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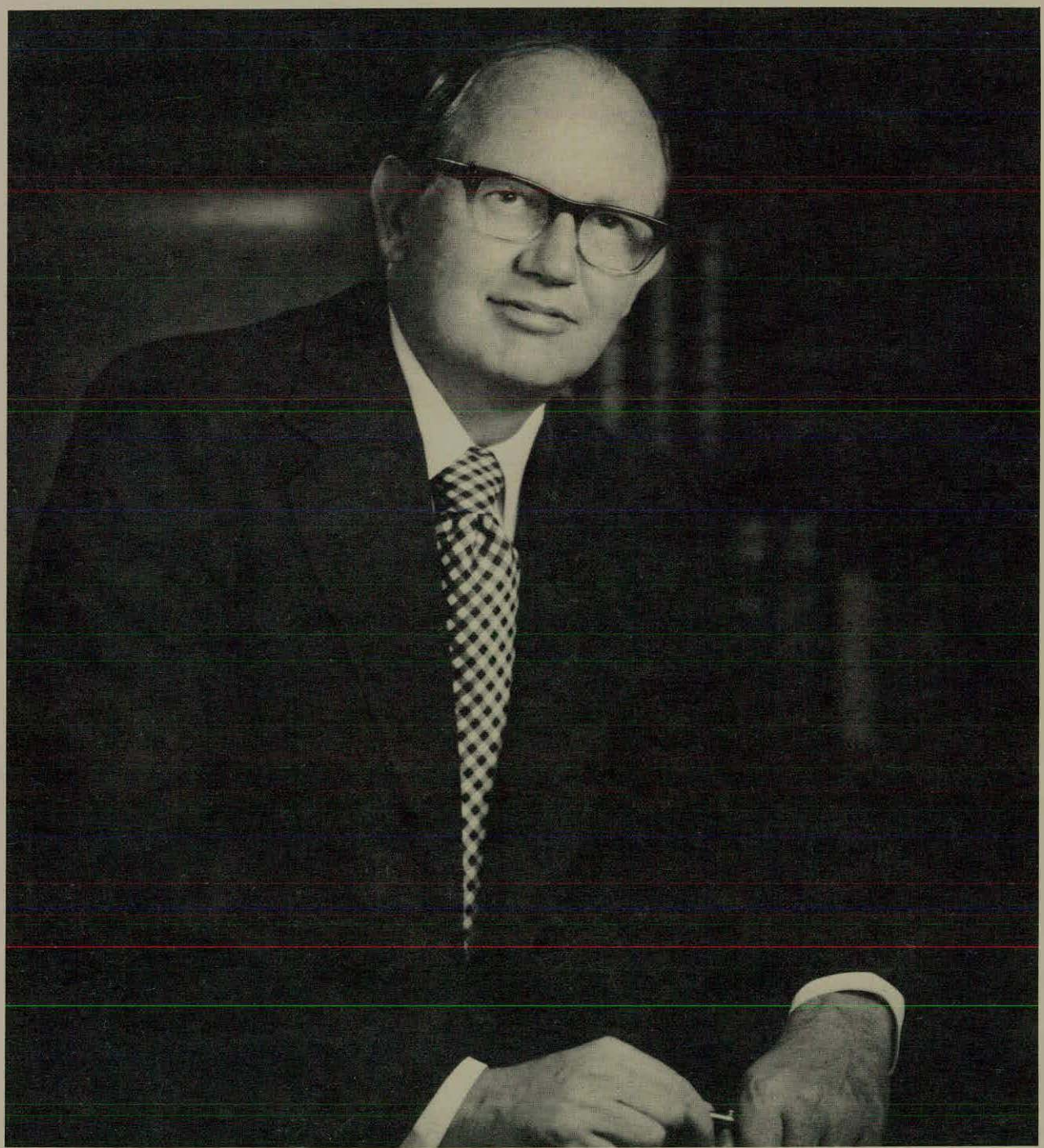
WASHINGTON STATE BAR NEWS



CLEARY S. CONE, ELLENSBURG — STATE BAR PRESIDENT, 1973-74

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Letters

Hawaii Meeting Inaccessible?

Board of Governors:

I was surprised to note that no letter from any member of the Bar was published in the July issue of the *Washington State Bar News* objecting to the sites for the 1974 and 1976 meetings of the Bar Association.

Perhaps the reason no objection was published was that none were received. That leads me to suspect that no member of the Bar read on page 19 of the June issue that members will be required to travel to San Francisco in 1974 and Hawaii (excluding Honolulu) in 1976 to exercise their rights to participate in these annual meetings.

I must register my objections to these locations. While I feel the meetings in Portland and Vancouver, B.C. were acceptable, I believe that the 1974 and 1976 sites will only be available to those few attorneys who are on expense accounts or who work in large firms. The majority of the Bar cannot or will not attend meetings at such a great distance.

The Board should reconsider these choices and pick locations more accessible to the majority of our members.

PRESTON L. JOHNSON
Seattle

Convention Materials "Insensitive"?

Editor:

RE: 1973 Convention Materials

You are to be congratulated for the planning, quality and content of the 1973 convention, but I am somewhat overwhelmed by the total insensitivity to equal rights displayed promnently throughout the materials, and suggest steps be taken immediately to rectify the situation.

Specifically, I refer to the linguistic approach in the printed materials which assume that all attorneys are men and all attorneys' spouses are women; and to certain aspects of the programming which appear to be based upon the same assumption. I also note that with the possible exception of James Andersen's presentation, that new developments in equal rights law have been totally omitted, and while the convention may or may not be the place to present updates on equal rights law, the tenor of the convention materials indicates such is certainly needed.

If more specific comments would be helpful, I would be happy to elaborate further upon request.

RON CHATBURN
City of Seattle
Department of Human Rights

Resolutions Procedure "Archaic"?

Editor:

It was surprising that only one resolution was timely presented and published in accordance with the WSBA By-Law procedures to the Resolutions Committee at the recent annual meeting of a group as intelligent and alive as the members of the WSBA. Are the procedures established by the By-Laws so restrictive as to excessively inhibit introductions of resolutions and discussion and debate on timely issues in this current fast moving society?

The procedurely-correct resolution proposed to allow standing committees of the Association to issue statements on matters within the scope of the committee's prescribed jurisdiction, provided two weeks' notice be given the president on matters which might be considered controversial, with right in the president to withhold the statement if he felt it advisable. The Resolutions Committee recommended and reported against that resolution and it lost in the business meeting.

The Resolutions Committee in effect appropriately waived the procedural requirements and did consider two other resolutions and reported negatively on both. One would have limited Annual Meetings of the Association to locations not more than one hundred miles outside the borders of the State of Washington. There are important considerations on each side and the discussion was enlightening, thought provoking, and lawyer-like before the resolution was tabled (in effect defeated) by vote of the members at the business meeting.

The other resolution against which the Committee also recommended, was to remove criminal penalties for possession and sale of small quantities of marijuana and for the Legislature to establish a regulatory scheme governing the distribution of marijuana. To the probable surprise of some on each side, there were some logical arguments both pro and con. The discussion was lively, occasionally emotional, and as you have probably heard, a compromise, substitute resolution, which previously had passed the ABA House of Delegates, was passed by a majority.

Presented for the first time to the Resolutions Committee at the Vancouver meeting was the following resolution:

> Resolution proposed by C. Henry Heckendorn, Seattle attorney, for adoption of procedures for peaceful settlement of international disputes as a project of the Washington State Bar Association

Whereas, the tragic loss of life and destruction in all wars, and the threats of repetition which continue in the Middle East, Southeast Asia, and thru possible nuclear holocaust anywhere, cause thinking people of all persuasions, to agree that peace is the most important and imperative goal of mankind; and,

Whereas, just, respectable and lasting peace can only be achieved by an established procedure for settling international disputes without violence; and

Whereas, by applying the idealism, talent and training of its members to a solution of this critical problem, the Washington State Bar Association will be furthering the purpose for which it was founded, and providing a greatly needed public service by its members,

Now, Therefore, Be It Resolved:

That this 84th annual meeting of the Washington State Bar Association meeting in Vancouver, B.C., Canada, adopts as a project of the Association the study, design and recommendation of a procedure for the settlement of all disputes between nations without violence and the ultimate adoption of such a procedure by the nations and peoples of the world.

The time was late, the Committee did not have an opportunity to study the resolution, felt that a resolution adopted a couple of years ago affirming general support of Peace thru World Law probably was adequate, and did not consider the resolution. The business meeting likewise voted not to consider it.

Supporters of the resolution suggest that the legal know-how and skills existing in the world today can devise a means of settling international disputes without violence. This can be done without regard to the internal policies of nations. Thus the project is much narrower and easier of attainment than the broad undertakings to establish complete racial or economic equality or absolute social justice throughout the world.

Saving just a few lives, or even just a few billion of the world's "defense" dollars, makes the project worthwhile. Let's put our minds and energies to it!

C. HENRY HECKENDORN

Seattle

Outfall on "Windfall"

Editor:

The letter of Stanley P. Wagner, Jr., in which he referred to the practice of attorneys of taking a retainer fee of $150. as "a windfall in many cases" reveals that Mr. Wagner, from the sheltered position of the Pierce County Legal Assistance Foundation, has not known the realities of the general practice of the law.

From the $150 we must deduct the costs, $32 for filing fee and approximately a $10 service fee, leaving a net fee to the attorney of approximately $108 to $110.

The average divorce client is faced with an extremely complex legal problem, as well as an extremely trying emotional period. The net result is that the attorney must not only explain the complexities of the legal situation, but is also faced with the practical problem of assisting the client through emotional problems. I am sure most of us have experienced a client crying during the first interview. The result is that it is seldom that the initial interview lasts less than an hour and frequently will last as long as an hour and a half.

By the time we have prepared the initial pleadings, served them, we are generally into the case approximately 2 hours. Then begins the follow up telephone calls with the client, frequently a second conference. Many times you will receive calls from the defendant, and if an attorney enters an Appearance, which happens in approximately half the cases, you are faced with contacting the attorney and touching base to find out the nature and extent of the problem area between the parties. In most cases, by this time you will have invested three to four hours of time, and frequently you prepare an Order of Dismissal because of reconciliation, and by then the $108 to $110 you received as a retainer hardly looks like a windfall.

I presume that we could solve the problem by mimeographed forms, having the secretary take all the preliminary information and utilize a time clock for both secretarial time as well as a brief contact with the client; that is, if one wants to treat one's services as merchandise and sell them under the law merchant. I, for one, hope that the time will continue when the attorney really wants to help the clients through their problems and does not regard each person as a prospective purchaser of small bits of time.

PAUL M. WILLIAMS

Edmonds

The President's Corner

Bar leadership is sometimes accused of being concerned with everything but the interests of the lawyers who constitute the Bar membership. The criticism isn't valid, but it is sufficiently prevalent that it deserves answer.

My perspective, without apology, is from the middle. I'm middle-aged and in the middle of a general practice in a medium-sized firm in the center of the State. I have one deep prejudice; I admire lawyers and our profession. Despite, or perhaps because of, those admissions, I will undertake to answer that criticism.

Judged by any reasonable standard, the lawyer who is practicing as a member of the Bar of this state is well educated, competent, conscientious and honest. He is working as hard or harder than he should. If he is young, he is definitely working harder than he should and is probably earning less than his brother-in-law who is a sheet metal worker. He is constantly narrowing the fields of law in which he practices. He does so, not because his skills are inadequate nor because he has rejected the "myth of omnicompetence" but because if he stayed abreast of all the advance sheets, statutory changes, rule changes and new forms, he wouldn't have time to talk to the book and equipment salesmen, much less to his clients.

Justice at Any Cost

He is willing to tackle anything that offends his sense of justice, even when it costs him dearly to do so. He has found that it almost always does. If he is rich, it is either because the estate tax rates are not totally confiscatory or because he made a lucky investment.

If the lawyer is a woman, she has special problems in achieving equal status as a professional, and if the lawyer is a black trial lawyer, someone has told him that he is too pushy. If he is a lawyer over 60, there was a time in his life when he gave away a major part of his time in free legal services while he was having trouble paying his own rent.

Bar presidents, outgoing (Charles I. Stone, left) and incoming (Cleary S. Cone)

Program for the Bar

Why, then, does the Bar leadership dwell upon changes in disciplinary rules, compulsory continuing legal education, increased recognition of the obligation to provide free legal aid to the indigent, certification of specialists, lay participation in professional matters, changes in substantive and procedural law and the reduction of the cost of legal services, none of which, on the face of it, would appear to be directed toward the problems of most lawyers? There is both an indirect and a direct answer to this reasonable question.

The fact of the matter is that Bar leadership is not excessively preoccupied with those leading edge issues which sometimes seem to exacerbate lawyers' problems and imply that the lawyer is none of the things and does none of the things that he knows he is and does. The necessary concerns of Bar leadership in such areas engender discussion and controversy which obscure the immense amount of work expended on programs to assist the working lawyer. These range from informational mailings and publications, through the spectrum of activities in continuing legal education, practice manuals, developments in the field of law office economics, placement services, lawyer referral services, the legislative program, and on to anticipation of the direct interest of lawyers in prepaid group legal services. This ongoing work creates little controversy and is too often forgotten in assessing the overall activities of the Board of Governors, our outstanding Bar staff, and our boards and committees.

The direct portion of the answer lies not only in the directives of the Bar Act, but in our own pride in our profession. Unfortunately, a very few among us are not as honest, as competent, and as hard working as the great bulk of our membership, and those few, with their vast potential for harming our profession and the public, necessitate the expenditure of much of the

energy of Bar leadership. Additionally, it is the hallmark of the working lawyer that he is never altogether satisfied with how well he does things. He is driven by his own pride to do better and to try to make his profession better. So it is with those in positions of leadership in the Bar, who are almost invariably working lawyers who did not seek leadership, but upon whom it was thrust. He or she has a special obligation to exercise the common lawyer-like instinct to try to make things better.

Profession Is No Island

Bar leaders cannot and should not abdicate their responsibility to meet and, if possible, anticipate challenges to and within our profession. Bar leaders cannot and should not regard our profession as an island, but must recognize its impact on the public interest.

The quality of the leadership exemplified by our elected Board of Governors, who are dedicated and constructively diverse, our outstanding Executive Director, G. Edward Friar, and our excellent committees provides positive assurance that our Bar will not become stagnant.

