
WASHINGTON STATE BAR NEWS



IS LAWYER/LEGISLATOR INFLUENCE DECLINING?



MEMORANDUM

TO: All State of Washington Attorneys

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

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

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

LEGAL DIVISION

(Pertaining to the printing and disposition of appellate briefs)

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

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

FINANCIAL DIVISION

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

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

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

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

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

Fairview Avenue N. & Valley, Seattle, Washington 98109

(paid advertisement)

Published by

WASHINGTON STATE BAR ASSOCIATION
505 Madison Street Seattle, Washington 98104

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

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

© 1974 by Washington State Bar Association

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

United Graphics

**WASHINGTON STATE BAR ASSOCIATION
OFFICERS**

CLEARY S. CONE
President
RICHARD H. RIDDELL
Secretary-Treasurer
G. EDWARD FRIAR
Executive Director
ROY C. MITCHELL
Director of Professional Activities
R. WAYNE WILSON
Director of Public Affairs

BOARD OF GOVERNORS

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

EDITORIAL ADVISORY BOARD

RICHARD A. MONAGHAN
Tacoma, Chairman

C. JAMES JUDSON
Seattle
MASON D. MORISSET
Seattle
R. MICHAEL KIGHT
Everett
A. J. NICHOLSON
Yakima
VERNON L. LINDSKOG
Olympia
DAVID L. BROOM
Spokane
EDWARD H. MCKINLAY
Pasco

FEATURE ARTICLES

- 4 Is Lawyer/Legislator Influence Declining?**
Are attorneys avoiding political life?
- 8 Bar Endorsement of Judicial Candidates**
Are lawyers fulfilling their obligation to the public?
- 11 Ex Parte Application for Continuance**
A practical approach to a common procedural problem
- 15 Washington Pattern Jury Instructions for Comparative Negligence Cases**
WPI Committee work product
- 27 Financial Disclosure Under Initiative 276**
How burdensome is it?

IN THE NEWS

- 3 Judge James J. Lawless: In Memoriam**
- 7 Environment — Who is SWIFT?**
- 14 ABA Asks Supreme Court to Abolish Jury Duty Sex Classifications**
- 34 101 Candidates Pass Bar Exam**

DEPARTMENTS

- 2 Editor's Notes**
- 10 Steinberg Cartoon**
- 12 The Board's Work**
- 13 Travel Committee Report**
- 14 Law School News**
- 22 McLaughlan at Large**
- 23 Around the State**
- 25 Twenty Years Ago**
- 26 Briefly Noted**
- 32 The Courts**
- 36 Notices**
- 36 Calendar**



"The Washington Plan" — Judicial Poll

With phrases such as "State Bar Association initiated," "uniqueness of" followed by *four* nouns, "favorably known throughout the country," "full candor," "fairness and objectivity," "computer testing, spot surveys" and "completely confidential," the cover letter succinctly and effectively kept the Judicial Advisory Rating Poll materials from immediate disposal. My thoughts went no further at that moment; however, as the day progressed, questions about the Poll briefly entered my mind. At one point my conscience twinged at recollections of our ethical responsibility to refrain from casual, open criticism of courts and judges, which might undermine public confidence in our judicial system. At other times I puzzled over why all the fuss about confidentiality (secrecy). Even later, I contemplated the possibility of the Poll being used as a tactical ploy of levying undue criticism upon selected judges with a minimal amount of organizational effort by persons, firms, associations, or governmental offices.

The ethical concerns were partially dispelled upon a reading of the Ethical Considerations, Rules, and Notes of Canon 1, *Maintaining the Integrity of the Legal Profession*, and Canon 8, *Improving the Legal System*. DR 1-102(A)(5) prohibits attorneys from engaging "in conduct that is prejudicial to the administration of justice." DR 8-102 prohibits "knowingly making false statements" of judges. Insofar as the comments are honestly made, well-founded, and solely motivated by a desire to improve the legal system, they are not in violation of the Canons. We are cautioned, however, to "be certain of the merit of [a] complaint, use appropriate language, and avoid petty criticisms, for unrestrained and intemperate statements tend to lessen public confidence in our legal system." EC 8-6. Any ethical reservation would then depend upon the use, publication, or availability of statistics, summaries, actual ballots, or recommendations to news media, election campaign committees, attorneys, or the public. The Bar Office advises me that no one, including the Bar Staff but excluding the Board of Governors, sees any of the data.

The rigid precautions to insure confidentiality seem unnecessary. How much more effective

would be the criticisms if a judge could associate names and faces with the numbers of his critics. While it might be idealistic to believe that proper judicial temperament will preclude a judge from vindictive rulings in those cases of his critics' clients, we must assume the risks of criticism, and stand out to be counted. Any judge who might establish a pattern of ruling against his critics' clients will only be providing additional grounds for criticism and eventual removal from the Bench.

The tactical aspect of the poll, we are assured, has not yet created any detectable effect. Solely for the future, then, what is to prevent a large firm, a department of governmental lawyers, or an association of attorneys, who practice a specific field of law, acting in common, from giving low evaluations to a judge who is not particularly sympathetic to their position? At present, relatively small number of critics could potentially effect a damaging evaluation which would not truly reflect a cross section of the attitude of the practicing Bar. The ounce of prevention might best be doing away with the secrecy aspect—the "confidentiality." If we have opinions, criticisms, which we can ethically make and support, let's put our names on them.

EH

U of W Class of '49 Reunion at Vancouver

The 1949 class from "Old" Condon Hall will re-unite at 7:00 p.m. at Vancouver's Bayshore Inn, Sept. 13. Contact Robert Brooke, Seattle. Further details may follow.

In Memoriam

The lawyers and judges of this state were shocked and indescribably saddened by the recent death of Judge James Lawless.

James Lawless epitomized those personal and professional attributes we hold in the highest esteem. He was devoted to his family, his community and his profession. He was a scholar and a man who in all things had a quiet zeal to do that which was right and fair.

He was a man of rectitude but without self-righteousness. He was unfailingly courteous and above all else he was compassionate.

He loved the law and he had a deep respect for his fellow judges and lawyers. To be a judge is to shoulder burdens beyond those which weigh upon humankind in general. James Lawless' compassion and capacity for empathy as he dealt with the problems of those who were disadvantaged required him to bear an especially heavy burden. The undiminished retention of his compassionate nature during 17 years of exemplary service on the bench distinguished him as a most uncommon man.

To his wife, Beth, and to his children we extend our utmost sympathy and, for their generosity in sharing James Lawless with us, our utmost gratitude.

The most self-effacing and quietly dedicated men often make the greatest contributions to society. So it was with James Lawless. He will not be forgotten.



Judge James J. Lawless

The Benton-Franklin Bar Association mourns the passing of Judge **James J. Lawless** who was struck down June 3, 1974, by an assassin's bomb.

Judge Lawless, 50, was elected to the Benton-Franklin Superior Court Bench in November, 1956. At the time of his election he was one of the youngest judges in the State of Washington. At his death, Judge Lawless ranked ninth in seniority among the Superior Court Judges of the State. In 1967 he was appointed Judge Pro Tem of the State Supreme Court.

Judge Lawless was a 1950

graduate of Gonzaga Law School. Prior to his election to the Superior Court, he was engaged in the private practice of law in Benton County. He is survived by his wife Beth, and five children, Greg, Scott, Tim, Susan and Linda.

Respected and admired for his judicial reasoning and fairness, Judge Lawless was looked upon by the entire Benton-Franklin Bar Association as one of the finest judges in the State. As an outstanding person, he was the friend of thousands in the bi-county area. Jim, will be sorely missed. □

Neal Shulman

IS LAWYER/LEGISLATOR INFLUENCE DECLINING?

by Senator Martin J. Durkan

"The number of attorneys serving in the Legislature has been declining, and their collective professional influence on the decision-making process has declined commensurately".¹ This was the theme of remarks I made a year ago to the annual meeting of the Washington Bar Association.

The passage in 1972 of the Public Disclosure Law (Initiative 276) has most recently been cited as the single greatest influence in the decline in the number of attorneys serving in the Legislature. I am not so sure that this is the case, for the reasons to be discussed below.

Primary occupational interest of legislative members over several recent sessions is revealed by the accompanying tables. At the outset, of course, it should be noted that a legislator who lists his occupation as "attorney" may not be in a law practice, and a person listed as a farmer may, in fact, be the head of a corporate conglomerate, and so on.

Examination of these tables does highlight several basic changes in legislative composition since I was first elected in 1957. In the Senate, "attorney" was the dominant occupation, and it still is. In that year, there were sixteen attorney

members in the Senate, or 34.8 percent.² The number of attorneys reached a high of 21 for 42 percent in 1963, and a low of 15 (30 percent) for the 1973 session.³

Attorney Membership in House of Representatives has Declined

The House of Representatives presents a different picture. In 1957, there were twenty attorneys for a representation of approximately 20 percent in the House. Nine attorneys were elected for the 1973 session, the profession having slipped to a three-way tie for third place in the occupational groupings.⁴ Numerically, attorney representation in the House reached its peak in the 1959 session, with 23 percent.

Senate composition really has not changed significantly overall in the nineteen years that I have been in the Legislature, according to Table 1. There have been some shifts — most importantly the rise of representation from the educational sector. Surprisingly, in spite of reported shifts from rural to urban dominance because of redistricting, the influence of agriculture has remained relatively stable in the Senate. Other changes by occupational type have not been significant enough to produce valid conclusions.

The House of Representatives again provides a contrast. There, the decrease in attorneys has been more dramatic, as has the increase in the educators; agriculture has lost half of its representation. In the House in the early sixties, half of all of the "labor" members were union officials. This has decreased from six to one.

Another method of analyzing attorney members' legislative influence is to examine leadership roles. Using the same period of time — the 1957 through 1973 sessions — we find that attorneys held nearly 40 percent of all eleven leadership positions,⁵ while their overall legislative representation was near 24 percent. In no session were there fewer than three attorneys in this group nor more than six. The only other occupation which had consistent multiple representation was agriculture.

Committee Chairmanships

Committee chairmanships are not as meaningful a barometer of influence because of the difference in legislative organization, session by session, and the relative power among committees. As an example, the House in the 1957 session had 26 committees and the Senate 31, which means that more than 75 percent of the Senators held either a leadership position or a chairmanship. Through the 1960's, attorneys consistently chaired 40-50 percent of the committees, a proportion greater than their numbers in the Legislature. The first dramatic change came in 1973, when the Legislature reorganized into 16 matched House and Senate committees. In the Senate, six of the committees were still chaired by attorneys and ten by non-attorneys, but in the House only one attorney chaired a committee.

If the influence of attorneys as legislators has been lessened, what are the causes? First, Initiative 276 definitely presents administrative as well as professional barriers to participation. The requirements for disclosure under 276 affect attorneys in two ways: as a general rule, more extensive reporting is required for lawyers than for other occupational fields. According to some attorneys, 276 also raises problems in a lawyer's relationship with his partners because of the required disclosure of clients' names. It is true that most attorneys who have resigned or who have indicated that they will not run for office again, are citing Initiative 276.

Although undoubtedly a factor in the decision not to run, I suggest that Initiative 276 is pro-

bably not the primary reason for the decline in interest among attorneys in serving the Legislature. I submit that it is, instead, the increasing legislative workload which makes it extremely difficult for an attorney to fulfill his obligations to his clients while at the same time carrying out the trust of public office. This is particularly true in the case of attorneys who have well established practices and who have risen to positions of legislative leadership.

Lawyers' Mystique has Diminished

The third cause of the diminution of lawyer influence among legislators is more subtle and arguable. That is the lessening of the "mystique" of the legal profession. In the early sixties, most leadership positions and committee chairmanships were held by attorneys. There was the idea then, which to some degree still remains, that an attorney is especially equipped to be a legislator. His acknowledged skills, such as



Senator Martin J. Durkan, lawyer and legislator, is serving his third four-year term as state senator from the 47th district after serving one term in the House of Representatives. He has served as Chairman of the Senate Ways and Means Committee since the 1967 session of the Legislature. Other committees on which he serves this session are Higher Education and Judiciary. During the interims since 1965, Senator Durkan has chaired the Municipal Code Committee and the Municipal Committee and is currently Co-Chairman of the Forest Tax Committee. Senator Durkan was born in 1924 in Great Falls, Montana; is a veteran of World War II and was graduated from the University of Washington School of Law in 1953. He practices law in Seattle.

familiarity with statutes, how to interpret them, how to write law, and the professional requirement that he be relatively articulate, gave attorneys as a group an advantage over other occupations. In the operation of the Legislature, and I think to some degree in the public view of lawmakers, this mystique, if indeed it ever existed, is no longer prevalent. (Witness the House Judiciary Committee, which was composed almost equally of attorney and non-attorney members this past session.)

Historically in this state, bright, aggressive and idealistic lawyers have offered themselves as candidates for our Legislature while still in their 20's and 30's and have stayed in office long enough to achieve leadership, while other occupations have been represented by persons entering the Legislature in their 40's and 50's.

Long serving lawyer-legislators are finding that professional and family responsibilities in these changing times do not permit their being away from home for longer and longer periods. Compounding this is the graver responsibility associated with increasingly complex problems of public policy, the non-compensatory financial reward, and the derogatory press coverage of

their efforts.

The mystique may be dying, but I believe the attorney *is* especially equipped to serve as a lawmaker. I hope that 276 will not cause our membership to decline further but rather that it will foster a dialogue among us in which we address ourselves to overcoming the barriers to legislative membership and to revitalizing legislative service by the attorney. □

¹ I am aware that the measure of the influence of an individual or group in a decision-making body may not be *precisely* reflected by numbers, but I believe there is enough correlation to make a useful analysis.

² In 1957, the Senate was composed of forty-six senators. This was changed for the 1959 session to the present forty-nine.

³ Several attorneys have indicated that they are not planning to run again — one of them is the present minority caucus chairman.

⁴ Of the nine, two have subsequently resigned and been replaced by non-attorneys. One of these was the minority floor leader who claimed the strictures in Initiative 276 as the reason.

⁵ Eleven leadership positions were used for this analysis. They were Speaker of the House, Speaker Pro Tem, President Pro Tem of the Senate, and the House and Senate Majority and Minority Caucus chairman, and floor leaders.

