providing that an award of expenses shall be the rule, when a motion for an order compelling discovery is ruled upon, unless there was "substantial justification" for causing the court to be involved. The Committee admits that this is only a rephrasing of the present rule—a reversal of the "unless" clause—but it hopes the new format will have effect. Certainly it should weed out some of the "frivolous" cases complained about by the Committee, but it remains to be seen whether the courts will put as much bite into the rule as the Committee apparently desires.

A confusion formerly contained in Rule 37 was that it sometimes spoke of a "refusal" to afford discovery and sometimes of a "failure." Quite naturally, courts read into "refusal" a requirement of wilfulness that they did not import into "failure." The Supreme Court, in *Societe Internationale v. Rogers*, 357 U.S. 197 (1958), held that a "refusal" is merely a failure to comply, with no requirement of wilfulness, but lower courts remained in doubt. Now the word "refusal" has been deleted, and the rule speaks only of a "failure." And under new Rule 37(a)(3), "an evasive or incomplete answer is to be treated as a failure to answer."

With regard to depositions of corporate personnel, old Rule 37(d) provided that the failure of "an officer or managing agent of a party" to make discovery might be treated as the failure of the party, but a director was not included. On the other hand, a director *was* included in the rule on use of depositions of a party (old Rule 26(d)(2), now Rule 32(a)(2)), and in Rule 43(b) dealing with treatment of witnesses as hostile.

The textwriters gave elaborate explanations and justifications for this distinction, such as the small degree of control over a director, but the texts will have to be revised, because a "director" has been added to the list in amended Rule 37(d), and the corporation may now be penalized for his failure to make discovery. Although the new rule does not articulate it, it seems clear that a mere notice to the corporation, and not a subpoena to the director, is all that is required, as in the case of officers or managing agents. If the corporation cannot in good faith produce the director, of course no sanctions should be imposed.

Other Changes

Many other changes in the discovery rules were also made by the 1970 amendments, and many of them may be of significance in particular cases. This article is already too long, however, and attorneys will have to consult the new rules for other amendments. □

SUPREME COURT PRACTICE

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

There are two markedly different procedures for seeking extraordinary writs, not including petitions for writs of habeas corpus, in the appellate courts of this state. Rule 58 sets forth the procedures for original writs directed to state officers. Rule 57 contains procedures for extraordinary writs in other cases. Whether to proceed under Rule 57 or 58, that is the question.

Petitioner seeks a review of an interlocutory order entered by a superior court judge. A superior court judge is a state officer, *State ex rel. Edelstein v. Foley*, 6 Wn 2d 444 (1940). Query, does petitioner proceed in accordance with Rule 58 or 57; answer, 57.

The above is the product of an evolutionary growth and clarification of the concept of the extraordinary writ function.

Section 4 of Article IV of the State Constitution identifies two types of appellate jurisdiction of extraordinary writ proceedings:

(a) "The Supreme Court shall have original jurisdiction in . . . quo warranto and mandamus as to all state officers . . . " (An original proceeding)

(b) " . . . The Supreme Court shall also have power to issue writs of mandamus, review, prohibition . . . certiorari and all other writs necessary and proper to the complete exercise of its appellate and revisory jurisdiction." (A review proceeding)

The 1895 Legislature enacted rather detailed extraordinary procedures and on July 15, 1901, the Supreme Court adopted General Rules of the Supreme Court which included a rule on extraordinary writs. Neither, however, recognized the constitutional distinction. Under the procedures promulgated at that time, all applications for writs were heard by the court. In 1923, the Chief Justice was authorized to deny an application for an extraordinary writ, but still no procedural difference was provided for the original as distinguished from the review proceeding. Twenty-seven years later, in 1950, the Supreme Court adopted separate rules providing for different procedures depending on the nature of the writ being sought. Rule 57 provided for certiorari and Rule 58, for mandamus, prohibition and quo warranto. By a subparagraph of Rule 58, it was provided that petitions for writs of mandamus, prohibition and quo warranto directed to state officers would be referred to the superior court of Thurston County for hearing, unless an agreed statement of facts accompanied the petition. Obviously, in providing for the facts to be determined by the Thurston County Court, the framers had in mind "writs directed to state officers" as referring to original actions in the sense that the question in hand did not arise from a superior court trial.

