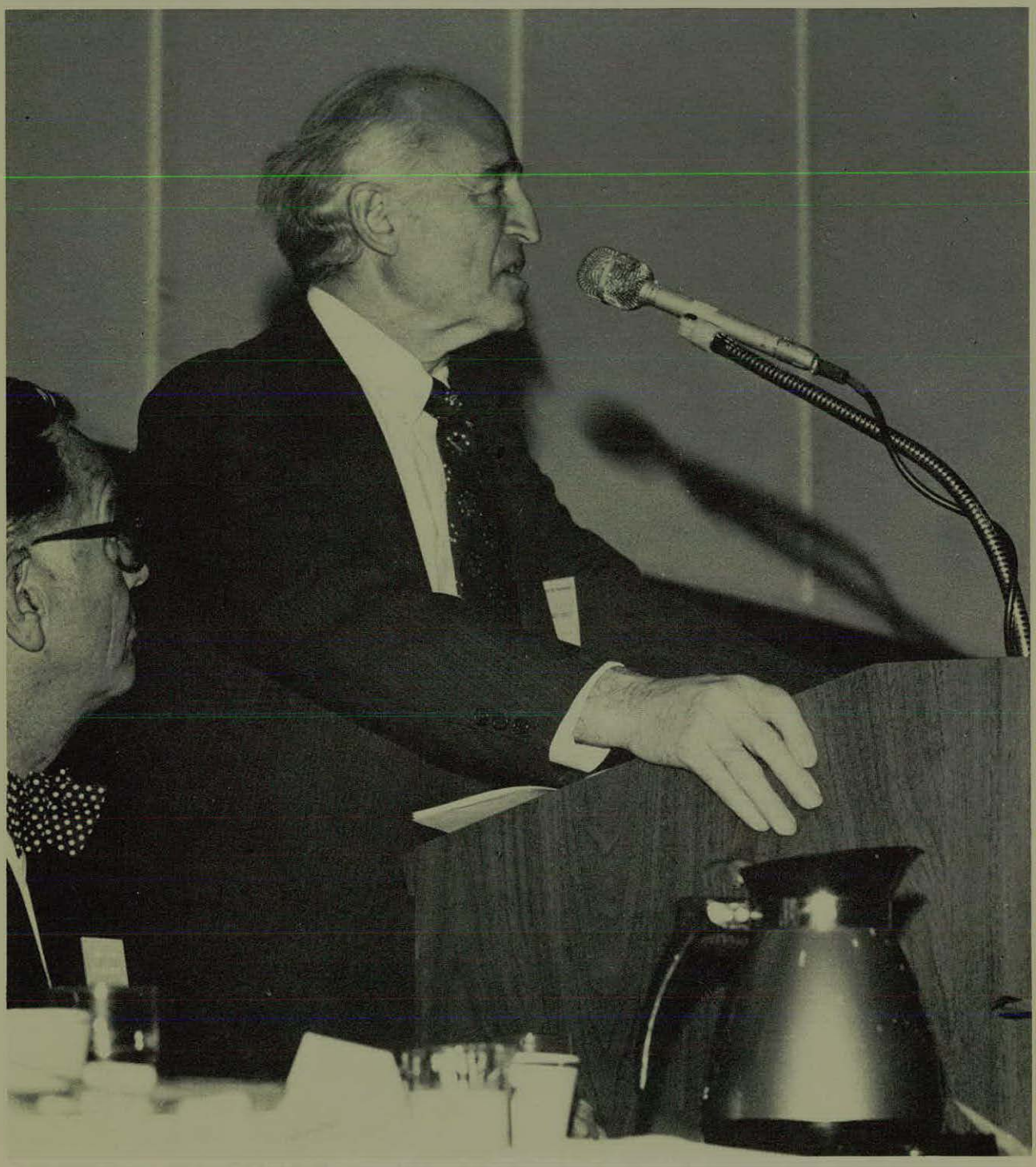
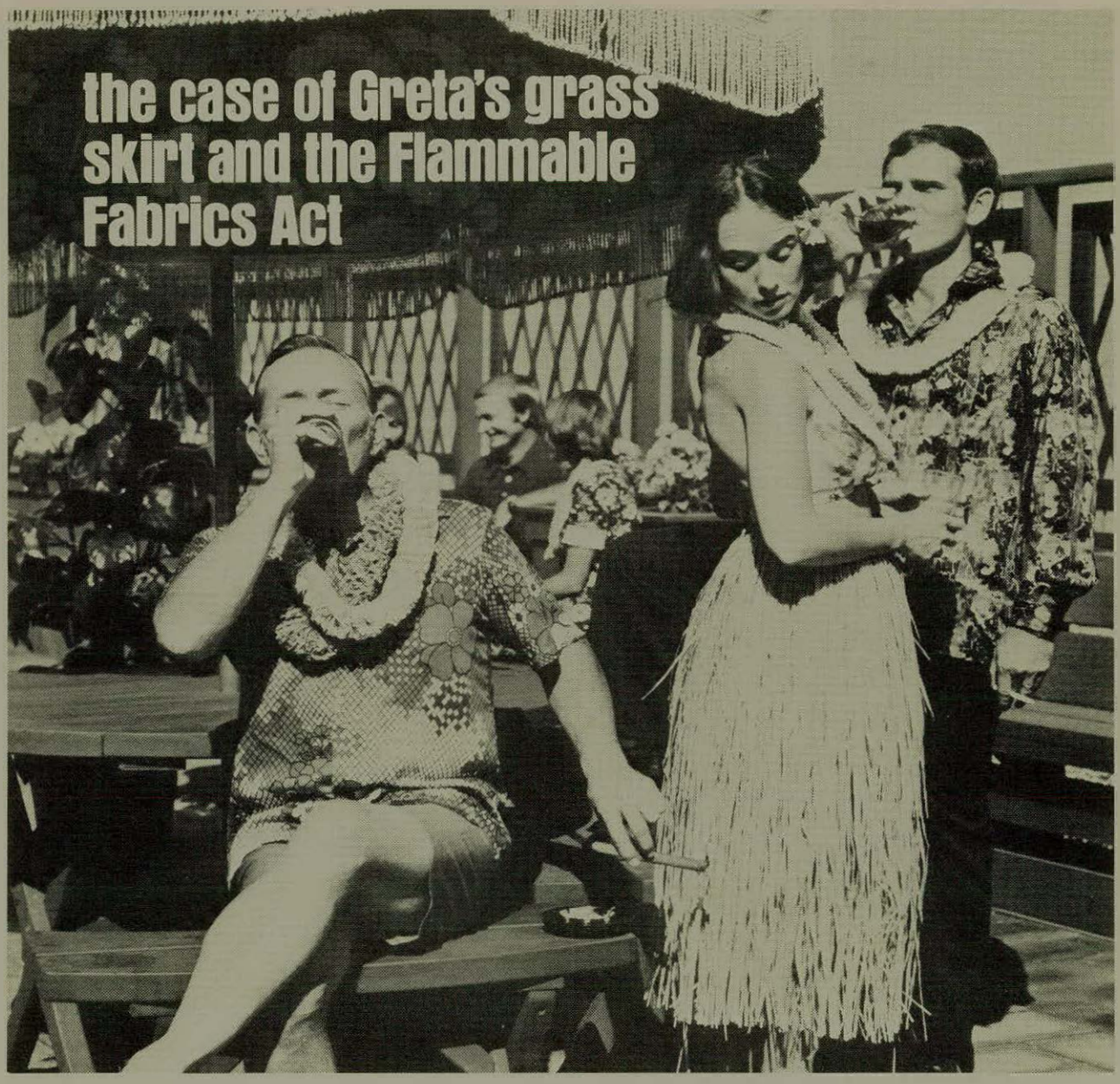
Volume 30, Number 11
November, 1976

WASHINGTON STATE BAR NEWS



ADVICE FOR NEW LAWYERS FROM JUSTICE HOROWITZ



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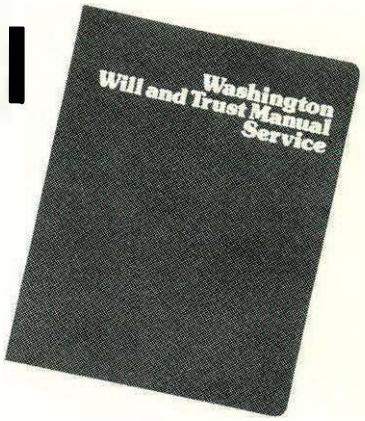

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Volume 30, Number 11
November, 1976

WASHINGTON STATE BAR NEWS

Published by

WASHINGTON STATE BAR ASSOCIATION
505 Madison Street Seattle, Washington 98104

Stephen E. DeForest, *Acting 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. Subscription price is $5.00 a year, 50c a copy. Subscription included with active membership. Back issues $1 per issue.

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FEATURES

IN THE NEWS

DEPARTMENTS

Editor's Notes

New Editor Named

The selection by the Editorial Advisory Board of Jay V. White of Seattle as the new Editor of the *Washington State Bar News,* effective next month, has been confirmed by the Board of Governors. He succeeds Edward W. Huneke, who resigned in July.

The new Editor was selected by the Editorial Advisory Board upon the recommendation of its subcommittee, which interviewed a number of well-qualified applicants for the position.

A 1971 graduate of the University of Washington Law School and a former law clerk to the Honorable Herbert A. Swanson of the Washington State Court of Appeals, Jay V. White is now associated with the Seattle firm of Houghton Cluck Coughlin and Riley. Jay is married to Nancy K. White, a fourth-year medical student at the University of Washington. They have one child, Matthew, born March 21.

Jay's writing and editing experience ranges from work as a newspaper reporter to legal research and analysis. He has written more than a dozen articles which have been published in the Sunday magazines of *The Philadelphia Bulletin* and, more recently, *The Seattle Times*. His third-year law school seminar paper was published as a book in 1972, *Taxing Those They Found Here: An Examination of the Tax Exempt Status of the American Indian*. Jay is also co-author with University of Washington Law School Prof. Ralph W. Johnson of a casebook, published last month, which is the first in the country designed for Indian Court Judges. In addition, Jay has written and edited publications in the field of municipal law for the Municipal Research and Services Center of Washington, an organization serving city and town attorneys and other officials throughout the state.

Jay is in the process of planning future issues of the *Bar News*. He suggests that anyone interested in commenting or contributing should write to him at 900 Hoge Building, Seattle, Washington, 98104, or telephone (206) 623-5285/623-6501.

STEVEN E. DeFOREST
Acting Editor

The President's Corner

The problem of obtaining adequate professional liability coverage for the attorneys of this state is one with which the Board of Governors has been wrestling for four years. More and more carriers are withdrawing from this market. Those who are left are charging ever higher premiums.

Affiliated FM Insurance Co. — the present bar sponsored carrier — has served formal notification upon us that it will cease writing malpractice coverage as of February 1, 1977. Our Insurance Committee is currently negotiating with American Bankers of Florida and others who have expressed some interest. Though a new agreement has not been finalized as of this date (10/25/76), it is likely that one will be soon.

The ''occurrence'' form of coverage — as we now have with Affiliated FM — is as extinct as the dinosaur. Liability carriers now are only writing on the ''claims made'' form, which is obviously less desirable from our standpoint. So American Bankers is offering a claims made policy. SEC coverage will be optional with each lawyer or law firm. The applicant will have a number of options available, the choice of which will obviously affect the amount of the premium. Deductible options of $1,000, $5,000, and perhaps $10,000 will be offered. Limits of coverage may be $100,000, $300,000, $500,000, $1,000,000 or perhaps more. Depending on the options selected the cost (without SEC coverage) will probably be in the range of 2½ to 3 times our existing annual rate of $170 per lawyer under the Affiliated FM policy. The halcyon days are gone!

In addition to plugging the dike with a present alternative to Affiliated FM, the Insurance Committee is charged with developing a long range solution. More and more the Board of Governors and the Committee are intrigued with the answer of the Law Society of British Columbia. In 1970 it set up a program by which the Law Society, subject to a modest deductible, underwrites malpractice losses of its membership up to a limit of $50,000 per lawyer and up to an aggregate limit which is currently at $400,000. Losses beyond those limits are reinsured with Travelers Insurance Co. Though the Law Society has also had to increase its rates substantially, it at least has a vehicle in being to insure coverage to its members if private carriers withdraw altogether. The disadvantages of the B.C. system are: 1) all members are required to participate, 2) like compulsory auto insurance, when the public knows we are all covered claims may increase. We would like to avoid getting into the insurance business as long as coverage is available through private carriers at anything approaching reasonable rates. But we are looking down the road and want to have an alternative available if the private market either dries up altogether or becomes unreasonably expensive.

Richard H. Riddell

A Welcome to New Lawyers Delivered at the King County Swearing-In Ceremony in October

WHAT NEXT?

By **JUSTICE CHARLES HOROWITZ**
Washington State Supreme Court

May I associate myself with my fellow judges and members of the bar in extending to each of you newly admitted members, our congratulations and best wishes and welcome you into membership of our great profession. After 3 years of arduous and successful study, you have fully earned the right to be addressed by your new title — lawyer.

It is a title of honor and value even though an accountant will not treat it as an asset on your balance sheets nor will the taxing authorities treat it as a depreciable asset for income tax purposes, nor will you be able to transfer it, sell it, exchange it, pledge it, give it away or bequeath it. Nevertheless it will open doors for you that would have remained closed; it will enable opportunities to come your way that might otherwise have passed you by. It should produce for you a life of continuing challenge — interesting, stimulating and rewarding. It is a title, the importance of which will grow with the years of your entitlement to its benefits.

