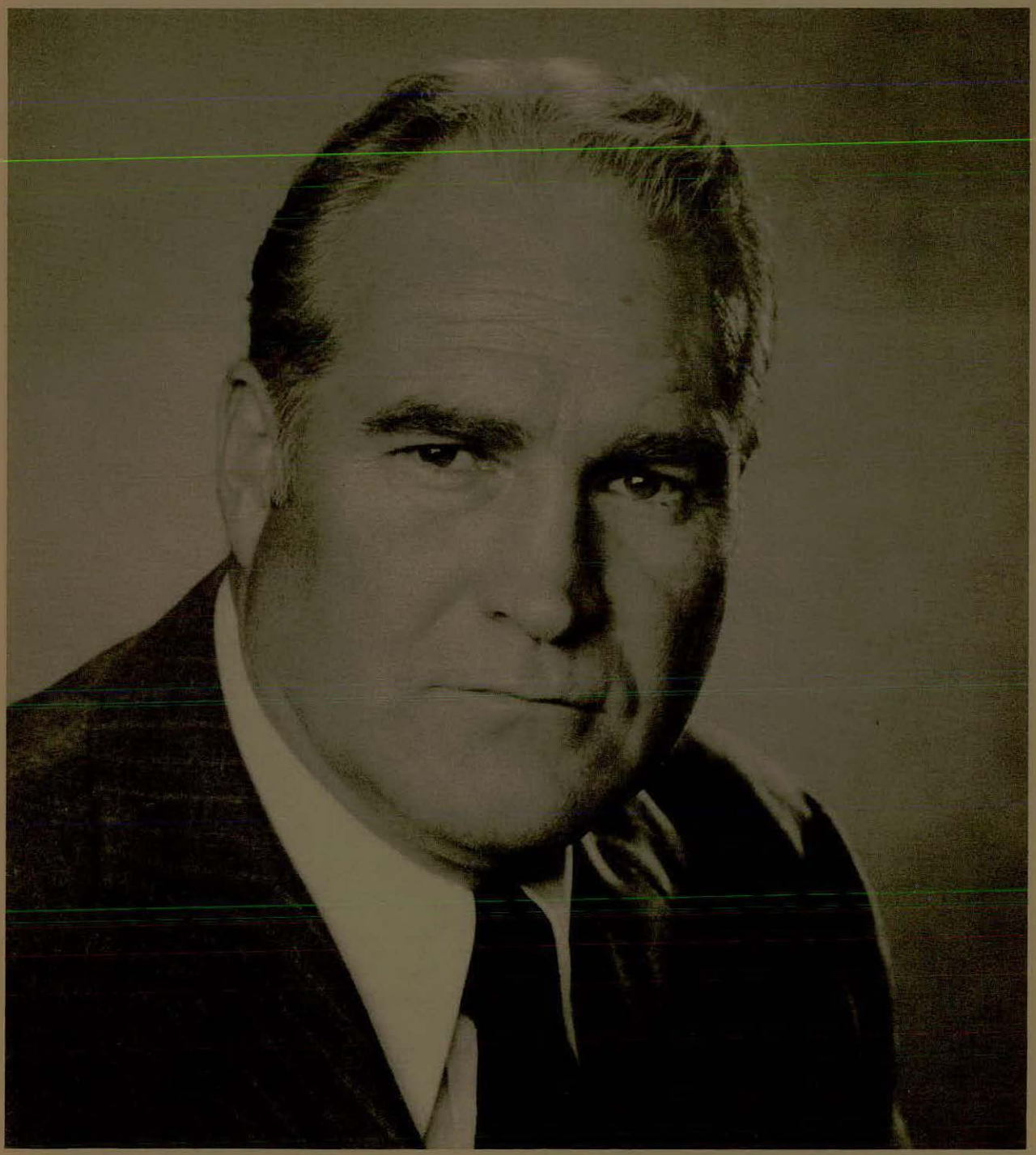
Volume 29, Number 9
October, 1975

WASHINGTON STATE BAR NEWS



ROBERT S. DAY, PRESIDENT 1975-76

Business Advisory Services from First Bank

First Bank's Business Advisory Department specializes in the business planning needs of closely-held business owners. These business specialists can be of particular assistance when your clients face the question of the ultimate disposition and successful continuation of their business.

Staffed with individuals whose financial knowledge is matched with solid business experience, the Business Advisory Department can assist you and your clients in answering questions such as:

- What special provisions should the estate plan of a closely-held business owner include?
- What steps should be taken to assure responsible management of his business after his death?
- What is the *value* of a closely-held business as a going concern?

Our Business Advisory specialists are experienced in working with attorneys in situations like these, and can contribute significant business and trust experience. You will find that First Bank is one of the few banks in the nation, and the only one in the Northwest, with a department specializing in these kinds of business concerns.

For more information send for a free copy of "Business Advisory Services from First Bank."

Business Advisory Services

Another Asset Management Service from First Bank.

Seattle-First National Bank
Business Advisory Services
P.O. Box 3586
Seattle, WA 98124

Please send me a copy of "Business Advisory Services from First Bank"

Name _____

Address _____

City _____ State _____ Zip _____

SEATTLE-FIRST NATIONAL BANK

Professional Liability Insurance

Including

S E C Coverage

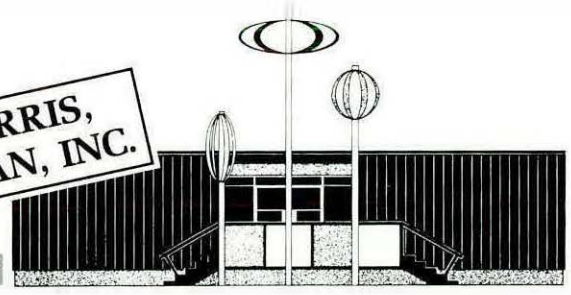
Placed with Underwriters at Lloyd's London
Limits: $100,000 to $5,000,000

$1,000,000 limits may be as little as
$225 per lawyer — premiums subject
to judgment rating.

A substantial number of Washington Lawyers have placed this coverage with our company. A roster of these firms would be our most compelling advertisement.

Please call us for a quotation. Your request will be answered *promptly* . . . And we think you will like the result.

FORMERLY MORRIS, GUEDEL & QUINAN, INC.



Quinan-Pickering, Inc. • Brokers Since 1938

P.O. BOX 3875 • SEATTLE, WN. 98124 • (206) 622-4260

Published by

WASHINGTON STATE BAR ASSOCIATION
505 Madison Street Seattle, Washington 98104

Edward W. Huneke, *Editor*
Keith Kessler, *Associate Editor*

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

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

United Graphics

Volume 29, Number 9
October, 1975

WASHINGTON STATE BAR NEWS

FEATURES

IN THE NEWS

DEPARTMENTS

Picture Protest

Editor:

You are to be commended for the quality of material which appears inside the covers of the *Bar News,* especially the feature article in the current issue entitled "Protection for the Public." However, given the high quality of the material inside, it is difficult to understand why you select an inappropriate cover photo. The cover photo in the current issue showing a bank robbery in progress is likely to enhance racial stereotypes and give rise to a host of irrational conclusions about the individuals who may commit armed robbery.

Since a considerable amount of care is needed to select and edit the high quality of articles which generally appear in the *Bar News,* I would hope that similar care can be given to choosing its cover.

WINSLOW WHITMAN
Seattle

No CLE

Editor:

As an active member of the Washington State Bar Association, I am strongly opposed to the proposed rule ordering *Compulsory Legal Education* of attorneys. The reasons for my opposition are as follows:

1) *Conflict of interest:* The proposed Board of Continuing Legal Education, dominated by the Washington State Bar Association through provisions a) requiring the Bar Association to nominate Board members and b) requiring four out of the Board's five members to be attorneys, is made the sole judge of which courses are to be accredited. Since the Washington State Bar Association both dominates the Board and has an enormous financial interest in the approval of WSBA-conducted courses/seminars, this conflict of interest virtually precludes approval of non-WSBA sponsored courses.

2) *State-sponsored discrimination based on poverty: violation of Equal Protection Clause:* WSBA-sponsored Continuing Legal Education (CLE) seminars are extremely costly. Since the WSBA possesses a state-sponsored monopoly on the practice of law, these courses should be free to those attorneys who cannot afford to pay for them. Otherwise, Compulsory Legal Education would constitute a state-imposed economic barrier to the practice of law that would discriminate against non-affluent lawyers on the basis of their poverty. Public defenders, poverty lawyers, part-time lawyers — all could be denied the right to practice their profession simply because they could not afford the high cost of CLE. The proposed CLE rule thus presents a clear violation of the Equal Protection Clause of the U.S. Constitution.

3) *Elimination of competition; antitrust implications:* The most tangible effect of the proposed rule would be to restrict competition in the legal profession, to eliminate sole practitioners, small firms, part-time and low-income attorneys unable to afford either the time or the cost of state-ordered Compulsory Legal Education.

4) *Exemption of non-practicing attorneys:* Unless exempted from CLE, teachers, scholars, writers, journalists, and others who use their active membership in the Washington State Bar Association for professional purposes other than the active practice of law would be threatened with purposeless deprivation of intellectual credentials that represent a valuable economic asset and symbol of scholarly achievement.

5) *Courses unrelated to competence:* Compulsory Legal Education would force attorneys to sacrifice time and money for courses that might have no bearing on their ability to serve clients competently. If an attorney specializes in a particular area of law and does not advise clients in other matters, the state would appear totally unjustified in compelling that attorney to invest time and money in seminars of no interest or value to that individual.

6) *Increased cost of legal services:* Compulsory Legal Education would raise the cost of legal services to the public at a time when the Washington State Bar Association is superficially expressing great concern about the availability of legal services to low- and middle-income individuals.

7) *Malpractice not avoided:* No amount of classroom instruction —certainly not the fifteen hours annually specified by the CLE proposal — would eliminate the bulk of malpractice cases that result more from attorneys' laziness or administrative incompetence than from any lack of factual knowledge of the

law. The WSBA has not demonstrated any clear relationship between the kinds of attorney misconduct that have resulted in provable malpractice and the CLE courses that it seems to require.

For the foregoing reasons, I sincerely hope that the Washington State Supreme Court will reject the proposed Compulsory Legal Education rule.

CHARLOTTE TWIGHT
Seattle

Dear Ms. Twight:

Although I am no longer President of the Washington State Bar Association, I received your letter of September 21 enclosing a copy of your letter to the Supreme Court Clerk opposing the compulsory continuing legal education rule.

1. You suggest a conflict of interest appears from the domination of the Board by the Bar Association and the Association's financial interest in WSBA conducted seminars. I have a little difficulty in understanding the concept of a conflict of interest between the Washington State Bar Association and the members of the Washington State Bar Association. The Board of Governors is elected on secret ballot from nine geographical areas across the state. Why they would have a conflict of interest with their own constituents escapes me. Furthermore, all of the literature disseminated with the rule indicates the WSBA could not possibly provide all of the seminars necessary to implement the rule. After all, you have more than 6,000 lawyers seeking to get in 15 hours each per year of continuing legal education. There is no conceivable way that the Bar Association could exclusively supply this need.

2. Your basic premise that "WSBA sponsored Continuing Legal Education (CLE) seminars are extremely costly" simply has no basis in fact. They are as inexpensive as any CLE seminars anywhere in the United States and as you well know average approximately $25 for an eight-hour presentation. You suggest that since the Bar Association has a state-sponsored monopoly on the practice of law, the courses should be offered free. But at whose expense? The Bar Association may be a state-sponsored monopoly but it is not a state-funded monopoly, it is funded by you and me. Public defenders, poverty lawyers, etc., are clearly not within a category of people who can be characterized as being unable to afford the program.

3. Your suggestion that the proposed rule would restrict competition in the legal profession, eliminate sole practitioners, small firms, etc., is simply not understandable to me. I can find no causal relationship between compulsory CLE and competition between lawyers.

4. As to exemption of non-practicing attorneys, I think you missed the point of the compulsory CLE requirement which is to quit licensing people who are not competent to practice law. You assert that there are "teachers, scholars, writers, journalists and others who use their active membership in the Washington State Bar Association for professional purposes other than the active Practice of law" and that they would be threatened with deprivation of their license. That's what the program is for. We presently have a situation where a journalist could take a law degree in 1941, not look at a law book since and every year for $100 we will issue him a license under the great seal of the State of Washington which permits him to hold himself out to the public as being capable of performing a professional service in respect to which he is wholly incompetent. To suggest we should exempt such people is to miss the whole point.

5. Your suggestion that compulsory CLE would force attorneys to take courses having no bearing on their ability to serve clients competently is simply a *non sequitur*. Why would anybody be forced to take any course that is unrelated to either his specialty or to his desires? You apparently haven't read the rules.

6. The impact of the expense of taking a CLE course upon the cost of legal services to the public is so minimal as to not warrant serious consideration by anyone.

7. Your suggestion that malpractice would not be avoided is quite correct. No one, to my knowledge, has suggested that it would be.

KENNETH P. SHORT
Seattle

Now there's a $250,000 Major Medical Program for the self-employed.

If you're in business for yourself, or if you don't have group medical coverage where you work, we have a new Blue Cross program designed for you.

It offers individuals the kind of health care coverage that, until now, was only available under group plans. In some ways, it's even better.

For example, it pays 100% of most hospital costs—including a semi-private room, 365 days a year. So even if costs go up, you're fully covered.

And that's only half of it. It also provides $250,000 in coverage for medical and surgical expenses. Including prescription drugs.

Anyone under age 65 is eligible. No physical is required; just complete a simple health statement and, if you qualify, you'll have real security against hospital and medical bills.

We invite you to compare this new program with any other individual coverage. We believe you'll find it to be among the best offered anywhere.

For a pamphlet with full details on the benefits and limitations of this new Blue Cross program, write us at P.O. Box 327, Seattle, WA 98111.

We want to take better care of you.

Blue Cross®
of Washington and Alaska

Seattle, Spokane Tacoma, Yakima, Richland Wenatchee Anchorage

® Registered Mark Blue Cross Association

Are We 30 Years Behind?

Doctors, many years ago, found difficulty in earning the livings that they do now. On a national average, they were far down the list, and well below lawyers, for annual income levels. Such is not the case today. In the late '30s and '40s, medical clinics started forming, which attempted to make more efficient use of the doctors' time. Staff assistance was utilized more. Group health plans spread the cost of medical coverage over a larger group of persons. It spread the payments by individuals over long period of times, in the manner of premiums. Medical insurance became a lucrative field for the insurance industry, resulting in medical plans available through employee groups, and spreading to home and auto insurance policy riders, and outright medical insurance programs themselves.

One motivating factor was the desire of the doctor to earn a higher level of income; another was to make more medical services available to the citizens of the country who might not necessarily be able to afford it.

