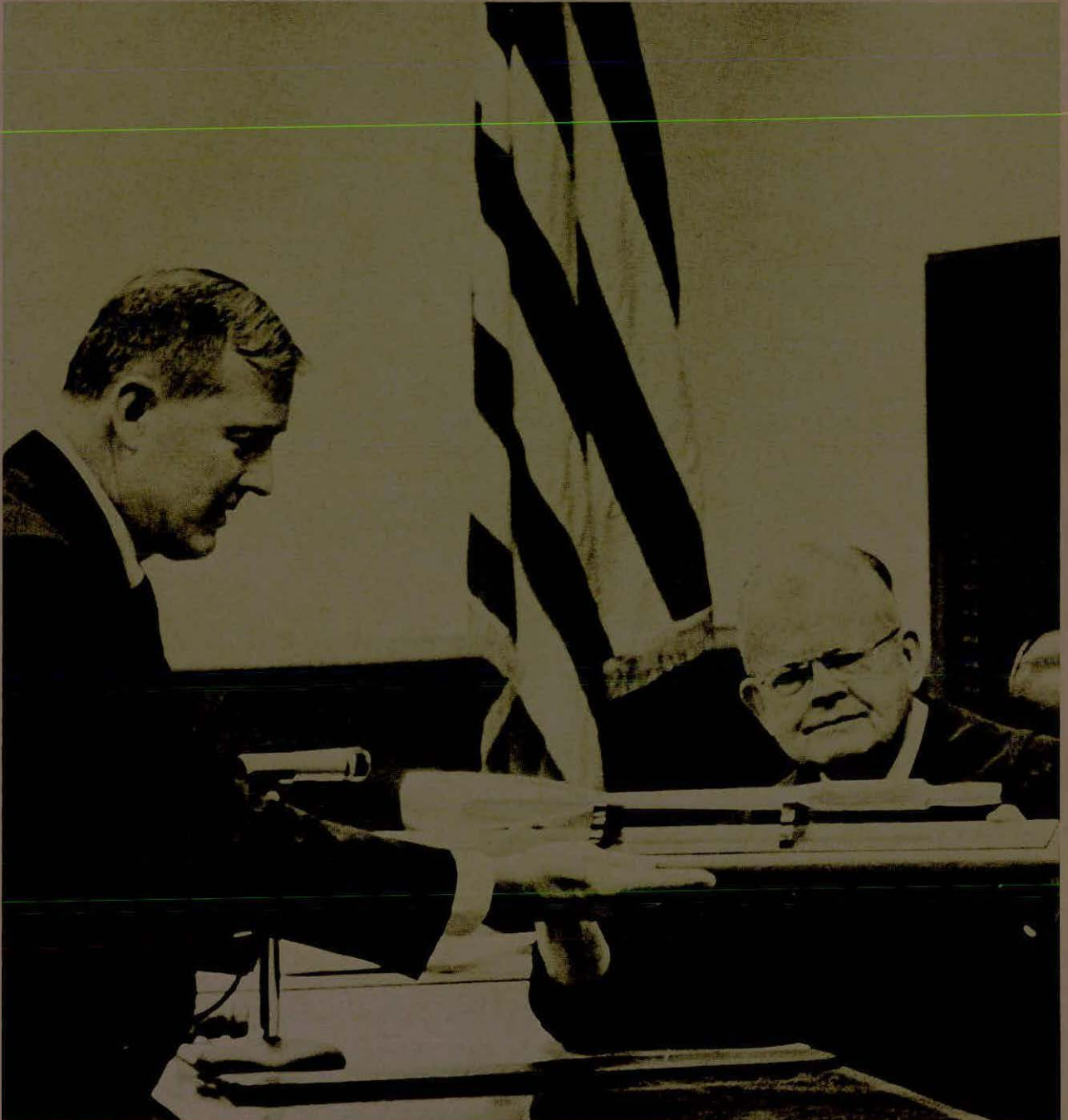


---

# WASHINGTON STATE BAR NEWS

---



---

JUDGE WILLIAM T. BEEKS RECEIVES SILVER OAR

---



# MEMORANDUM

TO: All State of Washington Attorneys

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

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

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

## LEGAL DIVISION

*(Pertaining to the printing and disposition of appellate briefs)*

- Brief drafts are edited to conform to the current rules on appeal.
- Index and case authority are prepared for you automatically with special attention to the correct form of citations.
- Briefs are printed either letterpress or offset; are served for you on opposing counsel (either personally or by our affidavits of service duly prepared and notarized) and we file the requisite number of copies. The above services take place in most instances within 48 hours after receipt of copy.

- We specialize in appellate briefs for the Washington, Idaho and Oregon State Supreme Courts; The Washington State Court of Appeals; The Ninth Circuit Court of Appeals; The U.S. Supreme Court; The U.S. Court of Claims; and the Interstate Commerce Commission.

## FINANCIAL DIVISION

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

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

The Metropolitan Press

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

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

s/BARRY J. REISCHLING  
Manager, Legal-Financial Divisions  
CRAFTSMAN-MET PRESS  
*(Metropolitan Press)*

Fairview Avenue N. & Valley, Seattle, Washington 98109

*(paid advertisement)*

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

Hugh R. McGough, *Editor*  
Edward W. Huneke, *Associate Editor*

Material, including editorial comment, appearing herein represents the views of the respective authors and does not necessarily carry the endorsement of the Association or of the Board of Governors. Direct all copy to Bar News, State Bar Office, 505 Madison, Seattle 98104.

© 1974 by Washington State Bar Association  
Published monthly, except August-September combined. Subscription price is \$5.00 a year, \$0.50 a copy. Subscription included with active membership. Back issues \$1 per issue.

United Graphics



#### WASHINGTON STATE BAR ASSOCIATION OFFICERS

CLEARY S. CONE  
*President*  
RICHARD H. RIDDELL  
*Secretary-Treasurer*  
G. EDWARD FRIAR  
*Executive Director*  
ROY C. MITCHELL  
*Director of Professional Activities*

#### BOARD OF GOVERNORS

CLEARY S. CONE  
*President*  
RICHARD H. RIDDELL  
*First Congressional District*  
EDWARD J. NOVACK  
*Second Congressional District*  
JOHN J. CHAMPAGNE  
*Third Congressional District*  
ROBERT S. DAY  
*Fourth Congressional District*  
JOHN E. HEATH, JR.  
*Fifth Congressional District*  
NELL J. HOFF  
*Sixth Congressional District*  
JAMES P. CURRAN  
*Seventh Congressional District*  
WILLIAM H. GATES  
*King County*  
LEWELYN G. PRITCHARD  
*King County*

#### EDITORIAL ADVISORY BOARD

RICHARD A. MONAGHAN  
*Tukwila, Chairman*  
C. JAMES JUDSON  
*Seattle*  
R. MICHAEL NIGHT  
*Everett*  
VERNON L. LINDSKOG  
*Olympia*  
EDWARD H. MCKINLAY  
*Bremerton*  
MASON D. MORISSE  
*Seattle*  
A. J. NICHOLSON  
*Tukwila*  
EDMUND B. RAFTIS  
*Seattle*

#### 6 Pre-Trial Diversion and Deferral Programs; The Lady or the Tiger

King County's new Public Defender looks at a changing aspect of criminal practice

#### 10 N.O.W. is Not the Time to Discriminate Against Women Lawyers

Female lawyers are entitled to equal treatment too.

#### 22 A New Year's Resolution for Lawyers: Realize Your Great Potential

A formula for a successful 1974

#### 25 Charisma Si! Public Relations Gimmick, No!

A worthwhile article from the Wisconsin Bar Bulletin

#### IN THE NEWS

13 Judge Beeks Receives Silver Oar

21 Law School Statistics, July '73 Bar Exam

33 Law School Dedication Set

#### DEPARTMENTS

2 Letters

4 Editor's Notes

5 President's Corner

15 Twenty Years Ago

16 The Board's Work

18 Around the State

24 A.G. Opinions

29 The Courts

35 McLauchlan at Large

36 Notices

36 Calendar

Cover: Ed Biele, member of the admiralty bar for the Western District of Washington, makes presentation of Silver Oar to Judge Wm. T. Beeks.



## On Judging Judges

We all judge judges; but what consequence to a judge if he is judged to have judged badly? An appeal, you say? If available, is an appeal of consequence to the judge? What cares he if the litigants seek relief above? What does one do if a judge refuses even to give a reason for his action? A violation of judicial ethics? So what?

I am not here concerned with merely incorrect rulings, but patently erroneous actions where the judge does not address himself to the litigant's arguments, and steadfastly refuses to indicate any basis for his action. A violation of procedural or substantive rights? So what?

Should a judge be criticized? Are not judges in a position to intimidate would-be critics? What, if any, effective means are at hand to prevent or at least deter bad judging?

ANTON J. MILLER  
Raymond, Wash.

## Bond for Bar Urged

I note that the Board took up certain matters relating to the handling of office trust accounts in its meeting on August 17-18. Most of the suggestions were directed toward education of lawyers with respect to their responsibility for trust funds. I think this is all to the good; but it really falls far short of what is needed.

Our primary concern should be protection of clients. The

Client Security Fund provides limited protection. Disbarment or other disciplinary action of an attorney who has misused trust funds does not make the client whole. I would suggest for your consideration a blanket fidelity bond which would cover each and every attorney authorized to practice law in this state, and their employees. In this manner, a client would be assured of not sustaining a loss because of a defalcation of an attorney. The annual license fee could be increased in an amount sufficient to cover the cost of such a bond. Alternatively, an attorney could be required at the time of license renewal to provide proof of fidelity bonding.

The amount of the bond should be substantial—somewhere between \$25,000 and \$100,000. It has always struck me as being anomalous that one needs to have a bond to be a Notary Public or a used car salesman, yet an attorney is free to practice law with no bond at all.

I suppose that if we were really true to our trust, we would also insist upon compulsory malpractice insurance. As each of us bears the brunt of the negligence of other lawyers through increases in our malpractice insurance premium, we would provide better protection for clients and encourage more awareness on the part of all attorneys of the necessity of maintaining standards of professional competence.

A client who has been victimized by neglect or defalcation of counsel is rarely able to obtain a recovery from that counsel. The attorney who plays fast and loose with his client's money is generally nearly broke by the time of discovery. Too often the neglectful attorney also

neglects to obtain malpractice insurance and lacks sufficient funds to respond to a client's claim. We ought to acknowledge that no system that man can create will insure that each and every lawyer admitted to practice is honest and will remain honest throughout his career, and during that career will never make a negligent mistake. All of us who practice law should be willing to undertake the expense of protecting the public.

I am sending a copy of this letter to the *Washington State Bar News* in the hope that it will be published in the Letters section and stimulate comment from other members of the Bar.

MALCOLM L. EDWARDS  
Seattle

## Have Done With Debate

Editor:

The word "obscenity," like the word "sin," can provide an endless source of confusion, intellectual discourse, and semantic debate, under the cloak of which the real problem grows rapidly larger. So, it seems to me, is the content of the Miller decision reviewed in the [October-November] Bar Journal. Each State in the Union has now, and has had for many years, adequate criminal code provisions, specifically defining and proscribing the very conduct over which the current debate rages.

Surely the expression of our several legislatures, declaring oral sexual conduct and the active conduct of homosexual relations, as well as those with animals, as criminal, and customarily as felony conduct,

should be a reliable index and statement of public policy, much more determinative than the "expert" opinions of college professors and various pollsters. To me, the matter is as simple as that. What one cannot do without the risk of felony conviction, cannot be done vicariously and enacted, whether in movies or on the stage, or even in narrative reports, urging the conduct. The declaration of our legislature on what is prohibited sexual conduct should, it would seem, relieve the courts of the uncertainties debated under the obscenity decisions.

Wisdom (in large part, the accumulation of understanding from the mistakes of previous civilizations) has been able to recognize the consummate evil, both of the subject of the debate and the even more subtle evil of endless argumentation over the obvious. We are dealing here with a cancerous invasion into our social framework and should soon have done with debate, perhaps heeding the words of Alexander Pope:

Vice is a monster of so  
frightful mein  
That to be hated needs only  
to be seen.  
Yet, seen too oft, familiar  
with her face,  
We first endure, then pity,  
then embrace.

ROBERT E. CONNER

Wenatchee

## A Fine Article, But . . .

Editor:

Neal Shulman is to be commended for a fine job of outlining the Supreme Court's significant and complex decisions regarding the law of obscenity. This is an area of the law with which I have come into close (one is

tempted to say intimate) contact lately, and I would like to make a few comments on Mr. Shulman's article.

First—and this is a quibble—the decision in *Stanley v. Georgia*, 394 U.S. 557 (1969), that the possession of obscene material in one's home for his own purposes is protected by the First Amendment, was an anomaly. The principle was stated first in *Roth v. U.S.*, 354 U.S. 476 (1957), and reiterated in *Miller v. California*, 41 LW 4925 (1973), that "obscenity is not within the area of constitutionally protected speech or press." The idea that one should be able to do as he pleases by himself in his own home is appealing to most of us and is supported by legal tradition. But either obscenity is protected by the Constitution or it is not, and aside from the *Stanley* case the Court has consistently held that it is not. That is why, of course, there is all the hubbub over a legal definition of obscenity. The hope is that police, prosecutors, and the public will know what enjoys constitutional protection and what is obscene. My point is that

*Stanley* is a poor decision from a technical—as opposed to a moral and practical—point of view, and should be labeled as such.

Secondly, Mr. Shulman seems to imply that the new *Miller* test for obscenity by no means solves the myriad problems extant in this area of the law, and I would agree with that. However, I believe that the new test is somewhat easier to apply in most situations than the old "utterly without redeeming social value" test. For one thing, the problem of the application of contemporary community standards might not be as formidable as at first it sounds, because under the new test those standards seem to apply to the question of whether the material appeals to the prurient interest, and not to the balance of the test. By that I mean that, although the Court in the summary of its holding states that "obscenity is to be determined by applying 'contemporary community standards'," in the body of its opinion the Court refers to the application of "contemporary community standards" to the question of the prurient interest of the

(Continued on page 34)



Norman Ericson, Olympia, and Charles Carey, Seattle



## Editor's Notes

Edward W. Huneke of Seattle is the new Associate Editor of the *Bar News*. Ed graduated from Gonzaga Law School in 1965; was an assistant Attorney General assigned to the Department of Highways from 1965 to 1968; practiced with McCutcheon and Groshong in Seattle from 1968 to 1970; practiced with Charles S. Rhyne in Washington, D.C., from 1970 to 1973; and has now hung out his shingle as a solo practitioner in Seattle.

In the future, we hope to have an Editor and an Associate Editor at all times so that there is always a lawyer in training to take over the job of editor.

Ed has contributed the following "Notes."

HMCG

Bar Associations throughout the country have been once again confronted with the proposition of issuing a policy statement of Association opinion upon a current issue of general public interest. For December the question focused upon the recent conduct of President Nixon. During this past August and September the question focused upon the decriminalization of the possession of marijuana.

The emotional reaction aroused by the subject matter of these issues is sufficient to provoke weeks of continuous debate among any group of persons, to say nothing of a group of lawyers. The length to which these debates among lawyers could extend is not nearly so much the result of the alleged propensity of lawyers to expound verbiage as it is evidence of caution and thoroughness, the necessity of being fully informed, the critical eye through which an attorney is constantly required to view people, their statements and actions.

