

WASHINGTON STATE BAR NEWS

No. 5000-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION I



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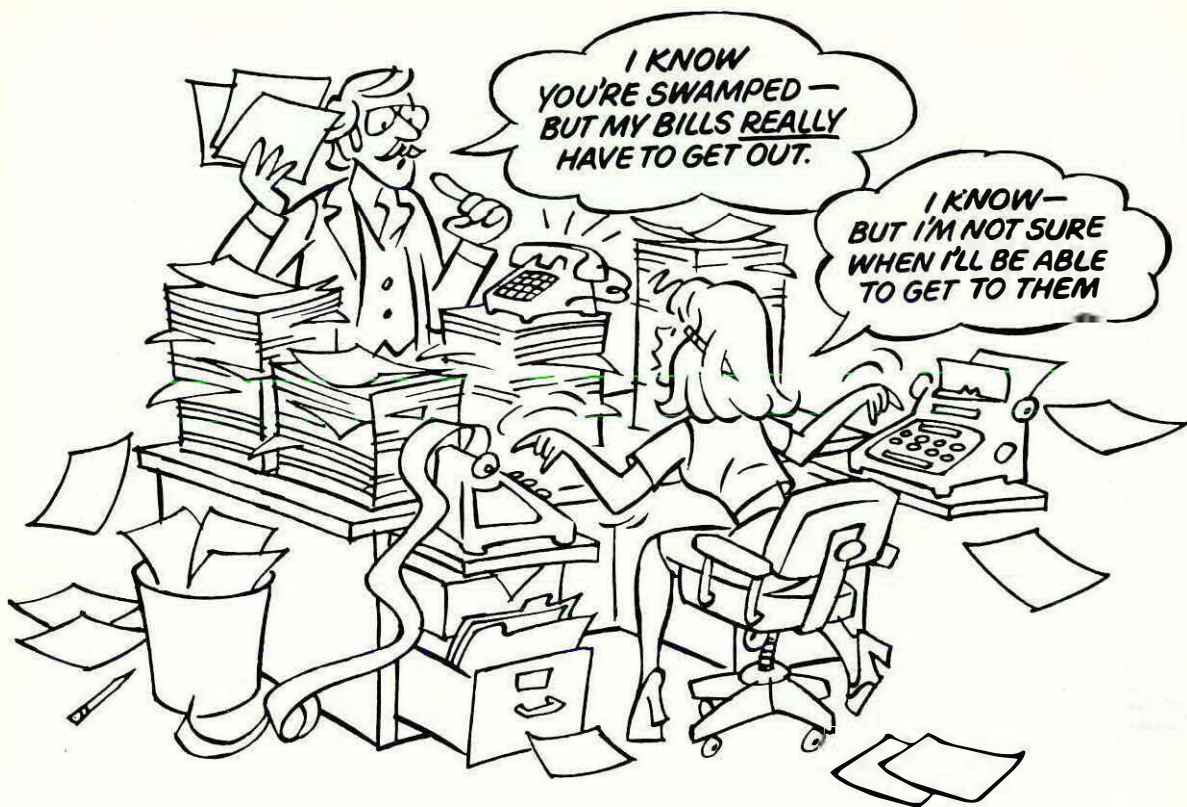
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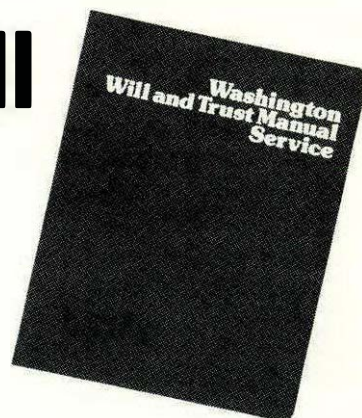
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Our Cover



Featured on our cover this month is the 12-member Washington State Court of Appeals which, according to Court Administrator Philip B. Winberry, is facing a case load crisis similar to that experienced by the State Supreme Court in the mid-1960's when the Court of Appeals was proposed. (See pp. 8-16). Standing, left to right: Keith M. Callow, Harold J. Petrie, Ray E. Munson, Jerome Farris, Dale M. Green and Edward P. Reed. Sitting, left to right: Frank D. James, Jr., Vernon R. Pearson, Herbert A. Swanson, James A. Andersen, Jr., Ward Williams and James Ben McInturff. (Photo by Johanson Studio)

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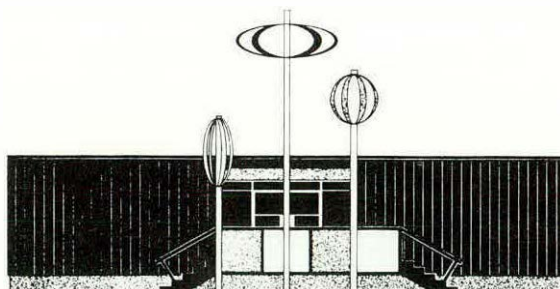
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Boddington Scholarship Fund

Editor:

It would be very appropriate as a memorial to a memorable person if those of you who wish would make a contribution to the Rod Boddington Scholarship Fund, c/o Dean Richard S. L. Roddis, University of Washington Law School, Condon Hall, Seattle, Washington 98105. Deserving law students do appreciate the help.

GORDON A. LIVENGOOD
Seattle

Bar Credit Union

Editor:

Recently I responded affirmatively to a questionnaire from either the Seattle Bar or the Washington Bar, I cannot remember which, asking if I would favor the formation of a Bar related credit union. After an experience which I had today, I am beginning to wonder if I was ill-advised when I agreed. I know that I was ill-informed, due to my lack of research.

I have not seen any cases interpreting RCW 31.12.020, as amended apparently in 1973, which has the following provision:

"Credit unions, in the event of default of such credit, may impose financing and reasonable late charges in accordance with their by-laws and may recover reasonable costs and expenses incurred in the collection of any sums due if provided for in the note or agreement signed by the borrower."

Washington Credit Inc. is presently collecting from a client of mine a secured loan of Group Health Credit Union. The loan balance is approximately \$4,500, plus approximately \$200 of accrued interest. The collection company advises her that the debt has been accelerated and that the new balance of her account is now in excess of \$7,500.

The credit union interprets the above provision of "... reasonable costs and expenses incurred in the collection ..." as their authority to add 50% to the balance of the loan, plus accrued interest and enforce this new amount on collection of the debt. The collection company advises me that since they charge Group Health 50% to collect their debts, this amount is a reasonable sum to be added on to the debt for collection.

The credit union makes this demand even though they have a written security agreement providing for an award to them of reasonable attorney's fees, plus all manner of costs and expenses.

Although the collection company representative advises me that the courts are entering default judges based on this manner of computation, I cannot believe that it is done with full knowledge of this circumstance. I think this is an unconscionable charge for the collection of a secured debt and is an unreasonable interpretation of the code provision.

If this is a general policy of credit unions, and is in fact supported by the courts in contested actions, then I would not care to have a bar-related credit union.

I would like very much to hear from anyone in the Bar who has contested this type of action, successfully or unsuccessfully.

JOHN R. WEBER

Seattle

Cheers for California Board Lay Members

Editor:

In the October issue of the *Washington State Bar News*, Bar Association President Riddell wrote that the appointment of lay members to the California Board of Governors is a "serious challenge to the independence of the California bar." He argued that the Washington bar, as an arm of the state's judiciary, should be immune from such challenge.

I believe the appointment of lay members to the Board of Governors should not be viewed solely as a threat to our independence. It should also be seen as an indication of serious consumer discontent. The bar provides a service to the public for a fee the same as other services, and we must be held accountable to our consuming public the same as other services. This is particularly true for the bar, since our market is partially created and protected by state law.

Rather than look upon the appointment of lay members as a threat, we should welcome it as a reasonable attempt to learn and remedy the causes of consumer dissatisfaction. I laud the efforts of Governor Brown and the California legislature to keep the bar responsive to consumer needs, and I hope that we in Washington can follow their lead.

THOMAS M. WALSH

Seattle



What Will Be The *Bar News*?

This page has been called "Editorial"; "Scintillae"; and, in recent years, "Editor's Notes". There is a tradition of editorial comment on this page not suggested by the term "Editor's Notes" and, editor's notes are not properly designated "Editorial". We now have settled upon "Editor's Page" because that heading can encompass editorial comment, editor's notes, late news, and miscellaneous information.

The words on this page are not the words of the Bar Association, but of one lawyer who serves as *Bar News* editor. But, as the first editor, John N. Rupp, stated in his opening editorial in 1947, "We trust that the members of the Association will remember that this bulletin is theirs and that their comments, suggestions, criticisms and suggested news items are always welcome and, indeed, earnestly solicited."

The *Bar News* is a conspicuous reflection of Washington lawyers, and the quality of that reflection is determined by the collective energy of the approximately 7,500 members of our Bar Association. Likewise, the value of the *Bar News* to Washington lawyers as a source of law-related news and information is related directly to the quality of contributions by the bar membership. For the most part, the content of the *Bar News* is selected from "what comes in." Some of that content is excellent; some is not.

We need more of the excellent, and we need it in the same degree of diversity as there is among Washington lawyers. If you cannot take time to write an article, write a letter or pick up the telephone to offer suggestions. 900 Hoge Building, Seattle, Washington, 98104. Area 206, 623-5285/6501.

In This Issue

Our cover story this month deals with the heavy workload of the state Court of Appeals which dramatically exceeds projections made less than ten years ago when the court was created. Court Administrator Phillip B. Winberry offers statistics and discusses possible solutions to the apparent problem. . . . Malcolm Edwards offers Part 5 of his series of articles discussing the new appellate rules. . . . Stimson Bullitt declines an

invitation to compare the practicing bar to locusts and argues that lawyers are not a plague. . . . Debate over amendments to Rule 9 is featured in The Board's Work column. The Supreme Court is expected to take final action on a revised Rule 9 this month inasmuch as the present rule expires December 31. . . . Last Words Dept.: The third editorial ever published in the *Bar News* dealt with lawyer advertising (May, 1947). For more recent words on this subject, see The President's Corner.

Compulsory CLE Rule Adopted

The State Supreme Court on November 24 unanimously approved the Continuing Compulsory Legal Education rule effective January 1, 1977. The text of the rule is substantially similar to that recommended by the Board of Governors. The court also appointed to the seven-member Board of Continuing Legal Education the persons recommended by the Board of Governors. See The Board's Work.

— J.V.W.



Does a total ban on advertising by private attorneys, enforced by a state supreme court through its own Court Rules and through an integrated state bar, violate the First Amendment?

Federal court actions raising this question are currently pending in Hawaii, New York, Virginia, California and in Washington. On July 26, 1976 the Arizona Supreme Court in a split decision answered the question in the negative and censured two Phoenix lawyers for their deliberate violation of the advertising proscription. The United States Supreme Court on October 4, 1976 accepted certiorari in the Arizona case (*Bates and O'Steen vs. State Bar of Arizona*, No. 76-316). In normal course we should have a definitive decision from the high court by late Spring. I think it is safe to predict that the decision will be by a divided court.

What are the implications for our profession? Basically, the court has three alternatives — 1) to uphold total proscription on lawyer advertising, 2) to reverse, holding that only false and deceptive advertising may be prohibited, and 3) to reverse, holding that such vague concepts as "good taste" or ads which bring "discredit to the profession" may also be regulated.

A substantial majority of your Board of Governors hopes that the Supreme Court will adopt alternative 1. The American Bar Association will be filing an amicus brief urging that position. If the ABA were not doing so, we very likely would.

But many able lawyers believe that alternatives 2 or 3 present the more likely result. If they are correct, the bar will have to police lawyer advertising à la the FTC. "False" or "deceptive" are concepts we could regulate if we have to, but "good taste" and "discredit to the profession" could lead us into a real morass. Any such regulation would require a substantial expansion of our able and effective staff — increased overhead and higher dues. What would all this accomplish? The Justice Department and the FTC answer is "Increased competition and lower prices for the benefit of the consumer." Advertising clearly lowers the cost of razor blades, chewing gum and other articles of commerce. Does this apply equally to personal services? Clearly not to open heart surgery, to a products liability trial, to estate planning, or to any sophisticated legal problem.



Arguably, advertising might lower the costs of the default divorce, the small probate, the simple will, the no asset bankruptcy. But do-it-yourself forms are already available for most of these. Does advertising an hourly rate help a consumer, unless he or she has a handle on the lawyer's experience and efficiency? Five hours times \$25 is still more than two hours times \$50.

Next Spring's answer from the Supreme Court will have important implications for all of us. Prior to 1900 lawyers were permitted to advertise in this state. We are informed that both the lawyers and the public thought a forward step had been taken when lawyer advertising was banned here. Let's hope we don't have to go through the cycle once again. Meantime, our own advertising lawsuit is on ice in federal court for the Western District of Washington awaiting the Bates and O'Steen decision from the Supreme Court.

