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# WASHINGTON STATE BAR NEWS

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SYMPOSIUM ON "VICTIMLESS CRIME"

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# MEMORANDUM

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## LEAD ARTICLE

### 5 Symposium on "Victimless Crime"

Washington State, a pioneer in holding a conference on a subject which is drawing increased national attention

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## Necessity of Consensus

Editor:

With reference to the cover of the May *Bar News*, there are at least two reasons why an organ of the Seattle-King County Bar Association should not have passed this resolution and issued the accompanying press release:

1. Like public criticism, public commendation of a judicial decision is apparently designed to influence the courts by extrajudicial means; that is, by arousing public opinion. Although the case commented upon has already been decided, the comment serves to announce how the courts should decide future cases involving similar issues. Owing to the close and peculiar relationship between bar and bench, efforts by the organized bar to exert public pressure on the courts are inimical to judicial independence. Therefore, the organized bar should eschew publicity which is actually or apparently designed to influence the course of judicial decisions.

2. By opposing President Nixon's legislative proposals and especially by condemning them as racist, the Young Lawyers Board of Trustees is engaging in partisan political activity. This violates the "social contract" that governs a voluntary association like the Seattle-King County Bar Association.

Lawyers join the association to further their common interests as lawyers. Certainly these common interests are not limited to matters of economic self-interest, nor do they preclude controversy or require unanimity on all actions taken by the association. There must be, however, a consensus on the purposes of the or-

ganization and the kinds of activities to be undertaken in furtherance of those purposes. Precise delimitation is impossible and it is admittedly difficult to develop even a rule of thumb. But some activities are clearly out of bounds.

When I participate in the activities of the association, I understand that I am precluded from using the association as a platform from which to disseminate my partisan views on specific political controversies. Likewise, I reasonably expect that other members will exercise the same restraint.

It is not a sufficient answer to point out that the resolution deals with law. Nowadays, virtually every political controversy has a connection with legislation or the courts. It does not follow from this connection that the members of the association have as lawyers a common interest in supporting one side of the controversy or the other. Proponents of the resolution may say that the members do in fact have such a common interest, because they all have an interest in upholding the Constitution. This begs the question by assuming that a few members have the right to determine for all what the Constitution means.

The critical requirement is that there be a consensus among the membership that a common interest is at stake. Absent that consensus, pronouncements on controversial political issues will sow division among the members and will impair the effectiveness of the association on occasions when it actually does speak for the whole profession.

DANIEL B. RITTER

Seattle

## Obsequious Gaucherie

Editor:

I was mildly astonished by the front cover of the May *Bar News*, for I think that Law Day could have been better saluted than by the featuring of the two "school bus" resolutions by the Board of Trustees of the Young Lawyers Section of the Seattle-King County Bar Association. Those resolutions had but scant relation to Law Day, and, anyway, for practical purposes, they werethoroughlyineffectual. Moreover, they were the work of a small group who evidently feel a compulsion publicly to express their views on any and all matters, even though the public has indicated no interest in their opinions. Indeed, the resolutions were not even news, for that group's position on most matters is highly predictable. Frequently sound and sensible, to be sure, but predictable.

Those circumstances and my own amazement are not enough to impel me to write a "letter to the editor." That which does call for comment, however, lest it go otherwise unmentioned, is the singular ignorance exhibited by that whole Board of Trustees in adopting and publishing the second of the two resolutions — the one which "commends" the State Supreme Court for a decision with which that group agrees.

The ignorance displayed is in the field of manners. Lawyers do not thank judges for favorable decisions, and they do not publicly commend judges for decisions. A lawyer may properly thank a judge for a courtesy or an accommodation, but not for a decision. In rendering a decision a judge is doing his sworn duty. He may not even like to do it and he surely does not expect



or welcome thanks or public commendation for doing it. In *Shylock v. Antonio*, Shylock exclaimed, "Oh wise and upright judge;" and Gratiano said, ". . . an upright judge, a learned judge!", but they were not lawyers. Lawyers know better.

I recognize that customs and manners change with the times, but I think that the times have not so changed as to make the resolution anything other than gauche — and obsequious gaucherie at that. To be sure, one sees this sort of thing in legal magazines, notably in one national publication which is forever commending courts as "courageous" and "forward looking" and the like. But that does not make it right. Mr. Justice Hilbery dealt with that in England 25 years ago when he said, "God forbid that the standard of manners should be taken from the man on the Clapham omnibus."

JOHN N. RUPP

Seattle

## Reply of the Young Lawyers

We believe that it is the responsibility of the organized bar to analyze and speak on important legal questions which have an immediate and substantial effect on the quality of life in our community. Lawyers bear precious trust to use their education and expertise to come to understand and then to explain to the public the workings of the legal process and the meaning of substantive laws. State action to reinforce segregated schooling is abhorrent to a system of just laws; we will not be silent on this issue.

*(Continued on page 10)*

The latter part of April the Board of Governors of Washington had a joint meeting with the Oregon Board. We found many things in common and I'm sure the meeting was beneficial to all of us.

Washington with its separate Discipline Board is far ahead of Oregon; we are much further advanced in our study of Group Legal Services; but otherwise we seem to be plodding along the same dusty road.

Oregon has a much larger staff than we do, their committees are larger, giving more Bar participation, but no expenses are paid for any committee members.

We are studying the means of allowing more lawyers to participate and would appreciate a response from the Bar as to our following the Oregon program, so that anyone wanting to serve on a committee could do so, but at his own expense. Our other alternative of greater participation would be to create sections where those interested could pay admission and the section would be generally self-supporting.

In reference to participation, Eddie Friar, our executive director, has recently given us some figures on participation. In a Board of Governors election the voting runs from 30% to 90%, but with an average of about 60%. In the Judicial Poll, 4404 ballots were sent out and 2065 returned for a 47% response. Recently, a statewide mailing was sent out for information. This mailing was important, as the information requested gives the office your proper address, phone number and Congressional District, as well as committee preferences. From this the "Green Book" is prepared, yet only 41% responded.



Ken Short ran a poll in his district as a basis of instruction on resolutions and 58% responded.

Does this mean that only about 50% of the lawyers care or have any interest in what the Bar does?

What can be done to remedy this lethargic condition so more will attend our convention and our seminars and participate in our excellent legal programs that so many devote time to produce?

"People seldom improve when they have no other model but themselves to copy after." (Goldsmith)



## Editor's Note

No one can deny that the legal profession is in a tremendous state of transition. Three developments this past month vividly demonstrate this transition.

The Board of Governors recently recommended to the State Supreme Court that three laymen be added to the WSBA Disciplinary Board. This will provide the public with a voice in the discipline of lawyers. It is commendable that such change is generated by the profession, rather than by the legislature or the State Supreme Court. Nevertheless, this proposal has generated more letters of disagreement to the members of the Board of Governors than any other subject has within the past three years. Even the Disciplinary Board itself is at odds with the Board of Governors on this subject.

The Seattle-King County Bar Association Board of Trustees recommended the proposal to the Board of Governors several months ago that compulsory malpractice insurance be required of all active members of the State Bar. The Board of Governors, agreeing with a report of the WSBA Insurance Committee, rejected imposing such a requirement. A study last fall showed only 1,500 of the 4,000 active members carry malpractice insurance. The SKCBA Board thought the public deserved better protection. The WSBA Board apparently believed that just because some lawyers become involved in malpractice suits, coverage need not be required of all lawyers.

The third development reflects dramatic change in approach by the SKCBA Board to the minimum fee schedule. A note in the March '72 *Harvard Law Review* capsulizes very well the anti-trust and economic ramifications in this area of interest. The note concluded that both the public and lawyers could be better served by periodic publication and dissemination of average, range, and deviation statistics on current, competitive prices. This is the very approach the SKCBA Board has taken. Lawyers will be surveyed and guidelines will be published, at which time use of the minimum fee schedule will be discontinued.

Playing a dominant role in all three areas of development is the public interest and rightly so.



## The Board's Work

Extracts of the minutes of the meeting of the Board of Governors of the Washington State Bar Association, convened at Rosario's, Eastsound, Washington on Friday, April 14th and in Joint Session with the Board of Governors of the Oregon State Bar on Saturday, April 15th commencing at 9:00 A.M. on each date. Those present were: E. Frederick Velikanje, Kenneth P. Short, Edward J. Novack, John S. Lynch, Robert S. Day, John J. Ripple, Neil J. Hoff and James P. Curran. Also present, at the invitation of the President, for the Saturday Joint Meeting was Charles I. Stone, the President-Designate of the Bar Association. G. Edward Friar, Executive Director, acted as Secretary of the meeting.

### HONORARY MEMBERSHIP

It was moved, seconded and carried that the Honorable Melville Monheimer be made an Honorary Member of the Bar Association with all the emoluments thereto.

### MEMBERSHIP REINSTATEMENT

It was moved, seconded and carried that the petition of William B. Early to be reinstated to active membership be approved.

It was moved, seconded and carried that the application of Donald Scott Sandelin for reinstatement after suspension for non-payment of dues be approved, and recommended to the Supreme Court.

### GROUP LEGAL SERVICES

It was moved, seconded and carried that Robert Payne Karr of Seattle be added as a member of the Group Legal Services Committee.

### LEGAL EDUCATION LIAISON

It was moved, seconded and carried that the task of intensifying efforts of the Bar to develop new areas of employment for lawyers, be assigned to the Legal Education Liaison Committee in response to their request and their interest in and concern for this program.

### DISCIPLINARY BOARD

A. The Honorable Alfred McBee appeared before the Board to generally discuss the work, affairs, interests, aims and desires of the Disciplinary Board and specifically to discuss the current status of certain disciplinary matters.

(Continued on page 23)

# SYMPOSIUM ON "VICTIMLESS CRIME"

*We must direct our efforts to the increasing "Input" of cases [in our courts]. Every legislature and session of Congress passes new laws carrying criminal penalties. Recent surveys of the incidence of indexed crimes indicates that a fourth of the offenses committed on a national basis have to do with drunkenness; additional large percentages include prostitution, gambling and marijuana. Studies must be made with reference to these **victimless crimes** of consenting adults with a view to abolishing those not connected with organized crime or reducing the punishment or processing them through medical services. There has been a practice to turn all such problems as they arise over to the courts. But they are not equipped or sufficiently advised to handle them to the best interest of society. All the courts can do is to process the cases, inflict the punishment directed or attempt the rehabilitation of the offender. This appears to be the wrong approach.*

Justice Tom C. Clark, Retired  
February 12, 1972

*What can be done to break the logjam of justice today, to ensure the right to a speedy trial and to enhance respect for law? We have to find ways to clear the courts of the endless stream of "**victimless crimes**" that get in the way of serious consideration of serious crimes. There are more important matters for highly skilled judges and prosecutors than minor traffic offenses, loitering and drunkenness.*

President Richard M. Nixon  
March 11, 1971

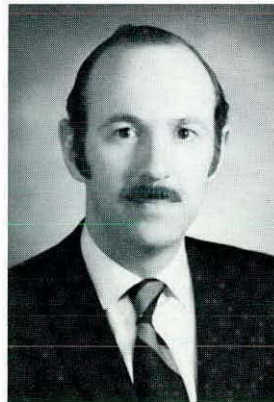
Perhaps the first symposium in this country directed solely to "victimless crimes" was held in Seattle on April 7, 1972, at the Washington Plaza Hotel. Its illustrious sponsors were: the Washington Council and National Council on Crime and Delinquency, the Seattle Crime Prevention Commission, the Seattle-King County Bar Association and the State Law and Justice Program.

The "victimless crimes" dealt with throughout the day were public drunkenness, juvenile delinquency and vagrancy, prostitution, obscenity and pornography, drug abuse, and gambling.

The program introduction was made by **Fredric C. Tausend**, Chairman of the Seattle Crime Prevention Advisory Commission. He outlined the questions before symposium:

"We have been criticized, and I'm sure we will be criticized again, for using the term 'victimless crime.' It is a broad term and a vague one. Perhaps no generally acceptable definition can be found. But no matter how we may wish to define it, there are certain questions on which I hope we will focus our discussion.