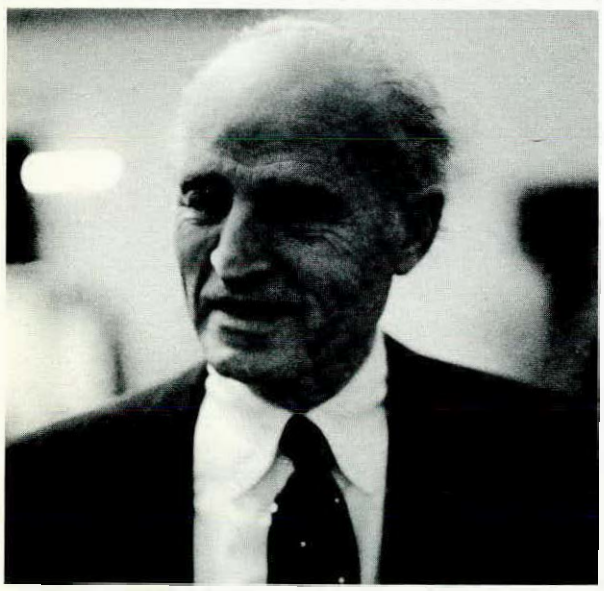
Your admission to the bar occurs at a very important time in the life of this nation — its Bicentennial Year. Much has happened since this nation determined to go free. Approximately 3 million people have become approximately 212 million people. Thirteen states have become 50; a small, far-away, uninfluential country has not only spanned the American continent — it has become a powerful world force. Much of the growth and much of the influence that has been attained has been due to the vigor and dedication of the people among whom the lawyers and judges of our country have played so significant a part.

Our new lawyers have entered into a small and select circle. Using round numbers, they number about 500 in a state whose total population is a little more than 3,400,000 or one additional person for each group of 6,800 members of that population. Even if you add the 500 to the existing 7000 lawyers, this means a total of one lawyer for each group of about 450 members of the state population.

That you newly admitted members of the bar have prepared yourself well in the profession of law goes without saying. You were accepted for admission to your law school in competition with

applications for admission far greater in number than the places available for enrollment. The law degree you received evidence your proficiency in the knowledge of the law. Some of you by extracurricular activities such as law review work have increased your skills and research in writing and legal analysis. By being one of the 71% of the candidates who passed the bar examination out of the 711 who took the examination, you have affirmatively demonstrated your ability to be entrusted with the basic responsibility of handling an actual legal problem.

Now you are faced with the necessity of answering the question: "what next?" When you were going to school the answer to the question of "what next" was not too difficult. You knew or took for granted the fact that you had to go through grammar school, to junior and senior high school and then to college and finally to law school. Now, however, the problem is of a different dimension — it is a bread and butter problem. You are faced with the basic necessity of earning a livelihood — of studying and planning your career so as to give purpose to your future activities. You will now be working with people with actual needs including those who may be involved in live controversies.



JUSTICE HOROWITZ has served on the Bench of the State Supreme Court since January, 1975. He graduated from the University of Washington Law School in 1927 and has been a member of the Washington State Bar since that time. After a career in private practice, he served on the Court of Appeals from 1969 to 1975, including a term as Chief Judge in 1971-72.

This speech was delivered at the swearing-in ceremony for new lawyers held in King County in October.

If you fall within the national pattern, approximately 72.7 percent of you will find yourself engaged in private practice; 11.1 percent of you will be employed as lawyers in government service — state and federal; and 10.3 percent of you will be employed as lawyers by private companies. The rest of you will go into other pursuits, no doubt enriched and benefited by your legal studies.

In fact, in a study just completed by the Washington State Bar Association, entitled *Employment and Compensation Patterns for Recently Admitted Lawyers in the State of Washington* it is stated: "those persons employed in non-law related positions were making more money at the time of the survey than those persons either engaged in the active practice of law or employed in law related positions." . . . "at the time of the survey those persons in non-law related positions were earning an average of 18% more than those persons employed in the active practice of law or in law related positions."

If you engage in private practice, some of you will obtain employment as associates in law firms or with private practitioners. Some of you will enter into office sharing expense arrangements whether with an older lawyer or lawyers or a lawyer or lawyers who may be your contemporaries. Some of you no doubt will open up an office of your own.

Whatever you do in private practice you will be interested in the potential subject matter of that practice. In a study published by the Washington State Bar Association in 1974 entitled *The Economics of Law Practice in Washington State*, a survey was made of the specialties of law practice and the median income received by lawyers specializing in that practice. In a moment I shall give you some figures. First, I wish to call your attention to the subjects of law practice in the nature of specialties commonly encountered in this state in the private sector. These include specialties relating to administrative proceedings, admiralty, antitrust problems, banking and savings and loan association law, bankruptcy and commercial law, condemnation law, corporation law, criminal law, law relating to domestic rela-

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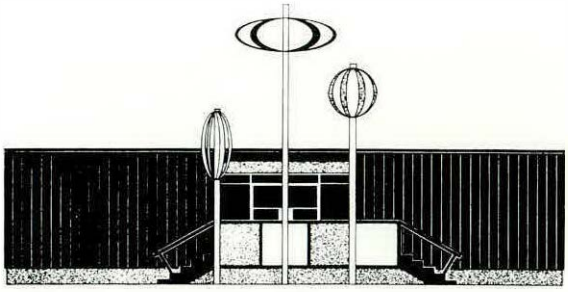

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tions, labor law, mineral and natural resources law, municipal and school district law, negligence and tort law, patent, trademark and copyright law, real estate law, securities law, taxation, trial and appellate work, utilities and communication law, probate law, including wills, trusts, and estate planning. These areas of the law are, of course, by no means the only areas of law practice.

Some of you may wish to further a special interest you may have by entering the field of public interest law. If you do, you may find a 1971 supplement to a book authored by Professor Vern Countryman of Harvard Law School and Ted Finman, entitled *The Lawyer in Modern Society*, of interest. A section of that supplement is devoted to the subject of public interest law dealing with clients' activities and social change. The authors divide public interest lawyers into several categories. There are lawyers for the poor whose work involves matters concerning landlord and tenant, welfare and consumer credit, garnishments and family law problems. Then there are the lawyers who represent political and cultural dissidents. In this group are civil liberty and civil rights lawyers, including those who work for the American Civil Liberties Union. They represent those who claim a violation of their civil rights involving political, religious and cultural dissenters of all types from the far right to the far left. Some lawyers in this category devote all their time to working for a single organization; others work for all clients in this category without regard to any sponsoring organization. Then there are the so-called value-oriented public interest lawyers who attempt to represent consumer and environmental interests. This work as well as the work of other public interest lawyers may lead to litigation of considerable size and responsibility, particularly in the area of class suits. It may also involve the lawyer in drafting legislation and in bringing litigation to test the validity or defend against a claim of invalidity that may be asserted against legislation enacted in these areas of the law.

Some commercial law firms, in the east especially, sponsor public interest practice on what is sometimes called a release time basis or on the basis of a separate department or branch office integrated with the firm's paying business. Furthermore, some funding provided by federal government and private foundation sources attempts to subsidize the cost of continuing representation for the poor.

1974 median income figures are available from the 1974 study of the Washington State Bar Association to which previous reference has been made. They do not reflect any changes that have occurred in our improving economy since that study was completed. The outlook for improvement looks promising. The September 21, 1976, issue of The Seattle Times contained an article discussing the predictions of Governor Evans and others that the next 8-10 years will bring an inmigration of from 200,000 to 300,000 people. If our economic growth keeps up with the increased population, opportunities in law practice will increase accordingly.

Let us, however, look at the 1974 figures. The median income from specialties I described earlier dealing with common types of law practice other than public interest law, varies from a low of $13,500 per annum for criminal cases to a high of $46,700 in admiralty cases. In the range of $25,000 and up, the study shows that wills, trusts, and estate planning, utilities and communication law, patent, trademark and copyright law, negligence law, corporation law, condemnation law, banking, savings and loan association law are all in the range of $25,000 and over. The other specialties are below $25,000 per annum.

While we are on the subject of median income, you will undoubtedly be interested in some additional figures with explanations also contained in the 1974 study. These figures have not been updated to reflect inflationary pressures and an improving economy.

(1) The annual median income for lawyers of this state is $21,380. In the $20,000 to $30,000 income category we find the largest number of lawyers — approximately one-fourth of the bar. These figures should be compared with the national median income for lawyers in 1972 which was $23,448.

(2) Beginning compensation for new lawyers is relatively high with 60% of those reporting having income of more than $10,000. Almost one-fourth of the new lawyers in this state receive beginning compensation of more than $12,000.

In the just recently completed report previously mentioned, there is evidence that typical salaries

for the February 1975, July 1975 and February 1976 group of new lawyers varied from $6,000 per year to $13,200 per year.

(3) One chart shows the median income for each age group. The best earning years according to age appear to be from 40 to 65 with a peak in the 50-54 range.

(4) If you seek to compare earnings in terms of the number of years of practice, the highest earning appears to be generated beginning with the 15th year in practice and continuing through the 39th year. No single peak dominates this 25-year earning period.

(5) If you seek to determine income based upon geographical location, an interesting conclusion is reached. The estimated median income for Eastern Washington is $22,300 compared with $21,000 for Western Washington.

(6) If you seek to compare the income levels according to the size of the city on the assumption that the largest population centers provide broader opportunities for high income, you may be surprised to learn the highest median income by far is earned in cities with a population range of 50,000 to 150,000. This does not mean that larger cities do not afford extremely higher income potential but they do show that more opportunity appears to exist in smaller cities for attaining a generally higher income. In a publication of the State of Washington entitled *The State of Washington Pocket Data Book* (1975), there is a section devoted to information concerning cities and towns of this state. That section shows the population of incorporated cities and towns as of April 1, 1975. A detailed chart shows the population of the 265 unincorporated and incorporated cities and towns by county as of April 1, 1975. This information may help you form some idea of the distribution by county, city and town of potential legal income producing business in this state when you come to select the area in which you should like to practice. I shall deal with that a little later.

(7) The statistics show that very small cities in the state do not necessarily lack income potential. The second highest income median applies to cities with populations ranging from 5,000 to 9,999. A list of cities containing population in the numbers stated is in the 1975 Pocket Data Book to which I have referred.

Some of you may also be interested in how the nature of the organization that you create or join affects income potential. The survey shows that partners in law firms and shareholders in professional corporations have substantially highest earnings. Sole practitioners both individually and practicing in groups have median incomes which fall just below the general median of the bar. Associates of sole practitioners, associates in firms and nonshareholders in professional corporations are at the low end of the scale. From an income standpoint, therefore, it is more profitable to own your practice.

The survey also shows that as the number of lawyers in a firm increases, the income per lawyer up to a point also increases. The highest per lawyer income is enjoyed in firms with 5 to 7 lawyers. So far as the median income for various types of salaried employees is concerned, the statistics show that with the exception of judges, all salary income figures fall below the general median for the bar.

I should now like to turn to the subject which I am sure is of concern to many of you — where should you locate. Understandably many of you would prefer to locate in a large city such as Seattle. One difficulty with now locating in Seattle is that you may find it more difficult to make your way against the many lawyers who live here and practice their profession. That doesn't mean that you should give up; it merely means that you should consider other alternatives before you finally make up your mind. If, of course, you can obtain a position with a well established law firm in Seattle, that may solve your problem. However, many of you will probably find it very difficult to find enough openings among such law firms in this city to permit the placement of all who wish to be employed. This is *not* something for which you should blame yourself. You must face up to the fact that having as many as 500 lawyers suddenly come into the job market creates a very difficult if not impossible problem of current absorption.

You must also face up to the fact that it may take you some time to become placed. Again, I refer to the last completed study of the Washington State Bar Association. That study shows that of the successful applicants covering the group surveyed in the February and July 1975 and February 1976 class of newly admitted lawyers, 70% were employed immediately; 4% were employed in less than one month; 6% within two months; 2% within three months; 8% within four to six months; and 10% for a period longer than 6 months, the longest being 16 months.

What should you do either to become placed or otherwise located? If you know a lawyer in some other part of the state, your investigation and inquiry may lead you to become an associate of that lawyer or another lawyer. However, before you make up your mind as to location it will undoubtedly prove helpful to make a trip to other counties of the state in both western and eastern Washington, armed with knowledge that you can obtain from *The State of Washington Pocket Data Book* (1975), to which I referred a moment ago. That book contains a summary study of each of the 39 counties of the state. It will give you information concerning the county seat, the cities within the county, the population of the county, the population of the cities, and in limited respects, some economic aspects of the county. In addition,

you should obtain additional information from law directories such as the Martindale-Hubbell Law Directory. That directory, for example, will give you the names and addresses of the lawyers in the various geographical units of the state — by county and by city. That directory also contains other information you will find useful as you make your trip around the state to see what the areas are like and to meet and talk to some of the lawyers in the area. Talk to the local Chamber of Commerce officials and others about the future economic outlook of the area. You will thus get a better idea of the economic prospects of the area to help you decide where you would like to spend at least the early years of your practice.