That same quality of leadership also provides assurance that the more ordinary but more pressing concerns of the working lawyer will not be overlooked. We will endeavor to increase our efforts in this regard and to do a better job of letting you know about it.

A substantial change in Civil Rule 68, dealing with Offer of Judgment, has been proposed.

The proposed new section dealing with Offer Before Trial reads as follows:

After issue is joined and not later than ten days before the trial date, any party may serve upon any adverse party a written offer of settlement. If the adverse party accepts such offer of settlement by written notice served upon the offering party within ten days after receipt of the offer, he may file the offer and a copy of the written acceptance thereof together with proof of due service thereof and the clerk shall thereupon enter judgment in accordance with the offer and acceptance.

If the offer is not accepted as provided above, the offer cannot be mentioned at the trial. However, if the offeree fails to secure a judgment more favorable than the offer, he shall not recover statutory costs and the offeror shall recover his costs as hereinafter defined. Costs shall include all the costs incurred by the offering party subsequent to written rejection of the offer or ten days after the service of the offer, whichever is earlier. Such costs shall include a reasonable attorney's fee, expert witness fee, discovery expense, and costs for preparation of exhibits for trial. Total costs shall in no event exceed $1,000 or 50% of the judgment, whichever is less.

If this Rule is adopted, the courts will have power to award *reasonable attorney's fees* up to $1,000.00 *in any type of litigation.* During the past several legislative sessions, bills which would accomplish substantially the same result have often been introduced, but have generally failed of enactment. One exception is Chapter 84 of Laws of 1973 which added new sections to chapter 4.84 of RCW. This statute permits recovery of attorney's fees after offers of settlement in *actions for damages* where the amount at issue is $1,000.00 or less.

Does the court have power to adopt a similar Rule as to all lawsuits without specific legislative authority? By promulgating the proposed new Rule, the court obviously assumes that it does have such power. Since the court is the final arbiter, the question will apparently be answered in the affirmative.

HRM

SPECIALIZATION: A CERTIFICATION PROGRAM IS APPROVED FOR THE BAR

A plan for certification of legal specialists in Washington State was approved by the State Bar Board of Governors at its meeting July 20-21.

The plan was devised by the Special Committee on Certification of Specialists, of which Cleary S. Cone of Ellensburg was chairman, after two years of study and research. The special committee will continue under the chairmanship of Donald A. Cable of Seattle.

Because of its importance to all lawyers and to the public, the Bar News here publishes the full text of the certification program:

1. *Establishment of the Washington State Bar Legal Specialization Board.*

A Washington State Bar Legal Specialization Board composed of nine members shall be established by the Board of Governors of the Washington State Bar Association. The Specialization Board members, except for the member from the judiciary, shall be active members of the Washington State Bar Association, and all members shall be appointed by the Board of Governors. Recommendations of potential appointees may be made by any bar association in Washington or by any active member of the Washington State Bar Association. The Specialization Board shall be representative of the legal profession and shall include:

a. One judge of a court of record of the State of Washington.

b. One member of the Board of Washington Bar Examiners as designated by that Board.

c. One representative of a Washington law school recognized by the American Bar Association.

d. The terms of office of all members of the Specialization Board shall be three years, except the terms of office for the initially-appointed members of the Specialization Board shall be as follows:

i. The member from the Washington judiciary, the representative of the Washington law schools, and one other member shall have initial terms of three years.

ii. Three other members shall have initial terms of two years.

iii. The three other members of the initial Specialization Board shall have initial terms of one year.

e. Each member of the Specialization Board shall serve his respective term and until a successor is appointed and qualified. Terms of office of the Specialization Board members shall commence at the close of the annual meeting of the Washington State Bar Association, except

for the initially-appointed Specialization Board which shall commence with the date designated by the Board of Governors.

2. *Duties of the State Bar Legal Specialization Board.*

The duties of the Specialization Board shall be:

a. To administer the program for the regulation of specialization.

b. To make and publish standards concerning education, experience, proficiency and other relevant matters for granting certificates of special competence for lawyers in the fields of law designated as legal specialties, after open hearings, on due notice, have been held.

c. To oversee the activities of each Board of Certification for the purpose of promoting uniformity in their operations.

d. To provide a forum where any lawyer may appeal any ruling or regulation of any Board of Certification.

e. To make and publish rules and regulations approved by the Board of Governors to implement the authority and duties of the Specialization Board herein set forth.

f. To cooperate in establishing and enforcing ethical standards for certified lawyers.

g. To encourage Washington law schools and bar associations to develop and maintain a program of legal education and continuing legal education to assist lawyers to meet the standards required by the Specialization Board.

h. To cooperate with the Special Committee on Specialization of the American Bar Association and with agencies in other states engaged in regulating legal specialization.

i. To report annually to the Board of Governors.

3. *Creation of Fields of Specialization.*

The Specialization Board shall receive and pass upon petitions from any section of the Washington State Bar Association, or group of Washington lawyers, for the recognition of any legal specialty. Any such petition shall define the scope of the legal specialty, state recommended standards for certification within the guidelines for standards of certification established herein, provide an estimate of the approximate number of lawyers who might be expected to make application for certification, explain the practice of law involved, and be accompanied with signed applications for certification by a sufficient number of members of the section or group to indicate a bona fide specialty.

The Legal Specialization Board, after a hearing on appropriate notice, shall determine promptly whether or not to grant a petition for recognition of a legal specialty. In granting any such petition, the Specialization Board may modify or rewrite the definition of the scope of the specialty and the standards for certification in the specialty. If the petition is granted, the Specialization Board shall notify the section or petitioning group and request each of the applicants supporting the petition to pay the requisite fee before processing the application.

4. *Boards of Certification.*

Once a petition for recognition of a legal specialty has been accepted by the Specialization Board, a Board of Certification shall be established for that field of law. Each Board of Certification within a field of law shall establish its standards for certification, the scope of the specialty and the examination for certification and recertification and approval by the Specialization Board and the guidelines for standards for certification as set forth below and as established from time to time by the Specialization Board.

The Board of Certification for each field of law shall administer the program in its particular field under the general guidance of the Specialization Board.

Members of each Board of Certification shall be appointed by the Board of Governors on the advice of the Specialization Board.

Boards of Certification will each promulgate their own rules and regulation, including terms of office of members, which rules and regulations shall be subject to the approval of the Specialization Board.

The Boards of Certification shall be so composed, when feasible, as to give a fair representation throughout the state and a balanced representation of the specialty field of law.

5. *Limitations on the Powers of the Specialization Board and Boards of Certification.*

The following limitations on the power of the Specialization Board and Boards of Certification are established:

a. No standard shall be approved which shall in any way limit the right of a certificate holder to practice law in all fields. Any lawyer, alone or in association with any other

lawyer, shall have the right to practice in all fields of law, even though he is certified in a particular field of law.

b. No lawyer shall be required to obtain a specialty certificate before he can practice law in any specialty field.

c. All requirements for and all benefits to be derived from certification as a specialist are individual and may not be fulfilled by or attributed to the law firm of which the specialist may be a member or associate.

d. Participation in the plan shall be on a completely voluntary basis.

e. A lawyer may not be certified in more than three specialties.

6. *Standards for Certification.*

The standards for certification for this program are set forth below. These are minimum standards in some instances and maximum standards in others and each Board of Certification may recommend to the Specialization Board different standards which are not in violation of those herein set forth.

Lawyers who are admitted to practice in Washington and who meet the prescribed requirements shall qualify for certification by a Board of Certification. A lawyer meeting those requirements shall be given a certificate by a Board of Certification in a form approved by the Specialization Board. The certificate shall identify the specialty practice and shall state the certifying agency, e.g., "Certified Specialist, (insert specialty field) — Washington State Bar Legal Specialization Board."

a. **General requirements for certification:**

i. The lawyer applying for certification must be an active member in good standing of the Washington State Bar Association, must be in actual practice of law within the state, and must maintain an office for the practice of law in this state.

b. **Requirements for qualifying for grandfather certification.**

i. The application for certification must be submitted within two years after a Board of Certification in that particular field has been established.

ii. Immediately preceding application for certification, a minimum of ten years of actual law practice, or ten years of experience after admission to the practice of law which is determined by the particular Board of Certification to be equivalent to actual law practice.

iii. A satisfactory showing, as determined by the Board of Certification, of a substantial involvement, i.e., actual performance, in the particular field of law during a five-year or other reasonable period, but not less than three years, immediately preceding certification.

iv. Passage of an oral examination, as may be determined to be appropriate by the Board of Certification and/or passage of an abbreviated written examination, as may be determined to be appropriate by the Board of Certification.

c. **Requirements for qualifying for certification other than by means of grandfather certification:**

i. Immediately preceding application for certification, the applicant shall be required to have engaged in actual law practice a minimum of three years but may be required by the respective Board of Certification to have engaged in actual law practice for a minimum time not to exceed six years. The criterion for "actual law practice" can be experience after admission to the practice of law which is determined by the Board of Certification to be equivalent to actual law practice.

ii. A satisfactory showing, as determined by the Board of Certification, of a substantial involvement, i.e., actual performance, in the particular field of law during a period of not less than two years immediately prior to application for certification; however, the Board of Certification may require that minimum period to be a period not in excess of five years. The requirement of "substantial involvement" can not exceed 15% of a lawyer's total working time during the period.

iii. Passage of a written examination, as may be determined by the Board of Certification, applied uniformly to all applicants prior to certification to

demonstrate sufficient knowledge, proficiency, and experience in the fields of law relating to the specialty as is necessary to justify the representation of special competence to the legal profession and to the public and/or passage of an oral examination, as may be determined to be appropriate by the Board of Certification.

d. When determined, after open hearings, on due notice, have been held, the Specialization Board shall publish the standards and requirements applicable for certification in each legal specialty as established by each Board of Certification.

7. *Appropriate Safeguards to Insure Continued Proficiency as a Specialist.*

a. Recertification shall be required every five years.

b. The standards for recertification shall be:

i. Actual practice of law during the period of certification or experience which is determined by the Board of Certification to be equivalent to actual law practice.

ii. A satisfactory showing, as determined by the Board of Certification, of a substantial involvement, i.e., actual performance, in the particular field of law for which certification was granted, during the period of certification. The requirement of "substantial involvement" cannot exceed 15% of a lawyer's total working time during that period.

iii. A satisfactory showing, as determined by the Board of Certification, of special educational experience in the field of law for which certification was granted, during the period of certification.

c. In the event that a lawyer fails to meet the requirements for recertification, he shall be entitled to take the examination as set forth in 6 c-iii above.

d. When determined, after open hearings, on due notice, have been held, the Specialization Board shall publish the standards and requirements for recertification in each legal specialty.

8. *Revocation of Certification.*

A certificate of specialty may be revoked by the Specialization Board if the program for certification in that field is terminated. A certificate of specialty may be revoked by the respective Board of Certification, if it is determined after a hearing on appropriate notice that:

a. The certificate was issued contrary to applicable rules and regulations; or

b. The certificate was issued to a lawyer who was not eligible to receive a certificate or who made any material false representation or misstatement of a material fact to the Board of Certification; or

c. The certificate holder has failed to abide by the Code of Professional Responsibility and/or by all applicable rules and regulations; or

d. The certificate holder has failed to pay any fee established by the Board of Governors.

9. *Right of Appeal.*

A lawyer who is refused certification, recertification or whose certificate is revoked shall have the right to appeal the ruling to the Legal Specialization Board.

10. *Protection for Referring Attorneys.*

When a client is referred to a certified specialist by another lawyer, the specialist shall not take advantage of his position to enlarge the scope of his representation. He shall not represent the client in other matters without first notifying the client's lawyer who made the referral.

11. *Miscellaneous Provisions.*

a. In the event no applications to be certified in a recognized legal specialty are received therein for a period of five years, the specialty shall be deemed inactive and the Specialization Board may discontinue recognition of such legal specialty and in such event, the certificates of specialty theretofore issued may be revoked by the Specialization Board.

b. If the application of any candidate is rejected by the Board of Certification, the Board shall inform the applicant of the reasons for the rejection and, if the rejection is for reasons other than failure to pass the written and/or oral examinations, the applicant may thereafter within six months furnish such additional proof for reconsideration of the application as shall be pertinent to the reasons for the rejection. The

failure of any applicant to receive approval shall not be publicized, and any applicant, who upon his initial application for certification as a specialist fails to pass the written and/or oral examinations may take the next examination(s) which is offered after the examination(s) which was failed. There shall be no limitation on the number of times an applicant may take an examination for certification in a particular specialty.

12. *Special Controls for Certified Specialists.*

a. Each participant in the program, as a part of his application for participation in the program, shall agree to abide by all rules and regulations covering the program promulgated by the Specialization Board and the respective Board of Certification, as amended from time to time.

b. Any lawyer certified as a specialist and holding an active certificate of qualification shall be entitled to the following:

i. To state in recognized and conventional legal directories or law lists that he is certified by the Specialization Board in a particular field in the following words "Certified Specialist,
(insert specialty field) — Washington State Bar Legal Specialization Board."

ii. To add to a brief, dignified notice that he is rendering a specialized legal service (to be circulated among lawyers only) the fact that he is certified by the Specialization Board in a particular field in the following words:
"Certified Specialist,
(insert specialty field) — Washington State Bar Legal Specialization Board."

iii. To display in his office the certificate issued by the Board of Certification.

c. No statement of certification shall be permitted otherwise than as above specifically set forth.

13. *Financing the Program.*

Fees as established by the Board of Governors shall be charged for filing an application for certification or recertification with the respective Boards of Certification, and a further fee shall be charged on the granting of the certificate.

14. *Duration and Evaluation of Program.*

a. The program shall be re-evaluated by the Board of Governors of the Washington State Bar Association when appropriate, and in no event later than five years after its commencement to determine whether it should be continued, broadened, modified, terminated, or whether some other action should be taken.

b. The Legal Specialization Board shall make an annual written report of its operations and of those of the Boards of Certification to the Board of Governors of the Washington State Bar Association at least thirty days prior to each annual meeting of the Washington State Bar Association.

c. Each Board of Certification shall make an annual written report of its operation to the Legal Specialization Board at least sixty days prior to each annual meeting of the Washington State Bar Association.

d. The Specialization Board and Boards of Certification may be provided with such office space and facilities and staff assistance at the headquarters of the Washington State Bar Association as may be decided by the Board of Governors.