Richard H. Riddell

Crisis in Washington's Appellate Courts - Revisited

By **PHILLIP B. WINBERRY**

Administrator for the Courts, State of Washington

The Court of Appeals is facing a caseload crisis much like that experienced by the Supreme Court in the mid-1960's when it was apparent to the bench, the bar and the public that the high court faced a workload of unmanageable proportions.

The court had been able to increase its capacity by utilizing pro tem judges.¹ It was apparent, however, that even with the use of pro tem judges, delays of more than a year had become the rule, not the exception, and that delays of five or even ten years were not inconceivable for the future. In 1967, projections of the Supreme Court's caseload indicated that in 1985, 1,399 cases would be filed

in the court, and with an average yearly disposition to that date of 650 cases, the court's backlog would have reached 8,038 cases.²

SJR 6, amending the state constitution to establish the Court of Appeals, was approved by the electorate in November of 1968. The 1969 legislature established the Court of Appeals with twelve judges geographically located in three separate divisions — Seattle (6 judges), Tacoma and Spokane (3 judges each) — and set the Court's general powers, authority and jurisdiction.³ The Court commenced operation on August 18, 1969 and has operated continuously since that time,

rendering opinions in 3,086 cases.⁴ In that same time period, the Supreme Court has written opinions in 1,183 cases.

The Court of Appeals, created in response to a crisis, has done its job well. It might be argued that it has performed too well. In 1967, for each superior court judge there was an average of 7.1 appeals filed with the Supreme Court. In 1975, an average of 15 appeals were filed for each superior court judge. It is estimated the average will be 18.8 appeals in 1977. Such increases, for whatever reason, are creating another crisis in Washington's appellate courts, and the crisis of 1976 is

total of 2,323 matters were filed in the state's appellate courts, almost double the projections for 1985 and almost triple the projections for 1975.

The Supreme Court, which has authority to control its intake, is not adding to the current appellate backlog. At the end of 1975, there were 226 matters pending disposition in the Supreme Court, only four cases more than were pending disposition at the end of 1974. The situation is different in the Court of Appeals which in 1975 saw a record number of 1,819 filings, an increase of 278 or 18% over the previous year and up 76.4% from 1970, its first full year of operation.

TABLE I
COURT OF APPEALS
DISPOSITIONS: 1971-1975

	APPEALS			
	<i>Criminal</i>	<i>Civil</i>	<i>Writs</i>	<i>Total</i>
<i>Division I</i>				
Total Dispositions	792	1766	426	2984
Written Opinions	479	690	46	1215
% Opinions Written	60.5%	39.1%	10.8%	40.7%
<i>Division II</i>				
Total Dispositions	469	826	234	1529
Written Opinions	308	379	33	720
% Opinions Written	65.7%	45.9%	14.1%	47.1%
<i>Division III</i>				
Total Dispositions	351	733	219	1303
Written Opinions	230	427	42	699
% Opinions Written	65.5%	58.3%	19.2%	53.6%

of a magnitude that is greater than that faced in 1967.

The appellate crisis of 1976, however, is not with the Supreme Court, but rather with the Court of Appeals. In 1967, projections of appellate court filings estimated that by 1975 a total of 992 cases would be filed in the state's appellate courts and that, as already noted, by 1985 the figure would rise to 1,399. Those estimates were grossly inaccurate. A look at the record⁵ shows that in 1975 a

In spite of a significant increase in productivity in 1975, an effort which continues in 1976, the tremendous surge in filings has left a record high number of cases pending at the end of 1975, a total of 1,809. Of the 1,809 cases, 1,117 (61.7%) were civil appeals, 600 (33.2%) were criminal appeals and 92 (5.1%) were writs. This marked an increased "backlog" of 380 cases or 26.6% over the previous year.

It is estimated that criminal cases, which have priority status, will be disposed of within a year after filing of the notice of appeal. On the other hand, the civil "backlog" is becoming increasingly larger and more difficult for the courts to manage. In Division I, a civil case which is ready⁶

Phillip B. Winberry received his law degree from the University of Washington in 1969 and shortly thereafter became a member of the Washington State Bar Association. He has held the office of Administrator for the Courts, State of Washington since 1972.

to be noted on the appellate docket today probably will not be heard before January of 1978. Similar predictions are valid for Divisions II and III, based on current workloads, productivity, and the percentage of filings which will result in written opinions by the court. What do these burgeoning

caseloads mean to the court? How can the court respond and what assistance does it need? To answer such questions, it is necessary to review the past.

By examining the court's disposition of matters filed from 1971 through 1975,⁷ it is relatively easy

TABLE II
WASHINGTON COURT OF APPEALS
Projected Filings*
1976 - 1985

	1976**	1977	1978	1979	1980	1985
<i>Division I</i>						
Criminal Appeals	237	257	278	298	319	421
Civil Appeals	587	639	691	743	795	1055
Total Appeals	824	896	969	1041	1114	1476
Writs	156	177	199	221	243	351
Total Filings	980	1073	1168	1262	1357	1827
<i>Division II</i>						
Criminal Appeals	173	193	213	233	252	351
Civil Appeals	257	278	299	319	340	444
Total Appeals	430	471	512	552	592	795
Writs	110	130	150	169	199	287
Total Filings	540	601	662	721	791	1082
<i>Division III</i>						
Criminal Appeals	117	128	138	149	159	212
Civil Appeals	235	257	280	302	325	437
Total Appeals	352	385	418	451	484	649
Writs	104	122	141	160	179	273
Total Filings	456	507	559	611	663	922
<i>Total Court of Appeals</i>						
Criminal Appeals	527	578	629	680	730	984
Civil Appeals	1079	1174	1270	1364	1460	1936
Total Appeals	1606	1752	1899	2044	2190	2920
Writs	370	429	490	550	621	911
Total Filings	1976	2181	2389	2594	2811	3831

*Projections are based on the linear trend of the period 1971-1975 and do not include filings in the Supreme Court.

**Actual experience during the first 10 months of 1976 indicates that the court's intake seems to be leveling off and that projections for 1976 may be overestimated by as much as 10%. This does not invalidate the views presented in this article because past history indicates the court experienced a plateau period (1971) followed by greatly increased filings in succeeding years.

TABLE III
WASHINGTON COURT OF APPEALS
Projected Backlogs*

	<i>Actual</i> Year-End 1975	Year-End 1976	<i>Projected</i> Year-End 1977	Year-End 1978
DIVISION I				
Criminal Appeals	285	395	525	676
Civil Appeals	641	836	1083	1382
Appellate Backlog	926	1231	1608	2058
Writs	41	58	96	156
Total Backlog	967	1289	1704	2214
DIVISION II				
Criminal Appeals	178	211	264	337
Civil Appeals	268	356	465	595
Appellate Backlog	446	567	729	932
Writs	26	50	94	158
Total Backlog	472	617	823	1090
DIVISION III				
Criminal Appeals	137	179	232	295
Civil Appeals	208	227	268	332
Appellate Backlog	345	406	500	627
Writs	25	34	61	107
Total Backlog	370	440	561	734
TOTAL COURT OF APPEALS				
Criminal Appeals	600	785	1021	1308
Civil Appeals	1117	1419	1816	2309
Appellate Backlog	1717	2204	2837	3617
Writs	92	142	251	421
Total Backlog	1809	2346	3088	4038

*Projected Backlogs are based on actual backlog at 12/31/75, projected filings and maximum ability to dispose of workload using 1975 standards.

to obtain an accurate estimate of the number and types of filings which will require a written court opinion.

The remaining tables project filings and backlogs for the court for the next three years. From those projections are calculated the anticipated workload for each of the divisions of the Court of Appeals through 1980, with the year 1985 also added.

By applying the percentages of cases which require a written opinion (Table I) to the court's anticipated workload (Tables II and III), we are

able to obtain a reliable statistical indicator of the number of written opinions that will be required from the Court of Appeals in the period 1976-79. This is set forth in Table IV.

Based on the statistical information cited and assuming that it is desirable for the court to become "current" by the end of 1979,⁸ the judges of the Court of Appeals will have to substantially increase their workload. It is assumed that the court's caseload and increases in filings will maintain a relatively constant trend with past numbers. The numbers could be larger; most certainly they

TABLE IV
COURT OF APPEALS
OPINIONS REQUIRED BY ANTICIPATED CASELOAD*: 1976-1979

	<i>Criminal</i>	<i>Civil</i>	<i>Writs</i>	<i>Total</i>
<i>Division I</i>				
Cases	1057	2558	573	4188
Published Opinions	272	566	39	877
Unpublished Opinions	367	434	23	824
Total Opinions	639	1000	62	1701
<i>Division II</i>				
Cases	757	1102	416	2275
Published Opinions	341	378	36	755
Unpublished Opinions	156	128	23	307
Total Opinions	497	506	59	1062
<i>Division III</i>				
Cases	520	980	392	1892
Published Opinions	125	356	55	536
Unpublished Opinions	216	215	20	451
Total Opinions	341	571	75	987

*Cases pending through 1978; opinions to be written through 1979.

will not be less. The court's current opinion output is as follows.

TABLE V⁹

Division I	244 opinions per year or 41 opinions per judge per year
Division II	144 opinions per year or 48 opinions per judge per year
Division III	139 opinions per year or 46 opinions per judge per year

If the court were to continue to dispose of cases at the rates cited above, dispositions and written opinions on all matters filed through the end of 1978 would not be completed before December of 1982 in Division I, April of 1983 in Division II and January of 1983 in Division III. In order for the court to dispose of its anticipated workload by the end of 1979, the judges will have to increase their output as follows.

TABLE VI

Division I	425 opinions per year or 71 opinions per judge per year
Division II	266 opinions per year or 89 opinions per judge per year
Division III	247 opinions per year or 82 opinions per judge per year

In essence, the judges of the Court of Appeals will have to almost double their output in order to become relatively current by the end of 1979.

It is obvious to any knowledgeable observer of the appellate process that it is not possible for the judges to double their output without either significant changes in their methods of operation and the utilization of alternative methods for disposing of appellate caseloads.

The remainder of this article deals with a number of suggested alternatives and the Court's efforts with regard to each.

Transfer of Some Court of Appeals Caseload to Supreme Court

It has been argued that a substantial amount of the Court of Appeals' workload could be transferred to the Supreme Court. Supporters of this argument allege that the Supreme Court's current caseload is not sufficient to keep the justices

busy.¹⁰ To place credence in such an argument ignores a significant factor.

The advent of the Court of Appeals created a new category of workload for the Supreme Court, i.e., the petition for review. Petitions for review have become a large percentage of the Supreme Court's caseload and the proportion of the court's filings which they represent has been constantly rising.¹¹

TABLE VII
WASHINGTON SUPREME COURT
PETITIONS FOR REVIEW
1969 - 1975

	1969	1970	1971	1972	1973	1974	1975	TOTAL
Opinions Written in the Court of Appeals*	51	401	494	474	525	526	605	3086
Petitions for Review Filed in Supreme Court	11	142	165	143	178	205	235	1079
Ratio of Petitions for Review to Opinions Filed by Court of Appeals*	.216	.354	.334	.302	.339	.382	.388	.350
Petitions for Review as a Percentage of Total Filings in the Supreme Court	1.5%	37.8%	36.7%	34.5%	41.8%	41.2%	46.6%	32.3%**
Petitions for Review Granted by Supreme Court	0	20	17	20	35	32	29	153
Ratio of Petitions for Review Granted to Petitions Filed	.000	.141	.103	.140	.197	.156	.123	.142
Ratio of Petitions for Review filed to Opinions* Filed by Court of Appeals	.000	.050	.034	.042	.067	.060	.048	.050

*This includes both published and unpublished opinions.

**If 1969 is excluded, Petitions for Review comprise 40% of the Supreme Court's filing 1970-75.

From 1969 through 1975, 3,086 appeals were terminated by published or unpublished opinion in the Court of Appeals. During the same time period, 1,079 petitions for review (35%) were filed in the Supreme Court.

As Table VII shows only 153 petitions for review, an average of 25.5 per year, have been granted. The Supreme Court's workload however, is much more adversely affected than the numbers support because it is necessary for the court to treat all petitions as a new filing although there is no oral argument nor written opinion.

Utilization of Pro Tempore Judges

It has been suggested that the court might address its backlog problems by utilizing pro tem

judges. In order for the court to employ this alternative to a larger degree than at present, a threshold issue would have to be resolved. Under current law, the court is allowed to utilize up to 240 pro tem days a year.¹² Assuming the legislature was persuaded to remove the restriction on the utilization of pro tem judges, it is not difficult to calculate the amount of pro tem time that would be required if the court were to become current at the end of 1979. Table VIII predicts the number of written opinions which will be required by the court's anticipated caseload 1976-1978. By deducting from this figure the number of opinions which can be expected to be written by judges of the several divisions during the period 1976-79, assuming that they continue to dispose of the cases at the 1971-75 rates of disposition, we arrive at the number of opinions which would be required from pro tem judges.

