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February 1973

WASHINGTON STATE BAR NEWS

THE BAR GOES TO A CLE SEMINAR (SEATTLE, DECEMBER 1972)

AND TO LONDON (START OF STATE BAR TOUR, SEPTEMBER 1972)

TOP REPORTS INSIDE: CONTINGENT FEES — BAR ADDS SECTIONS — INITIATIVE 276

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MOVED? MOVING?

Please: Let the State Bar Office (505 Madison, Seattle 98104) know your new office address — in *advance* of your move, if at all possible. Then you will be sure to receive your *Bar News* and other Bar mail.

Letters

The Puritan Ethic?

Editor:

The Seattle Times, like many other lay critics of the law, recently applauded the Supreme Court's decision in the California live sex acts case, which was decided apparently on a Twenty-First Amendment theory, i.e., a state has a virtually unrestrained right to regulate or control the liquor industry.

We are told by the press, however, that the majority discussed at length the type of acts being performed and the allegedly related crimes that were committed in and around the areas where the shows were being performed. The thrust of the decision, of course, reaches these moral and criminal problems, while the defense of the decision rests with a narrow reading of the Twenty-First Amendment. Hooray, a blow for morality.

But think about that case for a moment and its real import.

Last spring, the same Court ruled there was insufficient state action in the granting of a liquor license to a discriminatory club in the Pennsylvania Moose Lodge case, to find a violation of the Fourteenth Amendment's Equal Protection Clause. In the sex case, liquor flows totally at the whim of the state. In the discriminatory club case, there seems to be some sort of private right to liquor, enjoyed by the citizenry, independent of the state's regulatory power of the subject matter.

Query: If a state has the unbridled power to regulate a subject (surely state action), is not the conscious failure to regulate every bit as much state action?

Constitutional lawyers, to be sure, will be able to draw some nice legal distinctions between the cases, some of which even I can perceive, but a substantive difference eludes me. For example, what is the substantive difference between the granting by a county of a lease to a discriminatory restaurant in a county building and the granting of a liquor license to a discriminatory club? If a former court can find "state action" in a court's enforcement of restrictive covenants, how they avoid it here amazes me.

The tragedy of all this, I suspect, is that what we see is the Puritan ethic reappearing in our court, causing the court to use the Constitution's various provisions for the benefit of a preconceived moral standard rather than anything remotely resembling a standard under law. In my judgment, the dichotomy of these two cases reflects the present moral attitude of the court towards minority civil rights on the one hand, and sexual freedom on the other, totally aside from any legal framework.

Whatever one's attitude toward the Warren Court, at the very least it was consistent. The Burger Court, however, would appear to be returning to an "outrageous conduct" or "judicial self-restraint" standard of bygone days. With the geometric rise of technological and sociological information of our modern society, if our Constitution cannot grow along with that advancement, it will die. And if this is typical of the intellectual sophistry of our court, we have much to fear.

Blair F. Paul

Seattle

It's Not New

Editor:

Selection of Judges by committee is not new.

Bar Dues Due

Did you get your statement that Washington State Bar Association dues are due and payable before February 1, 1973?

You should have. Mailing of the statements was completed by the Bar Office on December 26.

If you did *not* receive a statement for 1973 Bar dues, please notify the Bar Office (505 Madison, Seattle 98104) immediately.

In the late thirties and forties the appointment of Judges in King and Pierce Counties at least was controlled by a committee. Two or three firms in Tacoma and four or five firms in Seattle always seemed to dominate all of the Bar committees and hence to control the appointments.

In an effort to get away from this both King County and Pierce County developed the Bar poll as an expression of the entire Bar and not of just a few firms who happened to be active in State and Bar Association politics.

If the Bar endorsement system is not working too well in your community, all that means is that your Association is not backing its opinion properly and what we have to do is learn to put our money and effort where our mouth is.

If the people are qualified to vote for President, if the people are qualified to vote for every other type of public official, I see no reason why they are not qualified to pick Judges.

To have a Judge run against his record is idiotic. Unless there is someone to spearhead a campaign against a Judge, there is no chance that the public will

ever know enough about "Judge Sludgepump" to remove him on the basis of his record.

Martin L. Potter

Tacoma

English System Urged

Editor:

This is in regard to the President's column published in the *Bar News* (concerning judicial selection).

Frankly, I think that England's second level courts, and the fact that they have solicitors and barristers, with all the judges coming from trial lawyers, could be a means of solving ninety-nine

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Word to the Wise: Make Those Reservations Early

Can you imagine — about 100 lawyers already have made reservations for the big annual State Bar Convention September 6-8 in Vancouver, B.C.

That means there now are only about 450 rooms still left in the headquarters hotel, the magnificent new Regency Hyatt — so new it hasn't opened yet. The hotel, modeled after the breath-taking Regency Hyatt House in Atlanta, Ga., is scheduled to open early this year, probably in March or earlier.

This year's convention already is in the heavy planning stage and promises to out-do even last year's widely praised annual meeting.

For hotel reservations write directly to Reservations, Regency Hyatt, Box 8650, Station H, Vancouver 1, B.C., Canada.

One of the fundamental problems which recurrently confronts the Board of Governors is to determine what should and what should not be considered a proper subject for interest in, or some form of support by, your State Bar Association. We are trying to establish more definite benchmarks to assist in our future decision making, and you can help by giving me your thoughts.

Problems of this sort present themselves in a variety of settings. The following are examples:

(1) Appearing as *amicus curiae* in pending litigation;

(2) The drafting and support of proposed legislation;

(3) The nature and activities of our standing and special committees and, in the future, of our sections;

(4) The subject matter and nature of the views aired in the *Bar News* and our other publications.

We need guidelines. I suggest that guidelines, to be appropriate, may be quite different, depending on the setting. To be obvious, should not the limits as to *amicus curiae* briefs be much narrower and more conservative than those for articles in the *Bar News*?

Membership Is "Captive"

We have a captive membership. Does this not suggest that we should be slow publicly to support as *amicus curiae* a position adverse to that advocated by a fellow member? Should we ever assume an *amicus curiae* role if two of our committees have adopted conflicting positions?

The Association of the Bar of the City of New York, a voluntary organization, has adopted a resolution in respect of *amicus curiae* briefs which reads in part as follows:

"The Executive Committee will not ordinarily approve the filing of an *amicus curiae* brief on behalf of the Association unless:

(a) the views of the Association have been specifically requested by the court;

(b) the question to be briefed directly affects the activities of the Association;

(c) the question to be briefed is one affecting members of the Bar in the conduct of their professional activities; or

(d) the case is one of substantial public importance in which a brief on behalf of the Association is likely to add a material contribution to the presentation of counsel for the parties or for other *amici*."

Court Sets a Test

On a broader policy level, the Florida Supreme Court laid down the following test in a recent decision sustaining State Bar Board of Governors expenditure of membership dues money to support the adoption of a new state constitution [217 So. (2d) 323, (1969)]:

> "The test as to whether or not the Florida Bar should engage in a particular activity is not whether the activity is 'political' in nature or directly connected with the administration of justice. The true test is whether the matter is of great public importance and whether lawyers, because of their training and experience, are especially fitted to evaluate the same. If a matter vitally affects the public and lawyers are peculiarly fitted to evaluate it, it is not only their right but the duty of the Bar as a professional organization to make such evaluation and advise the public of its conclusions."

What do you think of this?

BAR TO HAVE SECTIONS, REVAMPED COMMITTEE STRUCTURE, OPERATIONS

The "section" has come to the Washington State Bar Association.

The association's Board of Governors has authorized establishment of eight sections, chiefly in areas of substantive law. The amended Bar By-Laws authorizing sections are effective February 28, 1973.

The initial sections (others may be established later, in the manner prescribed by the amended By-Laws) are these:

Section of Administrative Law
Section of Antitrust Law
Section of Corporation and Business Law
Section of Criminal Law
Section of Family Law
Section of Real Property, Probate and Trust Law
Section of Taxation
Young Lawyers Section (tentative)

Formation of a Young Lawyers Section was "tentative" and to depend in part upon a decision scheduled to be made at a Young Lawyers Committee meeting January 28.

Equally important with the establishment of sections are the consolidation and a redefinition of the missions and assignments of the various committees. Several for which there no longer is need are to be eliminated and several are being established to help the association meet the needs and wishes of the Bar and society in the 1970s. All committees are being aligned and grouped under general service or jurisdiction concepts.

The committees which in the future will become sections will have a period of transition beginning February 28 until the date their by-laws are approved and they become fully operative as sections, John W. Riley, co-chairman of the Committee on Organization and Government of the Bar (COG), said.

More Lawyers May Participate

Sections, which have been established for many years in other, larger state bars and in the American Bar Association, make possible the participation of far more lawyers in association activities than the committee system has permitted. For instance, the present committees on the subjects of the new sections usually number from a dozen to perhaps 30 members each; now each section may have a virtually unlimited membership, open to all lawyers with an interest in the subject and in joining the section.

Through all the association's history — 83 years since formation and 40 years since the Bar was integrated by the legislature — it has functioned through the work of committees. But under the committee system, perhaps only 500 or 600 of the state's almost 5000 lawyers could participate actively in the work of their professional association and its approximately 50 committees. Many more than that have expressed interest in participating each time the association has asked lawyers to indicate a desire for committee appointment. Now, under the section system, every lawyer in the state will be able to

join and participate in the activities of a section or sections.

Sections to Have Own Dues

Each section will have its own officers and may have its own annual or other meetings, standing and special committees and dues structure. Section dues are expected to be nominal, as they are in most states in which sections long have been established, and devoted largely to expenses of section bulletins and newsletters, mailing and general housekeeping.

Although the sections are expected to be self-supporting, the Board of Governors has accepted in principle a COG recommendation that the association provide limited financial support for organizational expenses in connection with the initial formation of sections.

Establishing of the section system, and other changes in the association's structure, were recommended by COG after two years of research and meetings. COG was established originally in October 1970 as a new special "Committee on Committees" to study the association's committee and government structure and recommend changes and improvements.

COG chairmen are Robert O. Beresford and Riley, both of Seattle. Members are Tom A. Alberg, Seattle; Harwood A. Bannister, Mount Vernon; Gregory R. Dallaire, Seattle; Harrison K. Dano, Ellensburg; Donald Ericson, Spokane; Paul Hoffman, Tacoma; John S. Moore, Yakima; Robert C. Mussehl, Seattle; Harold A. Pebbles, Olympia; Edward Shea, Pasco, and Murray Taggart, Walla Walla.

Bar to Be Circularized

The work of initiating and organizing the eight "charter" sections is expected to begin immediately. Communications to the entire Bar have been planned to determine the initial membership of the sections and to obtain expressions of interest in committee appointments.

According to the amended By-Laws, each section shall have its own by-laws which are not inconsistent with the Bar Act and the association By-Laws. Section By-Laws and any subsequent amendments must be approved by the Board of Governors.

In addition to the eight original sections, the Board may consider establishing additional sections or combining or discontinuing existing sections on its own motion, or on a petition and report endorsed by at least 50 members of the association, or on a committee report.

Originators to File Statement

Those interested in establishing a new section must file with the association executive director, at least six months in advance of Board action: A statement showing the proposed section jurisdiction does not conflict with the jurisdiction of another section or committee and is within the legal objectives of the association; the proposed by-laws; the names of proposed committees; the proposed budget for the first two years' operation; a list of members and prospective members of the association who have signed statements that they will apply for membership in the section, and a statement of the need for the section.

COG in its report to the Board of Governors said:

"In the past, the demand for involvement in committee activities has exceeded the supply of positions. This committee's recommendation that the sections be open to enrollment of any lawyer according to his interest in specific areas of substantive law and the Young Lawyers Section should relieve this pressure and, hopefully, will produce constructive contributions to the public and to the Bar Association in the form of education and research."

Association Committees

COG and the Board of Governors still are continuing studies of the many committees and their missions and jurisdictions.

The Board of Governors asked COG to complete the redraft of statements of committee jurisdictions and objectives for submission to the Board's January 19 meeting. The previous By-Law definitions have been regarded as too vague, and COG hoped to offer definitions that will amount to more specific and direct assignments to committees but still broad enough to encourage imagination and original and constructive performance by committees.

The Board already has accepted a number of COG recommendations and amended the By-Laws dealing with the committees in an effort to increase their activities, usefulness and efficiency.

Committee chairmen will continue to be designated annually by the Board, which in its selections "shall give due regard" to the recommenda-

(Continued on Page 22)

CONTINGENT FEES: CAN THEY BE JUSTIFIED?

By Hugh R. McGough

The indictment of contingent fees contains six counts, some valid, some invalid:

1. They stir up litigation.
2. Rewards to the lawyer are often grossly out of proportion to the skill, responsibility, and work involved.
3. They impair the professional detachment and objectivity of the lawyer. Instead of an officer of the court who seeks only truth and justice, he becomes a biased part owner of the lawsuit whose own economic interests create pressures to win a recovery by fair means or foul.
4. They create a conflict of interest between the lawyer and his client in the handling of a case. The optimum dollar return to the lawyer often does not coincide with the optimum benefits to his client.
5. Lawyers overreach their clients by using contingent fee contracts when there is little doubt that plaintiff will make a recovery sufficient to pay a lower fee on an hourly basis.
6. There is no adequate policing of contingent fee contracts either by Bar Associations or the courts.

My purpose is to examine critically each of these charges.

Does the contingent fee foment litigation? This is the historical basis for illegality of the contingent fee in England. In the eyes of medieval Christian society, a lawsuit was an evil in itself. Litigiousness was a vice. Better to suffer a wrong without redress than resort to litigation.

Litigation Is Increased

When tested by this historical standard, the contingent fee does stir up litigation. Advocates of the contingent fee describe it as the "poor man's key to the courthouse." To the extent that this argument is true, that an injured citizen could not obtain access to the courts except through a contingent fee contract, such agreements do increase litigation.

Modern day critics of the contingent fee sometimes speak the language of the medieval Christian: Bear your injuries as penance for your sins; you will obtain your reward in the next world — at least unless you can afford to sue now.

Can anyone quarrel with the proposition,

This article is an adaptation of a discussion at a Medicine and Law Seminar in Seattle Dec. 7-8, 1972. Mr. McGough, assistant general counsel for Unigard, is a Seattle-King County Bar trustee and has been active in State Bar activities; he now is a member of the Continuing Legal Education Committee and chairman of the King County Local Administrative Committee. He is a member of the Washington and International Associations of Insurance Counsel. He was a University of Washington Law Review editor.

however, that today's sense of social justice requires that the ordinary citizen injured through fault of another have some key to the courthouse? In the absence of contingent fees, would not some reasonable alternatives by now have been developed? As examples: a system allowing a successful plaintiff to recover attorney's fees as part of his judgment; an open or closed panel prepaid group legal insurance program; or a state or federal government-operated lawyer services bureau under which salaried lawyers could bring suits without regard to their own direct economic interests.

