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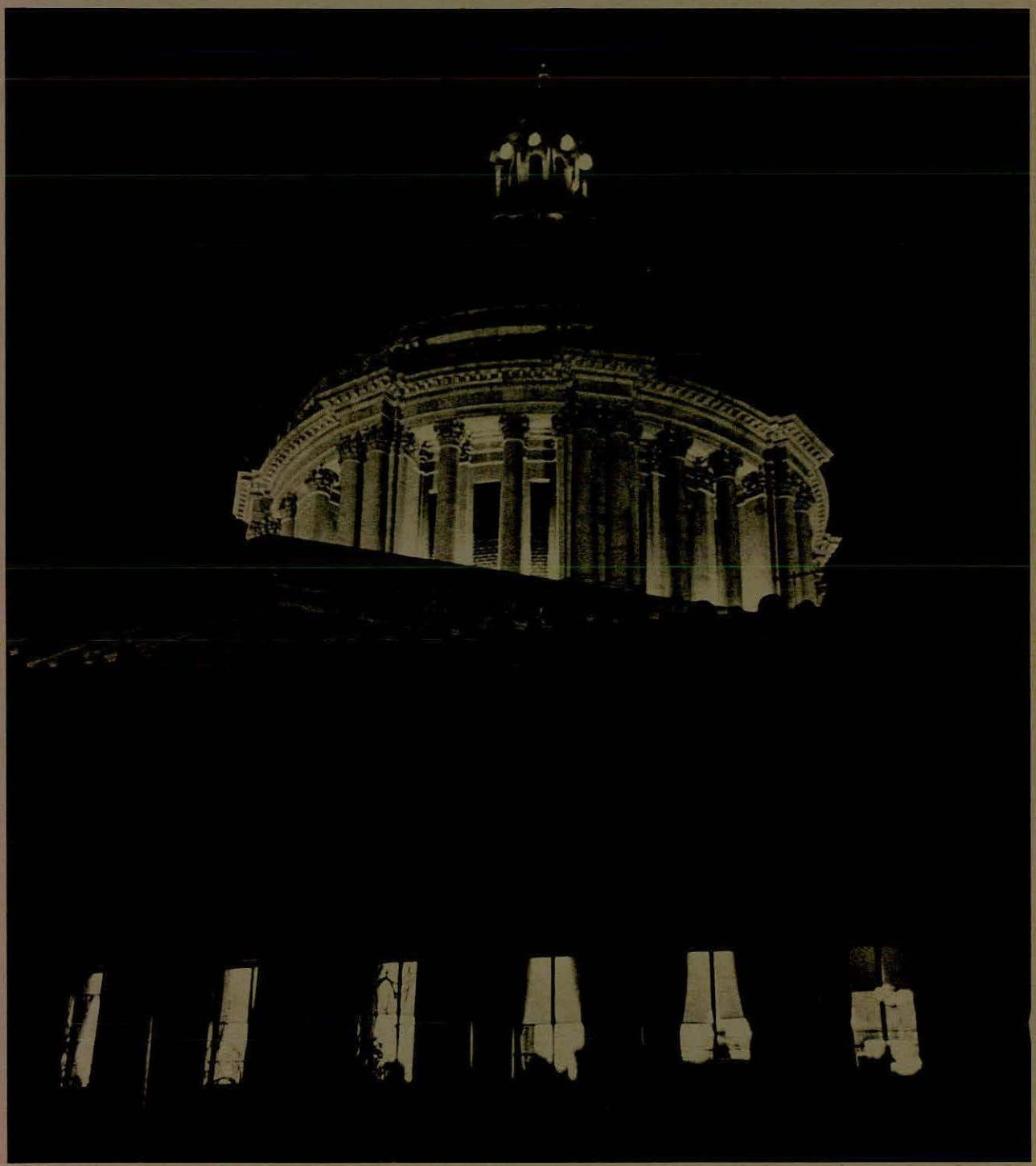
WASHINGTON STATE BAR NEWS



THE 42ND WASHINGTON LEGISLATURE IN SESSION

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Editor's Note

Washington State Bar News

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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.

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United Graphics

Index

Trial magazine devoted almost all its October-November 1970 issue to the auto insurance problem. So too, a good part of this issue of the *Bar News* deals with the problem. The arguments for a **"no-fault" insurance system** are presented through excerpts from the Stewart proposal out of New York (page 5). The arguments against are also presented (page 9). Quotes Quoted traces the increased activity in this state on the subject (page 4). At this writing the legislature has before it HB 230 which requires all motor vehicle liability policies to provide payment, regardless of fault, to the named insured for all property damage claims and to the named insured, members of his household and guest passengers for medical expense payments of up to $2,000 for each person injured and a maximum of $6,000 for each occurrence. Also under consideration is HB 696, the governor's proposal which would authorize a temporary study commission on "no-fault" auto insurance.

* * *

Jack Lynch's widely read letter draws several responses this month (page 2). Those interested in the writings of Bernard Weiner can find a sequel to his earlier article on the Seattle Conspiracy Trial in the February 1, 1971 *Nation* magazine, entitled "The Orderly Perversion of Justice."

* * *

Two innovative projects to strengthen the quality of legal services in Seattle are highlighted this month. **Seattle Lawyers for Housing** has a $92,000 budget for its first year of operation with which it hopes to ameliorate the problems of shortage of adequate housing for low-income families (page 16). **Neighborhood Consumer Center** hopes to have $32,000 to fund its office in the Central Area which would have both a legal and educational role in confronting consumer problems (page 25).

* * *

The Law Day theme this year is Channel Change Through Law and Reason (page 14). No bar exam bias found by Vice President Agnew (page 18). MacLauchlan at Large (page 19). New state-wide bail schedule, effective March 1, is criticized (page 24). What to do about the tidal wave of appeals that is threatening to inundate the new court of appeals? (page 28). How should profits be shared in a partnership? (page 32). The Young Lawyers Committee has proposed several reforms in the WSBA (page 34).

* * *

A swinging publication called *Juris Doctor*, a magazine for the new lawyer, was received in the mail last month. It will be published monthly on the 15th of each month from September through April by MBA Enterprises, Inc., 373 Fifth Avenue, New York, N.Y. 10016. It is being distributed at no charge to full-time law students, professors and selected alumni. Subscriptions are $8.00 per year to all others. Among the authors in the first issue are William Kunstler, John Lindsay and Ramsey Clark. An interview with John Mitchell is also included. The tempo of this publication may well make the content of this Fearless Journal look pale, Bernard Weiner notwithstanding.

Letters

Editor:

This is to let you know that although I disagree strongly with what John S. Lynch said in his letter to you [January *Bar News*, p.14] objecting to publication of "The Spirited Lawyer Representing Political Defendants" and "What, Another Conspiracy," and although I think that Mr. Lynch has "Exceeded the bounds of good taste" by signing as Governor, Third Congressional District, when he does not represent the views of me and many other third congressional district lawyers, I have no objection to your publishing his letter in the *Bar News*.

MORTON M. TYTLER

Olympia

Editor:

In your January issue John S. Lynch expressed his dissatisfaction with certain articles appearing in the *Bar News* and suggested that there is a need for ". . . more supervision of the contents . . . " of your journal. I wish to record my disagreement with Mr. Lynch.

In my estimation the fact that information on certain topics is unpleasant to some individuals does not suggest the advisability of withholding that information from other members of the Bar. If disrespect for the judicial system is, in fact, developing among lawyers, I believe the Bar should confront the problem rather than pretend that a problem doesn't exist.

I commend your efforts as editor of the bar news and sincerely hope that the Board of Governors will not feel the need to "supervise" or censor the contents of future issues.

WAYNE C. BOOTH, JR.

Seattle

Editor:

We are sorry that Mr. Lynch is uptight about the *Bar News* articles. Frankly, I like the exposure. We must remember the things which the article quoted ARE HAPPENING and ARE BEING SAID. It seems to me that they hit home a little harder when they are set out in our own paper.

No, I don't approve of the defendants' conduct but suspect that for the most part Judge Boldt can take care of himself. However, I do see that he is now overruled in some respects by the Circuit Court which comes close to setting aside some of the Authority whose help Judge Boldt said he requested in reaching his conclusions.

Far more dangerous and something to get really uptight about is the pin ball group's contributions to the campaigns of Judicial, Executive and Legislative candidates — getting right to the Supreme Court Justices and the Governor. Influence? What else? I've seen no evidence of anyone shocked or uptight since this exposure which goes much farther in my mind in "tearing down the foundations" than the mere *printing* of "What, Another Conspiracy?"

JAMES HAMMACK

Mount Vernon

Editor:

Mr. Lynch has expressed his dissatisfaction with some of the articles that are being published in the *Bar News*. He indicated he was particularly unhappy with some of the quotations set forth in those articles. His letter however acknowledged the accuracy of the reports and the quotations contained therein.

From his letter it would appear that Mr. Lynch prefer that you not print the truth if it is in bad taste. And what is and is not bad taste he and those members of the Board of Governors he can persuade to join him will decide. In other words, he would censor those accurate reports, quotations and articles if they "exceed the bounds of (his) good taste."

It was incredulous to the writer that a member of the Board of Governors of the Bar Association would suggest the muzzling of the press or the stifling of free speech because he found certain quotations and articles printed in the *Bar News* offensive.

JOHN R. SIMMONS

Seattle

Editor:

In reading the January 1971 issue of the *Bar News* I was surprised to read of criticism of the editorial policy of the News by a member of the Board of Governors of the Washington State Bar Association. I was saddened when I learned that the the reason for the criticism was that gentleman's disagreement with the content of specific articles contributed by others.

No editor of this or any other publication to which I have been a subscriber has ever required or requested that the readership believe the content of contributed articles. The editorial warranty, as I conceive it, is only that the printed articles will be pertinent to the interests, aspirations and goals of the members of the legal profession — in recognition of the variety of ways in which those qualities may be interpreted.

In that context I would examine the article to which primary objection was made, viz. that concerning the "Chicago 8" trial including defense counsel's languagecharacterizingcourtroom proceedings. It would be an un-

derstatement to say that the public was interested and alarmed by the events occurring at that trial. If the legal system's goal of substituting rationality in place of force in the resolution of disputes is to endure, then we must understand the causes which create such frustration, bitterness and despair as was manifested during the Chicago trial. How can we gain insight into such phenomena if we can't read about it in the *Bar News* and elsewhere and thus stimulate some of the finest minds of the nation (i.e. lawyers' minds) to seek answers to these problems.

Particularly is it important to acquaint the Washington lawyer with this subject since my experience and that of almost all Washington lawyers is that we count jurists among our personal friends; our experience in courtrooms has been one of common cause in seeking just resolution of disputes; and our belief in the judicial system as a fair and effective primary ingredient within a civilized society is constantly renewed. As to the view epitomized by Mr. Kunstler's statements, our response should be that we must "get wisdom, and with all they getting, get understanding" and then use our communicative skills as lawyers to interpret this understanding to the public and the leaders of this representative democracy calling for the curing of the causes of the Chicago incidents and the re-establishment of confidence in our judicial system. Those who were formerly frustrated, bitter and despairing will then have reason to join us in our confidence in the judicial system.

DAVID C. CUMMINS
Associate Professor
Texas Tech University
School of Law
Lubbock, Texas

There was no lull in Bar Association activities during the month of January. The Board had its annual meeting with the Judges of the Supreme Court on Thursday, January 21. This is really a once-a-year affair where the lawyers and judges can sit down and discuss problems in which both groups are interested.

The major problem right now is the proposed revision of the judicial article. It appears as though practically everyone who has had a little time on his hands has proceeded to draft a revision of Article 4. To the best of my knowledge there are at present four revisions, one by each of the following groups: The Washington State Bar Association, the Judges' Association, the Judicial Council and the Citizens' Committee. At least three of these revisions have been introduced to the Legislature.

While the Bar Association has not receded from its position that its committee has prepared an effective revision, nevertheless it is obvious that such a plethora of proposed articles can result only in confusion and possibly the failure of any article to be approved. Consequently, a committee has been appointed under the chairmanship of Neil Hoff, Governor of the Washington State Bar Association from the Sixth Congressional District, in which all the interested groups are represented, to see what can be done to clear up the comparatively few areas of disagreement and present a united front. The committee met last month, and I am happy to report that substantial progress has been made.

The other subject which was discussed was the possibility of cutting down on the length of opinions, and having more per curiam opinions where the case is of no real precedential value as, for example, where the case is purely factual, or where the legal issue has been decided by earlier opinions, one or more of which could merely be mentioned by name. Actually, once the backlog of pending cases before the Supreme Court is completed there will be comparatively few which would not have precedential value, since a review can and probably will be refused where a hearing before the Supreme Court would be merely to reiterate the decision of the Court of Appeals. This same question was brought up the next day when the Judges of the Court of Appeals met with the Board of Governors, and a solution was approved in principle which would authorize the Court of Appeals to determine which decisions should be written and published.

The January session was not all work. The Supreme Court Judges and the Board of Governors were invited for dinner aboard a Japanese freighter. Jack Lynch made all of the arrangements, and it was one of the most interesting and entertaining evenings I have ever spent. We were given a tour of the ship. After the tour, delicious Japanese food was cooked for us at the table in the Officers' Mess by the Captain at one end of the table and the Chief Engineer at the other. Each guest was given a saki set with a bottle of excellent saki as a parting gift. Jack, the Port of Olympia and the Japanese Merchant Marine rolled out the red carpet for us, and we were all most appreciative.

Quotes Quoted

The principal beneficiaries of today's "liability" system, in fact, are the lawyers who handle lawsuits arising out of traffic mishaps and disputes over who will foot the bill for damage claims and court-awarded compensation payments.

The "no-fault" system or variations on a similar theme may not cure all the present deficencies. A move to eliminate the negligence lawsuit, however, would be a significant step toward reforms that would be welcomed by the motoring public.

Editorial
The Seattle Times
September 27, 1970

You remark that lawyers handling automobile-negligence lawsuits are the only ones profiting by the present insurance programs; if true, this is not a problem for the insurance industry to correct.

If the lawyers are abusing the rights of their profession, then let the legislators correct it by direct legislation affecting the legal profession. The insurance industry should not be made the whipping boy.

Robert C. Rodruck, Pres.
Pacific Underwriters Corp., Seattle
The Seattle Times
October 4, 1970

NERO FIDDLED: Jim Dolliver, Administrative Assistant to the Governor, stated in Yakima at a recent meeting of local Bar Association officers that there would be at least three "no fault" bills introduced in the State Legislature during the coming session. If the writer understood him correctly, one of these would be by executive request.

It would seem that lawyers, whether individually or in association with each other, should get involved in structuring the change which is obviously coming to our auto litigation system. Some two years ago, a special committee of the American Bar Association made a comprehensive study of our automobile accident reparations system. It produced much evidence to support our present liability system and made many constructive recommendations for improving it, including the adoption of the comparative negligence rule, the streamlining of our courts (e.g. the six-man jury), the expansion of our auto liability medical payments provision to cover other pecuniary losses suffered by the victims of auto collisions, and court supervision of contingent fee contracts. Their report was adopted by the ABA General Assembly in 1969, but the excellent work seemed to stop there.

