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WASHINGTON STATE BAR NEWS

"NO FAULT" AUTOMOBILE INSURANCE

MEMORANDUM

TO: All State of Washington Attorneys

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LEAD ARTICLES

IN THE NEWS

DEPARTMENTS

Letters

"No Fault" Flyer

Dear Mrs. Ralls:

With the Washington State directory of lawyers, for which I thank you, came a brown pamphlet published by the Defense Research Institute, Inc., 1970, entitled "The Dilemma of No Fault Auto Insurance."

I deeply resent being circularized by the Washington State Bar Association on the supposed evils but none of the alleged virtues of "no fault" auto insurance.

The presentation on this subject at Vancouver by Professor Sargent was a disgrace. Following the business meeting, when a good cross-section of the bar was present, an obvious hireling of the insurance industry affiliated with a "university" no one has ever heard of, regaled the members with a one-sided, distorted, self-righteous presentation of the supposed evils, stressing an appeal to the puritanical prejudices he assumed resided in the assembled members.

If the objections to it are no more serious than one would infer from the puerile and blatantly unfair attack made upon it by that incompetent, no fault must have a great deal to recommend it.

Now today comes this silly pamphlet.

If the State Bar Association is going to concern itself with this subject, and I agree that it is a legitimate subject of concern to the association, it seems to me that it is about time that the members of the association were treated to a honest, fair presentation of both sides of the question. The *Washington State Bar News* for March, 1971 makes a fair start . . .

MARY ELLEN KRUG

Seattle

Dear Mr. Beresford:

I recently got a flyer from the auto and casualty insurance people enclosed with some official material from the State Bar Association. I'm really not particularly concerned that the flyer itself was badly put together, miserably written and full of gross misstatements of fact. It's a free country, and that's my problem.

What I am concerned about is that the Governors of the State Bar Association would lend their sanction to a grossly one-sided presentation on a controversial issue, unless of course you plan to send out comparable material on the other side of this question and then, presumably, both sides of dozens of other issues with which lawyers are concerned both professionally and as citizens.

Personally, I think it's a poor and a dangerous precedent, and I certainly object to having my money spent in this fashion, however inexpensive stuffing the flyer in question may have been. I want to make clear that I'm not complaining that the Board of Governors, regarded collectively, is ingrown and one-sided in its views; we lawyers could hardly complain of that, as we elected them. My objection is to the procedure being followed, largely because of the kind of Pandora's box which I suspect is about to open.

Best regards.

IRVING M. CLARK, JR.

Seattle

A Disgrace

Editor:

The Cover for the *Bar News* for May is a disgrace. Why should this dishevelled, unkempt visage be duplicated there as well as on an inside page? Such undeserved publicity is craved by such persons. The rambling remarks of this individual do not deserve this prominence. His blatant exaggerations are unmarred by a single . . . constructive utterance or thought.

No definite allegations or charges have been outlined. Nor have any definite remedies been suggested. There seems to be nothing but "words, words, words." The public had been made painfully aware of the tactics advocated and displayed by the defendants, and their advisers, in the Tacoma federal court trial. The complaints of the McNeil Island convicts have not been detailed in this article.

Certainly we Americans are not ready to adopt Mexican prison practices, as advocated by this one pleader. He stresses certain of their rights; yet they have certain definite responsibilities which they cannot arrogantly disregard. Let him criticise who has the heart to help, constructively.

JOHN J. LANGENBACH
Superior Court Judge retired

Raymond

Dissatisfied Reader

Editor:

Do you blame him? [Warden J. J. Parker not commenting on the article "There's Trouble at McNeil Island in the May '71 *Bar News*] I sure as hell don't. Those bums get enough Hallelujah Glory Be in the media as it is. What a contrast — Beresford's lament — and your Holley crap. As Bob Burns would say — It would puke a hog.

PAT STEELE

Tacoma

The President's Corner

On May 10th, the State Legislature went through its customary end-of-the-session antics, turned off the clock, and tried to pass a few bills.

Among the major items which were not passed was the new Judicial Article. The merits and demerits of the Judicial Article have been amply discussed in this *Bar News*, but nobody has really told the history of what occurred. I think a brief resume would be helpful.

First, as every lawyer knows, there has been agitation for years on the subjects of judicial tenure and discipline; delays due to court clogging arising from inefficient use of the judiciary both on the superior and district court levels, and the use of courts in some litigation which could just as easily be handled by boards.

Over two years ago, the Board, as it then existed, appointed a committee under the chairmanship of Fred Velikanje to study the problems and come up with a new Judicial Article. At first the committee worked with that of the judges, and then it concluded that it would be better for it to pursue its separate way. The result was that last fall the committee completed its work simultaneously with that of the judges' committee. There were a number of problems arising out of rule-making power, appointees to the bench, the Missouri Plan versus the Nebraska Plan, and so forth. I was empowered by the Board to appoint a committee and appointed Neil Hoff and Ken Short to work with an equally small committee from the superior, supreme, appellate and district benches, and a small committee from the Citizens' Advisory Committee, to iron out the differences in the various versions, to the end that one unified bill could be presented. This was accomplished, and a very effective article was introduced.

The first stumbling block was that the joint committee decided on the Nebraska Plan, as modified by the work of the various groups, which called for an appointment from a list composed of lawyers and laymen, but which also provided that the appointed judge would run in an open election, that is to say, against a named opponent. This would allow lawyers who felt that there were politics involved in the commission, or judges of lower courts who desired to run for appellate positions, to file and run irrespective of whether or not they were on the commission's list. It was intended also to meet the objections of certain labor representatives who wanted to run a named opponent against an appointed judge who, for one reason or another, they thought might be anti-labor.

The intended objectives were not accomplished. Mr. Davis, on behalf of the Washington State Labor Council, vetoed the plan. The appropriate authorities in the Legislature acceded to his veto without argument, tenure was deleted, and there the matter ended.

The proposed article, which, as you know, contained many important advances besides tenure, such as more effective court administration, an intelligent approach to the judicial discipline problem, greater utilization of the district courts, and so forth, died for the following reasons: First, the bar itself was not unified on the subject; second, while I know of no particular active opposition on behalf of the superior bench, I also do not know of any effective endorsement, and, of course, the reason I have given, the opposition of labor.

The final draft submitted may

not have been the best, but the problems sought to be cured are still with us, and it certainly was an improvement on the present article. The purpose of this column is not to make an argument, but solely to inform the membership of the complete history, and perhaps this will result in discussion on the local level, to the end that some consensus can be worked out, discussed throughout the state with the local legislators, so that ultimately we can attain the much needed reform.

Editor's Note

When the *Florida Bar Journal* was awarded first place and the *Washington State Bar News* second place in competition at the ABA Annual Meeting in St. Louis last summer, two points were made as to the *Bar News*. First, little boxes should appear at the end of lead articles to signify the end. This has been done. Secondly, the absence of an editorial page was scored. So here it is and remember Jack Lynch may not agree with everything that appears in this column.

Hypocrites and Vultures

The phenomena of a national speaker preparing a speech in one city for delivery in another city, with which he is not too familiar, was evident in Mr. Brown's speech at the Pacific Coast Labor Law Conference (page 11). He challenged the legal profession to put its own house in order as to minority employment. Then Mr. Brown, a lawyer, used choice words to describe lawyers — hypocrites and vultures.

Naturally the Seattle P.I. took the cue. The headline in its Sun., May 9 edition read "'Get House in Order,' Lawyers Warned."

Why didn't Mr. Brown point out that the Seattle-King County Bar Association for the second year has appropriated 20% of its dues ($10,000) to the minority law scholarship fund at the U of W? Why not give credit where credit is due and urge bar associations in other areas of the country to do the same?

Why didn't Mr. Brown point out that the Seattle-King County Bar Association has recently completed a survey of practices of law offices in the hiring of minority clerical and secretarial employees? Why didn't he point out that the Board of Trustees recently established a program to recruit minority races for employment in the legal field and has established an advisory service to assist individuals in obtaining jobs in this field?

Why didn't he? Because he never bothered to ask anyone what's being done in the State of Washington.

A Tricky Legal Point

The May 9 *Seattle P.I.* carried an editorial entitled "Courtroom Outrage" in which it lambasted the decision of U.S. District Judge William P. Gray in San Francisco in dismissing the charges against Black Panther leader David Hillard who had been indicted for threatening the President's life, having shouted to an audience: "We will kill Richard Nixon!"

The White House and the Justice Department had ordered taps on Hillard's phone without obtaining a court order, relying on the President's constitutional powers. The court held that while warrantless surveillance of this type would be constitutional in the area of foreign affairs, no such constitutional authority can be found in the domestic area.

Said the P.I. editorial:

> "A tricky legal point was involved . . . The rationale behind this thinking is beyond belief . . . Judge Gray's ruling was another instance of bending over backward to protect the civil rights of a more than suspicious character."

The day before the editorial, the Justice Department filed a brief with the Supreme Court asking the Court to rule whether such wiretapping in national-security matters is authorized without court approval. The government is resisting a pretrial order by the trial judge that it disclose the information it obtained by wiretapping to one of the defendants. The Court of Appeals upheld the trial judge's order.

Involved is a most important constitutional issue of when the impartial judgment of a court should be inserted between the citizen and the government.

It is far more than "a tricky legal point." Such an emotional outburst in the editorial adds nothing to the sum total of human knowledge. It merely tears down the judiciary.

NON-FAULT AUTO INSURANCE PANACEA OR INEQUITY?

By David J. Sargent

It is a great pleasure for me to have the opportunity to address the Washington State Bar Association on the problems of automobile insurance. And indeed I think we all have to start out by admitting that there are problems of automobile insurance.

There are problems with regard to the arbitrary cancellation of policies and the arbitrary refusal of companies to renew policies. There are problems with regard to the arbitrary assignment of people to the assigned risk pool particularly when they become elderly, when they pay prohibitive insurance rates. There are problems with regard to so-called red lining practices whereby the inhabitants of certain non-white neighborhoods find it impossible to buy insurance at any price. And there are problems with regard to insurance rates.

But it is my opinion that the Keeton-O'Connell Plan and the other non-fault automobile insurance plans don't solve any of those problems. If the Keeton O'Connell Plan is ever adopted, you will find out that none of your old problems have gone away and that you have got some new ones of which you never dreamed.

I should like to start by reminding all of you of the compulsion that presently exists for motorists throughout the United States to buy automobile liability insurance. That compulsion in the States of Massachussetts and New York and North Carolina is complete. You have a form of compulsory insurance via the so-called financial responsibility laws.

Now, Professor Keeton and O'Connell, Governor Rockefeller in the State of New York and others are advocating the adoption of something which Professor Keeton calls "compulsory basic

David J. Sargent

David J. Sargent is a Professor of Law at Suffolk University in Boston. This article embodies his remarks delivered on September 11, 1970 at the annual business meeting of the WSBA in Vancouver, B.C.

protection." The public might well think from this that all we are really talking about is the substitution of one form of compulsory insurance for another, but the change is much, much greater.

The Fault System

From the very beginning of this country as you men all well know, if a man was injured in any way other than the Workman's Compensation type case, and he sought recovery for his injuries from another, he was required to prove that the person that he brought suit against was at fault and that his injuries were causally related, but if he proved that then he was entitled to recover for all of the loss of his earning capacity without any deduction, he was entitled to recover for all of his medical expenses without any deduction. He was entitled to recover for all of his pain and suffering and loss of function without deduction. By the same token if he couldn't prove that someone else had wrongfully caused his injuries then that man was left to his own devices, to whatever he had seen fit to put aside for a rainy day.

I think that that system recognizes the philosophy that a man ought not to profit from his own wrong. But Professors Keeton and O'Connell would abolish our concept of negligence and substitute in its place the philosophy that it really doesn't matter how you drive your car, you are still entitled to recover. Under the Keeton O'Connell Plan, the drunken driver will be compensated, the dope addict operating under the influence of narcotics will be paid. The teenager who participates in the drag race on a crowded highway and crashes head on into an oncoming motor vehicle, he, too, will be paid.

Paying Wrongdoers At the Expense of the Innocent

I think it only fair to stop and ask ourselves the question, if you are going to make payment to these people who are denied payment under our present system of justice, how are you going to finance that payment? And the answer in my opinion is very simple. You take benefits away from the innocent victims in order to finance payments to the wrongdoers who perhaps perpetrated a disaster upon them.

Now, Professor Keeton, if he were here, would tell you that there is certainly nothing immoral about paying wrongdoers. I am inclined to agree with him. But I think that there is something very immoral about paying wrongdoers instead of paying the innocent, and in my opinion that is exactly what happens under every non-fault plan that has been proposed to date. You take benefits away from the innocent, in order to finance the same token benefits to the wrongdoers.

The Keeton O'Connell Plan is a rather complex piece of legislation, 72 pages long, but it is based on two rather simple principles: Everyone would be compelled to buy an accident-health insurance policy, and according to the terms of that policy if the operator or any occupant of his motor vehicle or any pedestrian received an injury which arose out of the ownership, maintenance or use of the motor vehicle, that person would be entitled to recover certain net economic loss benefits.

Net Economic Loss

Now, net economic loss as they define it means your wage loss plus your medical expenses, minus these deductions: You first have to deduct all collateral sources that you have or which you are eligible to receive. That means you have to deduct wage continuation plans, union fringe benefits, sick leave, Medicare, Medicaid, Blue Cross, Blue Shield and the like. Then if you have any loss above and beyond that, you are forced to deduct a flat $100. And if you have any loss above and beyond collateral sources plus $100, you then are forced to deduct 15 percent of your wage loss and then note finally under no circumstances are you ever paid one penny for pain, suffering, permanent disability. All you receive is this net economic loss. Conversely you have no right to bring suit against the wrongdoer who injured you unless you have damages which consist of either $10,000 in special damages (loss of wages and medical expenses) and/or $5,000 in pain and suffering. So most people because of the fact that most people have collateral sources receive absolutely nothing.

Now, this idea has been deemed a new and revolutionary concept but in fact it is only a stripped down version of something called the Columbia Plan which was first proposed in 1932. And it is interesting to note that in the ensuing 38 years not a single American jurisdiction has seen fit to adopt any one of the variations of the Columbia Plan. You might ask yourself a question, why not? One answer at least is that every plan that has been proposed to date, has been vastly more expensive than our present liability system.

(continued on page 27)

THE BASIC PROTECTION PLAN

By Robert E. Keeton and Jeffrey O'Connell

Perhaps the most distinctive feature of our previously proposed Basic Protection Plan[1] is that it dovetails fault and nonfault compensation through the use of its *partial* tort exemption. The two key ideas of Basic Protection are: first, to provide nonfault coverage for all out-of-pocket economic losses up to a selected limit — the amount suggested being $10,000; and, second, as a corollary, to eliminate all tort actions based on negligence except those for losses above the nonfault benefits and for pain and suffering in cases of severe injury.

The Basic Protection Plan, then, would require every motorist to insure himself for out-of-pocket losses up to $10,000, and, in turn, would exempt him from tort liability to others roughly within the same range of coverage. The precise form of partial tort exemption we have suggested is one that would eliminate claims based on negligence unless the damages, as assessed under tort standards, were higher than $5,000 for pain and suffering or higher than the $10,000 limit of non-fault benefits for all other items, including medical expenses and lost wages.

Excerpts from an article entitled "Alternative Paths Toward Nonfault Automobile Insurance" which appeared in 71 Columbia L.Rev. 241 (1971). © *the Columbia Law Review. Reprinted by permission.* *Mr. Keeton is a Professor of Law at Harvard University and Mr. O'Connell is a Professor of Law at the University of Illinois.*

Plans With No Overall Limit

The American Insurance Association (AIA) Plan, the New York Insurance Department Plan, and the variation on the AIA Plan developed by Minnesota State Senator Davies, all propose that the basic nonfault coverage for economic losses have no overall limit — neither at the level we proposed ($10,000) nor at any other level. The New York Plan also rejects internal limits, though both the AIA and Davies Plans include such limits; for example, both of the latter plans include a limit of $750 per month for wage loss. In turn, both the AIA and New York Plans also propose almost total abolition of tort liability for damages arising out of automobile accidents.

Objections to extending the basic nonfault coverage without limit are based on considerations of both cost and equity. Plainly, coverage without limit for accidental losses is socially desirable and should be made available if it can be provided at a cost that is both reasonable and equitably distributed. But we believe it is less than clear that these conditions can be fulfilled under a "no-limit" plan.

[1]As used in this article, "Basic Protection" refers to the nonfault system previously proposed by the present authors and set out in the form of a proposed statute in R. KEETON & J. O'CONNELL BASIC PROTECTION FOR THE TRAFFIC VICTIM: A BLUEPRINT FOR REFORMING AUTOMOBILE INSURANCE 299-339 (1965).

Problems of Cost and Equity

First, is it possible to provide nonfault coverage for all economic loss at a cost low enough to make it feasible to require every motor vehicle owner to pay a fair share of that cost as a prerequisite to registering his vehicle (or to require every driver to pay a fair share as a prerequisite to obtaining his driver's license)? If so, problems of equity among traffic victims with respect to benefits for *economic* loss at least (passing for the moment the issue of payment for pain and suffering) are avoided. If in contrast, the cost is so high that such an arrangement is not feasible for motorists, then a choice must be made as to what economic losses resulting from traffic accidents will go uncompensated. Problems of equity among victims come immediately to the fore as the choices among the many possible exceptions from full coverage are considered. In other words, in determining the extent to which losses are to be reimbursed through required insurance coverage one must face a cost-equity dilemma.