Where have the lawyers been all these years? Why have we found it so difficult to answer the question about providing legal services to the mass of middle-income, middle-class America? Why have we been struggling so hard to find work for the large numbers of new lawyers joining our Bar? Why do we have to continue to defend the prohibition on lawyer-advertising? (The impetus for allowing lawyers to advertise is to bring legal services to more of the citizenry.)

We all have had substantial dealings with doctors; as clients, and as their patients. We have seen their system improve through the years, yet we have not applied their results to our own profession. Simple business judgment seems to have been lacking altogether among the Bar.

The use of para-professionals and the institution of legal clinic arrangements should have been started years ago. Group pre-paid legal service programs should have been available long before now. Advertising would not be necessary. The Group Pre-Paid Legal Plans would soon extend into general legal insurance offered by private companies.

The public could select its own desired level of legal service; some could use clinics, some could purchase legal insurance, and others could hire their own lawyers, pay directly out of their own pockets as the needs arose (self-insuring themselves) if they desired.

The Pre-Paid Legal Services plan is long overdue. It will be an initial step in a healthy solution to many of the problems facing our Bar and our Profession.

Edward Huneke

Impressions Upon Becoming Bar President

At the time of writing this, I have not yet been sworn in as President, and I am sitting here contemplating the coming year with some trepidation.

I have known the last six Presidents of the Washington State Bar Association quite well and when it appeared that I was under consideration for the office I took the opportunity to talk to most of them about their experiences as President and their feelings about having served. To a man, they all agreed (1) that the job entailed a great deal of hard work with no pay; (2) that it resulted in a substantial loss of time from the practice of law and a consequent loss of income; (3) that by the end of their terms that a dissolution of their law partnerships seemed imminent; and (4) that their year as President was without question the most rewarding experience of their lives.

All in all it would be fair to say that they felt much like Abraham Lincoln's character who, having been tarred and feathered and while being ridden out of town on a fence rail, stated "If it wasn't for the honor of the thing, I think I'd just as soon pass."

Why then does one accept this job? Principally, I think, because the presidency of the State Bar is just something that a lawyer doesn't turn down. It has often been stated that one doesn't turn down the request of a President of the United States. It is equally true, I believe, that one doesn't turn down his profession.

It can easily be said (and will be, I'm sure), that the State Bar president is on an ego trip. To a certain extent this is of course true. But it is not the kind of ego trip where I feel that I have received a call, or that I am the only person qualified to step in and solve all of our problems in these trying times. Far from it. As a matter of fact I was a little reluctant to accept the job because I wasn't sure that I might not fall flat on my face, and there is certainly no assurance that I will not.

I think though that the real reason I didn't long hesitate when the presidency was offered to me was that I like lawyers, and like almost all lawyers I love our profession. I not only like

lawyers, but I like to associate with and know lawyers. I know a great many lawyers, but not nearly as many as I would like to, and I am looking forward to meeting as many of the lawyers of this State as possible. The way I feel about lawyers is epitomized by a comment made to me several years ago by a Pasco lawyer, Ed McKinlay. We were discussing lawyers and he said, "Bob, I love to talk to lawyers, because I have never met a lawyer who was not, in his own way, a great bullshitter."

As I stated before I not only like lawyers but I love our profession. I think that it is important that we keep always in mind that we are in the true sense of the word, "professional" people. We as lawyers have problems in our profession, but we should not let ourselves fall prey to the all too common tendency to self criticize ourselves to death. We have problems, but we are quietly and professionally going about the job of solving these problems. We will find no perfect solutions for there are none, but we will try our honest best to make the Washington State Bar a more outstanding bar than it already is, and to serve the needs of each of the lawyers of Washington.

I still believe that more cases are won by hard work than by flashes of insight and brilliance of rhetoric. Therefore, I promise to each member of the bar, not brilliance of mind and rhetoric, but a year of hard work and a sincere effort to do my best in your behalf.

I welcome suggestions and advice from each of you, because I will need your help. Wish me luck.

Robert S. Day

An Analysis of *SINGER v. HARA*, 11 Wn. App. 247 (1974)

SAME-SEX MARRIAGES

By **Hon. Charles L. Powell**
and **David A. Saraceno**

In September, 1971, two males applied in King County, Washington for a marriage license. The County Auditor refused to issue the license and a Motion to Show Cause was subsequently filed. In August, 1972, the Motion was denied by the trial court in part because there was no prima facie showing that Washington law permits two people of the same sex to marry. The trial court also stated that the refusal to issue a marriage license to a same sex couple did not abridge any constitutional rights. On appeal, three assignments of error were made: (1) The trial court erred in concluding that the Washington marriage statute, RCW 26.04.010 *et seq.*, prohibits same sex marriage. (2) The refusal to issue the license violates the Equal Rights Amendment [ERA] of the Washington State Constitution. (3) The refusal to issue the license violates the Eighth, Ninth, and Fourteenth Amendments to the United States Constitution.

The *Singer v. Hara* decision was authored by Judge Swanson and concurred in by Judges Horowitz and James. In support of their first claim of error, appellants argued as follows: the phrase of the marriage statute permitting "persons of the age of 18 years who are otherwise capable" to marry only prohibits certain marriages involving habitual criminals, diseased or insane persons; the legislature had not defined the competency of the marriage relationship, but only the competency of the individuals seeking to marry; therefore, since both appellants were legally capable, State law permitted their same sex marriage.

Charles L. Powell received his LLB degree in 1925 from the U. of W. Law School. He practiced in Kennewick from 1929 to 1959 with Powell & Loney, at which time he was appointed to the United States District Court Bench. He went on senior status in 1972. He died in Spokane, after preparing this article with the assistance of Dave Saraceno, on August 18, 1975, at the age of 73.

In response, the *Singer* court stated that the legislature did not authorize same sex marriage in enacting the marriage statute. A 1970 amendment to the questioned phrase of the statute eliminated any reference to male and female, and substituted the word "persons". Gender designations were eliminated to equalize previously different age requirements for marriage for male and female alike. The *Singer* court reasoned that the changed wording and the reference to male and female in required affidavits-of-marriage evidenced no legislative intent to authorize same sex marriage.

Equal Rights Amendment

The opinion next discussed the Equal Rights Amendment. In relevant part, the ERA provides that, "[e]quality of rights and responsibility under the law shall not be denied or abridged on account of sex". Appellants maintained that the simple language of the Amendment makes sex an impermissible legal classification. Thus, they argued that it is unconstitutional under the ERA to construe state law to permit a male to marry a female but deny a male the right to marry a male. The right to marry would then be impermissibly classified "on account of sex". The State responded by claiming that appellants were not entitled to relief under the ERA because they had not shown they would be treated differently by the State if they were females.

Appellants referred to several state and federal cases to support their argument, the most prominent being *Loving v. Virginia*, 388 U.S. 1 (1967). In *Loving*, the United States Supreme Court invalidated a Virginia statute prohibiting inter-racial marriage. The State of Virginia had argued that the statute was not an unconstitutional race classification because it applied equally to both races. The Supreme Court noted that "the fact of equal applicaton does not immunize the statute from the very heavy burden of justification which the Fourteenth Amendment has traditionally required of state statutes drawn according to race". Such an impermissible race classification could not be used to deny inter-racial couples of the "fundamental" right to marry.

The *Singer* court did not accept appellants' suggested analogy between the race classification in *Loving* and the alleged sex classification involved before it. It reasoned that the operative distinction lies in the relationship defined as "marriage," and concluded that marriage can be defined only as the legal union of one man and one woman. This definition controls even to the exclusion of the ERA. Moreover, the ERA pro-

WALLA WALLA COUNTY BAR ASSOCIATION MEMORIAL RESOLUTION IN HONOR OF THE LATE HONORABLE CHARLES POWELL

United States District Judge Charles Powell served our Eastern District of Washington and as a Visiting Judge in many other Districts for more than twenty years, faithfully and well. He also served as Judge Pro Tem on the Ninth Circuit Court of Appeals on a number of occasions.

Charlie was a dedicated and extremely able lawyer, practicing at Kennewick. He served in Benton County as its Prosecuting Attorney and was an outstanding and public-spirited citizen—a pillar in the State Bar Association.

Judge Powell's life set a superb example as judge, lawyer, citizen, and as a husband and parent, and he was our beloved neighbor.

It is now, therefore:

RESOLVED, by members of the Walla Walla County Bar Association in Special Meeting assembled this day that this, our tribute to our friend and colleague, Charlie Powell, shall be placed in the permanent records of this Association, and that copies of the same shall be forwarded to members of his family, to the Clerk of the U. S. District Court at Spokane, to the President of Benton County Bar Association, to the President of the Washington State Bar Association, and to the local news media.

Unanimously adopted this 21st day of August, 1975, in Walla Walla, Washington.

tects only those individuals who claim and demonstrate a deprivation of rights based solely on account of sex. Appellants were unable to make a showing because the right they sought was not presently recognized. The ERA did not create any new right permitting persons of the same sex to marry, but only insured that existing and future rights be equally available to members of both sexes.

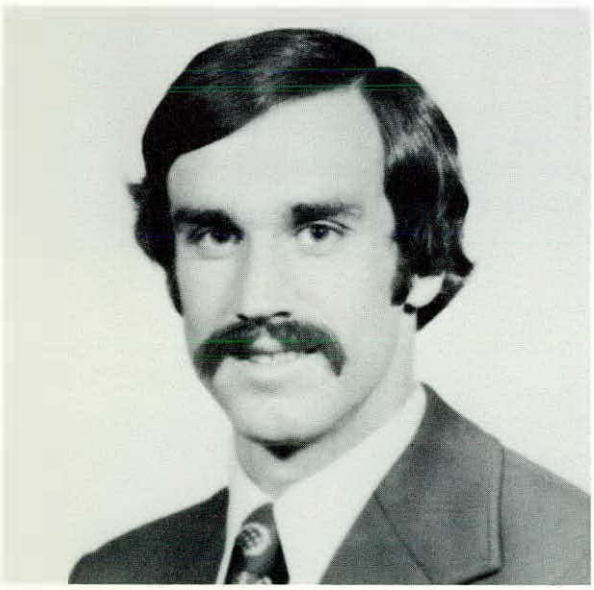
The logic of the *Singer* case is unpersuasive. It is similar to that described by Judge Learned Hand when he said that some people win cases like the player who won the chess game by sweeping all of the men off the table. The whole opinion is premised upon the conventional definition of marriage that controls to the exclusion of the ERA. As the opinion states:

> "...the state's refusal to grant a license allowing the appellants to marry one another is not based upon appellants' status as males, but rather it is based upon the state's recognition that our society as a whole views marriage as the appropriate and desirable forum for procreation and the rearing of children. This is true even though married couples are not required to become parents and even though some couples are incapable of becoming parents and even though not all couples who produce children are married. These, however, are exceptional situations. The fact remains that marriage exists as a protected legal institution primarily because of societal values associated with the propagation of the human race. Further, it is apparent that no same-sex couple offers the possibility of the birth of children by their union. Thus the refusal of the state to authorize same-sex marriages results from such impossibility of reproduction rather than from an invidious discrimination 'on account of sex'. Therefore, the definition of marriage as the legal union of one man and one woman is permissible as applied to appellants, notwithstanding the prohibition contained in the ERA, because it is founded upon the unique physical characteristics of the sexes and appellants are not being discriminated against because of their status as males per se."

Interpretation of the federal or state equal rights amendments is presently limited to legislative history, law review commentary, and a few state cases. Nevertheless, two distinct interpretative approaches can be distilled from these sources. One is the unqualified or "absolutist" view which states that sex shall not be a factor in determining the legal rights of males or females. The second approach, which appears to be adopted by the *Singer* court, is the "unique physical characteristics principle". This would permit legislative distinctions based on a sex characteristic unique to one sex. Thus, if legislation confers benefits or privileges to one sex because of a physical characteristic unique to that sex, the legislation cannot be said to treat the sexes unequally since no basis for achieving equality exists. Laws relating to pregnancy or sperm donation are prime examples. Yet the principle is possibly misapplied by the *Singer* court.

Some commentators have isolated two factors which should be weighed by a court in evaluating the validity of a "unique physical characteristic" classification. Restated in terms applicable to the same sex marriage ban, they question: (1) whether the physical characteristics upon which the classification is based are truly unique to the class being regulated, and (2) whether the regulation involved is directly restricted to those unique physical characteristics?

A uniform same sex marriage ban would fail both tests. While it is true that only the heterosexual pair has the capability to procreate, it is equally true that health or age prevents many heterosexual pairs from engaging in procreative activities. Nor must the heterosexual pair demonstrate procreative capability prior to the issuance of a marriage license. And, as will be discussed later, the legality of heterosexual marriage is unaffected by either partner's inability to procreate. It can be argued, then, that a marriage ban based on procreative disability should fall on the incapable heterosexual pair and the same sex pair since both exhibit the same unique physical characteristic. Moreover, marriage provides numerous *non-biological* benefits completely unrelated to procreative ability. Among them are the right to inherit, to file joint income tax returns with substantially reduced tax, to recover for wrongful death of a marriage partner, to claim marital privilege to prevent a spouse from testifying, to claim exemptions as the head of the household, and the community property rights. Therefore, proper application of the ERA "unique physical characteristics" principle makes it questionable whether the legality of marriage should be affected by procreative ability or inability.



David Saraceno received his J.D. degree from U. of Cal. at Davis in 1974. He was a law clerk to Judge Powell from Sept. 1974 to the present. Previously he clerked for an attorney in California, where he is a member of the bar. He has had experience with the Dept. of Water Resources, State of Calif., and with the Center for the Administration of Criminal Justice.

14th Amendment Violation

The appellants further argued that the State's failure to issue a marriage license violated the Fourteenth Amendment of the United States Constitution. After discussion of the standards of equal protection review which could be applied, the *Singer* court concluded that no inherently suspect classification existed that would compel application of the strict scrutiny standard. Therefore, since the State had an interest in providing a favorable environment for the growth of children, a rational basis for the exclusion of the same sex marriage was demonstrated.

The choice of the "rational basis" standard by

the *Singer* court is clearly a result-oriented approach to appellants' equal protection argument. Rarely has a state failed to demonstrate that a rational basis exists to justify disparate treatment of individuals within a legislative classification. In contrast, no state has shown a compelling state interest to justify its abridgement of a fundamental right or to justify the creation of a suspect classification. Appellants' equal protection argument was discredited before it was discussed.

To argue for same sex marriage is like arguing against motherhood. Nevertheless, an argument based on the Equal Protection Clause can be supported by existing constitutional precedent. The courts have invoked two major standards where equal protection is concerned: the strict scrutiny standard and the reasonable basis standard. The former standard is generally applied where a fundamental interest is abridged by rule, policy, or statute, or where suspect classifications, like race and alienage, are involved. In either situation, a state bears a very heavy burden in justifying its action. In contrast, the traditional, reasonable basis standard requires that when the law treats people differently, the disparate treatment must be reasonably related to a permissible purpose. Since choice of either standard represents an outcome-determinative decision, the strict scrutiny standard offers the most promise for validating same sex marriage.