The necessary hours, days or weeks for such debates is not available to us in any practical manner. Yet, as lawyers, who live with order, rules of practice and procedure, a logical, sequential process of reasoning, and a mandate of "preparation" as the necessary means of achieving our desired results, we revert to an equally impractical procedure. We confront ourselves with the momentous task of arriving at decisions on major issues (which are then published to society at large as our learned opinion on the subject) without affording ourselves the same reasonable preparation which we

would demand as a matter of right for our clients. For instance, at the marijuana debate in Vancouver, for numerous reasons the majority of members received notice of the topic only shortly before the debate. As a consequence, some of the persons who desired to express their opinions felt compelled to say that they had had insufficient time to prepare the presentation they wished to make. Nevertheless, after a short and stormy debate, a vote was taken which allegedly represented the majority opinion of the members of this Association.

This past month the "conduct of Mr. Nixon" issue was presented at several local Bar meetings, at at least one of which occurred a similar procedure, allowing inadequacy of time or preparation for speakers in debate.

While these Editors' Notes will not attempt to either support or criticize the "marijuana" position or a position on the "conduct of Mr. Nixon" they wish to point out that one major and common consideration at these debates is "What is the role of the Association in making public statements." Two of the state's local bar associations have voted with results opposite to each other. There appears to be a substantial question within our own state membership as to the purpose of an Association and the role of lawyers as responsible, learned members of society. This apparent inconsistency may possibly be due to the lack of either opportunity for full debate or a reasonable and practical procedure, which would provide for adequate preparation by the respective proponents and opponents.

Therefore, the *Bar News* suggests to each of the members of the Association that while "marijuana" and "Mr. Nixon" may be topics temporarily closed to formal debate by the Association, certainly the question of the role of the Association in making public statements is not closed. Neither should the current procedures for presenting debate on substantial questions be free from continuing and constant examination and inquiry as to their inadequacy. The *Bar News* is your readily available and valuable forum for the expression and persuasion of opinions. Through the letters and articles of the members and dissemination of reasons, reactions, arguments and controversy, the membership can realize a greater degree of preparation and formation of opinions and positions which will aid us all in arriving at a meaningful and valued public opinion statement, if one is to be given.

Edward W. Huneke



It is a temptation to try to place in this space each month a polished essay expository of some new and progressive program—a piece so well done and on such a provocative theme that it will be reprinted in Bar journals throughout the country—something that, even if wrong, will be quoted for years to come.

Our Bar in fact is a leader in progressive programs, for example, certification of specialists and lay involvement in the disciplinary process.

Nevertheless, because of excellent coverage of such programs by others in the *Bar News* and in other publications, and because of my persistent lack of talent for composition, I will, in this issue, use this space to tell you about a few of the more ordinary but important activities of the Association.

### **Proliferation of Lawyers**

The Board of Governors has appointed a Task Force on Professional Utilization, chaired by Robert Morrow, to develop a positive program to alleviate the anticipated problem of lawyer oversupply. The great thrust of its efforts will be to increase employment opportunities for lawyers. Areas of discussion include encouraging increased utilization of lawyers by government, encouraging greater utilization of lawyers to meet the needs of the indigent through expanded legal aid and public defender programs, encouraging the establishment of neighborhood law offices and stimulating preparation for the delivery of legal services through prepaid group legal service programs.

The Task Force will also investigate prospects for employment of lawyers by banks, insurance and title companies and other businesses.

The Task Force is also considering one negative approach, that is, publicizing the anticipated problem so that students contemplating the study of law will be aware of the risk of oversupply.

### **Young Lawyers Section**

The Young Lawyers Section is contemplating a project related to the problem of proliferation of lawyers. It wants to determine to what extent beginning law students are interested in careers other than in fields of conventional lawyer employment, and to what extent and why such interest changes by the time of graduation. The Section would also like to determine the employment experience of the many young lawyers admitted to our Bar in 1973.

### **Legislative Program**

The Legislative Committee, chaired by Ned Lange, has retained William Stephens as its legislative representative. Our major legislative efforts in the session beginning January 14, 1974, will be directed to reform of the Judicial Article, enabling legislation for Bar-sponsored open panel prepaid group legal services (which, as a matter of political reality, must also encompass closed panel plans for which the way has previously been opened by United States Supreme Court decisions) and sensible and beneficial reform of our existing probate statutes.

We continue to express our opposition to pre-emptive Federal no-fault legislation and continue to oppose the imposition of restrictive provisions on legislation establishing the National Legal Services Corporation.

### **Communications**

Eddie Friar, our Executive Director, has added to the Bar staff, Wayne Wilson, a young, energetic and experienced specialist in communications. Immediate attention is being given to improvement in communication within the Bar.

### **Other Activities**

The Disciplinary Board, chaired by Mike Hemovich, with the substantial assistance of the Local Administrative Committees, has accomplished a substantial reduction in the backlog of pending complaints. It also is preparing recommendations for further improvement of the disciplinary process.

The Continuing Legal Education Committee, headed by Bill Dwyer, is re-evaluating its program with particular stress on anticipating the needs and interests of the recently organized sections of the Bar.

The coming year should be one in which many objectives of the Bar will be accomplished as the consequence of efforts which in some instances began years ago. The spectrum of present Bar activity should insure a continuation of accomplishment in years to come.

With best wishes for a productive and satisfying new year.

# PRE-TRIAL DIVERSION AND DEFERRAL PROGRAMS: THE LADY OR THE TIGER?

by Phillip H. Ginsberg\*

The criminal justice system is under attack from all segments of society. The public, no longer willing to accept the ever-increasing crime rate and the high rate of recidivism among past offenders, is demanding to know why the criminal justice system cannot control crime. Numerous studies, in attempting to analyze the system's problems, have exposed shocking examples of its inadequacies. The need for reform is obvious—unfortunately, there is little agreement on the methods of reform.

Within the court system a number of issues have been identified which seem to bear a relationship to the problem of crime prevention and control: (1) in many urban jurisdictions, the tremendous backlog of cases; (2) the lack of consistency in sentencing policy, whereby different defendants whose circumstances and crimes are similar often receive grossly disparate sentences;<sup>1</sup> and (3) the potential for injustice and abuse of discretion inherent in plea bargaining.

Some observers consider the problems of the urban courts so great that total breakdown of the criminal justice system will result if drastic reforms are not instituted.<sup>2</sup>

One reform method which is gaining popularity is diversion or deferred prosecution. Although these terms are often used interchangeably, it is

important to note the distinctions between diversion and deferred prosecution. The concept of diversion (or total diversion) means that a defendant who qualifies according to established guidelines is "kicked out" of the system almost immediately after arrest. In a total diversion program, no conditions (other than to avoid future arrests) are imposed on the defendant and his or her conduct is not monitored. After a period of time in which the proceedings have been stayed (typically three months to a year), the case is dismissed if the defendant has had no further arrests.

Deferred prosecution means that the prosecution of the case is suspended according to an agreement between the defendant and the prosecuting attorney which is approved by the court. By the terms of the agreement, prosecution is suspended on the condition that the defendant follow a prescribed course of conduct for a specified period of time similar to a probation program. Successful completion of the program results in dismissal; failure results in a reinstatement of the proceedings.

Experimental diversion or deferred prosecution programs seem to have been well received in New York (Manhattan Court Employment Project) and Washington, D. C. (Project Crossroads). Other programs, patterned after these experiments, have begun in at least nine other major cities.

Among the significant findings of the two original programs were that: (1) the administration of justice became more flexible and responsive to individual defendants through emphasizing rehabilitation early in the adjudication process; (2) when qualified defendants are taken out of the

\*The author gratefully acknowledges the effective assistance of Joseph W. Duffy (MPA), Director of the Defender Association's Corrections Counseling Program.

criminal justice system as quickly as possible, damaging contacts with the system are avoided (e.g., long periods of pre-trial detention); (3) the motivational impact of arrest is maximized if defendants are offered treatment soon after arrest; and (4) courts and criminal justice personnel generally are not compelled to spend valuable time with less serious cases or with defendants who are good rehabilitation candidates, thereby alleviating the backlog of cases.

### **Law Practice to Be Affected**

Presumably, the favorable results achieved in New York and Washington, D. C., had some influence on the Washington State Legislature's decision to enact the "Adult Probation Subsidy Act." (CH 123, Laws of 1973, 1st Exec. Session.) The act provides *inter alia* a monetary incentive to counties which establish deferred prosecution programs as a part of a total community corrections program. Because it appears that diversion and deferred prosecution programs will soon be a part of the local criminal justice system, it is important to consider their impact on current practice. In the remainder of this discussion, the King County system of criminal justice will be used as a model in weighing the values and benefits of diversion and deferred prosecution against the dangers to individual clients and to the rights of all defendants.

Currently, there are three advantages available to felony defendants in King County which may distinguish this jurisdiction from many others. The first is the liberalized standard for personal recognizance release issued by the State Supreme Court in the 1973 Court Rules (CrR 3.2). The major consequence of the implementation of this rule is that few defendants are detained before trial in the county jail for lack of bail money. Only those considered high risk either in terms of the chances of failing to appear or in terms of danger to the community or to themselves, are detained.

### **Benefits More Widespread**

The obvious benefits of PR release are now available to a greater number of persons. Defendants who are out of custody can participate more actively in the preparation of their defense. The pressure to plead guilty, created by long periods of pre-trial incarceration, is removed. Defendants have the opportunity to "prove" themselves during the pre-trial period by working, participating in rehabilitation programs and avoiding further arrests. Significantly, no formal

program is imposed.

The second unique characteristic of the King County system is the use of deferred sentences. By deferring the imposition of sentence for a designated period (typically, one to three years), courts give defendants the opportunity to clear their record through satisfactory performance on probation. The combination of liberalized PR release standards and frequent use of deferred sentences has significantly reduced the contact many defendants (particularly first and minor offenders) have with the criminal justice system.

### **Counseling Is Available**

Additionally, in King County, all indigent felony defendants have the services of the Public Defender's Corrections Counseling Project available to them. Through this program, counselors act as advocates for clients in finding, selecting and gaining acceptance by community programs and resources. No programs are imposed; the client is provided with extensive information about resources and then makes his or her choice with the advice of the attorney and the counselor. Programs developed in this manner are presented to the courts at sentencing in the defense presentence report. Community programs developed by the project staff have been accepted by the court in 70% of the cases.

This project has several characteristics which distinguish it from typical social service or corrections programs. The counselors work within the scope of the attorney/client privilege. The use of ex-offenders as counselors helps to increase communication with clients who often are suspicious of professionals. Furthermore, counselors who have experienced what the defendant is experiencing pursue their work more actively than many professionals might. Finally, defendants are able to weigh all of their possible options during the pre-trial period, particularly as to whether to plead or go to trial, while considering the rehabilitation opportunities which are open to them. Better informed and more positive decisions can be made by clients within the client/counselor/attorney relationship because of the absence of any official pressure to make a particular choice.

### **Effect of Diversion Programs**

What impact, then, will diversion programs have on present King County practice? Total or "pure" diversion programs (as defined above)

presumably will be directed toward the "cream of the crop" or the defendants who clearly do not need the sanction of criminal conviction and sentence to avoid future criminal activity. Therefore, most candidates for diversion would receive deferred sentences under current practice. If diversion were accomplished efficiently (eliminating all court appearances) and without the imposition of conditions, such a program would probably be preferable to the present practice of granting deferred sentences.

There are, however, serious risks in diversion programs. There is, for example, the prospect that the beneficial results of liberal PR guidelines will be lost if defendants are held in jail for an extensive evaluation prior to being accepted for diversion. The PR decision should be independent of the diversion decision.

Furthermore, defendants who are candidates for diversion are asked to make extremely important decisions about their rights soon after arrest. Although advice of counsel will be required before such decisions are made, it is questionable whether there will be time for any relationship between the client and the attorney to develop prior to the time the defendant must decide whether to waive speedy trial and sign an informal confession. Innocent defendants may be tempted to accept diversion and waive their rights rather than risk trial. Waiver of speedy trial may adversely affect a defendant's ability to prepare his defense if he is later prosecuted because of failure in the diversion program.

### **Defendants' Rights Jeopardized**

Although the dangers to the defendant if diverted are significant, deferred prosecution poses an even more serious threat to the constitutional safeguards provided to criminal defendants. Of greatest concern is the defendant's loss of ability to effect the disposition of the case. Early in the adjudication process, defen-

dants are asked to waive their rights and accept a state-sanctioned program which may continue for a period of years. Throughout the period of deferral, the defendant faces the threat that prosecution may be reinstated and that a more severe sentence may result. It is possible that the duration of the deferral program may be longer than the period of confinement under present practice if convicted. Similarly, a defendant who receives a two-year deferred prosecution, completes 18 months but then leaves the program, may face double punishment if prosecution is recommended. (It is unlikely that a defendant will knowingly waive his Fifth Amendment right to be protected from double jeopardy when he or she agrees to deferred prosecution.) In order to gain treatment, the defendant is being asked to waive the presumption of innocence, as well as self-incrimination and speedy trial protections.<sup>3</sup>

### **Selection of Defendants a Problem**

One of the threshold problems with deferred prosecution is how defendants will be selected. Because there are no scientific tests available for predicting success in rehabilitation programs, what guidelines will decision-makers have in selecting candidates for deferred prosecution? Can a prosecutor who has never met the defendant make an intelligent decision on eligibility? Will a probation officer be able to communicate effectively enough with a defendant to make a reasonable decision? Is it fair to defer only on certain charges without concern for the individual client?

The answers to these questions do not appear to be readily available, and the prospect of discrimination cannot be ignored. For example, the guidelines for client selection for deferred prosecution programs established under the Washington State Adult Probation Subsidy Act (*supra*) merely exclude "dangerous offenders."<sup>4</sup> Clearly more detailed standards or considerations should be developed.

### **Problems Seen in Program Choice**

Another serious problem inherent in deferred prosecution programs is the imposition of the rehabilitation program. Will defendants have an adequate opportunity to participate in the selection of a program? For example, the guidelines for the operation of deferred prosecution published by the State Department of Social & Health Services include the following statement:

---

Phillip H. Ginsberg has been chief attorney for the Seattle-King County Public Defender since May 1970. On January 15, 1974 he will assume the duties of the Public Defender. Graduated from Princeton University in 1961 and from Harvard Law School in 1964, he was in private practice until 1970. He served as assistant professor of law at Chicago Law School, and director of the Mandel Legal Aid Clinic at University of Chicago. He now is a member of the Seattle-King County Young Lawyers Board of Trustees, the Governor's Task Force on Sentencing, the Washington Criminal Pattern Instructions Committee and the Board of Directors and Executive Committee of the National Legal Aid and Defender Association.

While the selection of offenders to participate in deferred prosecution programs is to be made by local officials on the basis of whatever screening procedures and criteria they deem appropriate, the Department suggests that the prosecuting attorney and the court may want to take advantage of recommendations by professional 'intake' staff if such exist, mental health professionals or other consultants, police, and any other appropriate source of information about the offender. A pre-hearing investigation, patterned after the presentence report, is strongly suggested. Such a report should contain objective statements and observations about the offense, the prior record, family situation, education, employment, financial status, physical and mental health, and other relevant factors.<sup>5</sup>

If the police, the Prosecutor, and the State Probation Department are participating actively in the decision about programs, is there not a probability that surveillance and control will receive greater emphasis than rehabilitation?

#### **A Counselor's View**

William E. Absher, an ex-offender, who has served time in prison and who now is a corrections counselor in the Defender office, made the following rather strong comments about deferred prosecution programs:

I am reluctant to entrust a decision as to whether or not to defer and how much or how little social service is needed to a civil service employee. Our prime concern lies with the welfare and best interest of our clients. I just don't feel that civil service employees can be objective enough to make these decisions. . . . In effect, I see this (deferred prosecution) plan as another insidious step in putting more power in the hands of the state, resulting in further erosion of the adversary system.