A Built-In Regulator

These alternative systems must be the basis of comparison in evaluating the part the contingent fee plays in adding to litigation. Would the lawyer with a guaranteed hourly fee, win or lose, be more or less inclined to bring a doubtful bodily injury suit than the lawyer who will receive nothing if the suit proves groundless? If a lawyer knows he will be paid only if he succeeds in making some recovery, is he not encouraged to bring only those suits where there is a substantial chance of success? Is there any such built-in regulator when the lawyer knows he will be paid $40 an hour for his time, win or lose?

This economic regulator does not work with complete efficiency, however. Ideally, the portion of the ultimate recovery charged as a contingent fee should be smaller in those cases where the probability of recovery is high, or where the number of dollars involved is large. The custom seems to have arisen, we suggest improperly, to charge a flat one-third contingent fee even in many low-risk, high-dollar-value cases. This permits a law firm with a large volume of personal injury practice to "average" the results, and allow the high-return cases to subsidize high-risk cases. Except in the unethical "personal injury mill" of the ambulance-chasing lawyer which plagues a few of our large cities, such subsidization is rare and the contingent fee seems to operate as an effective screen to keep hopelessly impractical lawsuits out of the courts.

Settlements Encouraged

The contingent fee also serves to keep injured persons out of the hands of lawyers. A claimant who knows he will have to pay a lawyer one third of his total recovery has a strong economic incentive to accept a reasonable offer of settlement without hiring a lawyer. Perhaps this explains why 60% of the automobile bodily injury claims made in this country in 1968 were settled directly with plaintiffs without lawyers being involved.

Further, in a small bodily injury case, where a recovery would not exceed $1500, a lawyer on a contingent fee can scarcely afford to bring suit. Perhaps this explains why over two thirds of the claims of persons injured in automobile accidents who do retain lawyers are settled without suit.

Few Claims Tried to Verdict

The optimum economic return to a lawyer on a contingent fee is ordinarily derived from a settlement before trial. A plaintiff's trial lawyer can't afford to try the ordinary automobile bodily injury claim. Only 7% of the auto bodily injury claims in which suit is filed are tried to conclusion, according to the Department of Transportation studies.

Critics of the contingent fee have been too quick to claim a cause-and-effect relationship between the contingent fee and the increasing volume of personal injury litigation. A larger cause is the modern-day widespread purchase of liability insurance. No longer is a plaintiff suing a neighbor. He is suing a money pool. The increasing liberality of juries in allowing dollar recovery for pain and suffering is a large factor. To use a bit of federalese, a significant factor is urbaninity — the impersonalty of modern life. Department of Transportation studies show, for example, that the ratio of lawsuits to auto accidents climbs dramatically as the density of population increases.

On the basis of evidence available, therefore, we must find the charge that contingent fees stir up litigation is not proved.

Are They Exorbitant?

The second count of the indictment is that contingent fees are often exorbitant. Ordinarily they are not. Occasionally, they are.

The Code of Professional Responsibility permits only a *reasonable* contingent fee, and states that an excessive charge abuses the professional relationship between lawyer and client. (EC 2-17, 2-20, 5-7) Collection of a contingent fee which the client deems excessive appears to be rare. A review of complaints filed with LAC's shows a large number arising out of charges on an hourly basis, and practically no complaints arising out of contingent fees.

A typical contingent fee agreement form now used in Seattle provides for attorneys fees of one third of the gross amount recovered, except 40% in the event of trial. What magic is there in the

one third and 40% figures which permits them to be preprinted in a contingent fee contract? Surely, in the low-risk, high-dollar-value case, one third could be excessive. Does not the spirit of the Code of Professional Responsibility require that the percentage of the fee be adjusted *in advance* according to the risk involved in the value of the case?

Many Lawyers Reduce Fee

When a case is closed, and the fee provided by the contingent fee contract proves excessive, many lawyers will adjust the fee downward. Too often, however, the lawyer seems to regard his one third of the total recovery as his absolute right, regardless of the relationship it bears to the skill required to handle the case, and the time and labor involved.

That there is some fat in the system is illustrated by a scabrous growth — the referral or brokerage fee paid to a general practitioner who has steered a client to the personal injury specialist. The Disciplinary Rules prohibit a division of attorneys fees except in proportion to services actually performed by a lawyer. (DR 2-107 (A) (2)) The unethical practice of paying a forwarding fee to attorneys who do no work on a case is limited almost exclusively to contingent fee cases. The practice, though not widespread, supports the allegation that some personal injury lawyers extract excessive fees. The problem, however, is the unethical lawyer, and not the rules of ethics.

The third count of the indictment makes a valid point. A truly professional relationship between an attorney and his client requires the *detachment* and *objectivity* of the lawyer. How can a lawyer be an impartial advisor to his client when he owns a piece of the action? How can a lawyer fulfill his role as an officer and adviser of the court when he has a substantial financial interest in the case he is presenting?

The Adversary System

Irrespective of the contingent fee, our system of trials contemplates limited warfare between two strong adversaries, with victory going to the combatant who has the greater supply of truth and justice. Under this adversary system, the lawyer is a hired champion whose primary obligation is to look out for his client. The opponent has his own champion to look out for him. In a trial, for example, a lawyer is not expected to ask questions which would produce testimony adverse to his own client. That obligation falls on the opposing lawyer. If the opponent is not alert enough to ask the correct questions, his client suffers. Victory belongs to those who are alert and who prepare their cases. (See EC 7-19)

Counterbalanced against the concept of a hired gladiator is a duty to the court of candor, honesty and fair play. (See EC 7-23, 7-27, 7-29) Striking the correct balance between these duties presents many difficult problems to the American trial lawyer. As contrasted with the English barrister, the American trial lawyer usually has a direct fee arrangement with his client and has personally supervised preparation of the trial evidence. He has been trained to think of a trial as combat where each man looks out for himself. When we superimpose upon this adversary system a contingent fee contract, we increase the pressure on a lawyer to resolve delicate questions, which require balancing of his duty to represent his client against his duty of candor to the court, in favor of the client.

> WASHINGTON — In a report that comes down strongly on the side of the maltreated patient, a federal malpractice commission named by President Nixon ended 16 months' work by concluding that the main cause of a growing wave of medical malpractice suits is injury to patients and not, as many doctors contend, fee-seeking lawyers.
>
> The commission said that the lawyers' usual contingent-fee system, by which the attorney is paid only if he wins, *discourages* injudicious claims. It recommended public legal assistance for patients with small malpractice claims.
>
> *The Seattle Times, Dec. 18, 1972*

Objectivity Diminished

The contingent fee also makes it difficult for a lawyer to be completely objective in advising a client regarding offers of settlement. Occasionally, it is the lawyer, rather than the client, who has visions of sugar plums dancing in his head, and who would rather gamble on a $100,000 verdict in a doubtful liability case rather than accept a $20,000 offer.

The fourth count of the indictment also has some validity. Contingent fee agreements can create a conflict of interest between the lawyer and his client. On a superficial examination, this

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RUNNING FOR OFFICE? NEW DISCLOSURE LAW AFFECTS YOU, CLIENTS

Attorney General Slade Gorton has spelled out income disclosure requirements of recently enacted Initiative 276 for attorneys who are either candidates or elected officials.

Gorton in a formal opinion said such attorneys must include in their financial reports:

— Names of clients from whom he received *any* compensation during the reporting period for *preparing, promoting or opposing legislation, rules, rates or standards,* plus the amount paid.

— Names of any of his *governmental, corporate or other business clients who paid $500 or more* during the reporting period for any legal services, together with a description of the nature of those services and the approximate amount of the compensation.

— If a member of a law firm, the names of any of *the firm's governmental, corporate or other business clients* from which the firm received $500 or more during the reporting period, gogether with a description of the services rendered for such compensation.

— The name of any "client" by which the attorney actually was employed on a *salaried basis* during the period.

Clients Not "Employers"

Gorton also reaffirmed a 1965 opinion which held that a lawyer's clients are not "employers," except in cases where the attorney is a full-time, salaried employee, such as a house counsel.

State Senator R. Frank Atwood of the 42nd District asked for the opinion. It was written by Philip H. Austin, deputy attorney general.

The opinion was written in response to this question:

"To what extent does Sec. 24 of Initiative No. 276, relating to reports of the financial affairs of certain elected officials and candidates, require a candidate or an elected official who is an attorney to report the names of his clients and the fees paid to him by such clients?"

Following are excerpts from the opinion (AGO 1973 No. 1).

Consideration of the question is divided into the following two parts:

(a) To what extent does § 24 of Initiative No. 276, on its face, require candidates or elected officials who are attorneys to report the names of their clients and the amounts of compensation received from such clients?

(b) To what extent, if at all, may a candidate or an elected official who is an attorney invoke the attorney-client privilege or the code of professional responsibility as a basis for declining to disclose such information in his report?

Persons to Whom Applicable

Section 24 of the initiative begins with a statement of its over-all mandate, as follows:

"(1) Every elected official (except President, Vice President and precinct committeemen) shall on or before January 31st of each year,

and every candidate (except for the offices of President, Vice President and precinct committeeman) shall, within two weeks of becoming a candidate, file with the commission a written statement sworn as to its truth and accuracy stating for himself and his immediate family for the preceding twelve months: . . ."

After this statement there appear a total of twelve separate reporting requirements (denominated subparts (a) through (l)), of which we will here need to consider only four. As explained in AGO 1972 No. 29 at pages 6-8, the "commission" referred to in this provision is the "Public Disclosure Commission" which is provided for in § 35 of the initiative and the duties and functions of which are set forth in §§ 36 through 38 thereof. The terms "candidate" and "elected official" are defined in § 2 as follows:

"(5) 'Candidate' means any individual who seeks election to public office. . . .

". . . .

"(9) 'Elected official' means any person elected at a general or special election to any public office, and any person appointed to fill a vacancy in any such office."

Reports Due Jan. 31, 1974

Finally, before proceeding further we should also reiterate here, in accordance with our answer to the second question considered in the foregoing December 22, 1972, opinion, that:

"The first reports of the financial interests of elected officials reporting as such (and not as candidates) under § 24 of Initiative No. 276 will not be due until January 31, 1974, and these reports will cover the twelve-month period beginning on January 1, 1973, and ending on December 31, 1973."

Likewise, although persons becoming candidates during 1973 will be required to file *their* reports within two weeks of acquiring this status, these initial reports will only be required to cover transactions occurring during completed calendar months between January 1, 1973, and the date upon which the particular report becomes due, together with any reportable financial interests or property ownerships held during such periods.

The "Employer" Question

We turn, now to subpart (a) of § 24, which requires the subject reports to include the candidate's or elected official's "Occupation, name of employer, and business address."

The issue raised by this subpart is whether a lawyer's client is to be regarded as an "employer" of his attorney. For the reasons set forth in AGO 65-66 No. 44, our answer to this question is, for the most part, in the negative.

In so concluding we also indicated that a different result would prevail if the attorney was actually serving as a regular salaried employee of, for example, a corporation or other business association, either in a nonlegal capacity or as "house counsel." . . . in our opinion, subpart (a) of § 24(1), *supra*, does not require an elected official who is an attorney to report the names of his clients, except where he is a regular salaried employee of the client.

The Legislation Section

. . . we look next at subpart (e) of § 24(1), which requires the subject reports of financial affairs to list —

"All persons for whom actual or proposed legislation, rules, rates, or standards has been prepared, promoted, or opposed for current or deferred compensation; the description of such actual or proposed legislation, rules, rates or standards; and the amount of current or deferred compensation paid or promised to be paid; . . ."

Here, obviously, the initiative *does* call for the reporting by a candidate or elected official who is an attorney both of the names and of certain other designated information (including compensation) respecting any of his clients for whom he has drafted, promoted or opposed legislation — including administrative rules or standards, and rates.

Likewise, under subpart (f) of § 24 a candidate or elected official who is an attorney will be required to report the names of, and compensation received from at least certain of his clients, depending upon the nature of his practice. This subpart requires the subject reports to include:

"The name and address of each governmental entity, corporation, partnership, joint venture, sole proprietorship, association, union, or other business or commercial entity from whom compensation has been received in any form of a total value of five hundred dollars or more; the value of such compensation; and the consideration given or performed in exchange for such compensation;"

Under this provision it will be seen that the initiative calls upon a candidate or elected official

(Continued on Page 30)

BAR'S NO-FAULT BILL MANDATES COVERAGE, KEEPS EYE ON COSTS

The draft of a "no-fault" insurance bill designed to bring benefits faster to more victims of auto accidents was approved by the Board of Governors of the Washington State Bar Association for submission to the current session of the state legislature.

It would make mandatory in this state first-party insurance providing to driver, passengers and pedestrians injured by a vehicle medical-expense coverage of $2,000 per person, and wage-service loss benefits with minimum coverage of $6,000 per person. Benefits would be paid by the driver's own insurance company, without regard to whose fault caused the accident.

The bill is based upon concepts recommended by the association's Special Committee on Automobile Accident Reparations appointed by the Board of Governors in June 1971. The committee concluded from its studies that the $2,000 limit would cover the medical expenses in 95 percent of all automobile accident cases. One survey showed that 79 per cent of all personal-injury claims paid had a total wage and medical loss of $500 or less.

"Thus the first-party insurance coverage provided under the bar association's proposals would pay virtually all the economic loss (medical and wage) of most accident victims promptly, without regard to fault and without, in most cases, recourse to lawyers and lawsuits," according to a commentary provided to the governors.

Under the bill, the non-negligent accident victim would retain his right to recover for his additional losses from the person whose negligence caused the accident. Liability insurance coverage of $50,000 for each accident would be mandatory.

The bill contains provisions that would prevent double recovery of first-party benefits, and it would require prompt insurance-company payment of no-fault benefits.

The commentary notes that "elimination of possible double recovery of benefits and the availability of prompt reimbursement through first party insurance coverage of wage loss and medical expenses, which can reliably be anticipated to reduce litigation, should substantially minimize any increase in total insurance premiums required."

Barriers to Recovery Would Come Down

In addition to its no-fault-insurance provisions, the proposed legislation calls for changes in the

reparations laws to eliminate barriers to recovery imposed on some auto-accident victims by the legal doctrine of contributory negligence and the host-guest law. The former bars recovery by a plaintiff if his own negligence contributed, even to a minor degree, as a cause of the accident; the latter bars recovery by an injured passenger against a host driver unless the passenger is able to prove "gross negligence," intoxication or an intentional tort.

