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WASHINGTON STATE BAR NEWS

CAN WASHINGTON AFFORD AN ELECTED JUDICIARY?

MEMORANDUM

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IN THE NEWS

DEPARTMENTS

Letters

Charles I. Stone,
President:

You have requested response from the Bar to your suggestion in the November, 1972, issue of the *Bar News,* the President's Corner, about adoption of the Missouri plan for electing judges in the State of Washington.

I could not agree more. The spectacle of judges and lawyers who are judicial candidates involving themselves in hard fought political campaigns, which necessarily involve solicitation of funds and time consuming political activity by themselves and by those who lend their support to them, is, in my way of thinking, most unfortunate and unwise. It undignifies the high office of a judge.

The participation of laymen in the selection of judges is assured by a plan which would include laymen on the blue ribbon commission who select judges in the first place; and the population, as a whole, could vote to oust a judge.

There is also obviously a need for periodic review of a judge's present capacity to be a good judge, including changes in temperament, habits, and surfacing of latent biases and prejudices which interfere with the judge's ability to be fair and impartial; as well as his energy, and mental alertness. Here the Bar Association has an important and vital role to inform the public as to its evaluation of a judge's continuing qualifications to hold office.

The conflict in the conflict-of-interest positions on disclosure of judges' campaign contributions which is the subject of your column in the *Bar News* is a good illustration of why affirmative action should be taken on this question, and without additional delay. The impetus should come from the Bar Association.

The issue is not a question of whether the present system of selecting and retaining judges has produced, on a whole, a fairly good record of judges. The question, it seems to me, is whether there is not a better way of assuring a high standard for our judges, a way of eliminating for them and for the members of the Bar a tremendous waste of time and money at election time; and finally, for all of us, as voters, of eliminating the difficult task of selecting the most qualified candidate for various judicial offices (in addition to selecting the candidates for a profuse number of other offices and issues) when we have little meaningful evidence before us with which to base this judgment.

MILTON C. SMITH

Seattle

Habeas Plumbum?

Editor:

The Editor's note in the November issue (*Bar News,* page 2, reporting the dilemma of the criminal defendant carrying around in his chest the evidentiary bullet which the prosecution would very much like to get at) piqued our curiosity and set us to theorizing. Our first thought was a replevin action, but a redelivery bond would obviously stymie that attempt. We then lightly considered constructive trust and reconstructive surgery, and with that our exoteric theories petered out.

Researching the esoteric and the arcane, we finally uncovered the solution — a Writ of Habeas Plumbum, ("You have the lead."). Although not often used in this country, Habeas Plumbum has a distinguished historical lineage. Adopted from the Spanish civil law and described in the classic English text on the civil law, *De Lege Civile,* E. Kassowitz, London, 1585, the Writ of Habeas Plumbum was used in the fascinating case of *Re Tewkesbury,* 12 King's B. Rpts. 422 (1591).

In the *Tewkesbury* case, the Earl of Tewkesbury sought to retrieve a bullet lodged in the chest of Sir Geoffroy Granville, who was wounded in a duel over the Earl's youngest daughter. The Earl was advised that the bullet was a Granini, made by the renowned arms maker of Palermo, circa 1580, and therefore a bullet which the Earl wished to add to his famous firearms collection now on display in the British Museum.

The Earl first attempted to secure a Writ of Quare Impedit Plumbum. The Court of Chancery dismissed the writ, holding that it lacked the required personal jurisdiction over the defendant, Granville, a Catholic, having fled to Scotland (see Rounsworth, *Granville: Diary and Letters,* Oxford, 1763, at page 654).

However, since the duel occurred on the Earl's demesne, the Court of Chancery granted the Earl a Writ of Habeas Plumbum, in rem jurisdiction being retained, and the bullet was surgically removed by Sir Henry Liston, court physician to Queen Elizabeth. Sixteenth century medicine being what it was, Granville died from the effects of the operation three days later. Ironically, the bullet proved not

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The President's Corner

Last month I suggested there are compelling reasons for the revision of our archaic 83-year-old Judicial Article, the Article of our State Constitution which deals with our judges and our system of courts. The four general areas most in need of improvement are as follows:

First: The manner in which we select and place judges on the bench;

Second: How they manage to stay on the bench;

Third: Provision for their discipline and removal in the occasional situation where such action is necessary; and

Fourth: The manner in which our court system is organized and administered.

Requirement: A Lawyer

Let's begin with selection. Under our present Judicial Article the judges of all our courts of record are elected by the voters. The sole qualification prescribed by the Constitution is that the candidate be a lawyer. Any lawyer, regardless of how poor his qualifications for the bench may be, may run for judicial office.

Even though popular election may be the best available means of choosing among candidates for other offices, it is an inappropriate and ineffectual process in a judicial race. Popular election simply is not an effective procedure for determining which of the candidates is better suited for the bench in terms of the qualifications which we know to be of the essence, qualifications such as integrity, judicial temperament, degree of legal expertise, independence, industry and consideration of others. Popular elections not only fail to measure these qualities, but are usually decided, in great part, on the wholly irrelevant factors of name familiarity and the amount of campaign funds available to the candidate.

Merit Selection an Answer

I am convinced we should follow Missouri and a number of other states and substitute the Merit Selection Plan. This would mean the establishment of a Judicial Nominating Commission, a small group of laymen, judges and lawyers, which would examine carefully the qualifications of each candidate for the bench and, upon occasion, encourage the candidacy of an outstanding lawyer who may be hesitant to seek judicial office. The Commission would then submit to the Governor a short list of the names of the best qualified candidates, based solely on merit, and the Governor would be required to appoint one of the candidates so selected by the Commission.

We now have our judge on the bench. How and under what circumstances does he remain there? Under our present Judicial Article Superior Court judges stand for re-election, against all comers, every four years; Court of Appeals and Supreme Court judges every six years. What voice will the public have under the program I am proposing? First of all, the public would be represented by the lay members of the Judicial Nominating Commission. Second, as a further part of the Merit Selection Plan, the appointed judge would be before the voters at regular elections and they would decide whether he was to be retained or dismissed. He would run against his own record in a so-called "retention election."

Evils Would Be Avoided

The Merit Selection Plan would tend to put the most able and qualified candidates on the bench. The retention election system would help to insulate the qualified incumbent from political influence and threat, and provide him with the security of reasonable tenure as long as he performed with competence and propriety. He would be freed from the burden of expensive political campaigns, from having to raise campaign funds from among the Bar and the public, from the possibility of putting his independence in jeopardy, and from having to engage in time-killing and energy-consuming political activities. It would leave him free to do the one thing which, by definition, is his highest and best use — to devote his full time to judging.

This brings us to the problem of discipline and removal of judges. At present a judge may be removed from office on charges of incompetency, corruption or malfeasance only by a resolution approved by three-fourths of each house of the Legislature or by impeachment by a majority of the House of Representatives and conviction by two-thirds of the Senate. These procedures are incredibly archaic, costly and cumbersome and deal not at all with the most common type of judicial misconduct, that which falls short of grounds for removal from office.

A Commission Could Remove

What would be better? The simple, logical solution, already in use in California and other states, is another commission — a Commission on Judicial Qualification. This commission, like the Judicial Nominating Commission, would be composed of judges, lawyers and laymen. It would have the authority to receive complaints and to investigate them, to counsel, warn and discipline a judge for misconduct or for wilful and persistent failure to perform his duties.

It would have the authority in extreme cases to remove the judge from the bench, subject to the right of appeal to the Supreme Court.

The fourth and last major goal of the court reform program I have described is the establishment of a strong, unified system of courts and court administration. We do not now have such a system. The Supreme Court and the Courts of Appeal are under State administration. Our Superior Court judges are paid by both the State and the County and their budgets are controlled by their respective County Commissioners. We have, in addition, a strange and wonderful mishmash of judges of courts of "limited jurisdiction," district court judges, municipal judges, police judges, and justices of the peace.

The Legislature has established the office of Administrator of the Courts under the Chief Justice of the Supreme Court. He provides valuable services but his authority is limited. He cannot, for instance, require a Superior Court judge with time on his hands to assist in the work of another, busier Superior Court. He can only ask for volunteers.

Case Load Needs Leveling

It seems clear that all Superior Courts, at least, should be integrated into a unified, state-wide system of courts. It seems equally clear that the Court Administrator should have the power to direct a judge from a less busy court to sit on the bench in a county with an undue backlog of cases. In some of our counties judges now average as few as 31 trials per year while in others judges average up to four times that many. The visiting judge volunteer under our present system deserves our enthusiastic commendation. But we need to do much more to level the case load.

Some states have chosen to strengthen the power of the Supreme Court Chief Justice and place statewide court administration authority in him and the Supreme Court. This does not necessarily seem to be the most advisable course to follow. First, it distracts judges from their all-important job of judging. Second, the courts have grown and are now a substantial business operation that requires skill and experience which few judges, if any, may be expected to have.

For instance, in 1970, the total operating cost of our Superior, Appeals and Supreme Courts was almost eight and one-half million dollars. This would appear to be much too large and complex a business operation and responsibility to thrust upon one or more judges whose main skills are almost certainly in the law and whose actual business and administrative experience may well be zero. Again, the answer may lie in a commission of laymen, judges and lawyers who would establish policy guidelines for the administration of the courts and to whom a strong administrator would report.

Reforms such as I have described have been recommended not only by your State Bar Association but by virtually all other groups which have studied the problem: The Citizens' Committee on Washington Courts now headed by Ken Billington; the Judicial Council; and the Constitutional Revision Commission established by executive order of Governor Evans. Your Board of Governors is fully committed to an all-out effort to effect the revision of our Judicial Article. We offer assistance and cooperation to all other interested groups. We ask for their support and yours. We believe we will be successful in 1973.

What do you think of this?

Candidates' Fund-Raising

Editor:

In "The President's Corner" of the November issue of the Washington State Bar News, Mr. Stone deals with the deep concern about political contributions and refers to the Board of Governors resolution adopted in 1970 providing that the judicial candidate should not be apprised of the name of a lawyer contributor and the amount of his contribution.

All judicial candidates, through their campaign committee, solicit endorsements from lawyers, and lists of the names of such endorsers appear in political advertisements. Hence, the candidate knows which lawyers are supporting him and which lawyers are supporting his opponent. It would seem to me that if the candidate knew to what extent his supporters and those of his opponent backed their endorsements with financial contributions, his bias, if any, would not be measured by the numbers of dollars contributed.

If non-disclosure is based upon the fear of bias, both endorsements and financial contributions should be prohibited. I see no fault with lawyer support for a judicial candidate on a full disclosure basis.

EDWARD F. STERN

Seattle

CAN WASHINGTON AFFORD AN ELECTED JUDICIARY?

By Judge Robert F. Utter

The highlight of 1972 was to be unopposed in my first statewide election for the Supreme Court position to which I was appointed. I was extremely grateful to be in this position and I believe it enables me to speak frankly about our elective process for judges. Needless to say, my remarks are not directed to any specific campaigns, but to the system as a whole.

This year we have had the opportunity to see the elective system for judges at its weakest. In King County there were 11 primary contests caused by four vacant positions and seven contested judgeships. There were 29 candidates for these positions. On the Supreme Court, there were three contested races requiring voters to choose statewide from six different candidates.

Such contests affect in different ways lawyers, judges and the public at large. The Bar Association is affected, first, by conflicts caused in a contest between an incumbent and a challenger, or alternately, a race involving a number of candidates for a vacant position. The traditional way for lawyers to support a judge is to join in an initial sponsoring committee and then respond to cards that are sent as the result of mailings to the entire bar. These cards ask for the lawyers' public endorsement, for financial contributions, for him to contribute effort in sending out endorsement cards to his friends, yard signs, and other actions that create name familiarity for the judge. They also publicly identify the lawyer with a candidate.

It would be naive to suggest that lawyers are insensitive to the problems of opposing an incumbent. Unless there is a strong likelihood the incumbent will be defeated, many lawyers are hesitant to face the possibility of whatever ill will may be created by publicly identifying themselves with the opponent of someone in office. The same problem, to a lesser degree, is presented to the lawyer asked to support publicly a particular candidate when there is no certainty this candidate will be successful in the elections. Reactions of the victors in campaigns vary. Some are gracious to all who appear, others have been known to be highly critical of lawyers who have actively supported an opponent.

The problem of campaign contributions is a staggering one facing a lawyer with 11 vacancies and 29 candidates for local superior court races. A lawyer from King County indicated to me he had candidates he would like to support in each of the 11 positions but simply could not make meaningful financial contributions to each race. When judges and candidates for judicial positions look, as they must, to the bar for their financial support, the bar is in an untenable financial position where there are multiple ju-

Judge Utter has been a King County court commissioner, then Superior Court and Court of Appeals judge before being appointed to the Supreme Court a year ago. This article is derived from addresses he has made before local bar associations.

dicial races and worthy candidates requiring support in each of them.

The dilemma facing a lawyer who must choose between candidates for judicial positions is heightened by the great discretionary powers given judges. It is my observation that most judges in this state exercise their considerable discretion impartially in ruling on cases and do not consider the political position of the party appearing before them. There are areas, however, where superior court judges have the ability to financially reward persons, if they so choose. The appointment of appraisers in estates and receivers for insolvent corporations can be a lucrative means of reward for judges who are successful candidates and may wish to express their gratitude. At the time I served on the King County Superior Court, the rough estimate of fees received by appraisers appointed by the judges on the probate calendar was approximately $10,000 a month. Fees in receiverships are often considerable. To the credit of the King County court it has devised procedures that largely insure the selection of both appraisers and receivers on the basis of merit. The appearance, however, of the ability of a judge to financially reward his supporters and withhold such reward from those who do not support him creates a situation which can reduce confidence of the public in the judiciary.

