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WASHINGTON STATE BAR NEWS

PROBATE CODE IMPROVED

MEMORANDUM

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FEATURE ARTICLES

IN THE NEWS

DEPARTMENTS

Letters

Lawyers As Escrow Agents

Editor:

Under the proposed new Escrow Agent Registration Act, which apparently has the approval of the State Escrow Commission, only the following are exempt from registration: "Any receiver, trustee in bankruptcy, executor, administrator, guardian, or other person acting under the supervision or order of any superior court of this state or of any federal court."

As will be noted, attorneys are not exempt, as they are under the existing act.

Perhaps the Bar Association should do some lobbying.

MARJORIE W. RUMLEY
Seattle

Condon Hall's Concrete Baffles

Editor:

I certainly enjoyed Marian G. Gallagher's article in the February issue of the State Bar News concerning New Condon Hall.

For some time now I have wondered just what was that concrete monster rising out of the ground off Roosevelt Way. Initially, because of its resemblance to a pyramid I assumed it was a new building for the Department of Anthropology to be used to store Egyptian mummies. However as the structure grew and grew, it was obviously not taking on the shape of a pyramid. For a while I concluded that it was a mausoleum for the remains of University professors. As the structure took shape it next appeared to be an atomic bomb shelter. However, I discarded both of these theories when the concrete baffles went into place. At that point it appeared obvious that it was a storage space for old files and microfilm. I now find that of all things it is New Condon Hall and that people are going to be in that structure. Whether law students qualify as "people" is of course subject to some debate.

I notice that Marian, with a lawyer's caution, did not name the architect who created this monstrosity. There is some talk of commencing a class action against him on behalf of all graduates of Old Condon Hall. One lawyer I know has issued a writ of habeas corpus. However, the Sheriff advises that he cannot locate the respondent in order to serve the same. I have been assured however by all parties that once the culprit is found that there will be a public hanging to which all graduates of Old Condon Hall are invited. I have been assured that he will be hung [sic] by his heels (or preferably some other part of his lower extremities) and that the rope will be wrapped around one of those concrete baffles.

ROY MOCERI
Seattle

Baffles Are Sun Screens

Editor:

A xeroxed and small selection of the clippings with which I threatened you yesterday by telephone is enclosed. These are intended to explain the purpose behind the dominating features of New Condon's facade, called by you concrete baffles, by architects suspended sun screens, and by me, lovingly, Giurgolas.

It would be possible for me to supply you additionally with a stack of papers several inches high comprising the architectural-engineering sun screen study, including direct solar heat gain tables and calculations, the mechanical engineer's report, sun penetration studies showing the sun position and intensity as of December 21, March 21-September, and June 21 with columns clearly segregating the figures for bearing, true altitude, angle incidence, direct solar energy clear and direct solar energy haze (direct solar energy factors are used to compute BTU/HR/OFFICE Heat Gain in the comparisons used in this study. Diffused Solar energy and temperature differential were not computed for Total Heat Gain) and a copy of the "Sun Angle Calculator" by Libby Ownes Ford. But the general idea is that at 6'3" above the floor, the Giurgolas do not block the view but do reduce the size of the air-conditioning system and thereby reduce operating expenses, so I shall not be forwarding this file unless you specifically request it.

MARIAN G. GALLAGHER
Law Librarian
Seattle

Why "—person"?

Editor:

I was interested in reading, on page 16 of the February issue of the State Bar News, that, "It was voted that the chairperson of the Young Lawyers' Section be invited to attend the meeting of the Board of Governors and that designated spokespersons for the

Young Lawyers be authorized, etc."

This new coinage of words has rather intrigued me so I looked up the meaning of "man" in Webster's New Dictionary and found it to be "a human being, person, whether male or female." I then looked up the word, "person," and I found the literal meaning meant "face mask used by actors."

The recent surge of the use of "person" rather puzzles me. Is it because the words, "man," or "male," are to be considered nasty words? Or, perhaps, a substitute for "chauvinistic pig."

If we are then to be consistent, we should say, "the hu-person race" consists of "chauvinistic pigs" (pigs for short) and "fe-persons" and "wopersons." In bringing Shakespeare up to date, we shall say, "Friends, Ropersons and Countrypersons, Lend me your ears." This also will apply to Frenchpersons and Gerpersons.

We shall thrill when we read the history of our naval heroes. We read of those battleships known as "persons of war" filled with able-bodied "seapersons." We see the captain on the bridge. We hear her call out, in a clear soprano voice, "You persons down there, half of you person the guns and the other half person the lifeboats."

When we, as lawyers, appear in Court to apply for a Writ of Persondate, I am sure she will grant it, because beneath those robes, she is really a "woperson."

Long live the girls!

WILLIAM F. DEVIN

Legal Secretary Submits Recipe

Last month, we printed the following:

RECIPE FOR LEGAL SECRETARY

Stir together until well blended:
- 10 fast fingers;
- 1 nimble brain;
- 1 even temper with equal parts of tact, diplomacy and common sense;
- 1 large size heart;
- 1 broad mind;
- 1 infallible memory;
- 1 lifetime of loyalty.

Add a touch of tenderness and season to suit individual taste of employer. Bake approx. 8 hours in moderate law office. Serve garnished with one large paycheck and a few words of thanks.

JOHN W. RILEY
Seattle

This month, we received the following response:

RECIPE FOR LAWYER

- 1 enormous ego (usually male)
- 1 part arrogance
- 1 part superiority complex
- 1 part childish temper, diced into uncontrollable tantrums
- 1 infinite disrespect for human needs

Blend thoroughly with a lifetime of practiced sexism, and
Disguise with shabby liberalism (this ingredient optional)

Shove ingredients through a law school until well institutionalized. Place this disgusting concoction in a law office beneath a framed code of unethical conduct. Season with glaringly bright, wide, flowered neckties and loud expensive suits. Garnish with 1 or more intelligent women who do most of the work and get nothing in return except total disrespect from their employer (mixed in with a revolting paternal attitude) and a paycheck which is practically too small to see and certainly does not reflect the value of her work—and convince her that she is privileged. Serve with blind justice and corrupt, oppressive legal institutions.

Truly a dish that will perpetuate the oppression of women and further a system of institutionalized injustice.

I.M. ANGRY
Legal Secretary
Seattle

Ethics, Legal Education Article

Editor:

Please be sure to indicate that the article was written for a general (non-lawyer) audience. Since articles in your magazine are generally written solely for lawyers, I am sure that there has been some confusion on this score.

THOMAS EHRLICH
Stanford, CA.

Correction

Judge Horton Smith's letter of commendation (February, 1974) misnamed and intended to commend Seattle attorney John Oswald for his recent efforts in a particular case.

Editor's Notes

Negligent Injury to the Marital Community — Imputed Contributory Negligence

Section 2 of the statute adopting comparative negligence apparently attempts to abolish the rule that contributory negligence of a husband or wife bars the community cause of action for damages arising out of bodily injury to one of them.

Ostheller v. Spokane & Inland Empire R. Co., 107 Wash. 678, 182 Pac. 630 (1919) stated that negligence of a husband which concurred with negligence of a third party to cause injury to his wife was imputed to the community and, therefore, barred suit for the wife's death. The court conceded that negligence of a husband or wife is not ordinarily imputed to the other spouse, but stated:

> ". . . those decisions are from jurisdictions where the injured wife has the right to recover damages for injury to her person in her separate right, under statutes which do not result in the merging of her individuality, so far as her marital property rights are concerned . . ." 107 Wash. at 687 (1919).

When *Ostheller* was decided, the husband was the only necessary party in a suit for bodily injury to the wife. Since 1972, the wife has been the only necessary party. RCW 4.08.030. Further, the husband was the sole manager of community property, where husband and wife are now equal managers. RCW 26.16.030.

Critics of the *Ostheller* rule found it difficult to understand why a husband or wife might retain a separate interest in an automobile or a set of silverware acquired before marriage, but not in the limbs of their bodies; and argued that, since a bodily injury claim is not acquired by "onerous title," that is, by labor and industry of the spouses, it should not be considered community property. Comment, *Personal Injuries as Community Property*, 35 Wash. L. Rev. 249 (1959), by Robert D. Duggan; see also 38 Wash. L. Rev. at 375-6, n. 20.

If a husband and wife agreed that their claims for bodily injury were to be separate property, the *Ostheller* rule arguably would not apply. Since the wife alone is the manager of her separate property, any argument that the husband is the agent of the wife for purpose of imputing to her knowledge of a dangerous condition should also disappear. See *Chase v. Beard*, 55 Wn.2d58, 346 p.2d 315 (1959). A *post accident* agreement that a bodily injury claim of a spouse should be separate property was not given a sympathetic reception in California. *Kesler v. Pabst.* 43 Cal. 2d 254, 273 P.2d 257 (1954).

Logically, the *Ostheller* rule should not be applied when the spouses are domiciled in a non-community property state. *Huddleston v. Angeles Coop. Creamery*, 315 F. Supp. 307 (WDW, ND, 1970), however, imputed contributory negligence of a driver wife to her passenger husband in a Washington accident, though they were domiciled in Oregon, thus extending the rule beyond its community property foundation.

Interspousal Suits Allowed

Part of the underpinning for the *Ostheller* rule was cut away by *Freehe v. Freehe*, 81 Wn.2d 183, 500 P.2d 771 (1972). As to a bodily injury claim by a wife *against her husband*, the court held the claim for pain and suffering was separate property of the wife, while the claims for special damages and that portion of general damages representing loss of future earnings were community property. Arguably then, contributory negligence of a husband should not be imputed to the wife as to her separate claim for pain and suffering against a third person.

Freehe's abolition of interspousal immunity, by itself, would not necessarily have impaired the doctrine of imputed contributory negligence between a spouse and the marital community. Imputation of contributory negligence does not bar suits between the persons themselves. *O'Brien v. Woldson*, 149 Wash. 192, 270 P. 304, 62 ALR 436 (1928); Restatement, Torts 2d 491 (2); Restatement, Agency 2d §415, comment b. See *Johnson v. Ottomeier*, 45 Wn.2d 419, 275 P.2d 723 (1954). Further, the imputation has been between a spouse and *the community*, and not from spouse to spouse—though language on the point has not always been precise. See *Raffensperger v. Towne*, 59 Wn.2d 731 at 736, 370 P.2d 593 (1962).

Statutory Change

The second section of the comparative negligence statute provides:

> "The negligence of one marital spouse shall not be imputed to the other spouse to the marriage so as to *bar* recovery in an action by the other spouse to the marriage, or his or her legal representative, to recover damages from a third party caused by negligence resulting in death or in injury to the person." RCW 4.22.020.

When the first section of the same statute states that no contributory negligence of *any person* will bar recovery for the same injuries (plus property damage), this second section can be read as nothing more than an unnecessary repetition of the concept previously stated. The Legislature probably intended to say that imputed negligence of a spouse will not *diminish* recovery, rather than *bar* recovery; except, it should be noted, in suits for property damage, where imputed negligence may diminish damages.

Will contributory negligence of a managing spouse now diminish all, or one half, of the community owned portion of a personal injury action, or is the statute limited to suits by spouses for their separate injuries? Even if the statute had used the word *diminish*, it would not give a clear answer to the question. A statutory declaration that all portions of a personal injury action are the separate property of the spouse injured might help solve the problem.

If a spouse is allowed to recover all of the out-of-pocket special damages incurred by the community, plus all lost future earnings, is the amount recovered separate property? Or is the other spouse to be allowed to "profit from his own wrong-doing?"

Does the statute apply where negligence would be imputed even if the husband and wife were not married, *e.g.*, a business partnership involving only separate property? Or is the statute limited to imputation of contributory negligence to a spouse because she is a member of the marital community? California, in a statute now repealed, attempted to abolish imputed contributory negligence by providing that a claim for bodily injury was separate property. This failed to prevent imputation of negligence for reasons other than the community property law. *Cooke v. Tsipouroglou*, 25 Cal. Rep. 586, 381 P. 2d 940 (1963). The newer California statute requires the same result. Cal. Civil Code §5112.

Imputed Contributory Negligence

Washington courts have applied the "both-way test" in determining whether contributory negligence will be imputed to a plaintiff. A plaintiff's suit is barred by negligence of a third person if that same negligence would make the plaintiff vicariously liable. The rule has been applied to partners, *Bergstrom v. Ove*, 39 Wn.2d 78, 234 P. 2d 548 (1951); a milk route supervisor killed by negligence of a dairy truck driver, *McBeath v. Northern Pac. Ry. Co.*, 32 Wn.2d 910, 204 P. 2d 248 (1949); joint venturers, see *Poutre v. Saunders*, 19 Wn.2d 561, 143 P. 2d 554 (1943); an action for death of a mother because her son was driving the family car as her agent, *Hauswirth v. Pom-Arleau*, 11 Wn.2d 354, 119 P.2d 674 (1941); a car owner for whom the driver was running an errand as his agent, *Meyer v. Miller*, 184 Wash. 393, 50 P. 2d 1018 (1935); and the passenger son of a car owner who was held to have the relation of master and servant with the chauffeur, *Hemrich v. Koch*, 177 Wash. 272, 31 P. 2d 529 (1934).

Treatment of vicarious liability and imputed contributory negligence as two sides of the same coin gives the law symmetry, but has been criticized as unnecessary and unfair. Minnesota has rejected the doctrine as to an employer who suffered bodily injury in a truck being driven by his employee, *Weber v. Stokely-VanCamp, Inc.*, 274 Minn. 482, 144 N.W. 2d 540 (1966), but has refused to extend the rejection to corporate plaintiffs, property damage suits, or non-automobile accident suits. *Clay County v. Burlington Northern, Inc.*, Minn. , 209 N.W. 2d 420 (1973). For a good summary of criticism of the "both-way" test, see the concurring opinion in *Smalich v. Westfall*, 440 Pa. 409, 269 A.2d 476 at 483 (1970).

Modernly, several courts have held that the purpose of the family car doctrine is humanitarian, to impose liability for injuries to third persons on a financially responsible person; but not to impute contributory negligence for purpose of defeating a claim for injuries to a father or mother who was a passenger while their child was driving. *Bartek v. Glasers Provisions Co.*, 160 Neb. 794, 71 N.W. 2d 466 (1955); *Michaelson v. Smith*, 113 N.W. 2d 571, 8 A.L.R. 3d 1183 (N.D. 1962); *White v. Yup*, 85 Nev. 527, 458 P.2d 617 (1969); *Pinaglia v. Beaulieu*, 28 Conn. Sup. 90, 250 A. 2d 522 (1969). See also *Phillips v. Tooele City Corporation*, 28 Utah 2d 223, 500 P.2d 669 (1972). Annotation, *Modern Status of Family Purpose Doctrine with Respect to Motor Vehicles*, 8 ALR 3d 1191 at 1219, §12.

The approach of these cases is probably still a minority one (see Prosser on Torts, 4th ed. 1971, p. 487), but they may provide a lever for change of the "both-way" approach to imputed negligence.

Adoption of comparative negligence may compel reexamination of the entire doctrine of imputed contributory negligence.