TABLE VIII
COURT OF APPEALS
OPINIONS TO BE WRITTEN BY PRO TEM JUDGES:
1976 - 1978 WORKLOAD

	<i>Div. I</i>	<i>Div. II</i>	<i>Div. III</i>	<i>Total</i>
Total Opinions (Table IV)	1701	1062	987	3750
Opinions to be written by Judges of the Court of Appeals:				
Annual Rate per Division	244	144	139	527
Total Opinions to be Written 1976-79	976	576	556	2108
Opinions to be written by Pro Tem Judges	725	486	431	1642

An estimate of the number of pro tem judge days required to accomplish this work is developed by using the following criteria:

Every two decisions written by a pro tem judge, will require

1 day of preparation,
1 day for hearing, and
6 days for writing the opinions.

In other words, there will be an *average* of four pro tem judge days required for every opinion written by a pro tem judge.

	<i>Div. I</i>	<i>Div. II</i>	<i>Div. III</i>	<i>Total</i>
Pro Tem Judge Days Required	2900	1944	1724	6568
Cost (at \$87.18 per day) ¹³	\$252,822	\$169,478	\$150,298	\$572,598

The staggering cost of utilizing pro tem judges to eliminate the backlog of the court arguably is a one-time expense if one assumes that the court would be able to maintain its output at a sufficiently high rate to dispose of incoming cases without building up a new backlog once it became current. It is the author's opinion, however, and the opinion of several members of the Court of Appeals that the statistics cited in this article refute this assumption. It is questionable whether there would be sufficient pro tem days available to the court in the time period 1976-79 or that there would be qualified retired judges capable of sitting and hearing cases. The 6,568 pro tem judge days required to become current by the end of 1979 represents almost 31 full-time judicial years.¹⁴ This is the equivalent of having almost one-third of all the superior court judges in the state each devoting a full year to the appellate court work. In addition, such use of pro tem judges would put a severe strain on the staff resources presently available to support the court's activities. Thus, even if the bench, bar and public would accept almost half of the Court of Appeals' opinions in the next three years being written by pro tem judges, increasing the use of pro tem judges would be at best a partial solution to the appellate court crisis but not a viable alternative as a total solution to the court's problems.

Settlement Conferences

Since RAP 18.11 was enacted,¹⁵ all three divisions of the Court of Appeals have experimented with a settlement conference program. As indicated by Judge Vernon R. Pearson in the February, 1976 issue of the *Bar News*, the purpose of the Settlement conference is to "stimulate settlement of the appeal with benefit of an opinion from an experienced Court of Appeals judge on the probable outcome of the various issues contemplated by the appeal."

Divisions I and II have utilized the services of a current Court of Appeals judge as a settlement conference judge. Division III has utilized the services of the pro tem judge. Experience shows that the approach of Divisions I and II is probably more successful in terms of overall results. In Division I, Judge Frank D. James has conducted

179 settlement conferences. Of these, 49 cases have been settled — approximately 35%. Thirty-seven cases have been scheduled for further hearings with settlement possible. In Division II, Judge Vernon R. Pearson, in 32 conference days, has heard 102 cases on the settlement calendar and has had 34% of the cases actually settled as a result of the conference. Negotiations still continue in 18% of the cases. It is hoped that the settlement rates eventually will approach the 50% level experienced by New York during an eight-month experiment in 1975.

The settlement conference proceeding appears to be a "bright star" on the horizon, but even the most optimistic prediction holds only partial hope that the program can stem the tide of increased appellate caseloads.

Additional Judicial Personnel

Another partial solution to the appellate court crisis is the time honored approach, the addition

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of judges and judicial support personnel. In 1975 the Supreme Court commissioned the Western Regional Office of the National Center for State Courts to analyze the state's appellate courts, recommend improvements in the Court's administrative operations and estimate future personnel and support needs of the appellate court system. The National Center's final report issued in December 1975, discusses the current "crisis" in the appellate courts. It suggests that to "solve" the appellate problems by adding judges would require 20 additional judges, assuming the Court were to continue at its current rate of production and desired to become current by the end of 1979.¹⁶ It was estimated by the Center that the 32 total judges needed in 1979 would be adequate to contain the Court's caseload for the ensuing three or four years before additional judges would be needed.

Such a dramatic and immediate increase in the number of appellate judges is not rationally, politically or logistically feasible. Accordingly, the judges of the Court of Appeals have rejected such proposals and have opted to ask the legislature to increase their numbers by only four judges in 1977 as a partial solution to the "crisis." An increase of four judges will enable one judge in each panel to sit as a settlement judge, freeing the time of a full panel to continue to hear cases in the regular appellate process.

The judges also have identified a need for increases in their clerical and judicial staffs to enable them to better screen matters which come before the court and to make the appellate process more efficient. The court is aware that with increased professional staff, it is possible for the work product of the Court to become "one man opinions." More sophisticated screening capability prior to oral argument will tend to minimize this untoward possibility and the court will take all precautions necessary to insure that the appearance of "assembly-line justice" does not occur in the State of Washington and that the bench, bar and public continue to hold the Court of Appeals in the highest esteem.

The Court of Appeals is at a crisis time in its existence. Statistics demonstrate that without ad-

ditional judicial manpower and support personnel and without resorting to new and innovative techniques such as settlement conferences, per curiam memorandum opinions, increasing use of unpublished opinions, utilization of additional pro tem judges and perhaps other unknown or unexplored techniques, the Court of Appeals will soon attain an adverse reputation with the public. Litigants who desire their day in court will have that day further removed from reasonableness, resulting in an escalating disfavor by the public with their system of justice. It should be noted that the Court of Appeals is the end of the road in a large majority of appeals. A litigant deserves to have a speedy determination by the court.

A combination of additional judges and support staff and the other alternatives suggested in this article will result in an increase in the number of appellate opinions filed each year. It is hoped that the information presented, and the author's opinions expressed herein, will alert the bar to the critical needs of the appellate system so it will support the court's request for additional judges and support personnel.

Footnotes:

¹Use of pro tem judges is authorized by the 38th Amendment to the Constitution approved in 1962.

²Eleventh Annual Report, Office of Administrator for the Courts, p. 24, (1967).

³RCW 2.06

⁴As of December 31, 1975

⁵Nineteenth Annual Report, Office of Administrator for the Courts (1975)

⁶Under present practice, a case is deemed "ready" for oral argument when the appellant's brief is filed.

⁷The period 1969-70 has been excluded as not being representative of the court's operating capability.

⁸"Current" as used in this article means that opinions will be written or the case disposed of by dismissal or agreed order in all cases which are a year or older; i.e., no case with a filing date over a year old will remain undecided by the Court.

⁹The court has increased its efforts so that it is estimated that its output for the year 1976 will be as follows: Div. I, 295 opinions or 49.2 opinions per judge; Div. II, 144 opinions or 48 opinions per judge; and Div. III, 166 opinions or 55 opinions per judge.

¹⁰In 1975, there were 504 appellate matters filed in the Supreme Court as opposed to 706 in 1967 and 701 in 1968, the two years immediately preceding the creation of the Court of Appeals.

¹¹Up from 37.8% in 1970 to 46.6% in 1975.

¹²RCW 2.06.150

¹³Based on current salary. Does not include per diem costs of \$25 per day.

¹⁴Assumes 215 work days per judicial year.

¹⁵Originally promulgated as CAROA 64, effective March 1, 1976.

¹⁶"Washington Appellate Court Project," National Center for State Courts, p. 156, (1975). □

The Board Considers Rule 9

By JAY V. WHITE

PORT LUDLOW, November 12-13 — In a series of votes ranging from a 5-4 split to unanimity, the Board of Governors has agreed to recommend that the Supreme Court amend and continue for another year APR 9 providing for admission to practice as a legal intern.

The Board retreated somewhat from restrictive amendments approved in October, but a majority of the board reiterated its opposition to participation by legal interns in jury trials even if there is a right to trial de novo and even if a supervising attorney is present.

The present Rule 9 expires on December 31. By the time this report is published, the Supreme Court may have determined whether Rule 9 will be continued beyond that date and, if so, in what form.

The Board also met in Tumwater on November 18 and the Minutes of that meeting are incorporated into this report.

The Port Ludlow meeting was marked by discussion of Rule 9, but the Board's crowded agenda encompassed a wide range of other subjects.

All Board members were present except Robert H. Peterson of the Sixth District who is recovering from surgery. Also present was Robert W. Burns, ex officio member of the Board, representing the Young Lawyers section.

Rule 9: October Amendments

In October, as reported last month, the Board adopted by the votes indicated a number of amendments to Rule 9 which would, if approved by the Supreme Court, (1) exclude legal interns from participation (except sitting at the counsel table) in superior court trials, hearings and motions, and in corresponding appellate court pro-

ceedings (5-4); (2) exclude legal interns from doing any more than observing the taking of depositions in superior court cases (5-3); (3) preclude interns in courts of limited jurisdiction from trying jury, DWI, hit-run, and reckless driving cases and require the presence of a supervising attorney in all other cases (7-2); (4) subject a supervising attorney to discipline for failure to comply with the rule (9-0); (5) provide that an intern's violation of the CPR or DRA would be grounds for disqualification from admission to the bar (9-0); and (6) provide that an intern should be considered an attorney for purposes of the attorney-client privilege (9-0). Several other procedural amendments were approved.

Response from the Bar

The Board invited comment about the October amendments to Rule 9 from prosecuting attorneys, municipal attorneys, public defenders and others. It received a large number of letters and comment, including the views of district and municipal judges; superior court judges; former interns, and supervising attorneys. Although the comments received were mixed, most favored continuation or expansion of the Rule 9 program and were critical of the Board's proposal. Among those registering opposing views were some district and municipal court judges; several superior court judges; and a few members of the private bar who have served as supervising attorneys. Complaints about the performance of Rule 9 interns centered upon lack of competence; a tendency by some interns to delay proceedings, particularly in jury trials; and inadequate supervision.

Dale B. Ramerman, chairperson of the Legal Internship Committee, and Marilyn Showalter of

that committee, appeared before the Board to present a memorandum previously submitted by the committee which generally is critical of the Board's October amendments to Rule 9, but supports Board proposals in the areas of discipline, the scope of the attorney-client privilege, and certain procedural matters.

Also appearing before the Board in a long Friday afternoon session were Kitsap Prosecuting Attorney John Merkel; King County Prosecuting Attorney Christopher T. Bayley; J. Dean Morgan, Clark County Public Defender and president of the Washington State Defender Association; Peter Greenfield of the Seattle Legal Services office; Bruce Meyers, assistant dean of the University of Puget Sound Law School; Lewis Orland, representing Gonzaga University Law School; Kitsap Public Defender James Munro; and Seth Armstrong of Seattle.

Only Munro spoke in opposition to Rule 9; he expressed the view that the defense of criminal charges in district court was too important to entrust to legal interns notwithstanding the right of trial de novo. The other speakers favored con-

tinuation of Rule 9 and directed most of their criticism of the Board's October amendments to the prohibition against participation by interns in jury, DWI, hit-run, and reckless driving cases and to the requirement that a supervising attorney be present in all other cases.

Board Modifies October Amendments

At the outset in the discussion Friday afternoon, Board member Willard H. Walker moved that the Board continue the language of the October amendment prohibiting trials by legal interns in courts of limited jurisdiction in jury, DWI, hit-run, and reckless driving cases and to amend it also to prohibit trial of "possession of an automobile while under the influence" cases. Walker included in his motion a proposal to omit the requirement of presence of a supervising attorney in other cases in order to alleviate the burden which otherwise might be placed on prosecutors and public defenders. The motion was seconded by Board member Michael J. Hemovich.

Board member Betty B. Fletcher proposed a substitute motion, seconded by Board member Edmund B. Raftis, to restore the language proposed by the Legal Internship Committee before it was modified by the Board in October. That language, which would amend the present section D(4) of Rule 9, states:

The supervising attorney need not be present in the courtroom during the legal intern's appearance in matters before and cases tried in a trial court from the judgment of which there is a right of trial de novo on appeal. Either the supervising attorney or another attorney from the same office shall be present (1) in the representation of a defendant in preliminary criminal hearings, and (2) in the first jury trial tried by an intern.

Board member Walker inquired about his original motion, but President Riddell ruled that Fletcher's motion was a proper substitute motion.

Fletcher, seconded by Raftis, moved to amend her substitute motion to add the prefatory language, "After a reasonable period of supervision in court. . .". Hoff expressed the view that the word "reasonable" was too indefinite; however,

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no further amendment was made, and the vote was taken on the amended substitute motion. The motion passed 5-4, with Fletcher, Raftis, Hoff, Jones and President Riddell in favor and Walker, Hemovich, Robert R. Redman and Charles R. Olson opposed.

Walker suggested that the vote might have been 5-5 if Peterson were not absent and observed that the vote would have been 4-4 if President Riddell had abstained.