Some Will Not Campaign

Another area of direct impact on the bar is the ability of members of the bar to serve as candidates for judicial office. Although it is difficult for the public to understand, the disparity in income between a judicial position and a successful law practice is for many a deterrent to becoming involved. This has been illustrated time and time again in both rural and urban counties throughout the state. The real tragedy, however, is that there are extremely able men who would make this financial sacrifice and are competent in every other way to be excellent judges, but simply will not campaign for office in a race where many of the issues are entirely irrelevant to the ability of the candidate. I am personally familiar with a case where an excellent candidate was on the bar list for appointment with a strong background of public service to both the bar and community and was eminently acceptable to both parties. He refused to consider appointment at the last minute in the face of certain election opposition, depriving the bench of a man who could have rendered significant public service.

A lawyer willing to spend large sums of money can come close to buying an election. Alternately, a candidate with wide community name familiarity may not have the support of his fellow lawyers but may be invulnerable because other, more able members of the bar are not able to become as well known to the public in a short campaign.

The elective system, viewed from the bench, presents an equal number of differing problems. A judge facing election realizes that he will more often than not be elected on the irrelevant issues of name familiarity or promises of attitudes in particular cases that could well cause his disqualification if cases of those types came before him as a judge. The inability of the public, as a whole, to realize that a judge simply cannot commit himself to a course of action in advance of hearing a particular case, places both contenders and incumbents in an unfair position when facing election.

The non-partisan nature of judicial campaigns in this state effectively removes it from open partisan politics. While this is clearly favorable, it also has the detriment of making party organizations unavailable to candidates. Candidates and incumbents for judicial positions realize that

King County Superior Court judges' average experience will drop to less than six years when judicial terms begin in January.

The court is losing its image of permanency. . . . No more than nine of the 22 judges elected four years ago will be on the bench two months from now. At no time has the job of judging seemed less permanent than this election year. . . .

Many voters complained there were so many candidates they did not have time to learn who was best qualified for the important positions.

There is evidence that not all the votes cast were done so intelligently. One candidate withdrew from the race, but too late for his name to be removed from the ballot. He did not campaign and his withdrawal was publicized, but he still received 25,534 votes.

The surplus of candidates has prompted renewed debate about whether elections are the best way to select judges.

— Larry Brown, in *The Seattle Times*

they must literally build their own campaign organizations from the ground up. This is a difficult job in a large county, a staggering one in a state-wide race.

Campaign costs present another serious obstacle to judicial candidates. These costs have escalated in a truly alarming manner in the past eight years. When I ran for election in King County my campaign costs in 1964 were approximately $15,000. This was for minimum newspaper coverage with no radio or television time and with over a third of that sum devoted to postage. By 1968, the cost of a superior court campaign in King County had risen to the point where some candidates spent between $25,000 to $40,000. By 1972, some candidates were speaking of spending as much as $50,000, if needed, in King County Superior Court races.

The costs for minimum media coverage statewide and other campaign costs in a Supreme Court race in 1970 were approximately $35,000. The campaigns in 1972 for minimally adequate coverage must have exceeded that cost.

I can speak on the problem of campaign costs from a personal experience. When I ran in 1964 it was necessary for me to pay approximately $8,000 from my own funds. This totally depleted my savings, required me to cash in my entire interest in the state retirement fund and pay off the approximate $2,000 debt in the following year from my personal income.

Financial Impact Is Great

The cost of financing a Supreme Court campaign and the physical drain involved, was, I am certain, the cause of the untimely passing of Harry Foster, one of the finest Supreme Court judges ever to sit on this bench. Judge Foster won the campaign in one sense, but the cost was simply too great in every other sense of the word. In recent Supreme Court races, the financial impact on judges has been such as to require some to devote most of the proceeds from the sale of their homes to pay off campaign costs.

The indirect costs to a man sitting on the bench, however, are even greater. At the superior court level, the trial hours are from 9:30 to 12 o'clock and 1:30 to 4 o'clock. On the surface it looks like ideal office hours. When I was on the superior court, I consistently averaged between 9 to 10 hours a day on the job. This time was spent roughly half trying cases, and the other half in administrative matters, talks to the community, preparing instructions for the next day, pretrial work, work on sentencing, and study. A superior court judge, concerned about election, must devote the time from 9:30 to 12:00 and 1:30 to 4:00 to his trial schedule, but simply cannot devote attention to judicial matters to any extent except for the time actually spent on the bench.

At the appellate level, the nature of work differs from trial work to a significant degree. Roughly one-fifth of the time of an appellate court judge is spent on the bench and four-fifths of that time is spent in work not regulated by a precise schedule. To be effective, the appellate court judge must be able to spend his time in preparing for hearings, writing, maintaining contact with problems of the public

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There were a number of hotly contested judicial campaigns around the state this last primary, and we wonder how many voters again felt a little uneasy judging the judges.

Men in flowing robes socking away at each other in the political arena is out of place, many citizens believe. Judges dwell in loftier places.

Should local and state judges be appointed by the governor in the manner that federal judges are chosen by the President? Or is the election process still the best, most democratic way of putting a qualified judge on the bench?

The rough business of politicking brings out many no-holds-barred statements. A judge's honesty and integrity may be publicly questioned by an opponent.

Picture a hapless citizen sentenced by a judge whose integrity was questioned by a political opponent. Will the citizen feel he's been given fair, impartial and honest treatment? The citizen may lose respect for the bench, and the judicial branch is weakened as a pillar of our democracy.

Would our democracy be better off with the elimination of judicial elections and the often inherent tough in-fighting of rough politics? Should the election process be merely improved upon? Or should all judges be appointed?

What course to take? A democracy? A democracy's people have to be the judge of that.

— *Tri-City Herald*

OUR COURTS ARE GOOD AND SHOULD BE BETTER: A NON-LAWYER'S VIEW

By Ken Billington

The State of Washington has a *good* system of courts and a good judicial branch of government. That statement can be made sincerely and can be easily sustained by a studied analysis and comparison of our courts and courts of other States. But let us look at the term "*good*" system of courts.

Is a court system which requires the men and women who make judgment decisions to live the life of a politician a good system? Is it good to have a system where a person, to be elected as a judge or to remain as a judge, must go forth and solicit political campaign funds from his friends and, particularly, those friends who will be practicing law in front of him?

Is it a good system which forces attorneys, especially those in the smaller communities, into the position of receiving strong suggestions or direct requests for political contributions from a judge who will decide the cases which they will try?

Is it a good system where analysis shows that it takes a special temperament and ability to be an efficient judge, and yet does not provide the general public with the assurance that the person aspiring to judgeship has such ability and qualification? Do political qualifications make good judges? Is it a good system where a judge who fails to perform his duties properly because of possible weaknesses or the development of arbitrary attitudes, or the use of punitive actions against attorneys whom he personally dislikes, can only be disciplined or removed by the cumbersome method of recall?

Is a court system good which allows certain types of cases to be tried twice if desired, with juries at taxpayer's expense without any record being made of the first trial, and where the defense attorney gets a complete new "chance at bat"? Is that a good court system?

Is it a good system which provides court jurisdiction on a legislative basis whereby one judge has a total of 44 cases to handle in a

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Mr. Billington for more than 20 years has been executive director of the Washington Public Utility Districts Association. Invited to attend a 1966 citizens' conference on the courts, he became interested in court reform and improvement and was a member of the organizing conference for the Citizens' Committee on Washington Courts in early 1967. He held several offices of the committee and became acting chairman in 1970 and chairman in January 1972. He was instrumental in organizing citizens' symposiums on Judicial Reform in 11 Washington cities during the month of November.

year when the statewide average is around 100 cases per judge?

Is it a good court system that has no definite administration and management which will make uniform, or at least establish, a definite schedule of the hours and days in the various courts throughout the State when those courts are to be manned and available for legal needs?

Is it a good court system which does not provide proper personnel management and coordination of the non-judicial personnel throughout the State courts?

Is it a good court system where leading cities of our state plan on a definite level of court fines and traffic violation receipts in their budgets to finance non-court cost of city government?

Perhaps by now you are getting a message. And lest I be misunderstood in asking these questions, which pinpoint or highlight certain inadequacies or deficiencies in our present system of courts, I would again reiterate that our courts are *good*.

"Good" Can Become "Bad"

Basically our system has been good because to date we have enjoyed the presence of dedicated men and women as our judges. But this can change and unless improvement is made and we bring our courts into the 20th century as far as providing more efficient laws and methods of operating them, the term can change from "good" to "bad."

I have been semi-active in court matters for several years now and I think I have met eight of the twenty-six Superior Court Judges in our King County. And yet I am required as a citizen to decide by my vote, based on a political campaign for these persons, whether or not they are qualified to be judges.

What I am trying to emphasize is that while citizens are aware of their executive and legislative branches of government, they do not pay much attention to the courts until they are individually involved. And though few of us ever become directly involved in a major court action, in this third branch of government there rests probably the most important responsibility of maintaining our democratic society.

Adolph Hitler in Germany in his rise to power took control of the courts. One of the first moves by Fidel Castro in Cuba, following that revolution, was to take control of the courts. What concern would a dictator have over what laws were written, if he had control of the persons who *interpreted* and made final judgment under those laws?

By now I hope I have illustrated certain need for improvements in our court system. I also have tried to emphasize the lack of citizen awareness of this need for improvement. I would now like to turn directly to some recommendations for improvement which could make our good system of courts a much better system of courts — and it would help guarantee good courts tomorrow.

My recommendations are based on participation in a Citizens' Conference on Washington Courts. This was a three-day conclave held in June with attendance by invitation of our Governor and the Chief Justice of our Supreme Court. Sponsors of the Conference were the Washington Judicial Council, which has the statutory responsibility of studying courts and their procedures; the American Judicature Society, which is a national organization headquartered in Chicago and dedicated to court improvement; the Criminal Law and Justice Training Center, which seeks improvement in criminal justice, practices and procedures; and the Citizens' Committee on Washington Courts, of which I am Chairman and which was organized following the 1966 Citizens' Conference on Washington Courts.

Following that Conference, we made a tremendous improvement in our court system. At the time of the Conference we had a very severe backlog in the Supreme Court of our State. It came about by the sheer overload on the nine Justices, plus the few pro tem judges which they were then able to use.

Further Improvement Wanted

Based on study at that Conference we promoted establishment of the appellate court system now used in this State. This has greatly improved justice at the appeals court level. Now, after this year's Conference, we now want to move ahead with citizens' support and make further improvements in our court system.

The basic need is the adoption of a new Judicial Article in our State Constitution. As is true in other parts of the State constitution, the judicial article is now a patchwork of emergency enactments based on 1889 wording adopted to fit horse-and-buggy needs. It needs a complete overhaul which will give us a modern Judicial Article with the needed flexibility to provide court operation under modern-society needs

and methods.

That new Judicial Article should contain the basic ingredients for an efficient court system. Coming out of the Citizens' Conference was a consensus or position statement. It enumerates a number of these basic ingredients needed as court improvements.

In my questions I raised the issue of the political election of judges. What is proposed in this instance? First, there would be established by constitution a nominating commission comprised of qualified persons, including lay citizens. There would be safeguards as regards term of office which would prevent any perpetuation of a built-in self-interest. This nominating commission would seek out, analyze and establish, for the purpose of Governor appointment, qualified candidates for all judicial openings.

This nominating commission would lay before the Governor three names for his consideration. Once appointed, the judge would serve. However, voter control would still be retained because any judge so appointed would at the conclusion of his established term of office be subjected to voter approval as regards his retention. In other words, the voter would approve or disapprove retention of a judge based on his record.

Stigma Would Be Erased

Should the voters remove a judge, then that position would be filled again by Governor appointment from a list supplied by the nominating commission. This would assure that persons serving in judgeships would have been screened and examined on their qualifications and abilities. It would also remove the political campaign stigma which arises from our present system of electing our judges.

Going hand in hand with this new method of selecting and retaining judges there would be established in the Constitution a commission which would handle the matter of re-districting court jurisdiction and thereby balance out to a better degree the work loads of the various courts and judges. However, as an added duty such commission would serve as a discipline and removal commission to add a new factor in judicial consideration on behalf of the people. Procedures would be established whereby judges who were neglectful of their responsibilities, either from personal habit or direct disregard, could be disciplined or removed. This commission would also include lay persons and have restrictions against self-perpetuation or unfairness or abuse of power.

Next, there should be a unified system of courts with the administration and management vested in the Supreme Court under the office of the Chief Justice of our Supreme Court. A central administrative authority should be able to deploy judges in such a fashion as to distribute the work load more evenly. Today, the constitution gives no clear authority on court administration and management. Attempts to effectuate such action is ineffective for a number of reasons: The short tenure of the Chief Justice; the political facts of life in the implications involved in forcing a unified court administration; and the fact that funding of the courts is divided between the state and the counties and/or the cities.

This brings me to another recommendation. There should be state funding of all courts.

Traffic Should Leave Courts

There should be a one-level trial court. The procedure of trial de novo, which allows the trying of a case in a district level court without a record being taken, and then giving the defendant the right to start over again at the taxpayers' expense and have a completely new trial on the same issue should be eliminated. All trial courts should be a court of record. All judges should be attorneys. Minor traffic violations should be moved out of the court procedure to a traffic bureau system with right-of-appeal protection to be afforded for citizens who feel aggrieved by the bureau's action.

These are the broad policy decisions reflected in the Consensus Statement adopted by the conferees upon completion of the Conference. A lot of these proposals came as the result of studying improvements which have been made in other States, also changing them to fit the needs of our own state.

Court improvement, however, can come about only by establishing a citizens' awareness of a need for improvement. This is difficult because the courts and their procedures do not involve a large majority of our citizenry.

We would urge everyone to become concerned about court improvement — while our courts in the State of Washington are *good* today, it can be even better tomorrow. Democracy can only reflect the interest of its citizens. Will you help? Will you get involved? ☐

FOR BETTER OR WORSE: THE VINDICATION OF GENEVIEVE

By Alan A. McDonald

Poor Genevieve! Sixty years have passed since she instituted suit against her husband for personal injuries of a highly delicate nature, resulting from a very personal form of trespass on the case!