"First, is the prevention and punishment for the 'crimes' with which we shall deal today an appropriate use of law enforcement personnel? Or, as stated more pun-  
gently in the *Saturday Review of Literature*, 'Is there some relation-



Fredric C. Tausend

ship between the use of the criminal justice system to police our morals and its failure to protect our persons?"

"Secondly, does making these activities criminal in fact protect society and is it an appropriate way to respond to the person who commits the act?"

"Thirdly, does making these kinds of activities criminal lead to a tolerance policy?"

"Finally, isn't our traditional policy of 'crime and punishment' in danger of losing its usefulness as a means to achieve a safe, law abiding and creative society when juries don't convict, when laws are widely and openly violated by broad segments of our society, and when a jail sentence becomes for many a badge of honor?"

"A recent report leaked out of the Federal Government concerning a great decline in the rate of convictions in criminal cases since 1967, and one of the areas mentioned was selective service convictions. Convictions dropped from 75% in 1967 to 34% last year.

"So I think that those of us who continue to believe that there is value in the concept of crime and utility in the application of some form of punishment, must recognize that some of our present laws do not reinforce or give credence to that concept. I think it is these questions on which we want to focus our attention today."

At the outset, a discussion was held as to why the term "victimless crime" is used.

The Report on Non-Victim Crime in San Francisco dated June 1971, put it this way:

"It is a loose term. Read literally, it suggests that no one is a victim when two males copulate in private, or when a man chooses to lie with a prostitute or to destroy himself with the bottle, or to roll dice, or when a student chooses to smoke grass. The term non-victim crime must therefore be re-read as crimes without victims or with consenting victims.

The terms further suggest that if no individual is a victim, the public is not injured. It is therefore, a question-begging term. But it is sufficiently suggestive to serve as an area of inquiry."

**Sidney I. Lezak**, U.S. Attorney, District of Oregon, early in the session outlined the origins of the current discussion:

"For the serious students, I want to give a few references. To really understand this problem in its historical perspective, you have to do a little reading. I think the bible on the subject is the book written by Stanford University Professor of Law,

Herbert Packer, entitled *The Limits of the Criminal Sanction* (1968). It was written after the President's Crime Commission Report, which had made some tentative feelers into this subject of victimless crimes, and that Commission should be given some credit as well.



**Sidney I. Lezak**

March 1972. Its importance transcends the subject matter which it was given to study. The report, which is entitled *Marijuana — A Signal of Misunderstanding*, is interesting, not only for its recommendations and its content, but in the way the Commission wrestles in an attempt to bring the American people to a position which is against the present soundings of the majority as indicated by the Harris polls. It is a recognition that the American people move one step ahead at a time. I think the insight of these sensitive and intelligent people, who are on this Commission, (whether or not the conclusions are ultimately accepted by the administration), provide a very fine lesson in public responsibility in moving a mass of humanity towards a position in an area where the hang-ups have been deep and long.

"And then, we have a report which I am going to rely on quite extensively. It also was published in March 1972, and is quite significant. It is called *New Perspectives on Urban Crime*, a report by the ABA Special Committee on Crime Prevention and Control. The Chairman is Edward Bennett Williams. It also has on it people like Judge Tamm of the Court of Appeals in Washington, D.C., who is a former assistant director of the Federal Bureau of Investigation and who is known generally as a law-and-order judge. It has Frank Hogan, District Attorney of New York City, who is not considered to be a pantywaist in this area, Samuel Dash, former District Attorney of Philadelphia, and Fred Vinson, Jr., who I knew when

"Following the Packer book, and I think independently arriving at the same conclusion, was the book by Professors Norval Morris and Gordon Hawkins entitled, *The Honest Politician's Guide to Crime Control* (1970). It's hard-hitting, although not without humor.

"We have just received the President's Commission Report on Marijuana published in

he was Assistant Attorney General of the Criminal Division under Ramsey Clark.

"So this isn't a bunch of featherheads who even the police establishment could call do-gooders. These are hard-headed, hard-nosed folks and experienced in all aspects of these problems. They've come through with a report that can only be characterized as startling, but which has to be said to be based upon foundations that have been laid by Packer and by Morris and Hawkins.

"Finally, the front cover of the April 10, 1972 *Newsweek* is entitled, *The Gambling Explosion*. The article gives a pretty accurate picture of the extent of gambling, especially sports gambling, which of course is the primary and the most common form of gambling, and shows how pervasive it has become in certain elements of American society.

"The mobility of change in this area is such that it wouldn't be fair to get up and not recognize it and not give you the full benefit of some of the thinking of the ABA Committee. I think the ABA Report has a good chance of being adopted even though there are some things in it that I don't agree with.

"I change from day to day on this subject. The problems are really great. We are all the products of our environment. We in law enforcement see how some of these persons involved are pretty scurvy. Yet we have to think logically in this area."

At that point, Mr. Lezak quoted from the ABA report:

"We have tended to view our criminal justice apparatus as the machinery for dealing with a wide range of often unrelated social ills. As a result, we have lost sight of the primary goals we have assigned to the criminal justice process — the maintenance of domestic order and tranquility. Violent crime in our cities presents the greatest threat to that goal, but the priorities of criminal justice agencies seldom reflect that primary goal.

"The problem of overcriminalization is a leading example of misplaced priorities. Overcriminalization is a term that describes the application of criminal sanctions to so-called 'victimless' crimes — those forms of behavior in which the participants do not consider themselves to be harmed. Overcriminalization has been described quite aptly by the Violence Commission Task Force as the 'misapplication of the criminal sanction.' Because as a nation we seem to believe that an endless variety of morally objectionable conduct can be deterred

by imposition of the criminal sanction, overcriminalization is extensive and constitutes a significant drain on the resources of our criminal justice system.

"The Violence Commission Task Force identified three principal categories of overcriminalization: (1) moral statutes, in which the criminal law is used to impose public standards on private morality — as in regulation of such forms of sexual conduct as adultery, homosexuality and fornication; (2) illness statutes, which regulate public intoxication and possession of narcotics; and (3) nuisance statutes, which govern such diverse offenses as disorderly conduct, vagrancy, the use of profanity in public and kite flying. When we ask the criminal justice agencies to enforce those and similar prohibitions, we necessarily divert their attention and resources from the more compelling task of controlling urban crime.

"The broad range of victimless crimes illustrates the critical but frequently overlooked role of the legislature in the criminal justice process. Statutes defining victimless crimes are the legislature's response to society's desire to be protected against the conduct they regulate. In the absence of such statutes, such conduct simply would not be criminal and would not be cognizable by the criminal justice system. By responding to the public pressure to codify morality in the criminal law, the legislature overburdens criminal justice agencies with work that they are frequently ill-equipped to handle.

"The problem of overcriminalization has an impact on the criminal justice system far broader than simply adding to the list of offenses that must be processed and prosecuted. For the enforcement of victimless crimes can and does generate far more serious criminal activity. Legislation proscribing a particular form of victimless criminal conduct creates a primary prohibition. However, the very existence of the primary prohibition often leads to crimes of a more dangerous and victimizing type. In this sense, the primary prohibition of a victimless crime causes satellite criminality which does serious harm to society." (pp. 16-17)

Mr. Lezak also quoted from Thurman Arnold's book, *Symbols of Government* (1935):

"The laws survive in order to satisfy the moral objections to established modes of conduct. They are unenforced because we want to continue our conduct and unrepealed because we want to preserve our morals."

Mr. Lezak closed on this point:

"I am delighted that this meeting is being held because the world is changing. There is a recognition that something must be done to handle this problem. I am sure we will disagree on which of these crimes we can eliminate. Some people will say the whole range should go and others will have good reasons for continuing the prohibition of those things which create a public nuisance, even though we regard them as essentially 'victimless crimes.' It seems to me that the final solution eventually is with the City Councils and the legislatures. If by being here in this room we assist in getting that message across, we'll have done a service."

Kitsap County Superior Court Judge **Robert J. Bryan** was the next speaker and took the opportunity to register disagreement with the philosophical underpinnings recited by Mr. Lezak:

"I want to pick up on a couple of points that Mr. Lezak made. He indicated that criminal law in this



Hon. Robert J. Bryan

area of 'victimless crimes' is in part an attempt to apply public standards to private morals. In thinking about the criminal law, it has always appeared to me that even though we commonly hear it said that you can't legislate morality, that criminal law is exactly that — an attempt by the people, through their elected representatives, to legislate morality: To determine what's right and wrong for the public. This is done in an attempt to protect society, to protect individuals who may be victims from crimes of other people. It's done to set standards of conduct for all the people. It's also an attempt through the legislative process to protect people from themselves, that is, to tell people what is right and what is wrong.

"Whether this is successful or not, is the subject of this panel. Nevertheless, the criminal law is the one place we look to in our society for guidance to what is right and what is wrong. In years past perhaps churches and other agencies filled this need. But in our society today, it appears to me that the legislature is the only body that speaks clearly and loudly on what is right and what is wrong and on what people should do and what they should not do.

"Now, we all know that this legislation of morality in many areas is not working well. We know that in many areas the legislature, in its wisdom, has pronounced what is right and wrong to the public and the public has not bought it. We should be aware, however, that the criminal law is changing. This symposium is part of that change, I think. But it's changing slowly. Perhaps some of the current changes in the criminal law system are solving the problems of 'victimless crimes.' For example, we have seen a substantial shift in emphasis in the criminal law system from punishment of criminals to an emphasis on rehabilitation of criminals. I bring those things up because I think it is extremely important in a conference such as this that we consider alternatives; that we consider substitutes for what we now have.

"It's very dangerous, it seems to me, in a blanket fashion to eliminate from the criminal law a number of things that have traditionally been criminal acts in our society. If we don't provide a substitute, we end up with a dangerous result. Let me give you a simple example. When public drunkenness ceases to be a crime in this state on January 1, 1974, who is going to pick up the drunks and protect them from themselves? Who will provide them with the medical care and safekeeping that they need? I agree that it is not right to throw them in jail, but something has to be done for these people. If we tell the police officers not to bother with them anymore, who is going to do it? There must be a substitute or an alternative before we pull the props out from under in that particular area. All I'm asking is whether the financing and the organization will be available to do all these things when the act becomes effective on January 1, 1974?

"One other question is whether cancellation of the laws in these areas will result indirectly, and not by design, in the encouragement of acts and activities that we really don't want in our society. For example, when we liberalize laws on sex, are we really saying to our children that we accept different standards of morality? Are we really saying to them that although you may not do these things until you're 18 or 21, that it's O.K.? Are we really encouraging them to engage in activities that we are against while they are under age and perhaps in need of protection of some sort?

"These are warnings. I don't want to be the dog in the manger. I only want to point out that in this area we must go cautiously but certainly we must go forward as well."

*(Continued on page 16)*

# WASHINGTON STATE BAR NEWS

## New Legal Services Office Opens In Olympia



Attorney General Slade Gorton here receives a Law Day button from Bob Hauth, chairman of the Government Lawyers Association, in preparation for grand opening ceremonies of the Thurston-Mason County Legal Services Office, at which Mr. Gorton cut the ceremonial ribbon.

A new legal aid office opened May 2nd in Olympia amid flurries of grand opening ceremonies officiated by Attorney General **Slade Gorton**. The operation, known as the Legal Services Association of Thurston-Mason Counties, is located in the Washington State Employees Association Building, 124 West Tenth in Olympia.

Attorney General Gorton dedicated the new office in conjunction with the week's observance of Law Day USA ceremonies. The new operation is designed to provide legal aid to indigent persons in a variety of noncriminal cases. Fee generating cases handled by private attorneys will not be accepted.