I think you may find that practice in other areas of the state will prove rewarding and satisfying. Some of the most important members of the state bar come from these areas. The important thing at this stage of your career is to decide what to do and where to locate even at some sacrifice of immediate income. I recall, if you will permit me to give you an illustration from my own experience, that when I first came back from school I wanted to locate in Seattle because it was my home town. I made the rounds of law offices but had difficulty finding a lawyer or firm not already supplied with new lawyers from the many who had already applied. I finally encountered one lawyer who made a suggestion I thought a very good one. He said: Pick out a firm where you would like to go and then go to the head of that firm and tell him about yourself. Tell him what you would like to do, tell him that you are not interested in any salary — you are only interested in a place to hang your hat and that you would like to go into his office. Well, I actually did that and later I was placed in his firm without salary. Two weeks later I was given double the usual salary and the salary was made retroactive to the beginning of my association with the firm. I later became a partner and remained with that firm the rest of my professional life before I was appointed to the bench.

You may properly consider the first year or two of your practice as a continuing part of your actual education — your apprenticeship in actual practice. Ultimately what you learn in those one or two years coupled with the education you now have will stand you in good stead. As you grow in stature — and you will — and as your income increases — and it will — your interest in the nature of the practice that you have and the problems and the challenges they present will be a source of continuing interest and satisfaction.

If any of you are interested in reading a book on building a law practice and are looking for suggestions, I would suggest a book authored by a former judge of the Oregon Supreme Court and a law practitioner in the state of Oregon. The book is by Rossman and Stringham entitled *Increasing a Law Practice*. You will find a number of suggestions that may interest you. I am sure that you will also find other works in this field as well.

Naturally, as you and I know, your education has not been completed. What you know about the law has come largely from the study of cases, statutes, textbooks and legal periodicals with the assistance of law teachers and the discussions with your fellow students. There is a great deal yet to be learned, not only in the law itself by keeping up with the law reports, law reviews, lectures on legal subjects and the like. However you will learn and indeed have to learn a great deal about

many other subjects that are not legal in character. You will find as time goes on that occasionally you will get a problem that requires knowledge of a science, an art or technique. I refer particularly to subjects such as accounting, medicine and engineering. You will find that it is not at all difficult to educate yourself in these subjects outside the law even though you have never had a formal school course in those subjects. You can pick up a volume on oil geology if you have an oil case. You can pick up a volume on principles of accounting if you have a case involving an accounting problem. You certainly can pick up a volume or article on a subject in the field of medicine to help you in a personal injury case you may have. The knowledge you thus acquire will be useful not only in the case at hand but I think you will find that at some time in your life everything you so learn or will learn will be of importance and assistance to you.

If I might make a suggestion, learn how to try a case in these first years of your practice. Take court assignments to defend those charged with crime. Welcome every opportunity to appear in court. Don't be afraid to pit yourself against a more experienced antagonist — you will undoubtedly learn something from the encounter — win or lose. As you grow in experience in your ability to handle a case in court you will acquire an assurance that will communicate itself to those with whom you come in contact whether they be lay people or members of the bar. It is surprising how contacts in which you have somehow managed to inculcate in others a sense of confidence in yourself will serve to increase your law practice. Make speeches before bar or lay groups. If you can do some lecturing in law to lay groups, do so. You will find that students such as high school students are anxious to learn how law is relevant to their concerns.

Thus far we have talked about bread and butter aspects of your prospective career planning. There is obviously more to career planning than the economics of law practice in the private sector of our economy. We must look to broader problems such as the status of the legal profession in our state and nation. Ours is a profession of service. We do not manufacture products — we do, however, play an essential role in making that manufacture possible. Neither do we generally

practice other professions. Yet professions such as medicine, engineering, accounting, architecture, and many others — and occupations covering a much broader range — could be conducted with only great difficulty but for legal help. Collectively we are the advisers of millions of our fellow citizens. We help protect their property, their families, their rights and liberties and help them acquire and maintain privileges our society extends to them in the public interest. Generally we have the respect and even the affection of our clients. The title of lawyer by and large is considered a title of esteem. However, unless we merit and continue to merit that esteem, we will be replaced by those whom the members of the public believes can serve them better.

We best merit that esteem by maintaining a high standard of competency and character. One has only to read our Code of Professional Responsibility to note how high those standards are. I believe we have seen the worst of the adverse reaction against lawyers connected with Watergate. The organized bar and individual lawyers had much to do with straightening out the Watergate problems. I hope we shall not again have to face such problems.

Not long ago I had occasion to read a speech by Whitney North Seymour, a former president of the American Bar Association. In that speech, he said:

> ". . . the lawyer is not just a journeyman devoted to his own interests . . . he has a duty to his profession which includes two broad areas: (1) the duty to render competent service to client, public and private, with utter fidelity to their interests and (2) the duty to contribute at least some of his talents to the public good through the organized bar and other ways."

You will also find the judges before whom you practice anxious to do right. You will find them hard working, conscientious, anxious to hear and understand your case and therefore to decide it properly. I think you will find a certain impatience with technicalities — a desire to get to the merits of the case so that each person may receive his just due. You may recall the anecdote Abraham Lincoln once told of a western judge of great strictness. Lincoln put it this way:

> "He would hang a man for blowing his nose on the street, but he would quash the indictment if it failed to specify what hand he blew it with."

You will also find you have begun a life in which hard work and industry will be the rule and not the exception. If you love the law, you will not find the demands of the profession unduly irksome. Some of you, at least, will wonder how you could ever be interested in any other occupation. I had a law professor who once said:

> "It has been said the law is a jealous mistress. It is nothing of the kind. The law is a wild-eyed harpy."

Justice Holmes put the matter more gracefully when in an address to the Suffolk Bar Association in 1885, he said:

> "If we are to speak of the law as our mistress, we who are here know that she is a mistress only to be wooed with sustained and lonely passion, — only to be won by straining all the faculties by which man is likest to a god."

When your career as a lawyer is over, you might find it said of a lawyer of your generation — to use the quaint words of a 17th century writer:

> "While he lives, he is the delight of the courts, the ornament of the bar, the glory of his profession, the terror of deceit, the oracle of his country; and when death shall call him to the bar of Heaven by a habeas corpus, he will find his Judge his advocate; nonsuit the Evil One, obtain a liberate from all his infirmities and continue still one of the long robe, in glory."

Henry Taft, of the New York bar, who called attention to the words I have just quoted when he once spoke to the Harvard Law School students, said:

> ". . . such lawyers still exist . . . it is only from such as they that the bar chooses its real leaders."

That is something worth remembering.

Good luck to all of you! Godspeed! □

Board of Governors' Meeting Harrison Hot Springs October 15-16, 1976

Reported by **Stephen E. DeForest,** Chairman
Editorial Advisory Board

The October Board of Governors meeting was held at picturesque Harrison Hot Springs under sunny skies. The agenda, described by one Board member as the lightest in some time, included such familiar topics as Rule 9, the proposed compulsory CLE rule, and malpractice insurance.

Legal Interns

The present Legal Intern Rule (APR 9) expires by its terms on December 31, 1976. Based upon a detailed two-year study by the Legal Internship Committee, certain revisions to APR 9 have been submitted to the Supreme Court for adoption. Underlying the proposed changes is the premise that APR 9 is designed to enhance the education of future lawyers by providing practical legal training under the supervision of an experienced member of the Bar. In addition to this educational function, the rule serves many other purposes, such as providing jobs for law students, improving employment prospects for new lawyers who have worked as interns, providing more economical legal services for the small dollar cases, and offering some relief for the tight budgets of county prosecutors. The extent to which APR 9 has served these purposes was discussed by the Board, with substantial disagreement over its effectiveness. The criticism was based primarily on the ground that Rule 9 has been abused by those who have used it to replace lawyers with interns, especially in the public sector. A motion to let Rule 9 terminate was defeated (4-6). The Board then adopted a number of amendments to

the proposed revised rule, the effect of which would be to restrict the scope and operation of the Legal Intern program. These amendments would, if approved by the Supreme Court, (1) exclude legal interns from participation in Superior Court trials and hearings and appellate proceedings (5-4); (2) exclude legal interns from participating in depositions, either in taking the deposition of a witness or representing a client whose deposition is being taken (5-3); (3) preclude interns, in courts of limited jurisdiction, from trying jury, DWI, hit-run, and reckless driving cases, and require that in all other cases in such courts legal interns participate in the trial with a qualified supervising attorney present at all times (7-2); (4) subject a supervising attorney to disciplinary action for failure to comply with the rule (9-0); and (5) provide that a violation of the CPR or DR by a legal intern would be grounds for disqualification from admission to the Bar (9-0). The Board also approved a proposed amendment to the Rule that for purposes of the attorney-client privilege, a legal intern would be considered an attorney. The proposed amendments will be placed on the November agenda of the Board of Governors, with the Chairperson of the Legal Internship Committee and representatives of the Prosecuting Attorneys Association and the Attorney General invited to attend.

Compulsory Legal Education

The Board adopted an amendment to the proposed rule on mandatory continuing legal education of members of the Bar, which it had previously submitted to the Supreme Court for adoption. Under the modification, the automatic suspension provision for failure to comply with the requirements of the rule would be replaced by a procedure requiring notice of the proposed suspension, a form of petition for an extension of time or waiver of the requirements, and an opportunity for review, with age, disability and limited practice identified as grounds for a waiver or extension.

Annual Meeting Resolutions

Under the Bylaws of the Association, all resolutions adopted at the Annual Meeting are automatically referred to the next meeting of the Board of Governors for action.

1. *Audit and Investigation of Trust Funds and Property* — The Board reaffirmed its position supporting the proposed rule on audit and investigation of trust funds of members of the Bar;

2. *Compulsory Legal Education* — The Board reaffirmed its position supporting the rule, with the modification discussed above;

3. *Senate Bill No. 1* (which purports to codify the Federal Criminal Code) — The Board reaffirmed its prior action opposing Senate Bill No. 1.;

4. *International Arbitration Endorsement* — The Board noted and accepted the resolution of the membership;

5. *Implementation of Human Rights Conventions* — The Board noted and accepted the resolution of the membership;

6. *Independence of the Bar/Subpoenaing Defense Counsel* — The Board noted and accepted the resolution of the membership, and instructed the President to send the resolution to the two United States Attorneys in this state and to the Prosecuting Attorneys Association.

Lawyers' Malpractice Insurance

Mr. Redman reported receipt of a letter from the current insurance carrier giving formal notification of withdrawal from the program effective February 1, 1977. The Association's broker of record, Marsh & McLennan, has solicited quotes from other carriers in the market, and received only two, both on a claims-made basis, and both for substantially higher rates than currently being paid. The Insurance Committee will make a recommendation to the Board at its November meeting on the selection of a new carrier. Mr. Redman stated that the Committee is working toward two objectives: first, to obtain replacement coverage for the existing policy; and second, to seek out a long-term solution, which at this point is tending in the direction of self-insurance because of increased rates and the declining market.

Health and Disability Insurance

Mr. Raftis reported that the change of brokers, previously authorized, has been effected; that the present carrier, Loyal Protective, is withdrawing as of January 1, 1977; that the number of participants in both the health and disability plans has dropped substantially; and that the Insurance Committee is looking for a new carrier to provide these coverages.

President's Report

President Riddell reported that he attended the California State Bar Convention in Fresno immediately following the Annual Meeting. He noted that the Board of Governors of the California Bar, rather than a committee, is responsible for the judicial selection list, and that a great deal of time is devoted to this task, since there are over 1,000 judges in California. In accordance with 1975 legislation in that state, there are now six lay members of the Board. Mr. Riddell, a new member of the State Committee on Salaries, reported that the Committee had agreed to recommend pay raises for judges. The proposal calls for Supreme Court justices to be raised from $39,400 to $45,000 per year, Appellate Court judges from $36,325 to $42,000, Superior Court judges from $34,250 to $39,000, and District judges from $29,000 to $33,000.

Executive Director's Report

The Bar Office has completed a survey on recently admitted lawyers, and the results will be distributed shortly to members of the Board. Approximately 40% of the persons who passed the three bar exams preceding the Summer 1976 exam

responded to the questionnaire. Of these, 16% have not found employment in law-related jobs, and over 50 are totally unemployed.

Bar News Editor

The Editorial Advisory Board's selection of Jay V. White of Seattle as the new Editor of the Washington State Bar News was confirmed. In accordance with prior authorization, the Editor will be paid $200 per month.

Election of Treasurer

David Hoff was elected Treasurer of the Association.

Board's Tentative Meeting Schedule

Date	*Location*
November 12-13	Port Ludlow
December 10-11	Thunderbird, Vancouver, WA
January 21-22	Tyee Inn, Olympia
February 15-16	Seattle
March 18-19	Victoria, B.C.
April	Hanford House, Tri-Cities
May 20-21	Kahneeta, Oregon
June 24-25	Sudden Valley
July 15-16	Rosario
August 19-20	Sun Valley, Idaho

Annual Meeting Sites

The Executive Director was instructed to explore the feasibility of holding the Annual Meeting in Hawaii in 1979 or 1980. He will also investigate Portland as a possibility for the 1978 Convention. The 1977 Convention will be held in Vancouver, B.C.

Miscellaneous

In other matters, the Board adopted a resolution of appreciation to Larry Bailey, outgoing Chairperson of the Young Lawyers Section, for his assistance at Board meetings during the past year; adopted in substance the "Guidelines for Section Participation in CLE Programs" which had been prepared by the CLE Director and approved by a special sub-committee of the CLE Committee; appointed Gordon Wilcox, Kent Millikan, Thomas Brown, Timothy R. Weaver, Paul Bastine, Stanley Wagner, and Gale Barbee as the initial members of the Board of Directors of the Statewide Legal Services Corporation, which is to be known as Evergreen Legal Services; and reviewed a document entitled "Public Information Program and Program for Meeting Inaccurate or Unjust Criticism of Judges and Courts" drafted and recommended by the Courts and Community Committee of the Washington State Superior Court Judges' Association, and adopted the "Model Program for State Bar". The latter program assigns to the Executive Director the task of administration, and sets forth guidelines for determining when a response to criticism of judges and the courts is appropriate by the President in the name of the Association. □

WASHINGTON STATE BAR NEWS

Tenth Annual Pacific Coast Labor Law Conference

The Tenth Annual Pacific Coast Labor Law Conference, sponsored by the School of Law, University of Washington, and the Labor Law Section of the Seattle-King County Bar Association, will be held April 28-29, 1977 in the Seattle Center Playhouse. The Conference will feature nationally-known experts and specialists in the field of labor relations, and is designed for attorneys, personnel and labor-relations managers, and union officials.

