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WASHINGTON STATE BAR NEWS

FRANCHISES IN WASHINGTON

MEMORANDUM

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WASHINGTON STATE BAR NEWS

FEATURE ARTICLES

IN THE NEWS

DEPARTMENTS

Letters

Section Finances

Editor:

On behalf of the executive board of the Environmental Law Section this is to express a deep concern over recently developed Board of Governors' policy which, if allowed to stand, will drastically reduce the value to members of the Bar Association of sections such as the one I head.

The Environmental Law Section is now in its second year of existence. The section was formed for the primary purpose of bringing to the attention of the members of the Bar recent developments in a new and rapidly developing area of the law, known as environmental law. Since its beginning, it has been very active in these educational endeavors. Within its first two years of existence, not only will the section have sponsored or co-sponsored three symposia or conferences, but it will have issued a report to the Bar News, recommended positions on legislative proposals pending before the state legislature, and conducted board meetings on a regularly scheduled basis.

The success of the section's endeavor has largely been the result of voluntary efforts by section members. However, a financial assistance program supporting the section's activities through use of general Bar Association funds has been a crucial factor insuring success for our section's efforts.

The recently stated Board of Governors' policy leading to the placing of sections on a self-sustaining financial basis will, I fear, transform our section from a valuable continuing educational service arm of the bar to a valueless social gathering at the annual meeting.

As I understand the new policy, it will have the following detrimental effects on the Environmental Law Section:

1. Reduce, by at least 1/3 annually, the number of issues of the section's newsletter.
2. Reduce drastically the motivation of the section to put on educational programs.
3. Reduce, by at least 1/3, the number of meetings of the officers and executive board members.
4. Eliminate any real opportunity for the officers and board members to meet anywhere in the state but Seattle as well as place a particularly heavy burden on board members from eastern and southern Washington.
5. Concentrate the leadership of the Section (and the burdens of running it) on members located in the Seattle area.

This list contains highlights of detrimental effects. It could go on and on.

The Board of Governors' policy is 180 degrees out of phase. Instead of placing active sections on a course leading directly to dormancy, the Board's policy should be one of strong financial support of sections. While the Washington State Bar Association has a number of important functions, none is higher than providing educational opportunities for its members. Without strong sections this activity cannot be achieved. Note is made of the annual budget of the Bar Association for 1974-1975 — $815,000, of which apparently $6,800 (.008%) is allocated to *all* sections! 5% of the budget can surely be used for support of sections; this would amount to approximately $40,000.

The executive board of the youngest of the sections unanimously urges the immediate reevaluation and modification of Board policy regarding funding of sections.

CHARLES B. ROE, JR.
Olympia

Doty, Hall and Johnson Receive Reprimands; Shaw Resigns

In action taken at the December meeting of the Board of Governors, formal reprimands were administered to three lawyers, including **Robert Jack Doty**, Chelan, **Robert J. Hall**, Seattle, and **Norman S. Johnson**, Spokane.

Doty and Hall were each disciplined for one count of failure to file timely income tax returns.

Johnson received a reprimand for unwarranted delays in the processing of several estate probates. Johnson's actions in the probate of three separate estates resulted in the payment of an aggregate of $30,016.93 in additional taxes and interest penalties by the estates.

In other action, the Board of Governors determined to permit Donald Robert Shaw, Jr., Spokane, to resign from membership in the State Bar. Disciplinary action was pending against Shaw.

Editor's Notes

New Year for *Bar News*

The change in editors has now become official. Hugh McGough finished off Volume 28 in fine style, having completed two years of producing a useful, newsworthy publication, during which I enjoyed the pleasure of closely following his constant, efficient development of the monthly news. After a hectic transition month, the *Bar News* is rolling again, headed in the same direction as before, with a few potential changes looming ahead.

The *Bar News* will expose its most obvious change for the year in the March issue, according to the Bar office. Flashing across the pages will be ADVERTISING; ads to titillate the imagination while reading through the tax or probate reports, ads to remind you to finish a will for that client who has threatened to have the Trust Department do it instead. The ads will also remind you that the *Bar News* may stop costing you money in the near future, if the projections come true, and if the intended purpose is served. Advertising was contemplated and finally adopted, primarily for economic reasons. The Board of Governors is fighting inflation. The costs of the Association keep rising, and the dues were likewise raised, but plans were adopted to stop the trend. Much concern has been developed over the plan to keep the Sections self-supporting. While those problems are being worked out, the *Bar News* is on its way toward easing the burden on the budget. Every bit helps, and the *Bar News* will not suffer from content by adding advertising to the format.

A less obvious change is the addition of a *Bar News* staff to aid the monthly production hassles incurred by your editor. Provision for the assistance has been approved by the Board, and it comes as a welcome relief. The staff is composed of one part-time person upon whom the blame for typographical errors can now be placed.

A third change is the inclusion of more regular reports from the various Bar committees, sections and projects. The *Bar News* should function as a primary source of Bar information from all corners of the association. While Sections will continue to pursue their specific goals and publish their newsletters, certain general and regular information may appear here, for those of us who are not members of each section.

A fourth item which has not appeared regularly will be the reporting of those attorneys who pass away during the preceding month.

The news items will hopefully continue with regularity as they did under Hugh McGough's editorship.

REMEMBER: The news comes from you, from all parts of the state. Send it in as it happens. Next month we will publish an audit of the Association which, when compared with the budget for the current year, will illustrate the dreary picture of inflation hitting us all.

E. Huneke

Franchises in Washington

The fast growing franchise system is now the subject of specific regulatory legislation in Washington. This article explores not only the new legislation but goes on to point out other areas of the law where problems and remedies may be found.

By: Donald L. Logerwell

Franchising — It's Advantages & Problems

Franchising is the nation's fastest growing form of business organization. The latest federal government survey shows franchising rapidly on the rise. In 1971, franchised establishments had total sales of $131 billion dollars, nearly 15% of the Gross National Product!

The franchise system has grown horizontally as well as vertically. In addition to the well-recognized fast-food outlets and automobile dealerships, franchises are now being offered for a variety of products and services such as personnel placement, assistance to inventors, automobile repair, and the now infamous chain distributor schemes for cosmetics.

The advantages of a well-organized franchise system are ample. The franchisee has the use of the franchisor's trade name which is at least theoretically already known to some of his potential customers. This is particularly important in our increasingly mobile society because newcomers to the area will generally patronize a business whose name they recognize from their previous location.

In addition, the franchisee will have the advantage of established and proven methods of operating the business. The franchisor has presumably established important guidelines as to purchasing, inventory control, accounting methods, pricing, business decor, uniforms, and the whole range of business practices that can spell the difference between failure and a successful business enterprise.

Thus, the prospective franchisee expects to be able to rely upon the franchisor's established name and business expertise to assure the success of his new venture. The economic events of recent years in Washington have prompted many people to turn away from what they have experienced as the relative insecurity of large companies where the individual's future is heavily dependent upon the company's success. Many of these people have savings which they could use to launch businesses of their own, and a lucrative franchised operation offers a substitute for their lack of previous business experience.

There can be no doubt but that the franchise relationship can be one which is beneficial and highly gratifying to both parties.

Unfortunately, the rapid expansion of the franchise system, plus the general receptiveness of prospective purchasers, has led to abuses by franchise promoters. It makes little difference whether the franchisor is simply inexperienced and overly enthusiastic or plainly dishonest — the result is the same. The franchisee's expecta-

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tions are frustrated, and his investment is either lost or yields an income far below what he had been led to expect.

The law further frustrates the disappointed franchisee who is faced with the prospect of legal action, based upon fraud with its multiple burdens of proof, or an excursion through the murky waters of existing but largely inadequate remedies available to other types of investors such as the federal and state securities laws. Moreover, the unfortunate franchisee often finds that his failure is simultaneous with the failure of the franchisor so that a judgment might very well be worthless.

The Washington Franchise Act

The Washington legislature, at the request of the Attorney General, met the many challenges of the franchise system when it enacted the Franchise Investment Protection Act, R.C.W. Chapter 19.100 (hereafter "the Act"). The Act is a comprehensive attempt to effectively regulate both the sale of franchises and the continuation of the franchisor-franchisee relationship. Though the Act has been in effect since May 1, 1972, there are, thus far, no Washington appellate court decisions construing this important legislation. The purpose of this article is to briefly analyze the Act and suggest some approaches and interpretations in private civil litigation.

Though eight other states (California, Florida, Illinois, Minnesota, Oregon, Rhode Island, Virginia, and Wisconsin) have also enacted broad-base franchise laws, only the California act (Cal. Corp. Code §§ 31000 *et seq*) has been in effect longer than our own. There are still no California appellate court rulings construing their statute, but the prudent practitioner should check for new decisions from California courts since a substantial portion of the Washington Act is similar, if not identical.

Registration

The basic regulatory scheme of the Act is the requirement that the franchisor register all offers with the Director of the Department of Motor Vehicles. R.C.W. 19.100.020. The application for registration must include the complete identification of the franchisor, his experience, a copy of the typical franchise agreement, the total investment required, as well as detailed information regarding the proposed franchise relationship. R.C.W. 19.100.040. Selling or offering to sell an unregistered franchise subjects the offending party to various forms of civil and penal sanctions. R.C.W. 19.100.020. These sanctions are discussed in detail later.

Under certain, limited conditions a franchisor may avoid the registration requirement. R.C.W. 19.100.030. The Act does require, however, the unregistered franchisor to make detailed disclosures to prospective franchisees. The information which must be disclosed is the same as the information which the franchisor would otherwise be required to furnish in a registration statement.

Whether he has registered or claims an exemption, the franchisor must furnish prospective franchisees with a copy of the so-called "offering circular." R.C.W. 19.100.080. That is, he must provide a copy of the materials which the Act requires in connection with an application for registration. These materials must be supplied at least forty-eight hours prior to the sale of the franchise. R.C.W. 19.100.080.

Finally, the Act further regulates the sale of the franchise by requiring the franchisor to submit copies of advertisements to the Director at least seven days prior to publication. R.C.W. 19.100.100. If the Director finds that the proposed advertisement contains any statements that are false or misleading, or if the advertise-

ment omits necessary information, he shall inform the franchisor, who is then precluded from publishing the advertisement. R.C.W. 19.100.110. If he desires, the franchisor can then request a hearing with the Director to rescind the order.

Thus, the Act provides for the regulation of the sales and offers to sell by specifying the information which the franchisor must disclose to prospective purchasers, as well as providing for the review of advertising copy before its publication.

Provisions Governing the Conduct of the Franchise Relationship

The Act does, however, go beyond the mere regulation of franchise sales since experience has shown that the unequal bargaining power of the parties also leads to abuses after the franchise relationship has been established. To curb the power of the franchisor after the franchise relationship has been effectuated, the Act sets down a detailed listing of the rights and prohibitions which shall govern their continuing conduct. R.C.W. 19.100.180. First, both parties must "deal with each other in good faith." This is, however, the only requirement specifically imposed on the franchisee, and the remainder of the rights and prohibitions deal with the conduct of the franchisor. In the words of one commentator, these rights and prohibitions constitute the "Franchisee Bill of Rights." D. Chisum, *State Regulation of Franchising: The Washington Experience,* 48 WASH. L. REV. 291, 369 (1973) (hereinafter cited as "Chisum").

The restrictions on franchisor conduct are spelled out in ten specific areas. Each prohibition has been shown by experience to be conduct which stems from the franchisor's inherent power over his franchisees, and in each area the Act attempts to prohibit the exercise of this power to the detriment of the franchisee. Briefly stated, the franchisor is prohibited from:

1. Restricting the right of franchisees to join "an association of franchisees."
2. Imposing *unreasonable* restrictions on the franchisee's sources of supply.
3. Discriminating between franchisees.
4. Selling to the franchisee at other than a "fair and reasonable price."
5. Dealing with the franchisee's customers without disclosing such dealings to the franchisee.
6. Invading the franchisee's territory, either directly or with another franchise, if the franchise agreement provides for exclusive territories.
7. Requiring the franchisee to waive the rights granted by the Act.
8. Imposing contractual or other requirements other than those which are "reasonable and necessary."
9. Refusing to renew the franchise without paying the fair market value of the business and its good will.
10. Terminating the franchise prior to expiration for other than good cause.

There will admittedly be future problems in interpreting these prohibitions. Terms like "reasonable and necessary," "fair and reasonable price," and "good cause" have long been the source of honest differences of opinion in both lay and legal use. Nonetheless, the Act does go far to equalize the balance of power and put the aggressive franchisor on notice that his power over his franchisees is not unfettered. Thus, while there are as yet no appellate decisions interpreting the Act, there are related cases from other jurisdictions which arose out of the abuse of the franchisor's power and should be of some assistance in defining the conduct which the Act seeks to proscribe.

Public and Private Remedies

The final portion of the Act deals with the remedies which are available in the event of a violation. The state is empowered to bring an action to restrain any conduct prohibited by the Act. R.C.W. 19.100.210(1). The violation of an injunction carries a civil penalty of $25,000. R.C.W. 19.100.210(2). Criminal penalties are also possible for willful violations of the Act or any order entered thereunder, although no such penal sanctions will be imposed upon any person who proves that he had no knowledge of the rule or order he violated. R.C.W. 19.100.210(3).

There can be no doubt but that the power of the state to restrain unlawful conduct and the power to impose criminal sanctions can be extremely effective. But, the limited resources of the attorney general and the county prosecutors, coupled with a general reluctance to pursue "white-collar crime" with vigor, make the practical effect of these provisions somewhat diminished. Moreover, the individuals who are most prone to abuse the franchise relationship tend to move quickly. Having maximized his

return in a particular area, the hustler moves on to greener pastures, and law enforcement tends to be substantially less concerned when the illegal activity has terminated. The general attitude seems to be to leave the already injured individuals to their civil remedies.

Thus, the potentially most effective provisions of the Act deal with the civil remedies available to injured parties. Unlike some other regulatory schemes, such as the Federal Trade Commission Act, this legislation specifically authorizes private actions by parties injured by either an unlawful sale (or offer to sell) or a violation of the "Bill of Rights." R.C.W. 19.100.190. Unlawful sales or offers may result in either rescission or damages which the court may "increase . . . to an amount not to exceed three times the actual damages sustained." R.C.W. 19.100.190(3). In addition, the prevailing party is entitled to costs, *including* a reasonable attorneys' fee. *Id.* The treble-damage provision, plus the award of attorneys' fees, offers substantial incentive to the private litigant.