H. McG.

PROBATE CODE IMPROVED

by Robert Beschel

In 1972 the Board of Governors adopted a recommendation of the Real Property, Probate & Trust Committee against the adoption of the Uniform Probate Code as a total substitute for our current probate code. It was the feeling of the State Bar Association that Washington Probate Procedure and Practice is one of the best in the country, that it should be further improved rather than totally abandoned, and that there appeared to be certain desirable concepts of the Uniform Probate Code which should be incorporated into our current practice. The new legislation has sought to accomplish these objectives, and I have broken the following summary into two overall categories, i.e., those changes which reflect improvements and simplification in our current practice, and those which represent new concepts taken directly from the Uniform Probate Code.

One of the most important changes in our current statute was to provide that all of the deceased's interest in a community property shall pass to the surviving spouse where there is no will. This provision should be in accordance with the intent of by far the great majority of married couples, and it should not only simplify the probate process, but should avoid guardianships for minor children where an estate of a decedent consists entirely of community property. Also, five of the seven remaining community property states have similar provisions. If a husband or wife does not wish the other spouse to receive all of the community property, he or she can, of course, make alternate dispositions of his or her one-half of the community property by will.

The Award in Lieu of Homestead was increased from $15,000 to $20,000 both with regard to the amount of property which could be set aside by an Award in Lieu of Homestead, and the amount of insurance or other property which could be received by a surviving spouse outside of probate before the award becomes discretionary with the court. The award was also made discretionary with the court when the decedent left either minor or adult children of a prior marriage; this would eliminate the automatic right of the spouse of the short second marriage to take $20,000 off the top of the estate to the detriment of the decedent's children of a prior marriage.

Distributions to Minors

Distributions to minors at the conclusion of probate were further simplified. RCW 11.76.090 was changed to increase from $500 to $1,000 the amount which can be distributed directly to persons for the benefit of minors, and the requirement that these funds should be paid through the clerk of court was eliminated. RCW 11.76.095 was changed to remove the $5,000 limit on the amount which could be placed on deposit (subject to withdrawal only on court order) for the benefit of minors, and to allow a financial institution to pay out the amount deposited to the former minor

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Robert Beschel is Chairman of the Real Property, Probate and Trust Section of the Bar Association, and he was previously Chairman of the Probate and Trust division of the Real Property Section. He obtained his BA from Stanford in 1953, his LLB from Gonzaga Law School in 1960. He has been engaged in private practice in Spokane since 1961 and has been a partner in Winston, Cashatt, Repsold, McNichols, Connelly & Driscoll since 1970. He has served on various Spokane County Bar Association committees including the committee on Real Property, Probate and Trust.

upon receiving satisfactory proof from him of his attaining the age of majority.

Creditors Claims

Significant changes were also made in the Creditor's Claims provision. Creditor's Claims must now be served and filed within four months of the date of first publication of Notice to Creditors, or within four months from the date of filing of a copy of the Notice to Creditors with the Clerk of Court, whichever is the later.

The statutory requirement that the claim be submitted under oath is eliminated, as is the requirement that actual proof of service by the creditor of the claim on the personal representative or his attorney be filed within the four month period.

Unless a court order is obtained extending the time for the personal representative to reject claims, the claims are conclusively deemed to be allowed six months after date of first publication of Notice to Creditors. This is a concept adopted from the Uniform Probate Code.

The requirement of court approval of Creditor's Claims was eliminated as it was the feeling that the personal representative was in a better position to determine whether or not the claim should be approved or rejected than the court, and that the requirement of court approval of Creditor's Claims was an unnecessary procedural step. Personal Representatives are now given broader authority by statute to compromise and settle claims without the necessity of following formal rejection procedures.

The requirement of court-appointed appraisers was eliminated, and the personal representative was given the authority to determine the fair market value of the estate's assets and/or to employ appraisers to assist the personal representative in valuing those assets which are of a special or unique nature. New statutes make it specifically clear that the appraised value of assets need not actually be stated on the inventory which is filed.

Changes in Non-intervention Statutes

Because the new code contains rather significant and lengthy changes in the non-intervention provisions (RCW 11.68), I have referred to these under a separate heading.

We now start, by statute, with the premise that unless the Testator specifically requires court supervision of his estate under the provisions of his will, the Testator shall be deemed to have intended any and all personal representatives named in his will to be entitled to administer the estate without the intervention of court, provided of course, that the estate is solvent.

Similarly, it is provided that non-intervention powers can be obtained by a personal representative at the time of his initial appointment upon furnishing the court with satisfactory proof that the estate is solvent. This proof need not necessarily be based upon the preparation of a formal inventory.

Non-intervention in Intestate Estates

The new statutes also provide for the extension of non-intervention powers to intestate estates or testate estates where the personal representative is an administrator with will annexed, or de bonis non, when the requisite solvency is established.

If the estate of an intestate decedent is solvent, the following persons are entitled to succeed to non-intervention powers without notice:

1) A surviving spouse, if the decedent left no children of a prior marriage; or
2) A bank or trust company authorized to do trust business in the State of Washington.

Non-intervention After Notice

In all other instances, any other person (except creditors) may administer an intestate estate under non-intervention powers after giving notice of their intention to apply for non-intervention powers to all heirs, devisees, legatees, and third persons requesting notice who have not either

waived said notice or consented to the administration of the estate without court intervention. This notice must be given to said persons at least ten days prior to the date fixed for the hearing on the Petition for Order of Solvency and must state that a Petition for an Order of Solvency has been filed, that upon the entry of an Order of Solvency the personal representative can administer and close the estate without further court intervention or supervision, and that any heir, legatee or devisee can appear at the hearing and object to the granting of the non-intervention powers; if there is an objection, the entry of an Order of Solvency and the granting of non-intervention powers is discretionary with the court, or the court can restrict the powers in such manner as it deems necessary.

Orders of Solvency

In either intestate or testate estates Orders of Solvency may be vacated and non-intervention powers terminated if the estate subsequently becomes insolvent. Also, heirs, devisees and legatees are given the authority to petition the court for the removal of a personal representative or the restriction of his powers, and the court has the authority to restrict the non-intervention powers of the personal representative, or to remove the personal representative and appoint a successor with such non-intervention powers as the court shall deem appropriate.

Closing Non-intervention Estates

The current three methods of closing a non-intervention estate are retained and apply to either intestate or testate estates; i.e., the estates can be closed by either a formal hearing which includes an accounting, or a formal hearing which does not include an accounting but declares the debts and taxes have been paid and distributes the property to the heirs, devisees, or legatees, or by filing a Declaration of Completion of Probate. However, the actual mechanics of closing estates in either of the three methods indicated is changed to assure that persons whose interest in an estate would be reduced by the amount of attorney's, personal representative's, accountant's or appraiser's fees paid or which are proposed to be paid will have the opportunity to appear and object to the amount of said fees. If there is an objection, or if reasonableness of fees is asked to be approved by the personal representative, the court is required to determine the reasonableness thereof.

Fees to be Stated

In either instance where a personal representative petitions the court for a formal order closing the estate, the petition is required to set out the amount of fees which have been or are proposed to be paid to the personal representative, his attorneys, accountants, and appraisers, and a copy of the petition is required to be sent with the notice of the hearing to all persons whose interests in the estate would be reduced by the amount of fees charged. In determining the reasonableness of attorney's fees the court shall take into consideration the criteria outlined in the code of professional responsibility. These criteria shall also form the basis of determining the reasonableness of the fees of the personal representative, his accountants or appraisers to the extent applicable.

In those instances where the estate is closed by the filing of a Declaration of Completion, the Declaration of Completion must state, among other requirements, the amount of fees which have either been paid or are proposed to be paid to the personal representative, attorney, etc. The Notice of Declaration shall also advise the persons interested in the estate that the personal representative believes the fees to be paid to be reasonable, and does not intend to obtain court approval of the amount of the fees or to submit an estate accounting to the court for approval.

A copy of the declaration is required to be mailed to the heirs, devisees, and legatees of the decedent within five days after filing, together with the notice which advises said heirs, devisees, or legatees that unless they petition the court to fix a date for a hearing for approval of fees or an accounting of the personal representative, the Declaration of Completion shall become final thirty days after filing. If no one objects within the time indicated, the Declaration of Completion becomes the equivalent of the entry of a Decree of Distribution for all legal intents and purposes upon the expiration of the thirty day period. If all persons who are entitled to notice waive notice the Declaration of Completion becomes effective as a Decree of Distribution upon its date of filing.

Other Miscellaneous Changes in Current Statutes

RCW 11.28.130 has been amended to eliminate the ten day waiting period between the filing of the petition and the hearing on the appointment

of the administrator in those instances where the decedent left no surviving spouse. The court has been given the authority to waive the bonds, or to permit the personal representative to substitute or submit other security in lieu of bond. If a decedent was a defendant in an action prior to his death, the period of time which the plaintiff can substitute the personal representative as the defendant in said action is coordinated to the period of time within which creditors have to file claims.

New Concepts Adopted from UPC

The probate bill incorporated four new concepts which were taken directly from the Uniform Probate Code; these are:

1. Provision for the transfer of personal property in small estates without the necessity of probate;
2. Provision for formal court adjudication of testacy or intestacy without the appointment of a personal representative to administer the affairs of the estate of the decedent;
3. Provision for the execution of a power of attorney which continues to be effective upon the incompetency of the principal; and
4. Provisions which declare certain transactions to be of a non-testamentary nature.

Small Estates Avoid Probate

In those instances where the decedent was a resident of the State of Washington and his entire estate, less liens and encumbrances would not exceed $10,000.00, provision is made for persons who are entitled to receive his estate to obtain the personal property of the decedent, either tangible or intangible, without the necessity of probate. Basically, the statutes provide that any person who is an heir, legatee, or devisee of the decedent is entitled to have the personal property of the decedent delivered to him upon presentation to the person holding such property of an affidavit which provides the information required by the statute and recites that the affiant has completed the acts referred to therein.

This procedure *cannot* be utilized unless 40 days have elapsed since the decedent's death, *or* if a petition for the appointment of a personal representative is pending or has been granted, *or* unless all debts of the decedent have been paid or provided for. In order to receive the personal property, the claiming heir or devisee must be entitled to receive the property individually or on behalf of the other heirs, legatees or devisees. Provision is also made for notifying the Washington State Inheritance Tax Division.

Adjudication of Testacy vs. Intestacy

Under the Uniform Probate Code it is possible to have a formal court adjudication as to whether or not the decedent died testate or intestate without the necessity of the appointment of a personal representative to administer the decedent's estate. Under this procedure, a petition is filed for a court to adjudicate either that the defendant died intestate or that the will submitted with the petition was the Last Will and Testament of the decedent. Once the adjudication is obtained, notice thereof is required to be mailed to each heir, legatee or devisee of the decedent. If the decedent died intestate the notice is required to state the names and addresses of the heirs of the decedent, their relationship to him, and their respective distributive shares. In either case, the notice advises all persons entitled thereto that the adjudication as to testacy or intestacy will become final and conclusive unless the adjudication is contested within four months of the date of the adjudication and the mailing of the notice thereof. If no person challenges this adjudication within the four month period, it becomes final; provided however, the adjudication does not prevent a person to subsequently petition the court to have a personal representative appointed to take charge of and administer the estate, or the right of a surviving spouse to obtain an Award in Lieu of Homestead or a Family Allowance.

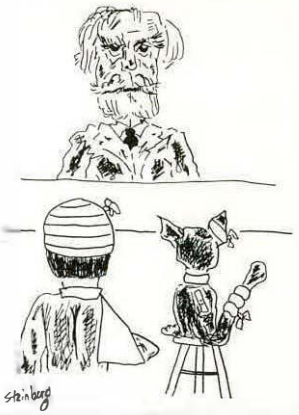
Continuing Effect of Power of Attorney

If an individual, while competent, issues a power of attorney to another which states either: "This power of attorney shall not be affected by disability of the principal" or "This power of attorney shall become effective upon the disability of the principal", the attorney in fact continues to have the authority for and on behalf of the principal in the event of the principal's incompetency.

Non-Testamentary Transactions

By declaring certain provisions to be non-testamentary in nature, it will now be possible for a person receiving payments from a promissory note or contract to provide in the note or contract that in the event of his death the payments will go to a third party, or to provide that the debtor's obligation shall terminate with death. □

THE HOST-GUEST STATUTE: REPEAL & INVALIDATION



Who can recover? Man or dog?
See p. 12.

by Quentin Steinberg

Automobile host-guest statutes are currently in force in 26 states, including the State of Washington. The Washington statute, RCW 46.08.080, deprives an injured automobile guest who does not pay for his transportation of any recovery for the negligent driving of his host unless the injury results from the driver's intoxication, gross negligence or intentional conduct. After several unsuccessful attempts to repeal the unfair guest statute, the third extraordinary session of Washington's 43rd Legislature passed Engrossed Senate Bill No. 2046 which repeals the host-guest statute.

Prior to the enactment of the original guest statute in 1933, the common law in Washington required gross negligence by the driver of an automobile to impose liability toward his social guest. *Saxe v. Terry*, 140 Wash. 503, 250 Pac. 27 (1926); *Shea v. Olson*, 185 Wash. 143 at 148, 53 P.2d. 615 (1936).

There is some argument, therefore, that the test of liability to be applied in automobile guest situations after the effective date of the repeal legislation is that of gross negligence. However, the trend in American tort law is toward a general negligence principle in all fields requiring that one exercise reasonable care to forestall foreseeable injury. For example, see *Rowland v. Christian*, 70 Cal. Rptr. 97, 443 P. 2d 561 (1968) as to a landowner's liability.

The Washington court, in an analagous situation, has indicated its desire to abrogate the common law rule of gross negligence. In *Potts v. Amis*, 62 Wn.2d. 777, 384 P.2d 825 (1963), our court held that if a social guest is injured by the "active" conduct of the occupier of land which is negligent, but which falls short of being willful and wanton, such guest is entitled to compensation for his injuries. Courts of other jurisdictions have also held that the principle of law to be applied in today's society is that of ordinary negligence. The State of Wisconsin had a common law host-guest rule similar to Washington's pre-1933 rule. The Supreme Court of Wisconsin, however, in 1962, after examining modern customs and community attitude toward the use of automobiles, held that the common law rule was no longer valid. *McConville v. State Farm Mutual Automobile Insurance Co.*, 15 Wis.2d. 374, 113 N.W.2d. 14 (1962). A similar view will probably be adopted by our courts.

Quentin Steinberg is a 1971 graduate of the U. of W. Law School, and practices as a member of the Seattle firm of Steinberg and Steinberg.

Effective Date of Statute

The bill repealing the guest statute was introduced in the Senate as a companion bill to our new comparative negligence statute, and provided the same effective date, April 1, 1974. Because of the delay in passage, the effective date was deleted, however, and the repeal will be effective ninety days after adjournment of the present session, which is scheduled for sometime in April, 1974.

The new legislation sets no guidelines as to whether the cause of action must arise after the effective date of the repeal or whether the cause of action need only be filed after that date in order to bar the application of the host-guest statute. Generally, a newly enacted statute operates prospectively only unless it is explicitly made retroactive or is remedial in nature. *Yellam v. Woerner*, 77 Wn.2d. 604, 464 P.2d. 947 (1970).

The issue of retrospective application of an earlier liberalization of the host-guest statute was decided in *Nogosek v. Truedner*, 54 Wn.2d. 906, 344 P.2d. 1028 (1959). In that case an injured passenger contended that the 1957 revision of the host-guest statute (RCW 46.08.080) should operate retrospectively. The court disagreed and held that since the amended statute imposed a liability which did not exist prior to the enact-

ment, it constituted an impairment of a vested right and must be construed as operating prospectively only.