*(Continued on page 11)*

## Disciplinary Board Opposes Lay Members

The Board of Governors has decided to ask the State Supreme Court to approve a number of amendments to the Rules for Discipline of Attorneys, among them a rule change which would add three non-lawyer members to the disciplinary board. (May *Bar News*, p.4)

Alfred McBee, a member of the Disciplinary Board, appeared before the Board of Governors at its April meeting to register the disagreement of the Disciplinary Board with the proposed rule change and to ask for authority to register its disagreement with the State Supreme Court.

A motion to give the Disciplinary Board authority to communicate with the Supreme Court as a Board on this matter failed by a vote of three (Messrs. Lynch, Novack and Ripple) to four (Messrs. Curran, Day, Hoff and Short). A motion authorizing members to communicate with the court in their individual capacity passed without opposition.

## Bar Counsel Candidates Sought

The Board of Governors has authorized the employment of an attorney as full-time staff counsel to represent the State Bar in discipline matters.

Persons interested in applying for the position may write to the Washington State Bar Association, 505 Madison, Seattle 98104, enclosing a resume and indicating the salary range necessary.

### BAR ELECTION NOTICE

● IF YOU RESIDE IN THE NEW THIRD CONGRESSIONAL DISTRICT, IN THE NEW SIXTH CONGRESSIONAL DISTRICT OR ANY PLACE IN KING COUNTY AND HAVE NOT RECEIVED A BALLOT FOR THE BOARD OF GOVERNORS ELECTION BY JUNE 8TH — PLEASE CALL THE BAR OFFICE — (MA 2-6054) — ONE WILL BE MAILED TO YOU IMMEDIATELY.

## Letters

(Continued from page 3)

In the first paragraph of our Young Lawyers Section Law Day Resolution we sought to meet our responsibility by criticizing this administration's attempt to undercut the federal judiciary's reasoned treatment of the issue of school desegregation. The administration's means violate basic notions of separation of power within the governmental process and the end violates an undeniable constitutional mandate against racial discrimination.

In the second paragraph of our resolution we sought to meet our responsibility by acknowledging the Washington State Supreme Court's direct engagement of an inflammatory public question and its carefully reasoned resolution of that issue on precise and proper legal grounds.

As Justice Hilbery might also have said, "God forbid that the standard of constitutional rights should be taken from the man sitting in the front of the Montgomery bus."

Board of Trustees  
Young Lawyers Section  
Seattle-King County  
Bar Association

## Admission of Minority Lawyers

Editor:

It is noted (May *Bar News*, p.8) that the Board of Governors, acting under the authority of RCW 2.48, "does hereby declare its support for the principle of encouraging and fostering by appropriate affirmative action the admission of *qualified minority group persons* to enter upon the study and practice of law."

The only new words in that resolution are "minority group." For nearly forty years we have had the integrated bar, authorized by the state to establish self government for the legal profession. This enabled the bar, with the approval of the court, to create standards for admission and practice of law.

The standards have applied to all people.

Now, the Board of Governors resolves that the standards for admission and practice of law should be changed for some people. Why not all?

CHESTER A. LESH

Seattle

## In Memoriam

**Donald G. Graham**, 77, Seattle, died April 30 following a short illness. A 1921 graduate of Harvard Law School, he was a member of Graham, McCord, Dunn, Moen, Johnston & Rosenquist.

**Tom S. Patterson**, 82, Seattle, died May 5. A 1913 graduate of the U. of W. Law School, he retired in 1962 after practicing in the Smith Tower for 50 years with his father, Charles, and brother, Hiram.

**Harry R. Williams**, 67, Yakima, died April 30. Born in North Wales, he took his legal training there and in London, where he was admitted in 1926. He had an illustrious career in the British army during WWII, retiring in 1948 with a rank of brigadier general. He then made his home in Naches, was admitted to the WSBA in 1952 and was active in Rowe Farms Inc. until his retirement two years ago.

## Treatment Program For The Sexual Offender

Five years ago, a specialized state center was established within the Department of Institutions at Western State Hospital for treatment of sexual offenders. Superior Courts throughout the state are now sending about 80% of all committed sexual offenders to this specialized center rather than to the adult correctional system. During the past year the number of offenders in residence and out-patient follow-up treatment increased from 81 to 128.

The annual report states: It is significant that no Negro offenders were received for observation during the year, although they constitute about 13% of all sexual offenders handled in Superior Court. We do not know for sure why young offenders of any race and black offenders of any age tend not to be sent to the specialized center, but it is probably because they receive less adequate legal representation than the older white offenders.

Attorneys representing clients with a sexual maladjustment problem have inquired whether evaluations can be performed without clients having to be committed to the hospital for the 90-day evaluation period. The answer has been "No." However, Robinson A. Williams, MSW, Assistant Director of the Treatment Program, is now making himself available, in Seattle, on Thursday evenings from 6:00 to 7:00 PM at 231 Lyon Bldg. Certain men may also be qualified for a specialized therapy group with this type of problem which meets from 7:30 to 9:00 P.M.

Remember to make contributions to the WASHINGTON STATE BAR FOUNDATION.

## New Legal Services Office

(Continued from page 9)

On hand for the opening ceremonies, **Jerry Buzzard**, newly elected president of the Thurston-Mason County Bar Association, commented, "The new program is an outgrowth of the present one for providing legal assistance to those persons who fall within federal poverty standards. Members of the bar will continue to donate their professional services to indigent persons."

The new legal aid office is run under the direction of a non-profit corporation comprised of three local attorneys and two lay members. **Ed Shaw**, an Olympia attorney, is president of the new association. Trustees include Shaw and **C.L. "Kip" Stiliz, Jr.**, of the local bar, and Government Lawyer **W. George Bassett**. Lay trustees are **Juanita Crawford** and **Harold Young**.

The new operation has received a \$10,290 one-year federal grant through the cooperation of the Mason-Thurston Community Action Council. The grant covers only office and secretarial expenses, and members of the local bar and the Government Lawyers Association will continue to provide the actual legal services on a voluntary basis.

While the office will be open for telephone contact and initial inquiries five days per week, client interviews with attorneys will be scheduled only two afternoons weekly, to begin with.

**Elmer Johnston**, retired attorney, retired Chief Hearings Examiner of the Washington Utilities and Transportation Commission, and former Spokane County legislator, will be the nucleus of the volunteer staff.

Interested persons may obtain further information by contacting the office at 943-6260.

## A Protest for Change

Violations of law and order appear invisible in the wake of the current outcry for law and order. Such violations are committed by slum-lords, for example, who charge exorbitant rates for substandard dwellings; their conduct violates city criminal laws but is not regarded as such by our society. Our society values property over people. Society decries the criminality of the torch bearer, the Molotov cock-



**U.S. Rep. Shirley Chisholm  
unbought and unbossed**

tail thrower, and the bomber who destroys property, but tacitly approves the conduct of the landlord who destroys people.

\*\*\*

Don't tear down the young people. Remember the young people didn't develop in a vacuum in America. They weren't just suddenly suspended from the heavens and thrown into our midst. They're the products of a society which has brought them to the brink, to suddenly find themselves so terribly frustrated, perturbed, and upset, because we are supposed to be images for the young people of this country.

But how can we be images for the young people if we ourselves are so immoral and venal? Just look at the newspaper and see what is going on everyday in federal, state and city government — the lack of morality, the lack of integrity, the lack of principle. Our country seems to be moving in a direction just like Rome moved before it fell. Our young people are searching for leadership that they can trust implicitly. And all we have to say is that they have never had it so good, while we continue double-talking and triple-talking.

\*\*\*

When are the Americans going to get together and send some care packages to the poor white children in the Appalachian region that I have been seeing — old beyond their years and can't even stand up on their two feet — thousands of them in West Virginia? When are we going to send some care packages to the Indian babies who are dying on the reservation in New Mexico? When is America going to send some care packages to the black children in the delta of Mississippi and Georgia — walking about with extended bellies because of malnutrition?

Now look, let's take care of business at home first.

One of the most beautiful things that I am getting out of this campaign is to really see America. I tell you, if you have heart (and I say that because I believe a lot of us really don't have heart in America any longer) and if you travel in America and see what is happening to America's children, you could never come back here and be the same again.

— **Remarks of U.S. Rep. Shirley Chisholm in a Law Day speech in Seattle**

## An Individual Within The Law

We celebrate Law Day to contrast liberty with repression. We believe the state exists to serve people so each individual may enhance the quality of his life and by his efforts realize its maximum fulfillment. The usual result of totalitarianism's aggrandizement of government is that those in power benefit while the little man is subjugated.

In part, these philosophies of government are based on one's trust or distrust of his fellow man. Democracy must trust its citizens to govern themselves, to vote responsibly, to act in restraint and self-discipline under rules they have created for themselves. Totalitarianism holds that only the few have the intelligence and ability to be trusted with power and the function of rule making. Totalitarianism concedes that government cannot allow man freedom and still provide order. Its concepts say man is a failure, the slave of his nature, and must be controlled.

We dare to provide each individual the chance to develop his talents and pursue his dreams as far as his ability and desire can take him so long as he acts within the law and gives his neighbor the same chance.

Times change and so does the law. Some feel the law is always a generation or two behind reality and therefore can be ignored, but this time lag serves its purpose. While the rule of yesterday may not foresee the circumstance of today and while we may lose patience with anachronisms written by old men, the sea anchor of the law keeps us on course while it slows us down. Time casts the doubt on our own ideas that brings moderation and tolerance. We are blessed in our

system that those who truly serve liberty and the law are not too sure they are right, their experience constantly reminds them as fair-minded men of their human limitations, and our legal system instills, in most, the humility that seeks to understand the minds of others. The frustrations we suffer because of the delays of democratic law and government, therefore, must be understood, and if reasonable borne unless we desire to surrender the choice of our individual destinies to the expediency of centralized power and the tyrannies of arrogance.



Hon. Keith M. Callow

The strength of law in a democracy is that it requires us to put up with the fellow we feel to be too establishment, too reform minded, too reactionary or too liberal to stomach. By forcing us to really listen to the idea we cannot tolerate, we pause, think, discuss, understand, empathize and resolve our conflicts so life may continue without violence. Thus we knock and buff off the jagged edges of extremism and grow. We have much struggle and dissension within our country, but we talk most

of it out. Is it not remarkable when we look at the diversities of race, wealth, religion, national origin, belief, and regional and economic interests that we are not at each other's throats more than we are? Such could not be without our system of law and government.

— Remarks of Judge  
Keith M. Callow in  
a Law Day speech  
in Seattle

## Art Show Will Be Convention Feature

Notice to all lawyers and lawyers' wives who dabble in the arts: Another big art show will be one of the extracurricular highlights of the State Bar Convention in Spokane September 7-9.

And this is your chance to show some of your prize paintings, sketchings, sculptures and other works. The show will be open during much of the convention in a special salon near the headquarters.

A similar show was a big hit during the 1969 annual meeting in Seattle.

Chairman of the art show for the sponsoring Spokane County Bar Auxiliary is Mrs. Scott B. (Betty) Lukins; her assistant is Mrs. John (Connie) Huneke.

The Spokane Auxiliary also is planning a number of attractive convention-time activities for the lawyers' ladies.

Helping direct the arrangements are Mrs. Richard F. (Joan) Wrenn, auxiliary president; Mrs. Victor (Ursula) Felice, general coordinator; Mrs. John (Mary) Heath, registration, and Kay Gray, assistant; Mrs. Robert (Corrine) Brown, hospitality; Mrs. R. Max (Marion) Etter, fashion show; and Mrs. Patrick A. (Diane) Sullivan, dance.

## Junker and James Take Issue with The Uniform Alcoholism and Intoxication Treatment Act

Professor John Junker (University of Washington School of Law), Ms. Jennifer James (Instructor in the Department of Psychiatry at the University of Washington) and Judge Robert J. Bryan (Kitsap County Superior Court) appeared on Attorney General Slade Gorton's TV show, Law In Action, on the subject of "Victimless Crimes." The following is a portion of that program:

**Prof. John Junker:** The legislature in the 1972 session passed an act, effective January 1, 1974, which provides that it will no longer be an offense to be drunk in public. Hurrah! It shouldn't be. However, under the act, people who are drunk in public can be picked up and coercibly put in treatment centers. People can spend three or six months in such treatment centers.