For further information about the Conference, contact the Office of Short Courses and Conferences, Lewis Hall DW-50, University of Washington, Seattle, Washington, 98195; telephone: (206) 543-5280.

Honors for Bob Day

Robert Day, Kennewick, former president of the State Bar Association, has been inducted into the International Academy of Trial Lawyers.

Day is one of about 460 members from throughout the world.

Day, whose term as state president ended Sept. 18, becomes the fifth member from Washington State in the group.

The academy is an invitational bar association chartered under the laws of the state of New York.

Robert S. Day, Pasco

Resolution of Commendation

BE IT RESOLVED by the Benton-Franklin County Bar Association that:

WHEREAS, on the 21st day of September, 1976, a meeting of the Benton-Franklin County Bar Association was held at the Tri-City Country Club in Kennewick, Washington; that during said meeting motion was made and seconded that this bar association acknowledge Robert S. Day for his outstanding leadership, service and hard work as president of the Washington Bar Association; and,

WHEREAS, said motion passed unanimously, NOW, THEREFORE,

IT IS HEREBY RESOLVED by the Benton-Franklin County Bar Association, that Robert S. Day be, and hereby is, commended for his outstanding leadership, service and hard work as president of the Washington State Bar Association.

DATED this 27th day of September, 1976.

Stanley D. Taylor,
President
Benton-Franklin
Bar Association

WLAA Seminar — Subchapter S Corporations

The Washington Legal Assistants Association will sponsor a seminar on Subchapter S Corporations with Karl Ege of the Bogle and Gates firm as speaker on December 8, 1976 at 7 p.m. in the Auditorium of the Seattle-First National Bank Building. Mr. Ege gave a similar presentation at the 1976 Annual Meeting of the Washington State Bar Association in Spokane. In addition to updating his outline on Subchapter S elections to include changes brought about by the 1976 Tax Reform Act, his discussion will include:

1) eligibility to elect under Subchapter S,

2) making the election under Subchapter S,

3) termination of the Subchapter S election,

4) tax consequences of Subchapter S elections

Members of the Bar, accountants, legal assistants and other interested persons are invited. There will be a registration fee of $3.50 to cover cost of reproducing Mr. Ege's outline for participants.

Advance registration is required to permit proper planning

for program materials. Please notify:

Professional Development Committee
Washington Legal Assistants Association
P.O. Box 2114
Seattle, Washington 98111

or contact one of the following members: Karin Buss, 442-7276; Roy Brewer, 623-8313; Carolyn Abbott, 623-1900. Deadline for registration is December 1.

The Washington Parks Foundation an Aid In Estate Planning

The Washington Parks Foundation, a public non-profit organization incorporated in 1972, moved its offices to Seattle recently. The Foundation is governed by a board of directors composed of private citizens from throughout the state. John Hempelmann, Seattle attorney, is one of the board's active members.

Attorneys and other officials will be especially interested in this Foundation as a vehicle for their clients to give gifts of cash, stocks, bonds, or land for the enhancement of park and recreation facilities in city, county, and state recreation agencies within the State of Washington. Most importantly, the Internal Revenue Service has granted the Washington Parks Foundation a 501 (C) (3) tax exempt status.

Donors can specify what agency and even for what purpose the donation is to be made. In this way the Foundation can assure donors that a gift or bequest will be used as she or he requests.

The Foundation staff is presently working with several attorneys in the state regarding the use of the Foundation in their client's estate programs.

For further information please contact:

Jo Ann Fisher,
Executive Secretary
Washington Parks Foundation
1500 Westlake Ave. N.
Room 7A
Seattle, Washington 98109
(206) 282-6265

Bar Admissions Reach Record High Nationally; No Drop in Sight

Bar admissions reached a record high for the sixth consecutive year in 1975, according to the National Conference of Bar Examiners.

The NCBE, an affiliate of the American Bar Association, said 34,930 persons were granted permission in 1975 to practice law in the individual states, the District of Columbia, Guam, Puerto Rico and the Virgin Islands.

Len Young Smith, editor of the NCBE official publication "The Bar Examiner," said the figure has been climbing steadily since 1971 when the total was 20,510.

"And based on preliminary figures it appears we're headed

for another record year," Smith said.

The admissions boosted the total number of lawyers in the United States to more than 400,000, also a record high.

¡Atención!

Last Call — Acapulco

This 7 day trip provides for United Jet Service from Sea-Tac, February 12th, with room at Acapulco Continental — very classy digs!

The Valentines Day program has been worked out for the young married, harried family type and the V.I.P. who thinks his practice will go up like a trick cigar if he is gone from more than 1 week.

Rates from $436.00 — triple. Call Louise Clymer at Central Travel and Tours, Bellevue, Wash. 1-206-455-9420.

The Travel Committee
Wash. State Bar Association

ABA President Warns Lawyers Against Ignoring Legal Services Problems

The president of the American Bar Association warned lawyers in the October issue of the *ABA Journal* that the public will seek solutions from others if the bar fails to provide adequate legal services at a reasonable cost.

"If we cannot deliver wills or divorces or tax services in uncomplicated cases at a reasonable cost, the public will go elsewhere — often, unfortunately, to entrepreneurs incapable of distinguishing the uncomplicated case from the complex one," Stanley said.

Commenting on public criticism of professions and institutions, Stanley said there is a tendency at times to blame complicated problems on a single group, such as the bar.

"For example," he said, "it is easier to denounce lawyers for the medical malpractice crisis than it is to understand why the problem has arisen and how it can be solved."

Stanley said ABA members who criticize the organization for reform efforts "fail to give appropriate weight to the critical importance of maintaining public faith in our system of justice."

He added: "If there are weaknesses in our system of justice, no group is better equipped than lawyers to address their solution, and the organized bar is the appropriate vehicle to do so."

"We are currently undertaking a comprehensive study to solve the growing crisis in lawyers' professional liability," Stanley said. "We have developed educational material and programs to increase the efficiency and productivity of law office management. We are trying to make computer research available to every lawyer in the United States. Each of these efforts benefits practicing attorneys; none is inimical to the public interest."

IN MEMORIAM

Oscar L. Boose, 94, of Sunnyside, died September 23. He was admitted to the Bar in 1908.

Around the State

BENTON-FRANKLIN REPORT
By **STEPHEN T. OSBORNE**

The Honorable **Fred R. Staples** recently returned from a month's vacation sporting a beard.

Ed McKinlay of Pasco, related over-hearing one disgruntled attorney exclaim after hearing Judge Staples render an adverse decision, "Your Honor, I think you're a bit fuzzy on the issues."

While on the trip, Judge Staple's son, **David,** placed 3rd in the National Speed Skating competition in Texas. Congratulations Dave!

Also on the sporting scene **Phil Raekes,** Kennewick, again confirmed the well known maxim that one does not have to be a good golfer to score a hole-in-one. The ace was registered on the par 3 #6 hole at Tri-City Country Club using a six iron. Witnessing the shot was **Stanley D. Taylor,** Pasco, who explained to those *few* interested in hearing about the feat, that had it not been for the fortuitous intervention of a tree limb in the right rough, the ball would have been OB.

After the round, Raekes generously bought the house a round, all three of them.

ISLAND COUNTY REPORT
By **TED D. ZYLSTRA**

Our league experienced a flurry of changes and acquisitions just prior to the trading. **Richard A. Haworth,** formerly a deputy prosecuting attorney for Island County, played out his option and was signed as a free agent by **Edward C. Beeksma.**

Dave Jamieson, who was formerly on his father's team in private practice in Tacoma, was purchased outright by the Island County Prosecuting Attorney and is now a deputy prosecutor.

Michael M. Waller was picked up on waivers by Zylstra & Pitt and is now an associate in that firm.

Alan Hancock, a local boy who went high in the draft, has been signed by **Harold Baily** and is now engaged in private practice in Coupeville with Baily & Hancock.

Larry Guisinger, formerly on **Glenn Toomey's** team in Seattle, has opened an office in Oak Harbor. It is not true that he failed the physical in Seattle. His home is in Oak Harbor and be prefers the local playing conditions to artificial turf.

Lee Wright, who was formerly on **John Watson's** team in Langley, has played out his option and has opened an office in Freeland.

Veteran **Fred Kaul** has decided he has a few good playing years left in his battered shell and is building a new office for the private practice of law on Main Street in Coupeville.

Although the Island County team appears to have exceeded the player limit, we welcome all the new faces. If we can increase the seating capacity in the domed courtroom in Coupeville and add a beer concession, we will be ready to play. Make-up kits are available in the courtroom visitor's locker room for visiting contestants whose trials will be televised under the new rules.

PIERCE REPORT

By **MICHAEL J. TURNER**

Traditionally the Pierce County Report will advise you of new attorneys and their new positions or changed positions as they become known. If I tried to do that this month, we would have to increase the dues for the further publication of the *Bar News* report. I would cite the admission of 38 new lawyers in the Pierce County area as the reason for my concern.

I am pleased to announce that other than the new lawyers, the following additions have been announced. The law firm of Michael Sterbick, Terry Lumsden, and Peter Sterbick, has announced that **Gregory C. Abel** has become an associate. Mr. Abel was formerly the law clerk for Justice **Robert F. Brachtenbach,** whose name you have seen on one of those funny yellow pamphlets that comes out occasionally. **George W. Dixon** announced the moving of his office and, in addition, the formation of a corporation, and in addition, the association of **A. Corinne Rohrer** and **John S. Abolofia.** George has also announced that he has lost a little more of his golden locks. **David Schweinler** and **Larry Ross** have announced the addition of **William H. Griffies,** as an associate in their firm.

One day Judge **Stanley Worswick** was unable to attend a session at Juvenile Court, where he is the Presiding Judge. He innocently asked everybody's friend, **Gary Steiner,** to act as Judge Pro Tem for him and Gary, of course, accepted. Little did Gary know that one of his duties that day would be to bind over a 16 year old individual for trial in Superior Court. The result was that the 16 year old recorded the first escape attempt from Juvenile Courtroom. Gary's reaction was commendable, however, when he dove under his desk. Upon hearing this news, Commissioner **Paul Boyle** asked Gary if he would mind being his fill-in at the mental illness hearings.

A couple of months ago I mentioned all of the brother combinations in Pierce County, but I forgot to mention former Mayor **Harold** and Judge **Erling Tollefson.** I suppose you can image the reception I met in Judge Tollefson's courtroom. Upon hearing his first ruling the next day, I took the same refuge that Judge Steiner took.

SKAGIT REPORT

By **EARL F. ANGEVINE**

When this writer came to Skagit County nine years ago, a majority of the attorneys were sole practicioners. That has changed with the influx of new lawyers and, presumably, the desire to "slow down". One of the last holdouts, **Richard Schacht,** has decided to perfect his golf game, and has associated **John Hicks** of Leavenworth via Gonzaga Law School so that he can spend more time at the Country Club.

Kent Haberly is now sharing office space with **David Strong** in Burlington. The latter is still working full-time, however, being one of the "under 40" set.

Paul Luvera's press agent is obviously still on retainer as evi-

denced by a recent article in one of the local rags describing his 1.3 million verdict against the State. Not only were the injuries set out in great detail — "She had to be taught how to chew food' — but even the number of exhibits and witnesses was reported. Nevertheless, good job, Paul.

Eugene C. Anderson passes along the following admission against interest made by **Gil Mullen,** Secretary-Treasurer of the County Bar, in his request for funds with which to finance our annual golf tournament. Quote: All complaints, noises of distress, and objections should be directed to either **Chuck Twede** or **K.R. St. Clair,** inasmuch as I am somewhat feeble, and becoming gray-haired, and unable to withstand any derogatory comments." For those of you who haven't seen Gil since he left Seattle, it isn't true — he is aging rapidly, but gracefully.

SEATTLE-KING REPORT

By **JOHN J. SOLTYS**

The King County Bar Association has announced the formation of a new committee designed to work with the King County judges in an attempt to alleviate court congestion and the civil case backlog now existing in the Superior Court because of the priority given to criminal trials. **F. Lee Campbell,** King County Bar Association 1st vice president, is serving as chairman of the committee which includes, among others, **Duane Lund,** president of the Washington State Trial Lawyers Association, **Ron Bergman,** president of the Washington Association of Defense Counsel, **Hartly Newsum,** president of the East King County Bar Association, **Pete Curran,** president of the South King County Bar Association, **John Rassier,** a representative from the Younger Lawyers Section, and Seattle attorney **Leo Anderson.** Although the committee has just begun its work, it hopes to implement a program increasing the use of *pro tem* judges who will volunteer from the various trial lawyer associations. Also being studied will be King County's long-range requirements for additional judges positions. It will be interesting to see the results which come out of a committee manned by so many bar association presidents.

Charles Z. Smith, associate dean and professor of law at the

University of Washington Law School, has been appointed to the American Bar Association's Federal Judiciary Committee.