> To whatever extent provisions for compensation fall short of assuring every victim *full* compensation at least for out-of-pocket loss, the system fails to assure distribution of loss — that is, it fails to spread it among a large group and instead leaves it to be borne by an individual. To this extent, the system must still confront the argument that as between just two individuals — an innocent victim and a blameworthy driver — it seems unfair to make the victim bear the loss. To escape this argument and its basic appeal to one's sense of what is fair, a pure nonfault system must come at least very close to compensating fully for out-of-pocket loss.[2]

The New York Plan does purport to come close to completely reimbursing out-of-pocket loss. The AIA Plan, however, is more vulnerable because of its internal limits, particularly the limit of $750 per month for wage loss. But in either case, the question remains whether (even assuming the equity of the amount and distribution of the nonfault payments) the cost of the payments can fairly and reasonably be exacted from the premium-paying public. Although cost estimates of the New York and AIA studies have predicted substantial savings, these projections have been vigorously attacked as underestimating the cost of providing lifetime or indefinitely extended benefits for out-of-pocket loss.

We ourselves are uneasy as to whether allowance has been made in these estimates for all cost factors (including inflation, among others) involved, for example, in providing lifetime compensation to victims suffering serious and permanent injury. Can the AIA and New York estimates be reconciled with the estimate of Professor Conard and his colleagues that the three per cent of traffic victims who incur out-of-pocket losses of $10,000 or more account for 57 per cent of the aggregate out-of-pocket loss suffered by all traffic victims?

Note too that some of the findings reported by the Department of Transportation in 1970 emphasize how little even of his out-of-pocket loss is now paid to the seriously injured victim through automobile insurance — and indeed apparently from all sources. According to the recent Department of Transportation study, only $2.5 billion of the $5.1 billion in compensable out-of-pocket losses resulting from those automobile accidents occurring in 1967 that involved deaths and serious injuries were repaid from all types of insurance. Automobile insurance itself accounted for less than $1.1 billion of the repayments, with the other compensation coming from health and accident and other insurance.

Moreover, we have long known that serious injury or prolonged illness can cause even the relatively affluent to face financial disaster. Finally, the gross underestimation of the costs of Medicare and Medicaid have — perhaps rightly — made all of us a little skeptical of actuarial predictions of the costs of relatively open-ended insurance plans. Is it not fair to conclude, then, that to pay the remaining out-of-pocket losses above those now paid from one source or another may involve very large sums indeed, compared to what is now being paid from automobile insurance?

Pain and Suffering

Keeping in mind the cost-equity dilemma, one must note also that this analysis has thus far taken no account of general damages, including payment for pain and suffering. Since a significant number of automobile accidents involve an innocent victim and a blameworthy driver, many will argue, in virtually all contexts, and perhaps others will argue in at least some contexts, that equity requires an award of general damages, including "compensation" for pain and suffering, as well as reimbursement for out-of-pocket loss. This argument gains force as the severity of injury increases; it has spe-

[2] R. KEETON VENTURING TO DO JUSTICE 136 (1969).

cial force in relation to cases of permanent disfigurement involving severe injury but relatively low out-of-pocket loss. Many victims, for example, sustain minimal out-of-pocket losses but very severe psychic losses (e.g., the amputee with a desk job or the grossly disfigured person whose earnings are not affected by disfigurement). For these victims, and for society generally, the bargain of eliminating the possibility of general damages in higher amounts in return for certainty of payment in lesser amounts may be unacceptable.

Thus the cost-equity dilemma poses two questions: first, can we afford to pay for all out-of-pocket loss? And, second, even if we can, should we force on *all* victims the bargain of assured and relatively full compensation for out-of-pocket loss at the price of abandoning all tort claims?

The Basic Protection Plan answers this cost-equity dilemma by preserving the tort action for severe injury cases. The Plan thereby does at least a little more, and probably a great deal more, for the severely injured victim than the fault system does for him. In all probability it will pay him, net of attorney's fees, at least as much as the fault system pays, but offers the advantage of paying $10,000 of that sum without delay, as nonfault benefits, while he pursues his fault claim for additional benefits.

The AIA Plan (including the Minnesota variation) and the New York Plan offer such a victim more in nonfault benefits since those plans have no overall limit on such benefits. But they offer much less in total benefits than the Basic Protection Plan offers to such a severely injured victim who has a good claim in tort against a solvent, or well-insured, blameworthy driver. In this respect — and with respect to their overall cost — we submit that the AIA Plan and New York Plan may not offer a satisfactory answer to the cost-equity dilemma. In other words, not only may those proposals fail to hold costs down to feasible levels, but also, in trying to do so, they treat inequitably some severely injured victims who are most deserving of more favorable treatment by the reparation system.

Perhaps the ideal answer to the cost-equity dilemma in these circumstances, preferable to both the AIA and New York proposals and the original Basic Protection Plan, is (1) to provide by compulsory insurance a basic level of nonfault insurance for out-of-pocket losses of all victims, (2) to offer optional nonfault coverage for additional out-of-pocket losses without limit, and (3) to provide that tort actions will be preserved for losses above the limit of the compulsory coverage unless the victim has elected to carry the unlimited nonfault coverage that would correspondingly preclude his tort claim in full. Thus, each motorist would be required to insure himself (and passengers in his car, including his family, as well as pedestrians injured by him), for basic out-of-pocket losses, with a corresponding elimination of tort claims by all motorists against each other within the range of this basic coverage. In addition, those motorists who want to be assured of relatively unlimited payment for their out-of-pocket losses at the cost of giving up their tort claims for unlimited damaged, including pain and suffering, could do so. No one, however, would be forced to do so.

If it should develop in practice that unlimited nonfault coverage for out-of-pocket losses would be no more expensive than the AIA and New York cost studies indicate, most car owners would probably elect the full coverage because of its attractively low cost and because the advantage of such full protection for out-of-pocket loss would outweigh the disadvantages of giving up claims for general damages such as pain and suffering. Those who also want coverage for psychic loss would be able to use part of the savings to buy optional nonfault coverage providing it. If, on the other hand, the New York and AIA cost estimates prove to be too optimistic, more motorists would make a different cost-benefit calculation and would reject the optional coverage. In short, we suggest that it may be better to let this cost-equity issue work itself out in the market place than to try to resolve it in the legislature.

Authors Offer Modification Of Their Plan

We therefore suggest a modification of our proposed Basic Protection Insurance Act to offer this optional nonfault coverage without limit.

Despite our reservations about the costs of open-ended plans, the New York and AIA studies do indicate that coverage for nonfault benefits, and even full coverage without limit, can be offered at a cost much lower than we had previously supposed possible. This different perspective on costs may also justify the reassessment of another related issue. In our original proposal we recommended that nonfault insurance up to $10,000 be compulsory and that liability insurance for losses outside the tort coverage should be optional, adding that it would seem

> wiser to use whatever dollars the motorist is required to pay in premiums for compulsory

insurance to support basic protection coverage alone. If it were proposed to a legislature that $10,000 of basic protection coverage be compulsory and an additional $5,000 of tort liability coverage also be compulsory, we would recommend instead raising compulsory basic protection to $15,000.[3]

We pointed out, however, that in the event of disagreement with our assessment of the relative advantages of adding more nonfault coverage or instead adding a basic level of liability coverage to the compulsory package, it would be a simple matter to modify the draft statute to so provide. Since nonfault insurance costs generally are lower than we originally anticipated, and since the Harwayne and AIA studies consider explicitly the cost of a first level of liability insurance coverage under a Basic Protection system and find it to be very low indeed, we believe it to be both feasible and sensible to include a basic amount of liability insurance in the compulsory package. We would recommend at least $10,000. Among the advantages gained by this arrangement are that Basic Protection policyholders would have coverage for the costs of defense against liability claims,[4] and both they and their potential tort victims would have the benefit of so-called residual liability insurance protection to cover, for example, accidents that occur while driving in a state that has not enacted a Basic Protection system.

Evaluation of the Massachusetts Plan

We are pleased to see the nonfault principle given some chance to prove itself — though the opportunity is indeed poor and limited when the nonfault provisions are as scaled-down as in the plans referred to here, and poorer still when they are burdened with amendments as extraneous as those attached to the Massachusetts bill. Thus, although we and others who are persuaded that nonfault insurance should be the keystone of an automobile accident reparation system can applaud the Massachusetts development as potentially a breakthrough for the nonfault concept, we cannot recommend it as a model for adoption elsewhere. Rather, we continue to believe that the evils of the fault system, as it applies to the great multitude of claims for less than severe injury, call for a tort exemption as extensive as that initially proposed in the Basic Protection Plan. And we believe the limit on nonfault benefits should be much higher than $2,000 if those benefits are to go a reasonable distance toward meeting the need for covering out-of-pocket losses, including expenses of rehabilitation in those critical periods immediately after an accident and before any payment of a tort claim can be realized.[5]

The tort-exemption provision of the Massachusetts law is subject to criticism not only because of the relatively low level at which the line between permissible and impermissible tort claims is drawn, but also because of the nature of the standard it uses to determine whether tort claims will be permitted. Tort claims for pain and suffering damages are permitted in specially defined circumstances, as when the victim suffers a fracture, and also whenever a victim's medical and hospital expenses exceed $500. Though data have not been released publicly, there is good reason to believe that only a tiny percentage of all claims in 1969 or 1970, for instance, involved medical and hospital expenses exceeding $500. But, under the new law an injured person could easily cause his expenses to exceed $500 by making subjective complaints requiring hospitalization for even a few days of diagnostic tests. Thus, a standard of this *nature*, and particularly at this low level, creates a far greater inducement to, and risk of, exaggerated medical expenses and claims than we think wise.

(continued on page 30)

[3] R. KEETON & J. O'CONNELL, *supra* note 1, at 288.

[4] Some have criticized the Basic Protection Plan because, in providing nonfault protection along with the corollary tort exemption, it does not cover, as does liability insurance, the costs of defending against liability claims, including lawyers' fees. A plan in which the package of required insurance includes both nonfault benefits and liability coverage obviates this objection.

[5] The situation may be even worse than that stemming from low limits, because the Massachusetts act as we read it, purports to provide that, when a fault claim is pursued, nonfault payments are not due until after the disposition of the fault claim. MASS GEN LAWS ch. 90, § 34M (1970). On the other hand, nothing in the act would seem explicitly to prohibit a person from evading the application of this provision by receiving his nonfault benefits and *then* claiming in tort. That approach would be less available to a seriously injured person with prolonged, periodic nonfault payments due him. For differing views regarding interpretation at the Massachusetts law, *see, e.g.*, R. Kenney & C. McCarthy, *"No-fault" in Massachusetts, Chapter 670, Acts of 1970—A Synopsis and Analysis*, 55 MASS. L.Q. 23 (1970); Ragalowicz, *An Analysis of the Massachusetts Personal Injury Protection Act of 1970*, to be published in 8 HARV. J. LEGIS., No. 3 (1971).

TITLE VII OF THE CIVIL RIGHTS ACT

By William H. Brown III, Chairman

Equal Employment Opportunity Commission
Washington, D. C.

Mr. Brown in preliminary remarks before launching into the following speech stated that lawyers have a "burden to carry" in advising clients as to Title VII. The back-pay ramifications are enormous; 350 women in New Jersey were recently awarded $1 million in back pay. There is $20 to $30 million exposure in some pending cases.

The last time I had the pleasure of visiting Seattle, I came to announce the opening of the Equal Employment Opportunity Commission's newest District Office. Since then we have continued to grow at a rapid pace: 12 new offices have been opened since we began our Seattle operations last year, and several other offices will open before the end of this year.

Like any new agency, we've had our growing pains. Procedures which worked well in other agencies had to be adapted to an entirely new statute. It is not surprising, therefore, that much of the litigation in which EEOC participated during its first five years involved procedural aspects of the law.

Between 1965 and 1970, most defendants in Title VII suits have been willing to bear the expense of litigating procedural issues. These defendants have not been deterred even though the cases dragged on for years through appellate courts, and they bore the risk of paying plaintiffs' attorney's fees.[1]

Delivered before the Pacific Coast Labor Law Conference at the Olympic Hotel in Seattle on May 7, 1971.

Voluntary Compliance by Business Doubtful

One commentator[2] has even suggested an "evident willingness of employers to contest suits simply seeking belated adherence to the law

William H. Brown III

(which) indicates that continuation of discriminatory employment practices . . . is profitable." I would like to believe that American businessmen are not that cynical. But unfortunately my experience does not make me too sanguine about the prospects for widespread voluntary compliance with the law.

For example, I often participate in question-and-answer sessions before large industry groups. Well over 90% of the questions I receive are some variation of "What will happen to my company if . . .?" "How much do we have to do to comply with this rule or that regulation?" I am almost never asked by businessmen, "How can we do more to solve the problem?" or "Will EEOC help us set up an affirmative action program?"

Like it or not, we at EEOC have to live with the fact that business and labor, with rare exception, are concerned with making the greatest number of dollars with the least possible effort required to comply with the law. With that fact in mind, I want to talk to you about dollars and cents, cases and precedents, and the relationship of Title VII to the corporate pocketbook.

Through participation in hundreds of cases initiated by private parties, EEOC and the Department of Justice have seen to it that it is no longer profitable to discriminate in employment. The Government has ultimately prevailed on just about every procedural issue which has been litigated in the past few years. To show you what this can mean to employers who choose to discriminate, let me cite an example of just one case.

Class Action for Back Wages for All Members of A Class

In *Bowe v. Colgate-Palmolive Co.*,[3] the Seventh Circuit said that the court's remedial power under Title VII should be read quite broadly. Then it continued:

> The clear purpose of Title VII is to bring an end to the proscribed discriminatory practices and to make whole, in a pecuniary fashion, those who have suffered by it. To permit only injunctive relief in the class action would frustrate the implementation of the strong Congressional purpose expressed in the Civil Rights Act of 1964.[4]

Since it is established[5] that employers have an affirmative duty to eliminate the effects of past discrimination, compensatory action is clearly appropriate for those who have suffered from prior discrimination. The court extended this reasoning in *Bowe* to hold that, under Title VII, a class action may be maintained seeking monetary damages for *all* members of a class, whether or not they had all filed complaints with EEOC. And, of course, those damages include back pay for all members of the affected class. You can see how this could get rather expensive for an employer or union which continues to discriminate.

The court in the *Bowe* case did not stop there. It also recognized the right of the charging party to pursue both contractual and statutory remedies where statutory rights provided by Title VII overlap with those provided by a collective bargaining agreement.

I have cited one case to illustrate the extent of liability which a violator of Title VII may face. Let me now summarize briefly a few of the other procedural victories we have won.

Several cases[6] have approved very wide use of the Commission's investigatory powers and two circuits have held[7] that a Commissioner's Charge need not detail the evidence on which it was based in order to support a Commission investigation, but need only allege the practices believed to be unlawful. The Commission's power to enforce court orders was upheld in a case requiring a union to adjust its referral practices to conform to a prior court decree.[8]

The Fifth Circuit has held[9] that the 90-day

1. *Jenkins v. United Gas Corp.*, 400 F.2d 28 (5th Cir. 1969).

2. Olson, "Employment Discrimination Litigation: New Priorities in the Struggle for Black Equality," 6 Harvard Civil Rights — Civil Liberties Law Review 20, 39 (1970).

3. 416 F. 2d 711 (7th Cir. 1969).

4. 416 F.2d at p. 720.

5. *U.S. v. Local 189, Papermakers*, 416 F.2d 980 (5th Cir. 1969).

6. E.g., *Bowaters Southern Paper Corp. v. EEOC*, 428 F.2d 799 (6th Cir. 1970), *cert. den.*, U.S. , 3 EPD para. 8049 (1970); *Blue Bell Boots v. EEOC*, 418 F.2d 355 (6th Cir. 1969); *Sanchez v. Standard Brands*, 431 F.2d 455 (5th Cir. 1970). See also, *Sciaraffa v. Oxford Paper Co.*, 310 F. Supp. 891 (D. Me. 1970).

7. *Bowaters, supra*, note 6; *Local 104, Sheet Metal Workers v. EEOC*, F.2d , 3 EPD para. 8134 (9th Cir. 1971).

8. *EEOC v. Plumbers; Local 189*, 311 F. Supp. 464 (S.D. Ohio 1969), appeal pending, No. 20314, 6th Cir.