15. *DEFINITIONS.*

As used in this plan,

a. "Substantial involvement i.e., actual performance" is intended to be a measurement of the actual experience within the particular field of specialty. It may be measured by any of several standards. It may be measured by the time spent on legal work within the area of the specialty, the number or type of matters handled within a certain period of time, the time spent in teaching the law of a specialty field, or any combination of these or other appropriate factors. It is recognized that mere limitation of practice does not, in itself, establish expertness.

It is also recognized that the time spent within a particular field of law may vary depending upon the specialty field involved. However, within each specialty field, experience requirements should be measured by objective standards. The requirements of substantial involvement must be defined for each specialty field by the respective Boards of Certification.

(Continued on Page 35)

OBSCENITY- DAYLIGHT OR DARKNESS?

by Neal J. Shulman

> Obscenity — "I could never succeed in [defining it] intelligibly, but I know it when I see it."
>
> — Mr. Justice Stewart (concurring opinion) *Jacobellis v. Ohio* 378 US 184, 197 (1964)

On June 21, 1973, the United States Supreme Court handed down opinions in the cases of *Miller v. California*, 41 LW 4925, and *Paris Adult Theater I v. Slaton*, 41 LW 4935. There can be no doubt that these opinions will take their rightful place in the constitutional history of the United States as "landmark decisions" along a clouded and often obscure pathway toward a definition of obscenity.

Five weeks later, the Washington Supreme Court in a consolidated case involving no less than nine appeals, rendered its decision in the case of *State v. J-R Distributors, Inc.*, (July 27, 1973). In upholding the constitutionality of the state obscenity statute, RCW 9.68.010, the *J-R* case adopted and applied the June 21 decisions of the United States Supreme Court.

Any attempt to evaluate these decisions must be undertaken in the historical context of the past 16 years. This was a period during which prosecutors, charged with the responsibility of pursuing that which they believed to be violations of local obscenity laws often saw their efforts dashed into frustration and defeat. Meanwhile, the advocates of unabridged freedom of expression were gratified by judicial successes though uncertain as to the precise status of the law. For brief periods, the fortunes of the prosecution and defense were reversed (see for instance *Ginzburg v. United States*, 383 US 463 (1966). Such reversals served only to heighten the prevailing aura of uncertainty.

RECENT HISTORICAL BACKGROUND

The year 1957 was a milestone in the long and certainly arduous attempt by the United States Supreme Court to come to grips with what has been aptly described by Mr. Justice Harlan as the "intractable obscenity problem." *Interstate Circuit, Inc., v. Dallas, 390 US 676*, 704 (1968).

In that year the high court, five justices concurring, in the noted case of *Roth v. United*

Neal J. Shulman is City Attorney for the City of Richland, Washington. As a former Chief Deputy Prosecutor for King County, Mr. Shulman prosecuted numerous obscenity cases arising under state law. More recently, as City Attorney, he authored an obscenity ordinance presently under consideration by the Richland City Council. A 1964 graduate of the University of Washington Law School, Mr. Shulman has devoted a major portion of his legal career to both the prosecution and defense of criminal cases. He has taught classes on various phases of law enforcement, both informally to various law enforcement groups and as an instructor in the law enforcement program at Highline Community College. He has been a frequent speaker before civic, professional and community organizations on current topics in the fields of criminal and municipal law.

States, 395 US 476 (1957), upheld a conviction under federal law for mailing obscene materials. In *Roth*, the court clearly rejected the proposition that obscene materials were protected by the First Amendment, and at the same time set forth the presumption that obscene materials were "utterly without redeeming social value."

It was this presumption, which nurtured and grew during the next nine years, that was ultimately incorporated into the tri-partite test for obscenity as set forth by the court in *Memoirs of a Lady of Pleasure v. Massachusetts*, 383 US 413 (1966). In *Memoirs*, with a plurality of but three justices, the court seemingly solidified the test for obscenity as follows:

> . . . Three elements must coalesce: it must be established that (a) the dominant theme of the material taken as a whole appeals to a prurient interest in sex; (b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and (c) the material is utterly without redeeming social value.

Under the *Memoirs* test, the prosecution was faced with the overwhelming burden of affirmatively proving, beyond a reasonable doubt, the negative proposition that the subject matter of the obscenity prosecution was, in fact and in law, "utterly without redeeming social value." This burden was described by Mr. Chief Justice Burger in *Miller v. California*, supra, as ". . .virtually impossible to discharge under our criminal standards of proof."

The fact that *Memoirs* was a plurality decision further compounded the problem in that a majority of the court was unable to agree on a standard to determine what was obscene. In *Ginzburg v. United States*, supra, yet another element, "pandering" was grafted onto the test for obscenity.

Lacking a precise definition of obscenity, the court in *Redrup v. New York*, 386 US 767 (1967), began the practice of per curiam reversals where at least five members of the court found the subject matter to be constitutionally protected through the application of their individual tests. Thirty-one cases were decided under the *Redrup* policy, with each justice subjectively reviewing the material in each case.

Stanley v. Georgia, 394 US 557, decided in 1969, held that the possession of obscene material by an individual, for his own purposes and within the confines of his own home, was not a constitutionally prosecutable offense under Georgia law. This obvious limitation on the prosecution caused many to fear that the *Stanley* decision would ultimately lead to a later decision allowing the dissemination of obscene material. This fear, which proved to be unfounded, was based on the somewhat tortured logic that the right to possess obscene material carried with it the corollary right to purchase and therefore, the right to sell.

Such fears were not put to rest until 1971 in the case of *United States v. Reidel*, 402 US 351 (1971). In *Reidel* the Supreme Court held that the federal government could prohibit the distribution of obscene materials even though such distribution was limited to willing and consenting adults. The court further held that the right of a person to possess obscene material in the sanctity of his home did not carry with it the right to sell and deliver such material.

It was against this background of uncertainty, heightened by the philosophical issues, that the four most recent arrivals on the Supreme Court, Chief Justice Burger, Justices Blackmun, Powell, and Rehnquist, joined by Mr. Justice White, delivered the majority opinions in the cases of *Miller v. California*, supra, and *Paris Adult Theater v. Slaton*, supra.

THE MILLER DECISION

Marvin Miller had conducted a mass mailing campaign throughout the State of California, advertising the sale of illustrated books, bearing

(Continued on page 25)

Neal J. Shulman

State Bar's New Sections are Ready for You to Join

You—and all other lawyers in the state—now are invited and urged to join one or more of the State Bar's dozen new sections.

Organization of the sections, under way since early this year, has been completed. All now are in full operation. Initial meetings were held during the bar's recent annual convention in Vancouver, B.C., and officers were elected.

It's easy to join a section or sections that represent your special interests: Simply write to the State Bar Office (505 Madison, Seattle 98104) and mention the section you wish to join; enclose a check for the annual dues. And that's it.

The annual dues: $8 for the Section of Anti-Trust Law, Section of Family Law and Section of Patent, Copyright and Trademark Law; none for Young Lawyers; and $5 for all other sections.

The sections, which enable a far larger number of lawyers to participate in bar activities, are expected to become increasingly important in bar association affairs, publishing their own news letters, conducting legal-education seminars and sharing the annual meeting schedule.

Newly elected section officers include:

Section of Taxation

Chairman: Irwin L. Treiger, Seattle; Chairman-elect: Scott B. Lukins, Spokane; Vice-Chairman: Joseph D. Holmes, Jr., Seattle; Secretary: Harwood Bannister, Mount Vernon; Treasurer: Thomas H. McCracken, Tacoma.

Section of Trial Practice

Chairperson: Leon Wolfstone, Seattle; Chairperson-elect: F. Lee Campbell, Seattle; Secy. Treasurer: Alvin A. Anderson, Tacoma. Executive Committee: Paul R. Cressman, Seattle; Thomas J. Greenan, Seattle; Murray B. Guterson, Seattle; Alan A. McDonald, Yakima; Lawrence C. Smith, Spokane; Willard H. Walker, Longview.

Section of Criminal Law

Chairperson: Frank Sullivan, Seattle; Chairperson-elect: Patricia Harber, Seattle; Secretary-Treasurer: Edmund E. Lozier, Tacoma. Executive Committee: Barbara Durham, Seattle: Max Etter, Spokane; Cameron Hopkins, Yakima; J. Dean Morgan, Vancouver; Frank Peters, Tacoma; James E. Warme, Longview.

Section of Family Law

Chairperson: Kenneth W. Weber, Vancouver; Chairperson-elect: Robert F. Phillips, Spokane; Secretary-Treasurer: Carol Anita Fuller, Olympia. Executive Committee: William D. Aiken, Sunnyside; Homer A. Crollard, Yakima; Margaret J. Gaskill, Seattle; Daniel W. Giboney, Spokane; J. Porter Kelley, Seattle; James B. McCoy, Longview; Miles F. McAtee, Seattle; Robert C. Mussehl, Seattle; A. John Nicholson, Yakima; Robert G. Perlman, Everett; Robert M. Reynolds, Tacoma; Walter E. White, Olympia.

Anti-Trust Section

Chairperson: William H. Ferguson, Seattle; Secretary-Treasurer: Hugo E. Oswald, Jr. Executive Committee: Martin T. Crowder, Seattle; James R. Irwin, Seattle. Other officers and Executive Committee members still to be selected at this writing.

Young Lawyer Section

Officers are being selected in a mail-ballot election; interim chairperson is Curtis L. Shoemaker, Spokane, 1972-73 chairman of the State Bar Young Lawyers Committee.

Environmental Law

Chairperson: Joel E. Haggard, Seattle; Chairperson-elect: Charles B. Roe, Jr., Olympia; Secretary-Treasurer: Irving M. Clark, Jr., Seattle. Executive Committee: Philip M. Best, Bremerton; Thomas R. Garlington, Olympia; George M. Mack, Seattle; John E. Snoddy, Spokane; Roger M. Leed, Seattle; Charles W. Mertel, Seattle.

Section of Patent, Trademark & Copyright Law

Chairperson: Orland M. Christensen, Seattle; Chairperson-elect: Richard W. Seed, Seattle; Secretary-Treasurer: Patrick D. Coogan, Tacoma. Executive Council: Ford E. Smith, Seattle; Robert W. Beach, Seattle; Richard J. St. John, Spokane, plus officers.

Section of Real Property, Probate & Trust

President: Robert P. Beschel, Spokane; Past President:

Norman F. Trezona, Spokane; President-elect: Alan H. Kane, Seattle; Secretary-Treasurer: John A. Wilkins, Kennewick. Executive Committee: Willard J. Wright, Seattle; Henry T. Newton, Everett; W. Harold Hutchinson, Seattle, plus Officers.

Corporation, Business and Banking Law Section

Chair: Herman S. Siqueland, Seattle; Chair-elect: David Lee Williams, Seattle; Past-chair: E. Fred Velikanje, Yakima; Recorder: Gerald L. Whitcomb, Shelton. Executive Committee: Frank Richard Chastek, Spokane; Earl W. Jackson, Battle Ground; R. Michael Kight, Everett; Thomas D. Loftus, Seattle; Bert H. Weinrich, Jr., Seattle; Davis J. Whitmore, Wenatchee.

Section of Creditor-Debtor Rights

Chair: Joseph A. Barreca, Seattle; Chair-elect: James C. Middlebrooks, Seattle; Recorder: Thomas R. Dreiling, Seattle. Executive Committee: Joseph M. Deem, Vancouver; Charles R. Ekberg, Seattle; Roger K. Garrison, Sunnyside; Phillip T. Hutchison, Seattle; Robert W. Skidmore, Tacoma; John H. Strasburger, Seattle, plus officers.

Section of Administrative Law

Chairperson: Dennis R. Barge, Olympia; Chairperson-elect: G. Keith Grim; Secretary-Treasurer: Harold E. Baily, Coupeville. Executive Committee: George G. Bovingdon, Seattle; Donald H. Brazier, Olympia; William M. Lowry, Olympia; Richard A. Mattsen, Olympia; Steven A. Memovich, Vancouver; James B. Strong, Olympia, plus officers.

Judge Lloyd Bever and David Olwell, Seattle

In Memoriam

Lee C. Delle, who began "reading law" in his father's office at the age of 12 and who practiced in Yakima for 67 years, died August 2 at age 93. In early years he served as deputy federal clerk, U.S. commissioner and assistant U.S. attorney. He was a life member of the American Bar Association and served on the General Council. He also was a member of the Oregon Bar, and once was president of the Yakima County Bar.

William Leslie Grill, Bellevue, who came to the Seattle area with his parents about 1900, died July 24. He attended University of Puget Sound and later studied as a law clerk to prepare for the Bar. He was active in the Masonic Lodge.

Clarence L. Gere, 88, a Seattle lawyer since 1912, died July 22. He was active in penal reform and was a past president of the old Seattle Jail Reform Society. He also was active in church and Masonic organizations.

Myron L. Borawick, 50, Midway (South King County) attorney and Des Moines Municipal Court judge, died August 27. A graduate of the Columbia University Law School, he served during World War II in the Army J.A.G. corps. He was active in Boys Club work, was former president of the South King County Bar and past president of the Des Moines-Midway Rotary.

Med School Offers Suggestion to Bar

The University of Washington Medical School is confronting a serious need for financial support. In this article George W. Scott, Ph.D., assistant to the dean for development, explains that need and a new service for attorneys working in the area of estates and trusts.

The University of Washington Medical School, authorized by the 1945 Legislature, turned out its first M.D. in 1950. It now ranks among the top half dozen of the nation's 110 medical schools. Some say our Medical School is first. The faculty is known internationally for their research and inventions. Two thousand graduates serve from Sitka to South Bend, and in every major city in the world. The institution's reputation is still ascendant.

Who supplies the $35 million a year that pays the 600 full-time faculty, underwrites countless research projects, and maintains the bricks and mortar? The State contributes $8 million a year. The rest largely comes from competitive grants won by the faculty, usually for terms of no longer than three years, from the Federal government. Most of the researchers and many of the faculty support themselves—and bring millions of dollars into the local economy by doing so. Because this is so, the Medical School is now vulnerable. We have found the Federals can take away as well as give.

Budget Slash Looms

Because of revisions in federal funding this year, the Medical School stands to lose $7 million, or one fifth of its budget (see *Time*, July 2, 1973, p. 46). Three hundred jobs will be lost, as training grants are phased out over the next two years. The termination of NDEA loans for students means that we will be $100,000 short on loans fo students with proven needs.