Chain or Pyramid Schemes

There is one further provision in recent legislation that is relevant here. The 1973 legislature enacted a provision entitled "Chain Distributor Schemes." R.C.W. Chapter 19.102. As defined, a "chain distributor scheme" is a sales device whereby each investor is allowed to recruit one or more additional persons who are also granted the right to recruit others and "further perpetuate the chain of persons who are granted such license or right. . . . " R.C.W. 19.102.010(1). Such schemes are declared to be unfair or deceptive acts under the state Consumer Protection Act. R.C.W. 19.102.020.

In simple terms, a chain (or "pyramid") scheme is a multiple (usually four) level distribution scheme where each level sells the product to the next level down at a substantial profit. In recruiting "distributors," the potential investor is told that his income is solely dependent upon the number of sub-distributors he can recruit. Little mention, if any, is made of selling the product to ultimate consumers so that this scheme, like the chain letter, soon runs out, leaving someone holding the unsold merchandise. See 15 *Business Organizations (Glickman, Franchising)* § 2.03 [3] [a] (Matthew Bender, 1974).

The provision outlawing chain distributor schemes was originally a part of the Franchise Investment Protection Act because the practice denounced therein was commonly found in some questionable franchise schemes. It was reenacted as a separate chapter after a King County *(State v. Golden Industries,* King County Cause No. 750248*)* Superior Court decision declaring the provision unconstitutional on the technical ground that it violated Art. II, § 19, of the Washington Constitution, prohibiting legislation embracing more than one subject.

The validity of that unappealed decision is questionable since this practice is common in franchise schemes which the Franchise Act was specifically designed to curtail. Thus, the practitioner faced with a chain distributor scheme prior to the effective date of Chapter 19.102 should not hesitate to rely upon its predecessor, R.C.W. 19.100.010(16) and R.C.W. 19.100.180 (2)(k).

The Unregistered Franchisor — Quick Remedies for the Private Litigant

The simplest situation covered by the Act is sales (or offers) by an unregistered franchisor. The sale of an unregistered franchise is unlawful, R.C.W.19.100.020, and the injured party may sue for rescission or treble damages. R.C.W. 19.100.190. Since the sale of an unregistered franchise is itself a violation of the Act, the plaintiff need prove only that he purchased a franchise, paid a franchise fee, and that the franchisor was not registered. Plaintiff need not prove fraud or allege that he was misled. As a matter of prudence, the plaintiff might allege other related claims (breach of contract, fraud, securities fraud, antitrust), but the thrust of his action should concentrate on the Act. Indeed, summary proceedings may well be appropriate, and counsel should consider seeking summary judgment *of liability* only and leave the question of damages to an expedited trial (or settlement negotiations) limited to that issue.

The only defense available to the unregistered franchisor is the contention that he is exempt under R.C.W. 19.100.030. The mere allegation of exemption, either by pleading or by sworn affidavit, is not sufficient to avoid summary judgment since the Act specifically provides that "the burden of proving an exception or exemption" falls on the party claiming it. R.C.W. 19.100.220. Thus, the plaintiff need only show that the franchisor has not registered, preferably by affidavit from the responsible individual in

the Department of Motor Vehicles. The unregistered franchisor could then defeat summary judgment only if he can show that he meets the specific requirements of one of the three conditional exceptions.

It should also be noted that at least one of the conditional exceptions (full disclosure plus $5 million net worth, twenty-five operating franchises, and a franchise fee in excess of $100,000) requires a filed claim of exemption. R.C.W. 19.100.030, last paragraph. Failure to file such a claim should be treated the same as failure to register.

On first examination of a potential claim, it may appear that the amount of the franchisee's investment is so relatively small that litigation would be inadvisable. One should, of course, keep in mind that the Act does provide for costs, including attorneys' fees, and there is no reason to predicate the fee awarded on the amount of the damage. Rather, the fee should reasonably reflect the time and effort expended, as well as the desirability of encouraging private actions to enforce the Act. Moreover, the possibility of a class action should not be overlooked. Although it may have generally dampened the ardor for expansive class actions, the Supreme Court's recent decision in *Eisen v. Carlisle & Jacquelin*, U.S., 94 S. Ct. 2140 (1974), should have no effect on a class action of this type.

The possibility of such a class action for relatively small franchisees should also be viewed in light of recent events. Though they have largely subsided at this time (see SECURITIES REGULATION *infra*) there have been a flurry of organizations operating in this state who conducted mass meetings with a revival atmosphere which promised both personal growth and business success and ultimately led to arrangements that were franchises as defined in the Act. The franchisors ignored the registration requirement for the most part, and most of the franchisees (labelled variously as "distributors," "enrollees," "agents," etc.) made small investments, but these were probably sufficient in number to justify considering a class action. The question of recovering on any judgments obtained is, of course, also suspect and should be investigated before any substantial expenditures are undertaken.

Proving the franchisee's damages may pose some additional, interesting questions. There can be no doubt of his right to recover his investment and any loss of income over his previous employment or business. In addition, Prof. Chisum has concluded that the "loss of bargain" rule (*Salter v. Heiser*, 39 Wn. 2d 826 (1951)) entitles the franchisee to damages up to the amount he would have earned had the franchise arrangement been as profitable as it was represented. *Chisum, supra*, at 385. Though helpful to the injured franchisee, this approach to damages will soon be subjected to severe tests in court, and the outcome may not be as clear as Prof. Chisum suggests. Prudent men will offer both theories.

The Registered Franchisor — Assuring Compliance With the Act

If the franchisor has registered with the Director, the relief available to an injured franchisee may not be as easy or swift as that available where the franchise was unregistered. Nonetheless, the Act does impose certain specific requirements upon a registered franchisor and if these are not met, a summary proceeding may also be possible.

First, one should determine exactly what the franchisor disclosed in his application for registration. This disclosure should be carefully compared with the information supplied to the prospective franchisee since the Act requires identical disclosure at least forty-eight hours prior to the sale of the franchise. R.C.W. 19.100.080.

Second, inquiry should be made as to any advertisements that the franchisee may have responded to. If there were advertisements, the next step is to determine whether the franchisor had obtained prior approval for publication. R.C.W. 19.100.100.

If either of these requirements (incomplete or false disclosure or unapproved advertising) has not been met, summary relief, including rescission and damages, should be available without a detailed showing of false statements, detrimental reliance or the like, except for the franchisee who had prior knowledge of the facts concerning the untruth or omission. R.C.W. 19.100.190(2).

In addition to defects in the sale of the franchise, there are, of course, the rights and prohibitions specified in the Franchisee Bill of Rights, R.C.W. 19.100.180. These rights have already been mentioned above and a detailed discussion is impossible here. Suffice it to say that, the complaints of a disappointed franchisee should be explored in full and carefully checked

against the restrictions the Act imposes on franchisor conduct.

Application of the Act to Existing Franchises

Though the effective date of the Act is May 1, 1972, it also provides that "the provisions of this chapter shall be applicable to all franchises and contracts existing between franchisors and franchisees. . . . " R.C.W. 19.100.900. Obviously, this does not mean that the provision regarding disclosure prior to sale or approval of advertising copy apply to franchise sales that were negotiated prior to the Act's effective date. Rather, the Act applies the "Franchisee Bill of Rights" to existing franchisor-franchisee relationships.

Prof. Chisum has suggested that this provision is subject to possible challenge on the ground that it violates state and federal constitutional provisions forbidding laws which impair the obligations of contract. *Chisum, supra,* at 381. Though he concludes that the provision is probably free of constitutional problems in most instances, his discussion of the issue and the cases cited are required reading for anyone who attempts to apply the Act to a pre-existing franchise.

One further point should be emphasized here. As discussed in the last section of this article, the rights and remedies provided by the Act are not exclusive and other alternative theories of relief are even more important here since the Act may not apply or may be found to be constitutionally defective.

Rights, Remedies and Problems Not Covered by the Act

Though the Act is comprehensive in scope, there are several other areas where there may be problems as well as additional rights and remedies, arising out of a franchise relationship. Chief among these, are the federal and state securities laws, the federal and state antitrust laws and the Robinson-Patman Act. A detailed discussion of the effect of these provisions on a franchise relationship is far beyond the scope of this article but each will be touched upon briefly to point our prospective problem areas.

Securities Regulation.

The questions of how state and federal securities laws might apply to franchise arrangements is no stranger to the state and federal courts. Disappointed franchisees have often sought the summary remedies available under the securities laws and the Securities and Exchange Commission has actively attempted to curtail the activities of some of the more notorious pyramid distributor programs. Their efforts have to date met with mixed results. Compare *SEC. v. Glenn W. Turner Ent., Inc.*, 474 F.2d 476 (9th Cir. 1973) with *SEC. v. Koscot Interplantery, Inc.* 365 F.Supp. 588 (N.D. Ga. 1973).

Whether a particular arrangement is an investment contract (and therefore a security under Washington and federal laws) depends upon whether "the scheme involves an investment of money in a common enterprise with profits to come *solely* from the efforts of others." *SEC v. W. J. Howey, Co.*, 328 U.S. 293, 301 (1945). [Emphasis added] Even liberally construed, the ordinary franchise arrangement will likely not meet this test since the franchisee normally makes not only a financial investment but thereafter participates in a major and substantial way in the operation and management of the business enterprise.

But, the question of how this test applies to the infamous pyramid schemes of Glenn Turner and his predecessors is less clear. As the Ninth Circuit described it, Mr. Turner's scheme was a "gigantic and successful fraud" perpetrated at mass meetings which were "like an old time revival meeting, but directed toward the joys of making easy money rather than salvation." *SEC v. Glenn W. Turner Enterprises, Inc., supra,* at 478-79. Ostensibly, the investor purchased a written and recorded instructional program aimed at improving his self-motivation and sales ability. In point of fact, what he purchased was the right to sell these materials to others and receive a part of the purchase price as his commission! The materials themselves were little more than instructions as to how to recruit other potential investors, including giving the prospective purchaser the impression of wealth (expensive autombiles, fancy clothes) even if it has not been attained or, as the Ninth Circuit put it, "fake it 'til you make it." *Id.* at 480. The actual selling was done by Turner's organization and the responsibility of the investor was limited to recruiting potential purchasers. Under these circumstances, the Ninth Circuit concluded that an investment contract was involved subject to federal securities regulation.

It is to be hoped that the use of the mass meeting to sell such schemes has been effectively

curtailed, both by the Ninth Circuit's decision as well as state enforcement of our own Chain Distributor legislation. In addition, the Federal Trade Commission has concluded that such multi-level pyramid marketing programs are inherently unlawful. *In re Ger-ro-mar, Inc.*, FTC Docket No. 8872 (Aug. 21, 1974). Finally, the United States Senate has approved legislation outlawing pyramid selling plans. S. 1939, 94th Congress, 2nd Session.

This does not, however, mean that parties previously injured have been compensated. Some have, particularly those involved in litigation brought by the Washington attorney general.

The state has thus far secured litigated or agreed judgments in King County Superior Court against five organizations which include court approved plans which give each franchisee (or "distributor") the right to seek a refund. Two other cases have been filed but remain pending.

Defendant	Product	King County Cause Number
Agreed or litigated judgments:		
Golden Industries	Cosmetics	750248
Success Marketing Institute of America	Sales Training	760430
Askew-Hesler Associates	Cash Discount Cards	770205
Nite & Day Securites Systems, Inc.	Burglar Alarms	779590
Commercial Service Courier, Inc.	Advertising Delivery Service	776388
Pending:		
Shannon Enterprises, Inc.	Ballpoint pens & lighters	779740
Memory World, Inc.	Brassieres	779259

Many others probably have not been compensated and a private class action under state and federal securities legislation as well as the franchise and chain distributor acts would offer a remedy, assuming that judgments obtained are satisfiable.

The affirmative action in this area should not, however, lull public or private law enforcement into complacency. Promoters have demonstrated amazing resiliency and an ability to modify their approaches for a fresh sweep into the bank account of the unsuspecting victim. Vigilance is both important and necessary in this area.

Antitrust Problems.

Perhaps the most troublesome area of the franchise relationship is the extent to which franchisor restrictions on franchisee conduct may run afoul of the federal and/or state antitrust laws. This conflict stems from the fact that the franchisor must exercise some control over his franchisees in order to protect his trademark or service mark. On the other hand, many of the controls exerted may have a strongly anti-competitive effect bringing the antitrust laws to bear.

Briefly, one must first understand the nature of a trademark (or service mark, trade name or the like). A trademark is some distinctive word, symbol or the like which is used to distinguish the goods or services of one business from that of all others. It takes on the characteristics of a trademark when the purchasing public has come to expect all products or services using the mark to emanate from a single source even though they need not know or care who that single source is. Trademark rights are conferred by common law and the various state and federal trademark laws offer no substantive rights but rather provide for registration and, in the case of federal registration, nationwide notice and access to the federal courts. 15 U.S.C. 1101 *et seg.*

Because of the inherent nature of a trademark, the franchisor who licenses others to use his business name must retain sufficient control over the franchisee's dealings to assure that they will use the mark on either the same product or service or one of substantially the same quality as that which the purchasing public had come to associate with the mark as used by the franchisor and/or other licensees. The question then is the extent to which controls are necessary to protect the franchisor's trademark and the extent to which they are not only unnecessary but violative of the antitrust laws. Principal among the suspect types of restrictions are territorial or customer limitations, price fixing, and requirements that the franchisee purchase from the franchisor ("tying"). Related problems may also arise from refusals to grant a franchise or termination of franchises which might be viewed as unlawful refusals to deal.

One provision frequently found in a franchise agreement is the territory granted the franchisee. Indeed, the Washington Franchise Act not only recognizes territorial restrictions but affirmatively protects the franchisee from invasion by the franchisor or another franchisee. R.C.W.

19.100.180(2) (f). This does not mean, however, that territorial limitations are free from attack under the antitrust laws. Horizontal restrictions (i.e., restrictions imposed by agreement of persons at the same level in the distributive chain) on a dealer's territory have long been recognized as unlawful. See, e.g., *Timken Roller Bearing Co. v. United States*, 341 U.S. 593 (1951). Vertical restrictions (i.e., those imposed by a manufacturer on his own distributors) were thought to be permissible until the Supreme Court's 1967 decision in *United States v. Arnold Schwinn & Co.*, 388 U.S. 365 (1967) when the Court specifically held that "where a manufacturer *sells* products to its distributor subject to territorial restrictions upon resale, a *per se* violation of the Sherman Act results. . . . " Id. at 379. See also *United States v. Topco Assoc., Inc.*, 405 U.S. 596 (1972).

