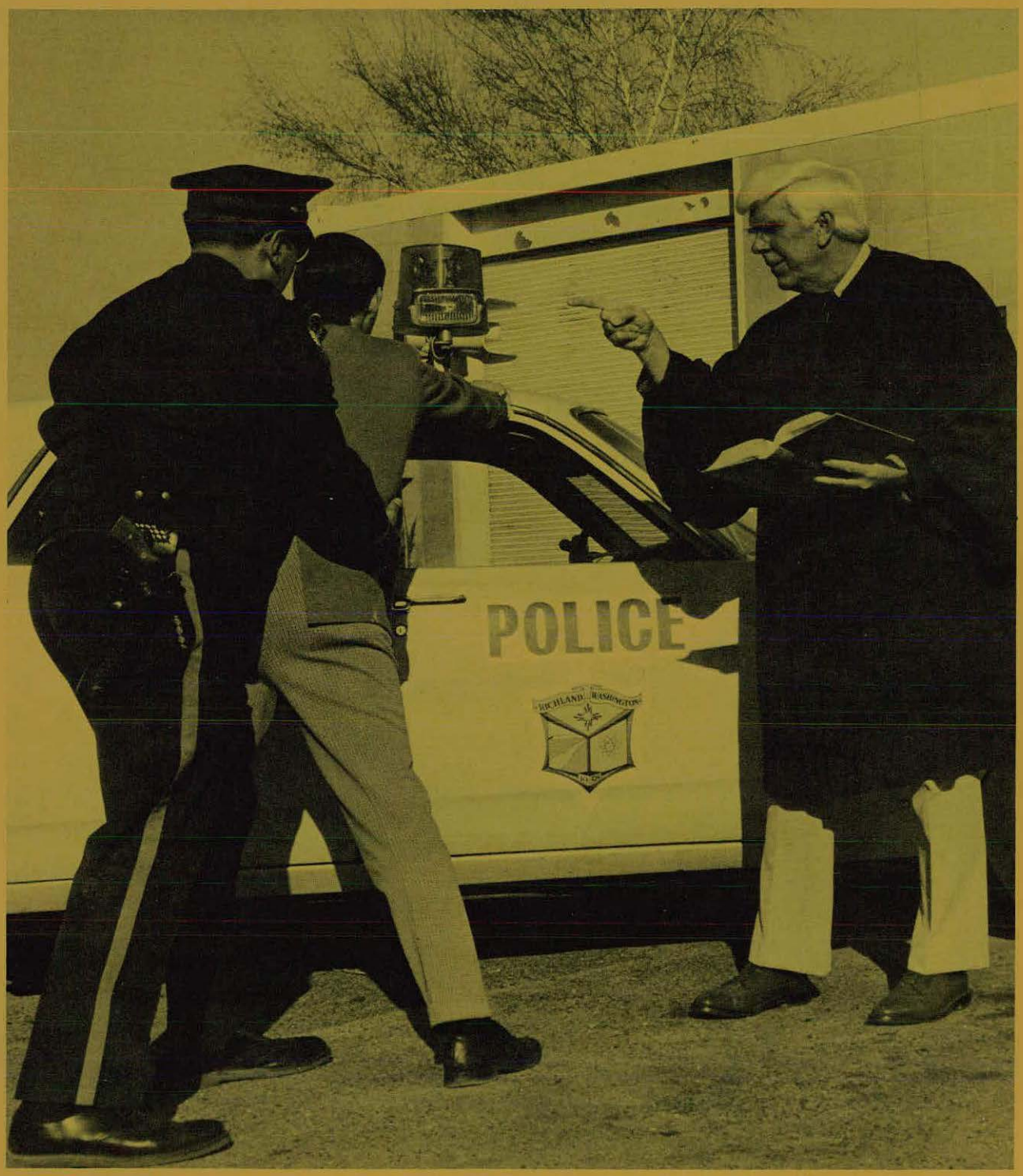
Volume 27, Number 4
April 1973

WASHINGTON STATE BAR NEWS



SEARCH AND SEIZURE

MEMORANDUM

TO: All State of Washington Attorneys

RE: The Unique Facilities and Flexibility of the Metropolitan Press, Seattle, a Service Oriented Printing Company

The Metropolitan Press has earned the reputation as the state's leading legal-financial printer and color lithographer. This reputation has been accomplished progressively since the Company's founding in 1905 by people who believed in the highest standards of quality, integrity and service as they apply to the printing industry.

A partial listing of services in our Legal & Financial divisions include:

LEGAL DIVISION

(Pertaining to the printing and disposition of appellate briefs)

- Brief drafts are edited to conform to the current rules on appeal.
- Index and case authority are prepared for you automatically with special attention to the correct form of citations.
- Briefs are printed either letterpress or offset; are served for you on opposing counsel (either personally or by our affidavits of service duly prepared and notarized) and we file the requisite number of copies. The above services take place in most instances within 48 hours after receipt of copy.
- We specialize in appellate briefs for the Washington, Idaho and Oregon State Supreme Courts; The Washington State Court of Appeals; The Ninth Circuit Court of Appeals; The U.S. Supreme Court; The U.S. Court of Claims; and the Interstate Commerce Commission.

FINANCIAL DIVISION

(Pertaining to documents required for the issuance of securities to the public)

- Financial printing for SEC encompassing registration statements and prospectuses requires a thorough knowledge of the complex rules and regulations and in many cases, overnight production of the documents involved.
- The Metropolitan Press has produced the documents for the majority of full registrations originating from this state.
- We are also specialists in the production of offering circulars, Regulation "A"'s, engraved and lithographed stock certificates, debentures and bonds; indentures; merger agreements; proxy statements and proxies; and annual and interim shareholder reports.

The Metropolitan Press
appreciates your business;
solicits your continuing business;
and invites your referral of new business.

Please call MUtual 2-8800 collect — MUtual 2-8801 in the evening after 5 p.m.

s/Barry J. Reischling
Manager, Legal-Financial Divisions
CRAFTSMAN-MET PRESS
(Metropolitan Press)
Fairview Avenue N. & Valley, Seattle, Washington 98109

(paid advertisement)

Washington State Bar News

Published by
WASHINGTON STATE BAR ASSOCIATION
605 Madison Street Seattle, Washington 98104

Published monthly, except August-September combined. Subscription price is $5.00 a year, 50c a copy. Subscription included with active membership. Back issues $1 per issue.

United Graphics

Credits

- Cover, Captain George S. Derrick, *Richland Police Dept.*
- 3, 4, 5, 11, 12, 17, 20, 21, 32 John D. McLauchlan

The distinguished Judge *pro tem* on the cover is Edward Critchlow, Richland. Ed.

Letters

Lawyer's Golden Rule

Editor:

Times Change. When I was in law school (Washington Class of 1940), we were taught that law was an honorable profession with all that the label implies. In the March, 1973 edition of the *Washington State Bar News*, I note a feature article dealing with contingent fees, which states on page 10:

". . . practicing law is first and foremost a business. . ."

It is comforting to know that my fellow lawyers today are, first and foremost, businessmen.

As one businessman to another, we should perhaps adopt the Golden Rule — "Do unto others before they do it to you."

ROGER E. DUNHAM
Seattle

Presumptuous Editor?

Editor:

I am writing this letter in response to your editorial in the March 1973 *Bar News*. By and large, I am in agreement with your comments therein. However, one of your comments seems to me to be presumptuous and somewhat misleading. Your statement is, "Much of the thrust behind no-fault auto insurance and closed panel group legal services, for example, comes from the high cost of legal services."

I think to state that your statement is only half right would be perhaps stretching it a little. I see no real connection between the high cost of legal services and the thrust behind no-fault automobile insurance. I don't think anyone seriously contends that the "high" cost of legal services has very much to do with the high cost of automobile insurance. Certainly if you look at the statistics that the insurance companies come up with, legal services for *both plaintiffs' and defendants'* attorneys do not exceed about three per cent of the premium dollar which is an amount which is statistically insignificant. The real thrust for no-fault automobile insurance certainly lies elsewhere than in the high cost of legal services. I think your statement indicates that you have accepted the propaganda of some of the insurance carriers who are pushing for no-fault and that this propaganda has little foundation in fact.

ROBERT S. DAY
Pasco

Meritorious Poetry?

Editor:

Since the High Priests of the Bar Association are now touting the Missouri Plan for selection and retention of judges, under the Madison Avenue cliche — Merit Selection Plan, I am sending you the following bit of poetry. It aptly expresses the thoughts of many lawyers.

The Missouri Plan

The Missouri Plan is the very best plan
For seeking out the worthiest man
To reign for life on the judge's bench
Secure and safe from the ballot's stench.
Once the people's choice on our courts did sit,
Till the A.B.A. said, "It's most unfit
"For our judges wise to risk the ire
"Of the voter's voice and the campaign's mire.
"If justice pure you would see done,
"Appoint your man — don't let him run!"
So, Citizens, heed Missouri's claims,
You've naught to lose but Democracy's "chains."

W. Arthur Combs, Esq.

By the way, when did Missouri ever produce a great judge or justice?

JAMES E. DUREE
Westport

Local Rules Surprise

Editor:

The writer and his client, the Administratrix of the estate, recently felt required to attend a distant court at the scheduled hearing in an estate, incurring considerable time and some expense, including night's lodging (separately) because of the early morning hearing. We were advised there that this particular probate court requires only a form certification by the attorney that the estate has been completely administered and that in fact neither the attorney nor the personal representative need attend such hearing. Upon my inquiry, the method seems to work, although from a public relations viewpoint, it might leave the client wondering what, if any, work the attorney does to justify his fee.

In any event, I wondered if other attorneys might have been taken, sometimes pleasantly, by surprise to find that a court, which he visits seldom, has adopted a rule or practice which he might appreciate knowing in advance; and I wonder if your office might inquire of each county and then promulgate among the bar information such as the day and hour of hearing ex-parte, default divorce and probate matters; and whether there are any special rules regarding proof in absentia by certificate or affidavit; and whether there is some office or person by whom the file must be reviewed and approved before presented to the court.

I'm sure the bar and clerks' offices will have other matters of interest which might be contained in a list of this kind of information.

HOWARD V. DOHERTY
Port Angeles

Editor's Notes

While browsing through some second hand lawyers' supplies several months ago, I discovered a collector's item. Buried beneath the usual battered CAVEAT EMPTORs and DAMNUM ABSQUE INJURIAs was an almost perfectly preserved STARE DECISIS.

Hiding my excitement, I casually asked the price. Not recognizing me as a member of the Bar, the proprietor explained that, not more than a few decades ago, a STARE DECISIS had been commonly used not only by lawyers in writing their briefs, but also by judges in writing their opinions.

He suggested, without making any express representation, that this particular STARE DECISIS had been used by the Washington Supreme Court near the turn of the century, and had been in storage since. Obviously, it had been little used.

Though the price was high, I bought it on an impulse and stored it in my office closet.

A search into the history of my STARE DECISIS has led to many unfullfilled hopes. For a time, I thought mine was the STARE DECISIS used by the appellant in *Jannak v. Dept. of Labor & Industries,* 181 Wash. 396 (1935) to reach a result which eight of the nine Supreme Court judges were on record as opposing! An earlier case, *Carsten v. Dept. of Labor & Industries,* 172 Wash. 51 (1933), had held by a 5-4 vote that a homeowner who hired a laborer to build a chicken house was not an employer within the Workmen's Compensation Act. The four dissenting judges in *Carsten,* still disagreeing with the result, felt it was applicable to *Jannak;* and since the majority would not overrule it, applied it. Three of the majority in *Carsten* dissented in *Jannak,* refusing to change the *Carsten* rule, but claiming it was inapplicable. Judge Geraghty, who had come to the bench between the two decisions, dissented in *Jannak.* Only Judge Steinert agreed with the *Jannak* result!

To my great disappointment, I discovered that a STARE DECISIS ET NON QUIETA MOVERE, rather than my own less elegant STARE DECISIS, had been used in the *Jannak* case. The court used a SUB SILENTIO to apply that ornate piece of work, however, thereby substantially diminishing any antique value it might otherwise now have.

With fair certainty, I believe that I can now show that the STARE DECISIS in my possession was the one used by our court in *State ex rel. Atkinson v. Ross,* 43 Wash. 290 at 292 (1906) as follows:

"STARE DECISIS is the policy of the courts. On the adherence to its principle rests the decisions of the courts as authority. The rule is a salutary one, and ought not to be departed from unless grave necessity exists therefor."

Efforts to add to my collection have proved unexpectedly unrewarding. The STARE DECISIS used by respondent in *Freehe v. Freehe,* 81 Wn. 2d 183 (1972), allowing interspousal negligence suits, was so badly mangled as to be unsalvageable.

We are informed that a STARE DECISIS used in an early draft of briefs in *Brown v. Merlo,* the Feb. 20, 1973, unanimous opinion of the California Supreme Court striking down their 44 year old host-guest statute as a denial of "equal protection," is available on the underground market. Rumor has reached us that the Chief Justice of the California court, however, has ordered his clerks to search out any STARE DECISIS in briefs under two years old, and strike them.

Nevertheless, in my office closet I still have my original STARE DECISIS and am ready to use it to befuddle my opponent and bedazzle the court when the right opportunity comes along.

Hugh and Teel McGough

HMcG

The President's Corner

I believe that, by now, all of us in the legal profession have come to recognize that the dominant and most compelling characteristic of today is change — change and a rate of change which is highly accelerated when viewed with historical perspective. We may not like it — none of us I suspect likes all of it — but we accept the fact that wholesale change is upon us and that it is coming from many, many fronts. Here are a half dozen subjects of major current interest to lawyers, each of which supports the postulate that change is today's touchstone:

Group legal services;
Use of legal assistants;
Certification of specialists;
Lawyer referral service;
Compulsory malpractice insurance;
The increasing lawyer population.

Each of the above subjects is in itself a separate, broad topic of concern. What I have come to notice is that although they are diverse there are also significant interrelationships.

Group Legal Services

Let me illustrate this by beginning with group legal services. We already have in our State a substantial number of legal service plans under which a group of individuals is served by a single lawyer or firm of lawyers. This is called a closed panel plan. What we do not have is an open panel plan, i.e., one in which lawyer participation is open to the Bar generally, or any plan under which legal services can be provided on a prepaid basis. Legislation to provide for open panel prepaid group legal services has been drafted by the State Bar Association and is before the current legislative session.

The main thrust of group legal service is to make much needed lawyer service available to families with annual incomes of from $5,000 to $20,000. This is the segment of our society, estimated at over 75% of our total population, which is ineligible for free legal service and which is unable, or believes itself to be unable, to afford to pay going rates to a lawyer for legal assistance delivered in accordance with our traditional delivery system.