The lesser amounts of money available will go for "contract" research, which increases accountability and decreases the scientist's ability to follow his best leads. This specific grant system will leave us without flexible money to help departments not on the federal priority list, or reward professors of exceptional ability. Most staff are not paid what our peer institutions are offering to pay them. We can trade on reputation and the glories of Northwest living only so long.

If people in the Northwest want to have one of the world's best medical schools and the unique services it brings to 22% of the land mass of the U.S., they will have to identify with it, and provide the private endowments enjoyed by both the public and private peer institutions with whom we are competing.

Program Assists Attorneys

For these reasons the Office of Medical Development was set up a year ago. We augment the professional services attorneys bring their clients by arranging for on-site inspections and access to staff for persons planning their estates and trusts. A client's income may dictate a deferred compensation unitrust. His holdings may benefit by participation in a pooled income fund, or he may wish to make a "bargain sale" of appreciated securities or property—the real cure for capital gains taxes. We supply specimen agreements, and specific language so a donor can get his gift where he wants it to go. Deductions usually reduce the "cost" by more than half. Being classified as a "public charity" is not without its saving points!

The Medical School is the Northwest's prime man-made asset, where the relief of suffering, research, and the bringing up of new generations of scientists goes on simultaneously. It is essential to the physical and economic health of the Northwest. It can stay great—with a little help from our friends. □

Gary Gayton and Ron Neubauer, Seattle

The Board's Work

Extracts from the minutes of the meeting of the Board of Governors August 17-18 at Rosario, Orcas Island, with all members present:

Judicial Capability Poll in King County

Having received formal notice from the President of the Seattle-King County Bar Association that the Board of that Association had voted to withdraw its earlier request that the Washington State Bar Association omit King County from its 1973 "Judicial Capability" Poll for candidates for the Superior Court Bench, it was voted that the "Judicial Capability" poll be conducted for those positions on the Superior Court Bench being contested in 1973. Mr. Ripple abstained from voting.

Legislative Committee

Edward N. Lange of Seattle was designated as Chairman of the Legislative Committee beginning at the close of the Annual Meeting in Vancouver.

COG Recommendations on Amendments to the Bar Act

A. The COG Committee recommendation that Section 7 - (a) of the Bar Act was amended by changing the word "classification" to "classifications" and striking the words, "into active, inactive and honorary members," and it was agreed that such an amendment be sought in the Legislature at the appropriate time.

B. It was voted that no further action be taken on other suggested amendments to the Bar Act and that within a reasonable period in the future that the Board consider major amendments to the Bar Act or perhaps a revision of the Bar Act.

Trust Accounts

By unanimous vote, the Board reaffirmed its support of the principle involved in every lawyer's obligation to preserve the identity of funds and property of a client and specifically approved further investigation of suggestions by the Chairman of the Committee on Law Office Management and Economics and in implementing the Chairman's suggestions assigned his discussed topics to the following committees for investigation and report:

A. (1) The suggestion that law schools should effectively teach the principle of the sanctity of trust funds with a practical how-to-do-it set of instructions was referred to the Legal Education Liaison Committee.

(2) The suggestion that the Bar Association prepare a manual of instructions on trust accounts was referred to both the CLE and Code of Professional Responsibility committees.

(3) The suggestion of a Law Office Management Committee seminar on the subject was referred to the Law Office Management Committee.

(4) The suggestion of Bar Examination coverage of the subject was referred to the Board of Law Examiners.

(5) The suggestion of an article in the *Bar News* was referred to the Editorial Advisory Board.

B. It was moved by Mr. Curran that as a part of the annual license renewal, each lawyer should be required to certify that his or her trust account is with a named bank, that the balance is reconciled monthly, and that he or she authorizes the Bar Association to obtain information from the Bank concerning the existence of the account, but not the balance or the details. After discussion, it was agreed by the Board that further action on this motion should be delayed at the present time pending further investigation and that the matter and the motion would be presented again to the Board at its meeting in February, 1974.

The Budget

It was moved, seconded and carried that the budget proposal as prepared and submitted by the Executive Director be approved.

Legal Education Liaison Committee - Discrimination Subcommittee

It was moved by Mr. Pritchard and seconded by Mr. Curran that a report of the Discrimination Subcommittee be amended by amendments previously suggested by Mr. Pritchard and then adopted. The motion failed, four votes in favor of the motion and five votes opposed to the motion. Those favoring the motion were Messrs. Pritchard, Curran, Ripple and Short.

It was voted that a report of the Discrimination Subcommittee be referred to the Civil Rights Committee for investigation, study and recommendation to the Board.

Letter to Judge William T. Beeks

It was moved, seconded and carried that the President of the Bar Association write a letter to Judge William T. Beeks commending Judge Beeks for his long and distinguished service on the Federal Bench and that the Board express its appreciation to Judge Beeks for his fine contribution to the law profession.

Clients Security Fund - Revision of By-Laws

Pursuant to a recommendation from the Client's Security Fund Committee, it was moved, seconded and carried that Section 2 of Article VII of the Washington State Bar Association By-Laws relating to the Clients Security Fund be amended so that the new Subsection (b) of Section 2 of Article VII shall read in its entirety as follows:

"The Fund may also be used for the purpose of relieving or mitigating a pecuniary loss sustained by a client who has paid money to a then active member of the Association as a deposit or retainer in connection with the attorney's undertaking to represent a client in a legal proceeding, when the attorney has failed to perform or only partially performed the service for which the deposit or retainer was paid in advance, and when the attorney is no longer able to complete his undertaking to represent the client. The Fund shall not be used for the purpose of relieving any pecuniary loss resulting from an attorney's negligent performances of services. No payment to a client under the provision of this subsection shall exceed the sum of $500.00. Further, the provisions of this subsection shall be operative only when the attorney involved or his or her estate is insolvent or otherwise unable to pay the amount claimed and properly awarded. The same cumulative total limitations shall apply to awards under this subsection as apply to other awards from the Client's Security Fund." The vote on this motion was 5 to 4.

Environmental Law Section

The request for the formation of an Environmental Law Section was approved, and the By-Laws were approved.

Minimum Requirements for Candidates for Positions of a Quasi-Judicial Nature

The letter of C. Robert Wallis, President of the Governmental Lawyers Association, relating to the requirements by education and experience for filling positions of a quasi-judicial nature, was referred to the Corrections Committee for study and comments since the specific inquiry was about the position of "Parole Board Hearing Officer.

Proposed Changes to "Rules for Discipline of Attorneys"

It was moved, seconded and carried that Rule 5.6 of the Rules for Discipline of Attorneys be amended so that Section (e) of the said Rule 5.6 and Section (f) and Section (g) shall read as follows:

"(e) Acceptance *or Refusal* of Censure or Reprimand. If the Disciplinary Board determines that the respondent attorney should be censured or reprimanded, a formal order signed by the Chairman of the Disciplinary Board shall be entered, which shall provide that if the respondent attorney or his counsel does not file in the office of the Association a written refusal to accept such censure or reprimand within fifteen (15) days of the date such order is served, the censure or reprimand shall be deemed accepted. *Within twenty (20) days after the respondent attorney has filed his written refusal to accept a censure or reprimand, he shall order a transcript of the testimony taken before the hearing panel and make arrangements with the court reporter for the payment of the cost thereof. When the proposed transcript is received by the respondent attorney, he shall file the original with the office of the Association. Thereafter, the transcript shall be settled as provided for in Rule 5.5 herein. Should the respondent attorney prevail on appeal, the cost of the transcript shall be paid for by the Association. If a determination is made that the respondent attorney is insolvent, the Association shall pay for the cost of the transcript on appeal.*

(f) *Letter of Censure.* A censure shall be administered to the respondent attorney by letter, signed by the President of the Association. Notice of the censure shall be sent to the Supreme Court where such information shall remain confidential unless the Court determines that further action shall be taken.

(g) *Giving of Reprimand.* If the respondent attorney has accepted the reprimand or, on appeal, the Supreme Court has ordered the

same, the respondent attorney shall appear in person before the Board of Governors at a time and place directed by the Board and receive the reprimand. The reprimand shall be given privately by the Board of Governors and no other proceedings shall be had at the administration thereof, nor shall any statements in support of or in opposition thereto or in mitigation thereof be made. A copy of the reprimand shall be sent to the Supreme Court where the same shall remain confidential unless the Court determines that further action shall be taken."

It was further made a part of this motion that in the event these Rule Changes are approved by the Supreme Court that the existing subsection (g), (h), (i), (j) and (k) be redesignated as h, i, j, k, and l, respectively.

Law Clerk Program

It was moved, seconded and carried that the Board reaffirms its position with reference to its recommendation to the Supreme Court that the Law Clerk program be abolished and its further position that no applications for the Law Clerk program be accepted pending action by the Supreme Court on the Board's recommendation. The vote favoring the motion was 8 to 1.

Board of Governors meeting July 20-21 at Jasper Park Lodge, Alberta:

National Legal Services Corporation

The following Resolution was adopted to be sent to appropriate Senators and other Congressional leaders.

WHEREAS, the Washington State Bar Association has consistently supported the efforts of the legal services programs in the State of Washington in their provision of legal services to the poor, and

WHEREAS, the Washington State Bar Association recognizes the need for adequately funded legal services programs in the State, and

WHEREAS, legislation is presently pending in the United States Senate which will create a national legal services corporation,

NOW THEREFORE, BE IT RESOLVED, that the Washington State Bar Association urges prompt enactment of legislation by the United States Senate which will enable legal services programs to meet the pressing needs of the poor to the full scope of legal representation without restrictions which are inconsistent with the duties of attorneys under the Code of Professional Responsibility.

Section By-Laws

Proposed By-Laws of seven additional Bar Sections were approved as amended.

Legal Intern Program

It was voted that the report of the Legal Intern Committee recommending the permanent continuation of the Legal Intern Program be adopted and that the Supreme Court be advised the Bar Association recommends that the program be approved for continuance on a permanent basis at the expiration of the trial period on December 31, 1973.

Committee on Certification of Specialists

The report and recommendations of the Committee on Certification of Specialists were approved and adopted (see full report in this issue of the *Bar News*).

Unauthorized Practice of Law

The Unauthorized Practice of Law Committee was instructed to meet the problem of certain lay people and organizations handling the closing of real estate business transactions which involve the preparation of legal documents unsupervised by an attorney, "head on" looking toward the elimination of such unauthorized practice of law. It was agreed that the Board of Governors would provide all the help necessary from the staff and to provide the necessary funding.

Request for Policy Change

It was moved, seconded and carried that the Board reaffirms its policy position that individual Committees of the Bar Association may not take public positions or issue releases to the news media or the public without prior approval of the Board of Governors.

Judicial Poll in King County

It was voted, in response to the request of the Board of Trustees of the Seattle-King County Bar Association that the State Bar Association's Poll relative to the Superior Court Judges not be conducted in King County in 1973. □

New Edition of RCW to be Published

by Richard O. White, Code Reviser

Due to the depletion of the supply of copies of the Revised Code of Washington, it will be necessary for the Statute Law Committee to publish a new edition of the code following the 1974 or 1975 sessions of the legislature. In developing the new edition, the Statute Law Committee is pleased to announce that it proposes to take full advantage of such printing innovations as photocomposition and high speed presses to accomplish major improvements in the cost and timeliness of code publication.

The new publication plan will substitute for the present loose leaf system, a permanently bound set of eight or nine volumes which will be republished in their entirety every two years and will be updated by means of a bound supplement in the intervening years. Each volume of the code will consist of approximately 1000 pages, 8½" by 11", bound in flexible vinyl covers. The code will be printed in 10 point Times Roman type on 11 point lines and will utilize bold face characters, italics, and other typographical refinements, and will be comparable in all respects to the typographical size and appearance of the present code. The larger page size will permit two columns to the page and the resulting shorter lines will enhance its readability.

The Statute Law Committee views its charge under RCW 1.08.037 through 1.08.039 as one of providing a code of the state's statutes in such format and upon such terms as will be most economical and advantageous to the state and to potential purchasers.

The new code will not cost present RCW owners anything additional, as it is anticipated that the new biennial code and its intervening supplement will be marketed at a price not to exceed the cost of merely supplementing the current loose leaf edition for a similar two year period.

New purchasers of RCW will also find its price attractive as compared to the $230.00 purchase price of the current loose leaf edition and more particularly as compared to our estimated price of $400.00 per set were we to reprint the code in its present format.

As the new permanently bound format will obviate the necessity for inserting and inventorying loose leaf pages, users will be spared this labor or expense and will have the further satisfaction of knowing that their codes are properly updated and contain all current pages.

Nor will any user's current investment in Book Publishing Company Annotation be impaired. The BPC Annotations will continue to function, although those users whose annotations are now integrated with code text will wish to refile them separately, using several of their leaf binders, and Book Publishing Company has indicated a willingness to perform this operation for them.

While the current RCW numbering system will remain intact, the new code will feature several substantial editorial improvements such as a newly consolidated and updated comprehensive index, revised and updated cross reference notes, and a new tabular section which will carry in numerical order all memorials and other references to sections which have been repealed or otherwise deleted from the code and will indicate their disposition.

Likewise of primary importance to code users is the timely receipt of current laws. The new technology holds promise of enabling us to distribute the new codes and supplements by as much as three or four months earlier than we have been able to distribute loose leaf supplements.

In order to effectuate this transition, the 1973 code supplement will not be published in its customary loose part format but instead will be published as a single volume containing all of the 1973 laws including those of the September special session, and in the event the new code cannot be completed until 1975, the 1973 supplement will be replaced with a cumulative 1973-74 volume. These interim supplements will be printed by the photo offset process, which is not to be confused with the more sophisticated photocomposition process which will be used in producing the new code. Such supplement or supplements will be marketed to the Bar at a very modest price. While this expedient will temporarily create an additional source to search for current statutes, the Statute Law Committee is confident that this transitional inconvenience will be minimal when compared to manifold benefits of the new publication.

Around the State

SEATTLE-KING REPORT

By **GERALD G. TUTTLE**

Florida and Washington are even. **Alan A. Bruckner**, who practiced with the National Labor Relations Board in Seattle in the 1950s announces that he is returning from the private practice of law in Miami to specialize in labor law. His new office will be at 1100 IBM Building. Mr. Bruckner, anxious to experience one more hurricane season, plans to begin his practice in the spring, 1974.

Robert Keolker, formerly with **Culp, Dwyer, Guterson & Grader,** announces the opening of his office for the general practice of law at 3300 Seattle-First National Bank Building.