TABLE 1 - MAJOR OCCUPATIONS OF SENATE MEMBERS 1957 - 1975

SENATE SESSION	TOTAL MEMBERS	PROFESSIONS				BUSINESSES			Agric.	Labor ⁴	Home Maker ⁵	Med. ⁶	Government	Retired	Student
		Attorney	Health Sciences ¹	Educ. ²	Other Prof.	Real Est. and Ins.	Owner/Manager ³	Other Bus. Occupations							
57/59	46 ⁶	16	1		1	4	12	4	4			3		1	
59/61	49	18	3		1	4	5	8	5			2	1	2	
61/63	49	16	2		2	4	8	6	4	1	1	2	2	1	
63/65	49	21	2		2	2	7	4	4	2	1	2	2		
65/67	49	20	2		2	3	7	3	4	3	1	2	1	1	
67/69	49	19		2	2	2	8	5	4	2	1	2	1	1	
69/71	49	18	2	4	3	3	6	4	5	1		2	1		
71/73	49	19	2	6	1	3	3	4	6	1		3	1		
73/75	49	15	3	5	1	3	5	4	4	3		1	4	1	

1. Includes all related health science occupations: physician, dentist, optometrist, chiropractor, veterinarian, pharmacist, health facility administrator.

2. Includes all education-related employees.

3. Ranges from small-business proprietor to corporation president.

4. Includes union officials.

5. Sole occupation listed by incumbent.

6. Senate membership increased from 46 to 49 commencing with 1959 session.

TABLE 2 - MAJOR OCCUPATIONS OF HOUSE MEMBERS 1957 - 1975

HOUSE SESSION	TOTAL MEMBERS	PROFESSIONS				BUSINESSES			Agric.	Labor ⁴	Home Makers ⁵	Media	Govern- ment	Retired	Student
		Attorney	Health Sciences ¹	Educ. ²	Other Profes.	Real Est. and Ins.	Owner/ Manager ³	Other Bus. Occupations							
57 /															
59	99	20	2	4	5	10	12	3	18	8	7	3	1	5	1
59 /															
61	99	23	3	8	4	4	13	6	16	11	6	3	1		1
61 /															
63	99	21	4	10	3	6	13	6	16	11	6	1	2		
63 /															
65	99	15	5	7	3	7	16	11	15	8	7	3	2		
65 /															
67	99	17	7	8	1	7	15	10	12	8	7	4	3		
67 /															
69	99	19	8	9	3	9	15	10	12	7	4	3			
69 /															
71	99	16	6	10	2	12	16	10	11	6	5	3		1	1
71 /															
73	99	11	7	12	7	11	15	11	12	4	4	2	2	1	
73 /															
75	98 ⁶	9 ⁷	8	15	8	9	13	8	9	4	5	3	3	1	3

1. Includes all related health science occupations: physician, dentist, optometrist, chiropractor, veterinarian, pharmacist, health facility administrator.
2. Includes all education-related employees.
3. Ranges from small-business proprietor to corporation president.

4. Includes union officials.
5. Sole occupation listed by incumbent.
6. House membership decreased from 99 to 98 as a result of redistricting.
7. Subsequently 2 House attorney members have resigned and been replaced by non-attorneys.

Environment: Who Is SWIFT? by Joel Haggard

In August 1973, the SWIFT group (Save Whidbey Island For Tomorrow) filed a SEPA lawsuit against a proposed 182-lot subdivision development. The court remanded the case to the County for the purpose of preparing a formal record of the County's determination that an impact statement was not required. After the County affirmed its earlier negative determination, the court resumed the trial and concluded that the County's negative determination was proper. A key reason for not requiring the EIS was that identified adverse impacts like sewage were to be mitigated as part of the development—thus no significant impact. This unique rationale may be appealed by SWIFT. A key case to watch.

The Governor vetoed a bill which would have permitted adjacent property owners to buy state-owned shorelands on navigable lakes where they had installed docks and other improvements. Now the Senate and House Natural Resources

Committee and the Department of Natural Resources will be reviewing all existing statutes related to shorelands to develop a general state policy. Donald Fraser, deputy state land commissioner told the Senate Committee that the state *assumes* it owns all lakeshores it has not previously sold, *even if* navigability has not been proven.

EPA is reproposing its regulations on prevention of significant air quality deterioration. The new regulations will permit states to classify areas so as to permit some developments that will cause an air quality deterioration.

The burden of proof dispute in SEPA-type lawsuits is still a live issue. One approach is that the burden shifts to the defendants (governmental agencies and developers) when plaintiffs establish a prima facie showing that the agency failed to adhere to SEPA requirements. See *Sierra Club v Froehlke*, 5ERC 1033. The other approach is that plaintiffs must establish their claims by a preponderance of the evidence. *EDF v Corps of Engineers*, 6ERC at 1517. A critical issue to the success of any SEPA-type lawsuit. □

BAR ENDORSEMENT OF JUDICIAL CANDIDATES

Charles H. Sheldon
Associate Professor
Department of Political Science
Washington State University

Perhaps the time is appropriate for the public and the profession to take another look at the process of recruiting candidates to the bench in the State of Washington. Elections are not pending, legislative efforts at reform have waned and the pressures for decisions are far in the future. In the State of Washington lawyers, out of commitment to their profession or to particular candidates, participate at several stages of the judicial recruitment process. At the initial stages, candidates or friends are urged to make known their receptivity to call to the bench. Names are submitted for vacancies and qualifications are explained. Bar leaders are consulted and members of the profession informally polled as to their possible support. After announcements of candidacy are made, efforts concentrate on building financial support and developing "name" familiarity.

But perhaps the most important and comprehensive role of the bar is performed by the formal candidate poll published prior to primary

elections in which judicial candidates are rated by members of the profession. The concern of this short article is not to question the propriety of bar polls generally but to suggest a more responsible use of those polls. Two factors provide the basis for the discussion: Canon 9 of the Code of Professional Responsibility of the ABA and the general nature of non-partisan elections.

Canon 9 of the new code admonishes a lawyer to avoid "even the appearance of professional impropriety" and lawyers are urged to "promote public confidence in our system and in the legal profession." Perhaps today, more than ever, the legal profession must involve itself in the often agonizing reappraisal of its image and its public activities. No small contribution could be made through alterations in the profession's participation in the recruitment of judges. The limited consideration given to judicial reform by the current legislature (and, specifically, the two judiciary committees) clearly indicates that the State of Washington will be functioning for some time to come under the present judicial recruitment system of gubernatorial appointment and non-partisan elections. What this obviously means is that judicial candidates will continue to be recruited to and retained on the bench by methods

which give to the bar a most crucial role.

Voters' participation in primary elections is, at best, limited to those who feel some commitment to the democratic process and have some knowledge of the issues, candidates and parties. Nonetheless in primaries and general elections the fall-off in voter participation is felt most by contested judicial offices. Fewer voters are sufficiently informed or patient to cast their ballot for candidates for offices not seen as crucial or simply not seen because of the location of names for judicial positions at the end of an often too long ballot. Given these voter proclivities, perhaps the bar can make a substantial contribution by enhancing the information available on judicial candidates and by encouraging a greater concern for judicial office. A revision of the present system of bar polls of judicial candidates would likely be a step toward greater voter concern and knowledge as well as enhancing the image of the profession generally.

Bar Endorsements Are Influential

Of course the concern for bar endorsement may be misdirected. Associate Justice Robert F. Utter of the Washington State Supreme Court has written: "The publication of the results of polls of the bar as to the merits of judicial candidates generally has not been a determinative factor in judicial elections in the state." But statistics dictate a more cautious conclusion. In the 1972 primary elections in the state 71 candidates vied in contested elections for 29 court positions on the Superior, Appeals and Supreme Court benches. Only 6 candidates achieved election who were not endorsed by the bar. Notable exceptions where voters disregarded strong endorsements were for positions on the Supreme Court, Division III of the Court of Appeals and Superior Courts in Pierce and Ferry-Okanogan Counties. In addition, the correlation between the strengths of the bar endorsement and the strengths of the votes cast for the respective candidates was extremely high. The enthusiasm of the bar endorsement coincides with the enthusiasm of the voting public. This coincidence might, of course, be caused by the recognition on the part of both the profession and the public that certain lawyers are well qualified for the bench and others are not. However, my interpretation would be that the profession is responsible for the public's attitude largely because of the publicity given the results of the bar polls. Certainly the major purpose of the polling is to inform the public prior to elections of the

view of profession regarding each candidate for state bench positions. The content of judicial campaigning is largely based on the results of these polls. Even if we were to accept Justice Utter's view of the importance of polls, the intent and use of bar endorsement is to influence the voting public and that influence, however great or small, must be made more responsible.

The bar possesses a special kind of expertise and experience which clearly qualifies them to judge the competency of judicial candidates. Canon 8 of the Code of Professional Responsibility admonishes the bar to assist in improving the bench through influencing judicial selection. How can the lawyers responsibly inform the public of their special knowledge in order to improve the legal system without falling into a procedure that expresses some distain for the voter and creates a Harris, Roper, or Gallup poll image? As long as non-partisan elections remain, those most knowledgeable must make an effort to educate the public on the special demands of the judicial office and must inform the voters why some candidates will meet the demands and others will likely fail.

"Whys" of Judicial Ratings Should be Publicized

My suggestion is simple although it presents to the profession several old and new problems — but greater responsibility always involves greater uncertainties. When the bar polls its membership regarding judicial candidates it must supply opportunities for lawyers to indicate why particular individuals are better suited for the bench and the public must be informed of the specifics of the ratings. "Qualified" or "competent" or "capability" are hardly meaningful labels for the voting public. The "*whys*" of the particular rating must be recorded and publicized. The ABA Code of Judicial Conduct, if it has any real meaning, should provide broad general criteria against which potential judges could be measured. Independence, integrity, impartiality, propriety, commitment to legal improvement and eschewing political activity constitute the dictates of the Code. Certainly it is not for a layperson to attempt to give content to these broad terms but it seems not impossible that the profession could fashion some list of criteria that would have empirical meaning as well as some meaning to the public. The present questionnaire based on something called "judicial capability" certainly implies attributes identical or similar to those in the Code.

But mere implications are insufficient. (On the other hand, if it is concluded that measurement of such fairly detailed attributes is impossible, then the present general category of "capability" is equally suspect.)

Bar Should Campaign for Preferred Candidates

Press releases with a plea for full coverage beyond the mere percentage preferences of the bar would suffice to disseminate information to the general public. These releases could be accompanied by speaking engagements throughout the state on the part of the bar leadership limited, of course, to explanations of the demands of the judicial office rather than "campaign speeches" for the endorsed candidates — although, to me, that does not seem to breach any of the codes of professional responsibility and may even be most desirable if the bar really is committed to improving the system and has confidence in the results of its poll. Possibly a "voters pamphlet" disseminated throughout the state to lawyers, judges, laypersons, community leaders and academicians in which each particular judicial attribute is explained along with the lawyers' ratings of each candidate on each of the attributes could complement the press releases and speeches.

Obviously, the construction of such a detailed questionnaire and a rather ambitious dissemination of its results would impose greater burdens on the time and effort of the bar. But a commitment to the improvement of the Washington legal system, in terms of the public's image of the system and in terms of better candidates for the bench, necessitates more time and effort on the part of those most knowledgeable — the bar. Members of the profession must assume that responsibility. When such a poll is published prior to elections with appropriate publicity, three desirable conditions will prevail. First, the public will then have something meaningful upon which they can base their vote. Second, the profession will, in the process, be educating the public of the unique features of judicial office quite apart from the attributes of any single candidate. And third, the image of the legal profession will be enhanced with the public through responsible construction and use of the poll. The public will feel that lawyers are greatly concerned about the administration of justice in the state and be flattered that the profession is sharing its concern. The correlation between the degree of sharing and the degree of citizen confidence will be positive and significant.

I wish not to imply that incumbent judges who hold their seat as a result of gubernatorial appointment, non-partisan elections and bar endorsement are of questionable quality. Quite the contrary. Most are devoted, competent and hard working jurists. But the possibility still remains that the arrogant, lazy, discourteous and impatient may find their way to the bench. The bar must take the lead in preventing this and, given the present system of selection, a more responsible bar survey of candidates may make a substantial contribution. Certainly the public image of a profession would be greatly enhanced as they attempt to inform the public of the demands of judicial office and of the qualifications of potential jurists in light of these demands. And perhaps the voter, on his part, will heed more carefully the considered opinions of the profession. □

Charles H. Sheldon is an Associate Professor of Political Science at Washington State University. He received a BA and MA from the University of Washington, and a Ph.D. from the University of Oregon. He has published several articles in Law Reviews and Political Science Journals. His most recent publication is a book: "The American Judicial Process: Models and Approaches," published this year by Dodd, Mead and Co., New York. Research areas and teaching interests are Public Law, Judicial Process, State and Local Government and Comparative Government.



I don't know, your Honor. The jury was there when I started my closing argument.

WASHINGTON STATE BAR NEWS

Ex Parte Application for Continuance...

by Herschel L. Feibelman

There is a prevalent, almost rampant, urge to improve the practice of Law. It manifests itself in procedure reforms, uniform statutes and techniques of specialization. It has called for evaluation of every aspect of the lawyer's role—every one, that is, except the Application for a Continuance.

This highly specialized area of trial practice has, up to now, escaped uniformity, codification and reform; it remains the oasis of individuality, the last frontier of the practitioner against the invasion of conformity. It is, none the less, one of the most important parts of the legal craft, a talent which should be honed to the sharpest edge.

The role of the continuance is undeniably important; if all matters set for trial were expeditiously heard our already-overworked-Court system would be strained beyond endurance. The lawyer who seeks to continue a matter should think of himself as performing a necessary function, a part of the whole, as it were. On the principle that no one can make a mistake in a matter not tried, he favors everyone; himself, his adversary and the Court. Acknowledging its significance, the technique of the Application must be examined.

The key to the successful Application of a Continuance is preparation. Far in advance of the setting of a cause, counsel must begin his program of delay. If possible, two cases, in different courts, should be set on the same day. This provides the opportunity to avoid the trial of at least one and, in what is called the Quinella Approach, possibly both matters. If, unfortunately, the date of the setting does not suggest grounds for the Application, some other basis should be sought. Here ingenuity and resourcefulness play a major role. Some classic standbys are: the Out-of-Town Engagement, the Religious Holiday and, in a desperate situation, Minor Surgery (this

can range all the way from a close haircut to unexpected dental anguish. No judge, however stern, would require a lawyer to go to trial with a missing lower plate).

Unlike preparation for other matters in litigation, the advocate seeking a continuance should anticipate that his application will be unopposed. This is justified for two reasons: First, it is likely that one's adversary is planning the same outcome, and second, if opposed by adversary or Court, the hurt, surprised look of the Applicant lends a certain poignancy to the effort.