In early January, 1963, substantial changes were made providing the present extraordinary writ appellate procedural rules with, it seems to me, considerably more insight into the real problems. The procedural distinction between certiorari and mandamus and prohibition were abandoned. Although a classroom distinction can be made between such proceedings, in actual practice the difference between certiorari or mandamus and certiorari or prohibition is one of form rather than substance and serves little real purpose from the standpoint of the administration of justice. The objective in either case is appellate review of an order. The title should not determine the procedure or disposition of the cause. The procedure for seeking the review of a superior court order is now set forth in Rule 57. Since the review in such cases is "appellate and revisory" and the court has under the Constitution the discretionary "power," the Chief Justice has the authority to deny the application for all such proceedings. On the other hand, Rule 58 is restricted to original proceedings against state officers, that is, original in the sense that the proceeding does not stem from a superior court action. Rule 58, therefore, provides for the facts being determined by the Thurston County Court. In such cases, the Constitution provides the Supreme Court "shall have original jurisdiction" and, therefore, the court, not the chief justice, must pass upon the application for such writs. Provisions for certiorari or review are therefore, logically omitted from Rule 58.

The fact that certiorari to review a superior court order lies under Rule 57, not 58, although the superior court judge is a state officer is not only a result of constitutional and rule construction, but it appeals to reason. When the proceeding springs from a superior court trial, the trial judge is not a real party in interest. As the Court commented in *Davis v. Gibbs*, 39 Wn 2d 180 (1951):

> "The idea behind the rule is that, although a judge of the superior court may be the nominal respondent in an application for a writ of this character, the party or parties to the litigation who seek to uphold the position taken by that judge make the showing, write the briefs and present the arguments as to why the writ should not issue. In

the instant proceeding, the parties actually contending before this court are the plaintiff and the intervening plaintiff, who seek the writ, and the defendants, additional defendants, and intervening defendant, who resist its issuance."

SUPERIOR COURT NEWS

By ROBERT M. ELSTON, *Judge*
King County Superior Court

James A. Noe, 38, was sworn in January 5 as the newest member of the King County Superior Court. Judge Noe had been presiding judge of the Seattle Municipal Court at the time of his appointment by Governor Dan Evans. King County Superior Court Judge **Keith M. Callow** gave the address of welcome on behalf of King County's 26 superior court judges. Presiding Judge **Stanley C. Soderland** administered the oath of office to Judge Noe who, for the ceremony, donned the robe of the late Judge **Malcolm Douglas** with the assistance of the late judge's son, Keith Douglas. Judge Noe has distinguished himself as a leader in judicial administration for courts of limited jurisdiction and has developed a highly regarded municipal court probation program utilizing volunteer probation workers. He has been active in community programs and presently serves on the governing board of the North American Judges Association. Judge Noe succeeds **Richard F. Broz,** who resigned to re-enter private practice.

* * *

King County Superior Court judges sat en banc January 11 to swear in newly elected District Court judges. Presiding Judge **Soderland** swore in the seven new district judges (**Janice Niemi,** Seattle; **Anthony P. Wartnick,** Bellevue; **George Mattson,** Renton; **Donald Eide,** Aukeen; **Charles Ralls,** Northeast; **Lee Olwell,** Mercer Island; and **Phillip B. Schwarz,** Vashon). Shoreline District Judge **James R. Cook** (chairman of the King County Magistrates) gave a welcoming address.

* * *

Robert J. Doran, 39, Chief Assistant State Attorney General, has been appointed as a Thurston-Mason County Superior Court Judge by Gov. Dan Evans. Doran, who served as top assistant to both present Attorney General Slade Gorton and former Attorney General John J. O'Connell, replaced Judge Charles T. Wright on January 11. Doran is a 1957 graduate of Gonzaga University Law School.

NEWS FROM THE COURTS OF LIMITED JURISDICTION

By MURRAY A. McLEOD, *Judge*
Aukeen District Justice Court

The WSMA has created a new committee this year to handle news releases. This committee, called the Public Relations Committee, is headed by Judge **Murray A. McLeod** of Auburn, Washington. The other members are: Judges **Ferris Albers,** Kelso, **Albert Yencopal,** Richland, and **Ben McInturff,** Spokane. It is contemplated that a judge desiring news coverage or other public dissemination of a particular matter would communicate this to the committee which would in turn issue the news release to the appropriate news media on behalf of the WSMA. Each judge on the committee has been appointed so as to cover each quarter of the state thus insuring better coverage of each area. Should any member of the WSBA have news regarding any member of the courts of limited jurisdiction felt newsworthy, they may contact any of the above judges or this writer.

The Uniform Traffic Citation and Complaint has been revised to allow the incorporation of the zip code number of a defendant's address. Mr. Galen Willis, Deputy Administrator of the Courts, in charge of courts of limited jurisdiction, stated that the reason for this change was not only to aid in the identification of the defendant, but also to assist the courts in speeding up the delivery of papers to a defendant.