Keith L. Kessler, Karl B. Tegland and **Randolph W. Urmston** announce the formation of a partnership for the practice of law under the firm name of **Kessler, Tegland and Urmston**, with offices at 715 Hoge Building.

Kevin J. Henderson, a graduate of Loyola University School of Law, has joined **Lee R. McNair** as an associate.

William H. Grady, formerly a partner with **Aiken, St. Louis & Siljeg**, has opened his office at 603 Norton Building.

Halverson, Strong & Moen announce that **Paul W. Chemnick** has become a partner of the firm.

Richard D. Bonesteel, Vice President and Counsel of Firstbank Mortgage Corporation, has been elected President of the Washington Mortgage Bankers Association.

William N. Mathias, III and **John B. Cathey** have recently joined **Houghton Cluck Coughlin & Riley** as associates. The firm, in moving offices to the Hoge Building July 1, left the Central Building after 38 years there.

Q. Robert Davis, formerly Vice President and Senior Division Counsel for Pioneer National Title Insurance Company, has become associated with the firm of Macbride, Sax & MacIver as counsel.

EAST KING REPORT

By **Barbara E. Reardon**

The East King County Bar Association has resumed its noon monthly luncheon meetings on September 17, at the Thunderbird Restaurant. The guest speaker was **Lee Kraft**, who discussed the "Eastside Public Defender Program."

Lee Kraft has been named City Attorney for Bellevue, a position held by Mrs. **Joyce Thomas** until her resignation in June.

THURSTON-MASON REPORT

By **STEPHEN J. BEAN**

Attorneys, **Jerald Mooney** and **Bill Cullen**, d/b/a Mooney & Cullen, and attorney. **Ed Holm**, have announced the formation of a partnership to be known as Mooney, Cullen & Holm. Their offices will be in the new Thurston County Federal Savings & Loan Building.

Bob Gates has moved into the Evergreen Plaza Building.

Thus, the game of legal musical chairs continues in Thurston County, and at least two more firms will have to move in the near future, namely: Bean & Gentry and Parr, Cordes & Sutherland, both of whom will be evicted within the next year from the Capitol Center Building, home of the new Thurston County Courthouse.

And so it goes.

CLARK COUNTY REPORT

By **Thomas L. Lodge**

Elected officers to serve for the year July 1, 1973, through June 30, 1974, are as follows:

Duane Lansverk, President
Dennis Duggan, Vice President
Frederick Stoker, Secretary
William Dunn, Treasurer

LEWIS REPORT

By **DAVID R. DRAPER**

The Prosecutor's office has this summer been fortunate enough to have **Craig Smith** as a legal intern. Craig returns to the University of Washington for his third year of law school this fall. Craig acted in the same capacity in the Prosecutor's office last year and is himself from the City of Chehalis. One of the projects he has worked on this summer is the preparation of a manual for school board directors dealing with legal problems which they face. He has also done considerable research on county problems. **Brian Baker**, the prosecuting attorney, reports he has been pleased to have Craig in his office and he has been happy with his performance.

Another recent returning attorney to Lewis County is **Joe Enbody.** Joe graduated from

Centralia High School, then got his BA at the University of Washington in 1968, and received his JD from the University of Oregon in 1971. Upon graduation from law school Joe was employed as counsel for the First American Title Company of Washington. He and his wife, Ruta, recently returned to Centralia, where Joe has now opened a law office. The Enbody's have two boys, Tom and Joe, and we heartily welcome all of you back to Lewis County.

Jeremy Randolph, Chief Deputy Prosecuting Attorney, was recently fortunate enough to marry Joan, the charming daughter of Nellie and Viola Back of Chehalis. Jeremy and Joan honeymooned in Oregon and California. Jeremy's good fortune also includes the immediate acquisition of a family of three of the most beautiful children in Lewis County, Stacey, Scott and Kendra. Congratulations you two, and we wish you much and long happiness.

Norm Stough, a 1973 graduate of the University of Washington Law School has recently returned to Chehalis, and is working in **Gilbert Valley**'s office. Norm spent nine years with the Washington State Patrol after which he went back to school to receive his BA at Seattle University in 1970. He and his wife, Mary, have three grown children. Norm, we are glad to have you back.

GRAYS HARBOR REPORT

By **JOHN L. FARRA**

Paul Stritmatter of Hoquiam and **Curtis Janhunen** of the Prosecutor's Office took a week's hike to the Seven Lakes Basin region of this state. Both individuals agreed that they will attempt to duplicate the enjoyable week next year. I wonder how many criminal cases were settled during the week.

David Foscue of the Prosecutor's Office, Aberdeen, and **Dennis Caldwell** Prosecutor's Office Montesano recently took their families for a camping trip in the North Cascades. It must be assumed that the Prosecutor's staff became fit for the jury term.

County Prosecutor **L. Edward Brown** attended the State Prosecutor's Convention and maybe he learned some new tactics from the other Prosecutors on preparing his staff for trying criminal actions. Coming jury trials will be watched closely to see if new trial techniques are used by members of the Prosecutor's staff.

Congratulations to **Curtis Janhunen, Warner Poyhonen, Jerry Hallam and Ted Zelasko** for the excellent preparation and handling of the Grays Harbor Bar Fishing Derby.
The preparation that goes into an event like this is astounding and these four individuals deserve a lot of credit.

Grays Harbor Attorneys have made good use of the Legal Intern Program. Mr. **Bob Peck** has been working with Paul Bitar and Bill Morgan of Hoquiam until his Bar results are announced. He came originally from the Spokane area of this State. **John Schumacher, Jr.** is working in the office of **Charette and Brown. Greg DeBay**, who is presently in Europe, has been working with **Jack Burtch** of Aberdeen.

Congratulations to **Paul and Les Stritmatter** for the gala opening of their new law offices located at 407 8th Street in Hoquiam. Their opening was beautifully handled and the refreshments were excellent in every respect. Paul and Les gave tours through their new office complex and introduced their staff to members of the local Bar. There was a good turnout from the local Bar and everyone agreed as to the excellence of the new facility.

YAKIMA REPORT

By **RANDY MARQUIS**

Changes and Acquisitions:

Former Judge **Ross Rakow** has recently joined the Tonkoff firm which is now known as Tonkoff, Rakow, Dauber & Shaw. Offices remain in the Miller Building, Yakima.

The law firm of Hovis, Cockrill & Roy has enlisted a new member. **Steve Schaefer** formerly of Seattle. Steve formerly practiced in Seattle and has completed work in tax law at New York University.

Kevin Kirkevold of Tunstall & Kirkevold announces that **Edward V. Lockhart, Jr.** and **Thomas A. Dietzen** are now sharing offices with the firm.

Lawyers in the News:

Robert R. Redman has been elected president of the University of Washington Alumni Association for 1973-1974. Bob is the first president of the association from outside of the Seattle area.

William Halpin has been appointed to the Yakima Valley College Board of Trustees by Governor Dan Evans.

COWLITZ REPORT

By **O. H. Husemoen**

The summer of 1973 has found much activity in the Cowlitz County Bar Association, which is usually somewhat stable. **James Carty** of Woodland has been appointed the Prosecuting Attorney for Clark County, thus retiring from his practice in Woodland. Stepping into his Woodland practice is **Jerold W. Heller** of the Vancouver firm of **Weber, Baumgartner & Heller,** P.S.

Darrell Lee, the former Chief Criminal Deputy Prosecuting Attorney for Cowlitz County, has resigned that position and moved to Clark County and is now actively campaigning for the position of Prosecutor. Apparently two Cowlitz County attorneys will be vying for the position of Clark County Prosecutor in the fall election.

Steven H. Pond, formerly of a large Seattle firm, is joining the relatively large Longview firm of **Calbom, Walker, Cox & Andrews. James E. Warme,** formerly a King County Prosecuting Attorney and immediately past Executive Secretary of the State Prosecuting Attorneys' Association, will soon join the Cowlitz County Prosecutor's Staff as Chief Criminal Deputy. **Stephen L. Wanderer** joins **Walstead, Mertsching, Husemoen, Donaldson & Barlow** after a year as Clerk for Judge **Morell Sharp** of the U.S. District Court.

New officers have been elected for the Cowlitz County Bar Association. They are **Robert Altenhof**, President; **William Dowell**, Vice President; **D. L. Donaldson**, Secretary-Treasurer. The Secretary-Treasurer (also Social Chairman) announces that the Second Annual Later-Than-Usual Cowlitz County Bar Picnic will be held the latter for of September.

SKAGIT REPORT

By **DAVID A. WELTS**

In case you are wondering, as the new Vice President of our organization I have been sentenced to do this column for the next year. I succeed **Paul Luvera** who is the new president of this organization. That honor signifies, among other things, that he is the oldest member of our Bar in length of service who has not held the post before. Congratulations Paul, I think.

Actually, he shares the honor with me as to length of service. I remind him that we were sworn in to practice at exactly the same moment back in 1959 by the Hon. **A. H. Ward** (deceased). Actually, we went to college together the first year, graduated from high school the same year and played basketball against each other throughout high school. I see no reason why he should be president first but I dutifully accept my position.

I can report that Skagit swamped Whatcom at the annual golf etc., picnic this summer but it can't be documented since Whatcom was host and decided there would be no team competition in the golf. District Court Judge **Warren Gilbert, Jr.**, won the individual competition and one of his valued prizes was a gift certificate to the Scandia Massage Parlor. Since Judge Gilbert is about to hear Skagit County's first pornography prosecution in years he'd better hurry up and use that certificate.

The picnic (at Bellingham Golf & Country Club) had a smattering of class this year being attended by Supreme Court Justices **Robert Finley, Hugh Rosellini** and **Charles Stafford**, together with Court of Appeals Justices **Ward Williams** and **Herb Swanson.**

Pat McMullen formerly associated with **William Stiles, Jr.,** in Sedro-Woolley has struck out on his own and opened an office in that city.

Since we have to do this thing every month, that's 30 for now except I just figured out why Luvera gets to be president first: Its because I always was a better basketball player.

THURSTON-MASON REPORT

By **STEPHEN J. BEAN**

Pat Sutherland, a man always on the move, stays on the move. He finally listened to me about the benefits of good Jewish cooking and went to Grossinger's in New York. He then went to Europe for a few weeks, spread his Irish charm all over the Continent, paid his respects to the Queen of England and the Pope. Returning to a more mundane life in Olympia was not to be without an announcement from Pat however. Effective October 1st, he was to remove his office to the Evergreen Plaza Building. Bill Parr, Cliff Cordes and Tom McPhee will remain in the Capitol Center Building (at least until they pay off Cliff Cordes's new Mercedes Benz).

Bean & Gentry also have a few surprises. My partner, **Fred D. Gentry**, purchased a fancy new mid-engine Porsche (I drive a beat-up old Chev.). He drives his car very fast as I'm sure

he'll regret when the sheriff stops him one of these nights.

I have decided to end thirty-two years of bachelorhood and, unless I receive wise counsel to the contrary, will be married on October 27th on the beach at the Napili Kai Beach Club in Maui, Hawaii.

BENTON-FRANKLIN REPORT

By **NEAL J. SHULMAN**

The Red Lion Motor Inn, Pasco, Washington, hosted the August 28 meeting of the Benton-Franklin County Bar Association. Officers for the 1973-74 term were unanimously approved by the membership. Congratulations to **Roger Olson** newly elected president, **John Sullivan** vice president, and **John Crawford** secretary-treasurer. The new officers took over their official duties September 1.

A golf tournament to be held September 21 was to feature the September activities of the Benton-Franklin Bar Association. The tournament will be followed by a prime rib dinner for members and wives.

Judges **Daryl Jonson** and **Brice Horton** have now officially taken their seats as the first Benton County District Court Judges. Judges **Jonson** and **Horton** donned their judicial robes in a formal ceremony held August 30 in the Benton County Superior Court, Prosser, Washington.

Not all the door prizes at the State Bar Convention went to Western Washington recipients. Congratulations to **Stan Taylor** who won a weekend trip to Harrison Hot Springs and to **Don Stancik** who came home with a pair of season tickets to the Husky Football games. For those of us that were not quite so successful, there is always next year.

PIERCE COUNTY REPORT

By **KENYON E. LUCE**

Murray, Scott, McGavick, Gagliardi, Graves, Lane & Lowry announce that **Douglas V. Alling** and **Gregory H. Pratt** have become partners, and **William P. Bergsten** has become an associate with the firm.

Schuyler J. Witt announces that he is continuing his general practice of law at 1535 Tacoma Avenue South, in Tacoma, Washington, and the former partnership is continuing under the name of **Hutchins, Plumb & Wheeler** at 921 Tacoma Mall.

Betzendorfer and Deutscher announce the addition of **Patrick M. Steele** at 2626 North Pearl, Tacoma.

The Pierce County Bar Association held its meeting in September with the topics being "Drunk Driving Offenses;" "Driver Revocations," "Practical Criminal Trial Techniques," and "Grand Jury Investigations." Speakers included **Frank Peters, Tony Savage** and **George Dixon.** (I wonder if the last two topics are a crystal ball indication of what may be forthcoming in the county.)

The Pierce County Bar Association in cooperation with the University of Puget Sound Law School is starting a placement center for law students. The students will be available for regular part-time assignments or occasional projects. The Bar Office will maintain a placement list and background information for attorneys interested in hiring UPS students.

Upcoming on the social docket of the Pierce County Bar will be the apparent Annual Pierce County Bar and Bar Auxiliary Dinner to be held at the Tacoma Yacht Club with **Judge Frank Hale** as main speaker. The box score at the present is: Bar Association, one; Ladies' Auxiliary, zero.

Richard Vlosich has move his office to Fife and is now associated with **Kenyon Luce.** They have established a firm under the name of **Luce & Vlosich** for the continued and hopefully profitable practice of law.

WILLAMETTE LAW ALUMNI REPORT

By **KENYON E. LUCE**

The Washington Chapter of the Willamette Law School Alumni Association held its annual meeting at the Washington State Bar Convention in Vancouver, B.C. The turnout was far greater than had occurred in past years, and many lost alums were found, including **Tom Gish** (Class of '67) who is now practicing in White Salmon, Washington. Other law alumni and friends of Willamette participated in the event. A good time was had by all, and while we didn't receive a state-by-state or college-by-college breakdown of the present first-year class at Willamette, we were pleased to have the presence of **Ross Runkle**, Professor, and **Larry Harvey**, Dean of the College of Law.