Beyond these problems, there is the concern for how a defendant's success or failure in the deferred prosecution program is to be judged. Here again, objective standards are difficult to develop; thus, there will be a great deal of discretion by those who supervise the defendant. There may be danger of arbitrary or discriminatory findings of failure which will have serious consequences for the defendant.

It is significant that most deferred prosecution programs emphasize employment as a condition of the program. Although it may be true that lack of suitable employment is a cause of crime, this

emphasis may lead to the imposition of traditional middle-class values on program participants. Failure or refusal to accept such values, although not in itself a wrongful act on the defendant's part, may lead to his or her "failure" in the program and reinstatement of prosecution. On a related point, what provisions will be made for allowing defendants to change programs if the original plan does not meet their needs?

#### **Danger in Grouping Defendants**

An additional problem is raised by the prospect of deferred prosecution programs serving both felons and misdemeanants. The Adult Probation Subsidy Act (Supra, §7) extends the incentive to create deferral programs to misdemeanor offenders. Such a proposal involves the danger that, by being treated in the same manner as felony offenders, misdemeanants may be stigmatized more than their offense warrants. Although many if not most felons were at some time involved in misdemeanor offenses, a significant number of misdemeanants never return to the criminal justice system after their first offense. Any attempt to group the two classes of offenders for rehabilitation purposes should be carefully scrutinized.

Finally, there is the serious question whether deferred prosecution will reduce the opportunity for court review of police practices. By removing the requirement of proof from the system of administering justice, are we not inviting the police to make unlawful arrests knowing that many defendants will accept deferred prosecution rather than risk trial.<sup>6</sup>

#### **Conclusion**

Although many defendants may well benefit from diversion and deferral programs in a progressive jurisdiction, the need for these programs is at best a close question. Such programs represent only a temporary or partial answer to the problems of the criminal justice system, and should not be seen as the ultimate reform solution. In all jurisdictions, the defense bar and specifically Defenders should participate in the drafting of enabling legislation and guidelines which will protect against the deterioration of due process by seemingly well-motivated social engineers.

When diversion or deferral programs are established, the exercise of discretion by the administration and staff of the programs must  
*(Continued to page 33)*

# NOW IS NOT THE TIME TO DISCRIMINATE AGAINST WOMEN LAWYERS

by Dustin C. McCreary

During a recent job interview in a medium sized law firm in western Washington, the partner in charge of hiring, whom we shall call Mr. Baker, was interviewing Betty Brown, an attractive 24-year old female law school graduate and an applicant for an associate's position in Mr. Baker's firm. As the curtain rises, we hear the usual small talk about outside interests and hobbies, after which Baker gets down to the bare essentials:

Mr. Baker: What field of law are you interested in, Betty?

Ms. Brown: Oh, I've always wanted to do trial work and I've heard that your office has an outstanding litigation practice.

Mr. Baker: Well, that's true, but of course you know a trial lawyer has to be aggressive and you know—sometimes the going gets pretty rough in the courtroom. Besides, trial work means burning the midnight oil and you can't do that and expect to iron your husband's shirts.

Ms. Brown: But I am not married.

Mr. Baker: Oh, well, you know what I mean. Wouldn't you prefer a nice office practice? You know, we just happen to have an opening for someone who can handle a lot of probate cases and who can be diplomatic with little old ladies.

Ms. Brown: Mr. Baker, I'm really not interested in probate law or, for that

matter, in little old ladies.

Mr. Baker: Well, do you like men? I mean, do you plan to get married and have a family?

Ms. Brown: Mr. Baker, I really don't think that question is pertinent.

Mr. Baker: You've got to be kidding . . .  
[Curtain]

Before proceeding to Act II, it might be well to note how various practitioners might comment on the above interview. For our purposes, let's listen to three eminent experts.

Mr. Bower: Baker obviously had a legitimate concern over Ms. Brown's welfare. Trial practice is not for the tender hearted. Besides, he wanted to know whether Betty planned to have a family because if she did, Baker's firm would have to make some long-term plans to cover prolonged absences and the possibility of Betty's leaving for good in four or five years.

Mr. Green: Baker's questions were irrelevant. Also, he obviously stereotyped the role of the woman lawyer. Why, in my practice, some of the toughest, most competent and, yes, meanest opponents I face in the courtroom are women.

Ms. Purple: Baker is an MCP and so is Bower.

Although all of the above comments may have

some merit, they miss the point. The fact of the matter is that Baker, albeit innocently and with the best intentions in the world, was headed toward a possible violation of the Washington Law Against Discrimination as well as Title VII of the Civil Rights Act. If Baker had read those statutes, as well as the Pre-Employment Inquiry Guide and Sex Discrimination Guidelines issued by the Washington Human Rights Commission and the Equal Employment Opportunity Commission's Sex Discrimination Guidelines, he would have conducted the interview in a different manner.

Most lawyers today are aware of state and federal legislation against racial and religious discrimination, and many lawyers are aware that these laws also proscribe employment practices which discriminate on account of sex; however, many lawyers are not aware that the sex discrimination laws, or at least some of them, cover themselves and their firms in the hiring and employment of female lawyers. In fact, all law firms with eight or more employees are covered by the Washington Law Against Discrimination and many firms and professional service corpora-

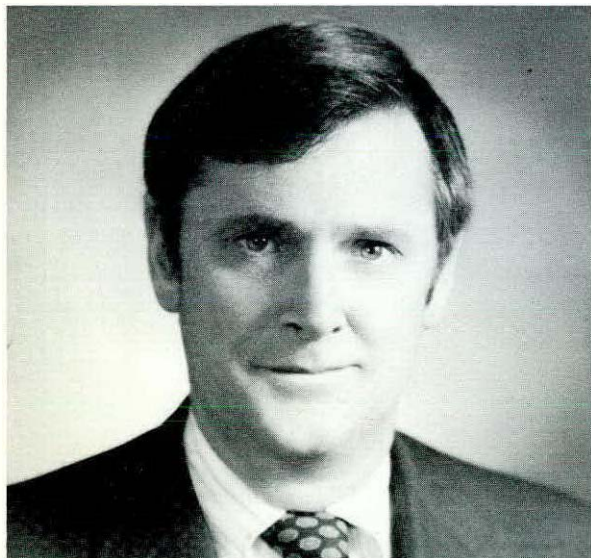
tions with 15 or more employees are now covered by the federal act.

Until fairly recently, the legal profession was in fact a man's world. But things are changing fast. Thirty-nine out of the 455 persons who passed the July, 1973, Washington bar examination were women so that today there are approximately 300 female members of the Washington Bar Association. Assuming that all Washington law school graduates will attempt to practice in this state and further assuming a zero student mortality rate, the following statistics may be of interest: during the 1973-74 school year the Washington law schools will graduate 39 women; the following year with the first graduating class from the University of Puget Sound, the Washington schools will graduate 98 women; in the 1975-76 school year female law graduates in the state will total 27 from Gonzaga University, 39 from the University of Washington, and 54 from the University of Puget Sound. In addition to the potential Washington graduates in the coming three years, or 257 women out of a total of 1,872 potential graduates, there will be a sizable number of out of state women taking the bar examination so that by 1978 we can reasonably expect the number of female lawyers in the state to double.

In addition to the economic impact that the sudden rise of the male and female lawyer population will have on the legal community, the above statistics mean that more and more competent women will be seeking employment as attorneys and the applicability of the state and federal sex discrimination laws will become more and more significant to attorneys who are interviewing job applicants and employing lawyers.

The Equal Employment Opportunity Commission and the Washington Human Rights Commission both have issued regulations and guidelines applicable to sex discrimination and pre-employment inquiries. Although these guidelines are periodically amended and revised and although some of them, including at least one discussed below, are presently being tested in the courts, they nevertheless represent the present thinking of the EEOC and the Human Rights Commission in regard to how the applicable federal and state employment discrimination statutes should be interpreted and enforced. Therefore it behooves all lawyers to familiarize themselves with these guidelines and act accordingly.

Returning again to Mr. Baker's interview of



Dustin C. McCreary is a partner in the law firm of Bogle, Gates, Dobrin, Wakefield & Long, Seattle.

He is a graduate of Hobart College and Case-Western Reserve University Law School, Class of 1955, and, after serving as an attorney for the National Labor Relations Board, has been engaged in private practice for 11 years. He has been active in the labor relations field of the law, representing employers.

He is married and has a son and a daughter.

Ms. Brown, it would appear that Baker's major transgression was his stereotyped characterization of the sexes. Although both federal and state employment discrimination statutes allow an exception in the case of bona fide occupational qualifications as to sex, both of the agencies which administer the statutes place a narrow interpretation upon such exception, to the extent that the federal guidelines mention only one occupation, acting, as a possible area where a person's sex will be considered as a bona fide occupational qualification. On the other hand, the federal guidelines, which are followed by our Human Rights Commission where the federal act is comparable to the state act (see WAC 162-30-010), declare that the following situations do not warrant the application of the exception:

1. The decision to reject a female applicant based on the assumption that the turnover rate among women is greater than among men.
2. The refusal to hire an individual because of the preferences of fellow workers, the employer or clients.

The federal guidelines also state that hiring practices which forbid or restrict the employment of married women and which are not applicable to married men is a discrimination based upon sex prohibited by Title VII of the Civil Rights Act.

Finally, both federal and state guidelines interpret the statutes as they apply to sex discrimination *after* a person is hired. Obviously, promotion and pay policies must be based upon non-

discriminatory factors. Perhaps less obvious is an employer's possible exposure if the EEOC's and Human Rights Commission's views regarding pregnant women, maternity leave and leave of absence benefits are disregarded. For example, the federal government views any written or unwritten policy which excludes persons from employment because of pregnancy as a prima facie violation of Title VII and requires disabilities "caused or contributed to by pregnancy, miscarriage, abortion, child birth and recovery therefrom" to be treated, for all job related purposes, as temporary disabilities under any health or temporary disability insurance or sick leave plan available in connection with employment. The state guidelines additionally require any maternity leave policy and benefits to be applicable to married and unmarried women alike.

This discussion has necessarily been brief and has covered only the tip of the iceberg. The important thing for all of us to do (both males and females) is to educate ourselves about the pertinent sex discrimination laws so that we can act lawfully in our own hiring and employment practices and give better advice to our clients.

Oh, yes, Act II is rather lengthy and involves practically no dialogue. Mr. Baker spends his entire time on stage reading the state and federal guidelines (Title 162 of the Washington Administrative Code as well as Title 29 CFR, Chapter XIV, Part 1604, Section 1604.1 to 1604.10). As the curtain falls, he is seen filling out an application for the Men's Auxiliary of N.O.W. □



Trustees of the East King County Bar Association are: James H. Dailey, Vice President; William L. Kinzel, President; Evan E. Inslee, Trustee; Judge A. P. Wartnik, Trustee; Ralph I. Thomas, Trustee.

---

# WASHINGTON STATE BAR NEWS

---

## Judge Beeks Receives Silver Oar

The Silver Oar of the Admiralty was presented to Honorable WILLIAM T. BEEKS, a Senior Judge of the United States District Court for the Western District of Washington on Wednesday, November 21, 1973.

The presentation was made by Mr. Edward C. Biele, of the law firm of Bogle, Gates, Dobrin, Wakefield & Long.

The following is a partial transcript of the proceedings:

**THE COURT:** Mr. Biele, the Court is very happy to recognize you on this memorable occasion.

**MR. BIELE:** Thank you, your Honor. Judge Beeks, it is my very high personal privilege and honor on behalf of those of us who practice admiralty in Seattle to present to you, representing the judges of the court of the Western District of Washington, what has become known as the Silver Oar of the Admiralty.

I might say a few words to those in the audience about the Silver Oar of the Admiralty. It goes back in antiquity a long time. Perhaps the first one goes back to the reign of Edward III in England. We know that around the year 1360 there was a Silver Oar in the Admiral's court. Now, the Admiral's court in those days had jurisdiction over phases of piracy, of prizes, that don't get into this court these days, but they had civil cases too.

Now, the purpose of the original Silver Oar of Admiralty was twofold. It was both a mace and a symbol of the court's authority.

The original Oar of Admiralty was hollow and they used to put the writs in the handle of the Oar and the Marshal would go out, and the people couldn't read or write but they would recognize the Oar and they would know they were under arrest, they knew the ship was attached.

**THE COURT:** Remember this.

(Laughter.)

**MR. BIELE:** Anyhow, Chuck Robinson's predecessor 500 years ago, 600 years ago, when

he went out and arrested somebody he would take the Silver Oar of Admiralty and show it to him, pull out the writ, and there you were.

They also used the Silver Oar of Admiralty as a symbol in the court. It always sat on the judge's bench, and this was to show the people that they were sitting in admiralty and not divorce or probate or common pleas. And thus it was that the Admiral's court in England had a Silver Oar.

As England expanded and they got colonies they had vice courts of admiralty. They had them in Jamaica, they had them in the West Indies. They also had them in the United States, and these vice admiral's courts before the revolution were in New York, Philadelphia, Providence, Rhode Island, and Boston, and they too got their Silver Oars. The one in New York I understand was manufactured by a very famous silversmith named Leroux, and it was manufactured in about 1737.

Well, as you know, we had a revolution in this country and we threw the English out, but during the revolutionary days the clerk of the court had custody of the Silver Oar in New York, and he was a Tory and he supposedly for safekeeping kept the Silver Oar. It never showed up again until the 1930's when one of his heirs needed money—

**THE COURT:** You're putting some ideas in my head here.

(Laughter.)

**MR. BIELE:** Well, this was the clerk, your Honor. The clerk's family did this. They took the Silver Oar and they had to hock it. They had to raise a little money, so they hocked the Silver Oar when they were in financial straits, and at that time the admiralty bar in New York got together and they purchased the Silver Oar. They paid \$2,500 for it. They bought it from the jeweler who had bought it from the hock shop. The Silver Oar in New York is now in the museum, it's a museum piece. It's in the Museum of the City of New York and it's on display.

When we decided to give the court here a Silver

Oar we got pictures of the one in New York. We compared the size, we got it measured, and I think that the Oar that I'm about to give to Judge Beeks and the court is a good replica of the Silver Oar that is now in the museum in New York.

I might say that there are a number of District Courts around the country that do have either Silver Oars or comparable oars. They have one in Philadelphia, there is one in the Virgin Islands. In Chicago in the Northern District of Illinois they have one. It's not silver, it's wooden, and it's made out of a timber from the old frigate CONSTITUTION. But they've got a few silver stars embedded in it and apparently it's a very handsome accoutrement to the court.

I might say a word about our Oar. It was fabricated by one of our local enterprises, the Duwamish Shipyard, Inc. Mr. Art Larsen, president of the company, took a personal interest in the fabricating of the Oar.

The stand which you will see is solid walnut and it's a piece of wood that came from the court here when the court was redone, when they put the air conditioning in and changed some of the benches.

**THE COURT:** The bench where the bailiff is now sitting, actually.

**MR. BIELE:** Well, this is where the stand comes from. And the Oar was engraved by Friedlander, and it's engraved precisely in the same way as the one in New York except that we have the District Court of the Western District of Washington as opposed of course to the Southern District of New York.

And now, Judge Beeks, with those few remarks it is my very high privilege on behalf of all those that practice admiralty in this court, those that have practiced in the past before Judge Bowen, Judge Neterer and Judge Hanford, and also your successors, to present to you on behalf of the court this very fine Silver Oar, and I know that this will be with you and with the court for many, many years to come. Judge Beeks, I turn this over to you and the court.