The Washington State Bar has done next to nothing on the problem. It seems inconceivable that anything so vital to the profession should be so ignored.

Calendar Call
The Spokane Bar
January 1971
Del Cary Smith, Jr., Editor

No-fault insurance, a controversial new concept in auto insurance will get an airing in the Legislature this session although some lawmakers will no doubt want to bury it under the rug.

At least two bills, one backed by Gov. Dan Evans and the other sponsored by Senator Nat Washington, Ephrata Democrat, are slated to be thrown into the hopper.

How much chance they have in the Legislature is anybody's guess. No-fault insurance is designed to drastically reduce court litigation and thus save on lawyer's fees. The legislature includes many lawyers, many of whom receive at least a portion of their income from auto-accident litigation.

AP Dispatch
The Seattle Times
January 13, 1971

Gov. Dan Evans has put the finishing touches on his legislative program. Evans said no-fault insurance "has excellent possibilities" but "should not be undertaken without better information." He called for creation of a commission to study the subject and report to the 1972 session.

AP Dispatch
The Seattle Times
February 5, 1971

"No Fault" Auto Insurance — Yes:

AUTOMOBILE INSURANCE... FOR WHOSE BENEFIT?

In 1967 Governor Rockefeller appointed a committee to study the present tort liability system for compensating the victims of auto accidents, with a view to possible changes in the system. His executive budget requested a $300,000 appropriation for staff and other working expenses of the committee, but no funds were appropriated. Finally in September of 1969, the Governor requested Richard E. Stewart, New York Superintendent of Insurance, to undertake the project.

What became known as the Stewart proposal was submitted to the Governor on February 12, 1970 and was released February 16, 1970. It was introduced in the New York legislature and was supported by the Governor in various public statements. The legislature's Insurance Committee held a hearing March 10, 1970 and reported adversely April 28, 1970, stating inter alia that it was the unanimous opinion of the members of the committee that severe and numerous problems would result had this program been adopted in its present form and that the committee was preparing its own program of reform to deal with problems in automobile insurance. Subsequent hearings have been held by the committee.

Richard S. L. Roddis, Dean of the University of Washington School of Law and former Insurance Commissioner of California, spoke on the Stewart Proposal at the WSBA annual meeting in Vancouver, B.C. in September 1970. His assistance is acknowledged at the front of the Proposal. Excerpts from the 164-page Stewart Proposal follow:

What are the characteristics of the present system in practice?

Uncompensated Victims

By its own theory, the fault insurance system is not supposed to pay benefits to everyone who suffers loss in an automobile accident.

The practice quite lives up to the theory. One out of every four people suffering bodily injury in an automobile accident in this State receives nothing whatsoever from the fault insurance system.

Delay

Even where the fault insurance system pays something, it pays slowly. Injured victims of automobile accidents face average delays in collecting under automobile liability insurance that are ten times as long as the delays in collecting under collision, homeowners or burglary insurance and forty times as long as delays under accident and health insurance.

The average delay in paying automobile personal injury liability claims in this State is well over a year. A typical large claim waits longer than a typical small claim. While waiting, the victim usually gets nothing from the fault insurance system.

Unpredictability

The fault insurance system operates through thousands of legal and extra-legal forums that apply its rules unevenly and unpredictably.

Because the legal rules of fault were laid down by appellate courts, it is easy to imagine the system is directed by those courts. But it is not. Only about 1% of automobile liability claims are de-

cided by a court, and very few of these get to the appellate courts.

The other 99% of the claims are settled in a proliferation of forums outside the judiciary — typically in unrecorded, private sessions between a claimant or his attorney and an insurance adjuster. The expense and delay of court trials make the judiciary, in practice, a remote forum, and it is unlikely that the law of the appellate courts is a forceful or precise guide to what goes on in the adjuster's office.

The essential fact is that the adjustment of claims is not a decision-making process, where a disinterested third party, with power to impose its decisions on the other two, finds the facts, interprets the law and thereupon decides who is right and how much is owed. Rather it is a bargaining process in which each of two antagonists tries to get an advantageous agreement out of the other.

Thus, under the fault insurance system, determinations are made either by an overburdened judiciary on stale facts or else by insurance adjusters in a bargaining process. Part lottery and part bazaar, the fault insurance system is unreliable and unpredictable.

Malapportionment of Benefits

The award for "pain and suffering" is no longer ancillary to the award for economic loss. Quite the contrary. In the typical case today the award for "pain and suffering" is larger than the award for economic loss.

Nor is this strange fact traceable to the big case of terrible injury. Quite the contrary. It is the small case, the minor injury, that receives proportionately the largest award for "pain and suffering."

For example, a leading empirical study revealed that of accident victims with small economic losses, one-third were significantly overpaid, receiving through the fault insurance system at least 1½ times their economic loss. But only 18 percent of them were underpaid, receiving less than three-fourths of their economic loss.

By contrast, the same study found that of the victims with the largest economic losses, none was overpaid and all were underpaid. Not one received so much as three-fourths of his economic loss, and 71 percent of them received less than one-quarter of their economic loss through the fault insurance system.

What does all this mean in human terms? It means that the fault insurance system overcompensates the slightly injured and undercompensates the seriously injured.

Lack of Coordination of Benefits

Where and when and however much or little the fault insurance system pays, its benefits are not coordinated with those from other sources.

An accident victim often is entitled to payments from such sources as health insurance and income continuation plans. Today 91 percent of the workers in this State are covered by health insurance, and most are covered by income continuation plans as well.

These and other sources pay significant benefits to traffic victims. But under the "collateral source rule" of the fault insurance system, these other benefits are generally disregarded in setting the automobile liability insurance award.

This lack of coordination of benefits between the fault insurance system and other sources is bad, both as a matter of insurance theory and as an impediment to the smooth functioning of the various reparations systems involved. It also has bad effects on insurance consumers and accident victims.

One such bad effect is that an employee with good fringe benefits does not see those benefits reflected in an immediate lowering of his automobile insurance premiums. Frequently those fringe benefits are collectively bargained and are financed by employer and employee contributions. What the employee pays is an obvious cost to him. What the employer pays is also a cost to the employee, in that it typically represents the giving up of some equivalent wage or fringe benefit item that might otherwise have been bargained for.

Yet no matter how progressive his fringe benefits, the employee's automobile insurance premiums are unaffected. All he gets is a chance at redundant payment if he is injured some time in the future.

Hindrance to Rehabilitation

In personal injury cases, a money award can reimburse the victim for his medical expenses, can replace his lost earnings and can pay him something in addition.

But where the accident victim is in danger of being permanently crippled or scarred, money can never be the best answer. Far better from the victim's standpoint is rehabilitation, so that he not be permanently crippled or scarred and so that he be restored to normal life as quickly and fully as possible.

The fault insurance system, however, does not promote rehabilitation. It hinders rehabilitation.

Rehabilitation is most urgently needed in cases of serious injury. The fault insurance system, as we have seen, pays proportionately least to the seriously injured.

Many techniques of rehabilitation have to be begun promptly. They cost money. The fault insurance system, as we have seen, pays slowly.

Rehabilitation programs must be planned and often take a long time, thus requiring certainty that money be available for payment over an extended period. The fault insurance system is, as we have seen, unreliable and unpredictable as to whether and, if so, how much it will pay. Moreover, it makes its payments all at once, in a lump sum, which means that any allowance for future rehabilitation expenses can only be estimated and that there can be no assurance that the money awarded for rehabilitation will still be available when it is needed.

Inefficiency

Because of its complex structure and the large number of individual acts and operations it involves, the fault insurance system is inherently expensive to operate. A significant part of the dollar that passes through the mechanism inevitably sticks to the mechanism, burdening consumers and shortchanging victims. That we could see in the system in theory.

What happens in practice? What becomes of the personal injury liability insurance premium dollar?

First of all, insurance companies and agents use up 33 cents. Then lawyers and claims investigators take the next 23 cents.

Together these items make up the operating expenses, or frictional costs, of the fault insurance system — 56 cents out of every premium dollar or $384 million a year in this one State.

What happens to the 44 cents that get through to the accident victim?

Now victims as a class get the 44 cents, and in that sense the 44 cents could be considered "benefits" paid by the fault insurance system. But such a mechanistic standard of efficiency would be met even if all 44 cents, or $302 million a year, went to one victim while the others got nothing. Obviously the 44 cents cannot be the end of our inquiry. We should consider efficiency in human as well as mechanical terms, which involves looking at what the 44 cents go to pay for.

In our judgment, the profligacy of the operating costs of the fault insurance system, and its wantonness in mismatching limited resources with serious human needs, would be enough to bring the whole system down someday even if there were nothing else wrong with it.

Other Proposals

It is sometimes proposed that the defense of contributory negligence be replaced with a rule of comparative negligence. Comparative negligence would at least qualify for compensation some victims who cannot get it now, and that much is good. But it would do so by making the process of deciding claims more complicated than it is today. It would increase the inefficiency of the fault insurance system. To the extent it increased benefits to victims, it would do so at a disproportionate cost to consumers in higher premiums.

It is sometimes proposed that some medical and income loss be paid to all accident victims on a first-party, no-fault basis, with such payments to be set off against any subsequent amount recovered by the victim from a negligent party's insurer. What these proposals amount to is an overlay of no-fault benefits on top of the fault insurance system. Their purpose is to lessen the delay and incompleteness which we have seen in the fault insurance system. But the "overlay" proposals would do so in a way that would increase the inefficiency of the overall reparations system and that would have to raise premium rates substantially.

Beyond the serious practical defect of expensiveness, the "overlay" proposals are up against a dilemma which they can never resolve. To the extent they place low limits on the no-fault benefits, as do all the current proposals, they would aggravate the misallocation of benefits — paying too much on small losses and too little on large losses — that is already one of the cruelest flaws in the fault insurance system. To the extent the "overlay" proposals provide generous benefits on a first-party, no-fault basis, they destroy anything that might be left of a reason for continuing to have the fault insurance system at all, for the most basic principles of fault law (shifting losses to negligent defendants and denying compensation to negligent plaintiffs) would have been completely done away with by the combination of liability insurance and first-party benefits.

Conclusion

In examining the fault insurance system in practice, we have seen its inherent or theoretical defects magnified many times by the practical burden of a large number of claims, and we have seen practical failings even beyond those to which the theory of the system alerted us.

Stewart Offers:
A PROPOSAL FOR A BETTER SYSTEM

1. **A Compensation System**

An accident victim would be able to recover for economic loss resulting from an automobile accident without having to prove the negligence or fault of somebody else. The present tort action for negligent operation of an automobile would be abolished. The proposal has elements of a first-party, no-fault system and of a strict liability system, for this is an area where those two legal concepts largely overlap.

2. **Unlimited Benefits for Net Economic Loss**

The compulsory, minimum automobile insurance should, in general, provide full compensation for the net economic loss of accident victims. This full compensation should be equally available to the owner, driver, passenger and pedestrian injured by the vehicle.

(a) *Personal Injury*

An injured person can suffer several kinds of economic loss, and the proposed compulsory insurance would give compensation for all. Benefits would be paid periodically, as the victim's losses and expenses accrued.

(b) *Property Damage*

(i) *Automobile damage.* The vehicle owner would be responsible for damage to his own car, but would not be compelled to insure. The vehicle owner would, of course, have the option of insuring against such damage, as he may now do with collision insurance. He would not be liable for damage to someone else's car.

(ii) *Other property damage.* The vehicle owner would be responsible for damage to property other than another automobile — property such as the clothing and belongings of passengers and pedestrians and such as roadside buildings. Since the property involved would be primarily that of other people, insurance against its damage should be required and included in the vehicle owner's compulsory insurance.

3. **Compulsory Insurance**

With respect to personal injury, the automobile insurance which all vehicle owners would be compelled by law to buy would cover only net economic loss.

To avoid duplication of benefits, and correspondingly high premiums, it is necessary to choose either automobile insurance or the other medical and wage loss insurances to provide the primary coverage. We have concluded that the compulsory automobile insurance should pay only those economic losses not repaid from the other sources.

With respect to property damage, the vehicle owner would be compelled by law to insure against damage to property other than automobiles but, as discussed above, would not be compelled to insure against damage to his own car.

4. **Special Cost Burdens**

Certain categories of drivers who are, as a class, especially hazardous should bear the total cost of accidents in which they are involved. Simply by being on the road, such drivers are performing a sufficiently anti-social act that society is entitled to say they use the road at their peril.

These categories would include drunken drivers, drugged drivers, drivers using a car in the commission of a felony, and drivers intentionally causing accidents.

These categories of drivers would be subjected to strict liability for the damage they caused, and the liability would be of the driver and not the vehicle owner. Their liability would not depend on proof that they were, at the moment of the accident, negligent or at fault.

These special obligations would have no effect on the compensation of victims. In an accident involving a driver in any of these categories, the victims would be able to recover compensation from a vehicle owner's insurer as in any other case. The paying insurer could then claim reimbursement from the strictly liable driver or his insurer.

5. **Optional Coverages**

While our proposal specifies the minimum coverages which all vehicle owners would be compelled by law to buy, it also leaves ample room, and provides incentives, for individuals to buy additional, optional coverages suited to their individual needs.

These optional, supplementary coverages could be expected to evolve over time. While we do not need to foresee now every possible form the optional coverages might take, certainly among the possibilities would be (i) insurance for other than net economic loss, (ii) collision insurance for damage to one's own car, (iii) extra liability insurance for remaining fault law situations, and

(continued on page 27)

"No Fault" Auto Insurance — No:

CRITIQUE OF THE STEWART PROPOSAL

By William J. Flynn, Jr.

Under the Stewart Proposal, the only benefits paid would be for "net economic loss" — meaning expense for medical and hospital care, for rehabilitation, for some property damage (such as clothing, but not for damage to automobiles) for miscellaneous expense incurred on account of the injury, and for net income loss.

The Stewart proposal is made tempting by estimates of premium savings which are uncertain and illusory as we shall point out below.

As for cost predictions in new and untried programs: After Medicaid was suddenly introduced and passed late in the 1966 Session and signed into law, the early estimates of its cost turned out to be incredibly low as the cost of the program skyrocketed.

In 1965, the final pre-Medicaid year, public assistance medical spending in the state was $223.5 million. Estimates for 1969 are about $1.05 billion. This is despite limiting and cutback legislation enacted each year through 1969.

The Stewart proposal seeks to lower auto premium cost by using as a crutch labor's hard-earned employment fringe benefits for which labor bargained with employers as part of wage packages, whereas under the present system labor keeps its fringe benefits. Further, the proposal would give nothing but expenses to persons with severe injuries now worth $10,000, $50,000, $100,000 and other amounts large and small. Further, it shifts high premium cost from reckless drivers to good drivers who have large families and good earnings.