Office Practice Tips

More on Automatic Typewriters

My recent article on the IBM Mag Card II typewriter elicited a letter from Attorney James R. Young who practices at 7969 Gilman Street, Redmond, Washington, which reads in part as follows:

"For about the last two years I have been leasing an IBM mag card typewriter, and have been quite pleased with the operation and production of that particular typewriter. What precipitated a change in my office was IBM's letter of February 23, which indicated that the rental charges would be increased by $10.00 per month, with a follow-up in April, that a 24-month contract was available which would give me a lesser cost for the mag card selectric. I was willing to make this agreement with IBM with the exception that I would not agree to pay all costs and expenses and collection and/or repossession including reasonable attorney's fees if I should default under their contract. Needless to say, IBM was unwilling to allow their contract to have those minor modifications so I terminated my arrangement with IBM and started looking elsewhere for other automatic typing equipment.

"The first system that I investigated was that of the Savin, which is a tape operated machine, and operates through a normal IBM selectric typewriter, with slight modifications provided by the Savin people. I was quite impressed with the machine in that it had provisions for inserting up to three or four lines of material at any juncture on the tape. This would allow extensive editing to existing tapes, without having to retype the entire tape. The entire system costs less than $5,000.00 which is approximately $3,000.00 less than the mag card I typewriter and appears to me to provide all of the features of the mag card I.

"I also checked the redactron dual card editing typewriter, which lists for approximately $8,300.00, and appears to me to provide all of the features of the mag card II plus it has greater capacity in the individual cards as well as in the "memory bank" cards. The other item that redactron offers is a contract which does not require a defaulting purchaser to pay repossession costs or attorney's fees in the event of default.

I have decided to sign up for the redactron editing dual card typewriter for the reason that it appears to have a simplicity which is not available in the IBM mag card II typewriter. The IBM mag card II will require 20 hours of formal training and the redactron takes 3 hours. As I understand it, the headings are typed into the memory bank on the mag card II blind, which would indicate that the operator must remember what is in memory. The underscore on the redactron is continuous rather than coded for each word. The redactron has a print control feature which eliminates the requirement for manually logging functions in order to play back as required. The redactron also has automatic line spacing which allows the operator to change from single line replay to double line without having to stop the machine and manually change the line space. The feature that sold me most on the redactron dual card editing typewriter was the fact that the boiler plate material might be typed on regular magnetic cards, and then transferred by word, line or paragraph to the edited card. This will allow a secretary to prepare a set of wills by making up a letter perfect card in a matter of minutes and then running off the wills in a very short time. It appears to me that this particular machine will provide much more versatility than the old mag card I typewriter and perhaps even more than the mag card II.

"One other piece of equipment that has come to my attention and might be of interest to readers of the Office Practice Tips column is the Litton Industries Royal Copier, which produces copy of a quality that is acceptable for filing appellate briefs. This particular machine is offered by a Seattle firm and will copy not only the body of a typewritten text for an appellate brief but also on card stock for the covers. It appears to be a very handy item for do-it-yourself brief writers who wish the convenience of being able to produce briefs in their own office under the rules allowing typewritten briefs."

In connection with the matter of appellate briefs, I have for sometime been running my briefs for the Court of Appeals on the Xerox 2400 machine. Since it will not handle the card stock for the covers we simply program the cover wording on the mag card and type them up as originals. Each cover required one minute of typing time and we normally prepare 36 copies so our total time on typing the covers was 36 minutes.

Harry E. Hennessey

Prepared by the Committee on Law Office Economics and Management, Raymond D. Forbenson, Seattle, Chairman.

such titles as "Intercourse" and "Sex Orgies Illustrated." At least five advertisements, all unsolicited, were received by the manager of a restaurant in Newport Beach, California, who complained to the police.

The *Miller* case presented the court with a situation wherein sexually explicit materials were thrust upon *unwilling* and *non-consenting* individuals. The non-consenting aspect of the *Miller* case is of particular interest when later considering the companion case of *Paris Adult Theater* which involved the showing of sexually explicit motion pictures to *consenting* adults who were not only willing patrons of two Atlanta, Georgia, theaters, but who had paid an admission price for the "privilege" of viewing the films.

Definition Is Altered

The Burger Court began by reiterating the *Roth* proposition that obscene material is unprotected by the First Amendment. The court then proceeded to depart from the previously established *Roth-Memoirs* test by rejecting the final element of the tri-partite definition which required that the material, in order to be classed as obscene, must be utterly without redeeming social value. In its place the court injected a different approach, that is, whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. As a result of the *Miller* decision, the basic guidelines to be applied by the trier of fact in determining whether material is obscene are stated as follows:

(a) Whether "the average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest . . . .

(b) Whether the material depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and

(c) whether the work taken as a whole, lacks serious literary, artistic, political, or scientific value.

As partial justification for the departure from *Memoirs*, the court alluded to the fact that the *Memoirs* test had never commanded the adherence of more than three justices at one time. The court opined that First Amendment values would not be jeopardized by the new test and would be adequately protected by the ultimate power of appellate courts to conduct an independent review of constitutional claims.

The court placed special emphasis on the fact that finally five justices had agreed upon a definition of obscenity. *Miller* marked what the court apparently felt was an end to the unsatisfactory *Redrup* policy whereby each justice was called upon to examine allegedly obscene materials in light of his own subjective test. Whether in practice the test agreed upon in *Miller* will have such an effect remains to be seen. The determination of whether an item lacks serious literary, artistic, political or scientific value still remains highly subjective, more often than not based on individual taste. As pointed out by Mr. Justice Douglas in his dissenting opinion in *Paris Adult Theater*, supra, ". . . tastes, like musical appreciation, are hardly reducible to precise definitions."

An equally important aspect of *Miller* was the court's rejection of the notion that the phrase "contemporary community standards" required the application of *national* standards. Noting that people in different states vary in their tastes and attitudes and that such diversity must not be "strangled by the absolutism of imposed uniformity," the court found that nothing in the First Amendment requires that a jury consider national standards when attempting to determine whether certain materials are obscene. Contemporary *state* standards were held to be constitutionally adequate.

The court further expressed its satisfaction that the specifics of the *Miller* test would provide fair notice to a dealer in questionable materials that his public and commercial activities may result in prosecution. As a practical matter it is extremely doubtful that the hoped-for notice will become a reality. The application of contemporary *state* standards carries with it the realization that standards will vary from state to state. Thus, the dealer engaged in interstate commerce on a nation wide basis must now act at his peril in each of the 50 states. A film, for instance, found to be constitutionally protected in New York and California may lose that protection in Nebraska or Iowa, creating a dilemma not heretofore envisioned by the distributor, nor, perhaps, by the court.

THE PARIS ADULT THEATER DECISION

In December of 1970, the Paris Adult Theater I and Paris Adult Theater II in Atlanta, Georgia,

were showing two motion pictures entitled "Magic Mirror" and "It All Comes Out In The End," both of which depicted sexual conduct which gave rise to the filing of civil complaints attempting to enjoin further showings.

Following a non-jury trial, the complaint was dismissed on the ground that the showing of these films was a constitutionally protected activity. While obscenity had been established to the satisfaction of the trial court, the fact that the films were shown to consenting adults with requisite notice of their nature, together with the fact that reasonable steps had been taken to protect against exposure to minors, rendered the films immune from prosecution according to the trial court.

On appeal, the Georgia Supreme Court reversed, holding that the sale and delivery of obscene material to willing adults was not protected under the First Amendment citing *United States v. Reidel*, supra, and distinguishing *Stanley vs. Georgia*, supra.

To insure that the Georgia Court was guided by the appropriate constitutional definition of obscenity, the Supreme Court vacated and remanded the case for further consideration in light of *Miller*. In so doing, the court made several determinations with important ramifications.

Interest of Public Noted

First, the court categorically rejected the proposition that obscene films received constitutional immunity because they are exhibited to consenting adults. The court held that the states have a legitimate interest in stemming the tide of commercial obscenity, even assuming it is feasible to enforce effective safeguards against exposure to juveniles and exposure to unwilling passers by. These included, according to the court, the interest of the public in the quality of life and the total community environment, the tone of commerce in city centers and possibly, the public safety itself.

What the court in effect said is that one may view and possess obscene material in the confines of his home without the fear of state interference, *Stanley v. Georgia*, supra, but that the state has a legitimate interest in prohibiting such viewing, and presumably possession, within the confines of a motion picture theater, though only consenting adults are admitted. Whether one is in agreement or disagreement with this conclusion, the court's rationale for making the distinction is blurred.

The court allows the states to regulate theaters on the basis of "various unprovable assumptions." In this case, the "unprovable assumption" upon which the state of Georgia was allowed to regulate adult theaters is the assumption that there exists, an arguable correlation between obscene material and crime, according to the *Hill-Link Minority Report of the Commission on Obscenity and Pornography*, cited by the court.

Even if one were to accept the court's justification, the question still remains as to why Georgia may not utilize the same "unprovable assumption" in regulating obscenity in a private home. Certainly the public interest would be the same if we assume a correlation between obscene material and crime. What difference to the public or a victim of crime whether the precipitating cause arose in a private home or a theater.

Examples Appear "Inappropriate"

In emphasizing that legislators and judges have, from the beginning of civilized society, acted on such unprovable assumptions, the court proceeded to cite as examples legislation restricting associational rights in the area of anti-trust law and the prohibitions regulating public expression by users and dealers in securities. Such examples, however, would appear to be entirely inappropriate in terms of being examples of legislation based on unprovable assumptions. The inherent danger to the public caused by a trust monopoly or by a false or misleading statement in a security prospectus has been clearly demonstrated in the past. There would appear to be no such clear demonstration of any correlation between obscene material and crime.

Perhaps the second ramification of *Paris Adult Theater* more clearly points out the "subjectivity" problem of obscenity prosecution discussed earlier in this article.

In holding that the Georgia Court was not in error in failing to require "expert" affirmative evidence that the materials were obscene, the court decided that the materials were sufficient in themselves for the determination of the question of obscenity.

Granted that the presentation of "expert" testimony in obscenity trials often generated more heat than light, nonetheless, under our system of jurisprudence the presentation of such

(Concluded on next page)

Twenty Years Ago

September was lost. So confessed the *Bar News* editor. He did not find it until the middle of October. It is not reported if this was due to bar convention hangovers.

Births

F. A. Kern, Ellensburg, new State Bar President. **George W. Martin**, Seattle, Secretary-Treasurer. **Clydene L. Morris,** Executive Secretary.

SPOKANE: **George W. Young** elected President; **Hugh Evans**, Secretary. **James B. McInturff** appointed Justice of the Peace. **Harvey Erickson** and **Frank R. Freeman** opened in the Spokane and Eastern Building.

FRANKLIN-BENTON COUNTY: **Theodore Peterson** elected president. **Leroy M. Sullivan** opened in Kennewick. **David E. Williams** opened in Labor Temple, Richland.

WHATCOM COUNTY: **William Durnan** joined **LeCocq & Simonarson in Lynden. John T. Slater** joined Leo Goodman. **Richard Nelle** appointed city attorney of Blaine.

SEATTLE: **Mary Sanders,** appointed supervising law librarian of the California State Library at Sacramento. **Paul D. Jackson** opened in the Smith Tower with **Donald H. Wollett** as "Counsel." **Robert M. Elston** joined **McCune and Godfrey**, University District. **Anthony T. Ressa** opened in the Dexter Horton Building. **Larry Hennings** announced he would be lawn bowling around the world. Dean **George Stevens** of Washington Law School made a very impressive talk which was well reported by **Helen Graham Greear**, Bremerton.

PORT OF SEATTLE: Professor **Harry Cross**, University of Washington, appointed Special Assistant Attorney General to survey the work of the office.

Crossed the Bar

SEATTLE: Judge **Chester A. Batchelor. John A. Homer**, 70, former assistant attorney general, former assistant corporation counsel of Seattle and general counsel for the Association of Washington Cities. **John E. Sanders**, 53, former assistant corporation counsel. **John B. Sholley**, 51, professor at University of Washington Law School.

We quote: "One **Paul P. Ashley**, a celebrated proof reader, known to his friends as 'Eagle Eye,' informs us that a leading Oregon newspaper recently stated that a certain divorce had been granted on the ground of 'incompatagility.'"

By David L. Williams

(Continued from preceding page)

evidence has provided a backdrop against which the trier of fact, be it judge or jury, could intelligently determine the issues. The question of contemporary community standards, redeeming social value, or lack thereof, and now, the question as to whether a work does in fact lack serious literary, artistic, political, or scientific value, are questions of fact which must be resolved prior to the time that the legal conclusion as to whether or not an item is obscene can be reached. In the absence of such evidence, the initial trial level determination as to the question of obscenity, and perhaps more important the appellate level decision, can be based on nothing but a subjective determination as to what community standards may be, and whether a work lacks serious value.

The court had previously indicated that First Amendment rights would be adequately protected through an independent review of the materials at the appellate level. On the other hand, what the court now appears to be saying is that neither trhe trial court nor appellate court need have before them factual evidence upon which to base a legal conclusion. Considering the concern expressed by the court in *Miller* over the subjective nature of prior obscenity determinations, this result surely was not the intent of the high court, but would seem to follow as a result of the two decisions.

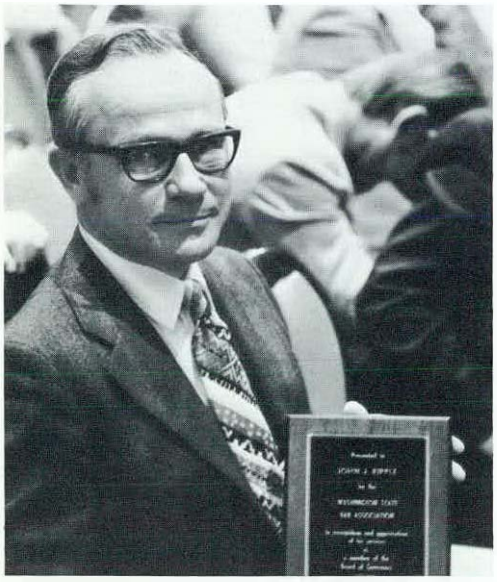
CONCLUSION

Whether the guidelines of the United States Supreme Court can be applied in the objective manner hoped for by the five concurring United States Justices remains to be seen. In the meantime, many might wonder whether the June 21 decisions have not created more problems than they have resolved.