(Applause.)

**THE COURT:** As Mr. Biele indicated, I have been designated by the Chief Judge of this court to receive and to accept this most generous gift on behalf of the court, and I am certainly highly honored to so do.

Isn't it a beauty? Mr. Larsen, you are to be very, very highly complimented on the design which you have put into this Oar. I think it is superb. I don't think there is any court in the



**Judge William T. Beeks**

United States or in England that has an Oar as beautiful as this one.

The notice which was sent out by Mr. Biele indicates that we are gathered here today to answer the question which was posed in *Hark versus Antilles Airboats*, and the question the Court posed in that case was whether the bailiff should place the Silver Oar of the Admiralty on the bench. As a matter of fact the opinion starts out that way. The Court in *Hark* responded in the affirmative, and I think properly so.

But my question to you is, have any of you seen the recent case of *Crosson versus Vance*, decided on September 27th by the Fourth Circuit? The opinion is authored by Chief Judge Haynsworth, whom I'm sure you have heard of in the recent past. I haven't seen the full opinion, but a summary is published in 42 *Law Week* 2199.

The Court in that case in a unanimous opinion held that admiralty jurisdiction does not reach a claim for personal injury by a water skier against the allegedly negligent operator of a powered vessel towing a skier on navigable waters tributary to Chesapeake Bay. The decision is said to be grounded on *Executive Jet Aviation versus City of Cleveland*, recently decided by the Supreme Court.

Ordinarily I would be surprised if *Crosson* stood up, but anything can happen these days, and my principal concern is how my poor bailiff is going to decide when to put the Silver Oar on the bench.

(Laughter.)

**THE COURT:** If the negligent operation and navigation of a vessel isn't within admiralty jurisdiction, how can I expect him to know when I don't know and won't know myself?

(Laughter.)

**THE COURT:** All I think that I can do is appoint a committee of three of you people to assist the bailiff, and I have an idea that we might have a lot of dissenting opinions.

As I said before, this is a memorable occasion. You know, I have thought that it might have been most appropriate for you on this day to have combined a wake or a memorial service for Joseph Sieracki, who in his brief legal life span of twenty-seven years probably did more to advance the well-being and financial status of the admiralty bar than any other individual, alive or deceased.

(Laughter.)

**THE COURT:** Seriously, however, the Silver Oar not only symbolized courts of admiralty during the past several hundred years, both here and in England, but all of its judges and officers, and by that I mean its proctors.

It is in that spirit that I accept this Silver Oar on behalf of the court, on behalf of you proctors, and on behalf of the many able and distinguished proctors of this court who are now fully retired from the practice or have departed this life. I am not able to name them all, but those that I knew and now recall are W. H. Bogle, fondly known as Judge Bogle, his son Lawrence Bogle, now ninety years of age, Frank Huffer, Ira Bronson, Will Hayden, Bob Bronson, Jerry Bucey, George Vanderveer, Bill Martin, Lane Summers, John Ambler, Sam Bassett, John Geisness, and Chuck Howard. I'm sure there are others, but those are the ones that come to mind at this time. They were indeed able lawyers and fine gentlemen.

The admiralty bar of this court has been most considerate and overly generous in procuring and presenting this beautiful work of art. We will guard it well, bench it upon the occasions for which it is intended, and on behalf of all of the judges of this court, from Judge Hanford, Judge Cushman and Judge Neterer down to Judge Sharp, our newest colleague, I extend our deep and heartfelt thanks.

And now I will turn this meeting back to you, Mr. Biele, for anything further, and I think that it might be appropriate to place this Oar out here on the outer portion of the clerk's desk at some time before we leave so those who have not seen it can come by and take a look at it.

**MR. BIELE:** I certainly will, your Honor.

**THE COURT:** Good. I think you may have something further that you have in mind, and as master of ceremonies I will turn it back to you.

□

Judge is hung. A painted portrait of Hon. **Malcolm Douglas**, senior judge of the entire state, was hung and commissioned by certain Irish and Scottish friends who insisted on being anonymous. This moved Judge **William J. Wilkins**, a Cornishman, to remark that he could hardly believe Scots could be so generous and Irish so reticent.

## Births

Port Orchard: **Robert G. Presser** joined Greenwood and Shiers.

Colville: **John T. Raftis, Jr.**, joined his father.

Spokane: New firm of Paine, Lowe, Coffin, Ennis & Herman announced. In addition to those named were associates **Alan P. O'Kelly**, **Lyle M. Colburn**, **Fred E. Woepfel** and **Sid A. Schulein**.

Tacoma was fecund. With new Federal Judge **George Boldt** out, his former partnership became Metzger, Blair & Gardner and **James E. O'Hern** became a partner.

**Wally Hager** joined Goodwin & Hicks.

**Horace Geer** opened in the Security Building.

**Al Billett** new assistant city attorney.

**Warren Peterson** associated with Hodge & Mann.

**Edward Hautanen** became partner of Ray Graves.

**Richard Broz** appointed assistant attorney general.

**H. Weston Foss** appointed clerk to Judge Boldt.

**Ernest M. Murray** teamed with his father, E.K.

**Nels Bernhard Nelson** commenced practice.

**Robert Peterson** associated with father, Henry Arnold.

**Thomas R. Sauriol** associated with James Healy.

**Ronald L. N. Peters** appointed J.P. for Tillicum.

**Waldo Stone** appointed J.P. for Tacoma.

Firm of Nickell, Reseburg & Burgess announced with **Lawrence E. Therriault**, associate.

Firm of Peyser, Cartano, Botzer & Chapman announced **Hugo E. Oswald, Jr.**, and **Robert A. O'Neill** as partners.

**Frank E. Holman**, past president of the ABA, was elected Seattle First Citizen.

## Crossed the Bar

Seattle: **J. A. Rokes**, 80. **W. Vaughn Tanner**, formerly State Attorney General, 72. **Ray M. Wardall**, 76.

Uncle Ez sez: It sometimes seems—folks—the less they know, the surer they is.

David J. Williams



## The Board's Work

Extracts from the minutes of the meeting of the State Bar Board of Governors at Port Ludlow November 2 and 3, 1973:

### Discipline

Reprimands were administered to Warren W. Russell of Friday Harbor and Joseph S. Kane of Seattle.

The petition by a lawyer that he be allowed to resign as a member of the Bar Association was denied because of pending disciplinary action against him.

### Editorial Advisory Board

The resignation of E. Glenn Harmon as Chairman of the Editorial Advisory Board was accepted and the President designated Richard A. Monaghan of Puyallup as Chairman. Resignation of John Weinberg as a member of the Board was accepted and Mason Morisset of Seattle was named to replace Mr. Weinberg.

### Public Defender Programs

Frank L. Sullivan, Chairman of the Criminal Law Section, and John Darrach of Seattle appeared before the Board to discuss the rate of compensation for Public Defender Attorneys and defense counsel for the indigent generally. The Board then adopted the following resolution:

“WHEREAS, the Constitution of the United States and its criminal justice system require that the defendant be treated fairly and such fairness requires that the indigent defendant be provided legal service of high quality, NOW THEREFORE, BE IT RESOLVED

“Salaries for public defender attorneys should be such as to attract the ablest law graduates and supporting staff, and in no event should such salaries be lower than those of the Prosecution Staff; and

“Felony caseloads for defender attorneys should not exceed a maximum of 150 cases per attorney per year and each jurisdiction should conduct a study of such caseloads to determine whether a lesser figure should be adopted. Caseload standards in other fields such as juvenile, misdemeanor, mental illness, etc., should be set after appropriate study.”

### Law Clerk Program

It was agreed that pending action by the Supreme Court on the Board's recommendation

that the Law Clerk program be abolished, applications for enrollment in the program be considered by the Board.

### Automated Law Research

Board Member Ed Novack reported on his attendance at the recent ABA Automated Law Research Program in California.

### Legal Intern Program

Fred Noland of Seattle reported to the Board on the results of his review of the attitude of young lawyers generally toward the Legal Intern program and reported young lawyers generally approve the program and recommend its continued support by the Board of Governors.

### Prepaid Legal Services

Upon the recommendation of the Chairman of the Prepaid Legal Services Committee, the Board agreed to support legislation providing for both “open” and “closed” panels under the supervision of one regulatory body.

### Proposed “Watergate” Resolutions and Requests

A. It was moved and seconded that a “Statement of Principle” Resolution relating to Watergate and allied developments in Washington, D. C., be drafted and adopted. The motion failed, with 3 votes for the motion and 4 votes opposed.

B. A motion that the Washington State congressional delegation be advised that the Board of Governors recommends that the delegation take the necessary steps to assure the independent nature of a special prosecutor in the Watergate matter failed.

C. An informal presentation was made relating to a Petition to the Board of Governors signed by certain members of the student body of the University of Washington Law School requesting the Board of Governors to adopt a Resolution calling for the impeachment of Richard Nixon. It was moved and seconded that action be deferred pending further developments. This motion was passed by a vote of 6 to 1.

D. A request submitted by Charles Moren of Seattle and four other members of the Bar Association for a special meeting of the Bar Association to consider a resolution requesting the impeachment of the President of the United States was deferred pending further developments.

### **Task Force on Professional Utilization**

The following persons were named as members of a Task Force on Professional Utilization: Allen Clark of Seattle, Robert Morrow of Seattle, Emanuel E. Rosatto of Federal Way, Donald Donaldson, Longview, Clifford Stiliz of Olympia, Ralph Irwin Thomas, Montesano, Frank Johnson, Spokane, Tom Loftus of Seattle and Robert Leeds, Spokane. Thereafter, the President designated Robert Morrow as Chairman.

### **Special Committee on Initiative 276**

The following persons were designated as members of a Special Committee to keep abreast of developments in both litigation and legislation arising out of Initiative 276 as such matters relate to lawyers and the legal profession and to keep the Board advised of such developments with appropriate recommendations from time to time: Robert W. Duggan, Seattle, Paul Chemnick, Seattle, Harold Fardal, Seattle, Douglas Raff, Seattle and Gary Gainer, Spokane. Thereafter the President designated Robert Duggan as Chairman.

It was agreed that the Chairperson of the Young Lawyers Section be invited to attend the December meeting of the Board at the Board's expense, if the chairperson has been selected.

### **Probate Legislation**

Robert Beschel of Spokane, Chairman of the Real Property, Probate and Trust Section, appeared before the Board to discuss that Section's proposals and recommendations concerning improvement in the probate processes and procedures. It was moved, seconded and carried that the Section recommendations relating to the Probate field with suggested changes as outlined by the Chairman of the Section be approved as to Sections one through forty-three of the proposed bill.

### **Bar Examination**

The request of the Board of Bar Examiners for continuing use of the Multi-State Bar Examination as a part of the total Washington State Bar Examination was approved.

### **Investment Program for Bar Association Funds**

It was voted that a committee consisting of

the Treasurer, Richard H. Riddell, Board Member, James P. Curran, and Executive Director, G. Edward Friar, be named to invest the Bar Association's funds in accordance with the Board of Governors directive of May 19th, 1971, to select an appropriate investment agency or bank to conduct the Bar Association's investment program and to supervise the investment program on a continuing basis, and to recommend, if deemed appropriate, an investment agency or bank to carry out this program.

### **Meeting with Local Bar Presidents**

On Saturday, November 3, the entire session was devoted to a joint meeting with Local Bar Presidents from across the State. The Local Bar Presidents had held a meeting of their own on Friday afternoon, November 2, and presented many items to the Board of Governors for discussion and recommendation. Information and views of mutual interest and concern were exchanged.

## **LEGAL HISTORY BRANCH AUTHORIZED AT GONZAGA**

The American Society of Legal History has authorized a Pacific Coast branch of its organization at Gonzaga University.

The Society is the professional association in the United States that promotes study, research, and publication in the history of law and legal institutions world-wide.

With the current branch authorization temporary officers will be Professor Morris Forkosch, Gonzaga Law School, president; and Dr. Philip Supina, Gonzaga Dept. of History, executive secretary. A nominations committee will be formed so that elections can be held in the near future.

A West Coast conference is being projected for 1974 by the arrangements committee. The members of that committee include Rev. Francis J. Conklin, S.J., Gonzaga law dean; local attorney Frank Hays Johnson; student coordinator Virginia Somers; and Rev. Fredric W. Schlatter, S.J. associate professor of classical language and history at Gonzaga.



## Around the State

---

### YAKIMA REPORT

By **RANDY MARQUIS**

---

**Walt Curnutt**, Director of Yakima County Legal Aid Society, announces the acquisition of **Rod Fitch**, a graduate of Willamette Law School, as an additional practicing attorney, making a total of three lawyers working out of the Southeast Yakima Community Center office.

**Walters, Whitaker & Finney** have moved their law offices to the Enright Building at 305 North 3rd Street, Yakima. The Law Office of **Martin & Marquis** has been moved to 1003 Larson Building, Yakima.

**Lincoln E. Shropshire** has announced his impending resignation as Prosecuting Attorney of the County of Yakima whereupon a poll was taken among the local attorneys relative to several interested applicants for the vacancy. It has been announced that **Jeffrey Sullivan** led the other applicants by a substantial margin. At this writing we have no indication whether this will influence the County Commissioners in their appointment to Linc's successor. We recall that in times past an endorsement by the Yakima County Bar has sometimes been the kiss of death.

---

### EAST KING REPORT

By **Barbara E. Reardon**

---

Judge **Cornelius C. Chavelle**, as the guest of the East King County Bar at its November 19th luncheon, instructed the Eastside lawyers on "how to bill the client and then how to collect the fee." His approach was both sound and practical. It was

agreed that the setting of reasonable attorney's fees by the court would be made easier for both attorney and the judge if the bar association would keep the bench informed as to the current costs of doing business of the practicing attorney.

The December 14, 1973, meeting of the East King County Bar was held on Friday at noon at the Thunderbird, with the first order of business the election of officers and trustees for the 1973-1974 term. The membership was invited to bring guests to view the holiday fashion show of gifts appropriate for wives and female good friends of the male membership of the association.

We, editorially speaking, should take this opportunity to thank **Bill Kinzel** for his fine performance this past year as our president. Bill has directed a year of excellent programs, which has resulted in the high attendance record of the association. A successful series of public seminars on subjects of interest to the layman of the community was presented last winter and spring, to which mention should be made of the East King County Bar's great Law Day activities. Naturally, Bill's success was made "partially" possible, we're sure, by the cooperation and assistance of the other officers and trustees.

It must be said, however, that **Bill Kinzel** made one grave misstep at the height of his success and at the last meeting of the year—naturally we are referring to the December 14, 1973, fashion show for male chauvinists only! This program was labeled a success by only 99% of the membership.

**Stanley P. Gregg, Jr.**, would like to announce the opening of his law office in the offices of **John W. Rusden** and **Robert W.**

**Villareale** at 11410 98th Avenue N.E., Juanita Beach Junction, Kirkland, as of December 2nd.

---

### WHITMAN REPORT

By **LLOYD W. PETERSON**

---

Current officers of the Whitman County Bar Association are **Jim Henderson**, president, **Ronald B. Webster**, vice president, and **Edward J. McBride**, secretary-treasurer. **Robert F. Patrick** has been designated chairman of Law Day activities again this year.

**Dolores Cooper**, a recent graduate of the University of Idaho Law School, has entered private practice and has established a new law office at 805 S. Mill Street in Colfax.