Mr. Flynn is immediate past president of the Bar Association of Erie County and is a Fellow, American College of Trial Lawyers. Reprinted from 42 New York State Bar Journal No. 5 (August 1970); *Portions of the article have been omitted because of space limitations.*

Illusory Savings

The Stewart proposal has claimed 56 percent lower premium cost for "required coverage" but the accompanying State Insurance Department report discloses that this is partly due to an 87 percent reduction in the property damage portion of the insurance premium simply because no owner would be protected any more for damage to his car unless he carried collision insurance. He could not collect for his car damage from the other driver who caused it, nor could another driver collect the other car's damage from him. Each and every owner would have to pay for his own car damage. If he wished, he could carry collision insurance coverage which is comparatively expensive especially for newer model cars, and continues to rise in cost due to the increasingly high repair costs for car damage. The 56 percent "saving" is thus an illusory figure. At present 50 percent of car owners carry collision insurance. The other 50 percent who now do not carry it would have to do so under the Stewart proposal or pay for any damage to their cars out of their own pockets.

(The proposal states that for a "typical" owner the average overall saving would be 33 percent.)

Illusory Savings Will Vanish

However, what would happen if the Stewart proposal were adopted? Exclusions would probably be written into employer-employee fringe

benefit plans, sickness and accident policies, sick leave benefits, and the like, so as to prevent exploitation by the Stewart proposal whenever the person's expense resulted from an automobile accident. (For example, present Blue Cross type policies exclude injuries covered by Workmen's Compensation.)

The auto premium would therefore have to carry the full load, and the auto premium would rise straight up in cost.

That would be the end of the alleged cost savings under the proposal.

The alleged savings would vanish and the proposal would end up as more costly than the present system because, like Medicaid, its cost is tied to the astounding modern upward escalation of medical and hospital charges.

Also, the proposal is open-ended and unlimited as to these payments whereas the present system is not. Under the present system a claim is closed permanently by a settlement or a verdict in court. Also, the present system does not pay the drivers guilty of causing accidents. Not so the Stewart proposal, which pays them too, which increases the impact of medical and hospital cost increases.

The open-end medical and hospital expense means, just as it did under Medicare and Medicaid, that people will seek and be given much more prolonged, elaborate and expensive treatment than they would otherwise have sought or been given, adding immensely to the cost.

In any event the cost estimates of such a proposal must never be taken seriously because for at least 20 years the insurance industry has not been able accurately to forecast future claim payments due to the continuous rise of the cost of services and other factors.

Family Men with Good Earnings Would Pay Highest Premiums

Since the Stewart proposal gives immunity to the wrongdoer and requires the car-owner victim to pay himself and passengers' damages by his own insurance rather than collect damages from the person guilty of causing them, this means that the insurance company of each car owner would charge him a higher premium depending on the number of persons in the family who could be injured. The bigger the family, the higher the premium. The insurance premium would also be higher if the father were a good earner than if he were not, because if he were unable to work due to injury his insurance company would have to pay him more for his loss of earnings than if he were a lower-paid person. This also means that men of high earnings would pay very high premiums. Furthermore, if the wife worked — and more do nowadays than ever before in history — the premium would go still higher — and go still higher again if any one else in the family worked, such as sons and daughters.

The present system of liability based on fault quickly and easily pinpoints bad drivers whereas a non-fault system such as the Stewart proposal would not involve the type of investigation that presently reveals it.

Only a few months ago during 1969, State Farm Mutual Insurance Company in a massive national poll of 3,090,315 auto policy holders, received responses of which 97 percent stated that the cost of car insurance should be lower or higher depending on a person's driving record; and 94 percent stated that the driver who causes an accident, or his insurance company, should pay for the losses of the other people in the accident.

The present system does this now. The vast preponderance of people believe in the present fault principle under which the wrongdoer — not the victim, as under the Stewart proposal — pays for the damages.

Wrongful Death

The Stewart proposal states that it intends in the future also to abolish actions for wrongful death and states it would include this in the plan now except that the New York State Constitution (Article 1, Section 16) forbids impairment of the action for death, and the proposal recommends amendment of this Constitutional provision. This would mean that the widow and children of a dead father would receive next to nothing, perhaps only payment of the funeral bill, judging from the scale of other benefits under the proposal. But under present law such a death case is now worth $100,000, $150,000, $200,000 or more depending upon the age and earnings of the deceased father and the number and age of his dependents.

Such humane awards would be lost to families under the Stewart proposal.

It is eminently simple to offer a proposal with low premium cost. Just make awards and benefits non-existent, as above, for injuries or death.

This is like saving gasoline by leaving the car in the garage; or like saving tuition expense for children by not educating them; or saving the cost of clothing by going unclothed.

"Deceptively Simple and Litigiously Prolific"

Although the Stewart proposal is presented inter alia as a cure for court congestion, it contains the following language (proposed new Article 18, Section 673, Insurance Law) to define economic loss to be paid in the case of personal injury (emphasis ours):

"(a) in the case of personal injury,
"(i) all expenses *reasonably and necessarily* incurred for medical and hospital care,
"(ii) all expenses *reasonably and necessarily* incurred for physical and occupational rehabilitation,
"(iii) all amounts which *would have been* earned but for such injury, and *all other expenses reasonably and necessarily* incurred on account of such injury;"

The above language sets alarms ringing in the minds of lawyers with litigation experience.

Workmen's Compensation laws are "no-fault" plans too but the language "arising out of and in the course of employment" has been characterized by the Supreme Court of the United States as "deceptively simple and litigiously prolific" (*Cardillo* v. *Liberty Mutual Insurance Company, et al.* 330 U.S. 469).

Perhaps some theoreticians who agonize over the present system and pelt us annually with these new no-fault plans may not know, as do lawyers with litigation experience, that many cases tried in court or settled before trial were controverted not upon liability but upon the *nature and extent of injuries* — alleged on the one hand to be serious and on the other hand to be trifling.

Thus under the Stewart proposal the question of how much medical expense, rehabilitation or loss of earnings was "reasonable and necessary" or "would have been earned but for such injury" are linked to highly litigious issues about whether a valid injury ever existed in the first place (just as in litigation under the present system) — or whether it is a continuation of a pre-existing systematic condition, especially in older persons — or an aggravation of an injury from that other accident two years ago.

The one massive inducement to litigation under the Stewart proposal — which stands out like a fire on a hilltop at night — is that it is open-ended for a lifetime of benefits. Thus, it becomes the world's greatest pension system with full net income loss payments for anyone who can prove he cannot work and also provides an enormous inducement to many others to malinger somewhat for that extra vacation with pay.

Insurance carrier resistance especially to lifetime and long-duration claims for lost earnings or medical expense is an obvious litigation prospect — and not just once, but periodically through the years a claim stays open.

The open-ended medical and rehabilitation features, for a lifetime, as applied particularly to older persons with their susceptibility to aggravation and precipitation of prior dormant degenerative diseases and disabilities of the aging process, point again to the litigation-prone provisions of the Stewart proposal.

The present system at least closes most claims by settlement or verdict within a year or two.

The argument, which has been used in support of the Stewart proposal, that litigation under health and accident policies is minimal compared to litigation under the present automobile tort system, neglects the key difference that the former does not have to be linked to any particular event or episode — it is sufficient that the person is ill or in the hospital. Naturally, causal relationship to a particular automobile accident must be shown under the Stewart proposal simply because it is *automobile* insurance, not skiing insurance to pay for the residuals of that fracture on the slopes some time ago, nor premises insurance for the icy sidewalk falldown of last winter.

Complex Rating and Adjustment Procedures

One of the Stewart proposal arguments has been that overhead cost of the present system is high.

But it is likely to be the same or higher under the Stewart proposal because of a proliferation of new requirements of investigation and verification both in policy rate-making and in adjustment of losses.

The insured's age, health, prior health and accident history, earnings, collateral sources such as availability of other health and accident insurance and wage-continuation plans, number of persons in his household who may ride in the car as well as drive it, and *their* age, health and accident history, earnings, and collateral sources as well — would now be directly involved in setting the rate, since each insured owner insures himself and all who may ride in the car. Disclosure of income tax returns would be a typical incident.

Furthermore, such data would have to be updated at frequent intervals and one can foresee

a policy requirement upon owners assiduously to keep the carrier informed of changes as they occur, to say nothing of the periodic audits and questionnaires flowing from the carrier to the insured.

Then, *after* an accident, the adjustment procedures unquestionably would require detailed proof on all these same items.

Added to this, after the accident, would be the verification of the injury itself and true duration, and its relationship to the particular accident — or whether it is an exacerbation of some other condition unrelated to the accident, and the other litigation-breeding and carrier claim-resistance features discussed *supra*.

Other Aspects

Press information releases by proponents of the proposal contained claims such as these, which were widely printed in newspapers:

— that the present system "pays absolutely nothing to one of every four persons injured." *Answer*: This is for the most part the drunken driver, and the driver, drunk or sober, who violates all the statutes and ordinances designed to save lives and prevent injury, who drives at high speed and who drives through red lights and stop signs. The present system refuses to pay him an award.

— that the present system "underpays the seriously injured." *Answer*: It does at times, chiefly because of the too-low $10,000 compulsory insurance presently in effect. The State Insurance Department itself has advocated for several years that it should be raised. As it happens, 70 percent of car owners now voluntarily carry more than the minimum, according to State figures.

However the deeper irony lies in this: The Stewart plan, while saying that the present system "underpays the seriously injured" would itself pay them nothing at all except out-of-pocket type expenses, and nothing at all for the injury and disability per se, such as a scarred or disfigured face, a painful spine, loss of ability to engage in activities like golf and bowling, the loss of a limb or an eye, and the like. Injuries now worth large dollar amounts, and involving lifetimes of pain and discomfort, would under the Stewart proposal be limited simply to expenses.

The people who read the Albany press releases were not adequately informed, despite the considerable length of these various releases, about what would be lost to injured persons as above — while instead being told that the present system "underpays the seriously injured."

The present too-low 10/20 compulsory insurance, (although voluntarily exceeded by 70 percent of owners who carry higher limits) is particularly shocking in cases involving the death of a father leaving a large family, to say nothing of serious injury cases.

The Province of Ontario has $35,000 compulsory coverage.

New York Is Already Advanced

Another claim by proponents of the Stewart proposal was that the present system "makes the average claimant wait 15 months before anything is paid, regardless of his financial plight." *Answer:* This fails to mention a number of things, such as: About 70 percent of automobiles registered in this State (other than in the assigned risk category) now carry medical payments additional coverage, according to State Insurance Department figures which also show that 91 percent of New York's employed labor force were covered by some form of health insurance, according to 1967 data. The compulsory New York Disability Benefits Law now requires payment regardless of fault, to employed persons injured in automobile accidents, or otherwise ill or injured, of up to $65 per week for up to 26 weeks. Many employers supplement this through wage-continuation extended coverage. Social Security disability payments are obtainable after the first six months (i.e. where the Disability Benefits Law leaves off) if the disability is expected to last (or has lasted) at least 12 months. Since the 1965 amendment the disability need not be permanent. A Buffalo-area hospital administrator said in September 1969 that 90 percent of bills are now being paid by hospital insurance, Medicaire, Medicaid or Workmen's Compensation.

Sources of Discontent

Much of the pressure to reform the liability system in this country has originated in a number of states which do not have enlightened measures already enjoyed in New York.

Many victims of accidents go without redress in those many other states which do not have compulsory insurance (only three states, New York, Massachusetts and North Carolina, have compulsory insurance); or which have so-called "guest" statutes under which a passenger cannot recover against the owner or operator for or-

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WASHINGTON STATE BAR NEWS

Bar Supports 15 Items in Legislature

After two years of work, the Legislative Committee of the Washington State Bar Association has announced that the Bar Association will support 15 items of legislation at the 1971 session of the Legislature. These measures, many of which have been drafted by the Legislative Committee, have been approved by the Board of Governors and consist of the following bills which will be introduced in the 1971 session:

1. Extension of the justice court act to all counties.
2. Legislation authorizing use of a six man jury.
3. Revision of bulk sales statute to permit the immediate transfer of a business if the proceeds of the sale are placed in escrow.
4. Legislation providing that an action for pain and suffering shall survive the death of the individual who dies of a cause not related to the event which produced the pain and suffering.
5. Legislation providing for service of process on a nonresident motorist by registered mail without the necessity of producing a return receipt.
6. Legislation providing that the Coroner shall cause an autopsy to be performed in all cases in which a death occurs to a prisoner while under con-

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Twenty-Seven Lawyers in Legislature

The 42nd Washington Legislature has as members 17 lawyers in the 49-man Senate and 10 in the 99-member House. The number of lawyers is up one from 1961.

Although the Oregon Legislature reports the number of lawyers declining so severely that the House is unable to man its Judiciary Committee with them, this is not the case in Washington.

Senate: James A. Anderson, (R), Bellevue; Frank R. Atwood, (R), Bellingham; George W. Clarke, (R), Seattle; John L. Cooney, (D), Spokane; Fred H. Dore, (D), Seattle; Martin J. Dur-

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In Memoriam

Samuel B. Bassett, 75, Seattle, died January 16 after a long illness. A 1924 graduate of the University of Washington Law School, he was a noted labor attorney. In 1928 he argued against the use of wiretap evidence in the bootlegging trial of Roy Olmstead, but was overruled in an historic 5-4 decision of the U. S. Supreme Court. He was associated with George Vanderveer, famed Seattle defense attorney and figures prominently in Vanderveer's biography, "Counsel for the Damned." He was a partner in Bassett, Donaldson and Hafer. His survivors include his son, Stephen S., who practices in Bellevue.

Alden C. Bayley, 83, Shelton, died December 16, 1970. He was a 1910 graduate of the Detroit College of Law.

Robert M. Burgunder, 82, Seattle died February 10. He had retired in 1962 following a heart attack and had been bed-ridden the past five years. A 1910 graduate of Stanford School of Law, he was prosecutor of Whitman County from 1913 to 1917 and of King County from 1930 to 1935.

Lloyd D. Cunningham, 52, Moses Lake, died September 28, 1970. He was a graduate of the University of Kansas Law School.

Edward P. Donnelly, 81, Seattle, died Jan. 13 in a nursing home after a long illness. A 1915 graduate of the University of Washington Law School, he served as an assistant state attorney general from 1931 to 1959, under five attorneys-general.

Wilmot W. Garvin, 68, Spokane, died February 5, when he suffered a heart attack at a neighborhood grocery store. He had suffered from several earlier attacks.

Howard Kafer, 46, Everett, died December 31 after collapsing at his office. A 1955 graduate of the University of Washington Law School, he was founder and president of the Land Title Co. of Snohomish County, founder and chairman of the board of the Security Title Insurance Co. of Hawaii, and managing partner in Kafer, Gissberg & Wilson.

George A. Meagher, 94, Seattle, died February 5 in a Seattle hospital after a short illness. He studied law in a private law office and in 1896 passed the state bar exam, the second exam to be given in Washington. He retired from the firm of Meier & Meagher in 1950.

Clarence A. Orndorff, 76, Spokane, died January 11 in a hospital following an illness of several months. A 1918 graduate of Gonzaga Law School, he was a retired army colonel, a founder and past chairman of the Gonzaga University Law Council, a former representative in the state legislature and a past president of the Spokane County Bar Association. He had been in practice with James E. Winton since last March.

