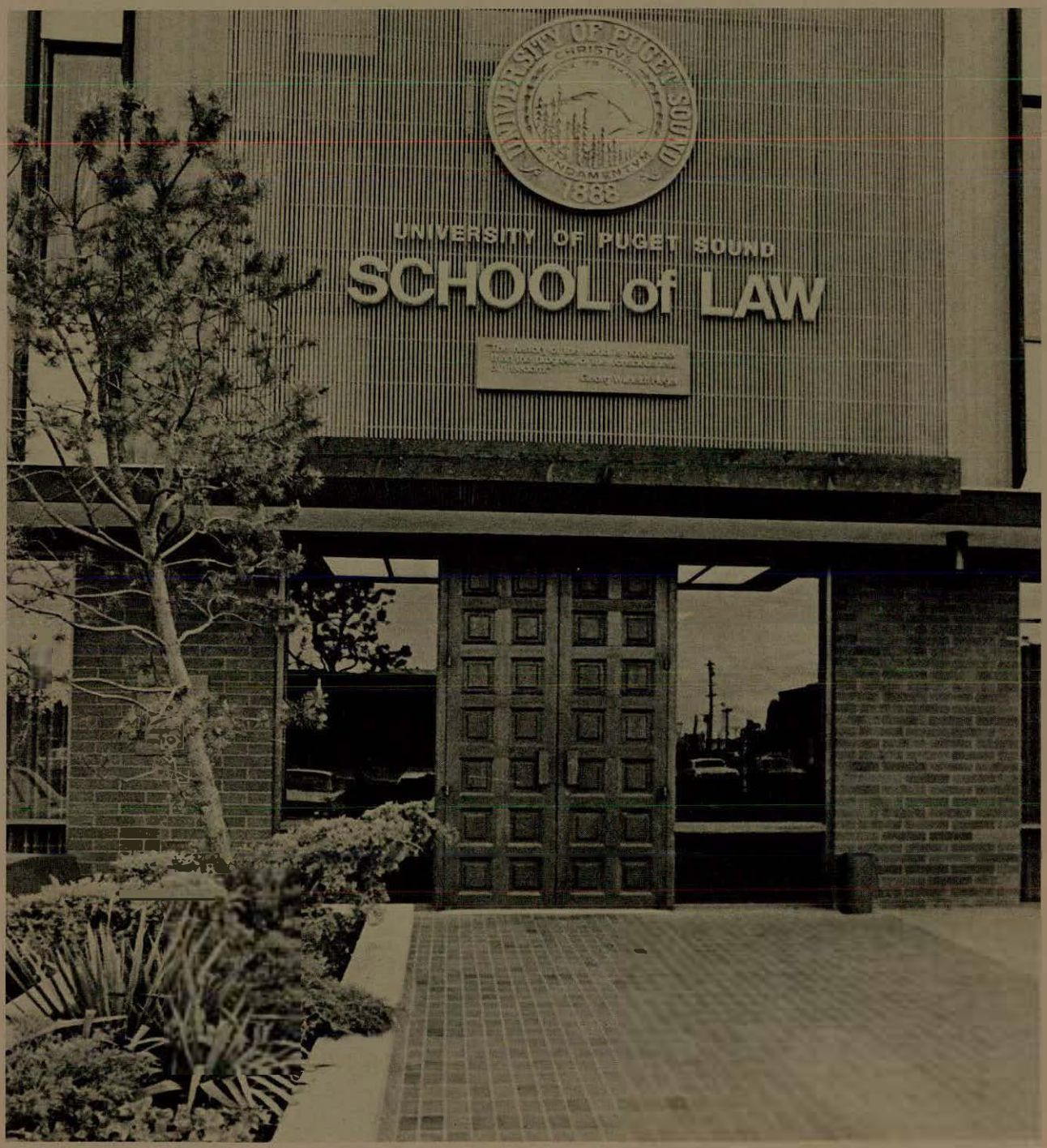
Volume 27, Number 6
June 1973

WASHINGTON STATE BAR NEWS



A HEALTHY INFANT: OUR NEWEST LAW SCHOOL ENDS ITS FIRST YEAR

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
505 Madison Street Seattle, Washington 98104

Material, including editorial comment, appearing herein represents the views of the respective authors and does not necessarily carry the endorsement of the Association or of the Board of Governors. Direct all copy to Bar News, State Bar Office, 505 Madison, Seattle 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

- 28-30-31 John D. McLauchlan

6 A Healthy Infant: UPS Law School Ends First Year
A review, and a look ahead at our newest law school

9 Suicide Threat: Don't Ignore That Cry for Help
A doctor-expert provides possibly vital data for lawyers

11 The Doctor's Dilemma: Informed Consent
And it has become an evidentiary problem for attorneys

27 Demonstrative Evidence: Neglected Weapon in the Courtroom
A trial lawyer urges greater use of an old tool

IN THE NEWS

13 Cleary Cone to Be 1973-74 Bar President

13 Bar Poll Favors Standards for Certification of Specialists

14 Certify Legal Assistants? Lawyer Is For It

15 Environmental Law Topic for N.M. Seminar

36 94 Pass Bar Examination

36 Successful Bar Applicants by Schools

DEPARTMENTS

2 Letters

3 Editor's Notes

4 President's Corner

16 Quotes Quoted

17 Twenty Years Ago

18 The Board's Work

21 Around the State

27 The Courts

30 McLauchlan at Large

37 In Memoriam

37 Wanted and Unwanted

37 The Calendar

Letters

Bill of Rights for Lawyer Applicants?

Editor:

I seek the promulgation of a "bill of rights" for those applying for a license to practice law. The current system does not assure every effort will be made to attain fairness.

I approached the State Bar Association by letter last spring expressing my concern over the lack of substantive and procedural due process. A copy of that correspondence is attached for your perusal. I call your attention specifically to two statements in Mr. Velikanje's response of May 5, 1972. He stated, in the third paragraph, that no appeal procedure is prescribed and, at the end of the fourth paragraph, that the Supreme Court must take responsibility for the system as it exists.

Prompt issuance of an appeal procedure is crucial to the forty-two percent of the February, 1973 examinees who were denied a license. The need for your review is all the greater because the exam result is unfair on its face. It is not credible that such a large percentage of extensively trained persons are incompetent to practice their chosen profession. Furthermore, to the extent that the result delays their admission, we are experiencing a great waste of valuable resources.

A good opportunity to understand more about our examination is offered by the current unfortunate situation. The February examinees and examiners could be interviewed to this end. A review of the papers of dissatisfied examinees is called for.

The denial of a license is a serious governmental sanction. The burden should be upon the agency to support its decision. The reasons for each denial should be specified and the aggrieved should be given a chance to refute such arguments before an impartial hearer.

The secrecy under which the current system operates puts the integrity of the Bar Association at stake. I urge your prompt attention and offer such further services as you may deem useful.

JOHN BOOKSTON

Seattle

No Fee — No Decree?

Editor:

I have read with interest the letter to the Editor appearing in your May, 1973 Edition written by Claude M. Pearson, suggesting that it is unprofessional for an attorney to refuse to set a divorce case for final hearing until the fee has been paid. I assume, as Mr. Pearson indicates, that this is a widespread practice in the State of Washington, but I also assume that, as I do, most attorneys in originally agreeing to accept a divorce case indicate to the client that the entire fee must be paid prior to the time the case is noted on the default or non-contested divorce calendar. There would seem to be nothing unprofessional in holding the client to his or her bargain.

Black's Law Dictionary, Fourth Edition, defines profession as "a vocation, calling, occupation or employment involving labor, skill, education, special knowledge and compensation or profit, . . ." If we abide by this definition it would appear to be unprofessional to set a divorce case for hearing without having first received compensation or profit.

DON ISHAM

Seattle

Patent Law Section

Editor:

"The special committee to organize the Patent, Trademark and Copyright Section of the Washington State Bar has announced that it is the intent of the committee to have the Section's area of interest encompass all intellectual, industrial, and artistic property rights including the areas of unfair competition and trade secrets. The area of interest has historically been closely related to the specific fields of patent, trademark and copyright law. It is the desire of the committee to attract general practitioners into this section in addition to the lawyers presently practicing in the specific specialty areas of patent, trademark and copyright law."

ROBERT J. BAYNHAM

Seattle

Ralls Memorial Fund

Contributions now are being received for the Alice O'Leary Ralls Memorial Scholarship Fund.

The Fund has been established in tribute to the long-time executive director of the Washington State Bar Association who died March 20, 1973.

Contributions may be sent to the Fund through the office of the Washington State Bar Association, 505 Madison, Seattle 98104. The Fund will be administered through a board of trustees.

Editor's Notes

Because or recent actions by each branch of state government, pressure for enactment of "threshold" no fault automobile legislation has been reduced.

The Legislature has abolished contributory negligence as a defense to most negligence actions, and substituted a rule of "pure" comparative negligence.

The Insurance Commissioner has successfully insisted that a package of first party medical and disability benefits be offered to purchasers of automobile insurance.

A King County Superior Court Judge has declared the guest statute to be unconstitutional.

Comparative Negligence

With an effective date of April 1, 1974, the new law states: "Contributory negligence shall not bar recovery in an action . . . to recover damages caused by negligence resulting in death or in injury to person or property, but any damages allowed shall be diminished in proportion to the percentage of negligence attributable to the party recovering." (Sec. 1, ch. 138, Laws 1st Ex. Sess. 1973)

In its original form, the bill would have abolished the defense of contributory negligence only if plaintiff's contributory negligence was no greater than defendant's. This limitation, however, was stricken from the bill by an amendment introduced by Senator Frank Woody of Woodinville.

Without the amendment, the bill would have adopted the Wisconsin version of comparative negligence. Although "pure" comparative negligence has been the rule under the Federal Employers Liability Act since 1908 (45 USC §§ 51-56), and is applied in admiralty, only Mississippi, under a 1910 statute, applies the rule to all negligence actions. (Arkansas used the rule for two years, but in 1957 shifted to the Wisconsin rule.)

An effort will probably be made in September to restore the Washington statute to its original Wisconsin form. Since the bill, with Senator Woody's amendment, originally passed 38 to 9 in the Senate and 95 to 1 in the House, and after reconsideration in the House, was passed again 68 to 29, chances of amendment appear slight.

A proposal for an automobile accident compensation plan, analogous to workmen's compensation acts, to be administered by a commission, was the genesis of comparative negligence in Wisconsin. Such a compensation plan passed one house of the Wisconsin Legislature in 1929. At least one commentator believes that had not Wisconsin adopted comparative negligence in 1931, an automobile injury compensation plan would have passed soon afterward. Advocates of the new Washington statute hope that it will have the same dampening effect on "threshold" no fault bills now pending.

Insurance Commissioner's Voluntary No Fault Package

Insurance Commissioner Karl Herrmann has implemented an innovative program which addresses itself to the problem of the uncompensated auto accident victim. The Commissioner's proposal is that automobile insurance carriers offer to all policyholders a package of first party benefits: $10,000 medical and $10,000 loss of income coverage at the rate now charged for $5,000 medical coverage. Maximum loss of income benefits would be $200 a week, and would begin only after a 14 day waiting period.

Several of the larger automobile insurance carriers have already agreed to offer this "voluntary no fault package." The Commissioner's theory is that the increased first party benefits will pay for themselves by reducing third party claims and litigation. Some figures from Oregon and Delaware, in which similar programs have been adopted by statute, support this conclusion, though returns are too spotty to support a prediction of the ultimate impact.

Guest Statute Declared Invalid

King County Superior Court Judge Norman Ackley recently ruled the Washington guest statute (RCW 46.08.080) unconstitutional. (*Hawkins v. Ballard*, No. 759648) Judge Ackley adopted the argument of Seattle Attorney Quentin Steinberg, based on *Brown v. Merlo*, 106 Cal. Rptr. 388, 506 P.2d 232 (1973), that the statute was a denial of equal protection to the non-paying passenger.

Prior to the *Brown v. Merlo* decision, the California Supreme Court had abolished all distinctions between social guests, business invitees, and the like, as to landowners. *Rowland v. Christian,* 70 Cal. Rptr. 97, 443 P.2d 561 (1968). Having taken this step, the California court found it unfair to deny equal protection to the social guest in an automobile. Washington has not completed the original step. Whether the reasoning of the California court is applicable in Washington, therefore, is arguable.

Judge Ackley's decision, however, may accelerate legislative repeal of the guest statute.

Each of these changes ameliorate the perceived inequities which have based arguments in support of the threshold no fault plans. Only the future can tell whether the effect can be measured before the Legislature—or Congress—enacts further and more drastic reforms. H. McG.

The President's Corner

More About Group Legal Services

In the May issue of the Bar News I wrote about the need for prepaid group legal legislation this year — in the September mini-session — and about the many important steps which must be taken before we are in a position effectively to offer such services.

Group legal service programs are of concern to lawyers as lawyers. They may become an important part of our overall professional activity. The potential impact, the potential benefit, to the public, is very much greater. The target group includes the families and individuals with incomes, generally speaking, in excess of $5,000 annually (who are disentitled to receive free legal services) up to $15,000 to $20,000 annually. These people, who constitute 75% or more of our total population, are believed to be currently receiving only a very small percentage of the legal services for which they have valid need.

The objects and purposes of prepaid group legal services must be to provide to the families and individuals I have described,

(a) high quality legal services;

(b) at a cost which they, generally, can afford, and

(c) at the same time provide the lawyers in question with reasonable compensation for their services, taking into account their education, experience, and professional skills.

This is a highly challenging assignment, both to the open panel and to the closed panel. To begin with, I question whether we will ever be able to accomplish this if every lawyer is permitted to accept every kind of legal business offered to him. To do so would cast doubt not only on the cost of the service but its quality. What does this mean to the open panel concept — to that of the closed panel? It may mean little to the lawyer involved with either type of panel as long as the services covered under the plan are of a relatively routine, commonplace "general practice" nature. Especially in smaller communities this may be just what many sole practitioners and small firms are already set up to do. The problem, if it exists, may more likely involve the ability of the lawyer who has specialized to cope effectively and efficiently with types of legal work which may be routine but which involve skills which he has either failed to acquire or has allowed to become rusty. The situation may change, however, if group legal contracts develop in the direction of a broader range of services, including some of a relatively sophisticated nature. In this setting the large open panel would appear to have the advantage. The advantage may, however, become illusory unless the specialties of particular lawyers are identified and either the consumer is informed of them or there are restrictions as to what kinds of legal business each participating lawyer may accept or some combination of both such features.

Assuming the lawyer in question is well qualified for the assignment he has accepted, whether the panel be closed end or open end, there remains a compelling need to develop a delivery of service system which will reduce costs to the consumer and at the same time permit the lawyer to enjoy an income which is commensurate with his training, abilities and experience. This is a first priority prepaid group legal challenge — to open end and closed end panels alike. Here it may be that the natural advantage lies with the closed end panel. The means for more efficient delivery of legal services which appears to have the most promise is the increased development and use of legal assistant programs. A single law firm, substantially involved in group legal practice, will find it easier to do this than will a large number of open panel practitioners, whether they practice alone or in a firm. An especially important concern in the development of the open panel concept would thus seem to be the need to assist all of its participating lawyers in designing and implementing effective legal assistant programs.