As in all matters of advocacy, the Applicant must be confident. This can be demonstrated in one of several ways: Appearing without the file or Law Books. If this technique is adopted it is best to leave the client in the hall. Another is the Moving Application. This is done with a slow undulating motion toward the door as if the issue never was in doubt. Still another device is the Murmur (sometimes called the Mumble). This is accomplished by approaching the counsel table, head downcast and remarks directed toward one's own shirt pocket. Since most judges remember their days as practitioners, this method will be immediately recognized and the continuance granted. It is important, though, in using the Murmur, to employ certain key words such as . . . reconciliation . . . or . . . settlement.

As in every field of endeavor, practice makes perfect. A lawyer should try to continue every case at least once. (Please note that the term 'resetting' has not been used; to the true pilgrim of procrastination, the term resetting is anathema.) It's delightful to try a case and win, but considering all the fine things one can do on any free day, it's even better to have a case and continue it. □

Reprinted with permission of Author. Author is member of Feuerstein, Feibelman & Kaminsky, Memphis, Tennessee.



The Board's Work

**Extracts from the Minutes of the
Meeting of the State Bar Board of
Governors
May 24 & 25, 1974 at Ocean Shores,
Washington.**

Unauthorized Practice of Law — Transamerica Title Insurance Company and Others

Special counsel will be retained to advise and represent the Bar association in connection with the recommendations of the Unauthorized Practice of Law Committee relating to Transamerica Title Insurance Company and others alleged to be engaging in the unauthorized practice of law. The said special counsel will be employed by the President and the Executive Director after they review recommendations from the Unauthorized Practice of Law Committee. It was also agreed that the said special counsel submit to the Board, in person if possible, an analysis of the proposed litigation with specific recommendations at the meeting of the Board in June.

Rules of Discipline

Board member Richard Riddell was directed to prepare a revised draft of the proposed Rules of Discipline and include a provision to accomplish an opportunity for probation, deferred sentencing, or suspension and deferral as alternatives to a system of probation.

Publication of Discipline Statistics and Information

The Board directed that a short summary of the actions of the Disciplinary Board be included in each issue of the Bar News with a brief description of the offenses and punishments (without names except in cases involving reprimand, suspension or disbarment). In the cases of reprimand, suspension or disbarment, names of the attorneys involved will be published.

Fee Arbitration Program

The filing fee for attorney's fee arbitration cases is set at \$20, with the Executive Director being given the authority to waive the payment of the fee when the circumstances warrant such waiver.

No attorney's fee arbitration process may be implemented unless both parties to the disagreement agree to be bound by the results.

Board Member William Gates was directed to prepare a new draft of the proposed fee arbitration procedure. Action was deferred on the program until the June meeting of the Board of Governors.

Judicial Rating Poll

The Judicial Advisory Rating Poll is expected to move forward apace and be implemented, tabulated and completed at the earliest practicable time, with a number of specific changes to various interrogatories. Changes can be obtained from the Bar Office.

No Fault Insurance

The President was authorized to appoint a Special Task Force to study the present status of the no-fault insurance question, including the pending Federal Legislation and the various proposals for State Legislation, and to recommend a course of conduct for the Board.

Legislative Committee — Request for Authority

The request of the chairman of the Legislative Committee with reference to pending "tax reform" legislation relating to the prohibition of deductions for foreign travel expenses was approved, and the chairman was authorized to contact the Washington Congressional Delegation in connection with this matter.

Committee on Professional Responsibility

The ethics opinion relating to "donation of legal services for charity auction" was approved and is re-printed elsewhere in this issue.

The enforcement date for the opinion regarding partnerships, letterheads, entrance door listings, etc., was extended to October 1, 1974, from April 1, 1974.

Guidelines for Committees and Sections

The proposed new Guidelines for Committees and Sections were deferred for final action until the June meeting of the Board, at which time President Cleary Cone will present a revised draft of the Guidelines with certain changes as approved and recommended by the Board.

Budget Committee

A Budget Committee, to be composed of three members of the Board of Governors, will be appointed on a continuing basis to advise

and consult on the preparation and submission of the Bar Association's annual budget and revenue requirements, and to study and evaluate requests for funding by the various Committees, Sections and other agencies, causes, projects or entities within or without the Bar Association. The President shall appoint the Budget Committee. At such times as the terms of the members of the Budget Committee expire, the current President shall then designate suitable replacements.

Lawyer Volunteers in Corrections

The request for endorsement of the Lawyer Volunteers in Corrections Program was approved.

Clients Indemnity Fund — Thomas Delaney

The claim of Claire Betteridge in the amount of \$242 against Thomas Delaney was approved for payment.

Public Relations Committee

The Board selected the Public Relations Committee as liaison to perform "listening sessions" with the Superior Court Judges Association.

Disciplinary Board Appointment

Julian C. Dewell of Everett was named to a three-year term as a member of the Disciplinary Board beginning at the close of the annual meeting of 1974.

Ethics Opinion

Donation of Legal Services

Inquiry has been made as to the ethical propriety of an attorney donating legal services as one of many items to be auctioned at a charitable event, such as a church, boy's club, hospital, or performing arts auction.

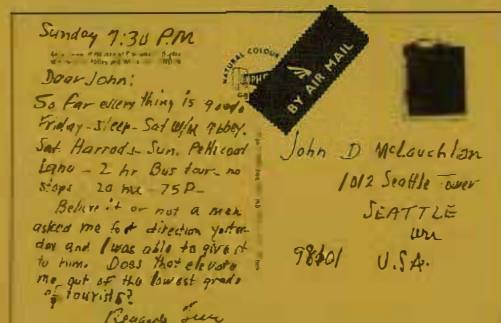
Legal services valued between \$75 and \$150, offered or solicited for auction, include the drafting of wills, estate planning, preparation of income tax returns or the donation of a number of hours of legal services. Examples of the proposed auction catalog listings include "Attorney John Doe will plan your estate and draw mutual wills," "Prominent local attorney will plan your legal future," "Attorney (whose name to be revealed after the auction) will give you three hours of legal services for any legal work needed."

There is, of course, nothing in the Code of Professional Responsibility to prevent a lawyer from performing free work for an eleemosynary organization. However, a question does arise as to whether an auctioning of legal services constitutes a form of advertising, solicitation, or professional conduct which would contravene the provisions or spirit of Dr 2-101 (A), Dr 2-101 (B), Dr 2-103 (A), Dr 2-103 (D) (5), Dr 2-104 (A), EC 1-5 and EC 2-9.

It is the opinion of the CPR Committee that it is improper for an attorney to permit the use of his name or services in this fashion, even for the benefit of a charity. Our opinion coincides with the American Bar Association Informal Opinion No. 1250. Such activity is a form of public communication and publicity not permitted under the Code. It is undignified for an attorney to permit his services to be given to the highest bidder at an auction, even if the attorney's name is not publicly disclosed or publicized. Obtaining a client in this fashion, for which certain initial services are rendered free, amounts to an indirect solicitation of a client for present and, potentially, future additional employment. □

Report of Travel Committee

Plans for a trip to Europe in the fall of 1975 are progressing nicely and Tim Royce, assistant to the Travel Committee's musicologist is now on the very spot and sends the following preliminary report of the London scene, postage prepaid:



A further report from the committee—if given—will be contained in the next issue and will, we trust, contain some pleasant and reassuring news.

John D. McLaughlin



University of Washington

In response to an invitation from Dean A. J. McClean of the University of British Columbia Faculty of Law, on Saturday, April 27, 1974, a team of six faculty members from the University of Washington Law School, assisted by a member of the UBC Faculty of Law, presented a day of lectures and discussion on community property at the Graduate Student Center on the University of British Columbia campus. The purpose of the conference, attended by some fifty persons, was to assist a special Royal Commission on Family and Children's Law, chaired by the Honorable Mr. Justice T. R. Berger, Chief Justice of the Supreme Court of British Columbia, in its active study of various alternatives to the present B.C. marital property system, which is based on the common law. Acute dissatisfaction with their system, particularly in the setting of the dissolution of marriage, has prompted a very serious and intensive look at community property.

Thus the UW team, consisting of Professors Cross, Fletcher, Huston, Lyness, Price, and Rieke and representing fields of expertise spreading across the entire spectrum of community property, was able to present a useful comprehensive picture of a community property system, using primarily the Washington marital property system as its model. The team had, as mentioned above, the excellent assistance of UBC Professor Drew Schroeder who, as the last to appear in the sequence of formal presentations, brought sharply into the focus of particular B.C. problems the comprehensive descriptions given by the previous speakers.

The audience consisted of Chief Justice Berger and many others of the Royal Commission (both lawyers and lay persons), several other lawyers and judges, and several members of the UBC Faculty of Law. After a full morning of formal lectures, the afternoon session of 1½ hours was devoted to open discussion. The audience was most active, with questions and comment, eager to be informed, and for the most part of them, at least, overjoyed that the visitors from the community property state, despite being mostly males, should so enthusiastically support a community property system. □

ABA Asks Supreme Court to Abolish Jury Duty Sex Classifications

Alleging deprivation of equal protection and due process for women, the American Bar Association has asked the U.S. Supreme Court to outlaw the classification of potential jurors by sex.

In an amicus curiae brief, the ABA said "the time has come for the court to abandon the presumption that classifications based on sex are rational and constitutionally valid."

Prepared by the ABA's Section on Individual Rights and Responsibilities, the brief was filed May 4 in support of an American Civil Liberties Union suit which led to a U.S. district court decision striking down Louisiana's jury sex classification statutes and constitutional provisions. Under them, women may serve on juries only by filing a written declaration of their desire to do so.

The ABA brief said that, because of the limitation, women have never exceeded five percent of any jury panel in the two test Louisiana parishes — Tammany and Washington.

The ACLU suit was brought in class actions consisting of:

- Women who argued that they are unfairly deprived of the right to serve on juries.
- Men who argued that these provisions impose on them an unfair burden of jury service.
- Women litigants who argued that they are deprived of juries representing a cross-section of the community.

The ABA brief concedes that the U.S. Supreme Court has ruled in favor of sex discrimination in some cases, but claims these decisions were "grounded on invalid, outmoded conceptions of the role of women in society."

Contending "there is no relationship between a person's sex and his or her potential contributions to society, needs or abilities," the ABA said that classifications based on sex "are almost invariably irrational" and can no longer be supported by "notions of separate social roles for the sexes."

The only time sex should be considered is on rare occasions when classification is compelled because of the physiological differences between the sexes, when it is necessary to preserve the individuals' rights of privacy, or when the state can prove some other compelling interest such as remedying past discrimination. □

Washington Pattern Jury Instructions (WPI) For use In Comparative Negligence Cases

The following instructions have been drafted by the WPI Committee for use in cases arising under Washington's Comparative Negligence Act, Chapter 138, Laws of 1973, First Extraordinary Session, which has an effective date of 12:01 a.m., April 1, 1974.

These instructions are to be used as a supplement to WPI Civil, Vol. 6, Washington Practice. These instructions are not the complete set to be used in a comparative negligence case. Many other instructions also must be given, such as the WPI 10 series defining negligence and ordinary care, WPI 15.01 defining proximate cause, the WPI 30 series on damages and any other instructions from WPI needed to make a complete set.

Instructions 11.01.01, 11.01.02, 21.03.01, 21.04.01, and 23.01.01 included here are substitutes for their original WPI counterparts, WPI 11.01, 21.03, 21.04 and 23.01. The 45.10 series included here is a new set of special verdict forms for use in comparative negligence cases.

The committee has not attempted to draft instructions to cover all possible cases. These are basic instructions from which the necessary adaptations can be made to cover a more complex situation.

Nor has the committee attempted to answer any of the unresolved legal issues regarding the act (is it retroactive, will set-offs be allowed, etc.). Because those issues presently are unresolved, the committee does not attempt to guarantee that these instructions will conform to applicable law. The committee does hope, however, that these instructions will be of assistance to the bench and bar of this state.

Comments, suggestions and reports of experiences pertaining to these instructions are solicited from users for assistance to the committee prior to incorporation in a bound volume supplemental to WPI.

Supreme Court Committee on Pattern
Instructions

Stanley C. Soderland
Chairman
King County Court House
Seattle, WA 98104

TABLE OF CONTENTS

WPI No.:	
11.01.01	Contributory Negligence—Definition Comparative Negligence Case
11.01.02	Contributory Negligence—Definition Comparative Negligence Case— Interim
21.03.01	Burden of Proof—No Counterclaim— Comparative Negligence Case
21.04.01	Burden of Proof—Counterclaim— Comparative Negligence Case.
23.01.01	Admitted or Directed Liability— Comparative Negligence Case.
45.10.01	Special Verdict Form—No Counter- claim—Comparative Negligence Case
45.10.02	Special Verdict Form—Counterclaim —Comparative Negligence Case.
45.10.03	Sample Special Verdict Form— Multiple Parties, Claims and Cross- claims — Comparative Negligence Case

WPI 11.01.01 Contributory Negligence — Definition — Comparative Negligence Case

Contributory negligence is negligence on the part of a person claiming injury or damage which is a proximate cause of the injury or damage complained of.

If you find contributory negligence, you must determine the degree of such negligence, expressed as a percentage, attributable to the person claiming such injury or damage. The court will furnish you a special verdict form for this purpose. Your answers to the questions in the special verdict form will furnish the basis by which the court will reduce the amount of any damages you find to have been sustained by a party who was contributorily negligent, by the percentage of such contributory negligence.

Note on Use

This instruction is for use with respect to cases within Washington's Comparative Negligence Act, Chapter 138, Laws of 1973, First Extraordinary Session. That act has a stated effective date of 12:01 a.m., April 1, 1974. The question of whether the act applies to cases tried after that date, to cases commenced after that date, or only to cases based upon occurrences arising after that date, has not yet been determined.

WPI 10.01, Negligence — Adult — Definition, and 10.02, Ordinary Care — Adult — Definition, should be given with this instruction. If this instruction is given in connection with a child who has passed his sixth birthday, also use WPI 10.05, Ordinary Care — Child — Definition. This instruction should not be given in connection with a child under the age of six years. In that event, use WPI 11.03, Child Under Six Years of Age Incapable of Contributory Negligence.