Judicial Invalidation

While court decision may be necessary to clarify the impact of the host-guest repeal legislation, it is possible that our courts may simply find the host-guest statute to be unconstitutional and therefore, not address itself to the ambiguities of the new repeal legislation. Last year the California Supreme Court in *Brown v. Merlo*, 106 Cal. Rptr. 388, 506 P.2d 232 (1973), held that the California host-guest statute violated the equal protection guarantees of the state and federal constitutions. Other courts have followed this precedent and invalidated their states' guest statutes. E.g., *Henry v. Bauder*, — Kan. — , — P.2d — (January, 1974).

In King County, Superior Court Judge Norman Ackley has ruled the Washington host-guest statute unconstitutional. *Hawkins v. Ballard*, No. 759648 (May 11, 1973). Subsequent challenges have been put forth throughout the state and most have met with success. However, some Superior Courts have upheld the constitutionality of the statute.

The Washington host-guest statute, and similar statutes have been challenged as being in conflict with the constitutional guarantee of equal protection of the law which requires, at minimum, that persons similarly situated with respect to the legitimate purpose of the law receive like treatment. The justification or purpose of our statute is similar to the justifications advanced for other guest statutes. First, the statute is said to protect generous drivers from ungrateful guests who have benefited from a free ride. Second, the statute protects against collusive lawsuits in which a friendly host fraudulently confesses negligence to permit his guest to collect from the hosts's insurance company. *Shea v. Olson, supra.* Neither of the two justifications constitute a rational basis for treating guests differently from paying passengers or social guests in other contexts.

A. Protection of Hospitality

There is no principle in our legal system which requires that one must pay a fee before he is protected from infliction of negligent injury. Another explanation for the hospitality justification is the theory that a guest's lawsuit against his host constitutes ingratitude and should be condemned. The rationality of this explanation has been completely eroded by the development of automobile liability insurance. There is simply no notion of ingratitude in suing your host's insurer.

Besides the factual changes regarding insurance coverage the statute's purpose of fostering hospitality cannot justify the lowering of protection for the class of automobile guests. In an analagous situation our court has held this purpose did not justify the doctrine of charitable immunity. The Washington court, in *Pierce v. Yakima Valley Memorial Hospital Ass'n,* 43 Wn.2d. 162, 260 P.2d 765 (1953), and later in *Friend v. Cove Methodist Church, Inc.*, 65 Wn.2d. 174, 396 P.2d174 (1964), rejected the hospitality rationale and stated:

> ". . . it is a principle of law as well as of morals, that men must be just before they are generous; that the charitable nature of a tortfeasor cannot place it beyond the law applicable to all; . . ."

B. Collusive Lawsuits

The legislature drew a distinction between automobile riders on the basis of whether or not the passenger compensated the driver for his ride, theorizing that a driver who gives a free ride to a passenger does so because of a close relationship with his guest and that because of this close relationship the driver will falsely admit liability so that his guest may collect from the driver's insurance company. To combat this possible risk of potential fraud by some drivers and guests, the statute eliminates all causes of action in negligence. Our court has rejected this rationale when it invalidated the rule of interspousal immunity in tort actions. In *Freehe v. Freehe*, 81 Wn.2d. 183, 188, 500 P.2d 771 (1972), the court stated:

> "Respondent also suggests that another argument in favor of the disability rule is that to permit suits between spouses would encourage collusion and fraud where one or both of the spouses carries liability insurance. In *Goode v. Martinis* [58 Wn.2d 229 at 234, 361 P.2d 941 (1961)] we rejected this 'pessimistic premise', noting that this line of argument presupposes that courts are so ineffectual and the jury system is so imperfect that fraudulent claims cannot be distinguished from the legitimate'."

Due to the enactment of the repeal legislation and the successful constitutional challenges to the host-guest statute, our courts will no longer be required to carve exceptions to the unfair and irrational guest statute. □

The President's Corner

In my first contribution to this space I wrote of the special responsibility of the Bar to our profession and to the public.

The thrust of the Bar's efforts to discharge its responsibility has been, and continues to be, the implementation of affirmative programs to improve the availability and delivery of legal services, to improve the quality of justice, and to enhance the competency and ethical standards of the members of our profession. We are accelerating the pace of change in all of these areas.

There are occasions, however, when the Bar's special responsibility requires it to vigorously oppose change. Two such occasions are now presented.

The proponents of S.354, the Federal no-fault bill, are intensifying efforts to impose upon the States their own doctrinaire attitudes toward the legal profession and toward the rights and responsibilities of people. S.354, as reported out of the Senate Commerce Committee, is so ineptly drafted as to be incredible. Even if the serious drafting errors were to be corrected, S.354 would continue to be philosophically unsound.

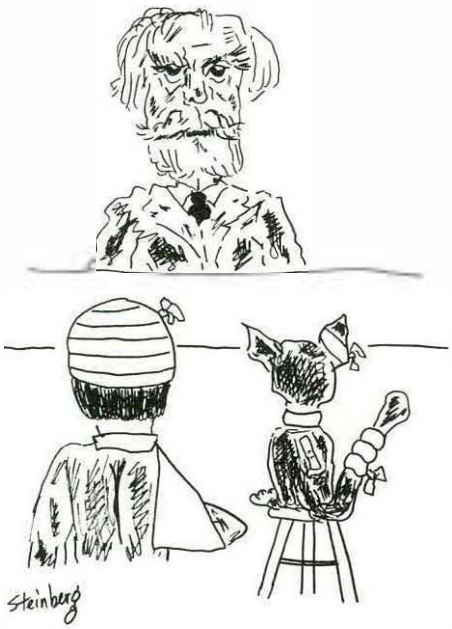
We have consistently opposed S.354. My predecessor, Charles I. Stone, presented testimony to the Senate Commerce Committee in opposition to the bill and as recently as January 30 of this year I testified before the Senate Judiciary Committee on behalf of our Bar in opposition to this legislation. Copies of that detailed testimony and other pertinent material are available at the Bar office.

We will continue to oppose S.354. Its economic impact on our profession in the State of Washington is trivial and the opposition of the Trial Practice Section and the Washington State Trial Lawyers' Association is not based on self interest. The doctrinaire attitude inherent in S.354 and the deceptiveness of its presentation require our opposition and merit your concern and opposition whether or not you are involved in tort litigation.

The second occasion which calls for the Bar to take an aggressively negative stand is presented by recent statements of Lewis Bernstein, chief, special litigation section, Anti-Trust Division of the United States Department of Justice. Mr. Bernstein informed the National Conference of Bar Presidents that it was the position of the Anti-Trust Division that the Code of Professional Responsibility should be changed so as to permit lawyers to advertise without restriction except as to advertising that is champertous or fraudulent. Coincidentally with the Bernstein statement the right of the California State Bar Association to discipline two of its members for advertising is being challenged in Court.

Reasonable approaches to providing the public with information about the availability of legal services through legal service programs for the indigent, through Bar sponsored referral systems, and through group legal programs are appropriate. Blanket removal of strictures against advertising would be a giant step backward and should be resisted with every resource of the Bar.

Your Bar leadership will continue to oppose unjust attacks on our profession and ill conceived efforts to erode the rights of people with the same vigor with which it supports and develops progressive programs for the good of the public and the profession.



The Host-Guest statute in action

I'm sorry Mr. Jones, but even though both you and your dog were injured non-paying automobile passengers, only your dog has a valid claim for damages.

WASHINGTON STATE BAR NEWS

Supreme Court Hears "Reverse Discrimination" Case

by James Ring Adams*

Josef Diamond, a Seattle lawyer who presented the Supreme Court with what could be its major cause of the term Tuesday, didn't know what he was in for when he agreed to do a relatively simple favor back in September, 1971. It started when a young member of his firm told him about a friend who was having mysterious problems getting into the University of Washington Law School.

The friend was Marco DeFunis, Jr., a magna cum laude, Phi Beta Kappa graduate of the University of Washington in 1970 who had recently been rejected in his second attempt to enter the law school. Mr. Diamond was impressed by Mr. DeFunis' record and thought that, with his own contacts in the law school, he could get the young man's case reviewed with little trouble. After two fruitless attempts to see the admissions records, Mr. Diamond brought suit. During noon recess of the trial day, the Law School finally produced some of the admission files, and Mr. Diamond learned for the first time that it had been giving preference to minority group applicants with lower scores than his client, on the basis of their race.

That trial resulted in a court order getting Mr. DeFunis into law school. It also gave rise to a Supreme Court case that could potentially produce a landmark decision on the order of "Plessy v. Ferguson," which legitimated "separate but equal" treatment of the races, or "Brown v. Board of Education," which repudiated it. No one really knows which of these it might resemble, if either. The court heard oral argument on the case Tuesday, in an atmosphere of unusually intense public interest.

By the time legal scholars, law students and spectators crowded under the Doric columns of the Supreme Court chamber to hear the hour-long presentation, the nine justices had been offered advice on the case by some 64 organizations, in the shape of 30 amicus curiae briefs. Written arguments were contributed by some of the foremost legal minds in the country. Two former U.S. Solicitors General, Erwin Griswold and Archibald Cox, supported the Law School's "reverse discrimination." Yale Law Professors Alexander Bickel and Eugene T. Rostow and Philip Kurland of the University of Chicago Law School, wrote briefs on behalf of Mr. DeFunis. Professor Bickel also asked permission to give an oral argument to the court, but the University of Washington lawyers objected.

Mr. Diamond seemed surprised by this degree of national attention. "We come from a little town way out West," he exclaimed on the eve of his court appearance. But the stakes in the case could conceivably be very high. Suppose the court agreed the Law School could continue giving separate treatment to blacks, Indians, Chicanos and Filipinos, its four favored categories, even if their grades and test scores were significantly lower than "non-minority" applicants who were rejected. The result, according to some academic groups, would be a green light for a wide variety of overt or covert "reverse discrimination" programs in both admissions and faculty hiring that already exist at many colleges and professional schools. Racial and ethnic quotas could come back into vogue not only in schools, but in public or state-financed employment. An increasing number of "disadvantaged minorities" would contend for special treatment, to the ultimate erosion of the merit system.

Crimping a Government Program?

Suppose, on the other hand, that Mr. DeFunis were upheld. This decision conceivably could limit a school's discretion in admitting students and result in a string of lawsuits from rejected applicants. It might put a crimp in the federal

*Mr. Adams is a member of the editorial page staff of the *Wall Street Journal*.

government's "affirmative action" programs and bring an end to the growing use of racial quotas in public construction jobs. Some black legal activists fear it could knock the constitutional props from under federal intervention in behalf of their race. A black lawyer at a Georgetown Law School symposium after the case remarked that if the Law School lost, "It's Supreme Court ratification of a second post-Reconstruction era."

The most dire of these consequences, of course, depend on what grounds the court would use to make its decision. As the lawyer at the symposium was pointing out, the ultimate issue is what sort of society was the 14th Amendment supposed to bring about? Was its "equal protection" clause a means of getting special help to victims of discrimination or were the nation's laws to be truly color-blind?

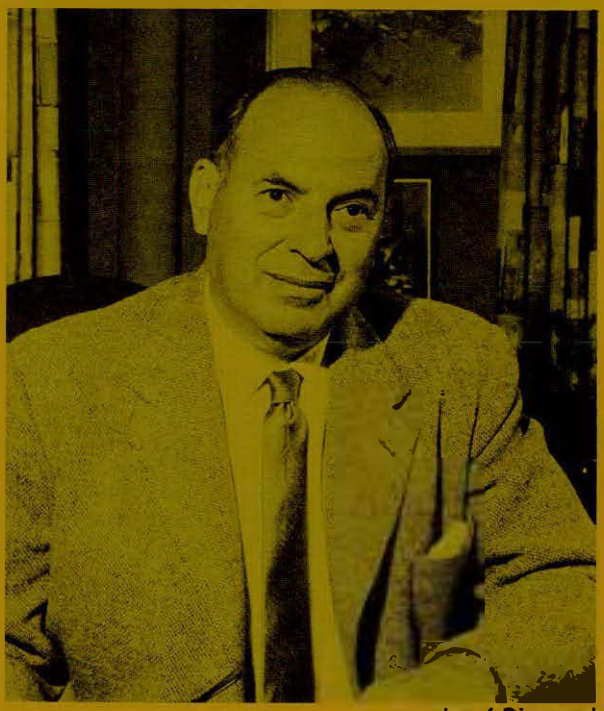
In the opinion of many in the large contingent of black law students who were present, this post-Civil War amendment was designed to help blacks overcome the effects of slavery. They felt, along with some eminent legal scholars, that it continued to justify special measures primarily to aid blacks.

Lawyers for the University of Washington Law School avoided this argument in the knowledge that Justice Douglas, for one, dislikes it. But they subscribed to the view the 14th Amendment Equal Protection Clause still allowed race-conscious measures, as long as they were "benign." Archibald Cox put it this way, in a pro-Laws School brief on behalf of Harvard College: "The Equal Protection Clause looks to equal treatment of the members of the identifiable groups composing society, not to disregard of the special characteristics of their members. . . . The Equal Protection Clause does not prohibit all racially-conscious government activity, but only that which is 'hostile" or 'invidious' towards minorities without compelling justification. . . ."

The supporters of Mr. DeFunis, however, argued for a totally "color-blind" Constitution. The Chief Justice of Washington State wrote, in a pro-DeFunis dissent, "Racial bigotry, prejudice and intolerance will never be ended by exalting the political rights of one group or class over that of another." Professor Bickel wrote that the Law School's racially-based admissions were a step backward toward the use of "status, measured by immutable factors like race, for assigning an individual his place in our society."

In the legal argument, this difference in theory boiled down to several specific questions. Among them: Could the Law School show an "overriding state interest" that would justify paying attention to race? The State of Washington Supreme Court said yes when it decided against Mr. DeFunis last spring. The Law School, it said, wanted to eliminate racial imbalance in public education, provide a diverse student body (which the Law School said would improve the legal education of all the students), and turn out more minority lawyers to serve their communities. This action was also justified, said the Law School, to overcome the history of suppression and discrimination these groups had suffered.

Supporters of Mr. DeFunis rejected this whole broad notion of "reverse discrimination." It wasn't good enough to want to right a national history of segregation, they said. The court should show specific acts of discrimination performed by the party who was now ordered to correct them. "Generalized historical assertion about conditions somewhere in the United States some time in the past is not the premise of the remedial discrimination cases decided by this court," said the Bickel-Kurland brief, "nor should it be." A premise like that, they said, could lead to such a wide range of official racial preferences that it "would denigrate if not destroy the concept of racial equality specified in the Equal Protection Clause."



Josef Diamond

These questions are so broad that one or two of the amicus curiae briefs argued the court should try to dodge them. This case, said Harvard's Center of Law and Education, presented "prime examples of the principle that . . . the court should avoid premature adjudication of constitutional issues." The Center urged that the record in the case wasn't adequate for a decision. This statement isn't as cowardly as it might look, since the court is not really in the business of legislating national policy, at least not all of the time. Its most important decisions often evolve after a series of individual cases define the nature of the constitutional problem. And in "DeFunis," the court has little to go on. The only clearly relevant precedent is a 1950 decision directing a law school to stop excluding black students on the basis of their race.