The Board of Governors in a happy respite: from left, Neil Hoff, Llew Pritchard, Ken Short, Bob Day, Chuck Stone, Bill Gates, Ed Novack, Jack Champagne, Jack Ripple, Jim Curran.

Closed panel proponents have charged the Board of Governors with being anti-closed panel and with an attempt at monopoly for the Bar-sponsored open panel. They justify this by pointing to the fact that the Bar Association bill did not establish legislative guidelines for the creation and operation of closed panel plans. Examination of the Bar-sponsored bill will, I suggest, show these charges to be groundless. If more is needed in order to dispel any such illusion, it should only be necessary to compare the Washington State Bar Association version of Disciplinary Rule 2-103(D)(5) with the American Bar Association version. The Washington State Bar Association version is the most liberal in the country. Unlike the American Bar Association version, it does not, for example, require that the primary purposes of the organization which is to furnish the legal assistance **not** "include the rendition of legal services" or that the recommending, furnishing or paying for legal services to members of such organization be "incidental and reasonably related to the primary purposes of such organization." The Washington State Bar Association version is quite different and goes far toward making it easier to organize and operate a closed panel plan.

The more liberal disciplinary rules under our Code of Professional Responsibility do not, however, solve all of the problems affecting either open panel plans or closed panel plans. There are vitally important, unanswered questions which touch on traditional prohibitions against advertising and solicitation of business by lawyers. Robert W. Meserve, President of the American Bar Association, at a speech given to the National Conference of Bar Presidents in August 1972 posed the question "Is the open panel arrangement so similar to Blue Cross, or other group medical arrangements, that really no ethical prohibition exists and your Bar Association and mine should cooperate?" Does this suggest that the Bar-sponsored non-profit corporation may (as Blue Cross does) openly solicit business for its open panel? What about the closed panel lawyers? May they now, under our present Disciplinary Rules, do any kind of soliciting? Should they be able to do any, especially if there is no prohibition whatsoever as to open panel solicitation?

What do you think of this?

□

A HEALTHY INFANT:
UPS LAW SCHOOL ENDS FIRST YEAR

By Richard A. Monaghan
Member, Editorial Advisory Board

No infant's progress has been watched with greater parental concern than that of the University of Puget Sound's School of Law during this, its first year.

But then, few infants have as many parents.

Unlike the legendary mule, the UPS Law School has much pride of ancestory and hope of a plentiful posterity.

Among its progenitors are Dr. R. Franklin Thompson, President of the University of Puget Sound; Norton Clapp, President of the Board of Regents; Richard Dale (Dick) Smith, Vice-President; and the Hon. George H. Boldt, Judge, United States Court, Western District of Washington (and formerly Chairman of the President's Wage and Price Commission).

"I, and others, had been advocating a law school for the Tacoma area since we first came here twenty-seven years ago," Judge Boldt said.

"A couple of years ago, Dr. Thompson and Dick Smith, who have been in the forefront of the effort, began to see a real possibility of having a law school. Norton Clapp, President of the Board of Trustees, appointed a feasibility committee to study the need for a school."

Judge Boldt was appointed Chairman of the Committee, which sought the advice of outside experts, including the Chairman of the ABA Committee on law schools and the National Association of Law Schools.

"We asked two questions: Was there a need, and if so, was UPS the right answer?" Judge Boldt said.

The Committee reported a need for a third law school, on the west side of the state, that Tacoma was an ideal location, and that there was a probable heavy demand for a law school providing night classes.

"We began with the idea we would either have a first-rank school by the time of the first graduating class, or we would recommend against estab-

Dean Joe Sinclitico

ABA President Robert Meserve (right) watches Reno Odlin (left), a UPS Law School supporter, greet Judge George H. Boldt at Law School dedication.

lishing the school," Judge Boldt said. "That meant acquiring a library, a first-rate dean and faculty, buildings — and an enrollment.

"We were unbelievably successful. Private donations helped us with the library. We were extremely lucky in getting Joseph A. Sinclitico, Jr., for dean, since he had just gone through a similar experience at University of San Diego Law School. We are also very proud of our faculty.

"In addition to that, the large number of first-year applicants meant we could choose the type of students that help make a good school."

School records indicate that there were approximately 900 applications for the first-year class, and that applications for next year may reach 1,500. The undergraduate grade average is between 2.75 and 3.0 and is expected to rise to 3-plus next year. The average LSAT score is between 550 and 600, and is likewise expected to rise. There are presently 370 students in the school (before finals).

Eventually, the school is contemplating an enrollment of 600 day students and 300 night students.

The school received provisional ABA accreditation in February, which Judge Boldt and Dean Sinclitico regard as something of a record for early recognition.

Dean Sinclitico is not dismayed by the inevitable question, "What are we going to do with all the lawyers?"

"There are quite a number of out-of-state lawyers finding positions here now," the Dean said implying that these positions could as easily be filled by graduates from our own law schools. In addition, he sees a growing need for lawyers.

Dean Sinclitico is a 1939 graduate of Harvard Law School and was Dean of the University of San Diego Law School from 1964 to 1971. He was formerly a professor of law at the same institution, and was an assistant professor of law at St. Louis University from 1946 to 1949. He is a member of the Massachusetts and Pennsylvania Bars.

He warns the prospective student that the less academic course-grades on transcripts will be given ever smaller consideration.

"Honest to God," the Dean said, "I saw 'basket weaving' on one transcript."

Students whose social adjustment exceeds their flair for literacy are probably in for a hard time at the school: "We're getting too many applicants

who just can't write," the Dean said.

The successful applicant must have a bachelor's degree from an accredited college or university and a satisfactory score on the law school admission test. Those who can devote substantially full time to the study of law can complete their course in three years through the day division (or in two years by accelerating their program in summer school). Those who cannot may extend the course to four years in the night school. The school expects the same academic performance of day or night students and the catalog cautions: "Evening division students should expect to have little free time while enrolled at the law school."

For the full-time student, there are no electives the first two years. The required courses for the first year are:

Contracts, Procedure, Property I, Criminal Law and Procedure, Torts, and Judicial and Legislative Process

The second-year student takes:

Property II, Taxation, Constitutional and Administrative Law, Evidence, Remedies, and Corporations

The third year is all electives. The student must take twenty hours, including one of the practice courses, plus a ten hour summer semester.

Electives include:

Business Planning, Labor Law, International Law, Estate Planning , Admiralty, Conflict of Laws, Comparative Laws (U.S., Australia, and New Zealand), Federal Jurisdiction, Problems in Urban Government, Environmental Law and Natural Resources, Patent, Trademark and Copyright Law, Creditors' Remedies, Criminology, Jurisprudence, Family Law, Special Problems of Constitutional Law, History of Anglo-American Institutions, Sociology of Law and Social Jurisprudence, Psychiatry and the Law, Commercial Transactions and Disadvantaged Groups and the Law.

Practice courses include Criminal Practice, Civil Practice, Indigent Practice, Legislative Practice and Judicial Administration.

The school is presently housed in a modern two-story building in the Benaroya Business Park at 88th and South Tacoma Way, giving the students walking access to either the "Beef and Brew" Restaurant, or the Sears Garden Store.

The library possesses about 50,000 volumes and has room for 250 students, 80% of whom can be seated in carrels. It also affords microfiche and microfilm facilities, and a data retrieval terminal is planned. There is a definite absence of pseudo-Gothic arches, clinging ivy or 80-foot ceilings (as in the principal reading room of the main library at the University of Washington). Everything is new, modern and business like.

A future move to the main campus of the University of Puget Sound, which is 10 or 12 miles away, and runs heavily to Tudor-Gothic, is expected some years hence.

(Anyone with four million dollars and a yen to have a law school named after him may contact the administration of the University of Puget Sound.)

"We don't plan any major changes for the 1973-74 school year," the Dean said. "We feel we are doing a good job. We are becoming immersed in community affairs — law and justice planning, the public defender program, in the main stream of the bar. We are very grateful for the bar-bench support we have received."

An informal chat with six of the students, two of them women, revealed a lot of enthusiasm and pride in being members of the first-class of the new law school. Criminal Law and Social Problems seem to interest most of them, although one said he did not intend to use his degree to practice.

The privilege of attending Washington's second private and newest law school, according to the catalog, will run a student $950.00 per semester (full-time), or $700.00 per semester part-time. There is an additional general fee for day students of $37.00 a semester, and the catalog advises that books can be expected to cost $150.00 a year.

A continuing effort is being made to assure not only that the student gets his money's worth, but that the clients of UPS law graduates will receive excellent legal service. A Board of Visitors has been appointed, headed by Judge Boldt, which has the responsibility to visit the school periodically and to advise and assist the students, the faculty and the University. □

SUICIDE THREAT? DONT IGNORE THAT CRY FOR HELP

by T.L. Dorpat, M.D.

Suicide is the tenth most common cause of death in the United States. Seattle and the State of Washington rank near the top in their suicide rate. The common lay opinion for the high rate in Seattle that "It must be the weather" is unlikely, since the highest rates are during the pleasant months of May and June.

Official statistics do not accurately reflect the number of people who kill themselves. If one were to include all of the unrecognized and unreported cases, the total figure might well be over twice the number of reported suicides.

There is a long tradition in Western civilization of religious and legal bans against suicide. In England, as late as 1860, one could be hanged for attempting suicide. Washington is one of the few states which still has a law prohibiting suicide and attempted suicide. Only in the past few decades has suicide behavior become the object of scientific investigation. Suicidology (the study of suicide behavior) is an inter-disciplinary field to which psychiatrists, sociologists, psychologists, psychoanalysts, and others contribute.

Since starting my research and writings on the subject of suicide behavior, I have occasionally been a consultant or expert witness on suicide cases involving medical-legal issues. My aim in this paper is to use studies of such cases to illustrate current psychiatric knowledge about suicide attempts and suicide.

One such case was that of Joe, a thirty-one-year-old fisherman who lived in Ketchikan, Alaska. One day Joe and two of his drinking buddies went for a joy ride on a chartered flight. Ten minutes after taking off from the Ketchikan airport, the plane abruptly went into a vertical power dive and crashed into a nearby lake. The plane was recovered and examined by a team of government examiners. They were puzzled over finding no evidence of mechanical failure or pilot error.

The plane had dual controls and Joe sat next to the pilot. The examiners found that the "stick" or wheel on the pilot's side was broken. One of the examiners reasoned that if Joe had put his foot on the dual control bar he could have put the plane into a power dive. Moreover, the broken stick could have been broken by the pilot's attempt to arrest the plane's descent.

Relatives of the men killed in the crash brought suit against the airline company. The defense attorney asked me to explore the possibilities of

---

Dr. T.L. Dorpat graduated from Whitworth College in 1948, and from the University of Washington School of Medicine in 1952. He interned at the Seattle VA Hospital and completed psychiatry residencies at the University of Washington and at the University of Cincinnati. For several years he was on the full-time faculty of the Department of Psychiatry at the University of Washington School of Medicine.

In 1959, Dr. Dorpat entered the private practice of psychiatry in Seattle. He received his training in psychoanalysis at the San Francisco Psychoanalytic Institute and the Seattle Psychoanalytic Institute. At present, he practices psychiatry and psychoanalysis and is a training psychoanalyst at the Seattle Psychoanalytic Institute. His research and writings on suicide began in 1958. About one-third of the 76 writings he has had published are in the field of suicidology.

the crash being deliberately caused by Joe.

Using questionnaires we had developed in our suicide research, the attorneys and insurance adjustors interviewed Joe's relatives and friends. I collated the interview data and found that the following facts supported the suicide theory about the plane crash.

"First of all, Joe was morose and depressed. There was abundant evidence that he had become more depressed a few months before his death.

All or nearly all people who commit suicide are depressed. In our study of 114 consecutive suicides in King County, Washington, we found that all of them had depressive symptoms when they killed themselves. Another finding supporting the suicide theory was the fact that Joe had made two suicide attempts before the fatal plane crash. Approximately one-third of those who commit suicide had made one or more previous attempts.

Joe was an alcoholic and he had been frequently intoxicated in the months prior to his death. There is a strong correlation between alcoholism and suicide in that about 30% of those who commit suicide are confirmed alcoholics. Alcoholism has been called "chronic suicide."

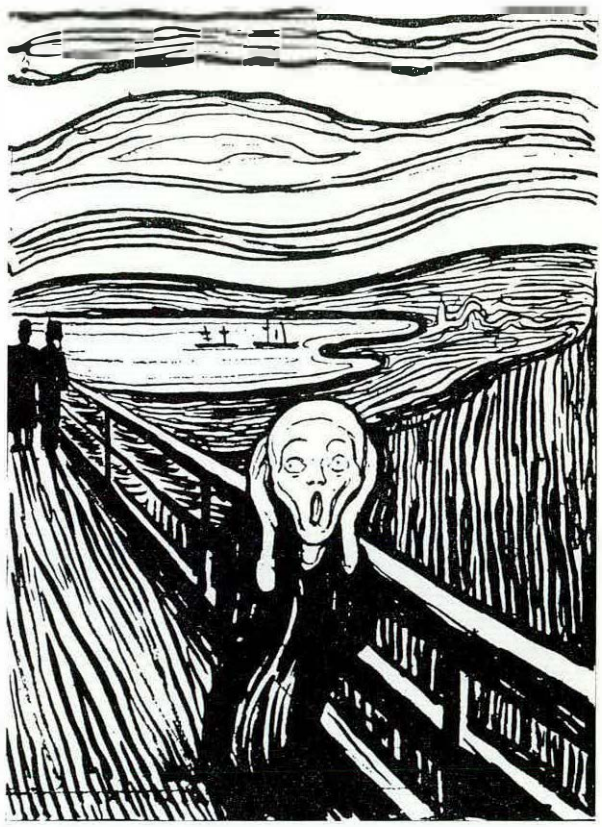
Rational Suicide

There is a wide range of psychiatric diagnoses in those who commit suicide. The fact that about 30% of suicides suffer from some kind of psychosis disproves the old myth that only those who are insane or psychotic kill themselves. Nor did our research findings support the popular notion of a rational suicide, i.e. one made without passion and based on a logical appraisal of the need for death. All of the suicides in our study had some kind of psychiatric disorder.

Depression and suicide behavior are reactions to some type of overpowering real or imagined loss. The two most common kinds of loss which precipitate depressive reactions leading to suicide behavior are the loss of loved ones through death, divorce or separation, and the loss of health by illness or injury.

Joe had lost his father in a tragic boating accident about a year-and-a-half before the plane crash. He had felt guilty about his father's drowning because he had been intoxicated when his father fell out of their boat. Also, Joe had lost his wife by divorce three months before he died.