9. *Hutchings v. U.S. Industries, Inc.*, 428 F.2d 303 (5th Cir., 1970); *Culpepper v. Reynolds Metal CO.*, 421 F.2d 888 (5th Cir. 1970).

period for filing a charge with the Commission is tolled upon the filing of a union contract grievance; the Court also held that an adverse arbitration award obtained through the grievance procedure is not a bar to the maintenance of a suit under Title VII.[10] The Supreme Court has heard arguments and will soon issue a decision on a case from the Sixth Circuit which took the opposite position.[11]

Two circuits have accepted the Commission's argument that a prior unsuccessful action under the National Labor Relations Act contesting the revision of a seniority system does not foreclose an action under Title VII challenging the same revision.[12]

In other procedural actions, a job applicant was held to have standing to attack in-plant practices from which he could not yet have suffered personally[13] and defendants have been denied jury trials on the issue of back pay.[14]

The Supreme Court will soon rule on the Commission's power to assume jurisdiction over charges previously deferred to a state agency.[15] The High Court recently vacated a Ninth Circuit decision which had disapproved of the Commission's deferral practices in a particular state.[16]

Many procedural issues arising under Title VII may have been alleviated since the Fifth and Seventh Circuits have ruled that employment discrimination suits may also be brought under the Civil Rights Act of 1866.[17]

10. *Hutchings, supra,* at p. 311.

11. *Dewey v. Reynolds Metal Co.,* 429 F.2d 324 (6th Cir. 1970), cert. granted. U.S. , Jan. 18, 1971.

12. *Taylor v. Armco Steel Corp.,* 429 F.2d 498 (5th Cir. 1970). The Eighth Circuit had reached the same result in *Norman v. Missouri Pacific R.R. Corp.,* 414 F.2d 73 (8th Cir. 1969).

13. *Carr v. Conoco Plastics,* 295 F. Supp. 1281 (N.D. Miss. 1969), *affirmed per curiam and incorporated by reference,* 423 F.2d 57 (5th Cir. 1970), *cert. denied.* U.S. , 3 EPD Para. 8049 (1970).

14. *Johnson v. Georgia Highway Express Co.,* 417 F.2d 1122 (5th Cir. 1969); *Gillen v. Federal Paper Board Co., Inc.,* F. Supp. , 63 LC Para. 9486, 2 FEP Cases 837 (D. Conn. 1970).

15. *Love v. Pullman Co.,* 430 F.2d 49 (10th Cir. 1969), *affirmed on hearing,* 430 F.2d 49 (10th Cir. 1970), *cert. granted,* U.S. , 39 U.S.L.W. 3353 (No. 957, Feb. 23, 1971).

16. *Crosslin v. Mountain States Telephone & Telegraph Co.,* U.S. , Jan. 18, 1971, *vacating and remanding* 422 F.2d 1028 (9th Cir. 1970).

In short, the courts have diligently protected the administrative powers of EEOC and the procedural rights of charging parties despite five years of legal attack on the framework of Title VII.

As procedural matters are settled, the Commission is participating in more cases which are deciding Title VII issues on the merits. And our track record on the substantive issues has been as good as it is on procedure. The first two Title VII cases to reach the Supreme Court established vital precedents which really put some meat on the skeleton of the Civil Rights Act.

Sex Discrimination

In its first sex discrimination decision under Title VII of the 1964 Civil Rights Act, the High Court held unanimously that the law forbids "one hiring policy for women and another for men" when both are parents of pre-school age children.[18] This marks the first time that the Supreme Court has acknowledged that women encounter discrimination when seeking employment, particularly significant since we are long past the era when women worked "for pin money" or "to have someone to talk to besides the children." Increasingly, women work for the same reason that men work: out of necessity. The Labor Department reports that the number of working married women now exceeds 18 million and that includes over 10 million women who work and have children under the age of 18. This case, *Ida Phillips v. Martin Marietta Corporation,* was just one step forward in achieving equal employment opportunity for women, but it was a big one.

High School Diploma and Testing

Recently, the Supreme Court issued its momentous decision in *Griggs v. Duke Power Company.*[19] In that case, black employees of the company challenged the company's right to require a high school education or the passing of a standardized general intelligence test as a condition for employment, transfer, or promotion.

17. *Waters v. Wisconsin Steel Works,* 427 F.2d 476 (7th Cir. 1970), *cert. denied,* U.S. , 3 EPD Para. 8032, 2FEP Cases 1059 (1970); *Sanders v. Dobbs House,* 431 F.2d 1097 (5th Cir. 1970).

18. *Phillips v. Martin Marietta Corp.,* U.S. (Jan. 25, 1971), *vacating and remanding* 411 F.2d 1 (5th Cir. 1969).

19. U.S. ; 28L Ed 2d 158 (1971).

The challenge was based on the fact that neither standard was shown to be related to job performance and both requirements disqualified blacks at a substantially higher rate than whites.

Chief Justice Burger, writing for a unanimous Court, upheld the EEOC's view that such practices are unlawful:

> [The Civil Rights Act] proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation. The touchstone is business necessity. If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited.

The effect of the opinion was to approve the guidelines on employment testing practices issued by the Commission; EEOC has long interpreted the law as permitting "professionally developed" tests only if they tested the applicant's ability to do the work. The decision comments, "The administrative interpretation of the Act by the enforcing agency is entitled to great deference." The Chief Justice wrote:

> What is required by Congress is the removal of artificial, arbitrary and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classifications.

He concluded by saying that "any tests used must measure the person for the job and not the person in the abstract." The *Griggs* decision will provide the framework for a massive assault on arbitrary hiring and promotion standards which have long prevented minorities from achieving true equality of opportunity in employment.

Rejection of Argument that Specific Intent Required

So momentous was the *Griggs* decision on the issue of employee selection devices that many commentators have overlooked another part of the opinion which may have even greater legal significance: the Court rejected the notion that specific intent is necessary and relevant to establishing a violation of Title VII. The Court held the only relevant consideration to be the *consequences* of an employment practice. If the consequence is discrimination, the selection device is proscribed in the absence of a showing of a "manifest relationship to the employment in question."

An earlier decision in California[20] also looked to the consequences of an employment practice and not to the employer's intent. The court held that an employer could not refuse to employ applicants with arrest records (as distinguished from convictions) where the practice had a disparate effect on minorities and was not compelled by business necessity.

The Commission has regularly held that statistics showing that women and minorities are absent from or substantially underrepresented in certain job classifications establishes a *prima facie* case of unlawful exclusion. The courts have adopted the Commission's analysis and have stressed the importance of statistical proofs.[21] Indeed, the Fifth Circuit has held that a statistical showing that blacks comprise only a small fraction of a company's work force and are primarily in menial jobs *requires* issuance of a preliminary injunction.[22]

Religion

A Title VII case currently pending before the Supreme Court, *Dewey v. Reynolds Metals Company*,[23] involves the Commission's Guidelines on Discrimination Because of Religion.[24] In those Guidelines, the Commission stated that employers have the duty to make reasonable accommodations to the religious needs of employees and applicants for employment where such accommodations can be made without undue hardship on the conduct of the employer's business.

In *Dewey*, the District Court had found, in conformance with EEOC Guidelines, that an employer violated Title VII when it discharged a member of the Faith Reformed Church who refused to work overtime on Sunday and to find a replacement for such Sunday work because it violated his religious principles. The appellate court reversed that decision and the case is now pending before the Supreme Court where it was argued a few weeks ago.

There have recently been several significant developments in the area of sex discrimination in addition to the *Phillips* case I mentioned. In

(continued on page 31)

20. *Gregory v. Litton Systems*, 316 F. Supp. 401 (C.D. Calif. 1970).

21. *U.S. v. Sheet Metal Workers, Local 36*, 416 F.2d 123 (8th Cir. 1969); *Jones v. Lee Way Motor Freight*, 431 F.2d 245 (10th Cir. 1970); *EEOC v. Plumbers, Local 189*, *supra*, note 8.

22. *Hutchings*, note 4, *supra*.

23. *Dewey*, note 11, *supra*.

24. 29 CFR 1605 (1967).

Two New Approaches to OEO Legal Services

OEO's Legal Services Program seems to be headed for a new home. Two bills have recently been introduced in Congress which would remove legal services from OEO, and establish an independent public corporation which would take over the job of approving, administering, and funding the almost 300 local legal services programs across the country.

The move to a corporation was recommended by the President's Advisory Council on Executive Reorganization (the Ash Council) on November 19 of last year. The primary reason for the Council's recommendation was to protect the legal services attorney client from political pressures. During the past several years, local legal services programs have been the subject of some intense political pressures by state governments, whose agencies are often defendants in lawsuits filed by legal services attorneys.

The most celebrated instance of this sort of pressure involved Governor Ronald Regan's veto of California Rural Legal Assistance (CRLA), which has been repeatedly recognized as one of the most effective and aggressive legal services programs in the country. One of CRLA's most well-known cases involved an injunction prohibiting Governor Reagan from forcing over $200 million in medical assistance payment forthe elderly poor. In introducing the Administration's legislation to Congress, President Nixon noted that the legal services "program is concerned with social issues and is thus subject to unusually strong political pressures."

The **"National Legal Services Corporation Act,"** H.R. 6360, S.B. 1305, was introduced on March 17. It is **sponsored by ninety-one congressmen** (37 Republican, 54 Democracts) and twenty-seven senators (4 Republican, 23 Democrats) led by Senator Walter Mondale (D-Minn.) and Congressmen William Steiger (R-Wis.) and **Lloyd Meeds** (D-Wash.). The bill provides for a 19-member board of directors to oversee the corporation's activities, with **six members appointed by the president,** six representatives of the "client community" and legal services attorneys, six representatives of professional bar groups, and the executive director of the corporation. The bill further requires that "client

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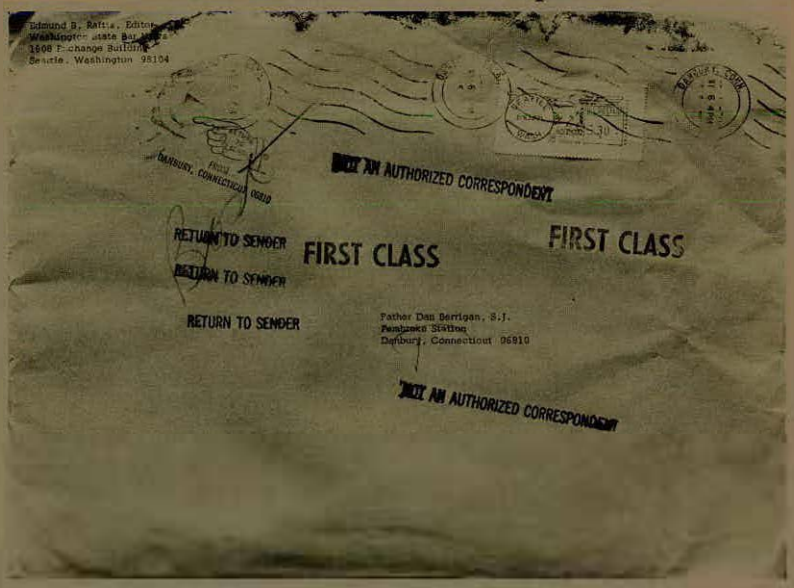
Not an Authorized Correspondent



Chief Justice Warren Burger stated: "A visit to most prisons will make you a zealot for prison reform." We can't even get Warden J. J. Parker at McNeil Island to answer our letters, let alone visit the place.

But apparently letters are not too popular in federal prisons. A friend wrote Father Dan Berrigan and received her letter back stamped "Not an authorized correspondent."

The last issue of the *Bar News* was sent to both Father Dan Berrigan in the federal prison at Danbury, Conn. and to Tommy Thomas, the strike leader in the "hole" at McNeil, with a cover letter asking for comments on prison reform.

The one sent to Father Berrigan was returned unopened and stamped "Not an authorized correspondent" (picture above). It is not known whether Tommy Thomas received his.

community" representatives have seats on the board of local programs funded under the Act.

The **administration bill,** sponsored by Senator Baker (R-Tenn.), Cook (R-Ken.), Taft (R-Ohio), Scott (R-Penn.), and Weicher (R-Conn.), provides for an **eleven-member board appointed by the President** and confirmed by the Senate. The bill further prohibits legal services attorneys from lobbying and preparing legislation on behalf of their clients unless requested to do so by an elected official.

Sponsors of the bipartisan bill argue that the structure of the Board of Directors in the administration bill will subject the program to the same pressures it is now laboring under. President Nixon urges that the board structure is similar to that of the Corporation for Public Broadcasting, and is "painstakingly designed to insulate the board from outside pressures."

Both bills were the subject of separate Senate and House hearings on May 10-12. The outcome of these hearings may determine the future direction of legal services for the poor.

— Mike Fox

American Bar Association to meet in N.Y., London

The world's second and third largest cities will co-host the 94th annual meeting of the American Bar Association in July.

More than 10,000 lawyers, judges, educators, government leaders and their families will gather in New York City for the first part of the meeting July 1-7; then many of them and others will journey to London for the second portion of the meeting scheduled from July 14-20. London is getting ready to welcome an estimated 12,000 U.S. visitors for the meeting.

Fourth trip to London

Ceremonial and educational programs will highlight the week in London, the fourth trip to the British city by the ABA. The other years were 1900, 1924 and 1957.

Historic Westminster Hall will be the setting for the opening assembly program in London on July 14. Speakers will include Chief Justice Burger and ABA President Wright.

The second plenary session will take place July 16 in the Great Hall of the Grosvenor House Hotel, London meeting headquarters. Speaking will be Chief Justice Burger, U.S. Attorney General John N. Mitchell and English Lord Chief Justice Parker.

British Prime Minister Edward Heath and U.S. Secretary of State William P. Rogers will address the third assembly on July 19.

All 21 ABA sections have arranged educational programs in London, most featuring U.S. and British participants discussing subjects from the aspects of both countries.

Young Lawyers Section

The ABA Young Lawyers Section will have a panel on "Right to Privacy" in London on July 15, 1971. Appearing on the panel will be Assistant Attorney General William H. Rahnquist, Anthony Lewis (Chief London Correspondent of the *New York Times*), Professor Samuel Dash of the Georgetown University Law Center and **Edmund B. Raftis** of Seattle.

Bob Mussehl of Seattle is chairman of the panel on "Consumer Protection" to be presented in New York. **Llewelyn Pritchard** of Seattle will be one of four participants in the personal finance debate.

In Memoriam

William L. Dafoe, 62, Longbranch, died April 15. He had lived there the past nine years after retirement from his law practice in Seattle in 1965. He was a graduate of the University of Washington Law School.

Floyd B. Danskin, 81, Spokane, died March 31 in a Spokane hospital. He came to Spokane in 1914 and practiced law more than half a century, retiring only last September from the firm of Randall, Danskin, Lunden & Allison. He served four terms in the state legislature, serving as speaker of the house for the 1925 session.

Henry L. Everett, 71, Bothell, died February 4. A graduate of Boston University Law School, he was admitted in 1958, having previously been admitted to the Florida bar in 1923.

Michael Dennis Kidder, 31, Spokane, died in September '70. A graduate of the University of Washington Law School, he was admitted in 1969.

J. Neil Mahoney, 79, Seattle, died April 14. A 1912 graduate of the University of Buffalo Law School, he practiced in Buffalo until 1943. He practiced in Seattle from 1943 to 1969.

Robert C. Royce, 55, Seattle, died May 8. A 1947 graduate of the University of Washington Law School, he had practiced with his father, T. M. Royce, since graduation.

Joseph H. Smith, 84, Everett, died April 20 in an Everett nursing home. A 1909 graduate of Indiana Law School, he served as Everett's city attorney and as a state senator and helped set up the military draft for this state before entering World War II as a lieutenant colonel.

Tax Aspect of Community Property Laws

Three Seattle lawyers are authors of a new volume, "Community Property: General Considerations," in Tax Management's Estates, Gifts and Trusts portfolio series.

They are Robert S. Mucklestone and Bruce M. Cross of the firm of Perkins, Coie, Stone, Olsen & Williams and John C. Huston, professor of law and associate dean of the University of Washington Law School.

The work, just off the press, is described by Tax Management, a division of The Bureau of National Affairs Inc., as a "scholarly, but practical and convenient" presentation of the general characteristics, origins and estate tax incidents of community property.

A "Detailed Analysis" section describes the attributes of community, separate and combined property; income taxation at death; estate tax consequences of owning community property; deductibility of administrative expenses and losses, and the special computation of the marital deduction for community property estates.

The volume includes 88 pages of Working Papers (tax-pattern outline, IRS regulations, publications and forms) and 16 pages of bibliography.

Mucklestone has B.S. and J.D. degrees from University of Washington and has served there as a lecturer in law in Estate Planning. Cross is a graduate of Dartmouth and has his law degree from Harvard University. Huston has both bachelor's and law degrees from U of W and master's in taxation from New York University; he was assistant professor of law at New York University and professor at Syracuse University College of Law.

Ralph Nader Funding Women's Law Firm With $40,000 Grant

Ralph Nader has announced plans to provide $40,000 to finance the formation of a five-woman law firm to focus on women's rights cases.

The women's firm is one of three special constituency firms that Nader hopes to begin. A black lawyers firm and a firm for senior citizens are also planned.

Nader intends to make the firm entirely independent after six weeks. During the firm's initial six weeks, the women lawyers would study special areas and prepare reports on selected women's issues. Thereafter the direction of the firm would be determined by its director and members.