No Fundamental Right To Marry

Some preliminary determinations are necessary.The right to marry a person of one's choice, irrespective of sex, must be established as a fundamental right. Alternatively, the prohibition against same sex marriage must be challenged as unconstitutionally-based on the suspect classification of sex or homosexuality. The *Singer* court deferred to the legislature on the issue of whether homosexuality should be a factor precluding marriage. Other courts disagree on whether sex is a suspect classification and have largely avoided the homosexuality issue.

Although marriage is recognized as a basic civil right, the Supreme Court has not declared it "fundamental" within the meaning of the strict standard. Full discussion of the fundamentality of the marriage right has usually been secondary

to discussion of other paramount issues engendered by the legal controversy facing the Supreme Court. However, the fundamental nature of the marriage relationship could draw special protection from a variety of constitutional safeguards, including the right of association and the right of privacy. Significant language in several cases emphasizes the "associative" element of the marital relationship and de-emphasizes the single entity or "union" element. Yet serious difficulties exist with this analysis which make it questionable whether it can be supported by current precedent. Most notably, the Supreme Court has not clearly denominated the marriage relationship as an association within the meaning of the First Amendment. Constitutional safeguards have generally been extended only to existing associations of political nature. Nevertheless, drawing from dicta in a variety of cases, a credible argument can be premised on the "associative" right.

Implicit recognition of the marriage right may also have its genesis in the right of privacy found in the penumbras of several fundamental constitutional guarantees.The recent abortion cases suggest the Supreme Court's willingness to protect individual's choice in matters of privacy from unwarranted governmental intrusion. Earlier cases tied the "associative" right with the "privacy" right and granted protection to the "freedom to associate and the privacy of one's association" *Griswold v. Connecticut,* 381 U.S. 479 (1965), the progenitor of privacy cases, set forth a theory of marital privacy that protected the institution of marriage as an association based on the privacy of each individual. Thus, two distinct positions emerge in the context of same sex marriage. The first empowers the state to authorize marriage, but prohibits any state encroachment into the privacy inherent in the marriage relationship once it is legally established. In contrast, the second position theorizes that if the right of privacy protects the institution of marriage, then the choice to associate within that institution is also protected. Since the inherent privacy of marriage originates in the premarriage choice of two individuals to marry, the second position offers the fullest expression of the marital privacy right.

Supreme Court language linking marriage with procreation presents another difficulty with the right to marry argument. Since procreative capability is central to the societal concept of marriage, arguably the marriage right cannot be separated from the procreative right. Though the *Singer* court followed a similar rationale, the reasoning may represent a judicial reluctance to apply changing legal and societal principles. As one commentator observed, "[i]t is unlikely, in light of Court dicta and of the evolving attitudes toward marriage in our society, that constitutional protections surrounding the institution of marriage would be made dependent on the ability or willingness to bear children". The observation has a great deal of merit. There is no logical nexus between procreative capability and the institution of marriage now permitted. No heterosexual pair must demonstrate either the ability or willingness to procreate as a condition to legal marriage. Nor is the legality of marriage affected by the decision of the heterosexual pair to forego sexual intercourse. What results is the implicit assumption that the same sex pair cannot benefit from the emotional, social and legal consequences of marriage because they cannot procreate. This *no-benefit* assumption should not dictate any legal disadvantage to the same sex pair since the factually identical heterosexual couple suffers no legal disadvantage due to its own procreative disability.

The determination of whether sex or homosexuality represent suspect classifications has been made by an increasing number of courts in recent years. The Washington Supreme Court recognized sex to be a suspect classification in *Hanson v. Hutt*, 83 Wn. 2d 195 (1973). The California Supreme Court took similar action in *Sail'er Inn, Inc. v. Kirby*, 5 Cal. 3d 1 (1971). Four members of the United States Supreme Court agreed in *Frontiero v. Richardson*, 411 U.S. 677 (1973). Other authorities, legal and medical, argue that homosexuality exhibits characteristics which could render it a suspect classification. Since the strict scrutiny standard is activated if a suspect classification is found, important substantive advantages are involved.

Like race and alienage, sex characteristics are largely immutable. An individual is virtually

powerless to change his or her sex. Stereotypes without factual support are attached to members of either sex. Sex characteristics rarely bear any relationship to ability to perform or to contribute to society. Too often the characteristics are determinative of a status that results in a whole class being treated without regard to the individual's true capability. Homosexuality also exhibits characteristics which the Supreme Court considers generic to suspect classifications. Like racial minorities, homosexuals have been saddled with disabilities, subjected to historical and contemporary unequal treatment, and subjugated politically. The disfavored treatment of homosexuals represents a societal view long-held and commonly-shared.

There are problems with this analysis, however. The first is represented by the Supreme Court's own disagreement over the question of whether sex is a suspect classification. The second problem focuses on whether the Supreme Court is willing to grant homosexuals a similar legal status now afforded to racial minorities. Though the *Singer* court recognized that "public attitude toward homosexuals is undergoing substantial, albeit gradual, change..." it expressed no opinion on whether the state's marriage laws should be revised to include homosexual union within the definition of legal marriage. It merely concluded that the revision is not constitutionally-mandated. Whether there is a sufficient political, social, and legal impetus to compel the United States Supreme Court or its Washington counterpart to find a new suspect classification is simply too difficult to predict.

However, serious inroads are being made into traditionally-held views of the marriage concept. In this regard, *Loving v. Virginia* is particularly interesting. The decision is possibly the watershed of evolving attitudes toward the marriage concept and judicial acceptance of new definitions of marriage. Previously, marriage in Virginia was defined as the legal union of two same-race partners and inter-racial marriage was considered immoral. *Loving* eliminated the prohibition against inter-racial marriage. Thus, it can be argued that if sex and homosexuality exhibit characteristics which, like race, render them suspect classifications, then both should be considered neutral factors in determining competency to marry. Stated differently, if marriage competency is race-neutral, then it should be sex-neutral as well. Finally, if the marriage definition encompasses inter-racial couples, it must encompass same sex couples. While these arguments are either perfectly symmetrical nor immune from criticism, there is sufficient precedential value in *Loving* to support them. In any event, *Loving v. Virginia* illustrates the Supreme Court's willingness to examine traditionally-held views about marriage and its relationship in a changing society. This willingness was not shared by the Washington court in *Singer v. Hara*.

If the right to marry is considered fundamental or a suspect classification is found, what justification can a state offer in support of a same sex marriage prohibition? Arguably, the laws against sodomy and other illicit sex acts represent strong state interests. Yet these laws apply equally to the heterosexual marriage pair. It is questionable whether the state is in any better position to regulate the activity in the same sex

marriage relationship than in the heterosexual marriage. A state may also have an interest in encouraging procreation to assure the survival of the human race. Since most heterosexual pairs have procreative capability while same sex pairs do not, is the interest sufficiently compelling to warrant a complete ban against same sex marriage? Problems with overpopulation and dwindling resources militate against its sufficiency. Finally, a state may argue for the preservation of the traditional heterosexual family since the state is benefitted by the inherent stability of the relationship. The *Singer* court supported its rationale in part on this interest. Yet no evidence demonstrates that same sex couples suffer from any disability that would disadvantage the state or each partner. The stability of the family is a function of each individual, not the sex of the marriage partner.

Despite precedential and interpretative difficulties, the Constitution will support the validity of same sex marriage. Successful application of an equal protection analysis demands that the courts reaffirm the basic tenent of the Fourteenth Amendment—that exclusionary classifications based on bias, prejudice and misinformation will not survive judicial scrutiny. As the Supreme court stated in *Williams v. Illinois*, 399 U.S. 235, 245 (1970), "[the] Constitutional imperatives of the Equal Protection Clause must have priority over the comfortable convenience of the status quo". The Constitutional commands of the Equal Rights Amendment make it equally imperative that courts avoid the convenience of semantical manuevering and the simplicity of an outcome-determinative approach. The importance of the rights involved and the need for enlightened interpretation of the ERA require a more responsive judiciary. □

ABA Approves Nine Schools for Paralegal Training

The American Bar Association has moved into the paralegal accrediting field, granting final approval to eight institutions and provisional approval to another.

First to receive ABA final approval were:

Bentley College, Institute of Paralegal Studies, Waltham, Mass.

Cumberland County College, Legal Technology Program, Vineland, N.J.

The Institute for Paralegal Training, Philadelphia.

Lone Mountain College, Legal Studies Program, San Francisco.

UCLA University Extension, Attorney Assistant Training Program, Los Angeles.

University of Minnesota, Legal Assistant Program, Minneapolis.

University of West Los Angeles, School of Paralegal Studies, Culver City.

Villa Julie College, Legal Assistant Program, Stevenson, Md.

Provisional approval was granted to Cleveland State Community College, Legal Assistant Program, Cleveland, Tenn.

Schools that apply for ABA approval are judged on several criteria, including curriculum, instructors and physical facilities. Most offer two-year programs.

In addition, the ABA's policy-making House of Delegates has authorized its Special Committee on Legal Assistants to work with appropriate groups and organizations toward establishment of a permanent, broadly-based body to assume the accreditation responsibility. The action was taken at the recent ABA annual meeting in Montreal.

Paralegals are used by lawyers to handle such activities as research, interviewing and preparation of briefs. They are viewed by many as one means of reducing the cost of legal services, making them available to a much wider segment of the public.

ROBERT S. DAY ELECTED PRESIDENT 1975-76

Is 1:59.3 too fast for this Board?

Life is not getting easier for the Board of Governors. In August, 1974, the *Bar News* reported that President Cleary Cone started the monthly Board meetings more explosively than the start of a 100 yard dash. The following year, President Ken Short forced the Board into even greater efficiency and precision, and now, when we could hardly expect the Board to improve any more, we have given them President Robert "Mercury" Day. "Mercury" claims that for two years straight, he was the Washington State Half-Mile champion, never being beaten during that time by any of his peers. He won the State Championship with a time of 1:59.3; and it is quite possible that no other person on the Board has ever run the distance of one-half mile in that short time. Any hopes the Board has in keeping up with Day lie solely in the fact that these State Championships were won in 1941 and 1942.

Robert S. Day was born in Ezel, Kentucky, and moved as a youngster to Okanogan. He attended Whitman College and Gonzaga Law School ('53). He clerked the following year for Judge Edward Schwellenbach, before entering private practice in the Tri-Cities.

In 1960 his present firm of Peterson, Taylor & Day was formed to engage in a general trial practice. He has been president of the Benton-Franklin Bar and a member of State Bar committees, including the Committee on Revision of the Judicial Article. He served on the Board of Governors from 1971-74.

He also doubled in brass as Kennewick police judge and justice of the peace from 1954-1970.

Pres. Bob Day convincing Bud Kight, Wenatchee

He and his wife, Gloria, have sons 18 and 20. Also a golfer, he described himself as a "former boatman"; when the sons were younger the family frequently toured on a 31-foot cruiser down the Columbia and out into the ocean.

In addition to his other interests, he has exchanged his yachting/cruising endeavors for general traveling.

He has been a member of the Moses Lake Lodge, F&AM, since 1949.

The Board's Work

Meeting of the Board of Governors, September 10, 1975, at Vancouver, B.C., Canada

The Board of Governors met at Vancouver on Wednesday, September 10, 1975, prior to the commencement of the Annual Bar Convention, to iron out a few last minute issues before the new Board took over.

President's Report

A change was made in the Medical Malpractice Committee membership, removing Bob Day, since he will now be the Bar President.

President Short recommended that the Board consider meeting 12 times a year, including August, which usually has been omitted from the meeting schedule.

Compulsory Continued Legal Education

Dick Riddell reported on a meeting with the SKCBA persons over certain objections to the language in the proposed Rule. Three changes were approved by the Board, as suggested by the SKCBA, clearing up the issues about lawyers selecting their courses, no discrimination on out-of-state courses, and setting guides for approval of courses furthering constructive legal education.

Judicial Article

The Board discussed whether to support the Judicial Article. No decision was made, and the matter was set over to the October meeting for further consideration.

Budget

The Board passed the Budget, which is published, as approved, elsewhere in this issue. The Audit will be published when it is completed. The Board also approved the salary of the Executive Director of $34,000 per year, plus rental of a car to replace his current auto, plus auto storage for the year.

Gloria Day, Judge Sirica, and Marge Short

Client's Indemnity Fund

The Board had numerous claims before it for approval. One of the primary problems was whether to overrule the present ceiling on maximum claims payable for one attorney. In at least two present instances, the total claims far exceed the ceiling.

The basic issue revolved around the determination of the primary purpose of the fund, i.e., whether it was to reimburse victims from attorneys' acts, or whether it is a public relations move by the Bar. It was argued that if the main purpose is to reimburse the public, then it should do so without limit. The discussion then went to appropriate ways to provide sufficient funds, noting that several states have funds with totals on deposit substantially larger than ours. Additional charges of the membership were considered, and the matter was left for further determination at later meetings. □

WASHINGTON STATE BAR ASSOCIATION BUDGET
As Approved and Adopted
for the Fiscal Year 1975-76 (Begin. October 1, 1975)

Revenue

Revenue	Fiscal 1975 Budget	Projected Fiscal 1976
Dues	$585.150	$ 632,200
Interest	12,000	15,000
Reimbursements— Disciplinary Costs	3,000	3,000
Bar News Advertising & Subscriptions	2,500	60,000
Lawyer Referral Service	2,200	4,000
Publications	1,000	1,500
CLE	120,120	157,000
Examinations & Admissions	93,000	110,000
Rent	—	35,200
Fee Arbitration	—	1,400
Total Income	$818,970	$1,019,300

Anticipated Activity Center Costs

	Audit 1974	Anticipated Fiscal 1976
Continuing Legal Education	$141,908	$ 159,586
Bar Examination & Admissions	95,540	128,933
Bar News	40,548	71,191
Legislative	—	16,500
Discipline	114,386	179,038
Committees	60,149	65,189
Public Affairs	39,267	77,171
Conferences & Meetings	34,710	22,236
Membership Mailings & Special Projects	19,916	20,236
ABA & Western Conferences	14,450	10,000
Lawyer Referral Services	12,876	18,013
Plebiscites and Judicial Polls	7,886	9,712
Legal Intern and Lawyer Placement	7,566	17,974
Audits of Trust Accounts	—	43,000
Other Activities	18,423	26,889
Sections	37,574	35,582
Contingency	—	40,000
Transfers to Other Funds	—	50,000
Equipment, Improvements & Remodeling	17,219	27,000
Totals	$662,418	$1,018,250

Schedule of Budgeted Cost Centers

	Budget Fiscal 1975	Budget Fiscal 1976
Salaries	$279,000	$ 309,000
Payroll Taxes & Benefits	32,500	42,000
Headquarters:		
Rent	30,480	76,550
Phone	20,000	20,000
Postage	15,500	20,000
Office Supplies	15,000	17,000
Office Equipment	10,000	12,000
Office Equipment Maintenance	2,000	3,000
Headquarters Improvements & Remodeling	5,000	15,000
Office Insurance	3,300	3,500
Audit	3,000	5,000
Library	1,000	1,000
Xerox	12,000	15,000
Printing/Publications	31,500	17,500
Bar News	36,000	60,000
Membership— Organizations	700	1,000
Discipline:		
Discipline Costs	12,200	12,000
Outside Counsel	8,000	18,000
House Counsel	6,000	4,000
Disciplinary Board & LAC	6,000	6,600
Audits of Trust Accounts	—	5,000
Miscellaneous	1,600	2,500
Committees	22,900	20,000
Sections	9,350	12,000
Conferences & Meetings	26,500	28,500
ABA & Western	8,000	10,000
Bar Presidents Meeting	3,500	4,500
Lawyer Referral	8,300	8,300
Public Relations	5,000	5,000
Public Affairs	8,800	5,000
Appropriations:		
Lamp	1,800	1,800
Jail Standards	4,000	—
Law-Focused Education	3,000	1,000
Legislative Representative	—	16,500
Contingency	15,000	40,000
Bar Exam & Admissions	48,350	70,000
CLE	65,000	80,000
Building Fund	30,000	—
Clients Security	25,000	50,000
Total Expenditures	$815,300	$1,018,250

Around the State

COWLITZ REPORT
By **O. H. HUSEMOEN**

The annual Cowlitz County Bar Picnic was held at the open-air surroundings of the home of the late **Ronald Moore.** Mr. Moore's widow, Grace, has been most receptive to continuing a past tradition for the location of the picnic and, again, it was a usual success.