Dismissal of her claim, arguably on the basis of interspousal tort immunity, was affirmed by our Supreme Court in **Schultz v. Christopher,** 65 Wash. 496, 118 Pac. 629 (1911). Ever since suits between husband and wife, at least unless the relationship was later dissolved by death or marriage, have been prohibited.

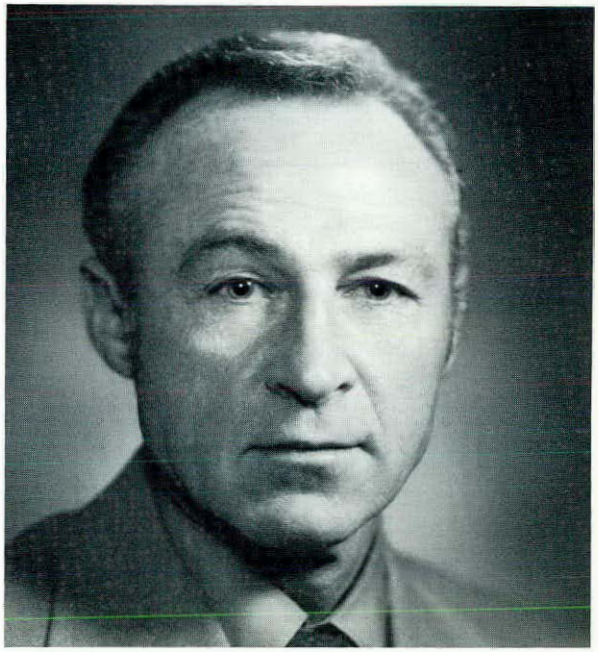
Hurtling Hearthstones

The immunity, supported by a variety of specious arguments, most prominent of which was its protection of domestic tranquility, endured despite erosion until an opinion written by Neill, J., in *Freehe v. Freehe,* 81 Wn. 2d 183 (August, 1972) brought the hearthstone hurtling down. (Surely if citadels can crumble, hearthstones can hurtle down.)

Support for the doctrine, in addition to the notion that litigation by the partners might have a depressing effect on marital bliss, has been offered in other forms.

It was said that the Common Law concept of total unity, under which the very being of a wife and all she owned merged in and became her husband's (those were the days, my friends), would render the latter liable to himself for a tort committed against him by his wife.

The criminal law and divorce courts were



Alan A. McDonald

Mr. McDonald, of the Yakima firm of Halverson, Applegate, McDonald, Bond, Grahn, Wiehl & Almon, is a native of Harrah, Wash., and a University of Washington Law School graduate. A Fellow of the American College of Trial Lawyers, he has written previous articles in the field of agriculture products liability, doubtless less entertaining than the accompanying article which he prepared at the invitation of the *Bar News.*

held to offer a more adequate and appropriate remedy!

Moreover, it was predicted that court calendars would be deluged by the flood of litigation which would flow but for this barrier. This spectre (understandably more frightening to judges than to lawyers) would be inspired by the opportunities for collusion and fraud, particularly if liability insurance was available.

Finally, the entire subject was labeled as one for legislative action, the absence of which was deemed a recognition that such litigation could not be countenanced in a community property state where a tortfeasor mate would share equally in the proceeds of a judgment and, to that extent, profit from his own wrongdoing.

The holding of *Freehe*, by a court which had previously demonstrated a disenchantment for immunity but a salutory restraint in awaiting a proper frame of reference for its repudiation, marshaled (I couldn't resist that) and met each of these arguments.

By way of preface, it defended its right to review and change law which was judge-made in the first place and which had never been sanctioned by the legislature.

The opinion labels the unity concept incongruous, with the abundance of existing legislation designed to preserve the equal and individual rights and status of the marriage partners.

Recognizing that spouses are, after all, "the best guardians of their own peace and transquilty" the court observes, and sagely, that if bliss exists with any real degree of rapture, it will preclude litigation or survive it; while, if it does not, if, in fact, that epoxy so vital to any union of the heart has evaporated, there is little to be salvaged by extending a technical prohibition.

Referral to remedies available under criminal law or in the divorce court was considered inconsistent with the preservation of peace. (This, without comment on the adequacy of those venues to deal with the problems for which they were designed, let alone damages resulting from unintentional acts.)

The Other Courts Survived

The floodgates were also faced with equanimity, the court observing that the benches in other jurisdictions permitting interspousal suits were still afloat. Kindly, they refrained from quoting (and perhaps I should have, too) the dissent in *Borst v. Borst*, 41 Wn. 2d 642, 251 p.2d 149 (1952), wherein the parent-child immunity was abolished, which predicted that that decision would "open the floodgates for hundreds of cases like this."

The legal system was presumed able to cope with the potential for fraud and collusion, which indeed in most cases it does. Further, the court recognized the capacity of the legislature to deal with such problems, should they arise. They might well have added that the insurance industry, not traditionally supine to such assaults, could quickly reduce the threat by the addition of some simple policy exclusions.

Finally, the court fashioned its own formula for the more troublesome problem presented by the community property laws. Permitted is the recovery of all special damages, the full recovery of general damages and one-half of the loss of future earnings.

The opinion is well written (which adds to a sense of loss occasioned by the departure of its author to the Federal bench) and from a standpoint of those of us who labor in the vineyards of the law, seems sound.

Certainly, it relates to current social values and even if it does not inspire a great volume of litigation, those cases that do arise should prove interesting.

For example, the driving instructions most of us receive and which are presently confined to the passenger's side or back seat of our cars, may well reverberate in larger forums.

Department stores, whose inventories have long included slip and fall cases, may be faced with home-made competition.

Third-party correspondence which up to now has had utility only in suits for alienation of affections may support a second cause of action for libel!

A New Challenge for Lawyers

One can anticipate new levels of diplomacy in crossexamination and certainly the quest for truth will in many cases be aided by the possibility of penalties far more subtle than those pronounced for perjury.

To Genevieve, then, our gratitude and regrets. Except for the irony of time she not only would have prevailed, but in doing so, would have undoubtedly emerged as a champion of women's lib. **It seems totally unfair that the vindication of her femininity should have been finally accomplished by a male Chauvinist plaintiff.**

We can only hope that wherever she is, she can enjoy the ultimate satisfaction for any wife — knowing she was right all the time! ☐

Statewide Legal Services Plan Taking Shape

A proposed $3,700,000 program to extend legal aid to indigents throughout the state has been approved by the State Bar's Board of Govenors.

That budget would provide approximately 114 attorneys statewide, compared with the present level of about 45, and would develop services in the 31 counties now without them, Bert L. Metzger Jr. of Seattle, former chairman of the Bar's Legal Aid Committee, reported.

Funding, largely through the Department of Health, Education and Welfare under the Social Security Act, still is "far from certain," he said, but is a strong hope.

The program would be provided by a nonprofit corporation, to be known as Washington State Legal Services Corporation, which would be controlled by a 29-member board of directors consisting of 15 lawyer-members and 14 representatives of low-income groups.

Metzger provided this outline of the background, planning and proposed operation of the program:

Early Beginnings

The organized Legal Aid movement nationally started in the early 1920s under the leadership of the noted Philadelphia lawyer, Reginald Heber Smith. Except for a few major urban cities, Legal Aid programs usually were staffed by private attorneys volunteering their time. By the 1960s there were numerous volunteers in programs throughout the State of Washington. There was also a full-time staff attorney providing legal services to low-income groups through a nonprofit corporation organized by the Seattle-King County Bar Association. Another attorney was paid for providing services on a half time basis.

In 1965, a Major Change

Under the Economic Opportunity Act, the federal government initiated funding of local legal aid programs in major cities as well as some rural areas.

The first such program to receive this funding in Washington State was the Seattle-King County Legal Aid Bureau which had been started in 1958 under the auspices of the Seattle Bar Association. Through fellowships, the VISTA lawyer program, Model Cities and OEO, the program has increased from seven attorneys initially to the present 31.

Subsequently, OEO funded a Legal Services program in Pierce County under the auspices of the Pierce County Bar Association. That program presently has five attorneys.

A third program was funded by the Office of Legal Services in Spokane County. This program has been seriously underfunded and now is the only program in Eastern Washington federally funded, with only four full-time attorneys.

Fourth Program Started

Last spring the fourth program initiated by the federal government was created to serve Snohomish, Whatcom, Skagit and Island Counties. This program was funded for five attorneys.

In the late 1960s, the Legal Aid Committee of the State Bar Association began to take cognizance of the difficulty which the OEO-funded programs had in meeting the demand once the services were established and made more widely known. To receive input about the extent of the demand for legal services, the committee asked for, and received, Board of Governors authorization to hold public hearings throughout the state. During 1970 and 1971 hearings were held in Seattle, Spokane, Yakima and Vancouver.

Figures Show the Need

Statistics about the low-income population may be of interest. Census figures for 1970 show 3,409,159 persons in the state. Of these, 16.5 per cent, or 562,513 persons, live in families having less than $2,999 annual income. When annual income under $4,999 for a family is considered, an additional 340,916 persons are added for a total of 903,429 (26.5 per cent of the total state population).

The percentage of King County households having less than $2,999 income is only 13.9 per cent and of Pierce County's is 16.3 per cent; both are under the statewide figure. Sixteen counties presently non-served by Legal Services have more than 20 per cent of the population earning less than $2,999 annually.

Another item of interest is the eligibility standards under which the OEO-funded programs are operating. The income standard is $2500-per-year annual income for an individual plus $500 for each other dependent

member of the family. Fee-generating cases are referred to the Bar through its normal referral programs.

New Funding Available

In late 1971 the Legal Aid Committee learned that federal funding for new programs might be available through the Department of Health, Education and Welfare. Under Title IV-A of the Social Security Act, the federal government could provide 75 per cent of the funds for a Legal Services program if the program were statewide and 25 per cent more funds were provided from non-federal sources, mainly from the state. This funding is the prime current hope.

As a result of the hearings, the Legal Aid Committee recommended to the Board of Governors in December, 1971 that it be authorized to draft a proposal for a statewide program with the hope that it would be funded by HEW.

Following Board approval, the Legal Aid committee sponsored two statewide meetings involving representatives of the bar, representatives of social agencies, low-income groups and governmental agencies. The meetings were held at Olympia and Ellensburg in June 1972. Great difficulty was encountered in getting a consensus.

Groups Brought Together

Eventually, through a grant from National Legal Aid and Defender Association, a program planning consultant was retained to provide technical assistance with respect to the organization and funding of HEW-type programs and help bring the various groups together to develop a concrete proposal.

As a result of further meetings of statewide representatives, a concrete proposal received a consensus and was presented to the Board of Governors on October 13, 1972, for its action. A number of low-income representatives, as well as representatives of the Legal Air Committee and other members of the Bar, attended the Board meeting during its review of the proposal. The low-income representation contributed greatly to the discussion and aided the Board in its resolution of the questions before it.

After discussion of the proposal, the Board approved a program, the basic features of which are as follows:

Board of Directors

The nonprofit corporation, Washington State Legal Services Corporation, would be controlled by a 29-member board of directors. The size of the board membership was established to permit widespread low-income representation on the board, considering the many varied low-income groups throughout the state, including Mexican-American, Indian tribes, urban whites and central-city blacks. The 15 lawyer-members were to be appointed by the Board of Governors after consultation with the Legal Aid and Young Lawyers Committees of the State Bar. The lawyer directors were to be five each from Eastern, King County Western, and non-King County Western Washington.

The 14 low-income members of the board of directors were to be chosen five from Eastern, five from non-King County Western and four from King County Western Washington.

Organization and Funding

The corporation would provide funding, monitor and evaluate programs, provide technical assistance and training, recruit staff, find other funding sources, and plan and set basic policy for the local programs throughout the state. The proposal was designed to meet the concern that there be a central planning policy body which would contract with existing and new programs in each area of the state, each of which would have its own board to allow local input into the program, as well as local responsibility.

The establishment of priority for funding would be: First, areas with no service; second, areas with disproportionately few services; and third, raising all areas to a level of services to a proper level. Thus, programs to cover Southwest Washington and Eastern Washington will involve the establishment of nonprofit organizations similar to those providing services in King County, Pierce County and Northwest Washington, as well as Spokane.

Precise budgets for an application for HEW funds are now being worked out. It is hoped that the total budget of the state, including all funding sources, will be about $3,700,000.

Legal Services Job Open

Lawyers interested in the job of attorney-director for Lewis-Clark Legal Services, Inc., Lewiston, Idaho, may submit resumes to the Board of Directors, 310 Main St., Box 973, Lewiston 83501. Salary is negotiable to $13,500.

CLE Seminar in Oregon

The Oregon State Bar invited Washington lawyers to attend the last of three sessions on advising businesses, scheduled for Dec. 1 and 2 in the Portland Memorial Coliseum.

Divide Civil, Criminal Cases in Wash. Reports?

Why not divide the bound volumes of Washington Reports of appellate courts into Civil Reports and Criminal Reports?

James J. Keesling of Seattle made the suggestion in a letter to Chief Justice Orris L. Hamilton and sent copies to a number of law firms for discussion and reaction. Within two weeks, he said, he had received more than 30 replies; none disagreed with or objected to his suggestions, and many heartily indorsed them. Some reported their firms planned further discussion before reacting.

Following is the substance of Keesling's idea. Readers wishing to comment are urged to write to him and the Chief Justice, he said.

Bound Volumes of Cases

The first reported case in the State of Washington was *Nisqually Mill Co. v. James S. Taylor* appearing in 1 Wash. Terr. Reports 1, (1854). Since 1854 the Washington cases have been bound in volumes as they were reported — arranged only by date and court.

Now that the cost of law books has skyrocketed and the expense of space to shelve them has kept pace, perhaps it is time to give some thought as to how Washington cases are arranged for binding, and what should appear in the bound volumes.

All this especially in view of the fact that a separate set has now been started for the appellate reports, and there are many more criminal cases being appealed.

At the risk of heresy may I suggest that the present system of division by court be abandoned, and that the *bound* volumes be divided into two sets as follows:

(a) *Washington CIVIL Reports*
(b) *Washington CRIMINAL Reports*

The *Washington Civil Reports* would include all cases except criminal cases of *both* the supreme court and the appellate courts. The first section of a bound volume would contain the cases from the supreme court, followed by the current appellate reports, perhaps separated by a colored divider.