Some Insistent Questions

Several of the justices showed discomfort with the case during Tuesday's argumentation. During the hour devoted to each side before the court, justices frequently interrupted the lawyers with free-wheeling questions. In grilling Mr. Diamond, at least three justices seemed less concerned with constitutional points than with facts that might make the case moot. Several asked insistently whether Mr. DeFunis had turned in his registration forms yet for his final semester. Slade Gorton, the Washington State Attorney General who entered the Law School's case actively in the last three weeks, abandoned his prepared outline to argue that the issue was still very live.

At other points, the judges seemed to be casting about for some limited grounds to decide the case. Justice Harry Blackmun and Justice William Rehnquist focused on the role of the two first-year student members on the seven-man admissions committee. The pro-DeFunis dissent in the State Supreme Court decision mentioned that the admissions process might have exceeded its legal authority by giving these students such a decisive role. A number of applications had been assigned to these students for review, among them that of Mr. DeFunis. According to the record, their decision was "virtually controlling." The student who rejected Mr. DeFunis later explained that his file had left her with a vaguely negative feeling, even though she recommended others with lower scores. The Washington State Court's minority decision labelled this a "patently arbitrary and capricious method." The Supreme Court conceivably could duck the sticky constitutional issues by ordering a lower court rehearing on that point, even though the implications for all university admissions policy would be equally sticky.

But if the court does plunge ahead with a broad decision, it may wind up qualifying some of the broad scope it has given to the "educational power." Mr. Gorton stood before the court and quoted its dicta in the 1971 North Carolina busing case of "Swann v. Charlotte-Mecklenburg Board of Education." The court said, he read, that the "broad power" of local school authorities could include prescribing a ratio of Negro to white students, a power exceeding even the authority of a federal court. Chief Justice Warren Burger, who wrote that decision, interrupted, "Is there anything in that context that would keep anyone out of school?"

"We were doing what you said we could do when you wrote the decision for the whole court in the 'Swann' case," replied Mr. Gorton.

"But you still haven't shown how you could exclude anyone, as Mr. DeFunis was excluded," retorted the Chief Justice.

At the end of the argument, however, everyone involved was as puzzled as before how the court might go. One legal scholar speculated in jest that the court could divide three for Mr. DeFunis, three for the Law School, and three for mootness. Said another eminent professor, joining the conversation in the marble corridor, "That's not a laughing matter. And the people for mootness might win over some of the others."

But the issue is sure to outlast the date in June that Mr. DeFunis might receive his Juris Doctor. Mr. Diamond informed the court during his argument that two more rejected law school applicants were waiting in his office to bring suit. □

Selected Questions By Supreme Court Justices During Argument On The De Funis Case

Mr. Justice White: "DeFunis is still in law school, isn't he?"

Mr. Diamond: "Yes."

Mr. Justice White: "He will graduate this year?"

Mr. Diamond: "Yes, he is scheduled to graduate in June unless this Court sustains the decision of the Supreme Court of Washington. He's only in school because of the stay granted by Mr. Justice Douglas."

Mr. Justice Stewart: "When the Washington Supreme Court decision came out, he was in his second year of school."

Mr. Diamond: "Yes. The respondent's brief says that he will graduate regardless of this Court's decision. But all we have is a statement in the brief that he will finish in a situation where, if the Washington Supreme Court is sustained, he will be in school illegally."

Mr. Justice Brennan: "Suppose he graduates before the decision is handed down?"

Mr. Diamond: "Then I don't suppose anyone will take his diploma away. But, this is not a unique situation."

Mr. Justice White: "If he graduates, and the Washington Supreme Court is affirmed, will he be permitted to take the bar examination?"

Mr. Diamond: "I think so, but I think mootness has already been dealt with; this situation will arise again. In fact I have two clients now who are in similar positions."

Mr. Justice Rehnquist: "Mr. Justice Douglas' stay requires the school to allow DeFunis to continue, but it doesn't require the passing grades that he has been receiving. So, if he graduates in June, he will have earned his degree; it wouldn't be a degree by default even if the state supreme court decision is affirmed."

Mr. Diamond: "No, he earned his grades. But I do think he is entitled to a decree that he was legally admitted to school in the first place."

* * *

Mr. Justice Rehnquist: "Do you maintain that the law school admission committee has to admit the 150 brightest applicants, the applicants with the highest scores on tests and the best academic records?"

Mr. Diamond: "No, but they must treat everyone alike; they should not divide the applicants into minority and non-minority classes. Here, there are separate tests, separate considerations for each group."

Mr. Justice Brennan: "If he was a member of a minority group, DeFunis would have been admitted to the law school?"

Mr. Diamond: "Yes, both the trial court and the Washington Supreme Court found this to be so."

* * *

Mr. Justice Marshall: "How do you know that the minority students were less qualified?"

Mr. Diamond: "The school admitted as much."

Mr. Justice White: "But, all of these applicants were fully qualified?"

Mr. Diamond: "That's a relative matter. If the school offered admittance to the best qualified applicants, these students wouldn't have been admitted."

Mr. Justice White: "In terms of overall policy, the school did pick the students best qualified for its purpose. The question is whether the law school can make this type of policy decision."

Mr. Diamond: "They can if they use the same tests. In this case, the law school admits that it did not select the best qualified students."

Mr. Justice Powell: "Is it your position that only formal school records can be considered?"

Mr. Diamond: "No, other qualifications can be considered if they are applied to everyone."

Mr. Justice Blackmun: "Let's speak for a moment of medical schools. There has been much talk lately of the need for newly trained general practitioners for small communities. Suppose an applicant said that it was his intent to go into a small community and be a general practitioner; yet, his qualifications were less than those of other applicants who specified that they wanted to specialize. Do you think this factor can be validly taken into account when considering applications for admission to medical school?"

Mr. Diamond: "Affirmative action programs are good and valid, but they shouldn't be based on race. You should go out and recruit certain types of students to meet community needs, but this should not be done on the basis of race."

Mr. Justice Blackmun: "Are you willing to say that the law school cannot take into consideration community needs?"

Mr. Diamond: "I submit that the community needs the best qualified lawyers; this can best be accomplished by admitting the best qualified law students." □

The Board's Work

Extracts from the minutes of the meeting of the Board of Governors in Tacoma, February 23:

Bar Examiners Indemnification

It was decided, in response to a letter of inquiry from the Chairman of the Board of Bar Examiners, that the Bar Association's insurance coverage be extended to cover the defense and indemnification of bar examiners against claims arising out of their official duties in behalf of the Bar Association.

1974 Annual Meeting

It was voted that because of the energy crisis and related transportation problems and in response to the requests of the President of the United States, the Federal Energy Organization and other federal agencies, the annual meeting of the Bar Association not be held in San Francisco in 1974 as originally planned, but that it be scheduled in Vancouver, B.C., September 11 to September 14.

Prepaid Legal Services

It was agreed that the Prepaid Legal Services Committee be advised it is the desire of the Board that the Committee look at the full spectrum of alternatives relating to the implementation of a Prepaid Legal Services Program and that the Board considers this field to be one of major priority.

The Legislative Program

A. William Stephens, the Legislative Representative of the Legislative Committee, appeared and reported on legislation affecting the Bar Association in the just concluded phase of the legislative session.

B. Action on the proposed new Juvenile Court Act was deferred until the March meeting of the Board; the Board endorsed the Legislative Committee's opposition to House Bill 1202 known as "The Good Samaritan Law"; the Board approved the Legislative Committee's opposition to House Bill 1456 dealing with unlawful or false arrests and attorneys' fees in frivolous suits; and the Board approved the Legislative Committee's position with reference to House Bill 1397, which would allow attorneys' fees to the prevailing party in a suit brought under a contract which provides for attorneys' fees for the party bringing the suit.

Discipline

A. Upon the recommendation of the Disciplinary Board, a formal Reprimand was administered to Kenneth C. Hawkins of Yakima.

B. Upon the recommendation of the Disciplinary Board, a formal Reprimand was administered to Anthony Savage, Jr., of Seattle.

Client Security Fund Claims

In accordance with the recommendation of the Client Security Fund Committee, the Board voted that three claims, totaling $1,746.38, be paid from the fund; the three claims arose from matters involving one attorney, Thomas P. Delaney of Grand Coulee, since disbarred.

Supreme Court Recommendation on Rule Changes

Language suggested by the Supreme Court with reference to rule changes involving admission to the Bar Examination, cumulative discipline, payment of costs and expenses arising out of disciplinary action and a more detailed definition of costs and expenses related to the disciplinary process was endorsed by the Board of Governors.

Civil Rights Committee — Request for Authority

The Civil Rights Committee was authorized to make reasonable efforts to obtain changes in procedures in all counties (including criminal rule changes, if appropriate) to assure that persons held in custody are charged immediately, that bail is fixed and procedures are available for arraignment within 24 hours of apprehension, including weekends and holidays.

Federal Defender Program

The Board voted to oppose the federal agency concept of a defender program for the Federal Courts and prefers a community-based program and that the President of the Bar Association should request an opportunity to discuss the proposed federal defender program with the Chief Judge of the Western District of Washington and other interested parties. It was further agreed that if a community-based program is approved, the Bar Association should provide the necessary leadership and cooperation in securing sponsors other than the Bar Association for that program as needed. □

AG Opinions

AGO No. 21: INSURANCE — UNFAIR PRACTICES — DISCRIMINATION — LIFE INSURANCE PREMIUM RATES.

The antidiscrimination provisions of §§ 3 and 6, chapter 141, Laws of 1973, do not now require the same life insurance premium rates to be charged to men and women of the same age in lieu of a continuing use by life insurers in this state of a reduced age factor in computing premium rates for women such as heretofore permitted by RCW 48.12.150 and RCW 48.23.350, and as apparently contemplated by RCW 48.23-.180.

AGO No. 22: DISTRICTS — SCHOOLS — AUTHORITY TO PURCHASE UNIFORMS AND EQUIPMENT FOR INTER-SCHOLASTIC ATHLETIC EVENTS.

When a school district, through the adoption of an appropriate resolution by its board of directors, has determined to engage in organized interscholastic athletic events with other schools as a part of its overall educational program, such district may utilize its general maintenance and operation funds to pay for appropriate uniforms and equipment to be used by its students in connection with their participation in such events, either as "on the field" participants or as band members, cheerleaders or the like.

AGO No. 23: DISTRICTS — PUBLIC UTILITY — ANNEXATION — COUNTIES — BOUNDARIES

A public utility district may annex adjacent territory located in a county other than that in which the district was created where such adjacent territory is not situated within the boundaries of another public utility district.

AGO No. 24: OFFICES AND OFFICERS — CITY COUNCILMEN — FIREMEN — INCOMPATIBLE OFFICES — CITY COUNCILMAN AND MEMBER OF A FIRE DEPARTMENT.

Under present law a member of a city or town council may not simultaneously serve as a member of the volunteer fire department of his city or town because these two public offices are incompatible under the common-law doctrine applicable in the absence of a statute to the contrary; however, the enactment of Senate Bill No. 2989 (43rd Legislature) would permit a member of a city or town council simultaneously to serve in these dual capacities.

AGO No. 25: DISTRICTS — SCHOOLS — EMPLOYEES — PROFESSIONAL NEGOTIATIONS — SALARIES — POLICIES.

(1) The board of directors of a public school district in this state is required by existing law to adopt an annual salary schedule for all of its certificated employees within the meaning of RCW 28A.67.066; it is not, however, so required by any specific statute to adopt official policies with regard to (a) the maximum number of students in a classroom; (b) the number of elementary specialists to be used in connection with such subjects as physical education and music; (c) secondary planning periods; or (d) a schedule calendar.

(2) The provisions of the "professional negotiations act" for school district certificated personnel (chapter 28A.72 RCW) permit but do not require the board of directors of a school district (or a committee thereof) to "meet, confer and negotiate" with the representatives of a duly designated employee organization as to proposed school policies initiated by that organization rather than by the board itself, except where those proposals are submitted by the employee organization as counterproposals during the course of pending negotiations on school policies initially proposed to be adopted by the board.

AGO No. 26: INITIATIVE NO. 276 — SCHOOL DISTRICTS — USE OF SCHOOL FACILITIES FOR PRESENTATION OF PROGRAMS — LEGISLATURE — ELECTIONS.

It is not a violation of § 13 of Initiative No. 276 (RCW 42.17.130) for the board of directors of a school district to allow the facilities of that district to be used by others on a nondiscriminatory basis for the conduct of meetings at which members of the legislature, or others, appear and speak either in favor of, or in opposition to pending ballot proposals or candidates for election to public office. □

BENTON-FRANKLIN REPORT

By **NEAL J. SHULMAN**

The Black Angus Restaurant in Pasco was the scene of the February meeting of the Benton-Franklin Bar Association. The leading item of discussion centered around the roll of legal aid in the Benton-Franklin area.

Not all Benton-Franklin lawyers find themselves chained to their offices. **Rem Ryals**, Richland, recently returned from Mexico boasting a deep suntan. **Ted Peterson**, Pasco, is currently on an extended vacation to Hong Kong, Bangkok, Australia and Tahiti. Ted's anticipated return is sometime in May.

Congraduations to Pasco Attorney **Ed Shea**, who was recently made a partner in the Pasco law firm of which he has been associated. Ed now practices under the firm name of Peterson, Taylor, Day and Shea.

YAKIMA REPORT

By **RANDY MARQUIS**

Cameron Hopkins has been appointed Juvenile Court Commissioner for Yakima County to fill the position recently vacated by **James S. Scott**. This is an added duty for Cam who is a private practitioner in the firm of Porter and Hopkins.

F. Stuart Foster has rejoined the Yakima Bar after a six-year absence. Stuart is a hearing examiner with the Washington State Board of Industrial Insurance Appeals. His home office is in Seattle but he now resides in Selah, Washington.

Robert Royal has left the Prosecuting Attorney's office and is now associated with Porter and Hopkins at 307 North Third Street. Bob is in private practice and has recently been appointed defense attorney for indigents for the city of Selah. Other defense counsel are **Neil Buren** and **Lonnie R. Suko**.

The firm of Gavin, Robinson, Kendrick, Redman and Mays announces the acquisition of **Joel Smith** who will be associated with the firm pending results of the current bar exam.

President **Bill McArdle** announces that the Yakima County Bar has passed a resolution urging restoration of the grandfather clause which formerly permitted non-lawyers to hold the office of District Justice Court Judge. Many local lawyers have written to members of the Washington State Senate Judiciary Committee in support of the proposed legislation. The restoration of the grandfather clause would assure local Judge Leslie Vannice the right to run in the upcoming election (the foregoing refers to Senate Bill No. 2982).

SNOHOMISH REPORT

By **JAMES A. SIMONTON**

The bar banquet was held February 23, 1974 at the Everett Golf & Country Club and being as objective as possible, it had to be one of the best parties we have had. **Charlie Jordan** was his amiable self in light conversation with **Arthur Newton**, each claiming the other works more hours when they should be relaxing more.

Prosecuting Attorney **Robert Schillberg** and **Henry Templeman** outdoing each other in the best-dressed department with rather colorful outfits.

Paul Williams, of Edmonds, was telling us about his mountain rescue group being called out recently to assist at Stevens Pass after the avalanches.