The American Bar Association has developed a new Section within its Section on Judicial Administration, entitled the National Conference of Special Court Judges. This Conference, like its counterparts for State and Federal Judges, will allow the exchange of ideas throughout the country of the various special court judges to assist in the improvement of judicial administration in the courts of special or limited jurisdiction. Anyone desiring any information regarding this new section, or wishing to join please contact this writer or Judge **Frank Throp** of Olympia.

The WSMA has rewritten the Justice Court Manual. This difficult task, headed by Judge **Carolyn Dimmick** of Redmond, is nearing completion and it is expected to be printed within the next few months. The purpose of the revised manual will be to assist all judges in handling the various matters before them. Its format has been so constructed as to lend to easy reading, full citations and footnotes, and with a complete appendix containing proposed forms.

Judicial Council

Judicial Salaries and Retirement Plans

According to the December 1970 issue of *Judicature*, Washington ranks 23rd in the highest appellate courts and 26th in general trial courts for judicial salaries.

The following information appeared in the article. The most glaring deficiency is the absence of a retirement plan for judges of courts of limited jurisdiction:

WASHINGTON

HIGHEST COURT	
Supreme Court	$27,500
INTERMEDIATE APPELLATE COURT	
Court of Appeals	25,000
GENERAL TRIAL COURT	
Superior Court	22,500
Pro tem judges	per day 90
LIMITED AND SPECIAL COURTS	
Municipal Court	
Seattle	18,000
Elsewhere if population	
over 50,000	minimum 9,000
Justice Courts (King,	
Pierce, Spokane)	2,400 to 13,333
Full Time Justice Courts	20,000
Justice of the Peace	
Where population is	
5,000 to 20,000	2,400 to 3,600
over 20,000	5,400 to 6,500
Others	Fees
Police Courts	Not reported
COURT ADMINISTRATOR	
Administrator for Courts	20,000

BENEFITS

HOSPITALIZATION: Group policies with family coverage available, premiums paid by judge.

VACATION: 1 month.

HOLIDAYS: 8 days.

EXPENSE ALLOWANCE: Superior judges receive expenses when sitting outside their district.

RETIREMENT PLANS

JUDGES COVERED: Supreme, Court of Appeals, and Superior Courts.

AGE AND SERVICE REQUIREMENTS: 70 after 10 years service, any age after 18; judge may retire after 12 years with reduced benefits commencing at 70. Retirement compulsory at age 75. Credit for service on either court and military service during term of office.

CONTRIBUTION: 6½% of salary.

RETIREMENT BENEFITS: ½ salary at time of retirement; judges who serve more than 18 years receive additional 1/18 of salary for each year over 18 to a maximum of 75% of salary.

DEATH BENEFITS: Widow of judge who served 10 years receives ½ of judge's pension provided she has been married 3 years.

DISABILITY BENEFITS: Any age with 10 years service, regular retirement benefits.

SERVICE AFTER RETIREMENT: No specific provision.

CITATION: Revised Code of Washington, Tit. 2, Chap. 2.12, §§ 2.12.010 through 2.12.070, Constitutional Provision: Amendment 25.

The Washington Judicial Council, created in 1925, is designed to have membership representative of all segments of the judicial branch of government. In creating the Council, the legislature assigned certain continuing tasks as prescribed in RCW 2.52.050.

Presently, the Council consists of 18 members. The 1971 Legislature will be requested to increase Council membership by the addition of two judges representing the Court of Appeals, one additional judge representing the courts of limited jurisdiction, and increasing the number of the members of the Bar who are practicing law from the present three to five.

Matters to be considered by the Council may be suggested by anyone. Much of the Council's business originates from referrals from practicing attorneys, from judges or other persons in the judicial system. However, an appreciable number of the topics studied are first suggested by citizens. The legislature has upon occasion referred problems to the Council for study, and members of the Council frequently initiate items themselves. Many of the topics coming before the Council require an examination of existing statutes insofar as they bear upon the administration of justice, in order to make recommendations to the legislature for improvement in that regard.