On Saturday morning, Hemovich, seconded by Walker, moved to amend Rule 9 further to prohibit the participation of legal interns in jury trials even in courts where there is a right of trial de novo. Hemovich argued that such a prohibition would not unduly burden prosecutors and public defenders because jury trials are specially set with ample advance notice. The motion carried, 5-2, with Fletcher and Raftis opposed and Jones abstaining.

In further action on Rule 9, Walker, seconded by Hemovich, moved that a legal intern's limited license shall be terminated in the event the intern fails the bar exam, effective the date the bar results are made public. The motion carried 6-2, with Fletcher and Raftis opposed.

Dealing with another aspect of Rule 9, Fletcher, seconded by Raftis, moved to withdraw from action taken by the Board in October and to follow the recommendation of the Legal Internship Committee that legal interns be allowed to participate in contested superior court proceedings if the supervising attorney is present; to handle ex parte matters in superior court without the presence of the supervisor; and to participate in appellate court proceedings in the supervisor's presence. This motion failed 6-2. Subsequently, at the Board's meeting in Tumwater on November 18, the issue of ex parte appearances was raised again by a seconded motion providing that legal interns be authorized to participate in ex parte matters before a court commissioner or a superior court judge where no evidence is presented and no legal arguments offered. A substitute motion authorizing full participation by legal interns in ex parte proceedings was defeated 3-5. Thereupon, the original motion was voted upon and passed.

The Board unanimously approved provisions permitting a judge discretion to exclude a legal intern from participation in a particular case;

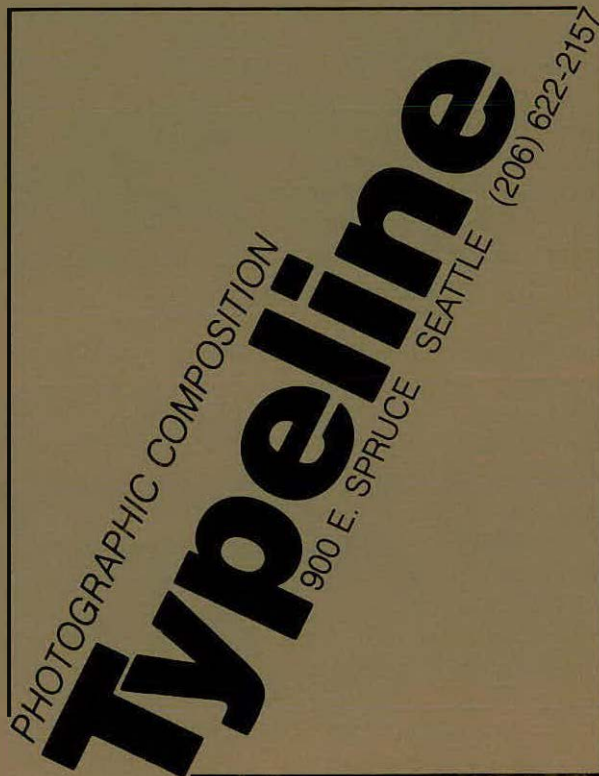
allowing disciplinary action against a supervising attorney for inadequate supervision or failure to comply with the rule; and providing that for purposes of the attorney-client privilege, an intern shall be considered a subordinate of the supervising attorney.

The following is a summary of other matters considered by the Board at Port Ludlow:

Malpractice Insurance

Board member Robert R. Redman, chairman of the Attorneys Professional Insurance Committee, reported to the Board about the committee's work on the subject of malpractice insurance. The following recommendations of the committee were approved unanimously by the Board:

- (1) Accept proposal by American Bankers Insurance Company of Florida for Washington bar-sponsored insurance plan;
- (2) Terminate Marsh-McLennan's status as exclusive broker of record;
- (3) Advise American Bankers that Washington bar desires "optional prior acts" coverage;



- (4) Authorize Redman to contact American Bankers and Shand-Morahan to delineate fully the type of claims information that will be available to the Washington bar;
- (5) Authorize Redman to proceed to implement inauguration of the program offered by American Bankers.

Insurance Trust Fund

Board member Edmund B. Raftis, chairman of the Personal Insurance Programs Committee, moved that an Insurance Trust Fund be established and that a Trust Agreement drafted by the Committee be adopted. The Board unanimously approved. The purpose of the fund is to procure various types of group insurance (e.g. health, disability, life) for members of the bar, their employees and beneficiaries.

B & O Tax Audits

The Board gave consideration to a memorandum prepared by C. James Judson of the Excise Tax Committee reporting that the state Department of Revenue has subjected at least five law firms to excise tax audits in recent months. The issue presented by the audits appears to be the proper interpretation to be given WAC 458-20-111 (Rule 111) "Advances and Reimbursements". Rule 111 provides that there may be excluded from the Business and Occupation tax base of the taxpayer (such as a law firm) "the measure of tax amounts representing money or credit received by a taxpayer as reimbursement of an advance in accordance with the regular and usual custom of his business or profession." The rule also provides that the words "advance" and "reimbursement" apply only to situations where the taxpayer is acting merely as an agent of his customer or client who alone is personally liable, and not to situations where the taxpayer also has personal liability, either primary or secondary.

The question raised is whether litigation costs advanced by an attorney and later reimbursed by the client such as deposition reporting and typing fees; witness fees; brief printing expenses; telephone and copying fees; messenger fees; necessary travel costs; and miscellaneous additional

fees are properly excludable from the attorney's income for purposes of the B & O tax, or whether under Rule 111 they are taxable on the theory that the attorney has primary or secondary liability for the charges.

The Board deferred any possible action regarding this matter.

Revision of Judicial Article

Russell V. Hokanson and Rush E. Stouffer, members of the Special Task Force studying the revision of the proposed Judicial Article amending the state constitution appeared to discuss the status of the proposed draft revision. The Board approved a motion indicating its support of the proposed draft revision in its present form and that it will continue to support the draft so long as it retains its present form.

Small Claims Courts

The Board gave consideration to a report on the subject of needed legislative changes in laws pertaining to small claims courts submitted by the Committee on Court Rules and Procedures submitted through its chairman, Walter G. Meyer, Jr., of Yakima.

The Board recommended (1) retention of the present \$300 jurisdictional limit; (2) no change in the minimum amount in controversy necessary to gain access to the courts (6-2); (3) that the filing fee be increased to make it the same as the filing fee for a civil case in district courts; (4) approval of the committee recommendation on enforcement of judgments to the effect that if a judgment remains unsatisfied for 20 days, the clerk shall automatically issue a transcript of the judgment which may be filed directly in superior court without first obtaining entry of the judgment in district court; (5) that no change be made in the types of cases, or persons who may sue in, or the powers (i.e. no equity powers) of small claims courts; (6) that changes be made in the law to permit judges to appoint court commissioners or pro tem judges, who must be lawyers, to preside in small claims court hearings; (7) that uniform statutory forms be adopted for litigation in small claims court, including detailed instructions as to their use and proper service; (8) that

the Public Relations Committee prepare and the Bar Association publish a pamphlet to advise the public about small claims courts (7-1; an earlier motion that no such pamphlet be published failed 4-5); and (9) that RCW 12.40.060 be amended to provide that time of service be changed to not less than 20 nor more than 30 days.

Group and Prepaid Legal Services

Claude M. Pearson, chairman of the Group and Prepaid Legal Services Committee, appeared before the Board on Saturday morning to report that Washington Lawyers Service still lacks its first client and to present committee recommendations dealing with that and other organizational problems. Pearson noted that the idea of prepaid and group legal services has a "lack of charisma" in comparison to competing health and dental programs, and that the committee has encountered some evidence that potential consumers lack faith in the program and see it as a "lawyers ripoff plan".

The Board unanimously approved the following resolution recommended by the committee:

Resolved that the Board of Directors of Washington Lawyers Service should be representative of lawyers participating in the Washington Lawyers Service plan and by actual and potential users of the plan and that the By-Laws of Washington Lawyers Service should be amended to so provide.

The Board authorized President Riddell to contact the bar presidents in Idaho and Oregon to discuss the possible formation of a regional program. In addition, the Board authorized the committee to prepare recommendations for membership on the Washington Lawyers Service Board of Directors and to confer with the incoming Insurance Commissioner concerning the policy of his office toward the program.

Compulsory Continuing Legal Education

The Board approved amendments recommended by the Special Committee on Compul-

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sory Continuing Education in the rule on this subject to be forwarded to the Supreme Court. At its meeting in Tumwater on November 18, the Board approved an additional amendment expanding the proposed Board of Continuing Legal Education from five to seven members, to be comprised of six lawyers and one layman. The Board recommended that the following persons be appointed by the Supreme Court as first members of the CLE Board with the terms indicated:

- Three years: Dr. Charles E. Odegaard, Seattle
Edward J. Novack, Everett
- Two years: John E. Heath, Jr., Spokane
Judith M. Zuberbuhler, Seattle
William G. Push, Seattle
- One year: Paul R. White, Ephrata
Edward F. Shea, Pasco

It was also recommended that Dr. Odegaard be named chairman of the CLE Board. If approved by the Supreme Court, the CLE rule to be effective for the year 1977 would require all active members of the bar to complete 15 credit hours of accredited legal education annually. Education completed in 1976 may be applied to 1977, and excess education in any one year may be carried over and applied to the requirement for either or both of the next two succeeding calendar years. Newly admitted attorneys are exempted from compliance with the rule during the year of their admission and the following year. The rule establishes the CLE Board and empowers it to approve courses and enforce the rule's provisions, with appeals available to the Board of Governors and to the Supreme Court.

Trust Accounts and Spot Audits

The Board approved proposed amendments to the Discipline Rules for Attorneys (DRA 13.1 - 13.5) concerning spot audits and certification of trust accounts. If approved by the Supreme Court, the rules will authorize the Disciplinary Board and its chairman to examine, investigate and audit the books and records of any attorney or law firm selected at random or upon information that a particular attorney or law firm is in violation of

CPR 9-102, relating to trust accounts. The rules make it the duty of any attorney or law firm to cooperate with persons conducting an examination, investigation or audit, subject to proper exercise of the privilege against self-incrimination.

Rule 7: Indigent Representation

Board member Walker raised the point that under the present APR 7B providing for the admission to practice in this state of out-of-state lawyers for representation of indigents, an uncompensated part-time attorney could practice indefinitely in Washington without admission to the bar. He agreed to draft language for a proposed amendment to the rule which would require persons practicing under Rule 7B to be admitted to the Washington bar under certain circumstances and time limitations.

Criminal Justice Act Panel

The Board approved a program of the United States District Court for the Western District of Washington for the selection and operation of a panel of attorneys to represent indigent defendants pursuant to the Criminal Justice Act, as outlined in a letter to the Board dated November 1, 1976 from United States Magistrate John L. Weinberg. The Board authorized the Bar Association to verify information submitted in applications by those selected to serve on the proposed 20-member panel, and conduct a similar review in the future of replacement members of the panel.

Admissions — Law Clerk Program

The Board (5-2) established the following guidelines for awarding advanced standing to applicants for the law clerk program:

- (a) Persons who have attended law school but did not graduate: no more than 1 year advanced standing;
- (b) Graduates of unapproved law schools: no less than 1 nor more than 1½ years;
- (c) Graduates of unapproved law schools admitted to the bar in another state: no less than 1½ and no more than 2½ years;
- (d) Graduates of law schools located outside the United States but in nations where the

legal system is based on common law: no less than 1½ and no more than 2½ years.

Annual Meeting Sites

The Board approved motions designating annual meeting sites as follows in the years indicated:

- 1978: Spokane
- 1979: Vancouver, B.C.
- 1980: Hawaii
- 1981: Portland, Ore.

Miscellaneous Topics

In other actions, the Board appropriated \$200 to the Committee on Professional Responsibility to develop a comprehensive index of past opinions of the committee, and \$300 to that committee for the purchase of reference works in aid of the committee's work; referred APR 8 to the Legal Internship and Legal Education Liaison committees and the Young Lawyers Section for possible revision; and, in accordance with prior Board policy, denied a request by the Washington State Trial Lawyers for use of the state bar mailing list. □



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Around the State

BENTON-FRANKLIN REPORT

By STEPHEN T. OSBORNE

On November 5, 1976, six new lawyers were admitted to the Washington State Bar in a ceremony at the Franklin County Superior Court.

Presiding over the ceremonies were the **Hon. Fred R. Staples**, **Richard G. Patrick** and **Albert J. Yencopal**. Welcoming remarks were also made by **Stanley D. Taylor**, President of the Benton-Franklin County Bar Association.

Those new members of the bar were: **Craig J. Matheson**, **William A. Bartlett**, **Ron D. Kaiser**, **Ralph K. Nickerson**, **Mark Kuffel** and **Susan L. Rasmussen**.