The commentary said "the bar association will firmly oppose any legislation which will add substantially to the cost of insurance in this state. . . . There are no reliable statistics upon which predictions as to cost can be made at this juncture. However, it is believed that any increase in premium costs required by the bar association's proposals would be relatively minimal, would for the most part be ascribed to those motorists now inadequately insured, and would be compensated by greater total insurance benefits available to all the citizens of this state."

Fairness in Premiums Sought

The problem of establishing, under a no-fault insurance system, premium ratings and payments that are fair for all drivers also is noted in the commentary:

"As a corollary of many no-fault proposals, the best and worst risks, from an accident-causing point of view, become reversed.

"Under the present system, a driver's premium rate reflects the risk that he will *cause* a loss; under a no-fault system, his rate would reflect the risk that he will *sustain* a loss. Today's worst risk, from an accident-causing viewpoint, is a teen-age male driver, unmarried, unemployed; the best risk presently is the middle-aged, cautious family man with good income.

"Under no-fault plans, since it is the risk of possible medical and income loss that is insured against, the teen-age driver becomes the better risk and the middle-aged driver the worst.

"Permitting the insurance companies, by subrogation or lien rights, to place the loss upon the negligent driver would tend to establish premium rates fairly."

"High Risk" Would Pay More

Thus the "high risk" driver, as under the present system, could expect to pay a higher premium for his insurance coverage, the commentary adds.

"In summary, the cost of insurance is directly related to the benefits provided," the commentary says. "No-fault proposals are subject to basic economic considerations. To the extent that required first party insurance benefits are expanded, an increase in total insurance premiums can be expected."

* * *

No-Fault No Cure-All, Says Davis

No-fault auto insurance is not seen as a cure-all by Joe Davis, president of the State Labor Council and an influential man in the Legislature.

In an interview with Jerry Bergsman, labor editor of *The Seattle Times*, Davis said, "I hope the Legislature goes slow and does not pass something just to pass something. I'm not ready to throw out the tort system."

Several suggestions he offered for possible auto-insurance system changes appeared to be identical to changes recommended by the State Bar's Board of Governors.

Davis feels some alternatives to no-fault should be given a good look. But if the 1973 Legislature considers no-fault insurance, Davis said, it should be operated through a state fund.

Under a state-operated system, premiums would be paid with the purchase of gasoline and driver's licenses. There would be a surcharge for accidents.

A myriad of no-fault insurance proposals in the past have been viewed with caution by both industry and labor.

Davis says a series of changes in the law could be an alternative to no-fault insurance. The features of these changes would:

1. Allow the motorist least at fault to recover damages instead of disallowing claims if both motorists contributed to the accident, even if one was 90 per cent at fault.

2. Revise the law in the guest-host relationship between the driver and a passenger.

3. Allow immediate payment of a claim without incurring liability so the victim of an accident is made whole before the insurance companies settle which one of the insurers is at fault.

4. Make mandatory medical and time-loss provisions in automobile policies.

Davis said this combination virtually eliminates the small lawsuit. Some of those provisions are in use in Oregon. □

Marriage, Divorce Law-Change Proposals OK'd by Board

Proposed new marriage and divorce laws prepared for the current session of the Legislature have been indorsed by the Washington State Bar Association's Board of Governors.

The divorce law would, among other things, make the fact that a marriage is "irretrievably broken" the cause for a "dissolution" of the marriage. The marriage law would have a couple married in signing a registry book before a county auditor and would make optional any further religious or other solemnization of the marriage.

Basic concepts of the proposed laws were arrived at in more than two years' study by the State Bar's Family Law Committee, of which Ivan Merrick Jr. was chairman, and a three-day statewide Family Law Conference of persons such as educators, social workers, clergy, doctors and others concerned with aspects of family life. The conference was sponsored by the Bar Association.

Drafts of the proposed new laws were prepared and approved by the State Judicial Council. Merrick also served as chairman of the council's Task Force on marriage and divorce.

"Secularization" Not Necessary

"The proposed marriage law has been criticized by some because it appears to secularize marriage," Charles I. Stone of Seattle, State Bar president, said. "It will not secularize any marriage that the parties wish to have solemnized — the parties may, as now, follow their own wishes or the requirements of their own particular faith on the subject of religious ceremony.

"The hope is that the new law will be attractive to couples who, under present law, might not register their marriage relationship. It will, for the first time, provide for central registration of all marriages.

"The new law also will call for more helpful factual disclosures by the parties, thus tending to make more marriages successful."

Adversariness Would Diminish

Stone said the simplification of the divorce law would eliminate in most cases the present adversary nature of divorce, with its tendency to perpetuate animosities between the parties and to increase future difficulties between the parents and their children.

"The law is not intended to make divorce 'easier' in the sense that it would encourage or make possible divorces that would not occur under present law," he said, "but only to make divorce procedures simpler and to reduce the rancor, bitterness and the occasional perjury which characterize many divorce proceedings under present law."

He said the Bar's Family Law Committee had researched both the legal and the social problems involved, including examination of the laws of other states, such as California and Iowa which now have "no-fault" divorce laws, and "model" marriage and divorce laws recommended by the National Conference of Commissioners on Uniform State Laws.

Legislature Asked Help

During the two previous sessions of the legislature, bills have been introduced to modify the laws pertaining to marriage and divorce. In recognition of this apparent interest in new domestic relation legislation, the Legislature informally requested the Judicial Council to make a study and to propose legislation.

The legislation proposed was prepared cooperatively by the Family Law Committee of the State Bar and the Judicial Council.

"The proposed legislation follows carefully the recommendations developed during a two day meeting of 150 selected citizens who met as a Family Law Conference in October of 1971," the Judicial Council reported. "It has also drawn extensively upon the Uniform Act. It has been compared to new domestic relation acts recently adopted in California, Iowa, Texas, Florida, Colorado, Michigan and England. An effort has been made to conform the proposed legislation to the community property system and to other distinctive laws of the State of Washington."

The proposed legislation deals with three major areas: marriage, dissolution of marriage, and custody of children. The following comment by the Judicial Council reflects this organization:

Marriage

Existing law states that marriage is a civil

contract. The proposed Act repeats this but adds, by way of clarification, that the contract must be between a man and woman.

Eligibility requirements are substantially amended. Most of the criminal prohibitions have been removed. Applicants are not required to certify that they are not insane or afflicted with tuberculosis, chronic alcoholism, or similar conditions. The prohibition against consanguinity is relaxed so that cousins may marry.

The proposal corrects the current uncertainty concerning age requirement for marriage, expressly provides when parental and judicial approval is required and prohibits marriage by persons under the age of 15. In general the proposal facilitates the formation of traditional marriage relations and discourages deviations.

Information to be supplied by applicants for marriage concerning prior marriage and parentage is essentially the same as currently required. When the application discloses that an applicant has been previously married or is obligated to pay support, the auditor is required to provide a copy of the application to the other applicant. The Act requires the auditor to provide applicants with medical and genetic information relevant to reproduction.

Applications may be obtained by mail. They are to be available for public inspection and will expire at the end of 60 days instead of the present 30 days. The existing three day waiting period is preserved.

A new feature of the act, patterned after the civil marriage laws of Europe and Asia, provides that the marriage will be certified and registered by the auditor. This provision protects parties from irregularities in the ceremonial process, from the failure of officiants to record the marriage, and from loss of the marriage documents. It also resolves an emerging issue concerning the relation of church and state. Although the parties are legally married upon signing the registry, they may thereafter solemnize their marriage in any form they desire.

Express authorization is provided for a limited use of proxy marriage.

In addition to the record of marriage in the county auditor's marriage registry book, the certificate of marriage will be filed with the Registrar of Vital Statistics.

The Act continues our existing policy by providing that marriage cannot be contracted by "common law" in Washington. However, it creates a means of recognizing the registering marriages validly contracted, by common law or other means, outside the state.

Dissolution of Marriage

The proposed Act substitutes the term "dissolution" for "divorce" and "maintenance" for "alimony." It also provides that marital actions will be captioned "In re the marriage of . . ." rather than in the style of an adversary action of "Jane Doe vs. John Doe." The objective is to simplify all proceedings, to reduce friction, and to promote amicable resolution of problems of the family.

The major change is the elimination of grounds and defenses based upon fault. A dissolution is to be decreed because the marriage is "irretrievably broken." The court finds such fact from the testimony of both parties or the uncontradicted testimony of one party. A denial by one spouse that the marriage is irretrievably broken enables the judge to delay the determination for a specified time to permit possible reconciliation. If one spouse persists in the allegation, after the reconciliation period has expired, the judge must find that the marriage is broken.

In response to *Wymetenberg v Syman*, 328 F. Supp. 1353 (1971), a three judge determination by the U. S. District Court, E. D. Wisconsin, the proposed act does not require a period of domiciliary residence prior to filing of the petition. It does require a 90 day waiting period after filing. Jurisdiction for dissolution may be based upon either domicil or military service in the state.

The Act proposes major simplification of the proceedings related to "annulments" (for voidable) and "decrees of nullity" (for void) marriages. It also provides a means of affirmatively establishing the validity of a questioned marriage.

The power of the court to order custody, visitation, support, maintenance (alimony) and to make disposition of property and liabilities is generally the same as it is in the existing statutory and case law of the state. The principal changes are the following:

1. More detailed instruction is provided relating to orders entered pending the main action.

2. The authority of the parties to contract with reference to the settlement of their economic affairs is expanded; a means of formally notifying creditors of a separation is established; it is provided that incorporation of a property settlement contract into a court decree does not, by the doctrine of merger, terminate the agreement as a contract.

3. Statutory provision, consistent with existing

case law, is made for disposition of property or award of maintenance after certain other marital actions have been completed.

Provision is made for awarding maintenance, and for the award of fees and costs to either spouse rather than only to the wife.

The Act provides supplemental methods for enforcement of orders for child support and maintenance and for the modification or termination of such orders.

Custody of Children

The criteria used to determine issues related to child custody and visitation is said to be the best interest of the child. The difficult problem is how the determination of "best interest" is to be made. The proposed legislation provides some approaches to this function of the court.

At times the interest of the child will not be congruent with that of the parents. The court may appoint separate counsel for the child.

It will often be advisable to have an opinion from a child psychologist, social worker, or other professional person. The Act permits resort to studies, reports and consultation, but always under circumstances guaranteeing access to the information by interested parties and permitting cross-examination of persons providing information.

Judges often profit from interviewing the child. The Act permits such interviews and provides who shall be present, what record is to be made, and how the information obtained may be used.

Modification of custody awards present additional complex issues. The proposed legislation permits but discourages modification. It requires a preliminary showing by affidavit of reasons for modification before a hearing is scheduled, and provides for the assessment of fees and costs against a bad faith petitioner.

To avoid contention, the Act defines the scope of proper custodial care and provides, in certain appropriate circumstances, for supervision of the care being given.

The proposed legislation provides that custody matters be given priority on court calendars.

An innovation in the Act is the provision authorizing non-parents to instigate a child custody hearing, without resort to the juvenile court, when the child is not in the care of a parent.

Except as indicated above, the provisions in this portion of the proposed legislation establish rules which appear to be in conformity with existing practice in Washington.

Tacoma Bar Opens Its Own Offices

The Tacoma-Pierce County Bar Association held a key-turn-over ceremony to dedicate its newly opened offices at Suite D, Civic Center Building, 9th and Tacoma Avenue, across the street from the County-City Building.

David Schweinler, president of the local bar association, received the keys from the committee which worked out the plans for the establishment of the officers which among other functions will house a proposed Lawyer Referral Service.

"We see these new offices as a milestone and a long step forward in our Association's effort to serve the public," said Schweinler, who will supervise all activities. The office will be staffed by Jan Hurst, as executive secretary of the local association.

The Referral Service has been designed by a special bar association committee chairmaned by Joseph H. Gordon, Jr., of Tacoma. It has features that are similar to other such services operated in King County and by the Washington State Bar Association.

The service is designed for persons of moderate means who do not have an attorney. Such a person calling the service will be referred to a private attorney with the assurance that he will receive 30 minutes of legal advice at a charge of $10. "Any further services would then be subject to agreement between the attorney and the client," explained Schweinler.

"Other functions of the office will be to promote continuing legal education, assist the State Bar Association in promoting group legal services, and to serve as a focal point of all of the professional activities of the association as they effect the public," stated Schweinler.

The committee which established the office include three past presidents of the local association, Warren Peterson, Robert Peterson, Stanley Burkey, and Nile Aubrey, and Claude M. Pearson, chairman.

In Memoriam

Herbert S. Little, 70, retired attorney and long-time Seattle civic leader, died December 15. A University of Washington Law School graduate, he had served on the university Board of Regents; for years he was active in the area of international law and foreign affairs.

Leon Barnard, 91, a 1907 graduate of Harvard Law School, died in Seattle December 13. He practiced in New York before coming to Seattle in 1912. He was active in veterans' affairs.

News Around the State

YAKIMA REPORT
By RANDY MARQUIS

Acquisitions and Changes:

G. Thomas Dohn is now a partner in the firm of Willis, McArdle & Dohn. **Gary McGlothlen** has left the prosecutor's office and has entered private law practice at the Legal Center, 303 East "D." **Walter G. "Wally" Meyer, Jr.** has associated with the firm of Halverson, Applegate, McDonald, Bond, Grahn, Wiehl & Almon. **Robert C. "Bob" Rowley**, formerly a teacher at Terrace Heights Grammar School, a grad of the University of Oregon Law School, is an associate in the firm of Salvini & Corless. **David A. Thorner** has now associated with the firm of Smith, Scott & Hanson

Public Defenders:

Neil Buren and **Gary G. McGlothlen** have joined **Robert Bounds, Jeffrey Sullivan** and **G. William Baker** as contracted public defenders in Yakima County Superior Court. **Michael Finney** handles the Juvenile Court appointments.

SEATTLE-KING REPORT
By GERALD G. TUTTLE

Daniel B. Ritter, chairman of the Seattle-King County Bar Lawyer Referral Service, reports that more than 3,000 King County residents were assisted by the service during 1972. This represented an average of 336 cases per month, and 213 cases per month were referred to attorneys for further legal service.

Mullavey, Hageman, Prout & Kirkland announced that **Chuck Mullavey** has left the practice of law effective December 1, 1972, to become vice president and counsel of the Herfy Corporation. **Thomas D. Coughlin** has joined the firm as a partner and the firm will continue in practice under the name of Hageman, Prout, Kirkland and Coughlin.