The most impressive evidence for the suicide theory was the fact that Joe had made specific suicidal threats indicating detailed plans about his suicidal intentions. Several days before the



The Cry (Edvard Munch)

fatal airplance flight he told a bartender, "I am going to take a one-way flight, and I'm not going to return." To others he gave ominous warnings of his intentions to "take a one-way trip." This was the most telling evidence because what happened in the fatal flight was precisely what he had previously threatened.

Communication of Suicidal Intent

People who commit suicide usually make prior communications to others of their suicidal intentions. In our study and in the research of others, about 80% of those who committed suicide communicated their suicidal intentions. Most often such communications are made at different times and to different people. Frequently this is communicated in a direct way. The suicidal person says, for example, "I'm going to shoot myself." The surprising thing is that people don't believe them. There is a popular saying that those who talk suicide don't do it. Nothing is further from the truth.

Not all communications of suicidal intent are direct and explicit. Indirect communications of

(Continued on Page 32)

THE DOCTOR'S DILEMMA: INFORMED CONSENT

by Michael R. Green

Anglo-American law has long recognized the inviolability of the human body against non-consensual touching. Accordingly, doctors are required to obtain a patient's consent prior to treatment, absent an emergency wherein consent is implied by the law. It is customary in hospitals today for a patient to sign written consent forms authorizing surgery and other medical procedures. Even then, many patients claim that they did not fully understand and appreciate all the risks attendant to the surgery or the alternatives available. Within the past decade, a number of cases have been reported dealing with the issue of "informed consent." In the State of Washington, three appellate court and two Supreme Court decisions dealing with this issue have come down in the past two years. This article will discuss briefly those cases and the trend of the law in this area.

The relationship between a doctor and his patient is very complex and involves the utmost in discretion and judgment from the doctor. The doctor is not a guarantor of the patient's health and should not be held liable because of complications suffered by the patient during the course of medical treatment. However, the doctor does owe a fiduciary duty to his patient not only to act in the patient's best interest, but also to disclose to the patient the information necessary to obtain the patient's valid and informed consent. This right-duty relationship has been clearly enunciated in a recent American Hospital Association bulletin dated November 17, 1972, entitled "Statement on a Patient's Bill of Rights," which provides inter alia as follows:

> "The patient has the right to obtain from his physician complete current information concerning his diagnosis, treatment and prognosis in terms the patient can be reasonably expected to understand. . . . The patient has the right to receive from his physician information necessary to give informed consent prior to the start of any procedure and/or treatment. Except in emergencies, such information for informed consent, should include but not necessarily be limited to the specific procedure and/or treatment, the medically significant risks involved, and the probable duration of incapacitation. Where medically significant alternatives for care and treatment exist, or when the patient requests information concerning medical alternatives, the patient has the right to such information. . . ."

A doctor's breach of this duty to obtain an informed consent from his patient constitutes a separate and distinct cause of action for damages even though the doctor performed his treatment in a non-negligent manner. In other words, every case involving a medical complication or untoward result to the patient can be and probably is a good case for alleging lack of informed consent, and the plaintiff's trial attorney in a

medical malpractice action should always consider alleging both negligence [generally res ipsa loquitur will help out] (as well as) lack of informed consent as causes of action.

The doctor's dilemma today is how to comply with this duty to his patient. In most instances, there are no recognized medical standards of what to disclose or how or when to disclose. Even when disclosure is made, the doctor often is unable to prove it in court except by his word against the word of the patient. The doctor has no **Miranda**-like statement of rights to read to his patient. If a doctor is liable for not telling his patient enough, can a doctor also be liable for telling his patient too much and thus frightening the patient out of needed medical treatment? By what and whose standards are we to judge a doctor's performance of his duty of disclosure to his patient? This problem has created a legal muddle for lawyers to ponder and doctors to worry about. The case law continues to evolve and change, with noted lack of agreement on how to treat the problem in court.

The first appellate opinion in Washington on informed consent was **Watkins v. Parpala,** 2 Wash.App. 484 (April, 1970), involving alleged dental malpractice, with the jury returning a defense verdict. The trial judge granted judgment N.O.V. and a new trial on damages only, and Division 2 reversed and reinstated the defense verdict. Plaintiff argued for a directed verdict on informed consent. The facts showed elective removal of several upper teeth. A fistula caused by a long tooth root from the upper jaw into the sinus cavity was not discovered by the dentist when he was making impressions for false teeth, nor did the dentist inform the patient of this possible risk prior to removing the teeth. The resultant pain and infection required two subsequent surgeries to close the fistula. Plaintiff alleged intentional tort, assault and battery, based upon non-consensual touching or lack of informed consent. Division 2 adopted the negligence approach instead of the intentional tort or battery approach:

> "The question of whether or not a particular risk should be disclosed should have the same evidentiary requirements as any other act of malpractice. The standards of disclosure should require some medical testimony unless the disclosure is so obvious that laymen can recognize the necessity of such disclosure."

Since there was no evidence that the dentist had breached any recognized standard of disclosure, and because the complication was rare, failure to disclose was not considered a breach of duty owed to the patient, therefore not a basis for either a directed verdict or a jury instruction.

The second Washington appellate opinion was *Mason v. Ellsworth,* 3 Wash. App. 298 September, 1970). In this case, a surgeon was accused of medical malpractice when he accidentally punctured the patient's esophagus during an esophagoscopy, a diagnostic procedure to examine the inner lining of the esophagus by use of a metal tube with a light attached, inserted down the throat to the stomach junction. The test was performed to determine if the patient had cancer of the esophagus, since the patient had long-standing gastric distress.

The jury again returned a defense verdict, and Division 3 reversed and remanded for a new trial because of erroneous jury instructions. The trial judge had erred in failing to submit to the jury the issue of the doctor's direct negligence. Division 3 ruled that the trial judge also erred in submitting the case to the jury on the issue of informed consent, because perforation of the esophagus was so rare (it occurred in

(Continued on Page 34)

Michael R. Green is a partner in the law firm of Davis, Wright, Todd, Riese & Jones, of Seattle, Washington.

He is a graduate of the University of Washington Law School, Class of 1961, and has been engaged in private practice for 12 years. He has been active in the health care field of law, representing hospitals and physicians, and has been active in medical malpractice defense.

He and his wife, Neva, are from Seattle, and have two sons and one daughter.

Cleary Cone to Be 1973-74 Bar President

Cleary S. Cone of Dano, Cone & Fraser of Ellensburg will be the 1973-74 president of the Washington State Bar Association.

He was chosen by the Board of Governors to succeed Charles I. Stone of Seattle during the association's annual meeting in Vancouver, B.C., September 6-8.

Cone is a 1951 graduate of the University of Washington Law School, where he was a member of the Law Review editorial Board and Order of Coif. He then served as clerk to Supreme Court Justice Charles E. Donworth before entering private practice in Ellensburg with Harrison K. Dano and the late F.A. Kern, who was State Bar president in 1953-54.

He describes himself as a general practitioner — "in a town like Ellensburg you are a general practitioner whether you want to be or not" — with emphasis on trial work and estate planning and probate work. He currently is chairman of the Bar's Committee on Certification of Specialists and the Board of Bar Examiners.

In Ellensburg he has been president of the Rotary Club, chairman of United Good Neighbors and chairman of Red Cross fund drives.

A Bellingham native, he attended the old Custer School through tenth grade — the entire high school numbered 82 students and only the upperclassmen enjoyed indoor plumbing — and was graduated from Ferndale High School. He served a stint in the Army and attended Washington State College before moving to the University of Washington for his last three years' undergraduate work.

At the UW he achieved some notoriety as a star pitcher (southpaw) and got bonus offers from major league teams to play professional baseball. He now enjoys a little golf, which he says he plays neither often nor well.

He and his wife, Aleen, from the Chehalis area, have three children: Ed, married and a veteran of military service, attends Western Washington State College; Cynthia is a senior and Alison a sophomore at Washington State College.

Bar Poll Favors Certification Standards

Almost 2500 lawyers responded to a poll on lawyer specialization conducted by the Washington State Bar Association, and nearly all think that a lawyer who wants to be recognized as a specialist should meet certain bar administered standards for certification.

Almost 1,900 of the respondents indicated that they foresee an improvement in the general quality of the legal services rendered to clients if the number of lawyers who specialize is increased, and about the same number would anticipate the same improvement in quality if the public is given an effective means of identifying the legal specialist.

About 1,500 Washington lawyers believe that certification of specialists will not hurt the general practitioner, but nearly 1,800 feel that a lawyer holding himself out as a specialist should not be required to limit his practice to his specialty or specialties.

In answer to a question that asked whether a respondent considered himself to be a "specialist" in any field, most indicated, as their "specialty" fields, civil trials, real estate, estate planning and probate, business and corporate, personal injury litigation, and divorce and domestic relations.

In 1971, the Washington State Bar Association board of governors appointed a special committee on certification of specialists, to take another look at the subject, in order to determine whether the association should depart from a 1968 decision of the board of governors to the effect that "the time was not ripe for certification" in Washington.

Following the tabulation of the questionnaire, the committee has recommended that the bar association evaluate the California and Texas specialization projects and confer with the board of bar examiners and representatives of law schools in the state.

MOVED? MOVING?

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

Certify Legal Assistants? Lawyer Is For It

Editor:

It was with some concern that I learned that some members of the Board of Governors are hesitant to recommend the certification of legal specialists. To me this is a giant step backwards in the progress that the bar has otherwise made in attempting to bring legal services to the public at a cost they can afford, and to otherwise enhance the image of the bar in the eyes of the community.

Lawyers have always been concerned with respect to their public image. Generally speaking, based on a substantial number of polls that have been taken on the subject, there is some misunderstanding of lawyers by the majority of laymen. In attempting to resolve this problem, lawyers and bar associations have spent considerable time, effort and money to allay the suspicions that apparently exist.

One of the prime criticisms by the public of attorneys and the bar in general is the misunderstanding of the manner in which lawyers compute and charge fees for their services; and generally a great concern for the high cost for legal services. The bar has not always gone out of its way to attempt to quiet these concerns. The result, as we have seen in the past, is that often times the citizenry takes the matter in their own hands rather than the bar associations or the attorneys taking care of the matter. As an example, recall the fact that the joint tenancy law, that all lawyers have criticized as being bad legislation in this state, was conceived and carried out as a general rebellion against the high cost of probate and attorneys fees charged in connection therewith. The bar has taken steps to alleviate the problem and even before minimum bar fee schedules were abolished, the committee for the Seattle-King County Bar Association, in their discussions, had discussed reducing the percentage fees applicable to probate and substituting hourly or other methods of compensation for probate services. The bar is to be commended for this type of approach. The bar is further moving ahead in the area of prepaid legal services, legal services for the poor and disadvantaged. All in all, however, there is still a majority of clients who come in contact with lawyers who charge them a fee for their services and in most instances there is a great correlation between the attorneys time expended on the client's matter and the amount of the fee, which is proper.

The reason that the undersigned feels that failure to certify or authorize certification of legal assistants, legal specialists, or paraprofessionals, whatever you want to refer to them as, is a giant step backwards, is because of the fact that failure to utilize the services of these specialists has a direct bearing on the cost that the client will incur for certain legal services.

We all can examine our own practices and identify countless items of work, services, and actions that we take on behalf of our clients that could just as well be undertaken by qualified, non-attorney personnel performing these same functions under our direct supervision. This is happening at the present time and increased use of these specialists is a good thing. The point is however, that some lawyers still fail to use these services, and as a result the public is paying an attorney an hourly rate of $40-$45 per hour, or perhaps more in some instances, for services that could have been performed by a $20 per hour, or some lesser rate, legal specialist. In other words, lawyers should be involved in making legal decisions and not routine matters. Reference our medical colleagues who, with the use of nurses, administrators, business managers, for the most part, make medical decisions. Lawyers should emulate this philosophy and spend their time attempting to make legal decisions.

The time comes when an attorney cannot merely continue to increase his fees to cover increased costs. An attorney, just as any other profession or business, must become more internally efficient. The bar, to its credit, is responding to this need by becoming more internally efficient by the use of automatic typewriters, forms, law students for briefing and the use of legal specialists. Legal specialists and the use of them by attorneys, are here to stay and the bar should recognize it. The attorneys should recognize further, that a legal specialist is not just a legal secretary, but is a person who hopefully will be trained to the point that they are no longer performing clerical or stenographic services whatsoever, but are assisting in the process of supplying legal services to those in need of the same, under

the direct supervision of attorneys.

It would thus appear that if a legal specialist is a good thing for the client and the attorney, as well as the legal process, then there exists no reason as to why they should not be regulated and steps implemented so that they can be certified as either competent or at least as having certain minimum qualities and standards. Failure to license or certify legal specialists would be just as criminal, in the opinion of the undersigned, as it would to fail to register, regulate or test nurses, hygenists, and others who presently perform services that were historically those of the professional doctor or dentist. Certification of legal specialists is a necessity to insure competency and ability since contrary to common belief, being a legal secretary for a number of years does not necessarily qualify that person to be a legal specialist or paraprofessional.

Those who would criticize the certification of legal assistants or specialists on the basis that it would detract or take away work that would be otherwise available to younger attorneys are ignoring the history of what has occurred when the legal profession prices itself out of business in any particular area. For example, title and escrow companies have taken over a substantial portion of the real estate business; insurance men have taken over a substantial portion of the estate planning field; accountants have taken over a vast majority of the tax services. The reason is that others have come in to fill a void and the public demands these services and they're too expensive or otherwise not attainable from the legal profession. Lawyers cannot put their heads in the sand and call it "legal business" and then think that they have a monopoly in the performance of those services. The bar association has no right to attempt to preserve a "work load" for younger attorneys or any attorneys, for that matter. The only thing that the lawyers have a right to do is to make sure that the law is not practiced by unauthorized persons. Certification of law specialists who work under the direction of attorneys is not in violation of the statute precluding the unauthorized practice of law.

In conclusion, although the law in representation by lawyers is in the eyes of some, becoming an expensive luxury, the undersigned believes that the law is for the clients too, and not merely for lawyers and judges.

In the undersigned's opinion, the certification of legal specialists would allow the regulation of a very technical, legal field; would assist the bar in obtaining competent people as assistants; would thereby reduce some of the substantial legal costs that the citizenry is experiencing and yet if properly administered should not reduce the income of responsible practicing attorneys. In the end it should allow attorneys to better represent their clients with respect to legal matters.

The undersigned would urge the very serious reconsideration of the opinion of some members of the board; and perhaps the entire bar should consider the matter in greater detail.