James R. Ellis has been appointed as the chairman of the American Bar Association's local government law section.

Julie W. Weston, 201 Elliott West, Seattle, Washington, has been promoted from the position of associate general counsel to general counsel of Western Farmers Association and has been elected as its secretary.

Thomas T. Glover and **Leon A. Uziel** were elected at the Washington State Bar Convention in Spokane to serve three-year terms of office on the executive committee of the creditor — debtor section of the Washington State Bar.

Joseph L.Lawrence has opened an office for the general practice of law at 734 Central Building, Seattle, Washington 98104, 682-0368.

King County lawyers are once again proving that they will find any excuse to avoid working on Sunday. The Sunday morning Professional Football League is in full swing with league standings as follows:

	Wins	Losses
Bogle & Gates	2	0
Culp. Dwyer, Guterson & Grader	1	1
Graham, McCord, Dunn, Moen, Johnston & Rosenquist	1	1
Arthur Anderson	1	1
Milliman & Roberts	0	2

One of Bogle & Gates' wins is being contested. Relatively few broken bones have been encountered thus far.

SOUTH KING REPORT

By **JAMES L. VARNELL**

Dick Krutch humored the most recent gathering of South King County attorneys with his witty anecdotes and experiences regarding aviation litigation. The meeting was held at the Renton Sheraton and was attended by King County Superior Court judges **Chan, Dore, Hunter, Ringold, Roberts,** and Court Commissioner **Niles** and his wife. District justice court judges **Mattson, McLeod and Duckworth** also were there to experience the barbs of Krutch.(There is little wonder that **Pete Curran** and Krutch, both of whom are from the Spokane area, came west of the mountains to practice law.)

Prior to the dinner meeting, the firm of Hardwick and Conrad held an open house for viewing of their new offices. The decor was most impressive, as were the "paralegals" who were retained to act as hostesses. It is reported that **Jack Hawkins** and **Steve Johnson** actually left the bar to look around the offices for a couple of minutes.

With the swearing in ceremonies held in October, several firms are announcing attorneys who have become newly associated with them. University of Puget Sound law school graduates include **Dean S. Johnson,** now with Watt and Venables, P.S., in Kent; **James M. Marshall** with Hoover and Donais in Auburn; **Gregory Cromwell** with Richard M. Barney; and **Rynold C. (Clay) Fleck** with Snure, Gorham and Varnell, P.S.C., in Des Moines. It should be noted that Fleck's wife, **Deborah,** also was sworn in during the October ceremonies. **Lester H. Stewart,** a University of Washington law school graduate is now associated with deMers and Leverette in Federal Way. **Peter Banks,** a graduate of Gonzaga University law school, is associated with Hardwick and Conrad in Renton. Finally, **Douglas Moreland,** who formerly practiced in downtown Seattle, has moved and opened an office in Burien.

Interested attorneys and their spouses/guests should take notice that the annual Christmas party of the South King County Bar Association will be held on Saturday evening, December 11, at the Meridian Valley Country Club, Kent.

THURSTON-MASON REPORT

By **FRED D. GENTRY**

Ronald Flansburg and **Drake Charles** have opened their office in the Evergreen Plaza Building. Drake is a graduate of Loyola University of Los Angeles. Prior to entering private practice, Drake clerked for Justice Charles Wright of the Washington State Supreme Court for two years. Ronald is a 1973 graduate of Gonzaga Law School. He practiced in Hawaii and San Diego prior to coming to Olympia. Evidently, he did not find the weather to his liking in either of those places.

Ralph Swanson just returned from a three-week sojourn in Europe and reports that Germany was his most enjoyable stop.

Ernest L. (Bud) Meyer captured first prize recently in the Elks Salmon Derby with a thirteen-plus pound catch. Most of us attribute Bud's prize directly to his son, **Tom**, who is conceded to be the number one salmon fisherman in the Thurston-Mason Bar.

WAHKIAKUM REPORT

By **GEORGE F. HANIGAN**

Below please find a first, a report from the Wahkiakum County Bar Association (as yet unincorporated and non-conforming with any association laws of the State of Washington).

Mitchell Doumit and **George F. Hanigan** being unable (or unwilling) to declare the other as President of the local bar association, notwithstanding at least one bar meeting each working day during the last 10 years, the local bar has doubled with the addition of **William J. Faubion** (UPS '76) associating with **Mitchell Doumit,** and **Frederick A. Johnson** (Wash '76) associating as part-time deputy prosecutor and part-time private practice with **George F. Hanigan,** who also serves as prosecuting attorney.

The challenge is now made to King (or any other) County to double its ranks!

Johnson and Faubion made their oaths of office before **Judge Robert A. Hannan** October 25th in the Wahkiakum County Superior Court at Cathlamet.

Local residents anticipate that the failure of Hanigan and Doumit to elect a local bar president based on age, length of service, political affiliation or religion may now be resolved depending upon in whose office (or which coffee shop) a quorum of the bar is first present at any given time. It is feared that the local bar's record of 100% membership attendance at both state and local bar meetings may soon be broken. (Let's see San Juan and Mike Redmond beat that record in his rowboat!) Rumor has it that neither side intends to leave Wahkiakum County until the tie vote has been broken, and a resolution has been passed determining whether to continue to keep the Cowlitz County bar solvent or deposit the monies locally.

Future developments *may* be reported on a schedule similar to those of the past. □

CLE Sessions for Fiscal 1976-77

Be sure to check the calendar published monthly near the back of every **Bar News** issue for upcoming CLE programs. They present solid, relevant information . . . The panel members are outstanding . . . And you'll get a financial bargain in education you won't find **anywhere** else.

505 CANDIDATES PASS WASHINGTON STATE BAR EXAMINATION

A total of 505 candidates successfully passed the Washington State Bar Examination administered in July.

The number of candidates who sat for the examination was 711, the largest number for an examination in the history of the Washington State Bar. 71% of the candidates passed the test. The names of the persons who passed the July examination are as follows:

SEATTLE

Sheena Ramona Aebig
William James Aylward, Jr.
John Daniel Ballbach
Joseph Charles Barron
Randy Von Beitel
Bruce T. Bjerke
Robert Alan Blackstone
Rhea Rolfe Bollen
William E. Bonano
Matthew Taylor Boyle
Susan Elda Boyle
Mark Allen Boyson
Richard Drake Bozarth
Anne Bradley
Mike Emmett Brandeberry
Jonathan Joseph Bridge
Ward Brown
Frederick Dean Bullert
Donald Russell Burke, Jr.
John Johnson Caldbick
Carl Jerome Carlson
Roger Williams Carlson
Michael E. Cavanaugh
Kristine Ann Chrey
Linda J. Cochran
James T. Corcoran
Bryan Charles Cressey
Paul A. Cullen
Ronald Evans Culpepper
Janis Rieke Cunningham
Christine L. Currie
Jeannette Arlene Cyphers
Michael J. Defranco
Robert Stephen Derrick
Fred Diamondstone
Robert C. Pierce-Dickerson
Peter Stephen DiJulio
Miles Clif Dillon
V. Marc Droppert
Anastasia Katina Dritshulas
Susan Alyce Dubuisson
Joseph William Duffy
Fax Andrew Duncan
Eric G. Easterly
Linda Kelley Ebberson
Bobbe Jean Chaback Ellis
Ronald Jay English
Alan Lee Engstrom
Bruce Milton Ensley
Lamar M. Faulkner
Margaret Ann Fiorella
William Edward Fitzharris, Jr.
Deborah Dunham Fleck
Rynold Clayton Fleck
William Henry Fligeltaub
Eric Louis Freise
Miles David Friedman
Samuel Lawson Furgason, Jr.
Karen Louise Gibbon
Florine Rose Gingerich
Ronald David Goldberg
Patty Grover
Alice F. Gustafson
Glenna Spitzer Hall
Stephen W. Hansen
Henry Howard Happel, III
Russell William Hartman
Michael Carlyle Hayden
Michael J. Heavey
Andrew C. Heinegg
John Herman Hertog, Jr.
Jeffrey Alan Hess
Hans Hoerschelmann
Timothy John Hogan
James Caroden Hole
Richard A. Hopp
Thomas Clair Hughes
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Law School News

Gonzaga Law School

One-day Tax Seminar Planned for December

The Third Annual Gonzaga Law School Tax Seminar, scheduled for December 4, 1976, will be devoted to the extensive changes made in the Federal Estate and Gift Tax Code by the recently signed Tax Reform Act.

The 1976 Tax Reform Act completely overhauled existing law, Randall said. It will require attorneys to review existing wills in many instances to determine whether changes should be made to correspond to the new law. Because virtually all transfers made after December 31, 1976 will be affected by the Act, familiarity with its terms will be essential to attorneys, CPAs, bank trust officers, and others who work in the Estate Planning area.

The one-day seminar is designed to convey a general understanding of the new provisions of the Act, according to Professor Randall, and will be structured around a series of individual presentations by a panel of tax specialists, followed by a question and answer period. Attorney Lincoln Arnold of Washington, D.C., will be joined on the panel by several Washington state tax lawyers and Certified Public Accountants. A $40.00 registration fee will be charged to cover expenses. Pre-registration checks may be sent to the Gonzaga Law School Tax Seminar, East 601 Sharp Avenue, Spokane, Washington 99202.

Fifth Annual William O. Dougias Lecture

William H. Rehnquist, Associate Justice of the United States Supreme Court, delivered the fifth Annual William O. Douglas lecture at the Gonzaga University School of Law on Tuesday, October 19,1976.

The title of the current lecture was "The First Amendment — Freedom, Philosophy, and the Law." Justice Rehnquist told an overflow audience of about 1,200, that the Supreme Court is unlikely to come to unified agreement on cases involving freedom of expression rights under the First Amendment. He emphasized that the political philosophy of a court member has a great influence on the manner in which he interprets the Constitutional provision. □

Appellate Practice and Reform

The New Appellate Rules: Part 4 Scope of Review

By **MALCOLM L. EDWARDS**

This is the fourth in a series of articles on the new appellate rules which are effective for cases filed in the appellate court after July 1, 1976. This article is about Rule 2.4 which relates to the scope of review. The discussion is preceded by the outline analysis of the rule.

Rule

2.4 Scope of Review of a Trial Court Decision
- (a) Generally
- (b) Order or Ruling Not Designated in Notice
- (c) Final Judgment Not Designated in Notice
- (d) Order Deciding Alternative Post-Trial Motions in Civil Case
- (e) Order Deciding Alternative Post-Trial Motions in Criminal Case

1. *Introduction.*

This article deals only with scope of review. It does not deal with the question of which decisions are initially subject to review. The article assumes that the appellate court has accepted review of the case. The question then remains as to whether or not the decision you want reviewed is within the scope of review in that proceeding.

2. *Scope of Appellant's or Petitioner's Review.*

The obvious comes first: the appellate court will review the decision designated in the notice of appeal or notice for discretionary review if a timely notice directed to that decision has been filed. RAP 2.4(a) Questions about scope of review generally arise only when the appellant or petitioner wants the appellate court to review a decision which does not fit this category. These questions are answered by parts (b) through (e) of Rule 2.4.

Trial court decisions not designated in the notice are within the scope of review (1) if the decision is entered *before* review is accepted and (2) the prior decision prejudicially affects the decision designated in the notice. Under the old rules, prior decisions in the same case were subject to review upon appeal from the final judgment, but only if the prior decision was not itself subject to review by appeal at the time the decision was entered. *In Re Estate of Kruse*, 52 Wn.2d 342, 324 P.2d 1088 (1958). This created problems as it was sometimes difficult to determine whether a particular decision was subject to review by appeal. The new rules eliminate these problems by including prior decisions within the scope of review even if the prior decision was subject to review by appeal. RAP 2.4(b)

Ordinarily, a decision entered in the trial court *after* review is accepted may be reviewed only by initiating a new and separate review proceeding. RAP 7.2(e) But a trial court decision on a question of trial court costs which is entered after acceptance of review may be raised in the same review proceedings. RAP 7.2(i) A supersedeas decision of the trial court may be reviewed in the

same review proceedings by motion in the appellate court. RAP 8.1(d) A party may also object to a trial court decision about the release of a defendant in a criminal case while that case is on review by means of a motion in the appellate court. RAP 8.2

Under the new rules, the appellate court will grant review of a final judgment in a cause even though that final judgment is not designated in the notice, but only if the notice designates a decision on a timely post-trial motion for reconsideration, new trial, amendment of judgment, or arrest of judgment. RAP 2.4(c) The old rules were to the contrary.

The old rules and the new rules are the same with respect to the scope of review of an order deciding alternative post-trial motions in a civil case or in a criminal case. An appeal from the decision granting a motion for judgment notwithstanding the verdict or a motion in arrest of judgment brings up for review the decision of the trial court on a motion for new trial. If the appellate court reverses the judgment notwithstanding the verdict or the order granting the motion in arrest of judgment, the appellate court will then review the ruling on a motion for new trial. RAP 2.4(d) and (e).

3. *Scope of Respondent's Review Generally.*

What is the scope of review for a respondent who does not seek cross-review by timely filing a notice of appeal or a notice for discretionary review? First, the appellate court will not ordinarily grant a respondent affirmative relief by modifying the decision which is the subject matter of the review. RAP 2.4(a) The old rules were the same. *Woagen v. Gerde*, 36 Wn.2d 563, 219 P.2d 595 (1950). Affirmative relief will be granted only in the limited circumstances where "demanded by the necessities of the case." RAP 2.4(a) The "necessities of the case" rule will be discussed in a future article dealing with Rule 5.3(i). This rule specifically relates to the relief that can be granted to a party that does not file a notice when there are multiple parties on one side of a case and fewer than all of the parties timely filed a notice. The lesson to be learned for the moment is that if you represent a respondent who wants affirmative relief, file a notice of appeal or

a notice for discretionary review within the time established by Rule 5.2.