The Judicial Council will submit proposals to the 1971 Legislature in the following areas:

1. Tolling Statute of Limitations
2. Court Administrator's Act
3. Extension of the 1961 Justice Court Act
4. Indication of Incumbency on Ballot
5. Schedule of Attorneys' Fees
6. Attorneys' Fees in Divorce Cases
7. Criminal Investigation Act
8. Judicial Council–Increase in Membership
9. Uniform rendition of Accused Persons Act
10. Annual Conference of Judges
11. Amendment to Wrongful Death Statute–RCW 4.24.010
12. Temporary Prison Leaves (Furlough Legislation)
13. County Law Libraries–Proposed Amendment to RCW 27.24.070
14. Presentence Reports
15. Costs Arising out of Criminal Matters
16. Six-Man Jury
17. Fiscal Accountability of Justice Court Judges
18. Electronic Courtroom Recording Devices

–C. E. Bolden

Office Practice Tips

Can you use any of these ideas in the operation of your law office?

TIME RECORD SHEET. Time is money, so why not remind yourself to record your time by having a large S sign superimposed on your time sheet?

ADVANCE SHEETS. Tired of having someone shortstop the advance sheets as they circulate from lawyer to lawyer? Have each lawyer initial *and date* the material as it circulates. (It places the blame neatly!)

COLOR CODING. Labels on files can be color coded by lawyer or subject matter for quick identification of files.

FILE DESTRUCTION. When files are placed in closed storage, mark files "File may be destroyed after (date)" or "Do not destroy without the consent of Attorney ." This enables the person clearing out dead files to make appropriate decision as to destruction without having to read the contents.

AUTOMATIC TYPEWRITERS. Are you using yours to address envelopes or to store legal memoranda that are used with regularity?

COPY MACHINE VOLUME. Is your present volume of copying sufficient to justify a newer, faster and better model?

ADDING MACHINE IN EACH OFFICE. Almost every lawyer will use a 10-key adding machine several times a day if it is at his desk available instantly.

OFFICE MANUAL. Every office, large or small, will benefit by establishing procedures, recording them in an office procedures manual. Helps orient new employees, reduces misunderstandings as to what is expected.

FORM FILE. Are you using your copy machine to supplement your office form file to minimize time for drafting or preparing documents?

HI-LITING FELT PENS. Available in many colors, these felt pens help you pick out the important parts of trial notes, briefing notes, and call attention of others to parts of documents you feel are important.

MONTHLY BILLINGS FOR OUT-OF-POCKET COSTS. Clients prefer to pay as they go, so bill your clients monthly for costs advanced. Your total outlay will be reduced, and your uncollectibles minimized. Set up an aging schedule and watch those 90-day-or-over accounts.

SIDE FILING. Saves floor space, provides better access, uses space to the ceiling.

DOCKET CONTROL BY COMPUTER. Those of you who have or contemplate having a computerized accounting system, have you considered a docket control or diary system that will call to your attention filing dates, deadlines, statutes of limitation, annual meeting dates. It can be done with the right programming.

CLIENT NUMBERS. If you assign a client a number for computerization, pre-fix the client number with a number assigned to the responsible lawyer. That way, on your monthly summary all cases for which a specific lawyer is responsible will be printed together on your computerized print-out.

PEG BOARD ACCOUNTING. There is literature available explaining the advantages of peg board accounting systems which reduce duplication. Sole practitioners or small firms not having a full time bookkeeper should check into this, especially.

KEEPING CLIENTS INFORMED. Send copies of all correspondence and pleadings to your client as a means of keeping him informed of just what you are doing for him.

INFORMATION SHEETS. Gather information for probate, divorce, estate planning systematically by having a form to be completed either by the client or by you, listing all necessary data.

MICROFILM. Have you considered microfilming instead of preserving files indefinitely or as a safeguard against the loss or destruction of important documents?

MANAGEMENT CONFERENCES. Have you attended any of the excellent management conferences presented by the American Bar Association? Excellent programs are presented, plus a chance to meet and visit with other practitioners with a keen interest in law office management.

"INSTANT SERVICE" FOR NEW CLIENTS. All clients, but especially new clients, are favorably impressed when some tangible action is taken promptly after a matter is entrusted to his lawyer. Acknowledge the file, outline steps to be taken, show evidence of having started the job—but do something immediately. And make certain that your client is made aware of just what you have done and intend to do for him.

Richard C. Reed

Prepared by the Committee on Law Office Economics and Management, Richard C. Reed, Seattle, Chairman, Harry E. Hennessey, Spokane, Editor.

This column is a clearing house for better ways to run the law office. Contributions are solicited from all members of the Bar and should be sent to the editor at Post Office Box 324, Spokane, Washington 99210.