Use WPI 21.03.01, Burden of Proof — No Counterclaim — Comparative Negligence Case, or 21.04.01, Burden of Proof — Counterclaim — Comparative Negligence Case, as applicable, with this instruction. The burden of proof instructions, WPI 21.03 and 21.04 are not to be used because the "formula" aspects of those instructions are not applicable in a comparative negligence case. In a comparative negligence case involving multiple parties, claims, counterclaims, cross-claims, etc., a new burden of proof instruction will have to be fashioned. The committee has not attempted to draft a pattern instruction because the possible variations are far too substantial. The committee does suggest, however, that such an instruction be adapted from the general format of WPI 21.03.01 and 21.04.01.

Use Special Verdict Forms — Comparative Negligence, WPI 45.10, as applicable with this instruction. See the Notes on Use to those instructions.

In a comparative negligence case tried to a jury that may also be hearing cases in which contributory negligence is a total bar, consider using WPI 11.01.02, Contributory Negligence — Definition — Comparative Negligence Case — Interim, instead of this instruction. See the Note on Use to that instruction.

Comment

In the state of Washington, contributory negligence is an affirmative defense. See 49 Wash.L.Review 705 (1974) and 28 Washington State Bar News No. 3, P.25 (March 1974) for discussion.

WPI 11.01.02 Contributory Negligence — Definition — Comparative Negligence Case — Interim

Contributory negligence is negligence on the part of a person claiming injury or damage which is a proximate cause of the injury or damage complained of.

The rule that contributory negligence bars recovery on the part of a person suffering injury or damage is not applicable in this case.

If you find contributory negligence, you must determine the degree of such negligence, expressed as a percentage, attributable to the person claiming such injury or damage. The court will furnish you a special verdict form for this purpose. Your answers to the questions in the special verdict form will furnish the basis by which the court will reduce the amount of any damages you find to have been sustained by a party who was contributorily negligent, by the percentage of such contributory negligence.

Note on Use

This instruction is for use with respect to cases within Washington's Comparative Negligence Act, Chapter 138, Laws of 1973, First Extraordinary Session. That act has a stated effective date of 12:01 a.m., April 1, 1974. The question of whether the act applies to cases tried after that date, to cases commenced after that date, or only to cases based upon occurrences arising after that date, has not yet been determined. Unless it is determined that the act applies to all cases tried after 12:01 a.m., April 1, 1974, it is probable that for some years, during any particular jury term, the jurors may be hearing cases under the comparative negligence rules as well as cases in which contributory negligence operates as a bar. This instruction was designed to avoid possible confusion on the part of such a jury. It is the same substantive instruction as WPI 11.01.01, with the additional language of its second paragraph. Its use is optional.

WPI 10.01, Negligence — Adult — Definition, and 10.02, Ordinary Care — Adult — Definition, should be given with this instruction. If this instruction is given in connection with a child who has passed his sixth birthday, also use WPI 10.05, Ordinary Care — Child — Definition. This instruction should not be given in connection with a child under the age of six years. In that event, use WPI 11.03, Child Under Six Years of Age Incapable of Contributory Negligence.

Use WPI 21.03.01, Burden of Proof — No Counterclaim — Comparative Negligence Case, or 21.04.01, Burden of Proof — Counterclaim — Comparative Negligence Case, as applicable, with this instruction. The burden of proof instructions, WPI 21.03 and 21.04, are not to be used because the "formula" aspects of those instructions are not applicable in a comparative negligence case. In a comparative negligence case involving multiple parties, claims, counterclaims, cross-claims, etc., a new burden of proof instruction will have to be fashioned. The committee has not attempted to draft a pattern instruction because the possible variations are far too substantial. The committee does suggest, however, that such an instruction be adapted from the general format of WPI 21.03.01 and 21.04.01.

Use the Special Verdict Forms — Comparative Negligence, WPI 45.10, as applicable with this instruction. See the Notes on Use to those instructions.

Comment

In the State of Washington, contributory negligence is an affirmative defense. See 49 Wash.L.Review 705 (1974) and 28 Washington State Bar News No. 3, p. 25 (March 1974) for discussion.

WPI 21.03.01 Burden of Proof — No Counterclaim — Comparative Negligence Case

The plaintiff has the burden of proving each of the following propositions:

First, that the defendant acted, or failed to act, in one of the ways claimed by the plaintiff and that in so acting or failing to act, the defendant was negligent;

Second, that [the plaintiff was injured] [and/or] [plaintiff's property was damaged];

Third, that the negligence of the defendant was a proximate cause of [the injury to the plaintiff] [and/or] [the damage to plaintiff's property].

The defendant has the burden of proving both of the following propositions:

First, that the plaintiff acted, or failed to act, in one of the ways claimed by the defendant, and that in so acting or failing to act, the plaintiff was negligent;

Second, that the negligence of the plaintiff was a proximate cause of the plaintiff's own [injuries] [and] [property damage] and was therefore contributory negligence.

[The defendant has the burden of proving the following affirmative defense(s) claimed by the defendant:]

(Here set forth the necessary elements of the affirmative defense(s), other than contributory negligence, claimed by the defendant. These should be set forth serially as is done above respecting plaintiff's burden and defendant's burden with regard to contributory negligence and should be joined either conjunctively or disjunctively as the particular circumstances require.)

Note on Use

This instruction is for use in a comparative negligence case where there is not a counterclaim. If there is a counterclaim asserted, use WPI 21.04.01, Burden of Proof—Counterclaim—Comparative Negligence Case. The burden of proof instruction, WPI 21.03, is not to be used because paragraph (4) of that instruction contains a "formula" that is inappropriate in a comparative negligence case.

Use bracketed material only where applicable.

WPI 21.01 must be given with this instruction. Use special verdict form, WPI 45.10.01 with this instruction.

The bracketed last paragraph should be used for affirmative defenses other than contributory negligence. Where more than one such affirmative defense is in the case, this instruction will have to be modified to inform the jury that the defendant's burdens are disjunctive.

See the Note on Use to WPI 21.02.

WPI 21.04.01 Burden of Proof—Counterclaim—Comparative Negligence Case

In this suit, there is not only the claim of the plaintiff, but also a counterclaim by the defendant. Because there is a counterclaim in this case, you may reach one of four results:

First, you may find for the plaintiff on plaintiff's claim and against the defendant on defendant's counterclaim, or

Second, you may find for the defendant on

defendant's counterclaim and against the plaintiff on plaintiff's claim, or

Third, you may find for the plaintiff on plaintiff's claim and for the defendant on defendant's counterclaim, or

Fourth, you may find against the plaintiff on plaintiff's claim and against the defendant on defendant's counterclaim.

The plaintiff has the burden of proving each of the following propositions:

First, that the defendant acted, or failed to act, in one of the ways claimed by the plaintiff and that in so acting, or failing to act, the defendant was negligent; and

Second, that [the plaintiff was injured] [and/or] [plaintiff's property was damaged]; and

Third, that the negligence of the defendant was a proximate cause of [the injury to the plaintiff] [and/or] [the damage to plaintiff's property]; and

Fourth, in defense to defendant's counterclaim, plaintiff has the burden of proving that the defendant was negligent and that such negligence was a proximate cause of the defendant's own [injuries] [and] [property damage] and was therefore contributory negligence.

On the counterclaim the defendant has the burden of proving each of the following propositions:

First, that the plaintiff acted, or failed to act, in one of the ways claimed by the defendant and that in so acting, or failing to act, the plaintiff was negligent; and

Second, that the [defendant was injured] [and/or] [defendant's property was damaged]; and

Third, that the negligence of the plaintiff was a proximate cause of the [injury to the defendant] [and/or] [the damage to defendant's property]; and

Fourth, in defense to plaintiff's claim, defendant has the burden of proving that the plaintiff was negligent and that such negligence was a proximate cause of the plaintiff's own [injuries] [and] [property damage] and was therefore contributory negligence.

Note on Use

This instruction is for use in a comparative negligence case involving a counterclaim. If there is no counterclaim, use WPI 21.03.01. If there are multiple parties and multiple claims, counterclaims, cross-claims, etc., this instruction will have to be modified accordingly.

Use bracketed material as applicable.

WPI 21.01 must be given with this instruction. Use special verdict form, WPI 45.10.02, with this instruction.

WPI 23.01.01 Admitted or Directed Liability — Comparative Negligence Case

The negligence of [court fills in appropriate name or designation of party] has been [admitted.] [determined by the court as a matter of law.] Accordingly, your answer(s) to question(s) [court fills in appropriate numbers] in the special verdict form furnished to you, must be "yes," and [that answer has] [those answers have] been filled in for you on the verdict form.

Note on Use

Use bracketed material as applicable.

The court will fill in the appropriate name or designation of the party in question (e.g., "defendant" or "John Jones" or both) and will also insert the appropriate number of the special verdict form question relating to the negligence of that party. If negligence is admitted or determined as a matter of law, and there is no issue as to proximate cause, this instruction will have to be modified so that it directs the jury to answer "yes" to the question on proximate cause as well as the question on negligence. The special verdict forms are set forth in WPI 45.10.

WPI 45.10.01 Special Verdict Form — No Counterclaim — Comparative Negligence Case

We, the jury, make the following answers to the questions submitted by the court:

Question No. 1: Was the defendant negligent?

Answer: _____ (Yes or No)
(If your answer is "no," do not answer any further questions.)

Question No. 2: Was the defendant's negligence a proximate cause of injury or damage to the plaintiff?

Answer: _____ (Yes or No)
(If your answer is "no," do not answer any further questions.)

Question No. 3: What is the total amount of the plaintiff's damages?

Answer: \$ _____

Question No. 4: Was the plaintiff negligent?

Answer: _____ (Yes or No)
(If your answer is "no," do not answer any further questions.)

Question No. 5: Was the plaintiff's negligence a proximate cause of the injury or damage to the plaintiff?

Answer: _____ (Yes or No)
(If your answer is "no," do not answer any further questions.)

Question No. 6: Using 100% as the total combined negligence of the parties which con-

tributed to the injury or damage to the plaintiff, what percentage of such negligence is attributable to the plaintiff?

Answer: _____%

FOREMAN

Note on Use

The court will apply the percentage of plaintiff's negligence (answer No. 6) to the total of plaintiff's damages (answer No. 3), reduce such total damages by that product, and enter judgment accordingly.

The committee recommends that the following be inserted in WPI 1.08, concluding instruction:

"In this case you will be given special verdict forms which consist of several questions for you to answer. It is necessary that you answer each of the questions unless the questions themselves specifically provide otherwise. You should answer the questions in the order in which they are asked as your answers to some of them will determine whether you are to answer all, or only some, or none of the others. Accordingly, it is important that you read the questions very carefully and that you follow the directions set forth."

WPI 21.03.01, Burden of Proof — No Counterclaim — Comparative Negligence Case, should be used with this special verdict form. The burden of proof instruction, WPI 21.03, is not to be used because the "formula" set forth in paragraph (4) thereof, is not applicable in a comparative negligence case.

In a wrongful death case in which the contributory negligence of a decedent is in issue, the word "plaintiff" in several of the questions and the word "parties" in Question No. 6 are inappropriate and the questions will have to be modified. The committee recommends using the name of the decedent and making semantic changes accordingly. Question No. 5, for example, might begin: "Was the negligence of John Jones a proximate cause of . . ." while Question No. 6 might start out with: "Using 100% as the total combined negligence of the defendant and John Jones which contributed to . . ."

If there is an affirmative defense asserted which would operate as a total bar (e.g., a factual question on the statute of limitations, etc.) proper questions will have to be inserted in the verdict form to present that issue to the jury with directions that if the affirmative defense is upheld, no other questions are to be answered.

Comment

The word "Question" has been used in place of the more traditional word "interrogatory" to reflect the committee's philosophy that instructions should be as simple, conversational and understandable to the average jurors as possible. The committee does not believe that these formal written questions, given to the jury at the end of a trial, will be confused by the jurors with the other questions (e.g., Was a particular witness credible?) they must resolve.

Bullock v. Yakima Valley Transportation Co. 108 Wash. 413, 184 P.641, 187 P.410 (1919) approved an instruction that stated that any 10 jurors may answer any one of the interrogatories. However, the same 10 jurors must agree upon all interrogatories which are legally necessary to the

general verdict in order for 10 jurors to be able to say truthfully when polled that the verdict is their individual verdict. If 10 jurors do not agree that the verdict is their individual verdict, there is no verdict of the jury. *Devoni v. Department of Labor & Industries*, 36 Wn.2d 218, 217 P.2d 332 (1950).

WPI 45.10.02 Special Verdict Form — Counterclaim — Comparative Negligence Case

We, the jury, make the following answers to the questions submitted by the court:

Question No. 1: Was the defendant (court fills in name) negligent?

Answer: _____ (Yes or No)

Question No. 2: If your answer to Question No. 1 is "yes," then answer both of the following: Was the negligence of the defendant (court fills in name) a proximate cause of injury or damage to:

1A. The plaintiff (court fills in name)?

Answer: _____ (Yes or No)

2B. The defendant (court fills in name)?

Answer: _____ (Yes or No)

Question No. 3: Was the plaintiff (court fills in name) negligent?

Answer: _____ (Yes or No)

Question No. 4: If your answer to Question No. 3 is "yes," then answer both of the following: Was the negligence of the plaintiff (court fills in name) a proximate cause of injury or damage to:

4A. The defendant (court fills in name)?

Answer: _____ (Yes or No)

4B. The plaintiff (court fills in name)?

Answer: _____ (Yes or No)

Question No. 5: Answer the following only if your answer to Question No. 2A is "yes." What is the total amount of the damages to the plaintiff (court fills in name)?

Answer: \$ _____

Question No. 6: Answer the following only if your answer to Question No. 4A is "yes." What is the total amount of the damages to the defendant (court fills in name)?

Answer: \$ _____

Question No. 7: Answer the following only if you answered "yes" to both Question 2A and Question 4B. If you answered "no" to either of those questions, do not answer this

Question No. 7: Using 100% as the total combined negligence of the parties which contributed to the injuries or damages to the plaintiff (court fills in name), what percentage of such negligence is attributable to plaintiff.

Answer: _____ %

Question No. 8: Answer the following only if you answered "yes" to both Question 2B and Question 4A. If you answered "no" to either of those questions, do not answer this Question No. 8: Using 100% as the total combined negligence of the parties which contributed to the injuries or damages to the defendant (court fills in name), what percentage of such negligence is attributable to the defendant?

Answer: _____ %

FOREMAN

Note on Use

In all the special verdict forms relating to comparative negligence (WPI 45.10 series), the court will perform the necessary calculations and enter judgment(s) accordingly. With respect to the plaintiff's claim, the court will apply the percentage of plaintiff's negligence (answer No. 7) to the total of plaintiff's damages (answer No. 5) and reduce such total damages by that product. With respect to the defendant's claim, the court will apply the percentage of defendant's negligence (answer No. 8) to the total of defendant's damages (answer No. 6) and reduce such total damages by that product.