In the *Washington Criminal Reports* all criminal cases from both the supreme court and the appellate courts would likewise be bound in the same volume.

Advantages

1. The chief advantages are flexibility and reduced cost.

2. Lawyers would have a choice as to which set of reports they wished to purchase, as the same might pertain to their practice.

3. Private and public law offices, banks, title companies, etc. having primarily a civil practice (or maintaining several sets of reports) could avoid wasteful duplicating of criminal cases in their law libraries. Likewise, city attorneys, county prosecutors, the attorney general, public criminal defense agencies, prison libraries, etc. could maintain extra sets of the criminal reports without the built-in expense. waste and useless duplication of civil cases.

4. The segregation of civil and criminal cases makes each set a more workable and convenient tool for the lawyer. The lawyer in the library working on a criminal case is not tying up a report wanted by another lawyer working on a civil matter.

5. By including cases from both courts in the same volume, the bound volume will reach the lawyer more quickly. The waiting period to accumulate enough cases from one court for binding will be drastically reduced.

6. Cases from both courts handed down during the same period will be in the same volume — eliminating the present cumbersome requirement of resorting to two separate sets of reports segregated by court, with widely differing numbers.

Policy

Perhaps it would also be a good idea to develop a *policy* as to what is to be put into a bound volume. At the present time the present policy is to throw in everything including the kitchen sink — by date. And the lawyers are being forced to purchase this unwanted and duplicate material and to use valuable shelf space in law libraries intended for case law. A reasonable policy might be that before anything is *bound*, the following question must be answered in the affirmative:

"Is the material such that it must be preserved for posterity — in the bound volumes of Washington law?" Such a policy would eliminate much of the junk that is now being put into the bound reports.

Junk: Perhaps one of the items to be discarded is the administrative rules of the supreme court. In addition, the amendments to the court rules might be omitted because by interspersing them into the bound

volumes, helter-skelter, by reason of their coming out on a particular date, it is almost impossible for the lawyer to make use of them.

Advance Sheets — Separate Volumes: This is not to mean that such material should be discarded entirely. The material omitted from the bound reports could well be put into separate paperback volumes or in loose-leaf, each paperback to contain one subject such as the rules of a particular court, disciplinary rules and proceedings, etc.

Disbarment Proceedings: Another category to remove from the bound volume would be disbarment proceedings. There is no reason to preserve for posterity the dirty linen of Washington lawyers to appear in every law library in the state and the nation. If a lawyer is disbarred and is able to rehabilitate himself, the bound publication of his misdeeds does not contribute to his rehabilitation. The son or grandson of the unfortunate lawyer should not be required to bear his cross for evermore. Such matters could appear in the advance sheets for the education of lawyers and whatever deterrent effect might result. A separate compilation of disbarment proceedings, bound or otherwise, should suffice. Lawyers could then purchase it or not at their option.

The changes suggested should reduce the cost of law books and the cost of space for storing them and make the Washington Reports a much more meaningful and workable tool for the lawyer.

CLE Seminar on Business Is Scheduled In Three Cities

The Practice Manual accompanying the December CLE seminar on Representing the Small Business will be the largest and most complete in our Bar's CLE history.

The seminar will be presented at Spokane's Ridpath Hotel from 1 to 6 p.m. Friday, Dec. 1; the Olympic Hotel in Seattle at 9 a.m., Saturday, Dec. 9, and the Evergreen Inn in Olympia at 9 a.m., Saturday, Dec. 16.

Coverage Is Thorough

The program covers forms of business organization, preincorporation matters, the full story of incorporation and conducting the corporation, tax considerations, financing, business transfers and dispositions of a business.

Extra manuals, if available after the seminars have concluded, will be priced at $20. Authors, and seminar panelists, are P. Cameron DeVore, chairman, and Allan H. Toole, Paul E.S. Schell, C. Kent Carlson and Barry H. Biggs.

Other CLE Practice Manuals available from the State Bar Office (505 Madison, Seattle 98104), while supplies last, include these:

Washington Civil Rules: 1972 Discovery Amendments, ($6), by John C. Coughenour.

Washington Civil Trial Practice ($5); Albert R. Malanca, Ronald E. McKinstry, Judge Stanley C. Soderland, James D. McCutcheon, Jr., William J. Rush.

Civil Practice After Trial ($5); Pinckney M. Rohrback, Lee J. Campbell, J.S. Applegate, Hugh B. Horton, William Wesselhoeft, Judge Dale M. Green.

Convention 1972 ($5); 1972 Estate Planning Update; Environmental Law; Construction Law: Representing the Owner, Contractor, Subcontractor, Architect and Supplier.

Convention 1970 ($5); New Developments in Products Liability: Patent, Copyright and Trademark Law for the General Practitioner; Federal, State and Municipal Tort Liability; Law Office Management — The Development of Lay Assistants; The Right to Privacy — Damages Actions and New Developments.

Also available:

Professional Service Corporations in Washington ($7.50); Civil Rights Law in Washington ($7.50); Professional and Fiduciary Liability ($5); Personal Property Security, UCC Article 9 ($5); Corporate Miscellany: Special Problems of Corporate Law Practice ($5); Sales Transactions Under the UCC ($5); Taxation for the General Practitioner ($5); Private Antitrust Actions ($5); Medical Miscellany for Lawyers ($5); Real Estate Transactions and Closings ($5).

Court Position Open

Lawyers interested in the position of King County Superior Court commissioner may communicate with Lewis P. Stephenson, Jr., court administrator. Stephenson said the salary is $21,420, plus employee benefits. Applications and resumes may be sent to him.

PIERCE REPORT
By KENYON E. LUCE

The Superior Court Rules changes were discussed in depth by **Bill Rush, Mike Manza, Dick Jensen, Larry Ross** and **Paul Sinnitt** at the Bar's October meeting.

The Pierce County Bar Association opened its Tacoma office October 1. One of its main functions will be the Lawyer Referral program for Pierce County which is being created by the Association, as well as a variety of other services to the Bar.

Because the Older Lawyer who formerly wrote the Pierce County Bar News intentionally failed to report the score on the Older-Lawyer vs. Younger-Lawyer baseball game, it should be noted that the score was 12-2 which is remarkable in view of the alleged unbiased, unprejudicial umpiring of the game. Dignity prevailed and the Young Lawyers won.

A Lawyer Golf tournament (?) was held at Twin Lakes Golf Course, chairmaned by **Stan Burkey.** It is interesting to note that **Mike Turner** is claiming long drive, **George Marsico** claims closest to the pin (both of them are from the Chairman's law firm) and **Wally Cavanagh** won it.

Gary Weber is now associated with **George Dixon. Doug Atwood,** W.U. '72, is associated with VanBuskirk & Haas. **Ev Holum** has set up practice on his own. **G. Patrick Healy** has joined his brother **James M. Healy, Jr.,** and **Norman L. Martin,** W.U. '71, is associated with **Philip DeTurk** in Puyallup. **Patrick Smith** is associated with **Arthur Knodel** in Fife.

Three **Kelley** brothers, having been admitted to practice in Washington, all practice in Pierce County — **Richard** is by himself, **Don** is a Pierce County Deputy Prosecuting attorney, and **George** is with Scogg & Mullin.

Doug McBroom, the new chief criminal deputy for Pierce County, spoke at a recent luncheon meeting of the Bar Association.

EAST KING REPORT
By CHARLES F. DIESEN

Judge A.P. (Tony) Wartnik of Bellevue has been selected by the Washington State Jaycees as one of the three outstanding young men in the state. The award cited Judge Wartnik for his contribution to curbing alcohol abuse and helping with mental-retardation problems while serving as judge of the Bellevue District Court.

John Lawson of Redmond has been elected a trustee of Overlake Hospital, Bellevue.

SEATTLE-KING REPORT
By GERALD G. TUTTLE

Arthur D. Swanson has been elected president of the Washington State Trial Lawyers Association and **Richard Holt** has been elected to the association's Board of Governors.

Lind, Thom, Mussehl, Navoni, Hoff & Pierson announce the association of **Thomas R. Dreiling.**

George E. Frasier has become a partner of Riddell, Williams, Voorhees, Ivie & Bullitt and **Stimson Bullitt** has resigned as president of King Broadcasting Company to return to the full-time practice of law.

George Constable and **John F. Kalben** announce the formation of a partnership for the practice of law at 4527 Seattle-First National Bank Building.

Charles O. Carroll, Joel Rindal, Jim Caplinger and **James Kennedy** announce the formation of a partnership for the practice of law at Suite 703, 1200 Westlake Avenue North, Seattle. **Robert Shuck** is an associate of that firm.

Friday, October 13, was a lucky day for the liberal, feminist (and sexist?) members of the Seattle-King County Bar Association providing breakfast with George (McGovern) and lunch with Gloria (Ms. Steinham). Both events were extremely well attended and proved to be of considerable interest to those in attendance.

YAKIMA REPORT
By RANDY MARQUIS

ACQUISITIONS:

The firm of Gavin, Robinson, Kendrick, Redman & Mays announces the association of **Dennis L. Fluegge.** Dennis is a graduate of Willamette University and a member of both the Washington and Oregon Bars, having recently served as deputy district attorney in Salem, Ore.

We congratulate **Terry A. Brooks** upon his newly acquired bride under an agreement of marriage entered into on Oct. 7, 1972, with the former Margaret Lee Seabury of Yakima. We welcome the Brookses back from a honeymoon cruise in the San Juans.

WORLD TRAVELER:

Welcome home to **Ernest Falk.** Ernie has just returned from a combination business and pleasure trip taking him to Great

Britain, Norway, Sweden, Finland, USSR, Greece and Turkey. It is not really unusual for Ernie to be out of the country. As manager and general counsel of the Northwest Horticultural Council since 1950, Ernie has truly become a world traveler.

BAR PAYS TRIBUTE TO JUSTICE BRACHTENBACH:

On Oct. 26 the Yakima Bar put on a fine feed at the Robin Hood Inn complete with testimonials. Paying tribute to newly appointed **Justice Robert Brachtenbach** were **Walter Weeks, Jim Hovis, John S. Moore, Doug Wilson, John Nicholson, George Clark** and **Bob Felthous.** President **Howard Hettinger** presided and **Alan McDonald** was master of ceremonies.

SKAGIT REPORT

By PAUL N. LUVERA JR.

The Skagit County Bar Association has been meeting with the county Medical Association in an effort to improve relationships as well as develop policies in connection with medical-legal matters. Serving on the committee are chairman **David Welts, George McIntosh** of Mount Vernon and **Al Rode** of Burlington.

John Kamb of Mount Vernon recently returned from a trip overseas which he claims was a business trip; however, envious local lawyers have expressed doubt as to how much time he devoted to business.

Speaking of travel, **Steve Mansfield** of Anacortes, **Bill Stiles** of Sedro-Woolley and **Ken St. Clair** and **Paul Luvera** of Mount Vernon just returned from Hawaii, where they say they were attending a legal workshop. All are sporting deep sun tans, empty wallets and a smile on their faces.

SNOHOMISH REPORT

By MICHAEL W. HERB

Some new faces have appeared in Snohomish County area. **Gerald L. Knight** is no longer associated with Ogden, Ogden & Murphy and has established a new office at 19411 44th Ave. W. in Lynnwood.

John A. Leque has associated with **Henry Chapman** and **Rudy Mueller** in Everett. He is a graduate of the University of Colorado. Mr. Leque will be responsible for a branch office on Camano Island which will be in the Gunderson Building, Stanwood.

CHELAN-DOUGLAS REPORT

By JOE R. WOOLETT

The Chelan-Douglas County Bar Association held a function October 24 at which the new attorneys in the valley were introduced to members of the bar association. On November 2 a joint meeting was held between the attorneys and CPA's to discuss mutual problems.

Thomas Brennan is now acting as special deputy prosecutor at the Chelan County Prosecutor's office. Also, to be added to our list of new attorneys, we extend a cordial welcome to **Thomas Duffy,** who is now associated with **James D. Kendall** of Wenatchee.

Editorship Still Open

Reminder: Lawyers interested in the position of editor of the *Bar News* still may make their interest known to the Editorial Advisory Board, Bradley T. Jones of Seattle, its chairman, or to the State Bar Office. Details of the position are set forth in the *Bar News* issue of November 1972, page 11.

Weaver Essay Contest Entries Due By Jan. 1

Next January 1 is the deadline for entering the 1973 Samuel Pool Weaver Constitutional Law Essay Contest, sponsored by the American Bar Foundation for ABA members.

Qualified scholars also have until February 1 to apply for a legal history fellowship or grant.

Subject area for the 1973 essay contest is "the scope of Congress' power under the enforcement clauses of the 13th, 14th and 15th amendments to 'expand' or 'dilute' the interpretations of those amendments by the U.S. Supreme Court."

First prize is $5,000; mention prizes total $1,500.

A University of Oregon law professor won the 1972 Samuel Pool Weaver Contest. David B. Frohnmayer, assistant professor of law and special assistant to the president at the University of Oregon, received the $5,000.

Contest information may be obtained by writing Samuel Pool Weaver Constitutional Law Essay Program, American Bar Foundation, 1155 East 60th Street, Chicago 60637.

The Board's Work

Extracts from the minutes of the Board of Governors meeting October 13-14 at Harrison Hot Springs, B.C., with all members of the Board in attendance:

Committee Appointment

A Special Committee on Drug Abuse was created with Charles R. King of Seattle as its chairman and with Susan F. French of Seattle, Robert Burnham of Seattle and Charles Van Marter of Spokane being named as members, with more members to be added at a subsequent meeting of the Board.

February 1973 Bar Examination

It was moved, seconded and carried that the recommended program and schedule relative to the February 1973 Bar Examination as outlined by Daniel Blom, chairman of the Board of Bar Examiners, including the use of the Multistate Bar Examination as a one day part of the three-day exam, be approved.