A respondent who does not file a notice can assign error to occurrences below if the matter complained of would constitute prejudicial error if repeated on a remand of the case. RAP 2.4 And a respondent can assign error in order to support the judgment obtained by respondent. *Fraser v. Monroe*, 1 Wn. App. 14, 459 P.2d 64 (1969). In *Fraser,* the court held that the respondent properly assigned error to a finding of fact where respondent's prevailing on the issue would support the trial court decision. The court held that the finding of fact to which error was assigned could not be sustained on appeal and affirmed the trial court decision in favor of respondent. Rule 2.4 only speaks of "acts in the proceeding below which if repeated on remand would constitute error prejudicial to respondent." This is probably broad enough to encompass the *Fraser* fact situation. However, the rule would be improved by specifically indicating that a respondent might seek review of an act in the proceeding below as a means of supporting the trial court decision.

Malcolm L. Edwards is with the Seattle law firm of Edwards, Wetherall and Barbieri. 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.

4. *The Case of the Anomalous Frogge.*

The case of the anomalous *Frogge* casts doubt on the scope of respondent's review when relief is granted to both the plaintiff and defendant and only one side seeks review. In *Leland v. Frogge*, 71 Wn.2d 197, 427 P.2d 724 (1967), a summary judgment was entered directing that the appellant have judgment against the respondents for $11,000 and that the respondents have judgment against the appellants for $13,000 "leaving a net judgment in favor of (respondents) . . . in the sum of ($2,000)." The appellate court held that the $13,000 judgment against the appellants was improperly entered. The court also held that the $11,000 judgment against respondents was improperly entered and reversed that judgment even though respondents had not filed a notice of appeal seeking review of the judgment. In doing so, the court stated:

> " . . . respondent . . . should not be penalized for failing to cross-appeal from one part of a judgment which was, on the balance, in his favor. Furthermore, the questions presented are so intermixed that a just determination could not be obtained unless both aspects of the case were considered together. Accordingly we treat the judgment here as single, and thus not requiring formal cross-appeal to sustain an attack by respondent." (71 Wn.2d 202)

The new rules do not make any exceptions for a respondent who fails to cross-appeal from a part of a judgment when the total judgment is on balance in favor of the respondent. It's likely that the application of the *Frogge* case will be limited to its facts, if the case has any continuing validity at all. The best course of action under present law for a respondent who is satisfied with the net result of the judgment but not all elements of it is to file a notice of appeal directed to the adverse portions of the judgment.

5. *Conclusion*

The scope of review may also be affected by the doctrine of law of the case, the doctrine of acceptance of benefits, and the extent to which a question was raised in the trial court. Next month's article will discuss these circumstances which may affect the scope of review. □

Replies to O'Neill's September Article

Comments on "Comments on the Contingent Fee"

The following letters to the editor were received in response to the article, "Should the Courts Be Allowed to Award Substantial Attorneys' Fees?," by Robert A. O'Neill, published in the September 1976 issue of the Washington State Bar News. *They are extensive and, for the most part, form an interesting rebuttal to the thrust of Mr. O'Neill's article. For a better perspective on the issue, we recommend that you re-read Mr. O'Neill's article before reading the following letters. – Ed.*

Editor:

I am dashing off this letter having just read the article by Robert A. O'Neill re: contingent fees. I have been in general practice since 1960 and contingent fees have represented only a minor part of my practice, thus, I feel no self interest in making these remarks.

The total lack of scholarship in the article appalled me. The awarding of substantial attorney fees to the prevailing party is a current practice under English law. It was also a current practice in 1776 and was one of the major causes of the American Revolution. For the very reason that substantial attorney fees were awarded to the prevailing party in English courts at that time, most of the colonists were afraid to go to court against the large English corporations and felt themselves victimized by the system. A principal result of the successful American Revolution was to do away with this obnoxious practice.

Our courts have followed this American philosophy to the present time, but because of a general lack of appreciation of our historical background (which is displayed beautifully by Mr. O'Neill) the issue is again being thrown up as a viable one.

The emphasis of Mr. O'Neill's article seems to be that contingent fees foster litigation — which is bad — and contingent fees will be discouraged by the awarding of substantial attorney fees to the prevailing party — because a lot of litigants will fear losing (would not even be sufficiently encouraged to continue by a contingent fee agreement with their lawyer.) The area of tort law is singled out for attention. I suggest that this reasoning is pure Alice in Wonderland.

In my experience, contingent fees are hardly limited to tort action. I represent many small businessmen, as do many general practitioners, and these small businessmen could hardly afford to pay a lawyer on an hourly basis for collection efforts. Almost all collection work is done on a contingent fee basis.

True, the field of torts has many contingent fee cases — obviously the great majority. However, torts are not restricted to personal injury. I personally have had occasion to sue cities, counties, and diversity of defendants on a contingent fee basis because the poor client was hardly able to take on the majesty of the Seattle Corporation Council's office for instance. As for personal injury litigation, anyone who has had occasion to review the old cases where railroad workmen got $1,000 for a severed leg, etc. find that the relationship of the realistic award due injury has improved greatly ever since contingent fees have been popular. This is for the obvious and simple reason that the attorneys can afford to do the work for the plaintiff now because there is hope that they will be paid!

More specifically as to Mr. O'Neill's arguments: first, contingent fee agreements can hardly be said to foster litigation as no attorney can afford to spend time on a sure looser. Contingent fees, however, do guarantee a lot of people access to the courts that otherwise would have none. Thus, let us equate the following thinking: "fosters litigation" equals "access to court." This was the thinking of our pioneer ancestors and is completely valid at this date. In the same vain, let us equate "award of substantial attorney fees to the prevailing party" to "denial of access to the courts." Once again this was the experience of the colonists and is valid at the present time.

Thus, from the above we see that even if there is a resulting substantial reduction in the case loads of our courts it will be out of disgust, disappointment, and disillusionment on the part of all of the citizens of the country — who need free and clear access to the courts and which was obtained by force in 1776 and could be lost by inept thinking in 1976. The "image" of our legal system would hardly be bettered! All experiences to the contrary.

Let's not get our thinking confused by such unfounded remarks as those posed by Attorney O'Neill. The contingent fee has its very proper place in our modern society. Substantial attorney fees are awarded in cases where they are appropriate even at the present time (such as by agreement as in notes and contracts; and cases). It strains reason to even equate the two.

JOHN P. COGAN

Redmond

Editor:

I read with interest, concern and no small measure of embarrassment Mr. Robert O'Neill's "Comments on the Contingent Fee" contained in the September, 1976 *Washington State Bar News*. The continuing fee, according to O'Neill,

(1) "has (resulted in) . . . the ever increasing number of claims brought into the judicial arena, and particularly the so called 'long shot' cases,

(2) tends "to foster litigation and champertous practices by attorneys,"

(3) "is a great blot on the history of the American Bar,"

(4) is a "system . . . whereby the lawyer gambles on the outcome of litigation (and) is obviously inconsistent with the theory that the lawyer is a minister of justice."

The article then goes on with the familiar refrain of the poor, suffering practitioners of the healing arts to the effect that it is the contingent fee system "in the highly lucrative medical malpractice field" which is the root of most — if not all — evil.

O'Neill charges that a lawyer working on a contingent fee "is an interested party to (sic) the litigation because he is betting on its outcome." I wonder, Mr. O'Neill, is it wrong for a lawyer to be interested in the outcome? I think it would be wrong if a lawyer was *not* interested in the outcome. Are lawyers who are paid fees regardless of the outcome *a fortiori* less interested in the outcome?

The author does not appear to blame the contingent fee for inflation, the decline in church attendance, crime in the streets, Watergate, moral

decay or — for that matter — tooth decay. But, if nothing else, Mr. O'Neill's article proves that, at least within the ranks of the Washington State Bar, there is complete freedom of expression. The *Bar News* will publish anything — and I mean *anything*.

RONALD J. BLAND

Seattle

Editor:

I write in response to Robert A. O'Neill, Esq.'s article appearing in the September issue of the *Bar News*.

The tenor of his article is that because there are abuses in the application of the contingent fee, it follows that the Legislature by statute, or the Court by rule, should allow the award of substantial attorneys fees and bar the contingent fee. It is a conclusion that does not necessarily follow. For example, he suggests that the evil of a lost contingent fee supported by a won contingent fee, would in some way be eliminated by the award of fees. However, the award of an attorney's fee by the Court, under any plan known to this writer, inevitably will go to the prevailing party. In your average serious injury, questionable liability action in which the insurance defendant prevails, an award against the disabled plaintiff would be pointless, because probably bankruptable. Where the plaintiff prevails, let's face it, the award to the successful plaintiff will still have to comprehend the win/loss ratio of the lawyers who handle this type of litigation.

There is nevertheless great need for reform in the area of attorneys fees. I am terribly chagrined to realize that our public tax dollars, for example, pay for governmental entities to defend illegal governmental action — our tax dollars go to pay for the courts and juries that judge the issues, but when a dissenting citizens group, or even a single individual abused by wrongful governmental action proves that proposition in the courtroom, there is no authority in our courts to award fees to that successful plaintiff. The taxpayer has supported everyone in the process except the prevailing, correct citizen. See for example *Swift v. Island County*, and *P.U.D. v. Kottsick*.

From another angle, the use of the contingent fee in certain areas of law screams for reform. Perhaps the most obvious area is in domestic carrier aviation crash cases. The contingent fee is based, not only in the contingency of damages, but also on the contingency of liability. In aviation law, there is in fact, in my opinion, no contingency in regard to liability for the passenger. Either the carrier, plane or navigation equipment manufacturer, or FAA is liable when the 747 runs off the end of the runway and kills 350 people, and yet we have, as a rule, one-third contingent fee contracts with the estates of every passenger on that flight. The contingency of liability is absurd, indeed the contingency of even damages is absurd below a certain predictable, computerized figure.

But I must challenge Mr. O'Neill's conclusions in regard to the medical malpractice area, as it has been my experience and observation that fewer "ill founded" cases in this area are filed than in any other, simply because of the incredible requirements in regards to advanced costs. The rule of thumb for most practicing malpractice lawyers is a $2,500 to $15,000 demand upon the lawyer for advanced costs. This, all by itself, causes the

attorneys to frequently examine the case far more carefully than in other areas of law well in advance of filing an action.

Alaska's Rule 82, a Court rule which permits an automatic award of fees to damage judgments would seem very appropriate for this state, together with the right to prejudgment interest. They would go a long way to solving at least three of O'Neill's four goals, but without eliminating the contingent fee. Under our present state of the law in the tort claim area, we have no right to fees or prejudgment interest. Consequently, insurance defense is encouraged to defer settlement as long as possible, because they enjoy the benefit of the money during the period of litigation, and are subject to no greater penalty for going to trial than settling out of court. It would clearly go a long way toward fostering settlements and reducing the caseload in our courts.

But this does not necessarily go to ending the abuse which exists within the contingent fee, and I would suggest a procedure for judicial review of contingent fee settlements. It would not necessarily have to be automatic, but submitable upon petition of the successful plaintiff or attorney. We could thereby perhaps eliminate that situation where the clear liability, horrendous damage case settled for well into the six or seven figures after only 30 or 40 hours of attorney time has been devoted to it, and leads to an effective hourly rate of perhaps thousands of dollars per hour. And perhaps, we could go a long way toward destroying the windfall fee recoveries of some firms who, because of technical expertise, such as in aviation law, dominate that area with incredible fee recoveries.

In conclusion, there is no question that there is tremendous need for reform in the area of attorneys fees; not just the contingent fee. Percentage probate and foreclosure fees also cry for reform. And in tax supported areas, such as municipal bonds, I find it incredulous that government pays the kinds of fees it does. No one will ever convince me that John Mitchell was worth $200 an hour, of effective tax dollars, on his most coherent, productive and intelligent day.

BLAIR F. PAUL

Seattle

Editor:

I have read the article by Robert A. O'Neill, entitled "Should the Courts be Allowed to Award Substantial Attorneys' Fees?", and wish to make the following comments concerning it.

During the last 20 years I have devoted approximately three-fourths of my practice to representing plaintiffs in the personal injury field. The vast majority of these clients are unable to engage an attorney to represent them on an hourly fee basis due to the financial crisis created by the fact of their injuries, and the resultant medical expense and inability to remain employed. Obviously, if these people are to receive reasonable compensation for their injuries and damages, they require competent representation by attorneys proficient in the personal injury field. If the only alternative available to them concerning representation is to engage an attorney who will charge them a fee for the work involved, regardless of the outcome of the case, many of these parties will not seek counsel to pursue their claims. The result, of course, is that the financially distressed or insolvent plaintiff will either abandon his claim entirely or attempt to

settle it himself. Whichever course he adopts, the injured party will be deprived of legal representation in pursuing a legitimate claim.

The contingent fee system, of course, provides a means by which the injured party may receive adequate representation without prospectively incurring the additional expense of attorney fees in case his claim is not successful.