E. Lawrence White, 44, Spokane, died February 3 following an illness of multiple sclerosis dating back several years. He was graduated from the University of Washington in 1952, and was a former partner of Keith, Winston & Repsold.

Disbarment

J. Morrison MacDonald, former Seattle attorney, was disbarred from the practice of law in Washington by opinion filed January 14, 1971. *In re MacDonald*, 78 Wn.2d 810 (1971).

Law Day

Law Day once pushed a fairly standardized theme, appropriate for those days: The rule of law vs. rule by men, particularly those in communist countries.

No more.

The 1971 Law Day theme is as up-to-the-minute relevant as today's headlines: Channel Change Through Law and Reason. It is the Law Day planners' response to one of society's pressing problems.

"The social crises which have (occurred) are known only too well: Severe discord and polarization of the American people, lack of tolerance for the other viewpoint, repressive attitudes, jeopardy of the liberties of a free society, unwillingness to be guided by the wisdom of reason," they say.

"It is imperative, therefore, that the rule of law be looked upon and recognized as the only rational conduit for change . . .

"This appeal by no means is intended to thwart or discourage change; change is the positive force behind progress, and progress serves to make traditional institutions more responsive to contemporary needs."

Law Day, May 1, this year falls on a Saturday. Therefore many of the local bars' school and other observances should be planned for the preceding day. Bars also are urged to enlist the participation of churches and pastors in observing the day in sermons Sunday, May 2.

The State Bar's American Citizenship Committee chairman, and Law Day state chairman, is **William C. Goodloe** of Seattle.

Remember to make contributions to the Washington State Bar Foundation.

Prosecutors Support, Bar Opposes Grand Jury Bill

The Judicial Council's revolutionary grand jury bill [HB 175-SB 239] got the solid endorsement of county prosecutors, but the back of a hand from the State Bar Association at a hearing on February 2.

Prosecutors from King, Pierce, Snohomish, Grant and Cowlitz counties came in person to endorse the bill. The prosecutors' association endorsed it earlier.

For the first time in state grand jury law, the state could order a witness to testify, then grant him immunity from prosecution on the basis of information extracted from him.

Quinby Bingham, lobbyist for the State Bar Association, said his group was for reform — but they don't like the fact that an attorney would leave the grand jury room once his client has been granted immunity; they think a lawyer should be able to represent more than one client before a grand jury; and they "haven't had time to study" the new concept of an inquiry judge.

When Bingham put the Bar Association of record against the lawyer leaving the grand jury room when his client is granted immunity, Rep. Mike Ross, R-Seattle, snapped:

"I'd be amenable to having it amended if the Bar Association spent more time enforcing its code of ethics. The former prosecutor in King County, Chuck Carroll, called the judge prior to a case being dismissed — a violation of the ethics code. The Bar Association didn't do anything about it. The Bar Association dodged it."

"I wouldn't know about that," said Bingham who seemed to be sweating lightly in the hot committee room. "I'm from Pierce County."

King County Councilman **Ed Heavey**, who lost the prosecutor's race to **Christopher T. Bayley** after initiating the Judicial Councils' grand jury study as a representative in 1967, agreed that the lawyer should leave the courtroom when the witness is granted immunity.

Why?

"It prevents a possible leak," said Heavey, summing up.

— Shelby Scates
Seattle PI

Few criticize new proposed criminal statutes for state

Criticism was minimal at a public meeting held on January 9, to hear comments on a proposed new state criminal code which is bound to spark much controversy before being approved by the Legislature [SB 384].

The meeting was held by the Legislative Council's Judiciary Committee at the University of Washington Student Union Building.

State Senator **Perry Woodall**, Toppenish Republican, and committee chairman, expressed surprise at the minimum of criticism.

Many at the meeting congratulated the committee and the advisory group which prepared the document for its direction and intent if not for all it specifies.

State Court of Appeals Judge **Robert Utter** summed up approval of the intent of the revision by telling the committee:

"I think almost everyone has condemned criminal laws on the books that are not enforced or enforceable . . . I think this represents an honest evaluation of what laws people are determined to enforce."

Judge Utter said it cannot be underestimated that having laws on the books that are not enforced generates disrespect for the law.

The strongest criticism of the proposed code came from Cowlitz County Superior Court Judge **Frank L. Price.** He told the committee.

"In my opinion, the effect of the changes would be to decrease the effectiveness of law enforcement and to increase the rate of crime and disrespect for lawlessness.

Judge Price touched on one of the most criticized changes. He said: "The proposed code materially reduces the number and seriousness of statutory sex offenses. Among other changes it legalizes homosexual conduct and adultery."

Judge Price also was critical of a new riot statute, which increases from the present three to five the number of persons needed to constitute a riot and makes riot a felony only if a person is armed with a deadly weapon.

He contended the new code would increase the burden of proof placed on the state in proving guilt. He also criticized proposed disorderly conduct provisions contending they would clear the way for demonstrators to act without incrimination in using obscenities and disrupting meetings.

But many law-enforcement representatives told the committee they felt the new code would help the job of law enforcement through a clearer classification of offenses.

— Don Hannula
The Seattle Times
January 10, 1971

Seattle Lawyers For Housing

By **Wally Fiore**

There is a national need for action to solve the problems of the shortage of housing and the high incident of substandard housing, for low-income families. The American Bar Association in an attempt to aid in these solutions has organized a national Lawyers For Housing Program, through its Special Committee on Housing and Urban Development Law. This program is directed at establishing a legal, political and social atmosphere which will be capable of generating low-income housing as well as contributing to the actual production of housing.

Lawyers For Housing is funded by the Department of Housing and Urban Development and by local contributions on a two to one basis. The Seattle local share is provided by the Ford Foundation, Model Cities, the Seattle savings and loans institutions, the Bullitt Foundation and the Simpson Timber Foundation. The legal cosponsor of the program is the Seattle-King County Bar Association. The nonlegal cosponsor is the Puget Sound Governmental Conference through which the federal funds are channeled. There are presently five cities operating in the program: St. Louis, Boston, Houston, Cincinnati and Seattle. A national director oversees and coordinates their functions from the headquarters of the American Bar Association in Chicago. It is expected that within the near future the program will be expanded to include New York City, Atlanta, and Los Angeles.

There are few professionals who have the opportunity to acquire an overview in a particular field, while also having the opportunity to acquire access to those in the power structure who may be in a position to offer assistance in solving problems. Lawyers in general have these opportunities and are particularly suited to participate in an activity as broad in scope as housing and urban development. A lawyer can be a mover, an entrepreneur, and a catalyst; and the American Bar Association feels that these skills must be directed toward providing more low and moderate income housing.

Implementation of the American Bar Association policy guidelines is supervised in Seattle, as well as other cities, by a steering committee composed of seven members. In Seattle, five of these members will be selected by the Seattle-King County Bar Association and two of the members will be selected by the Puget Sound Governmental Conference. While extensive analysis will be required to identify a comprehensive program which will alleviate area housing problems there are some general goals toward which the three-attorney staff of Lawyers For Housing will direct its efforts. They are:

1. To increase the supply of low and moderate income housing through the establishment of vehicles capable

$92,000 Bar Sponsored Housing Program in Seattle

A new Lawyers for Housing Program went into operation in Seattle in February.

Wallace A. Fiore, former deputy director of the housing division of the Department of Community Development for New Jersey, has been named director of Lawyers for Housing. Prior to finishing his legal studies three years ago, he was a civil engineer for 12 years, working with housing-rehabilitation and urban-renewal programs for the City of New York.

Eugene Moen, formerly an OEO staff attorney with the Seattle regional office, has been named to the program staff with a third legal position still to be filled.

The program is initiated as a two year program with the funding for the first year being $92,000. The sources of the funds are: $60,000 from the Department of Housing and Urban Development, $15,000 from the Ford Foundation, $5,000 from the Washington Savings & Loan League, $11,000 from Model Cities and $1,000 from the Bullitt Foundation and the Simpson Timber Foundation.

Five of the seven members of the steering committee are selected by SKCBA. They are Richare White, Liem Tuai, Louis Pepper, Gerald Grinstein and Jerome Hillis.

Development of legislation to create a new state housing corporation will be among the first projects of Lawyers for Housing. Fiore says that creation of a Washington Housing Corp., similar to ones already established in the East, would assure maximum local use of federal funds available for such housing. Formation of a state housing corporation has been proposed in past legislative sessions.

Preliminary estimates call for two-thirds of the three-man staff's time to be spent working with sponsors for low-income housing and the remaining time with public agencies.

The offices of Lawyers for Housing is 1200 Northern Life Tower, Seattle (MU 2-5226).

of producing housing;

2. To provide assistance to sponsors and developers of such housing;
3. To increase the number of lawyers, including minority group lawyers, capable of dealing with the complexities of housing law and finance;
4. To demonstrate the kinds of housing implementation activities that can be undertaken and;
5. To provide experience and input on legal aspects of national housing activities.

Particularly, efforts will be made to pursue innovative approaches directed at overcoming institutional barriers which inhibit the production of low-income housing.

It has been found that complex requirements of federal housing programs tend to limit the number of developers entering the field of low-income housing. Sponsors, also, are discouraged by the red tape they must overcome to build housing. The federal programs are little understood and vehicles to create low-income housing such as local housing and development corporations, which are eminently more workable than federal programs, are absent in many areas. These findings are the basis for the specific goals of the Lawyers For Housing offices; to assist non-profit sponsors. Additional specific projects to be undertaken by Seattle Lawyers For Housing will be to review and analyze local zoning ordinances, local building codes, housing code enforcement procedures, and the effect of the property tax structure on the housing supply. In addition, a number of workshops will be established for attorneys with the purpose of assisting them in becoming familiar with housing as a field of law. These workshops will be held in conjunction with the Seattle-King County and Washington State Bar Association Committees on continuing legal education.

Of course no project for housing can succeed without the timely and appropriate contribution of the planner, the engineer, the architect, the builder, the financier, and the citizens for whom the housing is intended. The local Lawyers For Housing staff will use their ideally situated overview position to assure cooperation and contribution from these various quarters. In this coordinating effort, the advice and assistance of the Puget Sound Governmental Conference will be sought on a continuing basis, not only because of their knowledge of the communities of the area, but also of the sound political base they represent. An additional source of advice and assistance will be drawn from the Seattle-King County Bar Association Committee on Housing and Urban Development Law.

One of the first tasks of the Seattle Lawyers For Housing will be to assist the Model Cities Agency in creating a housing component. In addition they will assist the state division of Planning and Community Affairs in the development of the Washington Housing Corporation Act. In view of recent fires on Alki Point, an offer has been made to assist the City of Seattle in adding fire safety requirements to its present building code.

In this housing generating effort the local Lawyers For Housing Office and the local bar committee will have the benefit of the best thinking in the country on housing and urban renewal law and the benefit of solutions already arrived at in other offices. Although these are available the Seattle effort will not be limited to repeating that which has been done before. It will be seeking wholly new approaches as well to the problems and concentrating on methods which will enable the accomplishments to be institutionalized to insure their continuation.

It is contemplated that the program in Seattle will last for two years. At the conclusion of the first and second years' work the staff will prepare and publish reports summarizing activities and findings and making recommendations based on those findings. These reports will be delivered to the Puget Sound Conference of Governments, the American Bar Association and the Seattle-King County Bar Associations and will thereafter be available to others throughout the country.

Discipline and Removal of Judges

Several bills, which take different approaches on discipline and removal of judges, have been filed in this session of the Legislature.

HJR 31 and SJR 20, endorsed by the State Bar, provide that a commission on Judicial Qualifications shall be established by statute and specifies the composition of the commission.

HJR 25 and SJR 16, endorsed by the Judicial Council, provide that the procedure for involuntary retirement, suspension or removal shall be established by statute or by rule authorized by statute, but is silent as to whether this will be a commission and if so, its composition.

HJR 9, endorsed by the governor's Citizen's Committee on Constitutional Revision, provides that a Commission on Judicial Qualifications shall be established by law but is silent as to its composition.

Bar Supports 15 Items
(continued from page 13)

finement.

7. Legislation providing that the lien of the Department of Public Assistance for medical aid given to recipients receiving a personal injury should bear its proportionate share of the attorneys fees and costs incurred in collecting the medical expense.
8. Statute providing that the Supreme Court shall adopt the Rules of Professional Ethics for the Bar Association and amending R.C.W. 2.48.230.
9. Legislation providing that the court may fix reasonable attorneys fees in actions for damages in which the claim is under $1,000.
10. Amendment to R.C.W. 9.45.060 which would add property covered by a security agreement to the statute providing that it is a crime to remove property subject to a chattel mortgage or conditional sale from the State of Washington.
11. Increase in the portion of the filing fee that is used to support county law libraries.
12. Uniform Principal and Interest Act.
13. Revision of the judicial article of Washington State Constitution.
14. Legislation which would fix the age that minors may perform acts now or formerly restricted to persons over 21 to one uniform age.
15. Legislation which will allow the professional corporation that has only one stockholder to have only one officer and one director.

The Bar Association will also oppose the following legislation which has either been introduced at previous sessions of the legislature or in other states:

1. Legislation which would allow police officers to arrest for traffic violations not committed in their presence.
2. Any statute providing for a system of no-fault liability insurance similar to the Massachusetts plan or Keeton-O'Connell plan.
3. Legislation which would shorten any of the present statute of limitations on liability for negligent acts or require that plaintiffs post a bond for security and costs in order to file an action.

The legislative committee is also studying the newly proposed criminal code submitted by the Legislative Sub-Committee on Judiciary. This bill as now drafted provides that if passed the effective date of the legislation would be two years following the date of its enactment. For this reason, it will be possible to offer amendments to the criminal code in the future, and it is hoped that suggestions will be received from the attorneys throughout the State on this legislative proposal. □

Twenty-Seven Lawyers
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kin, (D), Issaquah; Charles W. Elicker, (R), Bainbridge Island; Frank W. Foley, (D), Vancouver; Pete Francis, (D), Seattle; William A. Gissberg, (D), Lake Stevens; Robert R. Greive, (D), Seattle; Francis E. Holman, (R), Seattle; August P. Mardesich, (D), Everett; Robert W. Twigg, (R), Spokane; Nat Washington, (D), Ephrata; Jonathan Whetzel (R), Seattle; Perry B. Woodall, (R), Toppenish

House: R. Ted Bottiger, (D), Tacoma; Robert L. Charette, (D), Aberdeen; Kenneth O. Eikenberry, (R), Seattle; Edward F. Harris, (R), Spokane; Vaughn Hubbard, (R), Waitsburg; Axel C. Julin, (R), Bellevue; Mark Litchman, (D), Seattle; Daniel Marsh, (D), Vancouver; Leonard A. Sawyer, (D), Puyallup; Thomas A. Swayze, Jr., (R), Tacoma. □

No Bar Exam Bias Found By Agnew

Vice President Agnew has criticized suggestions that bar examination standards be eased to admit more Negroes to the practice of law.

In a speech before a meeting of the National Association of Attorneys General, Mr. Agnew commented on developments in Pennsylvania, where some public officials and lawyers are calling for abolition of the bar examination. They say that the tests are "culturally biased" against Negroes, that a high percentage of them do not pass and suggest that all persons who gain law degrees be licensed to practice.