Harvard Law Students Today

We have elaborate statistics on the pattern of jobs taken by our graduating students. This topic has recently provoked a great deal of comment. Alumni from Manhattan law firms have complained that Harvard students are no longer willing to come to New York in such numbers as they did years ago. Newspapers, such as the *New York Times* and *Wall Street Journal*, and critics, such as Ralph Nader, Edgar Cahn and Mark Green, have asserted that students from leading schools are much less inclined to go to established law firms, regardless of the city.

Now that another year's statistics have accumulated, one still looks in vain for reliable factual support for these claims. One year after their graduation, members of the Class of 1969 seem to be making substantially the same career choices as Harvard graduates have made over the past fifteen years. Forty-nine percent of the Class of 1969 are at work in law firms.

More interesting still, the preliminary figures for 1970 suggest an even greater rise in this proportion with 57.6% of the Class presently committed to take a job with a law firm.

Our data also show that among the graduates of 1970 entering law firms, over one-third are going to New York City, a fraction which corresponds closely to the proportions observed over the past decade.

The foregoing statistics may shift at any time, of course, to reflect the tendencies so vividly asserted in the public press.

Despite the sincere interest of many students in social service and the advocacy of unpopular causes, the alternatives to the law firm are unlikely to attract them in the end. They will find the pay too low in legal assistance offices, and the work often dull and frustrating. Public interest law firms offer brighter prospects for exciting, challenging work, but the outlook is bleak for finding financing for more than a handful of such positions. Government jobs can provide rewarding, challenging work for a time, but I doubt that students today will be more tolerant of the familiar aspects of government service that have traditionally caused most of our graduates to enter private life.

Under these circumstances, recent graduates are likely to go into established firms. Yet they may not join these firms in quite the same spirit as in the past, for their doubts and concerns are clearly greater than in the past.

In the end I suspect that the impact of the current generation on the law firms will be useful and that it will occur with much less turmoil and unrest than most leading law schools have experienced. By the time students reach a firm they will be a bit older. Their probing and questioning will take place in an environment where the practical limits that the world imposes will be far more evident than they can be in school or classroom.

–Dean Derek C. Bok
Harvard Law School Bulletin
Vol. 22, No. 1 (1970)

	**1970*	*1969*	*1968*	*1967*	*1966*	*1955*
Law Offices	57.6%	49%	44%	44%	49%	42%
Business Concerns	2.0	1	4	4	2	4
Government	2.7	6	8	8	7	4
Judicial Clerkships	18.9	12	12	12	13	6
Banks & Accounting	1.7	2	—	2	2	1
Teaching	1.0	3	5	3	2	1
Research & Study	1.3	4	2	2	4	3
Legal Services (incl. Reg. Heber Smith Fellows)	1.3	4	3	2	1	—
Fellowships	2.0	1	2	2	5	—
Peace Corps	—	—	—	1	3	—
VISTA	—	2	1	—	—	—
Miscellaneous	1.3	1	1	—	1	1
Eligible for Military without jobs	8.9	15	20	15	10	36

*1970 statistics are not entirely comparable because, unlike the other years, they are based on the activities of the class immediately after graduation instead of one year later. Perhaps, for this reason, the 1970 statistics are based on only 77% of the entire class while figures for the earlier years are based on substantially more than 90%.

Books

Chaucer was 61 when he finished "Canterbury Tales" while Verdi was 80 when he wrote the opera, "Falstaff."

Now, at 86, former U.S. Sen. **Clarence Cleveland Dill** offers further proof that age is no barrier to literary achievement with publication of a book that is on the stands this week.

The former solon's Christmas gift to the Pacific Northwest is *Where Water Falls*, 276 pages of interesting, well-written and highly revealing stories about the backstage effort which led to development of hydroelectric and storage dams on the Columbia River.

The Dill book, a tribute to a keen memory, might better be titled "A Love Affair with a River," for the senator leaves no doubt that, in his view, the Columbia is the greatest of God's handiworks.

Major emphasis is given in the book to the fact that Franklin D. Roosevelt, when he authorized the building of Grand Coulee Dam, kept a promise made prior to his first nomination to the presidency.

He desired to be a congressman while still doing chores on his father's farm in Ohio, and Dill makes no bones about purposefully coming to Spokane with that goal in mind.

Many of Dill's stories have never before appeared in print, including the fact that, when he decided to retire from the Senate in 1935, after two terms, the Spokane attorney was urged by Clarence Darrow to join his work. Dill's response was: "You believe every person who commits a crime is justified in his own mind and that society or big business practices are to blame. I can't go along with that doctrine."

Dill recounts also how he almost succeeded in a public takeover of the Washington Water Power Co., and the role he played later in securing storage dams in Canada by advocating a 50-50 share with Canada of additional power to be developed downstream.