EVAN E. INSLEE

Bellevue

Environment and Law Topic of N.M. Seminar

The Board of Christian Education of the United Presbyterian Church, U.S.A., in cooperation with other agencies of the United Presbyterian Church and other churches, will sponsor a seminar open to attorneys and interested laymen to examine ways by which environmental crises may be handled within the traditions of the legal system as well as new and not yet existing legal tools. The week-long seminar "Defending the Environment," July 30 through August 6, 1973, will be held at Ghost Ranch, Abiquiu, New Mexico. The staff will be led by Professor Joseph Sax, University of Michigan Law School; Marvin Durning, practicing attorney, Seattle, Washington; Richard Wilkes, practicing attorney, Phoenix, Arizona; and The Reverend Dieter Hessel, of the Office of Church and Society of the United Presbyterian Church. Ghost Ranch is a national conference center of the Presbyterian Church, located in the New Mexico mountains north of Santa Fe. Registration for lawyers is $100.00. The seminar provides an opportunity for legal education and a family vacation. Room and board at Ghost Ranch are $8.00 per day (adults) and $4.00 per day for children 9 and under. For further information call Marvin Durning in Seattle (206) 624-8901.

The participants will examine together the state of the law as it relates to the preservation of the environment and will seek to discover new ways and applications of old ways to deal with environmental crisis.

Accommodations at Ghost Ranch include cabins, dining hall, swimming pool, and facilities for recreation for all ages.

Quotes Quoted

California to Give Lawyers Certification and Let Them Flaunt It in Yellow Pages

By Tom Goldstein

Staff Reporter of The Wall Street Journal

In the late 19th century William F. Howe and Abraham Hummel, who represented much of the New York carriage trade and the best-known criminals of the day, planted atop their office building a 40-foot-long four-foot-high sign with enormous block letters spelling out "Howe & Hummel's Law Offices."

Today the organized bar is more skittish about allowing lawyers to promote themselves. "Competitive advertising would encourage extravagant, artful, self-laudatory brashness in seeking business and thus could mislead the layman," warn the drafters of the American Bar Association's 1970 Code of Professional Responsibility.

Lest there be any room for misinterpretation, various bar associations have ruled it improper for lawyers even to send Christmas cards to potential clients.

But the bar's hard line against advertising is cracking in places. Two years ago, for example, the District of Columbia bar association decided that the Stern Community Law Firm, a nonprofit outfit, could advertise for clients just so long as the word "law" was omitted from the advertisements.

And now, in California, under a plan approved in 1971 by the state's Supreme Court, the line is cracking a little more, and the American Bar Association is encouraging the development.

It Starts This Year

California lawyers will be able, later this year, to be certified to practice criminal, tax or workmen's compensation law. Those lawyers who are certified will be able to designate that specialty in the Yellow Pages of the phone book. The specialty will simply be appended to the lawyer's name in the "Attorneys" section of the Yellow Pages.

While the listing in the Yellow Pages isn't the main provision of the certification plan, there are those who view such listing as perhaps the plan's most practical, and certainly its most visible result. "Certification of specialties would be an empty gesture unless lawyers were free to indicate their specialties in the Yellow Pages," Thomas Ehrlich, dean of the Stanford law school, and the late Herbert Packer wrote in the 1972 book "New Directions in Legal Education."

The plan is voluntary. Specialist and nonspecialist alike will be able to practice any area of the law. The idea, say the plan's backers, is to assure that people needing legal help can readily find lawyers who are competent in specific areas of legal practice. "The opportunity for prospective clients to make such selection is in the public interest and, being in the public interest, is in the interest of the bar," says Robert W. Meserve, president of the American Bar Association.

Long Under Study

The ABA has long been interested in specialization. It started studying such proposals in 1954. In 1969 its House of Delegates adopted a recommendation encouraging state bar associations to set up experimental programs.

Today, 25 or so other states are studying proposals similar to California's, and at least two, Colorado and Texas, are developing pilot projects. Under the California plan, now designated as an experiment that will last five years, a lawyer can be certified in two ways: Either he must have practiced for 10 years and had substantial involvement in his specialty for five years, or he must have practiced for at least five years, taken special courses and passed an examination in the specialty.

Informally, lawyers have always specialized by type of clients, field of legal expertise such as negligence cases or taxation, or locale. In addition, specialized bars have been spawned by the existence of huge state and federal regulatory agencies. Thus a lawyer might specialize in arguing before the Federal Trade Commission.

And historically the patent and admiralty lawyers have been allowed to designate their specialties on their letterheads or signs, on the theory that there are different educational or admission requirements for these practitioners than there are for others. Patent lawyers, in fact, are already listed separately in the Yellow Pages around the country. And any lawyer can advertise his specialty to other lawyers in approved law directories.

Bad News for Banks?

Formal certification of the California variety is favored by Quintin Johnstone, a Yale law professor who is an authority on the practice of law in this country. He likes it because "it would

concentrate more legal work on those best able to handle it." He says it would also allow lawyers to compete more effectively with banks, accountants and title insurers, all of whom perform services once reserved for lawyers.

On the other hand, Murray Schwartz, dean of the UCLA law school, worries that certification in one area may incorrectly imply that the lawyer is incapable of doing anything else. He also is concerned that certification may become semi-mandatory. "Will a good judge appoint a non-certified lawyer to defend an indigent in a criminal case?" he asks.

Dean Schwartz is serving on the nine-member state certification panel, consisting of two ex officio members and seven members appointed by the board of governors of the state bar association. The two ex officio members are the chairman of the state committee of bar examiners and the head of the state bar committee on continuing legal education.

Rather than introduce certification, some observers would prefer to improve the lawyer referral services now functioning in nearly 300 locations. In these services, a person who wants legal advice calls a central number, states his general problem and is referred to a cooperating attorney who, for a nominal fee, consults with the caller. A normal attorney-client relationship might then be formed.

Referral services are already underused, says Russell Niles, former dean of the New York University law school. Under certification the services probably would be used even less. And since consultation via the Yellow Pages would be more haphazard than consultation via a referral service, the person in need of help could well end up with a lawyer less suited to his problem; he might simply call the first lawyer alphabetically who seems to meet his need, it is argued.

Other legal observers predict, some cheerfully and some sorrowfully, that if certification catches on, the all-purpose lawyer will become, like the general medical practitioner, a rarity.

Reprinted with permission
of The Wall Street Journal

On to Bellingham. Elaborate preparations were in the mill for the state convention. The great circuit judge **Orie L. Phillips** and also Lawyer-Governor **Arthur B. Langlie** would speak. Particularly noteworthy was the advance announcement of the brave men who accepted membership on the Resolutions Committee: **Richard S. Munter,** Spokane; **Sam Bassett,** Seattle; **Joseph E. Hall,** Vancouver; **Joseph W. Kindall,** Bellingham; **A.J. O'Connor,** Wenatchee.

Births

The Order of the Coif announced honorary membership to Supreme Court Judge **Ralph O. Olson.** Recent graduates **Edward Novack,** Everett; **Dulcie Young,** Seattle; **Ernest M. Murray,** Tacoma; and **Eldon Parr,** Albany, California, were also elected.

George Boldt, Tacoma, nominated by President Eisenhower to Federal district court.

Harold Tollefson was elected Mayor of Tacoma.

Seattle: **Barbara Ohnick** appointed deputy prosecutor. **John Vertrees** appointed assistant corporation counsel. **Kenneth A. Cox** and **Griffith Way** announced their partnership. **Stewart Lombard** forsook Seattle for Lake City. **George W. Martin** elected Fellow of the American College of Trial Lawyers.

Skeel, McKelvy, Henke, Evenson & Ohlmann moved to the Dexter Horton Building. It was stated that there was no truth to the rumor that **McKelvy** and **Betts** urged the move to avoid the sometime references by opposing counsel for the plaintiff to their offices in the Insurance Building.

Crossed the Bar

Tacoma: The Bar and Bench conducted a memorial service for: Judge **Ernest Card,** Judge **Charles L. Westcott, Harry Johnston, W.L. McCormick, Frank Latcham, Arthur Hoppe, Anthony M. Arntson, Roswell Quinn, Charles E. Schwrag** and **Joseph McNerthney.**

Leander T. Turner, 89, of Suqsamish and Seattle, father of Superior Court Judge **Theodore S. Turner.**

Judge **Chester A. Batchelor,** 71, of Seattle.

Editor Emeritus **M.W. Bean** of the Daily Journal of Commerce supplies this Beansprout: A young lady secretary is quoted as saying, "Well, my boss's dictation isn't so bad — but I do have to take a great deal for grunted."

David J. Williams

The Board's Work

Extracts from the minutes of the meeting of the Board of Governors April 20-21 at the Washington Plaza Hotel, Seattle, with all members in attendance:

Reprimand

A formal reprimand was administered to attorney Kenneth Hawkins of Yakima.

Legislative Review

After a general discussion of the just-concluded session of the Legislature, with particular emphasis on Prepaid Legal Services, Judicial Reform and No-Fault Insurance, the following actions were taken:

A. The President was instructed to communicate to the Governor that the Board urges the Governor to sign Senate Bill 2045, the Comparative Negligence Bill, which the Board agreed improves the automobile reparations system and removes a previously existing inequity balanced against the automobile user or consumer. The President also was to advise the Governor that the Board recommends that he consider the possibility of removing the delayed effective date from the Bill.

B. Senator Warren G. Magnuson is to be advised the Board of Governors recommends the Commerce Committee of the U.S. Senate hold further hearings on Federal No-Fault Insurance so the states may report on progress made by the States in the passage of No Fault Legislation.

C. If the U.S. Senate Commerce Committee holds such additional hearings, the Washington State Bar Association will send a representative to testify about progress made in this field by the State of Washington, and that the President designate such representative and that his expenses be paid by the Association.

D. A five-member Legislative Study Committee is to be appointed by the President to take an in-depth look at the legislative procedures, programs and plans for the Bar Association, including the size, composition, concept and purpose of the Legislative Committee. The new committee is to consider ways to design a plan for the benefit of the Bar Association and the public in legislative matters and is to consider whether the present plan and procedure is best or whether improvement can be made. The committee is to present its recommendations no later than the June 1973 meeting of the Board of Governors.

Election of President

Upon nomination properly made and seconded, the Honorable Cleary S. Cone of Ellensburg was elected, by unanimous vote, to serve as President of the Washington State Bar Association for the 1973-74 term.

Consideration of a President-Elect

The question of whether it would be advantageous to the work of the Bar Association to designate a President-Elect is to be studied by a committee of three members of the Board to be named by the President. The committee is to explore all possibilities, including, but not limited to, (a) designation of a President-Elect a full year in advance, (b) designation or selection by at least the first of each calendar year, (c) popular election by the membership, (d) popular election from two names nominated and submitted to the membership by the Board of Governors, (e) retention of the present system. The committee also is to investigate the possibility of presenting the names of potential future presidents of the Bar Association to be considered in the immediate years ahead. Following these actions, the President designated Edward J. Novack as the Chairman of this Committee and William H. Gates and James P. Curran as members.

Young Lawyers

Curtis Shoemaker, Chairman of the Young Lawyers Committee, presented several matters to the Board relating to the Young Lawyers Committee, the proposed Young Lawyers Section and other activities of Young Lawyers generally. Also appearing before the Board were Bradford G. Gierke of Tacoma and C. Robert Wallis of Olympia concurring in some of the positions and viewpoints of Mr. Shoemaker and the majority of the Young Lawyer Committee and presenting a minority viewpoint in others. After the discussions and presentations, the following actions were taken:

A. The Board approved the activities of both Robert Mussehl in connection with his duties as the Regional Director of the Young Lawyers' Disaster Legal Services Program and Curtis L. Shoemaker, the Washington State Director, and offered the continued cooperation of the Bar Association and the Bar Staff in implementing this program.

B. The request of the Young Lawyers for an appropriation of $1200 to be used in connection with the preparation and distribution by Tim Bruce of a slide presentation and sound track program dealing with the problems of young people in dealing with the courts was approved subject to the following conditions:

(1) That other possible sources of financial support including the LEAA be exhausted before the Bar Association be asked to finance the completion of the program, and

(2) That the presentation be viewed by the Board of Governors members Neil J. Hoff and Curran and the presentation approved as to quality and as to being worthy of Bar Association financial support from the standpoint of the public interest.

C. Upon the request of the Chairman of the Young Lawyers Committee that the Board give some specific indication of its attitude toward certain provisions of the proposed By-Laws of the Young Lawyers Section, the following actions were taken:

(1) The Board indicated by a vote of 5 to 3 that it would prefer that Article 2 should be amended so as to read, "shall be eligible to be members of the Young Lawyers Section" rather than "shall be members of the Young Lawyers Section".

(2) The Board indicated by a vote of 6 to 2 that it preferred the Young Lawyers Section officers and Board to be elected from Districts comparable to those from which the present Board of Governors is elected rather than from the Districts outlined in the proposed By-Laws as submitted.

(3) The Board indicated by a vote of 5 to 3 that it preferred the Section under the heading of "Duties" in Article 3 of the Model By-Laws as submitted by the COG Committee to the said Section in the proposed By-Laws as submitted by the Young Lawyers Committee.

(4) The Board indicated by a vote of 5 to 2 that the membership provisions of Article 2 should be restricted to those persons under the age of 35 years and without the provision that any person regardless of age would be eligible for membership until the end of the 5th year of his or her practice.

(5) The Board indicated without apparent dissent that it would be willing to appropriate the necessary funds to support a reasonable budget for the Young Lawyers Section.

(6) The Board indicated without apparent dissent that if the proposed changes in the proposed By-Laws for the Young Lawyers Section were agreeable to the Young Lawyers Committee that the Board would approve the By-Laws and subsequent Section status as indicated.

Law Clerk Program

Mr. Miles McAtee and Mr. John P. Sullivan appeared in support of the continuation of the Law Clerk Program and in support of certain proposed revisions in the Rules and Regulations governing the preparation and supervision of those persons enrolled in the Law Clerk Program. Thereafter, the following actions were taken:

A. It was voted that the Board of Governors recommend to the Supreme Court that the Law Clerk Program in the State of Washington be abolished, but that the program be phased out gradually so persons presently enrolled would continue until they complete the program or withdraw from it. No new persons are to be enrolled in the program pending the action of the Supreme Court on the recommendation that the program be abolished. The vote on this motion was 6 to 2 with Messrs. Ripple and Curran voting "no."

Sites for Annual Meetings

A. It was voted that the 1974 Annual Meeting of the Bar Association be held in San Francisco. The vote was 5 to 3; those voting against the motion were Messrs. Ripple, Gates and Pritchard.

B. It was voted, 5 to 4, that the 1975 Annual Meeting of the Bar Associatin be held in Spokane. The vote on this motion was 5 to 4.

C. It was voted, 5 to 3, that the 1976 Annual Meeting of the Bar Association be held in the State of Hawaii, excluding Honolulu.

Sections

A. Formation of a Creditor-Debtor Section of the Bar Association was approved, if there is sufficient interest and if other provisions for the formation of Sections are complied with. The following organization committee was then named to investigate the possibilities and make recommendations for the formation of such a Section: Joseph Barreca, Chairman, Willard Hatch, Alex Wiley, Samuel Steiner, Stuart Todd, Jerome Shulkin, Philip Hutchison, George Lundin, Wayne Boyak and Eugene Craig.