From the point of view of the consumer, the most sensitive element in the group legal service concept is cost. Development of the legal assistant function in the law office is a concept which addresses itself directly to cost, and I am convinced that one of the most promising factors looking toward the success of prepaid group legal programs is the greatly expanded use by lawyers of legal assistants. Another factor which I believe will contribute importantly to such programs, also by tending to reduce costs, is increased specialization among the lawyers. With this and other forces at work, it appears to me that the certification of specialists by Bar Associations has become more a question of when than whether.

Charles I. Stone; Robert Meserve of Boston, President of ABA; Brian Comstock, Seattle; John Champagne, Olympia.

Robert S. Day, Pasco; Charles and Naom Stone, Seattle; John J. Ripple, Spokane; and John J. Champagne, Olympia.

There are obvious similarities between our Bar Association's year old, fast growing, statewide lawyer referral service and our aspirations for an open end, prepaid group legal program. Both programs contemplate operation on a statewide basis. Both invite participation by lawyers throughout the State. Both are an effort to serve the public interest by making it easier for the relatively lower income, relatively unsophisticated individual in the community to reach a lawyer's office.

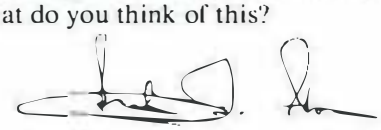
Self Certification

An experimental first step has been taken by our lawyer referral service in the direction of self-certification by participating lawyers. I predict this will continue and be extended eventually to more formal certification. All lawyers participating in the lawyer referral service are required to carry malpractice insurance. The Board of Governors has again requested investigation of compulsory malpractice insurance for lawyers generally throughout the State, and I suspect such coverage will, in any event, be a condition to participation in the prepaid open end group legal service program.

Dean Roddis, in the March issue of the Bar News, has supplied us with an informed, perceptive estimate of probable future increases in the lawyer population of our State. As this is written I have not had the benefit of the second portion of his article on the subject of future demand for lawyers. I cannot but believe, however, that if membership in our Bar Association doubles during the next ten years, as Dean Roddis' conservative projection suggests, we may be hard put to find useful, challenging employment for all of our members. It has been suggested that the group legal service concept, with all that it connotes in the provision of legal services to the vast population which is not now receiving the legal help which it badly needs, will go far toward absorbing anticipated increases in the supply of lawyers. I have reservations as to this and, once again, I find an important interrelationship with group legal services.

I have already expressed the view that one of the ingredients of group legal service success, perhaps an essential one, is greatly increased use of the legal assistant. This suggests that in the years to come the unemployed young lawyer, in a buyer's market, may find himself competing for law office employment with the much less highly educated legal paraprofessional. It would surely be an unhappy day if the result were to create a second-class lawyer cadre of individuals with full legal credentials doing legal assistant work at legal assistant levels of compensation.

What do you think of this?



SEARCH AND SEIZURE

Recent Trends In Washington

by Neal J. Shulman

"A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would, probably, never be understood by the public. Its nature, therefore, requires, that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects, be deduced from the nature of the objections themselves. . . ."

—Chief Justice Marshall
McCulloch v. Maryland
4 Wheat. 316, 4 L.Ed. 579

What were undoubtedly thought to be the simple and concise phrases of the Fourth Amendment to the Constitution of the United States were ratified and adopted in the year 1791, yet, today, few areas of the law have grown to more complex proportions. Police officers, prosecutors, and defense attorneys who continually work in the area of search and seizure are cognizant of the kaleidoscope of changing concepts, new philosophies, and sometimes confusing theories and rationale. To the average practitioner, who has spent little or no time in the area of criminal law, the concepts of search and seizure may appear as an insurmountable barrier to successful defense work.

With the advent of the Intermediate Court of Appeals, relatively few cases involving search and seizure reach the State Supreme Court. Acting within the guidelines previously established by the Supreme Court, with occasional clarification by that high court, the Court of Appeals, in recent years, has been largely responsible for shaping and defining the law of search and seizure. It is for that reason that primary emphasis has been placed on decisions of the Court of Appeals in an attempt to ascertain current trends in this massive body of law.

BASIC PRINCIPLES

Although subject to continuous metamorphosis and refined definition with regard to both interpretation and application, the basic principles of search and seizure remain the foundation for growth and expansion within this body of law. As points of departure, four basic principles are suggested:

1) An officer may search incident to a lawful arrest (with or without a warrant of arrest), so long as the search is limited to the area within the immediate possession and control of the arrested person.

2) An officer may search and seize pursuant to the direction and limitations imposed by a valid search warrant.

3) An officer may seize items in plain view so long as the officer is lawfully in the area in which the seizure takes place.

4) An officer may search for and seize items pursuant to a valid consent, given by a person having standing to give such consent.

The expansion and application of these and other related principles, including the relatively new concept of "stop and frisk," comprise the remainder of this article.

SEARCH BY PRIVATE PERSONS

Increased use of narcotic and other controlled drugs has led to search and seizure issues arising from attempts to transport such drugs. One of the more common situations arises when an individual deposits a suitcase or other parcel containing contraband drugs with a common carrier for transportation. The carrier, or his agent, having become suspicious, opens the parcel, discovers the contraband, and contacts local law enforcement officers who ultimately arrest the addressee upon his receipt of the container. The question continually raised in this and other varying circumstances, is whether the search by the carrier or other private individual was unlawful, requiring suppression of the evidence.

The Washington courts in conjunction with the Federal Courts have adopted the general rule that the fourth amendment prohibition against unreasonable searches and seizures does not apply to searches by private individuals not acting in concert with agents of governmental authorities. *State v. Wolfe,* 5 Wn App 153 (1971).

In the *Wolfe case,* two unidentified persons delivered a suitcase to the United Airlines freight depot in Portland for shipment to Seattle. The freight agent, becoming suspicious, opened the case and observed packets containing a white powder. The agent called a port security officer who, in turn, notified the local sheriff's office. Upon arrival the sheriff found the suitcase open and removed one of the packets, tested it, and found the contents to be amphetamine. The suitcase was then closed and sent on to its destination in Seattle. Seattle police officers, having previously been alerted, arrested the defendant when he picked up the suitcase. The defendant challenged his conviction on the ground that the action of the freight agent, the port security officer, and the sheriff, were in concert, and constituted an unreasonable search and seizure.

Relying on the general rule previously stated, the court found that the freight agent was not acting in concert with any governmental authority and that his search, being that of a private person, was not subject to the prohibitions of the Fourth Amendment.

While the rule may be fairly well defined, its application may lead to additional difficulties in determining what constitutes joint action between a private individual and agents of governmental authorities. The United States Court of Appeals for the 9th Circuit has held that direct physical participation in a search, or coordinated planning, is condemned as constituting joint action. *Corngold v. United States,* 367 Fed 2nd 1 (9th Circuit 1966). On the other hand, the 9th Circuit has also ruled that there was no joint action where a federal agent informed an air freight shipping manager that there was reason to believe the description of the contents of a package, as described in a waybill, was incorrect and the address of the shipper non-existent. Upon receiving this information, the freight manager opened the package, found the contraband, which ultimately led to the defendants conviction. *Gold v. United States,* 378 Fed 2nd 588 (9th Cir. 1967). It would thus appear that so long as the common carrier or other private individual, is not acting upon a request by a governmental agent to examine a container, or is not physically assisted in opening the container, there is no "direct participation" such as would justify a finding of joint or concerted action between the common carrier and governmental agents.

(Continued on Page 29)

NEAL J. SHULMAN, City Attorney for the City of Richland, Washington, is a 1964 graduate of the U of W Law School. A former Chief Deputy Prosecutor for King County, Mr. Shulman has taught numerous classes on the subject of Arrest, Search and Seizure, both informally to various law enforcement groups and as an instructor in the law enforcement program at Highline Community College. A major portion of his legal experience has been devoted to criminal trial work, both prosecution and defense.

MECHANICS OF SUPREME COURT DECISION MAKING

by Justice Robert F. Brachtenbach
Washington Supreme Court

The *Bar News* Editor has asked that I comment on the transition from private practice to the Supreme Court and further on the internal workings of the court in the decision making process.

Busy lawyers will know what I mean when I say that the most striking difference between private practice and sitting on this bench is the telephone. Imagine a day at the office when the phone not only doesn't ring every five minutes, but may never ring at all. This is one of the more welcome changes.

Greatly rewarding and personally satisfying is the opportunity to research thoroughly a legal issue without the inevitable deadline faced in practice. This factor, coupled with the freedom from worrying about the economic realities of a particular case (in the sense of wondering if you will ever be able to bill out all the time necessary to do a thorough job on an issue) provide a great contrast to lawyering.

While there is an element of isolation, I have not found this to be an overriding disadvantage. In view of the present method of electing judges, I find ample opportunity to speak to bar associations, civic groups, unions, newspaper editors, etc., so that the isolation is not nearly so great as might appear on the surface.

Petitions Take Time

I have been amazed with the amount of work on the court in matters other than argument and opinion writing. For example, substantial time and effort are devoted to petitions for review of decisions of the court of appeals. In 1972 the court received 143 such petitions for review. Each petition involves a reading of the petition itself, often an answer to the petition, the briefs and the opinion of the court of appeals.

These petitions are assigned to one of the two departments of the court. Petitions are preassigned to one judge. A departmental conference is held to consider the matter after a report and recommendation from the assigned judge. Recently I counted 591 pages of material for a single petition for review conference. My own assignment was in excess of 200 pages. If the departmental conference is not unanimous to either grant or deny the petition, the case is then presented to an *en banc* conference. In this manner, the petition is acted upon by a majority of the court.

Less time consuming, but still occupying part of the court's effort are questions of transfer of cases so that the case is heard in the supreme court initially.

Writs of habeas corpus, often pro se, may be ill-prepared, but demand and warrant careful scrutiny. They frequently are troublesome because the alleged error may rest upon factual matters occurring at the trial court.

The proposed rules on criminal procedure, previously distributed to the bar and bench, have occupied many day's work for each judge as well as lengthy conferences to review each rule. For example, the analysis of the American Bar Association standards for criminal justice as compared to existing Washington law is a volume in excess of 500 pages.

Finally the court must deal with purely administrative matters such as personnel, facilities and internal procedures.

Cases Assigned by Lot

I suspect that I was like many lawyers who had argued cases before the court without knowledge of the internal mechanics employed by the court in making a decision. When the docket is ready to be set for a term, case assignments,

to a particular judge, are made on a drawing by lot basis. This method has the obvious result and benefit of making the assignment by random selection. There is no opportunity to avoid the "tough" or unpopular issue.

By assigning all cases for the entire term, responsibility of a judge for his cases for that term is known well in advance of oral argument. He will review necessary parts of the record and study the briefs. Independent research may be necessary if the briefs fail to deal adequately with the issues.

The assigned judge's law clerk prepares a pre-hearing summary of the briefs and may or may not (depending on his own judge's instructions) give an evaluation of the case. This summary is distributed to each judge about a week prior to argument so that each member of the court not only has all the briefs, but also a well prepared synopsis of the contentions of both sides.

Decision Making

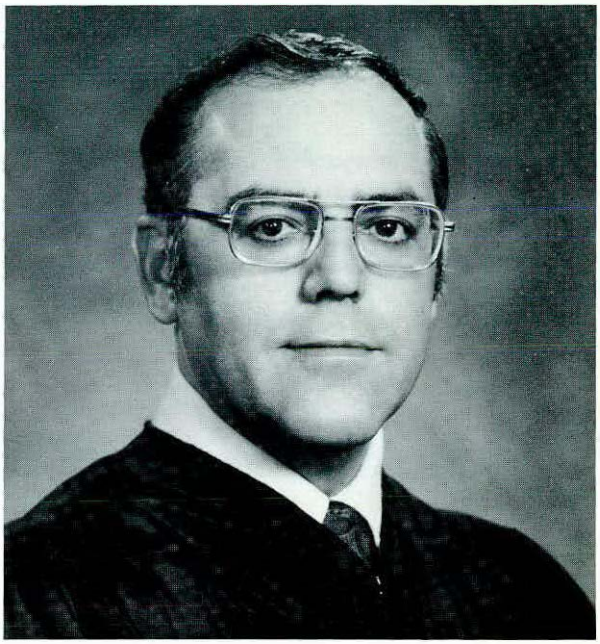
After oral argument, often on the same day as argument, the members of the court assemble in private conference. The judge to whom a case was assigned gives a detailed oral report on pertinent facts, contentions of the parties and his recommendation as to disposition. His evaluation will include his theory upon which the opinion should be written. The other members in turn around the table comment on the case and indicate their respective vote, with the chief justice normally reporting last. If the reporting justice receives a majority vote for his indicated disposition (both as to result and theory), he retains the case for opinion writing. If his proposed result is in the minority, the case is reassigned to one of the majority.

The judge writing the opinion necessarily goes back into the record and the briefs in preparing the decision. There appears to be no set pattern as to the method of preparing opinions, i.e., whether by direct dictation, handwritten rough drafts, law clerk assistance and various combinations of these approaches. I find it necessary to write at least a rough draft outline before dictating. On critical language I write out by hand the tentative wording, set it aside, review it with my law clerk, and then come back to it a day or two later. My law clerk and I independently review the first typed draft and subsequently have one or more conferences to consider proposed changes, either in style or theory.

My clerk then Shepardizes all cases cited and my secretary verifies all citations and all quotations. The opinion is typed in final form, signed by the writer and put into circulation with a passing sheet attached.

Each member of the court reviews the proposed opinion and may have it reviewed by his law clerk. Comments are made on the passing sheet. For example, a judge may defer signing until he has read the dissent which was indicated in conference. Or he may indicate unwillingness to sign the proposed majority opinion, even though he agrees with the result, unless it is restricted to a particular theory. Comments on the passing sheet may lead to a revision of the original opinion or may even result in a realignment of votes.

When all members of the court have functioned and signed the majority or dissent, the reporter of decisions prepares the headnotes and the opinion is ready for release and filing with the clerk.



Justice ROBERT F. BRACHTENBACH became the junior member of the Washington Supreme Court in November, 1972, shortly before his 42nd birthday. He is a 1954 graduate of the U of W Law School. He served as an instructor at the University of California Law School in Berkeley for a year and entered practice in Selah in 1955, which he continued until his appointment. He served two terms in the House of Representatives from 1962 to 1966. He has written for the Law Reviews of the U of W and Gonzaga, and has chaired the Continuing Legal Education Committee of the WSBA. He is now serving on an editorial task force which is developing a text book on Washington Community property law. He and his wife Nancy have five sons.