The committee recommends that the following be inserted in WPI 1.08, Concluding Instruction:

"In this case you will be given special verdict forms which consist of several questions for you to answer. It is necessary that you answer each of the questions unless the questions themselves specifically provide otherwise. You should answer the questions in the order in which they are asked as your answers to some of them will determine whether you are to answer all, or only some, or none of the others. Accordingly, it is important that you read the questions very carefully and that you follow the directions set forth."

WPI 21.04.01, Burden of Proof — Counterclaim — Comparative Negligence Case, should be used with this Special Verdict Form. The burden of proof instruction, WPI 21.04, is not to be used because the "formulas" set forth in paragraphs (4), (5) and (6) thereof, are not applicable in a comparative negligence case.

In a wrongful death case in which the contributory negligence of a decedent is in issue, the word "plaintiff" in several of the questions and the word "parties" in Questions 7 and 8 are inappropriate. The committee recommends that the word "plaintiff" be deleted as appropriate, and that the appropriate proper name be substituted for "parties" in Questions 7 and 8.

Comment

This is the basic set of questions for use in a comparative negligence case where a counterclaim is asserted. This special verdict form is easily expanded to cover multiple parties and multiple claims, counterclaims, cross-claims, etc. as demonstrated by WPI 45.10.03. The committee has recommended that the proper names of the parties be used in this special verdict form in order to avoid possible confusion on the part of the jury, and also to demonstrate a pattern for use in multiple party cases where the possibility of such confusion is increased.

The word "question" has been used in place of the more traditional word "interrogatory" to reflect the committee's philosophy that instructions should be as simple, conversational and understandable to the average jurors as possible. The committee does not believe that these formal written questions, given to the jury at the end of a trial, will be confused by the jurors with the other questions, (e.g., Was a particular witness credible?) they must resolve.

Bullock v. Yakima Valley Transportation Co., 108 Wash. 413, 184 P.641, 187 P.410 (1919) approved an instruction that stated that any 10 jurors may answer any one of the interrogatories. However, the same 10 jurors must agree upon all interrogatories which are legally necessary to the general verdict in order for 10 jurors to be able to say truthfully when polled that the verdict is their individual verdict. If 10 jurors do not agree that the verdict is their individual verdict, there is no verdict of the jury. *Devoni v. Department of Labor & Industries*, 36 Wn.2d 218, 217 P.2d 332 (1950).

WPI 45.10.03 Sample Special Verdict Form — Multiple Parties, Claims and Cross-Claims — Comparative Negligence Case

(Hypothetical, one plaintiff guest A; 3 defendant drivers B, C and D; plaintiff sues all defendants, each defendant claims against each other defendant, but none counterclaims against the plaintiff A.)

We, the jury, make the following answers to the questions submitted by the court:

Question No. 1: Was the defendant B negligent?
Answer: [Yes] (Yes or No)

Question No. 2: If your answer to Question No. 1 is "yes," then answer each of the following: Was the negligence of the defendant B a proximate cause of injury or damage to:

- 2A. The plaintiff A?
Answer: [Yes] (Yes or No)
- 2B. The defendant C?
Answer: [Yes] (Yes or No)
- 2C. The defendant D?
Answer: [Yes] (Yes or No)
- 2D. The defendant B?
Answer: [Yes] (Yes or No)

Question No. 3: Was the defendant C negligent?
Answer: [Yes] (Yes or No)

Question No. 4: If your answer to Question No. 3 is "yes," then answer each of the following: Was the negligence of the defendant C a proximate cause of injury or damage to:

- 4A. The plaintiff A?
Answer: [Yes] (Yes or No)
- 4B. The defendant B?
Answer: [Yes] (Yes or No)
- 4C. The defendant D?
Answer: [Yes] (Yes or No)
- 4D. The defendant C?
Answer: [Yes] (Yes or No)

Question No. 5: Was the defendant D negligent?
Answer: [Yes] (Yes or No)

Question No. 6: If your answer to Question No. 5 is "yes," then answer each of the following: Was the negligence of the defendant D a proximate cause of injury or damage to:

- 6A. The plaintiff A?
Answer: [Yes] (Yes or No)
- 6B. The defendant B?
Answer: [Yes] (Yes or No)
- 6C. The defendant C?
Answer: [Yes] (Yes or No)
- 6D. The defendant D?
Answer: [Yes] (Yes or No)

Question No. 7: Was the plaintiff A negligent?
Answer: [Yes] (Yes or No)

Question No. 8: If your answer to Question No. 7 is "yes," then answer the following: Was the negligence of the plaintiff A a proximate cause of the injury or damage to the plaintiff A?
Answer: [Yes] (Yes or No)

Question No. 9: Answer the following only if your answer is "yes" to at least one of the following: Question 2A, Question 4A, or Question 6A. If your answer is "no" to all of those questions, do not answer this Question 9: What is the total amount of the damages to the plaintiff A?
Answer: \$[40,000]

Question No. 10: Answer the following only if your answer is "yes" to either Question 4B or Question 6B or to both of those questions. If your answer is "no" to both of those questions, do not answer this Question 10: What is the total amount of the damages to the defendant B?
Answer: \$[30,000]

Note on Use

Question No. 11: Answer the following only if your answer is "yes" to either Question 2B or Question 6C or to both of those questions. If your answer is "no" to both of those questions, do not answer this Question 11: What is the total amount of the damages to the defendant C.

Answer: [\$20,000]

Question No. 12: Answer the following only if your answer is "yes" to either Question 2C or Question 4C, or to both of those questions. If your answer is "no" to both of those questions, do not answer this Question 12: What is the total amount of the damages to the defendant D?

Answer: [\$10,000]

Question No. 13: Answer the following only if your answer to Question No. 8 is "yes." Using 100% as the total combined negligence of the parties which contributed to the injury or damage to the plaintiff A, what percentage of such negligence is attributable to plaintiff A?

Answer: [10]%

Question No. 14: Answer the following only if your answer to Question No. 2D is "yes." Using 100% as the total combined negligence of the parties which contributed to the injury or damage to the defendant B, what percentage of such negligence is attributable to defendant B?

Answer: [20]%

Question No. 15: Answer the following only if your answer to Question No. 4D is "yes." Using 100% as the total combined negligence of the parties which contributed to the injury or damage to the defendant C, what percentage of such negligence is attributable to defendant C?

Answer: [25]%

Question No. 16: Answer the following only if your answer to Question No. 6D is "yes." Using 100% as the total combined negligence of the parties which contributed to the injury or damage to the defendant D, what percentage of such negligence is attributable to defendant D?

Answer: [55]%

This is a sample special verdict form involving multiple parties, claims and cross-claims, which has been expanded from the basic form, WPI 45.10.02. The omission of a counterclaim was intentional to demonstrate handling of a situation where some of the claims are not made against all of the parties. Compare Question 8 with Questions 2, 4 and 6 in this connection.

The bracketed answers to the questions are included in this sample form to demonstrate the calculations to be performed by the court, and also to point out that the total of the answers to Questions 13, 14, 15 and 16 (the percentage of negligence questions) may exceed 100%. In this sample form it has been assumed that the jury found plaintiff A negligent with respect to plaintiff's own injuries, but that such negligence was not a proximate cause of the occurrence. This could happen, for example, if plaintiff A was a guest on a motorcycle, was not wearing the protective helmet required by the statute, and if the medical evidence was to the effect that wearing the helmet would have reduced the plaintiff's injuries. The "100%" has reference only to the total negligence causing injury or damage to a particular party, and not to the total negligence causing injury or damage to all of the parties. Thus, the percentage of negligence of any particular party may also be different with respect to causing injury or damage to particular other parties, as in the sample form where as to plaintiff A, defendants B, C and D total 90%, while as among themselves, defendants B, C and D total 100%. The committee is of the opinion that these matters can best be handled by counsel's argument to the jury, rather than attempting to detail all of the distinctions in the questions themselves.

Remember also, there being no counterclaim by B, C or D against A, it is not necessary to determine whether A's negligence was a proximate cause of any injuries or damages to any other party. This question has not been included.

Using the bracketed answers assumed in this sample form, the court would calculate the damages to each of the parties as follows:

<i>Plaintiff A:</i>	Total damages (Answer 9):	\$40,000.00
	Less percentage of negligence, (Answer 13 — 10%)	(-) 4,000.00
	Net damages:	\$36,000.00
<i>Defendant B:</i>	Total damages (Answer 10)	\$30,000.00
	Less percentage of negligence (Answer 14 — 20%):	(-) 6,000.00
	Net damages:	\$24,000.00
<i>Defendant C:</i>	Total damages (Answer 11)	\$20,000.00
	Less percentage of negligence (Answer 15 — 25%):	(-) 5,000.00
	Net damages:	\$15,000.00
<i>Defendant D:</i>	Total damages (Answer 12):	\$10,000.00
	Less percentage of negligence (Answer 15 — 55%):	(-) 5,500.00
	Net damages:	\$ 4,500.00

FOREMAN

McLauchlan at Large



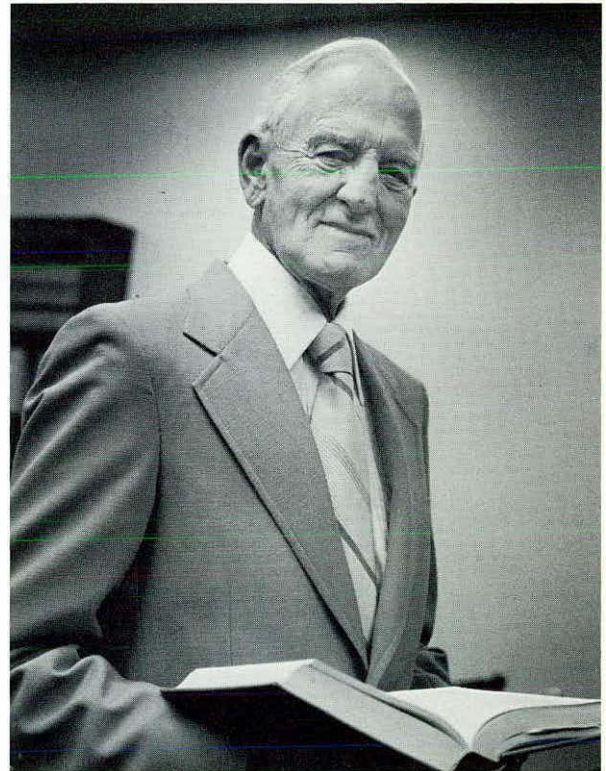
Stephen F. Chadwick



Elsa Durham arguing her first case before Court of Appeals



Willard Zellmer, Paul Richter, Tom Bruce, Lynda Frazier, Jerald Hallam



R. V. Welts celebrating 60 years of practice



THURSTON-MASON REPORT

By **STEPHEN J. BEAN**

The game of musical chairs continues once again in Thurston County. **Mrs. Trena Belsito Worthington** has moved her office from the Thurston County Federal Savings & Loan Building to the National Bank of Commerce Building. **Ralph Gilby** has moved his office from the Thurston County Building to the Security Building. **Bean, Gentry & Rathbone** have purchased property six blocks away from where their current offices are located, are renovating an old building thereon, have renamed the area Columbia Square, and will be in their new offices sometime during the month of July.

The bar association has honored at its annual dinner meeting by the presence of **Cleary Cone**, as the guest speaker. The new officers elected for the coming year are as follows: **Argal Oberquell**, president; **Stephen J. Bean**, Vice President; **Tom McPhee**, Secretary/Treasurer.

The Thurston County Prosecuting Attorney, **Smith Troy**, has resigned due to ill health, and local attorney, **Patrick D. Sutherland**, has been appointed Thurston County Prosecuting Attorney.

EAST KING REPORT

By **Barbara E. Reardon**

The East King County Bar held its annual luncheon at Snoqualmie Falls Lodge on May 20, 1974 at which Mr. **Douglas Jewett** of the King County Prosecutor's Office discussed "The Mental Commitment Law,"

which became effective January 1, 1974.

In the last few weeks we have had the following moves and additions to the legal offices on the Eastside:

Richard L. Martens has joined **Fred B. Phillips** and **Les Wahlstrom**, practicing under the firm name of Phillips, Wahlstrom & Martens at The Commons.

Nelson & Lucas, Inc., P.S. and **Oseran, Hahn & Kelley, P.S.** merged for the practice of law as **Oseran, Hahn, Nelson, Lucas & Kelley, P.S.**, at the Business Center Building.

The firm of **Inslee, Best, Chapin & Doezie, P.S.**, has associated **John T. Rassier**, recently of Legal Services Center and **Stanley E. Erickson**, a recent graduate of Hastings School of Law.

Kenneth H. Davidson, who is a 1974 graduate of the Duke University Law School, and served in 1973 as a legal intern with a Denver law firm and with the Institute of Government at Chapel Hill, North Carolina, has been associated with **King & King** in Kirkland.

Reminder to all members of the Association to mark their calendars for 9/20/74, East King County Bar Golf & Tennis Tournament, at Glendale Country Club, starting time 1:00 with dinner at 6:30 p.m. Call **LeMar Ostrander** or **Dick Chapin** for further details and reservations.

CHELAN REPORT

By **JAMES R. BLINN, JR.**

On May 14, 1974, the Chelan County Bar Association had its

annual Spring function. The guest speaker was Mr. **Cleary Cone**, the President of the Washington State Bar Association who spoke about the present status of the legal profession.

SEATTLE-KING REPORT

By **GERALD G. TUTTLE**

Last month we reported that **Seth Armstrong** had moved from Tacoma to Seattle. He quickly found a home, having become associated with **Uziel and Faltys**, who have gone into the real estate business, occupying their own building at 20 West Galer in Seattle.

Graybeal, Barnard, Uhlir & Hughes announce that **John L. Isaac** has become an associate with the firm.

F. Douglas Ruud, formerly Vice President—Law for REA Express, Inc. in New York City, has joined the firm composed of **Maurice D. Powell, Gordon A. Livengood, Grant J. Silvernale, Jr., Philip L. Carter** and **Robert P. Tjossem**. The firm name will be **Powell, Livengood, Silvernale, Carter & Tjossem**. Their practice will be conducted at 1313 Market Street, Kirkland.