B. It was moved, seconded and carried that the formation of a Trial Lawyers Section of the Bar Association be approved if there is sufficient interest and if other provisions for the formation of Sections are complied with. The following organization committee was then named: Murray Guterson, Leon Wolfstone, Alvin Anderson, Paul Cressman, Thomas Greenan and F. Lee Campbell.

CLE Program for Annual Meeting

A. The proposed seminar schedule for the

1973 Annual Meeting of the Bar Association as outlined in the minutes of the CLE Committee from its Meeting of March 16th was approved.

B. The Board approved the co-sponsorship of a Public Interest Law Seminar as outlined in the minutes of the CLE Committee's March 16th meeting and subject to the conditions as outlined by the CLE Committee.

C. The Board adopted as its own policy the recommendations of the CLE Committee with reference to guidelines on seminars sponsored by Sections or Committees of the Association other than the CLE Committee as outlined in the CLE Committee's minutes from its March 16th meeting.

Request of Judicial Council for Appropriation:

It was voted that the sum of $2750.00 dollars, which is the Bar Association's pro-rata share of a rebate from a previous allocation of funds for a project to revise the Rules of Court pertaining to Appellate Procedure, be appropriated to the Appellate Rules Task Force and the Judicial Council for their use as matching funds for a new grant for the completion of the project above described. The vote on this motion was 7 to 2.

Amendment to Rule 7 with Exceptions

The Board recommended to the Supreme Court that Rule 7 relating to "Admission to the Practice of Law in the State of Washington" be deleted in its entirety and a new Rule 7 be substituted in its stead and that the new Rule 7 as recommended by the Board should read as follows:

RULE 7
PRACTICE BY MEMBERS OF BAR FROM OTHER JURISDICTIONS PROHIBITED-EXCEPTIONS

A. In General

No person shall appear as attorney or counsel in any of the courts of this state, unless he is an active member of the state bar: Provided, That a member in good standing of the bar of any other state *who is a resident of and who maintains a practice in such other state* may, with permission of the court, appear as counsel in the trial of an action or proceeding in association only with an active member of the state bar, who shall be the attorney of record therein and responsible for the conduct thereof *and shall be present at all court proceedings.*

Application to appear as such counsel shall be made to the court before whom the action or proceeding in which it is desired to appear as counsel is pending. The application shall be heard by the court after such notice to the adverse parties as the court shall direct; and an order granting or rejecting the application made, and if rejected, the court shall state the reasons therefor.

B. Indigent Representation

A member in good standing of the bar of another state, while *rendering service in a Bar Association or governmentally or sponsored Legal Services, Public Defender or similar program providing legal assistance to indigents, and solely in one's capacity as a member of that office, may for a period not to exceed one year, upon application and approval, practice law and appear as counsel before the courts of this state in any action or proceeding in association with an active member of the state bar, who shall be the attorney of record therein and be responsible for the conduct thereof.*

Application to appear under the rules shall be made to the Supreme Court of the State of Washington and said applicant shall be subject to the Rules for Discipline of Attorneys and the Code of Professional Responsibility. The granting of an application shall be effective for the period of one's service, not to exceed one year or until such time as the individual shall take and fail the Washington State Bar examination, or until such time as the Supreme Court deems it necessary to terminate such privilege.

No member of the state bar shall lend his name for the purpose of, or in any way assist in, avoiding the effect of this rule.

Meeting with Young Lawyers

On Saturday, April 21, the Board met with a representative cross-section of Young Lawyer members of the Bar Association from across the state and problems of mutual interest were discussed, including Courts of First Resort, Group Legal Services, Lawyer Placement, the use of Paraprofessionals and Legal Assistants, Lay Persons on the Disciplinary Board and the Public Relations of the Bar.

Next Meeting

The next meeting of the Board was set for the Hanford House, Richland, on May 11-12.

YAKIMA REPORT
By RANDY MARQUIS

Boss of The Year:

Harry Hazel of the law firm of Hazel and Weeks was recently honored as Boss of the Year by the Yakima County Legal Secretaries Association. Harry was nominated by Kathy Lindberg of the Tonkoff office.

New Members of the Yakima Bar:

Successful February Bar examinees included three Yakima men: **Douglas Craig Marshall** presently serving in the Armed Forces; **Kenneth Wesley Raber,** Claims Officer with the Support Enforcement and Collections Section of the Department of Social and Health Services; and **Edward D. Seeberger,** newly appointed Deputy Prosecuting Attorney.

Bar Picnic:

Kevin Kirkevold, chairman of the annual Yakima Bar picnic, announces that the Bar picnic to be held on June 22, 1973 (that's Friday), will be bigger and better than ever, despite the fact there will be no dancing girls.

SKAGIT REPORT
By PAUL N. LUVERA JR.

The annual Law Day ceremonies were held at the Skagit County Courthouse, Judges **Walter J. Deierlien, Jr.,** and **Harry A. Follman** of the Skagit County court presiding. The Hon. **Ward Williams** of the Court of Appeals was the main speaker.

Arnnel Johnson was presented the Liberty Bell Award for his many years of public service.

President **Eugene Anderson** presented the award to Mr. Johnson and thanked **Bill Neilson,** who was chairman of the Law Day.

To highlight the ceremonies, **James G. Smith** presented his granddaughter, **Peggy Decker,** for admission to the Bar Association. Ms. Decker will make an attractive addition to the local bar association and plans to practice in Skagit County at Blanchard.

Warren Gilbert and **K. R. St. Clair** both were in Palm Springs, California, on vacation while the less prosperous lawyers were back home stealing their clients.

R. V. Welts, age 82, was recently honored as Director emeritus of the First Federal Savings and Loan Association. Robin is still active in the law practice with his son David Welts in the firm of Welts and Welts. **Richard Welts,** former member of the firm, passed away in Mount Vernon on April 8, 1973. Richard was a partner in the firm with his brother and nephew for many years and will be missed.

The bar association is preparing for their annual meeting with Whatcom, San Juan, and Island County bar associations this summer.

A medical-legal panel has been established in Skagit County to review medical negligence cases. The panel will be composed of local physicians and lawyers.

George McIntosh owns four sail boats; he can't turn a good deal on a boat down, even if he doesn't need one.

BENTON-FRANKLIN REPORT
By NEAL J. SHULMAN

Highlighting the spring social activities of the Benton-Franklin Bar Association was a dinner-dance at the Hanford House Hotel May 11 honoring **Charles Stone,** President of the Washington State Bar Association, as well as the Board of Governors. This event was viewed with anticipation by the members of the local association who take great pride and pleasure in the opportunity to honor the officials of the state association.

The Honorable **Charles Kilbury**, State Representative, was the featured guest at the April 18 meeting of the Benton-Franklin Bar Association. Rep. Kilbury educated the members on important events of the most recent legislative session.

Congratulations to **Stan Moore,** Pasco, a practicing attorney and part time deputy prosecutor, recently elected to the Board of Directors of the newly formed Tri-City's chapter of the International Footprint Association. **Neal Shulman,** Richland City Attorney, was elected as legal counsel for the new organization.

Those attorneys interested in obtaining further information relative to the quality and availability of the **1973 tomato crop** are urged to contact Pasco attorney **Ed McKinlay,** the agricultural expert of the Benton-Franklin Bar Association.

As to the remaining membership of the local association, it has been "business as usual" during the past month, with most attorneys working feverishly to tie up loose ends in the expectation of a long awaited, and hard earned, summer vacation.

THURSTON-MASON REPORT

By **STEPHEN J. BEAN**

The highlight of the Thurston-Mason Bar Association and Government Bar Association's Law Day Luncheon, was the speech of Supreme Court Justice **Robert Brachtenbach.** Justice Brachtenbach pulled no punches as he criticized lawyers for failure to speak out on behalf of the beleaguered trial court judges, who were criticized by President Nixon for coddling criminals. The point was emphasized that lawyers have a responsibility to speak out against unfair criticism of the judicial process. He also emphasized that he feels that lawyers have a responsibility to educate the public as to a new and more modern method of judicial retention.

PIERCE REPORT

By **KENYON E. LUCE**

The law firm of Mann, Copeland, King, Anderson, Bingham & Scraggin and the law firm of Oldfield & Manger have formed a new partnership, continuing under the name of Mann, Copeland, King, Anderson, Bingham & Scraggin.

At the last meeting of the Pierce County Bar, another program of great interest to the lawyers was presented, chairmanned by **Elvin Vandeberg** of Kane, Vandeberg & Hartinger. The panel covered such areas as probate and closely held business interests, trust wills, economics of probate practice and widows' election trusts and inter vivo trusts and trust wills generally.

Sportswise, the Young Lawyers' section of the Pierce County Bar is fielding two slow-pitch softball teams captained by Fred Weedon, Chris Boutelle and Ed Haarmann.

The Law Day program for Pierce County was chairmanned by **Ed Wheeler** of Whitt, Hutchins, Plumb & Wheeler. Special thanks goes to **Jeff Hale** of Comfort, Dolack, Hansler & Billett for all of the work he did. Ceremonies were conducted in the Presiding Judge's Department of the Pierce County Superior Court with Judge **William Brown, Jr.,** Superior Court Judge; Judge **Vernon Pearson** of the Court of Appeals; and **Bud Rees,** President of the Pierce County Bar Association participating. A noon luncheon was held and Justice **Robert Brachtenbach** of the Washington State Supreme Court addressed the meeting. This was Justice Brachtenbach's second speech with the Pierce County Bar, he having participating in the April meeting by discussing the new rules for Superior Courts.

SNOHOMISH REPORT

By **HENRY S. CHAPMAN**
RUDOLF V. MUELLER

Mr. **Bruce Keithly** has joined the office of Cooper and Lyderson. The firm, however, will continue under the name of Cooper & Lyderson.

Mr. **Kenneth B. Rice,** a graduate of the Duke University Law School, recently joined the law firm of Bell, Ingram, Johnson & Level in Everett. He worked as a corporate attorney on Wall Street, served as a legal officer in the Air Force and has taught college level law courses.

Ms. **Judy Lee Young,** a 1971 graduate of the University of Washington, recently joined the Prosecuting Attorney's Office in the Snohomish County Courthouse. She previously was employed as a Clerk for the Honorable Theodore S. Turner, Judge, King County, for approximately one year and a half.

ISLAND REPORT

By **TED D. ZYLSTRA**

The most noteworthy accomplishment of the new president, **Harold Baily,** and Secretary/Treasurer, **Buck Buchanan,** was to raise the local bar dues to $50.00.

At a special local bar luncheon held on May 1, the bar recognized the contributions to our community of **Del Honsberger,** Chief of the Oak Harbor Police Department. In receiving the 1973 Liberty Bell Award he promised great consideration by his force in all matters personally involving members of our bar who voted for him as the recipient of the award.

The Island County Bar Association spring seminar is scheduled for the Islander Lopez on the weekend of May 12.

WALLA WALLA REPORT

By **JOHN BIGGS**

On April 27, 1973, two new attorneys joined the Walla Walla County Bar. Sworn into practice were **Donald W. Schacht,** graduate of Willamette University School of Law, and **James E. Barrett,** graduate of the University of Cincinnati.

EAST KING REPORT

By BARBARA E. REARDON

The East King County Bar held its annual Law Day Dinner at the Glendale Golf & Country Club on April 27th. Present were 85 lawyers, spouses and guests. The East King County Bar was honored by the following members of the judiciary. The Honorable **Charles Horowitz** and **Frank James** of the Court of Appeals of the State of Washington, Division I: Honorable **Robert Utter** of the Supreme Court of the State of Washington; Judges **Solie M. Ringold** and **Horton Smith** of the King County Superior Court; King County District Court Judges **Tony Wartnik** and **Carolyn Dimmick;** King County Court Commissioners **Donald M. Niles** and **Norman Quinn** and U.S. Attorney, **Stan Pitkin.**

The Honorable **Joel Pritchard,** Congressman from the 1st District was our guest speaker. Congressman Pritchard addressed himself to his first "105 Days Experience in Congress."

Members of the East King County Bar Liberty Bell Award Committee, **Harry C. Wilson, Roy E. Mattern** and **Dick Holt,** asked the President, **Bill Kinzel** to make the presentation of the award to **Stephen E. Larson** of North Bend. One of Mr. Larson's many outstanding achievements was the formation in the fall of 1972 of the Snoqualmie Valley Drug Council which organization promotes the education of citizens in Snoqualmie Valley in the area of drug abuse.

Members of the East King County Bar were grateful to the work of its 1973 Law Day Committee, co-chaired by **Harvard P. Spigal** and **Charles A. Johnson.**

The Association was reminded of the last of its legal forums to be held on May 16th at the Puget Power Auditorium in Bellevue, with **J. Hartly Newsum** acting as moderator for the panel consisting of Commissioner **Robert Dixon,** attorney **Fred Barker** and **Barbara E. Reardon,** addressing themselves to the subject of Family Law and Domestic Relations.

The May meeting of the East King County Bar will be held as is the annual custom, at Snoqualmie Falls.

SEATTLE-KING REPORT

By GERALD G. TUTTLE

Thom, Mussehl, Navoni, Hoff & Pierson, a professional service corporation, announce the withdrawal from the firm of **Peter M. Lind,** who will continue the private practice of law in Bellevue. **Bert H. Weinrich,** formerly house counsel for the Jack A. Benaroya Company and a member of the Bar of California, has joined the firm as a partner and **Thomas R. Dreiling** has joined the firm as an associate.

Timothy R. Fishel and **Eugene D. Seligmann** announce the relocation of the offices of Fishel and Seligmann to Suite 254, Grand Central on the Park, Seattle.

Allen Lane Carr and **Stephen C. Watson** have left the firm of Lindell & Carr and continue as sole practitioners at 1500 I.B.M. Building. **J. Markham Marshall** is of counsel to the new firm, Krutch, Lindell, Donnelly, Dempcy & Lageschulte. They continue to practice at 1500 I.B.M. Building.

Thomas J. Kraft, Bellevue City Councilman, has joined **Burton S. Robbins** and **Ivan E. Merrick, Jr.,** and formed the firm of Robbins, Merrick & Kraft, with offices in the Seattle Tower.

Mary Fung Koehler has moved her office from the Lake Forest Professional Building to "store front" quarters at 3558 N.E. Ballinger Way, Seattle.

John C. Coughenour, Dan P. Hungate, and **William L. Parker** have become partners in Bogle, Gates, Dobrin, Wakefield & Long. **Karl J. Ege, Robert S. Jaffe, Don J. Vogt, Michael W. Dundy, J. Michael Emerson** and **Charles R. Blumenfeld** have become associates.

SNOHOMISH REPORT

By MICHAEL W. HERB
RUDOLF V. MUELLER

Donald Senter from SENTER & MILLER recently received his Certificate to practice law in the Supreme Court.

Russell Juckett, recently of the State of Tennessee and a graduate of Vanderbilt University, is a new legal intern employed by the law firm of GRIFFIN AND BORTNER.