Prior to filing of the opinion, great care is exercised to keep confidential the status of the matter, proposed disposition and even who is writing the proposed majority. In fact, by rule it is an act of contempt of the court for anyone to divulge to others than the justices and employees working on an opinion, the results before filing.

With a substantial number of opinions in circulation at any one time, this process does delay ultimate publication. Considerable study has been given and is being given to methods to allow sufficient opportunity for review by the other members of the court, but still shorten the time lapse between putting an opinion into circulation and filing. To function immediately on an opinion in circulation requires a judge to set aside the writing of his own opinions, further delaying the time when that case begins to circulate. It is a problem without an easy solution.

The quality of the briefs presented to us varies considerably. Many are thorough, well-reasoned and excellent overall. While I do not want to imply that the length of the brief is indicative of quality, there are few issues which can be presented adequately in a 3 page brief, but such are filed.

Common Deficiencies in Briefs

There are some common deficiencies which cause added work. There is the simple matter of correct citations of cases. The date of the cited case and both the state and national reporter system citations are necessary. If not provided by the briefs, court personnel will have to seek out these items as they are necessary for the opinion.

Occasionally there are detailed recitals of alleged facts appearing in the record without reference to the record so that the court can go directly to the appropriate place in the statement or transcript to verify the allegations.

Reference to matters outside the record, even events occurring after the trial are not properly brought before the court.

One practice is unhelpful. It occurs when a case is cited for a particular point of law and is followed by the statement "see also the following cases." See also the following cases for what purpose? If counsel contends that they stand for the same proposition, he should say so. Worse is the statement "see and compare the following cases." The comparison should be provided by counsel.

Oral Argument Important

Oral argument can be of substantial assistance to the court. Remember it is the last event occuring before the court makes at least a tentative decision on disposition of the matter. I find a brief summary of *material* facts to be of assistance. It is of no help to know the date on which the accident occurred (if not relating to an issue) or the occupation of the driver, etc., all pointing to the necessity of not wasting precious, limited time to recite immaterial facts. If the court asks questions about the facts, do not assume that the court has not read the briefs or the record. It has. Recollection may not be perfect, however.

The court generally will have had to read the briefs in 8 cases for 2 days of argument and may have had to do that a week earlier. It is impossible to keep in mind the details of 8 cases at once. Also, the argument or questions from the court may make significant facts which seemed unimportant in the initial reading of the briefs or the record.

It is a waste of time to repeat the volume and page of cases set forth in the brief. If a case is controlling in counsel's opinion, it is much more effective to so state and refer the court to the page of the brief which it is cited. The court has the briefs on the bench and can follow counsel's reading of a quotation of the principal point being argued. Questions from the court may indicate concern or doubt on points of law, factual issues or broad philosophical implications of the case. I have yet to be able to glean from a judge's questions the vote which he will cast in conference. Likewise, that a particular judge asks a lot of questions is absolutely no indication of whether he has the assignment or not.

Plenty of Work

In view of a proposal in the legislature to reduce the size of the court to 7 members and in view of the proposed amendment to the judicial article of our constitution, some comment about the work load of the court is in order. Personally I find plenty of work to not only keep me busy all day, but to require the reading of briefs and petitions at home in the evening.

The present size of the court enables it to be relatively current. Some individual cases do take considerable time to reach publication. The fact that ⅓ of the membership of the court has gone to the federal bench in less than 2 years cannot be overlooked as a cause of delay.

Edwin J. Friedman, Sam L. Levinson, Jack P. Scholfield, Judge William T. Beeks, Judge Lloyd Shorett, Russell V. Hokanson, John D. McLauchlan, all of Seattle; and Grant Armstrong, Chehalis.

Controversial decisions simply take longer to process as dissents are being written and circulated for as long as the proposed majority.

Notwithstanding the exceptional cases in this category, most cases are published within a reasonable time. Some of the cases argued in January, 1973, were ready for filing in February, 1973. A number more will be ready in March and April.

At the beginning of 1972, the supreme court had pending 199 cases in various stages of processing. Some had been argued, but not filed. Others were set, but not argued. Still others were not then ready for setting. During the calendar year of 1972, the court received another 414 appeals, writs and petitions. It disposed of 378 matters, transferred 30 to the court of appeals, leaving 205 cases pending at the end of the year.

Needless to say, this status would have been impossible to achieve without the outstanding performance of the court of appeals.

It should be and is the goal of the court to be as current as possible, consistent with a good work product. A reduction in size of the court will only increase the caseload per judge, a volume which I find ample under the present system.

Campaign Efforts Take Time

I mention the judicial article amendment, not to argue its merits or demerits here, but to point out that under the present elective process an incumbent necessarily occupies part of his time with campaign efforts. This is time and energy not spent in reading, briefing and writing. The proposed constitutional amendment should at least be studied by the bar with that fact in mind.

As a practicing lawyer I now know that I did not appreciate the time which must be spent in anticipation of a state wide election. As an appointee with a relatively short time before an election, I find myself mentally and physically involved in extensive efforts to assure election. At the time of writing this article I have just spent 3 full days in 3 different counties, talking to lawyers, bar associations, chambers of commerce, newspaper editors and reporters, visiting courthouses, city halls, police stations, senior citizens homes and the like. I can only conclude that there must be a better way.

The foregoing comments are personal and not intended to speak for the court or its other members. □

McLauchlan at Large

John Gavin with Chuck and Naom Stone

Susan French

Art Barnett

Evelyn Foster

Judge Jim Noe, Bob Mock and Norm Quinn

A Profile of the Washington State Bar and Bench with References to Judicial Selection

By Charles H. Sheldon
Associate Professor
Washington State University

Several questions are generated by the current concern often expressed in this journal for judicial selection in the State of Washington. First, under the present system of non-partisan elections mixed with gubernatorial appointment and bar consultation, what sorts of judges are recruited to the bench and how different are they from the bar at large? Second, how far does the present bench deviate from the "ideal" in their resolution of legal issues? Third, to what degree are members of the bench and bar satisfied with the present selection process in Washington?

As a result of financial assistance from the Division of Governmental Studies and Services of the Department of Political Science at Washington State University, this writer was able to survey the Washington Bar and Bench this past year and to compile data which provide some answers to the above questions. Mailed questionnaires were sent to a sample of 350 lawyers and to all the Superior, Appeals, and Supreme court benches. Two-hundred and twenty-eight lawyers returned their questionnaires (65%) and 84 judges participated (74%). The following data are based upon their responses.

Characteristics of Bar and Bench

Students of judicial selection assume that various modes of judicial selection result in the recruitment of characteristic judges. Are the judges in Washington different from the legal profession generally? Data from the survey indicate that indeed judges are fairly unique.

	Lawyers n = 228	Judges n = 84
Age		
Under 40	41.1%	5.9%
40-49	26.7	27.3
Over 50	31.5	66.5
Law School**		
Above average	13.1	4.6
Average	72.3	85.7
Politically Active*	**Lawyers**	**Judges**
Self Active	39.9	63.1
Family Active (Father etc.)	21.9	22.6
Active in Bar Ass'n	63.6	77.3
Political Party Preference*		
Democrat	34.2	29.7
Republican	45.6	52.3
Independent, other or none	20.1	16.6
Religion		
Catholic	17.5	16.6
Jewish	3.9	1.1
Protestant	57.0	63.1
Other or none	19.2	17.8
Courtroom Experience*		
Less than 10 years	46.8	27.2
10-15 years	15.8	20.2
Over 15 years	37.2	52.3
Class Background		
Upper class	29.8	26.1
Middle Class	49.5	53.5
Working Class	14.0	17.8
Ideology		
Conservative	25.0	13.1
Liberal	21.9	14.2
Moderate	48.2	70.2
Radical and other	3.0	0.0
Type of Practice* (Percentage refers to number of lawyers and judges whose practice was *primarily* in each category)		
Criminal Defense	5.7%	3.5%
Civil Defense	17.1	21.4
Criminal Prosecution	3.0	9.5
Civil Prosecution	19.3	26.1
Wills, Estates and Probates	13.6	15.4
Business and Corporate	21.4	14.2
Government Agencies	8.7	1.1
Real Estate	3.9	3.5
Other	5.7	2.3

(Percentage may not total 100 because of no response or an uncodable answer.)

* Prior to selection to the bench for the judges.

** Columbia, Yale, Harvard, Stanford, Michigan, Chicago etc. are classified as above average and Washington, Willamette, Hasting, U.S.C., Gonzaga etc. are classified as average.

The judges are different from their colleagues in the bar and they do vary in significant areas. As expected, judges are older and more experienced. Despite non-partisan elections and probably because of gubernatorial appointments the judges tend to be much more politically active prior to the bench. Also because of the moderating effect of non-partisan elections and executive appointment the judges are less extreme in their economic and political ideology, and were affiilated with the Republican party more than the lawyers. Class, religion, and law school backgrounds tend to reflect the backgrounds of the bar generally although slightly fewer of the judges attended the more prestigious law schools.

Judges have tended to come from adversary types of practice prior to the selection. Defense and prosecution experiences (especially civil) are more closely associated with the judges than with the lawyers. In sum, the way to the bench under the present system of selection is to be older, more experienced in adversary types of practice, to be moderate but active in Republican politics, to be active in bar association functions, and to graduate from a local law school.

Judicial Decisional Factors: The "Ideal" and the "Real"

Both lawyers and judges were asked in the survey to weigh on a scale of "most important," to "not important" a series of decisional factors. The frame of reference for the lawyers was those decisional guides used by the "best judge" before whom they had presented cases. The judges were asked to weigh those factors in terms of their own decision-making.

Decisional Guides	Lawyers (Percentage designating factor as "most important")	Judges
Oral Arguments	7.8%	8.3%
Written Briefs	28.0	28.5
Interpretations of law and precedent	57.0	65.4
Concept of justice	50.0	54.7
Common Sense	53.5	55.9
Community Values	6.1	3.5
Public Opinion	1.3	1.1
Political Factors	0.1	0.0
Needs of Community	3.9	3.5
Demands of Community		1.1

Little disparity exists between what lawyers feel the best judges use as decisional guides and judges say they actually use when deciding legal issues. Judges do tend, however, to give slightly more weight to precedent and interpreting the law than the lawyers would have them. Both lawyers and judges do not regard as too important the two contributions made to the decisional process by the lawyers — oral arguments and written briefs. Also social factors such as the values, needs and demands of the community along with political factors are clearly relegated to an insignificant role in decision-making. The decisional role of the Washington judge is to remain aloof from the ebb and flow of the political and social forces in the state and to decide on the basis of factors quite removed from even the adversary process of which he is the arbiter.

Preferences for Selection Systems

Assuming that the present selection system in the state at best contributes to the recruitment of characteristic judges who utilize the above decisional factors to decide legal issues before them, or at worst, does not hinder the recruitment of these judges, we are led to ask: Does the present bar and bench indicate a satisfaction with the non-partisan election system in which the governor is allowed to fill vacancies through appointment? Lawyers and judges in the survey were asked to rate several selection systems in terms of that system they felt would "best recruit highly qualified people to the bench" in Washington.

	Lawyers (Percentage giving positive rating to system)*	Judges
Merit System (Missouri Plan or variations)	72.3%	67.7%
Non-partisan Elections	49.5	63.8
Partisan Elections	3.4	0.0
Gubernatorial Appointment with legislative approval	10.0	16.6
Gubernatorial Appointment	10.0	36.8
Legislative Appointment with gubernatorial approval	1.3	1.1
Legislative Appointment	1.3	0.0
Any process in which the bar nominates	43.8	48.8

*Positive = "excellent," "best," or "good."

The Merit plan is preferred by both judges and lawyers although the latter feel stronger about its value in recruiting highly qualified judges. The judges are not dissatisfied with the present non-partisan system and are reluctant to condemn outright the participation of the governor in the process. Since they were recruited by

these methods, this emphasis is not surprising. There is a fairly significant attitude that as long as the bar participates somehow in the selection of judges that the integrity of the bench will be maintained.

Conclusions and Conjectures

The bench in Washington is not entirely characteristic of the legal profession generally. This may be a result of the present system of selecting judges. Once on the bench the judges tend to utilize those decisional guides that the lawyers would have them and these decisional guides are quite removed from what inputs the lawyers and community projects into the decisional process. The judge is a free agent when he dons his robe although it can be argued that the constraints upon the judge in the form of laws and precedent are not altogether insignificant. The profession generally agrees that the merit plan of selecting judges (nomination by a commission composed of judges, lawyers and lay persons with gubernatorial appointment followed, after a period of probation, by an election in which the judge runs on his record unopposed) is the better system. Judges are not as dissatisfied with the present methods (non-partisan election with gubernatorial appointment to fill vacancies) as are the lawyers. Perhaps the above data are suggesting that the responsibility of incompetency on the bench lies not entirely with the present system of selection although this certainly cannot be ignored. The problem is how to "correct" or discipline the very few judges who may abuse their office once they are on the bench. Under the present system of selection we seem to be getting the caliber of judges we need in the state (if the data on decisional guides are of any value). Under the Merit plan we probably would do better (if the data on the selection preferences are valid). But once on the bench how can we be assured that judges remain competent, compassionate and administer justice with an even hand? □

King Co. Probate Manual on Sale

The Probate Court Policy Manual of the King County Superior Court will be on sale for the month of March in Judge **Peter K. Steere's** courtroom E713, King County Courthouse, through his bailiff **John W. Acheson.** This is a revision of the Probate Policy Manual which took effect January 1, 1969. The revision has been in effect since January 1, 1973.

University of Puget Sound Receives Provisional Accreditation

The University of Puget Sound School of Law, which opened its doors to 427 students in day and evening law programs last September, has received provisional accreditation from the American Bar Association.

The February 12 action, which took place at the mid-year meeting of the ABA in Cleveland, culminated over four months of inspection by the accrediting organization through its various committees.

First step, according to Law School Dean Joseph Sinclitico, was completion of an exhaustive questionnaire by UPS administrators. In November, the school was inspected by Professor Millard Ruud, University of Texas at Austin, who serves as a consultant to the Council of the Section on Legal Education to the ABA.

Ruud's report then was submitted to the accrediting sub-committee of that Council. The sub-committee spoke personally with Dean Sinclitico and Lloyd Stuckey, UPS vice president and bursar, at the Cleveland meeting. Following that conversation, a recommendation for provisional accreditation was submitted to the Council of the Section on Legal Education, made up of approximately 30 members.