President **Jim Henderson** attended the most recent meeting of the local bar presidents at Port Ludlow. Jim journeyed across the state to attend the meeting to gain new information to help the Whitman County Bar Association improve its programs to equal those of other local bar associations. Jim returned with the report that the Whitman County Bar Association is already far ahead of most other groups in all important activities. Local bar presidents wanting to improve their programs should contact Jim.

**Claude Bagley**, who has served as the Whitman County Law and Justice Planner since last January, has accepted a position as staff counsel in the office of the U.S. Corps of Engineers at Walla Walla. Claude became well known and highly regarded during his brief tenure in Whitman County, and everyone wishes him well in his new position.

---

## BENTON-FRANKLIN REPORT

By NEAL J. SHULMAN

---

In keeping with the holiday spirit, the Benton-Franklin Bar Association held its annual yuletide party on December 21, at the Elk's Lodge in Pasco. It can authoritatively be reported that a good time was had by all and that the party, under the chairmanship of **John Schultz**, lived up to the highest expectations and traditions of the Benton-Franklin Bar Association.

The Benton-Franklin Bar Association welcomes two new attorneys to the Tri-City area. **George F. Wolcott, Jr.**, has entered practice with the firm of Heidlebaugh and Barr in Kennewick. George obtained his B.A. from San Francisco State College in 1964 and after teaching school for five years, entered law school, graduating from the University of the Pacific, McGeorge School of Law, Sacramento, California, in 1973.

**Stephen Osborne** entered the firm of Loney, Westland, Raekes, Rettig, and Sonderman in the fall of 1973 after spending the summer refreshing for and taking the bar exam. Stephen graduated from Central Washington College of Education in 1970 with a B.A. in economics and obtained his law degree from Gonzaga, Spokane, Washington, in May of 1973.

Due to space limitations, publication deadlines, and this reporter's inability to consistently make the required contacts, the following Benton-Franklin attorneys, whose names may not have been mentioned in previous reports, are hereby acknowledged: **Chuck Barr, Dick Bennett, Crane Bergdahl, George Butler,**

**Wayne Campbell, John Carroll, Don Clark, John Crawford, Ed Critchlow, Bob Day, Pete Felsted, Harvey Fauerholt, Tom Gess, Wayne Gladstone, George Heidlebaugh, Hugh Horton, Gary Hugill, Dan Hurson, Mike Johnston, James Leavy, Dean Loney, Curt Ludwig, Ed McKinley, Stan Moore, Charles Morbeck, Orville Olson, Roger Olson, Ted Peterson, Mike Pickett, Phil Raekes, Jim Remsen, Diehl Rettig, Phil Rodriquez, Rem Ryals, John Schultz, Gene Schuster, Ken Serier, Leroy Sullivan, Ed Shea, Sanford Skidmore, Carl Sonderman, Don Stancik, John Sullivan, Dennis Sweeney, Leroy Sullivan, Duane Taber, Stan Taylor, John Westland, John Wilkins, and Dave Williams.**

Last, but not least, the Benton-Franklin Bar Association conveys holiday greetings to the Benton-Franklin Superior Court Judges, the Honorable, **Richard G. Patrick, James J. Lawless, and Albert J. Yencopal**, also to Judge **Fred R. Staples**, Franklin District Court Judge, **Daryl D. Johnson** and **Brice Horton**, Benton County District Court Judges.

---

## SEATTLE-KING REPORT

By GERALD G. TUTTLE

---

**Robert S. McConnell**, formerly Staff Attorney with the Seattle office of the Securities and Exchange Commission, has entered private practice at 1510 IBM Building. Mr. McConnell is sharing office space with **Joseph McKinnon** and **Gordon Cromwell**.

The firms of **Torbenson, Thatcher & McGrath** and **Senn & Treadwell** and **George W. Schoonmaker** have merged for the practice of law under the firm name of **Torbenson, Thatcher, McGrath, Treadwell &**

**Schoonmaker, Charles L. Senn** and **John Spiller** of counsel. They will make their offices at 1402 Hoge Building.

Joining **Karr, Tuttle, Koch, Campbell, Mawer & Morrow** as associates are **Bruce Flynn**, formerly clerk for U.S. District Court Judge **Walter McGovern**, and **Mike Sorensen**, a 1973 graduate of the University of Washington.

**Edward W. Huneke** announces the opening of his office for the practice of law at 1102 Seattle Tower.

**Malcolm L. Edwards** announces the formation of a partnership with **Jack E. Wetherall** under the firm name of **Edwards and Wetherall, P.S.**, with offices located at 3701 Bank of California Center. **Richard L. Barbieri** will be an associate with the firm.

**Stern, Gayton, Neubauer & Brucker** announce that **John Hemplemann** has joined the firm.

**Richard L. Kelleher, Thomas H. Murphy** and **Wilfrid D. Nelson** announce the opening of their office under the firm name **Kelleher, Murphy & Nelson**, 3631 Seattle-First National Bank Building. A University of Washington graduate and former Public Defender, **Douglas A. Baum** is an associate with that firm.

**Daniel F. Sullivan** and Associates announce the opening of their office at 10th floor, Hoge Building. The associates are **Joan Smith Lawrence, Lawrence L. Longfelder** and **Jon M. Loreen**. **John W. Flynn**, of counsel, is presently enrolled in the tax course at NYU.

**John A. McGary, John S. Woodburne** and **Stanton M. Cole** announce the formation of a partnership under the name **McGary, Woodburne & Cole** with offices located at 1200 Westlake Avenue North.

The attorney population of Ballard has been increased by

approximately 5% with the addition to the firm of Treece, Richdale & Hoff of **Grant S. Meiner**, a 1973 graduate from the University of Oregon School of Law, and **Thomas W. Malone**, a 1972 graduate from the University of Washington School of Law.

---

## ISLAND REPORT

By **TED ZYLSTRA**

---

**Ed Beeksma's** resignation as Prosecuting Attorney is now effective and he is basking in the luxury of his new offices in the Plaza 200 building in Oak Harbor.

**Jim Walsh** and **Philip L. Bleyhl** have opened an office in Oak Harbor at 4030 40th Northwest Street.

**Jake Cohen** has joined the Island County Bar and is preparing to move to a new office on Midway Boulevard.

Several of the lawyers are too busy opening their new wine shop to worry about the practice of law. (With the number of practicing attorneys in Oak Harbor increasing by 100% in the past year they have to have something to do.)

The bar and wives enjoyed the Christmas revelry with our Skagit County brothers on December 4.

---

## KITSAP REPORT

By **WM. J. KAMPS**

---

After admitting to "at least" fifteen years on the job, **Helen Graham Greear Gunther**, has withdrawn as reporter for Kitsap County. It will take at least fifteen years for your new reporter to match her unique approach to the presentation of Kitsap news.

**Mrs. Bernadine S. Langlie Ryan**, Chief Probation Officer and Director of Kitsap County Juvenile Court Services, will retire after seventeen years of service to young people on January 31, 1974. Her husband, retired superior court judge **Frank W. Ryan**, became one of few men who has sat as judge at all court levels in the State when he was recently appointed as Judge pro-tem of the Court of Appeals, Division II.

In December the bar association voted to support a judicare-type legal aid program for indigents. The tab for that meeting of 42 members was picked up by **Mike Koch** (six months a private practitioner) in appreciation for referrals from fellow attorneys. Suffice it to say, a man able to spend money in that fashion is no longer in need of referrals.

**Ronald D. Ness** (Montanograd, passed bar last July) has opened an office at 791 Bethel Avenue, Port Orchard. Ron is married (Janet) and has one child (Ron, Jr.).

**Schultheis, Maddock & Fox** of Port Orchard have employed **Chris Bell** as an associate. Chris is married and moves here from the King County Prosecutor's office. There go your Saturday mornings, Chris!

---

## GOVERNMENTAL LAWYERS

By **JOHN A. HUGLUND**

---

Within governmental circles, many were pleased to observe the influx of talented new lawyers this year. Recent additions to the Attorney General's staff include: **Tom Evans** (Ecology); **Wade Gano** (DMV); **Steve Hosch** (DSHS); **Maxine Thomas** (Hu-

man Rts. Comm'n); **Jim Johnson** (Game); **Gerry Kelly** (Employ. Secur.); **Gwen Howard** and **Dick Kirkby** (L & I Safety Div.); **Cris Leady**, **Bill Pope**, **Glenn Reed**, **Garry Souja**, and **Bob Taylor** (Highways); **John Pettit** (Education); **Bob Sailer** (Div. Nat. Resources); **Jim Pharris** (Legal/Fiscal).

New law clerks serving the Supreme Court include: **Frank Dacca** (J. Hunter); **Mike Andrews** (J. Utter); **Joe Puckett** (J. Stafford); **Tracey Rosellini** (J. Hale); **A. Peter Parsons** (J. Finley); and **John Hogle** (J. Hamilton).

Congratulations are in order for those receiving promotions or returning to governmental service: **Bill Clarke**, transferred from Seattle Consumer Protection Div. to Olympia AG Trial Div.; **Ed Shaw** returned from private practice to become an Executive Officer for Utilities & Transportation Comm'n; **Steve Way** transferred to become a Supervisor at L & I; **Dick Mattsen** promoted to Chief Counsel, DSHS; **Jack Hayden**, ex-AG, appointed Colonel, WSP, as head of its new Organized Crime Intelligence Unit; and **Bill Stephens**, from Dept. Gen. Admin., to become WSBA Legislative Representative.

At their regular October luncheon, the Governmental Lawyers' thoroughly discussed the "Saturday Night Massacre" and the current governmental crisis. It is believed they were the first lawyers' group in the State to positively assert their concern to Washington's Congressional delegation by telegram. The group also established another "first" in October with the presentation of their First Annual Administrative Law Seminar.

In November, the Gov't Lawyers' hosted Ms. **Maxine Thomas**, Assistant AG, Human Rights

Comm'n., at their monthly meeting. A presentation and discussion of discrimination charges within State agencies was lead by Ms. Thomas.

Plans for January were recently announced by Gov't Lawyers' President **Bob Wallis**. A joint meeting with the Thurston-Mason County Bar Association will be the setting for a visit of the WSBA Board of Governors on January 19, 1973. A wine-tasting party is also on the schedule for the monthly social event. Inquiries should be directed to **Bob Wallis**, Supreme Court, Olympia.

### PIERCE COUNTY REPORT

By **KENYON E. LUCE**

The Law Firm of **Peter Sterbick & Michael Sterbick** announces that **Terry E. Lumsden** has become an associate of the firm at 721 South 38th Street in Tacoma. Terry was formerly with **Harold J. Triesch & Joseph Nappi** of Spokane and previously with the Pierce County Prosecuting Attorney's office.

**Davies, Pearson, Anderson, Gadow & Hayes, P.S.** is pleased to announce that **Ronald L. Coleman** has become an associate.

**Burkey, Marsico, Rovai & McGoffin** announces that **Michael J. Turner** has become a partner, and **Thomas P. Larkin** has become an associate of the firm at 818 South Yakima Avenue in Tacoma, Washington.

The December Bar meeting was held at the Top of the Ocean. Subject: Practicing Personal Injury Litigation under the proposed Comparative Negligence Law to be adopted in the State of Washington, by **Hugh McGough** and **Neil Hoff**. □

## LAW SCHOOL STATISTICS, JULY 1973 BAR EXAM

School	Pass	Fail	Total
American Univ. (1st)	2		3
Arizona Univ. (1st)			3
Baltimore Univ. (1st)			
Beverly College (1st)	1		
Boston Univ. (1st)	3	1	4
California Univ. (Berkeley) (1st)			5
California Univ. (Davis) (1st)			3
California Western (R)	1		1
Capitol Univ. (1st)	1		1
Catholic Univ. (1st)	2		2
Chicago Univ. (1st)			3
Chicago-Kent (R)			
Cincinnati U. (1st)	2		
Colorado Univ. (R)			1
Columbia Univ. (R)		1	2
Cornell Univ. (1st)	2		2
De Paul Univ. (1st)			1
Drake Univ. (1st)	3		3
Duke Univ. (1st)	2		2
Florida State (1st)	2		2
Georgetown U. (1st)			5
George Washington (1st)			3
Gonzaga Univ. (1st)	74	14	88
Harvard Univ. (1st)	12		14
Hastings (U. of Calif) (1st)			5
Houston Univ. (R)			1
Idaho Univ. (1st)	17	2	19
Indiana Univ. (1st)	2		2
Iowa Univ. (1st)	2		3
Kansas Univ. (1st)			1
Loyola (L.A.) (1st)	1		1
Maine Univ. (1st)			1
Maryland Univ. (1st)	4		5
Michigan Univ. (R)			1
Minnesota Univ. (1st)			1
Montana Univ. (1st)	2		4
Nebraska Univ. (1st)			2
New Mexico U. (1st)			1
North Carolina (1st)			1
N.Y.U. (R)			1
North Dakota (1st)			1
Northeastern U. (1st)			2
Northwestern U. (Chicago) (1st)	4		4
Northwestern U. (Lewis & Clark) (1st)	6		9
Notre Dame Univ. (1st)	4		4
Oklahoma Univ. (1st)			1
Oregon Univ. (1st)	22		24
St. Johns Univ. (R)	1		1
St. Louis Univ. (1st)	1		1
San Diego Univ. (1st)	6		6
San Francisco U. (1st)	4		5
Santa Clara U. (1st)	3		5
Stanford Univ. (1st)	9		9
Stetson Univ. (1st)			1
Syracuse Univ. (1st)			2
Texas Univ. (1st)	2		3
Tulane Univ. (1st)	3		3
U.C.L.A. (1st)	2		2
U.S.C. (1st)			1
Union Univ. (1st)	1		1
U. of Pacific (1st)	3		3
Utah Univ. (1st)	4		4
Valpariso Univ. (1st)			1
Vanderbilt Univ. (1st)	3		4
Wayne State U. (1st)	2		2
Washington Univ. (Missouri) (1st)	3		1
U. of Washington (1st)	122	4	126
William & Mary (R)	7	2	9
Willamette Univ. (1st)	1		1
Yale Univ. (1st)	31		32
Law Clerk (R)	4		5
General Applicants	2		2
	446	38	484

Key: (1st) — First Time  
(R) — Repeater □

## **A New Year's Resolution For Lawyers: Realize Your Great Potential**

by Paul N. Luvera, Jr.

Every lawyer has within him the capacity to be a far greater, more productive lawyer than he is now.

We use but a small portion of our true potential for greatness. Man's destiny is to fully realize his own potential in all areas of his life. A lawyer may be said to be truly successful only when he has fully capitalized upon his own God-given potential. Yet, almost every lawyer limits his accomplishments by imposing self-made limitations and restrictions. The only limitation any person has is that which he creates for himself. A man can be no more than what he allows himself to be.

How do you go about changing a self-image which inhibits your successful achievements as a lawyer? Begin by changing your past mental habits of thought. Just as one must remove the old paint before applying fresh paint, one must change his mental pictures. The editors of news magazines sort through quantities of photographs and select only those which reflect what they are trying to convey to the reader. You must learn to employ the same technique with regard to your mental pictures.

No matter what you have thought of yourself in the past, from now on resolve to think of yourself as a person with absolutely unlimited possibilities. Stop sitting in judgment of yourself and no longer make decisions in advance about what you can or can't do. Remember that you will act and perform like the kind of person you think you are.

No longer allow your potential to be inhibited by what you have done in the past. Remember that we learn by trying, failing, adjusting and trying again. The fear of failure from past mistakes breeds lack of courage and turns you away from the challenges which allow you to be a great lawyer. Develop the mental attitude that mistakes are only a lesson in progress towards ultimate success. Instead of reliving past failures, start seeing yourself in mental pictures as succeeding at what you attempt to do. We cannot successfully live in the past.