One does not have to be in the lawyering business long to firmly grasp the difficulty in making collections. This problem has been ably placed in rhyme by a classmate of mine as follows:

THE DEADBEAT'S LAMENT

"I just put a check in the
mail"
is the deadbeat's tale
without fail

Although it will never arrive
I still hear the same old jive
"I just put a check in the mail"
So when the deadbeat is called
and reminded
of his promise so very
high-minded,
He says without fail
"It got lost in the mail
and it can't be the Post
Office be finded!"

The author can identify himself if he wishes. He did much better in law school than he would have as an English major.

Thom, Mussehl, Navoni, Hoff & Pierson announce that **David R. Major** has joined the firm as an associate.

W. George Bassett and **James C. Ausum** announce that they have formed a partnership under the name Ausum and Bassett for the practice of law at 3825 Seattle-First National Bank Building.

Barnett, Robben, Blauert, Pease & Doces, Inc. P.S. take pleasure in announcing that **Peter S. Lewicki** has become a member of the firm.

SNOHOMISH REPORT

By **JAMES A. SIMONTON**

At the last bar meeting Senator **August Mardesich** presented the problems facing the legislature including the increased number of proposed bills to consider and the decreasing number of lawyers who are seeking these legislative positions. Because of the amount of time required to take care of the state's business without adequate compensation, it was Senator Mardesich's opinion that it will become

more and more difficult to attract qualified people.

Judge **Edward M. Nollmeyer's** retirement party was a huge success. Former Judges **Tom Stiger** and **Charles Denney** were on hand to not only provide the friendly "roasting" but also to lead off the "toasting" to a man who has served as a Superior Court Judge for 21 years with dedication and exceptional ability.

Charles Cole of Stanwood recently visited his son who is in Korea, then took the opportunity to see Japan and Hong Kong.

Advised that **Bob Alexander** has joined the firm of Kafer, Wilson, Luchini and Good (new firm name — congratulations!).

PIERCE REPORT

By **KENYON E. LUCE**

Edwin R. Johnson, **Hugo Metzler, Jr.** and **Bradford M. Gierke** announce as of June 1, 1974 the formation of a partnership for the practice of law under the firm name of Johnson, Metzler & Gierke, with **Richard T. Vlosich** as an associate.

Hugh Ellis, coach, reports that the two Tacoma-Pierce County Young Lawyers' softball teams are undefeated.

Assistant Prosecuting Attorney **Fred Weedon** tied Dentist **Jack Gould** at the annual Doctor-Lawyer-Dentist Golf Tournament at The Tacoma Country Club. They both shot a 75 (low score). This is the first time in quite sometime that a lawyer has had this distinction. Scores consisted of lots of ones, twos and

threes with very few fours, fives and sixes. An anonymous participant in the tournament who enjoys boating brought along his ship captain and crew.

Thomas J. Felnagle, University of Oregon '73 is an associate of Estes, Damis & Boyce.

Buckley has a new lawyer — **Don Waring** has opened his office for the practice of law.

Eisenhower, Carlson, Newlands, Reha, Elliot & Henriot announce that **Richard Turner** has joined the firm as an associate. During Mr. Turner's four years in Washington, D.C. he was Deputy Associate Director of the Council for Compliance and Enforcement; Director of the Office of Domestic Business Policy in the Department of Commerce; and Chief Counsel for Economic Development in the Small Business Administration. He is a '66 graduate of Gonzaga and practiced in Tacoma in 1970. (Rumor has it that his baggage was checked for tapes before he left Washington, D.C.)

Seven Lawyers Suspended for Non- Payment of Dues

The following lawyers have been suspended from practice in the State of Washington for non-payment of dues, as of May 3, 1974:

Leo J. Brand, Seattle; J. H. Jahnke, Centralia; Dean C. Lonseth, Seattle; L. L. Mendel, Jr., Seattle; Don R. Smith, Tacoma; Gerald L. Schafer, Omak; and Ralph R. Bouma, Jr., Glen Ellyn, Illinois.

Business was suspended. Principal concern was the coming state convention in Spokane. Spokane has always been the favorite city for such events. Indicative of the spirit there is the item on the agenda, "Invitational dinners with Spokane lawyers at their homes." This probably would be the event best remembered.

However, there were a number of important reports to be presented to the meetings. Most complete of such was the analysis of the coming Uniform Commercial Code. The author was Professor Warren L. Shattuck. It was prefaced with the recommendation that Washington take no action until the code had been sifted and presumably refined by New York, Massachusetts, Illinois, Ohio and California.

The committee on the selection of judges, **John Gavin**, chairman, **Tracy E. Griffin**, **Horton Herman**, **Harold Lant**, **John S. Lynch**, **Frank Preston**, **Byron Scott** and **W. R. McKelvy**, reported with great satisfaction that Governor Langlie accepted its recommendations.

The committee on American citizenship, **Helen Graham Greear**, chairman, **Story Birdseye**, **Philip S. Brooke, Jr.**, **William Robert Cole**, **David O. Hamlin**, **Neil J. Hoff**, **V. O. Nichoson**, **David E. Rhea**, and **Leonard F. Jansen**, in essence outlined a program to improve the understanding of the average citizen of his rights and his duties as such.

The Armed Forces committee, **Harvey W. Clarke**, chairman, **Robert L. Ager**, **J. S. Applegate**, **Robert E. Cooper**, and **Norton G. Richardson**, reported earnest effort to make available at modest fees services for those involved in the war.

R. V. Welts, chairman, **Del Cary Smith**, and **Philip D. Macbride**, reported it had filed 22 opinions in the course of the year dealing with actual ethics situations within the bar.

The committee on Federal Legislation composed of **Lowell P. Mickelwait**, chairman, **William B. Bantz**, **Newman H. Clark**, **Russell Millhouse**, **Charles L. Powell** and **Walter J. Robinson, Jr.**, reported that it was opposed to compulsory inclusion of lawyers in any social security program. It also urged an increase in the number of Federal judges in the 11th Judicial Circuit.

Clarence J. Coleman of Everett reported a very

productive year of the Continuing Legal Education Committee.

The Public Service Committee said, "It is encouraging to note an increasing awareness by individual members of the bar of the need of a good public relations program." **Charles Scanlan**, chairman, **Condon V. Barclay**, **Stanley J. Burkey**, **Warren L. Dewar**, **David Ellison**, **Daniel J. English**, **Earl W. Foster**, **Leo C. Goodman**, **Leo C. Kendrick**, **Neil J. Lynch**, **Smithmoore Myers**, **John McSherry, Jr.**, **Thomas M. Malott**, **Roger L. Olson**, **Dan Reaugh**, **Donald G. Simpson**, **Rush Stouffer**, and **Herbert N. Woolson** were members. We wonder if the committee is still operating.

Edward Taylor, chairman of the Committee on the Unauthorized Practice of Law quoted John Adams, 1757: "Looking about me, in the county, I found the practice of law was in the hands of deputy sheriffs, pettifoggers and even constables, who filled all writs on bonds, promissory notes and accounts and stirred up many unnecessary suits." Adams would be pleased to know that some progress has been made in eliminating the evils of unauthorized practice of law, at least, in King County. The county commissioners under the laws of 1953 abolished the office of constable.

Crossed the Bar

Seattle: **Frederick R. Burch**, 86, served one term as a representative in Congress.

Clarence R. Innis, 65, University of Missouri Law School. Member of the firm of Wright, Innis, Simon and Todd.

Morris H. Russell, 42.

John T. Gayton, 88, father of the eminent lawyer **Gary D. Gayton**. "Mr. Gayton served for 44 years as an attache of the United States Courts in Seattle, first as messenger, then as bailiff of the District Court, and as Seattle law librarian for the Court of Appeals from 1932 until his retirement last year. He was a courteous and gentle man, and his passing is mourned by all the Bench and Bar of the state."

David J. Williams



Briefly Noted

Washington Lawyers will visit European Legal Centers

Visits with lawyers and courts in five countries, including the Soviet Union, highlight a Washington State Attorneys Goodwill People-to-People tour to be led next fall by E. Frederick Velikanje of Yakima, former State Bar president and a veteran foreign-tour devotee.

Washington State lawyers will meet lawyers and visit courts and government officials on a people-to-people basis in Italy, Hungary, Greece and Yugoslavia as well as the Soviet Union. The tour will depart Seattle September 18 and return to Seattle October 9.

"This is not a trip devoted exclusively to tourism," Velikanje said. "It is an informative, educational Goodwill Mission dedicated to improving relations and understanding between America and the people of Western and Eastern Europe. But in addition to the schedule of special meetings, interviews and visitations, ample time will also be allowed for sightseeing, shopping, rest and relaxation," he noted.

He said the lawyer-tourists will meet and inspect typical lawyer and law-office operations, compare procedures and exchange experiences.

The total all-expense cost of the trip, from Seattle back to Seattle, is \$2167. Velikanje will be happy to provide further information about the tour, he said.

American Polygraph Convention Open to Attorneys

The American Polygraph Association has announced that a day of its National Convention will be open to members of the Washington State Bar. Tuesday, August 20, 1974 has been programmed for topics and speakers of interest to local attorneys. The day's activities include a mock trial in the morning that will be presided over by the Honorable Robert Utter, Justice on the Washington State Supreme Court. Participants will include Murray Guterson of the firm Culp, Dwyer, Guterson & Grader, Seattle, Washington.

The afternoon session will also include speakers of interest. Mr. John E. Reid, world's foremost polygraph expert, will speak on the "Judicial Recognition of the Polygraph." Mr. Christopher T. Bayley, King County Prosecuting Attorney, will address the group on "Prosecuting Attorney's View of the Polygraph."

Because of the large amount of local interest that has been displayed in this agenda interested attorneys should contact David W. Murdach, Deputy Prosecuting Attorney, Pierce County Prosecutor's Office, Tacoma, Washington, 593-4463 as soon as possible. The convention will be held at the Washington Plaza Hotel in Seattle, Washington. The registration fee of \$20.00 will include the noon luncheon.

Washington Lawyer Practice Manual

250 additional sets of the Washington Lawyer Practice Manual are being printed to meet the continuing demand for this "bread and butter" series on Washington law. The price for this three-volume, 1600 page work has been increased to \$58.50. This price increase reflects the costs of printing major new topics and includes the costs of printing new supplemental materials to existing topics. May admittees to the Bar are entitled to a \$10.00 discount through July 15, 1974.

Over 50 sets of this special press run of the Washington Lawyer Practice Manual have already been reserved for an expected delivery date of June 15, 1974. Reserve yours today by calling the Seattle-King County Bar office at 623-2551.

Dissolution of Marriage and Family Law Practice Handbook Revised

Page 188, 189, 190, and 193 of Section VII of the chapter on Child Custody Provisions in the Dissolution of Marriage and Family Law Practice Handbook have been replaced with correspondingly numbered loose pages. The original pages should be replaced with the new pages, and one should not rely on the section if the pages have not been changed.

FINANCIAL DISCLOSURE UNDER INITIATIVE 276

by Douglass A. Raff

In November, 1972, months before the events of Watergate had matured into a national scandal, the voters of this state began the national movement for openness in government by approving, by a 72% majority, Initiative 276, the open government initiative. Voter approval was only the first step for this reform measure, however, as it was attacked almost immediately in several suits which questioned the constitutionality of its provisions. The key provisions of the Initiative were upheld by our Supreme Court in the companion cases, *Fritz v. Gorton*, *Simmons v. Gorton*, 83 Wn. 2d 275, — P.2d — (1974). On May 28, 1974, the United States Supreme Court dismissed an appeal of the *Fritz* and *Simmons* cases for want of a substantial Federal question. It seems clear now that Initiative 276 is here to stay, and both its proponents and opponents feel it may become a model for disclosure laws in other states.

Members of the Bar have been especially interested in the Initiative, not only as lawyers who must advise their clients on its application but, in many cases, as lobbyists or elected officials who are directly affected by its provisions. For this reason, in November, 1973, the Board of Governors of the Washington State Bar Association appointed a special committee chaired by Robert Duggan of Seattle¹ to review Ini-

tiative 276 and advise the Board of Governors on its impact on the legal profession and on developments relating to the Initiative. The committee feels that the financial disclosure section of the Initiative, Section 24 (RCW 42.17.240) will have the greatest impact on lawyers and their clients, and that therefore it is imperative that the Bar be informed on the meaning and application of this section.

Financial Disclosure Provisions

Initiative 276 deals with four general areas: Campaign financing, including reporting contributions and expenditures in political campaigns; disclosure of lobbying activities and expenditures; disclosure by elected officials and candidates of financial interests and activities; and access to public records. The purpose of the financial disclosure section, Section 24, was described by the proponents of the Initiative in the 1972 Voters Pamphlet as follows:

"Initiative 276 permits the voting public to judge for itself where potential conflicts of interest may lie. All elected officials and candidates are required to disclose directorships and offices held and substantial financial or ownership interests in any business, and in real estate investments."

Section 24 applies to all elected officials and candidates, except for President, Vice-President, precinct committeemen, and candidates for those

offices. Included in this coverage, therefore, are such diverse offices as governor, legislator, county commissioner, mayor, school board member, and commissioner of a special district such as a port, sewer, water or fire district. Moreover, the requirement to disclose financial affairs extends to members of an official's or candidate's immediate family: spouse, children living in the household, and other relatives living in the household.

The matters which must be disclosed are set out in Section 24 (1):²

- a. occupation, name of employer and business address;
- b. bank or savings account or insurance cash surrender value of more than \$5,000; other direct financial interest in excess of \$500 and values of such by category;
- c. creditors to whom more than \$500 is owed, excluding retail installment transactions (RCW 63.14) and amount of debt by category;
- d. every public or private office, directorship or trusteeship held;
- e. persons for whom legislation, rules, rates or standards have been prepared, promoted or opposed, including a description of such and the amount of compensation by category;
- f. governmental and commercial entities from whom compensation of more than \$500 has been received and the amount by category;
- g. commercial entity, union or other entity in which is held an office, directorship, general partnership, or at least 10% ownership, name and nature of such interest, and, as to each such entity, the name of each governmental or commercial entity from which was received more than \$500 compensation during the preceding twelve months and the consideration for such compensation;
- h, i, j. real property in this state, with an assessed valuation of more than two thousand five hundred dollars (\$2,500), in which a direct financial interest was acquired, divested or held during the preceding year and consideration by category and parties involved.

- k. real property in this state, with an assessed valuation of more than five thousand dollars (\$5,000), in which an entity had a direct, financial interest when reporting person had 10% or more interest in such entity.