From the Council came a vote to recommend accreditation of the UPS school, Sinclitico added. The full House of Delegates of the ABA concluded the action with a positive vote.

Significant criteria in the ABA's accreditation, the dean explained, include administrative personnel, faculty, students, admissions standards, library and facilities.

"Accreditation is the product of great effort on the part of university officials, law school administrators, our faculty, students and staff," said Sinclitico.

"While this accreditation reflects the achievement of good standards of legal education, it should not be looked upon as the final phase of this law school, but rather as the first step in an ever-continuing effort to achieve excellence in the training of students for the practice of law and for service to their communities," he added.

The UPS School of Law joins 149 other accredited law schools in the nation.

(For Gonzaga News, see Page 22)

Around the State

SEATTLE-KING REPORT
By GERALD G. TUTTLE

Members of the Seattle King County Bar Association have imposed a dues increase upon themselves. Effective July 1, annual dues will increase $15 to $50 ($35 for lawyers with less than five years' practice).

Michael J. Fox, who has been named by the United Farm Workers to establish an office in Washington, D.C., as national counsel for that organization, plans on returning to Seattle after his tour of duty in the East. In his new job, Fox will be engaged in administration of major litigation for the United Farm Workers and in political activities on their behalf. As a result of this appointment, Mr. Fox has resigned as a trustee of the Young Lawyers Section of the Seattle-King County Bar Association and is leaving his position with the Seattle Legal Services Center.

The firm of LeSourd, Patten, Fleming & Hartung announce that **C. Dean Little** has become a partner with the firm and **Rodney J. Waldbaum** and **J. Stephen Werts** are associated with the firm.

Chesterfield Smith, president-elect of the American Bar Association, presented two ABA awards to the Seattle Young Lawyers Section for the "most effectively executed over-all program" of activity during 1972.

Smith said one award was for the group's Statutory Reform Committee's work toward the passage of Initiative 276. The Young Lawyers were responsible for the drafting and were active in campaigning for the initiative which calls for disclosure and limitation of political campaign financing, lobbyist reporting, reporting of elected officials' financial affairs and access to public records.

Chesterfield Smith (right), president-elect of the American Bar Association, presented awards to Bob Mussehl, immediate past president of the Seattle-King County Bar Association's Young Lawyers Section, for that group's efforts related to the drafting and passage of Initiative 276. Looking on is Betty B. Fletcher, president of the SKCBA.

"Initiative 276 is definitely one of the most constructive and important contributions to positive governmental reform presented during 1972," Smith said.

The other award presented to **Bob Mussehl,** immediate past president of the Seattle-King County Young Lawyers Section, was in recognition of the group's efforts in the areas of human rights, protection of individual liberties, drug abuse and consumer protection.

Smith presented the awards to Mussehl while in Seattle speaking to a luncheon of the Seattle-King County Bar Association and the Seattle Rotary Club.

Mussehl has also been appointed to a three year term as a Regional Director of the ABA Young Lawyer Section's Task Force for Emergency Disaster Relief, a group developing plans for emergency legal assistance in disaster areas.

William C. Erxleben, Regional Director of the Federal Trade Commission, announces the following attorney appointments at the Seattle Regional Office:

Barry E. Barnes — graduated Georgetown Law Center, 1969; formerly a VISTA attorney in Yakima; a Reginald Heber Smith Fellow with the Legal Aid Bureau in Chicago; most recently an Associate Counsel with Lawyers for Housing in Seattle.

Gregory L. Colvin — graduated Yale Law School, 1971; formerly staff attorney, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.; recently discharged as 1st Lt., United States Air Force.

David A. Middaugh — graduated Georgetown Law Center, 1970; law clerk to Judge Thomas E. Fairchild, United States Court of Appeals for the Seventh Circuit, 1970-1971.

SOUTH KING REPORT
By **CHARLES R. BRANSON**

At our last gathering we were fortunate to have **James P. Curran** report on the subject of the Bar Association's efforts to meet the demands for group legal services. Jim expressed his views that contributions from members of the Bar should be used to overcome current financial limitations. His views on the impact on our methods of practice were appreciated by all.

Hugh Carney has moved into his new office building at 311 Morris Avenue South. Renton. **Stan Stone** has moved his practice to the new Carney Building. **William R. Levinson,** formerly associated with Alva Long, has established his new office at 514 Auburn Way North.

Phil Biege lodged a complaint against the younger members of the Bar who he alleged are responsible for lengthy calendars. These allegations were not taken lightly by **Dick Conrad.** In a fair and impartial test conducted by **Jack Burgeson,** Phil was unable to prove his allegations.

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

The first of the legal forums sponsored by the East King County Bar Association was held on February 14, 1973, at the Puget Sound Power and Light auditorium in Bellevue. Panelists **John Hallock, Bill Blanchard** and **Bill Irvine** spoke to an enthusiastic 65 or 70 interested citizens on probate law. Justice **Robert Brachtenbach**, Judges **David C. Hunter, A. P. Tony Wartnik** and **Richard Carrithers** are on the March panel discussing the judicial process.

There are two new faces in Bellevue. **S. Michael Rodgers** has opened his office in Suite 412, 400 Building in Bellevue. **Robert G. Gunovick** is sharing space in Bellevue with **Richard C. Carrithers.** Bob has been a Bellevue resident for several years but has been practicing in Seattle.

Joseph H. Gordon, Tacoma; Judge Stanley Soderland, Seattle, and Betty B. Fletcher, Seattle.

PIERCE REPORT
By **KENYON E. LUCE**

At the sixty-fifth annual Lincoln Day Banquet of the Tacoma-Pierce County Bar Association, officers and trustees for 1973-1974 were announced as follows: President, **Merrifield B. Rees;** Vice-president, **William J. Rush;** Secretary-Treasurer, **Thomas Krilich;** Trustees: **Jerome Combs, Henry Haas, D. Gary Steiner, James E. O'Hern, Spirro Damis**, and **F. Curtis Hilton, Chesterfield Smith**, President elect of the ABA, addressed the meeting.

The Bar office has been in operation since December 7, 1972, and since that time has made 247 lawyer referrals.

Gordon Elected

Joseph H. Gordon of Tacoma has been elected to the American Bar Endowment's Board of Directors. He was voted into office during the mid-winter meeting of the American Bar Association in Cleveland in February. He will fill the unexpired term of Thomas J. Boodell Sr., who died in August of 1972. A partner in the Tacoma law firm of Gordon, Honeywell, Malanca, Peterson & Johnson, Gordon was elected to the Board of Governors of the ABA in 1962 and has been actively associated with ABA financial affairs, first serving as a member of the Budget Committee for three years and then as the Association's Treasurer from 1965 to 1972. While Treasurer of the Association, he was also Treasurer of the American Bar Foundation.

Campbell, Engerson & Dille announce the change of their firm name to Campbell, Dille & Barnett and announce that **Kenneth W. McCarthy, Jr.** has been associated with the firm since November 1, 1972, with offices at 319 South Meridian in Puyallup, Washington.

BENTON-FRANKLIN REPORT
By NEAL J. SHULMAN

John Nason, long time resident and practicing attorney in the City of Richland, has left for the San Juan Islands to continue his law practice. A bon voyage send off was held for John at the Hanford House, February 16, with a dinner following at the Brass Door restaurant.

A move to consolidate Benton and Franklin Counties is being spearheaded by **Dick Bennett** who is chairman of the citizen's committee to modernize government. The committee has drafted legislation for presentation to the state legislature which would allow the citizens in both counties to vote on the issue of consolidation. Under the proposed plan, Pasco would become the county seat of the newly formed Ben-Franklin County.

With the legislature in full swing, **John Sullivan** has been keeping himself busy as attorney for the Democratic caucus on the House side.

Any attorneys wishing to become the proud owners of shrunken heads are urged to contact **Phil Rodriquez.** As a side line to his legal practice, and service as part-time deputy prosecutor for Benton County, Phil has formed an import-export company known as "RO-INTER." Speciality of the month is shrunken heads by Indian craftsmen of Peru and Equador.

Diehl Rettig, oft times recognized as the Tri-City's most eligible bachelor attorney, has recently returned from a vacation in Hawaii. A deep tan and a large grin aptly summarized his trip.

The campaign of Benton County Prosecutor, **Herb Davis,** and his Chief Deputy, **Curt Ludwig,** against the sale of questionable literature in the City of Richland has proved to be ultra effective. The business establishment in question has moved its location to the City of Pasco, in Franklin County. Congratulations to Franklin County Prosecutor, **Jim Rabideau.**

Welcome is extended to **John Crawford** who was recently appointed as a part-time deputy prosecutor for Benton County. John was born in Billings, Montana, and graduated from Duke University as an undergraduate. He is a 1972 graduate of the University of Washington, School of Law, and served as a law clerk prior to accepting the position with the Benton County Prosecutor's office.

GRAYS HARBOR REPORT
By JOHN L. FARRA

The Grays Harbor County Prosecutor, L. Edward Brown, recently announced the appointment of **Greg Staeheli** as deputy prosecutor. Mr. Staeheli will be located in the Grays Harbor County Courthouse in Montesano, Washington. He is a graduate of Gonzaga Law School. His starting duties will entail work in the juvenile and non-support area. Speaking of graduates of Gonzaga University, I recently noticed that a classmate, **Ronald B. Webster,** opened a partnership in Colfax with Mr. **Lawrence Hickman.** Congratulations to both gentlemen.

I also noticed that another classmate of mine, **Arnold M. Young,** opened a law practice in the Silver Lake Village area outside of Everett, Washington with Mr. **Kenneth E. Phillips.** Congratulations to both gentlemen. Mr. Young was previously with the Snohomish County Prosecutor's Office.

Paul Fournier of Montesano recently returned from a trip to the American Samoan Islands and Hawaii. The trip did wonders for Paul as he and his lovely wife, Florence, sported beautiful pants.

Richard Johnson of Montesano, or is it McCleary, recently announced that he was closing his office in Montesano. Drop us a line, Richard.

LEWIS REPORT
By DAVID R. DRAPER

Our Prosecutor's office has expanded by the addition of two deputies. **Jeremy R. Randolph,** Chief Deputy, has been in the office since October. He is 30 years old and was formerly with the King County Prosecutor's office. Jeremy's King County wit and procedures baffled some of the local members for a while, but he finally seems to be adjusting to Lewis County.

Arlan O. Lund, 28 years old and formerly with the Seattle law firm of Hartman and McGuire, came to the Prosecutor's office in early February of this year. He is married to Donna, and they had their first child about two weeks ago. Congratulations Arlan and Donna.

John Panesko Appreciation Night, attended by one hundred odd people was held back in December in recognition of 24 years of outstanding public service in the Lewis County Prosecutor's office. During 18 of those years Mr. Panesko served as Prosecuting Attorney. He is now

in full time private practice, and we extend congratulations and thanks.

New officers were elected for 1973. They are: **Donald F. Pietig,** President; **David R. Draper,** Secretary.

The local bar is just recovering from the bitterness of the hard fought campaigns for these positions.

SKAGIT REPORT

By PAUL N. LUVERA JR.

President **Eugene Anderson** announced that Skagit County bar members **E.C. Anderson** of Anacortes, **Hugh Ridgway** of Sedro Woolley, **Alfred Rod** of Burlington, **Gilbert E. Mullen, George McIntosh, John Cunningham** and **David Welts** of Mount Vernon will be the first members of the Board of Directors of the new non-profit corporation to provide legal representation for indigent criminal defendants in Skagit County.

With Law Day plans now in the formation stages, early acknowledgment of those Skagit County lawyers directly involved in law enforcement should be given. A tip of the hat to the following city attorneys: **Stephen Mansfield** of Anacortes, **Alfred Rode** of Burlington, **John Anderson** of Sedro Woolley, **Boynton Kamb** of Mount Vernon, and **Michael Lewis** of LaConner. The Prosecuting Attorney's staff is composed of **Earl Angevine,** Prosecuting Attorney, **Gilbert Mullen,** Deputy, and **William Nielsen,** Deputy. The following District Court judges should be recognized also: **Eugene Anderson** of Anacortes, **Warren Gilbert** of Mount Vernon, **Fred Lubbe** of Burlington, **Hugh Ridgway** and **William Stiles** of Sedro Woolley. Superior Court judges **Harry A. Follman** and **Walter J. Deierlein.**

Skagit County lawyers were involved in some unusual jury verdicts recently. **John Anderson** recovered $15,000.00 in Whatcom County in a false arrest case where his client was arrested while climbing the side of a building (a tavern) in demonstrating the art of mountain climbing. **David Welts** defended a rear-end collision in which the court directed the verdict for the plaintiff, but the jury brought in zero dollars. **Warren Gilbert** and **Paul Luvera** of Mount Vernon recovered a Skagit County record verdict of $100,000.00 against a local school district for the death of an eight-year-old child.

Patrick R. McMullen, associate of **William Stiles,** and **John Cuningham,** associate to Bannister & Bruhn, threatened to form a union for law office associates in Skagit County. With only two associates in the county things get a little lonely.

SNOHOMISH REPORT

By MICHAEL W. HERB
RUDOLF V. MUELLER

Several changes have taken place in law offices in the county. **Joe Brinster** has become a partner in the firm of Jordan, Brinster and Templeman and is no longer practicing as a sole practitioner. **Ken Phillips** has left that firm and associated with **Arnold Young** in offices located at the Silver Lake Shopping Center.

Dennis Jordan, a recent graduate from the University of Washington Law School, has also associated with Jordan, Brinster and Templeman, and **Dennis** is the grandson of **Charles Jordan** of that firm.

Mark Patterson, the retiring president of the Snohomish County Bar Association, has been elected to his 7th term as chairman of the Snohomish County Mental Health Board, and has also resigned from his position on the Snohomish County Board of Adjustment. **Jay Wisman** was selected by the county commissioners to replace **Mark** on that Board.

Jim Allendoerffer has left the prosecutor's office to associate with **Merle Wilcox** and **Dick Thompson,** who conduct two offices, one in Marysville and one in Snohomish.

The new officers for the Snohomish County Bar are **Robert Bibb,** president; **Henry Newton,** vice-president; **Bill Baker,** secretary; and **Herman Michelson,** treasurer.

THURSTON-MASON REPORT

By STEPHEN J. BEAN

The Lynch Boys, Jack and Neil, have moved into the new luxurious offices in the Thurston County Federal Savings & Loan Building. It is a toss-up between Lynch & Lynch and Foster & Foster as to which firm has the most luxurious suite of offices.

GOVERNMENTAL LAWYERS ASSOC.