Mr. Agnew compared this to the open enrollment plan at the City College of New York, which he has criticized before. He said that such efforts "tear down standards," and "unqualified people are put into positions of responsibility that they can't handle."

"I think that's wrong," he added.

He said that he saw "no humane or benign reasons" to justify steps that might "lower our standards of justice" and that the best solution was not to lower testing standards but to improve educational standards. He said that blacks' competitive disadvantage was not due to racial differences and could be cured by hard academic work.

Fred P. Graham
The New York Times
February 2, 1971

MacLAUCHLAN AT LARGE

The Willard Wrights

The Bill Dwyers

The Howard Thompsons

The John Rupps

The Charles and Robert Beresfords

The Robert Fletchers

Around the State

CLALLAM REPORT

Ted E. Ripley has established an office at 205 Lincoln Bldg. in Port Angeles. He previously was with Riddle & Hines in Seattle.

EAST KING REPORT
By **CHARLES F. DIESEN**

According to **Ralph Thomas,** who is the sage among the trustees of the local association, when the East King County Bar Association was organized in the fall of 1962 its principal objective was to assemble the Bellevue and Kirkland attorneys in order that they could mutually decide what days would be office holidays. The Association now has 71 members. Accordingly, the objectives and purposes have become somewhat more sophisticated according to **Jay Nuxoll,** president, who says the author, in his last article, has mistakenly characterized our members as a group of Voyeurs.

John Hanson of Bellevue, in conjunction with members of the trust departments of participating east side banks is attempting to organize an Eastside Estate Planning Council.

KITSAP REPORT

Kitsap County has a public defender on an experimental basis. Named to the new post is **James Munro**, Bremerton attorney and Bainbridge Island resident. Munro served two terms as prosecutor some years ago. His appointment was made by presiding Superior Court Judge **Oluf Johnsen** on recommendation of the Kitsap County Bar Association. As public defender, Munro will be paid $1,000 a month. Review and evaluation of the experiment will be made May 1, Judge Johnsen said.

KLICKITAT REPORT

L. Eugene Hanson, Goldendale, has been appointed prosecuting attorney by the Board of County Commissioners to succeed **Edward B. Shamek,** who resigned.

LEWIS REPORT
By **DAN J. AGNEW**

There appears to be at least some prosperity arriving at the doorsteps of some Lewis County attorneys. **Laurel Tiller** of Dysart, Moore and Tiller, has begun pouring the footings of his new home in an area overlooking the city of Centralia. **H. John Hall** of Campbell and Hall has purchased a new car. **Gilbert Valley,** after stepping down from his post as prosecuting attorney, has set himself up in private law practice with his office at 1007 Chehalis Avenue, Chehalis.

J. D. Searle has added a new associate in **Byron Adams.** Byron hails from the state of New York and is a member of the Arkansas, Mississippi and Florida bars. Byron filled the vacancy created when **Brian Baker** was elected prosecuting attorney.

Mr. and Mrs. **Lee Campbell** have been enjoying a stay of rest and recreation in the sunny and warm climate of Mexico. About the time they return, Mr. and Mrs. **Jerry Moore** will take several weeks and vacation in the same country and hopefully the same weather.

PIERCE REPORT
By **DAVID E. SCHWEINLER**

Frederick B. Hayes, formerly an associate with the firm of Rush & Lynch, has become a partner and the new firm name will be Rush, Lynch and Hayes.

Charles E. Jett (University of Texas, 1969), formerly law clerk for Appellate Court Judge Vernon R. Pearson, has joined the firm of Conrad, Kane & Vandeberg, as an associate.

Mark L. Bubenik (Willamette Law School, 1970), formerly associated with E. Albert Morrison and Hiram E. Washburn, has joined the staff of the Pierce County Prosecuting Attorney.

Frank I. Loomis (Ohio State University College of Law, 1966) formerly associated with Albert and deMers, Federal Way, and **Ed Kirchen,** of Tacoma, Washington, has joined the staff of the Pierce County Prosecuting Attorney as a Civil Deputy.

James S. Witt, III (University of Oklahoma, 1969), formerly a Criminal Deputy with the Pierce County Prosecuting Attorney, has become an associate with the firm of Binns, Petrich, Mason and Hester.

Daniel E. Jacobson (University of Oregon Law School, 1968), formerly on the staff of the Pierce County Legal Assistance Foundation, has joined the staff of the City Attorney.

Huge W. Judd, a graduate of Stanford Law School, 1967, formerly on the staff of the Pierce County Prosecuting Attorney, has joined the staff of the City Attorney.

Geoffrey C. Cross (Golden Gate Law School, 1968), formerly an Assistant City Attorney, announced the opening of his law offices at 252 Broadway, Tacoma,

Washington, for the general practice of law.

J. Benedict Zderic (Gonzaga Law School, 1967), formerly Assistant Attorney General and Assistant City Attorney, announced the formation of a partnership for the general practice of law with **Robert G. Kerr.** The new firm name will be Kerr and Zderic, and their offices are at 9615 Bridgeport Way S.W., Tacoma, Washington.

Robert M. Kane, Elvin J. Vandeberg, Harold T. Hartinger, G. Perrin Walker, formerly of the firm of Conrad, Kane & Vandeberg, announce the formation of a partnership for the general practice of law, with **Charles E. Jett** as an associate, under the firm name Kane, Vandeberg & Hartinger. The new law offices will be in Suite 2100, Washington Plaza Building, Tacoma.

Carl C. Conrad and **David H. Johnson,** formerly of the firm of Conrad, Kane & Vandeberg, announce the formation of a partnership for the general practice of law under the firm name of Conrad & Johnson. Their offices will remain at 600 Rust Building, Tacoma, Washington.

The law firms of Gordon, Honeywell, Malanca, Peterson and Johnson and Blair, Thomas, O'Hern and Daheim, have announced the merger of their firms. The new firm name will be Gordon, Thomas, Honeywell, Malanca, Peterson, O'Hern and Johnson, and **Joe Gordon, Jr., Dennis S. Harlowe** and **Mark G. Honeywell** have become partners in the new firm. Their new offices are located in Suite 2200 Washington Plaza Building.

On January 21, 1971, the regular bi-weekly meeting of the Tacoma-Pierce County Bar Association was pleased to have as its speaker Mr. Darrell Smith, whose topic was "In The Crash."

SEATTLE-KING REPORT
By LLEWELYN G. PRITCHARD

C. Kenneth Grosse has been appointed Assistant State Attorney General in charge of the Seattle Law-Enforcement-Assistance Section.

Gerald Grinstein has been appointed a member of the President's Aviation Advisory Commission.

Former King County Prosecutor, **Charles O. Carroll**, has formed a new law firm partnership with **Joe Rindal** and **Neal J. Schulman**, who have been his deputies. The firm, to be known as Carroll, Rindal & Schulman, opened offices March 1 in the new Northwest Construction Center.

George Holifield has been named by Governor Evans to the State Personnel Board. Holifield is the senior attorney in the Juvenile Office of the Seattle-King County Public Defender's Office.

The latest issue of the "Youth & The Law," a bi-monthly bulletin published by the Washington State and Seattle-King County Young Lawyers Sections, focuses on Consumer Protection and includes guidelines for informed buying.

Legal advice and emergency legal service in criminal matters are now available on a 24-hour basis through the office of the Seattle-King County Public Defender.

A motion for a preliminary injunction to halt work on a proposed extension of Interstate 90 through Central District low income housing area in Seattle was denied by United States District Judge **William T. Beeks**. A restraining order was sought by legal services attorneys on behalf of the residents in the area.

John M. Darrah, the Public Defender, has proposed repeal of a number of criminal ordinances because he believes they are either improper or too vague for police to use properly. In a report to the City and County, Darrah has also called for doing away with open charges under which suspects are held without bail, changes in police procedure in towing away vehicles, handling complaints against police, and additional use of trained laymen. Darrah said jail operations should be the responsibility of the courts and not the police. He suggested a change in the Charter or State Law to turn supervision over to the courts.

Earl P. Lasher, III, has become a partner in the firm of Holman, Williams, Manning & Poll.

Sidney J. Strong, formerly Staff Counsel for the Seattle Urban League, and **Lowe K. Halverson**, have formed a partnership for the practice of law at Suite 734, Central Building.

Oseran, Hahn & Kelley has announced that **Robert C. Kelley** has become a partner and that the firm name has been changed to Oseran, Hahn & Kelley, effective January 1, 1971.

The first issue of the new *Consumer Advocate*, a publication of the Consumer Affairs Committee of the Young Lawyers Section of the American Bar Association, featured an article on Seattle attorney **Robert C. Mussehl**, the Chairman of the Committee. Mussehl is a partner in the Seattle law firm of Lind, Thom, Mussehl & Navoni.

LeSourd, Patten & Slemmons has announced that **Donald D. Fleming** and **John F. Colgrove** have become partners and **Lawrence E.Hard** is an associate,

and that the firm name has been changed to LeSourd, Patten, Fleming & Hartung.

Wes C. Uhlman, Robert W. Callies and John W. Flynn have announced that **Daniel F. Sullivan** has joined them as a partner in the law firm of Uhlman, Callies, Flynn & Sullivan, and **R. Terry Husseman**, **William E. Kuhn**, **Ralph S. Barber** and **Clarence L. Gere** are associates.

Jerome L. Hillis, **John E. Phillips** and **Mark S. Clark** have announced the formation of a partnership for the general practice of law under the firm name of Hillis, Phillips & Clark, at the Hoge Building, Seattle, Washington.

Bogle, Gates, Dobrin, Wakefield & Long has announced that **Dustin C. McCreary** and **Ronald T. Schaps** have become partners in the firm and that **Peter M. Anderson, Barry D. Matsumoto, Steven H. Pond, Edward M. Archibald** and **Jay H. Zulauf** have become associates.

Seattle attorney **Andrew J. Young** has been named regional attorney for the Department of Health, Education & Welfare. He will serve as Chief Legal Counsel for HEW Region 10, which includes Washington, Oregon, Idaho and Alaska.

Christopher T. Bayley, King County Prosecutor, has named **David Boerner**, former Assistant Attorney General in charge of the Law-Enforcement Section, Chief Criminal Deputy. Boerner will be assisted by Mrs. **Patricia D. Harber** and **Edmund P. Allen**, as Assistant Chief Criminal Deputies.

Bayley also appointed **Elmer Johnston**, Jr., as Acting Chief Civil Deputy, and **Norman K. Maleng**, as Assistant Chief Civil Deputy. Johnston, a former Assistant State Attorney General, will be on leave of absence from the law firm of Schweppe, Doolittle, Krug & Tausend.

Bayley further announced that the Non-Support Division, now to be designated the Domestic & Juvenile Division, will be headed by **Robert L. Burnham**, of Seattle.

Mrs. Alice O'Leary Ralls receiving *Outstanding Citizens Award* from Governor Daniel J. Evans in the Governor's office at the State Capitol in Olympia, Washington, on January 25, 1971, for her work in the field of alcoholism.

We are indebted to **Jim Turner**, the captain and sometimes quarterback of the Roberts, Sheffelman, Lawrence, Gay & Moch touch football team, for calling our attention to the true facts surrounding the score of the Perkins vs. Roberts touch football game. They are as follows:

> "On the last play of the game, with the score 24 to 0 in favor of Perkins, et al, quarterback **Paul Schell**, of Perkins, et al, threw an interception to linebacker **Dave Sweeney**, of Roberts, et al. Sweeney, at the behest of **Brian Comstock**, free safety, of Roberts, et al, lateralled to Comstock. The latter began dashing up the field toward the Perkins goal line when Parks, of Perkins, et al, yelled to Comstock, "Lateral! Lateral!", whereupon Comstock lateralled to Parks, who ran in for six points, thus ending the game with the score standing Perkins, et al 30 — Roberts, et al 0."

By way of reverie on past glory, Captain Turner also indicated that Roberts, et al, went undefeated during the 1969 season, having devastated the fighting Preston, Thorgrimson, Starin, Ellis & Holman team 6 to 0 in the first annual Bond Bowl."

SNOHOMISH REPORT

By **MICHAEL W. HERB**

New officers have been elected in the Snohomish County Bar Association and they are as follows: President, **Gaylord J. Riach**; Vice President, **Edward J. Novak**; Secretary, **Mark Patterson**; and Treasurer **Robert Bibb**. The Installation Banquet will be held at the Everett Country Club in March. The retiring president is **Robert Schillberg,** the Snohomish County Prosecuting Attorney.

Gerald Smith has become associated with the prosecuting attorney's office.

SPOKANE REPORT
By **THOMAS R. CHAPMAN**

Robert H. Whaley (Emory U., Georgia, '68) has been appointed assistant United States attorney for the Eastern Division of Washington. He formerly practiced in the Justice Department in Washington, D. C., with the Land and Natural Resources Division. He is a member of the Colorado, Georgia and Washington Bar Associations.

The firm of Turner, Stocve, Layman & Kennedy has announced a number of changes. The firm name has been changed to Turner, Stoeve, Gagliardi & Kennedy, and **Bill Goss,** formerly of Randall, Danskin, Lundin & Allison is now associated with the new firm. **Jerry Layman** has opened offices at 503 Paulsen Building. Phone, RIverside 7-1086. Randall & Danskin have also announced the retirement of **Floyd Danskin** from active practice. **Bob Carter** has been made a partner in the firm.

Curt Shoemaker has been made a partner in the firm of Paine, Lowe, Coffin, Herman & O'Kelly. **Bob Lamp** has resigned his position as assistant attorney general to become associated with Witherspoon, Kelley, Davenport & Toole. Richter, Wimberly & Ericson have announced that **Gary Gainer** and **John Krall** have been made partners in the firm.

Doug Lambarth, director of Spokane County Legal Services, needs a third attorney in his office. He would like a recent graduate, presently a member of the state bar, or one who will be admitted shortly.

In the past few months, the Legal Services Office has engaged in substantial litigation in Federal Court and expects to expand its law reform activities both in Federal and State Courts, with concentration on housing problems, including both the sale and rental of low-income housing; public assistance questions, including the constitutionality of certain state regulations and laws; and the revision and reorganization of juvenile court procedures.

THURSTON-MASON REPORT
By **STEPHEN J. BEAN**

Jerome L. Buzzard, former Thurston County Prosecuting Attorney, is now serving as Chief Counsel for the Republican Caucus.

The City of Lacey has a new City Attorney, **Kenneth Ahlf.** This was necessitated because Ken's partner, Argal Oberquell, built a new house, as we told he was doing. The new house is situated outside the city limits of Lacey, so Argal had to resign as City Attorney. The Mayor appointed Ken to be the new City Attorney. Speaking of Argal's New House, usually reliable sources of information have informed this reporter that the new mansion is ready and complete and liveable and Mr. Oberquell has yet to throw the open house which we all feel he should.

Stanbery Foster, Jr. former Deputy Prosecuting Attorney, is now associated with his mother, Evelyn, in the firm of Foster & Foster.