While Nader expects that the firm would become self-supporting and would handle income-generating cases as well as public interest work, he hopes to be able to finance the firm into its second year if necessary. Beginning salaries would be the standard paid to all Nader attorneys, $4500, but these would be expected to increase when the firm becomes self-supporting.

Women law students in at least three law schools, New York University, Yale and Harvard, have expressed some reservations, and occasionally opposition, to Nader's plans. They have objected to his recruitment procedures and the plans to tie the firm to his projects for six weeks.

Several women students said they believed that the firm's director should first be selected and that she should be permitted to select her associates. Others objected to having a man recruit any personnel for a women's firm.

Model Set of Criminal Rules

In May of this year, a special task force committee presented to the Judicial Council a proposed model set of criminal rules procedure for superior courts. Initially created in 1966, the task force is composed of attorneys. judges, and law professors representing, among other groups, the Washington State Bar Association, the Superior Court Judges Association, the Prosecuting Attorneys Association, the University of Washington Law School, Gonzaga School of Law, and the Seattle-King County Bar Association.

In 1967, the Legislature fortified the recognition by the Judicial Council for continued study in the criminal procedures field by their passage of Senate Resolution 1967-28, directing the Judicial Council to study Title 10 of the Revised Code of Washington. Meeting monthly for more than three years, the work product of the Criminal Rules Task Force is now complete and will be presented to the Judicial Council on May 15, 1971. Plans are now being made for the printing and distribution of the proposed criminal rules to attorneys and judges across the state for comment and suggestions.

C. E. Bolden

COURT AUTHORIZED WIRETAPS

There were 597 court-approved wiretaps in 1970, compared with 304 in 1969, the administrative office of the U.S. Courts said in May in an annual report to Congress, submitted under requirements of the 1968 Omnibus Crime Control and Safe Streets Act. The 1970 total included 414 orders signed by judges in state courts.

Shirley Retires

(Story on page 39)

G. U. Law Students in Clerical Program At Penitentiary

During the 1970-1971 school year, twenty Gonzaga Law School students have participated in the clinical advisory program for inmates of the Washington State Penitentiary at Walla Walla under the supervision of Assistant Professor Ronald C. Wyse. This year's program was funded by a grant from the State Law and Justice Planning Office and provided for the reimbursement of expenses and a modest stipend to be paid to the students volunteering for the program. Walla Walla attorneys **Arthur R. Eggers, Herbert H. Freise, Ronald K. McAdams, John Reese** and **Murray E. Taggart** voluntarily assisted the students during the prison visitations.

The program was designed to improve interviewing techniques on the part of the students and to provide needed legal advice regarding civil matters to the inmates. Under the supervision of the local attorneys the student determined the scope and nature of the prisoner's problem and in most cases this was followed by a researched opinion letter prepared under the supervision of the faculty advisor.

Legislators Again Evade Issue of Lawyer Retainers

Once again, the Legislature has ducked one of its toughest ethics issues — how to deal with retainers paid to its lawyer members.

The Senate, which has far more lawyers than the House, last month passed its own version of joint rules which contained a section requiring lawyer legislators to report retainers of more than than $1,500 a year.

When the House killed the provision last week, the Senate's reaction was to go along. There was an air of resignation among proponents.

"It was late in the session when we got started anyway, and there's always next time," said a Democratic senator who for years has backed efforts to get retainer provisions into the rules.

The proposal has been around a long time.

In the present Legislature nearly a third — 17 — of the senators are lawyers. There are only 11 in the 99-member House.

Many legislators have been always suspicious of retainers. Suspicions are heightened by the high proportion of large firms likely to have interests in the workings of the Legislature who pay attorneys a flat fee.

But what galls more is the fact that a similar arrangement with a non-lawyer legislator could be held to be bribery.

For instance, if a free-lance public-relations consultant were sent to the Legislature and were paid a retainer fee and did no specific work to earn it, he could very well find himself accused of breaking the law.

"Being a lawyer in the Legislature is like having a license to steal," former Senator A. L. Rasmussen of Tacoma was fond of saying.

There is one lawyer-legislator who accepts retainers and is a former prosecutor. But he opposes reporting and maintains that attorneys who misuse retainers could well be charged with bribery themselves.

"I'm sure a good prosecutor could make a bribery charge stick in cases where retainers are paid to influence legislation," he says.

Not all lawyer-legislators accept retainers.

"I won't say I'll never take a retainer," says a legislative leader who helped put the reporting provisions into the Senate version of joint rule. "But if I do I wouldn't mind reporting them."

He said he turned down two offers last fall.

Opponents of retainer disclosure, however, say even an innocent retainer fee which a lawyer legislator worked hard to earn could be misunderstood by the public.

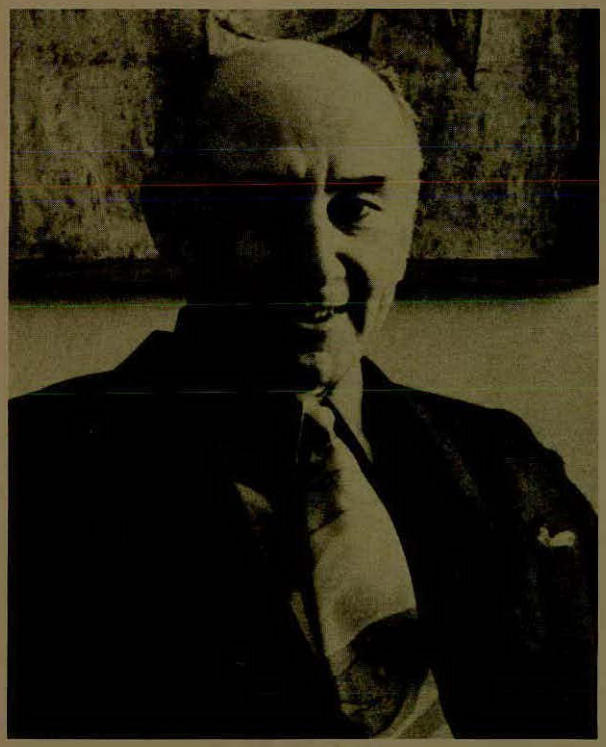
They also maintain that reporting of financial interests by all legislators as required by rules and laws won't really be effective in fighting conflict of interest until workable campaign-contribution laws are enacted.

There is some suspicion among Senate backers of retainer reporting that some of their fellows did a bit of lobbying in the House toward the death of the proposal in the joint rules.

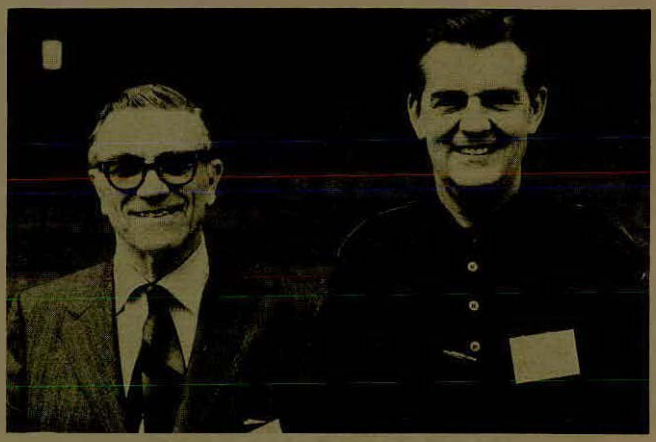
"It isn't like them over there (in the Republican controlled House) to make us look good," said one, a Democrat.

— Bill Mertena
AP, Olympia
The Seattle Times
March 7, 1971

McLauchlan At Large

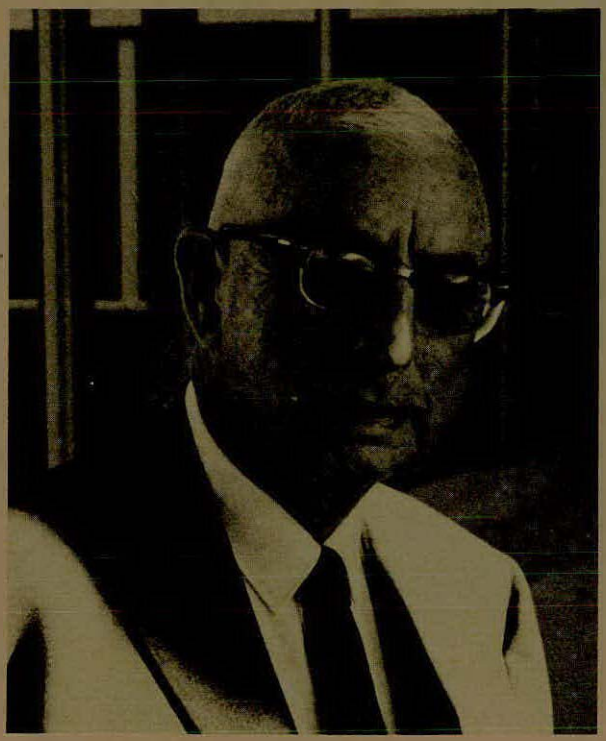


Donald D. Fleming
Seattle



Hon. Edward E. Henry, Seattle (L)
and Board Member Storrs B. Clough,
Monroe (R)

Richard F. Broz
Seattle



F. L. Stotler
Colfax

James B. Hovis (L) and Robert A.
Felthous (R), Yakima

Legislation '71

Bills which passed both Chambers:

HB 84: **Charitable Trusts**

Amends RCW 19.10.020 et seq. to expand charitable trusts reporting laws. Trustees exempted from filing an annual report with the attorney general must now file with the attorney general a copy of the declaration of the tax-exempt status or other basis of claim for exemption, its federal tax information return and other specified papers.

SB 796: **Collection Agencies**

— A collection agency may not threaten the debtor with impairment of his credit rating if a claim is not paid and may not resort to other specified pressure tactics.

— The attorney general and prosecuting attorneys are given power to bring action to enjoin violation of the act.

SB 564: **Corporations** (C 38 L 71 E)

Adds to 23A.08 RCW authority for a corporation to create and issue rights or options entitling the holders thereof to purchase from the corporation shares of any class or classes.

HB 254: **Corporations**

Increases secretary of state fees in handling corporation filings.

SB 108: **Crimes**

No court shall suspend or defer the sentence of any person having been convicted of selling or attempting to sell narcotics or dangerous drugs for profit.

HB 697: **Crimes**

Increases penalty for criminal property damage in excess of $250 to a felony.

SB 441: **Crimes (Senator Andersen's "Crime Christmas Tree Bill")**

— Penalties for possession, manufacture and disposal of incendiary devices (five to 25 years).

— Cities and counties are authorized to offer rewards of up to $5,000 for apprehension of criminal charged or convicted of a felony.

— Allows fingerprinting and photographing of juveniles involved in serious crimes as long as they are kept in a separate "Juvenile Confidential" file.

— Whoever, with the intent of influencing any judge, juror, witness or court officer, pickets or parades, uses any sound trick or similar device or resorts to any other demonstration in or near any building or residence used by such person shall be fined not more than $1,000 or imprisoned not more than one year.

— Requires permits for rock festivals.

SB 363: **Eminent Domain**

Limits award of attorney's fees in condemnation cases to the minimum bar fee schedule instead of one-third of the amount recovered in excess of 110 per cent of the department's offer.

State Rep. Alex Julin criticized passage, pointing out that in most condemnation procedings attorneys charge clients on a contingent fee basis. Thus fees awarded to property owners based on the minimum bar fee schedule will very often be less than those actually charged. The difference will have to be paid out of the compensation awarded to the property owners. Since "most condemnations are in the $25,000 home bracket. the owners usually can ill-afford to pay the difference out of his pocket," Julin said. He further charged that passage helped take pressure off condemning agencies to make realistic offers to property owners.

HB 694: **Family Court**

Allows family courts to order aid of specialists, the expense of which may be borne by either the court or the parties.

SB 755: **Franchise Investment Protection Act**

Sets up guidelines for sellers of franchises to protect persons thereof such as those who invest their life savings in such an operation.

HB 175: **Grand Juries**

— Grand jury reports can be made public only if approved by a majority of the judges of the superior court of the county. The reports may not identify or criticize any individual. They must not contain material which would prejudice any pending criminal investigation or trial.

— Grand juries will be called by Superior Court

judges whenever necessary. (No annual requirement.)

— Establishes the position of "inquiry judge," a Superior Court judge who could act in much the same way as a grand jury.

— Witnesses before grand juries will be allowed to have their attorneys with them only until they requested and were granted immunity for matters in their testimony. At that point, the attorney would have to leave the grand jury room, but his client could consult with them outside the room.

— Grand juries are limited to 60 days unless extended by the Superior Court.

HB 213: **Inheritance Tax Laws**

Amends RCW 83.44.010 to reduce time for filing inheritance tax report from fifteen to nine months.

HB 620: **Justice Courts**

Amends RCW 3.34.010 to reduce the number of justice court judges in Grant County from three to one.

HB 218: **Law Libraries**

Authorizes regional law libraries.

SB 183: **Liens**

Requiring a claim for mechanics' lien to contain the address of the claimant. (Effective Jan. 1, 1972.)

HB 309: **Minors**

Provides 18-year-olds full legal rights except voting and purchasing beer, wine or liquor. The 18-year-old vote is in the bill, but it will not become effective until voters approve a constitutional amendment. The State Bar endorsed the bill because many provisions making the age of majority 21 were causing problems in light of action by the last legislature giving 18-year-olds the right to sue and be sued.

HB 351: **Physicians and Dentists**

Physicians and dentists who, in good faith file charges against another member of their profession based on claimed incompetency or gross misconduct before a board of a medical or dental society or hospital shall be immune from civil action for damages arising therefrom except where malice is shown.

SB 277: **Superior Courts**

Amends RCW 2.08.030 to provide that superior courts may hold sessions in places in the county other than at the county seat as are designated by the judge or judges thereof with the approval of the chief justice of the state supreme court and the governing body of the county.

HB 643: **Superior Courts**

Whatcom County will have two superior court judges and Island-San Juan will jointly have one superior court judge. Increase from 6 to 7 in Snohomish County, 3 to 4 in Clark County and 9 to 10 in Pierce County.

HB 686: **Supplemental Proceedings**

Amends RCW 6.32.010 to eliminate requirement of return of execution unsatisfied and adds provision for written interrogatories.

HB 321: **Traffic Laws**

— Neither fine (not less than $50) nor jail sentence (not less than 5 days) shall be suspended or deferred for first conviction of driving under the influence.

— Provides for suspension on second conviction on condition that defendant successfully complete a court approved alcohol treatment program.

— Enacts "Washington Habitual Traffic Offenders Act."

— Persons losing their licenses because of refusal to take the breath test may be granted an occupational license under certain conditions.

HB 362: **Trusts**

Amends RCW 11.98.050 to provide that the rule against perpetuities shall apply to all trusts, unless the trust has been previously adjudicated in the courts of this state.

SB 261: **Wage Protection (C 55L71 E)**

— Unlawful for an employer to withhold employee's wages unless the deductions: (1) required by law; or (2) specifically authorized in writing in advance by the employee for a lawful purpose accruing to the benefit of the employee; or (3) medical or hospital care, pursuant to any rule or regulation.

— An employer still has a right to sue or collect, by any means other than deduction or set off from wages, any debt owed the employer by his employee.

— Violation is a misdemeanor.

Failed of Passage:

HB 67 —Would have amended Retail Installment Sales Act to increase **"cooling off period"** from one to three days.

H.B 75 — Provision for rubber **notary seals.**

HB 83 — Authorizing issuance of **traffic citations** for offenses not committed in officer's presence. (Opposed by by State Bar.)

HB 156 — (HB 182, SB 118, SB 245) Extend 1961 **Justice Court Act*** to all counties.

HB 183 — Eliminate requirement that **judges** hold their **annual conference** in this state.

HB 187 — (SB 127, SB 246) **Six-man jury.***

HB 233 — Amend RCW 2.48.230 (Laws of 1921) to have State Supreme Court adopt rules of **professional ethics*** for members of the bar instead of ABA standards applying. The considered opinion is that the State Bar Act of 1933 supersedes the statute and gives the court authority to adopt the rules.

HB 249 — **Lists of motor vehicle** owners could not be sold or used in any manner.

HB 260 — **Bail Reform** (1) within 48 hours of a person's arrest a magistrate shall charge the person with commission of a crime or release him; (2) require release on PR unless the judicial officer determines that such a release will not reasonably assure the appearance of the person; (3) provide additional penalities for jumping bail; (4) provide for detention without bail in certain circumstances when it can be shown the person poses a danger to any other person or to the community.

HB 423 —Would have added reasonable attorney's fees to concept of **offers of settlement** thereby changing CR 68. (See p. 11 of July '70 *Bar News*).

HB 593 —Gov. Evan's proposal on **landlord-tenant laws.** Would have required damage deposits be placed in a trust or escrow; would have placed limitations on the power of landlords to evict tenants.

HB 658 —Would have reduced number of **Supreme Court judges** from nine to five.

HB 696 —**No fault study commission.** The bill passed the House, (See p. 15 May '71 *Bar News*) but not the Senate. Sen. August Mardesich wants to hold on to the bill himself and hold hearings, rather than having a commission conduct the study.