Although the lower federal courts seem reluctant to follow the *Schwinn* decision to its ultimate conclusions in similar but not identical settings, there can be little doubt that the franchisor who sets up a territorial system which precludes or penalizes competition between his franchisees is exposing himself to severe challenge, Indeed, one of the nation's largest franchise systems, soft drink bottlers, is now under massive attack by the Federal Trade Commission and many franchise systems which previously imposed territorial limitations on the franchisees have wisely notified their franchisees that the territorial restrictions would no longer be honored or required. Proposed federal legislation (see, e.g., H.R. 312 and H.R. 566, 94th Congress, First Session) would alter the *Schwinn* decision to some extent, principally for the protection of the bottlers. Moreover, the FTC has only recently been successful in an attack on the territorial and other restrictions imposed by the brewer of Coors beer. *Adolph Coors Co. v. FTC*, 497 F.2d 1178 (10th Cir. 1974). An appeal to the U.S. Supreme Court is now pending decision.

Finally a recent decision by the Ninth Circuit Court of Appeals goes far to limit the ability of a franchisor to vertically restrict the territory of his franchisees. In *GTE Sylvania Inc. v. Continental T.V., Inc.*, 1974 CCH Trade Cases ¶ 75,072 (¶ 75,435 CCH Trade Cases indicates the case will be reheard by the 9th Circuit en banc on March 12, 1975, and the pending decision has been "withdrawn.") (9th Cir. 1974), the court held that Sylvania's "elbow room" policy which imposed location (and thereby territorial) restrictions on its franchisees was a *per se* violation of Section 1 of the Sherman Act!

Price fixing by the franchisor would ordinarily be highly suspect. In Washington, however, a fair trade agreement under R.C.W. Chapter 19.89 would appear to protect the franchisor insofar as he had signed agreements with Washington franchisees for the sale of the franchisor's product. Such arrangements are precluded from federal antitrust laws by the Miller-Tydings Act, 15 U.S.C. 1.

This does not mean, however, that the franchisor is free in Washington to set and enforce prices for his franchisees. First, the product must be manufactured by the franchisor. R.C.W. 19.89.020. Second, the prices can be enforced only against franchisees who sign fair-trade agreements. *Remington Arms Co. v. Skaggs*, 55 Wn.2d 1, 345 P.2d 1085 (1959). Third, a franchisee may be free to withdraw from the fair-trade agreement, depending upon its terms, and it would seem to be a clear violation of the Franchise Investment Protection Act to terminate the franchise for refusal to enter into a fair-trade agreement.

Finally, efforts are presently being made by the Attorney General to repeal our Fair Trade Act which would remove all justification for price fixing by the franchisor.

Controlling the franchisee's source of supply is another common form of restriction often found in franchise agreements. Such a requirement may run afoul of the antitrust laws since it amounts to "tying." That is, it requires the franchisee to purchase something from the franchisor (which he may wish to purchase elsewhere) in order to assure his continued use of the franchisor's trade or service mark. Tying has long been a recognized violation of the federal antitrust laws and is explicitly forbidden by Section 3 of the Clayton Act, 15 U.S.C. 14. Thus, a requirement that the franchisee buy some of his supplies from the franchisor would seem to run clearly afoul of the Clayton Act but the federal courts have recognized the franchisor's need to protect his trademark and have examined such requirements with care. See, e.g., *Siegel v. Chicken Delight, Inc.*, 448 F.2d 43 (9th Cir. 1971)

In short, the federal courts have adopted the view that restrictions on sources of supply must be reasonable, the precise approach adopted in the Franchise Investment Protection Act. R.C.W. 19.100.180(2)(b).

Since the *Chicken Delight* decision, some franchisors have adopted the practice of offering a "turn key" franchise. That is, the sale of a supposedly fully established business along with the franchise. Though the sale of such a business may avoid some of the tying problems as they relate to fixtures and equipment such an arrangement is still subject to scrutiny since it may amount to nothing more than an attempt to circumvent the antitrust laws. See, e.g., *Beefy Trail, Inc. v. Beefy King International, Inc.*, 1972 Trade Cases ¶ 74,127 (M.D. Fla. 1972).

Termination of an existing franchise is subject not only to the Franchise Act, R.C.W. 19.100. 180(2)(j), but may also raise antitrust problems. See, e.g., *FTC v. Texaco,* 393 U.S. 223 (1968). If the termination is the result of an anti-competitive agreement between the franchisor and other of his franchisees the franchisor cannot claim a justified, unilateral refusal to deal. *United States v. General Motors,* 384 U.S. 127 (1966). Nor can the franchisee be terminated because he refused to purchase his supplies from the franchisor or one of the franchisor's selected suppliers. *FTC v. Texaco, supra.*

Finally, the franchise relationship may pose problems of price discrimination within the Robinson-Patman Act. 15 U.S.C. §§ 13, 13a, 13b, 21a. Franchisors may not discriminate in prices as between franchisees. Moreover, the franchisor may not discriminate against non-franchisees who purchase its products and operate at the same level in the distributive chain as the franchisee. See *FTC v. Fred Meyer, Inc.* 390 U.S. 341 (1968.)

Conclusion

The Washington Franchise Investment Protection Act provides much needed regulation of the sale and operation of franchises in this state. Much of this legislation will yet require judicial interpretation but the attempt to equalize the uneven bargaining power of the parties should be largely successful. Moreover, the franchise relationship may subject the parties to other laws dealing with business conduct, specifically the securities law and the antitrust laws to provide further control over this fast growing form of business organization. □

Jail Standards Project

The Washington State Bar Association has been awarded a $40,000 grant from the American Bar Association's Commission on Correctional Facilities and Services to establish comprehensive jail standards for local facilities throughout the state. The grant will be administered by the State Bar Association Corrections Committee chaired by Croil Anderson. David B. Kenyon has been named as director for the 1 year project.

The American Bar Association received a total of $1 million from the Edna McConnell Clark Foundation to be distributed to state and local bar associations for the purpose of studying and improving correctional systems. The new program is called BASICS (Bar Association Support to Improve Correctional Services). The State of Washington is one of three to receive initial demonstration grants under the program.

The initial work of the Bar Committee will involve close cooperation with the Washington State Jail Commission, which was created by the 1973 legislature for the purpose of drafting jail standards. The chairman of the Commission is C. James Coughlin, Director of the King County Department of Corrections.

Following a close look at the Jail Commission's proposed legislation, which contemplates a permanent commission with authority to close jails which do not comply with standards set by the Commission, the Bar Committee will work with citizens' groups and interested experts in the fields of corrections, medicine, psychiatry, architecture, nutrition, and other related disciplines to formulate minimum standards for the operation of Washington jails.

The project has opened offices in the United Pacific Building, Suite 518, 1000-2nd Avenue, Seattle. Telephone: 622-8548.

Dave Kenyon

Survey of Corporate Law Department Salaries

Information from 202 corporations which employ two or more attorneys was tabulated for a study of attorneys' compensation, conducted by Altman & Weil, Inc., Management Consultants with headquarters in Ardmore, PA. The study indicates that attorneys without managerial responsibilities have received increases in compensation amounting to an average of 5.8 percent since November 1973. In the 1972 to 1973 period this group increased 6.8 percent.

2,453 individual salaries were tabulated to compile the report. Of these, 1,719 were in the "Attorney" category.

The participating employers hired a total of 260 new non-managerial attorneys during 1974, at a median salary of $21,000, up from $18,500 the prior year. Starting salaries of recent law school graduates ranged from $12,000 to $21,500 with the most common start-rate being $15,000 to $16,000.

The median total compensation (salary plus cash bonus) of heads of corporate law departments is $64,000, up 12% from 1973. There is a considerable range, however, depending both upon the individual counsel, the industry and the size of the law department. 187 such positions were reported.

Deputy Chief Legal Officers are those who assist the department head in the management of a larger department, or who head the legal function for a relatively independent subsidiary. The median compensation of this group is $50,000, a rise of 13%.

Managing Attorneys who supervise other lawyers show a median compensation of $42,000. 296 such positions were reported.

"Attorneys," who may range from those recently admitted through senior counsel with substantial legal responsibilities, are paid a median rate of $26,450 including cash bonuses. The 25th percentile rate for this group is $20,260. The 75th percentile rate is $33,380.

122 paralegal positions were reported. These positions command a median annual rate of $13,013. 48 of the 202 law departments report the use of paralegal assistants, up from 38 departments last year.

The full survey report, available to all bona fide employers, provides information by industry, location, year of admission and other factors.

SUMMARY DATA

Position Title	Chief Legal	Deputy	Mgng.Atty.	Attorney	Paralegal
Number Reported	187	129	296	1,719	122
Average Salary	$58,908	$47,559	$40,582	$26,768	$14,283
Number Paid Bonus	114	69	137	356	10
Average Bonus	$10,617	$ 5,544	$ 3,282	$ 783	$ 72
Average Compensation	$69,524	$53,103	$43,864	$27,551	$14,355
Low Quartile	$49,500	$43,000	$36,050	$20,260	$11,352
Median Compensation	$64,000	$50,000	$42,000	$26,450	$13,013
Upper Quartile	$81,400	$60,000	$50,000	$33,380	$15,720

The Board's Work

Extracts from the minutes of the meeting of the Board of Governors at Alderbrook Inn, Union, Washington on November 8th and 9th, 1974.

Discipline

The request of Donald Robert Shaw, Jr. to be allowed to resign as a member of the Bar Association was approved. The vote on this motion was 8 to 1. Donald Robert Shaw, Jr. was granted permission to resign with Disciplinary procedures pending.

Committee on Code of Professional Responsibility

The question of setting standards for lawyers while candidates for a judicial position was referred to the Committee on the Code of Professional Responsibility, with the request that the committee make a recommendation to the Board with specific guidelines, standards, and penalties for violations.

Compulsory Malpractice Insurance Program

The President will call a Special Meeting of the Board of Governors to discuss on-going developments in the Compulsory Malpractice Insurance Program sometime prior to November 20th, 1974. It was further affirmed that prior public notice of the meeting would be in compliance with the provisions of the Open Meetings Law. The vote on this motion was 8 to 1.

The certificate required in applying for exemption from the Bar Association's Professional Liability Insurance Program, as submitted by Board Member William Gates, was approved.

The Petition for Legal Services and Public Defender Attorneys to be exempted from the mandatory Bar Association Malpractice Insurance Program was denied.

Legislative Committee

Patrick C. Comfort, Chairperson of the Legislative Committee and William Stephens, the Legislative Committee's Representative in Olympia, appeared before the Board to discuss the Legislative Program and possible or projected legislation which might affect the legal profession.

Concerning the Bar Act:

1. It was decided that no amendments to the Bar Act be proposed or supported by the Bar Association at the upcoming session of the Legislature.

2. A written brief and opinion will be obtained as to the legal effect of the proposed "Hauth" amendment to the Bar Act including the tax consequences, if any, if the proposed amendment were supported by the Bar Association and adopted by the Legislature. The President will select an attorney or attorneys to prepare these briefs and opinions. The President should outline for the selected attorney or attorneys the perimeters for the research. David Hoff abstained on the roll call on this motion.

House Bill No. 1397, relating to *Attorneys Fees to Prevailing Parties in Actions on Contract,* will be supported by the Bar Association. On the roll call, Messrs. Heath and Redman abstained.

The Office of the Governor will be advised that, in response to an inquiry from that office, the Bar Association will support an "Oregon-Type" Bill relating to the possession and/or use of marijuana "with a strength percentage limitation," with the reservation that the Board of Governors have an opportunity to see the ultimate draft of the Bill before a final and definite commitment.

The motion relating to legislation adopted by the Group and Prepaid Legal Services Committee at its meeting on November 4th, 1974, was approved and adopted by the Board of Governors. The motion stated that, "in view of the recently adopted Federal Pension Reform Act which preempts Group and Prepaid Legal Services Legislation as to commerce clause employee groups, it would be inappropriate at this time to seek passage of group and prepaid legal services legislation in the form of S.B. 3212, as originally filed in January of 1974 or as subsequently amended by Senator Woody or in any other form."

The Bar News

The Board determined that (1) a new editor for the Bar News not be confirmed at this time, (2) a proposed advertising program for the Bar News be referred to the Editorial Advisory Board for recommendation, (3) no funds be allocated for layout, design and clerical help in connection with the publication of the Bar News at this

time and (4) the President and the Executive Director will arrange a meeting with the Editorial Advisory Board at that Board's early convenience to discuss matters of mutual interest and concern.

Judicial Discipline

In response to a request from the Superior Court Judge's Association, the President will designate two lawyer members of a proposed Commission on Judicial Discipline.

Meeting Schedule of the Board

The Board of Governors will meet in Seattle in December, in Olympia in January, in Tacoma in February, in Vancouver, B.C. in March, in Yakima in April, at Sun Mountain in May, at Ocean Shores in June and at Rosario in July and at the Annual Meeting in September.

It was moved by David Hoff and seconded by Mr. Pritchard that the February meeting of the Board be eliminated from the schedule. This motion was tabled.

Mid-Year Continuing Legal Education Seminar Series

The planned mid-year Continuing Legal Education Seminar Series in Palm Springs was cancelled.

Western States Bar Conference

Any member of the Board of Governors attending the Western States Bar Conference meeting in Monterey, California, February 26th to March 2nd, 1975 will be reimbursed for transportation (coach air fare or actual mileage) and $38.00 per day for other expenses not to exceed four days. Each member so attending will be assigned, by the President, an area of Bar Association activity for particular inquiry and study. The vote on this motion was 5 to 3 with Messrs. Gates, Pritchard and Heath voting "no".

Appellate Public Defender's Evaluation Project

The Board approved the adoption by the Supreme Court of the plan presented in the Public Defender's Appellate Evaluation Project, as amended in the recommendations of the Bar Associaton's Legal Aid Committee.

The Court will be advised of the Board of Governor's agreement with the sentiment, as expressed in the recommendation of the Criminal Law Section, that adequate compensation be paid counsel in these cases.

Young Lawyers Section

The request for approval of two proposed surveys, as outlined by the Chairperson of the Young Lawyers Section in his letter of October 18th, 1974, was granted with minor changes in the form of the survey, as agreed to by the Chairperson, who was present and participated in the discussion.

Civil Rights Committee

The request of the Civil Rights Committee for authorization to conduct a survey concerning the operation of various systems for providing legal services to persons who are accused of crimes but unable to afford attorneys fees was referred to the Legal Aid Committee, which is already heavily involved in this assignment, with the request that the Legal Aid Committee consider the interest of the Civil Rights Committee in connection with its own work and the work of the Public Defender Services Survey, which it is contemplated the Legal Aid Committee will coordinate.

The Budget Committee

The fiscal year-end Credit Balances and Recommended Budgets for Sections as suggested by the Budget Committee were approved and adopted. It was further agreed that the other recommendations of the Budget Committee as to policy be approved with (1) an addition to Section "C" of the recommendations, adding, "The nine members whose expenses are to be paid shall be designated at the beginning of each fiscal year by the Section"; (2) adding to Section "H" the sentence, "In situations involving seminars or special events for which the regular formula is deemed to be inequitable, special allocations and divisions can be negotiated"; (3) Travel expense for attendance at Board of Governors Meetings by the Chairperson of the Young Lawyers Section shall be charged to the Young Lawyers Section, but sufficient additional allocation of funds to cover this expense shall be allocated from the General Fund to the Budget of the Young Lawyers Section. The vote on this motion was 7 to 2.