Dill offers proof that his eye is on the future by titling his concluding chapter: "The Future Eldorado of the Pacific Northwest."

"I am a booster and I am here to boost the future of this part of the country," the 86-year-old attorney admits to his readers, adding that the coming development of this region will be based largely on use of low-cost electricity which power plants on the Columbia and Snake and their tributaries are producing.

—**John J. Lemon**
Spokane Daily Chronicle
Dec. 23, 1970

Twenty Years Ago

They lacked lawyers. Hard to believe but the Oregon legislature reported only seven lawyers sat in its Senate and fifteen in its House.

The Washington legislature in 1951 found itself in a happier situation with eleven in the Senate and twenty in the House. They likewise had the benefit of the Bar's Legislative Committee consisting of fifteen lawyers and six judges. **Alfred J. Schweppe** was the executive secretary.

The sad situation of the Oregon legislature reminds us of the time that our then Lieutenant Governor visited there. He advised it we then had the best legislature money could buy. However, the hearers probably remembered he promised on another occasion "If you don't tell the truth about me, I won't tell any lies about you."

Ninety-eight new applicants were admitted to practice following the January examination. Many have achieved a high place at the Bar. Two were appointed judges—**Morell E. Sharp** and **Edgar Horton Smith.**

The work fostered by now United States Circuit Court Judge **Eugene Wright**, Continuing Legal Education, was advancing. Many Washington lawyers were subscribing to the publication of the American Law Institute. However, shipment of Series One was delayed by a strike of railroad switchmen.

BIRTHS

Stewart Elliott, formerly of Kelso, opened a new office in Longview. **Pat Steele**, formerly Pierce County Prosecuting Attorney, returned to private practice sharing offices with **William LeVeque** and **Frank Hale**, Tacoma. **Vaughn E. Evans** resigned as chief assistant U.S. Attorney to reenter private practice in Seattle.

CROSSED THE BAR

Delos Spaulding, 71, of Morton and formerly of Castle Rock.

Spokane reported a memorial service for: **Frank H. Graves**, Judge **Louis B. Schwellenbach, O. C. Moore, Joseph P. Morton, V. T. Tustin, Charles A. O'Connor,** Judge **H. E. T. Herman, Charles W. Gillespie, Orville Duell, David R. Glasgow, James A. Brown.**

The Attorney General delivered an august opinion entitled "One who is merely an intoxicated passenger in a private automobile is guilty of no statutory crime." Let that be a lesson to all.

SALUTE THE SOARING SEVENTIES

David J. Williams

Lawyer/Public

Attorney conduct—especially discipline and enforcement of ethics.

This is the Bar's greatest single public-relations problem, nationally, according to an ABA public-relations survey report published in December.

But it probably is not the greatest problem in Washington State; our Bar is almost a model from the standpoint of discipline procedures and ethics enforcement, in contrast with the "scandalous" discipline situation which the ABA recently reported exists in some states and cities.

Despite our Bar's advanced rules, procedures and enforcement, we could develop a "PR problem" if the Bar and the state's lawyers do not let the public know about them—know that the Bar works constantly to maintain the highest standards of attorney conduct and competence.

Nationally, "tighter control over lawyer conduct, especially before the court, is needed," the ABA survey results indicated.

The Bar leaders and PR experts taking part in the survey expressed considerable concern for educating the public, especially the young, on law, lawyers, courts and the judicial system. Several bars feel more educational programs should be started in elementary schools to inform youngsters on law enforcement, actual workings of the court, lawyer duties and responsibility, and ways in which a citizen can best change laws in a peaceful manner.

Misunderstanding of lawyer fees by the public was listed as one of the most pressing problems by state bar officials. Because they do not know a lawyer's duties, often people feel they are being over-charged.

The ABA reported: "Also, there is growing concern to improve the image of the lawyer, courts and judicial system by more effective communications with the public. Substantially more lawyers should be concerned about their image and work harder on their own personal public relations . . . "

—Public Relations Committee

The Board's Work

(continued from page 4)

of judge selection: A judge would be appointed by the governor, from a list submitted by a Judicial Nominating Commission, for a two-year term, at the end of which he would be required to run for election and could be opposed by candidates. Thereafter he would serve a six-year term, then appear unopposed on the ballot for approval or rejection by the electorate.

The tentatively approved draft also calls for the state's chief justice to be selected by a Court Administration Commission; for the Judicial Nominating Commission to consist of a Supreme Court judge named by the governor, three lawyers elected by lawyers, and three laymen appointed by the governor; for judges to be retired at age 70, and for a Commission on Judicial Qualification with the power to remove judges.