Craig J. Matheson joins the staff of **Curtis Ludwig** at the Benton County Prosecuting Attorney's office; **Ralph Nickerson** joins **Richard Quigley's** staff at Washington Public Power Supply System and **Susan L. Rasmussen** has joined the legal staff at Battelle. **William A. Bartlett** announces the opening of his office at 1020-B George Washington Way, Richland. **Mark Kuffel** has joined the firm of Peterson, Taylor, Day & Shea as an associate and **Olson & Olson** announce the addition of a new legal intern, **Howard Baird**. **Butler, Heye, Cowan & Wolcott** also announce that **Craig Walker** has joined their firm as an associate. **Mike Larsen** announces that he has moved his office from Pasco to a new location in Kennewick at 115 West

Kennewick Avenue, Suite 1. This reporter is beginning to suspect that the only reason Mike keeps moving is so that he can get his name in the *Bar News* every month. **Philip M. Rodriguez** has opened a new office in Pasco at 824 West Lewis, Suite 212. **C.J. Rabideau**, Franklin County Prosecuting Attorney, announces that **Irene Asai** has joined his staff as a Deputy Prosecuting Attorney. (A prosecutrix?)

Phil Raekes, who celebrated his 39th birthday again this month, hosted a no-host golf match in honor of the occasion. The birthday boy had a good day beating all other contestants. The other seven participants specifically requested that their names not be mentioned, allowing as how publication of a loss to Raekes would leave an indelible scar on their golfing reputations.

CHELAN-DOUGLAS REPORT

By J. KIRK BROMILEY

The lawyer boom that has previously been felt in some of the more populous portions of the state is presently making itself known in the Chelan-Douglas County area. Within the past few months, eight new attorneys have begun the practice of law in our area.

John Bridges and **William Smith** have hung out their shingles as sole practitioners. Good luck, guys.

Patrick Aylward and **David Sonn** are new associates with the rapidly expanding firm of Hughes, Jeffers & Danielson.

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John Bybee, finding the practice of law in Odessa to be less than exciting, has moved to Wenatchee and is associated with the firm of Whitmore & Warren.

After being born and raised in the Wenatchee area, **Gary Riesen** is back to practice law in the offices of Dow & Foster.

Robert Scott, Jr. opened his own office in East Wenatchee a little over a year ago, and has recently announced that he has taken on, as a partner, **Gay Cordell**. Rumor indicates that there may be something other than a business partnership in the offing for these two lawyers.

Gordon Kelley has hired **Michael Platts**, a recent Gonzaga graduate, to replace **Jim Blinn** who is leaving for greener pastures. Jim, for the past year, has been the most vociferous of the local contract public defender's office. **E. R. "Dick" Whitmore**, Chelan County's prosecuting attorney, has offered to write Jim any letter of recommendation necessary to help him make the desired move.

In developments on "the other side of the river," **Dave Ellis** has left the E. Wenatchee firm of Sperline, Ellis & Sperline and has opened his own office in the same city.

Mike Tabler is feeling very comfortable in Waterville and recently received overwhelming voter support in the recent Douglas County Prosecuting Attorney's race. Mike was first appointed to the office in December of 1975 when **Fred Van Sickle** was selected by Governor Evans to fill the Grant-Douglas Co. Superior Court judgeship vacated by the retiring Judge **Felix**

Rea. Incidentally, Judge Van Sickle retained his seat after a hotly contested race with Grant County prosecutor **Paul Klasen**. In addition to running a superb campaign, Mike proved he knows what he is doing by hiring **Judy McCauley** as his deputy prosecutor.

Note should be made of the diligent services of last year's county bar officers, President **Larry Carlson**; V.P. **Garfield Jeffers**; and Secretary-Treasurer **Robert Scott**. It is hoped that this year's trio of President **Gar Jeffers**, V.P. **Bud Kight**, and Secretary-Treasurer **Kirk Bromiley** can somehow continue the sterling performances of last year's group.

Other newsworthy items include : **Jim Danielson's** wife, **Carol**, finally came through, on

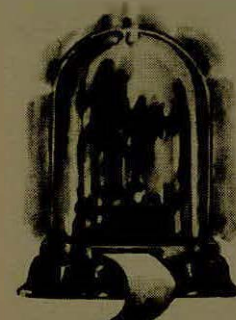
the third try, with a middle linebacker for Jim and produced a baby boy, **James Drew Danielson**, on October 18.

Wedding bells recently tolled for **Joe Woolett**, of Cone, Kiesz, Gaukroger & Woolett. I can't understand this move by Joe, now that he has got his new sports car. The law firm recently leased Datsun 280 Z's for each of the 4 lawyers. We certainly do hope this affluence continues during the coming administration.

KITSAP REPORT

By **WM. J. KAMPS**

The Kitsap County Bar Association held its annual election of officers November 5. The following officers were elected and



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assumed their respective positions: President, **Bruce Martin**; Vice President, **Larry Soriano**; Secretary-Treasurer, **Steve Thomas**; Trustees, **David Armstrong, Bill Kamps, Bruce Brunton, and Mac Redman**. As with past administrations, the new officers will immediately set a date for the installation dinner for the new officers and establish machinery for next year's election of new officers.

Mike Alvarado, Jr., has opened an office for the general practice of law in Poulsbo, Washington. While no exact figures are available, the Kitsap County Bar Association has approximately tripled in size since early 1970. Good luck with your new practice, Mike!

TACOMA-PIERCE REPORT

By **MICHAEL J. TURNER**

As the holidays roll in all members of the Pierce County Bar open their mail as early as possible in hopes of finding invitations to office parties. So far we've enjoyed the "Bosses Night" presented by the Tacoma Pierce County Legal Secretaries Association and the annual Judges' Banquet. These were only the beginning, however.

At the "Bosses Night," **Fritz Hayes** was named "Boss of the Year." The award is given annually to an outstanding member of the Bar Association and is based on letters of recommendation which come from the secretary. In this case it appears that Fritz

was given his award for his ability to dictate the best letter.

Terry Lumsden, President of Young Lawyer's Association, has rejuvenated the group with monthly luncheons and "mini-seminars". A crowd of 60 people gathered to hear **Larry Couture** tell how to defend a "DWI". Actually, it would have been more appropriate for him to discuss "Sentencing Following Convictions" of the same. This month's speaker will be **Bob Deutscher** on Small Judgments and **Fred Weedon** on Representing Indigents. With those topics it's easy to see what type of practice the young lawyers get around here. The young lawyers adopted a common theme which is "When I turn 35 will my practice get better?"

Local hero of the month is **John Messina** who was successful in obtaining a \$750,000.00 verdict. Since he is one of the board members of the State Trial Lawyers' Association, I am sure that a full disclosure of the case will be in the forthcoming issue.

H. Frank Crawford has joined **W. Roger Johnson, J. James Gallagher** and **Edward M. Lane**. Obviously Ed is the minority partner because he is the only one brave enough to use his first name.

Congratulations to **Joe Betzendorfer** who was re-elected as national president of the Humane Society. He has gone on so many trips now that his secretary had to buy a signature stamp. I received one of his letters the other day signed "Super Dog."

And finally, congratulations are in order for **Judge Hardyn B. Soule** who recently became a grandfather.



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SEATTLE-KING REPORT

By **JOHN J. SOLTYS**

At a recent Young Lawyer luncheon, approximately fifty young lawyers listened to **H. Graham Gaiser**, an old lawyer, describe those situations which generally caused the filing of legal malpractice suits. Sage suggestions on how to prevent legal malpractice were offered by Mr. Gaiser who has defended several young and old lawyers. Three lawyers at the luncheon were observed leaving in mid-speech and were heard to mutter, "Oh my gosh!" Graham indicated that almost 70% of the legal malpractice suits he is presently defending are totally without merit. Graham is always an advocate. Judge **George H. Revelle** was in attendance and was not noticed to flinch when Graham suggested that more legal malpractice suits should be summarily dismissed.

Llewelyn G. Pritchard threw a surprise birthday party for his wife, **Jonie**, and held the gala affair at the Stimson/Green House. The Northwest Chamber orchestra (who else) entertained.

Melvyn Jay Simburg announces the opening of a new office for the practice of law located at Suite 220, Grand Central on the Park, 216 First Avenue South, Seattle, Washington 98104, 622-6150.

The teams of the Sunday morning Professional's Football League have played their last scheduled games. As expected, **Bogle** finished first defeating **Arthur Anderson** in the playoffs. A surprisingly strong **Culp**,

Dwyer team finished third in spite of **Bill Dwyer's** quarterbacking. **Graham McCord** and **Milliman & Robertson** finished in the cellar but will have the first draft pick from this year's law school graduates.

John M. Darrah announces the relocation of his office to 320 Maynard Building, Seattle, WA 98104.

Dwight Holloway, **Richard B. McNees** and **Robert H. Yamagiwa** announce the relocation of their offices for the general practice of law to 700 Seattle Tower (former Northern Life Tower), Seattle, WA 98101. Their telephone remains 624-8744.

Gerry Collier and **Tom Bucknell** announce that **Gerald Netzkys** has joined them as an associate.

SOUTH KING REPORT

By **JAMES L. VARNELL**

Tax Mini-Seminar. A joint meeting of the South King County Bar Association and certified public accountants in the south King County area was held in November at Tukwila. The fare included salad, steak, and the 1976 Tax Reform Act. **Mel Kleweno**, J.D., L.L.M., and **Bob Shannon**, C.P.A., provided a synopsis of the changes wrought by the new tax law.

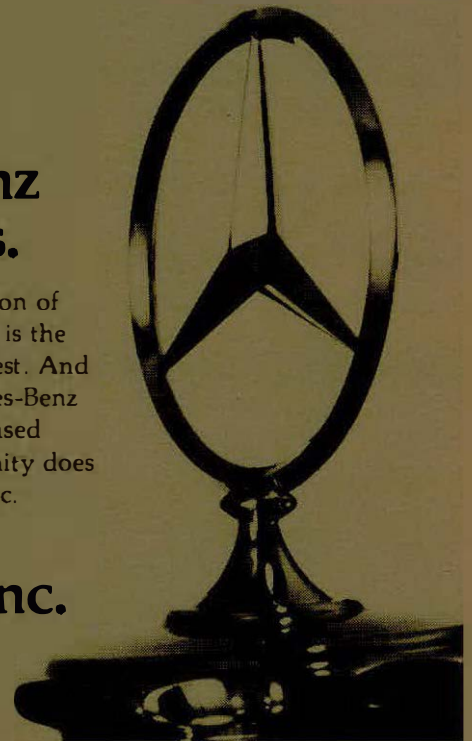
Preferential Poll Results. A poll conducted by the South King County Bar Association in the recently contested position for the state Supreme Court, position no. 4, disclosed that Justice **James M. Dolliver** received approximately 55% of the votes

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cast while **Fred Dore** received 35%. 10% indicated either no preference or insufficient knowledge on which to base a preference. Ninety-two of the 147 members returned their ballots prior to the deadline for tabulation.

New Admittees. **Fred A. Moore** and **Nayadean Pundsack** have opened a law office in Federal Way. Moore is a 1975 graduate of the University of Puget Sound School of Law, and Pundsack is a 1976 graduate of that school.

CLE: Discovery. Those attorneys who may be facing summary judgment motions occasioned by failing to answer request for admissions within the proper time period may be heartened by court rulings in the following cases: *Coleman v. Altman*, 7 Wn. App. 80 (1972),

and *Reid Sand and Gravel, Inc. v. Bellevue Properties*, 7 Wn. App. 701 (1972). The attorney(s) who brought that to the attention of this correspondent shall remain nameless for the time being.

Coming Attractions. Faithful readers of this report should look forward (?) to the annual awards of merit which will appear in the next issue. In keeping with the general tenor of this column, only laudatory items will be mentioned.

SKAGIT REPORT

By **DAVID A. WELTS**

The Skagit Report has been missing from these pages for a few months, but we can't let that happen again. Apparently the only way anyone knows any-

thing about what's going on up here is through this journalistic effort. Never was this demonstrated more clearly than when our pal **Fred Lubbe** was appointed to the Lawyers Referral Committee for 1977. Fred has been dead for a year and a half.

Once upon a time it was great news when a new face appeared in our organization. But you all know how things are nowadays. Recently, four new attorneys were sworn in. They being, **Richard Alan Weyrich, Ronald J. Crippen, Leslie A. Johnson** and **Vicki Lee Anne Parker**.

Mike Lewis, permanent chairman of our ad hoc social committee, expanded his talents into health care for the aged and put a bunch of us together as an alleged basketball team; so now guys like Lewis, yours truly, **Gary Jones, Marty Lind, John Meyer, Kent Haberly, Ken Evans**, and my Law Clerk, **Nick Nemo**, run up and down the floor one night a week in our underwear. To our surprise and to the absolute shock of this community we are 9 and 2 in league play. The team name? Legal Eagles, of course.

Another new face is **John Hicks** who is associated with **Dick Schacht**.

Of recent vintage, are new-born children to **Mike Lewis, Colonel Betz** and **David Yamashita** and spouses. I was so moved by this contribution to the perpetuation of our race that I went out and got married. **Jack Cuningham** and spouse, according to the statistics on the length of human gestation, will belong to the group by the time you read this. □

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Circumstances Which May Affect the Scope of Review

The New Appellate Rules: Part 5

By MALCOLM L. EDWARDS

This is the fifth 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 the last rule in Title 2 which relates to circumstances which may affect the scope of review. The discussion is preceded by the outline analysis to Rule 2.5.