Most men are so afraid that they are afraid to risk success. All successful men think positively, are self-motivated and are keenly aware of their unlimited potential and the abundance of opportunity around them. Begin to capitalize on your untapped potential talent and ability. Be prepared to take risks.

### **Worry Attracts Failure**

Worry has been said to be the act of holding mental pictures of what you don't want to happen instead of what you want to happen. Worry puts into action those mental forces which create paralysis of the mind and attract failure instead of success. Resolve to visualize yourself as already succeeding in the very thing you have been worrying about. Hold in your mind mental pictures of success rather than failure and set into motion your creative mind to achieve your goals.

Doubt stems from little more than lack of knowledge. If you have doubts it is because you do not have sufficient facts to make a decision. Doubt is dispelled by gathering facts, evaluating them and coming to a positive decision. Overcome procrastination by action and complacency by new challenges and develop self-confidence through new habits of thought about your true potential. You are really twice as good as you give yourself credit for.

Develop a new mental attitude about yourself by displacing all negative thoughts you have allowed to dominate your thinking with positive thoughts about the expectancy of succeeding in all things. Never give mental recognition to the possibility of defeat.

### **Keys: Persistence, Determination**

Develop a capacity for hard work. Nothing comes easy, especially success. Resolve that you will be willing to pay the price and combine hard work with a burning desire to succeed as a lawyer. A thirst for competition creates a passion for winning. Challenge yourself each day to greater and greater achievements. Persistence and determination to achieve are essential. Make your determination so strong it will overcome any circumstance which stands in the way of your objective.

Learn to squeeze an extra hour into every day in order to accomplish your goals. Think of your time in terms of money. When we hold dollar bills in our hand, we know that they have a

definite value. We wouldn't think of leaving them around where they could be stolen or blown away. We guard them. We should regard our time in the same manner. The better and wiser you invest your time, the greater the yield. Charles Buxton once said: "You will never find time for anything. If you want time, you must make it." How do you make extra time? By developing procedures to create that extra hour each day.

Have a daily list of things to be accomplished set out in the order of their importance. Become organized in your daily work and avoid useless hesitation about what work should be done next. Follow your daily work sheet rigidly and faithfully. Develop the attitude of doing first things first. Don't be a task hopper. Switching from job to job takes you nowhere fast.

### **Don't Stall the Big Jobs**

A common time waster is to fall for the temptation to get all of the easy jobs done before tackling the big jobs requiring the real thinking and work. If you do that, the big jobs will never get done until they are emergencies and emergencies waste time. Instead, do the easy jobs in between the big ones as a change of pace, incentive or reward.

Develop a formula for becoming a more successful lawyer. When we go on a journey we carefully map out where we are going and how we are going to get there. We plan ahead to make sure that we arrive at our destination. When we construct a building we do so from detailed plans as to how it should be built. We determine in advance every item which will enter into the construction of that building. In the same manner we should have a plan or formula for becoming a more successful lawyer.

### **A Formula for Success**

Examine the lives of successful men and you will observe a time proven formula for success. This formula involves the following steps:

**First, take the time to determine what you want from your law practice and from your life.** Know your objectives—not only for today but for the rest of your life. Analyze carefully every area of your life, the material as well as the spiritual. Set out your objectives in each aspect of your life. Identify your objectives and make them concrete and as specific as you can. Write them down so you can see them in black and white. Learn to review them regularly. Set your mind in gear

to create the circumstances which will achieve your goals.

**Second, determine what resistances you must overcome to obtain your objectives.** What is it that stands between you and your goals? Why don't you already have that which you want? Be specific and identify each of these obstacles to your success. Don't just analyze outside circumstances, look within you for the real obstacles to success.

**Third, develop your plan of action for overcoming these obstacles.** There is no resistance which you cannot go over, around or through if you will carefully consider all alternatives. Think how different people might view the obstacle and develop a response to it. Use mental "role playing" in your planning. Ask others for ideas but don't be too dependent upon others. Creative thinking requires a certain degree of independence. Approach every problem with the conviction that you can solve it. Even though others have failed doesn't mean that you must fail, as they may not have had your ability or talent. Unleash your imagination and creative thinking. Don't be too critical or prejudge your ideas until they have been developed fully. Allow time for your ideas to incubate—work on other problems and then come back to the original problem with a different perspective. Reduce your plan of action to writing and keep track of your progress in carrying your plan out.

**Fourth, start now!** If we place a bowling ball on the shelf, we know that it has the potential to be rolled down the alley and knock down all of the pins. But so long as it sits on the shelf it only has potential and if motionless nothing will be produced from the bowling ball. Overcome inertia and put your plan into action today. Have the determination and persistence to put your plan into action daily. Ideas are useless until they are translated into action. If you burn your bridges behind you and start you will be surprised at how quickly the world stands aside to let you pass. Action is thought in motion and procrastination is the thief of opportunity. Decide what you are going to do, how you are going to do it and then without hesitation begin. You will be amazed at how quickly you will get the job done.

□



**AGO No. 16: OFFICES AND OFFICERS — COUNTY — BOARD OF EQUALIZATION — TAXATION — JURISDICTION OF COUNTY BOARD OF EQUALIZATION TO INCREASE PROPERTY TAX VALUATION WITHOUT NOTICE.**

A voluntary appearance by a taxpayer before a county board of equalization, when made pursuant to RCW 84.48.010 for the sole purpose of seeking a *reduction* in the assessed valuation of a certain parcel of real property, does not give the board jurisdiction to *increase* the valuation of the subject property without advance notice.

**AGO No. 17: TAXATION — MEANING OF "RENEGOTIATION" FOR THE PURPOSES OF TAXING CERTAIN LEASEHOLD INTERESTS UNDER CHAPTER 187, LAWS OF 1973, EX. SESS.**

The term "renegotiation" as it pertains to taxable leasehold interests in property owned by the state or its political subdivisions under chapter 187, Laws of 1973, Ex. Sess., refers only to a renegotiation involving an extension or renewal of the lease and does not include mutually agreed upon changes in the lease during its term which are not a part of any extension or renewal.

**AGO No. 18: COUNTIES — FUNDS — MUNICIPAL CORPORATIONS — STATE RESTRICTIONS UPON USE OF FEDERAL REVENUE SHARING FUNDS RECEIVED UNDER PUBLIC LAW 92-512.**

(1) No county of any class may donate a portion of its federal revenue sharing entitlement under Public Law 92-512 (the state and local fiscal assistance act of 1972) to a private non-profit senior citizens' center.

(2) A county not operating under a home rule charter may not donate a portion of its entitlement under this federal act to a fire protection district for the purchase of an ambulance by such district.

**AGO No. 19: DISTRICTS — FIRE PROTECTION — SCHOOLS — CONTRACTS FOR FIRE PROTECTION SERVICES.**

The provisions of chapter 64, Laws of 1973, Ex. Sess., which on and after July 1, 1974, will require certain municipal corporations holding property situated within or adjacent to a fire protection district to contract with such district for fire protection services, are applicable to school districts holding such property.

**AGO No. 20: OFFICES AND OFFICERS — COUNTIES — SALARIES — AUTHORITY TO FIX SALARIES OF COUNTY ELECTED OFFICIALS.**

(1) Chapter 88, Laws of 1973, Ex. Sess., authorizes the legislative authorities of all classes of counties to increase or decrease the salaries of those county officers whose salaries are fixed by its provisions.

(2) Under Article XXX, § 1 (Amendment 54) of the state constitution, prohibiting mid-term salary increases for elective and appointive officers who fix their own compensation, a board of county commissioners or other legislative authority may not grant a mid-term increase in compensation to its own members under chapter 88, Laws of 1973, Ex. Sess.

(3) A board of county commissioners or other legislative authority exercising the powers granted by chapter 88, Laws of 1973, Ex. Sess., is effectively authorized by this chapter to fix the salaries of its other elective officials at or above their current levels by an ordinance adopted prior to January 1, 1974, but it may not reduce any of those salaries below those levels.

(4) After January 1, 1974, a board of county commissioners or other county legislative authority which by inaction has simply allowed the new salary levels fixed by the legislature to take effect most likely will not be able then to roll those salaries back to their prior levels in the case of any county elective officials then serving — except on a basis which will cause those salary decreases not to take effect until the commencement of the next ensuing terms of the respective county officers.

# CHARISMA, SI! PUBLIC RELATIONS GIMMICKS, NO!

by Philip S. Habermann  
Executive Director  
State Bar of Wisconsin

The sorest burden of bar association officers is the persistent demand that the bar "do something about public relations." When pressed for specifics, the members only respond, "Do more—do something!"

Bluntly speaking, there isn't much we can do if we adhere to traditional public relations patterns. Typically, the reaction is to take a quick survey of what all the other bars are doing, and then pick out and try whatever looks good that you haven't already tried, without any regard to how effective it was elsewhere.

The term "public relations" is a misnomer. It means different things to different people. It can't be packaged and bought and sold. Bar members look upon it as a panacea for everything they dislike. Any reflex response is surely going to be largely wasted. Whether you pour \$5,000, \$50,000 or \$500,000 into a so-called crash "public relations" program, you are largely wasting the money. The typical bar public relations program is like dousing yourself with perfume instead of taking a bath. You may smell better temporarily, but it doesn't do any real good if your underlying image still smells.

## What Do Lawyers Want?

What do the lawyers really want? They want what money can't buy—and what most of them

are unwilling to personally spend time and effort in obtaining. They want a good image—they want the public to realize that lawyers are great guys—that they are infallible—that they are all brilliant and trustworthy. In brief, they want an abundance of charisma for themselves, to the benefit of the entire bar; and this is something that no public relations program alone can accomplish.

Let's back off and look at the problem objectively. Lawyers find themselves in an incongruous situation. Never has the legal profession caught so much abuse in the media as in recent months. Lawyers and judges, you read, are milking estates and charging exorbitant fees for doing nothing. They thwart justice by defending guilty criminals. They legislate to pad their pockets and benefit their clients. They foment divorce and litigation and strife to generate fees. And so on and on and on.

At the same time, never have the lawyers been so busy—so swamped with work—and, for that matter, so prosperous.

Never have our law schools been besieged with so many applicants who want to become lawyers.

Isn't this inconsistent? Of course it is! But why is this? A closer look is revealing.

The fact is, the *complainers are not our clients!* The professional do-gooders—the "experts" who have never served a client for a fee—the reformers—and mostly the "nonclient" public, including a generous share of the aged and the poor—are the complainers. Some of these

squawk and point fingers because they gain personally in dollars or publicity. Others complain because they love it—like griping about the chow or the duty list in the Army.

But, the important thing is *that they are not our clients!* They never have been, and most of them never will be. And *nothing*—I repeat, *nothing*—that any bar PR program can do will influence the vast majority of this passel of protesters one little bit.

The authors will still write their books and articles attacking the lawyers because they make a lot of money out of it. The reformers will propose their utopian schemes for their own reasons. These things can't be ignored. Some good will come out of such criticisms and proposals. The "little guys" will go on carping and slandering the legal profession because we can't communicate with them—and they won't believe a thing you tell them if you can reach them. Sometimes the facts aren't what people really want to know.

So don't push the panic button. Things aren't nearly as bad as they seem. The two per cent who don't like us or who delight in tormenting lawyers shouldn't force precipitous action.

All right then, what do we do, assuming that we shouldn't just sit on our hands and cry?

#### Take a Look

First, let's look at the so-called public relations program that is supposed to gild us with gold and supply the wings and halos.

In practice, bar PR falls into several categories, most of which aren't public relations at all.

*Publicity*—this is the vanity builder. It isn't PR. Press releases are—and more often are not—news. They should be factual: Who did what, where and when. No gold paint here. The newspapers and other media may or may not use this information. Normally, it isn't very newsy or even very interesting. "Joe Blow Attends Tax Seminar" won't be published in the paper one-tenth as quickly as will "Joe Blow Arrested for Drunken Driving." The nitty-gritty of the bar's annual convention program surely isn't going to squeeze out a 20-inch paid advertisement for an X-rated movie.

Now we won't consider dropping the news release bit. A bar staff is geared to it. The members expect it. It builds their ego. And *some* of it will get published. Occasionally, you *will* have a nugget in the releases, or hit the media on a dull day and receive flattering attention. But

the accumulating scrapbook is just so much waste paper and paste, for all the lasting impact this publicity has.

Of course, if you really want publicity, get a rip-snorting fight going or create a real crisis over something crucial to the bar members. These things do haunt every bar administration—but then, strangely enough, they do their damndest to bury the story from the media!

Next, you have *public education*. Again, this is not true public relations. Here we have the pablum-spooning busy work such as "Law and You" newspaper columns, radio and TV tapes, leaflets, Law Day speeches, court house tours, law forums, paid newspaper ads and the like. All good, clean fun and games that may do some good and certainly do no harm, except that they divert time, energy and money away from the real job. They have only a cosmetic effect. But, the members see this sort of thing—and it satisfies them as part of "doing something" about PR. More gild and halos here? Hardly.

What do these things—publicity and public education—do to build the image of the lawyer—to give the bar *stature*? Little more than a wash job does on your automobile. The first good rain storm and mud puddle and you are right back where you started. A bar can work for months and years polishing its image, and one big, fat scandal or theft by a lawyer and you are right back with a worse image than you had at the start. And to a large extent, these disasters are beyond the control of the bar or its PR committee.

All right, you say, you're being negative and destructively critical. What do *you* suggest should be done? We want action. We want to get some of that "charisma." We're willing to forego the gimmickry and the diddle-do schemes and get at it. Tell us, man, tell us! We might not believe, but we'll listen!

OK—you *can* do something. The emphasis and direction of effort should be changed. Good PR—bright image—charisma—these are the pots at the end of the rainbow. You might not find them, but you can try, and in so doing will at least benefit from the exercise.

My suggestions call for a different emphasis on our image-building efforts. They are four-pronged:

#### Point One

First, you must gain rapport with the media representatives, with the individual legislators,

with other professional groups and with the law enforcement personnel. I mean, really establish communications and liaison. Get on a first-name basis. Do it man-to-man, before you have a problem and need their help and understanding. And offer to help them, if they need it. Respect is a two-way street. If people get to know each other—to understand each other's problems—they will be more apt to like and respect each other. This requires personal contacts by individual lawyers as well as the bar officers and staff. Visit these people. Talk to them. It takes a lot of doing and can't be accomplished overnight. You have got to make yourselves known and get to know the other guys. The legal profession doesn't live in a vacuum—and the sooner all of us recognize this, the quicker people will learn to know us and like us.

#### Point Two

Second, let's take ourselves and the story of what law and justice is all about into the high schools. This isn't a "Let George do it" proposition. It requires work—lots of work—in personal appearances and preparation, and it will pay huge dividends. Our school curriculums are not designed to give the students any basic fundamentals about law. About health, about politics, about economics, yes—but not about law. Not that we should try to teach high schoolers to be do-it-yourself lawyers, but they should know things such as the difference between criminal law and civil law, about lawsuits and damages, about juries, and the simple but important details about how their lives are affected by the rules and procedures in common problems they will face, including family matters, property, automobiles, contracts and business affairs. Most of all, let the students see and hear live lawyers and judges, and to talk with them.

The tools and know-how are available. The ongoing INQUIRY project is an example. All it takes is some local initiative and manpower and organization to get into the high schools with a viable, challenging and welcome program. Herein lies one of the most effective and available projects of all—right under your noses.