Clients' Security Fund

The Fund, to which all lawyers contribute through a portion of their State Bar fee, is organized voluntarily by the Bar solely to protect the public, to help repay a client who suffers a money loss as a result of wrongdoing by an attorney.

"The Fund is the Bar's modern response to its ancient and deep-felt responsibility for the conduct of its members," Beresford said. "We believe the Bar is the only public or private organization which voluntarily provides monetary redress for losses caused by its few miscreant members."

The changes in the Fund program were recommended by the Clients' Security Fund Committee, whose chairman is **Donald E. Spickard** of Seattle, and adopted by the Board. They include:

1. The type of misconduct for which reimbursement will be made is broadened to include "dishonesty or failure to account for money or property entrusted" to a lawyer; previously only "misappropriation, embezzlement or defalcation" was covered.

2. Coverage is expanded to include lawyers acting in a fiduciary capacity (as, for instance, trustees or executors) relating to their practice of law, where the court has required no bond or a bond inadequate to cover losses.

> **"In this connection, we are hopeful that judges will become extra-cautious in seeing that adequate bonds are required of all lawyers acting as fiduciaries," Beresford said.**

3. The limit on payment on account of claims against any one lawyer is increased to $25,000 from $10,000.

(continued on page 33)

Notices

Wanted and Unwanted

For Sale: Vols. 1-39 (less Vol. 27) ALR 2nd; Wash. Repts. 1st series and part of 2nd series; Wanted: Wash. Practice; 1st Wash. Repts. Irving Koths, P.O. Box 717, Morton 98356 (496-5133).

For Sale: Full set of Insurance Law and Practice by Appleman, current to date–$220.50. G. F. McCormick, Federal Way (VE 9-3333).

For Sale: ALR 1st & 2nd series with permanent Dig., Blue Book of Supp. Dec., Desk books, Word Index to Ann., $1,200. U.S. Sup. Ct. Rep., L.Ed. 1st & 2nd, $600. Blashfield Automobile Law and Practice, $250. Also available Wash. Law Rev., Vol. 1, No. 1-Vol. 44, No. 3, & Index; Hillyer's Ann. Forms of Pleadings & Practice (11 Vol.); Gray's Attorneys Textbook of Medicine (9 volumes); Page on Wills (6 volumes); Contact Frank A. Shiers, attorney, Shiers, Kruse & Roper, P.O. Box 126, Port Orchard, 98366 TR 6-4455.

For Sale: Complete and up-to-date set of CJS; excellent condition; negotiable price and terms. Jon R. Hunt, 820 White Henry Stuart Building, Seattle 98101 (MA 3-8932).

For Sale: 1-62 Wash. 2nd., 1-32 ALR 2nd (less Vol. 27); 26 Vols. Wash. Digest (not up to date). Wanted: ALR 2nd 43 to end of series. Irving Koths, 4104 Fir, Vancouver, Wash.

For Sale: RCW with current annotations. Wesley K. Duce, 516 1st Nat. Bk. Bldg., Everett, 98201 (259-4151).

For Sale: Nichols Cyclopedia of Legal Forms, Ann. 12 Vols.–$100.; J.K. Lasser's Estate and Income Tax Techniques–6 Vols.,–$75. Kodak Readyprint Copier–$75. James E. Winston, 601 Lincoln Bldg. Spokane

NOTICE TO ATTORNEYS

THE DIRECTOR OF THE KING COUNTY DEPARTMENT OF JUDICIAL ADMINISTRATION (COUNTY CLERK) HAS INDICATED TO THE KING COUNTY SUPERIOR COURT THAT THE USE OF TISSUE OR ONION-SKIN PAPER FOR ORIGINAL DOCUMENTS CAUSES DIFFICULTY IN MICROFILMING.

ACCORDINGLY, THE JUDGES OF THIS COURT WILL NO LONGER ACCEPT ORIGINAL DOCUMENTS FOR FILING IN THE COURT FILES UNLESS THEY ARE ON BOND PAPER.

DAVID C. HUNTER
COURT COMMISSIONER

Deadline for next issue of the *Bar News* is February 8, 1971.

Will Information Sought

Anyone having information regarding the last Will of Fred Grant Morse please contact George T. Nickell, 2131 First National Bank Building, 1001 4th Avenue, Seattle 98104 (MAin 2-8265).