Herman Michelson, our new secretary, wouldn't sit at the head table so **Archie Baker** had to fill in. Incidentally, Archie was recently honored by about 75 of his friends at a "roasting" party attended by such notables as **Augie Mardesich**, Judge **Phil Sheridan** and **Jack Sylvester**.

The highlight of the evening, however, was provided by **Ed Jones** and his barbershop singing group, the Anachords.

And with **Bryce Black, Andy Nielsen** and **Newell Smith** in rare form it was a great evening.

COWLITZ REPORT

By **O. H. HUSEMOEN**

After many years of discussion and controversy, Cowlitz County will finally obtain a new Hall of Justice on the banks of the Cowlitz River. Contracts have been let for the construction of the new building, and completion is scheduled in about one and one-half years. The Superior Court, Justice Court, Clerks of both courts, Prosecuting Attorney, Sheriff, Longview City Police, jail, and the law library will be housed in the new structure. It is located across the river from the present courthouse.

Darrell Lee and **Doug Wallace** have announced that they have joined together and are opening offices in Hazel Dell, just north of Vancouver in Clark County, and also in Woodland, Cowlitz County. **Jerold Heller** of Weber, Baumgartner & Heller, Inc., P.S., is also in Woodland, having

succeeded to the practice of **James Carty**, now Clark County Prosecuting Attorney.

C. LeRoy Borders of Borders & Altenhof, Kelso, is seriously disturbed and upset at this reporter for failing to recognize the existence of his office and the City of Kelso. Therefore, special recognition is given to Kelso and the five lawyers practicing in that city. The most note-worthy news is that Le Borders does not have a new associate, does not have a new office, does not have a new baby, and has not been working any harder.

Clifford McLean has opened his new office in the Park Plaza Building in Longview. **Judson T. Klinberg** leaves again soon for Europe and, in particular, for the British Isles, where he is apparently going to obtain additional resources for his syndicated column, "Man in the Kitchen."

PIERCE REPORT

By **KENYON E. LUCE**

The law firm of Gordon, Thomas, Honeywell, Malanca, Peterson, O'Hern and Johnson announces that **Dale L. Carlisle**, formerly Vice-President and General Counsel, United Homes Corporation and Levitt-West, Inc. has rejoined the firm as a partner, and **Gary A. Burns** has become an associate of the firm.

At the general bar meeting held March 21, 1974, **Robert Skidmore** spoke on bankruptcies.

Al Billett was selected as Superior Court Judge for Pierce County. Congratulations!

The Doctor-Lawyer-Dentist Golf Tournament will be held May 24, 1974 at the Tacoma Golf & Country Club.

Bar dues are past due. If you have not paid, your name will be dropped from the mailing list. Dues have been reduced to $25.00 because of the Referral Service's success. Get yours in now!

SKAGIT REPORT

By **PAUL LUVERA**

I have been named "substitute" editor for this month replacing our editor **David Welts** of Mount Vernon. Dave has been missing ever since the night of his record setting Skagit County verdict of $250,000 in February. We hope to sober him up and have him back soon.

Judge **Harry A. Follman** went skiing in Aspen after completing his year as the "Jury" judge. Judge **Walter J. Deierlein**, who took over his responsibilities, has been assigned the jury calendar for the rest of the year.

John R. Cuningham of Mount Vernon has been named a partner in the firm of Bannister, Bruhn & Cuningham. Jack is also the City Attorney for Mount Vernon.

Mount Vernon has a new lawyer, **Gary T. Jones**. Gary is a graduate of the University of Washington, class of 1973 and has been practicing in Seattle before setting up shop here.

When steelhead season arrives it is very difficult to reach **John Ward** of Sedro Woolley, **Charles Twede** and his partner **Al Rode** of Burlington or **David Yamishita** of Mount Vernon. They don't catch many, but they sure try hard.

Warren Gilbert, Jr. of Mount Vernon has made another trip to Sun Valley. This is his second trip this year. There is some talk about calling a grand jury to look into it as he is also the District Court Judge.

Speaking of Judges, justice is running smoothly in the Burlington municipal court under **Fred Lubbe.**

EAST KING REPORT

By **Barbara E. Reardon**

Judge **Donald J. Horowitz**, recent appointee to the King County Superior Court Bench, was the guest of the East King County Bar at its February meeting. Judge Horowitz indicated that he was enjoying his judicial duties. We were pleased to have the opportunity to meet with him on an informal basis and are hopeful that all of the Superior Court Bench will pay us a visit in the future.

President **Jim Dailey** announced that the East King County Bar is planning a series of public forums under the chairmanship of **Hartly Newsum**, who invited ideas from the floor. It appeared that the consensus of those lawyers in attendance agreed that certain topics, such as probate practice and procedure, were of continuing interest to the lay public, but that there were legal subjects, which had not been explored on a public forum basis, in which the public has evidenced interest. Hartly would welcome input from the members in the hope that the Association could offer a forum for discussion of subjects concerning which there is real interest from the public.

Roy Mattern, a member of the

Washington Patent Lawyers Association, and a member of the East King County Bar, spoke to the group on "Preventive Medicine for Your Investor Client," an area of law in which few of us have much contact, but one about which, Roy advises, we all should know in order to protect that inventive genius, whom Roy assures us could walk into the office next week. Hopefully, with Roy's guidance, we all now know enough to place the client in Mr. Mattern's hands forthwith.

The Bellevue law firm of Boyd, Decker and Hanson announce the association with their firm of **Diana F. Thompson**, who was graduated from the University of Washington Law School in the Class of 1972.

It is with deep regret that we report the death of **Joyce M. Thomas**, who died February 18, 1974. Joyce recently retired from her position as City Attorney of Bellevue and had practiced in the Bellevue and Seattle area for some years. All of us, who knew Joyce, recognized her fine legal mind and viewed her as one of our outstanding lawyers. The sincere sympathy of the East King County Bar is extended to Joyce's family, her husband, **Leo A. Thomas**, and her two sons, **Richard** and **Rex Bitner.**

Thomas F. Carr, recently with the Attorney General's office in Olympia, has joined the firm of Powell, Livengood, Dunlap and Silvernale in Kirkland. Mr. Carr is a graduate of the University of Washington Law School and while there was a managing editor of the Law Review.

SEATTLE-KING REPORT

By **GERALD G. TUTTLE**

Jerry H. Landeen has become a partner with Cook, Flanagan & Berst and the firm name has been changed to Cook, Flanagan, Bert & Landeen.

John Hendrickson, a recent Idaho Law School graduate and member of the Washington State Bar, is the new assistant to **Bill Snell**, City Hearing Examiner, Public Safety Building in Seattle.

Robert A. Jensen, formerly with Seed, Berry, Dowrey & Cross, has joined **George M. Cole** under the firm name of Cole & Jensen for the practice of Patent, Trademark and Copyright Law at 2124 Seattle-First National Bank Building.

GRAYS HARBOR REPORT

By **JOHN L. FARRA**

The annual Christmas party was held on December 17, 1973 at the Nordic Inn located in the City of Aberdeen. As usual spirits were high and all that attended enjoyed themselves thoroughly. It is rumored that **Bob Charette**, Aberdeen, was rather generous in treating members of the Bar to dinner after the party terminated.

Paul Fournier, Montesano, announced effective February 1, 1974, that he is retiring as District Court Judge and that he intends along with his wife Florence to spend his retirement resting and relaxing. When **Paul Fournier** announced that he was retiring from his position as District Court Judge, **Ed Brown**, the County Prosecutor, announced that he was submitting his name to the County Commissioners to fill the position. **L. Edward Brown** was appointed District Court Judge, assuming office on February 1, 1974. This left a vacancy in the County Prosecutor's position and Chief Criminal Deputy, **Curtis Janhunen**, was appointed to fill that position. Upon Curtis Janhunen's appointment he announced that **Dave Foscue** would become his Chief Deputy. It was also announced that **Dennis Colwell** would become the Civil Deputy for the County. The resignation of **L. Edward Brown**, and the subsequent appointment of Curtis Janhunen as County Prosecutor leaves a position open in that department.

It was announced by the County Commissioners that the bids were being submitted for the remodeling of the County Courthouse. **John Farra**, City Attorney of Aberdeen, is employing two legal interns for the coming summer. The program was highly successful last summer and it's success made this writer decide to hire two legal interns for the coming summer.

THURSTON-MASON REPORT

By **STEPHEN J. BEAN**

Harold Pebbles was selected as "Boss Of The Year" by the Thurston-Mason County Legal Secretaries Association at the recent annual banquet of the Association. The Master of Ceremonies for that gala dinner was **Jerry Buzzard**, who served as the poor man's **Don Rickles**. If any of the other attorneys in the state ever need a ruthless M.C. for any of their functions, they might contact Jerry Buzzard.

FRIDAY HARBOR REPORT

By **GEORGE MOSELEY**

Friday Harbor attorney **George Moseley** presided at a Monday luncheon meeting of the newly formed San Juan County Bar Association.

The meeting, held in the Chart Room of the Rip Tide Cafe, was attended by a number of special guests, including Judge **Howard Patrick**, Superior Court judge for San Juan and Island counties, with court reporter **Aubrey (Tab) Redling.**

Also present, in addition to most members of the county organization, were attorneys **Rodney Boddington** from Sultan, **Alfred Rode** from Burlington, and **Charles Sandell** from Seattle.

Mr. Moseley is president of the local bar association, with **John Linde** serving as secretary-treasurer. Much lively discussion occurred with active participation and help from Judge Patrick.

The group will meet every second Monday of the month (court day) with the next luncheon scheduled at noon in the Imperial Gardens Restaurant, Friday Harbor.

KITSAP REPORT

By **WM. J. KAMPS**

The Kitsap County Bar Association held its annual installation dinner on Friday, March 1. Outgoing president **Ken Lewis** installed **Doug Fox** as president; **Jay Roof** as vice-president; and **J. Michael Koch** as secretary. **Merrill Wallace** delivered the dinner address recounting some of the many changes in Kitsap law practice during his forty-plus years of practice. The dinner was well attended despite the fact that it was held about six months late. **Mike Koch** advises that the reason for the delay was that in so doing the officers got their names twice recorded in this column—once when they were elected and once when they held their own installation dinner.

GOVERNMENTAL LAWYERS

By **JOHN A. HOGLUND**

The Olympia based counsellors continued their self-edification at the February luncheon when they hosted their own representative on the Board of Governors, **Jack J. Champagne** (3d Cong. District). Mr. Champagne gave an excellent resume of the actions and deliberations of the Board of Governors over the past year. His presentation was followed by numerous queries from the large group attending.

In recognition of excellent performance in positions of high responsibility, Attorney General **Slade Gorton** recently announced that the title of senior assistant attorney general has been given to **John H. Bright, III**, chief of the Consumer Protection Division in Seattle, and **Jeff Lane**, senior attorney for the Department of Motor Vehicles. The new title was also conferred upon **Paul D. Solomon**, who will replace **J. Larry Coniff** as a senior assistant attorney general for the Department of Fisheries and Game. Mr. Coniff is transferring to the section which advised the Department of Natural Resources, and will replace **Douglas McRayde**, who has resigned to join a Sunnyside law office.

Better-late-than-never notes of new additions to the AG's office include: **John R. Ellis** (Consumer Protection, Seattle) and **Sharron Wetherall** (Consumer Protection, Seattle).

Richard S. Johnson, who practiced in Grays Harbor for 5 years and then served several months as North District Court judge in Pacific County, has now joined the Land Development Registration and Administration Office in Olympia as Deputy Chief.

Report from the Travel Committee

From high on top his digs in Seattle's Central Bldg., John R. Stair, now on sabatical leave as musicologist to the Travel Committee, sends the following item on the British scene:

"Bill Bangs of Stockton-on-Tees went to court charged with contempt for flashing a rude finger sign at a passing limousine. The occupants turned out to be two judges, who promptly had him arrested. In court, the judge told him: 'This is a very serious matter. I have the authority to send you to prison, you know.' Mr. Bangs replied: 'I humbly apologize. I did not intend to show disrespect to your lordships. I thought it was the mayor's car.' The judge accepted this exaplanation and released him."

John McLauchlan

LAW DAY 1974 TO FOCUS ON YOUTH AND THE LAW

Local bar presidents and Law Day chairmen throughout the state should be well into planning for the 1974 Law Day observance, which is directed toward youth and the law.

The theme:

Young America! Lead the way,
Help
Preserve good laws,
Change bad laws,
Make better laws.

The theme was chosen to help fill the gap in programs to teach young people about law and our system of justice. Such programs are well established in a few places in the United States and, are getting underway in many more places.

Law Day '74 is being directed toward helping local school teachers at all grade levels in preparing for appropriate classroom presentations and providing law students, lawyers and judges to address classes on a broad range of law-related subjects.

Law Day is a peculiarly local observance and as carried out by local bars in Washington State takes a variety of forms. Support and assistance is provided by the State Bar Office, which also arranges for such non-local aspects of the day as distribution of radio and television spot announcements.

If they have not done so already, local Law Day chairmen soon should contact their school district administration offices and principals to offer the Bar's assistance in planning and presenting Law Day programs.

Local-bar Law Day 1974 chairmen already appointed are:

Dennis W. Morgan, Adams County; John R. Sullivan, Benton-Franklin; Steve Crossland, Chelan; John O. Cossel, Clallam; James Holland, Clark; Vernon J. Guinn, Cowlitz; Leslie A. Wahlstrom and Richard Chapin, East King County.

Richard A. Perry, Ferry; C.J. Merritt, Grant; James J. Solan, Grays Harbor; Marvin C. Buchanan, Island; C.A. McCune, Jefferson; Terry McCluskey, Kitsap; Brian Frederick, Kittitas; Daniel J. Murray, Lewis; Edward Dawson, Lincoln.

Charles Ray Byrd and Jerry McCormick, Okanogan; James Pharris, Government Lawyers; Evelyn J. Black Dennis, Seattle-King County; Reinhard Wolff, Skagit; David Patterson and Judy Young, Snohomish; William Levinson, South King County; John D. MacDougall, Stevens; David M. Kenworthy, Thurston-Mason; Robert L. Zagelow, Walla Walla; Robert F. Patrick, Whitman, and Jerry D. Talbott, Yakima.

ABA Notes Pretrial Conference Technique Gains Momentum in State Courts

WASHINGTON, D. C. — A pretrial hearing technique used successfully by federal courts to speed up disposition of criminal cases is gaining momentum in the state court systems.

First implemented by the federal judiciary in 1967, the so-called "omnibus" hearing concept provides broad informal discovery at an early stage and attempts to telescope plea negotiations into a period of a few weeks after arraignment. At the hearing itself, the prosecution and defense attorneys identify and agree on the issues. The judge then establishes a firm schedule for future court appearances.

Washington was the first state to implement the omnibus hearing concept which is part of the American Bar Association's Standards for Criminal Justice.

Recently, a state court demonstration team from Seattle showed how the technique works at three seminars in Indiana. An Indiana pretrial demonstration team also participated in the presentations.

"This technique is without doubt the best approach to improve overall administration of criminal justice I have seen," said Justice Donald H. Hunter, of the Indiana Supreme Court.

Justice Hunter was host of the demonstrations held under sponsorship of the Indiana Center for Judicial Education in Indianapolis.

The ABA's Section of Criminal Justice, a co-sponsor of the demonstrations, said that the seminars were a trial run for a team comprised of a state court judge, prosecutor and public defender.