Now, if the reason we got rid of the law was that people should be allowed to drink themselves into a stupor — if that is the way they want to live their lives — no one should have thought that we should then be able to pick them up and put them in some treatment center.

We go through a charade. We say, "Here are the costs and here are the benefits"; "It costs too much to do this and we want to get rid of the revolving door." Thus we get rid of the criminal sanctions and then someone comes along with therapeutic sanctions. The therapeutic sanctions are just

as bad for human freedom and in many cases are worse than the criminal sanctions were.

The solution in a democracy is to try to persuade the public that people ought to be able to live their life as freely as they can. Every man ought to have as much freedom as he can possibly have consistent with other folks having the same amount of freedom.

**Ms. Jennifer James:** People talk about what will happen to these poor men found on the street in the middle of winter if the police department doesn't take care of them. Well, short of a treatment center, one could provide a large facility at much less cost of what we are doing now which is always open. It would be a place to go, a place where food and jobs are available. It could be just a place to sleep if they wanted nothing else. There would be no restrictions on entering it and they could live their life style as long as they didn't interfere with any other person's freedom. They would be left alone.

**Prof. John Junker:** You can work yourself into a stupor watching TV or do anything else that you want to do in order to waste your time or waste your life, thereby failing to support your family and becoming a charge on the public. But if you do it with alcohol and you're a homeless person in the city, then you're a criminal. But if you do it with alcohol and you live in Laurelhurst or any other suburb, you don't become a criminal. It isn't a problem of alcoholism. It's a problem of homeless people — namely homeless men.

**Ms. Jennifer James:** It's a key

point because alcoholism goes throughout our society. There are many alcoholics who are picked up and who are driven home or who bail out. We are taking particular groups, who have no friends, no funds and limited kinds of contacts. We're applying the law to them in a way that we would not apply it to other people in our society.

**Judge Robert Bryan:** You're suggesting that the desire of the American public to help people, whom they conceive to be in need of help, is not a proper motive.

**Prof. John Junker:** It's not so much helping people as forcing the help down their throats. It's bad therapy for one thing. As far as I'm concerned, it's bad politics. It's not a good way for a government to behave toward its citizens.

## News From GU School of Law

Joseph Nappi, Jr., was named winner of the 37th annual Gonzaga University Legal Argumentation presented April 28, 1972, at Gonzaga Law School. The argumentation was sponsored by the James V. Linden Moot Court Council. Other participants were Patrick Brown, Steve Foster and William Henry.

Five members of the Washington State Supreme Court including Chief Justice Orris Hamilton and Justices Robert T. Hunter, Marshall Neill, Hugh Rosellini and Charles Wright made up the panel judging the competition.

After the argumentation, the judges and many other special guests including members of the Spokane Bar joined the students for the "Heidelberg" held this year at the Davenport Hotel.

## Status of "Victimless Crime" Reform in Washington State

**Public Drunkenness:** Effective January 1, 1974 (pursuant to Wash. Laws, 1972 1st Ex. Sess., Ch. 122), drunk in public will no longer be a crime in this state. However, persons who appear to be incapacitated by alcohol can be taken into protective custody by the police or an emergency service patrol and taken to an approved treatment facility for emergency treatment. A person may not be detained at the facility (a) once he is no longer incapacitated by alcohol, and (b) if he remains incapacitated by alcohol for more than 48 hours after admission, unless he is committed pursuant to court order.

Any responsible person may petition the court to have a person involuntarily committed to a treatment facility. A person committed remains in the facility for 30 days unless sooner discharged. Petitions for an order of recommitment for 90 days can be filed. Only two recommitment orders are permitted.

**Prostitution:** The proposed Seattle Criminal Code repeals ordinances prohibiting prostitution and would prohibit only solicitation in public places. (*Bar News*, Aug.-Sept. '71, p. 5) The proposed State Criminal Code contains prohibition of both prostitution and public solicitation.

**Obscenity and Pornography:** The state has preempted regulation of sale of erotic materials to minors. *Tacoma v. Naubert*, 5 Wn. App. 856 (1971). The proposed Seattle Criminal Code follows the findings of the National Commission in prohibiting public display of erotic materials but not prohibiting the private com-

mercial display of obscene materials to consenting adults. (*Bar News*, Dec. '71, p. 5) The proposed State Criminal Code makes no proposed revisions in this area.

**Drug Abuse:** The state proposal offers no revisions in this area. The Seattle proposal defers to the Seattle-King County Drug Commission which is expected to issue its recommendations shortly. In *Marijuana — A Signal of Misunderstanding*, the National Commission proposes decriminalization of possession of marijuana. The Bar Association of San Francisco on April 30th, announced support for an initiative in California to remove criminal penalties for adult personal use of marijuana.

If Initiative 264 gets on the ballot this November, Washington residents will have the chance to vote on the removal of all criminal penalties for the use, possession, and sale of marijuana.



Justice Robert C. Finley, in a speech at a conference at Louisiana State University in August of 1971 stated:

"... let me say that the available data I have seen as to marijuana are somewhat in conflict as to whether it is a psychologically addictive drug — or whether its use leads to heroin

and other so-called 'hard' drugs. From what I have read, I am of the view that the dangers of use of marijuana may be over-exaggerated at the present time. I hasten to add that its abuse, as the abuse of liquor or any other drug, is unquestionably dangerous. What we greatly need is more reliable data as to marijuana and its use.

"If — and I say this with a great big 'if' — the danger of marijuana is presently exaggerated and is proven to be so on the basis of more reliable medical and scientific data, perhaps more effective control of distribution and use could be accomplished by moving to a system of administrative licensing and handling of marijuana, with the criminal law applying sanctions only on unlicensed sales and illegal sales to minors, as in the case of hard liquor at the present time. Such a system would offer a constructive retreat from the present situation which closely parallels the widespread violation and flaunting of the law in prohibition days, with the attendant criminality, hoodlums, gang-wars, et cetera."

**Gambling:** Art. II, sec. 24 of the State Constitution provides that "the legislature shall never authorize any lottery." SJR 5, a Constitutional amendment, will be on the ballot in November. It provides:

"Lotteries shall be prohibited except as specifically authorized upon the affirmative vote of sixty percent of the members of each house of the legislature or, notwithstanding any other provision of this Constitution, by referendum or initiative approved by a sixty percent affirmative vote of the electors voting thereon."



King County Prosecutor **Christopher T. Bayley** hopes to have an implementing proposal ready for the 1973 legislature if voters open the door to lotteries this fall. He and law enforcement agencies have embarked on a survey of what other states have done. Bayley emphasized that the law enforcement group has no idea yet what it will recommend. He is presently taking no position on SJR 5.

The nationwide picture looks like this: (a) 28 states allow pari-mutuel wagering on horse racing to the tune of \$6 billion last year; (b) Nevada, the only state with legal casinos, collected \$41 million in taxes from that source which financing 40% of the state budget; (c) New York City's year-old pioneering venture in off-track betting handles about \$1.4 million a day in its 59 crowded offices; (d) New Jersey's State lottery is expected to handle \$320 million in the next fiscal year — with half of the action going to the state. In March Pennsylvania and Massachusetts became the fifth and sixth states to launch lotteries. Oregon cleared the way for lotteries on January 1, 1972.

The argument is that instead of draining money out of the economy and into the underworld, gambling should be legalized and taxed. Gambling experts have estimated that for ev-

ery dollar bet legally, five to seven dollars are wagered illegally. The illegal action totals as much as \$40 billion annually, making it the second largest business. The automobile industry ranks first.

**Consensual Adult Sexual Behavior:** The proposed State Criminal Code would repeal the prohibition of homosexual acts between consenting adults and the prohibition against adultery. (*Bar News*, Jan. '71, p. 26.)

**Lewd Conduct:** The proposed Seattle Criminal Code prohibits lewd conduct only when the person engaging in the conduct "knows such act is likely to be observed by a person who is thereby reasonably offended or alarmed." If a theatre posted adequate notices, performances by nude dancers and live sex shows would be permitted. The state proposal on public indecency (9A.88.010) is similar.

**Traffic Offenses:** The proposed Seattle Criminal Code makes all traffic offenses "violations," except the eight most serious which would remain "crimes." Conviction of a "violation" would not give rise to any legal disability that would result from a "criminal" conviction. Thus the majority of traffic offenses would be decriminalized under the proposal.

It has been suggested by some of the municipal court judges that a system of "Commissioners" be established to hear and determine the "violations." This would let the judges give their attention to the more serious charges. All Constitutional rights would be preserved in these hearings. There would be no right to a jury trial. Young lawyers might act as hearing officers.

## Practice Manuals To Be Published by Bar

To enlarge its area of practical service to the Bar, the State Continuing Legal Education Committee has decided to publish a series of practice manuals.

These would be smaller and more limited in scope than the traditional seminar manuals previously published (for list of titles available see *Bar News*, May 1972, Page 16).

Publication of the larger seminar manuals will continue, and the committee also has undertaken publication of all-encompassing volumes in various important legal areas; now underway is production of the first such volume, to include all aspects of community property in our state, with Judge **George T. Shields** of Spokane as chairman of the editorial task force. Task force members are **Harry M. Cross** and **John C. Huston** of the University of Washington faculty; **Lewis H. Orland** and **Joseph Nappi** of the Gonzaga law faculty; **Robert F. Brachtenbach** of Selah; **Kenneth L. Schubert Jr.**, **Hugh McGough**, **Robert H. Lorentzen** and **Gordon G. Conger**, Seattle; and **Beverly Jean Rosenow**, Tacoma.

The new series of monographs is intended to be of immediate practical value to the general practitioner. They probably will consist of 20 to 50 pages, will be written or edited by the Bar's best available experts on each subject, and will be made available to lawyers at the minimal cost of mechanical production.

Lawyers with suggestions as to subjects they feel should be included in the series are urged to write the CLE Committee at the State Bar Office (505 Madison, Seattle 98104) or the chairman, Will L. Lorenz (302 Fidelity Building, Spokane 99201).

## "Victimless Crimes"

(Continued from page 8)

Judge Bryan's remarks drew this rejoinder from **Roger Leed**, a member of the Steering Committee of the Seattle Criminal Code Revision Project:

"It seems to me that many people do perceive the criminal law as a buttress, buttressing moral



Roger Leed

attitudes or social attitudes, right or wrong. But I think that there are many, particularly lawyers, who do not accept a necessary relationship between moral attitudes and criminal laws. This is because we know that many laws that do not have any basis in moral judgment. We see criminal laws that proscribe conduct that obviously is neither right nor wrong in any kind of moral

way, such as wearing a hat in a theater or failing to have a rear-view mirror on your car.

"We also see many things that are considered to be within the purview of morality that aren't inscribed in the law books. There are many things that are in a deep sense wrong or criminal which are perfectly legal and I am sure that it is going to continue to be that way for a very long time. I think that a human being, who is not equipped with any sense of morality founded on something deeper than laws, is socially deficient and personally deficit. A society which does not have these attitudes and values separate and apart from its criminal laws is in trouble."

The lead-off speaker in the afternoon session was **Dr. Nicholas Kittrie**, a Professor of Comparative and Criminal Law at American University and director of the Institute for Studies in Justice and Social Behavior. Kittrie, author of *The Right to Be Different*, argued the *Gault* and *Kent* cases before the United States Supreme Court. Excerpts from his remarks follow:

"What I heard this morning gave me somewhat of an uneasy feeling that many people came here today in the hope of getting final answers as to what we should do with these crimes without victims. It is as if one could now produce a very wise decision and provide an answer for all times, for all societies and for all states. I think that for our own mental health, so that we don't expect too

much, we should admit that we have had various forms of crime and deviance with us for a long time. We have tried all kinds of ways to handle them. Some were effective at one time and some were effective at another time and some were effective for one society and not for another society.