HB 998 —Would have established state **medical-examiner system** and abolished the coroner's jury. (See p. 6 June-July '69 *Bar News.)*

SB 92 —Providing for **reasonable attorney's fees*** in actions for $1,000 or less.

SB 210 —Claims by a corporation forbidden in **small claims court.**

SB 212 —Attorney General would represent a plaintiff who is a natural person in **small claims court,** if the defendant is a business or a natural person acting on behalf of any business.

SB 255 — Would have established **comparative negligence** standard.

SB 313 — **Uniform Probate Code.** It would greatly reduce the necessity for about 75% of the population whose affairs do not involve high values or family complication, to make wills or otherwise engage in estate planning.

SB 384 — **Revised Criminal Code.** (See p. 11 Jan '71 *Bar News.*). Sad to say no hearings were even held on an excellent revision which was the product of a two-year interim study by the Judiciary Committee of Washington's Legislative Council.

SB 548 — Would have set maximum fee schedules for **employment agencies.**

SB 576 — **Uniform marriage and divorce law.**

SB 792 — (HB 940). Would have authorized **consumer class actions.**

SJR 31 — The consensus amendment to the **judicial article.*** (See p. 11 of April '71 *Bar News.*)

Items endorsed by the Bar are marked with an asterisk.

EAST KING REPORT
By CHARLES F. DIESEN

Speaker at the East King County Bar Association Law Day breakfast held April 30 in Bellevue was the Honorable **Orris L. Hamilton,** Chief Justice of the Supreme Court. The breakfast, organized by **Richard Carrithers,** was well attended. Among those present was a second year law student at the University of Washington who had received the Bar Association's $400.00 scholarship. In addition to being worthy to receive the award scholastically, the winsome recipient, Miss Nancy Holland, was a former Miss Idaho. Liberty Bell Awards were presented to four recipients from Bellevue, Kirkland, Bothell and Redmond.

GRAYS HARBOR REPORT
By JOHN L. FARRA

The prosecutor's office, formerly in the Finch Building in Aberdeen, has finally taken up new quarters in the recently purchased building on 1708 Sumner in Aberdeen. The new building will house the justice court with **Thomas Parker** presiding and the offices of the prosecuting attorney. The new offices will house **John L. Farra** and **Curtis M. Janhunen,** Deputy Prosecutors. The building was recently purchased by Grays Harbor County and was formerly used as a church. The new facility is a great improvement over the Finch Building. Justice will now be put forth in a saintly atmosphere.

The incorporated law firm of Stewart & Thomas has recently modernized its building. Since the removal of the East County District Court, the building has been remodeled to enlarge the office of **James Stewart** and **Ralph Thomas.** The remodeling has also given larger space for their secretaries.

It is time to start thinking about the annual fishing derby, and all the fun and surprises that go along with that derby. If any member of the bar has not received notice of this annual event, please contact the Honorable Judge **Warner Poyhonen** of Montesano, or **Ted Zelasko** in Aberdeen, Washington.

A dinner party for the Board of Governors was held on May 13, 1071, at the Ocean Crest Resort, Moclips. A bus was chartered to pick up members of the local bar from Aberdeen and Hoquiam. **Paul Stritmatter,** Hoquiam attorney, handled the arrangements. The Board met at Ocean Shores in conjunction with the meeting of all local bar presidents.

Jack Burtch has recently returned from a trip to Tahiti. **Ted Zelasko** has recently returned from a trip to Reno, Nevada. The Honorable Judge **Paul B. Fournier** is about to embark to the Detroit area with family and relatives. **Robert Charette** has traveled to the city of Olympia, and that's all that can be said.

John L. Farra

KITSAP REPORT
By HELEN GRAHAM GREEAR

LAW DAY 1971 was observed in Kitsap County high schools and Superior Court on Thursday April 29 and Friday April 30 respectively, and the gauntness of the want, as compared with the immensity of the opportunity, impressed me anew.

Our Bar Association put on a brief but effective courtroom ceremony at 9:30 a.m. Friday in Judge **Oluf Johnsen's** courtroom, the current judges being joined en banc by the Honorable **Frank W. Ryan,** retired Superior Court presently sitting pro tem, who responded for the judiciary with his usual kindliness and grace. The main address was given by Seattle City Councilman Sam Smith. His address was eloquent and impressive, and one distinguished political figure present said afterward, "Why doesn't this man run for Governor?"

In the high schools various lawyers met with large combined classes all day Thursday. We were woefully undermanned, as the students do not want a single individual lecturing them. They seem to enjoy panel type discussions or even dialogue; they are full of challenges, make the most of a willing target, yet they are amenable to enlightenment. When we consider the great need for fundamental communication with the young, here is an immense opportunity (on Law Day and other days) to listen to and speak with the young.

Our Association enjoyed a most interesting program on April 19 at a dinner meeting, the program being contributed by the Snohomish County Domestic Relations Department of the Family Court (Superior Court), the speakers being Judge **Alfred O. Holte** and his Commissioner Don Tegarden. Snohomish County by court rule is pioneering in the treatment of the troubled family as a unit, although the problems may be identified as marital discord, juvenile delinquency, alcoholism, mental illness, drugs, et cetera. They reduce the adversary character of family law practice, using agency investigation much more than elsewhere. They are presently federally funded and hence have adequate staff.

This reporter is enjoying the privilege of membership on the WSBA Family Law Committee, which had heard several persuasive presentations by Holte, Tegarden & Company. If any local bar association needs an interesting evening program, I recommend this one.

COURT HOUSE NEWS:

Our Superior Court will hold a first jury term in July and August for condemnation and criminal cases. We now have eight months of jury terms.

Our Sheriff has just installed a video-tape recorder to put drunk drivers on TV. This equipment has worked well for the Bremerton Police Department.

PERSONALS:

Bruce Brunton, former deputy Prosecuting Attorney, is now working as an attorney for Health, Education and Welfare, in their Seattle office. **Jean R. Sherrard,** a Seattle attorney, also maintains a part-time law office in Poulsbo.

THE WILL OF JOSHUA WEST

Perhaps I died not worth a groat;
But should I die worth something more,
Then I give that, and my best coat,
An all my manuscripts in store,
To those who shall the goodness have
To cause my poor remains to rest
Within a decent shell and grave.
This is the will of Joshua West.

JOSHUA WEST

PIERCE REPORT

By DAVID E. SCHWEINLER

Robert S. Schuck, University of Washington JD, 1967, recently released from active duty with the United States Navy, has joined the staff of the Tacoma City Attorney and has been assigned to the Municipal Court before the Honorable Judge DeWit Rowland.

In February a program was presented by the new young lawyers' section. **Robert Deutscher** of Betzendorfer and Deutscher was the principal speaker and the Bar Association adopted an amendment to its by-laws recognizing the young lawyers as an authorized group within the association and placing their President on the Board of Trustees of the Tacoma-Pierce County Bar Association.

SEATTLE-KING REPORT

By LLEWELYN G. PRITCHARD

Emmett Watson reports that **Gordy Culp** has taken a leave of absence to assist Scoop Jackson's run for the presidency. Culp will help coordinate Jackson's accelerated speaking and personal appearance schedule, which is now ranging all over the nation. Also from Emmett Watson: "Incidental intelligence: The cable address for the law firm of Sullivan, Redman and Winsor is SUREWIN, and I will leave it to the Bar Assoc. to decide if that's advertising."

Peter Leach has been named general manager of the Conifer Co., Tacoma. He was formerly an associate with the Seattle firm of Schweppe, Doolittle, Krug & Townsend. **J. Keith Dysart** has been appointed Chief Deputy Attorney General by Washington State Attorney General Slade Gorton. Dysart has taken a leave of absence from Ashley, Foster, Pepper & Riviera. He replaces **Donald H. Brazier, Jr.,** now Chairman of the State Utilities and Transportation Commission.

The Old National Bank of Washington has announced that **John P. Patterson,** Trust Officer, has opened the Seattle Trust Office, serving Western Washington.

Seed, Berry & Dowrey, specializing in patent, trademark and copyright causes, has announced a change in name to Seed, Berry, Dowrey & Cross.

Arnold Barer, John Hempelmann, John R. Miller and **Edmund Wood** testified before the Seattle City Council at a hearing on a proposed Code of Ethics for this city.

Ronald E. McKinstry and **F. Lee Campbell** were reappointed to positions on Defense Research Institute, Inc. committees. McKinstry was elected to serve as vice chairman of the Institute's Practice & Procedure Committee, and Campbell was named vice-chairman of the Aerospace Committee.

James R. Ellis has been elected president of the University of Washington Board of Regents for the coming year. Ellis has been a member of the Board since 1965 and has been vice president for the past year.

Alvin J. Ziontz, chairman of the Seattle-King County Bar Association Committee on Jail Visitation, indicated that there is a "scandalous lack of medical care" for inmates in the King County Jail. After an inspection of the King County Jail, Ziontz indicated that although county law enforcement officials are aware of the situation, "it never should have been allowed to deteriorate to this point."

A law suit has been filed in Superior Court asking the State to provide hearings in reducing welfare grants. The civil action was prepared by **Robert L. Bergstrom,** a Legal Services Center lawyer, on behalf of certain individuals whose Public Assistance grants have been reduced. The suit asks for a permanent

injunction requiring a "due process hearing" before any reduction, whether on issues of fact or interpretation of relevant law.

SNOHOMISH REPORT
By MICHAEL W. HERB

There are several new faces in the County Bar as of recent months. **Charles H. Amstutz** has joined the firm of Griffin & Bortner. Chuck was graduated from the University of Oregon Law School and spent five years with the Internal Revenue Service. **Vernon Judkins** and **William R. Friedhoff Jr.** have opened an office in the South Everett area at 13410 Highway 99 S. Vern was graduated from the University of Washington Law School in December 1970 and passed the State Bar exam in February 1971. Bill was formerly with Ryan, Carlson, Bush, Swanson and Hendel in Seattle.

Robert Bibb and **Richard Bailey** have moved their offices from North Olympic Avenue in Arlington to the intersection of State Highway 9 and Highway 530 in Arlington, and the new facilities on the outskirts of that city have been described as "bucolic." A very enjoyable open house was held April 16 for the opening.

Mark Patterson of Hunter, Gates & Patterson has been appointed to the Snohomish County Board of Adjustment.

SOUTH KING REPORT
By MORTON T. HARDWICK

Robert L. Anderson of Renton has been elected president to serve for the coming year. Mr. Anderson was installed May 13 at the Sirloin Inn in Renton.

Other newly elected officers are: Vice President — **Morton T. Hardwick,** Renton; Secretary — **Duane Radliff,** Enumclaw; Treasurer — **Stanley E. Stone,** Renton.

Trustees elected are: **Charles R. Branson,** Renton; **William B. Christie,** Burien; **Charles P. Curran,** Kent; **Donald G. Holm,** Renton and **Melvin L. Kleweno, Jr.,** Kent.

WHATCOM REPORT
By ERNIE BENTLEY

The Honorable **Boone Hardin,** Superior Court Judge for Whatcom County since January 1961, announced his retirement, effective May 1, 1971. Judge Hardin served as Whatcom County Prosecuting Attorney from 1947 through 1950. He was also a Justice of the Peace prior to World War II and spent several years in private practice. Judge Hardin's wisdom and expertise have been a great benefit to Whatcom County.

The vacated position will be filled by Byron L. Swedberg, 36, of the firm of McCush, O'Connor & Swedberg. Mr. Swedberg has practiced law in Bellingham since 1963. He holds a Bachelor of Science degree from Drake University in Des Des Moines, Iowa, and was graduated from the University of Washington Law School in 1962. He served as deputy prosecuting attorney in Skagit County before coming to Bellingham. He and his wife, Shirley, have two sons.

Veteran deputy prosecuting attorney, **David E. Rhea, Jr.,** should have been included in this article when he was a novice in September 1970. David is a graduate of Willamette Law School and resides with his wife, Marnie, in Bellingham. David has been doing an outstanding job for the prosecutor's office.

Craig Hayes has recently opened a law office at 1200 Lakeway Drive in Bellingham. Craig is a graduate of the University of Oregon. He was admitted to the Washington State Bar in March of this year. Craig resides with his wife, Sandy, and three daughters.

YAKIMA REPORT
By RANDY MARQUIS

Perry J. Robinson has been selected "Boss of the Year" by the Yakima County Legal Secretaries Association. Perry's secretary, Mrs. Boyd Christopherson, submitted the winning letter of recommendation.

Richard L. Wiehl has been appointed by President Nixon to replace **Walter E. Weeks** on the local five-man Selective Service Board. Walt had served on the board since 1968.

Yakima County Superior Court Judge **Carl L. Loy** will join 150 judges from throughout the U.S. to attend the National College of State Trial Judges at the University of Nevada in Reno during the month of June. Intensive training will be given in court administration, judicial discretion, evidence, family law, criminal law, sentencing and probation and new developments in civil law.

We are proud to announce that a two session seminar spearheaded by the Bench-Bar Liaison Committee headed up by **Howard Hettinger** was a great success. The seminar covered recently adopted modifications to trial procedures in Yakima County. The purpose: elimination of wasted time, docket delays and public expense.

Briefly Noted

'Worthwhile' no-fault insurance advocated by Safeco

Safeco Corp. hopes to take a positive role in seeking legislative changes that will turn worthwhile "no-fault" automobile-insurance proposals into reality, Gordon H. Sweany, president, told directors and shareholders on April 27.

To test the various proposals and gain the wisdom of actual experience, Safeco favors adoption by individual states, Sweany said.

"To adopt one federal plan containing fundamental changes based on untried and speculative predictions seems an unnecessary and unwise risk to run," he added. "Failure of such a single plan would mean confusion and frustration on a national scale."

Sweany said the present pressures for change seem to offer the opportunity to improve the accident compensation system and yet retain its basic strengths.

"One key feature of any proposal should include having most injured persons' medical expenses and income loss paid by their own insurance company without regard to fault," Sweany said.

To offset the cost of these additional benefits, he observed, some restrictions should be placed on recovery of intangible damages in less serious accidents in order to hold the line on auto-insurance costs.

Safeco regards, as essential, preserving personal accountability for driving misconduct, Sweany said. "Only in this way can the careful driver be rewarded with lower insurance costs."

The right of seriously injured and disfigured persons to seek compensation under the fault system should also be preserved, Sweany added.

Public Interest Firm Allowed To Advertise

The Bar Association of the District of Columbia has approved with specific exceptions the report of its ethics committee authorizing the Stern Community Law Firm—a public interest law group—to place certain advertising in media.

The Stern Community Law Firm was organized under a grant from the Stern Family Foundation to serve the public interest without charging fees to clients.

The ethics committee report restricts the group from including the names of individual attorneys in the ads and prohibits the firm from representing what can be opinions as facts in the ads.

In approving the ethics committee report, the bar's board of directors added the proviso that the word "law" be deleted from the name of group.

The name Stern Community Law Firm creates the impression to some that the organization is a private law firm and Stern is an attorney, said Fred Vinson, vice president of the D.C. Bar Association. "The approval is applicable only to the advertisement that was before the Association and is interim in nature because the Association is in the process of developing overall ethical guidelines for the operation of public interest law firms in the District of Columbia," Mr. Vinson added.

Indictments

During the month of April, the Seattle federal grand jury indicted seven lawyers.

Macfarlane Retires

Robert S. Macfarlane, chairman emeritus and a director of the Burlington Northern, retired May 13 after a 37-year railway career. A graduate of the University of Washington Law School, he was elected a judge of the Superior Court of King county at the age of 31. He became assistant Western Counsel of the Northern Pacific Railway in 1934 and president in 1951, serving in that capacity for nearly 16 years.

Washington State Legal Secretaries Convention

The Snohomish County Legal Secretaries Association hosted the convention at the Airport Hilton in Seattle May 22, 1971. During the convention, a Mock Trial was presented for the purpose of showing secretaries the procedures that are followed from the beginning of a trial to the moment the jury returns with a verdict. Participating in the Mock Trial were Judge **Faye Collier Kennedy,** Judge **Donald E. Priest,** Attorneys **Henry Templeman, Richard A. Mueller, Gerald R. Gates, Mart T. Patterson, Robert G. Perlman.**

Following the meeting, a banquet was held at which **Marian Gallagher** was guest speaker, and the Hon. **Mary Ann Holman** installed the new officers.

Judicial Appointments

State Supreme Court Justice **Walter T. McGovern** was confirmed by the U.S. Senate on April 21st to be U.S. District Court Judge for Western Washington. **Morell E. Sharp** has been appointed by Gov. Evans to fill his position in the State Supreme Court.

(continued from page 6)

Now, Professors Keeton and O'Connell have attempted to eliminate that expense objection in a very direct way. They have reduced almost all of the benefits. How much would it cost you to sell insurance in the State of Washington if after you have proved fault on a liability basis the victim was not entitled to be paid to the extent that he had collateral sources, was not entitled to receive a first hundred dollars of economic loss above and beyond that, was not entitled to 15 percent of his wages above and beyond the first two and never got anything for pain and suffering. You ought to be able to give that policy away because almost no one is going to receive any benefits under its terms. But under the Keeton and O'Connell Plan that is exactly what happens.