Special Task Force on 276

The request of the Special Task Force on Initiative 276, that a survey be conducted within

the Bar Association concerning the provisions of that initiative, was approved with Board member John J. Champagne designated to supervise the conduct of the survey and to discuss with Chairperson of the Task Force the details of the survey as to form and method of distribution.

Task Force on Professional Utilization

James R. Hermsen was named an additional member of this Task Force.

Corrections Committee

Lonnie Davis, Al Ressler and Arnold Whedbee were named as members of the Corrections Committee.

Court Rules and Procedures Committee

The Board reaffirmed its position that, with reference to possible amendments to the Probate Code, any rule relating to attorneys fees should be based upon the criteria for determining such fees provided in the Code of Professional Responsiblity.

The Supreme Court was requested to defer action on the proposed change to Rule No. 41 at this time. This motion failed with there being two votes for the motion, five votes opposed to the motion and Mr. Redman abstaining.

Family Law Section

The proposed By-Law Amendments for the Family Law Section were approved.

Ben Franklin Legal Aid Association

The Board determined that an amendment to the present Admission To Practice Rule 7 be submitted to the Supreme Court in the following manner and degree:

(1) The present Section (A) of Rule 7 remain unchanged.

(2) Section (B) subsection (1) remain unchanged.

(3) A new subsection (2) of Section B inserted to read as follow:

> "(2) A member in good standing of the Bar of another state while rendering service in either a bar association or governmental sponsored, legal services, public defender or similar program providing legal assistance to indigents and solely in one's capacity as a non-compensated volunteer of that office may upon application and approval, practice law and appear as counsel before the courts of this state in any action or proceeding in association with an active member of the State Bar who shall be the attorney of record therein and be responsible for the conduct thereof."

(4) The present subsection (2) of Section B be renumbered so that it shall become the new Subsection (3) of Section B.

The vote on this motion was 7 to 1.

Alcoholism and the Profession

The Board adopted the following Resolution:

> "Whereas there appears to be a strong correlation between malpractice claims, disciplinary proceedings, disbarments and alcoholism and
>
> Whereas a number of individuals have suggested to the Board of Governors the need for an examination of what they believe to be a serious problem of alcoholism existing among members of the Washington State Bar Association, now, therefore,
>
> Be it resolved that local bar associations in the State of Washington be encouraged to inaugurate, where the local bar deems it appropriate, special committees to investigate the problem of alcoholism in the profession.
>
> Be it further resolved that such local Bar committees make recommendations to the Board of Governors with a view toward determining the role of the Washington State Bar Association in assisting to alleviate the problems of alcoholism among its members and to assist members of the Association who are afflicted with this disease."

The Law Schools and the Code of Professional Responsibility

The entire subject matter of the Law Schools and the Code of Professional Responsibility, the treatment of ethics questions on the bar examination, ethics courses taught in the law schools, and other related questions were referred to the Legal Education Liaison Committee and to the Board of Bar Examiners for investigation, study and recommendation.

Taxation Section

The Legislative Request of the Taxation Section was referred to the Legislative Committee for consideration and recommendation to the Board. □

CREDITOR-DEBTOR SECTION

By **THOMAS R. DREILING**

The Executive Committee of the Creditor-Debtor Section met Saturday, November 16, 1974.

Under old business, Chairman Middlebrooks indicated that the re-draft of Laborers and Materialmen's Proposed Lien Law has been submitted to the legislative committee. Dave Williams suggested that the title companies and banking industry be notified of the bill so that their support could be gathered for the January session of the legislature.

Efforts will continue in the subcommittee reviewing pre-judgment remedies. Chuck Ekberg will continue as chairman of that subcommittee and efforts will now be directed in drafting and proposing local court rules concerning pre-judgment attachment, replevin and garnishment procedures.

The receivership rules the Creditor-Debtor Section recommended for adoption last year have been sent to the Board of Governors for approval. No action has been taken on that matter to date. In order to coordinate with the Seattle-King County Bankruptcy Section, Pete Middlebrooks and Joe Barreca will meet with Eugene Craig and Phil Hutchison in the near future.

Under new business, Middlebrooks indicated he will be working with Craig Sternberg and the Hon. Robert Skidmore on a membership drive for the Section. There are presently 71 dues-paying members and it is hoped that before the end of the year we will have 200 members.

Programs for Year

The proposed Section programs this year include:

1. Continued work on the revision of the Agricultural Lien Laws contained in RCW 60.12.010 *et seq.;*
2. Pre-judgment remedies and self-help provisions;
3. Public Construction Lien Law;
4. Private Construction Financing Lien Law (the Columbia Wood Products Case and its problems);
5. The proposed Bankruptcy Act;
6. Revisions on Bankruptcy rules (especially concerning adversary proceedings);
7. Collection company practices;
8. Problems of usury as interest rates remain abnormally high;
9. The certification of specialists in the creditor-debtor area; and
10. Miscellaneous.

New Usury Law Passed

Attention was drawn to the recently enacted Federal Act entitled the Debt Limit and Usury Ceiling Act of 1974. This Act overrides state law for national banks, state banks, savings and loans, and small business investment companies concerning usury laws. The new ceiling on interest, according to this act, is five points above the Federal Reserve Discount Rate for ninety day notes. Since this legislation has not yet been provided in the loose-leaf services, it was suggested that interested persons review USCAAN for the last few days in October to get the exact working of the Act.

TAXATION SECTION

By **MALCOLM KATZ**

In *Estate of Ellsasser*, 61 Tax Court no. 26 (1973), a unanimous Tax Court concluded for the first time that a passive investor was subject to the self-employment tax on his share—as a limited partner—of the partnership's undistributed taxable income. The limited partner's share was part of his "net earnings from self employment" and "wages," as defined in Section 1402 (A) of the Internal Revenue Code, and was therefore subject to both FICA and FUTA taxes. That code section, said the court, includes both income derived by an individual from a trade or business carried on by him, as well as a partner's distributive share of income from a trade or business carried on by a partnership, and there was nothing in the statute which suggested a distinction between general and limited partners.

The impact of the holding in *Ellsasser* is extremely far reaching. Not only does it affect the economics of limited partnerships without exception and substantially decreases their attractiveness for high bracket taxpayers, but its application to several types of taxpayers who, whether by desire or otherwise, might be deemed to be partners, e.g., valid family partnerships, so called "silent" partners, certain associate or

junior partners or other taxpayers who receive a percentage of a business' profits, is very unclear. And conversion of equity positions, when a limited partnership begins to produce a taxable income, into debt interests will pose many problems.

Wholly aside from whether the court's rationale was correct or whether remedial legislation would be desirable, who would have thought that a limited partner would have had to pay self-employment taxes on an investment that happened to produce some taxable income!

YOUNG LAWYERS SECTION

By **LAWRENCE B. BAILEY**

Rafael Stone and Bill Burns have been elected to fill vacancies on the Board of Trustees of the Section from the first and fifth congressional districts, respectively. Rafael is a 1973 graduate of the University of Washington Law School and is presently associated with the Seattle law firm of Foster, Pepper & Riviera, while Bill is a 1973 graduate of Gonzaga University Law School and is associated with the Spokane law firm of Paine, Lowe, Coffin, Herman & O'Kelly.

The Board of Trustees has been meeting on a monthly basis in order to direct the work efforts of the Section. Five committees have been established. These are as follows: Continuing Legal Education; Professional Career Development; Law Focused Education; Mental Health; and Membership and Program.

The Continuing Legal Education Committee is planning a criminal justice seminar next spring in cooperation with Criminal Justice Section of the American Bar Association. This committee is also tentatively planning a seminar for the late spring or early summer, 1975 on Expert Witnesses. Crane Bergdahl of Pasco and Paul Chemnick are the co-chairpersons of this committee.

The Professional Career Development Committee is planning to present a "Career Day" at each of the three law schools in the State. The Committee is making available a panel of young lawyers engaged in various types of legal practice, i.e., large firm, small firm, corporate law department, federal and state governmental agencies, legal services, etc., to make short presentations on their type of legal practice and to answer questions from law students. The Executive Director of the Washington State Bar Association, Eddie Friar, will also be a panel member to explain the function and activities of the State Bar Association. The committee is also in the process of conducting a survey of first and third year law students as a part of the overall State Bar Association effort to predict future growth, employment trends and employment possibilities. The results of this survey will be published in a future issue of the *Bar News*.

The Law Focused Education Committee is planning to publish once again the "Youth and The Law Bulletin." This bulletin will be directed to high school students and will attempt to explain basic legal concepts, rights and liabilities. The co-editors of the bulletin, Leslie Stomsvik, James J. Helvling, and Werner Boettcher, hope to publish its first edition this next winter.

As an additional project this year, the Section has contracted with the Federal Disaster Assistance Administration to provide legal assistance to disaster victims in need of legal services. In the event of a disaster in the State, the Board of Trustees is organized to establish panels of attorneys to volunteer their legal services to aid disaster victims.

There are many opportunities for involvement in the Section and if you have not yet become a Section member, we would urge you to do so by completing and returning the membership application. Any member of the Washington State Bar Association under the age of 37 years or any member admitted to practice for less than five years is eligible for membership. If you are interested in being a member of a committee, please indicate your preference.

TO: YOUNG LAWYERS SECTION
WASHINGTON STATE BAR
ASSOCIATION
505 Madison, Seattle, WA 98104

Enclosed is my check for $5.00. Please enroll me as a member of the Washington State Bar Association Young Lawyers Section.

Name _____

Address _____

City _____ State _____ Zip _____

CRIMINAL LAW SECTION

By **PAT HARBER AITKEN**

The Criminal Law Section voted overwhelmingly last year to support certification in the criminal law area. The Executive Committee of the section drew up the following proposal for Standards for Certification in the Criminal Law Specialty and would like your suggestions and comments.

Please send any suggestions you may have to Patricia Aitken, Chairperson of the Criminal Law Section at W554, King County Courthouse, 3rd and James, Seattle, WA 98104, or contact any of the members of the Executive Committee listed below:

J. Dean Morgan
410 West 12th
Vancouver, WA 98660 699-2441

Edward Gene Holm
Suite 301, Thurston County
Savings and Loan Bldg.
Fifth and Columbia
Olympia, WA 98501 943-6747

Edmund E. Lozier
601 Tacoma Mall Office Bldg.
Tacoma, WA 98409 474-0744

Mark E. Vovas
Broadway Center Bldg.
721 Jefferson
Spokane, WA 99201 326-5220

Frank A. Peters
955 Tacoma Ave. South
Tacoma, WA 98402 383-5891

Barbara Durham
615 Lyon Bldg.
Seattle, WA 98104 682-1882

R. Max Etter, Sr.
511 Spokane & Eastern Bldg.
Spokane, WA 99201 747-6038

Patrick D. Sutherland
310 Thurston County Courthouse
Olympia, WA 98501 753-8094

The Honorable Frank L. Sullivan
Rm. E. 338
King County Courthouse
3rd and James
Seattle, WA 98104 344-4172

Standards for Certification in the Criminal Law Specialty

I. SCOPE OF SPECIALTY: The Criminal Law Specialty includes (1) all criminal proceedings for offenses punishable by loss of liberty, regardless of their denomination as felonies, misdemeanors, or otherwise (ABA Standards Relating To Providing Defense Services, § 4.1), (2) collateral proceedings arising from the initiation of a criminal action, for example, extradition, mental competency, post conviction and other proceedings adversary in nature, whether or not classified as civil matters (ABA Standards Relating To Providing Defense Services, § 4.2), (3) civil and administrative matters unconnected to a criminal court proceeding, but still punishable by loss of liberty, for example, matters before the parole board or the juvenile court, or matters brought pursuant to the involuntary mental commitment laws. Lawyers within the specialty are those who meet or exceed the requirements set forth in the attached standards for certification, and who are active members of the Washington State Criminal Law Section.

II. ESTABLISHMENT OF THE CERTIFICATION PANEL

A. NUMBER OF MEMBERS AND MANNER OF APPOINTMENT: The Certification Panel of the Criminal Law Specialty shall have twelve (12) members appointed by The Board of Governors on the advice of the Specialization Board. Three (3) members, including the chairperson, shall also be members of the Executive Committee of the Criminal Law Section. The chairperson shall be designated by the Board of Governors. (para. 4, subpara. 3*)

B. TERMS OF MEMBERS: The terms of the members of the Certification Panel shall not exceed four (4) years and are not renewable. Subject to the foregoing, the terms of office of the members of the Panel shall be established by the Panel itself. (para. 4, subpara. 4)

C. RULES AND REGULATIONS: The Panel will promulgate its own rules and regulations subject to the approval of the Specialization Board. (para 4, subpara. 4)

D. REPRESENTATION: The Panel shall be composed as to give fair representation to the various geographical areas of the State, and fair representation among prosecutors, public defenders and private defense counsel. (para. 4, subpara. 5)

III. POWERS OF THE BOARD OF CERTIFICATION

A. ADMINISTRATION: The Certification Panel shall administer the program in the criminal law specialty under the general guidance of the Specialization Board. (para. 4, subpara. 2)

B. SPECIFIC RESPONSIBILITIES: The Panel

shall establish standards for certification, the scope of the specialty, and the examinations for certification and recertification, all subject to the approval of the Specialization Board. (para. 4, subpara. 1)

C. ANNUAL REPORT: The Panel shall make an annual written report of its operations to the Specialization Board at least sixty (60) days prior to each annual meeting of the Washington State Bar Association. (para. 14, subpara. c)

D. OFFICE SPACE: At its discretion, the Panel may apply to the Board of Governors or other appropriate agency for office space, facilities, funds or staff assistance. (para. 14, subpara. d)

IV. LIMITATIONS ON THE POWER OF THE CERTIFICATION PANEL

A. NO LIMITATION ON RIGHT TO PRACTICE LAW: No standard shall be approved which shall in any way limit the right of a certificate holder to practice law in all fields. (para. 5, subpara. a)

B. NO REQUIREMENT OF SPECIALIZATION: No lawyer shall be required to obtain a specialty certificate before he can practice criminal law. (para. 5, subpara. b)

C. INDIVIDUALIZATION: All requirements for and all benefits derived from certification are individual and may not be fulfilled by or attributed to the law firm of which the specialist is a member or associate. (para. 5, subpara. c)

D. PARTICIPATION IS VOLUNTARY: Participation in the plan shall be voluntary. (para. 5, subpara. d)

E. LIMITATION ON NUMBER OF SPECIALTIES: No lawyer shall be admitted to the criminal law specialty if he presently holds certificates in three (3) or more other specialties. (para. 5, subpara. e)

F. FEES: No fee shall be established by the Certification Panel, but it may collect fees for filing an application for certification or recertification or for the granting of a certificate, provided that such fees have been established and authorized by the Board of Governors of the Washington State Bar Association. (para. 13)

G. GIVING NOTICE OF SPECIALIZATION: Prior to certifying each lawyer in the specialty, the Panel shall require that he agree to abide by all rules and regulations promulgated pursuant to the specialty program, and that he agree to make no statement respecting his certification other than as follows:

1. He may state in recognized and conventional legal directories or law lists that he is certified by the Specialization Board in the criminal law field in the following words: "certified specialist in criminal law—Washington State Bar Legal Specialization Board".
2. He may circulate among lawyers only, a brief, dignified notice that he is rendering a specialized legal service and the fact that he is certified by the Specialization Board in the criminal law field, the notice to be in the following words: "certified specialist in criminal law—Washington State Bar Legal Specialization Board".
3. He may display in his office the certificate of specialization.