Three Seattle lawyers have been elected officers of the Washington Association of Defense Counsel. **William L. Parker** of Bogle, Gates, Dobrin, Wakefield & Long was elected president, **Eugene H. Knapp, Jr.**, of McMullen, Brooke, Knapp & Grenier, was elected vice president, and **Martin T. Crowder** of Karr, Tuttle, Koch, Campbell, Mawer & Morrow was elected secretary-treasurer.

James T. Marston, Halleck H. Hodgins and **Owen M. Gardner, Jr.,** announced the formation of the firm of Marston, Hodgins & Gardner for the general practice of law at 601 Fourth & Pike Building.

SKAGIT REPORT
By PAUL N. LUVERA JR.

K. R. St. Clair of Mount Vernon held his annual Christmas party for the Skagit County Bar Association and anyone else who happened to wander by while it was going on. All those in attendance and who left before the raid had a great time.

Our own **Alfred McBee** has returned to the practice of law after spending considerable time on Washington State Bar Association Disciplinary Board hearings.

The new moustache which Deputy Prosecuting Attorney **Gil Mullen** is wearing these days has not changed his basic attitude about drug cases and law violators. He looks very distinguished as he continues to ask juries to find defendants guilty.

William Stiles of Sedro-Woolley for the past several months has been working on a business transaction in Hawaii. He has spent more time in Hawaii than he has spent here in Skagit County. Many of the envious lawyers have tried to find out what the secret is to getting business like that but without success.

The Skagit County bar Association was greatly saddened by the loss of the wife of **John Cheney.** Margaret Cheney had been a secretary in John's law office in Anacortes for many years and her loss will be felt by all.

GRAYS HARBOR REPORT
By JOHN L. FARRA

Dennis R. Colwell and Marilee Winiecki were recently married and are presently living on York Drive in Central Park. Dennis is a deputy prosecutor of Grays Harbor County and works out of the Montesano Prosecutor's Office. Best of luck to both.

The Christmas party of the Bar Association of Grays Harbor County was held at Breck's in Cosmopolis. This year's host was **Jack Burtch**, president of the Grays Harbor Bar. The festivities included the usual amounts of crab and hors d' oeuvres and samplings of exotic beverages. The party concluded at approximately 10:00 o'clock and the party-goers left to continue their entertainment at local restaurants. As usual a good time was had by all.

According to the recently enacted Grays Harbor County budget, it would seem that the Prosecutor's Office will be hiring

a new deputy prosecutor and investigator. The present staff includes the following: **L. Edward Brown**, prosecutor, **Curtis Janhunen**, chief criminal deputy, **David Foscue**, deputy prosecutor, and **Dennis Colwell**, deputy prosecutor.

Robert Landi having successfully passed the recent bar exam is presently associated with **J. K. Hallam** of Aberdeen.

PIERCE REPORT
By KENYON E. LUCE

H. Frank Stubbs, Frank August Peters, F. Curtis Hilton, George W. Dixon, Gary G. Weber and **Franklin K. Fogg** have moved their offices to 309 State Savings Building, 955 Tacoma Avenue South, Tacoma 98402.

The Pierce County Legal Assistance Foundation had its election of officers for 1973. The president will be **Murray J. Anderson**; vice president, **Perrin Walker**; sec.-treas., **Franklin Burgess.**

The Pierce County Bar Association opened its County Bar Office and engaged the services of Jan Hurst as the executive secretary. The address is Suite D, 755 Tacoma Ave. So., Tacoma, telephone 206-382-3432. Among the services available will be routine secretarial work of an emergency nature, sponsorship of the Lawyer Referral system for Bar members, and the maintaining of a list of attorneys interested in seeking employment in Pierce County.

On January 5, 1973, at The Top of the Ocean, the Bench and Bar sponsored a banquet in honor of the Hon. Bartlett Rummel, leaving the Pierce County Superior Court Bench after having served since early 1949. He attended the University of Washington Law School and took advanced studies at Columbia Law School. He was president of the National Rifle Association from 1963 through 1965, and was the author of many articles of interest to sportsmen in **The American Rifleman.**

The new Bar office needs a used IBM Selectric typewriter and a used mimeograph machine. Please contact Jan Hurst at the office.

ISLAND REPORT
By TED D. ZYLSTRA

Island lawyers and their wives greatly enjoyed the Christmas party with the Skagit Bar.

Sun Seekers: **John Wold** to Mexico and **Harold Baily** to Southern California.

The Bar will meet twice monthly in 1973 for the sole purpose of discussing recent cases, legislation and trends (no host).

SOUTH KING REPORT
By CHARLES R. BRANSON

Superior Court Judge Solie M. Ringold was our guest at our January meeting and spoke to us about the possibility of the permanent assignment of a superior court judge to the South King County area.

President **Morton T. Hardwick** has been working with Judge Ringold on this concept. The South King County Bar Association members have vigorously supported the establishment of a circuit court and are giving support to the appointment of a permanent judge as an extension of that concept.

James L. Varnell has become associated with Snure & Gorham in Des Moines. He is a former clerk of court of appeals' Judge Jerome Farris.

Richard Barney, Jr., and **Robert L. McAdams** have opened new offices in Normandy Park and are practicing under the partnership name of Barney & McAdams.

GOVERNMENTAL LAWYERS ASSOC.
By DAVID M. KENWORTHY

In the past several meetings the Governmental Lawyers Association has enjoyed hearing the views of Jerry Buzzard, president of the Thurston-Mason Bar, speaking on areas of future cooperation and of possible divergencies with the association; G. Edward Friar, executive director of the WSBA, gave members a cogent and interesting briefing on several Bar policies and procedures; then-Justice-designate Robert F. Brachtenbach met the members and sketched his thoughts and views respecting the system of justice and its future developments; and, at the most recent meeting, **Bill Bennett**, deputy state insurance commissioner, detailed his views and recommendations regarding "no fault" insurance proposals.

The January meeting was to be held with the Thurston-Mason Bar in conjunction with the meeting of the Board of Governors in Olympia.

Planned activities include a public informational service on pending legislation, a social evening and continued support of the law in the school and legal aid programs.

Recent additions to the local ranks of government attorneys

include: **Pat Biggs**, and **Dennis Reynolds**, AAGs-Torts; **John Browne**, AAG-S&HS; **Bill Coats**, AAG-Education; **Jim Cufley**, AAG-Game; **Marianne Holifield** and **Winslow Whitman**, AAGs-Human Rights Comm.; **Bob McIntosh** and **Paul Roesch**, AAGs-Highways; **Rudy Tollefson**, AAG-EmpSec; and **Jim Vache**, AAG-GenAdmin.

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

The East King County Bar Association has elected **James Dailey** of Redmond vice president. He replaces **Bill Kinzel** of Bellevue, who automatically succeeds **Joe Miller**, the retiring president.

Fred Philips and **Les Wahlstrom** have formed a partnership and opened law offices in the Commons in Bellevue.

COWLITZ REPORT
By **O. H. HUSEMOEN**

Wayne Roethler and **Don McCulloch** have remodeled a building and are moving into it. Their new office address is 803 Vandercook Way, Longview.

Carol Bridgewater has joined the staff of the Cowlitz County Prosecutor's Office. **John Barlow** is now a partner in his firm, causing the firm to change its name to Walstead, Mertsching, Husemoen, Donaldson and Barlow.

The final plans for the Hall of Justice, which include the new jail facilities, new superior and justice courts, prosecutor's office, and facilities for the three local law enforcement agencies, are just about completed, and hopefully construction will start in the spring.

Prepaid Legal Services Plan Draws Inquiries

Word of the Washington State Bar's progress toward establishing a group, prepaid legal services program is getting around.

The program, which calls for incorporation of Prepaid Legal Services, Inc., a separate, nonprofit corporation, is virtually ready to go. Almost all the organizational details and the necessary documentation have been taken care of, and clarification of legal details through the Legislature has been planned.

Lionel E. Wolff of Spokane, counsel to the State Bar's Special Committee on Group Legal Services, is becoming much in demand as a speaker and resource person for other Bars. In addition, the State Bar Office receives almost daily inquiries from Bars throughout the country and from many prospective subscribing groups in this state.

Wolff was scheduled to appear February 2 in Vancouver before the British Columbia Branch of the Canadian Bar Association, along with David Robinson, ex-president of the California Bar, and Jules Bernstein, general counsel of the Laborers International Union. The three also appeared on the State Bar Convention program last September in Spokane.

The following day Wolff will appear before the Alberta Bar in a meeting in Edmonton to explain the Washington Bar's program.

In November he attended an anti-trust seminar in Atlanta sponsored by the American Bar Association which discussed fee subjects, and planned to exchange prepaid-care ideas with lawyers attending a January 27 meeting of the Vision Institute of America in Las Vegas.

Letters

(Continued from Page 3)

percent of our problems.

What is wrong with the office lawyer limiting his practice to any specialty he desires? That is not the important issue. The big distinction should be between those who go to court and those who do not, or the so-called barrister-solicitor, English way of doing it.

As regards the judge problem, I think that judges should be appointed for life, until retirement age of not past 65 years of age. All of the judges should come from the trial lawyer-barrister section of the Bar. England has found this to be the best solution.

I, frankly, have been against the District Court Judge solution and the Appellate solution. I see nothing wrong with the State Bar Association or the Trial Bar studying the English program, which is bold and imaginative.

In my opinion, any attorney who wants to limit himself to a specialty can do so now, and I cannot see how a general practitioner can be limited from doing, for example, probate, real estate or other specialities.

In many small communities in the state, a lawyer has to be a general practitioner and do it all, just as an M.D. has to do it all; otherwise, the people do not get any service at all.

John R. Lewis

Moses Lake

Comment in Brief

Editor:

Re: January '73 — Mosler Letter (*Bar News*, Page 2).

Boy, am I glad I practice in Spokane.

JOHN HUNEKE

Spokane

A Poet's Corner?

Editor:

Having been a reader of the *Bar News* for several years now, I feel compelled to point out that most of the articles are straight news reporting, technical reports, or grousing letters to the editor. I believe that this sadly reflects on the State's lawyers' contributions to their own publication, as I feel that lawyers are among the country's best fiction writers (consider the typical divorce affidavit), and somewhere among us must be a man with poetry in his soul.

In order to do something to partially fill the literary void in this publication, I wish to suggest as a regular part of this publication a poet's corner for attorneys. I wish to submit in this vein a famous, forensic poem, which is not only entertaining but could well win a difficult case for a defense lawyer, were he to inject them at the proper place in his trial.

INTOXICATION

"Drunk is he, who prostrate lies
And cannot either drink or rise,
Not drunk is he, who from the floor,
Can raise himself and drink once more!"

In addition, I hereby submit original creations of my own authorship, in the hopes of encouraging other attorneys to vent their creative spirits and submit poetry of their own.

ODE TO THE FRUITLESSNESS OF SCIENCE

"What are ions and eons . . .
To peons."

A DRUG DEALER'S PROFIT

"His gross is grass,
But his net is not."

THE BALLAD OF SAM McGAY

"The Northern Lights have seen
Queer sights,
But the queerest they ever did see,
Was the night on the marge of Lake LaBarge,
When the vice squad raided me."

DONALD A. SENTER
Everett

The 1973 Law Day Theme: Help Your Courts — Assure Justice

In an effort to increase public confidence in the courts and to foster greater public understanding of our judicial system, the main thrust of all 1973 Law Day U.S.A. programs will be centered on a single, all-embracing, court theme:

HELP YOUR COURTS — ASSURE JUSTICE

Local bars are urged to build their main events around the 1973 Law Day theme and to broaden their Law Day outreach to include programs in each of the state and federal trial courts and traffic courts.

Court programs should seek to explain the objectives of Law Day, to pinpoint the problems facing the judiciary today, the day-to-day workings of the courts, the role of the judge, court achievements, and ways individual citizens can help resolve the problems confronting our judicial system and strengthen the courts.

On the state level, The Conference of Chief Justices has been invited to cooperate and assist in the 1973 Law Day observance by having trial judges take an active part in the local programs by presenting appropriate courtroom ceremonies, out-of-court events, and talks keyed to the Law Day theme.

On the federal level, the Judicial Conference of the United States, headed by the Chief Justice of the United States, Warren E. Burger; Roland F. Kirks, Director, Administrative Office of the United States Courts, and Judge Alfred P. Murrah, Director of the Federal Judicial Center, have been invited to assist in arranging for programs to be held in the federal courts.

State supreme court chief justices are appointing state chairmen to help arrange court programs.

The Immigration and Naturalization Service, Department of Justice, advises "we shall be pleased to continue our efforts during 1973 to arrange for as many naturalization ceremonies throughout the United States as the naturalization courts will permit" in connection with the 16th annual observance of Law Day U.S.A.

Traffic courts contact more Americans than any other segment of the judiciary, therefore, it is essential that these courts take part in Law Day. The January issue of "Traffic Court Justice," sent to some 30,000 persons, including 16,000 judges, features an article calling for support of the 1973 observance by local traffic court judges throughout the country.

Short on Gambling Group

Kenneth P. Short of Seattle, a member of the State Bar Board of Governors, has been appointed by Gov. Dan Evans to the 21-member state advisory committee to recommend legislation regarding gambling, made possible by November voter approval of a change in the constitution permitting the Legislature to authorize lotteries.

The Board's Work

Extracts from the minutes of the Board of Governors, December 8 and 9, 1972. The president and all board members were in attendance.

Advertising of Services by Corporate Trustees

It was moved, seconded and carried that the Bar Association continue to oppose legislation which would allow corporate trustees to advertise certain of their services, which advertising is now prohibited by law. The vote on the motion was 6 to 3.

Compulsory Malpractice Insurance

It was moved, seconded and carried that the Board of Governors renews its support in principle of the concept that every practicing lawyer should carry malpractice insurance for the protection of the public and that the Insurance Committee be instructed to suggest alternative ways to achieve this desirable end.

Lawyer Delay

It was moved, seconded and carried that the matter of elimination of unusual delay by a lawyer in the handling of a matter when the only complaint is delay, and when the lawyer has violated no other specific provision of the Code of Professional Responsibility, be referred to the Disciplinary Board for study and recommendation, looking toward more effective preventive procedures.

Legal-Medical Special Committee

It was moved, seconded and carried that the President be authorized to appoint a special committee of three members of the Bar Association to meet with a similar special committee of the Medical Association to discuss legal-medical problems, areas of common interest and increased cooperation for the benefit of both professions and the general public. It was made a part of the motion that this committee would submit its report and recommendations to the Board of Governors and that no report would be released by the committee without the approval of the Board of Governors.