Now, they claim that that plan is going to cost you 15 to 25 percent less than you presently pay for liability insurance. But there are some very well respected actuaries around the country who disagree with that claim. Robert Bailey who is the Chief Actuary for the State of Michigan has said there are so many fallacies in that actuarial study as to make it completely unreliable but perhaps most interesting is the study done by Dr. Calvin Brainard who is the Chairman of the Department of Finance and Insurance at the University of Rhode Island. He did a one year study on the economic feasibility of the Keeton O'Connell Plan, and when he concluded it, he stated that if he were going to advise the motoring public on the adoption of non-fault insurance, Keeton O'Connell Plan, he would have to break that public down into two groups, the traditionally good driver and the traditionally bad driver.

His advice to the good driver was that you should abhor this plan because it will cost you more money and give you less benefits. His advice to the bad drivers is that you should embrace this plan because it is made to order for you.

I think it interesting to note that Dr. Brainard, who is not an attorney and who does not have a financial interest in this, as all of you will probably be accused of having if you choose to oppose this kind of legislation, did this one year study of the Keeton O'Connell Plan under a grant from the Walter E. Myer Foundation, which is the same foundation that gave Professor Keeton tens of thousands of dollars to do his study. They sent him out to do an economic feasibility study and in short he concluded it was not economically feasible but whether it is going to cost you more or less let's look and see what you get in exchange for your dollars.

Collateral Sources

Consider if you will the case of the typical union employee who during the course of his working years decides that instead of getting an extra $5.00 a week in his pay envelope he is going to start to accumulate some fringe benefits, his union works out this arrangement for him. So he in effect has been setting aside $5.00 a week for a rainy day.

And some Sunday morning while he's parked at the curb he is hit in the rear end by his drunken neighbor who is just coming home from a night on the town. He is injured, he is hospitalized, he receives a broken leg, he goes to the hospital, he is out of work for four, five weeks, he has medical bills of $1,800 or $1,900, he has four or five weeks of total disability. If this man has good collateral sources which he remember bought and paid for at the rate of $5.00 a week, he receives not a penny from anybody from automobile insurance premium dollar. He can't recover against his own accident health and insurance carrier, his automobile health insurance carrier because he has these collateral sources and he can't recover against the drunk who hit him because the drunk has an exemption from liability to the extent of $10,000 in specials and/or $5,000 in pain and suffering.

But conversely let's assume the drunk also was injured, and let's assume further that he not only is a bad driver but this is the man who never bothered to put the $5.00 a week aside for the rainy day. He has no collateral sources, he doesn't have a steady job, he hasn't worked at one long enough to accumulate these benefits. The insurance company says to him in effect, "Step right up, Mr. Irresponsible, you are just the kind of man we want to take care of. We don't care about the innocent people that you injured, this plan is designed for the likes of you, people who can't recover under our tort liability system, because they are wrongdoers, and who in addition do not have collateral sources." Those are the only people who can benefit under this kind of a system.

Profiting Through Double Payment

Now, Professor Keeton, in fairness to him if he were here, as he usually is when this subject is discussed, would tell you also that people should

not make a profit out of motor vehicle accidents. He'd tell you one of the things wrong with our present system is the classic case of the man who is injured, has $15.00 x-rays and that $15.00 x-ray is paid once by Blue Cross, once by the Med-Pay carrier and once by the liability carrier. He says that that is wrong. And to a certain extent I am inclined to agree with him. But what profit does a man make if he buys and pays for two separate insurance policies? Why shouldn't he be paid from both of them? This is compulsory insurance. Under this plan we are saying if you are prudent and you have collateral sources to take care of all of the injuries sustained in non-automobile incidents, we are going to penalize you but if you don't bother to then we reward you.

Consider, if you will, the case of social security, one man works and saves $20,000 during his working years and on reaching the age of 65, would we think of telling him, "You have got to spend your $20,000 before we will give you social security benefits," but under this plan that is exactly what we do, we say, "Use up everything you have saved, spend everything that you have purchased before you are entitled to any of these benefits at all."

The Drunken Driver

Now, people are apt to tell you that there is a great social problem involved here, they will tell you that if a man is injured, breaks his leg in an automobile accident, whether he is at fault or not, society has an interest in that situation. The man undoubtedly didn't intend to be intoxicated, he is a very nice fellow except perhaps on this one occasion, whether that be true or not, he certainly has a lovely wife and some fine children, and somebody ought to take care of them, best way of doing it is non-fault insurance, but why is it we are so suddenly concerned with the drunk in the motor vehicle? If this poor old drunk, that we are talking about, should fall down on a dirty banana peel in the barroom and break his leg, we wouldn't feel sorry for him, but he has still got the grocery bills to take care of, the rent to pay, children's shoes to buy. If the drunk should manage to fall out on the street on a defect, he still wouldn't recover, but boy if he can just hang on until he gets to his motor vehicle then his problems will be solved.

And remember, he doesn't have to have an accident in the ordinary sense of the word, all he has got to do is bump his head as he gets into the car or fall out of the car on his back. You don't have to prove an accident in the ordinary sense only that there was an injury which arose out of the ownership, maintenance or use of a motor vehicle. If he injures his back putting up his antenna, changing the tires, putting on new seat covers, that man is entitled to receive these benefits.

Some people again, talking about this drunken driver problem, say that too much is made of him, that may be an interesting case to discuss but that isn't really the problem, but I think it is. Dr. William Hadden who was the Director of the National Safety Institute has said that more than 50 percent of all highway fatalities are caused by drunken drivers. He said in using that figure, I am not talking about the man that has had a couple of drinks or more, as almost all of us have had and then gotten behind the wheel of a car, he says, "I am talking about the man who has consumed a pint or more, shortly before getting into his automobile. That is the kind of man that causes more than 50 percent of all highway fatalities." And that is the kind of man we are going to reward under this kind of a plan.

I think also interesting to note that in England not too long ago, they adopted some very stringent laws concerning breathalyzers, and penalties concerning violations. What you may not know is that in the first one month following the adopting of those stringent laws, the accident rate in England dropped 40 percent. Would there be any problem in the State of Washington or any other State if we could reduce the number of accidents by 40 percent. I think that is some indication of how great an effect alcohol has upon motor vehicle accidents.

I think also from this welfare point of view, people that are concerned with it, if you want to take care of the drunk who is injured, why don't you want to take care of all the other people that are injured in other ways. Sixteen times as many people are injured in non-automobile related incidents as are injured upon the highway. If it is socially desirable to pay the man on a non-fault basis who voluntarily becomes intoxicated and injures himself, can it be less socially desirable to compensate the man that develops lung cancer, let's take care of him, too. He has got groceries to buy for his children. If that is your political and social philosophy, don't limit it to the automobile because I think there are an awful lot of other people that are far more in need.

Pain and Suffering

Another objection that I have is to this elimination of the right to recover for pain and suffering. Professor Keeton will first tell you that they eliminate the right to recover for pain and suffering because this is a rather intangible right anyway. You can't really put a dollar price on the value of a headache, and if someone is stretched out on a stryker frame for three weeks you can't translate into dollars and cents, so we'll give him nothing.

But they are inconsistent on this point, because although they don't ever let you recover from your own accident and health insurance carrier for these benefits, they do allow you to recover against the wrongdoer if you can prove pain and suffering in excess of $5,000. So what happens under this plan is that you try your case, and then a special verdict is returned by the Jury, and the Jury might say for example, "This man's pain and suffering was worth $4,900." The Judge has to turn to the Jury in effect and say, "You don't know what you are talking about, you can't measure pain and suffering in that amount and you, Mr. Plaintiff, who had a trial before a jury of your peers, and who had been told that someone else wrongfully caused you $4,900 worth of pain and suffering, you don't get a penny."

Now, if you think the American public is going to believe that that is justice, then I am sorry to say that I am rather in great disagreement with you. On the other hand, if the Jury returns a verdict of pain and suffering in $5,100, then the Judge turns to the Jury and says, "You did a wonderful job, you can measure pain and suffering, $5,100 is what you told us this man had, but you, Mr. Plaintiff, you don't get $5,100, you get a hundred dollars because he has an exemption from liability to the extent of first $5,000."

Fraud

It has also been stated that one of the problems with our present system is there is too much fraud, and I am certainly sure that to the extent that fraud does exist in this system we'd all like to rid ourselves of it. But consider whether or not the Keeton O'Connell Plan or any of the others really solves this problem. Today suppose that a man injures his back shovelling or bowling, he knows he is going to be out of work for a while, and he would like to get someone to bear some of the burden for him financially. That man in order to go to automobile insurance benefits has got to stage a so-called phantom accident case, he has got to convince an adversary insurance company that there was a motor vehicle accident with another car, and that that other car was being negligently operated.

Under this plan he doesn't have to go through that elaborate pretense. All he has got to do is say that in his own privacy he felt twinges in his back, as he was putting up the antenna, putting on the seat covers, getting into the car, falling out of the car, or even if he backs his car into the hydrant or the tree or the back door of the garage. That is all he has got to prove. Now Jim Kemper, President of the Kemper Insurance Industries, has said that that kind of situation makes it virtually impossible for an insurance company to successfully defend against, the household injury that is only alleged to have been sustained in a motor vehicle incident. These are, I think, some of the more flagrant objections to the Keeton O'Connell Plan from the point of view of what you get.

Rating Structure

But just one word that you might be interested in, with regard to the change in the rating structure. Today, as you know, if a man lives in the suburbs and is a steady worker and has a wife and children, owns his own home and does not have a bad driving record, he is a good risk. And he should be rated accordingly. By the same token if a man is a high school drop out, who is habitually unemployed and has a souped up two seater sports car, he is a bad risk. And will be rated accordingly again. One man is likely to cause accidents and the other one isn't.

Under this plan, you completely reverse the rating structure because you are now insuring yourself. The man who owns the station wagon and has the large family suddenly becomes a bad risk even though he is a pretty good driver because if he makes a considerable weekly wage, his insurance company has a big exposure to loss even though someone else caused him the injury. If the two seater sports car hits the station wagon, the company that is going to lose is the company that insures the station wagon. But the company that insures the two seater sports car isn't too worried, number one, he will only have two people in the car at one time, one of whom is habitually unemployed. He's a rather good risk.

Finally, I would like to tell you that the Keeton O'Connell Plan, the A.I.A. Plan, Cotter Plan, Governor Rockefeller's Plan and a plan that I

am ashamed to tell you was adopted and is effective January, 1971 in Massachussetts (the first non-fault automobile insurance system in the Nation) are plans which are without question bad for lawyers. But if that is all that is wrong with them then I predict you will have non-fault automobile insurance throughout the nation in a matter of months. That is not a very good reason for preserving the system.

I have also been asked the question wherever I have travelled, whether or not this plan is bad for the insurance industry. And it probably is bad for the casualty insurance industry, probably isn't bad for the life insurance industry. One reason being, if nothing else, that there is approximately nine billion dollars worth of liability insurance on automobiles written in this nation each year, that is nine billion dollars worth of business that the life insurance companies can't compete for. They at least directly can't write casualty coverage, but if you switch from casualty basis to an accident-health basis, life insurance companies can and do write accident-health coverage and that is nine billion dollars worth of business that they then are able to compete for. The casualty industry, at least the majority of it, is not in favor of this change, but again pretty much for selfish reasons.

But ladies and gentlemen, I honestly and sincerely believe that these plans are bad for the public and if you familiarize yourself with them, I am convinced that the overwhelming majority of you not for selfish reasons but for the same motives that prompted me will join with me and become as I am a critic of non-fault automobile insurance. □

The Basic Protection Plan

(continued from page 10)

(In contrast, the $5,000 Basic Protection limit on pain and suffering is out of reach for all but the seriously injured.)

If many claimants yield to the temptation offered by the Massachusetts act, the *nature* or the *level* of the standard will have to be changed or the system will become seriously inequitable as well as unduly costly in overcompensating the less deserving claimants. Put another way, under the Massachusetts act there will be a strong temptation to inflate medical expenses in order to exceed the $500 limit and thereby become entitled to make a separate claim for pain and suffering. Similarly, the preservation of the tort action for those suffering a fracture may well give rise to numerous claims of so-called hairline fractures. The result could well be the preservation of so many nuisance claims as to seriously undercut the savings inherent in a plan that in fact as well as theory *replaces* fault claims with nonfault calims, as distinguished from *adding* the latter on top of the former.

Conclusion

We originally offered the Basic Protection Plan as a model for state legislation. We continue to believe that the needed changes in the legal and insurance systems can and should be made by state legislatures. But we also believe that the need for a change to nonfault insurance as the principal source of compensation for traffic victims is both compelling and immediate. The opportunity for meeting the need at the state level should be seized at once. If, instead, the lobbies that oppose the needed legislation in state after state continue to succeed in defeating reform, then we will join those who feel obliged to consider (1) whether Congress should intervene and take action and (2) whether it is feasible for Congress to do so by merely establishing national standards while continuing to depend primarily on the states to regulate, and on private enterprise to operate, an automobile accident reparations system that adequately serves the public interest. In short, if the states cannot or will not act quickly and effectively, the national government must do so. □

Title VII

(continued from page 14)

Diaz v. Pan American World Airways,[25] a case involving a charge filed by a man, the Fifth Circuit found that an airline violated Title VII when it refused to hire a male as an airline steward. The Court said: ". . . we feel that being female is not a 'bona fide occupational qualification' for the job of flight cabin attendant . . . " *Diaz* thus reaffirmed earlier decisions[26] which have adopted the EEOC Guidelines on Discrimination Because of Sex.[27] Those Guidelines state: "The Commission believes that the bona fide occupational qualification as to sex should be interpreted narrowly." In short, with rare exception, a job may not be denied to women (or men) as a class; each person must be judged as an individual.

The *Diaz* case is but one example of the way in which sex discrimination adversely affects the employment status of men. Other charges filed by men have involved a refusal to employ because of draft status; and the maintenance of job classifications, seniority systems, wage and pay scales, shift assignments, restrictions on the length and style of hair, retirement and pension plans, and other conditions of employment which discriminate against men.

State Protective Laws

So-called state "protective" laws prohibit the employment of women in certain occupations, limit their hours of work and the weight they may lift and require certain benefits for women workers, such as minimum wages, premium pay for overtime, rest periods, and physical facilities.

In 1969, the Commission issued its current Guidelines which find that state laws restricting the employment of women are superseded by Title VII and, accordingly, do not justify a refusal to employ women. The trend of Federal court decisions has been to support this view.[28]

Since 1969, a number of state attorneys general have issued opinions[29] finding that Title VII and/or their state fair employment practices legislation superseded their state protective legislation; and many states and the District of Columbia have amended or repealed their protective legislation so as to broaden opportunities for women.[30]

The view that state protective legislation is superseded by Title VII was implicit in the first Title VII lawsuit filed on the basis of sex by the Department of Justice. The case involved the Libbey-Owens-Ford Company and the United Glass and Ceramic Workers of North America. The consent order agreed to[31] provided for the bidding into jobs and the assignment of overtime on a nondiscriminatory basis even though the state (Ohio's) protective legislation restricts overtime and weight-lifting for women.

Affirmative Action Programs

The Libbey-Owens-Ford case is also significant as an indication of the type of affirmative action which is appropriate in a sex discrimination case.

25. *Diaz v. Pan American World Airways*, F.2d (5th Cir., April 6, 1971, No. 30098), reversing 311 F. Supp. 559 (S.D. Fla. 1970).

26. E.G., *Weeks v. So. Bell Tel. & tel. Co.*, 408 F.2d 228 (5th Cir. 1969).

27. 29 CFR 1604.1.

28. *Rosenfeld v. Southern Pacific Company*, 293 F. Supp. 1219 (C.D. Calif. 1968), *remanded to determine mootness* in 3 EPD Para. 8091 (C.A. 9, 1971); *Richards v. Griffith Rubber Mills*, 300 F. Supp. 338 (D.C. Ore., 1969); Local 246, *Utility Workers Union Of America v. Southern California Edison Company*, 3 EPD Para. 8100 (C.D. Calif., 1970); *Caterpillar Tractor Co. v. Grabiec*, 63 LC Para. 9522 (D.C Ill., 1970); *Ridinger v. General Motors Corporation*, F. Supp. (S.D. Ohio, 1971); *Garneau v. Raytheon Co.*, 3 EPD Para. 8153 (D.C. Mass., 1971). *Cf. Mengelkoch v. Industrial Welfare Commission*, 3 EPD Para. 8097 (C.A. 9, 1971), *rev'g and remanding unreported decision issued following remand* of 284 F. Supp. 950 (D.C. Calif. 1968) in 393 U.S. 83 (1968) (see also 284 F. Supp. 956 (D.C. Calif., 1968)), *for dismissal on abstinence, appeal from which was dismissed for lack of jurisdiction* in 393 U.S. 83 (1968). *But C.F. Ward v. Luttrell*, 292 F. Supp. 162 (D.C. La., 1968) and 292 F. Supp. 165 (D.C. La., 1968).

29. Such Opinions have been issued by the Attorneys General of South Dakota, Pennsylvania, Oklahoma, Michigan, Massachusetts, Wisconsin, and Washington and by the Corporation Counsel for the District of Columbia. *Cf.* Opin. of the Attorney General of North Dakota, April 18, 1969, CCH Labor Law Reporter, State Laws, Admin. Rulings, Para. 49, 995 .02 [and of Washington, AGO 1970 No. 9].