H. PROTECTION FOR REFERRING ATTORNEYS: Prior to certifying each lawyer in the specialty, the Certification Panel shall require that the applicant agree that when a client is referred to him by another lawyer, he shall not take advantage of his position to enlarge the scope of his representation. He shall not represent the client in other matters without first notifying the lawyer who made the referral. (para. 10)

V. STANDARDS OF CERTIFICATION

The Executive Committee of the Criminal Law Section recommends to the Certification Panel when the same is established, and to the Specialization Board and the Board of Governors, that the following standards governing the criminal law specialty be established:

A. GENERAL REQUIREMENTS:

1. The lawyer applying for certification must be an active member in good standing of the Washington State Bar Association and of its Criminal Law Section.
2. He must be in actual practice of law within the State and have an office within the State for that purpose. (para. 6, subpara. a)

B. SPECIFIC REQUIREMENTS:

1. Length of practice:
   a. Actual Law Practice:
      The applicant must have engaged in the actual practice of law for the five (5) years immediately preceding his application for certification. The applicant shall be required to have engaged in actual law practice within Washington for not less than two (2) years immediately preceding application for certification. (para. 6, subpara. c(i)
   b. Equivalent Experience:
      If acquired after admission to the practice of law, the following types of experience may be substituted for actual law practice:
      (1) Full time teaching of subjects within the specialty.
      (2) A full time clerkship for a justice of a State or Federal Appellate Court; provided that this type of experience shall not supplant more than one (1) year of actual law practice and provided that the applicant, during this clerkship, was "substantially involved" within the criminal law specialty as the term "substantial involvement" is defined hereunder.
      (3) As a court commissioner or hearing examiner, for example, as a court commissioner in juvenile court or hearing examiner with a parole board, provided again, that the applicant was "substantially involved" within the specialty area as "substantial involvement" is hereunder defined.
      (4) As a Judge of a court, provided again that he was "substantially involved" within the specialty area as hereunder defined.
      (5) Such other types of experience as may be approved in the individual case by the Certification Panel. (para. 6, supara. c(i))
2. Substantial Involvement: To be certified, the lawyer must have been "substantially involved" in the criminal law specialty for a period of not less than four (4) years immediately preceding application for certification. Not less than two (2) of such years shall have been in the State of Washington. "Substantial involvement" means that the

lawyer has spent not less than fifteen (15) percent of his total working time during each year of the required four (4) year, minimum period on matters within the scope of the criminal law specialty as that term has been defined in paragraph I above.

"Substantial involvement" is shown when the lawyer (1) supplies a general statement to the Certification Panel, on a form satisfactory to it, that he spent not less than fifteen (15) percent of his time within the specialty during the required period and (2) corroborating information complying with one of the following subparagraphs:

a. Computation by time:

If the lawyer elects to compute substantial involvement by means of time spent, he shall provide an estimate of his total time spent in the law practice during the required period of substantial involvement. In addition, he shall provide the court of filing, cause title, cause number, type of case (e.g., felony, parole revocation, juvenile), charge, type of disposition (e.g., trial, plea), and result obtained. He shall specify time spent on each listed case and his manner of arriving at the amount of time spent (e.g., estimate, reference to written time records). At its discretion, the Certification Panel may make written or oral inquiry of the lawyer with respect to statements of time spent and may require such additional supporting information or records as it may deem necessary. Listed cases may include felonies, misdemeanors, appeals, juvenile proceedings, civil involuntary mental health commitment proceedings, parole board proceedings, probation revocations, extraordinary writs, or other proceedings within the specialty, provided that felonies, misdemeanors, juvenile proceedings and appeals account for not less than eighty (80) percent of the listed time spent.

If the lawyer elects to compute substantial involvement by time spent, he shall also list two felony jury cases tried by him during the required period.

b. Computation by number of cases:

If the lawyer elects to compute substantial involvement by number of cases handled, he shall state information showing that he has been principal counsel of record in all of the following proceedings:

(1) During the last three (3) years of the required period of substantial involvement, not less than eight (8) trials in felony cases, of which four were jury trials.

(2) During the same three (3) year period, not less than two (2) appeals or extraordinary writ proceedings to the Court of Appeals of the State of Washington, Washington State Supreme Court, United States Court of Appeals or the United States Supreme Court, both of which shall have been carried through to the completion of oral argument on the merits. However, in lieu of this requirement, the applicant may submit four (4) additional felony trials.

(3) During the same three (3) year period, not less than sixty (60) additional matters within the scope of the specialty, with not less than ten (10) nor more than twenty-five (25) of such matters to have been concluded in each of the twelve (12) month periods preceding the date of application for certification. (para. 6, subpara. c(ii), para. 15, subpara. a)

If the lawyer elects to compute substantial involvement by the number of cases handled, he shall, with respect to each case relied upon, proved the court of filing, cause title, cause number, type of case (e.g., felony, parole revocation, juvenile), charge, type of disposition (e.g., trial, plea), and result obtained.

3. Examinations: The applicant shall take a written and an oral examination to demonstrate sufficient knowledge, proficiency and experience in the specialty. The examination shall be prepared, administered and graded under the direction of the Certification Panel. (para. 6, subpara. c(iii))

VI. GRANDFATHER CERTIFICATION

A. APPLICATION AND COMPLETION OF REQUIREMENTS: The application for grandfather certification must be submitted within two (2) years after the Certification Panel has been established. All requirements for grandfather certification must be completed and satisfied within one year after the date of application. (para. 6, subpara. b(i)

B. LENGTH OF PRACTICE: The applicant must have had a minimum of ten (10) years of actual law practice or equivalent experience as of the date of establishment of the Certification Panel. (para. 6, subpara. b(ii))

C. SUBSTANTIAL INVOLVEMENT: The applicant shall show substantial involvement during a five (5) year period immediately preceding application for certification. Substantial involvement for grandather certification is shown when the applicant certified that he has spent fifteen (15) percent or more of his time in each year of the required period working on matters within the specialty, and when he satisfies either paragraph V-B-2-a or all of the following:

(1) Fourteen (14) felony trials, with at least seven (7) of those being before a jury;

(2) Three (3) appeals or extraordinary writs carried through to oral argument on the merits, or in the alternative, an additional six (6) felony trials; and

(3) One hundred (100) matters within the scope of the specialty, with not less than ten (10) nor more than thirty (30) of those being concluded in a given year. (para. 6, subpara. b(iii), para. 15, subpara. a)

D. EXAMINATION: The lawyer shall pass an oral examination and an abbreviated written examination as prepared, administered and graded by the Certification Panel. (para. 6, subpara. b(iv))

VII. RECERTIFICATION

A. PERIOD: Recertification is required every five (5) years. (para. 7, subpara. a)

B. LENGTH OF PRACTICE AND SUBSTANTIAL INVOLVEMENT: To be recertified, the lawyer must show that he has been in actual practice of law during

the period of certification, or has engaged in equivalent experience during that period, equivalent experience being defined as in Section IV-B-1-b above. Furthermore, the lawyer must show substantial involvement in the specialty area as that term is defined in Section V-B-2 above. (para. 7, subpara. b(i))

C. SPECIAL EDUCATIONAL EXPERIENCE: In addition to the foregoing, the lawyer shall make a satisfactory showing of special educational experience obtained in the specialty field during the immediately preceding period of certification. The requirement of special educational experience is satisfied by either:

1. Attendance and completion of a program of study for criminal law specialists developed and approved by the Certificational Panel; or
2. Fulfillment of any three (3) or more of the following, involving a total of not less than fifteen (15) hours per year of effort:
   a. Teaching a course in criminal law.
   b. Completion of a post graduate law school course in criminal law.
   c. Participation as a panelist or speaker on a symposium or similar program in criminal law.
   d. Attendance at a lecture series or similar program concerning criminal law, and sponsored by a qualified educational group.
   e. Authorship of a book or article on criminal law published in a professional publication or journal.
   f. Active participation on a professional committee dealing with a specific problem of criminal law.
   g. Rigorous and structured self-study in criminal law.
   h. Structured apprenticeship under a certified Washington criminal law specialist.
   i. Such innovative and educational programs in criminal law as may be approved from time to time by the Certification Panel. (para. 7, subpara. b(iii), para. 15, subpara. b)

For purposes of this paragraph VI-C-2, "criminal law" means criminal law, criminal procedure, or a closely related subject approved as such by the Certification Panel.

D. RECERTIFICATION AS ORIGINAL APPLICANT: In the event that a lawyer fails to meet the requirements for recertification, he may apply and qualify in the same manner as an applicant for original certification. (para. 7, subpara. c)

VIII. DE-CERTIFICATION

A. BY THE SPECIALIZATION BOARD: A certificate or specialty may be revoked by the Specialization Board if the program for certification in the criminal law specialty is terminated. (para. 8)

B. BY THE BOARD OF CERTIFICATION: A certificate of specialty may be revoked by the Certification Panel if after a hearing held on appropriate notice it is determined that:

1. The certificate was issued contrary to applicable rules and regulations; or
2. The certificate was issued to a lawyer who is not eligible to receive a certificate or who made any material false statement or misstatement of material fact to the Certification Panel; or
3. A certificate holder has failed to abide by the code of professional responsibility and/or by all applicable rules or regulations; or
4. A certificate holder has failed to pay any required fee; or
5. The certificate holder files a written request for decertification and surrenders his certificate. (para. 8, subpara. a-d)

IX. PROCEDURE AFTER REJECTION OF APPLICATION:

A. RIGHTS OF APPLICANT AFTER FAILURE: If the application of any candidate is rejected by the Certification Panel, the Panel shall inform the applicant of the reasons for the rejection. If the rejection is for reasons other than failure to pass the written or oral examination, the applicant shall have a right to have his application reconsidered. In aid of such reconsideration, he may within six (6) months following rejection furnish such additional proof as shall be pertinent to the reasons for the rejection. If the rejection is because of failure to pass the written or oral examination, or both, the applicant may, without reapplying take the next succeeding examinations which are offered; provided, that he notify the Panel that he will re-examine, that such notice is given at least thirty (30) days before commencement of the re-examination, and that any additional fees established by the Board of Governors for the re-examination are paid at the time notice is given.

B. FAILURE NOT TO BE ANNOUNCED: The failure of any applicant to receive approval shall not be published.

C. ADDITIONAL APPLICATIONS AND EXAMINATIONS: There is no limitation on the number of times an applicant may apply and examine for certification in the criminal law specialty. (para. 11, subpara. b)

D. RIGHT OF APPEAL: A lawyer who is refused certification, recertification, or whose certificate is revoked by the Certification Panel may appeal the ruling of the Panel to the Legal Specialization Board by giving written notice of such appeal within thirty (30) days following the day of the ruling by the Panel. Such written notice shall be given to the Panel and within ten (10) days of receiving it, the Panel shall transmit or cause to be transmitted to the Legal Specialization Board all papers, documents or other items relating to the case being appealed. The decision of the Legal Specialization Board may not be appealed and is final when made. (para. 9)

*References are to the Specialization Plan adopted by the Board of Governors.

SEATTLE-KING REPORT

By **GERALD G. TUTTLE**

In the November, 1974 issue of the *Washington State Bar News*, it was incorrectly stated that **Terry Lukens** formerly clerked for the Oregon State Supreme Court. His clerkship was with Chief Judge Schwab of the Oregon Court of Appeals.

David M. Shelton of Seattle was appointed to the State Advisory Council on Criminal Justice Services. He fills the vacancy created by the death of Seymour Kaplan of Seattle. Shelton is a partner in MacDonald, Hoague and Bayless.

COWLITZ REPORT

By **O. H. HUSEMOEN**

President William Dowell has decreed that there shall be more Cowlitz reports in the *Bar News* and, therefore, in accordance with his edict, a more frequent report of the infrequent Cowlitz County Bar Report will be forthcoming.

Walker & Dowell's new offices will probably be ready about the time this report hits the press. Located in the Bank of the West Building in Longview, the offices are going to be the ultimate in decor and convenience. Rumor has it that white carpeting, stand-up work areas, conference tables, sofas and hidden telephones are the order of the day.

Kenneth Cowsert has joined the Cowlitz County Prosecuting Attorney's staff as a deputy. He has been in Cowlitz County for over four months, but this reporter apparently overlooked his arrival in prior reports. **William Trippett** has left the Prosecutor's office and has associated himself with Walker & Dowell.

Klingberg, Houston, Reitsch, Cross & Frey have remodeled their offices again, providing for new offices and a different arrangement of the pecking order.

Paul R. Roesch has joined the firm of **Studley, Purcell, Spencer & Guinn**, effective January 1, 1975. Keeping in line with all other offices, they have also remodeled, providing for additional office space.

The annual Christmas party was its usual success, with the newly-formed Skit Committee providing the entertainment which included the annual Cowlitz County Superior Court Judge Roast.

ISLAND REPORT

By **TED ZYLSTRA**

In an election determined by 38 votes, **Dave Thiele** retained the office of Prosecuting Attorney. His opponent, **Dave Strong**, left immediately after the election for sunny Spain where he fulfilled his Naval Reserve responsibilities. Tough duty. **Mike Tull** (Gonzaga '74) has been assisting in the Prosecutor's office.

The Island County Sheriff's race, which was decided by 2 votes, prior to the recount, is the subject of an election contest according to **Ed Beeksma**, attorney for the contestant.

John Watson enjoyed the Thanksgiving holiday in Bakersfield (if it is possible to enjoy anything in Bakersfield).

The recent local Bar Seminar led by Dave Thiele concerned itself with property rights arising out of meretricious relationships. The principal inquiry was whether a long weekend was sufficient time to create "a lasting relationship."