"If anyone thinks that in this stage of American social life and social development, anyone could come here and give you final answers, he's really mistaken. I think social life and political life means constantly a process of readjustment and change to meet needs as we see them at a particular time.

"If there is one thing that delights me today, it is this gathering of people of diverse professions and backgrounds from throughout the state. Because I don't believe there is any final and clear answer, I am committed to the proposition that our federal system is indeed a system of diverse workshops where each state and each community tries its own way with various approaches. They learn from each other. One may approach it one way and another approach it a different way. The people in each jurisdiction must try to find out what is suitable for them and how they want to go about it. It is this citizen participation in the field of law and justice that is very rewarding and important to me.

"I can tell you without any hesitation that as a lawyer who has gone before the Supreme Court of the United States, I am not pleased or happy with resolving national issues by running to courts and getting things decided on the basis of some interpretation of the Constitution. Then we all end up with one final authoritative answer for the whole nation. I am much more interested in local experiments, local approaches, and comparative approaches to these problems.

"I define 'crimes without victims' as those types of behavior which are more in the nature of vices than offenses directed against other people. Consequently, they would include prostitution, alcoholism, the use of drugs, gambling, obscenity, various mild forms of juvenile delinquency (where there is no criminal behavior yet but just such undesirable traits as being ungovernable, running away from home, and not responding to one's parents' admonitions), vagrancy, homosexuality, fornication, and smoking (although it has not yet been defined as a crime). I think that for most people that really can't afford it, playing the stock market could be viewed as a 'victimless crime.'

(Continued on page 21)




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**EAST KING REPORT**

By CHARLES F. DIESEN

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The East King County Law Day dinner was held April 25 at the Glendale Golf and Country Club in Bellevue. This event, chaired by **Hartly Newsum**, coincided with the time the Supreme Court justices had scheduled to pass by on their Law Day whirlwind tour. We were pleased to have six Supreme Court justices and several Superior Court judges present. Co-Liberty Bell awards were made to Nick Giardina, Bellevue Police Chief and Mike Buckley, reporter with the Seattle Post-Intelligencer.

**Lyle Neeley** has opened a practice as a sole practitioner at 909 Market Street in Kirkland.

**Les Wahlstrom** is now working in Bellevue with the Washington State Land Planning Commission. Even with his departure, Johnson, Inslee, Best and Chapin is the largest firm in East King County.

**Peter Lucas** has been named as the new court commissioner for the Bellevue District Justice Court in an announcement made jointly by Judges **Melvin V. Love** and **Anthony P. Wartnik**. Judge Wartnik was recently honored by the Bellevue Jaycees as the outstanding young man of the past year in the Bellevue area. Judge Wartnik was nominated by the Eastside Alcoholism Information and Referral Association, of which he is president.

The **Nate Thomas** family is enjoying a new house which overlooks Laughing Jacobs Lake south of Issaquah. Where, Nate?

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**PIERCE REPORT**

By DAVID E. SCHWEINLER

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*Announcements*

On March 9, 1972, a ceremony was held in the Pierce County Presiding Court to swear in eight new lawyers. They were: **Larry Moore, Richard T. Blossick, James T. Fuller III, Cecil Driver, Robert Alan Klein, Jones Osborn III, Steven K. Causseaux, and Thomas A. Brown**. All Pierce County Judges were present at the ceremony and **Neil Hoff** represented the Board of Governors and **David E. Schweinler** represented the Tacoma-Pierce County Bar Association.

**Richard J. Kelley** announces the opening of his office at Suite 210, Clover Park Professional Square, 10828 Gravelly Lake Drive SW, Tacoma.

**Larry E. Levy**, University of Washington, 1968, has become an associate in the law firm of Davies, Pearson, Anderson & Gadbow.

The Tacoma-Pierce County Bar Association recently had as speaker **Slade Gorton**, Washington State Attorney General, who spoke on the subject of consumer protection.

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**KITSAP REPORT**

By HELEN GRAHAM GREEAR

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The courthouse has acquired a full time general factotum and circulating guard and bailiff in the person of a young ex-Army man named Dennis Morin. He presides over a desk in the upper hall and is very helpful.

I would lie to quote from a document found among the papers of John Ward of Hackney,

England, who was expelled from the House of Commons in 1727. It was later titled *The Miser's Prayer*:

"O Lord, Thou knowest that I have nine estates in the City of London, and likewise that I have lately purchased one estate in fee simple in the county of Essex; I beseech Thee to preserve the two counties of Middlesex and Essex from fire and earthquakes; and as I have a mortgage in Hertfordshire, I beg of Thee likewise to have an eye of compassion on that county; and for the rest of the counties Thou mayst deal with them as Thou art pleased. O Lord, enable the Bank to answer their bills, and make all my debtors good men. Give a prosperous voyage and return to the Mermaid sloop, because I have insured it; and as Thou hast said the days of the wicked are but short, I trust in Thee that Thou wilt not forget Thy promise, as I have purchased an estate in reversion, which will be gone on the death of that profligate young man, Sir J. L. . . ."

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**LEWIS REPORT**

By DONALD F. PIETIG

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NO. 1972, EN BANC, April 24, 1972, *In the matter of Lewis County Law Day U.S.A.*

Heard before: Hamilton, C.J.; Rosellini, Hunter, Stafford, Wright, Finley and Utter, J.J.; Hale, J. and Neill, J., did not participate in the disposition of this case.

Amicus Curiae briefs were submitted by the Lewis County Bar Association regarding the proposed dinner menu and oral argument was heard as to the extent each steak should be submitted to the cooking grill.

After thorough analysis of both briefs and oral argument, including the use of extensive sampling techniques employed by each Justice, Hamilton, C.J., announced the decision of the Court: They enjoyed the dinner and the hospitality of the Lewis County Bar Association.

All concur.

On a more serious note, we extend our sincere appreciation to those members of the Supreme Court who attended our April 24 Bar Meeting as the observance of Law Day U.S.A. took on a special meaning and the already fine bar-bench relationship was even further improved.

Regarding Law Day U.S.A. observances, special thanks is also due to Dan Agnew, John Hall, Dan Murray, Ralph Olson, Laurel Tiller, James Turner, and James Vander Stoep for presentations delivered to area high schools and social clubs.

Special congratulations to Mr. and Mrs. Brian Baker on the birth of Brooke Nall, bouncing baby girl born April 9, 1972.

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## SEATTLE-KING REPORT

By GERALD G. TUTTLE

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**Betty B. Fletcher** was honored for outstanding achievement at the April 11 annual Matrix Table banquet. The award to Mrs. Fletcher, soon to become the first woman president of the Seattle-King County Bar Association, was in recognition for her activity in connection with women's rights legislation. Another woman lawyer recently honored was **Muriel Mawer** who was presented the annual Curtain Raiser award by Seattle Junior Programs. Miss Mawer is also president-elect of Altrusa Interna-

tional, an international professional women's service organization.

**Mike Redman** will leave the firm of Ashley, Foster, Pepper & Riviera to practice in Friday Harbor beginning early this summer. Mr. Redman will also become assistant district attorney and deputy coroner.

**Robert D. Morrow** has been re-elected Washington State chairman of the Defense Research Institute at a recent board of directors meeting of that organization held in Milwaukee, Wisconsin.

**Jerry Schumm** is leaving Merri-  
rick, Hofstedt, Schumm & Lindsey and **Dwayne Richards** is leaving Horswill, Keller, Rohrback, Waldo & Moren to set up practice under the firm name of Schumm & Richards on the 17th Floor, Park Place. Their new telephone will be 682-1088.

Keating & Douglas announced that **John A. Drury**, formerly a legal intern with the firm, has become an associate.

**Thomas G. Holcomb** and **Thomas J. Owens** announce the termination of their partnership and Thomas G. Holcomb announces the association in the practice of law of **Thomas G. Holcomb, Jr.** They will all continue to practice at 1710 IBM Building.

**Douglas F. Graham** has left Karr, Tuttle, Koch, Campbell, Mawer & Morrow for a position with the United States Attorney's Office in Seattle.

**Howard Breskin** has been named to head the new 29-member regional advisory committee for the State Department of Social and Health Services. The committee acts as an advisory group to Ralph Dunbar, regional administrator of the State Department of Social and Health Services. Ninety-seven community organizations, schools, and church

institutions are represented by the committee.

The SKCBA Board has approved in principle the concept that **the minimum fee schedule had outlived its usefulness.** Specifically, the Code of Professional Responsibility promulgated by the State Supreme Court effective January 1, 1972, no longer treats charging below the minimum Bar fee schedule as solicitation (see former rule: WSBA Op. 94 of 1961). Rather the admonition to lawyers is to "not charge more than a reasonable fee, for excessive cost of legal service will deter laymen from utilizing the legal system in protection of their rights."

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## SOUTH KING REPORT

By STEPHEN L. JOHNSON

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The Association has elected officers for the forthcoming year, commencing June, 1972. They are **Morton T. Hardwick**, Renton, president; **Stephen L. Johnson**, Kent, vice-president; **Robert Kitto**, Kent, secretary; **Richard C. Conrad**, Renton, **Jack A. Hawkins**, Auburn, **Robert E. Stead**, Federal Way, **Melvin L. Kleweno, Jr.**, Kent, and **Richard P. Thompson**, Burien, directors.

The May meeting was held in Des Moines and featured a presentation on OEO Legal Services.

Members of the Association entertained the Supreme Court Justices at a luncheon meeting on April 25, 1972, at the Sea-Tac Motor Inn. That afternoon some of the Justices accompanied speakers to high schools in the area for Law Day programs.

The April meeting was held at Burien and featured a program on professional corporations secured by **Don Holm**,

Renton.

**Philip Biege**, Enumclaw, self-appointed chairman and host of the annual Open Golf Tournament, has announced that the show will go on. Set aside July 28, 1972, and plan to spend the afternoon and evening at Enumclaw with the South King County Bar.

The Superior Court Circuit calendar is still alive in Kent on the second and fourth Thursdays at 1:30 p.m. The importance of this calendar to the attorneys and their clients has been demonstrated and should be expressed to the Superior Court Judges.

Bonjorni, Burgeson & Fiori, Auburn, have recently completed a substantial addition to their offices. It is expected that they will soon be inviting their brethren to a reception preceding a bar meeting.

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### SPOKANE REPORT

By **MICHAEL E. DONOHUE**

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The music that emanated from the Gonzaga University Law School Heidelberg, held awhile back at the Davenport Hotel, was not, I am told, from "The Student Prince." In fact, "Morphine Joe and Cocaine Sue" ("Have a Sniff on Me") and "Ragtime Cowboy Joe" were sung in a way that would give Jeanette MacDonald and Nelson Eddy an attack of gas or drive them to drink. A lot of us music lovers took to strong drink that night to ease the pain. Masochists all, we have invited the singer back for the next Spring Heidelberg because it just wouldn't be "Heidelberg" without him. Present, along with most of the law school student body and faculty, were 7 of the 9 esteemed Justices of the State Supreme Court,

a fair share of the more notorious tosspots from the county bar and quite a few of the rest of us.

With **Curt Shoemaker** as Mr. Interlocutor, the Young Lawyers Section last month presented "Personal Property — Secured Transactions," a two-act seminar starring **John Heath**, **Larry Small** and **Bob Winston**. Although it was a huge success both in the box office and with the critics, the performance was mared by Winston's choice of pipe tobacco. The county air pollution control authority is investigating.

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### THURSTON-MASON REPORT

By **STEPHEN J. BEAN**

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The Thurston-Mason County Bar held its annual banquet at the Evergreen Inn on Thursday, April 27, 1972, in conjunction with the Washington State Superior Court Judges Association conference which was being held at the Evergreen Inn at the same time.

An enjoyable time was had by all in attendance, particularly those who were somber enough to hear outgoing Bar President **Gerry Alexander** introduce Judge **Frank Baker**.