By DAVID M. KENWORTHY

Bill Lowry, Association President, recently announced the following new committee heads: **Jack Champagne** (also Third District representative on the Board of Governors), Programs and Activities; **James Wilson,** Law School Enrollment; **Rich Montecucco,** Employment and Compensation; and **Bill Rosatto,** Retirement Systems. The new committees are the result of a recent reorganization and are expected to produce useful information on topics of particular interest to the members.

The Board's Work

Summaries of the minutes of the Board of Governors meeting February 16 and 17 in Vancouver, B.C., following members' attendance at the Western States Bar Conference:

Disciplinary Board

The Board of Governors requested that the Disciplinary Board submit a proposal for adoption of the so called "Pennsylvania Rule" which, inter alia, requires a suspended or disbarred attorney to inform his clients of the action. The Disciplinary Board was also requested to recommend a formula for automatic suspension after a number of censures or reprimands.

Report of Representative to the ABA

John Gavin of Yakima, one of the Board's representatives in the ABA House of Delegates, reported on the meeting of the House in conjunction with the mid-year meeting of the ABA in Cleveland. It was agreed that (a) the Agenda for the House of Delegates meeting in August would be submitted as soon as available to the Board of Governors and (b) that the Board's House of Delegates Members would in advance of the meeting outline to the Board the alternatives before the House of Delegates with reference to delegate representation in the House.

Lay Membership on Disciplinary Board

It was unanimously agreed that this matter be deferred for action until the March Meeting of the Board in Spokane.

Group Legal Services

A motion was made by Mr. Day and seconded by Mr. Pritchard and carried that the Bar Association's Group Legal and Pre-Paid Legal Services enabling legislation bill be amended to provide for a membership on the Board of Directors of the non-profit corporation provided for therein of 50% lay membership and 50% lawyers, plus a further amendment setting up a Board of Review for handling grievances involving either the client or the lawyer to assist in control of the quality and cost of the legal services rendered under the program.

B. The President was authorized to act on behalf of the Board to implement the passage in the Legislature of an acceptable Group Legal Bill which would allow the program to go forward.

C. The Staff Bar Counsel was requested to review the Annual Reports filed by those attorneys and law firms participating in the present Group Legal Services programs with particular reference to compliance with the Rules as adopted and the Code of Professional Responsibility and to give a report to the Board as soon as possible.

D. The Board adopted in principle the concepts as outlined in a memoranda of January 29th and February 13th as prepared by Gordon Wilcox and submitted to possible funding agencies.

E. The Board decided that the Group Legal Services Committee should become a part of the "Availability of Legal Services" category in connection with the Bar's general restructuring of its committee functions.

F. It was resolved that the Bar Association enabling legislation in this field be amended to reflect the fact that it was not the intention of the Act to prohibit the formation and conduct of any group, prepaid, or other legal service arrangement organized as an unincorporated association so long as the attorneys furnishing the legal services thereunder act in compliance with the Code of Professional Responsibility in its provisions concerning such arrangements.

Membership on Judicial Council

The resignation of John Moore as a member of the Judicial Council was accepted, with an expression of gratitude to him for his service. The designation of his replacement on the Judicial Council was placed on the March agenda of the Board.

Political Contributions

A. The office of "Corporation Counsel" was declared to be a "Law-Related" office within the meaning of the term in the Board's policy relating to political races and political contributions.

Neil J. Hoff, Tacoma

B. Candidates for the office of Corporation Counsel are prohibited from the personal solicitation of funds from other lawyers in connection with a campaign for that office.

Registration Fee at Annual Meeting

The registration fee at the Annual Meeting to be held in September. 1973, will be $15.00 per registrant.

Computer Legal Research and Analysis — Senate Bill-4106

The Board endorsed Senate Bill 4106 as introduced in the U.S. Senate by Senator Charles Mathias, Jr. "to establish a temporary commission to evaluate the development of automatic data processing systems for legal and legislative research and analysis and related areas and other purposes." The Board expressed its approval of the condition that access to the computer should be made available, at a reasonable cost, to private practitioners as well as to governmental, legislative or judicial users.

Continuing Legal Education

The CLE Committee was authorized to list the Washington State Bar Association as a co-sponsor of a planned two day program on Estate Planning to be held in Seattle in the autumn of 1973, in accordance with the request of the Chairman of that Committee.

Committee on Unauthorized Practice of Law

Roger C. Walsh of Seattle was added as a member of the Committee on Unauthorized Practice of Law.

Practicing Law Institute — Request for Co-sponsorship

The Association will co-sponsor the Fourteenth Annual Anti-Trust Institute of the Practicing Law Institute, to be held in Seattle, August 23-24, 1973.

Civil Commitment Legislation

A. The Board endorsed in principle the involuntary treatment law drafted by the Governor's Task Force for Commitment Law Reform, including suggestions of Chairman of the Civil Rights Committee.

B. More specific action was deferred pending receipt of an updated Bill which the Board is advised is to be introduced in the legislature.

Committee on Law Office, Economics and Management

A. The appropriation for the distribution and tabulation of the questionnaire to be distributed

Llewelyn G. Pritchard, Seattle

by the Law Office Economics and Management Committee was increased to $2,000.00 so as to adequately cover the anticipated expenses of the project.

B. Sponsorship by the Law Office, Economics and Management Committee of one of the seminars at the Annual Meeting of the Bar Association to be held in September, 1973, was approved.

Drug Abuse Committee

Judge David Soukup of the King County Superior Court was named as an ex-officio member of the Drug Abuse Committee.

Committee on Organization and Government of the Bar

John Riley, Co-Chairman of the Committee on Organization and Government of the Bar reported on the work of the Committee. The Board decided:

(A) Any Sections to be formed under the provisional plan should be formed no later than June 1st, 1973, so that the Board would have no delay in structuring its Section and Committee plans for the 1973-74 fiscal year.

(B) A Section on Patent Law should be approved.

(C) The Resolution proposed by the COG Committee on the establishment of Special Committees during the process of the creation of Sections should be adopted.

(D) Sections should be self-sustaining financially in their own projects, but would be funded by the Board for work the Section did at the request of the Board.

(E) The proposed form of the By-Laws for Sections be approved, with one amendment.

(F) After the Sections are in operation, adequate opportunity and facilities be made available for such sections to meet at each Annual Meeting of the Bar Association.

(G) A letter and return card should be mailed so that the membership would have an opportunity to indicate its interest in the various proposed Sections.

(H) The following should serve as Chairpersons for the various consolidated committees as recommended by the COG Committee:

Americanism:
Charles V. Moren, Seattle
Availability of Legal Services:
Robert Moch, Seattle
Contemporary Problems:
Richard S. Wirtz, Seattle
Quality of Legal Services:
Cleary Cone, Ellensburg
Court Rules:
Edward E. Level, Everett
Courts and Judicial Selection:
Mark T. Patterson, Everett
Disciplinary Board:
Michael J. Hemovich, Spokane
International Law:
Lionel W. Wolff, Spokane
Legislation:
Lee J. Campbell, Chehalis
Interprofessional Committee:
Alan A. McDonald, Yakima
Economics and Law Office Management:
Richard C. Reed, Seattle
Public Relations:
Robert A. Felthous, Co-Chairperson, Selah
Douglas D. Peters, Co-Chairperson, Selah

Young Lawyers Committee

Curtis Shoemaker, the Chairman of the Young Lawyers Committee presented a draft of proposed By-Laws for the proposed Young Lawyers Section. Action on this matter was deferred to the March Meeting.

Next Meeting

The next meeting of the Board was scheduled at the Lamplighter Lodge, Spokane on Friday, March 16th and Saturday, March 17th, with a joint session to be held on Saturday, March 17th with the Presidents of the Local Bar Associations of the State. □

Office Practice Tips

Property Settlement in Divorce

One of the most annoying features in a Divorce action is the failure of the attorneys to do their homework in advance in tying down the valuations of the various assets to be divided between the husband and wife. In Spokane County the Judges are inclined to effect as nearly as possible an equal division of the property. Judge William H. Williams commented to me one day that he felt that the form of three column ledger used by John O'Connor of the Spokane Bar was particularly helpful and I asked John for a sample copy for publication. He sets it up as shown on the following page.

It is a relatively simple matter to extend valuations for husband and wife and strike a balance on their two columns. Recently I have been adding legal descriptions and appraisal information to bolster my valuations and in some instances attaching the ledger sheet as an exhibit on the Divorce Complaint.

Harry E. Hennessey

New Construction at Gonzaga Law School

A two level addition to the Gonzaga Law School building is presently under construction. The addition will be attached to the northwest corner of the existing building and will consist of a basement and one story at street level. The upper level will contain two tiered classrooms each of which will have a capacity of about 150 students. The lower level will contain reading rooms, books and possibly a student lounge area. This will be the second addition to the building since Gonzaga added the three year day program.

Alexander M. Bickel, currently the Chancellor Kent professor of law and legal history at Yale Law School, delivered the second lecture in the William O. Douglas Lecture Series at Gonzaga University Law School. Bickel spoke on the subject "Civil Disobedience and the Duty to Obey" before a large audience in the Gonzaga Student Union Building. The series was inaugurated last year by U.S. Supreme Court Justice William O. Douglas for whom the series is named.

Office Practice Tips (Continued)

Property Settlement in Divorce — Sample Ledger

	Net	Husband	Wife
1. HOME at N. 2433 Standard Free & clear EXCEPT 3 yrs. taxes — $300.00 Value: $4,000 - $4,500	$ 4,000.00		
2. HOUSEHOLD GOODS — all "'USED" All from Goodwill or Used Furniture	350.00		
3. W. 209 Main Business Real Property Franklin Furniture (Since 1946) Paid off @ 1956 *Lot* is probably 50′ × 125′ *Bldg.* — 50′ × 65′ Vacant ground — used for rental parking — 50′ × 60′ @ parking space — $6.50/month @ 10 customers.	15,000.00		
4. W. 209 Main — Business personal property	2,500.00		
5. W. 18 Main Business personal property	2,500.00		
6. W. 2615 Dean (1939) 2 Apt. Duplex with Furniture	8,000.00 400.00		
7. Fish Lake property — Lake frontage 80′ - @1945 Lot with 1 room cabin & patio	(was offered 5,000) 6,000.00		
8. Clear Lake property — not frontage (1945-48) Land @ 5-50′ Lots Bldgs. (4 warehouses built by Franklin (all together 50′ × 100′)	4,000.00 2,000.00		
9. Personal Property — elec. ranges, wood & coal stoves, bath tub, chairs, tables	2,500.00		
10. W. 1400 Mallon (Grandmother's prop.) (⅛) Undivided ⅛ — Corner Lot — 1 lot — house & garage.	2,000.00		
11. Fairview & Addison — E. 400-500 (Grandmother) 1 — 50′ lot & old house (View of City)	2,000.00		
12. Old Cars — 1. 1954 Ford Coupe (33,000 miles) 2. 1957 Chev. Pickup (Billy) 3. 1953 Ford Pickup (Deft.) 4. 5 Cars — 2 Trucks	 500.00 350.00 250.00 300.00		
13. Delinquent support owed to wife on Court Order	600.00		
14. Wife's legal fees —			

Twenty Years Ago

Horse on Dick. The Washington State Bar Association delegation to the American Bar Association convention concocted a telegram which stated in substance that **Richard Munter** of Spokane was a specialist in equine law in the western states and Florida concluding with this: "He is available to serve other lawyers in those jurisdictions in his office at their respective better tracks." The delegation consisted of **Frank Holman, Al Schweppe, Dick Munter, Tracy Griffin, Charles Paul, Joe Gordon** and **Clydene Morris.**

Births

Storrs Clough opened shop in Morton.

An election in Skagit County resulted in new city attorneys: **W. V. Wells**, Anacortes; **Clyde Fowler**, Mount Vernon; **Charles F. Abbott**, Sedro Woolley; and **Fred Lubbe**, Burlington.

Olympia: **Don Miles** formerly of Colfax was appointed assistant attorney general. **Rudy Naccarato** opened there. **Jane Dowdle** appointed deputy prosecutor.

Whitman County: **D.C. Dow** appointed justice of the peace, Pullman, and **James McMannis** for Colfax. **Philip H. Faris**, Colfax, became deputy prosecutor.

Snohomish County: **Archie Baker**, deputy prosecutor. **Dennis Britt** and **Charlie Jordan** announced their partnership, Everett.

Tacoma: Tacoma Bar, smarting about its reporter's spelling of "misspelling," was mollified to note in a recent *Bar News*, "The word 'practitioner' was thoroughly mangled. Touche, Rupp?" **Ralph Rogers** elected President, **Harold Tollefson**, Vice President (also to Tacoma city council), and **Valen Honeywell**, Secretary-Treasurer.

Yakima: Partnership of Hovis & Kaiser announced; also Beaulaurier & Hanson.

Kent: **Neal Clark** appointed justice of the peace.

Fifty-eight law students passed the bar exams.

Seattle: **Ed Starin** and **James Ellis** became Preston, Thorgrimson & Horowitz's partners as did **Wallace Aiken** with Howe, Davis and Riese and **Earl Zinn** with Lycette, Diamond & Sylvester. **James Dubuar** joined Moriarty & Olson. **Richard Oswald** joined Patterson, Maxwell & Jones. **Gail Williams** and **George Kinnear** announced their partnership as did **James McMahon** and **Donald Sullivan. Boris Kramer** opened in the American Building.

Crossed the Bar

Judge **Richard Webster**, Spokane, age 81, served more than 30 years.

The learned legislature declined to pass a bill drawn by **Herman E. Brown** and proposed by the Judicial Council which would have prevented a murderer from inheriting from his victim.

Bellingham became masculine. All males above the age of 4 were required to let their beards grow. Thus the prelude to the hippie movement was apparently initiated. One of the disguised monsters was the Honorable **Hobart S. Dawson**, Superior Court Judge. He won. The race was his by a whisker.

David J. Williams

In Memoriam

William H. Thompson, 101, who practiced in Seattle from 1903 to 1965, when he retired and moved to Bremerton, died there February 15. An 1895 Michigan Law School graduate, he practiced in Minnesota before moving to Seattle. He was active in King County Grange and Masonic Lodge affairs.

Howard A. Adams, 79, a 1917 graduate of the University of Washington Law School, died in Seattle February 25. After service in World War I he returned to Seattle and began a law practice which he continued until retirement in 1966. He was a past national president of Theta Delta Chi fraternity.

Milton P. Warner, 57, retired attorney, died February 2 in Tacoma, where he had lived for 10 years since moving from Seattle. He had been an attorney for insurance firms, and was a past president of the Seattle Claims Adjustors Association.