Harold Baily's column on wines now appears monthly in the local press. He demonstrates an expertise which has never been exhibited in his briefs.

SKAGIT REPORT

By **DAVID A. WELTS**

The abbreviated Skagit Report recognizes:

1. The high water mark of 46 lawyers in this county. (Might not sound like many to you Big City lawyers, but for us —wow! over crowded; don't bother to inquire.)
2. The higher water mark of 35 percent at a business meeting. (Good percentage)
3. One fine "integrated" (with ladies) party to meet all those new lawyers' wives.
4. **Arnold Whedbee** and **John Moffat** (Northwest Legal Services) joining our Association.
5. Whatcom County claiming 75 or 90 or some such number of attorneys now.
6. Island County claiming only 12 members—certainly no match for *their* Judge (Howard A. Patrick).
7. **Judge Charles Stafford** who spent all those years on our Bench, then went Big City, but is now telling everyone to get out of the City. (Go to Whatcom County.)
8. No mention herein of San Juan County because that's where I am going.
9. It's 1975 and THE War was over 30! years ago. (For you oldtimers)

Educating Public on Lawyer Use is Major Tasks, says ABA President

Educating the public on when and how to use a lawyer is a major task challenging the legal profession. James D. Fellers, ABA President, said legal problems are like medical problems — it is better to prevent them from arising than to resolve them after they arise.

He said that the bar must seek ways to cut legal costs through such means as prepaid legal services plans, increased use of non-lawyer assistants, establishing law offices outside high-rent areas, specialization, and technological improvements such as computerization.

These efforts should be accompanied by a campaign to prevent legal difficulties from occuring.

"Today, it is the rare individual indeed who considers consulting with a lawyer prior to choosing a path which clearly involves potential legal difficulties," Fellers said. "Most Americans are their own legal advisors, until they become embroiled in critical legal problems."

Fellers discussed two ABA projects which he said would help achieve the Association's goals. One, being conducted by the ABA Standing Committee on Lawyer Referral Service, involves production of a series of preventive law firms, and a 28-minute television documentary which would depict generally when and why an attorney should be consulted.

The second project, proposed by the ABA Section of Family Law, would establish panels of retired attorneys to provide free legal assistance to low-income elderly in their communities. The project would be carried out in cooperation with local and state bar associations.

Fellers praised the proposal, saying "it encourages maximum use of human resources which society and the bar have neglected."

Gift Tax Revision

The Inheritance and Gift Tax Committee of the Tax Section has prepared a revision of the gift tax Chapter RCW 83.56. The Tax Section has submitted the proposed revision to the Board of Governors with a recommendation that it be submitted by the Bar Association to the next session of the legislature. The proposed legislation contains no changes in rates, deductions or exclusions. Its thrust is to simplify language and procedures for collecting and contesting gift tax assessments.

The next task of this committee is to review the RCW chapters on Inheritance Tax. This review will involve an examination of rates, deductions and exclusions, as well as procedures. The members of the Bar are invited to submit any written comments or suggestions which they would care to make with respect to the Inheritance Tax of the State of Washington to this committee.

Comments should be mailed to Dudley Panchot, 1117 Norton Building, Seattle, Washington 98104.

U.S. Supreme Court's Initial Conference Handles 1,000 Cases

Chief Justice Warren E. Burger said this Fall that 1,011 cases including 45 special motions faced the nine Justices of the Supreme Court at the first conference of their new Term during the week of Oct. 7.

The Chief Justice added that some solution must be found to the problem of an ever increasing caseload if the quality expected of the Supreme Court is to be maintained.

Chief Justice Burger made his statement on the eve of the first week of hearings of the new Term. Twelve cases were scheduled for the week, followed by fifteen the following week.

In line with the policy of recent years, one hour was assigned to the hearing of most of the cases; on several occasions, however, more than one—as many as four—were heard together in a single hour. In earlier years two hours were given to the hearing of the average case.

The number of cases awaiting as the Justics reconvened for a new Term passed the 1,000 mark for the first time in Court history. Part of the work was done at the Conference table, part of it in exchanges of memoranda. When it is realized that the Conference decisions represented the final judicial act in hundreds of cases, it can be realized how heavy a burden the decisions of the first week represented.

BACKGROUND AND SELECTION PATTERNS OF JUSTICES OF THE WASHINGTON STATE SUPREME COURT: 1889-1974

Mary Fagan*
Ken Hamernik
Pat Youngblood

In the past twenty years a number of qualitative studies have been made of the United States Supreme Court and of some state high courts. These studies have focused on procedural aspects of judicial selection, voting behavior, and ideological attitudes of high court judges. To our knowledge, an inclusive study of the Washington State Supreme Court has not been undertaken. In light of the paucity of information, it has been our purpose to collect data concerning the pre-bench characteristics of the sixty-six justices who have served full-time on the state's highest court since 1889 and to suggest further research areas.

The clerk of the Supreme Court provided us with valuable information. *Who's Who* for America and Washington State added background characteristics to our compilation. Newspapers, academic theses, *The Washington Reports*, and *Bar News* provided other data.**

Having compiled this information, we isolated certain variables to find continuities in the social, legal and political characteristics of the men chosen to serve on the Supreme Court. The lives and activities of these justices, spanning more than a century, created a number of problems in interpreting the variables. For example, birthdates ranging from 1838 to 1931 and birthplaces extending across the continent led to a difficulty in determining which justices were born in urban communities and which in rural environments. Through verbal communication with the U.S. Census Bureau we established the population figure of 2500 as the point at which we separated rural from urban classification. Analyzing the relative prestige of law schools in particular years also created problems of subjective interpretation. We relied on earlier studies by judicial scholars to establish our criteria for this and other variables.

There are gaps in the judicial data which, when filled, will add greater meaning to our cumulative analyses. This study is not an end in itself: rather it should be a stimulus for further research and interpretation. The assumption is that background experiences and training will explain, to a great degree, the behavior of justices who have sat on the states high bench. Our task was merely to begin to accumulate often elusive background information. Behavioral analysis will later be part of a comprehensive history of the Washington Supreme Court.

The Constitution of the State of Washington (Article IV, Section 3) provides that justices of the Supreme Court "shall be elected by the qualified electors of the state at large" unless "a vacancy occurs in the office of a judge of the Supreme Court (in which case) the governor shall appoint a person to hold the office" until the next general election. Although technically our Supreme Court justices are elected on a non-partisan ballot, gubernatorail selection to fill vacancies on the Court has been as much the rule as the exception. Of the seventy-four positions which have been filled since the first

*The authors are pre-law students at Washington State University and this article is a summary of their research paper submitted as partial fulfillment of the requirements in a political science course entitled "Judicial Process."

**Readers having knowledge of other public or private sources of information on any of the justices of the Washington Supreme Court are urged to contact Professor Charles H. Sheldon, c/o Political Science Dept. at W.S.U., Pullman, WA 99163. Also those wishing any of the data on specific justices from which this summary was compiled can write to the above address.

Court election in 1889, 66% were initially filled by appointment and only 34% by election. Although the forty justices originally appointed by the governor eventually came up for election, they enjoyed the overwhelming advantage of incumbancy. In only four cases were the appointed justices defeated in the first election following their appointment.

Throughout the history of the Court the trend has been towards a marked increase in gubernatorial appointment relative to those elected. In the period from 1889-1914, 11 justices were initially appointed and 12 elected, 1914-1945, -18 appointed and 7 elected. Since World War II, 20 have been appointed and only 6 elected.

There may be numerous ramifications of this high percentage of Court appointments. One interesting result has been the frequency of shared political affiliation between the appointing governor and the appointed justice. We found the political party of twenty-seven appointed judges, of which 85% were of the same party as the governor to whom they owed their appointment.

It is not the purpose of this paper to criticize either the appointment or election method of selection but only to stress that it is likely that different selection procedures result in different sorts of lawyers being elevated to the bench. Such recruitment differences should be the basis for further studies of the Washington Court.

Although it may seem relatively inconsequential compared to later influences, the environment in which a justice was born and raised may shape his future attitudes. Unlike the federal court, a substantial majority of Washington's Supreme Court justices were the products of rural environments. Sixty-eight percent of the Court came from rural backgrounds and only 32% from urban environments. Forty-eight of the justices were born outside of Washington State, fifteen within the state and two were foreign-born.

Similarly, the kind and quality of judicial education may have a profound effect on the judicial philosophies of the individual Supreme Court justices. Information available on fifty-seven judges showed that 84% attended law school and 16% 'read law' in a legal office to prepare for the bar. The trend is toward the former as relatively few justices and for that matter, lawyers, have 'read law' since 1900. The forty-eight justices with institutional legal educations attended law schools across a wide qualitative spectrum. Unlike justices of the federal court, they did not predominately graduate from 'top flight' law schools. Using the date of admission to the American Association of Law Schools as our criteria for institutional quality, we found that 31% of the justices attended '1st flight' law schools, 46% attended '2nd flight' (the University of Washington Law School, from which fifteen justices graduated, was included in this category), and 19% attended '3rd flight' schools.

TABLE I

LAW EDUCATION
(Information on 57 Justices)

Read Law — 9	
Attended Law School — 48	
1st Flight: Charter Members*	
Columbia	3
George Washington University	1
Harvard	1
Northwestern	2
University of Michigan	4
University of Minnesota	2
University of Wisconsin	1
Yale	1
Total	15
2nd Flight: Members admitted up until 1920	
Chicago College of Law (1902)	1
Georgetown University (1902)	1
University of Washington (1909)	15
University of Idaho (1914)	2
University of Virginia (1916)	1
University of Oregon (1919)	2
Total	22
3rd Flight: Since 1920	
Duke (1930)	1
Willamette University (1946)	3
American University (1947)	1
Union Law School (same as Albany Law School) (1947)	4
Total	9
Not yet admitted:	
Gonzaga	2

*The dates are the years of admission of the law school to the AALS (see American Association of Law Schools, Proceedings 271-73 (1961).

The breakdown into "flights" was at our discretion based on this particular group of admittance dates.

Although it is not a formal requirement of selection, every justice of the Supreme Court had a high degree of legal experience before reaching the bench. This experience has been diverse in nature; some forms of experience were common to many justices, others unique to a few. Twenty-seven judges had prosecuting experience, primarily as city and county prosecuting attorneys. Fifteen judges had experience as municipal attorneys. Four of the justices taught law at some time prior to the bench and one served as dean of a law school. A large percentage of the judges had judicial experience in lower courts. Thirty-five justices served as Superior Court judges before moving to the high court. Others were Probate, Municipal Court, and State Court of Appeals judges. One justice resigned from the bench temporarily to serve as a military judge at the Nuremberg War Trials in 1946.

Relatively few justices held high political offices prior to serving on the Supreme Court. Political experience was more common to the earlier justices than it has been in recent years. Four of the earliest justices had served on the Territorial Council (the legislative body of Washington until statehood), one was a member of the Territorial Code Commission, and two were members of the State Constitutional Convention. Only eight justices since 1889 have served in the state legislature.

TABLE II

Prior Legal/Judicial/Political Experience of Justices

Legal

City Attorney	15
District Attorney	1
U.S. Attorney	3
Assistant U.S. Attorney	3
Assistant Attorney Gen. for Washington	4
Consultant to U.S. Attorney	1

Judicial

Superior Court Judge	35
Probate Judge	2
Municipal Court Judge	3
U.S. District Court Clerk	1
Military Tribunal	1
Washington State Court of Appeals	2

Political

Member of State Senate	8
Territorial Legislature	2
Board of Education	1
Mayor	3
Territory Council	2
Territorial Code Commission	1
Member of Constitutional Convention	1
Out-of-State Legislators	2

Prosecuting Experience

Dep. County Prosecuting Attorney	10
County Prosecuting Attorney	14
Assistant Chief Prosecuting Attorney	2
Professor of Law	4
Dean	1

One of the most frustrating problems which we encountered was establishing the political affiliation of the justices in order to measure the party balance throughout the Court. Perhaps because judicial elections in this state are non-partisan, judges attempt to 'play down' their political affiliation. Of the fifty-two justices for which we detmined political party, 62% were Republican, 35% Democrat, and less than 1% were Independent. The greater number of Republicans on the bench is likely a result of the actual party distribution in the state and a result of the party affiliations of the governors (85% Republican, 15% Democrat), who have played an active part, through appointments, in determining the political makeup of the Court.

Although Republicans have numerically dominated the bench overall, for the past twenty years the trend has been to a more politically balanced court. From 1905-1908, Republicans held all seven positions on the Court, since 1971 there have been three Republicans, three Democrats and 1 Independent sitting on the bench. The degree of partisan imbalance throughout the history of the Supreme Court and its effect on Court decisions might provide another interesting area for analysis.

The justices of the Supreme Court showed the greatest homogeneity in their religious backgrounds. All of the thirty-three justices whose religions we found, were Christian, 88% being Protestant and 12% Catholic. Non-fundamentalist protestant denominations were quite evident in the religious data. Unlike the federal Court, no trend has developed to keep a constant religious balance on the Court. With a dual system of election and appointment, such a balance would be nearly impossible and this duality may, to an extent, be responsible for the tremendous denominational imbalance since 1889.

TABLE III

RELIGION: (Information on 33 Justices)

Protestant	
Congregationalist	4
Methodist	6
Episcopalians	6
Presbyterians	8
Baptist	3
Unspecified Protestants	2
Total Protestant	29
Catholic	
Roman Catholic	4
Total Catholic	4
Other	
Other	0
Total Other	0

Data about the tenure of justices on the Court are also interesting. The average age at which a justice reached the bench was 49, the youngest being 36 years old and the oldest, 69. The duration of terms varied from three months to thirty-three years; eleven years being the average length of service. The high percentage of gubernatorial appointments stems from the number of justices who left the bench prematruely. Twenty-four percent of the justices resigned from the bench, 17% died during their terms, 16% retired, and 11% were defeated. The other justices left the bench after appointments to higher courts, were only temporary appointments to the Supreme Court, or are presently serving on the bench.

TABLE IV

Nature of Termination on the Bench

71 Positions:	
Resigned	17
Died	12
Retired	11
Defeated	8
Upper Court Appointments	4
Temporary War Appointments	4
Unfinished Terms	9
Unknown	6

By law, the Chief Justice is selected as follows: "The justice having the shortest term to serve, not holding his office by appointment or election to fill a vacancy shall be the Chief Justice. In case there shall be two justices having the same short term, the other justices of the Supreme Court shall determine which of them shall be Chief Justice." In all thirty-three of the justices served as chief once, six served twice and one served three times.