Robin M. Force, a graduate of San Diego State, is joining the Cowlitz County Prosecuting Attorney's staff as a deputy. **Robert H. Falkenstein** is moving from the Prosecutor's Office to become an associate with the firm of Calbom, Cox, Andrews & Hamm.

C. C. Bridgewater, Jr., has joined the firm of Walstead, Mertsching, Husemoen, Donaldson & Barlow as an associate, and that firm is now undergoing major remodeling of its offices to make room for new additions.

GRAYS HARBOR REPORT
By **JOHN L. FARRA**

Recently members of the Grays Harbor Bar Association met with members of the Thurston County Bar, Mason County Bar, and Lewis County Bar for a joint meeting. The guest speaker was Bob Hopkins, representing the SuperSonics. Those attorneys attending the meeting from Grays Habor County were, **Paul Stritmatter, Dick Goodwin, Bill Morgan, John Lindel, Bob Charette, Curt Janhunen,** and the President of the Grays Harbor Bar Association, **Tom Brown.** It is my understanding that the members attending from the Grays Harbor Bar Association enjoyed themselves and a good time was had by all. The only sobering aspect of the meeting was the long drive back to Grays Harbor County.

Four members of the Grays Harbor Bar Association recently endeavored on a canoe trip with their spouses, **John Farra, Dennis Colwell, Curt Janhunen** and **Paul Stritmatter** went on a week's canoeing trip to Ross Dam. The mastermind behind the trip was Paul Stritmatter of Hoquiam. Preceding the trip Paul wrote some amusing letters to the members of the party which I personally considered to be classically hilarious. Speaking of Paul Stritmatter, it is my understanding that while preparing for work one day he casually stuck his finger in his eye, damaging the retina. It is also my understanding that Paul was preparing to climb Mt. Rainier that weekend and upon having a rational moment decided that he would take the man's way out and poke himself in the eye. I hope Paul realizes that I do not truly believe what I say.

I have been informed that we have members of the Grays Harbor Bar Association that are recent winners of a golf tournament. **Jon Parker** and **Omar Parker** of Hoquiam recently won a Son-Father golf tournament at the Grays Harbor County Country Club. According to my source, Omar was the strong member of the team.

We usually do not carry maternity information, but I thought I would relate that while **Bill Morgan** went fishing his wife labored at home.

Dave Edwards of the Grays Harbor County Prosecutor's office recently returned from a one week Scholarship in Huston, Texas. The Scholarship gave Dave a course in "Career Prosecution." The only after affects of his sojourn was that he was sick for six weeks after the trip.

KITSAP REPORT
By **WM. J. KAMPS**

The Kitsap County Bar Association held a luncheon meeting on August 1, 1975. Fifty-nine members were present. President **Jay Roof** announced that the Annual Bar Picnic would be held September 6, 1975 and the Annual Meeting and election of officers would be held September 8, 1975. The guest speaker was Lt. **A. Dean Pickett,** who discussed the new federal garnishment law. We welcomed the return of retired Judge **Ron Danielson** and his wife, Grace, from a lengthy vacation.

Schultheis, Maddock and Bell of Port Orchard announced that **James Riehl** has joined their office as a legal intern. Jim took the Bar Examination last July and is anxiously awaiting the results. Jim is from Poulsbo and was graduated from San Diego State University.

Robert A. Baskerville of the Kitsap Legal Services announced that **Joan Andersen,** a graduate of the University of

Washington, has joined his office. Joan comes to Kitsap County from the Seattle Legal Services office.

The attorney population in Kitsap County continues to expand rapidly. At our last Bar Meeting your reporter had not yet met one of the attorneys who was introducing a new attorney.

LEWIS COUNTY REPORT

By **JOSEPH P. ENBODY**

For those of you not previously aware, in the Prosecuting Attorney's Office we wish to state that **Jeremy Randolph,** a graduate of the University of Oregon and formerly Chief Criminal Deputy in Lewis County is now our Lewis County Prosecuting Attorney and has in his office Mr. **Ray Byrd,** a graduate of the University of Washington and formerly Prosecuting Attorney in Okanagon County. Also, on the staff is **Joe Mano,** graduate of the University of San Francisco and **Ken Johnson,** a legal intern and a recent graduate of the University of Washington Law School. Former Prosecuting Attorney **Brian Baker** and his former Chief Civil Deputy, **Arlun Lund** have established a law practice under the name of Baker & Lund, located in Chehalis, Washington. Also, **James Gober,** previously Lewis County District Court Judge, has established an office also located in the City of Chehalis. Judge **William Lemke,** formerly of Searle & Lemke is now our District Court Judge.

SAN JUAN REPORT

By **MICHAEL C. REDMAN**

Yea scribe returned from the Convention all aglow from the intellectual stimulation received during the meeting of association members attending the convention. The phone booth was made available at no charge and the orange juice was outstanding.

Upon my return I discovered that applications for non-resident members almost equalled withdrawals. **Philip Bleyhl** and **Marvin C. Buchanan** have taken out listings in the yellow pages and are perhaps considering the cost of taking out a Zenith number to save their clients the call to Oak Harbor. **Rod Bollington** has continued his standing in the "double dues" category, continuing to list himself in bold face in the white pages. **Jacob Cohen** of Oak Harbor has dropped out and we note with regret that **Dan Olson,** probably the senior member of the non-resident section, no longer lists his Friday Harbor office notwithstanding the fact that he gets over here quite a bit.

The lawyers resident in the county continued to be outnumbered and **Jack Nason** isn't helping much by declining to show his availability in the yellow pages.

The local Chamber of Commerce continues to support, in principle, the concept of winter scheduling of lengthy trials involving out-of-town counsel particularly since a new restaurant,

The Wounded Pig, has opened its doors.

The Law Day observance committee continues in a state of euphoria after this year's experience with our three high schools. Educator kits were ordered from the American Bar Association and distributed, speakers were offered and lucre was allocated for the best essay from each high school with a bonus for the best in the county. No effort was spared in passing the word and publicizing the event which culminated in the request for one speaker from one high school one day in advance and no essays. Some concern was expressed that an opportunistic young person may smuggle an essay in from the mainland for a grand sweep if the contest is repeated next year and the committee is considering appointing a subcommittee to cope with this problem.

On the legislative front the county commissioners recently adopted an ordinance taking San Juan County out of the "open range" classification although an environmental impact statement was not prepared. And so it goes.

Warren Russell has been appointed Superior Court Commissioner.

SEATTLE-KING REPORT

By **GERALD G. TUTTLE**

William R. Creech has left the practice of law to engage in a private commercial opportunity and his former firm announces that **Brian Putra** has joined the firm as a partner, and **Mary Ann Ottinger Hege** has joined the firm as an associate. The firm name will now be Peterson, Bracelin, Young & Putra.

Steven R. Pruzan has become an associate at Miracle, Pruzan & Nelson.

Richard D. Eadie announces the opening of his office for the general practice of law at 2810 Sea-First Building, phone 624-9263.

Cartano, Botzer and Chapman announces that **Jon G. Schneidler** has become a partner of the firm, and **Albert E. Stephan,** formerly chief assistant United States attorney, in Seattle, has joined the firm as counsel.

Delbert D. Miller and **Robert D. Kaplan** have become partners of Bogle & Gates. New associates with the firm are **Kirk A. Dublin** and **Thaddas L. Alston.**

Two Seattle area experts in Creditors and Debtors Rights have been busy educating lawyers and non-lawyers alike.

Jerome Shulkin was guest lecturer at the Montana State Bar Convention at Big Sky, Montana, on June 20 and 21, 1975, speaking on rehabilitation of distressed companies through Chapters X, XI, and XII of the Bankruptcy Act. He, also, spoke as guest speaker to the Regional Managers of Pacific National Bank at their June meeting on the subject of the banker's approach to corporate rehabilitation.

Mr. **Shulkin, Willard Hatch,** and **Phillip Hutchison** were speakers at a June seminar sponsored by the Washington State Department of Revenue cov-

ering both federal and state court creditor-debtor activity.

Cole & Jensen announced that **Clark A. Puntigam** has become an associate with the firm.

Stephen A. Branom and **Wayne C. Vavrichek** have become partners of Hackett, Beecher & Hart. **Richard W. Olsen** has joined the firm as an associate.

Alan L. Axelrod announces the opening of his office for the general practice of law at 300 Maynard Building, Seattle, Washington, phone 623-7007.

Alan Hall and **Irving Sonkin** have formed a partnership for the general practice of law under the firm name of Sonkin & Hall. The firm offices were opened in the Colman Bldg., Seattle.

Maryalice Norman and **John B. Magee** have been joined by **Jon M. Loreen** practicing under the new name of Norman, Magee & Loreen. They have also established new offices at 9422 Delridge Way S. W., in Seattle.

Lowell Dale Young announces the opening of his office for the general practice of law at 200 Maynard Building in Seattle.

Torbenson, Thatcher, McGrath, Treadwell & Schoonmaker announce the removal of their office to the 17th Floor, Hoge Building.

SOUTH KING REPORT

By **JAMES L. VARNELL**

The South King County Bar Association held its annual golf tournament at the Enumclaw Golf and Country Club on August 1. In addition to the various attorneys, the following judges from the King County Superior Court struggled through a tight eighteen holes, including six water crossings on the back nine: Judges **Bever, Hunter, Eberharter, Chan, Noe, Mifflin.** Also, attending were Court of Appeals Judge **James A. Andersen** and King County Superior Court Commissioner **Quinn.** Superior Court staff participating included **G. R. "Bob" Rockman, Don Swanson, Larry Colingham,** and **J. D. Evans.** Other guests included Kittitas County Superior Court Judge **W. R. "Bob" Cole, Ken Short,** President of the Washington State Bar Association, and **Eddie Friar,** Executive Director of the Bar Association.

Judge **Frank Eberharter** took the low gross award in the Judge's Division, and **Mort Hardwick** won the Calloway Division for attorneys. The low gross winner overall was **Dick Williams,** copping his second title with a two stroke victory over **Paul Houser.** Awards for the longest drives were won by **Dick Williams** and **Doug Baldwin.** Closest to the pin was won by **Dave Dobson.** It was rumored that **Pete Curran** had shot a hole-in-one, but Judge Eberharter refused to accept Curran's hearsay statement of his success. Curran's offer of proof was rejected as pure hearsay based upon a lack of eyewitness testimony.

At the awards dinner **Monroe Watt,** who is retiring, was presented with a plaque in recognition of his many years of practice and service to the South King County area.

Recent additions to the roster of South King County attorneys include **Mike Reynolds,** a graduate of the University of Notre Dame Law School, now with the firm of Schneider, Smythe, Salley & Van Siclen. Also, **John A. Tidwell,** a graduate of the University of Southern California Law School, has joined the firm of Anderson, Stead & Vogel.

James Gooding remodeled a residence in a commercially-zoned area in Kent and is now practicing therefrom.

THURSTON-MASON REPORT

By **FRED D. GENTRY**

Lawyers from Thurston, Mason, Grays Harbor and Lewis Counties were entertained on August 18, 1975 by Seattle SuperSonics Assistant Coach, Bob Hopkins, at a recent joint meeting of these associations.

The re-inaugurated annual Thurston-Mason Bar Association golf tournament was reincarnated under the able direction of **Bob Lundgaard.** Assistant Deputy Prosecutor, **Jeff Watson,** fresh off the P.G.A. tour had low gross score.

WHITMAN REPORT

By **RONALD R. CARPENTER**

New officers were elected and installed at the Whitman County Bar Association meeting of May 23, 1975. President, **Edward McBride;** Vice-President, **Howard Neill;** Secretary-Trea-

surer, **Dolores Cooper;** and Recorder, **Ronald Carpenter.**

Albert Schauble recently attended a legal workshop concerning the ins and outs of the Real Estate Settlement Procedures Act of 1974. Al was kind enough to share his newly acquired expertise with attending members at the Whitman County Bar Association meeting in July. He was immediately dubbed the RESPA expert for Whitman County.

Don McMannis and **Dolores Cooper,** with their respective spouses, attended the Continuing Legal Education Seminar designed for lawyers and their spouses held at Harrison Hot Springs, British Columbia. Consequently, there are at least one Whitman County wife and one Whitman County husband who are more understanding and appreciative of the problems encountered by their spouses in the daily practice of law. **Claude Irwin, Jr.** and **Howard Neill** attended the Legal Education Conference on Psychiatry and the Law. They are both immediately dubbed "Super Shrinks" for Whitman County.

Robert Patrick and **Ron Carpenter** attended the Washington Prosecutors' Association Conference at Rosario on Orcas Island. It is reported that the defense counsel of the county were glad to see the entire legal staff of the Whitman County Prosecutor's Office gone for a few days which gave them and their clients a much needed rest. Robert Patrick resigned his position as Prosecuting Attorney effective September 1, 1975.