Rule

- 2.5 Circumstances Which May Affect Scope of Review
- (a) Errors Raised for First Time on Review
 - (b) Acceptance of Benefits
 - (c) Law of the Case Doctrine Restricted

1. Introduction

Last month's article was about scope of review generally. The scope of review discussed there may be limited by the failure to raise a question in the trial court and the doctrines of acceptance of benefits and law of the case.

2. Errors Raised For The First Time On Review.

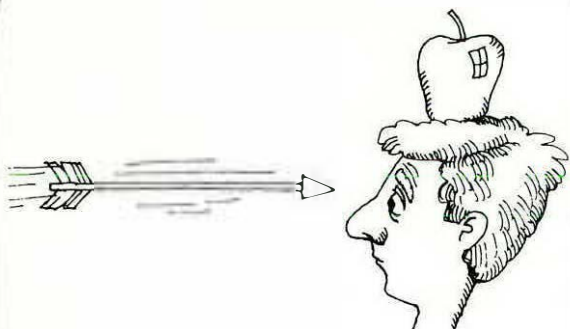
Rule 2.5 (a) starts out by stating the general proposition that the appellate court "may" refuse to review an error which was not raised in the trial court. The rule does not say that the appellate court "will" refuse to review such a claim of error. The appellate court always has discretion to review questions raised for the first time in the appellate court, but will rarely do so.

Rule 2.5 points out three specific claims of error which may *always* be raised for the first time in the appellate court. These are lack of trial court jurisdiction, failure to establish facts upon which relief can be granted, and "manifest error affecting a constitutional right."

The Supreme Court amended the Task Force version of the rule which would have permitted raising an error for the first time in the appellate court if it was "plain error affecting a substantial right when review of the error is necessary to prevent manifest injustice." I suggest that the Supreme Court's omission of this Task Force language is fundamentally a change of emphasis. The appellate court will — and should — find a means of reviewing a claim of error not raised in the trial court if that error affects a substantial right and review of it is necessary to prevent manifest injustice.

The appellate court can on its own initiative decide a case on the basis of an issue which was not argued by the parties in either the trial court or the appellate court. RAP 12.1 and, under prior law, *Siegler v. Kulhman*, 81 Wn.2d 448, 502 P.2d 1181 (1972). It may decide the case on a new issue without giving the parties an opportunity to brief and argue the issue. It strikes me as rather odd that the court might refuse to review an issue raised by a party for the first time in the appellate court, yet might decide the case on the same issue if the party kept quiet and let the court raise the issue on its own initiative. If a party raises the issue, it at least gets briefed and argued by both sides. There is no standard under the new rules, or under the cases decided under the old rules, for determining when the court will on its own initiative decide a case on a new issue. The substantial right/manifest injustice test should have been retained in Rule 2.5(a) and extended to court introduced issues under Rule 12.1.

The question of appellate court jurisdiction can sometimes be used by an appellant to obtain affirmative relief on review. *Esmieu v. Schragg*, 15 Wn. App. 260 (1976), Pet. for Rev. granted 87



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Wn. 2d 1007 (1976). This procedure of obtaining affirmative relief for an appellant by moving to dismiss the appeal is unusual. However, it's not new. See *Stewart v. Lohr*, 1 Wash. 341, 25 Pac. 457 (1890) and cases cited in *Esmieu v. Schragg*, *supra*, at 266.

3. *Acceptance of Benefits.*

Under prior law, a party that accepted the benefits of a decision lost the right to seek review of that decision. *Potter v. Potter*, 46 Wn.2d 527, 282 P.2d 1052 (1955); *Maxham v. Berne*, 88 Wash. 158, 152 Pac. 673 (1915).

RAP 2.5(b) codifies the acceptance of benefits doctrine in a modified form. A party may accept the benefits of a decision which is subject to modification by the court that made the decision. For example, a person might accept payment of maintenance or child support without losing the right to seek review of the trial court's decision as to the amount or duration of that maintenance or support. A party may also accept the benefits of a trial court decision without losing the right to obtain review if the party gives adequate security to make restitution in the event the decision is reversed or modified. The trial court determines the amount and type of security to be given. There is nothing in the rule that provides that the security must be determined or given prior to the time the benefit is accepted. RAP 2.5(b) (2) And in a compelling case to further justice the court might review a matter even though benefits had been accepted. RAP 1.2(a) and 18.8

In the event of a conflict between RAP 2.5(b) and a statute, the statute governs. For examples of statutes in the eminent domain area, see *RCW 37.16.130*, *91.04.360*, and *91.08.250*.

The acceptance of benefits doctrine should be distinguished from the question of mootness or waiver asserted where the person seeking review is the one paying the benefit rather than receiving it. For examples of that, see *Murphree v. Rawlings*, 3 Wn. App. 880, 479 P.2d 139, (1971); *MonWai v. Parks*, 43 Wn.2d 562, 262 P. 2d 196 (1953) and *Campbell v. Hall*, 28 Wash. 626, 69 Pac. 12 (1902). The rules on appeal do not cover the question of mootness or waiver occasioned by payment by an appellant. This is still governed by case law.

4. *Law Of The Case.*

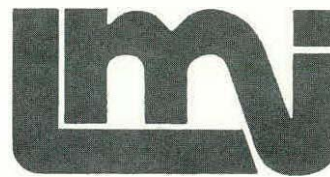
(a) Change of Appellate Court Decision

Rule 2.5(c) is applicable when the same case is before the appellate court once again following a remand. This rule provides that the appellate court may review an earlier decision of the appellate court in the same case and "where justice would best be served" decide the case on the basis of the court's opinion of the law at the time of the later review. This is consistent with prior law. *Greene v. Rothschild*, 68 Wn.2d 1, 402 P.2d 356 (1965), decision upon Rehearing at 68 Wn.2d 5, 414 P.2d 1013 (1966). I recommend the study of this case if you are interested in the general subjects of stare decisis and the authority of the appellate court to act.

(b) Change of Trial Court Decision

Rule 2.5 (c) also deals with the other branch of the law of the case doctrine. What happens if the case is before the appellate court a second time and a party asks the appellate court to review the propriety of a decision of the trial court when a similar decision of the trial court on the first trial was not disputed in the earlier review of the same case? For example, a party may win at the trial level. The loser appeals. The trial court has made a decision that the winner thought was wrong, but the winner is satisfied with the ultimate result. The appellate court reverses and directs a new trial. The law of the case doctrine states that the decisions and rulings of the trial court in the earlier case became the law of the case for the second trial. The winner of the first case is stuck with the earlier decision unless the winner also seeks appellate review of that decision. Rule 2.5(c) as originally written by the Task Force directly abolished this aspect of the law of the case doctrine. The Supreme Court changed the original Task Force language from "will" review to "may" review. It is probable, however, that the change was one of form only and that the adopted rule also abolishes this element of the law of the case doctrine.

The abolition of the doctrine also has an impact on remand when a new trial is granted. The trial court may exercise independent judgment in deciding questions not decided by the appellate court without regard to how the questions may have been decided by the trial court when the case was first tried. □



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Response to Harper's article

Lawyers Are Not A Plague!

*"Lawyers and courts
help one to come out even."*

By STIMSON BULLITT

In the October issue of Harper's magazine, Wellesley College Prof. Jerold S. Auerbach, in an article entitled, "A Plague of Lawyers," directed a number of broad criticisms at the legal profession as it has developed in this country, comparing the American bar to, among other things, the medieval church, frogs, gnats, flies and locusts, and concluding: "Modern America could not easily survive the absence of lawyers. They not only sustain and profit from its rapacious individualism; simultaneously, they commit the society to legalistic values, which offer the only thin veneer of unity that Americans can tolerate. As Jack Cade's fellow rebel suggested: 'The first thing we do, let's kill all the lawyers.' The problem for Americans, is what to do next." In the article which follows, a distinguished member of the Washington bar offers his comment about Auerbach's views.

— Ed.

Much is wrong with our profession that could be corrected and therefore calls for criticism. It may be observed for example: (1) If lawyers were to adopt less archaic administrative and data processing methods, then lower fees would result, and if courts were to do the same, then less justice would be delayed and therefore denied; (2) Many lawyers make excessive use of technical jargon

and archaic terms; (3) Law schools mainly teach craftsmanship without doing enough to examine the question of justice. Mr. Auerbach, however, attacks practices that do good and blames us for evils that we did not cause.

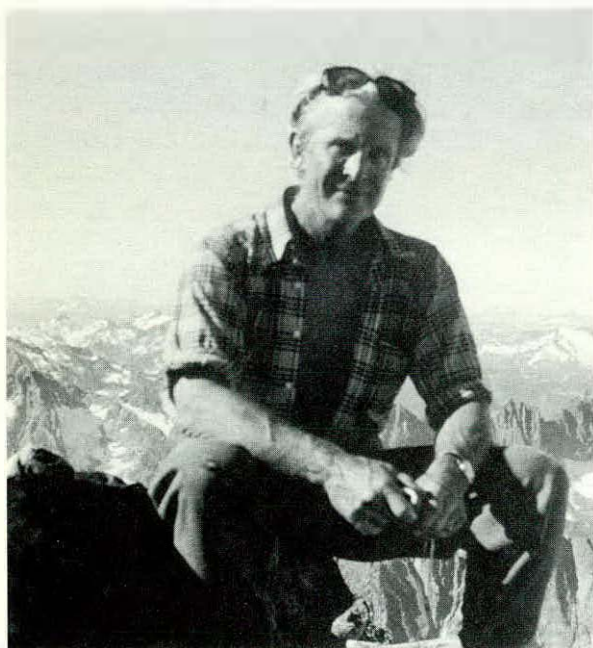
The author criticizes lawyers for neutrality toward the social value of a client's interest, as though this shows lawyers to be amoral. Many lawyers, however, in their role as citizens are active partisans. And in our practice we are not, as Auerbach suggests, mere "hired guns" because our function (which most of us perform) is not to gain ends by force but to uphold the society's structure of law and to make it work. Judges, we hope, are neutral. Don't we want a lawyer to take our case without passing judgment on us and perhaps rejecting us? The author distorts the meaning of Dr. Johnson's remark to Boswell ("A cause is neither good nor bad 'til the Judge determines it"), which is not that lawyers are unconcerned with right and wrong, but that every disputant's lawyer should represent him without pre-judgment and let the court decide which side is right. That is, lawyers should defer judgment to judges and juries.

Although much of the legal process involves representing group interests (governmental units, corporations, schools, environmental associations), the author asserts that lawyers encourage

social fragmentation by excessive support of individual rights. Policies of the legislative and executive branches, however, are more concerned with group needs and wishes than with individual rights, and so it is left to courts and members of the legal profession to defend such rights. For example, the rights of those arrested by police have been extended in recent years by lawyers, on and off the bench, and by almost no one else. National societies elsewhere, where lawyers and laws do not apply restraints, let police and prison guards exercise unbridled subjectivity. Supporting personal rights makes society *more* cohesive.

Those who suffer from the illusion that all justice rests in lawyers' and judges' hands are led to blame the legal profession for most social injustice and to overload the legal system with demands it cannot well meet. Although the author acknowledges that too often people "turn to law," he shares this illusion.

Lawyers and courts do have the sole function of providing justice, but only a certain kind. Most aspects of social justice affected by public policy, and almost all distributive justice, are determined



Mr. Bullitt is a partner in the firm of Riddell, Williams, Ivie, Bullitt & Walkinshaw in Seattle where he has engaged in a general civil practice since 1949. At the present he is on the Board of Bar Examiners and is a member of the Constitutional Law drafting committee for the multi-state bar exam.

either by legislation, or by business practices permitted by legislation. The author's article is subtitled: "As the laws multiply, so also does the civilization decay." But the laws are multiplied not by practicing lawyers but by elected legislators. Courts do not make large changes in society's structure and the patterns of wealth and income. Even the rare history-making case (e.g., *Brown v. Board of Education* and *Baker v. Carr*) does not affect public policy on the scale of some legislation (e.g., voting rights and campaign reform acts — not to speak of annual decision as to where and how to tax and spend.) Lawyers and courts help one to come out even. If a person has been injured by another's fault or if someone has broken a bargain with him, the judicial process can make him whole. But the legal profession cannot make him significantly richer or poorer than he was just before the incident that gave rise to his right or liability. Lawyers' and courts' best efforts can do little to rectify that form of injustice reflected in Anatole France's wry comment that equality under the law gives rich and poor an equal right to sleep under bridges.