State Bar Association
Annual Meeting
September 9, 10 and 11, 1971
Portland Hilton
Portland, Oregon

An ACLU of Washington staff counsel position in Seattle will be open as of June 1, 1971. Inquiries should be directed by March 1 to Michael Rosen, 2101 Smith Tower, Seattle 98104 (MA 4-2180).

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 applicants on file:

1. Applications for employment now outnumber job openings by more than two to one in our files. The "applicants" file is a good place to begin the search for your new attorney.

2. Two-man firm in small King County city seeking third attorney to purchase partnership interest. Will finance.

3. Southwest Washington county prosecutor needs civil or criminal deputy at $11,000 to $15,000 per year.

4. Three-man firm in one of larger eastern Washington cities seeking associate for plaintiff's personal injury practice. $12,000 to $15,000 to start.

5. Western Washington city currently interviewing to fill position of city attorney at $15,000 per year.

6. State Supreme Court seeking assistant reporter of decisions. Must be admitted to bar or intending to apply for admission.

7. Upper 20% graduate of George Washington Law School seeking private general or labor law practice in Seattle area.

Calendar

Two Part Seminar On Trial Practice

A two-part spring-and-fall seminar on trial practice will be presented this year by the State Bar Continuing Legal Education Committee.

The spring seminar, which will feature nearly a dozen outstanding lawyers and judges, will be devoted to Washington Civil Practice Before Trial. It is scheduled for Friday, February 26, from 1 to 6 p.m., in Spokane's Ridpath Hotel; Saturday, March 13, from 9 to 3:30, in the Seattle Center Rainier Room, and Saturday, March 20, from 9 to 3:30, in Olympia's new Evergreen Inn.

The fall seminar, to be presented in the same three cities, will be on Washington Civil Trial Practice, with the emphasis on in-trial procedures.

Working with Will L. Lorenz of Spokane, CLE chairman, to arrange the program were William L. Dwyer and Ronald E. McKinstry of Seattle and Albert R. Malanca of Tacoma.

Feb. 4	Estate Planning for the 1970's, CLU Seminar . . . Washington Plaza Hotel, Seattle (Noon-5:00 P.M.).
Feb. 4-9	Midyear Meeting of the ABA in Chicago, Illinois.
Feb. 11-12	Western States Bar Conference . . . Mountain Shadows, Scottsdale, Arizona
Feb. 13	Bankruptcy and Wage Earner Proceedings, Bridging-the-Gap . . . Bannon Auditorium, Seattle University, 8:30 to 11:30 A.M.
Feb. 26	Washington Civil Practice Before Trial, State Bar CLE seminar, Ridpath Hotel, Spokane (1 to 6 P.M.).
Feb. 27	Personal Injury Action, Bridging-the-Gap . . . Bannon Auditorium, Seattle University, 8:30 to 11:30 A.M.
March 13	Washington Civil Practice Before Trial, CLE seminar, Seattle Center Rainier Room, Seattle (9 to 3:30).
March 20	Washington Civil Practice Before Trial, CLE seminar, Evergreen Inn, Olympia (9 to 3:30).
July 5-7 14-20	Annual Meeting of the ABA in New York, N.Y. and London, England.
Sept. 9-11	Annual Meeting of the Washington State Bar Association in Portland, Oregon at the Portland Hilton.

The Board's Work

(continued from page 31)

4. Payment now may be made where responsibility is admitted, or where the lawyer is dead or incompetent or has disappeared under circumstances tending to support complicity in the matter charged, or where he has been convicted in a criminal action involving charges out of which the claim arises. Until now payments have been made only after the conclusion of disciplinary cases against lawyers.

Rule 9

The Legal Internship Committee (chairman, J. Shan Mullin of Seattle) suggested a number of changes in the still-new Rule; they were approved in substance by the Board and were to be considered again in final form.

The suggested changes, which still must be approved by the Supreme Court:

1. Legal interns would be permitted to practice in a limited way before the Court of Appeals and Supreme Court, in addition to a trial court as now.

2. Practice of a supervising attorney in this state "or elsewhere" would count toward the three years requisite for him to qualify.

3. A more positive statement concerning the professional responsibility assumed by a supervising attorney would be required.

4. Attorneys in public-aid offices would be able to supervise two interns; this would permit employment of several interns in a legal-aid office with a small staff of attorneys.

5. The provisions concerning time limits for applications and length of practice for interns would be clarified, with special provisions for a student who enters military service immediately after graduation.

WASHINGTON STATE BAR ASSOCIATION
505 Madison Street
Seattle, Washington 98104

Nonprofit Org.
U. S. POSTAGE
PAID
SEATTLE, WASH.
Permit No. 2204