Board of Industrial Appeals

It was moved, seconded and carried that the President appoint a special committee to make an in-depth study of the problems relating to the profession and the public connected with the work of the Board of Industrial Insurance Appeals. It was also agreed that the Special Committee would have five to nine members that the President would also designate a chairman and that the committee would be asked to have a preliminary report in time for the November meeting of the Board of Governors if possible. It was agreed that the Committee would be asked to look into the entire matter of industrial insurance practice including the question of excessive delays of processing claims, if any, of excessive fees being charged by lawyers, if any, of the standards of service being rendered by the profession and the degree of protection afforded the public as that protection relates to the legal profession.

Election of Secretary-Treasurer

It was moved, seconded and carried that Kenneth P. Short of Seattle be re-elected as Secretary-Treasurer of the Bar Association.

Resolution in re: Periodic Review of Competence Of Federal Judges

It was moved, seconded and carried that the two United States Senators and the members of the National House of Representatives from Washington State be advised that the Board of Governors endorses the proposal that there should be federal legislation enabling a periodic review of the competence of members of the Federal Judiciary.

Editorial Advisory Board

A. It was moved, seconded and carried that the report and recommendations of the Editorial Advisory Board be approved in toto except for a minor amendment.

B. It was then moved, seconded and carried that Edmund B. Raftis of Seattle and Edward H. McKinlay of Pasco be named as additional members of the Editorial Advisory Board in accordance with the resolution previously adopted.

C. It was then moved, seconded and carried that the nine (9) members of the Editorial Advisory Board choose the length of their own terms on the Board by lot at their next meeting so that three of the members would be designated for one year terms, three members for two year terms and three members for three year terms, all in accordance with the resolution previously adopted.

D. It was moved, seconded and carried that the chairman for the current year of the Editorial Advisory Board be Bradley T. Jones of Seattle.

E. It was moved, seconded and carried that the request of the Editorial Advisory Board that a story appear in the upcoming issue of the *Bar News* asking for applications to become the Editor of the *Bar News* or expressions therein of interest in the editorship be approved.

Statewide Legal Aid Program

Bertram Metzger Jr. of Seattle, Edward Shaw of Olympia, Gordon Wilcox of Seattle and other interested parties appeared before the Board to discuss a proposed State-Wide Legal Aid Program as endorsed and developed under the direction of a subcommittee of the Bar Association's Legal Aid Committee, chaired by Mr. Metzger. Also present and appearing in person before the Board were eleven representatives of a diversity of low income groups interested in the program and to whom the services would be available if the program were adopted by the Board of Governors and thereafter suitably funded.

It was moved, seconded and carried that the proposal be endorsed and supported by the Washington State Bar Association and that among other things that the Bar Association would participate to the extent of naming the fifteen lawyer members of the Board of Directors of a non-profit corporation formed to administer the program and that (a) the member of the

Board of Governors from the First District, the member from the Seventh District, the two King County at Large Board Members and the President would recommend five (5) lawyer members to serve on this Board. (b) that the member of the Board of Governors from the Second District, the member from the Third District and the member from the Sixth District would between them recommend five others and that (c) the member of the Board of Governors from the Fourth District and the member from the Fifth District would between them recommend the remaining five members of the Board of Directors.

It was further agreed and made a part of the motion of support and endorsement that in assuming the responsibility for naming the lawyer members to the Board, the Board of Governors reserved the authority to name the lawyer members for definite terms and reserved the right of removal of the lawyer members of the Board.

Annual Meeting Resolution

It was moved, seconded and carried that the Resolution adopted at the Annual Meeting in Spokane relative to the Equal Rights Amendment be approved and that the terms of the Resolution become the official position of the Washington State Bar Association.

Automobile Reparations

It was moved, seconded and carried that the Washington State Bar Association endorse a resolution expressing opposition to federal regulation of the automobile accident reparations system and expressing its support of state regulation of such system. It was made a part of the motion that the executive director be instructed to forward a copy of this resolution and notice of the action endorsing it to the two United States Senators and the Members of Congress from the State. The vote on this motion was 8 to 1 with Mr. Pritchard voting "no."

Judge Towne Honored

District Judge Vernon W. Towne of Seattle has received the Evergreen Safety Council's "Leadership Award" for outstanding public service in the field of accident prevention. The award, citing Judge Towne's work in improving driving and pedestrian safety in Seattle, was presented at the council's recent executive board meeting in Seattle.

Nondisclosure Prevails

A candidate for Superior Court judge cannot be bound by a King County Charter provision or any other local ordinance requiring him to disclose names of campaign contributors, a judge in Olympia has ruled.

Thurston County Superior Court Judge Hewitt A. Henry signed a declaratory judgment in a lawsuit brought against King County, the state and the Washington State Bar Association by Norman B. Ackley, a candidate for King County Superior Court judge.

Henry ruled that Superior Courts are state rather than county offices, and therefore a canon of judicial ethics regarding nondisclosure of campaign contributions to judicial candidates must prevail over the King County Charter.

The charter requires disclosure of contributors to all candidates for county office, under penalty of forfeiture of office. Henry enjoined the county from starting any forfeiture proceeding against Ackley as a result of his failure to file a list of contributors.

Ackley said he supports campaign disclosure practices but brought the suit to clear up the conflict between the non-disclosure requirement evolving from the canons and the disclosure requirement in the charter.

— *The Post-Intelligencer*

Job Openings Seen

The proposed Eastern Washington Legal Services program is expected to have opportunities both for attorneys and for paraprofessionals, Douglas D. Lambarth, director of Spokane County Legal Services, has reported. The program, not yet funded, is being planned for employment of VISTA attorney and legal paraprofessional volunteers. Offices have been established in Moses Lake, Walla Walla, Omak and Colville; each of those offices is expected to begin or enlarge "circuit-riding" programs, Lambarth said. Information may be obtained from him at W246 Riverside, Spokane 99201, telephone 509-RI 7-4118.

Profession Must Diversify, Specialize, Study Avers

The minimum requirements for law school education should be reduced from three years to two as part of a long-range effort to make legal education and the profession itself more diversified.

That is the principal recommendation of a newly published study on American legal education sponsored by the Carnegie Commission for Higher Education and written by Prof. Herbert L. Packer and Dean Thomas Ehrlich of the Stanford Law School with the assistance of Stephen Pepper, a Stanford graduate currently at Yale Law School.

"We are convinced that for many law students, the marginal benefits of a third-year legal education are outweighed by the cost of that year. Even more important, we are convinced of the need for experimentation and diversity among law schools and the education that they provide. . . . " the authors say.

"It will be a better allocation of resources with a better production of legal talents if some students attend law school for two years, some for three, and some for four or even more.

"Similarly, we would expect the development of different curricula at different schools. . . ."

Fundamental to their recommendations is the belief that "the unitary bar is crumbling."

In response to "a quiet crisis in the availability of legal services," they forecast the development of sublegal and paralegal personnel, group legal services, certified specialists and comprehensive, prepaid legal insurance — trends long apparent in the medical profession.

Without these kinds of changes, both in education and professional practice, they warn, "Too many of the young people who graduate from law school will not be able to put skills to work usefully."

Despite resistance within the bar itself, "both group legal practice and certification of specialists are almost certainly coming," they state.

Because of the limits of time and experience, "A lawyer is usually truly competent in a few areas only and minimally competent — perhaps often incompetent — in the rest.

"Trained divorce specialists will do a much better job obtaining uncontested divorces than will an all-purpose lawyer.

"Inevitably, the trends of specialization and paraprofessionalism will narrow the roles for and the number of, generalist, all purpose lawyers.

"Indeed, this process is well under way.

"We suspect that there will continue to be some place for the general practitioner, although a more elegant label may emerge for this counterpart of the internist in medicine.

"But we have no qualms in making the prediction that the jack-of-all-trades will increasingly be viewed as master of none and he will be increasingly uncomfortable, financially and otherwise in that role."

— *Seattle Journal of Commerce*

Clinical Education Funds Urged

Federal government funding for clinical legal education programs was urged by the American Bar Association's Law Student Division executive committee at a recent meeting with President Nixon's staff assistant for domestic affairs, Dana Mead. Mead indicated the proposal had merit.

Under Title XI of the Higher Education Act of 1968, as amended this year, a $7.5 million annual expenditure is authorized for grants to law schools to help fund clinical legal experience programs. However, Congress has never appropriated, and the President has never requested, funds to implement such programs.

In urging the Administration to include a request for the $7.5 million annual authorization in its January 1973 budget message, the law students supported an academically based clinical program to improve the overall quality of legal education and subsequent legal practice. They stated their opposition to using such clinical training for "mission" oriented programs.

He Wins Argument, $100

Belatedly comes word that Robert C. Mussehl of Seattle, together with a New York lawyer, won the 26th annual argument presented at the Conference on Personal Finance Law in San Francisco in August. They defeated Young Lawyer teams from Florida and Washington, D.C. At issue was the constitutionality of the self-help provision of the Uniform Commercial Code. And the winners were given a one-hundred-dollar bill.

AG Opinions

AGO 1972 No. 13
Concerning taxation of mobile homes.

AGO 1972 No. 14
Concerning taxation of mobile homes.

AGO 1972 No. 15
(1) Under chapter 36.94 RCW, a county may either construct a single system of water and/or sewerage disposal for the entire county or it may create several separate such systems for separate portions of the county.

(2) If a county establishes separate systems of water and/or sewerage disposal for separate parts of the county, each system must be covered by a separate "general plan" under RCW 36.94. 030, and there must be a separate review committee under RCW 36.94.050 for each such proposed system and plan.

AGO 1972 No. 16
Concerning sewer district assessments for local improvements against county-owned lands.

AGO 1972 No. 17
The board of trustees of a community college may delegate its duty to meet, confer and negotiate with representatives of its academic employees under chapter 196, Laws of 1971, 1st Ex. Sess., to a committee composed of members of the board; however, it may not delegate this function to a negotiating committee that consists either partly or entirely of nonboard members.

AGO 1972 No. 18
(1) The Washington state liquor control board probably does not possess the requisite authority, under existing statutes. to adopt and enforce a regulation disqualifying from class H licensure those private clubs which are governed by a written constitution, bylaw or house rule excluding persons from membership or use of the club's facilities because of race, creed, color or national origin.

(2) The legislature may constitutionally grant to the liquor control board the requisite statutory authority to adopt such a regulation.

AGO 1972 No. 19
The board of trustees of a community college may not adopt a rule establishing a mandatory retirement age of 65 years for all of its classified civil service employees who are also members of the Washington public employees' retirement system, without regard to the particular jobs which they hold.

AGO 1972 No. 20
The records of funds deposited by the commissioner of public lands in approved state depositories, pursuant to RCW 43.85.130 and .140, are available for public inspection in accordance with RCW 43.88.200.

AGO 1972 No. 21
Concerning investment of surplus port district funds.

AGO 1972 No. 22
Attorneys who are constitutionally required to be appointed to represent indigent defendants in misdemeanor cases before a district justice court are to be compensated for their services under RCW 10.01.110; however, the costs of such compensation must be drawn from the county current expense fund of the county in which the court is situated and not from justice court revenues under RCW 3.62.050.

Arbitration of Very Small Claims?

ABA President-Elect Chesterfield H. Smith of Lakeland, Florida, has urged the organized bar to restructure the legal profession to make the justice system more responsive to resolving problems and disputes of the average person.

Addressing the recent ABA Workshop on Lawyer Referral Service at the University of Denver College of Law, Mr. Smith said that "little has really been done to make the legal system work more efficiently and more economically for the average individual."

He referred particularly to the resolution of smaller disputes that arise in daily life — those involving persons of lower and middle income who do not qualify for free legal aid. He said that under our traditional system of resolving legal disputes and providing legal advice, "it simply does not make economic sense to take very small claims to court."

He called upon the nation's 275 Lawyer Referral Services to lead the way for experimentation in delivery of legal services aimed at solving this problem. The possibilities, he said, include a voluntary community arbitration service sponsored and supervised by Lawyer Referral where attorneys attempt to resolve small disputes informally and economically without court action.

Twenty Years Ago

McBee hit it. The Mt. Vernon lion exposed big graft in state land office. Impressed neighbor Bellingham called him to reform its police. He did.

Births

Appointed Deputy Prosecutors: Walter J. Deierliein, Jr., Skagit; Dennis J. Britt, Snohomish; Alan A. McDonald, Yakima.

Walla Walla: John Tuttle became city attorney; Howard J. Martin open in Drumheller Building; Matt J. Ennis joined the Navy.

Tacoma: Harry Sager joined Henderson, Carnahan, et al. Robert Briggs opened with Crippen & Flynn.

Seattle, the following joined firms: James M. Taylor, Walthew, et al.; Calfin C. Culp, Ferguson & Burdell; Raymond Swanson, Ryan, et al.; Hugh A. McClure, Brethorst, et al.; Paul Moats, Preston, et al.; John C. Huston, Kahin, et al.; Ralph Johnson, Skeel, et al.; Richard Harrison, Holman, et al.; Jerry Holdaway, Jonson & Jonson; and Robert O'Gorman, Fred H. Dore. Lyle Iversen, former assistant attorney general, opened in the Dexter Horton Building. The firm of Jordon, Adair and Holcomb was announced.

North Bend: David Gordon joined Speer.

Crossed the Bar

Seattle: Emmett R. Mifflin, 46; Henry Pennock, 90; Louis Shela, 73.

Bar Meetings

Grays Harbor: Lester T. Parker, Chairman, arranged a banquet which five members of the state Supreme Court attended. President Philip D. Macbride, Seattle, spoke on better public relations and David Ellison, Seattle, on trusts.

Tacoma: At the annual judges' dinner a skit was presented written by William LeVeque. Frank Hale and Harold Tollefson playing supreme court judges presented insight (?) on the preparation of Supreme Court decisions.

Kitsap: Discussed divorce. On the panel were Judges Sutton and Ryan, a doctor, banker, newspaper publisher, college dean, Catholic priest and Methodist minister. They did not agree.