Although even in legal systems more imperfect than ours, the law restrains the strong from taking advantage of the weak, and most of the strong are not poor, the author accuses American lawyers of increasing the inequality of wealth and income in this country. Assuming that such inequality is as unjust as he implies, a matter of opinion to which many subscribe, his evidence does not support his charge. He cites the big legal fees paid by big corporations as being used in one-sided dollar-throwing contests with the poor. The First National City Corporation, to use one of his examples, did not spend much of its fees for foreclosing mortgages on widow's homes, but rather on controversies with well-heeled opponents: government and other big corporations. He points out that Japan survives with few lawyers, yet there the range of personal wealth is wide.

The author asserts: "Additionally, the particularism of legal inquiry, directed from the general to the specific and from society to client, obliterates critical scrutiny of social institutions. That, of course, is precisely what any wealthy client, abetted by his lawyer's mastery of the tax code, fervently desires." The first sentence is

true; however, the process it describes is necessary to decide a case with justice, which depends on certainty, but which is impossible if a judge decides according to what he or she thinks ought to be public policy. All litigants, poor as well as rich, may "fervently desire" attention to particulars. Is a refund claim an appropriate occasion for the taxpayer either to hope for or to fear a reform of the Internal Revenue Code?

To resolve a controversy over a concrete interest, or to protect against controversies (as in drawing an instrument of contract or conveyance), one must draw lines of distinction so narrow they are sharp. The place for broad policy is where laws are enacted, not where they are applied.

The author asserts: "The cost of professional legal services puts justice beyond the reach of the poor." But little of the injustice suffered by the poor can be attributed to being unable to afford lawyers. A poor person whose winning lottery ticket gave him for life the full-time services of the best lawyer in town soon might wish he had won another prize.

And even as to that kind of justice that courts and the legal profession can provide, although the poor lack the help of such skilled practitioners or such quantity of working time, but they do have access to the same courts and now in most places can have free legal services for both criminal and civil matters. Some, though not many, court decisions are made unfair by one side paying its lawyer more than the other side can. Patty Hearst's legal representation is reported to have been expensive, but at modest cost she might have reached the same result. As in the case of health care, the tightest pinch is felt by people close to the median income line. And it mainly applies to certain kinds of legal services (mainly business matters and those disputes that do not involve pursuing claims for large sums or defending claims covered by insurance).

The author claims that lawyers use the tools of a selfish, closed guild to give themselves more income and security than their contribution to society has earned. We do have a monopoly in the sense that no one else is allowed to do some of the things we do, but it is an anomalous monopoly in

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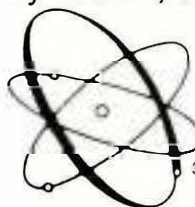
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which supply exceeds demand so that some members lack buyers for their services.

The scope of lawyers' work has been contracting as functions are taken over by other occupations and institutions: title searches by title insurance companies; trust administration by trust departments of commercial banks; much of tax work by CPAs; a substantial part of labor-management negotiations by professional negotiators; some drafting of wills and conduct of divorce litigation by readers of do-it-yourself books. Small claims courts handle disputes over small sums without attorneys' services for either side. A large proportion of personal injury and other damage claims work has come to be handled by non-lawyer employees of insurance companies and state industrial insurance departments. In disputes now handled before public administrative agencies, much of the fact finding is done by non-lawyer hearing examiners. No-fault divorce and no-fault automobile liability insurance reduce the functions further.

The author asserts, "absence of a law degree is almost as effective a disclaimer for high office as being nonwhite or female. Much of the early distrust of Jimmy Carter may be attributable to his lack of legal credentials." Nevertheless, in recent years the proportion of lawyers in elective office throughout the country has been dropping (while the proportion of teachers elected to office, for example, has been rising).

The author also states: "Precisely because law so pervades American culture, legal careers have served as the surest passports to success, short of inherited wealth." As to money elites, however, the median income level of physicians well exceeds that of lawyers.

The author compares bench and bar to the pre-Reformation medieval church, stating in part: "The black robes of bishop and judge clothe mere mortals with the power of the Lord or the law. The courtroom is our cathedral, where contemporary passion plays are enacted. In both buildings silence, awe and deference — if not subservience — placate the authorities." Yet the sober atmosphere of courts and the deference given to judges when they are on the bench are needed to enable orderly production and consideration of information with minimal passion and prejudice in decid-

ing disputes. This is saluting the uniform, not revering an elite.

The author supplements his onslaught by suggesting measures to make the profession afflict society less. One is to let proof of "good moral character" suffice for a license to practice. Should the same be done for doctors and dentists? If fairly high minimum standards of competence (like minimum standards of food quality) are not maintained, those who would suffer would be the poor. The rich, from connections with experts, would have the knowledge of where to get competence — largely through the big firms which do their own screening and testing.

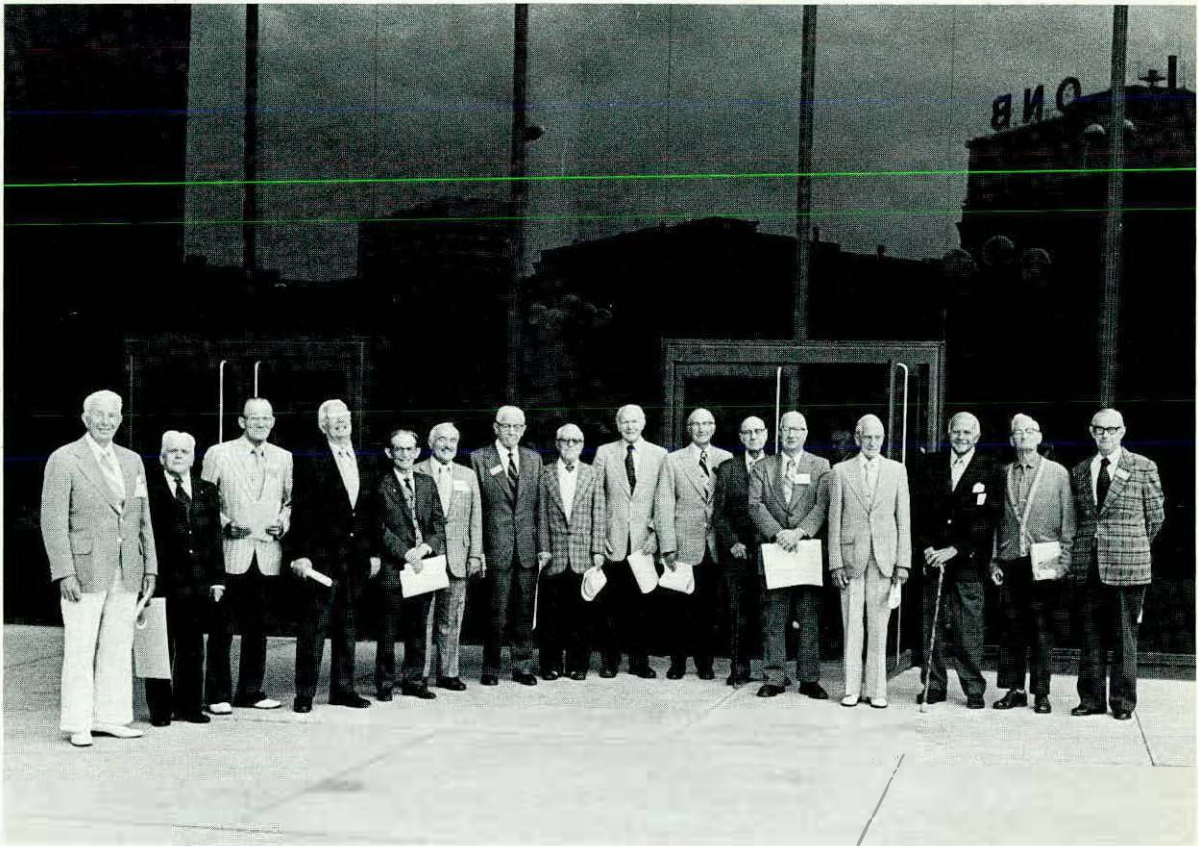
The author also suggests that if we had *fewer* lawyers we might have more justice; however, a society with complex organization and technology, if it lacks enough software technicians (lawyers, accountants, administrators, etc.) for handling the relationships of people and the material things they deal with, suffers from inefficiency and injustice. If lawyers were few, only the rich would have access to legal services. Maybe some of the more able minds in our profession would be more useful to society if they were administering business and government than they are in splitting hairs exceedingly fine, but others, albeit lesser craftsmen, taking their places would be needed for constructive work.

A third suggestion for reform is: "We might even authorize resolution of disputes in people's courts, mediated by neighborhood arbitrators — if we could withstand the fury of a bench and bar stripped of its privileged monopoly." Nothing prevents "the people" from establishing such agencies and using them now as they see fit. But in many cases, although these methods consume less time and money than the judicial system, they exact a price of another kind: less justice.

By definition, arbitrators (who, the author should learn, do not mediate) more or less make up the rules as they go along, and this makes their decisions arbitrary. A skilled mediator often can help to bring about a compromise, but compromise often is not just. If you lend your car and fail to get it back, or if the prosecutor charges you with a crime that you did not commit, a mediator's suggestion of compromise may make you want a lawyer. □

McLauchlan-at-Large

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One hundred forty one lawyers have each been awarded a Special Award of Honor by the State Bar in recognition of fifty years or more of service to the profession. Those gentlemen shown above were among those who received their award certificates at the annual meeting in Spokane. The State Bar is proud of the contribution to the profession made by each of these lawyers.

Those who were awarded the Special Award of Honor include:

Robert B. Abel, C.A.K. Anderson, Stuart D. Barker, Glenn L. Bean, Arnold R. Beezer, H.M. Berkey, John H. Binns, Wendell W. Black, L.R. Bonneville, John C. Bowen, V.D. Bradeson, Philip S. Brooke, H.F. Broomell, Stephen Darden Brown, Arthur E. Campbell, D. Elwood Caples, John F. Chesterley, H. Gordon Chute, G.E. Clark, Newman H. Clark, Earl V. Clifford, John M. Coffee, William H. Cook, Maurice H. Cooperman, C. Edwin Courtney, Harley W. Covalt, Henry W. Cramer, W.J. Daly, Charles R. Denney, William F. Devin, C. Norman Dickison, Clarence C. Dill, Edward G. Dobrin, Earl G. Dorfner, Fred C. Dorsey, Howard S. Duell, Lloyd Dysart,

Ford Q. Elvidge, Russell H. Fluent, Lady Willie Forbus, Edward S. Franklin, S.A. Gagliardi, A.D. Gillies, James M. Hay, Esther Healy, Cyril D. Hill, Matthew W. Hill, Charles V. Hoard, Mary G. Hoard, E.W. Hoffman, Tyre H. Hollander, Joseph D. Holmes, Herman Howe, Elwood Hutcheson, W. Harold Hutchinson, Bertil E. Johnson, Charles W. Johnson, Ofel H. Johnson, C.W. Jordan, Donald D. Keim, John Kelleher, Raymond F. Kelly, B.H. Kizer, Eugene H. Knapp, Nelda Jaeger Kraemer, A.A. LaFromboise, John J. Langenbach, Leslie A. Lechner, Sam L. Levinson, Fred A. Lind, Alfred McBee, C.A. McCabe, Evan S. McCord, Francis J. McKevitt, Maurice R. McMicken, Robert S. Macfarlane, Thomas Marshall, Joseph Matsen, Edwin C. Matthias, C.J. Mentzer, Florence Mayne Merrick, Fred S. Merritt, Grace D. Mifflin, H.A. Moldstad, W.W. Montgomery, Veida S. Morrow, E.K. Murray, Louis J. Muscek, Arthur E. Nelson, A.W. Newman, V.O. Nicholason, A.J. O'Connor, Richard B. Ott, Niles Arthur Pearson, M.M. Pixley, Robert B. Porterfield, Ralph B. Potts, Frank M. Preston, John T. Raftis, Mabel D. Raymond, J.W. Reynolds, George W. Roberts, Edward L. Rosling, Rex S. Roubush, T.M. Royce, Bartlett Rummel, John E. Ryan, Jr., Lloyd R. Savage, Tessie Fransen Schmitt, Herman Schollmeyer, Alfred J. Schweppe, Byron D. Scott, Stanley Seddon, Elizabeth Shackleford, Roger L. Shidler, Duane T. Shinn, Arthur E. Simon, Charles L. Smith, Del Cary Smith, James G. Smith, Joseph B. Smith, Claude C. Snider, Charles A. Spirk, James G. Staley, Edward Starin, Evangeline Star, Leo W. Stewart, Louis H. Strack, Millard P. Thomas, Morrell P. Totten, Theodore S. Turner, P.O.D. Vedova, L.B. Vincent, J. Orrin Vining, Hiram E. Washburn, Philip J. Weiss, R.V. Welts, Frederick J. Wettrick, Alex Wiley, Ev. Victoria Wiley, David J. Williams.



SUPREME COURT PRACTICE

By JOHN J. CHAMPAGNE

Summary of Cases Set for January, 1977 Session

No. 44287 — *Cherberg v. Joshua Green Corporation*

Is a landlord under a duty to make repairs to a wall of a building in which leased premises are located in absence of an expressed covenant?