30. Most of these changes are detailed in *Report of the Task Force on Labor Standards to the Citizens' Advisory Council on the Status of Women*, Appendix B, 56-68 (April 1968).

31. F. Supp. , 3 EPD Para. 8052 (N.D. Ohio, 1971).

The Consent Order provided, among other things, that the Company and the Union would implement an education and training program for women employees to assist them in transferring to new jobs and departments; and that the Company, when hiring, would take positive steps, including advertising, to ensure that its file of pending applications included a sufficient number of applications from women so that it could hire on a nondiscriminatory basis; and that, to the extent that qualified women employees were available, two out of the next four foremen selected in certain departments would be women.

The Commission's current Guidelines contain no statement of position on the relationship between Title VII and state laws which require benefits for women workers, such as minimum wages and premium pay for overtime. The Commission is handling such cases on a case-by-case basis. It would appear, however, that the existence of such laws will not justify a refusal to hire or promote women. Furthermore, such laws can be harmonized with Title VII by extending the benefits involved to men.[32]

The Commission has established the principle that, as a general rule, an employer may not terminate an employee who is compelled to cease work because of pregnancy. He must offer her a leave of absence with the right to reinstatement to the position vacated or an equivalent position at no loss of seniority or any of the other benefits and privileges of employment.

The first judicial decision involving the employment rights of expectant mothers under Title VII was issued this past February. In that case, *Schattman* v. *Texas Employment Commission*,[33] the Court found that an employer's policy of requiring all employees to cease work at the conclusion of their seventh month of pregnancy violated Title VII.

Pension Plans

There has been one case to date involving sex discrimination in retirement and pension plans under Title VII: *Rosen* v. *Public Service Electric Company*.[34] *Rosen* stands for the principles that a company retirement and pension plan cannot differentiate on the basis of sex with regard to optional or compulsory retirement age; and that where a company changes its retirement and pension plan so as to comply with Title VII, it must eliminate all differentials, and cannot phase out the discriminatory features over a period of time.

Seniority Lists

The Commission and the courts have held that the establishment or maintenance of seniority lists or lines of progression based on minority status or sex violate the Act. Where plantwide seniority has been in effect, it may be possible to correct a segregated seniority system merely by integrating the system. However, where departmental, gang, or job seniority is a factor in determining transfers and promotions, additional adjustments in the system may be needed so as to eliminate the present effects of past discrimination.[35] Otherwise, minority employees and women with long years of plant service will still find themselves excluded from jobs, gangs, and departments that were formerly closed to them.

The courts have been zealous in protecting from retaliation those who bring their cases to the Commission. In *Plumbers, Local 189*, the Court refused to receive evidence coercively obtained by the union from plaintiffs in violation of Section 704(a) of the Civil Rights Act.[36] In another case, where an employer refused to consider an applicant for employment because of various charges which he had filed with EEOC, summary judgment was granted to the aggrieved applicant.[37]

Enforcement Powers

Despite the legal successes I have discussed, many of which EEOC has participated in, the Commission still lacks adequate enforcement power to effectuate the purposes and intent of Congress when it passed the Civil Rights Act of 1964. [Mr. Brown pointed out that a House Subcommittee has recently voted out a bill giving

32. *Potlatch Forests* v. *Hays*, 3 EPD Para. 8024 (D.C., Ark. 1970).

33. F. Supp. , 3 EPD Para. 8146 (W.D. Tex. 1971).

34. 409 F.2d 775 (C.A. 3, 1969), 3 EPD para. 8073 (D.C. N.J., 1970), 3 EPD Para. 8074 (D.C. N.J., 1970). The *Rosen* decision conformed to the EEOC's Guideline, Sec. 1604.31(a) of the Commission's Rules and Regulations.

35. *Robinson* v. *Lorillard*, 319 F. Supp. 835 (M.D. N.C., 1970); *Local 189, United Papermakers and Paperworkers, AFL-CIO, CLC* v. *United States*, 416 F. 2d 980 (1969).

36. *Plumbers, Local 189*, note 8, *supra*.

37. *Stebbins* v. *Keystone Ins. CO.*, F. Supp. , 63 LC Para. 9489, 2 FEP Cases 861 (D.D.C. 1970).

EEOC "cease and desist" enforcement powers and extend Title VII to employers of eight or more employees and state and local governments. It may pass congress this session.] Thus, when we win an important case which enlarges the rights of minorities or women, we give it the broadest possible publicity. It is our hope that this will encourage more private litigation by worthy plaintiffs; for, with our limited power, private litigants remain a vital resource in attacking job discrimination.

So let me assure you that you are going to be hearing more from EEOC. And that, in turn, will mean you are going to be hearing more from victims of job discrimination who are ready to go into court.

When the Government does go to court, it is going to focus increasingly on those cases which will have a significant impact on systemic patterns of discrimination in major industries. EEOC is identifying such cases and referring them to the Department of Justice and other Federal agencies for appropriate legal action.

The decisions I have mentioned provide the framework for a massive assault on arbitrary hiring and promotion standards which have long prevented minorities and women from achieving true equality of opportunity in employment.

But these decisions are only as powerful as lawyers choose to make them. They are the result of courageous plaintiffs and lawyers challenging established practices through an equally well-established mechanism — the law.

A Challenge to Lawyers

The decisions which I have mentioned provide a hope, a real chance to help solve the myriad problems that surround us. But the decisions must be implemented, refined and extended. A small plot has been planted, but thousands of acres remain. I challenge you as lawyers to sow the seeds of justice and help reap the harvest of a better life for *all* people.

As a first step, lawyers must recognize that their profession has long been a closed fraternity, excluding women, blacks, Spanish-surnamed Americans, American Indians and other minorities. The legal profession must put its own house in order before it can claim to be a true champion of the disenfranchised. For an all-white, all-male law firm piously to represent on a *pro bono* basis black welfare mothers seeking to challenge the distribution of ADC funds is as hypocritical as an all-white corporation donating money to a black university.

Law students and alumni must demand that their law schools undertake immediate affirmative action to attract women and minorities in large numbers. Women, for example, comprise about 40 percent of the total student population here at the University of Washington, but only about 10 percent of the law school. This disparity is intolerable.

As a second step, students and alumni alike must take vigorous steps to end the discrimination which occurs every fall in the interview rooms when law firms, like vultures, seek out the white male law review students. The placement office of every law school should require every law firm which recruits at that school to pledge, in writing, that it will interview and select students on a non-discriminatory basis. The placement office must make it clear, for example, that women cannot be confined to trusts and estates law, but must be given an equal chance at litigation and other areas of legal practice from which they have been blocked or discouraged. And each placement office should clearly indicate that law firms which discriminate will be barred from recruiting.

I recently spoke to the students and faculty of the law school at Wayne State University in Detroit. I told the students who planned to join law firms following graduation to examine the employment practices of each firm and to insist on real equality in the employment of both professional and non-professional personnel. I told the students to refuse offers and to make their reasons clearly known where they found women or minorities excluded or holding only minor jobs. Such a collective effort among all the graduates of a class could be most effective.

And if you have not already joined the fight against the bar exam, which is a glorified job test, do so at once. It has never been shown that this test is effective in indicating who will be better lawyers. The test *has* been shown, year after year, to be excellent for the purpose of screening out minorities.

Earlier in my remarks I mentioned the negative attitude which I have perceived from many businessmen who ask, in effect, "What is the least I have to do to be in bare compliance with the law?" If there is going to be real progress in fighting discrimination, business and labor leaders had better start asking themselves what is the *most* they can do.

Compliance with Federal regulations is only the bottom line. I know that you and the organizations which you represent want to be way above that line. □

The Board's Work

A special State Bar committee to study and make recommendations on the subject of automobile accident reparations — including the variety of **"no-fault" insurance plans** — is being appointed by the Board of Governors.

The problem previously had been assigned to a special sub-committee of the Legislative Committee; because of its increasing importance, the Board decided at its April meeting in Spokane to establish the special full committee.

The Board agreed that members of the State Bar committee were to be selected with a view of achieving a committee "absolutely balanced" in its views on the subject.

In other business at its April meeting the Board:

√ Discussed at length the qualifications of applicants for the position of **State Bar executive director** to succeed Mrs. Alice Ralls, who has announced plans to retire.

√ Voted to oppose **House Bill 420**, which was designed to end the ban on soliciting of executorships by banks and trust companies.

√ To achieve closer understanding between the Board and the **Legislative Committee**, decided that a committee representative will be invited to attend Board discussions of legislative matters in the future.

√ Heard a report by treasurer Kenneth P. Short of Seattle on the **investment status of various State Bar funds** — general, bar examination, legislative, Continuing Legal Education, Client Security. The Board agreed to enlarge the investment authority to include government-guaranteed funds.

√ Decided to investigate the possible advantages and disadvantages to the public and the Bar of **bar integration** under court rule rather than legislative enactment.

√ Voted to contribute $300 each toward the expenses of two law students, one each from University of Washington and Gonzaga University, to attend the **World Peace Through Law** Conference in Belgrade in July.

√ Approved a required resolution establishing the State Bar as the sponsoring office for a program of employing law-student **legal interns** in prosecuting attorney and public defender offices, especially in Pierce, Snohomish and King Counties. The program was devised by and will be administered by the Young Lawyers. A grant of federal Law Enforcement Assistance Administration funds will pay two-thirds of the interns' salaries, the public offices the other third. The program is designed to provide practical experience in public law offices year-around for law students and to provide additional man-power to the offices themselves.

√ Dispatched a big variety of business affecting individual lawyers, law-exam applicants and law clerks.

√ Bestowed honorary Bar Association membership upon **Mary G. Hoard** (admitted in 1917) and **Don G. Abel** (admitted in 1919).

√ Decided to investigate further a recommendation that a lawyer be given a copy of a complaint against him, rather than only the substance of the complaint.

√ Approved in principle a suggestion by a Local Administrative Committee chairman and decided that, in counties where it is applicable, the local trial committee, rather than the local administrative committee, shall act as the **fee-arbitration committee**. □

SUPREME COURT PRACTICE

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

R.C.W. 10.01.11 provides that "appropriate counsel fees" shall be paid by the state to an attorney ordered to represent a criminal indigent on appeal. Query: What are appropriate counsel fees? There is no difficulty in obtaining expressions of opinion on this subject. The difficulty lies in the fact that opinions leave something to be desired by way of consistency. The opinions range from the overtaxed citizen's lament, "Why is the public obligated to pay anything for an appeal by a person seeking a procedural error in a superior court's finding of guilty?"; to the observation of the lawyer with the fixed overhead, "The medical profession is fully compensated for providing required medical services to the indigent —why the differennce?"

Avoiding a direct attack on an answer, the practice in some other states authorizing compensation of court-appointed counsel from public funds may be enlightening. The data was gathered by the Supreme Court during February and March of 1971. Perhaps it should be noted that the statutes involved in the states listed below generally provide for "reasonable attorney fees" rather than "appropriate attorney fees."

In **State v. Horton,** 34 N.J. 518, 170 A.2d1 (1961), the Supreme Court recognized this view, stating that the most helpful clue to determine the meaning of "reasonable compensation" was to be found in the measure of compensation paid to court appointed attorneys in other states, and that such evidence led to the conclusion that no matter how it was calculated, there was no indication that the compensation was intended to be "full," and that in many cases the awards permitted amounted to little more than an honorarium. The court found the objective to be "a desirable sharing of the economic burden between the Bar and the community."

StateAttorney Fees Allowed for Appeals

Alaska	$350-450 (with some exceptions)
Arizona	$350-$450 (with some exceptions)
California	$10 per hour — AVerage fee $400-$450 with exceptions in death penalty cases.
Hawaii	In death penalty cases $250-$1000; in other cases $50-$500
Massachusetts	Most cases handled by members of the Defenders Committee who serve without pay except travel expenses. When other counsel appointed, compensated "at a rate somewhat below the rate appropriate in the case of private employment" — $300-$500
New Jersey	60% of the fee a client of ordinary means would pay until 1967; $10 per hour with a maximum of $250 except in extraordinary cases until 1970; after 1970 public defender system which occasionally employs other attorneys at $15 per hour plus $100 for oral argument.
Oregon	$300 plus $50 for a petition for review to the Supreme Court.

In 18 ALR 3d 1074, there is an annotation on the subject. On page 1078, it is noted:

"It has generally been held that in the absence of a statute providing for compensation, an attorney appointed by the court to represent an indigent accused of the commission of a crime cannot recover from the public for the services performed."

Washington supported this position. In *Presby v. Klickitat County,* 5 Wash. 329, 31 PAC. 876 (1892) the court said:

"In some instances, no doubt, it is a hardship upon an attorney to be obliged to defend poor persons, without compensation, but, when called upon, it is a duty which he owes to his profession, to the court engaged in the trial, and to the cause of justice, not to withhold his assistance, nor spare his best exertions in the defense of one who has the double misfortune to be stricken by poverty and accused of crime . . . One of the duties of the attorneys enjoined by law in this state is never to reject from any consideration personal to himself, the cause of the defenseless or oppressed."

The ALR reporter, supra, continues:

". . . Many jurisdictions have enacted legislation which provides an appointed attorney with some measure of compensation and reimbursement for necessary out-of-pocket expenses for services performed on behalf of an indigent defendant, although in general that compensation is much less than the fee that would be charged to a paying client for comparable service."

THE COURT OF APPEALS

By ROBERT F. UTTER, *Judge*
Division 1

On June 10, 1971, all decisions of the Court of Appeals will commence selective opinion publications in accordance with Chapter 41, Laws of 1971. That Law provides:

In determining which cases have sufficient precedent value, the Court of Appeals will tentatively use illustrative guide lines:

1. Does the case involve a new issue of law?
2. Is there a change in application of an established precedent of law?
3. In cases involving multiple issues, all issues must lack precedential value.
4. An issue is lacking in precedential value where;
   a. The only question is whether the findings of fact are or are not supported by substantial evidence.
   b. A legal question is raised and it has been decided by a prior unanimous decision of the supreme court or a division of the court of appeals, and the reviewing court unanimously agrees the precedent is a correct statement of the law.
   c. The answer to the issue is dictated for technical reasons, such as failure to properly raise the issue in the court below.
   d. A subsequent change in statute or court rule or decision making the holding authoritative only for this case.

Attorneys may include in their briefs or oral argument a statement of the precedential value of the case.

Attorneys wishing to express their views concerning the guide lines may do so by writing to the Clerk of the Court of Appeals in their area.

SUPERIOR COURT NEWS

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

State judges met in Richland April 21-24 for the Spring Conference of the Washington Superior Court Judges Association, President Judge **Lloyd L. Wiehl** (Yakima) presiding. The first day featured a joint meeting with state Juvenile Court Directors. Judges **Charles Z. Smith** (King) and **Richard G. Patrick** (Benton-Franklin) moderated a discussion of proposed juvenile court law changes. Other segments of the first day juvenile court program featured Judge **David W. Soukup** (King) and Judge **Ross R. Rakow** (Klickitat). Second day topics included a demonstration of court room security arranged by Judge **Albert N. Bradford** (Walla Walla); a legislative report by Judge **Keith M. Callow** (King); consideration of a criminal law survey presented by Judges **David W. Soukup** and **Theodore S. Turner** (King); presentation of a concept of continuing judicial education by Judges **George H. Revelle** and **Solie M. Ringold** (King); and various committee reports. Association business and further committee reports highlighted the final day.

Judge **Nancy Ann Holman** (King) was recently honored as a "Seattle Woman of Achievement" by the Matrix Table of the Seattle Professional and University of Washington Chapters of Theta Sigma Phi. Following closely on the heels of this distinction, Judge Holman received the Alumnus of the Year Award from Boston College Law School of which she is a 1959 graduate.

NEWS FROM THE COURTS OF LIMITED JURISDICTION

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

Judge **George Mullins** of Yakima, has requested that all the members of WSMA be reminded of the annual conference for Courts of Limited Jurisdiction will be held in Yakima on September 23, 24, and 25th. All members are urged to make plans to attend this important conference. Among the speakers listed for the conference will be the Honorable **Eugene A. Wright,** Judge, 9th Circuit Court of Appeals and the Honorable **Slade Gorton,** Attorney General.

Galen Willis, Deputy Administrator for the Courts, has announced that the long-awaited revision to the Justice Court manual has finally hit print and will be distributed shortly to the many members of the Courts of Limited Jurisdiction throughout the state. If you have not done so previously, please contact Galen at the Temple of Justice, Olympia, and let him know how many copies you desire. A special thanks and "well-done" are also in order for Mr. Willis, who coordinated the project with a great deal of skill and ability, and to Judge **Carolyn Dimmick** of Redmond and her committee who worked untiringly to put the revised manual together for publication.

AGO 1971 No. 1: — Public School Districts:
Discusses several questions pertaining to pension coverage for certain non-certified school district employees.

AGO 1971 No. 2 — Public Works Contract:
Discusses two questions relating to the uses to be made of the retained percentage of moneys earned on a public works contract.