Mary Ellen Krug reported a Phi Delt tea at which six were pledged.

The editor quoted an index note in the Idaho Code: "Appearance — Decedent's right to notice of subsequent proceedings."

David J. Williams

Lawyer/Public

Many of the complaints received by the State Bar about attorneys come from clients who are disgruntled about fees, often because they do not understand them.

At some point in our practice, we have all had a client claim the fee is too much even though you have exerted your best efforts on his behalf and then sent a statement for the reasonable value of your services. The aggravation and frustration is compounded when you ultimately compromise the fee or simply do not get paid.

Here is a technique used by some attorneys to minimize fee disputes: 1. Before ending the first conference with the client, the attorney advises the client of his fee, or if the problem is such that a set fee cannot be made, he explains in detail how the client will be charged for the work done. 2. Immediately upon conclusion of this first conference with the client, the attorney sends a "fee letter" covering three basic parts:

A. Confirms that the attorney will represent the client on the particular matter involved; B. Confirms the set fee or the method by which the client is going to be charged if it is not a set fee; C. Explains that the client will be responsible for costs in addition to the fee; D. Requests that the client contact the attorney immediately if the foregoing does not meet the client's understanding of the newly created attorney-client relationship.

The experience of one attorney when using and when not using a fee letter is rather revealing. In each instance where a client complained of a fee, fired the attorney because of the fee, or simply "beat the attorney out of the fee," the attorney found there was no fee letter when he dejectedly reviewed the file.

On the other hand, when a fee letter was used, this attorney recalls only one instance of a question being raised. In that instance, upon the client being reminded of the fee letter, the fee was paid.

A flow of cash across your desk for the good work you have performed cannot help but improve your deskside manners. A fee letter will improve the flow of cash.

Most clients do not enjoy paying fees, but there is seldom a problem over the subject if the arrangement is clearly stated at the outset.

(Arizona Bar news letter)

— Public Relations Committee

Letters
(Continued from page 2)

to be a Granini, but an Anatoli — a dime a dozen.

Incidentally, Granville's answer to the Earl's writ was similar to that of the defendant in the instant case, namely, "super corpus meum mortuum," whence comes the modern phrase "over my dead body."

The Writ of Habeas Plumbum has, of course, become a part of American jurisprudence through our adoption of English common law.

BARRY D. ERNSTOFF
ROBERT L. PIRTLE

Seattle

Non Potest Probari?

Editor:

Our resolution of this case is as follows:

Non potest probari quod probatum non relevat.

JOHN G. COOPER
HARVEY S. POLL

Seattle

Scalpel, Please

Editor:

Your Editor's Note for November carried a fact situation under the title, "Should He Make a Clean Breast of It?" regarding an accused with a bullet in him allegedly fired by the self-defending victim. The question was asked whether the state could compel the defendant to submit to surgery for removal of the bullet. I believe he can be compelled.

In a 5-to-4 decision, the U.S. Supreme Court in 1966 held that the state could compel an accused to submit to a blood test over his objection, *Schmerber v. California,* 384 U.S. 757, 86 Sup. Ct. 1826, 16 L. Ed. 2d 908. Justice Brennan for the majority denied that such a procedure was an unreasonable search and held that it did not violate the 5th Amendment privilege.

If this is the answer you are looking for please ask those who wish to refer their criminal matters to me to wait a year as I have not yet graduated from Northwestern School of Law of Lewis and Clark College. But then . . . .

ALLEN REEL

Beaverton, Ore.

ABA Brief Supports Discipline "Fee"

The American Bar Association has filed a brief *amicus curiae* in a U.S. District Court case challenging the Supreme Court of Pennsylvania's right to require lawyers to finance their own disciplinary enforcement programs.

The ABA brief argues that lawyers have a duty to pay for their own disciplinary enforcement programs, and supports the inherent power of the judiciary over lawyer discipline. The case is *Gilbert M. Cantor* v. *The Supreme Court of Pennsylvania.*

The plaintiffs, a group of Philadelphia lawyers, charge that the assessment of an "annual fee" for the maintenance of a disciplinary enforcement program is unconstitutional. They claim that the rules exceed the inherent powers of the judiciary and that the "tax" discriminates against attorneys.

Pennsylvania does not have an integrated bar.

New Legal Assistant Classes Attract 163

Edmonds Community College's fledgling paraprofessional two-year Legal Assistant training program is in full swing with 163 students enrolled, according to Mike Pastore, program coordinator.

The 23 daytime students comprise a mixed group of just-out-of-high school students, housewives seeking an employable skill and other adults needing job retraining. Legal secretaries constitute the majority of the 140 night students. Approximately 95 per cent of the enrolees are women.

Response to publicity has been "overwhelming," says Pastore, and he anticipates doubling enrollment during Winter Quarter, when Orientation and Probate I courses will be repeated, and Probate II, Bankruptcy, and Domestic Relations courses will be added.

The coordinators are continuing to explore possibilities for expansion of the program into areas such as civil rights and criminal law. Attorneys who might be interested in instructing or developing courses can reach Pastore at 775-3511.

The college library is building its collection of legal materials to supply references for the program. Donations of any pertinent books, reports, etc., would be gratefully accepted, according to Librarian Joanne Euster. There is an urgent need for a set of *Washington Reports.* Anyone with those or other materials to donate should contact Ms. Euster at the college, 775-3511.

McLauchlan at Large

Philip W. Schoel and Harold E. Baily

John L. Weinberg

James Gay

James C. Hanken and Henry T. Ivers

Brothers Thomas F. and James P. Curran

Gregory R. Dallaire

Judge Campaign Fund Pool Started in Florida

A plan to eliminate the appearance of campaign payoffs between judges and attorneys has been started by the Dade County (Florida) Bar Association.

It is believed to be the first such plan in the country, and Burton Young, former president of the Florida Bar who helped draft the plan, said "If it works here in Dade County I think it could change the entire country's judicial election process."

The plan, as described in the Florida Bar Journal (October 1972):

In essence, the program would prevent judges from seeking contributions from lawyers by providing an alternative financing plan. (They could still seek contributions from nonlawyers.) Under this plan, **members of the bar voluntarily will pledge to contribute, not to individual judicial candidates, but to a trust fund** in amounts ranging from $50 to $150 depending on the number of years they have practiced.

Dade Bar President Robert A. White said he would consider this year's program a success if $100,000 were donated, but added the trust fund potentially could raise $350,000 if all the county's attorneys pledged.

The Dade Bar polled the 3,574 county attorneys on their evaluation of the various candidates for judgeships. The poll provided for responses of qualified, not qualified and don't know. **Candidates whom 60 per cent of those responding rated "qualified" were eligible to draw from the fund** according to a fixed formula and administered by a board comprised of a judge, an attorney and three nonlawyers.

The financing program received the endorsement of Chesterfield Smith of Lakeland, president-elect of the ABA, in August, who called it "a novel plan to mitigate the adverse impact of the financial solicitations by the judicial candidates." Months of study and a public hearing preceded the adoption of the plan.

In Memoriam

Robert I. Studebaker, 62, died October 25 at his home in Everett. A University of Washington Law School graduate, at the time of his death he was president of the Benefit Plan Administrators Inc. He also was active as a labor negotiator. His father was the late Chester Studebaker, a Lewis County Superior Court judge.

William W. Witherspoon, of Witherspoon, Kelley, Davenport & Toole of Spokane, died October 20. He was 66. He was active for many years in Spokane civic, education and Boy Scout activities and was an officer and director of a number of mining and business firms; at his death he was chairman of the board of Old National Bank of Washington and of Washington Bancshares, Inc.

Ivan Merrick, Sr., 81, died October 19 in Pasco. He practiced in Seattle before World War II and was in partnership with Lewis B. Schwellenbach and Robert S. Macfarlane. He went to Pasco to serve with the Lands Division of the Department of Justice on the Hanford Project. Except for 18 months as Superior Court judge, he was in private practice until his retirement in 1962.

Lyle D. Keith, 64, longtime Spokane attorney, died Sept. 27 in Portland. Long associated with the former firm of Keith, Winston & Repsold, in June he had formed a partnership with Norman dePender. He had been a member of the Legislature, and the Judicial Council and served as U.S. district attorney for Eastern Washington.

Anthony Felice, 54, who practiced in Spokane since 1945, died Oct. 2. He was a former World Boxing Association official and for nine years was a member of the State Boxing Commission. He had been treated three years on the kidney machine and had received a kidney transplant a year ago.

Reah M. Whitehead, 89, Seattle's first woman judge, died Oct. 13 in Yucca Valley, Calif. A University of Washington law graduate, she served many years as a justice of the peace; upon resigning in 1941 she was succeeded by Evangeline Starr.

Henry Clay Agnew, 75, who had retired as a King County Superior Court judge last december, died Oct. 13 in judge's chambers in a courtroom in which he was to sit as a judge pro tem. A University of Washington law graduate, he was admitted to the bar in 1919. He was a judge more than 20 years.

Briefly Noted

This and That From All Around

Interesting bits and pieces from here and there:

THE 1971 AVERAGE net earnings of lawyers was $36,500, up 5 per cent from 1970, according to a survey by Daniel J. Cantor & Co., Philadelphia management consultant firm.

ACAPULCO, MEXICO, and its Princess Hotel, of all unlikely places, is the site of the mid-year meeting of the New Jersey Bar Association and its numerous sections.

IMAGINE THIS LEGAL mess: 2,800 divorces were granted, and 2,700 of them were fraudulent, during a mail fraud, quickie-divorce swindle spree involving two lawyers and a judge — now two ex-lawyers and an ex-judge — in Alabama. Mail-fraud convictions of the three recently were upheld by the Alabama State Circuit Court of Appeals.

WIRE OR TAPE depositions now are OK in New York's Southern District Court if they are stipulated by both sides.

ONE MORE SUPPORTIVE case allowing a $5,000 jury award for mental anguish without impact is in the books: A Bronx woman got the award for New York City's failure to notify her within eight days of the death of her husband in the city subway. "One may not tortiously withhold notification of death. . . ." said the judge. (*Finn v. City of New York,* discussed in N.Y. L.J., 7/28/72)

ANOTHER MANAGEMENT consulting firm, Golightly & Co., has discovered that lawyers rank fourth, percentage-wise, as presidents of the nation's 100 largest corporations. The 12 per cent figure scored by the legal profession has been constant for five years.

FIRST COME, FIRST SERVED: A lawyer who found himself retained by two clients with conflicting interests can neither represent both nor simply abandon one for the other, a federal judge has ruled. He said that one, a client of long standing, had priority over the second, a newcomer. To permit otherwise, the court said, would nullify bar association rules. (*Estate Theatres, Inc.,* OCH Trade Reg. Reports Sec. 74, 106 (S.D.N.Y. 1972))

FIRE THE JUDGE, the California Commission on Judicial Qualifications has urged the California Supreme Court. The commission reported that in January 1971 a Los Angeles municipal court judge had used a electric prod on a public defender to persuade him to plead a client guilty. Such conduct was, the commission decided, prejudicial to the administration of justice.

Suggestions Are Invited On Jury Instructions

The Supreme Court Committee on Jury Instructions is beginning work on uniform jury instructions for criminal cases.

The committee would appreciate receiving jury instructions from prosecuting attorneys and defense counsel that would assist it in its work.

All such material may be sent to the chairman, Hon. Stanley C. Soderland, Judge of the Superior Court, King County Courthouse, Seattle 98104.

"Screening" Court Seen

A panel of legal experts is expected to propose that Congress establish a new seven-judge court to help the United States Supreme Court by screening out secondary cases, according to recent press articles.

The panel, headed by Prof. Paul Freund of Harvard, is expected to make the recommendation to the Federal Judicial Center.

The purpose is to relieve the Supreme Court of its ever-mounting load of cases.

The "screening" court would have two primary functions, according to authoritative sources.

The first would be screening the petitions and appeals made to the Supreme Court to sift out the ones considered "most worthy." The remaining appeals would be denied review.

The second major function would be to retain for decision by the high court the cases of "special importance" and situations in which the Circuit Courts are in conflict on important issues of law.

The "screening" court would have the authority to resolve minor conflicts between the Circuit Courts.

Lawyer Heads Chamber

Lowell P. Mickelwait, who retired recently as a high Boeing Co. official and now is a member of the firm of Perkins, Coie, Stone, Olsen & Williams of Seattle, has been named 1972-73 president of the Seattle Chamber of Commerce.

Can Washington Afford an Elected Judiciary?
(Continued from page 7)

and just simply reflecting on the nature of the law and directions it must take.

The intrusion of politics on this process differs at different levels of the appellate court. On the Court of Appeals, judges in our state run in smaller areas. Four judges from King County run in King County alone, while one judge each from Pierce, Snohomish and Spokane counties runs in just those counties. Those judges from single county districts have that limited area to compaign in, the others face multi-county races.

At the Supreme Court, serious problems exist. The work of the Supreme Court judge, by its nature, does not take him to the areas of the state where the large centers of population are located; to remain in the public eye, a judge is forced to spend time critically needed on the job, campaigning and appearing before the public, for the most part, on issues unrelated to his work.

Due to the unstructured nature of the work, intrusion on productive time of a Supreme Court judge is simply incredible. In the time I have been on the court, there have been many times when I have found it difficult to follow a consistent train of thought for any significant period of time without potential problems of election and the immediate day-to-day necessities required to put a campaign together intruding on my thought processes.

Time Is a Big Cost

Although I have now served only about a year on the Supreme Court, I am astounded at the loss of creative time in my own schedule due to election demands. It is my firm belief that the court could easily be one-third more productive, both in its qualitative and quantitative production, if judges on that court did not face the prospect of a political campaign. In 1970 and 1972, four of the nine judges on the Supreme Court have faced election, and in each campaign three of the four judges have been opposed. In 1974, four judges will again be on the ballot with the same negative drain on productivity inevitable and its corresponding impact on the productivity of the court.