Clients Security Fund Publicity

It was moved, seconded and carried that the recommendations of both the Clients Security Fund Committee and the Public Relations Committee concerning publicity relating to the Clients Security Fund be adopted and approved with the further provision that the Board reserves the right to go further than either committee recommended in the release of such publicity depending on the individual circumstances when warranted.

No-Fault Bill

It was moved, seconded and carried that the Board endorse the no-fault insurance bill as prepared and submitted by Richard Broz, the chairman of the Auto Reparations Committee. The vote on this motion was 8 to 1 with Mr. Pritchard voting "no."

Uniform Probate Code

It was moved, seconded and carried that the Real Property, Probate & Trust Committee be requested to submit to the Board prior to its January meeting recommendations concerning which sections of the proposed Uniform Probate Code might be beneficial if adopted as Washington law.

Honorary to Active Membership

It was moved, seconded and carried that Section 3 (c) of Article II of the By-Laws be amended so that it shall now read in its entirety as follows:

"TRANSFER FROM HONORARY MEMBERSHIP. Any judge of a court of record in the State of Washington may transfer from honorary membership to active membership upon his resignation, retirement, or completion of his term of office, by paying the current year's membership fee.

Any other honorary member of the Washington State Bar Association who is otherwise qualified to practice law in the State of Washington may be reinstated as an active member on filing his application in such form as may be prescribed by the Board of Governors and paying the current year's membership fee."

Referendums — Amendment to the By-Laws

It was moved, seconded and carried that Sections 8 and 9 of Article IX of the By-Laws of the Bar Association be amended so that the said sections shall read as follows:

"Section 8. REFERENDUMS. Any proposal upon which action has been taken at an annual meeting of the Association may be referred to a vote of the entire active membership of the Washington State Bar Association by order of the Board of Governors. The Board of Governors shall order a proposal referred to a vote of such membership in each of the following circumstances:

(a) If the proposal were acted upon at an Annual meeting of the Association and if the action taken were requested to be referred by a two-thirds vote of the active members who voted at the meeting; or

(b) If there has been filed with the Association a petition signed by two hundred fifty active members of the Association requesting such referral in respect of a proposal,

(i) Acted upon at an Annual Meeting of the Association, or

(ii) to amend a By-law of the Association, or

(iii) to adopt any new rule on any of the subjects contained in Section 7 of the Washington State Bar Act, or

(iv) to modify or reverse a decision of the Board of Governors,

such petition to be filed within sixty (60) days after the taking of the action under (i) above or the publication of the decision under (iv). Participation in the referendum by not less than fifty percent of the active membership of the Association shall be required in order for any referendum under this Section 8 to carry."

"Section 9. BALLOT. Whenever the Board of Governors is required to take a referendum, or whenever the Board orders any question referred to a vote of the entire membership of the Washington State Bar Association, the Board shall prepare a ballot containing the matters on which such vote is to be taken, and such ballot shall be submitted by the Board to each active member, in such form that each such member can vote thereon and return the same to the Board."

The vote on the motion was 7 to 2.

Access to Rating Poll

It was moved, seconded and carried that the Committee on Judicial Selection, Compensation and Tenure have access to the Bar Association's advisory poll on Superior Court Judges when one of the judges included in the poll is an applicant for consideration for recommendation to the Court of Appeals or the Supreme Court with the restriction that the committee is to have access to the poll only when meeting at the Bar Office and that the poll material is to be returned to the executive director at the conclusion of the committee meeting.

The Judicial Article

It was moved, seconded and carried that the "Walterskirchen Proposal" relating to retired Judges (being authorized to sit as active judges temporarily) be approved in principle, but not approved to be included as a part of the formal revision of the Judicial Article supported by the Bar Association. The vote on this motion was 8 to 1 with Mr. Pritchard voting "no."

Group Legal Services

(1) It was moved, seconded and carried that the Board of Governors approved in principle the concept that membership on the governing body of the Bar Association's Group Legal Services Corporation should have 50% of its membership as lawyers and 50% of its membership being non-lawyers.

(2) It was moved, seconded and carried that a bill be prepared to amend the Bar Act so as to make possible the use of the Bar Association funds to aid in the initial financing of the Group Legal Services Program. It was further made a part of this motion and agreed that the bill would not be introduced until after the January meeting of the Board, but that the bill would be presented to the January meeting and that a decision would be made at that time concerning the wisdom or necessity for attempting to secure its passage.

(3) It was moved, seconded and carried that the Washington State Bar Association join in the protests of the Shreveport Bar Association, the California Bar Association and the American Bar Association relating to the Internal Revenue Service ruling that the Shreveport Group Legal Services Program is not entitled to the tax-related benefits of a non-profit corporation.

Proposed Marriage and Divorce Legislation

(1) It was moved, seconded and carried that the Bar Association endorse and support the proposed marriage legislation and the proposed divorce legislation as prepared and presented by the Family Law Committee, the Judicial Council and others.

(2) It was moved, seconded and carried that the Chairman of the Family Law Committee be authorized to designate a task force of not to exceed five members to assist the Family Law Committee in its support of the proposed marriage and divorce legislation and it was further agreed and included in the motion that the expenses of the task force for up to six (6) meetings would be paid for by the Bar Association and budgeted to the Family Law Committee. The vote on this motion was 8 to 1.

Admissions

It was moved, seconded and carried that, upon the recommendation of the Board of Law Examiners, the Multistate Examination be used as a one day part of the Bar Examination to be given in July of 1973 and that the dates for the July 1973 examination be Wednesday, Thursday and Friday,

July 25th, 26th and 27th.

Joint Meeting

On Saturday, December 9, 1972, a joint meeting was held with the officers and members of the Board of Trustees of the Seattle-King County Bar Association during which a great many matters of mutual interest and concern were discussed. Among the topics covered were:

(1) An additional member of the Board of Governors from King County; (2) A president-elect for the State Bar Association; (3) Closer cooperation between the committees of the State Bar Association and the Seattle-King County Bar Association; (4) Closer cooperation between the two bar associations relating to legislative matters; (5) Guidelines for candidates and managers of political campaigns in judicial races on law-related political races; (6) The Group Legal Services Program; (7) State-wide Legal Services Program; (8) Specialization, and (9) Closer communication and coordination so as to avoid duplication of efforts whenever possible.

Date and Place of Next Meeting

It was moved, seconded and carried that the next meeting of the Board of Governors be held at the Evergreen Inn in Olympia on the 18th, 19th and 20th of January, the formal regular agenda session to begin at 9:00 a.m. Friday, January 19.

Bar to Have Sections

(Continued from Page 5)

tions of the committees themselves. Committee members will be appointed on a one-year basis. Any member failing to attend two consecutive meetings of the committee shall be removed from the committee unless he has an excuse approved by the committee chairman.

"As a general principle," according to the amended By-Laws, "a member's continuing service shall be limited to three consecutive one-year terms on any one committee."

The first meeting of each committee shall be scheduled by the executive director within 60 days after the annual meeting unless the executive director and the committee chairman agree such meeting is unnecessary.

In the past committee expenses were budgeted by the association in a lump total sum and most individual committees did not have individual budgets. Now, under a By-Law amendment, each committee must submit a budget request to the Board of Governors. The committee then must keep its costs within the budget figure and the appropriation approved by the Board. Any special interim request also must be approved by the Board.

Committees are required to distribute minutes of each meeting "as soon as is reasonably possible." And the minutes must list those members present and absent.

A committee member or chairman may be removed by the Board for cause, "provided that a member or chairman so removed and feeling aggrieved shall be entitled to a hearing before the Board of Governors."

"As a general principle," the By-Laws add, "a member of a committee or the chairman of a committee serves at the pleasure of the Board of Governors and neither malfeasance nor misfeasance is required for removal."

COG itself has been established in the By-Laws as a permanent standing committee. It has informed the Board it has scheduled these subjects for future committee consideration:

Analysis of the dues structure; possible ways to utilize the services of past presidents of the association; means of coordinating state and local bar activities, and continued consideration of the structure of the Board.

In addition, COG plans to conduct continuing studies of the Bar's committee structure and operation, including these subjects: Standing committees' jurisdictions; means of encouraging more effective committee activity; committee work products; scheduling of meetings; size of committees and criteria for memberships on committees; criteria for qualifications of chairmen; the system of appointments to committees, and an analysis of financial structure.

Committees Put Into Categories

So far the By-Laws have been amended by the Board, substantially following COG's recommendations, to establish the following committees and categories:

AMERICANISM
- American Citizenship
- Rule of Law

AVAILABILITY OF LEGAL SERVICES
- Modernization of the Legal Profession
- Group Legal Services
- Prepaid Legal Services
- Lawyer Referral
- Legal Aid
- Legal Services to the Armed Forces

CIVIL RIGHTS

CLIENTS' SECURITY FUND

CONTEMPORARY PROBLEMS AND PUBLIC INTEREST LAW
- Consumer Protection
- Environmental Law
- ~~Workmen's~~ Compensation
- Drug Abuse

QUALITY OF LEGAL SERVICES
- Continuing Legal Education
- Internship
- Legal Education Liaison
- Code of Professional Responsibility — Ethics
- Specialization

CORRECTIONS AND PRISON REFORMS

COURT RULES AND PROCEDURES
- Federal Rules
- Rules of Evidence
- State Rules
- Pattern Jury Instructions

COURTS AND JUDICIAL SELECTION
- Judicial Selection, Compensation and Tenure
- Judicial Selection — Court of Appeals
- Justice Court

~~CREDITORS' AND DEBTORS' RIGHTS~~

DISCIPLINARY BOARD
- Local Administrative Committees
- Trial Committees
- Disciplinary Board

INTERNATIONAL LAW
- World Peace Through Law
- International Law

LEGISLATION
- Federal Legislation
- Legislative Committee

INTERPROFESSIONAL COMMITTEE
- Medical Legal Liaison
- Attorney-Accountant Conference

LAW EXAMINERS

ECONOMICS AND MANAGEMENT OF LEGAL PRACTICE
- Insurance
- Law Office Management and Economics of the Law
- Legal Fees

COMMITTEE ON ORGANIZATION AND GOVERNMENT OF THE BAR

PUBLIC RELATIONS
- Public Relations Committee
- Bar-Bench-Press Committee

EDITORIAL ADVISORY BOARD

RESOLUTIONS COMMITTEE

STATUTE LAW COMMITTEE

TRAVEL COMMITTEE

UNAUTHORIZED PRACTICE OF LAW COMMITTEE

Bench-Bar-Press Guidelines Adopted for Reporting on Grand Jury Actions

Guidelines for the reporting of Grand Jury proceedings have been adopted by the Bench-Bar-Press Committee of Washington.

They will be added to earlier guidelines adopted for the reporting of Criminal, Juvenile Court and Civil Proceedings and Public Records.

The guidelines are principles and propositions voluntarily subscribed to by member-groups of the Bench-Bar-Press Committee, which include the State Supreme Court, Superior Court Judges Association, Magistrates Association, State Bar Association, associations of prosecuting attorneys and law-enforcement officers, Allied Daily Newspapers, Newspaper Publishers Association, Association of Broadcasters, Associated Press, United Press International and University of Washington School of Communications.

Chairman of the committee is, ex officio, the chief justice of the State Supreme Court.

The guidelines are aimed, in the public interest, at achieving a practical working accommodation between the sometimes seemingly conflicting rights to a fair trial and to freedom of the press. They spell out generally what information may be and what usually ought not to be released or published.

State Bar members of the State B-B-P Committee are Robert A. Felthous, chairman, and E. Glenn Harmon, Gary D. Gayton, George W. McCush, Arthur R. Paulsen, Charles H. Todd, Francis Joseph Walker and Roy C. Mitchell.

The new Grand Jury Guidelines follow:

1. Grand juries are important investigative and accusative bodies in the federal and state judicial systems. As such, their public activities are legitimate subjects for fair and impartial reporting by all news media.

2. The public interest which may be generated by grand jury investigations into matters of public interest and concern, however, may often require news media to exert extra care and judicious self-restraint in reporting on the activities of grand juries on matters still under investigation and not yet made public.

3. The general Guidelines for the Reporting of Criminal Proceedings as adopted by the Bench-Bar-Press Committee of Washington apply fully to the coverage of news with respect to grand juries.

4. In addition, these factors are relevant and

should be observed with respect to grand juries.

(a) Those acting as legal advisors to grand juries should avoid giving statements or information which, if published, may create pressures on the grand jurors or on witnesses called or to be called before the grand jury.

(b) News media are entitled to publish news of the public activities of a grand jury.

(c) News media are entitled to publish such reports of grand jury investigations and indictments as may be released by the grand jury or the court.

(d) Witnesses called to testify before a state grand jury are entitled to know, and should know before being excused after testifying, that they have a legal right to talk to or to refuse to talk to representatives of the news media who may wish to question them, but that it is a violation of the state Criminal Investigatory Act of 1971 (RCW 10.27.090) for them to disclose the details of their actual testimony on examination before the grand jury, or any other evidence received by the grand jury, except when such disclosure is permitted by the court in the furtherance of justice.

(e) Though news media have a legal right to seek and publish information as to matters under consideration or examination by a grand jury, news media should be aware that premature publication of news or speculative reports in this field may create a serious risk of hindering grand jury investigations, and may cause miscarriages of justice, and that publication of details of testimony revealed by a witness who has appeared before the grand jury may result in the witness and possibly news media representatives causing the publication being charged with a violation of the Criminal Investigatory Act of 1971.

(f) The news media should be aware that publication of names of those called as witnesses by a grand jury, where such witnesses do not want to be identified nor to talk to news media representatives, may hamper the grand jury's investigation, or in some cases may cause damage or actual physical harm to a witness by reason of such publication.

(g) The news media should voluntarily refrain from publishing the names of witnesses before a grand jury who are private individuals not in the public eye, not willing to disclose information concerning their grand jury appearance, if the news media have no information concerning such a witness or the fact he is a witness, and know nothing other than the fact he was called as a witness before the grand jury.

(h) The voluntary restraint mentioned in subsection (g) above is not applicable where the witness before the grand jury is a public official or public personage, whether such witness is willing to talk voluntarily to news media representatives, or will not talk voluntarily about his grand jury appearance.

5. Representatives of the judicial system, the law enforcement system and the news media should consider themselves jointly responsible for seeing to it that grand jury deliberations are not hampered or rendered invalid, either by inadvertence or by design of any person.

6. News media should reject the publication of any news story, of any kind and from any source, which obviously will seriously hamper the functioning of any duly constituted and regularly functioning grand jury which is still in session.