Members of the Washington state court demonstration team were **David Boerner**, chief, Criminal Division deputy, King County prosecutor's office; Judge **David K. Soukup**, King County Superior Court, and **John A. Strait**, staff attorney for the Seattle Public Defender's Association.

An estimated 75 Indiana state court judges, prosecutors, public defenders and private defense attorneys attended the one-day demonstrations held in South Bend, Jan. 25; Indianapolis, Jan. 28; and Clarksville, Jan. 29.

State Lawyer Referral Service

The number of client referrals by the State Bar's statewide Lawyer Referral Service increased 55 percent in 1973 over those in 1972, the service's first year of operation.

In 1972 the referrals totaled 827; in 1973 the figure was 1,285.

In the same time the number of referrals resulting in matters in which further legal services were required increased 69 percent. About one-third of those matters were estimated by the lawyers to require legal fees of less than $100 and about two-thirds of the additional fees were estimated at between $100 and $500.

In addition there were 26 matters for which the lawyers estimated the additional fees required at more than $500; there were 18 contingent-fee matters and 49 matters for which the ultimate fee could not be estimated.

The State Bar's Service operates by WATS long-distance, toll-free telephone in the 36 counties other than King, Spokane and Pierce, where the local bars conduct referral services. Persons not knowing a lawyer or reluctant themselves to contact one may telephone the State Bar Office; a staff member then makes a definite appointment for the caller with an attorney-LRS panel member in the caller's area.

Any State Bar member in the 36 counties may join the LRS panel and receive referrals; the annual membership fee is $15.

LRS "business" is expected to increase as the availability of the service becomes more widely known; the number of referrals in January, 1974 was 153, largest monthly figure in the service's two-year history.

Figures for the first two years' statewide LRS operation, which is conducted by the Bar as a public service and a public relations program for the profession, include:

Referrals, 2,112; lawyers' reports returned to Bar Office, 1704; $10 initial-appointment fee paid by client, 1,146 (the fee is waived by many lawyers in many cases); further services required, 650 "yes" and 108 "maybe"; estimated additional fee, under $100, 218; between $100 and $500, 422; over $500, 26; contingent, 18; and unknown, 49.

Jeske to be Speaker at Corporation, Business and Banking Law Section Meeting

William P. Jeske, Chief Economist for Pacific Northwest Bell, will be the featured luncheon speaker at the May 11 meeting of the Corporation, Business and Banking Law Section.

The subject of Jeske's speech will be "Review of the Prospect for Washington Businesses and the State of Washington Economy."

Jeske, a leading Northwest economist, has been with Pacific Northwest Bell for more than twenty-two years. Among his many other affiliations, he is a member of the Governor's Economic Advisory Council, a member of the Board of Directors of Seattle Trust & Savings Bank, and Research Chairman of the King County OEDP.

The American College of Probate Counsel

Harrison F. Durand, President of the American College of Probate Counsel announced today that W. L. Minnick, of the law firm of Minnick & Hahner, Walla Walla, has been elected to membership in the College.

The American College of Probate Counsel is an international association of lawyers organized for purposes of modernizing and improving probate procedures throughout the country. The College has approved the Uniform Probate Code in principle.

Joseph H. Gordon and E. Frederick Velikanje are currently members of the Board of Regents.

Savage and Hawkins Receive Reprimands

Reprimands were administered to Anthony Savage, Jr., Seattle, and Kenneth C. Hawkins, Yakima, by the Board of Governors at its February 23 meeting in Tacoma.

Savage was reprimanded as the result of his conviction for failure to file an income tax return.

Hawkins received a reprimand for failure to file a lawsuit prior to the expiration of the statute of limitations and for misinforming a client with respect to progress being made on his claim and with respect to settlement negotiations.

Dan Sullivan's Article on *Retroactivity of the Comparative Negligence Statute*, originally scheduled for this issue of the Bar News, was published in a special issue of Trial News, which has been mailed to all lawyers in the state.

CANADIAN COMPARATIVE NEGLIGENCE LAW

by Hon. Edson L. Haines
Justice of the Supreme Court of Ontario,

The law of torts aims at adjusting the losses which result from the ever increasing activities of persons living in a common society by providing compensation for harm suffered by persons as the result of conduct of others. If it fails in that objective, then public opinion will force its legislators to find a substitute and legislators are often inclined to turn to the new rather than repair the old. It is so easy to set up Compensation Boards or Commissions, particularly where the incidence of loss is great, the need for rapid solution pressing and the established legal processes are slow. That is the situation in many parts of the Continent with the tremendous losses being caused by the motor car. For years writers have been proposing on both sides of the American-Canadian border that "Compensation without fault" is the appropriate solution, because otherwise the community must ultimately bear a large portion of the loss of the uncompensated victim, either by way of hospitalization, medical attention or some form of direct relief. And one must never overlook the economic loss to a person, his family and community. The Honourable Lord Justice Denning when addressing the Assembly of the American Bar Association on the 25th of August, 1955, said:

> "Take now freedom from injury. Daniel Webster said, 'That man is free who is protected from injury.' That is perhaps a little far-fetched. No one can prevent accidents happening. Risk of injury is a necessary incident in life. Nevertheless, a man's freedom is no good to him if he is liable to be killed at any moment by the many machines which modern science has made available. The law cannot itself insure freedom from injury, but it can at least insure that compensation is available for those who are injured." 41-ABAJ 1014.

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System of Justice on Trial

Every trial lawyer knows that in any lawsuit that not only is the case being tried but that our system of justice is also on trial. That our judges struggle valiantly to make the system reflect community concepts of fair play is obvious in the steady development of our Common Law jurisprudence; but, there are marked limitations on judge-made law. Nowhere is this more obvious than in the doctrine of contributory negligence.

> "No one can appreciate more than we the hardship of depriving plaintiff of his verdict and of all right to collect damages from defendant; but the rule of contributory negligence, through no fault of ours, remains in our law and gives us no alternative other than to hold that defendant is entitled to judgment notwithstanding the verdict. It would be hard to imagine a case more illustrative of the truth that in operation the rule of comparative negligence would serve justice more faithfully than that of contributory negligence.* * * But as long as the legislature refuses to substitute the rule of comparative for that of contributory negligence, we have no option but to enforce the law in a proper case." Holt, J., in Haeg v. Sprague, Warner & Co., 1938, 202 Minn. 425, 281 N. W. 261.

In the face of such strong judicial opinion, supported by so many serious students of the law of torts, it is difficult to understand legislative inaction in so many States. Comparative Negligence Statutes have existed in Maritime and Civil Law countries for a great many years. They were adopted in the Province of Ontario in 1924 and in the rest of Canada shortly thereafter, and in Eng-

land in 1945. To Insurance Counsel who feel that in the interests of their clients they ought to oppose such legislative reform, let it be said emphatically that Canadian Insurance Companies operate very happily under our legislation. While not encouraged to defend a lawsuit in the hope that the Plaintiff will be found partly at fault and thereby denied recovery, they are not exposed to the risk of a "perverse jury" ignoring the alleged acts of negligence of the Plaintiff and bringing in a verdict suspected of containing a high emotional element. Insurers are paying that portion of the Plaintiff's loss caused by their insured's negligence. We lawyers in Canada feel that our clients are happy with the operation of our Comparative Negligence Laws and that while we have by no means prevented the clamour for "Compensation without Fault" we have effectively removed one of the main reasons for its adoption.

Canadian Comparative Negligence Law Outlined

It is the purpose of this article to outline the workings of Canadian Comparative Negligence Law so that those interested can decide for themselves whether some similar rule in their own jurisdiction should be adopted. Our rules achieve the following:

1. An injured plaintiff whose fault has contributed to his loss, finds his recovery reduced by the degree of his fault.
2. Where there are concurrent wrongs on the part of two or more defendants, each remains liable to the plaintiff, but between themselves are entitled to contribution in the degree to which the negligence of the other contributed to the loss.
3. Where the plaintiff sues only one of two or more concurrent tort feasors, the defendant can add the other tort feasor as a party defendant, if the plaintiff does not object, or, as a third party, if the plaintiff objects. In any event, all tort feasors can be brought before the court. In this respect, there is a further option. Any tort feasor can settle with an injured person and thereafter proceed against another tort feasor for contribution. This may be done at any time before or after the injured person sues. The only limitation is that the person making the settlement must:
   (a) Admit that he was a tort feasor, and
   (b) He must satisfy the court that the amount of the settlement was reasonable.
4. The defendant may counterclaim for his loss against the plaintiff and, where he alleges that his loss has been caused by the plaintiff and some other wrongdoer, he may add the other as a party to the action.
5. In any action, the degree of fault or negligence of the respective parties is determined as a question of fact.

Perhaps the outstanding achievements of this legislation are twofold. First, it receives the approbation of those suffering injury because it permits recovery of that portion of the loss for which other wrongdoers are responsible. No plaintiff objects to bearing that portion of the loss caused by his own negligence, but is quite incensed at being obliged to bear that part caused by another's fault. It is the experience of the bar that our citizens readily understand and approve of this equitable distribution of loss according to fault. The second achievement is that is promotes settlements. No defendant is encouraged to defend in the hope that the plaintiff will be found contributorily negligent. One of several concurrent tort feasors no longer refuses to contribute because:

(a) He cannot be reached, or
(b) He believes his co-defendant cannot afford to fight.

The litigants soon discover that the judicial process speedily gets down to discovering the responsibility for the loss and apportioning it amongst those who are guilty. Therefore, litigants and their counsel quickly do what they can foresee the courts doing for them. Consequently fewer cases reach the litigation stage and those that do are usually settled after disclosure of the evidence of the parties in modern discovery procedures. Crowded court dockets are relieved substantially.

The Ontario Statute is similar to that adopted in the other Common Law Provinces. The English Statute is somewhat different in form and has certain commendable features, since the draftsmen had over twenty years of case law in Canada to draw from when preparing their Statute. It is known as the Law Reform (Contributory Negligence) Act 1945.

Speaking of the practical operation of the Act, Lord Porter said in Stapley v. Gypsum Mines Ltd., 1953 (A. C.) 663.

> "It enables the Court (be it judge or jury) to seek less strenuously to find some ground for holding the Plaintiff free from blame, or for reaching the conclusion that his negligence played no part in the ensuing accident, inas-

much as, owing to the change in the law, the blame can now be apportioned equitably between the two parties."

Negligence Law Simplified

Plainly our Courts are no longer concerned with the subtleties and refinements of last opportunity. Contributory conduct must constitute what the law regards as a substantial factor in producing the harm. The enquiry is not confined to conduct that is exactly contemporaneous. In a judgment warmly supported by the other law lords, Viscount Birkenhead pointed out that, despite the fact that cases of "strictly synchronous negligence" were rare, the Courts could, nevertheless still find that the negligence of both parties contributed to the resulting accident even though their acts were not "synchronous." He added:

> "Upon the whole I think that the question of contributory negligence must be dealt with somewhat broadly and upon common-sense principles as a jury would probably deal with it. And while, no doubt, where a clear line can be drawn, the subsequent negligence is the only one to look at, there are cases in which the two acts come so closely together, and the second act of negligence is so much mixed up with the state of things brought about by the first act, that the party secondly negligent—might, on the other hand, invoke the prior negligence as being part of the cause of the collision so as to make it a case of contribution.* * *."

Our Courts have insisted upon the "common sense" jury approach and have refused to become involved in the philosophical refinements revelled in by so many tort lawyers. "Whose negligence was it that substantially caused the injury?" is the question propounded to the jury, and at the same time a forceful warning is given against the dangers of "attempts to classify acts in relation to one another with reference to time or with regard to the knowledge of one party at a particular moment of the negligence of the other party."

With the accent upon the use of common sense principles in the solution of problems of causation together with the recognition that contributory negligence is always a question of fact for the jury, amazingly little difficulty is encountered in the trial of a negligence action.

Special Verdicts

While general verdicts are permitted in the discretion of the judge, it is a well established practice to require the jury to find the facts. We believe that the tribunal of fact should find the facts in a manner that all can see, and where a jury has found an act of negligence which is not negligence in law there should be a remedy available to the aggrieved party. To achieve this purpose the jury is required to answer specific questions. They are told to find the acts of negligence of each party and that where no finding is made upon a point in dispute the Court will presume the party was not negligent in that respect. If they find each party at fault, they are told to apportion the degrees of negligence, and when it is not practicable to do so the Statute requires the jury to find each party equally at fault. Interpreting the jury's findings broadly, and in the light of the evidence, our Courts find little difficulty. If the finding of negligence is not clear, then the jury is sent back to clarify it. If the finding does not constitute negligence in law either the Trial Judge or the Court of Appeal will set it aside and give the verdict that ought to have been given in the circumstances. That will vary with the nature of the case from a direction in favour of one party or the other to a new trial.

Here is a specimen set of questions:

1. Was there any negligence on the part of the defendant that caused or contributed to the accident? (Answer yes or no.)
2. If your answer to No. 1 is "Yes," then in what respect was the defendant negligent? (Answer fully.)
3. Was there any negligence on the part of the plaintiff that caused or contributed to the accident? (Answer yes or no.)
4. If your answer to No. 3 is "Yes," then in what respect was the plaintiff negligent? (Answer fully.)
5. If you find both the plaintiff and the defendant negligent, then in what degree do you apportion the negligence?
   Plaintiff _____%
   Defendant _____%
   100%
6. At what amount do you assess the total damages of:
   The Plaintiff $ _____
   The Defendant $ _____

Indemnity—Contribution

Attention is called to the provisions of the Statute permitting one wrongdoer to bring another into the action and to obtain an order for contribu-

tion or indemnity. All the tort feasors are brought before the Court and the rights of the parties between themselves are worked out in the one action. More recent is the provision which gives one wrongdoer the right to settle with the injured plaintiff and then to proceed against another wrongdoer and recover contribution. In appropriate cases this often results in settlement of an injured man's claim without his resorting to litigation. It enables a tort feasor or his insurer to take full advantage of the opportunity of making an economical settlement early in the proceedings and thereby limit the amount of the claim. Thereafter he can litigate his claim for contribution with the other tort feasor without incurring the danger involved in a three-cornered fight where each tort feasor refrains from cross-examining and calling evidence as to damages for fear of giving the jury the impression he believes he is at fault. Experience teaches that in such unopposed situations the innocent plaintiff is apt to get an overly generous verdict.

Settlements Encouraged

Perhaps the greatest benefit from our Comparative Negligence Statute is that it tends towards settlements. In these days when so much is being said about crowded calendars and interminable delays, the trend is toward conciliation as a substitute for trial. Actually if the rules permit the bringing of all responsible parties into an action and the working out of just apportionment of fault, the parties themselves are usually in a preferred position to settle their own differences. They should be encouraged to do so. Generally speaking most injured people prefer a reasonable settlement at an early date to the risk of a trial and its frustrations. In Canada we have no statistics as to the number of settlements. We know our accident ratio is about as bad as that in the larger centres in the United States. We have no more judges per capita, perhaps fewer. But crowded calendars are unusual. It is the rare damage action that cannot be brought to trial within six months, assuming due diligence on the part of counsel. It is our belief that our Comparative Negligence Law contributes largely to this situation. Plaintiffs reduce their demands knowing a Court will find them partly at fault. Insurance Companies adopt a realistic view and pay up where there is reasonable evidence of conduct of their assured which contributed to the Plaintiff's loss. Our Comparative Negligence Law makes for realism. □

Septic Tanks in Whatcom County?