Delays caused by the elective process have an impact on the way our courts function. Although the time loss in Washington is not as severe as in other states, it is a problem in some counties and in some appellate courts. King County, a short while ago, had the time between filing and trial in civil jury cases reduced to approximately eight months. These cases now are delayed for over one year. Many factors contribute to this problem, but diversion of judicial energy to campaign can only be looked upon as a negative factor. During the summer of 1972, there have been problems in the expeditious handling of the criminal calendar in King County. Judicial campaigns had a direct impact on the lack of time flexibility by judges serving in that county.

The Public Is a Loser

The bar and bench are not the only ones who suffer from the elective process. The public is the loser from the occasional inappropriate selection of a judge, made on entirely irrelevant issues. This state has an excellent judiciary and it is staffed by judges as a whole able to compare favorably with the best court systems in the nation. This is largely due, however, to the willingness of members of the bar to make extreme sacrifices to help our system of government function. Occasionally, however, inadequate judges are selected by the elective system who are difficult, if not impossible, to remove. Name familiarity lends a degree of protection that lawyers are unable to overcome with concerted action. The public cannot afford to have judges remain on the bench who are not representative of the finest the profession can produce.

An equally serious threat posed by the elective system, however, is the assault on the integrity of the entire judicial system.

The courts must be aware of what the problems of the public are, and judges should not be selected who by temperament or inclination have no time or desire to become aware of the crucial issues affecting persons of all economic and racial backgrounds in this country. Lawsuits, however, should be won or lost in court on the merits of the suit, and not as the result of sometimes subtle and sometimes not so subtle efforts to exert political pressure on judges. The end result of this pressure can only be that the justice of a particular situation would be determined by which side musters the greatest political pressure, and our government of laws, not men, would be the loser.

There is no one correct answer to the problems posed. I do approve as a start in the right direction the conclusion of the recent Citizens' Conference on Washington Courts that: "Experience has demonstrated that the judiciary must be

insulated from the political process. To accomplish this objective, judges should be appointed by the Governor from a list of candidates submitted to him by a constitutionally established judicial nominating commission. That commission should represent the legal profession and all segments of the citizenry.

"Once appointed, judges should be periodically subjected to the scrutiny of the electorate at uncontested elections.

"Any judge who is not fulfilling the requirements of his office, should be subject to appropriate discipline and, if he is found to be incompetent or incapacitated, should be removed from his position. The discipline and removal functions should be performed by a constitutionally established commission composed of judges, lawyers and lay citizens."□

Citizens Ponder Court Reform In Meetings Across the State

Can our state's court system be improved, in terms of judicial selection, efficiency, financing or even fairness?

Lay citizens were scheduled to respond to this question at a series of 11 conferences in 11 cities throughout the state November 13-25.

"The public should have a role and an interest in court administration," according to the conference-invitation letter from the sponsoring agencies, the Citizens' Committee on Washington Courts, Leagues of Women Voters, Seattle Crime Prevention Commission, Washington Council of the National Council on Crime and Delinquency and the American Judicature Society.

" Laws are interpreted and cases decided which affect virtually every person at one time or another. It is to the advantage of all to secure the best possible system for the administration of justice."

Speakers at the day-long conference in Seattle November 17 were to include Charles I. Stone, State Bar president; Chief Justice Edward Pringle of the Colorado Supreme Court and Chesterfield Smith, president-elect of the American Bar Association and chairman of the Florida Citizens' Committee of Court Reform.

"Are Changes Needed in Our Courts?" was the subject of a panel discussion by these scheduled speakers: Robert J. Block of the Seattle Crime Prevention Commission; Hon. Jerome Farris, member of the National Council on Crime and Delinquency; Betty B. Fletcher, Seattle-King County Bar president; Nancy Miller, member, Citizens' Committee on Washington Courts; Luvern V. Rieke, Judicial Council executive secretary, and Justice Robert F. Utter of the Supreme Court.

State Bar Plan Calls For Appointed Judges

Proposals for extensive revision of the State Constitution's Judicial Article were approved by the State Bar's Board of Governors December 11, 1970.

Those proposals, incorporated into a legislative bill which ultimately died, were the result of recommendations from the Bar's Committee on Revision of the Judicial Article, chaired by E. Frederick Velikanje of Yakima.

Briefly, they include:

Judicial Nominating Commission, consisting of a judge, lawyers and laymen, would submit to the governor a list of qualified candidates for a vacant judgeship in a court of record. The governor must appoint from the list.

The initial term of office for each judge so appointed would be two years, at which time he would stand for election and could be opposed by other candidates.

If elected, he would serve a six-year term, and his approval or rejection then would be submitted to the electorate. If rejected, his position would be filled again through the same Judicial Nominating Commission procedure.

A Commission on Judicial Qualification, composed of judges, lawyers and laymen, would have the power to retire a judge involuntarily for disability or remove a judge for willful and persistent failure to perform his duties.

A Court Administration Commission, consisting of a judge, lawyers and laymen, would make rules governing administration of the courts, and would appoint a court administrator.

The Chief Justice would serve a term of up to six years, and he would be selected from theCourt by the Court Administration Commission.

The Court Administrator would have the power to, among other things, direct judges and authorize retired judges to perform, temporarily, judicial duties in other courts.

Retirement age for judges would be set at 70 years.

Quotes Quoted

Walla Walla Lawyers Object to ABA's Brief

Walla Walla Attorney H.H. Hahner has confirmed reports that 10 local members of the American Bar Association (ABA) have resigned from the national organization, but a poll conducted by the Union-Bulletin revealed that nine attorneys have not dropped out.

There are 16 local attorneys in the ABA. Hahner, spokesman for the members, said the resignations came after the ABA attempted to file a brief involving attorneys for migrant laborers now pending before the Washington State Supreme Court.

"Basically, we don't feel our money (for membership in ABA) should go for that type of effort," said Hahner, spokesmen for some Walla Walla members of ABA. "We feel no organization can say it represents the views of its entire membership."

Hahner said of the local ABA membership, 10 had resigned and the others had indicated they would like to resign ". . . but for various reasons could not . . ." The Walla Walla attorneys who are members of ABA constitute about half of all attorneys here. There are 31 attorneys practicing here.

Principal objections to the ABA action, cited in a letter over Hahner's signature were:

- No provision in the court system for ABA or other organizations to file the sort of brief attempted "which the Supreme court noted in turning it down."
- The strong feeling that no organization has the right to say that it represents the view of all (or even a majority) of its membership.

Hahner said the objections cited in his letter were basically the same objections voiced by all attorneys who had tendered their resignations.

Madison Jones said of the ABA action, "I felt it was an unwarranted interference with a law suit, with ABA assuming certain things were true . . . not acting as a friend of the court but just taking one side."

The Associated Press reported that ABA president Robert W. Meserve, Boston, had defended the ABA brief-filing attempt. Meserve was in Tacoma to attend founding ceremonies for the University of Puget Sound Law School, first law school established in the state in 60 years. "I have no regrets about the position we took," Meserve said. "I am awfully sorry that anybody feels so strongly about it as these gentlemen."

The case involves the conviction of Seattle attorney Michael Fox and a union organizer who were arrested for criminal trespass in a Walla Walla migrant labor camp in 1971. At issue is a definition of the right of attorneys to enter labor camps.

The State Supreme Court did not allow the ABA to file the brief, but it was accepted by the court as a brief submitted by private attorneys.

— *Walla Walla Union Bulletin*

Judges Seek Uniformity

Superior Court judges in King County are concentrating on achieving more uniformity in the sentencing of persons convicted of the same or similar crimes.

In a recent speech to the Seattle Central Lions Club, Presiding Judge Frank H. Roberts, Jr., said the five judges in the court's criminal-law committee are directing their attention to uniformity now that the problem of speedier trials has been solved.

"While the judges have been concerned for some time with the wide disparity of sentencing for like offenses with so many judges involved, meeting only once a month, with a multitude of other problems to discuss, there was no practical way to solve the problem," Judge Roberts said.

"Now, with the majority of the sentences being imposed by a committee of five judges meeting at least once a week, it was felt that guidelines or criteria could be established which would accomplish more uniformity in the sentencing procedure."

— *The Seattle Times*

Court Aide Sought

Applications are being accepted for the position of King County District Court Administrator.

Resumes should be sent immediately to Judge Anthony Wartnik, Chairman, District Courts Personnel Board, Bellevue District Court, 300 120th Ave. N.E., Bellevue 98005. Applicants should be college graduates with experience in law and/or business management or court administration. Duties include budget control, purchasing, personnel, statistical reporting, etc., for the county's 12 district courts.

Books

Potts' Book Reviewed

"COME NOW THE LAWYERS" by Ralph Bushnell Potts. Published by the author. $6.95.

For a long time there had been a project in the making to publish the annals of Washington's early courts.

Ralph Potts Seattle attorney, was on the committee of the *State Bar Association* to see what could be done about it. Having interested himself in the subject, Potts began to write — he is the author or co-author of three other volumes — and what emerged was not the biographical chronicle that had been projected but this book, which he decided to publish independently.

Potts is so much the right man to have written about Washington's lawyers that we wish he had given us more of the spectacular early-day cases and had digressed less into subjects like the Indian War.

He is best when dealing with courts and telling stories like that about the Seattle lawyer who paid a motherly looking cleaning woman to sit beside the defendant in a murder trial and pat him occasionally on the back. Though she had no part in the proceedings, apparently her presence strongly influenced the jury to acquit the young man.

"If I had voted the other way," one juror declared later, "I couldn't have looked that nice mother in the eye."

Equally enthralling are Potts' tale of a confidence man and a millionaire widow and another about the origin of the Frye Museum trust fund. His stories go back to the administration of law before 1850. He credits David Stone, of Clark County, with being the first attorney in Washington. Perhaps the most colorful period in this region's legal history was when judges and lawyers became circuit riders, traveling from place to place on horseback to administer justice.

"Come Now the Lawyers" is a distinct contribution to local history. One regrets that it is not a bigger book, for Washington's pioneer bar was involved with many interesting cases and personalities.

— Lucile McDonald
The Seattle Times

ABA President Urges Changes

The new president of the American Bar Association has called for sweeping changes in the nation's law school enrollments and curricula to meet the needs of present and future society.

Robert W. Meserve, Boston attorney, told members of the Association's Law Student Division meeting in San Francisco during the recent ABA annual session that his concern for the "viability of legal education is particularly acute."

He said that both the general public and law students will "properly raise a great deal of hell" unless:

- The legal profession meets its responsibility to provide enough qualified lawyers to meet the needs of all citizens;
- Classroom space is found for the thousands of well-qualified prospective law students now turned away each year for lack of desks;
- Law school curriculum and teaching methods are improved and altered to make them more relevant to current legal practice.

He noted that law school enrollments jumped by one-third — from 69,000 to 97,000 — between 1968-1971, that women students in the same period rose from 3,700 to almost 9,000, and that the ranks of minority students also increased.

Last year, he said, the nation's law schools could admit only 37,500 first-year students from the 119,000 applicants who took law school aptitude tests.

Adding more seats to law school classrooms is not the only answer, Mr. Meserve said. What is needed are entirely new institutions and plans to fully utilize the talents and interests of existing law students and those who could be trained if future needs called for them.

"We are faced with the challenge of modifying and modernizing our process of legal education so that legal study becomes more relevant to current legal practice. In short, we need to move aggressively in the area of well-developed and professionally responsible clinical legal education programs."

Mr. Meserve said the new Council on Legal Education Opportunity (CLEO) program to recruit and represent minority-group Americans for law school and the Bar has fared successfully.

He said a recent letter from Elliot Richardson, Secretary of Health, Education and Welfare, reported agreement with the Office of Economic Opportunity to fund the CLEO program for this year.

The Courts

SUPREME COURT PRACTICE

By WILLIAM M. LOWRY
Supreme Court Clerk

Below is a list of cases set for the January 1973 Session which may be of interest to counsel.

No. 41958 — *Iverson v. Marine Bancorporation.* Is an *indigent* in a civil case entitled to public funds to obtain a statement of facts necessary to perfect the appeal?

No. 42352 — *Northshore School District No. 417 v. Kinnear et al. Constitutional Law.* Whether the funding of public schools under the present equalization formula based in part on assessed value is unconstitutional in that it does not afford equal educational opportunities.

No. 42378 — *Olympic Forest Products v. Chaussee Corp.* Is a prejudgment *garnishment* of a business corporation pursuant to RCW 7.33 unconstitutional?

No. 42392 — *Eggert v. State.* Should U.S. Treasury bonds used to pay federal estate taxes and given face value for this purpose be valued at face or market value for state *inheritance tax* purposes?

No. 42407 — *State v. Ralph William's Northwest Chrysler.* Can an action for penalties under the *State Consumer Protection Act* be sustained only in situations where an injunctive remedy is appropriate and has been obtained by the State?

No. 42498 — *Diversified Industries Development Corp. v. Ripley et al.* Is a clause in a *rental agreement* which provides that the owner shall not be liable for any damages to person or property of the tenant by reason of any condition of the premises and to hold the owner harmless for any claims for damages to person or property exculpatory in nature and void as against public policy?

No. 42499 — *State v. David F. Ladely.* On a charge of larceny by willfully, unlawfully and feloniously receiving and withholding certain personal property does the *three year statute of limitation* run from the time of the commission of the crime or from the time of the actual possession of the stolen property?

No. 42501 — *Richard L. Nowell v. State Dept. of Motor Vehicles.* Whether the conviction of any criminal charge arising out of the same accident that led to the refusal to submit to a chemical test of breath precludes the Department of Motor Vehicles from revoking the driver's license in compliance with the *Implied Consent Law?*

No. 42523 — *Charlene Curtiss v. Young Men's Christian Association.* In a suit for personal *injuries* is the burden of proof from the plaintiff to prove that a defect existed in the product at the time it left the possession of the manufacturer and does proof of the existence of a defect at the time of the injury raise any inference or presumption that runs backward in point of time?

No. 42531 — *Myers et ux. v. Harris et ux., et al.* Does an appellate court obtain jurisdiction of an appeal under *ROA 1-33 and CAROA 33* where there has been a failure to pay the required filing fee within the 30 day period?