7. Editorial comment concerning grand jury activities when the grand jurors appear to be rejecting the advice or leadership of their legal advisors or setting out on investigations which are of doubtful public interest, or clearly opposed to public interest, is proper, but only after substantial investigation by the news media to make certain that the grand jurors have in fact gone afield from the investigations they were called to make, to the detriment of the public interest.

8. Despite the cautions which the news media should observe in covering grand jury proceedings, the courts and other participants in the judicial-law enforcement system should recognize that news media have the right (1) to publish details of grand jury actions, and (2) to criticize the grand jury and its advisors when such criticism is deemed justified by the news media, subject only to the restraints imposed by journalistic good taste and the law of defamation.

9. Investigations by special inquiry judges under the Criminal Investigatory Act of 1971 are subject to these Grand Jury Bench-Bar-Press Guidelines.

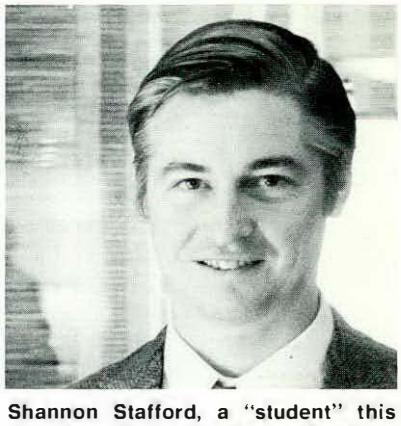
McLAUCHLAN GOES TO A CLE SEMINAR

As usual at State Bar CLE seminars, the luncheon break at the Seattle "Small Business" Seminar Dec. 9 gave the big crowd a great chance to socialize.

Four of the panelists: C. Kent Carlson, Paul E.S. Schell, P. Cameron DeVore (chairman) and Allan H. Toole.

And the fifth speaker: Barry H. Biggs.

This overflow part of the capacity crowd was seated in the "wings"; about 750 registered for the seminars in Seattle, Spokane and Olympia.



Shannon Stafford, a "student" this day but chairman of the Products Liability Seminar scheduled in March.

ABA Reports a Variety of Goings-On

The American Bar Association has filed a brief *amicus curiae* supporting the right of a prisoner to bring legal action in federal courts under the Civil Rights Act of 1871 without first exhausting his judicial remedies at the state level.

The brief, requested by the ABA Commission on Correctional Facilities and Services, was filed in the case of *Rodriguez v. McGinnis*, now before the U.S. Supreme Court on a writ of certiorari.

Eugene Rodriguez was serving a 1½ to 4-year sentence in Ossining Correctional Facility, New York, for perjury and attempted larceny when he was accused of possessing several "contraband" letters from his wife. He was summarily divested of accumulated "good time" and sent to solitary confinement.

A lower federal court granted relief, restoring the lost good time because of failure to follow due process.

A panel of the U.S. Court of Appeals for the Second Circuit then reversed the decision, holding that state prisoners must exhaust their state judicial remedies before filing under the Civil Rights Act. Later the entire Second Circuit, sitting *en banc*, reversed the panel, holding that exhaustion was not required by federal-state comity nor by prior case law.

Mr. Rodriguez has since been released, pending appeal.

Two earlier Supreme Court decisions — in *Wilwording v. Swenson* (1971) and *Houghton v. Schaefer* (1968) — raised basically the same issue, and both held in favor of non-exhaustion.

According to the ABA Commission, the fact that the Supreme Court has granted certiorari in the Rodriguez case might mean the Court will reconsider the earlier rulings, or interpret them narrowly as standing for the proposition that exhaustion is not required only if there are no available or meaningful state remedies.

The brief points out that non-prisoners do not have to exhaust their state judicial remedies before suing under the Civil Rights Act. Therefore, if prisoners can be "interpreted out" of the law today, other groups, such as those asserting racial discrimination, could be "interpreted out" tomorrow, emasculating the protection afforded by the Act.

The Commission considers *Rodriguez* a critical case in prison litigation.

Reform Handbook Ready

Publication and distribution of a new 600-page handbook of correctional reform legislation has been announced by the American Bar Association's Commission on Correctional Facilities and Services.

About 4,000 copies of the volume, which contains a foreword by Chief Justice Warren E. Burger, are being mailed to administrators of correctional institutions, state legislators and leaders of the legal profession.

Commission Chairman Richard J. Hughes said he believed the new handbook will be an important reference tool for state officials during meetings of their legislatures. "We believe 1973 will be a banner year for legislation to strengthen correctional and prison systems."

The former New Jersey governor added: "Public concern has grown so great that legislatures across the country will have to come to grips with the problems of jails, prisons, probation, parole and other parts of the correctional system. We hope our publication will help them improve the outmoded codes that exist in so many states."

Chief Justice Burger also highlighted the importance of legislative correctional reform in his foreword to the handbook.

"Statutory improvement can serve as a major, indeed preeminent mode for realization of tolerable, if not ideal, correctional systems," he wrote. "It should be viewed as a vehicle not only for accountability, individual right and equal justice in the correctional context, but also as a basis for administrative excellence and financial adequacy."

As compiled by the ABA and its project co-sponsor, the Council for State Governments, the "Compendium of Model Correctional Legislation and Standards" presents — for the first time — one source for the complete texts of model correctional legislation developed over the past decade by nationally recognized and responsible groups.

The compendium also contains brief analyses and comparative commentaries on legislation and legislative standards. It does not, however, express preferences for certain model laws in the belief that no single formulation is desirable

for all states.

The handbook in loose-leaf binder is available from the ABA Commission, 1705 DeSales St., N.W., Washington, D.C. 20036, at $5 each. Softbound editions are $3.50. The proceeds will help pay for future supplements.

* * *

Federal Judges Elect

U.S. District Court Judge Walter E. Craig, Phoenix, Ariz., a former president of the American Bar Association, has been elected chairman of the ABA's new National Conference of Federal Trial Judges.

The conference was created last summer at the ABA's annual meeting to improve the administration of justice in federal trial courts. Its members are affiliated with the ABA's Judicial Administration Division.

The Conference plans to work for the improvement of judicial administration at the federal trial court level by sponsoring conferences, seminars and educational programs. It also plans to collect and distribute information and recommendations aimed at solving problems in the operation of these courts.

Gonzagan Wins Stipend

Stephen R. Blake, 29, a senior at Gonzaga University Law School, is one of 40 law students in the nation to receive a cash scholarship offered by Phi Alpha Delta Law Fraternity International.

The $500 scholarships are awarded on the basis of scholarship, service to the fraternity and service to the individual's law school.

Blake is a 1970 graduate of the University of Washington and attended Shoreline High School in Seattle.

It was the third consecutive year in which a GU law student has won one of the scholarships. David R. Syre won it last year and Brian Leahy the year before.

Over 100 law schools in the nation compete for the awards.

Number of Lawyer-Volunteers In Parole Program Growing

More than 60 lawyers now are working in the Washington State Bar Association's "Volunteers in Parole" program.

The program matches a lawyer-volunteer on a one-to-one basis with a parolee or inmate of a correctional institution to provide counseling needed during his or her return to society.

The number of participents was expected to increase after a second two-day training program scheduled for January 26 and 27. Some three dozen lawyers indicated they planned to attend.

The Volunteers in Parole program is conducted by a subcommittee of the State Bar Association's Corrections Committee, of which John T. Piper of Seattle is chairman. Chairman of the subcommittee is David B. Kenyon of Seattle.

The program is conducted from offices at 408 Alaska Building in Seattle. Trisha Streff is the program coordinator.

The initial 40 lawyers were trained in the first two-day training session held in Seattle last May 19-20. Training of new participants since then has been on a more individual basis.

"After training, the lawyer-volunteer usually is matched with an inmate of the institutions at Monroe or Shelton who is due for parole within several months," Kenyon said.

"The volunteer visits the inmate regularly and becomes familiar with his life and problems. Then and after the inmate's release the lawyer assists with work on the parole plan, helps in the job-finding efforts and provides general counseling which we hope will make the inmate's return to society an easier one and a permanent one.

"The lawyer does not serve the parolee as a lawyer or represent him in legal matters, but tries to provide effective counseling and to refer the parolee to community resources where it is useful or necessary."

He said the program also has a side benefit in exposing attorneys to the problems of the correctional system and educating the Bar generally to the realities of that system.

"We always can use more lawyer-volunteers," Kenyon said. "The program has proved to be attractive to many of the inmates and there is a waiting list in the institutions for additional sponsors."

PROMINENT LAWYERS, LAYMEN AGREE ON NATIONAL INSTITUTE OF JUSTICE

More than 125 prominent lawyers and laymen agree in "a strongly shared sense" that there should be a National Institute of Justice (NIJ).

But the scope, role and structure of an NIJ were not specifically defined by the conferees who met in December in Washington, D.C., to consider its creation.

According to Charles S. Rhyne of Washington, D.C., chairman of the ABA Commission on a National Institute of Justice, the conference paved the way for continued development of the NIJ concept.

The ABA's 22-member NIJ commission was to meet in January to review recommendations presented at the recent meetings, to further define and develop the NIJ concept, and to consider future plans to lead to the eventual founding of an institute.

Mr. Rhyne said the Commission will consider scheduling regional hearings on the proposed NIJ and the possibility of convening a major National Conference on Justice in America.

Summarizing the two days of discussion, Yale University law Prof. Geoffrey C. Hazard, Jr., who served as conference reporter, stated in a report that:

Commission conferees were almost unanimous in assuming that "public authority at all levels of government is suffering from a severe problem of 'credibility.' No single agency, including an NIJ, could restore the public's confidence, although participants felt that an NIJ could try to be "the conscience of the national community" with regard to equal justice. Creating an institute with this objective was termed "worthwhile."

The Institute, as tentatively outlined earlier, would provide for the field of law and justice the kind of centralized direction and funding now supporting research and development in the physical sciences and medicine through the National Science Foundation and the National Institutes of Health.

It would be a not-for-profit, federally chartered corporation, interdisciplinary in scope, and governed by a board of distinguished representatives of the legal profession and allied fields.

It would analyze and assess the needs of the legal system and serve as a fiscal agent to receive and disburse both public and private funds for research and action programs to meet the needs at both the state and federal level.

It was anticipated that the December conference would result in a formal proposal for a National Institute of Justice that will be submitted this spring to a National Conference on Justice in America.

Portlander Installed

William H. Morrison of the Portland firm of Morrison, Bailey, Dunn, Cohen & Miller, recently was installed as president of the American College of Trial Lawyers. The College, which lists 2200 Fellows, was founded in 1950 as a national honorary group open, by invitation, to outstanding trial lawyers with more than 15 years of trial experience; membership may not exceed one per cent of the lawyers in each state.

GU Clinical Law Grows

Gonzaga University Law School's clinical law program, judged the finest in the nation by the American Bar Association, has expanded to include 90 students working on nine separate projects this term.

Another 60 students may be added soon if the coordinators — all students themselves — add two additional project areas currently under consideration.

This year the entire program is being run on a $9,000 budget given by Law School students themselves.

This year the Gonzaga students have been assigned to work in a legal education project with city schools; Spokane Resource Advocates (SRA); Washington State Human Rights Commission; Spokane County Legal Services; a consumer protection program under the Spokane County prosecuting attorney's office; Housing Crisis Association; American Civil Liberties Union (ACLU); Welfare Law Group; and the city corporation counsel's office. A program with the Small Claims Court, active last year, is in the process of being reinstated.

The Spokane Spokesman-Review

Revelle Is Named

King County Superior Court Judge George R. Revelle has been appointed to an American Bar Association committee working to achieve adoption by the states of the new ABA-approved Code of Judicial Conduct. Judge Revelle was a member of the association's committee that drafted the code as a model.

Contingent Fees
(Continued from Page 8)

criticism might seem without merit. Do not both the lawyer and the client seek to recover and share the same pot of gold at the end of the rainbow?

But how many hours should the lawyer expend to recover how big a pot of gold? If the lawyer can make a gross recovery for his client of $1500 and earn for himself a $500 fee with a few letters and phone calls, and a total of four hours' work, he has earned $125 an hour. If he invests another twenty-one hours and prepares the case for trial, he could expect a gross settlement of $2100 and would earn a fee of $700. He has increased his client's net recovery by $400, but has reduced his own hourly earnings from $125 to $28. The lawyer must average at least $40 per hour of billable time to produce his desired net income. It is to the lawyer's economic interest to sacrifice the potential $400 additional recovery by his client to optimize his hourly return.

Conflict Is "Built In"

This conflict of interest is built into the contingent fee system. The optimum dollar return to the lawyer from a case often does not coincide with the highest net recovery to his client. This phenomenon has been explored in detail by Murray L. Schwartz and Daniel J. B. Mitchell in "*An Economic Analysis of the Contingent Fee in Personal-Injury Litigation*," 22 Stanford Law Review 1125 (June, 1970).

The spending of monies to prepare a case for trial creates another minor conflict. Should an attorney utilize his own time to prepare the case, at his own expense; or should he hire an investigator to prepare the case at his client's expense? Expert witness fees, exhibit expenses, and the like, are ultimately charged to the client, win or lose. The attorney bears no part of the costs. Yet, to the extent the expenditure of funds increases the recovery, the attorney increases his income by a percentage of the gross amount recovered. If some of the monies spent are recoverable, the attorney receives a portion of the money spent.

Though these conflicts of interest are real, they would appear to be no greater than those between the client and the attorney whom he has hired on a hourly basis. In the latter situation, the attorney is tempted to balance his need to generate chargeable hours with the best interests of his client, which may require a minimum of time to be spent on a particular piece of litigation.

Complaints Are Lacking

That Washington lawyers have been successful in resolving such conflicts of interests in contingent fee cases is proved by the almost total absence of disciplinary complaints arising out of contingent fee contracts.

The fifth count has enough merit to require thoughtful consideration. In too many cases, a contingent fee is not really contingent. After his initial review of the case, the lawyer knows with fair certainty either that the client can pay him on an hourly basis, or that adequate money will eventually be recovered to pay him a reasonable fee upon an hourly basis. What is the lawyer's duty in this situation?