#### Point Three

Third, we've got to face up squarely to the problem of *competency* of the lawyers. The new Code of Professional Responsibility lays it right on the line. Under DR 6-101 it is spelled out as follows:

(A) A lawyer shall not:

- (1) Handle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it.
- (2) Handle a legal matter without preparation adequate in the circumstances.
- (3) Neglect a legal matter entrusted to him.

Violation is sufficient to bring discipline. And let me say emphatically, a major portion of the complaints and grievances received by the bar are against lawyers who are dilatory, slow and plain neglectful of their clients' matters. Believe me, this is the very worst sort of public relations—the one thing that can undo most of the good things that the bar does and stands for. It simply cannot be tolerated.

The rule is there. It is crystal clear. Why not enforce it vigorously?

But the rule provides more. We can't stop there. *Competency* is the word, and the court is justly concerned that by giving you the right to hang out your shingle, it vouches for the fact that you are competent to provide the counsel you are offering. This means study, attendance at seminars and bar meetings, buying new lawbooks and keeping up-to-date. It means referring some clients to others who are competent to advise them when you are not. And, most important, it forces you to honestly evaluate your ability and knowledge and confess that you don't know everything. Again, violation can mean discipline, and also civil damages.

#### Point Four

Fourth, and in my view, most important of all, is the imperative necessity to tighten up and speed up our grievance and disciplinary procedures. No one thing will do more to polish our image—to put the halo over your head individually and as a bar—than for the public to know that the bar *does* have machinery to promptly and fairly investigate complaints and to discipline and remove from our profession those lawyers who merit such treatment.

Any smell of cover-up or white-wash and you have lost the whole ball game. Any unwarranted delay or stalling is just as bad as the whitewash. Once the public gains confidence in the fact that the bar *will listen* and *will act* promptly on complaints, even if they prove groundless, they will respect us.

This is the challenge: We can and must follow

through at all levels, up through the final court of appeal, to make certain that consideration of complaints is expedited at all levels and stages.

If we lawyers are to claim professional status, then we must face up to the clear-cut obligation to keep our noses clean. There is no better way to imbue the bar with a concept of professionalism than to enforce strictly a code of professional responsibility.

Strangely—or maybe not so strangely—running a taut ship is popular with the membership of the bar as well as with the lay public. The day of sweeping our problems under the rug—of stalling on complaints until they are forgotten—is gone. The springboard of good image building is in giving first priority to the charge of Chief Justice Burger: "The legal profession cannot claim exemption from the historic proposition that those who have a monopoly on the performance of vital public services should be strictly regulated to protect the public interest."

### There Is More

So be it. There is our number one image-building opportunity.

Is there more? Of course there is. Every bar association has numerous PR-related, image-building projects which operate outside of the normal PR department. Examples are legal service programs for the poor; campaigns to aid judicial reform and court congestion; legal research and law reform; committees to speed up the judicial process, with certainty and finality; and the like. All these things are important and good. The long-range effect is cumulative. All are recognized by any perceptive and active bar association. But, they are not in themselves any substitute for the action that must be taken if any genuine change is going to be accomplished in the public's opinion of the lawyers.

I have not touched upon the personal involvements in community life and service that individual lawyers must engage in if they want to develop genuine admiration and respect. There is little that the organized bar can do to promote this beyond exhortations to devote time and energy to worthy causes and to develop in the members a true sense of professionalism. Yet, community service is a highly significant factor in building a warm public image.

There also remains the problem of better lawyer-client communication—the "one-to-one" public relations job that is of paramount impor-

ance. This must be accomplished by each lawyer, in his own office, in his day-to-day dealings with his clients. People are often most unhappy and critical over the seemingly short shrift that they get from their lawyer, even though the legal work is performed efficiently. The trouble is, the lawyer is too busy—or too thoughtless—to *talk* to the client. Spend a few moments in telling the client how long it will take to serve him, what is involved, what the fee situation is, what the chances for success are, and at the conclusion of the matter, to thank him and tell him to call if any questions arise later. These are important to the client. It is the best satisfaction builder I know. And if the clients aren't satisfied, in the long pull you won't have any.

Finally, the bar—meaning all of you—cannot remain indifferent and unresponsive to the discontent of the public, not with lawyers per se, but with some aspects of the legal establishment. Probate—divorce—automobile accident claims—all burden our courts and are often excessively complicated and slow. The bar can best serve itself by concentrated striving to perfect and speed up the system of justice in the general interest of the lay public. Our "image" will then take care of itself.

I remember an episode on a Groucho Marx TV quiz show some years ago. Groucho was interviewing a panel member, who said he was a salesman. Groucho said, "How's Business?" The salesman replied: "Groucho, if your product is right and your price is right and your service is right, you never have to worry 'How's business!'"

The successful lawyer has to be a salesman. If his work is competent, his fee is fair and his service is right, he never has to worry "How's business!"

Where, then, do we stand? Or better, where do we go from here? I have suggested a viable action program that in my opinion will effectively accomplish something. These four things don't cost a large sum of money. They can be started "right now" by lawyers in any community.

They need action—continued action in the perpetual future. The ideas are there. Any bar can fill in the details.

So, like many bar members say to me, I say to you: "Do more—do something!"

Charisma, si!—or maybe!

Public Relations Gimmicks, as such, NO!

□




---



---

**SUPREME COURT PRACTICE**

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


---



---

Following is a summary of important issues pending before the Supreme Court.

**APPEALS**

 41640 *Tonasket v. Washington*

Does public law 83-280 allow state excise taxes to be validly imposed upon Indian commerce conducted by a full-blood Indian upon his trust land in an Indian reservation which is subject to state civil and criminal jurisdiction?

 42570-71 *Weiss et al. v. Bruno et al.*

Can a prevailing party in an appeal be awarded more than the statutory \$25.00 allowed by RCW 4.88.260?

 42696 *Goodman v. Bethel School District No. 403*

Does a trial court have the authority under RCW 28A.58.490 to grant reasonable attorney fees and costs to a non-prevailing party?

 42791 *The Carrington Company v. Dept. of Revenue*

Are goods sold to the federal government for use in foreign countries that are loaded for shipment at the company's loading dock moved to a federal packing facility where they are inspected, accepted, repacked and transhipped subject to a business and occupation tax on income from the transaction?

 42793 *Yetter v. Commeau*

Does an illegitimate minor have any right to support from a natural parent if no paternity action filiation proceeding is brought by the mother against the father?

 42800 *State v. Chapman*

Defendant when arrested for second degree murder was in a state of intoxication. She asked for an attorney but after having been told it might take a couple days answered questions and gave incriminating statements. Was the defendant accorded the rights guaranteed by Miranda?

 42817 *Carter v. University of Washington*

Is an indigent in a civil appeal exempt under State or Federal Constitutions from the provisions of ROA I-22 requiring the filing of a cost bond?

 42856 *Bitney v. Morgan*

In an area where speculation has inflated land values beyond the value of land to the farmer, may the assessor base valuation figures solely upon "comparable sales" of property in the area, or must he take into account the present use of the property and its value at that use?

 42879 *Bare v. Slade Gorton &*

 42878 *Young Americans for Freedom v. Gorton*

Is initiative 276 violative of the first amendment to the U. S. Constitution?

 42889 *Petraroa et al. v. Halligan (Respondent) and Yazzolino (Petitioner)*

Did the trial court err in granting a motion to substitute the personal representative in a lawsuit when said motion was made more than ninety days after notice to the creditors was made?

 42894 *Dept. of Motor Vehicles v. Anderson*

Is there a right to a jury trial in superior court reviews of license revocations under the Implied Consent Law?

 42913 *Glader v. City of Seattle*

In a contest between the developer of a high-rise apartment building, the City granting permits and vacating an alley, and neighborhood residents claiming a violation of the SEPA, do citizens have standing without alleging a property interest? Is laches a defense in an action based on the SEPA? Is declaratory judgment the appropriate remedy if other alternative remedies are available despite CR 57?

 42976 *Comenout v. Burdman*

Was the assumption of jurisdiction by the State of Washington over the Quinault Indians pursuant to Sec. 6 of Public Law 83-280 invalid because of the failure of the state to amend its constitution?

 42983 *Granite Equipment Leasing Corp. v. Hutton*

Respondent is an Arizona Corporation but did substantially all of its business in Washington, it guaranteed a lease of water and sewage equipment in Oregon. The lessor is a New York Corporation and there was a provision in the guarantee providing that the New York law govern. New York law was not pleaded and the

trial judge applied Arizona law. Should Arizona law control? May the trial court in upholding the guarantee look to the law of a state other than the state whose law governs the principal transaction?

42984 *State v. Andre Brigham Young*

Is the discretion placed in the prosecutor to charge a violation of either RCW 9.61.160 (gross misdemeanor) or RCW 3.66.060 (misdemeanor) violative of the equal protection of the laws?

42985 *Baumgardner v. American Motors Corp.*

Does the manufacturer of an automobile which is involved in an accident owe a legal duty measured in terms of reasonable foreseeability to an occupant of that automobile for injuries caused and/or enhanced in the accident due to a defect in the automobile, when the defect did not itself cause or substantially contribute to the accident in which the injury was sustained?

42995 *State ex rel. Brundage v. Eide et al.*

Is an order entered by a District Court Judge requiring repayment of attorney fees by an indigent should he obtain employment within six months a violation of the sixth amendment to the U. S. Constitution and Art. 1 Sec. 22 of the Washington Constitution?

42996 *Barclay et al. v. City of Spokane*

Are non-employees properly includable in a bargaining unit so as to become parties to a collective bargaining agreement concluded after the termination of their employee status where the agreement provided for retroactive effect?

43004 *Pierce et al. v. Lake Stevens School District #4*

Whether notices sent and procedures followed in dismissing certain teachers for lack of sufficient funds met constitutional and legislative protections of teachers including the Continuing Contract Law.

43005 *Deschenes v. King County and Bertil J. Carlson*

Was the ten day appeal limitation Sec. 21.58.130 of the King County Zoning Code appealed by the subsequent adoption of the King County Home Rule Charter and the State Planning Enabling Act?

43006 *Gilmore et al. v. Hershaw*

Is the sale of seven lots in an unplatted subdivision illegal and the contracts for the sale thereof voidable?

43025 *State v. Morton*

Can a trial court dismiss counts in an information based on factual issues before any evidence is admitted? Is a public school principal a "public officer" for the purposes of RCW 9.18.020? Is a public school principal a "public officer" for the purposes of RCW 42.20.010 (Code of Ethics).?

43026 *State v. Matheason*

Is a dismissal of a charge of unlawful possession of a controlled substance with intent to deliver a bar to the bringing of a forfeiture action under RCW 69.50.505 as being a violation of the constitutional right not to be placed in double jeopardy?

43027 *Wilber Development Corp. v. Les Rowland Construction Inc., et al.*

In an action for damages on the theory of inverse condemnation was it error for the trial court to grant summary judgment where there was some question as to the amount of water discharged on appellant's property by respondents storm drainage facility. Even if appellant was damaged may he recover in view of the "common enemy" doctrine?

43028 *Hartford Accident & Indemnity Co. v. Novak*

Do the provisions of an uninsured motorist clause cover an accident in which the one causing the accident did not come into physical contact with the insured?

43029 *Canteen Service Inc. v. State*

Should cigarette excise taxes, found in RCW 82.24.080 to be excluded from the selling price as defined by RCW 82.08.010 used to calculate the retail sales tax?

43030 *State v. Wright, Klem, et al.*

Is WAC 352-36-040 adopted pursuant to the provisions of RCW 43.51.680 by the Parks and Recreation Commission limiting driving on ocean beaches beyond the scope of authority granted to the commission in RCW 43.56.680? Was RCW 79.16.160 impliedly repealed by RCW 43.51.680? Did the legislature intend to delegate the authority to the commission to promulgate WAC 352-36-040?

43037 *Luscier v. Colwell*

Is the right of a parent to his children sufficiently fundamental to entitle an indigent parent to appointment of counsel at public expense in a permanent child deprivation proceeding?

## PETITIONS FOR REVIEW

42858 *Wood v. Dunlop*

In a case where a person has died as a result of conceded medical malpractice and the potential wrongful death claim is settled between the insurance adjuster and the surviving spouse who has been appointed only as administrator, were the rights of an incompetent minor properly protected under the probate statutes without the appointment of an independent guardian ad litem?

42897 *State v. Murray & Simpson*

Was a tv set properly seized under the "plain view" doctrine where police officers search premises for items stolen in one robbery but take the serial numbers of the tv and subsequently discover that it was stolen in a different robbery?

42929 *State v. McFarland*

Is a defendant charged in municipal court with minor offenses entitled to court appointed counsel? Is a search as a result of a conviction in the municipal court without the benefit of counsel lawful? Is the evidence seized in such a search admissible in a subsequent prosecution in superior court?

42946 *Galvan v. Prosser Packers & FMC Corp.*

In an action for strict liability was it error for the trial court to give, over the objection of the plaintiff, an instruction on foreseeability? Did the trial court abuse its discretion in denying a motion for a new trial where an affidavit of one of the jurors indicated that there was racial discrimination voiced by other members of the jury in reaching the verdict?

42971 *Hamilton v. State Farm Insurance Co.*

In an action to determine whether an insured was fairly represented by the insurer's attorney in connection with settlement negotiations was it error under Canon 8 of the Code of Professional Ethics to give the following instruction:

A lawyer employed by the insurer to represent the insured owes the insured undivided loyalty.

Where an insurer's attorney has reason to believe that the discharge of his duties to his client, the insured, will conflict with his duties to his employer, the insurer, it becomes incumbent upon him to terminate his relationship with the insured.

42974 *State v. Glasper & January*

Where an item is observed in the trunk of a car, by police in plain view, but the circum-

stances did not amount to probable cause to arrest or to search on the basis of a suspected robbery, is it nevertheless proper for the officers to impound the vehicle and the contents thereof and later introduce the particular item as evidence of a subsequently discovered robbery?

42978 *Tunney v. Seattle Mental Health Rehabilitation Inst.*

Was the plaintiff prevented from presenting his theory of the case by the refusal of the trial court to give an instruction setting forth an ordinance which made it unlawful to move a defective vehicle on city streets where the defendant's vehicle was being pushed by another?

42998 *Dick v. Attorney General*

Are practitioners of the profession of Drugless Healing exempt from the application of the Consumer Protection Act?

---

## COURT OF APPEALS

By JOSEPH A. THIBODEAU

---

On July 1, 1973, the Supreme Court amended CAROA 46(f). "Reproduction of Briefs in *Indigent Cases*", as follows:

"When public funds have been authorized for the costs of briefs filed on behalf of a defendant, the briefs shall be reproduced by the Court of Appeals. Within the time allowed, an original copy of such briefs ready and suitable for photocopying shall be filed with the clerk of the cognizant division. The clerk shall reproduce the briefs and make the following distribution:

To Whom Sent	Number of Copies
Defendant	1
Counsel for Defendant	2
Opposing Counsel	2
State Law Library	5
Court of Appeals	As Required
Supreme Court	7 if petition for review is filed and 5 additional if petition for review is granted;

Some confusion has arisen among the members of the bar as to whether the term "briefs" in-

cludes (1) briefs on motions, (2) petitions for rehearing, and (3) petitions for review directed to the Supreme Court.

(1) *Briefs on Motions.* Briefs in support of any motion are required in all cases in accordance with CAROA 53(f). The Court of Appeals requires, in practice, an original and three (3) copies of all briefs. The court takes the position that since the cost of reproduction is minimal, counsel should be required to make the necessary copies. The expense, if any, may be recovered as part of counsel's cost bill submitted pursuant to CAROA 47(a) (3).