No. 42559 — *Kinne v. Kinne.* In an action to modify the provisions of the *divorce* decree which required the husband to make monthly payments to his ex-wife does the recitation in the property settlement agreement that the agreed monthly payments to the wife are "property settlement and not alimony" preclude further inquiry as to their character?

No. 42561-42562 — *State v. Sampson; State v. Miller.* Whether a trial court in a *criminal action* has the authority to vacate, amend or modify a judgment and sentence pronounced and from which no appeal has been taken.

No. 42587 — *State v. Quesnell.* Whether the same rights will be given a person in an involuntary mental commitment hearing that are given in criminal and juvenile proceedings.

No. 42605 — *Foisy v. Wyman.* Whether the failure by a *landlord* to maintain leased premises to the Seattle Housing Code constitutes a failure of consideration relieving the leasee of the obligation to pay rent and whether the enforcement of the lease under these circumstances would be against public policy.

No. 42606 — *State v. Hill.* Is a defendant effectively prohibited from exercising his constitutional right to testify in his own behalf by a trial court's ruling that he would be subject to cross-examination concerning prior criminal convictions?

No. 42607-42613 — *State v. Wetherell; State v. Wright.* Does the failure of an investigating officer to warn a motor vehicle driver of his statutory rights under RCW 46.20.308 (*implied consent warnings*) bar the use of any chemical tests of said driver's blood in a subsequent criminal case?

THE COURT OF APPEALS

By JOSEPH A. THIBODEAU, *Clerk*

To assist counsel in their practice in the Court of Appeals, following are two charts which may be of some assistance in preparing a case for argument before the Court of Appeals.

Criminal Appeals Time Requirements

Judgment or Final Appealable Order Entered in Superior Court

Time (Days)	Rule	Explanation
30	CAROA 46(b)	File *notice of appeal within* 30 days after entry of judgment or final appealable order (See attached)
no time req.	CAROA 46(c)(3)(i)	File *statement* setting forth date statement of facts was ordered and financial arrangements made with court reporter.
90	CAROA 46(d)(1)(i)	File *proposed statement of facts* in superior court 90 days after entry of judgment
30	CAROA 46(d)(2)	File *appellant's opening brief* within 30 days after filing proposed statement of facts.
30	CAROA 46(c)(4) & CAROA 46(d)(3)	File *appellant's supplement-brief* within 30 days after filing opening brief.
30	CAROA 46(d)(4)	File *respondent's brief* within 30 days after filing of appellant's opening brief, or 30 days after appellant's supplemental brief, if authorized.
5	CAROA 46(d)(5)	File *appellant's reply brief* not less than five court days prior to hearing.
7	CAROA 46(d)(6)	File *transcript* and *statement* of *facts* not later than one week after service of respondent's brief.
no time req.	—	*Oral argument.*

Opinion Filed

10	CAROA 55	Prevailing party files *cost bill* within 10 days after filing of opinion.
30	CAROA 50(a)(1) & CAR 15	File *petition for rehearing* within 30 days after opinion filed.
20	CAROA 50(b)(1)	File *petition for review* within 20 days after order denying petition for rehearing is filed.

Remittitur Filed

10	CAROA 47(d)(2)	File *cost bill* of counsel for appellant (indigent criminal cases) 10 days after opinion becomes final.
30	CAROA 33	File *notice of appeal* within 30 days after entry of judgment or final appealable order (See attached) and pay the $25 filing fee.
10	CAROA 22	File *bond for costs on appeal* with clerk of superior court within 10 days after filing notice of appeal.
45	CAROA 33 & 34	Order *statement of facts* from court reporter and *transcript* from county clerk; arrange payment therefor within 45 days after filing notice of appeal.
55	CAROA 33	File *statement* that above step has been completed within 55 days after filing notice of appeal.
55	CAROA 44	Have *transcript* and pertinent records certified and filed by clerk of superior court within 55 days of filing notice of appeal.
90	CAROA 34	File *proposed statement of facts* in superior court and proof of service in Court of Appeals (or Supreme Court) within 90 days of filing notice of appeal.
no time req.	CAROA 36 & 37	Have *statement of facts* certified by trial judge.
45	CAROA 41	File *appellant's opening brief* within 45 days after filing proposed statement of facts.

30	CAROA 41	File *respondent's brief* within 30 days after filing of appellant's opening brief.
12	CAROA 41	File *appellant's reply brief* 12 days prior to hearing.
no time req.	—	*Oral argument.*

Opinion Filed

10	CAROA 55	Prevailing party files *cost bill* within 10 days after filing of opinion.
30	CAROA 50(a)(1) & CAR 15	File *petition for rehearing* within 30 days after opinion filed.
20	CAROA 50(b)(1)	File *petition for review* within 20 days after order denying petition for rehearing is filed.

Remittitur Filed

Washington State Supreme Court and Appellate Court Procedure

ROA 1-14 — Appeal to the Supreme Court — When Allowed.

Any party aggrieved by a final order or judgment or order for a new trial by the superior court in a case set forth below may appeal to the supreme court:

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

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

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

(d) Cases involving substantive issues on which there is a direct conflict among prevailing decisions of panels of the court or between decisions of the supreme court; and

(e) Cases involving fundamental and urgent issues of broad public import requiring prompt and ultimate determination.

CAROA 14. All other cases will be heard by the Court of Appeals and governed by CAROA 14.

Motions

Procedure for bringing motions to this court are governed by CAROA 51, 52 and 53.

Extraordinary Writs

Petitions for all writs authorized by the state constitution (mandamus, prohibition and certiorari) and necessary and proper to the complete exercise of the court of appeals appellate and revisory jurisdiction are governed by CAROA 7.

SUPERIOR COURT NEWS

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

Judge **George R. Stuntz** (King) recently fulfilled a longtime ambition of having served as visiting judge in all 39 of the state's counties by serving in Island County during October. The statewide service of Judge Stuntz has convinced him that lawyers throughout the state are highly competent, conscientious, and busy. He also found a uniformly high quality of staffs in courts and clerk's offices. Judge Stuntz, who will retire in January after 11½ years on the bench, is the first state judge to have served in all counties prior to retirement.

* * *

Judge **George T. Shields** (Spokane) has been elected a trustee of the Superior Court Judges' Association to replace Judge **William H. Williams** (Spokane), who was recently elected vice-president.

* * *

King County Prosecutor Christopher T. Bayley has appraised the Superior Court inquiry-judge system as an "unqualified success." Judge **Stanley C. Soderland** was elected by King County superior court judges as inquiry judge when the system was established by the 1971 legislature and has served in that capacity since. Judge Soderland hears testimony behind locked doors, usually on Friday afternoons, primarily from witnesses relative to white collar crime.

What's Happening? A Simple System for Financial Control

First it was established that lawyers who record their time earn more than the non-time-keeping lawyers. More recently it was determined that firms who have budgets and fiscal controls take home more than those who do not. Here's a simple system for determining how the firm stands.

Weekly report: Every Friday have your bookkeeper report to you the following information: 1. Starting bank balance as of the previous Friday. 2. Cash received. 3. Checks written. 4. Total cash on hand. 5. Fees received this month. 6. Out-of-pocket costs received this month from clients. 7. Total fees billed this month. That much information will give you a weekly reading as to how things are going and what the prospects are for next month.

Monthly Analysis: In addition to a trial balance which you should insist on having prepared not later than the 10th of the month covering the previous month, you should receive and have distributed to all lawyers (or at least to the partners) a monthly analysis which will show this information:

1. **Analysis of chargeable time** (for firm) illustrated as follows:

Balance last month	2750	hours unbilled
Plus time recorded this month	1600	
Less time billed this month	1720	
Less time written off	17	
Balance this month	2613	hours unbilled

The total fees billed ÷ total hours billed = average rate per hour.

2. **Total of nonchargeable time.**

3. **Total number of active files being processed.**

These three reports disclose total firm activity, whether billing is being done currently, the average rate, how much is nonchargeable and whether the caseload is increasing or decreasing.

4. **Analysis of accounts receivable,** showing current, 30-day, 60-day and 90-day aging schedule, and a breakdown by lawyers of the fees and out-of-pocket costs that are 90 days or more delinquent. This gives you the total picture, but you should concentrate primarily on the 90-day accounts. This analysis will pinpoint how your collections are going and which lawyer is either accepting no-pay work or not following up on collections. You can head off financial disaster if you know what is happening and then react properly.

5. **Report on write-off of time, out-of-pocket costs and unpaid fees,** which will show which lawyer is making adjustments which will result in the firm not receiving payment for work performed. If you make this analysis in columnar form by month and show the information cumulatively, by month, you can quickly spot trends.

For example, if the current balance of unbilled chargeable time has been rising each month, you can recognize that more and more of your time remains unbilled. Expect a cash flow problem in the future if the trend continues!

Or, if the amount of out-of-pocket costs increases each month, be prepared to write off more of those old, old costs and put some money in the bank to make up for it!

If your total of active files keeps going down, better plan to sublet some of your office space, or, conversely, if it keeps rising, better call the Placement Office because you will need more help!

If your firm average rate per hour keeps going down, find out why, unless you want to work longer and earn less.

To keep it simple, record the information each month on the same columnar sheet, photocopy, and distribute without having to recopy information for the prior month.

If you want a more sophisticated report, you can analyze on the basis of each individual lawyer rather than on a firm basis, or compute the average billing rate by type of work so that you can make a conscious selection of the type of representation which your firm will undertake.

Admonition: If you don't promptly read, interpret and act appropriately after your bookkeeper has given you this information, abandon the whole project for you are just wasting your bookkeeper's time.

RICHARD C. REED

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

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

Notices

Wanted and Unwanted

Office Space Wanted: Want office-sharing arrangement or association in Bellevue. 454-1261.

Wanted: Wash. Supreme Ct. Reports, Appellate Ct. Reports, Wash. Digest, RCWA, Wash. Practice set. Bannister, Bruhn & Luvera, Mount Vernon, 336-2191.

For Sale: Wash. Reports, 176 through 43 Wn. 2d. James Hovis, Box 437, Yakima.

For Sale: Medical Atlas for Attorneys (10 vol. looseleaf), with accompanying vol. of Surgical Techniques and Courtroom Drawings; Bancroft-Whitney (1961, 1967); all offers considered. Seattle, 624-7990.

Wanted: Complete set, Wash. Reports. State Law Library, Olympia, 753-6525.

Wanted: Used set RCWA and used set Wash. Digest. Riner E. Deglow, 518 Paulsen Bldg., Spokane, MA 4-4184.

Space Available: Attorney space Norton Building office. William J. Van Natter, 411 Norton Bldg., MA 3-2348.

Space Available: Two spaces, almost immediate occupancy. Joseph Burns, 402 Grosvenor House, 500 Wall St., Seattle 98121, MA 3-3602.

Deadline for submitting copy for the next issue of the *Bar News* is December 6, 1972. Mail to *Bar News*, Washington State Bar Association, 505 Madison, Seattle 98104.

Calendar

Dec. 1	Representing the Small Business, with emphasis on going corporate; State Bar CLE seminar; 1 to 6 p.m. Ridpath Hotel, Spokane; panelists, P. Cameron DeVore, chairman, Barry H. Biggs, C. Kent Carlson, Paul E. Schell, Allan Toole.
Dec. 9	Representing the Small Business, State Bar CLE seminar; 9 a.m. to 4 p.m., Olympic Hotel, Seattle.
Dec. 16	Representing the Small Business, State Bar CLE seminar; 9 a.m. to 4 p.m., Evergreen Inn, Olympia.
Jan. 8-12	Seventh annual Institute of Estate Planning, Americana Hotel, Bal Harbour, Fla.; information, University of Miami Law Center, Box 8087, Coral Gables, Fla. 33124. (Faculty includes Malcolm A. Moore, Seattle.)
Jan. 10-13	"CLE and Ski," Conference on Securities and Corporate Problems, Big Mountain, Whitefish, Mont. Continuing Legal Education, Law School, University of Montana, Missoula 59801.
Feb. 14-16	Western States Bar Conference, Hotel Vancouver, Vancouver, B.C.
Feb. 28-March 3	Fifth Medical Institute for Attorneys, on Orthopedics and Rehabilitation; University of Miami Law Center, P.O. Box 8087, Coral Gables, Fla., 33142.

Probate Code Manual

The new Uniform Probate Code Practice Manual, recently published by the Association of Continuing Legal Education Administrators, now is available from the ALI-ABA Joint Committee, 4025 Chestnut St., Philadelphia 19104.

The loose-leaf, bound, 477-page manual is priced at $41.75. The manual, prepared in anticipation of the Code's widespread adoption, is the work of 13 authors who were closely involved in the drafting of the Code. The authors explain the code provisions and aim to help lawyers understand and use the Code when portions or all of it is adopted in a jurisdiction.

Abidjan Meeting Set

All interested lawyers and judges are invited to attend the Abidjan, Ivory Coast, 1973 World Conference on World Peace Through Law and World Assembly of Judges next August 26-31. Charles S. Rhyne, president for the United States of the World Peace Through Law program said reservations forms may be obtained from Abidjan World Conference, Coordination Center, Suite 306, 1025 Connecticut Ave. N.W., Washington, D.C. 20036. The conference which brings together lawyers and judges from throughout the world will focus the program on "Africa and the Law."

WE ALSO REPRESENT LARGE CORPORATIONS

"Of the nation's 250 largest industrial corporations C T represents 93%."

We can make that claim—it *is* true—but the statistic is unimportant. More important to you and your clients is the fact that corporations of such size, each with its own staff of experts in every field of business, find it is safer and more economical to entrust statutory representation to C T agents and offices than to their own employees.

It's important because the *same* low cost, full time protection relied upon by those corporations is available to your clients—through you—regardless of size. You won't be alone. Counsel for tens of thousands of smaller corporations use C T service.

Give us a call. We'll gladly give you (lawyers only) a no obligation quotation and demonstrate the unique protective features of C T statutory representation.

C T CORPORATION SYSTEM

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