Give Client the Choice

The Rules of Ethics permit a contingent fee agreement ". . . because it may be the only means by which a layman can obtain the services of a lawyer of his choice." (EC 5-7) If means are available to hire a lawyer's services on an hourly basis, and such an arrangement would probably be more advantageous to the client, the lawyer's obligation is to explain this alternative method of purchasing legal services. The Code of Professional Responsibility makes this clear when it states:

> "But a lawyer, because he is in a better position to evaluate a cause of action, should enter into a contingent fee arrangement *only in those instances where the arrangement will be beneficial to the client*." (EC 5-7)

Elsewhere, the Code states:

> "Although a lawyer generally should decline to accept employment on a contingent fee basis by one who is able to pay reasonable fixed fee, it is not necessarily improper for a lawyer, where justified by the particular circumstances of a case, to enter into a contingent fee contract in a civil case with any client who, after being fully informed of all relevant factors, desires that arrangement." (EC 2-20)

There are conflicting interpretations of the Code of Professional Responsibility on this point, but in my own view, a lawyer who agrees to handle a personal injury case for a client, who will be able to pay a fee on an hourly basis at the close of the case, should give the client the option of retaining the lawyer on either a contingent or hourly basis. The benefits and detriments of these alternatives should be accurately explained to the

client. Many lawyers follow this practice, but it should become universal.

More "Policing" Urged

As a final point, I would argue that the courts and Bar Association should take greater affirmative action in policing contingent fee contracts. The occasional abuse blackens the reputation of the entire Bar.

Canon 13 of the Canons of Ethics of the American Bar Association, as originally adopted in 1908, provided:

> "Contingent fees, where sanctioned by law, should be under the supervision of the Court, in order that clients may be protected from unjust charges."

Supervision Concept Dropped

The concept of court supervision apparently has been dropped from the revised Code of Professional Ethics. Though the question has been the subject of dispute, the courts have an inherent power to supervise and modify contingent fee contracts between a lawyer and his adult client. New York, Pennsylvania and Massachusetts courts have adopted rules for supervision of contingent fee contracts. We suggest that both the Washington Bar and the public would reap benefits from a court rule along the following lines:

(a) All contingent fee contracts must be reduced to writing. (See EC 2-19)
(b) The contract must meet specific guidelines to insure that the percentage fee charged is reasonable in relation to the risk, responsibility, effort and amount involved.
(c) If a lawyer seeks a fee which exceeds the established guidelines, he is required to obtain court approval of the larger fee.
(d) If the client feels the fee ultimately charged is excessive, he may seek review by the court.

Such a rule would make little change in the present practices of most Washington lawyers. The rule would provide a ready device to correct the infrequent abuse of the contingent fee, however, and provide a ready answer to the often exaggerated complaints of the critics of the contingent fee system.□

New Disclosure Law

(Continued from Page 10)

who is an attorney to report the names of any of his *governmental, corporate, or other business clients* from whom he has received compensation of $500 or more during the reporting period — together with the approximate value of such compensation and the consideration given or performed in exchange for such compensation.

In addition, if the attorney is a member of a law firm the next subpart of § 24 comes into play as well — by requiring the attorney-candidate or elected official to report:

> "(g) The name of any corporation, parnership, joint venture, association, union or other entity in which is held any office, directorship or any general partnership interest, or an ownership interest of ten percent or more; the name or title of that office, directorship or partnership; the nature of ownership interest; and with respect to each such entity the name of each governmental entity, corporation, partnership, joint venture, sole proprietorship, association, union or other business or commercial entity from which such entity has received compensation in any form in the amount of five hundred dollars or more during the preceding twelve months and the consideration given or performed in exchange for such compensation;"

Exact Compensation Not Required

Here, however, it will be sufficient for the reporting attorney to list the governmental, corporate, or other business clients of the firm of which he is a member and from which compensation of $500 or more was received during the reporting period — together with the consideration given or performed in exchange for such compensation. Unlike subpart (f), *supra*, this subpart does not require even an approximation of the amount of such compensation. And finally, neither of these subparts of § 24 require any listing of either the attorneys' or the firms' other (i.e., nongovernmental, noncorporate, or other non-business) clients.

Thus, the answer to this first part of your question is that Initiative 276, on its face, requires a candidate or elected official-attorney to report the names of his clients and his compensation received from them only to the extent called for in subparts (a), (e), (f) and (k), as above discussed . . . Let us now turn to, and consider the relationship, if any, between this law and either the attorney-client privilege or the code of professional responsibility.

"Privilege" Is Not a Basis

We can find no basis in the privilege itself for a refusal by a candidate or elected official who is an attorney to report the names of, and compensation received from, his clients to the extent required by the initiative. As you know, this privilege is merely a rule of evidence under which an attorney is barred from testifying in court or other judicial or quasi-judicial proceedings as to certain communications between him and his client without the client's consent. 97 C.J.S., Witnesses, § 252, et seq. Accord, RCW 5.60.060(2), which codifies the common law attorney-client privilege in this state as follows:

> "An attorney or counselor shall not, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment."

Moreover, neither the name of a client nor the amount of a fee received by an attorney from a client are in any event ordinarily held by the courts to come within the purview of this privilege, *per se*. See, *Collins v. Hoffman*, 62 Wash. 278, 113 Pac. 625 (1911), and cases cited therein; also, 97 C.J.S., Witnesses, § 283(c) and (f), and numerous authorities cited.

Code Provision Explained

On the other hand, when we look to the code of professional responsibility which presently governs the conduct of attorneys in this state we find, in part, that it picks up and broadens the applicability of the privilege to some extent. As adopted by the state supreme court on August 26, 1971, effective December 7, 1971, DR 4-101 of this code states that:

> "Except when permitted under DR 4-101(C) and (D), a lawyer shall not knowingly during or after termination of the professional relationship to his client:
>
> "(1) Reveal a confidence or secret of his client. . . ."

The terms "confidence" and "secret" are defined, for the purposes of this rule as follows:

> "(A) 'Confidence' refers to information protected by the attorney-client privilege under applicable law, and 'secret' refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client."

Thus, even though the name of a client and the fee received from him are ordinarily not protected by the privilege itself — and thus would not generally come under the definition of a "confidence" for the purposes of this rule — this information could become a "secret" under the rule if the client were to request that his identity and/or fees not be disclosed by the attorney. Query, however: If this were to occur in a case involving an attorney who is required, as either a candidate or an elected official, to file a report under § 24 of Initiative 276, *supra*, would the ban against disclosure appearing in the code of professional responsibility justify a refusal by this attorney to include in his "financial disclosure" report under § 24 of the initiative, the name of his client and/or the amount of the fee received from him under circumstances rendering § 24 otherwise applicable?

Law Requirement Prevails

Reading further into DR 4-101 itself, our answer to this question must be in the negative. Noting that the prohibition against disclosures of "confidences" or "secrets" is preceded in the rule by a clause reading "Except as permitted under DR 4-101(C) or (D)," we find in subsection (C) the following:

> "(C) A lawyer may reveal:
>
> "(2) Confidences or secrets when permitted under Disciplinary Rules or *required by law* or court order." (Emphasis supplied.)

Thus, it will be seen that where the provisions of the initiative (clearly, a law) require an attorney who is a candidate or elected official to report the names of his clients and the compensation received from them, he is permitted by this rule to do so — even though this information, under the circumstances, might constitute either a "confidence" or a "secret." Accordingly, it must be concluded that such an attorney may not invoke this code of professional responsibility as a justification for refusing to supply this information where required by § 24 of the initiative, *supra*.□

* * *

Holman on 276 Group

Attorney Francis E. Holman of Seattle was one of five members appointed to the new Public Disclosure Commission under Initiative 276 by Governor Dan Evans. Holman has been a member of the State Senate through 1972. The commission will administer and enforce provisions of Initiative 276.

Quotes Quoted

Cheated by a Lawyer? See Bar Association

There are two residents of Tacoma, along with 46 other persons across the state, who know that one public relations program operated by the Washington State Bar Association really pays off.

It has paid them cash from a little-publicized bar association account known as the Client Security Fund.

Established more than 12 years ago and sustained ever since by voluntary donations from active members of the state bar, the $130,000 fund is present to reimburse clients in cases where an attorney misappropriates or misuses funds entrusted to him.

Since its creation Sept. 7, 1960, 81 claims have been made against the fund. Forty-eight claims totaling more than $20,000 have been paid, 28 rejected and five are pending. Eleven of the 48 claims paid were filed against one lawyer who has since been disbarred, bar association records show.

While most claims to date have been relatively small, payments are authorized up to an aggregate sum of $25,000 against any one active member of the bar association.

One typical small claim was awarded a Tacoman who got $500 from the fund when his attorney died leaving no assets after forwarding less than half of a $1,000 out-of-court settlement in a personal injury case involving the man.

In another case, $890 in Client Security funds were released to pay the medical bills of a Tacoma man whose lawyer was supposed to have paid them out of a settlement of a personal injury case. Unfortunately, the lawyer neither paid the bills nor turned the money over to his client.

The largest claim to date against the fund was for $5,000, which was paid to a Seattle man whose lawyer died owing the man that amount.

The Washington Bar's Client Security Fund was the second established in the nation, following the Vermont Bar Association's lead by a few months.

Since 1960, similar funds have been established in 33 more states and British Columbia, with the American Bar Association now seriously studying whether it could implement such a fund nationwide.

Although many state bars now operate client security funds — some with balances of more than $250,000 — officials of the Washington Bar are quick to point out that theirs goes beyond most.

Most funds allow payment only to persons who suffer losses in a lawyer-client relationship, but bylaws governing operation of Washington's fund were amended in 1970 to further allow payment of losses by lawyers acting in a fiduciary capacity — i.e., by those with custody of another's funds through a position as executor or receiver.

The bylaws also have been amended to allow claims against the fund to be settled during disciplinary proceedings against the lawyer. As originally written, the bylaws forced the client to wait until disciplinary action was concluded before any claim could be considered.

Washington Bar officials have expressed pride in the fact that the legal profession "stands alone among the professions in undertaking collective responsibility for the financial misdeeds of its members.

"To disbar a lawyer who has stolen money from a client does not put the client back where he was before he placed his faith and his funds in the hands of the lawyer," State Bar Association president Charles I. Stone of Seattle said.

"This fund," he said, "is a debt of honor owed by the profession."

Michael J. Sweeney, in
The Tacoma News-Tribune

Andersen Quits State Senate

State Sen. James Andersen, Bellevue, Republican floor leader since 1971, has announced his resignation from the legislature.

Andersen, 47, a veteran of 13 years in the legislature, is respected as one of the most knowledgeable, straightforward members of either house.

Andersen was first elected to the House from the 48th District in 1958.

A close personal friend and political ally of Gov. Dan Evans, Andersen apparently joins other lawyer-legislators who have found that maintaining a successful law practice and meeting the responsibilities of legislative leadership are too heavy a load to carry.

Bob Schaefer, D-Vancouver, House speaker in 1965; State Supreme Court Justice Bob Brachtenbach, R-Yakima, who probably would have been speaker in 1967, and former Sen. Chuck Moriarty, R-Seattle, minority floor leader in 1965, all resigned under similar circumstances.

Seattle Post-Intelligencer

Law School News

The American Bar Association has reported that enrollment of first-year (freshman) students in the 149 ABA-approved law schools dropped this year by 2.9%, despite an increase of 7.7% in overall law school enrollment.

However, the decrease did not apply to women first-year law students, whose number increased 27.3% from 4,326 to 5,508 this year. The total number of women law students rose by 35.9% from 8,914 in 1971 to 12,172 this fall.

Total Now 101,664

Total enrollment in law schools approved by the ABA jumped from 94,468 last year to 101,664 this fall. This was due largely to a 26.3% increase in the size of the third-year class, from 22,404 in 1971 to 28,311 this year. When admitted in 1970, this class hiked law school enrollment by 20%, the first indication of the recent surge of interest in law as a profession among students throughout the country.

The decrease in first-year enrollment, from 36,171 in 1971 to 35,131 this fall, does not indicate waning student interest in the law, according to University of Texas Law Professor Millard H. Ruud, consultant on legal education to the ABA.

He explained that record increases in the number of first-year students admitted during the past two years have now resulted in higher enrollment levels among second and third-year students, accounting for the 7.7% increase in total enrollment. To prevent further overcrowding, he said, many law schools have found it necessary to accept fewer incoming students than last year.

New Class Held Down

"Most of these schools reported that in the last year or two they had intentionally or inadvertently admitted a larger than normal entering class," he said. "To hold the total enrollment at a number that could be adequately served by the present full-time faculty and law school facilities, this year's entering class was reduced in size."

The decrease is even more significant, he added, if the two law schools approved since last year are not counted. If the 586 students enrolled in these two schools are excluded, the 147 law schools approved as of last year have decreased their first-year enrollment by 1,626, or 4.5%.

"This occurred at a time when the demand for legal education, as measured by administrations of the Law School Admission Test, was increasing by nearly 12%," Professor Ruud said.

Only two law schools reported "unfilled seats" this year, totalling 27. In 1970 there were 659 unfilled seats reported, and last year 87.

Professor Ruud said statistics for schools not approved by the ABA are incomplete. However, he added, "the unapproved schools have been the beneficiaries of the inability of approved schools to accommodate the further increases in demand for legal education."

Bar Exam Will Include One Day of Computer-Graded Questions

The computer has come to the state bar examination.

One day of computer-graded, multiple-choice questions will be given during the three-day examination of prospective new lawyers February 26-28, the Washington State Bar Association's Board of Governors has decided. The board acted upon the recommendation of the association's Board of Bar Examiners, which administers the examination.

Questions given during the two other days of the exam will be the traditional essay type.

The one-day multiple-choice test is known as the Multistate Bar Examination. The culmination of years of research and experiments by national bar-exam experts and Educational Testing Service of New Jersey, it was given for the first time in 19 states last February. Twenty-six states used the test last July. The test is given the same day in all the states using it.

"The virtue of a multistate examination is that it provides some relief against the mounting burden of preparing and grading papers of a steadily increasing number of applicants for admission to the Bar," Daniel C. Blom of Seattle, chairman of the Board of Bar Examiners, said.

"It also will help reduce the delay in grading and announcing the results of our twice-a-year exams. The multistate portion of the test is graded by computers in about two weeks.

"The number of applicants examined has more than doubled in the last six years, from 267 in 1967 to 558 this year, and the prospect is for even larger numbers of applicants in the future."

He noted that immense progress has been made in recent years in testing techniques and that a multiple-choice test of bar applicants now is sophisticated and sensitive, permitting evaluation of discrimination, judgment and reasoning power as well as legal knowledge.