The new officers elected for the ensuing year are **Jerry L. Buzard**, President; **Frank J. Owens**, Vice President; and **Ward J. Rathbone**, Secretary-Treasurer.

Judge Willie White, of the Cook County Superior Court, spoke about the problems of the juvenile procedure, both in Illinois and Washington. The local Bar also presented its annual Liberty Bell Award to George Earsley for his outstanding effort in leading the fight for a new juvenile hall for Thurston County.

**Bob Wallis** was recently elected Chairman of the Young Law-

yers section of the Thurston-Mason County Bar Association. **Kip Stilz** and **Bill Cullen** were elected Vice-Chairmen.

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### YAKIMA REPORT

By **RANDY MARQUIS**

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*Lawyers In The News:*

**E.V. Lockhart, Jr.** has been elected Eastern Washington Vice President of the Washington State Society of the Sons of the American Revolution.

*Bar Business:*

The Yakima County Bar recently approved Articles of Incorporation for the newly conceived Yakima County Legal Aid Society. Spearheading the move is a special committee headed up by **Richard C. Smith**, with special assistance of **Michael Schwab**.  
*Law Day Ceremony:*

**Neil Buren**, chairman of Law Day 1972, announced that the Yakima Bar in keeping with its traditional annual Liberty Bell Award ceremony named Kara Kondo as the 1972 recipient of the Award. The Bar was pleased to have in attendance Justices **Hamilton**, **Finley**, **Neill**, **Hunter**, **Rosellini**, and **Wright**, as well as State Bar President **Fred Velikanje**. Chief Justice **Orris L. Hamilton** made the presentation, noting that Mrs. Kondo, currently chairman of the Yakima County League of Women Voters, is a past president of the Yakima League of Women Voters, is a past president of the Yakima League of Women Voters and past president of Yakima Toastmistresses and is presently serving on the Governor's Human Affairs Council. The Liberty Bell Award is given in recognition of community service done in furtherance of freedom under the law and within the framework of the Constitution.



## Briefly Noted

A rule change was scheduled for adoption by the **State Board of Industrial Appeals** on May 19th. The rule has been that an individual employer could represent himself without a lawyer before the Board, but the rules require that a lawyer represent a corporation. The planned rule change allows the corporation to be represented by a full-time corporate employee, not necessarily an attorney, whose duties include workmen's compensation matters.

Workmen also could seek the services of a union representative whose duties include workmen's compensation matters. The number of workmen who have been represented by attorneys has increased from 80 to 90% in the past 10 years. The Board also plans to publish its criteria for reasonable attorney fees, which are paid out of the workman's award.

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Bellevue District Court Judge **Melvin Love** is running ads in the University of Washington Daily, the Catholic Northwest Progress and the Daily Journal of Commerce urging his election on September 19th. Interestingly enough, he doesn't indicate for what position he is running. He does indicate he served in General Patton's Third Army and was wounded in action in France.

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The Board of Governors at its April meeting rejected, by a vote of five to one (Mr. Curran dissenting), the concept of **compulsory malpractice insurance** for all active members of the State Bar. The report of the WSBA Insurance Committee, which was strongly against the concept, was adopted.

In *Waller v. Noe*, 78 Wn. 2d 484, 475 P. 2d 787 (1970), the court ruled that the posting of bail was not required for the assignment of a trial date. Citations now set for trial in Seattle Municipal Court have increased 77% in 1971 over trials set during 1969.

In *Tate v. Short*, 400 U.S. 814 (1970), the court ruled that an indigent could not be required to serve jail time in lieu of fine payment. Accounts receivable in Seattle Municipal Court totalled \$28,285.50 on December 31, 1970; on December 31, 1971, the total had risen to \$185,885.93.

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The *Seattle PI's* Action Corner by Don Carter on May 12th questioned **Attorney General Slade Gorton** as to why the Hellsell firm became involved in the Alioto-O'Connell-Faler lawsuit. His answer in part stated:

"Only some time later, when rumors arose that Mr. O'Connell had shared in the fees resulting from the case, did it appear possible that the office might be required to take action against him, rather than defend him. This change in circumstances was deeply troubling.

"As a result, I wrote to **Mr. John Huneke**, then president of the Washington State Bar Association, to ask for his views and those of the Board of Governors of the Bar Association as to my duties in the matter."

It was, Gorton says, the suggestion of Mr. Huneke and the Board of Governors that "I should pursue the matter actively" and that a reputable attorney "with whom I had no personal or political ties" be appointed to remove the investigation from any possible political implications.



J. David Andrews

100 members of the SDS demonstrated at the Pacific Coast Labor Law Conference on May 12th in Seattle at the Olympic Hotel. **J. David Andrews**, Chairman of the afternoon session allowed one of the demonstrators to briefly take the microphone. After the demonstrator departed, Andrews quickly produced his horoscope and read it to the audience:

"You may encounter some difficult persons now. Remain tolerant and affable and things will blow over."

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Minnesota has also adopted the **Uniform Alcoholism and Intoxication Treatment Act**. Reports *The National Observer*:

"Only a few Minnesota cities have even minimal facilities for handling drunks under the new law, and most rural communities have none. "The new law did more to make the politician, the social worker, and the minister feel better than it did to help the alcoholic," said a Minnesota state legislator. Until we get facilities, the true alcoholic in the rural areas will be in worse shape."

## **"Victimless Crimes"**

*(Continued from page 16)*

Playing bingo may be in the same classification. Blue laws, which regulate your Sunday activities, fall in the class. Admittedly, all these could be viewed as vices and as activities which are really not too good for you. In some communities there might be little consensus as to these vices. In others, community feelings might be strong. They may feel that these forms of behavior are really just pathways to more dangerous behavior at a later time and therefore they would like to have you refrain from them now. The assumption is that once you start out on this road — once you start gambling, you will get yourself into debt; then you will start forging; next you will engage in embezzlement; and finally, you will wind up in jail. So it's much better to stop you early in the



**Dr. Nicholas Kittrie**

game. This is what the rationale behind the victimless offenses is all about.

"Clearly, the reason for regulating 'victimless crimes' is not because they are a major and immediate threat, but because of secondary considerations. It is future developments we are afraid of. Somehow we think that if someone reads pornographic literature he becomes aroused, and if he becomes aroused, he is going to run into the streets, and once in the streets he may become a rapist. These are all secondary and speculative considerations.

"I must repeatedly stress that in my opinion the harm in most of these 'victimless crimes' is much too speculative. It's much too remote. Somehow we assume that if someone is a homosexual he will not seek out adult partners but will abuse

children. My position with regard to 'victimless crimes' is that the answer in many cases ought to be, 'Let us wait until the particular harm is clear at hand, then we'll punish him for what he has done. If what we are afraid of is embezzlement or rape, let us make sure he has actually committed embezzlement or rape and then we will punish him.' I am opposed to society developing a rather remote network of preliminary restraints, or the assumption that if one smokes marijuana today, he may use cocaine next week and then he will become a raving maniac and murderer. We cannot have a system of criminal justice which is all that preventative, which looks all that far into the future.

"I could illustrate the same with regard to gambling. If the reason we restrain or control betting is because one might lose his money and then will not keep his job and will be unable to support his family, again I would much rather wait 'till he fails to support his family and at that point step in. I just don't think that criminal justice can or should be made to teach people good habits, good life styles.

"Some of these socializing functions have to be accomplished by church groups, homes, school groups, and the like. I don't think it is the function of the criminal law to inculcate people with general morality and good life habits. We must establish priorities in the use of the criminal system. If we pursue victimless crimes and mildly offensive behavior, as we have done over the years, little time and resources are left for dealing properly with more serious criminal conduct. No wonder the criminal justice system is ineffective — half of the six million arrests made in the U.S. annually is for victimless crimes. The police and courts have little time for the serious business.

"You may say that if indeed we follow much of what I suggest here the whole system of morality would collapse. Will people pursue their vices and deviations, running each in their own direction with the nation having no uniformity and no way of pulling people together? My answer to you is that we are going to have to wait and see. I do not think that through criminal penalties we can impose an ideal society for all time. Indeed the whole American dream was a belief and a commitment to experimentation, to a variety of approaches, to a pluralistic society. The society we have created ought to remain committed to experimentation with various approaches, to as many individual life styles as possible. As a free nation we also preserve the freedom for re-evalu-

ation and redirection. Society and the state keep the option to step in — but until a real not speculative need is demonstrated, my preference is liberty.”

After various workshop sessions in the afternoon, the symposium closed with an address by **Milton Rector**, Executive Director, National Council on Crime and Delinquency. He had some poignant remarks on our nation’s approach to heroin:

“The federal Bureau of Narcotics has duped the American public in debunking the British system of dealing with heroin addiction. In New York City in 1955, many of us were arguing for the medical profession to get up in front and establish, with a central records system, medical treatment centers in the neighborhoods for the poor sick kids who are addicts, so that they could come in to get a maintenance dose free and so that we could find out where they were.



**Milton Rector**

At least we could try to induce them to come in because nothing can be done about an addict until he makes up his mind that he wants to do something about being an addict. But until then, you don’t have to make it necessary for him to desperately push, attack, mug and steal and so on, first with his own family and then with the people next door and so on.

“At that time in 1955, the question in New York City was whether we had 25,000 or 50,000 addicts.

“The Bureau of Narcotics agents said that the British system wouldn’t work. The British had only about 100 addicts on its records in 1955. The British did have trouble because the addicts were getting prescriptions when they didn’t need as much as the prescription provided and they were selling it and producing more addicts. We heard it was going up by 1,000% and so on. And it did. It peaked out at 3,000 addicts. But they just didn’t throw the system over. They improved it. They are now using liquid cannabis and methadone. They tightened up the central registry and the neighborhood clinics; they made the maintenance dosage a part of treatment to reach them. And they are reaching them. In recent contact for a possible research product, they told us that

they can’t find 100 new heroin addicts in all of London in 1971.

“During this same period, 1955-1971, we were closing our options. (I remind you that the Bureau of Narcotics even fought valiantly to keep methadone from being used when it was first introduced.) We frightened the medical profession out of research and out of treatment. The result was that those of us in criminal justice were making the determinations as to what kind of research was going to be done and we didn’t know anything about it.

“The question now is ‘does New York City have 200,000 or 300,000 addicts?’\* We have spent over \$250 million dollars in law enforcement in this area which should have been going into education and a variety of treatment methods. At this time we only have about 13,000 under treatment of methadone. How successful is that?

“What you need is a second symposium to tell the medical profession to help addicted people — To get busy — To take over. We can’t wait till they get the alternatives because if we change the law tomorrow and all the addicts and all the alcoholics are out of the criminal justice system, they will still be better off than they are coming into the system. Then your criminal justice system can do what it is set up for. So get them busy developing the alternatives and guidelines because that’s where the overload belongs. Not over here.

“In terms of your public money, when it comes into criminal justice, use it to fight crime.”

It remains to be seen whether the challenge to sponsor a second symposium will be accepted. □

\* “Estimates vary greatly, but there may be about 4,500 or more heroin addicts in the Seattle area — most of them stealing property or selling heroin themselves to support their habits, which cost an average of \$50 a day or more. 500 Seattle area heroin addicts will be treated by two methadone programs to be financed by federal funds.” *The Seattle Times*, May 14, 1972, p. A28.



### The Board's Work

(Continued from page 4)

The Board expressed its appreciation to Mr. McBee for his great interest in the Bar Association and in the work of the Disciplinary Board and asked him to convey the continued appreciation of the Board of Governors to the Disciplinary Board for its outstanding work.