In the continuing story on parking permits and air quality impact reviews, EPA's regulations have been changed. If your developer client begins a continuous program of construction before December 31, 1974, a favorable EPA review is not required (See 39 FR 1848 and 38 FR 32675 for details). The Department of Ecology is now considering the readoption of their regulations.

Water permits are in the forefront—June 30, 1974 is a deadline. If your client uses ground or surface water, he must register the claim with the Department of Ecology by that date. For more information, write the Department of Ecology, Water Right Claims, Olympia, Washington 98504. You can also check with your county's extension agent.

Client discharging to water?

An NPDES permit may be required. Administered by the Department of Ecology the regulations are in WAC 173-220. If your client discharges in Okanogan, Chelan, Kittitas, Yakima, Benton or Klickitat County, contact Clar Pratt in Yakima at (509) 248-0981 for information.

The proposed effluent guidelines for the timber products industry (see 39FR 938) are the subject of hot dispute. Danfort Bodien, Regional Industrial Coordinator of EPA, Region X, contends they are a step backward. U.S. Department of Commerce is critical of the scope of backup data. This could become a critical issue for Washington clients.

Need information for an Environmental Impact Statement ("EIS")?

The United States Geological Survey of the Department of the Interior has developed some 30 land use information maps. One set of maps discusses how well household septic tanks are like to function in Western Whatcom County; another set, salmon use of streams in the southern Hood Canal area.

An EIS not needed because of insignificant impact?

One recent federal case under NEPA (virtually the same as SEPA) said a written analysis appraising this is required. *Simmons v. Grant*, 6 ERC 1225 (D.C., S.D. Tex; 1974). ("ERC" refers to Bureau of National Affairs' Environmental Reporter). See 49 Wash. L. Rev. at 518-9.

Joel Haggard, Chairman
Environmental Law Section

PRE-TRIAL DIVERSION

ANOTHER VIEW

by James E. Carty

The January *Bar News* contained an article on pre-trial diversion and deferral programs. It stated:

> "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."

This statement is not in accord with the diversion programs in effect in various jurisdictions. The best known diversion program is that of the Citizens Probation Authority of Genesee County, Michigan. Among other jurisdictions having formal diversionary programs are: Atlanta, Baltimore, Cleveland, Minneapolis, Newark, San Francisco (North Bay area) and San Antonio. Some of the basics of this program are: (1) The present offense shall not constitute part of a continuing pattern of anti-social behavior; (2) crimes of a violent nature, interpreted to include "crimes against persons" are precluded from the program; (3) the offender must accept moral responsibility for whatever his behavior in the alleged offense, and, (4) restitution to the victim is required. A distinction is made between the offender who is a "lawbreaker" and the offender who is a "criminal."

The program is carefully structured, supervised and designed to rehabilitate the offender. The case load is less than that carried by probation officers. The offender is under an "intensive care" type program.

Recidivism is some measure of determing the effectiveness of a structured diversionary program. Using this measure, the Genesee County program has been effective. Only three persons (less than 1%) were convicted on a felony charge for an offense during or up to thirty six months after a successfully completed program. Twenty-three persons (6%) received misdemeanor convictions twenty-six (7%) convictions in traffic charges.

The Clark County Prosecutor's Office has entered into an agreement with the Prevention-Habilitation Council of Clark County, a non-profit organization, for the operations of a diversion program. The agreement is as follows:

1. Prosecutor's office through the examination of police records, crime reports and other material determines that an alleged offender is a potential subject for diversion and refers him to the Diversion Interviewer.

2. The Diversion Interviewer is an employee of Pre-Hab whose job is to screen potential diversionees, develop and write up diversionary programs, and supervise the execution and carrying out of these programs. His interview with a subject is confidential and no information gained from it is to be related to the prosecutor's office. He works under the supervision and control of the Pre-Hab Board and under the guidance and counsel of the Pre-Hab Coordinator.

3. The Diversion Interviewer screens the subject.

   (a) If he believes that the person should not be diverted, he reports his conclusion to the prosecutor and nothing further is done by him.

   (b) If he believes that the subject should be diverted, he prepares a proposal for a diversion program which is submitted to the prosecutor's office for its approval.

4. The diversion program should:

   (a) specify the length of the program;

   (b) list any treatment that is to be involved and the responsibility of the subject in connection with the treatment;

   (c) list goals, if any, which subject is to meet along with a time schedule for meeting them;

   (d) list conditions, if any, with which the subject is to comply; and

(e) where it is feasible a proposed fee based on a sliding scale, is set which is to be paid by the subject to Pre-Hab to help pay for the expenses involved.

5. The prescribed fee is to be paid in full only if the person is financially able to pay it in addition to any charges for treatment or other services that may be involved. The fee set should be reasonable.

6. If the prosecutor's office approves the proposal, it is submitted to the subject's public or private attorney for the subject's approval. Upon its approval it is to be signed by the prosecutor and the subject with copies given to both. A certification of advice of rights and obligations signed by the subject and his attorney shall be provided as a condition precedent to his admission to diversion.

7. The diversion program should utilize any and all necessary community agencies and resources based upon the subjects particular needs as diagnosed by the Diversion Interviewer.

8. If the plan involves the use of Pre-Hab services other than the Diversion Interviewer, the subject will be interviewed by the Pre-Hab Coordinator to determine whether the person should be accepted.

9. The execution of the program is to be supervised and directed by the Diversion Interviewer. If he determines that the subject is not cooperating or that the program is not beneficial, he reports his conclusion to the prosecutor and terminates further work with the individual.

James E. Carty has served as Prosecuting Attorney of Clark County since July of 1973. He is a 1952 graduate of Duke University Law School, where he was Order of the Coif. He practiced law in Woodland, Washington from 1952 until his appointment as prosecutor.

The fee schedule for the offender is as follows:

Annual Salary (Based on Last Year Jan. 1 - Dec. 31)	Fee
0-1000	10
0-2000	20
0-3000	30
0-4000	40
0-5000	50
0-6000	60
0-7000	70
0-8000	80
0-9000	90
10,000 and above	100

Monthly Salary (If the Above Schedule Cannot be Used)	Fee
0-100	10
0-200	20
0-300	30
0-400	40
0-500	50
0-600	60
0-700	70
0-800	80
0-900	90
1000 and above	100

An example of a diversionary program is Offender "A." This individual was referred to Pre-Hab. He was found to be an acceptable candidate for diversion. His program consists of the following:

(1) Involving himself with a weekly mental health program;
(2) Participating in Pre-Hab with a team;
(3) Maintaining steady employment;
(4) Acquiring a high school diploma or a G.E.D.

At present, the program is operating with available community resources. We estimate that 25 to 50 offenders will be placed in the diversionary program in 1974. This represents approximately 5% to 10% of the total felony filings for 1973.

Contrary to the impressions given in the January article, diversion does not necessarily mean kicking the offender out of the criminal justice system. It can, and should, mean diverting the offender into a carefully designed program, using existing community resources, at some point prior to the filing of a felony information. A good diversion program is an asset to the existing criminal justice system. □

CLE: A New System and a Busy Year

The State Bar's Continuing Legal Education program has a new and busy look. And it will have something for everyone.

The new program was devised by the Board of Governors and the CLE Committee after the establishment of the section system within the Bar. The association now has a dozen sections, mostly on substantive areas of the law. The sections henceforth will share with the CLE Committee much of the responsibility for organizing and presenting CLE seminars.

The first such seminar was the three-city presentation in March on the new Comparative Negligence Act. The seminar was presented by members of the Trial Practice Section in cooperation with the CLE Committee.

Because an increasing number of attorneys has indicated they would prefer seminars to be presented Fridays instead of the traditional Saturdays, several Friday programs are being presented on at least a trial basis. The CLE seminars were switched to Fridays in Spokane a couple of years ago and the change apparently permitted a larger number of lawyers to attend.

Some of the Friday programs in Seattle will be from 9 a.m. to 4 p.m. and some from 1 to 6 p.m., with registration from noon to 1. The latter Friday-afternoon scheduling actually results in only a few minutes' less actual "class time" than the full-day format.

The 1974 Bar annual meeting and convention also will have the CLE Committee and various sections sharing the responsibility for the programming.

The convention, as all members of the Bar have been notified, has been switched from San Francisco to Vancouver, B.C., chiefly because of the energy-shortage uncertainties, and will be one week later than the normal convention time; the dates are Wednesday, September 11, through Saturday, September 14. The date change was made in response to many reports that the traditional convention time, at the end of Labor Day week and the week of the start of school, was inconvenient to those who have school-aged children and who wished to have their spouses accompany them to the convention.

Here are some dates to save for CLE seminars during the remainder of 1974:

The **new Bankruptcy Rules** for the general practitioner, April 19 in Spokane and May 3 in Seattle; presented by the Section of Creditor-Debtor Rights and CLE Committee.

Seminar on the practical problems in many areas growing out of the **new Dissolution of Marriage Act**, May 17 in Seattle and May 31 in Spokane; presented by the Family Law Section and CLE Committee.

Practice under the **Revised Probate Code**, September 20 in Spokane and September 27 in Seattle (the new code will be effective October 1, 1974); presented by the Real Property, Probate and Trust Section and CLE Committee.

Estate Planning Seminar, October 3 and 4 in Seattle; sponsored by the State Bar and Estate Planning Council. More than 740 attended the Estate Planning Seminar last October.

Seminar on **antitrust law** as it increasingly affects all general practitioners, October 18 in Seattle and November 1 in Spokane; sponsored by Section of Antitrust Law and CLE Committee.

A two-day special seminar on the **basics of trial advocacy**, in Seattle November 22 and 23 and Spokane December 12 and 13; presented by Trial Practice Section and CLE Committee.

Alice O'Leary Ralls Memorial Loan Fund Established

The School of Law, University of Washington, is pleased to announce the addition of the "Alice O'Leary Ralls Memorial Loan Fund" to their financial aid program. The Honorable Charles C. Ralls has initiated this fund in memory of his wife who died on March 20, 1973. Mrs. Ralls received her law degree from the University in 1930. In 1969 she received an "Honored Citizen Award" from the King County Council in recognition of her outstanding work in the field of Alcoholism, and she received the coveted "Woman of Achievement" Award given by the Women in Communications at their annual Matrix Table banquet in 1961. From January 1955 to March 1972 Alice Ralls contributed greatly to the effectiveness of the Washington State Bar Association as its Executive Director.

The Alice O'Leary Ralls Memorial Loan Fund will be administered by the School of Law to assist students by reducing financial anxieties in the belief that this will add to the quality of the students' education. Additional contributions to this fund will be most welcome and can be sent to the School of Law.

The Courts

COURT OF APPEALS

By **JOSEPH A. THIBODEAU**

Recently a panel of Division I considered a motion to strike respondent's brief for failure to timely file it within the rules. The pertinent facts in the instant case disclose that appellant filed his opening brief on *October 15, 1973.* Counsel were notified on *November 16, 1973*, that the case would be set in the January 1974 Session on a date to be selected by counsel. On *November 20, 1973*, counsel agreed to have the matter heard on February 13, 1974. Nine days prior to oral argument, counsel for respondent filed an answering brief. During the time from October 15, 1973, to February 4, 1974, counsel for respondent did not at any time request an extension of time to file this brief. On February 8, 1974, counsel for appellant promptly moved to strike the brief. The matter was considered by the court at the hearing on the merits. Following the hearing, the court determined that the delay was inexcusable and entered the following order:

> "Ordered that the appellants' motion to strike respondent's brief is denied; and, it is further
>
> Ordered that appellant shall have until March 1, 1974, to file a reply brief in the above-entitled case; and, it is further
>
> Ordered that respondent shall pay to counsel for appellant on or before February 26, 1974, the sum of $150.00 as terms for the delay in filing respondent's brief until February 4, 1974; and, it is further
>
> Ordered that in the event that the $150.00 is not paid by February 26, 1974, counsel for respondent is requested to show cause on Friday, March 8, 1974, why he should not be held in contempt of this court."

It is important to note that while the court did not strike the brief, it did allow terms. Further, the late filing necessitated an additional period of time to appellant after oral argument to permit counsel to file a reply brief. This placed the appellant at a real disadvantage being unable to present his argument orally to the court.

The court has become quite concerned recently with the late filing of briefs especially when a cause has been set on the regular appeal calendar. The court has a responsibility to both the public and the bar to adequately prepare for oral argument. With late briefs, this prevents the court from doing the job that both the public and the bar expect. For an excellent article on the value of briefs see Effective Appellate Advocacy by Judge Charles Horowitz and Marjorie D. Rombauer in Chapter IV—Civil and Criminal Appellate Practice.

The conclusion from all this should be that the counsel should make every effort to see that the briefs are timely filed so that the court in preparing for oral argument has counsel's strongest arguments in mind at the time the case is presented and that the above incident is the exception and not the rule.

COURT ADMINISTRATOR

By **PHILLIP WINBERRY**

Administrator of the Courts

Superior Courts Management Information System

The first meeting of the Superior Courts Management Information System committee was held in Olympia on February 21, 1974. The committee, composed of representatives from the Supreme Court, Superior Court Judges' Association, Association of County Clerks, Prosecuting Attorneys' Association, Public Defenders, the public, Court Administrators' Association and the state Court Administrator's Office, elected Supreme Court Justice Robert F. Brachtenbach Chairman. The members of the committee are:

Robert Brachtenbach	Justice, Supreme Court
Del C. Smith, Jr.	Judge, Spokane County Superior Court
Walter Stauffacher	Judge, Yakima County Superior Court
Kay Anderson	Snohomish County Clerk
James Boldt	Benton/Franklin Co. Court Administrator
Miles Eslick	Spokane County Clerk
Vernon Fishback	Yakima County Court Administrator
Charles McNurlin	Superintendent, Selah School District 119
Dean Morgan	Clark County Public Defender
Betty Mullen	King Co. Judicial Administration Dept.
Don Perry	Pierce County Clerk
Robert Schillberg	Snohomish County Prosecutor
Lewis Stephenson, Jr.	King County Court Administrator
Robin Trenbeath	Information Systems Dir., Admin. for Cts.

Dorothy Wagar	Franklin County Clerk
Phillip Winberry	Administrator for the Courts

In the next year the committee will consider methods to take full advantage of businessmanagement techniques available for efficient and effective management of the judicial system and develop a prototype management system, adaptable to the circumstances found within the various superior court districts, for gathering, compiling, analyzing and reporting court management data. The committee hopes to develop a program which will not only be a management tool for the superior courts, but also an improved procedure for the collection of information concerning the operation of the superior courts. The committee is particularly concerned that information pertaining to the function and operation of the superior courts be more comprehensive, reliable and timely. Among the issues to be considered by the committee will be who are potential users of court information, what information should be collected and the accuracy and security of that information.

If further information is desired, please contact Mr. Phillip Winberry, Administrator for the Courts at (206) 753-5780.

SUPERIOR COURT NEWS

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

Allan R. Billett, Tacoma attorney, has been appointed by Gov. Daniel J. Evans to the vacancy on the Pierce County Superior Court created by the resignation of Judge **Bertil E. Johnson**, effective March 1. Judge Johnson had served on the Pierce County bench since his appointment by then Gov. Arthur B. Langlie on May 14, 1951.