On a more somber note, **Floyd Leroy Stotler,** 89, pioneer Colfax attorney, died Tuesday, June 2, 1975, at the Whitman Community Hospital. Mr. Stotler was born May 6, 1886, at El Dorado, Kansas. He spent his early life in West Virginia. He was admitted to the bar in 1909 and, except for a one year stint as an assistant United States Attorney in Spokane in 1914, he practiced law in Colfax until he retired December 10, 1971. Stotler started his 63 year career with the law observing trials in the Cumberland, Maryland county courthouse. He came to Whitman County in 1908 where he studied under attorneys **J. D. McMannis** of Tekoa and **R. L. McCroskey** of Colfax. Stotler served as deputy prosecutor and prosecutor for Whitman County from 1910 to 1912. He was president of the Washington State Bar Association in 1931 and 1932. A memorial presentation was held in the Whitman County Superior Court honoring Mr. Stotler. Many of his former colleagues were present as well as life-long friends.

YAKIMA REPORT

By **GARY G. McGLOTHLEN**

Congratulations to the unanimously elected officers of the Yakima County Bar Association. **Norm Nashem** was elected to the high and stately office of the Presidency of the Bar Association followed by **Richard Smith** as First Vice-President, **James Davis** as Keeper of the

Funds or somewhat colloquially known as the Treasurer and **Rodney Fitch** the Recorder who is claimed to be the Secretary. If Rodney follows in the footsteps of all the illustrious secretaries of this Association as in the past, no one will ever know what we have been up to including the Board of Trustees consisting of **Doug Peters, Don Bond** and **Mike Finney.** We are indeed in good hands for the following year under the able and capable management of so great and sundry a crew as we have elected to lead us. Your contributing editor has replaced **Randy Marquis** who has contributed to this column for many years and I would, at this point, like to serve notice on all members of the Yakima County Bar that if they don't want this column to reveal their trade secrets they better let me know about it before it happens.

Frank Kurtz from Creighton University in Nebraska has settled to do his bit in Yakima after serving three years with the Peace Corps in India and surviving the rigors of Gonzaga Law School. He graduated in 1974 and has assumed the private practice of law with Kirschenmann, Devine and Fortier in the Legal Center, 303 East "D" Street, Yakima, Washington.

Jerry Hall married with two children has escaped Southern California where he attended UCLA Law School graduating in 1968. Jerry worked for Allstate Insurance Company in Seattle while he investigated the best area to settle with his family. He naturally chose Yakima Valley where he entered private practice of law officing at the Legal Center, 303 East "D" Street, Yakima, Washington.

George Velikanje has been elected first Vice-President of the Yakima Greater Chamber of Commerce Board of Directors. He will be installed during the annual meeting of the Chamber on September 11, 1975. Good going George!

Steve Michels has opened a new office at 1112 State Highway, Post Office Box 195 in Sunnyside, Washington where he has commenced practice of law.

Swede Miller who, for over 15 years, has been the Local Trustee for Chapter XIII in the Yakima area has retired. Upon exiting the office for the last time, Swede stated that the reason for his retirement was that being Trustee just did not allow enough time for fishing or for telling fishing stories. While cleaning out his office and selling some of the equipment to the highest bidder, it was noted among the Lawyers that the items receiving the most attention and bidding was Swede's collection of over 15 years of Playboy magazine. It is rumored that collection did not leave the office intact, but was divided up among all takers.

Tom Dietzen has completed his office decor with **Pete Tonkoff**'s "huge white throne" sometimes referred to as an office chair. It's rumored Tom's only problem while sitting in "the big white throne" is to keep from getting lost in its enormous size.

Briefly Noted

Members of the State Bar Association Invited to Hear Financial Expert

Dr. L. Donald Guess, noted author and financial consultant, will present a "Gameplan For Financial Security" to members of the medical, dental, legal and accounting professions on Friday, November 14, in Seattle. His purpose is to create personal freedom for the professional by providing a plan for financial security.

Dr. Guess is a practicing dentist, business executive, educator, consultant and author. He has gained a national reputation in assisting fellow professionals in achieving financial security. He is president of the Economic Association of Health Professionals, a national organization which provides its membership with specialized financial planning, administrative and educational services. He is also Chairman of the Board of five California corporations which offer a diversified range of financial and management consulting services to practicing professionals.

Dr. Guess has been accredited for continuing education by societies of the A.D.A. and A.M.A. and is a visiting lecturer and faculty member of several state universities.

The all-day seminar is being sponsored by the Washington Professional Incorporation Seminar. Sponsoring members are Drs. E.M. Zuck, R.L. Taylor, R.J. Tadlock, R.D. Swanson, D.R. Rice, T.J. McIntyre, J.C. McGraw, C.J. Eckman and T.F. Berthelote.

Members of the A.D.A., A.M.A., the Washington State Bar Association and the Washington Society of Certified Public Accountants are invited to attend.

Registration blanks may be obtained from Dr. David R. Rice, 2817 80th S.E., Mercer Island, Washington 98040.

Teaching Films Available

Screen Education Enterprises, Inc., an educational film distributor, is currently marketing three 16mm color/sound films that relate to the law/justice field. *State Lawmakers* (28 minutes, $350.00) documents the passage of the 18 year old vote bill through the Washington State Legislature. *Presumption of Innocence* (89 minutes, $1250.00 or 39 minutes, $495.00) is a film of an actual criminal trial, filmed in Judge David Soukup's courtroom in the King County Superior Court System. The trial involves a young woman, arrested for possession of cocaine with intent to manufacture and/or deliver. *Civil Court* (76 minutes, $975.00 or 39 minutes, $495.00) documents a trial in Judge George Revelle's King County Superior Court. A young man is suing a university for injuries received while he was a spectator at a sporting event. All films are available for sale or rent from Screen Education Enterprises, Inc., 3220 16th Ave. West, Seattle, Washington, 98119, (206) 285-2082. *Pre-*

sumption of Innocence is *not* available in Washington State. Screen Education markets educational films throughout the United States and Canada.

Public Invited to Discuss Sentencing

King County Prosecuting Attorney Christopher T. Bayley announced that the prosecutor's office will sponsor a two day conference on the question of punishment versus treatment for criminal offenders. The conference will be held on 18 and 19 December 1975 and will feature as guest speakers Robert Martinson, Norval Morris and Marvin Wolfgang. These three men have been at the forefront of the current debate over correctional policy and have been widely quoted on television and in the major news weeklies. The conference will also feature a number of nationally known corrections officials, judges and adminstrators who will speak to the practical side of the issue.

Bayley emphasized the importance of public participation in the conference. "Too often only the experts have decided how to sentence criminals," he said, adding that "criminal sanctions should reflect the values of a society as held and expressed by its members."

The conference is being funded in part by a grant from the Washington Commission for the Humanities and will be cosponsored by the Department of Social and Health Services. For full information, contact Phyllis H. Harris, Adminstrative Assistant, 206-344-7313.

Convention's Big CLE Legal Manual Available

Limited numbers of the State Bar's largest (770 pages) Annual Meeting Practice Manual in history now are available from the Bar Office ($15).

The Convention 1975 contents:

Buying and Selling the Small Business—Timothy R. Clifford, C. James Judson, Neil S. McKay, Dale L. Carlisle and Yancey Reser. Guidelines, tax aspects, securities aspects and dealing with warranties and bulk sales.

Medical Malpractice Review and Update—A. Duane Lund, Gerald A. Palm, Judge Keith M. Callow and Michael R. Green. Medical negligence and manufacturer's liability for defective products, overview of malpractice law, trends in claims procedure and the legal state of professional legal malpractice.

Incorporation and Estate Planning for the Farmer/Rancher—Frederic G. Emry, Terry C. Schmalz and Kenneth L. Schubert, Jr. A near-definitive treatment of the farm corporation and tax considerations, with model documents, plus estate planning ideas for the executive as well as the farmer/rancher.

Arbitration and Settlement Skills: Their Effective Use—Cornelius J. Peck, J. S. (Bud) Applegate, Judge Frank J. Eberharter and Pinckney M. Rohrback. Negotiation and arbitration skills, techniques and psychology and skills and obligations of the lawyer in settlement.

The "secrets" of getting and keeping happy and uncomplaining clients and an explanation of the Bar's discipline procedures are presented by Gerard M. Shellan and Michael J. Hemovich, late of the Disciplinary Board.

Section of Intellectual and Industrial Property (Trade Secrets—Bryan C. Ogden, Dale B. Ramerman, Clark A. Puntigam, Richard W. Seed, John O. Graybeal and Ford E. Smith).

Family Law Section (Selected Problems in Family Law—Wendy R. Gelbart, Robert F. Phillips, Robert G. Perlman, James W. Abbott, Miles F. McAtee).

Environmental Law Section (State Environmental Policy Act, Standing to Sue and Recovery of Litigation Costs—Chris Smith, Stephen J. Crane, Joel E. Haggard, Edmund B. Raftis, Roger M. Leed, Charles F. Secrest, Charles B. Roe, Jr.).

Criminal Law Section (New Legislation, Case Law re Criminal Rules for Superior Court, and Drivers' License Suspensions — Gerald K. Mooney, Mark E. Vovos, James R. Silva).

Corporation, Business and Banking Law Section (buy-sell provisions in shareholder agreements and HMO Act of 1973, Developments in Taxation of closely held corporations, use of corporations and tax planning for farms and businesses, bringing your pension and profit-sharing plan into compliance with the Pension Reform Act — Elvin J. Vandeberg, Malcolm D. Katz, Roger H. Underwood, Thomas B. Tilford).

Seminar on Involuntary Treatment

The State Bureau of Mental Health in conjunction with the Family Law and Mental Illness Committee of the King County Superior Court and the Division of Involuntary Treatment are sponsoring a three-day conference on the Washington State Involuntary Treatment and Mental Commitment Law, its impact, and proposals for the future, on November 6, 7 and 8 at Providence Heights in Issaquah, Washington. Call 753-5414 for information and reservations.

In Memoriam

Warren F. Andrews, 53, of Tacoma, died June 22, 1975. He was admitted to the Bar in 1954.

Robert J. Caw, 52, of Othello, died July 23, 1975. He was admitted to the Bar in 1951.

George Leedy, 60, of Seattle, died July 4, 1975. He was admitted to the Bar in 1940.

Clarence S. Lind, 77, of Seattle, died July 14, 1975. He was admitted to the Bar in 1930.

Edward J. McCormick, Jr., 60, of Washington, D.C., died August 24, 1975. He was admitted to the Bar in 1953.

C. F. Schlosstein, 72, of Seattle, died August 20, 1975. He was admitted to the Bar in 1928.

Discipline Action on Smith

Don R. Smith, Tacoma, was disbarred from the practice of law on August 21, 1975.

IN MEMORIUM THE EXCLUSIONARY RULE 1914-1975

By Neal J. Shulman

"Is the criminal to go free because the constable blundered?"
Benjamin Cardozo
People v. Defore
150 N.E. 585 (N.Y., 1926)

Like a signpost on the road to extinction, *United States v. Peltier,* decided by the Supreme Court on June 25, 1975, may well point to an impending judicial abolition of the often discussed and frequently criticized exclusionary rule—the rule developed over the past 61 years which prohibits the use in criminal trials of any evidence obtained by law enforcement as a result of an unreasonable search and seizure.

In February of 1973, James Peltier was stopped in his automobile by a roving border patrol. As the result of a search, conducted pursuant to federal statute, 270 pounds of marijuana were discovered in the trunk of the car. The statute in point had authorized a warrantless search by Immigration and Naturalization officers within a reasonable distance from any external boundary of the United States. Reasonable distance had been established by administrative regulation as 100 air miles from the border. The statute and administrative regulations were silent on the necessity of probable cause.

Four months subsequent to Peltier's arrest and indictment, the Supreme Court handed down its decision in the case of *Almeida-Sanchez v. United States*, 413 U. S. 266 (1973), holding that a warrantless search of an automobile, conducted approximately 25 air miles from the Mexican border by Border Patrol agents acting without probable cause, contravened the Fourth Amendment.

In the meantime, Peltier had been found guilty. On appeal, the Ninth Circuit Court, sitting en banc, reversed the conviction on the ground that the rule announced in *Almeida-Sanchez*, decided after Peltier's conviction,

should be applied to similar cases pending on appeal at the time of the Supreme Court's decision. The Government's petition for certiorari was granted. Following argument and due deliberation, the Supreme Court reversed the Ninth Circuit, refusing to apply *Almeida-Sanchez* retroactively, even though it was conceded by the Government that the search of Peltier's automobile and the seizure of the marijuana were clearly unconstitutional under the *Almeida-Sanchez* standard.

The Court's unwillingness to apply the *Almeida-Sanchez* standard retroactively and its rationale for not doing so heralds what may be the approaching demise of the exclusionary rule. That rationale as well as its overall impact on the rule will be considered against the legal background and development of the exclusionary rule.

The antecedents of the exclusionary rule date back to 1886 when the High Court in the case of *Boyd v. United States*, 116 U.S. 616, suggested that documents obtained in violation of the Fourth Amendment should not be admitted into evidence. That suggestion lay in the recesses of the Court Reports for 28 years before gaining recognition as a firm principle of law. In the 1914 case of *Weeks v. United States*, 232 U.S. 383, the Supreme Court reversed a defendant's conviction holding that the retention and admission into evidence, in a federal prosecution, of items seized by federal officers in violation of Week's constitutional rights, was prejudicial error. At the same time, the court noted that evidence wrongfully seized by state officers, not acting under any claim of federal authority, was not subject to the Fourth Amendment. That Amendment, it was held, was a restraint on the federal government, not the states.

Another 35 years passed before the court came to grips with the issue of evidence seized by state officers for use in state prosecution, under circumstances which, if seized by federal officers for use in a federal prosecution, would have violated the defendant's Fourth Amendment rights. In *Wolf v. Colorado*, 338 U.S. 25 (1949), the Supreme Court declared that the security of one's privacy against arbitrary intrusion by the police,

the core of the Fourth Amendment, is implicit in "the concept of ordered liberty" and enforceable against the States through the Due Process Clause of the Fourteenth Amendment. While recognizing the application of Fourth Amendment principles to the States, the Court, in *Wolf*, did not, however, apply the exclusionary rule to the States.

It was not until 1961, in the case of *Mapp v. Ohio*, 367 U.S. 643, that the exclusionary rule reached full proportion. In *Mapp* the Court held that all evidence obtained by search and seizure in violation of the federal constitution would be inadmissible in a State criminal trial. The Court expressly overruled that portion of *Wolf* which declared the exclusionary rule inapplicable to the States. Shortly thereafter, in *Ker v. California*, 374 U.S. 23 (1963), the States were obliged to follow the Fourth Amendment decisions of the Supreme Court which were applied by the Court in federal cases.

Even before the high court's decision in *Mapp* the exclusionary rule had been the subject of considerable debate among lawyers, jurists and others concerned with the logic of the rule. On the one hand, those supporting the rule argued strongly that the only effective way of enforcing the constitutional prohibition against unreasonable search and seizure was to exclude evidence obtained as a result. This deterrent approach rested on the premise that if illegally obtained evidence was suppressed often enough, law enforcement would be deterred from unlawful search and seizure by being deprived of the benefits sought to be gained through such conduct. On the other hand, those opposing the rule argued, with equal vigor, that the rule was inconsistent with the ultimate purpose of fact finding in determining the guilt or innocence of the accused. The rule, they claimed, rejected otherwise probative evidence. See Canon, *Is the Exclusionary Rule in Failing Health?*, 62 Ky. L.J. 681 (1974), and Oaks, *Studying the Exclusionary Rule in Search and Seizure*, 37 U. Chi. L.R. 665 (1970).