The study of judicial personalities and their effect on the nature of Court decisions has not yet been fully developed by judicial scholars. The research technology, the potential quantity of data, the innumerable variables which have an impact on the courts, and the complete interpretation of these variables are still in their elementary stages. When these analyses are fully developed, they will offer only a partial explanation of the functioning of court systems. As John Schmidhauser suggests:

> It is not at all clear that social and political background factors in themselves may serve as reliable indicators of precise patterns of judicial behavior. Explanations based entirely upon the causal influence of such factors . . . could scarcely take into account . . . the impact on individual justices of the traditions of the Supreme Court or of the interaction of the intelligent and frequently forceful personalities. Complete dependence upon background factors would also ignore the complexity and subtlety of intellect and motivation.

The information contained in this study is only a beginning, to be used as a 'springborad' for further research. Research into private papers of the justices and articles in law reviews and bar publications which they authored, as well as their case records on the Supreme Court and lower courts, may give further insight into the philosophical alignment and attitudes of each justice. Similarly, studies of voting blocs and patterns, and historical tendencies and periods will give new insight into the dynamics of the Court as a whole. Only when interpretation of this data and understanding of the unique processes of the Court are combined, can a full appreciation of the Washington Supreme Court be realized. If our data can serve to stimulate further analysis of the Court, this study will have been well worth the effort. □

SUPREME COURT PRACTICE

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

On August 1, 1974, Eddie Friar, Executive Director of the Washington State Bar forwarded to the Supreme Court a proposed amendment to the Code of Professional Responsibility. Said he in his forwarding letter:

> The Board of Governors has voted to recommend to the Supreme Court the adoption of a rule which would authorize and implement a program of compulsory malpractice insurance for active members of the Bar Association. The plan will call for certain exceptions and exemptions for those in government service, House Counsel or persons with a single client as defined by the Board in the plan and others not engaged in the private practice of law.

The Court decided that the members of the Bar should have the opportunity to comment before the Court considered the proposal. Early in October, 1974, proposed DR 6-103, was distributed. Through some hidden expertise, Mr. Friar was able to generate an unusual interest among the members in this proposed rule change.

Fifty nine comments have been received. Forty nine are either flatly opposed to adoption or to some aspect of the proposed rule. Seven comments favor adoption. A few comments fit in neither category suggesting delay, study, or question accurarial feasibility. Of those opposed a significant number consider that the flat premium proposed would require the more responsible attorneys to bear in part the higher insurance cost of more error prone less responsible attorneys or, although approving the concept of compulsory malpractice insurance, objecting to the necessity of procuring the insurance from one carrier determined by the Board of Governors.

The Court had scheduled consideration of the comments and proposed rule for November 20, 1974. In preparation the comments were distributed to the members of the Court for study on October 31. However, on November 15, the Bar notified the Court that the insurance carrier on which the Bar was relying for implementation of the proposed rule had withdrawn its commitment because of extraordinary underwriting losses, and that the proposal should, therefore, be tabled.

During the subsequent en banc administrative conference on November 22, 1974, the Court, after having considered comments from members of the Bar, decided not to adopt CR 41, proposed by the Judicial Council on dismissal of actions.

The Court has asked that the members of the Bar be informed that their interest and comments were appreciated. Additionally, the comments will be retained and considered if the proposal is renewed.

COURT OF APPEALS

By **VERNON R. PEARSON**

Chief Judge Vernon R. Pearson, Division II (Tacoma) of the Washington State Court of Appeals, announces the appointment of Mark H. Adams as Chief Clerk of the Court. Adams replaces the former Chief Clerk, Laurence Gill, who resigned recently to accept a position as Deputy Clerk of the United States Supreme Court.

For the past two years Adams has been serving as Assistant City Attorney for Tacoma. Adams, formerly from Portland, received his Bachelor of Arts degree in economics from Portland State University, and his law degree from Boalt Hall School of Law, University of California, Berkeley. He was admitted to the bar in Washington in 1972. He is a member of the Tacoma-Pierce County, Washington State, and American Bar Associations. Adams recently was an unsuccessful candidate for Judge of the Pierce County District Justice Court.

Adams will commence his duties as the chief administrative officer for the Court on November 7, 1974 and will work closely with the Chief Judge and with the lawyers in seeing that appeals are processed promptly and in compliance with the Court Rules.

Adams resides with his wife, Jane, and daughter at 6408-47th Street Court West in Tacoma.

Mark Adams

Committee Reports

TRAVEL COMMITTEE

By **JOHN McLAUCHLAN**

The Travel Committee has determined not to sponsor a charter to London with return to Amsterdam during the autumn of 1975. The greatly increased costs of air line charters, which of course must be passed on to our members, makes charter arrangements of this kind entirely too expensive. The Committee hopes to reestablish our customary CPA charter flight to London as soon as cost factors will permit. However, the Committee has considered with favor the following offerings and invites the comment of our members.

1. **Offerings of Creative World Travel**

A. Round trip Seattle-Sydney, Australia — $699, early December, 1975. The price on this program, which will be 14 days and nights, will include air fare, hotel accommodations, transfers, baggage handling, and the services of a tour staff.

B. Round trip Seattle/London — $599, including hotel accommodations and breakfast for 11 days in London. This package permits 6 days of the London trip for side trips to Amsterdam, Paris, Rome, Madrid, Moscow, or Leningrad for prices between $30.00 and $300.00, depending upon the distance traveled and the particular inclusions of the option. Dates to be determined.

2. **Offering of Maritz Travel Associates, St. Louis, Mo.**

Holy Land Discovery Cruise departing Seattle October 17 and returning October 30, 1975. Prices range(depending upon cabin accommodations on board MV Stella Solaris) from $1,250.00 on up to around $1,900.00. The itinerary calls for visits to Alexandria, Egypt; Beirut, Lebanon; Haifa, Israel; and Alanya/Antalya, Turkey. All meals and accommodations on board are included in the basic cost; however, shore excursions and conducted tours are extras. The Stella Solaris is of 18,000 tons and is a new vessel with excellent and commodious accommodations. Passengers are free to select (and pay for) as many shore excursions as the itinerary will permit. These costs would be approved by a "reasonable man," if such a person exists.

3. **Air France Offering of "April in Paris" — $599.00 (Group Inclusive Tour)**

The cost of this venture includes air fare Seattle/New York, UAL, and Air France New York/Paris — 6 nights at the new St. Jacques Hotel, including service, taxes, and continental breakfast, assisted escorts for arrival and departure, and miscellaneous goodies. While this trip is of short duration, it will doubtless meet the needs of our members who cannot get away from the works for a longer period.

All of the foregoing proposals appear to be good values for the money, and the Travel Committee respectfully invites comments and expressions of interest from our members. It could well be that between now and the time of departure there might be some adjustment in cost (upwards, that is, not downwards) although we are hopeful that the prices quoted will be firm. The travel situation is quite bewildering; however, in that respect it is not unlike going to the grocery store. We feel that, despite the vicissitudes of day to day living, our members should refresh themselves with a change of scene from time to time with the view that tired blood will be renewed, natural juices revitalized, and taxable estates diminished thereby.

Please send your comments as soon as possible to the Travel Committee, Washington State Bar Association, 505 Madison Street, Seattle, WA. 98104. We do not want to find ourselves in the invidious situation of sponsoring unpopular tours.

Jack McLauchlan, Fred Velikanje, Frances Harris, David Kenworthy

DISCIPLINARY COMMITTEE

With this column we begin a monthly feature about discipline. The content will consist of a typical (or sometimes not so typical) example of unprofessional conduct which resulted in disciplinary action. No actual names will be used, of course, but the cases described will be taken from the files of the Disciplinary Board. A description of the problems will be followed by the disciplinary action taken or recommended by the Board.

We hope that these case descriptions will furnish guidelines for steering clear of situations which could result in disciplinary action. If you know of anyone who appears to have a similar problem, we encourage you to help them—with advice or assistance—*before* it becomes serious enough to require disciplinary action.

This column is experimental. . . . The editors welcome comments on the content and usefulness of the series.

This month's case involves a lawyer who commingled the funds of several clients with his own.

After more than a decade of law practice, during which the lawyer received a reprimand but no other disciplinary action, a number of problems occurred in rapid succession. During a period of 13 months, the lawyer on three separate occasions appropriated for his own use funds intended for his client trust account. In one case, a client recovered his funds through the threat of a law suit. In the second case, the client had not recovered any funds at the time of the disciplinary hearing and, thus, was delayed in paying the closing costs on a house. In the third case, the client recovered his funds by retaining another lawyer.

These matters were referred to the Disciplinary Board, which held a hearing but took no disciplinary action at that time. Subsequent to these events, however, several other complaints were filed against the lawyer. Among the acts cited were the filing with the court of a false affidavit in a civil law suit, and three more unresolved instances of the commingling of funds.

The lawyer was temporarily suspended pending an investigation and a hearing concerning the latest series of complaints.

At the completion of its hearing, the Disciplinary Board recommended that the lawyer be permanently disbarred from the practice of law. The State Supreme Court adopted the recommendation of the Board and directed that the lawyer be permanently disbarred. The opinion of the Court stated that:

> In making the determination we consider the seriousness and circumstances of the offense as well as the following standards:
>
> 1. A sufficient punishment of the offender, which should be sufficient to prevent reoccurrence.
> 2. A penalty sufficient to deter other practitioners from engaging in such conduct.
> 3. Punishment sufficient to restore and maintain respect for the honor and dignity of the profession, and to assure those who seek the services of lawyers that the penalties for unprofessional conduct will be strictly enforced.

As a footnote, it should be mentioned that one of the findings of the Disciplinary Board was that the lawyer had spent, for at least a year prior to his disbarment, the greater part of each working day in a bar, apparently under the influence of alcohol. □

Willamette Law School Tax Conference

On March 7, 1975, Willamette University College of Law will sponsor a Federal Income Tax Conference at the Law School in Salem, Oregon. Among the topics to be discussed will be: The New Pension Legislation; Recent Developments—Cases and Rulings; Inventory Valuation Problems created by inflation; Tax Shelters; Responsibility to the Investing Public for Tax Opinions and Financial Statements. The luncheon speaker will be the Honorable Al Ullman, U.S. House of Representatives. Registration Fee $40. For further information write to: Mrs. Susan Robertson, Assistant to the Dean, Willamette University, College of Law, Salem, Oregon 97301.

Quotes Quoted

In *Badorek* v. *General Motors Corporation*, 90 Cal. Rep. 305 (Cal. Ct. of App. 1970), the Court stated:

"* * *Even if a legal proposition is untenable, counsel may properly urge it in good faith; he may do so even though he may not expect to be successful, provided of course, he does not resort to deceit or to willful obstruction out of the orderly processes." (p. 321)

After having been reminded of the *Badorek* case, are we blindly to follow the advice of Dr. Johnson, or does Boswell not make sense at all?

Boswell: But what do you think of supporting a cause which you know to be bad?

Johnson: Sir, you do know it to be good or bad till the judge determines it. You are to state facts clearly; so that your thinking, or what you call knowing, a cause to be bad must be from reasoning, must be from supposing your arguments to be weak and inconclusive. But Sir, that is not enough. An argument which does not convince yourself may convince the judge to whom you urge it; and if it does convince him, why then, sir, you are wrong and he is right. It is his business to judge; and you are not to be confident in your own opinion that a cause is bad, but to say all you can for your client, and then hear the judge's opinion.

Boswell: But, Sir, does not affecting a warmth when you have no warmth, and appearing to be clearly of one opinion when you are in reality of another opinion, does not such dissimulation impair one's honesty? Is there not some danger that a lawyer may put on the same mask in common life in the intercourse with his friends?

Johnson: Why, no, Sir. Everybody knows you are paid for affecting warmth for your client, and it is therefore properly no dissimulation: the moment you come from the Bar you resume your usual behaviour. Sir, a man will no more carry the artifice of the Bar into the common intercourse of society, than a man who is paid for tumbling upon his hands will continue to tumble on his hands when he should walk upon his feet.

Twenty Years Ago

She left us. After 25 years managing the Washington State Bar as well as the Seattle-King County Bar, **Clydene Morris** resigned. She had the respect of every lawyer who was fortunate enough to gain her acquaintance. **Alice O'Leary Ralls**, who had had a wide experience as a lawyer, succeeded Clydene.

Births

Grays Harbor County: **Bob Charette** elected prosecuting attorney. **Jim Solan** appointed deputy prosecutor. **J. K. Hallam** left a large law firm in Seattle to open in Aberdeen. **Greg Nelson** joined with his father, **O. M. Nelson**, in Montesano.

Olympia: **William E. Schneider** appointed Secretary to the Tax Commission. **John C. Martin** and **Winston Ingham** appointed assistant attorneys general. **Hewitt Henry** was reelected prosecuting attorney.

Spokane: **Harold W. Coffin** elected president and **Hugh Evans**, vice president, of the Spokane County Bar. **Synder & Thomas** and **Frank J. McKevitt** opened in the Old National Bank Building. **Otto M. Allison, Jr.,** opened in the Hutton Building. **Gordon S. Lower** and **Ben McInturff** reelected justices of the peace. **William L. Bennett** and **Kathryn Ann Mautz** were elected justices of the peace, Ms. Mautz being the first woman to hold that position in Spokane County.

Ritzville: **W. Walters Miller, Leonard F. Jansen** and **Milton R. Sackmann** opened there.

Whatcom County: **C. A. Lee** elected president, **Tom A. Durham**, vice president, and **Charles Olson**, secretary-treasurer of the county bar.

Seattle: **Kathreen Mechem** opened in the Securities Building. **R. Stuart Thompson** appointed deputy prosecuting attorney. **Charles P. Moriarty, Jr.,** joined Matsen & Cory. **Merwin E. Casey** joined with **Carl Pruzan. John C. Lombard** became associated with Harroun & Shidler. **Tracy E. Griffin** elected delegate to the House of Delegates of the American Bar.

Crossed the Bar

Bellingham: **Loomis Baldrey**, 72, one of the city's leading citizens.

Toppenish: **Charles F. Bolin**, 69.

Clarkston: **Homer L. Post** who had served as county clerk, prosecuting attorney, state senator, state representative, county commissioner and U. S. Commissioner.

Seattle: **George E. Flood**, 61. **Edward F. Medley**, born in Ireland, 71. **Carl E. Croson**, 70.

Spokane: **Ray F. Cater**, 62. **Lester P. Edge**, 74.

Longview: **Melvin C. Rooney**, 41.

Olympia: **Robert W. Reid**, 65.

Sartorial Seattle

Claude Wakefield was named by the Argus as one of the ten best dressed men in the city. However, the Bar News editor Rupp felt that **Clay Nixon** should have been mentioned because of his remarkable waistcoasts and **Elias Wright** for his tailcoats and **William Harrison Abbott** for the extent of his wardrobe. However, the general feeling was that most Seattle lawyers dressed closer to the style of **Bill Truscott** who was careful never to appear before a jury in a clean shirt or a shaved face.