Where an amount is required to be reported for any of the above items, the exact amount need not be stated but the amount can be designated by category (Section 24(2)):

- a. Less than \$1,000
- b. At least \$1,000 but less than \$5,000
- c. At least \$5,000 but less than \$10,000
- d. At least \$10,000 but less than \$25,000
- e. At least \$25,000 or more.

Moreover, an amount of stock reported under 24(1) (b) may be reported by number of shares rather than market value.

These matters are reported on a written statement which must be filed with the Public Disclosure Commission in Olympia within two weeks of becoming a candidate and, for elected officials, on or before January 31 of each year. The statement is to cover the preceding twelve months. The Public Disclosure Commission has published Form F-1 for making reports under Section 24.

Problems Under Section 24(1) (g)

Section 24 has been the most controversial section of Initiative 276, and most of the controversy has centered on Section 24(1) (g). Other requirements of Section 24 may seem onerous to an individual in requiring that essentially private financial information be publicly disclosed. Section 24(1) (g), however, reaches further in requiring disclosure of the names of those who do business with one's own business entity.

The complaints about Section 24(1) (g) have centered on two points. First, it may be expensive, and possibly impossible, for a major concern or large law firm to prepare lists of customers or clients from which the firm has received at least \$500 during the preceding months. Secondly, and more importantly, disclosing this information may be damaging to the business. For example, the information required to be disclosed may amount to a disclosure of a customer list which is valuable to the company only if it is kept confidential. Clients of a law firm may object to their names being disclosed. These concerns were central to the challenge

to the constitutionality of Section 24 in the *Simmons* case and have generated more requests for hardship exemptions and more bills for amendment to the Initiative in the Legislature than have concerns about any other section.

From a lawyer's standpoint, the report required under 24(1) (g) can be burdensome in that it requires the disclosure of the names of each of a sole practitioner's or a law firm's governmental, union or business clients from which the firm or attorney has received at least \$500 compensation during the preceding 12 months. The report must state the consideration ("legal services") given for this compensation, but the amount received need not be reported.³ Non-business clients, such as plaintiff-personal injury, divorce, estate or probate clients, need not be listed. Although it is true that in many instances an attorney will have already listed some of his clients in an approved law list, such as Martindale-Hubbell, in other cases the client will object to being listed at all.

Hardship Exemptions

Section 37(9) (RCW 42.17.370(9)) of the initiative authorizes the Public Disclosure Commission, a five-member commission appointed by the Governor with the consent of the Senate, to suspend or modify any reporting requirements of the Initiative "if it finds that literal application of this act works a manifestly unreasonable hardship and if it also finds that such suspension or modification will not frustrate the purposes of the act." The suspension or the modification is to be only to the extent necessary to substantially relieve the hardship and the Commission may act only if it determines that facts exist that "are clear and convincing proof" that the act will work a manifestly unreasonable hardship in the particular case. As stated above, most of the exemption applications under this section have related to Section 24. The Bar Committee examined the first 60 applications for exemption filed with the Public Disclosure Commission in 1973, and found that of these 60, 37 were requests for exemption from the requirements of Section 24(1) (g), and that no more than three of the requests related to any other single provision of the Initiative.

On behalf of the special Bar Committee, Robert Duggan requested the Commission to describe the criteria used in granting hardship exemptions under Section 24. In a letter dated

May 22, 1974, Commissioner Stuart G. Oles stated:

"We believe the statute designedly creates broad criteria for granting exemptions, to wit, manifest hardship and circumstances in which granting the exemption will not frustrate the purposes of the act. The Commission by administrative rulings which are part of the Washington Administrative Code has somewhat amplified this statutory mandate. . . .

"Within these broad guidelines it is the view of the Commission and myself that it would be improper to attempt to draft more narrow or specific criteria other than those which develop on a case-by-case basis. . . . we conceive our function as quasi-judicial in granting exemptions, and believe that our approach must develop on a case-by-case basis."

Examples of hardship exemptions granted by the Public Disclosure Commission might assist the practitioner in determining whether an application for an exemption is justified. In several instances, the Commission has exempted candidates from reporting the business affairs of their spouses except for dealings between the spouse's business and the public official or candidate's governmental entity. In other instances, the Commission has granted an exemption from reporting customers lists of the candidate or public official's own business except for business dealings between the business and the governmental entity. Several employees of banks and insurance companies have been successful in obtaining this type of exemption. Among the blanket exemptions granted under 24(1) (g) have been exemptions granted to a stock broker and an employee of an owner of newspapers, both of whom were candidates for town offices. In the latter cases, it would appear that there were no transactions between the governmental entities and the candidates' businesses. Thus, the Commission has been willing to narrow in a number of instances the application of 24(1) (g) to transactions between the candidate or public official's business and the governmental entity, rather than requiring the disclosure of all customers or clients of the candidate or public official's business.

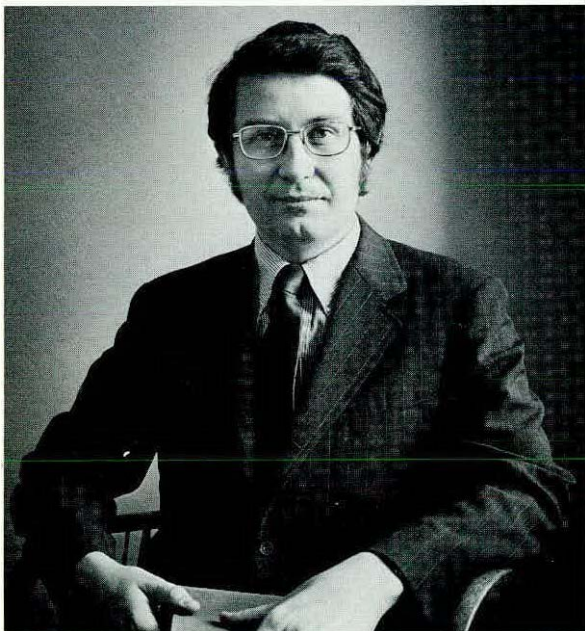
Another set of exemptions the Commission has granted has consisted of geographic exemptions. In several instances school district directors or candidates for school boards have been granted exemptions from reporting under

24(1) (g), except for business dealings within the school district.

In considering the possibility of seeking a hardship exemption from the application of 24(1) (g), the candidate or public official should bear in the mind that the Commission's rulings may be challenged by any citizen. Section 37(9) provides "any citizen shall have standing to bring an action in Thurston County Superior Court to contest the propriety of any order entered hereunder within one year from the date of entry of such order."

Impact on the Legal Profession

For lawyers who wish to serve as legislators, commissioners of special use district, or in any elective office, Section 24 of Initiative 276 will require the reporting of commercial clients if the lawyer is a sole practitioner or a partner in a law firm. The Commission has been reluctant to grant exemptions from this requirement to lawyers, and the public debates about amending the initiative seem to have centered, unfortu-



Douglass A. Raff received his law degree from Harvard in 1964 and has been in the private practice of law in Seattle with the firm of Riddell, Williams, Voorhees, Ivie & Bullitt ever since. He is a member of the Seattle-King County, Washington State, and American Bar Associations. Because of his activity with the subject matter Raff was appointed to the Bar Committee as its member advocating favorably for Initiative 276.

nately, from the standpoint of the Bar, on lawyers and their clients. Much of the opposition to amending the initiative will be opposition to permitting lawyer-elected officials not to disclose their commercial clients.

This raises two issues which the Bar will have to face during the next few years. First is the possibility that members of the legal profession will not be able to run for public office if their clients or partners object to the disclosure of commercial clients. The second problem arises out of the first. The Bar Association will be called upon to comment on proposed modifications of the financial disclosure provisions of the Initiative and the positions it takes will be widely publicized and discussed. At a time when the image of the legal profession is a matter of concern to all lawyers, few stands our state Bar Association will take in the next several years will be as critical to the Bar's efforts to improve the image of the profession.

Douglass A. Raff

Footnotes

¹Other members of the committee are Paul W. Chemnick, Seattle; Harold delete

¹Other members of the committee are Paul W. Chemnick, Seattle; Harold A. Fardahl, Seattle; Gary J. Gainer, Spokane; and Douglass A. Raff, Seattle.

²This summary was taken from the brief of MacDonald, Hoague & Bayless for Marianne Norton, filed with the Supreme Court in *Simmons v. Gorton*, docket number 42901. The complete text of Section 24 follows:

(See attachment)

³But a sole practitioner may be required to list amounts of compensation from clients, by category, under 24(1) (f). See AGO 1973 No. 1, pages 5-6.

CHAPTER III. REPORTING OF ELECTED OFFICIALS FINANCIAL AFFAIRS

Section 24. ELECTED OFFICIALS REPORTS OF FINANCIAL AFFAIRS. (1)

Every elected official (except President, Vice President and precinct committeemen) shall on or before January 31st of each year, and every candidate (except for the offices of President, Vice President and precinct committeeman) shall, within two weeks of becoming a candidate, file with the commission a written statement sworn as to its truth and accuracy stating for himself and his immediate family for the preceding twelve months:

(a) Occupation, name of employer, and business address; and

(b) Each direct financial interest in excess of five thousand dollars in a bank or savings account or cash surrender value of any insurance policy; each other direct financial interest in excess of five hundred dollars; and the name, address, nature of entity, nature and value of each such direct financial interest; and

(c) The name and address of each creditor to whom the value of five hundred dollars or more was owed; the original amount of each debt to each such creditor; the amount of each debt owed to each creditor as of the date of filing; the terms of repayment of each such debt; and the security given, if any, for each such debt: PROVIDED, that debts arising out of a "retail installment transaction" as defined in chap. 63.14 R.C.W. (Retail Installment Sales Act) need not be reported; and

(d) Every public or private office, directorship and position as trustee held; and

(e) All persons for whom actual or proposed legislation, rules, rates, or standards has been prepared, promoted, or opposed for current or deferred compensation; the description of such actual or proposed legislation, rules, rates or standards; and the amount of current or deferred compensation paid or promised to be paid; and

(f) The name and address of each governmental entity, corporation, partnership, joint venture, sole proprietorship, association, union, or other business or commercial entity from whom compensation has been received in any form of a total value of five hundred dollars or more; the value of such compensation; and the consideration given or performed in exchange for such compensation; and

(g) The name of any corporation, partnership, joint venture, association, union or other entity in which is held any office, directorship or any general partnership interest, or an ownership interest of ten percent or more; the name or title of that office, directorship or partnership; the nature of ownership interest; and with respect to each such entity the name of each governmental entity, corporation, partnership, joint venture, sole proprietorship, association, union or other business or commercial entity from which such entity has received compensation in any form in the amount of five hundred dollars or more during the preceding twelve months and the consideration given or performed in exchange for such compensation;

(h) A list, including legal descriptions, of all real property in the State of Washington, the assessed valuation of which exceeds two thousand

five hundred dollars in which any direct financial interest was acquired during the preceding calendar year, and a statement of the amount and nature of the financial interest and of the consideration given in exchange for such interest; and

(i) A list, including legal descriptions, of all real property in the State of Washington, the assessed valuation of which exceeds two thousand five hundred dollars in which any direct financial interest was divested during the preceding calendar year, and a statement of the amount and nature of the consideration received in exchange for such interest, and the name and address of the person furnishing such consideration; and

(j) A list, including legal descriptions, of all real property in the State of Washington, the assessed valuation of which exceeds two thousand five hundred dollars in which a direct financial interest was held: PROVIDED, that if a description of such property has been included in a report previously filed, such property may be listed, for purposes of this provision, by reference to such previously filed report;

(k) A list, including legal descriptions, of all real property in the State of Washington, the assessed valuation of which exceeds five thousand dollars, in which a corporation, partnership, firm, enterprise or other entity had a direct financial interest, in which corporation, partnership, firm or enterprise a ten percent or greater ownership interest was held; and

(1) Such other information as the commission may deem necessary in order to properly carry out the purposes and policies of this act, as the commission shall by rule prescribe.

(2) Where an amount is required to be reported under subsection (1), paragraphs (a) through (k) of this section, it shall be sufficient to comply with such requirement to report whether the amount is less than one thousand dollars, at least one thousand dollars but less than five thousand dollars, at least five thousand dollars but less than ten thousand dollars, at least ten thousand dollars but less than twenty-five thousand dollars, or twenty-five thousand dollars or more. An amount of stock may be reported by number of shares instead of by market value. No provision of this subsection shall be interpreted to prevent any person from filing more information or more detailed information than required.

(3) Elected officials and candidates reporting under this section shall not be required to file the statements required to be filed with the Secretary of State under R.C.W. 42.21.060. □



SUPREME COURT PRACTICE

By **WILLIAM M. LOWRY**

Supreme Court Clerk

The 38th amendment to the State Constitution was adopted twelve years ago this fall. In that short period it has shown unusual versatility in answering problems. Born of a need to provide the Supreme Court additional capability, the amendment empowers a majority of the Supreme Court to authorize judges or retired judges of courts of record to perform temporarily judicial duties in the Supreme Court. During the period 1963 through 1968 maximum use was made of pro tempore judges to reduce the backlog. By 1966 a pro tempore judge sat on virtually all departmental hearing days and pro tempore judges were writing approximately 30% of the opinions. The number of opinions being filed by the Court was increased about 26%. The pro tempore system, however, as a means of increasing the capacity of the Court to dispose of cases had its limitations. The circulation work load on the regular justices increased correspondingly with the increase in the number of judges writing opinions. The added circulation reduced the time available to regular judges for writing opinions. The 26% increase was not sufficient to cope with the constantly increasing number of cases being filed for appellate review. The 50th Amendment adopted in late 1968 substituted the Court of Appeals as the means for increasing the capability of appellate review. Since 1968 pro tempore justices have not been used to increase the Court's capability. They are no longer authorized to write a majority opinion.

Although materially reduced in vitality, the 38th was not retired by the 50th. When a regular member of the Supreme Court is disqualified or unable to function for good cause, a pro tempore justice is appointed to sit with the regular members of the Court. Although the pro tempore member cannot be called upon to write the majority opinion, his vote has equal weight. During 1973, pro tempore justices assisted in the disposition of sixteen cases.