In his article *Studying the Exclusionary Rule in Search and Seizure*, supra, Professor Dallin H. Oaks suggested that:

> The exclusionary rule should be abolished, but not quite yet... The use of the exclusionary rule imposes excessive costs on the criminal justice system. It provides no recompense for the innocent and it frees the guilty. It creates the occasion and incentive for large-scale lying by law enforcement officers. It diverts the focus of the criminal prosecution from the guilt or innocence of the defendant to a trial of the police.

In its stead Professor Oaks appeared to favor the development of a tort remedy imposing civil liability on the offending officer and/or agency, while allowing the utilization of evidence wrongfully seized. In that regard see for instance *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

More recent attacks on the exclusionary rule argue simply that the rule is not working as the Court had originally anticipated. Law enforcement, according to the argument, has not consistently observed those rights guaranteed by the Fourth Amendment, thus the deterrent value of the rule is lost.

Neal J. Shulman currently serves as a trial attorney for the Criminal Division, United States Department of Justice, in Washington, D.C. He is a 1964 graduate of the University of Washington Law School, a former Chief Deputy Prosecutor for King County, and former City Attorney for Richland, Washington.

These and similar arguments were not lost on the High Court. A clear example is Mr. Chief Justice Burger's dissenting opinion in *Bivens*, supra, at page 415:

> Although I would hesitate to abandon it until some meaningful substitute is developed, the history of the suppression doctrine demonstrates that it is both conceptually sterile and practically ineffective in accomplishing its stated objective.
>
> Some clear demonstration of the benefits and effectiveness of the exclusionary rule is required to justify it in view of the high price it extracts from society—the release of countless guilty criminals.

Likewise, Mr. Justice Harlan, concurring, *Coolidge v. New Hampshire*, 403 U.S. 443 (1971) indicated his opinion that:

> . . . it is apparent that the law of search and seizure is due for an overhauling . . . I would begin this process of re-evaluation by overruling *Mapp v. Ohio* and *Ker v. California*.

> The former of these cases made the federal exclusionary rule applicable to the States. The latter forced the States to follow all the ins and outs of this Court's Fourth Amendment decisions, handed down in federal cases.

See also the opinion of Mr. Justice Black in *Coolidge v. New Hampshire*, supra, in which he is joined in part by Mr. Justice Blackmun.

Amidst the background of these pronouncements by both past and present members of the Supreme Court, the decision in *Peltier* is not surprising. It would appear, in fact, to be a logical extension of prior dissatisfaction with the exclusionary rule, consistent also with what perhaps may be labeled the more conservative approach of the Nixon appointees to the Supreme Court.

There is much to be said for the argument that *Peltier* could have been decided by way of reference to the long standing principle requiring probable cause for the warrantless search of an automobile, enunciated by the Court in *Carroll v. United States*, 267 U.S. 132 (1925). That, however, would likely have required retroactive application of *Almeida-Sanchez* and the suppression of the evidence obtained in *Peltier*. Writing for the majority in *Peltier*, Mr. Justice Rehnquist avoided such a result by examining the exclusionary rule in terms of the doctrines of "deterrence" and "judicial integrity". The former doctrine has been discussed previously, supra, and the latter provides, in essence, that "no court, state or federal, may serve as an accomplice in the willful transgression of the Laws of the United States. . .". See *Lee v. Florida*, 392 U.S. 278 (1968).

In considering whether the doctrines of judicial integrity and deterrence were sufficiently weighty to require exclusion of the marijuana found in Peltier's car, Mr. Justice Rehnquist noted that:

> . . . if officers reasonably believed in good faith that evidence they had seized was admissible at trial, the 'imperative of judicial integrity' is not offended . . .
>
> It was in reliance upon a validly enacted statute, supported by longstanding administrative regulations and continuous judicial

> approval, that border patrol agents stopped and searched respondent's automobile... unless we are to hold that parties may not reasonably rely upon any legal pronouncement emanating from sources other than this Court, we cannot regard as blameworthy those parties who conform their conduct to the prevailing statutory or constitutional norm...

Justice Rehnquist's statement relative to "longstanding... judicial approval" is difficult to reconcile with the *Carroll* doctrine and the apparent conflict among the lower courts (see for instance *United States v. Wright*, 476 F. 2d 1027 (1973), where the Fifth Circuit required a "reasonable suspicion" that aliens might be present before a car could be searched by roving border patrols). Nonetheless, he effectively absolved the court from any violation of the doctrine of judicial integrity.

Relative to the deterrent factor, Justice Rehnquist observed that:

> If the purpose of the exclusionary rule is to deter unlawful police conduct, then evidence obtained from a search should be suppressed only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment.

and concluded:

> ...in light of this history and of what we perceive to be the purpose of the exclusionary rule, we conclude that nothing in the Fourth Amendment, or in the exclusionary rule fashioned to implement it, requires that the evidence here to be suppressed, *even if we assume that respondent's Fourth Amendment rights were violated by the search of his car.* (emphasis added)

While the question of excluding illegally obtained evidence in Peltier was determined in the context of a "retroactivity" issue, the case would appear to represent a sharp break in the historical application of the exclusionary rule. The historical test of whether evidence should be suppressed has been, according to Mr. Justice Brennan, "...solely whether the Fourth Amendment prohibition against unreasonable searches and seizures was violated, nothing more and nothing less." (See Justice Brennan's dissenting opinion in *Peltier*, citing in support of his position *Weeks v. United States*, *Wold v. Colorado*, *Elkins v. United States*, *Ker v. California*, and *United States v. Calandra*, 414 U.S. 338 (1974).)

With the decision in *Peltier*, the Supreme Court has forecast a change in evidentiary considerations under the Fourth Amendment. The form of that change awaits a subsequent decision. As a condition precedent to the exclusion of evidence the Court may require knowledge on the part of law enforcement that the evidence was seized in violation of the Constitution. Or, the Court may dramatically abolish the exclusionary rule in its entirety on the basis of its failure to fulfill its role as a deterrent. In either event the criminal will no longer go free merely "because the constable blundered"—a result which undoubtedly will give rise to another 61 years of discussion, debate and evolving case law. □

McLauchlan at the

Hon. John Sirica addressing the Convention

David Hoff, Frank Gifford at lunch

Harwood Bannister, Mt. Vernon, and Walter Robinson, Yakima

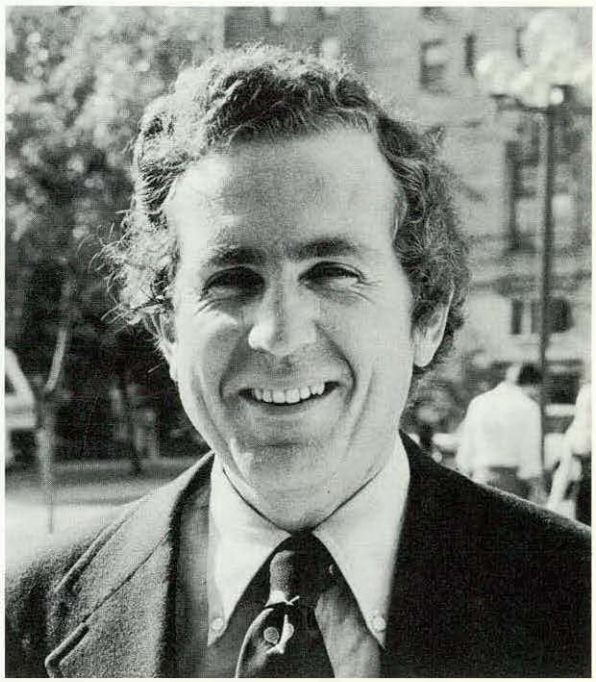
Mr. and Mrs. Paul White, Spokane

at Large
1975 Annual Meeting

The Presidential Change

The "Late" John Gavin, Yakima

Fred and Jackie Velikanje, Yakima



Edmund Raftis, Seattle, New Board Member

Appellate Practice and Reform

DEAR BILL, WE'LL MISS YOU... AND HURRY BACK

By Malcolm L. Edwards

I have a picture of a sunset on my wall. Golden light shimmering across the water onto the beach of the Island of Maui, Hawaii. I look at it and usually think of the delightful and tranquil times that my wife and I have enjoyed there. But this morning I remember that Bill Lowry will be enjoying that beauty in January.

William M. Lowry is retiring as Clerk of the Supreme Court on November 30 of this year. The majority of us who are now in practice never knew any other clerk. The telephone was our first access to the Court, and Bill was on the other end of it answering our questions—never chiding, always in a way to make us feel our question was important, and even when a closer look at the rules would have revealed the answer without the necessity of bothering Bill.

Bill came to the Court in the fall of 1961 after a distinguished career which he refers to as a "naval interruption". This "interruption" included serving as Commanding Officer of several ships in the destroyer class, Operations Officer to the Commander of the Amphibious Training Command for the Pacific Fleet, and Commanding Officer of the U.S. Naval Amphibious School in San Diego.

Bill still loves the water. And he has a sense of humor about that, as with all else. Bill will tell you about his efforts to get his lovely wife Grace to go on long vacations in their 26-foot boat. His use of the best that was in him—patience, persuasion, intelligence and charm—to encourage her to take a trip through the San Juans. And it was a beautiful trip. Well, most of it was. You see, there was this unexpected storm when they were going across the straits. The water was

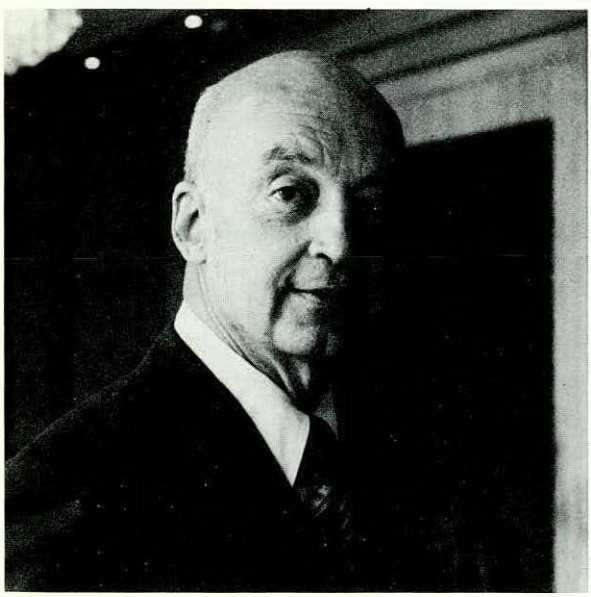
Malcolm L. Edwards is with the Seattle law firm of Edwards and Wetherall. He is Chairman of the Task Force on Revision of the Rules on Appeal and a member of the Washington Appellate Court Advisory Committee. A substantial part of the work of his firm is in the field of appellate advocacy.

breaking over the bow. And as Bill put it, Grace was huddled down alternately accusing him of thinking he was still in command of a destroyer and thanking God that their three children were already raised.

Bill's a home-grown product. He was born in Seattle. He got his B.A. from the University of Washington where he earned a Phi Beta Kappa key. He graduated from the University of Washington Law School—Magna Cum Laude, and Order of the Coif. A little bit of digging will also reveal that Bill was on the law review and that one of his case notes was titled "Appeal and Error—Objections—Effect of Failure to Make". Bill also attended Stanford, where he obtained a Master of Arts degree.

Bill's first experience on the Supreme Court was as law clerk for Justice Steinert. His first Chief in 1961 was Justice Robert C. Finley. Since that time, Bill has worked with six other Chief Justices and another term with Justice Finley. And Bill has served at the pleasure of 18 different justices in his more than 14 years as Clerk of the Supreme Court.

I hope Bill decides to write about the activities of the Supreme Court while he was clerk. His years have been one of the most historic periods for the court since statehood. With the exception of the Appellate Rules, every rule in the 750-page Washington Court Rules booklet has been adopted or substantially revised during Bill's tenure. That includes the Code of Judicial Conduct, Code of Professional Responsibility, Discipline Rules for Attorneys, Civil Rules for Superior Court, Mental Proceedings Rules, Juvenile Court Rules, Civil Rules for Justice Court, Criminal Rules for Justice Court, Traffic Rules for Justice Court, and the new Criminal Rules for Superior Court. All of these rules have significantly affected the way each of us practices on a day-to-day basis.



William Lowry

I think Bill is going to complete the book on rule changes. Bill is a member of the Task Force on Revision of the Appellate rules. This task force began meeting in June of 1972. After over 30 full days of group meetings, countless hours of work between group meetings, and much correspondence, the proposed rules of appellate procedure were submitted to the Judicial Council in March of 1974. Those rules are now before the Supreme Court. They have been the subject of a number of administrative conferences. And hopefully, the rules will be adopted within the next few months. Bill attended every single meeting of the task force. He worked extremely hard between those meetings. His knowledge of the actual working of the appellate courts provided other members of the task force with insight and direction on countless occasions. He continually displayed his ability to consider new ideas as original propositions, even though these ideas might represent a departure from his own way of doing things. Every other member of the task force insisted that Bill's contribution be specially acknowledged in the introduction in the pamphlet on the Washington Proposed Rules of Appellate Procedure which was distributed to the bar. Bill's contribution was a major one. And the proposed rules are better for that contribution.

The most significant change in the appellate process since statehood has occurred during Bill's term as Clerk: the Court of Appeals was established in 1969 and began its first session on September 8 of that year. I don't think many of us realize just what a big job it was to reorganize from an appellate process with a single court to an appellate process with three intermediate courts. The physical task of starting three different intermediate appellate courts from scratch —

new offices, new staff, library, etc. — pales by comparison to the reorientation of judicial attitude which had to accompany that physical change. Bill trained two of the first three clerks of the Court of Appeals when they were deputies in his office. Joe Thibodeau began as Clerk of Division I, and is now the Commissioner of that division. Larry Gill began as Clerk of Division II, and is now a Deputy Clerk with the United States Supreme Court. And the rules required Bill to give assistance to all of the Clerks of the Court of Appeals, something he would have done without the benefit of a rule.

I am looking now at a preliminary report on the Washington Appellate Courts prepared by the National Center for State Courts. The report indicates that the clerk's responsibility is traditionally one of supervising and coordinating clerical operations for the court. I understand that this was the way it was when Bill came to the office in 1961. With apparent surprise, the report lists two and one-half pages of other activities being performed by Bill and the people working for him. I won't list them all here. But here is a sample: analyze, brief, and recommend action on motions considered by the chief justice; analyze, brief, and recommend disposition of petitions for extraordinary writs; summarize issues in appeals filed to assist the court in determining whether the Court should hear the case initially; draft orders; brief questions of law as requested by the court; rule on cost bills; write articles for the *State Bar News;* advise members of the Bar on procedures; prepare the court budget; recruit applicants for the positions of law clerk; maintain liaison with the Judicial Council, Washington State Bar, and bar rules committees; prepare background information and make recommendations on items heard in the court's adminstrative conferences; supervise dissemination of information from the Supreme Court; and so forth. Here is a case where the job grew to fill the man.