SUPPLY AND DEMAND FOR LAWYERS

Part 2: The Demand

By **Richard S. L. Roddis**
Dean, University of Washington School of Law

Last month, we concluded that the membership of the Washington State Bar could double in the next ten year period.

Now let us think a bit about the demand side of the equation. What are all these lawyers going to do? This is much more difficult to evaluate. Most speakers tend to lean in one of two directions. Some view the whole development with alarm and Malthusian gloom. Others, mostly law deans and well esconced leaders of the bar, speak bravely of new worlds and of a great natural resource and imply that a large increase in the number of lawyers is not a problem but rather promises the solution to most of our other problems.

I do not find myself entranced by either camp. I am not inclined to be panicked or to be gloomy but at the same time, I do not find the massive infiltration of the population by lawyers to be a source of particular inspiration.

One has to think about the future occupational demand for lawyers in two basic categories.

First, there are those occupational roles which primarily involve the rendition of legal services as conventionally defined, without regard:

1) To whether the segment of the population served is one which has been a traditional user of legal services or is one which in the past has not sought or had access to legal services and is evolving as a new "market,"

2) To changes in the particular kinds of legal services needed, and

3) To the structural mode through which the legal services are rendered.

Second, there is the broad area of occupational opportunity for law graduates in a wide variety of roles which do not essentially involve the performance of "legal work" or the rendition of legal services.

I recognize that there is a shadowy in-between area that may be thought of as derived from the possibility that whole new occupational preserves may be assigned to lawyers by custom or otherwise. The theory is that our society has become so pervasively legalistic, that the legal component has assumed such dominant importance in the performance of many functional activities, that in the future lawyers will take over many occupational roles previously held by people with other types of educational background. An illustration, and probably not the best one, might be police work. Perhaps the nature of our law enforcement processes have evolved to a point where we would say that all policemen have to have J.D. degrees. (You will recall that for many years, the FBI essentially recruited its agents from the ranks of law graduates and public accountants.)

While I do not doubt that this phenomenon of occupational assimilation by lawyers goes on to some extent, I am inclined to dismiss this as a separate category. To the extent to which it does occur, the new lawyer roles become included in my first category.

More importantly, I really do not believe that this process of lawyer assimilation is apt to be as far reaching as some may suppose. In the first place, our historical experience has been in the other direction; several of the territorial domains once exclusively occupied by lawyers have been invaded, captured and largely absorbed by non-lawyers. The second and critical point, however, is that the logic of evolution in the performance of socially useful functions should, and probably will, continue to place primary emphasis on

education for the knowledge and skills most basically related to the accomplishment of the needed results rather than on the legal processes attendant to getting there. It may be, for example, that urban planning is permeated by legal problems and that law plays an important role in the planning process. I draw the conclusion that urban planning organizations need to include some lawyers or at least have ready access to legal advice. I also draw the conclusion that urban planners need to know something about law. They also need to know a great many other things, some even more than they need to know about law. What this all suggests to me is the infusion of more legal learning in urban planning curricula, not that all urban planners will have to be law school graduates. Increasingly, our higher educational institutions are developing educational programs tailored to the needs of people in the endless variety of functional roles in the society. These programs increasingly will include appropriate law related courses. It is unlikely that the graduates of those programs will be widely displaced in the job markets by the J.D. graduates of law school programs primarily designed to qualify people for entry to the general practice of law.

Non-Legal Jobs for Lawyers?

The whole area of employment of law graduates in essentially non-legal occupations (the second category I stated) is difficult to assess. Perhaps, it should not even be thought of as a part of the "demand" for lawyers. It tends to be a result, rather than a cause, in the process of balancing in the economics of supply and demand. Of course, it is not a new phenomenon. There have been periods in the past when substantial numbers of law graduates found it more attractive to seek nonlegal employments. Law graduates tend to be very intelligent, highly motivated people, and legal education is a reasonably useful form of general education taken on top of the completion of a four-year undergraduate program as is the case with virtually all of our graduates today. Hence, there are many employment opportunities for law graduates in a variety of other fields. We should attempt to cultivate and develop access to these opportunities, particularly as alternatives for those graduates who desire them or who temporarily may find entry to practice roles of their preference constricted.

There have always been some people who went to law school with the intention of entering some other occupation than law practice. Conceivably, the number is somewhat greater today, though I see no hard evidence of it. I suspect that it remains true that the overwhelming majority of people who go to law school do so with the desire and expectation that they will perform eventually in a role that primarily involves the rendition of legal services. In the long run, I think it is a mistake for very many people to go through three years of a difficult, professionally oriented J.D. program in order to do something else.

The real area, therefore, that has to be assessed as the "demand" side of the equation is the first category I defined, the occupational roles primarily involving the rendition of legal services as conventionally defined. This is the critically important area if for no other reason than that it is the one toward which the expectations of the vast majority of the law students are directed and if we graduate large numbers who find themselves foreclosed from access to such roles, then we have to admit that the demand is not equal to the supply at least in the psychological sense of defeated expectations, even though all find some form of reasonably satisfactory and remunerative alternative employment.

In analyzing the prospective future demand for lawyers in roles primarily involving the rendition of legal services, I have sought to think of the principal factors which suggest expansion of the demand and the principal factors which may have a depressive effect on the demand. I can identify the main factors on both sides but I have no particular wisdom to offer in prospectively balancing them out.

Expansive Factors

The expansive factors are of several types.

First, there will continue to be a constant increase in the demand for legal services arising from normal population and economic growth. I have not attempted to include assessment of this potential as a part of this presentation. You are all as familiar as I may be with the various projections and studies which are released from time to time by persons expert in such matters. The impression which I received from a cursory look at a few sources is that here in Washington over the next ten years we may expect steady but not dramatic growth in population and economic activity. Hence, some appreciable part of an increase in lawyer population and in the supply of legal services will be absorbed in the normal course of growth.

A second factor creating a greater demand for legal services is the constant development of new or significantly expanded areas of legal activity. As the law and the remedies which it affords and the problems which it presents for solution and prevention grow in response to various pressures within the society, obviously there is more legal work to be done. To a significant extent, I believe, the legal system operates as a self-generating, constantly accelerating mechanism, at least so long as it enjoys popular acceptance and does not become so cumbersome or oppressive as to result in some cultural backlash or rejection. This phenomenon offsets, and perhaps more than offsets, the decline in lawyer involvement occurring in some areas of human activity.

New Demands for Lawyers

Among the areas where dramatic new demands for lawyer involvement have emerged in recent years and may be expected to continue to expand, we may mention the following:

a. There is much greater emphasis on full representation of the criminal defendant at all stages of the criminal law process. Particularly, we are seeing a significant expansion of legal controls and lawyer representation throughout the entire system of correctional administration.

b. The enforcement of equal economic opportunity and the prevention of racial and sex based discrimination have gained larger attention by lawyers, both in the conduct of the proceedings made possible by the remedial opportunites which have evolved and in the advisory and prevention activities of lawyers engaged by economic and governmental institutions.

c. Despite the possibility of a decline in lawyer involvement in the automobile accident reparations area if the "no-fault" proposals gain wide acceptance, the fact remains that the law and lawyers are playing an even broader role in the complex process of distributing, shifting and adjusting the burden of financial loss from the myriad of personal and proprietary harms that occur daily in our complex and crowded society. The frequency of products and service suppliers liability cases, the broadening of workmen's compensation coverage and benefits here and in many other states, and the great expansion in the insurance arrangements of the economy give testimony that the great spirit of the Tort Law is alive and well.

d. We have been experiencing a new surge of public regulatory activity as a result of broad public concern with consumer protection, environmental quality, and control over land use. The increased levels of governmental regulation in these areas necessarily involve appreciable numbers of lawyers in all facets of the activity.

Group Legal Services

A third factor which has received a lot of attention as portending a vast expansion in the demand for legal services is the movement to make legal services more readily and economically available to persons in the lower and middle economic ranges. The potentialities of various types of group prepayment and cost distribution mechanisms to accomplish this purpose have been much discussed with the expectation that the ultimate result will be a much greater utilization of legal services by segments of the population which in the past have had only limited resort to lawyers. Personally, I am unsure as to the extent to which this will actually occur. It seems to me that a variety of interrelated factors are involved. Large numbers of people must develop a much greater awareness of the values of a range of legal services to them and a heightened confidence in the satisfactions which they will derive from resort to the legal process. These attitudinal developments are intertwined with the problem of creating economically viable systems of group payment of the costs of service.

Of course, to some extent greater utilization of legal services by a larger proportion of the population undoubtedly is occurring even without group payment arrangements. This is a result of the trends toward broader public interest in law, the emergency in many areas of law of doctrinal and remedial rules more favorable to individuals in the lower income groups, and the general tendency accompanying rising personal income levels toward a proportionate increase in consumer spending for services. Hence, we may be confident that in the foreseeable future more people than ever before will turn to lawyers and will use more legal services. But how far and how rapidly this movement will go and how much it may be accelerated or fostered by group prepayment arrangements remain questions on which I entertain cautious reservations.

Demand for Lawyers May Be Reduced

Contervailing these expansive trends in the utilization of legal services, there are some factors which should be identified as tending to depress the future demand for lawyers.

First, there are some areas of social control and the adjustment of conflicts and competing

interests within the society in which the trend is toward the development of mechanisms which rely less upon formal legal processes, that is, upon law, litigation, and lawyering. The movements for "no-fault" automobile reparations systems, for simplification of probate administration, for fewer legal restraints on the dissolution of marriages, and for decriminalization of various types of behavior are illustrations. I do not think that we should perceive these measures as portending any broad repudiation by the public of lawyers and the legal process. Yet, we should recognize that in some of these areas dissatisfaction with the costs and inconveniences of the traditional legal processes is one of the considerations fostering change.

The Efficiency Factor

A second, and major, factor bearing on the future demand for *lawyers* (as distinguished from *legal services)* is the pressure for enhanced productivity in the rendition of legal services. More and more lawyers have perceived the need to reduce the unit costs of service. To accomplish this, lawyers are rapidly increasing their reliance upon the sophisticated technology which has become available — the computers, the MTST's and so on — and the employment of specially trained paraprofessional assistants. The effectiveness of these aids in reducing the unit costs of service is enhanced by the trend toward specialization and the concentration of attention upon the systematization of the processing of work by law offices.

I identify this as a depressive factor, of course, only because the subject of this paper is the supply and demand for *lawyers.* In a broad, long-range sense, enhanced productivity of lawyers in the providing of legal services should serve to contain unit costs and thereby make the services more attractive and available to more people. But the shorter range and more immediate consequence, almost by definition, must be a somewhat lower demand for lawyers than if these techniques were not being adopted. How many busy law offices are there, I wonder, where the internal discussions about future growth come down to the question for present decision of whether to hire another associate or to hire a paraprofessional?

To what general conclusion about the relationship between the supply and demand for lawyers in the foreseeable future does this analysis lead us? Obviously, anyone who is not gifted with unusual powers of prophecy (and I am not) should be very cautious and tentative in making an assessment. The expansive and depressive factors which I have identified as bearing on demand are not susceptible to quantitative measurement so an attempt to net them out and express the result in terms which can be balanced against the supply figures which I projected is futile. I give you only my personal best estimate, or "guesstimate," if you prefer.

Short Range Oversupply

I think that we are in for a period of short range technical oversupply. For a few years we may be producing more new J.D. graduates than can be readily placed in positions involving the performance of essentially legal services. This may mean that more graduates will go out into their own practice, or may have to go to communities that are now underserved and which may not be their preferred choice of location, or may be attracted into other employments not essentially involving legal work. There could be some shift in the migration balance of law graduates between this and other states. Conceivably, there may be some effect on opening salary rates, though I think this would be likely to occur in the form of a deceleration in the rate of increase rather than reduction from current levels.

Concurrently, however, I would expect that we will see some decline in admission applications. The undergraduate student population is fairly sensitive to perceptions about employment opportunities in various vocational fields. Whether this phenomenon will actually result in decreased enrollments in doubtful. But it probably will lead to a leveling off in the rate of increase in admission and, hence, in graduate output after a few years.

Of course, it is axiomatic that there will always be excellent opportunities for the graduates who have performed well academically and graduated from institutions providing sound legal education.

We have gone through periods like this in other eras and readjustment has always occurred before too long. I think that within a very few years we will see the cumulative effect of a preponderance of expansive factors on the demand side coupled with a leveling out on the output side leading to restoration of a reasonable balance in the supply and demand for lawyers. □

For similar factual situations see *State V. Gerke and Ihler,* 6 Wn App 137 (1971) and *State v. Birdwell,* 6 WnApp 284 (1972).

PLAIN VIEW DOCTRINE

In its simplest terms, the "plain view" doctrine states that where an officer is lawfully in an area, he may seize objects within his view if he has reasonable cause to believe they are contraband. Thus, in the case of *State v. Wolfe, supra,* the action of the sheriff in seizing the amphetamine packets from the suitcase and testing them was proper since the sheriff had probable cause to believe that the item was contraband and circumstances existed which made obtaining a search warrant impractical.

The doctrine was further clarified in the case of *State v. Cabigas,* 5 Wn App 183 (1971), where the court held that in determining whether probable cause for seizure exists, the function and qualifications of the police officer may be considered. The officer's action is to be tested by what a reasonable, cautious, and prudent police officer, under the circumstances of the moment, would have done.

One of the more common applications of the "plain view" doctrine arises with regard to the search of automobiles. In *State v. Palmer,* 5 Wn App 405 (1971), a police officer observed a suspicious man loitering in the vicinity of a pharmacy burglar alarm box at approximately 2:30 A.M. As the officer approached, the suspect began walking toward an automobile and was arrested approximately 10 feet from the car. Observing a woman seated in the car, a second officer approached and ordered the woman out. She appeared to fumble with a paper bag on the floor prior to leaving the vehicle. After both the man and woman were in the officers' custody, the second officer returned to the car, opened the bag which was lying on the floor board and discovered four revolvers. The car was subsequently impounded and a search warrant obtained. Pursuant to the search warrant, the revolvers together with other items, which proved to be stolen, were removed from the vehicle.

Following the defendant's conviction on charges of larceny and unlawful possession of firearms, an appeal was taken based on the doctrine set down by the Supreme Court of the United States in the case of *Chimel v. California,* 395 US 752 (1969), which limited the scope of search incident to a lawful arrest to that area within the immediate possession and control of the suspect. The defendant contended that once he and the woman were arrested and placed in the police car, the right to search his car ended. Rather than re-examine previous Washington cases with respect to search of automobiles, the Appellate Court chose to rest its decision on the "plain view" doctrine and justified the search on the basis that the initial discovery of the bag was inadvertent, but later facts justified the officer in returning to the car and opening the bag.