The Northwest Washington Legal Services, Inc., principal office located in Everett, Washington, with branch offices in Mount Vernon and Bellingham, which serves Snohomish County, Island County, Skagit County and Whatcom County has received an OEO grant covering the year of February, 1973, through January, 1974. The Legal Services Office reports that over 1000 hours were contributed by practicing attorneys to the Legal Services during the year of 1972.

COWLITZ REPORT
By O. H. HUSEMOEN

Arthur Reed, long-time member of the Bar and practicing in Kelso, Washington, recently assisted in the swearing in of his son, **Charles A. Reed,** as a new member of the Washington Bar. The younger Reed, a graduate of the University of Oregon, is now planning to practice in Seattle.

At a recent Cowlitz County Bar Association meeting, a minority of the Bar then in attendance voted to remove this writer as a correspondent for *The Bar News* for Cowlitz County. Apparently a few of the senior members of the Bar and a couple of disgruntled younger members felt that their names were not appearing often enough in the publication. Therefore, from time to time you may see two reports from this county, as the new reporter will be sending in his fabricated copy to fill up space and this author, who refuses to resign, will continue to send his reliable information.

The past practice of this column is to report reliable information of interest to other members of the Bar. It is difficult on occasion to forward lengthy copy when the Bar Association is made up of such uninspiring personalities who do not produce sufficient activities to be of worth for publication. Far be it from me, though, to totally ignore their requests. I will publish a few names with their most recent activities.

Gerry Reitsch, Wes Bergman, George Twining, Bill Dowell and **Dave Hallin.**

William Trippett and **Robert Falkenstein** are two new additions to the Cowlitz County Prosecutor's Staff. **William Trippett** came to town to fill the vacancy left when **Ronald Webster** left for Colfax.

Herbert Springer, Richard Norman and **Leonard Workman** are now in the process of constructing new offices and will be moving shortly. **Klingberg, Houston, Reitsch, Cross & Frey** are apparently planning to stay at their present location for a long time, as extensive remodeling is now underway.

A note to our Editor: Please accept no substitute for the "real thing" from Cowlitz County.

GOVERNMENTAL LAWYERS ASSOC.
By DAVID M. KENWORTHY

Attorney General **Slade Gorton** announced the promotion of **Malachy R. Murphy** to the rank of deputy attorney general with management responsibility for several units of the office.

In addition, Murphy will head a newly-expanded legal division which will handle general, public-interest trial work for the office, including present litigation involving Initiative 276.

Gorton also announced that **William H. Clarke,** chief of the Consumer Protection Division since 1970, will move to Olympia to become assistant chief of the trial division, effective July 1.

A successor to Clarke will be named later.

Gorton said he has revised the legal supervisory responsibilities of the four deputy attorneys general and that the office now will operate without a chief deputy. (In addition to Murphy, the deputies are **Edward B. Mackie** and **Philip H. Austin** in Olympia and **John Martin** in Seattle.)

Murphy, 33, was associated with a Seattle law firm before he became an assistant attorney general in 1969. He is a graduate of the College of the Holy Cross and the University of Michigan School of Law.

Clarke, 30, was reared in Spokane, where his father, Harvey, is a practicing attorney. After graduating from the University of Washington School of Law in 1969, he became an assistant attorney general and administrative assistant to the chief of the Consumer Protection Division. He was appointed chief when **Christopher T. Bayley** became King County prosecutor.

According to Gorton, the division will concentrate on trials which involve an unusually high degree of public interest and which don't pertain to any particular section of the office, or which involve several such sections.

In addition to the general trial work, the section will provide legal service for several state agencies.

DEMONSTRATIVE EVIDENCE: NEGLECTED WEAPON IN THE COURTROOM

by Dwayne A. Richards, Seattle

The adversary system presently practiced in the United States has been under severe attack in the past few years, and the fire grows.

There are many dreadful predictions that adversary trials will be eliminated within a decade. The faction most critical of the present system challenges that the trials of today are based upon delay, litigation costs, and more importantly that the trials do not result in justice through the establishment of truth. The critics claim that the modern trial remains adversary proceedings in which the courts not only tolerate but often encourage suppression or concealment of truth. These criticisms must be seriously considered by the trial bar and by the judiciary administering justice in civil litigation. An intensive effort to simplify procedures must be made whereby the truth can be readily obtained through discovery and vividly presented at trial.

When presenting testimony at trial, more demonstrative evidence should be utilized with imagination to develop with clarity the issues and testimony being presented to the trier of fact. Unless liberal discovery is allowed, however, the basis for such evidence is severely diminished.

Many lawyers consider the nonprivileged files of their client a private sanctuary, forbidden from disclosure to the opposition. These are lawyers who at every juncture cry "fishing expedition," or "work product" and continuously take the Court's time to resolve petty issues of law concerning requests for discovery. Fortunately, most judges adhere to the principle that their function is to get the truth and to compel disclosure of facts, not privileged, with fairness, and to impose severe sanctions for concealment or refusal to reveal documentary or other evidence.

The revisions to the Civil Rules For Superior Courts in Washington effective July 1, 1972, were certainly a welcome change (and long overdue) in liberalizing discovery. The next step is to somehow get our brethren to use the rules to adequately prepare for trial, including preparation of illustrative, graphic and clear demonstrative evidence. Until utilized, the rules themselves are useless, similar to the purchase of a new book which forever adorns the bookshelf.

In my estimation, preparing for trial should involve substantial time devoted exclusively to the subject of demonstrative evidence. There are many reasons why this type of evidence should receive great emphasis. Here are some of them:

(1) Since "seeing is believing" and demonstrative evidence appeals directly to the senses of the trier of fact, it is felt that this kind of evidence possesses an immediacy and reality which endow it with particularly persuasive effect;

(2) Where "expert" testimony is presented, demonstrative evidence is a must since the average trier of fact generally lacks the basic knowledge in the field of expertise to fully understand and apply the technical testimony to the factual issues;

(3) Outside the courtroom, each trier of fact

is accustomed to using all of his senses in evaluating factual data before rendering a decision; with just oral testimony, the truth is less likely to be obtained;

(4) Substantial trial time will be saved and the related expenses diminished;

(5) The function of "truth finding" and resulting "justice" is made easier because of the clarity and permanency of the evidence.

Without question, the proper use of graphs, photographs, maps, exhibits, overhead projectors and the like materially increases the time necessary for the preparation of a case for trial. But the results obtained are a decrease in trial time and the establishment of truth. Unlike Watergate, doesn't the end justify the means?

The purpose of this article is neither to review the authorities for use of demonstrative evidence nor to expound on the merits of one versus another form of demonstrative evidence. However, I feel compelled to comment on the use of the overhead projector primarily because it has not been as widely utilized as some other similar devices.

The overhead projector uses transparencies reproduced on a standard Xerox (or other brand) copier from any book or documents for a cost of approximately 25 cents a transparency. Photographs generally require sending to a film processor and take two to three days. Normally, no screen is necessary and the projector works adequately under normal lighted room conditions. With special marking pencils, you can mark, underline or draw on the transparency in a wide range of colors.

By reproducing parts of your brief or case law onto a transparency, the overhead projector can be of tremendous help in arguing points of law. Its biggest asset, however, is assisting you while presenting evidence during trial and again during argument. It is especially effective in discussing jury instructions on damages.

Regardless of what method you select to visually support your oral testimony, you will be pleased with the result. The chances of the trier of fact remembering your evidence increases by about 605%. This was proven many years ago by the Socony Vacuum Oil Company by conducting extensive and well controlled tests to determine whether or not visual aids were actually helpful in the teaching process. The studies demonstrated that indeed they were. For example, it was learned that when a person merely hears statements orally, such as testimony, the average person remembered only about 10% of what he had heard after the lapse of three days. When the same people were shown something, such as a picture or model, they remembered roughly 20% of what they had seen. Interestingly, however, the tests proved that when the person is both told something orally and at the same time shown something which supported or demonstrated the validity of the oral testimony, the listener and viewer remembered about 65% of what he had been told and shown.

It is a logical conclusion from these findings that the use of demonstrative evidence should be greatly expanded by lawyers and their resulting product should be welcomed by the courts. If the evidence is likely to assist the trier of fact and if it is not cumulative, the ultimate function of a trial, i.e., to find the truth, dictates that the evidence should be admitted.

A truth that is not understood or remembered becomes an error. Demonstrative evidence lessens the possibility of this result. □

SUPERIOR COURT NEWS

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

Judge **Robert A. Hannan** (Pacific) has been elected to the Board of Trustees, Washington Superior Court Judges Association.

* * *

Judge **Frank D. Howard** has been elected by King County judges as Inquiry Judge. He succeeds Judge Stanley C. Soderland who is now serving as Presiding Judge.

* * *

The King County Superior Court has approved an Omnibus Hearing procedure for immediate implementation in all felony cases. Judge **David W. Soukup,** who will conduct the hearings, has developed and distributed a set of forms for use in Omnibus Hearings. Additional forms are available in Room E917 of the courthouse.

* * *

The state's superior court judges, at their spring conference at Orcas Island, April 19-21, voted to urge the State Supreme Court to adopt for all state judges the Code of Judicial Conduct of the American Bar Association. Less Stringent alternatives were rejected by the judges. The code modifications include extension of its requirements to candidates for judicial office as well as judges.

SUPREME COURT PRACTICE

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

A obtains a judgment against B and C. B and C appeal to the Court of Appeals. The Court of Appeals affirms. B petitions the Supreme Court for review; C does not. The petition is granted. What are the rights and position of C?

The somewhat analogous situation in the case of an appeal is covered by ROA I-33(2) and CAROA 33(2) providing in part:

> . . . Any such party who does not so join (in a notice of appeal) shall not derive any benefit from the appeal, unless from the necessity of the case . . .

The situation of a non-joining losing party in a petition for review is not covered by the rules. From a purely theoretical standpoint the question would seem to depend on whether the review by the Supreme Court is considered an appeal de novo or a review limited to the issues raised by the petition for review. Although the Supreme Court relies on the briefs filed in the Court of Appeals, the Court indicated in September, 1971, that such a case was not before it on the theory of a de novo appeal. In *Zukowsky v. Brown*, 79 Wn.2d 586, P.2d the Court stated:

> We granted defendants' petition for review which challenges two of the conclusions of the Court of Appeals. However, plaintiffs' answer to that petition raises for review each assignment of error set forth in their opening brief in the Court of Appeals. By reason of this answer, we have considered all assignments of error presented there . . .

Recently a losing party who had not joined in a petition for review queried when the petition was granted whether he could participate in oral argument. The answer was no.

It would seem to follow from the above that a losing party who does not join in a petition for review is in much the same position as a losing party who fails to join in a notice of appeal. He is not a party to the review by the Supreme Court, has no rights with respect to the review and shall derive no benefit from the review, unless the necessity of the case requires some modification of the Court of Appeals' opinion with respect to him.

The trap in the notice of appeal situation is probably, therefore, applicable to the petition for review. A obtains judgment against B and C. C is B's surety. B appeals or petitions for review but C does not since B is solvent. On review, B prevails. The trap has sprung. The judgment against C is final, and C cannot obtain reimbursement from B.

THE COURT OF APPEALS

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

A dimension to appellate practice, which in the past has more or less been taken for granted, is the recovery by the prevailing party of a reasonable attorney's fee on appeal. At the outset, it should be pointed out that the attorney's fee, which is the subject of this article, should be distinguished from the statutory attorney's fee which is allowed pursuant to RCW 4.88.260 and CAROA 55(a)(2).

The general rule is that unless authorized specifically by statute or by contract, a reasonable attorney's fee is not generally allowed. This article will discuss the procedure for recovery of reasonable attorney's fees only in those particular instances where a reasonable attorney's fee is allowed on appeal. See *Corinthian Corp. v. White & Bollard*, 74 Wn.2d 50 (1968).

The following procedural steps may be of some assistance:

Step 1.

A section of the brief should be devoted to the request for the fee. The request should not be made in the cost bill following the filing of the opinion. The court takes the position that if an award is to be made, the award will be provided for in the opinion. See *Goin v. Goin*, 8 Wn. App. _____ (1973).

Step 2.

One week prior to the time of oral argument, counsel shall serve and file an affidavit in this court in which counsel details his services; failure to detail his services may result in a more modest fee than would have been allowed if counsel had expended any unusual amount of effort and so advised the court. See *Ranta v. German*, 1 Wn. App. 104 (1969).

Step 3.

At the time of oral argument, counsel should address a portion of his argument to the request

for the fee and should also draw the court's attention to the affidavit on file which details his services, so that in the event he is successful, the court will award him a reasonable attorney's fee.

By use of this procedure, counsel will be more successful in attaining a reasonable attorney's fee on appeal in cases where such a fee is allowed.

COURT ADMINISTRATOR

By **PHILLIP WINBERRY**
Administrator of the Courts

Visiting Judge Program

The coordination and handling of the Visiting Judge Program is one of the services handled by the Court Administrator's Office for the courts of record in the State. During calendar year 1972, the number of visiting judge days decreased fifteen per cent (15%) from 1972. Even with this decline in time given, it is equivalent to 3.4 years of judge time. By allowing for travel time, the equivalent of judge time given would be increased to 4.2 years. The decline in time given experience can be expected to continue as growth of the workload in many judicial districts places a greater time demand on the resident judges.

The Visiting Judge Program is a voluntary one. The Court Administrator's Office does not generally "order" or direct a judge to sit in another judicial district. Usually the moving or transfer of judges is on a "trade" basis. A judge who must disqualify himself in a case, or who may have an Affidavit of Prejudice filed against him, normally will work out an exchange with another judge at a time mutually convenient for both. The Court Administrator's Office is effective in handling this coordination and maintains a master visiting judge schedule for all of the court terms throughout the year.

Chapter 259, Laws of 1957, and Chapter 303, Laws of 1961, require that when an Affidavit of Prejudice is filed against a judge serving a single-judge district, selection of the visiting judge must be by written Order of the Supreme Court. Coordination and service of this aspect of the Visiting Judge Program is also performed by the Court Administrator.

In our Annual Report to the Chief Justice and the Judicial Council, recognition is given to those judges who have served thirty (30) days or more in districts other than their own. For 1972, the following Superior Court Judges deserve recognition for this service to the people of the State of Washington.

Judge	County or Judicial District	Days Given
Hon. W.R. Cole	Kittitas County	93.5
Hon. Ross Rakow	Skamania-Klickitat	90
Hon. Patrick McCabe	Columbia-Garfield-Asotin	80
Hon. Richard J. Ennis	Lincoln	70
Hon. James R. Thomas	Okanogan-Ferry	57.5
Hon. Robert A. Hannan	Pacific	53
Hon. B.J. McLean	Douglas	49
Hon. John C. Tuttle	Walla Walla	39
Hon. Robert J. Bryan	Kitsap	36.5
Hon. Oluf Johnsen	Kitsap	33.5
Hon. John Denoo	Whitman	31.5

Judge Keith Callow and Bob Morrow

Jack Ripple and Bill Lowry

Smithmoore P. Myers Returns To Teaching

Smithmoore P. Myers, Dean of Gonzaga Law School from 1955 to 1965, has announced that he is returning to a full-time position as Professor of Law at Gonzaga University commencing with the Fall of 1973.