Until the fall of 1973, the expectation was that the 38th would thus continue to serve a useful but unobtrusive existence. Then came the challenge

to Initiative 282 and disqualification by all nine regular members of the Supreme Court. For Washington it was a unique situation. A few other states had struggled with the problem and arrived at answers not wholly satisfactory. The 38th was called upon to provide a nine member pro tempore court. The Court relaxed its administrative rules sufficiently to allow more than two pro tempore justices to function on a case and to authorize the writing of an opinion by a pro tempore justice. Thus, the 38th came into full potential and provided a solution to a very difficult problem with minimal difficulty and expense. The costs of the Initiative 282 pro tempore court was as follows:

Moving furniture to & from	
G. A. Building	\$ 103.80
Telephone installation and use	25.41
Postage	50.88
Travel	887.93
Miscellaneous	306.96
Salaries	
Justices (nine)	4,201.37
Law Clerk (one)	315.58
Secretary (one)	1,044.84
	\$6,936.77

SUPERIOR COURT NEWS

By **ROBERT M. ELSTON**, *Judge*

King County Superior Court

The appalling death by assassination of Judge **James J. Lawless** represents a substantial loss to the state's judiciary. During his 17 years as a Benton-Franklin Superior Court judges, Judge Lawless was known as one of the most effective judges in the state. Judges of all court levels from around the state attended memorial services in Pasco on June 7. Those unable to do so expressed mourning by recessing court during the memorial service.

Two recently retired Snohomish County superior court judges have shed some light on the reason for the spate of early retirements, announced and contemplated, by state judges. Both Judge **Edward M. Nollmeyer** (retired, effective

June 1) and Judge **Alfred O. Holte** (retired, effective July 1) cite inadequate salaries as a prime retirement cause. They agree that without higher salaries the quality of the state's judiciary will decline because it will become increasingly difficult to find well-qualified attorneys willing to serve as judges at the salaries set by the state.

Judge Nollmeyer, a past president of the State Superior Court Judges Association, said that salaries and being "just plain tired of it all" prompted his resignation after 21½ years on the bench. He noted the many pressures on judges and expressed concern that continued judicial service might adversely affect his health. He pointed out that judges are being unjustly blamed for many of society's problems by a public which often lacks understanding of how the legal system works. Additionally, he cited the frustration of not having time to research properly despite increasingly more cases with complex legal questions. He noted that because of the volume of litigation judges often have to do research in the evening or early morning hours.

Judge Holte pointed out that during his seven years as judge his salary had increased 17% while the inflation rate had been 40%, with the cost of living continuing to rise. He has forfeited accrued pension rights in resigning to take a position with a savings and loan firm at a substantially higher salary.

* * *

Judges **Solie M. Ringold** and **Nancy Ann Holman** (both King) have been elected president and first vice-president respectively of the Conference of Conciliation Courts.

JUDICIAL COUNCIL REPORT

By **Dean R. Sargeant**

In March copies of the "Washington Proposed Rules of Appellate Procedure" printed by West Publishing Company were distributed to all members of the Washington Bar and all judges of the courts of general and limited jurisdiction. During the past two months, Malcolm Edwards, Chairman of the task force which prepared the

rules, and Karl Tegland, staff attorney for the task force, have presented the rules to meetings of twelve local bar associations and to the Governmental Lawyers Association in Olympia, the Court of Appeals judges in Spokane, and the Washington State Trial Lawyers Association.

Several comments on the rules have been received by the Council. Comments may be sent directly to the Judicial Council office, Condon Hall, 1100 N.E. Campus Parkway, Room 508, Seattle 98195. Any group wishing a presentation of the proposed rules is welcome to contact the Council, Mr. Tegland, or Mr. Edwards. A limited number of copies of the rules are available at the Council office.

The Judicial Council's regular meeting on June 26th and 27th will be devoted to consideration of the rules. The Chairman of the task force will present the rules and respond to the comments received by that time. The Council may then adopt a recommendation to the supreme court.

As a result of the 1974 amendments to the Civil Commitment Act, the Council has prepared several proposed amendments to the new Mental Proceedings Rules (MPR). These have been forwarded to the Supreme Court for consideration at their June conference.

Since the Judicial Council's permanent staff is limited to one full-time attorney, much of the research is done by law student research assistants. This makes the summer months busy ones for the Council staff, as that is the only time the research assistants can work full time. Included among this summer's projects are a study of the district court jury system, a study of the new Washington comparative negligence act, review of the criminal rules for superior courts and preparation of a comprehensive set of rules of evidence, and a follow-up study of the new dissolution of marriage act. The Council welcomes comments on these or any other subjects.

101 Candidates Pass Mid-Year Washington State Bar Examination

A total of one hundred one candidates successfully passed the mid-year Washington State Bar Examination administered in February. The total number of candidates who sat for the examination was one hundred fifty-four. The successful candidates represented fifty law schools throughout the United States. Nine of the candidates were graduated from the law schools in Washington State, including seven from the University of Washington and two from Gonzaga University.

The names of the persons who passed the February 1974 Washington State Bar Examination are as follows:



Henry W. Grenley and Jack M. Whitmore, Seattle



Mary King and Kenneth H. Davidson, Kirkland, and
Carol Sanders Doherty, Seattle

SEATTLE: Earl O. Andrews, Lawrence Elliot Berman, Richard Paul Blumberg, Robert Charles Boruchowitz, Harold Chesnin, William T. Christian, Jr., Kelly Patrick Corr, Carol Sanders Doherty, Bruce I. Fine, Martin David Fox, Gerald W. Gelfand, Peter Warren George, Theodore Signey Goodwin, Henry Walker Grenley, Alan F. Hall, Tommy Tung Ming Hall, Elizabeth Ann Edmonds Huneke, Carl A. Johansen, David F. Jurca, Thomas Patrick Feeke, Jr., Daniel Adam Kline, Howard Marsen LaMont, David R. Major, David A. Middaugh, Greg Montgomery, Robert Erling Ordal, Walter George Palmer, Jr., Patricia Jean Parks, David Royhl Pender, Colonel Richard Shagrin,

Richard Lee Shaneyfelt, Irving Alan Sonkin, Max Edward Spring, Adrienne Stone, Kimbrough Street, Floye Nui Sumida, Winship A. Todd, Jr., Ronald James Trompeter, Daniel Walton Vradenburg, David A. Waldschmidt, Don B. Wittenberger, Gary L. Wolfstone.

BELLEVUE: John Lansing Isaac, Robert Franklin Pascal, Tracy Lee Rosellini, Gregory Bruce Soriano, O. Kent Whiteley, Thomas James Wolfstone.

BELLINGHAM: Joseph C. Abbott, Matthew William Peach, Richard Waller Stone, Peter Lewis Whitton.

BREMERTON: William Thomas Lawrie, Gerald A. Matosich.

BRIER: Barbara L. Johnston. **CHEHALIS:** Rene J. Remund. **EDMONDS:** Robert Lester Guillette. **EVERETT:** Eric L. Clauson. **FEDERAL WAY:** Paul Kenneth Graves. **KENT:** Timothy Mitchell Stone.

KIRKLAND: Kenneth Harry Davidson, Olof Krister Hellen. **LACEY:** Gerald Timothy Martin, Patricia Kane Stidham. **MEAD:** Steven Lawrence Jones. **MERCER ISLAND:** Robert Alan Dowdy, Joseph Cox Finley. **MOSES LAKE:** Douglas Ken Earl.

OCEAN SHORES: David L. Edwards. **OLYMPIA:** James Albert Humphrey. **PULLMAN:** Will Knedlik. **REDMOND:** David G. Laidman. **SHELTON:** Ralph K. Mulford, III. **SPOKANE:** Donald A. Anderson, Daniel E. McKelvey.

TACOMA: Thomas Jay Fel-nagle, Robert R. Forsythe, Mary McMorrow Howarth, Louise A. Seeley, Richard Martin Shute, Richard D. Slehofer, Richard Dale Smith, Joel D. Swanson. **YAKIMA:** Joel Edward Smith.

OUT OF STATE: John Ambrose, Bardelli, Idaho; Daniel Martin Caine, California; Richard Coleman Cohan, Oregon; Peter Reynolds Day, California; Kenneth Ray Eiesland, Oregon; Barry Meredith

Johnson, California; Terrence Pennington Lukens, Oregon; Ronald Norman Richards, Colorado; James Walter Ruddy, Michigan; Robert P. Schmitt, Illinois; William Hugh Stuart, 3d, California; Darrell Eugene Varnier, California.

ATTORNEY APPLICANTS: William Hudson Griffies, Tacoma; Gary Stanley Kindness, Edmonds; William M. McRostie, Anacortes; Thomas James Roth, Bellevue; Charles C. Stidham, Lacey. □

FEBRUARY 1974 WASHINGTON STATE BAR EXAMINATION

School	Pass	Fail	Total		Pass	Fail	Total
American Univ. (1st)	1	1	2	Michigan (1st)	4		4
Arizona State (1st)	1	1	2	Missouri (1st)	1		1
Boston College (1st)	1	1	2	North Dakota (R)	2		2
Boston Univ. (1st)	2		2	Northwestern (Chicago) (1st)	2		2
(R)	1	3	4	Northwestern (Lewis & Clark) (1st)	7	7	14
California (Boalt Hall) (1st)	3	3	6	(R)		1	1
California Western (1st)		1	1	Oregon (1st)	5	2	7
Catholic Univ. (1st)	1	1	2	Pepperdine (1st)	1		1
Chicago Univ. (1st)	1	1	2	Pennsylvania Univ. (1st)	1		1
Cincinnati Univ. (1st)	1	1	2	Pittsburg Univ. (1st)	1		1
Colorado Univ. (1st)	2	2	4	Rutgers Univ. (1st)	1		1
Columbia (1st)	2	2	4	St. Louis Univ. (1st)		1	1
Creighton Univ. (1st)	1	1	2	San Francisco Univ. (1st)	1		1
Denver Univ. (1st)	1	1	2	Santa Clara Univ. (1st)	1		1
De Paul Univ. (1st)	1	1	2	(R)		1	1
(R)		3	3	Seton Hall Univ. (1st)	1		1
Detroit College (1st)	1	1	2	Southern Methodist (1st)	1		1
Detroit Univ. (1st)	1	1	2	Stanford Univ. (1st)	6		6
Duke (1st)	1	1	2	Texas Tech. (1st)		1	1
Florida Univ. (1st)		1	1	Toledo Univ. (1st)	1		1
Georgetown (1st)	2	2	4	U.C.L.A. (1st)	1		1
George Washington (1st)	3	3	6	Union Univ. (R)	1		1
Gonzaga (1st)	2	6	8	Utah Univ. (1st)	3		3
(R)		11	11	Valparaiso (R)	1		1
Harvard (1st)	3	3	6	Washington (1st)	7	3	10
Idaho (R)		2	2	(R)		4	4
Illinois Univ. (1st)	3	3	6	Washington U. (Missouri) (1st)	1		1
Indiana (1st)	1	1	2	Wayne State (1st)	2		2
Iowa (1st)		1	1	Willamette (1st)	1		1
Kansas (1st)		1	1	Yale (1st)	1	1	2
Kent College (1st)	1	1	2	Law Clerk (1st)	1		1
(R)		2	2				
Kentucky (1st)		1	1	TOTAL			
Loyola (Los Angeles) (1st)	3	3	6	General Applicants	96	50	146
Loyola (Chicago) (1st)	1	1	2				
Maryland (1st)	1	1	2				



Space Available: First-class office building, in center of Bellevue business district, for two independent attorneys in four-man suite on a cost-sharing basis. Phone Joseph S. Miller at 454-8185.

Wanted: Used, but relatively current, RCWA Washington Digest and/or Reports for tax-deductible gift or at low cost. Michael F. Fitch, Northwest Washington Legal Services, 203 West Holly, #32, Bellingham, Washington, 98225. Phone (206)734-8680.

For Sale: Rabkin & Johnson current legal forms with tax analysis. 19 volumes and supplement. Completely up to date. Make offer. Joseph P. Mathews, Jr., 435-2546, Arlington, WA.

For Sale: Law practice and building in Grandview, Washington. Interested parties contact Thomas H. Hamann, Brown, Hansen & Steenson, 705 Standard Plaza, Portland, Oregon 97204 — 503/228-4331.

Will Information Sought:

John Halverson Jensen died May 1, 1973, while a resident of Utah. A will was prepared by a Seattle attorney in June, 1970. Contact James S. Milch, attorney, Suite 408, 1007 Fifth Avenue, San Diego, (714) 232-6568.

- 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, Ridpath Motor Inn, Spokane; Willard J. Wright, Chairman.
- Sept. 27 CLE Seminar, Practice under Revised Probate Code, Olympic Hotel, Seattle; Willard J. Wright, Chairman.
- Oct. 3-4 CLE Estate Planning Seminar, Washington Plaza Hotel, Seattle; Kenneth L. Schubert, Chairman.
- Oct. 4-6 Seminar, Investigation, Preparation and Trial of an Aviation Accident Case; sponsored by Aviation and Space Law Section, Seattle/King County Bar; Sun Mountain Resort, Winthrop, WA.; John Sweet, Seattle, Section chairman.
- Oct. 18 CLE Seminar, Antitrust law, Olympic Hotel, Seattle; William L. Dwyer, Chairman.
- Nov. 1 CLE Seminar, Antitrust law, Ridpath Motor Inn, Spokane; William L. Dwyer, Chairman.
- Dec. 5-6 CLE Seminar, Basics of Trial Advocacy, Seattle Center, Rainier Room, Seattle; Alan A. McDonald, Chairman.
- Dec. 12-13 CLE Seminar, Basics of Trial Advocacy, Davenport Hotel, Spokane; Alan A. McDonald, Chairman.

Lawyer Placement Service

1. Position available in small Seattle firm for experienced securities lawyer.
2. Medium-sized Seattle firm is seeking an experienced trial attorney for substantial defense workload. Forward resumes to the Bar Office, c/o Box 10.
3. Attorney, honors graduate with two years trial experience, seeks position doing trial work with private firm in Seattle area.
4. General Services Administration has position open August 1 for attorney in the Office of Regional Counsel, Auburn, Wa. Salary: \$12,167-\$17,497. Details on file in Bar Office.
5. An associate attorney is being sought by small Western Washington firm. Good scholastic standing and some experience preferred.
6. Excellent opportunity available in eastern Washington city for association and rapid takeover of successful downtown practice.
7. Assistant City Attorney. Responsibilities: Drafting Municipal ordinances; write legal opinions for City Departments; District Court Civil litigation; limited Superior Court litigation. \$1,227.00-\$1,315.00.
8. The University of Puget Sound offers an immediate administrative position in Estate Planning. The new post will include a two-year intensive training program in the techniques of deferred giving.

WASHINGTON STATE BAR ASSOCIATION

505 Madison Street
Seattle, Washington 98104

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

LUVERN V. RIEKE
256 CONDON HALL
UNIVERSITY OF WASHINGTON
SEATTLE, WASH. 98195