Perhaps a clearer approach, at least in this factual situation, would have been the recognition that an automobile is highly mobile and what might be an unreasonable search of a house, may be a reasonable search of an automobile. This approach was adopted by the court within a few months of the *Palmer decision* in the case of *State v. Cagle,* 5 Wn. App 644 (1971), citing *Chambers v. Maroney,* 399 US 42 (1970) and *Carroll v. United States,* 267 US 132 (1925).

In a more recent application of the "plain view" doctrine police officers in the process of serving a search warrant for narcotic and dangerous drugs, seized four prescription bottles bearing the defendant's name, and in the same room discovered a quantity of heroin. The bottles, found in the room, were admitted into evidence to show that the defendant had constructive possession of the heroin. The defendant moved to suppress the bottles bearing his name, on the ground that they were not covered by the search warrant since they did not contain a narcotic or dangerous drug. Citing a recent United States Supreme Court decision, *Coolidge v. New Hampshire,* 403 US 443 (1971), the Washington Court held that objects in plain view, found inadvertently by police officers, while searching under a valid warrant, may be seized if it becomes immediately apparent to the police that they have *evidence* before them. Thus the Washington Court found that objects with *evidentiary value* may be seized under the "plain view" doctrine, even though not specifically listed in a search warrant and not contraband, so long as the officers were immediately aware that they had evidence before them.

PRE-IMPOUND INVENTORY

Another application of the "plain view" doctrine arose in the case of *State v. Patterson,* 8 Wn App 177 (1973). Following the arrest of

the defendant on an outstanding warrant for shoplifting, officers called for a tow truck to impound the defendant's car. After the officer had completed a pre-impound inventory and was walking back to the police vehicle, he was alerted by the tow truck driver, who had gotten into the defendant's car and inadvertently dislodged a pistol, which fell to the floorboard from underneath the dash. The officer then returned to the vehicle and searched under the dashboard where he found two bottles containing barbiturates.

The defendant contended that the discovery of the barbiturates under the dashboard was the result of an unlawful exploratory search rather than a lawful inventory search. In upholding the search, the court indicated that the purpose of the original search was to protect the contents from possible theft and the police from false claims of theft during the impound. The court noted that when the pistol dropped from underneath the dashboard it became apparent that an area in which personal property could be kept had been overlooked and thus, the officer would have been derelict had he not returned to the vehicle and examined the area before releasing the car to the tow truck driver. The court found that the total transaction of impounding the defendant's car had not been completed when the officer examined the area under the dashboard. This second search, which resulted in finding the barbiturates, was not a general exploratory search the court held, but rather the continuation of a lawful inventory of the personal property contained in the car. Thus, where the original search is a continuing one which has not been completed or abandoned subsequent acts performed within the right to search do not constitute a second search.

STOP AND FRISK

Since the decision in the case of *Terry v. Ohio,* 392 US 1 (1964), the doctrine of "stop and frisk" has undergone some dramatic changes, not the least of which have occurred within our own state.

In the recent case of *State v. Howard,* 2 Wn App 668 (1972), a police officer, while standing outside a house which was being searched pursuant to a search warrant, observed a vehicle being driven down a public alley in front of the house. The car was driven by the defendant who the officer recognized as a suspected drug user. The car came to a stop near the house where the officer was standing and the officer walked over to the car, flashed his light inside, and saw a small cellophane packet lying on the floorboard. He removed the defendant from the car and seized the packet which proved to be amphetamine tablets.

The state contended that the search of the vehicle was justified on the basis of the "plain view" doctrine. The Appellate Court rejected this contention on the basis of findings by the trial court that the officer had engaged in a "search" before he observed the packet. The search was upheld however on the basis of recently expanded "stop and frisk" principles in the case of *Adams v. Williams,* 407 US 143 (1972). The Washington court found that the officer had the right and duty as a policeman to approach the car and determine why it had stopped at that particular time and place. The court further found that the officer had the duty to ascertain first, that its occupants would not interfere with the search, and second, what business, if any, the occupants had at that particular place. The court held that the officer, under these circumstances, would be justified in making a frisk for weapons. Finding that a frisk for weapons would have been justifiable under the circumstances, the court went on to hold that a reasonable frisk for weapons need not be confined to a personal frisk of the occupants of a vehicle, but should extend to the area of the car reasonably accessible to the occupants. Thus, the officer had the right to inspect the interior of the vehicle with his flashlight either before or after the occupants left the car. The discovery of the drugs therefore, was the product of a reasonable "stop and frisk."

An even greater expansion of the principles of "stop and frisk" is found in the case of *State v. Toliver,* 5 Wn App 321 (1971). In the *Toliver* case, both federal and local officers had information that a man wanted on a federal warrant for sale of a machine gun was to be found at a residence in the City of Kirkland. Officers also had information that people in the house had guns and would resist any attempt to arrest the wanted man. As officers approached the house, they observed the wanted man in his car which was parked next to the house. The wanted man was arrested and at that point a girl who had been standing near the car began screaming. The door of the house slammed shut and officers heard sounds of running from within. Moments later they observed the defendant jump out of an upstairs window and subsequently placed him under arrest. Officers then entered the house, apparently searching for other individuals, and

observed a check protector taken in a burglary the night before. At this point a search warrant was obtained as a result of which other stolen property was discovered. The defendant moved to suppress the evidence on the ground that the officers had no right to be in the house.

In rejecting the defendant's contention the Washington Court found, on the basis of *Terry v. Ohio, supra,* and *Collidge v. New Hampshire, supra,* that ". . . although the self-protective action in the instant case went beyond the limited stop and frisk permitted by *Terry*, the . . . principles upon which the holding in *Terry* was based are properly extended to cover the situation where officers lawfully executing an arrest warrant have a reasonable fear that friends or confederates, who are beyond the area within the immediate control of the arrestee and within a constitutionally protected dwelling, might begin shooting, or take action which otherwise endangers the safety of the officers." The Washington court noted, in accord with *Terry v. Ohio, supra,* that the test is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. The court further noted that a search to find and detain a person in a dwelling must be strictly limited to that which is necessary to ascertain the whereabouts of persons, so that they can be detained and searched for weapons. Thus, the court concluded that the officers, being lawfully in the house to apprehend and disarm those within so as to secure themselves from being shot at, were not required to close their eyes and ignore items of possible evidentiary value which were in plain sight.

CONSENT TO SEARCH

The question of consent to search was raised in a rather unusual manner in the case of *State vs. Duarte,* 4 Wn App 825 (1971). The defendant, appealing his conviction on a charge of selling dangerous drugs, asked the court to suppress evidence of the sale on the ground that the evidence of drugs sold by the defendant, in the course of a voluntary face to face sales transaction to an undercover agent lawfully present in the defendant's home was obtained in a manner which constituted an unlawful search and seizure. The question before the court was whether the sale in the defendant's home was a subject of Fourth Amendment protection. The court found that the case of *Hoffa v. United States,* 385 US 293 (1966), supported the propriety of admitting the evidence in question.

In the *Hoffa case,* a friend had been invited by Hoffa to visit with him in a hotel room. For the purpose of the opinion the friend was treated by the court as a paid government informer. While in the hotel room, the friend overheard incriminating conversations carried on by Hoffa in the friend's presence. The United States Supreme Court found that the Fourth Amendment protects the security that a man relies upon when he places himself or his property within a constitutionally protected area, and that Hoffa was not relying on the security of the hotel room but was, instead, relying upon his misplaced confidence that his friend would not reveal the nature of the conversations.

Applying this doctrine to the *Duarte* case, the Washington court found that the narcotic agent had been in the defendant's home on an implied invitation where the defendant voluntarily admitted the agent, had voluntary conversations with him, made no attempt to exclude the agent or to decline conversation. The court thus found the necessary implied consent and misplaced confidence which the Supreme Court of the United States referred to in the *Hoffa* decision, and concluded that under these circumstances the sale in the defendant's home was not subject to Fourth Amendment protection.

"NO-KNOCK"

The questions raised by the "no-knock" cases turn on whether or not an officer serving either an arrest or search warrant, must first knock and identify himself prior to entering and serving his warrant. In the recent case of *State v. Miller,* 7 Wn App 414 (1972), a detective attempting to execute a search warrant approached the house described in the warrant and observed the door beginning to open. The detective stepped out of sight to avoid being seen. He observed a boy open the door, then turn around and walk into the house. The detective followed without announcing his presence, purpose, or demanding admittance. After gaining entry, the detective saw the defendant sitting in a chair over the back of which was draped a black leather coat. The coat was searched and two bottles of pills containing barbiturates and ritalin were discovered. The defendant was arrested, and at trial, challenged the admissibility of the drugs.

Considering the factual situation in the *Miller* case in terms of the United States Supreme Court decision in *Sabbath v. United States,* 391 US 585 (1968) the court found that entry may not be made by a police officer without first an-

nouncing his identity and purpose for which he seeks entry and demands admission. The court did note however that certain exceptions to this general rule are present in the case of exigent circumstances. In that regard, the Appellate Court referred to a previous decision by the Washington State Supreme Court, *State v. Young,* 76 Wn 2d 212 (1969), where the State Supreme Court found that circumstances were such as to excuse the necessity for announcement of purpose and demand for admittance. On the other hand, see *State v. Hatcher,* 3 Wn App 441 (1970), a case similar to *State v. Miller,* wherein the Appellate Court found no circumstances which warranted entry without first announcing the officer's purpose and making a demand for admittance.

SEARCH OF PERSONS

An area that has long been unresolved in the State of Washington was recently put to rest in the case of *Tacoma v. Mundell,* 6 Wn App 673 (1972). In the *Mundell* case, a Tacoma police officer obtained a search warrant to search certain specified premises. Upon entering the premises, the officer immediately searched one of the occupants, discovering a quantity of marijuana and amphetamine. No other contraband was found on the premises.

In challenging the search, the defendant contended that a general search warrant did not permit, by itself, a search of an individual person. The Appellate Court agreed, holding that a specific warrant to search premises cannot be converted into a general warrant to search individuals. The court went on to note that if incriminating evidence had been found during the search of the premises, or if the defendant had attempted to flee or dispose of the evidence, the officer might then have made a valid arrest and searched incident thereto; however, in the instant case, no such incriminating evidence was found nor did the defendant attempt to flee or dispose of evidence.

CONCLUSION

This summary of recent trends and decisions is not intended as a scholarly treatise on the law of search and seizure, but rather, as an indication, as viewed by one attorney, of where we are today in the State of Washington with regard to some of the more basic principles. It is hoped that an understanding of where we are today may lead to a better appreciation of where we *might* be tomorrow. □

Chuck Olson, Bellingham, and Tom Keefe, Seattle

Paul Clausen, Spokane, and Roger Walsh, Seattle

Lawyer/Public

One blessed virtue of our Bar's new Code of Professional Responsibility is its explicitness. In contrast with the old Canons of Ethics, the new Code spells out in clear terms most of a lawyer's duties to his client. Lawyers' phone calls to the Bar Office indicate that some lawyers are not yet aware that the answers to many of their questions are easily found in the Code.

(The Bar Office a year ago sent a Code booklet to every active lawyer; if you have misplaced yours you may obtain another by writing the Bar Office.)

One troublesome problem which frequently comes to the attention of the Bar Office arises from termination of the attorney-client relationship. The Code's Disciplinary Rule 2-110 states that no lawyer shall withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of the client. This includes giving due notice to the client, allowing time for the employment of other counsel, delivering to the client all papers and property to which the client is entitled, and in complying with the applicable laws and rules of the court. In addition, the lawyer shall refund promptly any portion of a fee paid in advance that has not been earned.

"Competence" Is Specified

It may surprise some lawyers to know they now are specifically required by the Code to have a certain level of competence. The Code's Canon 6 provides that "a lawyer should represent a client competently." Disciplinary Rule 6-101 states that a lawyer *shall not* handle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it.

And, shocking to some, that old bogie, "delay and neglect," under Disciplinary Rule 6-101(A)(3) is specific unprofessional conduct. The Code's language: "A lawyer *shall not* neglect a legal matter entrusted to him."

— Public Relations Committee

Deadline for submitting copy for the next issue of the *Bar News* is April 6, 1973. Mail to *Bar News*, Washington State Bar Association, 505 Madison, Seattle 98104.

AG Opinions

AGO 1972, No. 23:
Where a person eligible for the real property tax exemption granted for residences owned and occupied by senior citizens has claimed this exemption and paid his "first half" taxes by April 30 of the year when due — and then, prior to the due date for the second half payment, sold the property to a noneligible grantee who assumes the obligation to pay the remaining taxes, the grantee will be required to pay one-half of the original amount levied.

AGO 1972, No. 24:
Competitive bidding requirements of RCW 35.23.352 do not apply to a contract for the services of an insurance broker executed by a city operating under the optional municipal code.

AGO 1972, No. 25:
The veto power of the Governor is applicable to a bill authorizing lotteries passed by a 60% majority of the Legislature unless the bill is submitted to the electors as a referendum.

AGO 1972, No. 26:
A juvenile court is required by RCW 13.04.120 to forward to the department of motor vehicles the record of its handling and disposition of all juvenile traffic violation cases coming before such court.

AGO 1972, No. 27:
A PUD commissioner vacates his office when he moves from his district, but not when boundary lines are changed to place his residence outside the district.

AGO 1972, No. 28:
The entire $9.40 mobile home identification fee is to be paid into the State Motor Vehicle Fund.

AGO 1972, No. 29:
(1) The reports of financial interests which are required from candidates for public office and elected officials by Initiative No. 276 are to be filed with the Public Disclosure Commission at the office of the Secretary of State.

(2) The first reports of the financial interests of elected officials reporting as such (and not as candidates) will not be due until January 31, 1974, and these reports will cover the twelve-month period beginning on January 1, 1973.

(3) An individual who holds two or more elected offices, each of which would necessitate his filing a report of financial interests under Initiative No. 276 if held separately, need not file separate reports for each office.

The Courts

SUPREME COURT PRACTICE

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

When does an order entered by an appellate court become final? The following statement appears in *Reeploeg v. Jensen*, 81 Wn.2d 541:

> . . . we note that the cause was remitted on the day that the order of dismissal was entered. Since under CAR 15, a decision does not become final until 30 days after it is filed, assuming counsel have not stipulated to an earlier date, the cause was remitted prematurely.