I said I hoped Bill would write about all of the changes and innovations of the Court during his more than 14 years as clerk. You can see from the preceding paragraph that Bill would write as a participant in those changes, and not just as an observer. Bill was directly active in many of the changes, and was always there providing assistance to the Supreme Court so that it might better fulfill its responsibility to promulgate rules and implement changes of structure.

Throughout all of this, Bill has found time to do some other very important things. He and Grace have raised three fine children. All three have graduated from college. Joan is in the personnel department of Westinghouse in San Francisco. Bill, Jr., works in the computer division for the Boeing Company in Seattle. Richard is a Deputy Prosecutor in Snohomish County.

Bill has been very active with the legal services program in Thurston County. Many people will tell you that Olympia wouldn't have a legal services program if it had not been for Bill's efforts.

I have searched for an accurate description of Bill. I have talked to people who know him well and asked them for one. I think the best way to summarize Bill is to say that he is in every respect a decent and honorable human being. Let me give you an example: Bill had his boat up on the ways this spring. He left it unattended for about an hour, and returned to find that it had been vandalized and stripped of much of its equipment. The engine on Bill's car blew up while in Seattle getting replacements for the stolen equipment. I saw Bill a few days later. He was obviously hurt. But the angriest thing he said was said with a partial smile: "You might say I'm tough on crime this week."

I was with my 7-year old daughter Susan a few months ago watching one of our beautiful Washington sunsets. She was quiet. And then she said, "God must have had a good day." Bill, when you and Grace are looking at those sunsets on Maui, I hope that each is at the end of a good day for both of you. And while you're relaxing over there, I'll be smug knowing that one of these tomorrows you will be back making your contribution in a different capacity. You were in the private practice of law for awhile, and I wouldn't be surprised to see you make a contribution again there. And I know you will return to make a contribution to the public and to the law through bar committees or in other ways. On behalf of all of us who know you and all of us who will get to know you:

"Dear Bill,

"We'll miss you... and hurry back." □

SUPREME COURT PRACTICE

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

QUERY: Is an attorney representing an indigent in a civil case entitled to obtain compensation from public funds for services in connection with an appellate review?

ANSWER: Perhaps.

Chapter 261, Laws of 1975, 1st Ex. Sess. amended RCW 2.32.240 and RCW 10.01.112 to authorize the expenditure of public funds to perfect the appeal of an indigent in a civil case when the indigent "has been judicially determined to have a constitutional right to obtain a review." Compensation is to be made upon satisfaction of requirements established by Supreme Court Rule. Drafting of the rule for consideration by the Court is now in progress. However, it does not appear from the present cases that an indigent appellant can assume that public funds are necessarily available for perfecting the appeal.

Five Washington cases are perhaps relevant. The first two can be classified as "access cases." In *O'Connor v. Matzdorf*, 76 Wn.2d 589, 458 P.2d 154 (1969), the Court held that the justice courts have authority to waive the statutory filing fee, and stated:

> The proper and impartial administration of justice requires that (the judicial) doors be kept open to the poor as well as to those who can afford to pay the statutory fees.

Recently, in *Carter v. University*, 85 Wn.2d 391, 536 P.2d 618 (1975) the Court, on the basis of the Washington State Constitution, held that an indigent, upon showing a bona fide indigency and probable merit of the claim, could not be barred from access to the courts by the requirement of a bond or filing fee.

Does "access" merely open the door or does it contemplate that the indigent once inside is entitled to the same representation that a rich man can afford.

Honore v. State Bd. of Prison Terms, 77 Wn.2d 660, 466 P.2d 485, held that an indigent prisoner seeking a writ of habeas corpus is entitled to court appointed counsel at the first appellate level under certain conditions. The conditions are: a request for counsel; the petition is urged in good faith; significant issues are raised which when considered in the light of the state's responsive pleadings or the evidence adduced in an evidentiary hearing are neither frivolous nor repetitive; and the issues by the nature indicate the necessity for professional legal assistance if they are to be presented in a fair and meaningful manner.

In *re Luscier*, 84 Wn.2d 135, 524 P.2d 906 (1974) held that both the U.S. and Washington State Constitutions guarantee an indigent parent counsel in any proceeding wherein the parent may be permanently deprived of parental rights. While *Luscier* involved the right to counsel in the trial court, the language of the opinion is broad enough to include appellate review.

Both *Honore* and *Luscier* can be considered to involve fundamental rights. *Honore*, incarcerated as the result of a criminal conviction, was seeking liberty. In *Luscier* the Court emphasized that:

The family entity is the core element upon

which modern civilization is founded.

The Federal cases in passing upon the requiring of a filing fee have predicated a distinction on whether or not a fundamental or basic right is involved, see *Boddie v. Connecticut,* 401 U.S. 371, 28 L. Ed. 2d 113, 91 S. Ct. 780 (1971); *United States v. Kras,* 409, U.S. 434, 34 L. Ed. 2d 626, 93 S. Ct. 631 (1973); *Ortwein v. Schwab,* 410 U.S. 565, 35 L. Ed. 2d 572, 93 S. Ct. 1172 (1973).

Perhaps *Honore* and *Luscier* are no broader in providing the indigent funds for perfecting an appellate review than the fundamental rights involved in those cases.

The last case, *Iverson v. Marine Bancorporation,* 83 Wn.2d 163, 517 P. 2d 197 (1973) is an appeal challenging the adequacy of the amount of a money judgment. The opinion does not identify a fundamental or basic right and indeed the nature of the case would seem to provide no basis for such a finding. However, it may be noted that the facts are such that justice would appear to demand appellate review. After obtaining a judgment for $1,000 as damages incurred as a result of an unlawful eviction, the attorney's lien for services filed by counsel for plaintiff/appellant exceeded the amount of the judgment. In any event, based on a trial court finding that the plaintiff/appellant was indeed indigent, that the appeal was not frivolous and that a statement of facts was necessary to review the issues on appeal, the Supreme Court ordered the official court reporter to furnish a statement of facts and seek reimbursement from the Legislature. However, when the indigent plaintiff/appellant moved for appointment of counsel on the ground that she lacked the ability to prepare her appeal, a department of the court denied the motion by notation order.

In summary it appears that counsel for an indigent in a civil case under certain conditions is entitled to obtain compensation from public funds for services in connection with an appellate review. Whether these conditions require that the case involve a fundamental or basic right and, if so, what constitutes a right are still largely unsettled questions.

COURT OF APPEALS

By **JOSEPH A. THIBODEAU**

Division II of the Washington State Court of Appeals, located in Tacoma, announces the appointment of Mark H. Adams as Court Commissioner and Jane R. Hotneier as Chief Clerk of the court, effective August 1, 1975.

Adams, formerly assistant city attorney for Tacoma, has been Chief Clerk since November of 1974. He is an economics graduate of Portland State University and received his law degree in 1970 from Boalt Hall School of Law, University of California, Berkeley. He is a member of the Tacoma-Pierce County, Washington State, and American Bar Associations. He resides in Tacoma with his wife and two children.

As Commissioner, Adams will assist the court in the processing of appeals. His duties will include ruling on procedural motions, screening new appeals, and making preliminary determinations required by petitions for post-conviction relief and for review in both criminal and civil cases.

Ms. Hotneier has been law clerk to Judge Ver-

non R. Pearson during the past year. She received a Bachelor of Arts from the University of Michigan in 1968 and a law degree summa cum laude in 1974 from Gonzaga University, where she ranked first in her class and was an editor of the law review. Ms. Hotneier resides in Tacoma and is a member of the Washington State Bar Association.

The duties of Ms. Hotneier as Chief Clerk will include assisting lawyers to process appeals promptly and according to the court rules, scheduling dockets for the arguing of appeals and motions, and working with the Chief Judge to administer the business of the court.

SUPERIOR COURT NEWS

By **JEROME M. JOHNSON,** *Judge*
King County Superior Court

The Washington State Superior Court Judges' Association has directed a $5,000 grant from its Nevins Fund to the Washington State Committee for Law-related Education. This grant will serve as seed money to allow the committee to broaden its organization and seek major funding toward implementation of its goal of improving the curriculum in Washington state public schools so that our citizens will have a greater knowledge of our legal system, its history, and its operation in the fields of both civil and criminal law.

Curriculum development and teacher training are two efforts which the committee hopes to get underway as soon as possible. Seattle attorney, **Mr. Larry Longfelder,** for several years has actively promoted the need for improved education in our schools on law-related matters. He served on the committee with approximately 25 other citizens including **Judge Francis E. Holman** (King), **Judge T. Patrick Corbett** (Seattle Municipal Court), **Judge Donald Eide** (Aukeen District Justice Court), lawyers **Jay Reich, Gary Little, Ross Radley,** and **Will Knedlik.** Professor **Peter J. Hovenier,** professor at Western Washington State College at Bellingham, is president of the committee.

The Nevins Fund was created by a bequest to the Washington State Superior Court Judges' Association by the late Honorable William Nevins, Lincoln County Superior Court Judge, for 20 years, who died in July 1963.

Judges Act on Judicial Article

At the fall Judicial Conference the Superior Court Judges voted 62 to 9 in favor of a resolution recommending that the people of the state of Washington reject the proposed constitutional amendment SJR 101 which will be voted upon in the November general election.

The association has followed the development of the proposed Judicial Article and advised the legislature from time to time concerning it, offering numerous specific amendments in hopes of improving that legislation. The judges are concerned that such proposal will weaken the state's judicial system, violate the doctrine of separation of powers, impair the physical and administrative stability of the courts, surrender certain basic constitutional safeguards and further remove the administration of trial courts from the counties to Olympia. **Judge Fran Holman** has prepared a careful analysis of SJR 101 which is available for review by interested lawyers. Members of the media, officers of the State Bar Association and others have been furnished with copies of this analysis.

ETHICS OPINIONS

Opinion No. 161
Government Attorneys in Private Practice

City attorneys, their partners or associates may represent defendants or juveniles in actions that are not brought nor initiated by the City and the facts of which are not investigated by representatives of the City employing the City Attorney. WSBA Opinions 25, 88, 146 and 148 are withdrawn.

It has come to the attention of the Committee on the Code of Professional Responsibility of the Washington State Bar Association that there is confusion throughout the State Bar with respect to the propriety of city attorneys, assistant city attorneys or of their partners or associates or those officing with the city attorney being employed to defend persons charged by the employer/city or other levels of government with violations of the law. In this opinion "city" refers to both cities, towns and optional municipal code cities.

Earlier Opinion 25 of the WSBA held that a lawyer in a third class city could not defend a person charged with a municipal offense when one of his partners was the city attorney. Opinion 24 was reaffirmed in WSBA Opinion 88 with the modification as to situations where strict interpretation of the rule was applied to sparsely populated areas would deprive indigent persons ac-

cused of a crime of being adequately represented by counsel. In WSBA Opinion 146, a prior Legal Ethics Committee of the WSBA reaffirmed the former positions and stated that the only exception to the rule was the deprivation of counsel situation. In June of 1971, WSBA Opinion 148 was adopted by the Board of Governors. It provides that a lawyer, hired as a special assistant corporation counsel, his partners or any lawyer employed by the partnership, is prohibited from representing any defendant in a criminal case in municipal, state or federal court, this rule being applied to misdemeanors, gross misdemeanors or felonies.

On January 1, 1972, the Code of Professional Responsibility of the Washington State Bar Association became effective. Canon 9 thereof provides that "A lawyer should avoid even the appearance of professional impropriety." Disciplinary Rule 9-101 entitled, "Avoiding Even the Appearance of Impropriety," (Subsection B) provides that "A lawyer shall not accept private employment in a matter in which he had substantial responsibility while he was a public employee." A lawyer should promote public confidence in our judicial system and in the legal profession to the end that there be no misunderstanding that could cause the public to lose faith in the concept that justice can be obtained through our legal system.

The Preamble of the Washington State Bar Association's Code of Professional Responsibility states as follows:

> ". . . in the last analysis it is the desire for the respect and confidence of the members of his profession and the society which he serves that should provide to a lawyer the incentive for the highest possible degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction."

It is the *appearance* of professional impropriety that may arise which produces the part-time city attorney's ethical dilemma. It goes without saying that the application of the Canons and the Disciplinary Rules and Ethical Considerations of the Code of Professional Responsibility requires an exercise of judgment which should always be based on careful analysis and considered advice. It has been suggested that a good rule of thumb is "When in doubt, don't."

A main consideration of the Committee in reaching its opinion has been the well-recognized necessity of small municipalities having the opportunity to maintain adequate legal counsel to handle their legal problems while at the same time not unduly hampering the general practice activities of the city attorney or assistant city attorney in the general conduct of the affairs of their private clients. The situation as it appears to the Committee is that in the great majority of the smaller municipalities of the state, the practice is to hire an attorney on a part-time basis because the amount of legal services required is small and, ordinarily, such municipalities cannot afford a full-time attorney.

It is the opinion of the CPR Committee that a city attorney, assistant city attorney, their partners or associates, or those officing with the city attorney may ordinarily represent an individual accused of a violation of law, provided, however, that such representation of a defendant or juvenile is not brought or initiated by the city and the facts of which were not investigated by representatives of the city employing the city attorney.

In view of the foregoing, it is the opinion of the Committee that Opinions 25, 88, 146 and 148, should be and they are withdrawn.

Opinion No. 162
Dual Professions

It is not necessarily improper for a lawyer simultaneously to hold himself out as a lawyer and as a certified public accountant or a labor relations consultant. A lawyer who practices as a certified public accountant or labor relations consultant shall not identify himself as such on his legal profession letterhead, office sign, or professional card. A lawyer who is engaged in the practice of law and in another profession or occupation which is closely related to law must conform to the Code of Professional Responsibility in conducting such activities. WSBA Opinions 134 and 135 (December 1968) are hereby withdrawn. See ABA Formal Opinion 328. □

Section Reports

YOUNG LAWYERS
By **LARRY BAILEY**

Congratulations are in order for *William H. Neukom* of Seattle who was recently elected Secretary of the American Bar Association's Young Lawyers Section at the ABA Convention in Montreal. In addition to his new duties as Secretary this year, Bill will also be serving as a member of the Board of Trustees of the Washington State Bar Association's Young Lawyers Section and has an active practice with MacDonald, Hoague & Bayless law firm. Bill will serve a one-year term as the ABA/YLS Secretary, and according to tradition, will serve as Chairperson-Elect in 1976 and *Chairperson* in 1977.