AGO 1971 No. 3 — Taxation-Mobile Homes
If a mobile home meets the conditions set forth in the first paragraph of RCW 82.50.180(5), it is not necessary, in order for the unit to be placed on the real property tax rolls of the county in which it is located, that the owner thereof make a request to the county assessor for such entry.

AGO 1971 No. 4 — Abortion:
The pregnancy of an unmarried female under 18 years of age may be terminated in accordance with chapter 3, Laws of 1970 (Referendum No. 20), if all other conditions set forth therein are met, on the basis of her own consent and that of her parent as her legal guardian, unless some other person has been appointed by the court to serve as her legal guardian.

AGO 1971 No. 5 — Initiative to the Legislature;

AGO 1971 No. 6 — Initiative and Referendum-Funds from out-of-state corporation:
The provisions of RCW 29.79.490(6) are applicable to a corporation whose principal office is, or a majority of whose members or stockholders have their residence outside, the state of Washington, even though such corporation may possess a certificate of authority to transact business within the state of Washington under RCW 23A.32.020.

AGO 1971 No. 7 — Crimes-Restoration of Civil Rights:
(1) A person who has been convicted of a felony under federal law, or under the law of another state, unless restored to his civil rights, should be regarded as disqualified from voting in the state of Washington under Article VI, § 3 of the state constitution, unless the felony of which the person was convicted has a counterpart which is not a felony under the criminal laws of this state.

(2) To the extent that a person who has been convicted of a crime under federal law or under the law of another state is disqualified from voting in the state of Washington, the governor of this state has the authority to restore such person's civil rights so as to enable him to vote in this state.

AGO 1971 No. 8 — Zoning Laws:
Under the provisions of the planning enabling act (chapter 36.70 RCW), a board of county commissioners may not amend a zoning ordinance pursuant to an application for rezoning in a manner contrary to the recommendation of the planning commission, without a public hearing.

AGO 1971 No. 9 — Subdivisions-Notice Requirements:
The notice requirements of RCW 58.17.080 relating to the filing of a preliminary plat of a proposed subdivision adjacent to or within one mile of the municipal boundaries of a city or town do apply to a proposed subdivision which is located totally within a certain city but is also located within one mile of the municipal boundaries of some one or more other cities or towns.

AGO 1971 No. 10 — Student's Voting Eligibility

AGO 1971 No. 11 — Recall of County Officer:
The percentage of the total number of votes cast for all candidates for a certain King county office which is determinative of the number of voters who must sign a petition to recall the person holding such office is twenty-five percent, as provided for in RCW 29.82.060(1).

AGO 1971 No. 12 — Length of Hair and Beards of Prisoners
The provisions of RCW 36.63.130 do authorize (but do not require) the department of social and health services, acting through the superintendents of the various penal institutions under its jurisdiction, to regulate the length of hair and beards worn by convicted felons imprisoned therein, at least where such considerations as those of identification or of personal cleanliness and health are deemed by the department in the exercise of its sound administrative discretion to justify such regulation.

AGO 1971 No. 13 — Public Utility Districts
Discusses questions relating to sale of PUD revenue obligations.

Office Practice Tips

The Realities of Billing

Your State Committee on Economics of the Law is delighted to be able to announce that for the State Convention to be held in Portland, Oregon, this year, we have secured the services of J. Harris Morgan of Texas, a national authority on the art of billing. Lawyers in Spokane and Seattle have seen his film put out by the American Bar Association entitled "Romancing Your Fees Into the Twentieth Century." Every lawyer and every firm should begin to think very seriously of the adequacy of their billing practice and culminate their thought and discussion by attending J. Harris Morgan's lectures at Portland with the resolution to adopt a really workable system which will guarantee getting their statements out by the tenth of every month.

Large firms frequently go into data processing and order a print-out at the first of each month. If their in-put is faithful and if they promptly review the print-out they have established a workable system.

The sole practitioner can bill promptly with no more effort and just as good a result as the firm with the computer services if he will follow a few simple principles. The first is to keep an adequate appointment book with each day divided into fifteen minute periods. There are many such books. The Lawyers Day is an elaborate and sophisticated example which is very popular at the Bar and is completely adequate. For my purposes, an appointment book called "Week-at-a-Glance" available at any stationery store does just as well and is very inexpensive. On two pages, when opened, it shows the entire week, which to me is an advantage in keeping track of work ahead. As long as I bracket the time for the clients and make a few abbreviated notes I can remember what I did for a maximum of twenty-four hours.

The secret to the thing is to spend *the first ten minutes* of every day dictating your services for the day before. Lawyers are used to dictation machines and can easily state their services in sequence and dress up the work. This is what J. Harris Morgan calls romancing. I realize that many lawyers use the pegboard system and are fond of it, but no secretary can transpose scribbled notes from individual slips and really romance the services rendered. Moreover, I resent the time required to fill out pegboard slips as I only want to spend ten minutes a day and this is all that is rerequired for dictation. The dictation folder should then be marked for the day of the services so that whoever posts it to the client's ledger card will keep them in sequence. Client's ledger cards should be in statement form and the services should be posted daily. After each item is dictated, I indicate to the bookeeeper the value in time which is placed on the back rather than the front of the Client's card.

At the end of the month when I review my client's ledger, all of the detail of effort expended is already on the face of the cards, the time charges are on the back and it takes but a moment to skim through the items for errors, arrive at a fee commensurate with the effort shown and instruct the bookkeeper or secretary on a dictation tape the amount to enter for the fee and and whether or not to send the bill. She accumulates the cards to be billed, runs them them through the copy machine and sends out the statements in window envelopes.

I have had many attorneys write to me sending samples of their bookkeeping ledger cards and their internal systems and I have been disappointed to find that so many of them are designed for the bookkeeper and not for the lawyer. To the lawyer, the primary function of a bookkeeping system should be to bill the client promptly, accurately and in a fashion to adequately show the effort expended for him so that the fee is justified. If the system is not designed to do these things, then it should be scrapped and we should start over again.

Actually by photographing ledger cards designed in statement form, the sole practitioner can bill as efficiently as the firm with data processing capability. One evening a month handles all the review and if each lawyer's ledger cards in a firm are kept in a separate alphabetical tray, the entire client's ledger can be reviewed by all partners in one weekend. Actually, if they were all in the office at the same time, they could all review simultaneously in a two hour period.

In a busy office, typing up statements at the first of the month is physically impossible if you handle any volume at all and make any pretense of setting forth your effort expended as justification for your bill. If anyone has a third method in addition to the computer print-out and typing services daily on a statement ledger card, I would be delighted to hear from him. If I am satisfied with its workability, I will attempt to publish it before we listen to J. Harris Morgan in September.

Harry E. Hennessey

Lawyer/Public

In September 1961 Shirley Gee — bouncy, bright, perky, pretty, beautifully tanned, a trifle freckled and not long out of Montana State University in Bozeman, where she grew up — joined the State Bar staff in Seattle. A couple of weeks ago, long since become Mrs. Charles Pass of Issaquah, she left the staff for the hopefully less trying demands of raising a family.

For the last five years Shirley has been the efficient key power cog that has kept the Bar's disciplinary machinery running smoothly and helped make it one of the model discipline programs in the nation. And among her myriad clerical, secretarial and trouble-shooting duties was one that has to be rated as the least pleasant imaginable: It was into her ear that absolutely countless hundreds of telephoned complaints against lawyers poured; it was on her desk that most of those countless "Dear Sir, You bum" letters landed.

"It was terrible for awhile," she confesses. "I would go home after work and find myself spending the evening griping and complaining."

But she soon developed an attitude of patient understanding toward the immense variety of callers and writers, and managed in many, many instances to smooth disgruntled clients' ruffled feathers with explanations the lawyers themselves had failed to make, or to make clearly enough.

"I know now that many, perhaps a majority, of the complainants were educationally disadvantaged," she says. "It was obvious many times that the lawyer actually had explained things, the services to be performed and the fee to be charged, but many clients simply were unable to understand it, and probably were afraid to ask to have it explained again."

What lawyer shortcomings cause the greatest number of complaints?

"Delay. And not letting a client know what the lawyer is doing or had done. And fees."

The many hundreds of lawyers she has met in the course of their work in Bar activities are "the absolute greatest," she says. And she says it with feeling.

But it's fair to guess she has some understandable reservations about that minority of lawyers who still delay unreasonably. Or fail to keep their clients fully informed. Or fail to have clear understandings with clients about fees and possible fees.

Try to remember all the rest of us innocents kindly, though, will you, Shirley? And to you, much good luck and happiness as a mother.

— Public Relations Committee

Twenty Years Ago

GATHERIN'S

Stevens County Bar entertained members of the Supreme Court and families at the Little Pend Oreille Lakes. Following lunch there they repaired to Nelson, B.C., and were entertained by its lawyers. Next, they traveled to Trail and on to Colville. All survived it seems.

Chelan County Bar entertained the members of Douglas, Grant and Okanogan counties. Dean Judson Falknor spoke on "The Model Code of Evidence."

Washington Chapter, Order of the Coif, initiated **Priscilla Alden Townsend, JoAnn R. Locke, Hoyt M. Wilbanks, Jr., Cleary Stuart Cone, William Robert Smith** and **James E. O'Hern.** Supreme Court Judges **Charles T. Donworth** and Matthew W. Hill were made honorary members. Wonderful how Supreme Court service improves scholarship.

Bogle, Bogle & Gates had a dinner party celebrating the 25th anniversary of Mrs. Gates' entry into the firm. It was reported "a great many people were present." Surplusage?

BIRTHS

Kenneth C. Hawkins opened in the Miller Building, Yakima. **George Kinnear** associated with Catlett, Hartman, Jarvis and Williams, Hoge Building, Seattle. **Donald Blair** elected President of the Clark-Skamania Bar. **Earl W. Foster,** deputy prosecuting attorney, Spokane, reformed and joined **Sam Sumner, Harvey Davis** and **Sam Sumner, Jr.,** Wenatchee.

CROSSED THE BAR

Judge **Arthur Graham,** 66, Grays Harbor County.

H. V. Wells, 85, Anacortes. He entered practice in 1889, joined the gold rush in 1897, opened a law office in a tent in Dawson City, returned to Anacortes and was elected to the state Senate.

In Seattle, Judges **Donald McDonald** and **Ward Roney** belabored the Bar at great length about careless practices in probate. The members listened attentively, and continued to do just what they had been doing.

David J. Williams

Notices

Wanted and Unwanted

For Sale: ALR 2d, vols. 1-100, with supps; ALR 3d, vols. 1-14, plus Index; American Jurisprudence 2d, vols. 1-31; Rabkin & Johnson form books, vols. 1-10; Wash. Repts., vols. 1-200; Wash. Repts. 2d, vols. 1-67; RCWA; Wash. Dig., 25 vols.; Wash. L. Rev., 1947-1970; Whartons, Crim. Ev.; Restat. Agency; Restat. Torts; Restat. Restitution; Six brown steel book cases, about 7 feet tall by "Harbor"; Contact: S. Neil Stevens, 2612 - 166th, SE, Bellevue, SH 7-6742.

For Sale: U.S. Reports, Law Ed., complete to date with Rose's Notes bound in; U.S. Supreme Court Digest Ann. up to date. Theodore S. Turner, W 913 King County Courthouse, 344-4051.

Unwanted: Friden Flexowriter Model 2340 leased for term ending Oct. 29, 1973, with option to purchase. If interested in acquiring or subletting, call Jack Kruger or Craig Campbell, MAin 3-3333, Seattle.

For Sale: Wash. Repts., complete, $1,850; Wash. Dec., $150; Revised Code of Washington (not RCWA), $150; Wash. App. Repts., vols. I & II, $40. Contact Don Minor, 1712 Pacific Ave., Everett 98201 (259-9194).

For Sale: ALR 1, 2, and 3; RCWA; Wash. Practice; CJS (complete to date); Restatement (both 1 and 2) and many others. Write Bud Tinsley, 4107 S. 288th Place, Auburn 98002.

Deadline for next issue of the *Bar News* is June 7, 1971

Unauthorized Use

Dear Mr. Beresford:

Some of the members of your bench and bar may have received ad material from the Legal Heritage Society in connection with their "Man's History of the Law" project, in which my name and picture appear along with others.

This is, of course, highly improper and you should know that I neither agreed to this use of my name and picture nor had any advance notice of the mailing. I have not been asked to select or approve any material or to pass judgment on any selected material in connection with the enterprise. I have requested that those responsible for the mailing to so notify the recipients.

This in an unfortunate situation which I feel compelled to explain and it would be appreciated if you would use your good office to cause this letter to be appropriately carried in your official publication.

ALFRED P. MURRAH
Director
The Federal Judicial Center
Wash. D.C.

Will Information Sought

Harold A. Fowler, 609 5th Ave. NW, Puyallup, died April 21. He was a long-time resident of the Puyallup-Sumner area and was there active in business. Anyone having information of his last Will please contact Lawrence M. Ross, 901 Tacoma Avenue So., Tacoma 98402.

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) Seattle office of major transportation company seeking lawyer with at least two years' experience for career in general corporate staff practice with emphasis on trial work.

(2) Recent UW Law School graduate, candidate for L.L.M. in Taxation from New York University (June, 1971), has resume on file.

(3) Eastern Washington county seeking Deputy Prosecutor at $10,000 plus private practice with most overhead paid. Office in community of about 3,000.

(4) Suburban attorney seeking lawyer to assume practice and income therefrom during 14 month trip abroad. General and some criminal practice experience necessary.

(5) Southwest Washington three-man firm seeking associate for private general practice and Municipal Court prosecutions (as assistant City Attorney).

Lawyer-Pilots Bar Association Annual Meeting

The 1971 annual meeting of the Lawyer-Pilots Bar Association will be held at Salishan at Gleneden Beach, Oregon, from July 14-18. The Lawyer-Pilots Bar Association is an international association of attorneys who are also licensed pilots.

Legal highlight of the program will be a full day seminar on aviation insurance. Panelists will include an aviation insurance broker, an aviation insurance company underwriter, an aviation adjuster, an aviation claims man, and plaintiffs and defense lawyers.

Members of the Washington State Bar who qualify for membership in the Lawyer-Pilots Bar Association are invited to write for membership application blanks to Gale P. Hilyer, Jr., 1900 Pacific Building, Seattle, Washington, 98104. Associate memberships are available for attorneys who are not licensed pilots but who have an interest in aviation law and safety. A special membership category is also open for law students who are licensed pilots.

June 4-5	A Basic Comprehensive Course in Trial Law . . . sponsponsored by ATLA at Ridpath Hotel and Motor Inn, Spokane.
July 5-7 14-20	Annual Meeting of the ABA in New York, N.Y. and London, England.
July 14-18	1971 Annual Meeting of the Lawyer Pilots Bar Ass'n. at Salishan, Gleneden Beach, Oregon.
July 31 - August 1	National Conference on Medical Malpractice and Doctor-Lawyer Relationship in Los Angeles . . . sponsored by CEB and Medical-Legal Society of Southern California in Los Angeles.
Aug. 29 - Sept. 4	National College of Advocacy, sponsored by ATLA and Hastings College of the Law, at Hastings in San Francisco.
Sept. 9-11	Annual Meeting of the Washington State Bar Association in Portland, Oregon at the Portland Hilton.
Oct. 10-15	8th Annual Hawaii Tax Institute at the Princess Kaiulani Hotel in Waikiki.
Dec. 3 (Friday)	1 to 6 p.m., Washington Civil Trial Practice, State Bar CLE seminar, Ridpath Hotel, Spokane.
Dec. 11	9 to 4, Washington Civil Trial Practice, State Bar CLE seminar, Olympic Hotel, Seattle.
Dec. 18	9 to 4, Washington Civil Trial Practice, State Bar CLE seminar, Evergreen Inn, Olympia.

Attorneys Needed For Hearing Examiners

The United States Civil Service Commission will be appointing 250 Hearing Examiners in the next 18 months. The Commission is seeking well-qualified attorneys to fill these important positions. Attorneys must have practiced seven years which include two years in the field of administrative law and two years of actual trial practice in courts of original and unlimited jurisdiction.

While these appointments will be made in a number of different regulatory agencies, the larger percentage will be made in the Bureau of Hearings and Appeals, Social Security Administration. Most vacancies will be filled at the GS-15 grade level although a number of appointments will also be made at GS-16. The salaries paid Federal employees were increased on January 1, 1971. GS-15 now pays from $24,251 to $31,523; GS-16 from $28,129 to $35,633. Hearing Examiner positions are located in Washington, D.C., and in 70 other cities throughout the United States and Puerto Rico.

Hearing Examiners preside at formal hearings required by law and make or recommend decisions on cases involving the rights and liabilities of individual citizens as well as those affecting the economic welfare of large regions in the United States. They are employed by 25 different Federal regulatory agencies.

Copies of the appropriate announcement (318) and forms needed for filing may be obtained from any Area Office of the U.S. Civil Service Commission, at most major post offices, and from the Office of Hearing Examiners, U.S. Civil Service Commission, Washington, D.C. 20415.

WASHINGTON STATE BAR ASSOCIATION
505 Madison Street
Seattle, Washington 98104