#### AMENDMENT TO BY-LAWS

It was moved, seconded and carried that the language of Section 8 of Article 9 of the By-laws as previously modified by the Board at its February meeting, shall hereafter read as follows:

"ACTION AT ANNUAL MEETING. The Board of Governors may order any question upon which action has been taken at the annual meeting, referred to a vote of the entire membership of the Washington State Bar Association. The Board of Governors shall on a two-thirds vote of those present at such annual meeting, or on a petition signed by two hundred fifty (250) active members of the Washington State Bar Association so requesting, take a referendum on any such matters presented, or acted on at such meeting, or to modify or rescind any rule theretofore adopted by the Board of Governors, or to adopt any new rule on any of the subjects contained in Section 7 of the Washington State Bar Act, provided however that a total vote of two thirds of those members voting in any referendum be required to reverse, modify or overthrow a decision of the Board of Governors."

#### MEETING WITH OREGON GOVERNORS

On Saturday, April 15th beginning at 9:00 A.M. the Board of Governors met in joint session with the Board of Governors of the Oregon State Bar with the agenda including the following topics: Board of Governors, Officers, Group Legal Services, No-fault Insurance, Compulsory Mal-practice Insurance, Discipline, Use of the Computer in Legal Research, and Committees.

In addition, a wide range of subjects of mutual interest was discussed concerning the work of the two Bar Associations — information, experiences and ideas were exchanged including considerable literature, materials and exhibits.

#### THE NEXT BOARD MEETING

It was agreed by the Board that the next meeting of the Board would be on Friday, May 19th at the Eddie Mays Motel in Wenatchee. The meeting will commence at 9:00 A.M.

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### SUPREME COURT PRACTICE

By WILLIAM M. LOWRY

Supreme Court Clerk

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The summaries below supplement those set forth in the April *Bar News* of cases to be heard by the Supreme Court during the May 1972 Court Session which may be of interest to the Bar.

#### Original cases filed in the Supreme Court

41885 — *State v. Braun and Maine* — Criminal Law, First Degree Murder: Whether certain pre-trial newspaper articles and the failure of the trial judge to sequester the jury constitutes grounds for a new trial.

42261 — *State v. Baker* — Criminal Law, First Degree Murder: Whether a trial judge has authority to defer a death sentence, notwithstanding the verdict of the jury.

42276 — *State v. Patterson and Morgan* — Criminal Law, Search and Seizure: Whether an affidavit sworn to by a police officer based upon statements made by a Federal Narcotics Agent is legally sufficient for the issuance of a search warrant.

42326 — *Moses Lake School District No. 161 v. Big Bend Community College, et al.* — Constitutional Law: Whether RCW 28B.50.300 which provides for the transfer of property from local school districts to the community college board is unconstitutional in that it attempts to deprive respondents of their property without sufficient compensation.

42264 — *National Bank of Washington, et al. v. Equity Investors, et al* — Leins — Priorities: Is a prior recorded deed of trust to secure construction loan advances subordinate to a materialman's lien with respect to advances made after the recording of the lien when the deed of trust provided advances were to be made "as the lender shall determine."

42231 — *City of Seattle v. Seattle First National Bank* — Condemnation: Whether upon the discontinuance of a condemnation proceeding under RCW 8.12.530 by a condemnor, a trial court may award interest upon the condemnation judgment between the date of rendition of such judgment and discontinuance and payment of costs.

*Appeals called up from Court of Appeals*

42333 — *State v. Porter*)

42334 — *State v. Frazier*) — Criminal Law: Does RCW 9.41.025, providing a minimum sentence for crimes committed while armed, merely provide for an additional penalty or does it define a separate and distinct crime which must be charged and proven?

42368 — *State v. Richardson*)

42369 — *State v. Skarperud*)

42370 — *State v. Blake*) — Whether a person must be advised that the qualified person of his choosing to administer any additional tests must be a physician, qualified technician, chemist, registered nurse or other qualified person of his choosing in order for the Department of Motor Vehicles to revoke a driving privilege for refusing to submit to a breathalyzer test.

42332 — *Hudson House v. John I. Rozman* — Real property, Accretion: Are upland owners of land entitled to accreted headland and if so how is it to be divided?

42335 — *Ocean Spray Cranberries Inc. v. Terrence E. Doyle, et ux.* — Whether a railroad company can abandon a railroad trackage without prior approval by either the Interstate Commerce Commission or the Washington Utilities and Transportation Commission.

42336 — *Miller v. Paul Revere Life Insurance* — Community Property: Whether a beneficiary designated in a life insurance policy takes precedence over the claims of a surviving spouse.

42364 — *Anderson v. Island County* — Zoning: Whether a Board of Commissioners has the authority under Ch. 36.70 RCW to overrule the denial by a planning commission of a request for a zoning change.

4266 — *Thayer v. Anacortes School District* — What constitutes notice of "sufficient cause or causes for nonrenewal" of a school employee's contract as provided under RCW 28.67.070?

42367 — *Watson v. Washington Preferred Life Insurance Co.* — Constitutional Law: Whether RCW 23.A.08.305 relating to the representation of absent shareholders at meetings satisfies the due process provisions of the constitution.

*Petition for Review Granted*

42305 — *State v. Walls* — Criminal Law: Whether under circumstances that would amount to the crime of defrauding of an innkeeper and the amount is in excess of \$75.00, a prosecuting attorney has the discretion to file a charge of grand larceny.

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THE COURT OF APPEALS  
By JOSEPH A. THIBODEAU, Clerk

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One of the problems that confronts the Court of Appeals is a uniform disposition of respondent's motions to dismiss for want of prosecution. The case of *Ewer v. Goodyear Tire and Rubber Company*, 1 Wn. App. 628 (1969) was the Court's first opportunity to make the Bar aware that for the orderly and timely administration of judicial review, the rules on appeal must be complied with and that failure to do so may result in dismissal.

Since this decision, however, the Court has varied its approach to the problem. Prior to *Ewers*, the Court hesitated to dismiss an appeal and allowed counsel an opportunity to perfect the appeal within a specified time. More recently the Court has granted the motion unless appellant perfected the appeal within thirty days. In some extreme cases, the Court has allowed terms. If the conditions were not complied with, the appeal was dismissed without further hearing.

The present policy is to enter an order granting the motion conditionally and unless there is good reason not to do so to award damages to the moving party for bringing the motion and for the delay in perfecting the appeal. If appellant does not comply with the order, the cause is dismissed and remitted to the superior court with directions to enter a judgment in favor of respondent in the amount of the damages awarded by the court in its order of dismissal. The sum includes additional attorney fees incurred by reason of the proceedings. The amount of damages has varied from \$150 to \$700 depending upon the circumstances and the reasons for the delay.

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## NEWS FROM THE COURTS OF LIMITED JURISDICTION

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

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Many changes have been made recently throughout the state of Washington. Some involve the merging of Limited Jurisdiction Courts and others in reference to a change in personnel in a judicial capacity.

It was recently reported that **Mountlake Terrace Municipal Court** would send most of its criminal matters to the South District Court in Snohomish County. Since that time Galen Willis, Deputy Administrator for the Washington State Courts, has reported that the **Lake Stevens Municipal Court** also will be filing its future cases in the Everett District Court, and that the **Moses Lake Municipal Court** cases have been taken over by Judge **James Wickwire** of the Grant County District Court.

Effective May 1, 1972, **Douglas County** came under the 1961 District Court Act, bringing the total of counties now within the 1961 Act system to 30. The honorable **H.B. Hanna** of Wenatchee has been named as new judge for the Douglas County District Court. The court facilities will be maintained at the Brabrook Building in East Wenatchee. WSMA sends its congratulations to both Judge Hanna and the County officials for another step forward in the improvement of the administration of justice in the Courts of Limited Jurisdiction throughout the State.

Over the past two short months several changes have been made to judicial capacities. Judge **Henry Rieflin** has been appointed to replace Judge **Emery DeBow** for the Soap Lake Municipal Court, and Judge **Vernon C. Kind** is now serving as Judge of the Mansfield Municipal Court replacing **Car E. Goll**.

Judge **Eunice M. Norstadt** has resigned her position as Justice of the Peace for the Newport Precinct, Pend Oreille County. No one at this writing has yet been named to replace her. Judge **Vernon Hewitt** has been named new Justice of the Peace for Prosser, Washington, replacing **E. Louise Keller**.

Judge **Richard R. St. Clair** has indicated he will resign as judge of the Colton Police Court at the end of May. **Louis Etcheverry**, of Moscow, Idaho has been nominated to succeed Judge St. Clair to this position. Arrangements are also being

made to enlist the services of law students from the University of Idaho to participate in the court under the tutelage of Mr. Etcheverry.

Finally, and probably least in newsworthiness, is the appointment of your humble reporter to the Governor's Advisory Council as chairman. The new alcoholism treatment law, enacted during the 1972 session of the legislature, makes this council, potentially, an important link in implementing the types of programs needed for problem drinkers.

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## SUPERIOR COURT NEWS

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

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Judge **Story Birdseye** (King) has announced that he will not seek re-election this fall. Judge Birdseye has served continuously since his appointment to the King County Superior Court in 1955. He is currently president-judge of the Washington State Superior Court Judges Association and has twice served as King County Presiding Judge. Judge Birdseye, 65, plans to travel and do some boating.

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The state's Superior Court judges, at their Spring Conference in Olympia, voted (with something short of unanimity) to invite fulltime district and municipal judges as non-voting guests at the annual State Judicial Conference in Spokane in September.

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Judge **William L. Brown, Jr.** (Pierce) is chairman of a committee developing a disciplinary procedure to handle lawyers' and citizens' complaints about judicial conduct. A proposal is expected to be submitted to the judges for consideration soon.

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State Superior Court judges who attended the one-week continuing judicial education program at Providence Heights, Issaquah, during the week of April 17 included judges **James J. Dore**, **Edward E. Henry**, **Jerome M. Johnson**, **James A. Noe**, and **Robert W. Winsor** (all of King); **Daniel T. Kershner** (Snohomish); **Howard A. Patrick** (Island-San Juan); **Gordon C. Swyter** (Adams); and **James R. Thomas** (Okanagon). A number of other judges served as faculty members as reported previously.



## Office Practice Tips

### DIVORCE CONDITIONING LETTER

Judge William H. Williams of the Superior Court in Spokane County, recently returned from a trip to Long Beach, California with a form of letter used by the firm of Colton & Austin in Long Beach. They address it to both their own client and to the other party immediately upon commencement of the divorce action. He was so impressed that he recommended it to the Spokane County Bar and I, in turn, am printing it in this column to make it available to the Lawyers of the State. It reads as follows:

#### A Message To Our Client and His or Her Spouse Regarding Your Divorce

Unhappy differences have arisen between you and your spouse, resulting in your spouse consulting us regarding the dissolution of your marriage. These differences are personal between the two of you, and no one else, and are unfortunate.

Our experience has shown that if a marriage has reached the point where the parties cannot resolve their differences and save the marriage, then the best thing the parties can do is attempt to at least work out, by mutual agreement, their property and support rights. If this can be accomplished honestly and fairly between the parties, much of the past bitterness can be dispelled and future conflict avoided.

Our experience has further shown that about 90% of the parties cannot afford a divorce. By this we do not mean attorney's fees and court costs, although this is a factor, particularly if the matter cannot be resolved between the parties and a contested action results. We do mean, from a practical point of view, that normally the parties have a fixed income, even where both parties are working, and have grown accustomed to spending their income accordingly. They have one set of obligations (rent, food, utilities, clothing, insurance, auto, transportation, etc.). Suddenly, when they part company they still have the same fixed income, but find they have two sets of obligations, (rent, food, utilities, clothing, insurance, auto, transportation, etc.) resulting in a lower standard of living for both parties. In short, there is not enough money to go around and maintain the parties with the same standard of living as before.

The point of all the above is to illustrate the pitfalls of divorce, and if divorce is the only solution, to show the parties that a tremendous readjustment by both will be necessary.

To this point nothing has been said concerning the children of your marriage. They are innocent and usually the worst victims of divorce. Generally, parents become so hateful of each other, that the children wind up being used as pawns in the warring battle between their divorced parents. They parents lose sight of the fact that in divorce, the children are usually the losers. They are deprived of the full time guidance and direction that **two** parents can give them and which is so necessary for their moral, spiritual and character growth.