Jane Dowdle Smith, former Assistant Attorney General, is now serving as the Chief Civil Deputy in the Thurston County Prosecuting Attorney's Office. **Ward J. Rathbone** continues as Chief Criminal Deputy.

Donald H. Brazier, Jr., chief deputy attorney general, was appointed by Gov. Dan Evans to a six-year term as chairman of the State Utilities and Transportation Commission. Brazier will replace Dayton A. Witten. His salary will be 125,000 a year.

Frank Witt has been appointed Yelm's city attorney. He will be replacing **E. R. Fristoe** of Olympia who has held the position for many years.

YAKIMA REPORT
By **RANDY MARQUIS**

The firm of Velikanje, Moore, Countryman & Shore announces the acquisition of Michael J. Downie as a para-professional. Mike, born and raised in Yakima, comes to the firm with four years of financial and accounting experience.

Richard L. Wiehl has become a partner in the law firm of Halverson, Applegate, McDonald, Bond, Grahn & Wiehl. Dick is the son of Yakima County Superior Court Judge **Lloyd L. Wiehl. Warren L. Dewar, Jr.** and **John A. Rossmeissl** are now full partners in the firm of Velikanje, Moore, Countryman & Shore. They bring to the firm experience in law practice in South Carolina and Chicago respectively.

J. Hugh Aaron of the law firm of Lyon, Beaulaurier, Aaron & Weigand has been elected 1971 president of the Yakima County United Good Neighbors. Hugh distinguished himself in the 1970 campaign drive as chairman by driving home 100.9 percent of the campaign goal. **Donald H. Bond** of the Halverson office has been named attorney-secretary of the Yakima Mall Shopping Center, Inc. succeeding the late **Fred C. Palmer.**

Briefly Noted

The King County Superior Court in cooperation with the Seattle-King County Bar Association, soon will institute a new system to accommodate persons who want speedier trials.

Most lawyers like the present delay of about 10 months in civil cases. It provides time to prepare cases. And it allows the tempers of litigants to cool.

But the court's goal is to provide trials in four or five months for lawyers and clients who want them.

* * *

Disagreement has developed among Seattle District Justice Court judges over whether to release traffic violators from jail on their personal recognizance.

Judge **Janice Niemi** and **Bill Lewis** think they should.

Judge **J. Edmund Quigley** opposes PR'ing all traffic violators. He's the court's presiding judge, and his position is supported by Judge **Charles M. Stokes** and, reportedly, by Judge **Evans D. Manolides.**

The issue came to a head when Judge Niemi, as traffic judge, directed county jail officials to issue a PR bond to anyone arrested for a traffic violation, being a pedestrian on a freeway or resisting arrest in conjunction with a traffic violation.

Quigley, as presiding judge, countermanded the directive.

"This business of a blanket PR is ridiculous," he remarked.

Judge Niemi said she feels that if after a reasonable length of time—about six hours—a violator has been unable to post bail or if he can't afford it, he should be released on his recognizance.

* * *

A Seattle Justice Court judge, protesting to the State Supreme Court about proposed increases in bail for traffic violations, has contended that even current bail is "much too high."

Judge **Bill Lewis** wrote a letter to the high court, objecting to a new bail schedule order the Supreme Court issued Dec. 17 and which were to be effective March 1, subject to modification. Lewis wrote:

"The excessive bails and fines seem to revive the not-so-old theory that the traffic courts were cash-register courts and an excellent source of revenue."

Citing a letter the Washington State Magistrates Association wrote to legislators Dec. 22, the judge added:

"I wonder what the public will think about the large raise of bails and fines when it becomes known that the judges (of justice courts) wish to have their pensions funded from 'the revenues generated by the district justice courts.' "

Lewis said he just completed six months as traffic judge for Seattle District Justice Court and noted that on drunken driving convictions, for example, he usually imposed fines from $50 to $75 on a bail of $190. The new rules would set the bail at $315.

* * *

The State Supreme Court ordered that previously secret records in a case involving former Attorney General **John J. O'Connell** be turned over to the State Bar Association for investigation.

The Bar Association is looking into a King County Superior Court action filed by Attorney General **Slade Gorton.** The state seeks recovery of about $2.3 million in fees paid Joseph Alioto, now mayor of San Francisco, in connection with a $16.3 million antitrust settlement on behalf of electrical-utility clients in Washington State.

Alioto has said he shared more than $800,000 of the fee with O'Connell and **George Faler**, a former O'Connell aide.

The state is seeking a refund of all the legal fees on grounds O'Connell did not have the power to boost Alioto's fees from a limit of $1 million to a flat 15 per cent of the final settlement.

In arguments recently before the high court, O'Connell admitted he shared the fee but he contended there was nothing unethical about the action. "I know there has been no breach of ethics in this case," O'Connell told a five-judge department of the court.

Although the fee case has been filed in the King County court, the Bar Association is conducting its own investigation of the matter.

* * *

The newly released IRS figures on average net profits reported on 1968 returns of lawyers practicing in partnerships show $26,419 for 1968 compared to $25,280 for 1967.

* * *

Total claims filed for bodily injuries in auto accidents were 50 per cent lower in January the first month of **Massachusetts' no-fault insurance law,** than they were in January 1970, the state insurance commissioner says.

Commissioner C. Eugene Farman called the drop "staggering" but said yesterday he is not sure whether it is due to the new law and will not know for months whether the trend will continue.

Neighborhood Consumer Center in Seattle's Central District

The Consumer Affairs Committee of the American Bar Association, Young Lawyers Section, chaired by Robert C. Mussehl of Seattle, plans to sponsor a pilot Neighborhood Consumer Center in Seattle's Central District.

The Consumer Protection Committee of the Seattle-King County Bar Association, Young Lawyers Section, will cooperate in the project. The Center is expected to open by April 1, 1971.

The Neighborhood Consumer Center would be both legal and educational. It would furnish legal assistance and advice on consumer problems. This would include restitution as well as trial assistance where necessary. The educational projects would include lectures, movies and classes on home management, and current deceptive practices and frauds.

The Center would be staffed by local members of the Bar, law students from the University of Washington, and members of the community. The educational classes would be conducted by members of the Bar and local educators.

The Center will have four operating departments. They are legal, education, research and complaint investigation. The legal department would handle the preparation and strategy of a court trial. This would be furnished on a low or no cost basis to the consumer.

The education department would sponsor classes as a means of preventing consumer problems before they arise. The research department will study present consumer laws as well as research possible new areas of consumer law. The complaint investigation department will investigate consumer complaints in order to effect a solution acceptable to both parties. The information on the complaints learned in this department would be passed on to the research department for further study and to the education department for dissemination to their classes. At the same time, complaints of persons in the education classes

Robert C. Mussehl

and seminars would be given to the research and complaint departments.

Thus, each department would cooperate in feeding information to the others. This will enable the programs and projects of each to be current for the needs of the community.

The Seattle Center will be the first of several such centers in low income areas throughout the country to educate the public in consumer matters. Other centers are tentatively planned for Chicago, Atlanta and Los Angeles.

Mussehl said the individual consumer has too long been the helpless victim of a few dishonest merchants, and now our impersonal, computerized business techniques have reduced his bargaining position still more. He added:

> "Our Consumer Affairs Committee is taking steps to back the consumer on two significant levels, through enactment of effective state legislation and by providing equally important personal advice in the community. Our goal is to help create a wiser consumer who will ultimately force the unscrupulous merchant out of business."

The Seattle Consumer Center will not duplicate the services presently being supply by the federal, state and local consumer agencies. A reciprocal referral program will be established with the Washington State Attorney General, the Neighborhood Legal Services Program, the Mayor's Consumer Protection Office and the Federal Trade Commission. This liaison will enable the Neighborhood Consumer Center to dispose of cases of a legal nature that it will be unable to handle.

The Seattle "pilot" project has the full support of the President's Committee on Consumer Interests headed by Virginia A. Knauer, Special Assistant to the President for Consumer Affairs.

The Consumer Affairs Committee and the Consumer Protection Committee are looking for young lawyers in the Seattle area who would like to take an active role in the Center. If you are interested, please contact Robert C. Mussehl, 3822 Seattle-First National Bank Building, Seattle, Washington 98104, telephone MAin 3-8433, or G. Theodore Ressler, 908 Republic Building, Seattle, Washington 98101, telephone 583-4655.

Credit Cards and Consumer Reports

Title V of the recently-enacted Federal Public Law 91-508 (39 U.S.L.W. 89, November 10, 1970) proscribes fraudulent use and unsolicited issuance of credit cards, and limits a cardholder's civil liability for unauthorized use, and Title VI mandates fair reporting of consumer credit and other information by consumer reporting agencies.

TITLE V — CREDIT CARD PROVISIONS ADDED BY AMENDMENT TO THE TRUTH IN LENDING ACT

Fraudulent Use

Any person obtaining, in the aggregate, *$5,000* or more of goods or services through the use, in a transaction affecting interstate or foreign commerce, of a "counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card" commits a felony, punishable by imprisonment for not more than five years or by fine of not more than $10,000, or both [§ 134]. Section 134 applies to all offenses committed on or after October 26, 1970, the date of enactment of this law.

Issuance

No credit card may be issued except in response to [oral or written] request or application therefor. Credit card renewals and substitutions are, however, not subject to this restriction. [§ 132, effective October 26, 1970.]

The Truth in Lending Act, which Title V now amends, provides that failure to comply with its requirements subjects the offender to a fine of not more than $5,000 or imprisonment for not more than one year, or both. [§ 112(3), Title I (Truth in Lending Act), Pub. L. 90-321, May 29, 1968; 82 Stat. 151; 15 U.S.C.A. § 1611(3) (Supp. 1970).] For the purpose of establishing compliance with the foregoing requirements of § 132, it has been recommended by some commentators that a record of each credit card request or application (written and oral) be retained for a period of at least one year from the date of receipt of the request or application.

The Federal Trade Commission and the Federal Reserve Board are both authorized to prescribe rules and regulations to ensure compliance with the requirements of the Act.

Liability for Unauthorized Use

Effective January 24, 1971, the following conditions must be met before a cardholder can be held civilly liable, in a maximum amount which cannot exceed $50, for all unauthorized use of his credit card by others:

- it is an "accepted credit card," as that term is defined in § 103(1);
- the issuer has provided a method of identification [a photograph, a signature panel or more precise identification on the credit card (such as a fingerprint), or electronic or mechanical confirmation] whereby the user of the card can be identified as the person authorized to use it;
- the issuer has given "adequate notice," as that term is defined in § 103(k), to the cardholder of his potential liability;
- the issuer has provided a self-addressed, prestamped letter of notification, to be mailed in by the cardholder if his card is lost or stolen; and
- the unauthorized use occurs "before" notification is effected. Notice can be given by the cardholder taking such steps as may be reasonably required in the ordinary course of business (*i.e.*, by telephone, letter, telegram, or other communication, at the option of the cardholder). [§ 133(a).]

In any suit to enforce liability for the use of a credit card, the issuer shall have the burden of proving that (i) the use was authorized or (ii) if "unauthorized," as that term is defined in § 103(o), that all of the foregoing conditions of liability have been met [§ 133(b)].

Also there is a recently issued Regulation Z of the Federal Reserve Board which, among others, sets forth requirements for the issuance of credit cards and civil liability for unauthorized use.

Next month — Act effective April 24, 1971 relating to issuance and use of credit reports and other consumers reports.

Automobile Insurance . . . For Whose Benefit?
(continued from page 8)

(iv) strict liability insurance for drunken or druggd driving.

Since the vehicle owner would be purchasing such additional coverages largely for himself, his family and friends, he would have the incentive and the information needed for an intelligent decision as to what insurance to buy beyond the compulsory minimum.

6. **Fair Settlement of Claims**

Under our proposed system, the claimant against an insurance company would in most cases be that company's own policyholder or a member of his family. The standards for entitlement to benefits would be clear, as would the amount of such benefits.

Under these circumstances, insurers would have little legitimate reason for delay in payment or for offering a claimant far less than the claim was worth.

It would then be practicable to impose on insurers heavy sanctions for unfair treatment of claimants. We recommend that any claim whose payment was unreasonably delayed or resisted bear interest at a very high rate, on the theory that the claimant had been coerced into making a loan to the insurance company.

Conclusion

To meet the criteria for a good system, we recommend a system of compensating virtually all drivers, passengers and pedestrians in full for their net economic loss from automobile accidents.

The proposed system is designed to be simple to operate, with clear standards of entitlement, clear measures of recovery and a minimum of transactions.

Once the victims are compensated, we recommend a secondary shifting of certain accident costs to commercial vehicles and to a few obnoxious categories of drivers — in the interest of safety, economy and fairness.

We have compared the price of the compulsory coverages under our proposal with the price of the liability insurance which is compulsory in New York State today, first as to personal injury, then as to property damage and then for the two combined.

The cost of our proposal with respect to compulsory personal injury coverage should average about 42% less than the cost of compulsory personal injury liability coverage under the fault insurance system.

With respect to property damage, our proposal should result in an anticipated average premium reduction of 87% on compulsory coverages. This saving is not due to increased efficiency, but chiefly to the fact that, under our proposal, the first-party nature of insurance for damage to an automobile makes it unnecessary for the law to compel purchase of such insurance.

Taking compulsory personal injury coverage and compulsory property damage coverage together, the average premium under our proposal should be about 56% less than it is under the fault insurance system. □

Critique of the Stewart Proposal
(continued from page 12)

dinary negligence; or which restrict death awards to very low levels; or which do not have Disability Benefits payments required by law; or which do not have procedures similar to the Motor Vehicle Accident Indemnification Corporation (MVAIC) which in New York provides insurance for a personal injury victim to make claim against, where the accident is caused by an uninsured car, hit-and-run car, stolen car, car operated without permission of the owner, unregistered car, or where an insurance company disclaims coverage.

Other criticisms of the present legal system which have been made in New York as well as many other jurisdictions are of the strict rule of contributory negligence which bars a careless person from receiving an award. If the philosophy of the times dictates, the rule of contributory negligence can be replaced by comparative negligence, a simple and workable system used in a number of states and also under the Federal Employers Liability Act for railroad employees and the Jones Act for seamen.

For persons unfamiliar with personal injury settlement procedures and litigation it should be mentioned that a one or two-year wait is not "delay" as they tend to think. It requires considerable time for physicians to evaluate injuries of any seriousness in order to determine residual or permanent effects. Without this time, neither doctors, lawyers or insurance companies could arrive at sound valuations.

No-fault proposals are not new. Starting with the Columbia-Ballentine report in 1932 there has been a long series of them, all of them rejected. □

The Board's Work

What to do about the tidal wave of appeals that is threatening to inundate the new **Court of Appeals** — and to swamp lawyers with "required reading" material?

Judge **Ralph Armstrong** of the Court's Division 2 appeared before the State Bar's Board of Governors at its January meeting in Olympia to ask the Board's advice and assistance.

"The number of appeals being filed already exceeds the number projected for the year 1979," the judge told the Board. "The judges are reading briefs every night and every weekend."

One possible solution, he said, is a change in the law requiring opinions to be written and published in all cases. Instead, he said, opinions could be published only for decisions "having substantial precedential value."