In reviewing Mr. O'Neill's article, I fail to detect any understanding on his part of the problems confronting the injured plaintiff. As nearly as I can determine, he is suggesting that the injured plaintiff find an attorney who will represent him in the disputed matter, with the agreement that if the case is won the plaintiff's attorney will receive a "reasonable fee" from the court and, if the case is lost, plaintiff's attorney will receive nothing for his time, expense, and effort. Also, I can only conclude that the "reasonable fee" referred to will be based on an hourly charge — perhaps the same hourly charge made by the attorney representing the insurance carrier in the case and who is paid by the insurance carrier regardless of the outcome of the litigation.

Further, I am extremely offended by Mr. O'Neill's repeated suggestions and references to the effect that plaintiff's attorneys are "gamblers," whose activities "foster litigation." Again, I can only conclude from his remarks that he would advocate a system by which the only injury claims which could legitimately be pursued by claimants and/or their attorneys would be those where the injured party and the representatives of the insurance carrier agreed that the claims have "merit"! He does not provide us with his suggestion as to who should determine the existence of "merit" under those circumstances.

Further, I find Mr. O'Neill's remarks concerning malpractice claims and litigation unbelievably naive and uninformed. He blatantly informs us that doctors practicing today have "improved their skills," cannot be any more "negligent" than they were five years ago and, apparently concludes from those ill-considered "facts" that the increase in malpractice claims is due to the unethical practices of his colleagues who simply commence suits against physicians and hospitals hoping for a settlement and with no consideration whatsoever concerning whether or not the claim is well founded. If the author of the article in question took the time to discuss the matter with those practicing in the medical malpractice field, he would find that many hours of time, and considerable money, is spent by attorneys in an attempt to insure the validity of a malpractice claim before commencing suit. No ethical attorney would dispute the fact that counsel who commence law suits without merit, or those who allege defenses which are without merit should be disciplined by the Bar Association. I would hope that anyone, including Mr. O'Neill, who has actual knowledge of such practices would bring this to the attention of the Bar Association so that the particular offenses complained of may be thoroughly investigated, to determine whether or not disciplinary action is warranted. However, I do not believe that any useful purpose is served by resorting to the damaging generalizations appearing in Mr. O'Neill's article.

In conclusion I must state that Mr. O'Neill's article is, in my opinion, based on an almost total lack of knowledge or understanding of the subject matter with which he deals. I feel that the editors

of the *Washington State Bar News* would be well advised to make some effort to determine the experience and knowledge of those submitting articles appearing in our publication before accepting or printing same. Most certainly, articles which ignorantly damage the image of large segments of our profession should not be printed at all, unless supported by something more substantial than Mr. O'Neill's ill-considered generalities.

DANIEL G. GOODWIN

Seattle

Editor:

I have before me the September, 1976, issue and in particular Robert A. O'Neill's article dealing with contingent attorneys' fees.

I believe that Mr. O'Neill's article is predicated upon some basically erroneous concepts and is ill-advised in large and substantial part.

There is no reputable documented or otherwise showing that contingent fees result in the encouragement of the bringing of ill-founded claims. To the contrary, good sense and logic tells us that if the attorney's fee is on a contingent basis, he, the attorney, will refuse to undertake the case because, if he cannot recover on the merits, there will obviously be for him only great expenditure of time and risk of great unrecoverable expense without compensation.

There is no reputable showing that settlements are encouraged by the absence of contingent fee contracts, and to the contrary, the experience has been that even in the jurisdictions allowing substantial attorneys' fees, that contingent fees prevail where the cases are settled.

There has been no showing that the presence of contingent fee contracts results in an increase of case load burden upon the courts, nor conversely that the absence thereof will reduce the case load.

So far as Mr. O'Neill's fourth point of creating a better image for our legal system, many would disagree with him that depriving of the impoverished or less financially able persons of their right of a day in court will create a better image of the legal system. A theoretically available right of action that is, by reason of expense, unavailable does nothing for the image of our legal system.

As matters now stand, clients have the choice between engaging an attorney upon a contingent fee system or a fixed hourly or per diem non-contingent basis. The choice is generally theirs.

The United States Government, major corporate enterprises, and others frequently insist upon the contingent fee approach in matters in which the government or insurers have a subrogated interest, and in matters in the nature of anti-trust, Securities Act violations and the like.

It is easy to state that the contingent fee system brings about champterous practices by attorneys. However, proof is totally absent in Mr. O'Neill's article, and we, as attorneys, should rely upon proof — that is evidence rather than broad brush, unsupported accusations without documentation. If champtery does from time to time occur, the system is adequate to deal with it.

Perhaps Mr. O'Neill would like to consider the fact that the increase in the frequency with which plaintiffs prevail in malpractice cases is because doctors, however reluctantly, are now increasingly willing to appear and testify to the facts, even though this results in embarrassment to their fellow practitioners.

In the day when medical malpractice premiums for doctors and hospitals is usually, when checked, found to be less than the cost of their laundry, it seems ill founded to suggest that such suits have become unduly onerous. The fact is that we are trying to determine who should bear the results and consequences of professional error — the victim, his insurer, or the wrongdoer. Ultimately, the general public now, as always, bears this cost, too, as part of the cost of health care, whether paid personally or spread by the insurance system or the tax system. The important thing is that the risk and the loss is spread, rather than being a still added burden to the victim.

There is much to be said for those who urge that the present practice of medical negligence cases on a contingent fee basis results in the greatest conceivable protection to the physician and/or hospital in that the attorney cannot and will not undertake an ill-founded case or one without merit.

LEON L. WOLFSTONE

Seattle □

Discipline

Robert N. Gates, Jr. Receives Reprimand

Olympia Attorney Robert N. Gates, Jr. has been reprimanded for his violation of DR 9-102(A) and DR 9-102(B)(3) and (4) of the Code of Professional Responsibility. The Board of Governors issued the reprimand to Mr. Gates at its meeting on September 15, 1976.

Gates was reprimanded for his failure to properly maintain complete records of trust funds received from a client, for other delinquencies in his handling of trust funds including his failure to render an appropriate accounting and his failure to promptly pay those funds over to the client when requested.

Nels B. Nelson, Jr. Received Two Reprimands

Tacoma Attorney Nels B. Nelson, Jr. has received two reprimands for his violation of DR 6-101(A) (3) and DR 9-102(B) (1), (2), (3) and (4). The Board of Governors issued both reprimands to Mr. Nelson at its meeting on September 15, 1976.

One reprimand was issued to Nelson for his neglect in pursuing the completion of a lawsuit he instituted for clients in July, 1972.

A second reprimand was issued to Nelson for failing to properly account to a client for funds he received during his collection of a judgment entered in his client's favor in 1967. □

Why, How and Wherefore

By **John J. Michalik**
Director of Continuing Legal Education

We have apparently completed the continuing legal education cycle in the State of Washington insofar as the availability of CLE programming is concerned. I have in the files a letter dated June 10, 1970, in which an attorney chastized the Bar Association's CLE Committee for not presenting enough CLE seminars; and I would imagine there are some who share that view even now. On the other hand, I also have a letter dated October 4, 1976, in which an attorney characterized the extensive number of continuing legal education programs to be presented by the WSBA and other organizations this fall as an "absurdity." Though six years apart in time of writing, those letters suggest or raise some valid points which deserve some comment.

At least from this writer's point of view, the CLE program of the State Bar Association has but one overriding purpose: to serve the members of the bar in this state. In pursuance thereof, the amount of CLE programming has increased dramatically over the last 3 or 4 years, to the extent that during the period September 1976-June 1977 the CLE Committee will, on its own or acting as co-sponsor with various Sections of the Bar Association and other state and national organizations, sponsor seminars on 18 different topics. We have also been active in urging national organizations, such as ALI-ABA, PLI and various sections of the ABA, to schedule some of their programs in Seattle — and 10 programs of that nature are on the schedule. Additionally, of course, the State Bar Association is not the only sponsor of CLE programs in the state. The Washington State Trial Lawyers and the Seattle-King County Bar Association, among others, are also very active; for example, the WSTLA schedule lists 7 programs for the time period referred to. I think that, in the final analysis, the point to stress is that these programs are *available* to Washington attorneys — no one lawyer could possibly be interested in them all, but if the object is to serve Washington attorneys, it would seem to follow that a wide-range of programming is not only desirable but required.

If programs are to be available to the attorney population in this State, they must also be accessible. National organizations are naturally drawn to Seattle as the major population center, and the smaller in-state organizations are not geared to providing programming across the State. However, the *State* Bar Association is in a different position — it exists for all the members of the bar and, accordingly, has an obligation to make its CLE programs accessible to as many as possible. Thus, and with but few exceptions, all State Bar Association seminars are presented in at least Seattle and Spokane. In addition, for most programs a third, and in some cases a fourth, city is added to the circuit. For example, we will be presenting at least one program this year in Bellingham, Olympia, Tacoma, Vancouver, Yakima and Richland, with expansion to other locations, where appropriate, under consideration. There are, of course, limits to how far we can go in this direction, but the underlying philosophy is that of bringing the program to the attorney.

If programs are to be made available and accessible, they must, in no lesser measure, be affordable. I think, perhaps immodestly, that the CLE Committee has done an excellent job in this area. The basic tuition structure for State Bar CLE seminars has remained the same for over five years and, incidentally, is at worst the fifth *lowest* of the 75 or 80 largest CLE organizations in the country. Those facts are in large measure a reflection and result of the constantly increasing attendance at State Bar CLE programs — and in that respect, to toss out a few more statistics, we were, during the year ending in July, 1976, one of only four state bar associations to have more registrants at CLE programs than total bar population.

All of the above should not be viewed as an exercise in chest-beating by yours truly and the CLE Committee. There remains a great deal of room for improvement, particularly in the area of finding ways to make programs more accessible to you. Any thoughts or suggestions you may have are always solicited and appreciated. □

Section Reports

TAXATION SECTION

By **DONALD W. HANFORD**

Federal Income Taxation

On October 4, 1976, President Ford signed into law the Tax Reform Bill of 1976 (HR 10612), which contains significant amendments to both the income tax provisions and gift and estate tax provisions of the Internal Revenue Code. What follows is the first of a three-part article, which will briefly summarize the more significant amendments from the standpoint of a practicing attorney. This portion of the article will deal with the general income tax amendments, while the second and third installments will deal with the gift and estate amendments and the tax shelter limitations, respectively.

Prepaid Interest. Under present law, an accrual basis taxpayer is permitted to deduct prepaid interest only for that portion of the prepayment which represents the cost of using the borrowed funds for that particular taxable period. While a cash basis taxpayer may generally deduct his expenses in the year they are actually paid, there is presently some controversy as to whether he may deduct prepaid interest in full in the year paid, especially where it may result in a material distortion of income. The new rule will conform the deductibility of prepaid interest by a cash basis taxpayer to the present rule for interest prepayments by an accrual basis taxpayer. An exception is made to the new rule which, under certain circumstances, permits "points" (additional interest charges made at closing in lieu of a higher interest rate) paid by a cash basis taxpayer in connection with the purchase and improvement of his principal residence, to be deducted in full in the year of payment. This provision would become effective for all prepayments on or after January 1, 1976.

Alimony. The new rule will change the deduction for alimony payments from an *itemized* deduction to a deduction from gross income in arriving at adjusted gross income for all alimony payments made after December 31, 1976. Thus, the alimony deduction will be available to taxpayers who elect the standard deduction, as well as those who itemize their deductions.

Child Care Expense. Presently, taxpayers may claim as an itemized deduction certain expenses incurred for the care of dependents up to $4800.00 a year, provided the expenses were necessary to permit taxpayer to be employed. Child care payments made to relatives are not currently deductible to any extent. The new provisions will convert the deduction to a tax credit of 20% of the employment-related expenses incurred, up to a maximum of $400 for one dependent and $800 for two or more dependents. The credit is extended to married couples in which the husband or wife, or both, work part time, or where one spouse is a full time student and the other spouse works. In addition, the credit is extended to a divorced or separated parent who has custody of the dependent, even though the custodial parent may not be entitled to a dependency exemption for that child. Finally, the credit may be claimed for child care expenses paid to relatives, even if they are members of the taxpayer's household, provided that the relative's earnings are subject to Social Security tax. The credit would be available for 1976, and all subsequent taxable years.

Subchapter S Corporations. Under present law, a corporation is required to have ten or fewer shareholders in order to be eligible to elect and maintain subchapter S status. However, a husband and wife are treated as one shareholder where the stock is community property or held in joint tenancy. Further, a Subchapter S corporation may not, if it wishes to maintain its elective status, have a trust as a shareholder. The new provision will permit a Subchapter S corporation to increase its maximum number of qualified shareholders to fifteen after it has maintained its elective status for five consecutive taxable years. In addition, the corporation is permitted to have up to fifteen shareholders during the initial five year period, provided the additional shareholders receive their interest by inheritance (i.e., legacy, devise or intestate succession). The Act will provide that where either husband or wife, or both, die, the estate of the decedent will be treated as one shareholder with the surviving spouse (or her estate), provided husband and wife were treated as

one shareholder while both were living and the stock continues to be held in the same proportions as before death. Finally, grantor trusts and voting trusts are made eligible shareholders, as well as any other type of trust which receives stock under a will, but only for a period of sixty days. These amendments will be effective for all taxable years beginning after December 31, 1976.

Holding Period for Long Term Capital Gains. Under present law, gains or losses realized from the sale or exchange of capital assets held for more than six months are considered long term capital gains or losses. The amendment will lengthen the requisite holding period to more than nine months in 1977, and more than one year in 1978 and all subsequent years.

ENVIRONMENTAL LAW

By LEE KRAFT

Debates have raged over the impact of the State Environmental Policy Act. Is it substantive or merely a full disclosure act?