Gonzaga University Announces MBA/JD Degree

At the spring meeting of the Gonzaga University Board of Trustees, approval was given to the adoption of a combined degree: Master of Business Administration and Doctor of Law. These combined degrees will be awarded at the end of a three year program which will be open to any person who has satisfactorily completed one year of law school in an institution approved by the American Bar Association, and an adequate undergraduate preparation in Accounting and other business courses.

Gonzaga University also has a new Master's degree program combining courses in the School of Business Administration and the School of Law. The purpose of this new program is to fulfill a definable need in Business and Industry for management trainees with a sound legal background. The new program will combine an emphasis upon advanced courses in business administration and financial management with the basic law courses of contracts, property, corporations, tax, etc.

Graduates of the new two-year program will be awarded the degree of Master of Science in Commerce and Legal Studies.

Gonzaga Announces Law Medal To Alfred J. Schweppe

Gonzaga University's Law Medal was awarded this year to Mr. Alfred J. Schweppe. Each year the University awards the medal to a person who exemplifies the highest personal and professional ideals of the legal profession.

The Very Reverend Richard E. Twohy, S.J., Gonzaga's President, stated that in bestowing the medal upon Alfred J. Schweppe this year, we achieve the medal's objectives in an extraordinary degree.

Five new faculty members will join the staff of the University of Puget Sound School of Law.

Appointed at the rank of full professor is George Neff Stevens, current professor at California Western School of Law, who served as dean and professor of law at the University of Washington from 1952 to 1965. A graduate of Cornell University Law School, Stevens has served on law faculties at the Universities of Louisville, Cincinnati and New Mexico, Ohio State University, Western Reserve, Buffalo, Lewis and Clark College and Texas Tech.

I. Boyce Covington, 29, assistant professor at the University of Georgia School of Law who previously taught at the University of North Carolina's law school, has been appointed an associate professor. He was graduated with honors from UNC and is a former partner in the law firm of Partner, Barber, Holmes and Covington, Pittsboro, N.C.

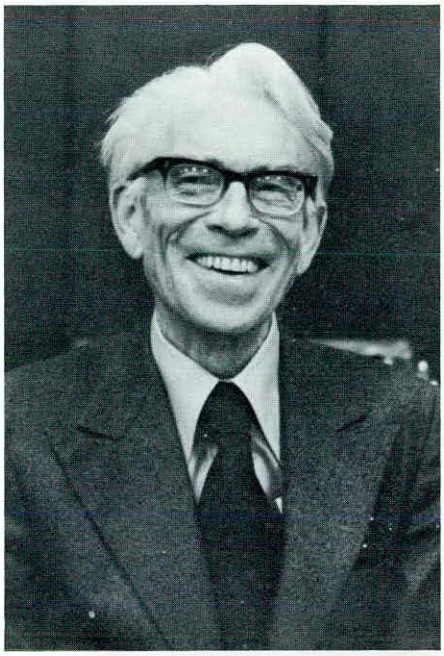
J. Clifton Fleming, Jr., a specialist in federal taxation, corporate law, probate and estate planning also has been appointed an associate professor. He presently is employed in the Seattle law firm of Bogle, Gates, Dobrin, Wakefield and Long. An honors J.D. graduate of George Washington University Law School, Fleming has been a counselor at Heads Up, Bellevue, a drop-in center for teenagers, and a participant in the OEO Volunteer Legal Services Program with the Seattle-King County Bar Association.

George Priest, 25, who will receive his J.D. from the University of Chicago Law School in June, has been named an assistant professor. Business manager for the Yale University Daily News when he was an undergraduate there, Priest is a research assistant to Chicago professor Richard Posner in the study of the history of the U.S. Post Office monopoly. A professor of political science at Wellesley College, Mass., will take a leave of absence from that school to serve as visiting professor at UPS for the coming academic year. Listed in Who's Who in America, Alona Evans was awarded a Ph.D. from Duke University in 1945.

The five new faculty members join six others currently on staff at the UPS School of Law, which projects an enrollment of 250 day and 125 evening students in the 1973-74 class. Present total first-year enrollment is approximately 350.

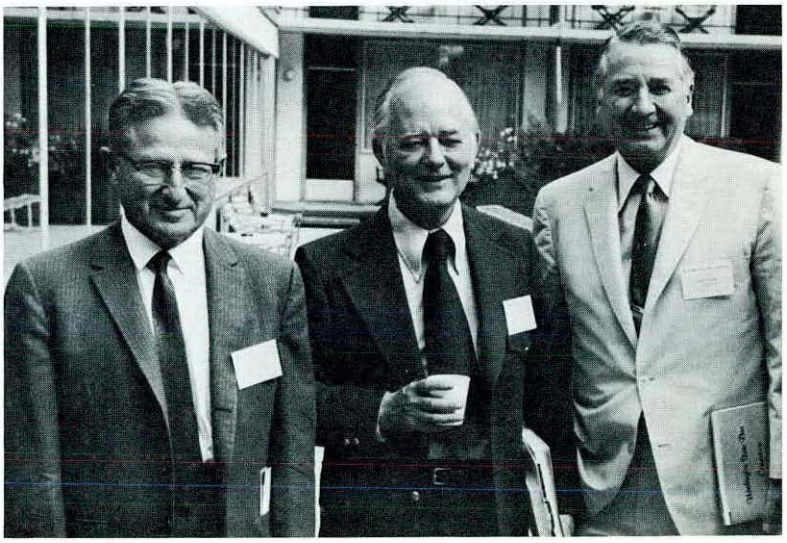
McLauchlan at Large

Gordon Clinton and John Rupp, Seattle



J. Paul Coie, Seattle

Burton S. Robbins, Seattle



Harold Shefelman, Ivan Merrick, Jr., and Dewitt Williams, Seattle

Walter J. Robinson and Michael Leavitt, Yakima

Judge Lloyd Bever, Seattle

Curtis Shoemaker, Spokane

Donald D. Fleming and Judge Frank James, Seattle

Suicide Threat?
(Continued from Page 10)

suicidal intent include the purchase of lethal weapons, making a will, and the hoarding of sleeping pills.

The reader may wonder why Joe committed murder as well as suicide. We don't know the answer, because we did not obtain evidence about Joe having murderous feelings or intentions toward other people in the airplane.

Joe was a psychopathic personality — one who was capable of murder. He had several times threatened to first kill his divorced wife and child and then to commit suicide. About 5% of those who commit suicide do so immediately after killing someone else.

These considerations bring to mind the close psychological relationship between murder and suicide. Murderers symbolically kill the hated parts of themselves projected onto their victims. The suicide identifies himself with the hated aspect of someone close to him, and in killing himself he also symbolically destroys the internalized object of his hatred.

In Joe's case the psychological evidence, plus other evidence for the suicide theory, was sufficiently convincing to allow the case to be settled out of court.

Suicidologists are involved as expert witnesses in suicide cases involving suits brought by insurance beneficiaries against life insurance companies. Many life insurance policies exclude coverage of death by suicide.

I recall the case of Mr. H., a middle-aged man who was found dead from a bullet wound in the head. Near his body was a rifle, a ramrod, and gun-cleaning equipment. The coroner had not been able to decide whether the death was caused by an accident or by suicide. I interviewed relatives, friends, and the physician of the deceased.

According to family members and his physician, Mr. H. had enjoyed excellent physical and mental health. He had never threatened suicide and he had never attempted suicide. There was no suicide note (about one-third of suicides leave suicide notes). Hence, there was no psychological evidence for suicide, and the cause of death was probably accidental.

In a similar case involving insurance benefits, there was both physical and psychological evidence of suicide. A fifty-seven-year-old man shot himself in his basement with both barrels of a shotgun. The coroner called it suicide, but the widow of the deceased man sued the insurance company for insurance benefits. The gunsmith declared that it was virtually impossible for a man accidentally to fire both barrels of a gun which the gunsmith had proven to be intact.

Even without the psychological evidence, the physical circumstances of the fatal act provided overwhelming evidence for the suicide hypothesis. I reviewed the psychiatric data and found that the deceased man had previously made a serious suicide attempt. Interviews with his physician revealed that he had become depressed several months before his death. These and other data provided considerable psychological evidence favoring the suicide theory. The judge heard my testimony in a pre-trial hearing, but he would not permit me to testify before the jury. The judge was behind the times, since psychiatrists have testified in many trials concerned with questions of suicide behavior.

Another case was that of Mr. N., a fifty-three-year-old construction worker who fell thirty feet from a building under construction. He was comatose for several weeks and sustained moderately severe brain damage. When he regained consciousness, he had a number of neurological deficits, including memory loss and motor incoordination. He became depressed over his neurological impairment, since both his livelihood and his self esteem depended on his ability to use his body effectively.

Three months after the accident he committed suicide. His wife sued an insurance company for accidental insurance benefits. The neurologist who had treated him and I testified that the accident had precipitated his depressive reaction.

Both the depressive reaction and the brain damage impaired his ability to control his feelings, thoughts and behavior. The judge concluded that the suicide resulted from an uncontrollable impulse caused by the brain damage and the depression. The wife won the case in the trial court and again when it was appealed to the Washington Supreme Court.

Drug Automatism

In two cases in which subjects killed themselves with barbiturates, some of the attorneys and others claimed that the deaths were accidental and caused by "drug automatism." They continued to argue for this theory after the coroner and I had adduced compelling physical and psychological evidence for suicide. According to the theory of drug automatism, the ingestion of a

therapeutic dose of barbiturates causes a person to enter a state of automatism in which the subject, without awareness of his actions, ingests additionally a potentially lethal quantity of barbiturates. In the past fifteen years the drug automatism explanation for over-dosages of barbiturates has been thoroughly discredited by numerous published scientific studies in which hundreds of completed and attempted suicides were studied. I know of no suicidologist who thinks that such a state as drug automatism ever occurs.

How does it happen that so many people, including physicians uninformed about suicide behavior, continue to find the drug automatism explanation so attractive? The drug automatism theory appeals to the relatives and physicians of persons who attempt or commit suicide because it serves them as an unconscious defense against the anxiety and guilt evoked in them by the suicide behavior.

In one case the patient had taken an overdosage of barbiturates several weeks before she actually killed herself with barbiturate sleeping pills. When she was admitted to the emergency room of a hospital for the over-dosage, her husband told the treating physician that she had lost her sense of time and that she had taken the drugs automatically and accidentally. The physician accepted this untenable explanation of the patient's behavior despite the lack of evidence for it.

Accidental deaths from barbiturates do occur, but they are uncommon and they are not caused by drug automatism. In a recent study of 500 barbiturate deaths, only 1% of the deaths were accidental. These accidental deaths from barbiturates involved situations where someone who was intoxicated had taken several barbiturates. The subjects had not known that the additive effects of alcohol plus barbiturates could be lethal.

Let us examine some of the questions most frequently asked about suicide. Why do people destroy themselves? Consciously, they want relief and escape from their intolerable despair and misery. They seek oblivion similar to alcoholics who drink themselves into a stupor.

Other conscious and unconscious motives may be acted upon in attempted and completed suicide. The conscious wish for death is only the tip of the iceberg of suicidal motivations. Underneath the surface of consciousness are multiple unconscious suicidal motivations. Wishes for spite, for revenge, for self-punishment, for murder are frequent. The spiteful suicide thinks "they will feel sorry for me." A need for punishment arising out of a profound sense of guilt is a powerful source of suicidal behavior in many persons.

Unconscious murderous wishes toward loved ones play an instrumental role in much suicide behavior. This motivation was first elucidated by Freud over fifty years ago. The wish to kill another person is turned around and directed against the self. A depressed suicidal woman complained bitterly about her stinginess. Actually she was not stingy, but her father had been exceedingly stingy. He had committed suicide two years before she herself had become depressed and suicidal. Gradually in her psychotherapy we were able to reconstruct what had happened. She felt guilty over her father's death, and she had repressed any murderous wishes she had felt toward him. She had tried to deal with the anger and guilt by turning the anger against herself and accusing herself of her father's fault of stinginess.

Death by suicide can mean loss, separation, and the end of life; or, on the other hand, death can have pleasurable meanings when it is equated with a peaceful sleep, immortality, or union with the "good" mother of one's infancy. Strange as it may seem, persons who attempt or commit suicide often express in their suicidal behavior wishes for rebirth, reunion, or other hopes for a better life. Many who suffer from unresolved grief reactions maintain the hope that through suicide they will rejoin their lost love objects in a new life.

Nearly all suicide behavior includes a wish to be rescued from death. Those who attempt suicide usually arrange it so that others will save them. One depressed patient put her head in the oven and turned the gas on at five minutes to midnight. Since her husband generally returned home from work at midnight, she knew she might be saved. She gambled with her life. Fortunately he did discover her, and she recovered in the hospital.

There is a broad continuum of suicidal motivation in suicide attempts ranging from suicidal gestures (in which there is a pretense of suicide) to serious near-lethal suicide attempts. For every one completed suicide there are ten attempted suicides. Since there are about 150 reported suicides each year in King County, Washington, I estimate that there are about 1,500 attempted suicides. About one-third of those who attempt

suicide would die if they were not rescued and given medical treatment.

Suicide Prevention

The recognition of the need for rescue in suicide behavior has led to the development of over 150 suicide prevention centers in the United States. The Crisis Clinic in Seattle provides this service. Suicide prevention centers or crisis clinics offer a variety of diagnostic, treatment, and emergency services, including a twenty-four-hour telephone service.

Is suicide preventable? Yes, suicidologists believe that the majority of suicides can be prevented by earlier detection and treatment of suicidal persons. Most depressive reactions are treatable and self-limited in duration. Persons who have attempted suicide or who have expressed intentions of committing suicide should be referred to a psychiatrist or to a suicide prevention center. Relatives of the suicidal subject should be informed of the suicide risk so that they may assume their responsibility for taking steps to prevent suicide.

Psychiatric hospitalization, psychotherapy, drugs, and electric shock treatment are the major modes of treatment of suicidal patients. Some suicidal persons can be treated by office treatment, but those who are ominously suicidal, especially psychotic patients, require the protection and treatment available only through psychiatric hospitalization. Psychotherapy should be provided. According to the varying needs of the patient, this may involve individual or group psychotherapy, marital counseling, or psychoanalysis. Tranquilizing and anti-depressant drugs help relieve a suicidal crisis. Tranquilizing drugs usually reduce anxiety and the symptoms of anxiety within several hours.

Suicidal depressions are reactions to the loss of love objects or the loss of health. The most enduring treatment is one which provides the suicidal person with the emotional support necessary for him to grieve and master his pathological responses to loss. Professional credentials or technical expertise matter not so much as the psychiatrist's capacity for empathy and emotional commitment to the patient. The friendship and love of friends and family members are also crucial in overcoming a suicidal crisis.