He cited, as an example, the burden of preparing opinions for appealed divorce cases: "Divorce law has all been stated many times. How often are we able to say anything new about it?"

The Board discussed the problem and possible solutions at length with Judge Armstrong and agreed to provide suggestions.

In other business at its January meeting, the Board:

√ Appointed **Richard R. Hodge** of Tacoma chairman of the seven-man **Disciplinary Board**, replacing **Fred C. Palmer** of Yakima, who passed away in December. **James P. Curran** of Kent was named vice chairman. **James I. Leavy** of Pasco was appointed to serve on the Board.

√ Continued full support in the Legislature of the Bar's bill proposing revision of the **judicial article** of the Constitution (see February 1971 Bar News), and decided to call a meeting of representatives of other groups (judges, Judicial Council, governor's citizens' commission) which have prepared similar revisions, with the aim of trying to harmonize the various versions. Board members **Neil J. Hoff** of Tacoma and **Kenneth P. Short** of Seattle were to represent the Bar, with Hoff to serve as chairman.

√ Approved two large-scale **Public Relations Committee projects**. One will provide to every member of the Bar a booklet of suggested methods and procedures for improving the public relations of lawyers and law offices. The second will present to every graduating high school senior in the state a 16-page public-service booklet containing helpful and practical information on a variety of legal subjects and an explanation of our system of justice, law and the courts and the role of lawyers and the Bar Association.

√ Decided not to apply retroactively to a specific case the newly liberalized provisions of the **Clients' Security Fund** (see February 1971 *Bar News*), on the ground that it would reopen many claims from years past.

√ Approved a request from the **Lawyer Referral Service** Committee that a set of LRS promotional films be purchased from the ABA.

√ Appointed Board member **John S. Lynch** of Olympia to investigate further a complaint submitted by the **Committee on the Unauthorized Practice of Law** and involving a private firm's activities before the State Board of Industrial Insurance Appeals. Practices of title and escrow companies also will be inquired into.

√ Approved a **Legal Ethics Committee opinion** that a full-time Justice Court judge may not act also as city attorney or prosecutor in the same Municipal Court and city.

√ Received a letter from the chairman of the **State Fee Schedule Committee** reporting that the committee has under consideration the matter of probate fees (see President's Column, February 1971 *Bar News*), including the possibility of alternative methods of arriving at fees.

√ Reviewed reports on discipline and finances and minutes of the Corporate Law, Public Relations and Legislative Committees.

√ Agreed to discuss at a future Board meeting the subjects of the law clerk method of studying for the Bar, the methods of administering disciplinary reprimands and whether notice of reprimands should be published in the *Bar News*, and the format of future State Bar conventions.

√ Approved a suggestion from Judge Eugene A. Wright of the U.S. Circuit Court of Appeals that a new Northwest circuit should be formed and that court facilities should be housed in the federal office building to be constructed soon in downtown Seattle.

√ Enlarged the special Judicial Selection Committee which makes recommendations for appointments to the State Court of Appeals. □

SUPREME COURT PRACTICE

By WILLIAM M. LOWRY
Supreme Court Clerk

APPELLATE PRACTICE

Knowledge of which court has jurisdiction is axiomatic to being in the right place at the right time. At the appellate level, with respect to the merits, ROA 1-14 sets forth the criterion for determining whether a case should be appealed directly to the Supreme Court. Chapter 221, 1969 Session Laws, 1st Ex. Sess. provides that the Court of Appeals "shall have exclusive appellate jurisdiction in all other cases." The criteria are, of course, subject to interpretation. However, the penalty for disagreeing with the court in this respect is not sudden death. The statute further provides "No case, appeal or petition for a writ, filed in the Supreme Court or the Court of Appeals shall be dismissed for the reason that it was not filed in the proper court." The penalty for such an error is no greater than possible delay. The Supreme Court prereviews each case after appellant's opening brief is filed to determine whether the cause should be transferred or retained. If the case is transferred, the time involved in the procedure may result in the hearing of the appeal being delayed a session.

The court having jurisdiction of the merits is normally referred to as the court having jurisdiction of the case. It does not follow, however, that such a court has jurisdiction for all purposes. There is an increasing fragmentation of jurisdiction for special purposes at the appellate level. Listed below are examples of the trial court retaining jurisdiction for special purposes after the appellate court has jurisdiction of the merits (ROA designations also refer to similarly numbered CAROA rules):

Settlement of the statement of facts.	ROA 1-15
Determination of the amount of an appeal bond	ROA 1-22
Approval of a supersedeas bond	ROA 1-23
Appointment or withdrawal of counsel in a criminal appeal	ROA 146(c)(3)
Fixing of bail	ROA 1-46(c)(3)
Dismissing an appeal on stipulation	ROA 1-19

In passing, it may be noted that until 1969 the trial court had authority to extend the time for filing the statement of facts, but no longer has jurisdiction for this purpose: ROA I-34.

Now developing is the theory of the passage of jurisdiction from the Court of Appeals to the Supreme Court. A number of attorneys have questioned the logic of placing the rule relating to petitions for review in the rules for the Court of Appeals, CAROA 50. They argue that since the petition is addressed to the Supreme Court the rule should be in the rules for the Supreme Court. Without meeting their argument, suffice it to say the rules with respect to presenting a petition for review is in CAROA since the theory is that the appeal remains under the jurisdiction of the Court of Appeals unless and until the petition is granted. If the petition is denied, the Court of Appeals taxes costs and remits the case. Under this theory does the Court of Appeals have authority to affect the case during the pendency of a petition for review? This question was put to the court in Supreme Court No. 41641. Respondent moved to dismiss the appeal during the pendency of a petition for review on the grounds that appellant, challenging a zoning ordinance, was required to be a property owner, and it had recently been discovered that appellant had sold his property prior to commencement of the action. Respondent filed the motion in both courts. The Supreme Court quashed the motion in the Court of Appeals and heard argument apparently on the theory that although the Court of Appeals nominally had jurisdiction, it had lost authority by the denial of the petition for rehearing to affect its decision. It must also follow that the Supreme Court acquires jurisdiction for some purposes by the filing of a petition for review.

It may be helpful to counsel to touch on another aspect of jurisdiction involved when the Supreme Court acquires jurisdiction of a case from the Court of Appeals. Trial court costs are not taxed by the appellate court for the obvious reason that the trial court is in a better position to determine such costs when the case is remitted. Jurisdiction of an appeal coming to the Supreme Court from the Court of Appeals is, however, not returned through the Court of Appeals, but is remitted directly to the trial court. Hence in what some attorneys have referred to as a "well hidden rule," CAR 24(d)(2) provides that the Supreme Court will tax costs arising from the review of the Court of Appeals. This requires, of course, that counsel prevailing in the Supreme Court timely file a bill for their costs arising in the Court of Appeals.

SUPERIOR COURT NEWS

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

Judge **Carl R. Loy** (Yakima) reports the successful operation of an experimental bail system initiated in Yakima County in April 1970. The program features in-jail interviews by VISTA volunteers and attorneys of persons arrested on Superior Court felony warrants. Yakima County Superior Court judges developed information forms utilized in the interviews. (These forms are available to interested judges in other counties.) Since the beginning of record keeping last October, 64 persons have been interviewed. Of these, 14 were released on their personal recognizance and 27 had their bails reduced. All have appeared in court at required times. Judge Loy credits VISTA attorneys for "invaluable assistance in the program," the principal purpose of which, he says, "was to overcome the criticism leveled against our judicial system that we have two standards of justice — one for the non-indigent and another for the indigent."

* * *

King County Superior Court judges have elected Judge **James W. Mifflin** to be Presiding Judge for a six-months term. Judge Mifflin succeeds Judge **Stanley C. Soderland** who has served for the past year, having been elected to two successive six-months terms.

* * *

Despite constantly increasing filings, the King County Superior Court last year reduced the backlog of cases awaiting trial by 233 cases, from 6,068 in 1969 to 5,835 in 1970. The delay between filing a civil jury suit and getting it to trial has been reduced from 12½ to 10½ months, while the wait for non-jury civil cases is down to 7½ months from 9 months. Although criminal filings increased by over 300 cases during 1970, most criminal cases are tried within 60 days from filing date. Judge **Stanley C. Soderland**, Presiding Judge during the period involved, gives credit to bar association cooperation and consistent aid from Superior Court judges visiting from other counties. He noted that retired Snohomish County Superior Court Judge **Charles R. Denney** is now serving full-time as a Pro Tem Judge in King County. King County judges have increased their productivity by lengthening their daily time on the bench to hear motions, sentencings, and other matters before or after regular court hours.

NEWS FROM THE COURTS OF LIMITED JURISDICTION

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

A new concept in aid to the Judges of Courts of Limited Jurisdiction is being introduced this spring. Under the auspices of **Tom Russell**, former Judge of the Northeast District Justice Court, King County, a Training and Orientation Institute for Judges of Courts of Limited Jurisdiction will be held March 12, 13, and 14 at Providence Heights Criminal Justice Education and Training Center, Issaquah, Washington. This seminar is geared to the newly elected or appointed Judge to assist him in better preparing him for his new duties. However, all judges are being urged to participate in this program which, hopefully, will become an annual event in the promotion of upgrading the concept of judicial administration in the Courts of Limited Jurisdiction.

The faculty of the training will be made up of various Judges and scholars, learned in the various aspects of the field of law. The curriculum encompasses much of the broad spectrum of procedural and substantive law and matters aimed at the Justice Court. Judge Russell and his fine committee, composed of Judges **Gerard Fisher**, Kitsap County, **Don Eide**, King County, and **Filis Otto**, Pierce County, have done a fine job in setting up this outstanding program.

A milestone in the history of the Courts of Limited Jurisdiction was reached this year. With the addition of several new counties going under the 1961 Justice Court Act, only ten counties remain under the pre-1961 system. The state Legislature has again before it the mandatory state Justice Court Act and with addition of these new counties there is considerable encouragement that the State of Washington, in 1971, will come under one system of guidance for Courts of Limited Jurisdiction.

The Board of Governors of WSMA has announced the time and place for the annual conference for Judges of Courts of Limited Jurisdiction. The annual meeting will be held in Yakima September 24, 25, and 26, 1971 at the Holiday Inn. Judge **George Mullins** of Yakima has been appointed to head the committee to plan this event. All Judges of Limited Jurisdiction Courts are urged to mark these dates on their calendars and make every effort to attend this vital and interesting conference.

Judicial Council

To determine whether continued use of the grand jury in Washington was justified, the 1967 legislature requested the Judicial Council to study the organization and procedures relating to grand juries. In 1969, the Council proposed a revised grand jury law to replace present RCW 10.28. This bill was unsuccessful in both the 1969 regular session and the 1970 special session of the legislature.

After the 1970 special session, the Judicial Council reopened its grand jury study. The result of this additional study is embodied in HB 175 and SB 239, presently before the Forty-Second Legislature. The import of these bills contemplates restructuring the grand jury so as to provide a more effective tool for law enforcement.

The proposal does not contemplate use of grand juries as "watchdogs" for auditing or reporting on non-criminal misconduct, nonfeasance, or neglect — these functions being better handled by the State Auditor or Ombudsman, should such an office be created. An additional feature of the proposed statute is the provision for a special inquiry judge. This added law enforcement aid is patterned after the one-man grand jury law of Michigan. The special inquiry judge will sit only as a judicial officer to hear and receive evidence presented by either the prosecuting attorney, the Attorney General, or a special prosecutor appointed by the Governor. These proceedings are supplementary to a regular grand jury, which has the power to actively investigate evidence of crime and corruption, a power not granted to the special inquiry judge. The judge does not have the power to issue indictments as does the grand jury, but can turn over any evidence produced at the proceedings before him to any subsequent grand juries called pursuant to the statute. Thus, although not actively participating in an investigative role himself, the special inquiry judge provides the prosecutor an added investigatory tool by enabling the prosecutor to require a person's testimony, under oath, before a judicial officer.

Under the proposal, no reports can be issued by either the grand jury or the special inquiry judge. Alternative methods of reporting were considered by the Council but were rejected as not sufficiently protecting the rights of the individual to not be unjustly accused and unnecessary to the true, modern function of the grand jury.

C. E. Bolden

AG Opinions

AGO 1970 No. 21 — Public Works Contracts:
Section 1, chapter 38, Laws of 1970, relating to the investment of the retained percentage of moneys earned in public works contracts, is not applicable to contracts which were executed prior to its effective date.

AGO 1970 No. 22 — Taxation of Reforestation Lands Which Have Been Declassified:
Pertains to taxation upon the declassification of reforestation land under the provisions of chapter 84.28 RCW.

AGO 1970 No. 23 — State's Pre-emption of Surface Mining Regulation:
After the effective date of chapter 64, Laws of 1970, it will not be legal to engage in surface mining in this state solely on the basis of a license or permit issued by a county, city or town without also obtaining a permit from the state board of natural resources.

AGO 1970 No. 24 — Use of Federal Funds by City

AGO 1970 No. 25 — Removal By County Commissioners:
The supervisor of community mental health services for a county may be removed from office by the county commissioners without the concurrence or approval of the county's community mental health program administrative board.

AGO 1970 No. 26 — Limitations on Vacation:
Pertains to the limitation of the power of a county to vacate a county road which abuts on a body of salt or fresh water.

AGO 1970 No. 27 — Rights of Public To Use Of Ocean Beaches:
Without regard to any other property interests or rights which the state may have, members of the public have the right to use and enjoy the wet and dry sand areas of the ocean beaches of the state of Washington by virtue of a long-established customary use of those areas. The right of members of the public to use and enjoy the wet and dry sand areas of the ocean beaches of Washington by virtue of a long-established customary use of those areas does not presently extend to such ocean beach areas as are within the exterior boundaries of the Quinault Indian Reservation.

AGO 1970 No. 28 — Guidelines For Congressional And Legislative Redistricting

Office Practice Tips

THE PARTNERSHIP AGREEMENT

At the Fourth National Conference on Law Office Management sponsored by the American Bar Association in New York City, Robert F. Preti of the law firm of Preti, Peabody, Johnson & Smith in Portland, Maine, presented and discussed the partnership agreement which was developed by and used successfully by his first generation firm. An abridged version of his presentation appeared in Prentice-Hall's Practicing Attorney's Letter of November 26, 1970. It also appears in Prentice-Hall's publication entitled "Manual for Managing the Law Office" which is its original source. Prentice-Hall has graciously consented to our republication of the article in the Bar News.

Probably no other area of a law partnership agreement has had more attention paid to it than the way profits are shared. Many law firms over the years have given a great deal of careful and sophisticated study to the question. Most firms share profits under one of the following three methods — and it's to these three that we'll turn our attention.

- Partners share the firm's net profits on a simple percentage or unit basis. This may differ in amount for individual partners, and even for the same partner in different years.
- Partners share in the net profits on the basis of an allocation formula that gives weight to the work done, the origin of the client and, in some circumstances, to the profitability of the case. (This is the so-called "Hale & Dorr System" developed by the late Reginald Heber Smith.
- Partners share in the firm's net profits under a system combining the straight percentage and allocation formulas.