Proponents for the view the act is substantive cite *Leschi Improvement Council v. Washington State Highway Commission*, 84 Wn.2d 271 (1974). In *Leschi,* in an opinion written by Justice Utter and concurred in by Justices Finley, Stafford and Brachtenbach, the Court granted standing to petitioners on the basis of SEPA's policy statement recognizing a fundamental right to a healthful environment, thus seemingly underscoring the substantive nature of SEPA. Justice Rosellini, in a statement concurring in part and dissenting in part, argued that policy statements do not constitute substantive law and create no rights. Justices Hale, Hunter and Wright concurred with Justice Rosellini, leaving only Justice Hamilton with no direct statement on the issue. Thus the question remains.

In 1973, Division I of the Court of Appeals in *Juanita Bay Valley Community Club v. Kirkland*, 9 Wn. App. 59, had no such difficulty. The Court stated at page 73 that the change in the substantive law brought about by SEPA introduces an element of discretion into the making of decisions that were formerly ministerial.

Opponents of the view of the substantive effect of SEPA argue the debate may have ended with the decision in *Norway Hill Preservation and Protection Association v. King County,* 87 Wn.2d 267 (1976). Justice Hunter, in an opinion concurred in by seven of the Justices, decided that "... the procedural provisions of SEPA constitute an environmental full disclosure law," and that "SEPA does not demand any particular substantive result in governmental decision making," citing *Stempel v. Department of Water Resources,* 82 Wn.2d 109 and *Eastlake Community Council v. Roanoke Associates,* 82 Wn.2d 475 (1973). Query: Is SEPA only procedural or is there an argument to be made that policy statements in SEPA recognizing a fundamental right to a healthful environment, create substantive rights along with the full disclosure required by the Court in *Norway Hill.*

A case now at the Superior Court level which addresses the issue head-on is *Polygon Corporation v. City of Seattle,* King County Cause No. 800496. In *Polygon,* the City of Seattle required the developers to prepare an environmental im-

pact statement relating to their application for a building permit to build a 13 story, 47 unit condominium on Queen Anne Hill. After review and analysis of the said statement, the city denied the permit on environmental grounds.

Judge Dimmick of the King County Superior Court in her oral decision granted Seattle's motion for summary judgment and stated:

> After reading a great many Federal cases under NEPA, and all of the Washington cases under SEPA, the conclusion is inescapable that they are not simply environmental full disclosure laws, but they are intended to effect substantive changes in decision making and introduce an element of discretion that was not proper prior to SEPA. They are engrafted onto all of our existing codes and laws.
>
> SEPA does not require any particular substantive result. It does require that presently unquantified amenities and values be given appropriate consideration along with economic and technical considerations . . .

Attorneys for *Polygon* state it is almost virtually certain this case will be appealed.

If *Polygon* does reach the Washington Supreme Court, hopefully the Court will address this important issue directly and resolve once and for all the continuing debate. □

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 for further Bar Activity and policy.

If you are already a member of a Section, you should have received a dues statement to renew your membership in October, 1976. To become a new member of a Section, simply send a note to Cassie Morris Cole, Administrator of Sections at the Bar Offiice, 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, 1976 to September 30, 1977 are as follows:

Administrative Law	$ 5.00
Antitrust 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

SUPERIOR COURT NEWS
By JUDGE JAMES A. NOE

The Superior Court judges are busy organizing new committees and formulating programs for the new year which began October 1. President-Judge **Willard Roe,** Spokane, has appointed judges to the following active committees: Courtroom Security, Courts and Community, Criminal Law, Family Law, Improvement of Justice, Institutions, Judge's Desk Book, Judicial Education, Judicial Ethics and Grievance, Juvenile Court, James J. Lawless Memorial Fund, Legislative, Mental Illness, Salaries and Retirement. Judge **Al Yencopal,** Benton-Franklin, has been named chairman for the spring conference, which will be held next April in the Tri-Cities area.

An important meeting took place at the conclusion of the annual Judicial Conference in Spokane last September. The Board of Trustees of the Washington State Superior Court Judges' Association met with the Board of Governors of the Washington State Bar Association to discuss problems of common interest and to improve communication between bench and bar. Future meetings of these groups will be planned.

The King County Superior Court judges will honor retiring judges **Edward E. Henry, James W. Mifflin** and **Howard J. Thompson** at a social event on December 5. Judge Henry has served 16 years, Judge Mifflin 16 years and Judge Thompson 13 years. All three judges have brought legal ability, leadership and dignity to the Superior Court and they will be missed by their colleagues and the bar.

Judge **Gerry Alexander,** Thurston-Mason, completed a graduate course on Evidence at the National College for the State Judiciary. The one-week course at the campus at Reno, Nev. concluded October 1.

Judge **George H. Revelle,** King, has recently been elected by the Board of Governors of the American Bar Association to serve as a member of the Board of Trustees for the National College for the State Judiciary. He attended his first board meeting in Reno October 21 and 22.

DISTRICT COURTS
By JUDGE JAMES R. COOK

September seems to be the "in" month for annual conventions and meetings for both the Bench and the Bar, and for the judges of our courts of limited jurisdiction it was certainly no exception. District and municipal court judges from throughout our state assembled in Spokane at the Davenport Hotel on September 27, 28 and 29 for the annual meeting of the Washington State Magistrates Association. Judge T. Patrick Corbett, Seattle Municipal Court and just recently elected to the King County Superior Court, presided over the three-day meeting and did his usual masterful job. New officers for the ensuing year were elected as follows: President — Judge George T. Mattson, Renton District Court; Vice-President — Judge Philip J. Thompson, Spokane District Court; Secretary — Judge P. Brice Horton, Benton County District Court; Treasurer — Judge James R. Cook, Shoreline District Court; Board of Trustees — Judge Frank L. Sullivan, Seattle District Court; Judge George H. Mullins, Yakima District Court; Judge C. Brent Nevin, Clark County District Court; and Judge Thomas E. Kelly, Everett District Court. This event was chaired by Judge John A. Schultheis, Spokane District Court, who is to be commended for the fine program presented.

All of the full-time district courts throughout the state will commence in October with participation in the Washington Weighted Caseload Project. This project is being conducted by the National Center for State Courts through the office of the Administrator for the State Courts, and is designed to determine standards for measuring judicial workloads for the district courts. A similar project is being conducted in the superior courts throughout the state. Participation in the project will continue until December 17, 1976. □

Pictured above are some recent recipients of certificates awarded in recognition of service in the practice of law for fifty years or more. Including these recipients, shown at the Annual Meeting in Spokane, a total of 135 certificates were awarded this year. Shown applauding at the speakers' table are (l to r) Eddie Friar, WSBA Executive Director, immediate-past president Bob Day, Pasco, John Rupp, Seattle, and Ron McAdams, Walla Walla. More news on this event next month.

Twenty Years Ago XX

Raised Eyebrows Department

The editor reported some special correspondence with an attorney from New York who said:

Raised Eyebrows Department

Stuart C. Gaul, New York lawyer, formerly of the state of Washington, noted in the public education program of the Seattle Bar Association that one subject discussed was "Marital Relations and Community Property." He said, "While I recognize that lawyers might be somewhat qualified to discuss domestic relations or marital rights, I am somewhat at a loss as to what their qualifications are to educate the public on marital relations. Has some new law been passed by the legislature out there, or is it just the weather?

"I and a few of my colleagues would be much interested in learning about this new branch of law. We would like to know just how much of a good thing we might be missing back here in the East."

To which editor Rupp replied: We play these things straight, Stuart. That's what the program said, "Marital Relations." What do you do to historians who write chapters on "Social Intercourse"? The weather here has been lovely, and the legislature has been quiescent. Ain't been no atomic fallout to ruffle our genes either.

Births

T. M. Royce of Seattle was named to succeed **A. V. Stoneman** who resigned as counsel for the Bar Association. Mr. Royce was admitted to practice in Washington in 1919.

Alfred McBee of Mount Vernon, elected to the Board of Governors, and **E. F. Velikanje,** of Yakima, also elected to the Board to represent his district.

No One Crossed the Bar.

State Bar Convention

The principal speaker and honored guest at the annual bar meeting was to be **G. A. Gooch** of Fort Worth, Texas, a trial lawyer, who addressed the Annual Meeting on "Shall Advocacy Vanish?"

IT HAS NOT.

Caution

Lives of Great Men
all remind us
As their pages o'er
we turn,
That we're apt to leave
behind us
Letters that we ought to burn.
— Abraham S. Wolf Rosenbach.

— David J. Williams

Notices

Wanted: Wash. Reports and Wash. Appellate Reports and Washington Digest. Contact Burkey & Marsico, 705 So. 9th, Suite 305, Tacoma, WA 98405, 572-3633.

Moving: Closing my office at end of year. Liquidating library, equipment and supplies at terrific discounts. Ronald W. Meier — 624-1200.

For Sale: Complete set of RCWA with current supplements. $900. Call 454-0186, Bellevue.

For Sale: Washington Digest; Am Jur 2d; ALR 2d, 3d, Federal, Digest; Washington Practice; Danner, Interrogatories; Am Jur Legal Forms 2d; Am Jur Proof of Facts; Schweitzer, Averbach, O'Bryans and other misc. texts, forms, and office equipment; mostly original owner, A-1 condition. Call 363-2647.

Will Sought: Assistance needed in locating the last will of Frank Joseph Lalor, who resided for various times in Alaska, Washington and Idaho. Please contact Gerald W. Neil, 5302 Pacific Avenue, Tacoma, WA 98408, 474-9464.

Office Space Available: Small, well established law firm with general practice seeks established practitioner to share facilities in financial district. Reply Box 14, Wash. State Bar Assoc., 505 Madison St., Seattle, Wa 98104.

Wanted: IBM Executary belt dictating machine. Call John Maxwell at 509-882-1421.

Office Space: Small firm in the Central Building has office space available with access to reception area. $125.00 per month includes rent, telephone, answering service, and basic library. Call 682-8177.

Furnished Office Available: Together with library-conference room facilities. 24th Floor, The Financial Center. $400 per month. Seattle, 624-5606.

Law Office Available: 38th floor, Seattle-First National Bank Building, well-equipped library-conference room — $450.00 per month. Seattle, (206) 682-8850.

Will Search: Mrs. Alice May Madden, date of death April 25, 1971, Auburn, Wa. Also: Mr. Edward F. Madden, date of death Nov. 23, 1975, Redwood City, Calif. Please contact Dorothy M. Stewart, 8007 Linden N., Seattle, Wa. 98103.

For Sale: United States Supreme Court Reports, Lawyers Edition, Vols. 19 through present, very reasonable. Miracle, Pruzan & Nelson, 2301 Smith Tower, Seattle, Washington 98104, 624-8830.

Calendar

Dec. 3	CLE Seminar: **Trial Advocacy,** 9-4 p.m., $40, Ridpath Motor Inn, Spokane
Dec. 10	CLE Seminar: **Trial Advocacy,** 9-4 p.m., $40, Olympic Hotel, Seattle
Dec. 17	CLE Seminar: **Trial Advocacy,** 9-4 p.m., $40, Greenwood Inn, Olympia
Jan. 7	CLE Seminar: **Law of Parent & Child,** 1-6 p.m., $25, Wash. Plaza Hotel, Seattle.
Jan. 11	CLE Seminar: **Federal Tax Aspects — Real Estate Part I,** 6:30-9:00 p.m., $35, Downtown Hilton Hotel, Seattle
Jan. 14	CLE Seminar: **Law of Parent & Child,** 1-6 p.m., $25, Ridpath Motor Inn, Spokane
Jan. 14	CLE Seminar: **Responses to Auditor Letter Requests,** 1-5 p.m., Olympic Hotel, Seattle
Jan. 18	CLE Seminar: **Federal Tax Aspects — Real Estate Part II,** 6:30-9:00 p.m., Downtown Hilton Hotel, Seattle
Jan. 21	CLE Seminar: **Law of Parent & Child,** 1-6 p.m., $25, Hanford House, Richland

Lawyer Placement

1. Position available for Statewide Director of Evergreen Legal Services, a newly formed corporation including at least 18 new offices providing legal services to the majority of the poverty population in Washington State. Qualifications: Member of the Wash. State Bar 5 years and has had 3 years experience as a project Director of a legal services office or similar experience. Resumes should be sent to: Gordon Wilcox, 4300 Sea-First Nat'l Bank Bldg., Seattle, WA 98154.

2. Staff attorney for Island County Legal Services (Coupeville, Oak Harbor area). If interested, please contact Stephen M. Randells, 1712½ Hewitt Ave., Everett, WA 98201 or Arnold Whedbee, 112 Broadway, Mt. Vernon, WA 98273.

3. Position available for a Reservation Attorney for the Lummi Indian Tribe full-time, on-site legal representation of the tribe. Submit resumes to Daniel A. Raas, 2616 Kwina Rd., Bellingham, WA 98225. Women and minorities are encouraged to apply.

4. Half-time or part-time position open in a small one-person law firm for an attorney with a minimum of one year trial experience. Only those interested in remaining in private practice need apply; possible association. Forward resume to: 412 Alaska Building, 624-8113.

5. Young Lawyer wanted for medium-sized Southwest Washington law firm. Opportunity for advancement. General practice but with emphasis on trial work. Applicant should possess well-rounded personality and have a willingness to work hard. Write Box 15, c/o Washington State Bar Association, 505 Madison St., Seattle, WA 98104.

WHEN YOU ADD UP WHAT YOUR CLIENT'S WORTH, WE COULD BE HIS BIGGEST ASSET.

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