Judge **William H. Williams** (Spokane), president-judge of the Washington Superior Court Judges' Association, has announced that the annual Spring Conference of superior court judges will be held April 25-27, in Yakima. The first day will be devoted to juvenile court matters. Judge **Willard J. Roe** (Spokane) is chairman of the Conference.

It seems that the Editor was hibernating in the winter of '54 thereby causing the loss of a month so we substitute marginally with excerpts from Age of Achievement.

Tacoma: **'Benjamin A. (Dad) Trimble,** an ex-slave who gave his age as 103, was formally excused from jury duty by Black-robed Hugh Rosellini by reason of age. "Heck, I was too old in 1912," said Trimble.

'He sang a hymn for the judge and did a modified buck and wing dance. When asked the secret of his longevity he confided that most reasons were real secret, but would say: "Garlic is good for the blood pressure; red peppers will take the ulcers off your stomach, and I drink sage tea to beautify me." '

'He stated that he had had his blood pressure taken forty years ago and it was fine them. "No need to recheck those things all the time." He also said he had given up smoking and drinking sixty-five years ago so as not to ruin his health.'

Speaking of age, we turn to Sulphur, Oklahoma in 1924 and **John Junior Allen,** 99, who said he was in the prime of his life. 'Two dates stood out in his life, one his marriage in 1904 after living as a bachelor for seventy-eight years. The other one was in 1922 when he quit chewing tobacco. "I've chewed tobacco all my life, but it's too windy to chew in Oklahoma. The wind blew the juice in my eyes. If I can't chew like a man, I won't chew like a hog," was his explanation.

'He thought the styles of the day and the flappers were all right but he recommended the old fashioned hoop skirt for war-time use. During the Civil War when he was "actually running" from the Yanks, a woman hid him under her hoop skirt as she sat sewing, enabling him to escape.

'His formula for longevity: "Let whiskey alone, especially the modern disinfectants; drink black coffee six times a day; eat red onions, fat meat, and cornbread." On his formula he operated a thirty acre farm with the help of his "girl-wife," fifty-two.'

To bring us up to date on the subject, we noted that Larry Lewis, San Francisco waiter, died at the age of 106. He ascribed his good health to his daily four-mile runs in addition to his employment and a diet of beef and water.

The foregoing is only a report, not advice. We do not wish to be accused of infringing upon the medics.

David J. Williams

Office Practice Tips

MAILING TIPS

Stamps and envelopes constitute a very substantial item of expense in any law office. Here are several tips on how to economize. The United States Post Office will furnish pre-stamped envelopes with your office letterhead imprinted at a very reasonable price. Many law offices, including our own, now utilize window envelopes to save re-typing the address and to eliminate damaged and wasted envelopes. With pre-stamped envelopes only a modest supply of stamps are required for added postage. Order forms can be secured from any post office.

Many offices utilize postage meters. The smallest hand-operated machine leases for $7.50 per month. Larger offices frequently use a model with a keyboard similar to that of a touch telephone which has the ability to stamp, seal and stack mail in one operation. Some models automatically issue tape stamps which are very useful where packages and bulky envelopes are common. The real advantage of postage meter machines is that they speed up the handling process in the post office. All mail goes from the post office box to the local regional section center where a series of nine steps takes place which includes various sortings and cancellings before sorting by destination can begin. Metered mail bypasses these steps. It has already been cancelled and dated. It comes into the post office, is primary sorted and then goes out. It can be at its destination 24 hours earlier than ordinary mail.

To facilitate delivery of your outgoing mail, it should be sorted in the office before mailing and banded with bands and labels supplied without charge by the post office. Bundles should be sized to fit a man's hand. Appropriate bands and labels should be affixed for local and out-of-town mail. Every office should have a good postage scales to take the guess work out of determining the proper amount of postage.

Since all first-class mail addressed to points over 200 miles away travels by the fastest practical way, that is by truck, train or plane, it is seldom that any time is saved by the use of airmail. Consequently, airmail stamps should be used very sparingly. First-class will get there just as fast.

First-class mail sent to a city will arrive just as fast as special delivery because the post office in a city normally makes several deliveries each day. A letter mailed to a smaller city or rural area will probably be faster by special delivery than first-class. Special delivery letters go through regular channels but at the place of delivery distribution is made by special carrier on a regularly scheduled run. You should never use special delivery for mail addressed to a Post Office Box. It is simply a waste of money.

Certified Mail can be ticketed and numbered in the law office and dropped in a box. A return receipt is always requested and it is less expensive than Registered Mail. Registered Mail is used to protect articles of intrinsic value. It must be taken directly to the post office and registered there. It is considerably more expensive than Certified Mail. Express Mail Service is a new high-speed delivery network between the major cities which guarantees arrival at the receiving post office by 10 a.m. the next business day. It is generally used for delivery of important documents and products and is available on a contract basis, including door-to-door pickup, door-to-destination airport service, or airport-to-airport delivery.

Booklets containing 29 time saving techniques for improving your mail handling, and a new postage chart, are available by writing Pitney Bowes, Stamford, Connecticut 06904.

Harry E. Hennessey

Prepared by the Committee on Law Office Economics and Management, Raymond D. Torbenson, Seattle, Chairman, Harry E. Hennessey, Spokane, Editor.

This column is a clearing house for better ways to run the law office. Contributions are solicited from all members of the Bar and should be sent to the editor at Post Office Box 324, Spokane, Washington 99210.

Notices

Will Information: Any person having information of Will of EDWARD MILLER please contact Robin Fosburg, 695-1028, Vancouver.

Will Information: Anyone with knowledge of a Will of Robert Daniel Eckman please contact Frederic B. Rutledge, 5701 20th Avenue N.W., Seattle, Washington 98107.

Attorney Wanted: Medium-sized Seattle law firm is seeking a well qualified attorney with 1-3 years' experience in business planning, corporate and related areas of practice. Replies held in confidence. Please respond c/o Box 1001, Washington State Bar Association, 505 Madison, Seattle, Washington 98104.

For Sale: Complete set of Am. Jur. 2d. Richard C. Nelson, Bellevue. 206-455-3900.

For Sale: One set Current Legal Forms and one set Collier on Bankruptcy (1970). $150 per set or best offer. William Merchant Pease, 909 Seattle Tower, Seattle, 98101. Phone: 682-1931.

For Sale: A complete set of Corpus Juris Secundum in excellent condition. Contact David McGoldrick of Bonneville, Viert & Morton (Tacoma) at MA 7-8131.

For Sale: 17 vol. RCW by Book Publishing Co. $165. Call: R. L. McKenzie, PR 6-6875, eves.

For Sale: Pacific Reporter (second series) vol. 1 to 408. Also a large number of 1st edition. $800.00. F.O.B. Millwood, Wa. K. C. Harrington, 3117 N. Argonne, Spokane, Wa. 99206.

For Sale: Dictation equipment. Stenorette Embassy/2-one each dictating and transcribing machines. Loucks & Lamb, 820 Logan Building, Seattle, Wa. 98101. Phone: (206) 622-3280.

Office Space Wanted: Law Clerk/Bailiff for Superior Court Judge would like to rent or share office space in Seattle to begin in May or June. Mark K. Wexler. W965 King County Courthouse, 344-4066 or 323-9500 ext. 501.

Office Space: Professional office space available located 100 feet from county courthouse, ample parking, will remodel to suit tenant. Paul N. Luvera, Jr., 1002 South Third Street, Mount Vernon, Washington 98273, 206-336-6561.

Space: Share large view offices with trial attorney and corporate attorney. Room for additional secretary. Use of library, photocopy machine, equipment and telephone. Rent negotiable depending upon services desired. Paul J. Fisher, 624-8261, Alaska Building, Seattle.

For Sale: Stenocord No. 270 dictating machine, excellent condition. $175.00 or best offer. 454-8115. Harvard Spigal, Bellevue.

Wanted: Attorney desires to purchase a going private practice in a Western Washington city outside King County. Replies confidential at Box 17, Bar Association.

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

Office Space: A major life insurance agency has from 275 to 935 square feet of office space to sub-let to small law firm. Near Seattle Center. Air conditioned. Free parking. Sound view. Coffee room privileges. Telephone answering service available. Call Mrs. Vorhies, MU 2-4232.

Wanted: Used StenoCord Dictator, Model No. 270. Call Mueller and Chapman, 259-5541.

Wanted: Seattle attorney desires either a going private practice or a partnership in same, located in a smaller Western Washington city outside King County sometime on or before July, 1975. All replies confidential. Reply Box R, State Bar Association.

For Sale: Washington Territory Reports, Vols. I through III, complete; Washington Reports, 1st Series, Vols. 1 through 200, and Washington Reports, 2nd Series, Vols. 1 through 63. Richard J. Waters, Bellingham National Bank Bldg., Bellingham, Wa 98225. Phone: 206-734-2930.

Office for Rent: One office for rent, complete with secretarial services if required. Located in the Yakima Legal Center which has a complete practitioners' centralized law library along with the offices' own operating law library. Terms and services may be negotiated with any interested attorney. We are looking for someone to occupy the office who would be interested in a future association with the office. Please contact Gary G. McGlothlen at 509-453-8288.

Briefly Noted

Board Elections Due

Lawyers residing in the Second, Fourth and Seventh Districts, please note:

Members of the Board of Governors of the State Bar to represent those three Congressional districts are due to be elected this year. Expiring in September are the three-year Board terms of Edward J. Novack, Second District; Robert S. Day, Fourth District, and James P. Curran, Seventh District.

The State Bar Association Bylaws (Article III) provide: Any active member may be nominated for the office of governor upon petition signed by at least twenty but not more than thirty active members residing in the district. Nominating petitions may be obtained from the Bar Office (505 Madison, Seattle 98104).

The petitions must be filed in the Bar Office by 5 p.m. May 31.

April 15 Is Deadline For Proposed Legislation

All suggestions, ideas or initial drafts of bills for proposed legislation to be submitted by the State Bar Association to the 1975 regular session of the State Legislature should be submitted to the State Bar Legislative Committee by April 15, 1974.

This is your opportunity to have your input considered and included in the Association's legislative program. Proposals do not have to be formal—just a brief description of the legislation or topics that you would like to have the Legislative Committee consider.

No new proposals will be accepted by the Committee after April 15. Send your letters and proposals to Ned Lange, Chairman, Legislative Committee, Washington State Bar Association, 505 Madison Street, Seattle, Washington 98101.

1974 ANNUAL MEETING SITE CHANGED TO VANCOUVER, B.C.

The 1974 Annual Meeting of the Washington State Bar Association will be held in Vancouver, B.C., Canada, not in San Francisco, California as previously announced. The Board of Governors voted to change meeting sites at their monthly meeting in Tacoma on February 23. The energy crisis was cited as the primary factor in the decision.

The 1974 Annual Meeting will now be held at the Hyatt Regency and the Hotel Vancouver. Meeting dates will be September 11-14. Further details will be available shortly.

To assure first choice in accommodations, reservation and registration requests should be made to the Bar office now.

Criminal Defense Seminar

The National College of Criminal Defense Lawyers and Public Defenders will hold two summer sessions June 9-30 and July 14-August 4 in Houston, Texas. The summer session dates are tentative. Both the regional institute and the summer sessions will concern themselves with tactics and techniques of criminal defense.

Applications may be had by writing the NCCDLPD, College of Law, University of Houston, Houston, Texas 77004.

Lawyer Placement Service

by David L. Broom

1. June, 1974, candidate for LL.M. in taxation from NYU, admitted in Washington last autumn, has resume on file.
2. Administrative position in criminal justice area open in large county. $16,500.00 — $22,000.00 to begin depending on qualifications. Graduate degree in social science field or law degree preferred.
3. Five-man firm in large city seeking associate for private general practice with emphasis on domestic relations and courtroom work.
4. Large county to employ Superior Court administrator. $15,000.00 plus substantial fringe benefits.
5. Federal government seeking a number of hearing examiners for social security matters. Salary range from $20,677.00 to $31,519.00.
6. Sole practitioner in large city neighborhood seeking associate to train as trial attorney with a view toward eventual take-over of practice.
7. Defense oriented firm seeking additional trial attorney for work in personal injury area.

Hearing Examiners Wanted

The Bureau of Hearings and Appeals of the Social Security Administration seeks to hire as many as 250 attorney-examiners to conduct hearings and issue decisions in connection with the new Supplemental Security Income program.

The positions, to be located in various cities, will be filled at two levels: GS-14, with a salary range of $24,247 to $31,519; and GS-13, with a salary range of $20,677 to $26,878. Six years of progressively responsible legal experience are required for the GS-14 positions and four years for the GS-13 positions.

The Supplemental Security Income program, which started January 1, assures a basic income for the aged, blind, and disabled. It replaced the Federal-State programs of old age assistance, aid to the permanently and totally disabled, and aid to the blind. It is administered by the Social Security Administration, a part of the Department of Health, Education, and Welfare.

The Bureau of Hearings and Appeals has issued a brochure entitled "Announcement of Examination for Attorney-Examiner" which gives complete information on the duties and provides detailed instructions for applying. Copies can be obtained by writing:

Department of Health,
Education, and Welfare
Bureau of Hearings and
Appeals, SSA
SSI Task Force (326 Webb)
P.O. Box 2761
Washington, D.C. 20013

April 6	WSTLA Seminar. Divorce vs. Dissolution, Chinook Hotel, Yakima (rescheduled from March 23)
April 13	SKCBA Securities Regulations. U of W HUB Auditorium. 8:30 a.m.
April 19	CLE Seminar, on the new bankruptcy rules, for the general practitioner, sponsored by the CLE Committee and the Section of Creditor-Debtor Rights. Davenport Hotel, Spokane, 1 to 6 p.m.
April 26-28	WSTLA Seminar. Medical and Professional Malpractice, Rosario Resort, Orcas Island, Washington.
May 11	Corp., Business & Banking Law Section, Wash. Athletic Club, Seattle, 9:30 a.m. Luncheon speaker, William P. Jeske on "Prospects for Washington Businesses, Review of Wash. State Economy."
May 3	Seminar on the new bankruptcy rules, for the general practitioner, Olympic Hotel, Seattle, 1 to 6 p.m.
May 17	CLE Seminar, on developments and problems of the new Dissolution of Marriage Act and allied topics, sponsored by the CLE Committee and the Family Law Section, Olympic Hotel, Seattle, 9 a.m. to 4 p.m.
May 31	Seminar, on developments and problems of the new Dissolution of Marriage Act and allied topics, Ridpath Hotel, Spokane, 1 to 6 p.m.
Aug. 12-16	Annual Meeting, American Bar Association, Honolulu, Hawaii.
Sept. 11-14	Annual Meeting, WSBA. Hyatt Regency and Hotel Vancouver, Vancouver, B.C.
Sept. 20	CLE Seminar, Practice under Revised Probate Code, Spokane.
Sept. 27	CLE Seminar, Practice under Revised Probate Code, Seattle.
Oct. 3-4	CLE Estate Planning Seminar, Seattle.
Oct. 18	CLE Seminar, Antitrust law, Seattle.
Nov. 1	CLE Seminar, Antitrust law, Spokane.
Nov. 22-23	CLE Seminar, Basics of Trial Advocacy, Seattle.
Dec. 12-13	CLE Seminar, Basics of Trial Advocacy, Spokane.

WASHINGTON STATE BAR ASSOCIATION
505 Madison Street
Seattle, Washington 98104