Also deserving recognition is *Edward F. Shea* of Pasco who served as the 1974-1975 Chairperson for the WSBA Young Lawyers Section. At the ABA Convention he was elected District 13 Representative to the Executive Council of the ABA Young Lawyers Section. Ed was also named to the Editorial Board of the *Barrister* magazine which is the ABA/YLS publication issued quarterly to all section members.

Bill Neukom, Ed Shea and Paul Chemnick were jointly responsible for conducting "The Defense of a Criminal Case" seminar in Seattle on June 13th and 14th, sponsored by the WSBA/YLS and the ABA Criminal Justice Section. This particular seminar received an award of special recognition in the Awards of Achievement Competition at the ABA Convention.

Ed Shea, Pasco and Bill Neukom, Seattle

TAXATION
By **MALCOLM D. KATZ**

In *Harrington* v. *United States,* 74-2 U.S.T.C. ¶ 9772, the First Circuit joined the Seventh Circuit's 1970 decision in *Monday* in holding that a corporate officer willfully failed to have a corporation pay over employment taxes, and that in determining the question of willfullness, there was no exception for "reasonable cause" or "justifiable excuse." In so holding, the First Circuit recognized that although "reasonable cause" was a defense to the penalty set forth in Sections 6651, 6652 and 6656 of the Code, it was not an element of the penalty provided for in Section 6672, and that the responsible officer's act is willful, within the meaning of that section, if it is a voluntary, conscious, and intentional act.

The Fifth Circuit, however, in a long line of decisions and most recently in a post-*Monday* decision entitled *Newsome* v. *United States*, has held that in determining whether the failure to pay over was willful, it was very important to determine whether or not the officer's failure was attributable to reasonable cause, e.g., reliance upon counsel that there was no tax liability, or that the government would satisfy its tax claim out of another fund, etc.

One of the cases relied upon by the Fifth Circuit was a 1956 Ninth Circuit case entitled *The Gray Line Company* v. *Granquist*, 237 F. 2d 390, in which the predecessor to Section 6672 was interpreted so as to allow the responsible party to escape the penalty if there was reasonable cause. In that case, an airport limousine service, which was liable for a transportation tax, was not subject to a 100% penalty provided for in the predecessory to Section 6672, because of the corporation's reliance upon counsel and a special deputy tax collector's advice that it was not required to col-

lect or to pay the tax. The Ninth Circuit, however, was not presented with the government's defense in *Harrington* that inasmuch as there is no reference in the statute itself to reasonable cause, Congress must have knowingly excluded this as a defense from the definition of willfulness, since they included this defense in the penalities provided for in Sections 6651, 6652 and 6656.

Until this conflict at the Court of Appeals level is ultimately decided, or until *Newsome* is reaffirmed by the Ninth Circuit, the possibility of getting jury instructions, such as those which were requested in *Harrington*, that in determining the question of willfulness, facts showing a justifiable excuse or reasonable cause may be taken into account, is up in the air. However, common sense in applying the standard of willfulness and protection against the effect of a reversal of the *Monday-Harrington* trend would dictate in favor of such instructions.

ADMINISTRATIVE LAW

By **C. ROBERT WALLIS**

Bowing v. Board of Trustees, 85 Wn.2d 300, _____ P.2d _____ (1975), decided May 1, speaks to a significant issue in administrative law and Washington agency practice. Reviewing a decision of the Court of Appeals, Div. I, 11 Wn.App. 33, 521 P.2d 220 (1974), the court reversed the portion which would have required a proposal for decision to be served in any contested case under the APA where the deciding officials had not been physically present at the reception of oral testimony and written evidence.

The statute, RCW 34.04.110, reads as follows:

> Whenever in a contested case a majority of the officials of the agency who are to render the final decision have not heard or read the evidence, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision, including findings of fact and conclusions of law, has been served on the parties, and an opportunity has been afforded each party adversely affected to file exceptions and present written argument to a majority of the officials who are to render the decision, who shall personally consider the whole record or such portions thereof as may be cited by the parties. Oral arguments may be heard in the discretion of the agency.

The court declared that officials who had not been present when evidence was received might read a written transcription of orally-presented evidence to sufficiently familiarize themselves with the facts of the case. In addition, the court said that the provision requiring officials to "consider" the record where they had not heard or read it (*note:* e.g., where an examiner's proposed decision is issued) does not require hearing or reading the entire record but would allow "practical administrative procedure in obtaining the aid of assistants in the agency."

Withrow v. Larkin, 95 S.Ct. 1456 (1975), decided April 16, also is of note to administrative law practitioners. There, a state agency temporarily suspended, without formal proceedings, the license of a physician who had performed abortions.

The court said that a challenger seeking to establish bias in administrative adjudication must overcome a "presumption of honesty and integrity in those serving as adjudicators."

It indicated that the initial charge or determination of probable cause and the ultimate adjudication have different bases and purposes, and the fact that the same agency makes both determinations and that they both relate to the same issue does not result in a violation of procedural due process. It noted that the facts and circumstances of a particular case could demonstrate that the risk of unfairness might be intolerably high.

The court said that judges or administrators who have had their decisions reversed and were confronted with them again on remand should not, by that fact alone, be precluded from functioning; the risk of bias or prejudgment or psychological wedding to complaint is not sufficiently great.

Please note: Thanks to Doug Owens and Charles F. Murphy for the above. Contributions are solicited.

Join a Section

All members of the State Bar Association are invited to join one or more of its twelve active Sections. These legal interest groups have their own officers, annual and other meetings, committees, seminars, and newsletters.

Each Section is responsible for continuing legal education in its respective field of law, for proposing to the Board of Governors new or amended legislation, and for making recommendations to the Board of Governors for further Bar activity and policy.

If you are already a member of a Section, you will receive a dues statement to renew your membership in October, 1975. To become a new member of a Section, simply send a note to Cassie Morris, Administrator of the Sections at the Bar Office, indicating which Section or Sections you wish to join, and enclose a check for the appropriate amount.

The twelve Sections and their annual dues for the fiscal year of October 1, 1975 to September 30, 1976 are as follows:

Administrative Law	$5.00
Anti-Trust Law	8.00
Corporation, Business & Banking Law	5.00
Creditor-Debtor Rights	5.00
Criminal Law	5.00
Environmental Law	5.00
Family Law	8.00
Intellectual & Industrial Property	8.00
Real Property, Probate & Trust	5.00
Taxation	10.00
Trial Practice	5.00
Young Lawyers	5.00

ABA Continues Computerized Placement Assistance Program for Law Students

The American Bar Association has decided to make permanent its program of computerized placement assistance for law school students and their prospective employers.

Launched by the Law Student Division last spring as an experiment, the program attracted inquiries from more than 1,000 students and 250 employers, said Fran Utley, manager of the ABA Lawyer Placement Information Service.

Ms. Utley said the computer checked 261,981 possible "matches" between applicant qualifications and employer requirements, printing out 3,138 of the closest matches.

Based on the large response, the ABA decided to put the program—JURISCAN—on a permanent basis, Ms. Utley said.

The program is open only to members of the ABA Law Student Division. The JURISCAN registration fee for students is $5.

There is no charge for employers using the program.

Employer enrollment forms for the program appear in the September issue of the American Bar Association Journal, and student forms will be carried in the October issue of Student Lawyer, a publication of Law Student Division.

Both forms can also be obtained from law school placement officers and by writing to JURISCAN,,American Bar Center, 1155 East 60th St., Chicago, Ill., 60637.

Harvard Plans Instruction Program for Lawyers

A program for instruction of lawyers will be given by Harvard Law School from July 19 to July 30, 1976. This session, the ninth of its kind since 1953, will precede the annual meeting of the American Bar Association in Atlanta, Georgia.

Inquiries about the program may be directed to:

Program of Instruction for Lawyers
Harvard Law School
Cambridge, Massachusetts 02138

Reservations for the 1976 program can be made by letter request.

Gonzaga Report

Gonzaga University School of Law, as a part of a multifaceted Clinical Law Program involving some 60 students, has initiated a legal clinic for agricultural workers in the lower Yakima Valley. The clinic will be staffed by six third-year student interns from Gonzaga under the specific direction of two clinical law faculty members and general supervision of local Yakima attorneys. The Yakima Clinic, with the cooperation and assistance of several existing agencies, hopes to provide sorely needed legal representation to a segment of the migrant worker and Chicano community in the lower Valley, and to expose the student interns to an educationally valuable experience in bridging the gap between classroom theory and practice reality. The Clinic hoped to open its doors on August 1st.

Willamette Law School

The forty Washingtonians who make up nearly 30% of the entering class at Willamette University College of Law in Salem, Oregon, joined their classmates at the annual orientation program on August 22 to hear the honored speaker, Chief Justice Charles Stafford of the Washington Supreme Court, give the orientation address. The law class of '78, which numbers 134, is comprised of students from 28 states and Canada.

UPS Report

Three new persons have taken positions on the University of Puget Sound Board of Trustees.

The official announcement was made today by Norton Clapp, chairman of the board, following the group's annual three-day spring retreat in Port Ludlow. Named to the board are George H. Boldt, Regina Glenn and Robert Rinker.

Boldt, senior U.S. district judge, has served as chairman of the UPS School of Law's Board of Visitors since its inception in September 1972. He is an LLB graduate of the University of Montana who holds honorary degrees from that institution and UPS. A member of the American, Washington State and Tacoma Bar Associations, the newly named trustee is co-author and co-editor of the Manual for Complex Litigation.

Mrs. Glenn, a 1971 MBA graduate of Puget Sound, currently serves as Technology Transfer Center Director for the City of Tacoma. Former Manpower Planning Director for the city, the trustee member was manager of the UPS Bookstore while a university student and also held the post of second vice president of the Associated Student Body. She is a member of the Law and Justice Committee of the State of Washington, past vice president of the Tacoma Urban League and was appointed by Governor Evans to the Board of Trustees for Fort Steilacoom Community College in 1973.

A graduate of UPS and Cornell University, Rinker is executive vice president of Tokyu Hotels International, Tokyo, Japan. Prior to his 1973 appointment, the Tacoma native was executive vice president of the Hawaii Hotel Association and active in many phases of Hawaii's burgeoning visitor industry for 20 years. He also has been coordinator for the Institute for Technical Interchange at the University of Hawaii's East-West Center.

The appointments are effective immediately, Clapp said.

Notices

Will Wanted: Stanley M. L. Palmer, a/k/a Stan Palmer who resided in Seattle for the past year; Portland, OR from September, 1971 through April, 1974; and in Redmond, Kirkland, and Fall City prior to September, 1971. Will would have been drawn subsequent to February, 1973. Contact B. G. Anderson; #1852; The Bank of California Center; Seattle, WA 98164.

For Sale: 46 Vols. Words & Phrases, 17 Vols. Blashfield Automobile Law & Practice, 20 Vols. Fletcher Cyclopedia Corp. + 9 Vols Fletcher forms; Supreme Court Reporter (302 U.S.) Vol. 58 through Vol. 93A. Pemberton & Bentley, 218 W. Champion, Bellingham, 733-8370.

Space Available: Attorney to share office space, secretary, and equipment. Arrangements flexible. Contact Andrew Salmon at 624-3144 in Spokane.

For Sale: IBM Executary dictating unit and transcribing unit. Ex. condition. $500. 623-8355.

Wanted: Used United States Supreme Court Reports, Supreme Court Reporter or Lawyers Edition. Call William R. Hickman, 682-2444, Seattle.

For Sale: Model 211 IBM dictator, and model 212 transcriber, with accessories, Joseph S. Miller (206) 455-9922.

Space Available: Grand Central on The Park, Pioneer Square, for one attorney in a four-attorney suite. Telephone: 624-0861.

Calendar

Oct. 30-31	20th annual Estate Planning Seminar; 9 a.m.-4 p.m. each day, Olympic Hotel, Seattle; James B. Gilchrist, chairman; speakers: Albert J. Fink, Los Angeles; Scott B. Lukins, Spokane; Prof. Alan N. Polasky, Ann Arbor, Mich.; Joseph Kartiganer, New York; Charles L. Thomas, Tacoma; T. Neal McNamara, San Francisco; Robert Erickson, Seattle; Prof. James J. Freeland, Gainesville, Fla.; Ms. Karen Ferguson, Washington, D.C.; the Hon. Jerome M. Johnson, Seattle; Austin Fleming, Chicago; Malcolm A. Moore, Seattle; Donald D. Perkins, Seattle; Victor D. Alhadeff, Seattle.
Nov. 7	CLE seminar, Labor Law Ground Rules: How to Counsel and Save Your Client; 1-6 p.m., Ridpath Hotel, Spokane.
Nov. 21-22	CLE seminar, Trial Advocacy II: Evidence; 9 a.m. to 4 p.m. both days, Ridpath Hotel, Spokane; Terry A. Brooks, Yakima, chairman, David Boerner, Seattle, chairman for the criminal law portions.
Dec. 4-5	CLE seminar, Trial Advocacy II: Evidence; 9 a.m.-4 p.m., Tyee Motor Inn, Olympia.
Dec. 11-12	CLE seminar, Trial Advocacy II: Evidence; 9 a.m.-4 p.m., Olympic Hotel, Seattle.

Lawyer Placement

1. Attorney, admitted in Washington since 1972, seeks position with firm needing an attorney with a masters in tax background from NYU and 3 years of planning and litigation experience in federal income, estate and gift tax as well as general business practice. Resume available on request. Write the State Bar Office, c/o Box 12.

2. Honorable Charles F. Stafford, Chief Justice of the Washington Supreme court, announces several law clerks employed by the individual justices during 1975-1976 are seeking employment to commence in late summer of 1976. The clerks, most of whom are already admitted to the Washington bar, are recent law school graduates with outstanding credentials. Their service with the court, typically for one year, provides them with an opportunity to observe the appellate system, and sharpen their legal skills. Anyone wishing to obtain further information, or arrange interviews please contact: Office of the Chief Justice, Temple of Justice, Olympia, Washington 98504; (206) 753-5067.

Office Space: Available for 3 attorneys in 9 man suite, 17th Floor, Hoge Building. Air conditioned and south view. Library-conference room. Phone 624-5760.

For Sale: IBM Selectric, 13" carriage, Legal Pica 72 element, good condition, has been under maintenance agreement since purchased new in 1969. $350. 622-2296, Seattle.

Let's talk trusts, person-to-person ...at your place.

Now, when a client of yours wants to set up a trust, all you have to do is call 223-2221 and one of our trust officers will come to see you.

We owe our name to our Trust Department. Trusts have been one of our essential services for 70 years. So it's no surprise that we'll take extra steps to secure a trust account.

Next time the occasion warrants, call 223-2221; and one of our trust officers will assist you... at your place.

Seattle Trust
SEATTLE TRUST & SAVINGS BANK EST. 1905
Every service you'll ever want from a bank, person-to-person.

Member FDIC

WASHINGTON STATE BAR ASSOCIATION
505 Madison Street
Seattle, WA 98104

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