McLauchlan at Large in Vancouver

Charles Stone and Robert Beresford, Seattle

Ed Hilpert and wife, Susan, Seattle



John Ripple, Spokane

Steven M. Clough, Monroe, winner of Hawaii trip, and Helen M. Geisness, Seattle

John Huneke, Spokane

Ken Short, Seattle

Joe Brennan, Olympia

Sen. Pete Francis and wife, Elva, Seattle

William C. McArdle, Yakima

John T. Piper, Seattle

Irving Clark, Seattle

Lem Howell and Ben Gantt, Seattle

The Courts

COURT ADMINISTRATOR

By **PHILLIP B. WINBERRY**

The 1973 Washington Judicial Conference was held in Seattle, Washington, September4-7, 1973. Headquarters was at the Washington Plaza Hotel, where all proceedings took place. There were 136 judges present, these being from the State Supreme Court, the Court of Appeals, and the Superior Courts throughout the State. The full-time judges from the Courts of Limited Jurisdiction were guests of the Conference. Ninety-five wives accompanied their husbands to the Conference.

The Conference was presided over by Chief Justice Frank Hale of the State Supreme Court. Preparations for the Conference were made by Judge Edward N. Nollmeyer, Snohomish Superior Court, who is also President of the Superior Court Judges' Association. Additional assistance was given by Phillip B. Winberry, Administrator for the Courts. The General Conference Chairman was Judge Stanley C. Soderland, Presiding Judge of the King County Superior Court.

The Conference was opened Wednesday morning, September 5, by Chief Justice Frank Hale. Welcoming addresses were given by Honorable Wes Uhlman, Mayor of Seattle, Honorable John Spellman, King County Executive, and Judge Soderland.

A unique feature of the 1973 Conference was the recognition given to 22 new judges attending the Judicial Conference for the first time. These judges were: Robert F. Brachtenbach, Supreme Court; James B. McInturff, Court of Appeals, Division III; Norman B. Ackley, King; Gerry L. Alexander, Mason-Thurston; Dennis Britt, Snohomish; Gerald B. Chamberlin, Clallam-Jefferson; Cornelius C. Chavelle, King; Frank J. Eberharter, King; Philip H. Faris, Whitman; MarshallForrest, Whatcom; William C. Goodloe, King; William J. Grant, Spokane; Bruce Hanson, Yakima; Howard Hettinger, Yakima; Francis E. Holman, King; David C. Hunter, King; B. E. Kohls, Ferry-Okanogan; Ted Kolbaba, Klickitat-Skamania; Janice Niemi, King; Donald N. Olson, Spokane; Waldo Stone, Pierce; Albert Yencopal, Benton-Franklin.

Wednesday morning, September 5, James S. Munn, Chairman of the Washington Judicial Retirement Board and John L. Ryan, Assistant Director of the Public Employee's Retirement System, spoke about the "Fiscal and Administrative Functions of the Washington Judicial Retirement System." The remainder of that day was spent in separate business sessions for the Supreme Court Justices, the Court of Appeals Judges, the Superior Court Judges and the District and Municipal Court Judges.

Judge Willard J. Roe, Spokane Superior Court, addressed the luncheon on September 5, 1973, and spoke on the "Statistical and Substantive Analysis of U. S. Supreme Court Cases, Oct. 1972 Term."

Following a no-host social period, the Annual Judicial Banquet was held in the Westlake Room of the Washington Plaza Hotel on Wednesday evening. Honorable Robert J. Willis, Yakima Superior Court Judge (Retired) spoke on the topic: "The Law Sometimes is a Funny Thing."

Thursday morning, September 6, included a panel discussion of Comparative Negligence and Its Effect After 1974. Judge Edward E. Henry of the King County Superior Court served as moderator. Those participating in the panel discussion were Judge Erle W. Horswill, King County Superior Court and Judge Stanley C. Soderland, also of King County Superior Court. Assisting were members of the bar, Ronald E. McKinstry, Esq. and Sam L. Levinson, Esq., both attorneys in Seattle. Also participating in the morning program was Dean Gordon D. Schaber of McGeorge School of Law, University of the Pacific, Sacramento, California. Dean Schaber gave an interesting presentation on Model Courtroom Design.

The Luncheon on Thursday was addressed by Dr. Lendon H. Smith, a well-known T.V. personality from Portland, Oregon who gave a very humerous and interesting presentation on "How to Win Without Cheating." The remainder of the afternoon was devoted totally to a discussion of The New Comprehensive Criminal Rules. Judge Hardyn B. Soule, Pierce County Superior Court led the discussion on this topic and was assisted by Robert E. Schillberg, Esq., Prosecuting Attorney from Snohomish County who spoke about the rules in relation to prosecution. R. Max Etter, Esq., an attorney from Spokane, discussed the rules from the point of view of a defense attorney.

Friday, the last day of the Conference, consisted of a breakfast honoring the new judges

and their wives. The breakfast was presided over by Chief Justice Frank Hale of the Supreme Court. Following the breakfast, there was a floor discussion and committee reports. The Conference concluded at noon that day.

Judge William H. Williams from the Spokane County Superior Court will serve as the President of the Superior Court Judges' Association for the coming year. The Judicial Conference for 1974 will be in Richland, Washington, with headquarters at the Hanford House. Tentative dates for the Conference will be September 4, 5 and 6, 1974.

SUPREME COURT PRACTICE

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

Here is a summary of the more important cases now pending before the Supreme Court:

No. 42417 *State v. O'Connell, Faler, Alioto*—Is a fee sharing agreement between a private attorney and the Attorney General in an anti-trust action involving several Washington municipal utilities in violation of the conflict of interest statutes and thus void? Are such agreements a breach of a public official's fiduciary responsibility to the electorate?

No. 42742 *State v. Stephens*—a. *Comment on the Evidence*: After the trial court concluded there was insufficient evidence to give an instruction on intoxication, did the judge's statement before the jury, "Well counsel knows what the legal defense is as far as alcoholism is and I don't think it is in this case" constitute a comment on the evidence justifying a new trial?

b. *Admission of Non-judicial Records of Sister State*: Is the statement under oath by a state official that he is the custodian of certain public records and that these are copies of the originals in his possession sufficient or must there also be a certification of the position of the custodian?

No. 42463 *Wyatt v. University of Washington*—Does the Board of Regents under RCW 28B.16 have authority to exempt a position (Master of Research Vessel) which was previously classified under the civil service laws? What notice is necessary and what procedures must be followed?

No. 42505 *Kirk et al. v. Miller, Chairman, et al.*—Does the teacher contract nonrenewal statute (RCW 28A.67.070) apply to noncurricular duties?

No. 42549 *Wright v. Woodard*—Has a county assessor fulfilled his duties under the Forest Lands Act (Laws of 1971 1st Ex. Sess., ch. 294) by determining that his county is not a "timber county" and that therefore he need not classify any of the land in the county as timber land?

No. 42555-42556 *Spokane Education Association v. Orville L. Barnes*—What are the duties of a School Board to negotiate under RCW 28A.72?

No. 42580 *In the matter of the Estate of Glenn W. Granger*—Where a bona fide will contest is settled before judgment, should the state's tax upon the privilege of taking property from a decedent's estate be allocated upon the directions of the will or upon the settlement agreement!

No. 42635 *Valentine v. Johnston*—Should the tax revaluation "rollback statute" RCW 84.48.085 be applied retroactively?

No. 42642 *Jones v. Strom Construction Co.; Strom v. Belden & Thompson*—Is an indemnity provision in a contract between a general contractor and a subcontractor requiring the subcontractor to indemnify the contractor for the latter's sole negligence void as a violation of the public policy? Is RCW 4.24.115 prohibiting such agreements constitutional?

No. 42643 *Commercial Credit Equipment Corp. v. Carter et ux.*

Commercial Code: RCW 62A.9-501 prevents the recovery of a deficiency judgment by a creditor having a purchase money security interest in "consumer goods." Is an aircraft purchased and used in the same manner as a private automobile as "consumer goods"?

No. 42645 *State v. A. Frans Koome, M.D.*—Does RCW 9.02.070 (abortion statute) on its face violate the privacy of minor unmarried pregnant persons by conditioning their right to an abortion—irrespective of physical or mental need or the best interests of the patient—upon prior consent by the legal guardian?

No. 42651 *City of Seattle v Verdon–Constitutional Law*: Is an ordinance prohibiting nudity a violation of the First Amendment if applied to a stage performance in a theater?

No. 42654 *Oestreich v. Ocean Shores Estates*—Is an action alleging violations of the Interstate Land Sales Full Disclosure Act, professional malpractice in the sale of land, violation of the Consumer Protection Act, breach of contract, fraud and breach of a fiduciary duty, transitory in nature and thereby outside the scope of RCW 4.12.010(1)? If it is a local in nature does this statute violate the plaintiff constitutional rights?

No. 42710 *Blaine M. Madden v. Public Utility District No. 1*—Is RCW 54.16.220 which provides that PUD's that acquire land for hydroelectric projects shall grant back to former owners at their request a perpetual easement in the condemned land unconstitutional insofar as it requires a gift back to the former owners after they have received full value?

No. 42757 *Aetna Life Insurance Co. v Washington Life & Disability*—Is the Washington Life and Disability Insurance Act (RCW 48.32A) constituional?

No. 42761 *City of Tacoma v. General Metals of Tacoma, Inc.*—Where goods are sold by one domestic corporation to another domestic corporation within the county, but are thereafter exported, have the goods so embarked upon the stream of commerce that the state is barred from collecting an excise tax upon the parent/seller corporation's activity in whole selling the goods?

No. 42766 *Leschi Improvement Council et al. v. State Highway Commission*—Where a statute requires the swearing of witnesses at an administrative agency hearing, and not all witnesses are in fact sworn, is action taken following the hearing invalid? Did the environmental impact statement submitted by the State Highway Commission comply with the State Environmental Policy Act?

No. 42785 *Dairyland Insurance Co. v. Donovick*—Is an "exclusionary clause" in a "drive in other car" provision of an automobile insurance policy against public policy?

No. 42786 *Allen v. Employment Security Dept.*—Whether RCW 50.20.020 is to be construed so that the 26 week disqualification period contained therein runs in addition and subsequent to the total disqualification period contained in 50.20.060 or runs concurrently therewith.

No. 42818 *Economic Assistance Authority v. O'Brien*—Constitutional Law—The Economic Assistance Authority desires to furnish funds for an industrial park on an Indian Reservation. Does the Economic Assistance Act of 1972 authorize expenditure of funds, and, if so, would the proposed expenditure be a gift prohibited by the Constitution?

No. 42819 *State v. Pringle*—Whether upon the charge of the crimes of robbery armed with a deadly weapon as defined in RCW 9.95.040 and a firearm pursuant to RCW 9.41.025 it was error for the trial judge to fail to enter a special finding that the defendant was armed with a deadly weapon as defined by RCW 9.95.040 and a firearm pursuant to RCW 9.41.025.

No. 42826 *Hanson et al. v. Hutt*—Is the provision in RCW 50.20.030 which disqualifies pregnant women from receiving unemployment insurance benefits when they are precluded from engaging in their employment by reason of pregnancy unconstitutional?

No. 42829 *State v. Bell*—appeal from court of appeals—Whether it was proper under the provisions of RCW 69.40 to instruct a jury that a doctor may only sell drugs if he does so under the following three conditions: (a) in good faith; (b) in the course of professional practice and (c) for therapeutic purposes? Whether RCW 69.40.060 and 60.40.064 are sufficiently clear to comply with the constitutional requirement that a statute cannot be so vague that men of ordinary intelligence will be unable to understand it.

No. 42848 *State v. Eller*—Was it error for the trial court to grant a continuance (RCW 10.46.080) where counsel for defendant by affidavit alleges that a material witness is unavailable.

No. 42854 *Monroe et al. v. Tielsch*—Is the maintenance of juvenile arrest records or the divulging thereof unconstitutional as a violation of the juveniles rights to due process?

No. 42868 *State v. Sponburgh et al.*—Does a trial judge have authority to release grand jury evidence following the dismissal of the indictments?

No. 42884 *Fruetel v. Safeco Insurance Co.*—Is a thirty day notice required within an automobile insurance policy void for the reason that it provides less coverage than that made obligatory by the uninsured motorist statute? (RCW 48.22.030)

No. 42885 *Morris v. McNicol*—Plaintiff seeks damages for the formation of a sandbar in front of his beach property resulting from alleged operations of a real estate developer and gravel pit operator located some distance upstream. Are defendants protected by the doctrine of Damnum Absque Injuria?

No. 42886 *Talps v. Manuel Arreola*—Is an automobile repair shop entitled under the provisions of RCW 60.08 to retain possession of an automobile repaired where the amount due is in controversy prior to any judicial hearing?

No. 42888 *Morrison v. Rutherford*—Taxation—Is cyclical revaluation of real property constitutional when it results in a 100% disparity in the assessed valuation of like property.

No. 42890 *Lutz v. City of Longview*—Does the delegation of authority to a planning commission to approve "planned unit developments" constitute an unlawful delegation of legislative authority?

No. 42920 *King v. City of Seattle*—Whether refusal to grant a street use permit to gain access to submerged property on Lake Washington subjects city to liability for damages.

No. 42921 *Bassan et al. v. Investment Exchange Corp.*—Whether a general partner under the provisions of the Washington Limited Partnership Act (RCW 25.28) is precluded from selling property to a limited partnership for an amount in excess of acquisition costs.

Petitions for Review

No. 42729 *Standlee v. Smith–Collateral Estoppel*: Does the doctrine of collateral estoppel bar the Parole Board revoking parole on charges identical to those on which the petitioner was acquitted in a superior court case?

No. 42755 *State v. Odom*; No. 42758 *State v. Rogers*—Is the statutory presumption (RCW 9.41.030) that a person armed with a pistol with no license to carry same intended to commit a crime of violence—irrational and unconstitutional?

No. 42775 *Helling v. Carey*—Where a particular standard of care exercised by an entire special class of physicians uniformly is itself in light of the special skill and knowledge of members of that class, is a plaintiff in a negligence action entitled to an instruction that would permit the jury to find the standard of care to be negligent, and, thereby, to find the defendant following such standard to be negligent?

No. 42788 *Farm Supply Distributors v. Wash. Utilities & Transportation Commission*—Does an appellate court in reviewing an administrative order inquire into whether there is substantial evidence to support the lower court's findings, determine whether the administrative order is arbitrary or capricious, or apply the "clearly erroneous" test pursuant to RCW 34.04.130(6)?