David J. Williams

PROBATE DATA SHEET

At the State Bar Convention in Vancouver, B.C., Roger Underwood spoke at a seminar on the efficient handling of a probate and featured an elaborate multi-page probate data sheet. Most of my estates are small ones and do not justify going into depth to this extent. We have formerly published the simple one page probate data sheet designed to be supplemented by the Washington Inheritance Tax Report and initial rough draft on the form 706 Federal Estate Tax Return, in more elaborate estates. Now with the changes in the Probate Code and the recent change in Inheritance Tax Report form, it appeared timely to revise this data sheet. A copy of our revised form follows on the next page.

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

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

ABA Law Student Division Introduces Computerized Job Search Program

The Law Student Division of the American Bar Association has introduced a computerized job-search system to help ease the employment burden for both students and employers.

Named JURISCAN, the system uses coded information supplied by the law student and the prospective employer to make a "match."

The program is open only to Law Student Division members attending ABA-approved schools. There is a $5 fee for students; employers receive the service free.

Students are matched with potential employers based on such descriptive attributes as "law school courses taken" and "additional skills and experience," rather than on the more arbitrary traditional standards like "class standing" or "law school attended."

The program is expected to become operational in January when the participating students' names, qualifications and employment preferences will be computerized along with specifications of participating employers.

Students will be sent the close matches among the employers, if any, as openings are listed in the system. The student's name will remain in the computer until he, or she, has received approximately five employer matches, or until late April, whichever is sooner.

The nation's law schools are jammed with a record high 106,000 students, representing one student for every three practicing lawyers.

The National Conference of Bar Examiners says 30.879 persons were admitted to the bar last year, also a record high.

Balance this against a U.S. Department of Labor estimate that only 16,500 legal jobs will be available each year until 1980 and you can see how critical the employment situation is for the graduating law student.

Additional information can be obtained by contacting David W. Erdman, Law Student Division, American Bar Association, 1155 E. 60th St., Chicago, Ill., 60637. □

Office Practice Tips

PROBATE DATA SHEET — DECEDENT

Name of Deceased _____ Age _____ Soc. Sec. No. _____

Date of Birth _____ Date of Death _____ Place of Death _____
Length of Last Illness _____ Cause of Death _____
Marital Status _____ Will Dated _____ Where found _____
Residence-Domicile _____ Year Established _____
Decedent's occupation _____ Witnesses: _____

Petitioner _____ Address _____
Phone _____
Executor or Admin: _____ Address _____
Phone _____

PROPERTY: (In Washington) (rough draft 706 Schedules or Inheritance Tax Report)

In Other States: _____
Value: Probated Assets: _____ Separate $ _____ Community $ _____
Non-Probated Assets _____ Separate $ _____ Community $ _____
Joint Bank Acc't., Stocks, etc. _____

OFFSETS: Taxes $ _____ Assessments $ _____ Mortgage or Contract $ _____
Liens $ _____

INSURANCE ON DECEDENT:
Ordinary Life $ _____ Beneficiary _____
Annuities $ _____ Beneficiary _____
On Surviving Spouse $ _____ Beneficiary _____
TRANSFERS WITHIN FIVE YEARS _____
PREFERRED CREDITORS: Funeral $ _____ paid _____ Cemetery $ _____ paid _____
Last Illness $ _____ paid _____ Expenses of Admin $ _____ paid _____
OTHER KNOWN CREDITORS: _____

Heirs at Law—Devisees	Relationship	Age	Address	Share

REMINDERS:
Medical Expense, Interest, Taxes, Contributions, etc., for income tax return to date of Death _____
Former returns checked for assets _____ Title Insurance policies and Deeds for descriptions _____
Securities for Listing _____ War Bonds for Listing _____ Certificates of Ownership for automobiles for listing _____ Dividends and Interest Paid on Life Insurance _____ Benefits: Soc. Sec. _____
Union _____ V.A. _____ Fraternal _____ Wages Due _____ Insurance Coverage Checked _____ Taxes Checked _____

Briefly Noted

The Future of Law Related Education in Washington Schools

On October 25 and 26, approximately 225 educators, lawyers, judges, parents, police officers and news media attended the Northwest Regional Conference on Law Related Education at the Olympic Hotel in Seattle.

The participants in the Conference attended workshops where the latest techniques of the law-related instruction were demonstrated and current information on pilot projects in other areas of the United States was supplied by resource leaders engaged in such projects. The 21 resource leaders discussed the organization, funding and logistics of creating and maintaining a Law Related Education project. Use of simulation technique, role playing, case study method and the role of the lawyer in the classroom were all discussed in the workshops. The Conference was designed so that all participants would have an opportunity to discuss with other participants and the resource people their ideas and reactions to the material presented.

At the conclusion of the Conference, the Washington delegation, along with the delegations of Oregon, Idaho, Montana and Alaska, met separately to discuss plans for implementing projects similar to those discussed at the Conference in Washington schools. At this meeting, it was decided, by the participants, to establish an ad hoc committee to conduct meetings in an effort to develop community support for the institution of Law Related Education pilot projects in school districts around the state. Judge Francis Holman, King County Superior Court, Lawrence L. Longfelder, Chairperson, Youth and the Law Committee, Seattle-King County Bar, Young Lawyers Section and Mrs. Jan Wetsch, teacher, Boze Elementary School, Tacoma, were appointed coordinators for Western Washington. Donald J. Koler, Gonzaga Law student, Ms. Patty Conners, Assistant Dean, Gonzaga Law School and Charles A. Reynolds, Sr., social studies teacher, Davis High School, Yakima, were named to coordinate planning on the Eastern side of the state.

Planning efforts will commence immediately in an effort to decide the direction that Law Focused Education should take in the state of Washington and to begin an effort to secure funding for teacher training which is the keystone to a successful Law Related Education project.

Any attorneys or judges who are interested in assisting in this effort are urged to contact any of the above persons.

Attorneys in the Seattle-King County Bar Association will shortly be contacted regarding the setting up of a Speakers Bureau which will provide another area for attorney participation in the educational process. Attorneys interested in serving on the high school and junior high Speakers Bureau are urged to contact Mr. Longfelder.

"Milestone" Set in Prepaid Legal Services by Ohio Legal Services Fund — City of Columbus Agreement

A prepaid legal services plan—the first of its type in the United States—will begin operation January 1, 1975 between the non-uniformed employees of the City of Columbus (Ohio) and the Ohio Legal Services Fund. This is the first open panel plan in which a "government employer" is paying the full cost of the program.

Acceptance of the plan was announced Monday, November 25 following approval of the program by the Columbus City Council. The program affects some 4,200 employees and is the result of an agreement between the City and Local 1632, American Federation of State, County and Municipal Employees.

This agreement is a milestone in providing legal services to the people of Ohio. The OLSF is a non-profit trust set up by the Ohio State Bar Association in 1973 for the purpose of establishing agreements with organizations which desire to provide legal services benefits to their members by any attorney selected by the member.

The plan permits each covered employee to select his own lawyer and to make his own arrangements on the fee. The Fund will pay all or some portion of the fee depending on the nature of the legal matter involved, all as provided in the agreement.

Beyond its establishment of the program and the trust, the Ohio State Bar Association is not involved in operating the

plan. Both the City of Columbus and the AFSCME have designated persons to be representatives on the Board.

The "Columbus" Plan

Included in the plan are these provisions:

1. Two hours per year for consultation and advice on any subject of a legal nature.

2. Five hours of legal services per year in the event that preliminary consultation with the attorney shows need for further legal help, but not one connected with other benefits in the plan, subject to $15 deductible per case.

3. 15 hours per year of legal services plus $100 for court costs and witness fees and $200 for various expenses involved in civil, criminal or administrative hearings, trials, etc., subject to $25 deductible per case or suit when the beneficiary is the plaintiff.

4. "Major legal expense benefits" covering 80% of all expenses incurred in excess of limits for benefits otherwise provided, not to exceed $1,000 per year. This benefit is available where the beneficiary is named as a defendant in a civil suit, charged with a felony or misdemeanor, or named as a respondent in an action before an administrative agency.

5. Bail deposit card—$100 bail coverage is available to the covered employee in the Franklin County (Columbus, Ohio) Municipal Court, only.

6. Domestic relations cases benefits are provided. When interests of other family members are opposed to that of the participating group member, eligibility is restricted to the member unless the member waives the benefit in favor of the other family members.

Exclusions in the plan include business expenses, contingent fee cases, interest and penalties, tax returns, class actions and *amicus curiae* filings, duplication of services, controversies involving immediate parties to the plan, and legal matters predating the implementation of the plan.

Beneficiaries to the plan include the member, his lawful spouse and each unemancipated child under 18 years of age.

Obsolete Laws Victimize Children

How obsolete laws are victimizing children is described in a book being published by the American Bar Association.

The 350-page volume, "The Youngest Minority: Lawyers in Defense of Children," is a compilation of juvenile law articles from the Family Law Quarterly, a publication of the ABA's Section of Family Law.

The articles are presented with commentaries by Prof. Sanford N. Katz, of Boston College Law School, editor-in-chief of the quarterly.

In his introduction, Katz said the book deals with "some of the ways in which children have been victimized by obsolete laws enacted for societies and times vastly different from ours, and suggests means by which the resulting discriminations and injustices may be eliminated."

Copies may be obtained by writing to Mabel Flynn, The American Bar Association, 1155 E. 60th St., Chicago, Ill., 60637.

New WISHA Record-Keeping Requirements

State safety regulations requiring all Washington employers to keep certain occupational injury and illness records will take effect January 1, 1975.

Safety records forms which will meet the requirements of the Washington Industrial Safety and Health Act (WISHA) may now be obtained in package form from any of the Department's service offices throughout the state.

The new WISHA record-keeping requirements apply to virtually all public and private employers regardless of the number of their employees.

Starting January 1, 1975, employers who keep WISHA records will be exempted from the record-keeping requirements of the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA).

The WISHA record-keeping requirements ask employers to record each work-related injury or illness and to inform employees of these incidents following each calendar year.

Employers will keep their records at their workplaces for five years unless a variance to do otherwise has been granted by the Department. Records will not be mailed to the Department.

Department inspectors will review the employer's records during regular workplace inspections, Jacobs said. A mandatory penalty of up to $200 will be charged against employers who fail to keep accurate records.

Notices

Wanted and Unwanted

For Sale: Washington Lawyer Practice Manual, 3 vols. including 1973 Suppl., like new, call Mitchell, 285-5730, Seattle.

For Sale: ALR 1st, 2nd and 3rd complete, $1,600, terms available, call John C. Hoover at 833-0600 or 838-0311, or write 803 East Main St., Auburn, Wa. 98002.

For Sale: Corpus Juris Secundum with all supplemental material up to date. $450 suggested price. Reasonable offers considered. Dano, Cone & Fraser, P.O. Box 499, Ellensburg, Washington 98926 — (509) 925-3191.

For Sale: Am. Jur. Proof of Facts, Vols. 1-30 with Index; Am. Jr. Trials, Vols. 1-19 with Index; A. L. R. 1st, 2nd and 3rd complete and current, with digests, desk books and later case service; A. L. R. Federal, Vols. 1-15; Am. Jur. 2nd, Vols. 1-75, with Interim Index, New Topic Service and Am. Jur. Vols. 49-58 with General Index; Am. Jur. 2d, Legal Forms, Vols. 1-14 with Federal Tax Guide and Index; Modern Legal Forms, with Index; Rabkin & Johnson, Federal Income, Gift & Estate Taxation, complete and current; Rabkin & Johnson, Current Legal Forms, complete and current; C. J. S., with all current vols., but pocket parts only through 1969. Call (208) 746-2371, Lewiston, Idaho.

For Sale: Fed. 2d, 1-494 plus current advance sheets; Fed. Rules Dec., 1-62 plus current advance sheets; Moore's Federal Practice Digest. Extremely reasonable. 324-3500, Seattle.

For Sale: Rabkin & Johnson, Current Legal Forms w. Tax Analysis; Federal Income, Gift & Estate Taxation; Fletcher, Cyclopedia Corporations, & Forms; USCA; Collier, Bankruptcy Manual (4 vols). Call 624-2822, Seattle.

Wanted: An unannotated set of RCW. Contact Granville Egan in Republic, WA.

Wanted: Small Tribes Organization of Western Washington seeking donated or inexpensive sets of RCW, Federal Digest, a Supreme Court reporter and other law books. S.T.O.W.W. is a non-profit organization of small Indian tribes. The new legal program is staffed by four legal services lawyers and has no budget for a law library. Call 872-6446 (Seattle) or 593-2894 (Tacoma).

Calendar

March 7	CLE seminar, UCC Update: Law, Practice and Litigation in 1975; William M. Weisfield, chairman; Richard Cosway, Lawrence R. Small, Justice Robert F. Brachtenbach, Delbert D. Miller, Betty B. Fletcher, Paul J. Allison. 1 to 6 p.m., Olympic Hotel, Seattle.
March 14	CLE seminar, UCC Update: Law, Practice and Litigation in 1975; 1 to 6 p.m. Holiday Inn, Yakima.
March 21	CLE seminar, UCC Update: Law Practice and Litigation in 1975; 1 to 6 p.m., Ridpath Hotel, Spokane.
April 17, 18	Annual Conference of Association of Legal Administrators, Marco Island Hotel, Marco Island, Florida. ALA is composed of professional managers who work in law firms, law departments and bar organizations, and who devote half or more of their time to managerial duties.
April 18	CLE seminar, Basics of Securities Regulation: More Opportunities and Pitfalls for the General Practitioner; Mike Liles Jr., chairman; James E. Newton, Ralph Smith, Paul E. S. Schell, N. Michael Hansen, Ronald E. McKinstry, Bert H. Weinrich Jr., Tom A. Alberg; 1 to 6 p.m., Olympic Hotel, Seattle.
May 2	CLE seminar, Basic of Securities Regulation: More Opportunities and Pitfalls for the General Practitioner; 1 to 6 p.m., Ridpath Hotel, Spokane.

Lawyer Placement

Newly admitted jobless lawyer seeks others in the same situation who would like to discuss forming an atypical, shoestring firm with radical propensities, serving lower and middle income clients in Seattle. Reply to Box 5, WSBA, 505 Madison, Seattle 98104.

Legal Aid staff has paid position for bilingual "Spanish" speaking attorney or legal advocate, starting January, 1975, at $500/month; also Vista Volunteer positions for attorneys and paralegals seeking experience. Contact Ben Franklin Legal Aid Association, Inc., P.O. Box 827, Richland, WA.

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