Percentage system: A great many law firms set a predetermined share of profits. It's sometimes expressed in percentages or units. Generally, the older and more productive partners enjoy a higher percentage or number of units than the other partners.

This method has worked fairly well in second and third-generation law firms that are large enough to insulate against developing frictions among partners. Older partners — who in effect control the annual review of units or percentages — are required, however, to mediate and exercise judgment in a diplomatic and equitable manner.

Allocation system: An equally large number of firms use the allocation method for dividing profits. Under it, partners share in net profits on the basis of a formula that gives weight to: (a) the work each attorney does; (b) the origin of cases or clients; and (c) the profitability of each matter or case handled.

SPECIAL EMPHASIS: In Mr. Smith's system, work done is weighted twice as heavily as credit for business origination. Also, the profitability factor is weighted only one-third as much as business credit. Here's the formula:

Work done — 6 units
Origination — 3 units
Profitability — 1 unit

The resulting total factor (expressed in dollars) attributable to each attorney is used as the numerator of a fraction, the denominator of which is the total factors (again expressed in dollars) of all partners for the year. The fraction is then applied to net profits. Any drawing accounts are deducted, and each partner's balance is shown as a credit or debit.

Although the statistical result under Mr. Smith's formula is applied prospectively to the next fiscal year of operation, there's no technical reason why you couldn't apply it to your current year's operation.

SOME OBJECTIONS: Writers and lecturers on methods for sharing law partnership profits have been less than unanimous in their support of the allocation approach. Generally they object to its apparent sterility and rigidity. Some feel that determining who originated a client or case can cause friction in a firm. Also, senior partners may handle only those cases with high anticipated profits; they'll refer the others to their more junior colleagues.

A growing number of firms have adopted a profit-distribution system that combines the best features of both the percentage and allocation methods. New firms, in particular, seem to find it much to their liking. Here's a bird's-eye view of this —

Combination system: Simply stated, a portion of a partner's share of the profits is based on a predetermined percentage method; the balance is based on an allocation method. This combined method has the advantage of providing work and business-getting incentives while giving every part-

ner in the office a real financial interest in work originated or being worked on by another attorney. Further, there's less incentive for one attorney to hold on to work that he thinks may carry a high fee.

How the combination system works. — The firm's books set a common ledger entry for percentage units and a separate entry for each partner for allocation units. When a fee comes in, one-third of it is entered as the common percentage unit. The other two-thirds are broken down into a working attorney allocation (70% of 2/3) and a responsible (originating) attorney allocation (30% of 2/3).

Totaling the "credits": At the end of the fiscal year, each partner has allocated to him a dollar amount determined by: (1) the total of all of his working-attorney ledger entries; (2) the total of all of his responsible-attorney ledger entries; and (3) his proportionate share of the percentage unit ledger entries.

Note: An attorney's share of the percentage units is based on a predetermined number assigned under the partnership agreement. This number, of course, may be changed periodically as it is in any percentage method of distributing profits.

Final share: The total dollar amount attributable to each partner is carried as a numerator of a fraction, the denominator of which is the total of all entries of all partners for the year. This fraction is then applied to the net profits of the firm in order to determine the actual dollars of net profit attributable to each partner.

Here's how the formula is expressed as an algebraic equation:

$$\frac{P + A \times N_f}{G_f} = \text{Each partner's share of net profits}$$

KEY: P = Each partner's percentage (unit) account

A = Each partner's allocation account

G_f = Firm's total gross fees

N_f = Firm's total net fees (after overhead)

OBSERVATION: The combination system appears to fairly compensate the partner who is responsible for generating the business as well as the lawyer who does the work. Equally important, it gives all the partners equitable financial participation in everything the firm does.

□

"The legal profession as a whole has very poor standing; there are many causes for this, one of them being the incompetence, the misconduct and the bad manners and lack of training of a great many lawyers who appear in the courts."

This sounds like a paragraph from one of those seemingly popular books critical of lawyers. But it isn't. It's a direct quotation from an address delivered in 1967 by the now Chief Justice, Warren E. Burger.

What does he think has caused the bar's sagging reputation? He went on to say:

"There is no single cause for what, in Madison Avenue terms, would be called the 'bad image' of the legal profession. The total image is a stream into which many things are poured — and the deportment and misconduct of some members of the bar pollute this stream and the bad manners contribute to the bad performance . . .

"A large part of the bad image of lawyers generally is in part a reflection of the misconduct of the fellow we call the 'office lawyer' . . . But my concern today is with the lawyer in the courtroom; most of his professional performance is done in a goldfish bowl where everything can be observed . . .

"On the most favorable view expressed (in a survey Burger made of trial judges), 75 per cent of the lawyers appearing in the courtroom were deficient by reason of poor preparation, inability . . . Also very high on the list of deficiencies was the lack of an understanding of basic courtroom manners and etiquette and a seeming unawareness of many of the fundamental ethics of the profession . . .

"The things jurors seem to find most offensive are the bad manners of lawyers who abuse witnesses, lawyers who snarl at each other across the counsel table, lawyers who are discourteous or slovenly in their communications with the judge and jury. The jury surveys confirm a fact well known, that the bad manners of a trial lawyer almost invariably count against his case. . .

"Good manners, courtesy and etiquette are more than a matter of form. They are the lubricant which helps prevent a trial from deteriorating into a brawl . . .

"Our problem is not simply to see this evil blight on the legal profession and its terrible impact on the administration of justice, but to try to do something positive about it."

— Public Relations Committee

Young Lawyers

The WSBA Young Lawyers Committee at its January 23 meeting adopted a resolution urging the WSBA to make certain reforms. The recommendations contained in the resolution are preliminary suggestions and would bring about significant changes. The Committee does not necessarily feel bound to the exact form of the changes suggested in the resolution.

As to membership on the Young Lawyers Committee, the resolution calls for election by ballot on a geographic basis, taking into consideration the concept of one-lawyer, one-vote. Twenty per cent of the dues paid by lawyers under 36 would be allocated to a special budget for exclusive use by the Young Lawyers Committee. It was further proposed that the immediate past chairman of the Young Lawyers Committee would serve as a full voting member of the WSBA Board of Governors for a one-year term. The Young Lawyers Committee "should have the freedom to speak on substantive issues without obtaining prior approval of the Board of Governors, provided that it is made clear that the Committee is speaking on behalf of itself."

As to the WSBA, the resolution called for more Young Lawyers on standing and special committees. "Young Lawyer representation on WSBA committees is virtually non-existent." Finally, the resolution urged use of the one-lawyer, one-vote concept as to the Board's composition and expansion of the Board from seven to nine members, exclusive of the Young Lawyer member. "The need for expansion of the Board is derived from time pressures placed on the members of the Board of Governors as well as on urgent need to make the Board more responsive to modern social problems."

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The Young Lawyers section of the Spokane County Bar Association is in the process of structuring itself into a formal group. In order that officers might be elected and by-laws drawn, a nominating committee consisting of **Joe Ganz, Bob Winston, Jr., Tom Chapman, Chuck Van Marter**, and **Rick Fancher** has been selected.

Twenty Years Ago

School was in. The Legal Institute Committee held a seminar on trial procedures in Walla Walla. **Al McBee**, Mt. Vernon, and **George Boldt**, Tacoma, monitored. A large number of lawyers, judges (both Superior and Supreme), and even members of the Board of Governors attended. **Carl Johnson**, committee member, said there would be no charge. Great relief!

Spokane studied, too. Judges **Edgerton** and **Bunge** made worthy contributions at its seminar. **Tom Malott** discussed "Alimony — Who Pays the Income Tax." It was stated that **Frank P. Weaver** "led us into the United States Tax Court." Who led us out and how was not quite clear.

BIRTHS

Ninety-seven new lawyers were admitted.

Yakima had several new entries: **Blaine Hopp, Jr.**, came from Kelso, joined Cheney & Hutcheson. **James Hovis** joined Velikanje & Velikanje, **Vincent Beaulaurier**, Hazel & Greiner, and **John McArdle**, Olson & Palmer. **George Mullins** was serving as a naval lieutenant in Washington, D.C.

A. Vernon Stoneman, Auburn, elected President of the Morse Club, telegraphers' society. **Carl P. Heideman**, Seattle, named Finnish counsel. **Vernon Gould** and **Norman B. Ackley** opened in White Center. **Joseph Adams**, Seattle, appointed Civic Aeronautics Board.

CROSSED THE BAR

Spokane: **Charles F. Cowan** and **John Salisbury.**

Seattle: **A. E. Jonson**, survived by two lawyers, Bernice and Carl, and **James A. Dougan**, longtime director of Seattle Legal Aid Bureau.

Ben Ohnick, who started in Seattle but spent most of his business life in Manila, P.I. engaged in the practice but more in gold mining. The J.S. government ordered him to destroy his mine to prevent its being taken by the enemy. He suffered miserable treatment in the Santo Tomas prison. His daughter, Barbara, was then Washington State Assistant Attorney General.

Clinton J. Crandall, Seattle, federal government attorney, survived by **Gordon F. Crandall**, law student.

SING LOUD ON ST. DAVID'S DAY!!!

David J. Williams

NOTICE OF HEARING

Mr. William R. Eddleman has applied to the Board of Governors of the Washington State Bar Association for reinstatement to the practice of law.

Mr. Eddleman was disbarred by the Supreme Court of the State of Washington on February 13, 1964 (63 Wn (2d) 775).

An application for reinstatement was heard and denied by the Supreme Court on October 15, 1968 (77 Wn Dec.2nd 40).

On or prior to the date of hearing anyone wishing to do so may file with the Board of Governors written statements for or against reinstatement, such statements to set forth factual matters showing that the petitioner does or does not meet the requirements of Rule 8.6 of Discipline Rules for Attorneys.

The hearing on Mr. Eddleman's application will be held on March 19, 1971 commencing at 10 A.M. and will be held at the Leopold Motor Inn in Bellingham.

Jack P. Scholfield
State Bar Counsel

Will Information Sought

Anyone having any information regarding the last will of Merritt O. Smith, who passed away in December of 1970, please contact Mrs. Ralph E. Smith, 2008 Douglas Drive, Pullman, Washington 99163, phone 332-5745. Mr. Merritt O. Smith told his heirs that he had a will drawn by a Seattle area attorney during the fall of 1970.

Will any attorney having prepared or having knowledge of a will made by George C. Seader please contact Robert M. Mercer, Attorney, 10340 N.E. Weidler, Portland, Oregon 97220.

Wanted and Unwanted

For Sale; Am Jur and Am Jur 2d to date including Vols. 33 and 34 — 1971 Tax Vols. current and to date $900. Am Jur Pleading and Practice Forms including Revised Vols. 1-13, Temporary index and supplements and including Vol. 10-21 1st series and index $260. Warren W. Russell, P.O. Box 338, Friday Harbor 98250 (378-2181).

For Sale; Vols. 57-76, U.S. Supreme Court Reporter (20 Vols.), in like-new condition. $100. M. S. Raichle, P.O. Box 387, Aberdeen, 98520.

For Sale; Vols. 1-62 Wash. Reports 2d, N.B. Buckram, good condition. Mrs. Mary Carriker, 3102 Harney No. 6, Vancouver, Wash. (696-1044).

Wanted; Good, up-to-date, bound set of RCWA. Chambers and Rank, 3206 Seattle-First Bank Bldg., Seattle (MU 2-3632).

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

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. Excellent opportunity available to assume practice from older lawyer in small community near Yakima. Modern offices and good library.

2. Fort Lewis staff Judge Advocate, upper third graduate of Washington Law School, applying for position in private general practice in Seattle area.

3. Two-man firm in one of larger Olympic peninsula communities seeking young lawyer for general practice. Starting salary negotiable.

4. State of Washington seeking Tax Protest Examiners. Experience in real and personal property evaluation or tax law practice essential.

5. Top 20 percent Washington Law School graduate, to receive LL.M. in taxation from N.Y.U. in June, 1971, has resume on file.

6. Woman seeking opportunity to become qualified for bar through Law Clerk program. Liberal Arts undergraduate degree.

Calendar

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).
May 7	Fourth Annual Pacific Coast Labor Law Conference, Olympic Hotel, Seattle.
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.

Pacific Coast Labor Law Conference

The Fourth Annual Pacific Coast Labor Law Conference will be held Friday, May 7, 1971, at the Olympic Hotel. The Conference is jointly sponsored by the University of Washington School of Law and the Labor Law Section of the Seattle-King County Bar Association.

Subjects and speakers for this year's Conference are the following:

"Individual Employee Rights"* A. L. Zwerdling, attorney from Detroit; Charles Prael, attorney from San Francisco; and Howard Jenkins, Jr., member, National Labor Relations Board, Washington, D. C.

"Successorship Problems"-Charles J. Morris, professor of law, Southern Methodist University, Dallas, Texas; and Joseph Barbash, attorney from New York.

"Labor Problems in the Public Sector"-Ed Townsend, labor editor, *Christian Science Monitor* and associate editor, *Business Week;* Robert H. Chanin, general counsel, National Education Association, Washington, D. C.

Chairman for the Fourth Annual Pacific Coast Labor Law Conference is Seattle attorney J. David Andrews.

CLE Civil Practice

The final two presentations of the State Bar CLE seminar on Washington Civil Practice Before Trial will be in Seattle March 13 and in Olympia March 20.

Preregistration on the brochures mailed to every active lawyer is strongly urged by the CLE Committee, but necessary late registrations will be taken at the doors from 8 to 9 a.m.

Chairman of the dozen-member faculty of judges and lawyers is **Albert R.Malanca** of Tacoma. Panelists are **James P. Moceri** of Tacoma; **Roy J. Moceri**, Seattle; **Ronald E. McKinstry**, Seattle; **Alan A. McDonald**, Yakima; **Howard P. Pruzan** and **Charles S. Burdell**, Seattle; **Paul Luvera Jr.**, Mount Vernon; **Alvin A. Anderson**, Tacoma, and Superior Court Judges **Robert J. Bryan** of Kitsap County, **Bertil E. Johnson** of Pierce County and **Charles Z. Smith** of King County.

The seminar was scheduled for Spokane's Ridpath Hotel from 1 to 6 p.m. February 26.

WPI — Civil

The Supreme Court Committee on Washington Pattern Jury Instructions is now actively working on a pocket supplement to WPI-Civil. The bar has now worked with this book on civil jury instructions for approximately three years.

The Committee would appreciate comments from lawyers growing out of their experience. Suggestions for revisions to be included in the pocket supplement should be addressed to Judge Stanley C. Soderland, King County Courthouse, Seattle 98104.

Scholarship Fund

A "Samuel B. Bassett Labor Relations Scholarship Fund" has been established to aid college students or law students who are interested in working in the labor movement and who are in financial need. Contributions can be mailed to Bassett, Donaldson & Hafer, Vanderveer Bldg., 2819 First Ave., Seattle 98121.

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

Disbarment

Wilmont Garvin, Spokane, was disbarred from the practice of law in Washington by opinion filed January 21, 1971. *In re Garvin,* 78 Wn.2nd (1971).

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