We wish we could take credit for what follows below. However, credit should go where it belongs and domestic relations Judge Frank E. Finnegan of Sacramento County deserves the credit for the "bill of rights" for children of parties contemplating or who have obtained a divorce. The "bill of rights" for the children and the code of conduct for their parents are as follows:

1. Do not poison your children's minds against either their father or their mother by discussing the shortcomings of your spouse with your children.
2. Do not expose your children to any member of the opposite sex with whom you may be involved.
3. Do not use your visitations as an excuse to continue arguments with your spouse.
4. Do not visit your children when you have been drinking.
5. Do not visit your children at unreasonable hours.
6. Notify your spouse when unable to keep your visitation date.
7. Make your visitation as pleasant as possible for your children by not continually questioning them regarding the activities of your spouse and by not making extravagant promises you know you will not or cannot keep.
8. The parent with whom the children live must prepare the children both physically and mentally, for the visitation.
9. If one parent has plans for the children that conflict with the visitation — be adults and work out the problem together.
10. Always work for the spiritual well-being, health, happiness and safety of your children.

We trust both of you will carefully study the contents herein and will be able to pledge to each other your cooperation in resolving and adjusting to your new situation in light of all the foregoing.

**Harry E. Hennessey**



Lawyers not nice. Ed Guthman, nationally known newspaper reporter of the Seattle Times, spoke to the Seattle Bar and stated that lawyers were too patronizing and suspicious of reporters. He complained bitterly that we had not properly protested against the flouting of fundamental human rights which were being trampled on by the Canwell and other such committees. However, Editor Rupp concluded the article as follows: "A good time was had by all, and some of the members whose blood pressures had been getting a bit low of late pronounced themselves cured and under a full head of steam again."

*Births*

Burlington: **Fred Lubbe** opened there, deserting Seattle. Spokane: **William G. Ennis** elected to Board of Governors. Tacoma: **Len Sawyer** of Puyallup was appointed deputy prosecuting attorney of Pierce County. Bellevue: **R. Eugene Boyd** opened in the First National Bank block. San Juan County: **Robert Buck** was elected president of the Washington State Association of Prosecuting Attorneys.

*Crossed the Bar*

Everett: **William A. Johnson**, 78. Vancouver: Held memorial services for **John D. Currie**.

*Vancouver, B.C.*

We seemed to be savoring a rash of verse. Reported from The Advocate, published by our lawyer neighbors to the north, was a letter to the editor commencing "I am a farmer myself, and not a lawyer, but study law as a hobby. It is a very simple subject until made complicated by lawyers and policemen." It was followed by two verses, the first of which was:

"Simple brethern of the law  
Stand no more in learning's awe;  
Quit your quest for wisdom great,  
Leave your studies lest too late  
Your should find the farmer's creed  
Serves to teach you all you need."

And closed with:

"O farmer, do not trespass here,  
Lest our queer law you make more queer;  
To you our thanks for food and drink  
To give us strength to help us thing;  
We spend our lives in earnest toil  
As hard as you upon your soil.  
Your "hobby" is our lifetime's whole  
Endeavor, and its hard-won goal!"

A.B. Russ

**David J. Williams**

Much has been said in this column over the last couple of years about the vital importance of each lawyer's personal client relations.

These daily contacts between lawyer and client, multiplied by the past weeks, months, years and decades, have been chiefly responsible for the Bar's present public image, virtually all Bar public-relations experts seem to agree. And your public relations committee has tried to offer positive suggestions for the improvement of each lawyer's client relations (e.g., see Desk Book insert in the *Bar News*, October 1971).

The Detroit Bar Association publication, *The Detroit Lawyer*, takes another tack and puts it this way in a reprinted article:

*A Client*

A client is the most important person ever in this office — in person — by mail — or by telephone.

A client is not dependent on us — we are dependent on him.

A client is not an interruption of our work — he is the purpose of it.

We are not doing him a favor by serving him — he is doing us a favor by giving us an opportunity to do so.

A client is not an outsider in our business — he is a part of it.

A client is not a cold statistic — he is a flesh and blood human being with feeling and emotions like our own.

A client is not someone to argue with or to match wits with. Nobody ever won an argument with a client.

A client is a person who brings us his wants. It is our job to handle them profitably to him and to ourselves.

**Public Relations Committee**



## Notices

### Wanted and Unwanted

**For Sale:** CJS and Wash. Dig. Ann., both current, for cash or on reasonable terms. Paul M. Boyle, 755 Tacoma Avenue S., Tacoma 98402 (FU 3-3684).

**Wanted:** Law Library and furniture needed by two graduating "attorneys" of limited means. Will be in Seattle during June-July for Bar Refresher. C.J. Henderson, Stadium Dr. Tr. Ct., No. 3 Moscow, Idaho 83843. Leave messages at 208-882-0708 or 208-882-0169 anytime through summer.

**For Sale:** RCWA with pocket parts through 1971, \$600; Wash. Rptrs. 2d (water marked) Vols. 1-76, \$1,368; West's Fed. Prac., Vols. 1-7, \$150; Am. Jur. Legal Forms with 1970 pocket parts, \$175; and Wash. Prac., Vols. 1-8, \$185. Call Jack Welsh collect, 252-2191 (Everett).

### Egger Suspended

Robert S. Egger, Seattle attorney, was suspended from the practice of law by the State Supreme Court on April 14, 1972, pending completion of disciplinary proceedings initiated by the State Bar Association.

Egger has been convicted of conspiracy and of receiving from a client funds which, it was charged, he knew had been stolen from a bank in Spokane.

### Job Applicants Sought

The State Bar Association's Legislative Committee is seeking applicants for a salaried position as legislative representative. Interested lawyers are urged to communicate with the committee chairman, Lee J. Campbell (Security State Bank Building, Chelalis 98532, telephone 748-3386).

### Navy Reserve Law Company Seeks New Members

Seattle based Naval Reserve Law Company 13-1 is interested in new lawyer-members. Former Navy and Marine officers residing in the 13th Naval District are eligible. The group is active in providing legal assistance to the Naval establishment. In this manner the Law Company reflects the new look of the Navy's Judge Advocate Corps. The Commanding Officer is George A. Klawitter. A call to him at 622-6703 will afford you the opportunity to discuss your eligibility and the interesting benefits.

### Retroactive Rule Change in King County

RULE 38 OF THE CIVIL RULES was amended by the King County Superior Court to provide for the use of six-man juries. The amendment is effective as of January 1, 1972, and provides that a jury demand is presumed to be a demand for a six-man jury unless it specifically requests a 12-man jury.

The presiding judge has determined that the new law will be effective as to any case noted after January 3, 1972, even though a jury demand has been previously filed. This means that attorneys will have to file an amended jury demand if they wish a 12-man jury in those cases where the jury demand was filed prior to January 3, 1972, although not noted until after January 3, 1972.

DAVID C. HUNTER,  
Court Commissioner

### Will Information Sought

Iver Bristow and Ann M. Bristow, his wife, are trying to locate the mutual will drafted for them by William L. Hutchins, who had an office on 29th Avenue N.W. in Seattle and then moved to Hoquiam where he passed away. Anyone having knowledge of the location of Mr. Hutchins' files, please contact the Bristows at 2212 NW 61st, Seattle 98107 (SU 4-0710).

Anyone having any knowledge of the last will of Ruth E. Brown drafted in the late '50's or early '60's, when she probably lived at 1514 Boren or 135 E. Harvard, please contact her daughter, Mrs. Billie B. Armstrong, 15023 Jones Rd., Renton 98055.

### Photographic Directory

The Lawyers Pictorial Register of King County is now available for distribution. It contains photographs of over 1900 lawyers and judges and should prove very useful to all lawyers in the state.

GET YOURS EARLY, as the supply is limited. Copies may be picked up at the Bar office or will be mailed upon receipt of your check for \$5.00 per copy plus .25 sales tax.

Write: Seattle-King County Bar Association, 605 Arctic Bldg. Seattle, Wash. 98104.

State Bar Convention  
September 7-9, 1972  
Ridpath Hotel  
Spokane, Washington

Deadline for the next issue of the *Bar News* is June 5, 1972



## Shoreline Management, the Washington Experience

The Environmental Quality Committee of the Young Lawyers section of the ABA, the State of Washington, and the City of Seattle are sponsoring a Symposium June 24, 1972, at the Seattle Center entitled, *Shoreline Management, the Washington Experience*. The program is aimed at attorneys and government officials concerned with shoreline and conservation planning. Speakers will include Prof. Ralph Golenson, University of Washington Law School, Dr. Dennis Ducisk, M.I.T., and Charles B. Roe, Jr., Assistant Attorney General.

Participants will receive copies of the Shoreline Act, the newly issued guidelines, and summaries of the remarks of the speakers. The symposium will begin at 9:00 A.M. and conclude at 6:00 P.M.

Information, and registration forms, may be obtained from **Roger M. Leed**, 540 Central Building, Seattle, Washington 98104, Ma 2-8506.

## Western States Bar Conference

Bar leaders should plan now to attend the annual Western States Bar Conference in Vancouver, B.C., Canada, February 14-16, 1973. Although the conference is of primary interest to officers, trustees and governors of bars in the thirteen western states, any attorney is welcome to attend and participate.

- June 24 Shoreline Management, The Washington Experience . . . Seattle Center.
- July 13-15 18th annual Institute of the Rocky Mountain Mineral Law Foundation, Missoula, Mont.; for information, write the foundation, University of Colorado, Boulder, 80302.
- July 17-24 Seminar to Examine the Environmental Crisis . . . Ghost Ranch, Abiqui, New Mexico . . . Family Vacation in gorgeous mountain setting . . . seminar several hours per day, vacation the rest . . . Reg. \$100; adults — \$7.50 per day, children under 10 — \$3.75 per day. Contact: Marvin Durning, 1411 Fourth Avenue Bldg., Seattle (206-624-8901).
- July 17-28 7th Program of Instruction for Lawyers at the Harvard Law School.
- Aug. 20-26 National College of Advocacy, co-sponsored by Hastings College of Law and ATLA . . . Program on Civil Trial Advocacy . . . San Francisco.
- Sept. 7-9 WSBA Convention at the Ridpath Hotel in Spokane.
- Sept. 11-16 14th Biennial Conference of the International Bar Ass'n. in Monte Carlo. Contact: IBA, 501 Fifth Ave., N.Y., N.Y. 10017.
- Oct. 3-6 9th Annual Hawaii Tax Institute at Princess Kaiulani Hotel in Waikiki. Contact: Director, Hawaii Tax Institute, 3140 Waiialae Ave., Honolulu, Hawaii 96816.

## CPA Seminars

Continuing-education seminars for accountants, to which interested Washington lawyers are invited, include the following:

Estate and Gift Taxation, Seattle, June 8-9; Tax Problems of Individuals, Spokane, June 29; Real Estate Problems, Spokane, June 30; Fiduciary Accounting,

Seattle, July 21; Real Estate Syndications, Richland, August 17; Farm Tax Seminar, Richland, August 18; Financing the Small Business, Richland, August 18.

Information and registration forms may be obtained from Washington Society of CPAs, 347 Logan Building, Seattle 98101.

## Charter Flight — Europe 1972

At the time of writing, the Travel Committee has approximately 20 seats left for our deluxe DC8 charter flight from Vancouver, B.C., to London September 12, returning from Amsterdam October 8, 1972.

We anticipate that when the summer vacation period starts there will be the customary rush for the remaining seats, with a wait line being formed by those who are too late. Space will be allocated in accordance with the time of receipt of payment. To avoid disappointment and to preserve tranquility on the home front, your reservation with \$250 for each seat should be sent in without delay, using the application form below.

The time of year is the very best. Hotel space is generally more relaxed, rates are lower, head waiters are inclined to civility, and the weather is delightful. Part of the fun of our trips is in the planning, and now is the time to start.

See application form on page 25 of the May 1972 Bar News.

WASHINGTON STATE BAR ASSOCIATION

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