The Courts

SUPERIOR COURT NEWS

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

Superior Court judges from throughout the state, primarily those recently elected, attended a judicial orientation course at the Washington Criminal Justice Education and Training Center near Issaquah January 2-6. The sessions were presented by the Washington State College of the Judiciary. Judges attending included: **Dennis J. Britt** (Snohomish); **Sidney R. Buckley** (Stevens-Pend Orielle); **Gerald B. Chamberlin** (Clallam-Jefferson); **Richard J. Ennis** (Lincoln); **Philip H. Faris** (Whitman); **Marshall Forrest** (Whatcom); **Bruce P. Hanson** (Yakima); **Ted Kolbaba** (Klickitat-Skamania); **Waldo F. Stone** (Pierce); **Albert J. Yencopal** (Benton-Franklin); **Donald N. Olson** and **Del Cary Smith, Jr.** (both Spokane); **Norman B. Ackley, Lloyd Bever, William C. Goodloe, Janice Niemi** and **Peter K. Steere** (all King).

The annual Spring Conference of the Superior Court Judges' Association will be held April 18-20 at Rosario. Judge **Willard J. Roe** (Spokane) is conference chairman. The first day's session will be devoted to a consideration of Juvenile Court matters, including a new Juvenile Court Code.

Judges **Erle W. Horswill, Frank D. Howard, George H. Revelle, Solie M. Ringold** and **Stanley C. Soderland** have been elected as the Executive Committee of the King County Superior Court to serve for one year.

THE COURT OF APPEALS

By JOSEPH A. THIBODEAU, *Commissioner*

Approximately 200 cases will be set for argument during the January 1973 Session by the Court of Appeals. Cases raising issues which may be of interest to members of the Bar are summarized below.

SUMMARIES — DIVISION I

Prepared by Joseph A. Thibodeau
Court Commissioner

No. 2002-I, Marvin Pinkis, et al. v. Network Cinema Corporation

Whether a provision in a franchise agreement providing that any dispute arising from this contract should be submitted to arbitration is broad enough to include fraud in the inception, or may this issue be heard by a court?

No. 1285-I, State v. Gary Gene Grant

Whether electronic eavesdropping by a police officer of a conversation between the accused and his attorney constituted such an infringement of the federal and state constitutional rights to counsel that a dismissal of the case with prejudice should have been entered.

No. 1917-I, Doyle John Cook et ux. v. King County

Whether communications made by a police officer to the sheriff as part of an internal investigation of police conduct are privileged and not subject to discovery in a civil action brought against the county for personal injuries suffered as a result of alleged misconduct of the police.

No. 1819-I, Christian Mebust et ux. v. Mayco Manufacturing Company, et al.

Whether RCW 51.28.070 prohibits a representative of the Department of Labor & Industries from allowing discovery by a defendant of a workman's claim file in a personal injury suit brought by the workman.

No. 1955-I, Juanita Bay Valley Community Association, et al. v. The City of Kirkland, et al.

Whether a city in issuing a grading permit must file an Environmental Impact Statement under the State Environmental Policy Act of 1971 when the activities under the permit may have an effect on the environment.

SUMMARIES — DIVISION II

Prepared by Laurence P. Gill, Clerk

No. 573-II, Hodgins v. Floyd Oles, Gordon Johnston and City of Tacoma

Action against the city to recover for negligence in allowing appellant to escape and failing to properly supervise appellant, a paranoid schizophrenic who is being held in Northern State Hospital under maximum security: raises the issue of whether the instruction on contributory negligence should have been given in view of appellant's apparent insanity.

No. 712-II, State v. Mary C. Walters
No. 738-II, State v. David A. Polacek

These cases seek reversals of convictions for unlawfully obtaining public assistance and challenge the constitutionality of RCW 74.04.300

and 74.08.331. The major issues: 1. Whether the statute deprives appellant of a jury trial on all elements of the crime; 2. whether the trial court properly rejected appellant's offer of proof regarding the minimum cost of living for someone in defendant's situation and locality; 3. does RCW 74.04.300 embrace more than one subject not expressed in the title (Wn. Const. Art. 2,§19); 4. does RCW 74.04.300 deny defendant due process and equal protection of the laws if the prosecution is permitted to seek a different or greater punishment under two or more statutes by proof of identical criminal elements.

SUMMARIES — DIVISION III

Prepared by David MacCulloch, Clerk

No. 541-III, Ivan's Tire Service Store, Inc. v. The Goodyear Tire & Rubber Company; Ivans

Respondent claimed appellant ruined his business by unfair competition. Appellant cross-claimed for $37,000 due for tires, etc. Jury verdict for respondent for $233,000. Appellant was allowed $37,000. Was the verdict unfairly excessive?

592-III, Sundling v. The Estate of Austin L. Sylvester, Deceased, and Elsie E. Sylvester, Representative of the Estate of Austin L. Sylvester, et al.

The issue: Whether in a probate a claim of a creditor must be filed within the statutory period when the reason for failure to timely file the claim was fraud which was not discoverable.

No. 683-III, Baldisserotto v. State of Washington Employment Security Department

The issue: The state unemployment compensation statute states that a political subdivision need not be covered. The McNamara-O'Hara Act says an employee must be covered. Does the state statute or the federal law control?

Another District Court

As of January 1 the Stevens County justice courts disappeared and a new District Court took over their function. The action was ordered by Stevens County commissioners. Robert ●. Haigh was named District Court judge. Only nine counties in the state remain with justice courts, the 30 others having switched in the last decade to the District Court system.

Fee disputes, fee complaints and fee questions now are moving ahead of delay and neglect in volume of communications from the public to the State Bar Office and Bar discipline officials.

Most of the fee disputes turn out to be the lawyer's fault. In most cases the fee is not excessive but there have been no adequate steps by the lawyer to inform the client of what the cost of the legal services would be, and generally on what the amount of the fee would be based.

In the Code of Professional Responsibility, Ethical Consideration 2-17 urges lawyers to charge a "reasonable" fee. Disciplinary Rule 2-106(A) commands that "a lawyer shall not enter into an agreement to charge or collect an illegal or clearly excessive fee."

The factors used in determining a reasonable fee are outlined in Disciplinary Rule 2-106(B). It must be remembered that a contingent fee may not be charged or collected for criminal matters (Disciplinary Rule 2-106(C)).

A few minutes taken by the lawyer to execute a contingent fee agreement or to send a letter to the client advising him of the charges for the services to be rendered will place the professional relationship on the proper footing.

A typical "misunderstanding" arises from a contingent-fee arrangement in which there has been no prior lawyer-client clear agreement on the figure to which the percentage is applied. Too often there is uncertainty as to whether court costs, expert fees, deposition expense and other advancements are deducted before the lawyer-client division. There are even misunderstandings as to whether the attorney or the client pays the medical expenses and the property damage. A clear fee contract avoids the possibility of difficulties and eliminates, in large part, claims of client "surprise."

A few minutes to prepare a standard contract or send a letter clearly setting forth the fee arrangements can eliminate confusion, misunderstanding and unpleasantness and even complaints to the Disciplinary Board.

— *Public Relations Committee*

Remember to make contributions
to the
WASHINGT●N STATE BAR
F●UNDATI●N

Briefly Noted

Products Liability CLE Topic in March

Products Liability, one of the fastest-moving areas of law, will be the subject of the State Bar Continuing Legal Education Seminar in March.

The seminar will be aimed at helping lawyers, both on the plaintiff and defense side, maintain awareness of the changing legal and technical concepts and apply those concepts effectively in the courtroom.

The speaking panel has been selected to present a balance of plaintiffs' and defendants' views.

Chairman is Shannon Stafford of Seattle. Members of the panel are the Hon. Keith M. Callow, judge of the Court of Appeals; the Hon. Erle W. Horswill, King County Superior Court judge; Hugh R. McGough, Seattle; Roy J. Moceri, Seattle; Raymond D. Ogden Jr., Seattle, and Daniel F. Sullivan, Seattle.

The seminar will be presented in Spokane from 1 to 6 p.m. Friday, March 23; Seattle from 9 to 4 Saturday, March 31, and Olympia from 9 to 4 Saturday, April 7.

Bar Meeting in B.C.

Final reminder: The annual Western States Bar Conference will be held in Vancouver, B.C., February 14-16. 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. John Huneke of Spokane is conference president, and the Washington State Bar is this year's "host bar."

Legal Assistants Form

The National Association of Legal Secretaries has created a special Section for Legal Assistants, which will be the first national organization of persons engaged in paraprofessional work in the legal field.

This Section of NALS now is open for charter membership.

Membership is open to the following:

(1) Persons who have completed an approved training course for legal assistants.

(2) Persons whose employers will certify that they have for 6 months or more been working as legal assistants.

(3) Associate membership is available to students enrolled in an approved course for legal assistants.

When the American Bar Association sets official standards for qualification, certification, or licensing of legal assistants, membership requirements in the NALS Section for Legal Assistants will be in accordance with such official standards.

For more information or membership application, contact Georgia Hinton, 1177 Dexter Horton Building, Seattle 98104.

Vocational Witness

Paul Pugh, former assistant district supervisor of the Vocational Rehabilitation Division of the State Department of Social and Health Services, reports he now is available to serve as a vocational witness. He has been senior counselor at the Seattle Cardiac Work Evaluation Clinic since its inception in 1954 and has aided in training many counselors in cardiac rehabilitation.

Aviation Law Is Topic

Aviation law will be highlighted at a three-day seminar scheduled at Rosario on Orcas Island Feb. 2, 3 and 4, 1973.

The seminar is sponsored by the Aviation and Space Law Section of the Seattle-King County Bar Association and the Northwest Region of the Federal Aviation Administration.

Participating will be attorneys concerned with aviation law in the three Northwest states and Alaska. Subjects to be discussed include federal regulatory matters, legislation, airport development and procedures associated with aviation litigation.

The seminar will be highlighted by a speech by R. Tenney Johnson, general counsel for the Civil Aeronautics Board, Washington, D.C. His presentation will follow a banquet to be held Saturday evening, Feb. 3, 1973.

Seminar plans were coordinated for the bar association by John W. Sweet, Seattle attorney. Inquiries can be directed to him at 219 East Galer St., Seattle 98102.

What's That Again?

Sign from a Yakima law office, presumably not displayed too prominently: "This office now employs twice the clerical staff it had ten years ago. We're just as confused as ever, but now we're getting it all down on paper."

Deadline for submitting copy for the next issue of the *Bar News* is Feb. 2, 1973. Mail to *Bar News*, Washington State Bar Association, 505 Madison, Seattle 98104

Notices

Wanted and Unwanted

For Sale: Make offer — ALR 2nd: ALR 3rd to Vol. 6; C.J. Sec., current; Modern Legal Forms, current; Cyc. Trial Prac., current; Bancroft, Probate Prac., current; Collier on Bankruptcy; Am Jur Proof of Facts, current; Am Jur Trials, current; Courtroom Medicine, Bender; Rest. Trusts 2nd, current; Rest. Contracts, Torts, Securities, current. J.R. Sherrard, Seattle VI 2-5681.

Wanted: Am Jur 36 2nd to date; ALR 3rd to date; 148 Wash. Rpts. Irving Koths, Morton, 496-5133.

For Sale: ALR 2nd, 1-32; RCW 1-17. Irving Koths, Morton, 496-5133.

Space Available: Plush Bellevue office space, air conditioning, parking, 2-office suite or 5-office suite with conference, street level. Bellevue, SH 7-3636.

Available: Veteran of more than three years' trial counsel experience in Army JAG Corps, grad U of San Francisco Law, wants trial position with Western Washington firm.

Wanted: Used IBM Selectric typewriter, used Mimeograph machine. Jan Hurst, exec. dire. Pierce County Bar Office, Tacoma 383-3432.

Lost But Wanted: Red wool cardigan sweater, left at the State Bar CLE Small Business Seminar at the Olympia Hotel Dec. 9. Jack M. Whitmore, Seattle 624-2132.

Wanted: Attorney to share offices and overhead: White-Henry-Stuart Building, Seattle. Dwight Holloway, 623-7441.

Space Available: Half block south of Courthouse, Everett. New building, parking. All utilities except phone included. Efrem Z. Agranoff, ALpine 9-8158.

Calendar

Feb. 14-16	Western States Bar Conference, Hotel Vancouver, Vancouver, B.C.
Feb. 20-23	American Academy of Forensic Sciences, 25th annual meeting, Las Vegas Hilton, Las Vegas, Nev.; 200 speakers and panelists for about 60 scientific and medico-legal programs. Details, Dr. James T. Weston, 44 Medical Drive, Salt Lake City 84113.
Feb. 28-Mareh 3	Fifth Medical Institute for Attorneys, on Orthopedics and Rehabilitation; University of Miami Law Center, P.O. Box 8087, Coral Gables, Fla., 33142.
March 23	Products Liability, from both sides of the counter; State Bar CLE seminar, 1 to 6 p.m., Ridpath Hotel, Spokane; chairman, Shannon Stafford, Seattle, panelists Judge Keith M. Callow, Judge Erle W. Horswill, Hugh R. McGough, Roy J. Moceri, Raymond D. Ogden Jr., Daniel F. Sullivan.
March 31	Products Liability, State Bar CLE seminar, 9 a.m.-4 p.m., Olympic Hotel, Seattle
April 7	Products Liability, State Bar CLE seminar, 9 a.m.-4 p.m., Evergreen Inn, Olympia

LAWYER PLACEMENT SERVICE

By DAVID L. BROOM

The Young Lawyer's Committee of the Washington State Bar Association operates a Lawyer Placement Service at the State Bar Office, 505 Madison Avenue, Seattle, Washington 98104, and at the Spokane County Law Library, Paulsen Building, Spokane. The service is available to members of the Association and recent law graduates seeking legal opportunities and employers seeking legal personnel. The service is offered without cost to either the applicant or prospective employers. The following are summaries of a few of the many applicants on file:

1. Federal Land Bank seeking staff counsel having broad experience in general practice including real property transactions; $15,000.00 minimum to begin, generous fringe benefits.
2. Deputy prosecutor needed in Eastern Washington county; $12,000 to start plus benefits.
3. Environmental Protection Agency seeking chief for Enforcement Branch. At least three years' experience within or before regulatory agency required; agency also has other opening on file.
4. 1969 Gonzaga law graduate, currently combination prosecutor-private practitioner, seeking new position. Applicant has had 55 Superior Court jury trials, has written six appellate briefs and has four appearances before Court of Appeals.
5. Offices planning for the future take note! Our Applicants' File contains a number of student, law clerk and "short-timer" J. A. G. officer resumés.
6. Lawyer in small community, now judge-elect, selling practice, building and equipment. Financing available.
7. Community college seeking full-time instructor in Criminal and Business Law fields. Experience in prosecution desired. Up to $15,700 to start.

WASHINGTON STATE BAR ASSOCIATION
505 Madison Street
Seattle, Washington 98104