(2) *Petitions for Rehearing.* Any party to a case in which an opinion is filed may, before the opinion becomes final, file in the Court of Appeals a petition for rehearing or modification. An original and three copies shall be filed with the court pursuant to CAROA 50. The purpose of the copies is that in the event that the court requests an answer to the petition, copies are available for service on opposing counsel. CAROA 50 does not require that the petition for rehearing be served on opposing counsel. The court takes the position that copies are only necessary if the court requests an answer, and the burden of reproduction should be placed on the court. Hence, counsel should file the original with the court and if copies are necessary, the clerk will arrange for reproduction.

(3) *Petitions for Review.* Any party to a case in which an opinion has been filed by the Court of Appeals, may within twenty (20) days after the denial of a petition for rehearing or modification, file in the Supreme Court a petition for review. A copy of the petition must be filed with the Court of Appeals and a copy served on the opposing party with the twenty-day period. Proof of service of the copy on the opposing party shall be filed in the Supreme Court with the petition. An original and twelve copies shall be filed with the Supreme Court in accordance with CAROA 50(b). In indigent cases, the court has established the following procedure on petitions for review:

The *original* petition for review shall be filed in the Court of Appeals within twenty (20) days of the date of the order denying the petition for rehearing. In that event, the clerk of the Court of Appeals shall make the following copies:

- 1 for service on opposing counsel
- 1 for counsel for petitioner
- 1 for service on the petitioner

Proof of service shall be made by counsel for petitioner and mailed to the Supreme Court within the twenty-day period. A timely filing of the petition in the Court of Appeals shall satisfy the filing requirements of the Supreme Court. The Court of Appeals will then mail the original petition for review along with the entire file to the Supreme Court for consideration of the petition for review. The Supreme Court, upon receipt of the petition for review, will make the necessary copies for distribution to that court.

---

## SUPERIOR COURT NEWS

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

---

President-Judge **William H. Williams** has named the following to chair committees of the Superior Court Judges Association: **Walter Stauffer** (Yakima), Criminal Law; **Albert N. Bradford** (Walla Walla), Judicial Ethics and Grievances; **Solie M. Ringold** (King), Trial Judges' Center; **Edward P. Reed** (Clark), Juvenile Court; **Richard J. Ennis** (Lincoln), Improvement of Justice; **Donald N. Olson** (Spokane), Mental Illness; **Felix Rea** (Douglas), Institutions; **James A. Noe** (King), Courts and the Community; **Nancy Ann Holman** (King), Family Law; **Warren Chan** (King), Legislation; **Willard J. Roe** (Spokane), Spring Conference; and **William L. Brown, Jr.** (Pierce), Salaries and Retirement.

King County judges have elected **Warren Chan**, **Frank D. Howard**, **George H. Revelle**, **Solie M. Ringold** and **Stanley C. Soderland** as an Executive Committee for the coming year.

Judge **Warren Chan** (King) is serving as dean for a trial judges law "Update" seminar to be presented by the Washington College of the Judiciary January 7-11 at Providence Heights. Superior court judges serving on the faculty are Judges **Chan**, **Theodore S. Turner** (King); **Alfred O. Holte** (Snohomish); **Willard J. Roe** (Spokane); and **Nancy Ann Holman** (King).

## Law School Dedication Set

The University of Washington School of Law is scheduled to move from the main campus to its new quarters during the month of March if movable equipment is delivered as contracted, according to Dean Richard S. L. Roddis.

The new building, located at 1100 Northeast Campus Parkway (Seattle 98195), will carry the familiar name of "Condon Hall." Present Law School telephone numbers are expected to remain the same.

The building, designed by Mitchell/Giurgola Associates Architects of Philadelphia, will house the School of Law and Law Library.

*Dedication of the new Condon Hall is tentatively planned for Friday and Saturday, November 15 and 16, 1974, according to Professor John Huston, Chairman of the Dedication Committee, and Professor Marian G. Gallagher, Chairman of the Building Committee.*

The Dedication Committee plans to bring to the ceremonies as keynote speaker a person who has made a significant contribution to the legal profession.

*All members of the Washington Bar are invited to attend.*

Activities during the two-day period will include programs, tours and special meals for alumni, students, faculty and other guests.

The School of Law and Law Library, with a

capacity of 250,000 volumes, provides initial facilities for 500 law students.

The eight-story reinforced concrete building houses classrooms, seminar facilities and a moot court room. A lounge, lunchroom and lockers are provided for students.

Law School administrative offices are located on the third floor with the faculty library and lounge. *Facilities for attorneys are located adjacent to the faculty library.*

Faculty offices are located from the fourth to seventh floors. The Washington Law Review offices are located on the eighth floor.

Charles Z. Smith  
Associate Dean  
U. of W. School of Law



Marian G. Gallagher and Llewelyn Pritchard

### Pre-Trial Diversion and Deferral Programs

*(Continued from page 9)*

be carefully and effectively monitored. Every defendant must have counsel before the decision to accept a diversion or deferred program is made. Without counsel there can be no knowing waiver of constitutional rights, and the opportunity for official pressure to influence a defendant's decision is increased. In all instances, safeguards must be established to insure that a defendant may freely choose without prejudice to decline diversion or deferral and to attempt to establish his or her innocence at trial.

Finally, it is imperative that all lawyers clearly and cogently advise their clients that diversion and deferral programs are only intended for defendants who are guilty. If the rights of criminal defendants are not effectively protected, particularly in the face of tempting diversion-

deferral programs, the rights of all persons will ultimately suffer.

### FOOTNOTES

<sup>1</sup>For a discussion of this question, see Frankel, Marvin E., *Criminal Sentences*, 1973, New York.

<sup>2</sup>See *Philadelphia Inquirer* series, "Crime & Injustice," 1973.

<sup>3</sup>See Barr, Carl, "Will Urban Courts Survive the War on Crime," Vol. 4, #18, *Criminal Justice Newsletter*, September 1973.

<sup>4</sup>The National Advisory Commission on Criminal Justice Standards & Goals (*Courts*, Wash. D. C., 1973, pg. 20) recommends the publication of detailed guidelines to determine eligibility for deferred prosecution and strict enforcement of the published guidelines.

<sup>5</sup>Department of Social and Health Services, 10-1-73.

<sup>6</sup>See Zaloom, J. Gordon, "Pretrial Intervention Programs Should Not Postpone C.J. Reform," Vol. 4, #20, *Criminal Justice Newsletter*, Oct. 15, 1973.

## Letters

(continued from page 3)

work, and omits this phrase from the other aspects of the tripartite test for obscenity. With "contemporary community standards" thus confined, the difficulty of application of that phrase is reduced.

This is because as a practical matter, the kind of films and bookstore material bothering some segments of police and public invariably appeals to the prurient interest—by any reasonable standard of definition. In other words, when the issue comes down to whether the material is hard-core pornography (and that is what the *Miller* Court was concerned about), the question of its appeal to the prurient interest is obvious and has already been hurdled in most cases. That is the easy part of the test, because unless the material has gone past the stage of mere appeal to the prurient interest—Don't many Madison Avenue ads for cars and cigarillos arguably go that far?—the police are not even interested. No, it is the explicitness of depiction of sexual activity and whether the work otherwise has serious value that are the real concerns, and the *Miller* test does not directly speak of community standards with respect to those issues.

Another reason that I feel the *Miller* decision, although certainly no panacea, can be more easily applied than the previous test, is that the Court helpfully gave:

"a few plain examples of what a state statute could define for regulation under the second part (b) of the standard announced . . . :

"(a) Patently offensive representations or descriptions of

ultimate sexual acts, normal or perverted, actual or simulated.

"(b) Patently offensive representations or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals."

So we at least have an idea of the kind of activity the Court does not believe can legally be depicted, which is more than we knew before.

One more thing. Mr. Shulman says that "there would appear to be no clear demonstration of any correlation between obscene material and crime." I am not prepared to argue with him. However, police officials in Tacoma would never be convinced of the validity of that statement in light of their experience in making arrests for assaults on women, attempted rapes, peeping, and assorted deviant crimes, after which in a large incidence of these cases "porno" material is found in the subject's car or room. They are convinced, empirically, that there is a connection between obscene material and crime.

MARK H. ADAMS

Tacoma

## And The Author's Reply

Editor:

I was pleased to see Mr. Mark Adams's response to my recent article on obscenity (October-November Bar News). While the two of us seem to be in basic agreement as to the status of the law, there is one point of divergence upon which I feel an urge to comment.

Mr. Adams indicates that "... the new test is somewhat easier to apply in most situations. . . ." In the abstract, that may be true,

however, in reality, the court is left without any factual background against which contemporary community standards, appeal to prurient interest and lack of serious literary, artistic, political, or scientific value may be evaluated.

In the *Paris Adult Theater* case the court held that the State of Georgia did not err in failing to present affirmative evidence on the question of obscenity. Thus, the trier of fact, and perhaps more important, the appellate courts, are left to their own subjective determinations in each case. As difficult as it may be to accept, this type of subjective determination may well lead to a "trial de novo" before the appellate courts, with appellate judges measuring obscenity in terms of their own subjective backgrounds and experiences.

This is not to say that the appellate courts will not apply the "test" as set down by the United States Supreme Court, but rather, that the ingredients going into the application will be subjective, rather than based on evidence.

As the article indicated, the presentation of "expert" testimony in obscenity trials often generated more heat than light. Nonetheless, such evidence did present at least a factual backdrop against which the issues could be determined in an objective manner. Once the factual evidentiary requirement is gone, so is the hoped for objectivity.

Abolition of the need for "expert" testimony will undoubtedly make a case easier to try. On the other hand, ease of trial is a doubtful substitute for the clarity and predicability necessary to sound legal guidance.

NEAL J. SHULMAN

Richland

## McLauchlan at Large



Randy, Judge George and Geoffrey Revelle



Judge Betty Howard and Ralph Potts

Grant Armstrong and Ray Ogden, Jr.



Ben Gantt



Hugh Miracle, Jr., and father



**Wills Information Sought**

Anyone with knowledge of a will of **Robert J. McGallian** please notify J. Arvid Anderson, 807 Puget Sound Bank Building, Tacoma 98402.

A possible will of **Geneva H. Finley**, a/k/a **Geneva L. Hemp-hill**, is being sought by Bernard J. Barnes, 610 Fourth and Pike Building, Seattle.

Christopher M. Eagan of 123 Third Ave. S., Seattle, wishes information concerning a will of **Lois M. Hansen**.

J. R. Sherrard, Box 10400, Bainbridge Island, seeks information concerning a will of **Phil H. McIntire**, which would have been drafted by an attorney in Seattle or Everett any time before 1972.

Richard L. Pitt of 1126 West Pioneer Way, Oak Harbor, wishes to contact the attorney who prepared wills for **Gatch Titus Cohoe** and **Ida D. Cohoe**, residents of Freeland, Island County. The original wills are believed to have been destroyed in a house fire which claimed the lives of both Mr. and Mrs. Cohoe on November 21, 1973.

**Wanted and Unwanted**

**Space Available:** Available now to sublet, well-appointed two-room office one block from courthouse in Tacoma in new Labor Center Building. Ms. Stam, 624-4515, Seattle.

**For Sale:** Gray's Textbook of Medicine; Rabkin and Johnson Estate, Gift and Income Taxation; Blashfield Automobile Law and Practice; entire set Am. Law Reports. All complete and current. Curran, Kleweno, Johnson & Curran, Kent, UL 2-2345.

- Jan. 9-12 CLE & Ski program, Big Mountain, Whitefish, Mont., on Land-Use Planning; faculty includes Marvin Durning and Richard U. Chapin of Seattle; registration limited to 100, fee \$100; sponsored by Continuing Legal Education Montana, University of Montana Law School, Robert E. Sullivan, Dean, Missoula 59801.
- Feb. 15-16 Product Liability seminar, Seattle Hyatt House, sponsored by WSTLA and ATLA.
- March 6-9 Sixth Medical Legal Institute, Americana Hotel, Miami Beach; for information, University of Miami Law Center, Box 8087, Coral Gables, Fla. 33124.
- March 15, 23 and 30 CLE Seminar in Spokane, Seattle and Olympia on Personal Injury Practice Under The Comparative Negligence Law.
- April 26-28 Medical and Professional Malpractice seminar, WSTLA, Rosario, Orcas Island; Daniel Sullivan, chairman.
- June 28-30 WSTLA annual convention and seminar.

**For Sale:** California lawyer selling Portland, Ore., law library, including Pacific Reporter 1st complete and 2nd through Vol. 433, Elaine Van Bruggen, 315 University Ave., Los Gatos, Calif. 95030.

**For Sale:** Two sets RCW (BPC), current, without annotations, \$150 per set. Studley, Purcell, Spencer & Guinn, Longview 423-8820.

**Wanted:** Scott on Trusts 3rd ed.; **For Sale:** Mathew-Bender Courtroom Medicine Series current, any offer considered. J. R. Sherrard, Bainbridge Island, VI 2-5681.

**For Sale:** R.C.W.A. with current pocket parts—\$1,000; Washington Practice—\$250; Washington Digest—\$300; Rabkin & Johnson-Current Legal Forms, complete and up-to-date—\$400; Three Volume Collier on Bankruptcy—\$60; Moore's Manual, Four Volume Practice and Procedure—\$75; Frumer & Frieden,

Products Liability—\$80; Three Volume Research Institute of America Tax Guide—\$90; Irwin, Defense of Drunk Driving Cases—\$20; Bernhein—Defense of Narcotic Cases—\$20; also, miscellaneous furniture, shelving, conference table, 3M Copier, and other miscellaneous items. Charles L. Senn, Seattle 622-4841.

**Space Available:** Office-sharing arrangement, IBM Building, with firm expanding space, available Jan.-Feb. Jeff Brotman, Seattle 624-1230.

**For Sale:** Complete 10-book set Rabkin and Johnson Federal Income, Gift & Estate Taxation, Perfect Condition, \$150.00. J. B. Gough, Office Manager, Law Department, Burlington Northern Inc., 840 Central Bldg., Seattle. Call 624-1900, Ext. 2445.

**For Sale:** 75 erased MTST tapes. Best offer. Seattle, 292-1000, Ext. 608.



## THAT BANNER DAY!

The multiple benefits are so obvious, so proven by experience, it is almost certain that some day in the near future your firm will also install a law office management system.

To make it a banner day, be sure it is the "right" system for you. If it is, your firm's investment will be returned many times over.

Include the *CT System For Law Office Management\** in your deliberations. It is the standard of excellence against which to compare any other system. It is used by more law firms in more states than any other. We'll be glad to send you descriptive literature (lawyers only, it's a lawyer's system) on either our System/1500 (data processed weekly) or our System/2500 (data processed daily). Both offer a wide selection of options to fit your firm's individual requirements.

*\*Provided through CT Law Technology, Inc. (CTLTI).*

---

**CT CORPORATION SYSTEM, 1218 THIRD AVENUE, SEATTLE, WASHINGTON 98101**

As offered, send me, without obligation, information on

CTLTI/System/1500

CTLTI/System/2500

NAME \_\_\_\_\_

FIRM \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY, STATE, ZIP \_\_\_\_\_

WASHINGTON STATE BAR ASSOCIATION

505 Madison Street  
Seattle, Washington 98104

Nonprofit Org.  
U. S. POSTAGE  
**PAID**  
SEATTLE, WASH.  
Permit No. 2204