Suicide threats and attempted suicides are a kind of cry for help. When we respond to this cry the outlook is generally good. When we don't hear and respond to the need for help and rescue, the outcome can be lethal. □

The Doctor's Dilemma

(Continued from Page 12)

only ¾ to 1% of the cases), therefore this was not a foreseeable risk that a doctor was required to disclose to a patient in the absence of specific inquiry by the patient. *Mason* then went on to set out a different approach to handling informed consent than *Watkins:*

> "We hold that a plaintiff, to establish a prima facie case . . . must allege and prove: (1) she was not informed of a reasonably foreseeable risk, or that she inquired of defendant as to any risks involved in the proposed procedure and was not informed of same; (2) if she had been informed she would not have proceeded with the procedure; and (3) she has been injured as the result of submitting to the procedure."

Concerning the issue of expert medical testimony, *Mason* adopted the following approach:

> "In this framework, expert medical testimony to establish a standard of disclosure by the plaintiff becomes unnecessary. However, this does not prevent the physician from introducing evidence of such a standard, if in fact one exists; nor does it eliminate the necessity for some medical testimony to establish what is a reasonably foreseeable risk."

Then in May 1971, Division 1 considered the issue of informed consent in *Hunter v. Brown,* 4 Wash.App. 898, a case against a plastic surgeon. This case was a "pure" case of informed consent, since there was no evidence of negligence by the doctor, only the failure of the doctor to inform the patient of the risks of dermabrasion, a procedure whereby the skin is lightly "sandpapered" to remove, in this case, darkened pigmentation on the forehead of the patient, an adult Oriental woman. Dermabrasion is a procedure commonly used by plastic surgeons to remove cosmetically disfiguring scars or pigmentation. However, the doctor in this case neglected to explain to the patient that Orientals, because of oily skin, suffer a 50% rate of complication from dermabrasion to the forehead, namely, darker pigmentation. The patient here was apparently sandpapered darker than before and sued for damages. The trial judge directed a verdict for the defendant when plaintiff failed to put on expert medical testimony regarding standards of disclosure. The defendant doctor was called as an adverse witness and candidly admitted that he never discussed possible risks

of complication from dermabrasion with his patients.

Division 1 reversed and remanded for new trial, and stated that it rejected the majority rule stated in *Watkins* requiring expert medical evidence, and also refused to adopt the standard of *Mason* requiring some medical testimony about foreseeable risks for establishment of a prima facie case, and instead adopted the following approach:

> "We hold that if a patient-plaintiff presents substantial evidence that (1) his physician failed to disclosed material facts reasonably necessary to form the basis of an intelligent consent, and (2) he has been injured in a result of submitting to a surgical procedure, he has made out a prima facie case."

Division 1 in *Hunter* reasoned as follows:

> "Whether the failure to disclose was willful or attributable to negligence is immaterial. The causal wrong is the violation of the fiduciary duty to disclose. . . . Reasons why the physician withheld facts are a matter of defense. Evidence that the patient was not uninformed or that the facts undisclosed were immaterial or that disclosure might be harmful would properly be matters of defense. It is at this juncture that evidence of medical standards of disclosure might become relevant and material. . . . But such proof should be the physician's burden and should be weighed as any other evidence and be judged by reasonable man standards of conduct."

After the three appellate divisions each had arrived at a different approach to the handling of the informed consent issue, the Supreme Court was presented its opportunity in the case of *Zebarth v. Swedish Hospital Medical Center*, 81 Wn.2d 12 (July, 1972). In this case, the patient, diagnosed as having Hodgkin's disease, a fatal type of cancer, obtained radiation therapy at Swedish Hospital which arrested the cancer but subsequently caused spinal paralysis, apparently as a side effect when the radiation injured the spinal cord covering. As in the case of drugs and other treatments, radiation sometimes has unwanted side effects. Apparently the doctors at Swedish Hospital did not adequately advise the patient of the dangers of radiation or alternate types of treatment. Specifically, the patient received "massive dosages" of radiation to arrest the cancer, whereas an alternative treatment of smaller, fractionalized dosages was also available. In discussing the informed consent issue, the Supreme Court never mentioned *Hunter*, referred obliquely and only in passing to *Mason*, and appeared to adopt the rule of *Watkins* without citation to *Watkins*, as follows:

> "We deem it to be the prevailing view and one which should be followed by this court that generally the duty of a physician to inform and the extent of the information required should be established by expert medical testimony."

In other words, the standard of disclosure and the extent of disclosure is a matter of medical judgment and not for the jury to decide in the absence of expert medical opinion on the issue.

Shortly after *Zebarth*, the case of *Hunter v. Brown*, 81 Wn.2d 465 (December, 1972), appealed from Division 1, was before the Supreme Court. The Court affirmed Division 1 and recognized an exception to *Zebarth's* requirement of expert medical evidence. Remembering that in the facts of *Hunter* there was no disclosure by the doctor of recognized risks to the patient, the Court stated the rule as follows:

> "This is the kind of case in which no medical standard as to telling the patient need be proved. As was said in (*Watkins*) . . ., there are cases in which '. . . the disclosure is so obvious that laymen can recognize the necessity of such disclosure.' Under the circumstances and considering this was elective surgery for the attempted improvement of appearance only, the necessity of disclosure is too clear to require medical testimony."

Conclusion

While Washington seems firmly camped in the mainstream of the majority rule which requires expert medical evidence on the standard of disclosure, notable decisions taking yet a different approach are cropping up in other jurisdictions which echo *Mason* and *Hunter* (Division 1 only) or somewhere in between. The malpractice lawyer should refer to California's recent case of *Cobbs v. Grant*, 502 P.2d 1 (1972), or Washington, D.C.'s case of *Canterbury v. Spence*, 464 F.2d 772 (1972), or Rhode Island's case of *Wilkinson v. Vesey*, 295 A.2d 676 (1973), all of which adopt the view that doctors are not their own standard-makers on the issue of what should be disclosed to their patients. Therefore, a plaintiff is not necessarily required to prove a case on informed consent strictly through expert medical testimony. □

94 Pass Bar Exam

Ninety-four persons passed the February 1973 bar examination to become lawyers.

In addition four attorney-applicants from other states successfully passed the exam, administered in Seattle February 26-28 by the Board of Bar Examiners.

Those passing the bar exam are:

SEATTLE: Alan Lawrence Axelrod, Jay Carey, Robert James Cathcart, David Lawrence Clancy, Bifford S. Crane, Stephen Joel Crane, John MacDougall Davis, Jr., Elsa Ray Durham, Robert L. Erickson, Joan Foster, Steven Bert Frank, Edwin Ray Hazen, Jr., Lewis N. Hiken, Nancy Huntley Holland, Van Marshall Holland, Steven H. Jacobs, Leonard Ernest Kerr, Ronald Kessler, Stephen Powell Larson.

Mark Leemon, Jay E. Leipham, Douglas Stewart Little, Patrick Henry McIntyre, Donald H. Mullins, Dan Bruce Oros, John Philip Paul, Daniel Alan Raas, John Michael Rosellini Carol Anne Schapira, Marjorie Singer, William Randolph Squires, III, Geoffrey Stamper, John A. Tidwell, D. Michael Tomkins, Alva Granquist Treadgold, Wayne Clare Vavrichek, Nick Steven Verwolf, Lewis Malcolm Wilson, Hamersley Stephens Wright, Richard Carl Yarmuth.

BAINBRIDGE ISLAND: Richard Albert DeClerck, James A. Doerty, Sharon Swenson Howard.

BELLEVUE: Robert Ward Ferguson, Duane R. Hirsch, Ross A. Radley, Gail Luise Toraason, Gary Stephen Wiese, John M. Woodley.

BELLINGHAM: William Joseph Johnston, Robert Scott.

BREMERTON: Harry Laurence Johnsen, III, Jerry Lionel Soriano.

EVERETT: Gary M. Carlson, Kenneth Bromley Rice.

FORT LEWIS: Darrel Blair Addington, James M. Finnell.

GIG HARBOR: Thomas Jay Westbrook; KENT: Stephen Kent Harpold; LOWDEN: Donald Ward Schacht.

MOSES LAKE: David Edward Ebenger, Anthony D. Vivenzio; MOUNT VERNON: Margaret Graham Cahill; OAK HARBOR: Wade Rowland Dann; PULLMAN: Claude T. Bagley; REDMOND: Stanley Powers Gregg, Jr.; RICHLAND: Arnold Henry Pedowitz, Alan Craig Ritcher.

SPOKANE: Gary L. Densow, John Leonard Erickson, Theodore Stanley McGregor, Daniel Perry O'Rourke, R. Bruce Owens, Norman Richard Rosenberg, Richard William Sanger, Robert Houston Thompson, Jr.

SULTAN: Donald Emil Waring; TACOMA: Roger William Crissman, Edward A. Hibbard, Kevin Michael Ryan.

VANCOUVER: Douglas B. Leightner, Jr.; WALLA WALLA: James Edward Barrett; Paul Raymond Licker; YAKIMA: Douglas Craig Marshall, Kenneth Wesley Raber, Edward D. Seeberger.

OUT OF STATE: Michael Stock Fryer, Oregon; Randolph LeRoy Johnson, Oregon; Lucien Garlow Lewin, California; Robert L. Olson, Michigan; Charles Arthur Reed, Oregon; Eric Franklin Saltzman, Massachusetts; Stephen M. Snyder, California; Graeme Hammond Strickland, Jr., Texas.

ATTORNEY APPLICANTS: Gene Scott Anderson, Bellevue; James E. Beaver, Tacoma; Gabriel E. Gedvila, Federal Way; William H. Simmons, Seattle.

School	Pass	Fail	Total
Albany Law School		1	1
American U.	1	2	3
Arizona State	1		1
Arizona Univ.		2	2
Boston College	1		1
Boston Univ.	2		2
California (Boalt Hall)	2		2
California Western	2	1	3
Chicago Univ.	1		1
Cincinnati U.	2	2	4
Colorado Univ.		3	3
Columbia Univ.	1		1
Connecticut U.	2		2
Cornell Univer.	1		1
Denver Univer.		1	1
Duke Univer.	2		2
Florida Univer.	1		1
George Wash. U.	1	1	2
Golden Gate Col.	1		1
Gonzaga Univ.	6	7	13
Harvard Law School	4	1	5
Hastings College of Law	2		2
Houston Univ.		1	1
Idaho Univ.	2	3	5
Indiana Univ.	3	1	4
Iowa Univer.	2		2
Kansas Univ.	2		2
McGeorge School of Law		1	1
Michigan Univ.	3	1	4
Minnesota U.	1		1
Missouri Univ.	1		1
Montana State U.	2	1	3
Nebraska Univ.	1		1
New York U.	4	1	5
North Dakota U.		1	1
Northeastern U.		1	1
Northwestern U.	2	1	3
Northwestern (Lewis & Clark)	1	1	2
Ohio State	1		1
Oregon Univ.	8		8
San Fran. U.	1	1	2
Santa Clara U.	1	1	2
Syracuse Univ.	1	1	2
Tennessee Univ.	2		2
Texas Tech. Col.	1		1
Texas Univ.	1	2	3
UCLA	1		1
USC	1		1
Vanderbilt U.		1	1
Villanova Univ.	1		1
Virginia Univ.		1	1
Washington, U of	10	11	21
Willamette U.	6	1	7
William & Mary		1	1
Wisconsin U.		3	3
Wyoming Univ.	1	1	2
Law Clerk	1	2	3
Totals	94	60	154

In Memoriam

James A. Alfieri, 40, who practiced 13 years in Seattle, died April 24. A Seattle native, he was graduated from University of Washington Law School, then served in the King County prosecuting attorney's office before entering private practice. He served in the Army during the Korean War.

Euthemios N. (Theme) Carras, 47, died of a heart attack in his Seattle law office May 8. A 1950 graduate of the University of Washington Law School, he was employed in the King County prosecuting attorney's office until going into private practice in 1953. He was active in civic club and Greek community affairs.

Advocacy Seminar Set

The 1973 session of the National Institute for Trial Advocacy will be held from June 24 to July 19 on the campus of the University of Colorado in Boulder. The course is designed as an intensive four week training program in the skills of the trial lawyer, with the primary emphasis on learning by doing. Eminent trial judges and leading members of the bar with rich and diversified experience will form integral parts of the teaching teams. Prosecutors and public defenders may qualify for full tuition scholarships. Young practitioners from smaller counties or smaller firms may also qualify for scholarship assistance. For information, write **Professor A. Leo Levin,** Director, National Institute for Trial Advocacy, 3400 Chestnut Street, Philadelphia, Pennsylvania 19174.

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.
June 15-16	Flammable Fabrics Seminar. Hyatt House, Seattle, WSTLA.
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.

Wanted and Unwanted

Office Space: Lawyer wanted to share office space and expenses with three other lawyers; includes secretarial services. Metropole Building, MU 2-6644.

Books For Sale: Appleman — Insurance Law & Practice; Corbin on Contracts; Blashfields Auto Law and Practice; Donald P. Marinkovich, 622-3790.

Books For Sale: Complete set of up-to-date, current Corpus Juris Secundum. David A. Richdale, 206-789-2111.

For Sale: Walnut Bookcase, approximately 8' long with a working area of approximately 24" wide. Two double door storage areas are situated on either side of the bookcase. $125.00. Rolling Vertiflex Crendenza, $20.00. Black conference chairs (6), with wood handles and chrome legs. $40.00 each. Full circular conference table, matches the 6 chairs listed above. Four feet in diameter. Best Offer. Call 206-624-8261.

For Sale: two dictaphone dictators; two dictaphone transcribers, one old unit and one newer unit, supply of dictating belts and indicator pads. Best Offer: Call Anita at 206-662-5306.

Books For Sale: Washington Practice, $225.00; Washington Digest, $275.00; Current Legal Forms, $400.00; Washington Court Rules, $48.00; Erwin — Drunk Driving, $25.00; Washington Reports, $1,500.00; 1 dictaphone desk unit, $240.00. Exec. desk, secretary desk, exec. suede chair, legal lateral file, occasional table and chairs, couch — will sell separate or package for $1,700.00. Call 622-4841.

For Sale: 2 or 3 Stenocord dictators, one transcriber. GL 4-8115, 8:30 to 5:00 weekdays.

Sublet offices: 2 large, 1 small and large reception area. Seattle Tower, view, redecorated. 820 sq. ft. AVAILABLE NOW! 622-7282.

Will Information: Anyone having information regarding a will made by Margaret J. Murray, who died on March 14, 1973, at Seattle, Washington, is requested to communicate with James D. Picton, 9829-16th Ave. S.W., Seattle, Wa., 98106.

Joseph Welluck who died in March, 1973. Please contact Leon C. Mistavek, 206-624-1040.

WASHINGTON STATE BAR ASSOCIATION
505 Madison Street
Seattle, Washington 98104

JAMES B. WILSON
[illegible] ADMINISTRATION BLDG.
[illegible]NIVERSITY OF WASHINGTON
SEATTLE, WA 98195