In the *Reeploeg* case the Supreme Court was concerned with an order entered by the Court of Appeals. The corresponding rule for the Supreme Court, SAR 15, provides:

> . . . . .
> (c) *Finality*
> (1) *Orders.* An order shall be final upon entry

The Supreme Court is aware of the divergence in procedure between the two appellate courts and has requested that comments be obtained from the members of the Bar as to whether the rules should be brought into conformity and, if so, what the rule should be.

It should be noted that although the finality of an order of the Court of Appeals is delayed for a period of thirty days, the delay seems to serve no useful purpose other than providing a cooling off period. CAROA 50 setting forth the procedure for seeking a rehearing is expressly limited to the "after an opinion has been filed" situation. It is true that if the Court of Appeals order terminates the action, the aggrieved party can seek a writ of certiorari from the Supreme Court under ROA 1-57, and in this respect the order of the Court of Appeals can be distinguished from the order of the Supreme Court. However, delaying the finality of the order of the Court of Appeals would not appear necessary for invoking the certiorari procedure or probably even desirable. The present authority of the Supreme Court to grant a stay upon application for a writ based on the facts of the case in hand would appear to be a better approach to the question of finality.

In other words comments should be addressed to the question of whether there should be a delay in the finality of an appellate court order, and if so the reason or purpose of the delay. If some form of a petition for reconsideration of the order is desirable, what should be the time limitations, the manner of presentation and consideration, and the rights of the opposing party?

Comments and recommendations should be addressed to the Clerk of the Supreme Court to be received by August 31, 1973.

THE COURT OF APPEALS

By **JOSEPH A. THIBODEAU**, *Commissioner*

During 1972 the Court of Appeals decided 474 cases by written opinion. From these decisions, counsel filed 207 petitions for rehearing and 150 petitions for review were filed in the Supreme Court. That court granted 26 petitions for review. Of the total number of cases decided by the Court of Appeals, the Supreme Court has accepted review in only 5.48 per cent.

Gross filings in each of the divisions increased from 1971. Division I's gross filings went from 461 to 702, for an increase of 52.27 per cent; Division II's gross filings increased from 258 to 293, for an increase of 13.56 per cent; Division III's gross filings increased from 187 to 248, for an increase of 32.62 per cent; for a total gross in 1972 of 1243.

Dispositions for the Court of Appeals during 1971 were 870. During 1972 the court disposed of 903 cases, for an increase of 33 cases.

From the statistics, it becomes apparent that the gross filings in 1972 exceed the number of total determinations by 340 cases, which amounts to a percentage increase of 247 per cent over 1971 figures.

With passage by the 1973 Legislature of Senate Bill 2350, the Court of Appeals will be able to utilize the services of the pro tempore judges. These judges may be either active superior court judges or any retired judge of a court of record. It is anticipated that by use of the pro tempore system, the Court of Appeals will be able to maintain its high level of dispositions.

The Chief Judges of the Court of Appeals have agreed to set 129 cases in the May Session in an attempt to cope with the ever-increasing caseload. □

"God Save This Honorable Court"
By Louis M. Kohlmeier Jr. Scribner's. 309 pages. $8.95.

By **Tom Goldstein**

Arthur J. Goldberg and Abe Fortas are practicing law in Washington. Earl Warren, now 81, is also in Washington, leading a quiet retirement and working on a book. Had events in the middle and late sixties developed differently all three of these men would still be sitting on the Supreme Court, the Court would have been spared years of turmoil and President Nixon would have been denied the opportunity to name four strict constructionists to the nine-man body in his first term of office.

In "God Save This Honorable Court," Louis M. Kohlmeier Jr., a Supreme Court watcher for this newspaper for a dozen years up to this year, sketches in fascinating detail the events allowing President Nixon to forge a court in his own image. This is not so much a study of how the Court operates or the substance of its decisions as it is a piece of current history, recounting how, in Mr. Kohlmeier's opinion, one of the government's three branches came to be the political instrument of a second.

Taking a decidedly deterministic view of the recent past, Mr. Kohlmeier traces the emergence of the Nixon Court to a natural occurrence three-and-a-half years before Mr. Nixon took office.

On a warm July afternoon in 1965, Adlai E. Stevenson abruptly dropped dead on a London street, making what Mr. Kohlmeier considers "the beginning of a chain of events that led to a historic battle over the future of the Supreme Court." Within eight days, President Johnson appointed then-Justice Goldberg to Ambassador Stevenson's post at the United Nations and replaced Mr. Goldberg with an old friend, Abe Fortas. Neither man wanted his new job, but each obeyed the request of the President.

For the next three years, aside from the elevation of Thurgood Marshall to the bench in 1967, the Warren Court remained intact, with Abe Fortas proving himself an able Justice. In fact, in the summer of 1968, Mr. Kohlmeier relates that the Warren Court, which numbered among its prodigious accomplishments the one-man, one-vote ruling, the school integration cases and a string of decisions broadening the rights of criminal defendants "stood as strong as, if not stronger than, at any time since Chief Justice Warren had arrived in 1953."

Then, amidst accumulating controversies, Justice Warren decided to step down so that LBJ, a President who supported what the Court was doing, could name the next Chief Justice. The plan backfired when Mr. Johnson's nominee, Justice Fortas, was blocked by a Senate filibuster, thus leaving the choice up to President Nixon.

The author blames President Johnson for offending the "dignity of the court" by naming one friend, Abe Fortas, to take on the job, and another, Judge Homer Thornberry of Texas, to replace Mr. Fortas.

Mr. Kohlmeier's villains for creating a court unsympathetic to minority aspirations are many, but he reserves his greatest wrath for President Johnson's immediate successor whom he accuses of placing in jeopardy "the moral leadership of the Court" and leading "the Court, the Bill of Rights and the 14th Amendment into retreat."

Shortly after President Nixon's first inauguration, the Court, which usually makes news for the breadth and import of its rulings, began making news of another sort. The image of the Court became tarnished — perhaps irretrievably — by the disclosure of Justice Fortas' connection with a charitable foundation established by financier Louis Wolfson and his family, the partisan attempts by congressional conservatives to impeach Justice William O. Douglas and the extraordinary succession of Mr. Nixon's bungled nominations. Mr. Kohlmeier devotes half his text to the tumultuous two years which embraced these events, placing seemingly scattered occurrences into an intelligible framework.

Despite the Senate's dramatic rejections of Clement F. Haynsworth Jr. and G. Harrold Carswell, the withdrawal from consideration of Congressman Richard H. Poff, and the American Bar Association's disapproval of potential nominees Herschel H. Friday and Mildred L. Lillie, President Nixon managed to appoint three men — Harry A. Blackmun, Lewis F. Powell Jr. and William H. Rehnquist — who agreed with his philosophy and that of his Chief Justice, Warren E. Burger.

Because "Burger, Blackmun, Powell and Rehnquist voted together with such frequency that the predictability of their position suggested a discipline more akin to politics than jurisprudence," Mr. Kohlmeier grimly awards Mr. Nixon the dubious honor of politicizing the Supreme Court "more than any President in history."

Briefly Noted

Trial Advocacy College Scheduled for San Francisco

The 1973 COLLEGE OF ADVOCACY, sponsored by Hastings College of the Law, University of California, and Loyola University School of Law, Los Angeles, will be held at Hastings in San Francisco, July 29 through August 4, 1973.

This one-week, intensive course in civil trial advocacy will offer a new and exciting format to both plaintiff and defense attorneys. Litigation techniques covering a wide area of civil trial practice will be presented by a faculty, and workshop leaders, composed of over seventy-five of the country's foremost trial lawyers, esteemed law school professors and honored members of the judiciary.

The 1971 and 1972 advocacy programs held at Hastings received an enthusiastic response from the hundreds of attorneys in attendance from over forty states. Without a doubt, the ADVOCACY WORKSHOPS were considered one of the most valuable portions of the program, and particular emphasis has again been placed on the use of BASIC AND ADVANCED WORKSHOPS this year. Also featured are lectures, panels, discussions and practical demonstrations.

The program registration fee is $250 and enrollment is limited; therefore, early registration is suggested to insure participation in the 1973 COLLEGE OF ADVOCACY. For further information call (415) 557-2205, or write to: HASTINGS CENTER FOR TRIAL AND APPELLATE ADVOCACY, 198 McAllister Street, San Francisco, California 94102.

World Peace Through Law Conference Scheduled

The 1973 World Conference on World Peace Through Law and World Assembly of Judges will hold its 6th biennial conference August 26 to 31, 1973, at Abidjan, Ivory Coast, West Africa.

The program starts with the International Observance of World Law Day, August 26, 1973, which has the theme of "Religion and the Law."

World Peace Through Law is the largest organization of International lawyers in the world. All lawyers are eligible for membership. Members belong as individuals — not representing any bar association or nation. Membership dues are $10.00 per year.

Please request application forms for membership in the World Peace Through Law Center and registration forms for the Abidjan conference from the World Peace Through Law Committee, Washington State Bar Association, 505 Madison Street, Seattle, Washington 98104, Lionel E. Wolff, Chairman.

Better Looking Than That!

Editor:

The photograph of Jack McLauchlan appearing on page 24 in the March issue of the *Bar News* is a cruel business. He is much better looking than that and we think the photographer should be fired.

Jack is not alone in his interest in birdwatching. Many of our number have been keen on this for many years, and the Scandinavian Adventure promises exciting opportunities for the enthusiast. The flight departs May 27.

— Lawyers' Committee for Fair Play

Law-Office Seminar Scheduled for June

A special law-office management seminar has been scheduled for June 7-9 at the Hanford House in Richland.

The seminar, being presented by the State Bar's Committee on Law Office Management and Economics of the Bar, will be limited to an attendance of about 100 because of facilities and to keep workshop sessions small. Seminar chairman is Richard J. Dolack of Tacoma; committee chairman is Richard C. Reed of Seattle.

One feature of the seminar will be a luncheon address and an afternoon's presentations by Milton H. Stern of Newark, N.J., writer and speaker who is well known for his practical, non-academic, "tell it like it is" expertise on law-office management subjects.

Those attending the seminar will have a no-host get-acquainted session in early evening Thursday, June 7.

The Friday schedule includes general sessions and workshops on the subjects of automatic typewriters and timekeeping. Saturday's subjects include distribution of partnership income and management of firm finances.

Group discussion leaders will include, in addition to Dolack and Reed, Harry E. Hennessey, George F. Velikanje, Donald C. Dahlgren, Ernest M. Ingram, Fred T. Smart, Roger H. Underwood and Joseph Q. Betzendorfer.

Lawyers planning to attend may register through brochures to be mailed to the entire bar; requests for room reservations should be made with Hanford House, Richland 99352 (509-946-7611).

Notices

Will Information?

Anyone having knowledge of the existence of wills belonging to Russell A. Krause and Frances V. Krause, his wife, who until their deaths in February of this year resided at Arlington, Washington, please advise W. Stanley Riddle, Jr., 5801 15th N.W., Seattle, Wash. 98107.

Anyone having information regarding the Last Will of Mrs. Cecile Maine, please contact R. Thomas Olson, 2801 Seattle-First National Bank Building, Seattle 98154 (MAin 3-5890).

For Sale: *C.J.S. Trans.-Def. Drug Cases*, $20.00; *The Environmental Law Reporter*, $75.00; *Educational Manual of Washington State*, $25.00; *Washington Rules of Court*, $20.00. William B. Matthews, 1414 Hoge Building, Seattle 98104, 206, MA 2-3103.

Space Available: Choice downtown Bellevue Office. Share overhead. GL 5-4340. Richard P. Beaudry, 818 Business Center Building, Bellevue 98004, 206-455-4340.

For Sale: Two dictating units, two transcribers, one dictating unit with carrying case, all in excellent condition. Dictaphone permanent belt type. Also stand & supply of dictating belts. $150. Call Shirley at 206-888-1967. Daryl G. Rank, Snoqualmie.

Books for Sale: A.L.R., volumes 1 to 71 inclusive. A.L.R., volumes 101 to 175 inclusive. A.L.R. 2d, volumes 1 to 100 inclusive. A.L.R. 3d, volumes 1 to 8 inclusive. A.L.R. Permanent Digest covering 1-175, 12 volumes. Additional 15 volumes Digest, Red Book, Blue Book, etc. Harley W. Allen, 101 First National Bank Building, Walla Walla, Washington 99362, 509-JA-5-5050.

Calendar

April 7	Products Liability. WSBA CLE seminar. Evergreen Inn, Olympia. Shannon Stafford, Seattle, Chairman.
April 7	Traumatic Neurosis. WSTLA Seminar. Seattle. Daniel J. Goodwin, Chairman.
April 14	How to Prepare and Try a Jury Case. WSTLA Seminar. Red Lion Motor Inn, Pasco. Herbert Friese, Walla Walla, Chairman.
April 28-29	Medical Malpractice. WSTLA Seminar. Seattle. Daniel F. Sullivan, Chairman.
May 1	Law Day. Theme: Help Your Courts Assure Justice.
May 11-12	Sixth Annual Pacific Coast Labor Law Conference. Olympic Hotel, Seattle. Sponsored by U of W Law School and Labor Law Section of SKCBA.
May 12	Maritime Law. WSTLA Seminar. Hyatt House, Seattle. Gerald Bangs, Chairman.
June 1-2	ATLA Seminar on Basic Advocacy. Seattle.
June 7-9	Law Office Management Seminar at Hanford House, Richland. Sponsored by WSBA Committee on Law Office Management and Economics of the Bar. Richard J. Dolack, Tacoma, Seminar Chairman.
July 29 - August 4	College of Advocacy. Hastings Law School, San Francisco.
August 6-9	ABA Annual Meeting. Washington, D.C.
Sept. 6-8	WSBA Convention. Regency Hyatt, Box 8650, Station H, Vancouver, 1, B.C.

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. Deputy Attorney General, Consumer Protection and Anti-Trust Division, extensive experience in full spectrum of state and federal consumer-oriented law, seeking position in Seattle area.
2. Olympic Peninsula attorney seeking office associate on overhead-sharing basis. Modern office space and library.
3. Federal Land Bank seeking experienced attorney for position having salary range up to $24,710.00
4. U.C. undergrad, San Diego Law graduate, outstanding all-around scholastic, activities and athletic background; has resume on file.
5. Northwest Washington Prosecutor has opening for full-time legal intern from April 2, 1973, through December 31, 1973.
6. Sole practitioner having extensive subrogation and third-party litigation practice seeks one or two associates to assist with heavy case load. Salary to begin with eventual sharing of percentage.

WASHINGTON STATE BAR ASSOCIATION
505 Madison Street
Seattle, Washington 98104