No. 42799 *P. Lorillard Co. v. City of Seattle*—Does RCW 82.02.020 particularly its language pre-empting" . . . the field of imposing taxes upon . . . cigarettes" deprive a city of the power to consider gross proceeds derived from a cigarette wholesaler under a general municipal business and occupation tax which is levied for the privilege of engaging in business activities and uses gross proceeds to measure? Does RCW 82.02.020 preclude local taxation (including application of general tax licensing laws) that might indirectly as well as directly increases the price of cigarettes?

No. 42821 *State v. City of Kirkland*—Is a statement by the Shorelines Hearing Board that board members have divided three to three on an appeal, a final decision under the Shoreline Management Act of 1971 and reviewable in the superior court under the provisions of the Administrative Procedure Act? Where there is a split is it a proper exercise of discretion for the trial court to remand the case to the Board for further consideration where there has been a change in membership?

No. 42834 *State v. Renneberg & Lavanway*—Whether in a criminal case a witness who takes the stand on his behalf may on cross-examination be asked if he or she is addicted to or using

narcotic drugs or on a program to cure narcotic addiction.

No. 42840 *Rosellini v. Banchero*—When parties to a cost plus contract have a dispute regarding the cost plus items and mutually agree to a compromise figure, is there consideration for the contract?

No. 42852 *Glaspey & Sons Inc. v. Conrad et al.*—Is notice sufficient under RCW 36.70.630 when (1) it failed to state that it was the final hearing before adoption of the ordinance (2) it did not set out the ordinance in whole and (3) made no reference to official zoning maps?

Is RCW 36.70.630 or due process violated when the Board of Commissioners, without additional notice adopted amendments introduced at the subsequent continued hearing?

SUPERIOR COURT NEWS

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

New officers of the state Superior Court Judges Association, elected at the September 5-7, 1973 Judicial Conference, are: Judge **William H. Williams** (Spokane), President; Judge **J. Guthrie Langsdorf** (Clark), Vice-president; and Judge **Frank D. Howard** (King), Secretary-Treasurer. Judged **W. R. Cole** (Kittitas) and **Robert A. Hannan** (Pacific) were elected to the Board of Trustees.

* * *

Judge **Warren Chan** (King) will serve as Dean for a Criminal Law Seminar for all state Superior Court, District and Municipal Court judges to be held at the Washington Criminal Justice Education and Training Center, Issaquah the week of January 7, 1974. Emphasis will be upon criminal topics, however, some time will be devoted to selected civil law subjects.

* * *

Judge **George H. Revelle** (King) has been elected vice chairman of the National Conference of State Trial Judges. As such, he is slated to become chairman of the national conference in 1975. Judge **James A. Noe** (King) was elected to the executive board of the Conference at its annual meeting attended also by Judges **W. R. Cole** (Kittitas), **Oluf Johnsen** (Kitsap) and **Edward E. Henry** and **Nancy Ann Holman** (both King).

The Gonzaga University School of Law has begun publication this fall of a monthly newsletter especially designed to help keep its graduates aware of what is happening on the rapidly expanding campus.

The first issue of the publication, "Transition," is devoted to the changes that have occurred on the Spokane campus: a new dean and his assistant, added classroom facilities, broadened curriculum, expanded faculty and new student profile.

Edited by second-year-day student Frank V. Slak Jr., "Transition" is the first alumni publication at Gonzaga expressly aimed at law school graduates. They are encouraged to send any information about themselves or former classmates to the law school.

A woman's place is in the Gonzaga University School of Law—at least it is for third-year-day student Jane Hotneier.

A native of Kalamazoo, Mich., she has established her presence there by receiving the first perfect grade report in at least 25 years, according to Francis J. Conklin, S.J., dean.

Miss Hotneier, who is working as an intern at the Spokane office of the Washington State Attorney General, received "A" grades in all six of her classes during the second semester of the last school year after earning an "A" and "A-" in two first-semester courses.

As a result of her scholastic achievement, Miss Hotneier is being awarded a full-tuition scholarship for her final year of studies at the Spokane school, Dean Conklin said.

Professor Robert Fletcher
U. of W. School of Law

A progressive step for the Bar

As a profession, lawyers are happy these days with anything that smacks of good news, what with the steady stream of attorneys implicated in the Watergate scandal.

Washington's bar association has just adopted a plan for certifying lawyers as specialists in various fields of law and it should be welcome news to the public because it will benefit the most.

For years, the legal profession has been hampered by ethical code strictures which barred them from listing themselves as specialists—with only one or two exceptions. Patent attorneys have always been able to list themselves that way and so have specialists in admiralty (maritime) law in some states.

A lawyer is a lawyer and presumably can handle any sort of legal matter presented to him. That is how the logic has gone.

But it is ridiculous to suggest that any lawyer can handle any legal matter with the same degree of competence and expertise. Some lawyers know more about corporate law than others. Some know more about workmen's compensation than others who may know more about criminal law than yet another lawyer.

Just as there are specialists in medicine, there are specialists in the law. There are tax attorneys, bond attorneys, real estate attorneys, trial attorneys, personal injury attorneys, defens attorneys, tax, domestic relations, appellate and a number of other specialists.

But the public hasn't know this. Under attorneys in the telephone book there are just a list of names. How is the public to know who is a specialist in the area some individual needs help with? Now it can.

People ought to be able to pick and choose among specialists. After all, if you are ill with chest pains, you don't want an orthopedic surgeon to examine you, you probably want a cardiologist. Similarly, if you want to see a lawyer about the injuries you received from a fall on a wet store floor, you want to see an expert in personal injury suits, not some person who spends most of his time doing federal tax law.

The new bar program will allow lawyers in Washington to be certified as specialists in three fields. A special specialization board has been established and it will govern the program. The bar is going to try it for five years and then review it.

Any attorney may apply to be certified as a specialist in a particular field. There will be written and oral examinations before certification, much like specialists in medicine.

This new program ought to help the attorneys as well as the public. Persons will be able to find attorneys whose specialty meets their needs.

And lawyers who are specialists ought to be able to spend more of their time practicing their specialty and not be interrupted by persons seeking help in some field far from theirs.

As for the citizen who doesn't know what his problem is, there will still be the general practicing attorney—much like the family doctor of yore—a man who does a little of everything.

– Longview News

Specialization

(Continued from page 10)

These requirements may vary from specialty to specialty. In no event, however, should they be either so restrictive as to unduly restrict certification of lawyers as specialists, or so lax as to make the experience requirement meaningless.

b. "Special educational experience" is intended to be a measure of the involvement of the applicant to the study of the law in a particular field of specialty. The requisites of "special education experience" will vary depending upon the particular field of law specialty. Special educational experience might consist of appropriate work under the auspices of recognized continuing legal education programs, law school postgraduate work, attendance at symposiums, lecturing in programs presented by any of the foregoing, rigorous self-study programs, and apprenticeship in a specialty. Due recognition should be given to innovative, educational programs. The requirements of "special educational experience" must be defined for each specialty field by the respective Boards of Certification.

Briefly Noted

Convention Seminar Book Now Available

Convention 1973, containing the papers presented by speakers at the State Bar's annual-meeting seminars at Vancouver, B.C., now is available from the State Bar Office.

The softbound, 8½ x 11-inch book contains 386 pages and is priced at $7.50.

The contents:

New Federal Rules of Evidence, by John C. Coughenour; **New State Criminal Rules**, Frank L. Sullivan, David Boerner, John L. Farra, Murray B. Guterson; **Evidence Update**, Irving M. Clark Jr., Paul R. Cressman, Hugh Miracle, William Wesselhoeft; **Divorce: Practice Under the New Statute and New Developments in Old Problems**, Homer Crollard, Evelyn L. Foster, Judge Nancy Ann Holman, Robert F. Phillips, Richard H. Riddell; **The Legal Assistant: How, When, Who**, Grant J. Silvernale, Stephen E. DeForest, Dennis Gaasland, Georgia Hinton, Suzanne Smith.

State Tax Seminar Coming Up

An outstanding CLE seminar is on tap for Washington State lawyers this Fall.

Washington State Taxes: Substance, Administrative Remedies, Trial Practice, a full-day program, will be presented December 1 in Olympia, December 8 in Seattle and December 14 (Friday) in Spokane.

John T. Piper of Seattle is chairman and will preside over an expert and authoritative "faculty." Joining Piper as a panel commentator throughout the program will be **Timothy R. Malone**, counsel to the State Department of Revenue. Other speakers include:

S. E. Tveden, director of the Interpretation and Appeals Division of the State Department of Revenue; **James A. Furber** of Tacoma, former chief counsel to the Department of Revenue; **Graham H. Fernald** of Seattle, whose practice has emphasized state tax matters; **Michael L. Cohen**, a tax specialist in the King County Prosecuting Attorney's office; **Harley H. Hoppe**, King County Assessor; **E. M. (Sandy) Murray** of Tacoma, a frequent writer and speaker on tax matters; and **James R. Stanford**, member of the State Board of Tax Appeals.

The program is designed to examine in depth many of the problems a lawyer meets in a day-to-day general practice, and will explain the nature and substance of the various taxes, approaches to valuations, the important areas of exemptions and limitations, tax procedures, appeals and appeal procedures and litigation.

Advance registrations are strongly urged, though door registrations will be accepted. A practical and valuable Practice Manual will be given to all registrants.

Ideas for Legislation?

Individual members of the State Bar, as well as Bar committees and sections, with suggestions or proposals for state legislation are being asked to send them along to the State Bar Legislative Committee. The committee was scheduled to discuss at its October meeting proposals for the 1974 Legislature, and already is seeking suggestions for the 1975 session. Proposals for the 1975 Legislature should be submitted by May 1, 1974, to the Legislative Committee. Anyone with such suggestions should send them to the committee chairman, Edward N. Lange, 4200 Seattle-First National Bank Building, Seattle 98154.

Judge Horowitz Named To Judicature Board

Judge Charles Horowitz of the Court of Appeals of Washington has been elected to represent the state of Washington on the board of directors of the American Judicature Society. As a director, he will work with the Society in its programs to achieve court modernization both in Washington and throughout the nation. Judge Morell E. Sharp of the United States District Court was re-elected to another one-year term as Washington's other representative on the Society's board of directors. The American Judicature Society is an organization of more than 45,000 lawyers, judges and lay citizens dedicated to improving the administration of justice in the United States.

Oops . . .

The new State Bar Directory of Attorneys is remarkably but not totally gremlin-free.

So right now, while you are thinking about it, why not grab your copy of the directory and a pen and do two things:

On Pages 36 and 123, add the name of William Lucht, 205 Rookery Building, Spokane WA. 99201, telephone 509-MA 4-7707.

And on Page 15, an unfortunate "typo" added a "d" that does not belong on the name of Dewar, Warren L. Jr. And that has meant some mail misdirected to Warren L. Dewar, the senior, in Seattle. So strike that "d" off the Dewar Junior of Yakima.

Notices

Wanted and Unwanted

Will Sought: Anyone having knowledge of a Will of Jack H. Carstens, notify Mrs. Mildred Baskerville, 4103 North Adams, Spokane, 99205.

For Sale: A.L.R., Vol. 1 through 175; A.L.R. 2nd, Vol. 1 through 68 2nd. Also R.C.W. Bellingham; call 733-5150.

For Sale: Complete set of Corpus Juris Secundum with current pocket parts. Don W. Schussler, Yakima, 509-248-1900.

Wanted: Used RCWA. Legal Services, Box 1844, Omak (509) 826-2621.

For Sale: 1-3 Ter. 1-163 1st series Wash. Reports; 1-32 ALR 2d. Irving Koths, Box 306, Morton, 98356

Books for Sale: *United States Code Annotated* - $800; *Washington Practice* - $275: Rabkin and Johnson *Current Legal Forms* - $300 (10 volumes); Loucks & Lamb, 820 Logan Building, Seattle, Washington 98101, Phone: 622-3280.

Office Space: Share receptionist, library, conference room with 9 man law firm, 37th Floor Bank of Cal., 3 offices available, occupancy early next spring. Terms negotiable 623-8433.

For Sale: Complete, up-to-date Moore's Federal Practice; best offer. J. Dorman Searle, 1107 Park Street, Chehalis, 98532.

Books for Sale: *American Law Reports 1st, 2nd & 3rd Series* (some volumes missing). Also Morse's Federal Practice: Vols. 1 & 2.

Calendar

Dec. 1	CLE Seminar, Evergreen Inn, Olympia, Washington State Taxes: Substance, Administrative Remedies, Trial Practice. John T. Piper, Chmn.; Speakers: Michael L. Cohen, James Furber, Graham H. Fernald, Harley H. Hoppe, James R. Stanford, S. E. Tveden, E. M. Sandy Murray; Consultants: William R. Anderson, Michael B. Hansen, Robert S. Muckleстone.
Dec. 8	CLE State Tax Seminar, Olympic Hotel, Seattle.
Dec. 14	CLE State Tax Seminar, Ridpath Hotel, Spokane.
March 15, 23 and 30	CLE Seminar in Spokane, Seattle and Olympia on Personal Injury Practice Under The Comparative Negligence Law.

LAWYER PLACEMENT SERVICE

By **DAVID L. BROOM**, *Spokane*

Most Washington lawyers now at least know that the Lawyer Placement Service "exists". That step took about five years. "Step two" will occur when most Washington lawyers either seeking jobs or seeking other lawyers will utilize our files as a *primary resource*.

I am certain that most prospective employers completely overlook the files and I am equally certain that most prospective employees generally do use our service. This exacerbates the current supply and demand problem in the legal field.

Here are a few of the files currently lodged both at the State Bar Office in Seattle and at the Spokane County Law Library:

1. Seattle native, now Texas lawyer, seeks to relocate in Washington in either large or small town. Was honor student and has experience in environmental construction law.
2. Legal Services Director needed for large metropolitan-area office. Salary $20,000.
3. Hotel chain seeking staff attorney having two to three years of experience in corporate and real estate law.
4. Several deputy prosecutors sought by Western Washington county. Trial experience desired.
5. A rapidly expanding municipal corporation has an opening for a staff attorney. Five years experience in construction contracts, public financing and municipal law desired. Member of Washington Bar. Salary will be based on experience and background. Send resume to Box SS, Bar News, 505 Madison Street, Seattle, Washington 98104.

WASHINGTON STATE BAR ASSOCIATION
505 Madison Street
Seattle, Washington 98104