No. 44271 — *Esmieu v. Schrag*

May constitutional error be raised for the first time at the appellate level in civil cases?

No. 44177 — *State v. Hehman*

Is the full search of the person a permissible incident to a custodial arrest for a minor non moving traffic violation?

No. 44081 — *Barnes, et al., v. Seattle School District No. 1*

Are economic and financial circumstances "sufficient cause" to justify discharge salary reduction or other unilateral changes in teacher assignments if such changes are made by the school district in good faith?

No. 44302 — *State v. Thompson*

Can a knife with a blade of less than 3 inches be considered a "deadly weapon" for the purposes of RCW 9.95.040?

No. 44389 — *State v. Clark*

In determining the Indigency of a criminal indigent defendant, may the court take into consideration a spouse's separate property?

No. 44392 — *Ellis v. Dept. of Labor and Industries*

No. 44394 — *Johnson v. Dept. of Labor and Industries*

Does RCW 51.52.130 allow the trial court to fix extraordinary expert witness fees?

No. 44424 — *State v. Tourtellotte*

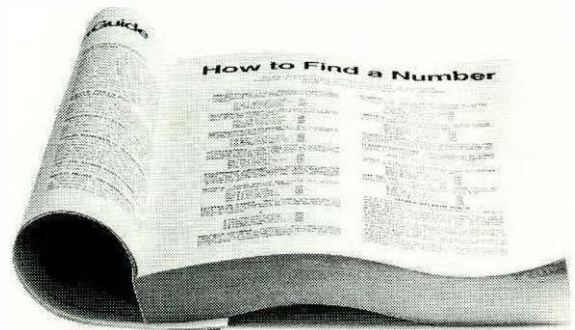
May a Superior Court, once it has accepted a bargained for guilty plea, without the defendant's consent, withdraw that plea and direct that the defendant be prosecuted not only on the charge to which he has pleaded but also the charge that was the subject matter of the bargain?

No. 44056 — *Burlington Northern Inc. V. Washington State Dept. of Revenue v. Harley Hoppe*

Is the Dept. of Revenue's use of the "indicated ratio" in equalizing the values of operating property of interstate and inter-county public utilities and private car companies for assessment year 1972 unconstitutional?

No. 44499 — *Architectural Woods Inc. v. State*

Does a common law assignment of accounts



DIRECTORY TIP:

Some numbers are tough to find in the telephone book. All you have to know is where to look. Saint James Hospital probably is St. James. The Brown Store would be listed under "B," not "T." For federal agencies, look under United States Government. There are lots of other tips in front of your telephone directory. Please check before you call Directory Assistance.



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receivable take precedence over a subsequently filed financing statement under the commercial code?

No. 44537 — *In the matter of the Personal Restraint Petition of Dennis Vensel*

Must a district court judge, in accepting a plea of guilty to a misdemeanor meet the standard for superior court, by determining of record that the defendant understands the possible consequences of his plea?

No. 44542 — *Langan v. Valicopter, Inc.*

Does the aerial application of insecticides constitute abnormally dangerous activity so as to warrant the application of absolute liability.

No. 44544 — *Stanard v. Bolin*

Is an action for breach of promise to marry in violation of the public policy of the state?

Have you tried the Lawyer-to-Lawyer Consultation Panel?

A few minutes telephone consultation with a member of the Lawyer-to-Lawyer Consultation Panel may save you hours of digging in the law library. 600 consultants, each of whom concentrates his practice in one or a few related fields and meets the standards for Panel membership, are ready to assist you. This 277 page directory, indexed by fields of law (151 covered) and containing biographical information such as authorship of legal articles, enables you to select the Consultant who best meets your specific needs. To introduce you to the Panel, no charge for current Directory.

Write or phone, Lawyer-to-Lawyer Consultation Panel, 5325 Naiman Parkway, Suite B, Dept. JA-8, Solon, Ohio 44139, telephone 216/248-0135.

No. 44543 — *Buchanan v. Washington State Board for Volunteer Firemen*

Is a volunteer fireman injured in the course of fire fighting outside of his fire district, as an individual and as a member of his own fire dept. that has responded to a call entitled to benefits under the volunteer Firemen Relief Act?

No. 44087 — *Roberts v. Atlantic Richfield Co.*

Should the doctrine of terminable-at-will in employment relationships be abolished?

No. 44185 — *Boeing v. City of Auburn*

What is the duty of a city with respect to construction and maintenance of bridges within the city limits, but crossing over roads designated as state highways is a "feasibility" instruction regarding the revision of and underpass by increasing clearance admissible?

No. 44529 — *Jepson v. Dept. of Labor and Industries*

Were the provisions of RCW 51.32.030, which require notice to the director of the Dept. of L & I that a corporate officer is being carried on the payroll in order to be covered for injuries under the workmans compensation act, impliedly repealed by ch. 289 Sect. 2 Laws 1971 excess?

No. 44530 — *Miller v. Green*

Do the physician-patient and psychologist-patient privileges apply to mental commitment hearings?

No. 44528 — *Atlantic Richfield Co. v. Beeson*

Who has primary responsibility as between merchant vessels and fishing vessels of facilitating navigation within fairways recommended by the U.S. Coast Guard?

(To be concluded in January.)



BITS AND PIECES

By **JOHN J. MICHALIK**

*Director of Continuing
Legal Education*

With the beginning of a new year comes some random bits and pieces of information on CLE and CLE-related matters.

January of 1977 will feature an unusually heavy schedule of State Bar Association seminars on a wide variety of topics. Although announcing brochures for the January seminars have crossed your desks by now, a little further information on those programs may be of interest:

Federal Tax Aspects of Real Estate Transactions — This program will be presented, in three parts, on consecutive Tuesday evenings — January 11, 18 and 25 — in Seattle. The entire program will be repeated as a full-day seminar in Spokane on Friday, January 28. The three part Seattle program is, frankly, an experiment designed to gauge the interest in a seminar format which presents the opportunity for outside study and preparation between sessions. The chairman of this seminar is Edward A. Rauscher of Seattle.

Lawyers' Responses to Auditors' Requests for Information — Auditors for private and public business often seek, in connection with the expression of their opinion relative to the financial status of the enterprise, disclosure by attorneys as to pending or threatened claims or other contingent matters which may affect the financial condition of the enterprise. This timely seminar concerning the proper scope and form of an attorneys' response to such a request will be presented in Seattle on Friday, January 14th under the co-sponsorship of the CLE Committee and the Corporation, Business and Banking Law Section of the State Bar Association.

Family Law — An important seminar focusing on the law of parent and child will be presented in Seattle on January 7th, in Spokane on January 14th and in Richland on January 21st. The seminar is co-sponsored by the CLE Committee and the

Family Law Section, with Miles F. McAtee, Seattle, and Edward J. Leary, Spokane, as co-chairmen.

In connection with future seminars, it should be noted that the major item of business to be considered by the CLE Committee at its March, 1977, meeting, will be the schedule of seminars for the period September 1977 - June 1978. Topic selection for future seminars is based on a number of factors, not the least of which is the input received from members of the bar. If you've got an idea for future programming, let us know by March 1st. Write to either the CLE Director at the State Bar Office, or the chairman of the CLE Committee, Michael R. Green, 4200 Seattle-First National Bank Building, Seattle, WA 98154.

A final item of interest concerns a new publication by the ALI-ABA Committee on Continuing Professional Education entitled the *ALI-ABA Course Materials Journal*. This publication appears bimonthly and features selected outlines, forms and checklists prepared and distributed in conjunction with ALI-ABA seminars held throughout the country. For example, the most recent issue contains materials on "The Tax Aspects of Selling a Going Business," "Documentation for Real Estate Purchases and Construction Contracts," "Nonperformance caused by Energy Unavailability," "Fiduciary Responsibilities Under ERISA," and "Criminal Securities Prosecutions." Subscriptions are \$30. Write ALI-ABA Course Materials Journal, ALI-ABA Committee on Continuing Professional Education, 4025 Chestnut Street, Philadelphia, PA 19104. As noted in an earlier edition of this column, the same organization also publishes the weekly *CLE Review*, describing up and coming ALI-ABA seminars, which any attorney can subscribe to free of charge. □



Section Reports

CORPORATION, BUSINESS & BANKING

By DENNIS G. SEINFELD

All business lawyers should plan to attend the special CLE Seminar on Lawyers' Letters to Auditors sponsored by our Section. It will be held at the Olympic Hotel, Seattle, on Friday, January 14, 1977 from 1:00 PM to 5:00 PM. The program will cover the following topics:

Role of auditor — Audit process — Purpose of lawyer's letter (Peter Zech)

Detailed description of ABA policy statement (Kent Carlson and Steve McKeon)

Role of house counsel in responding to auditors (Francis Kareken)

Critique of ABA policy statement and suggested alternatives (Dave Sandell)

Lawyer's office procedures and mechanics for gathering information, evaluating issues and preparing letters (Robert Kaplan)

There will be a question period at the end. This is an area frequently misunderstood by the general business practitioner; yet we are frequently asked to reply to auditors' letters. It behoves all of us to attend.

The Section's corporate law revision committee is currently drafting proposed amendments to the Washington Business Corporations Act. Hopefully these will be introduced during the next legislative session. The Committee would like as much input as possible, both for general ideas and for specific provisions. Please write the committee chairperson, Cameron DeVore, 4200 Seattle First National Bank Building, Seattle, 98154.

Salaried Counsel:

The Corporate Law Department subsection (of the Corporate Business and Banking Section of the Washington State Bar) is trying to identify its constituency.

If you are a lawyer in a salaried position which involves at least some activity as legal counsel, please write or telephone your name and address to either:

Fred Bruhn, Safeco Plaza,
Seattle 98185 545-5664,

or

Hoyt Wilbanks, Financial Center,
Seattle 98161 622-4488

ENVIRONMENTAL LAW

By LEE KRAFT

What is a "major action significantly affecting the quality of the environment"? The answer to that question means the difference of thousands of dollars to the person, corporation or governmental body proposing an action related to land use. If the threshold determination is that the proposal is a major action significantly affecting the environment, a full environmental impact statement costing anywhere from \$5,000.00 to several hundred thousand dollars must be prepared, and a delay from six months to several years must be anticipated before the proposed action may proceed.

RCW 43.21C.030(2)(c) provides that

"(2) all branches of government of this state, including state agencies, municipal and public corporations and counties shall:

(c) Include in every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the environment, a detailed statement by the responsible official on:

(i) the environmental impact of the proposed action;

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented;

(iii) alternatives to the proposed action;

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;"

Unfortunately, the legislature provided no guidance as to what the term "significantly" means. The Supreme Court in 1974 in *Narrows-view Preservation Association v. Tacoma*, 84 Wn.2d 416 attempted to give some definite meaning to this statutory phrase. They stated:

"the term 'significantly' has been defined to include the examination of at least two rele-



vant factors: 1) the extent to which the action will cause adverse environmental effects in excess of those created by existing uses in the area, and 2) the absolute quantitative adverse environmental effects of the action itself, including the cumulative harm that results from its contribution to existing adverse conditions or uses in the affected area." *Narrowview* at p. 423.

The legislature recognized the problem and established the Council on Environmental Policy empowering it to adopt definitions and guidelines to aid the interpretation and implementation of SEPA. The Council adopted an intricate set of procedures to assist the decision-maker in determining the threshold question as to whether a proposed action was a major action significantly affecting the environment. Unfortunately, no criteria were established by which the decision-maker, upon obtaining all the information required under these procedures, could then determine if the proposal would significantly affect the environment.

WA 197-10-360 sets forth the following guidance for making the threshold determination:

Whether a proposal may have a significant effect depends on:

- a) the "nature of the impact and location of the proposal".
- b) the "nature of the existing environment".
- c) the "absolute quantitative effects of the proposal".
- d) if there exists a reasonable belief that the "proposal could have a significant adverse impact".

And finally the guidelines state:

"The question at the threshold determination level is not whether the beneficial aspects of a proposal outweigh its adverse impacts, but rather if the proposal involves any significantly adverse impacts upon the quality of the environment. If it does, an EIS is required."

(To be concluded in January.)



Gonzaga Conference on Unfair Trade Practices

On the weekend of January 21, 22, 23rd, 1977, the Student Bar Association of the Gonzaga School of Law and the Gonzaga School of Law will sponsor a *Conference on Unfair Trade Practices*.

The opening speaker will be Washington State Attorney General Slade Gorton and the keynote speaker at a dinner to be given on Saturday, January 22nd will be consumer advocate Ralph Nader.

Topics to be discussed will be:

- Current and Proposed FTC Regulations
- Washington Consumer Protection Act
- Truth-in-Lending
- Door to Door Sales
- The Media's Responsibility for the Contents of its Advertisements
- Lawyer Advertising
- FTC Holder in Due Course Regulation
- Enforcement of FTC Regulations



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Briefly Noted

New Edition of RCW Now Available

Pursuant to the publication cycle adopted by the Statute Law Committee in 1974, the committee is pleased to announce that the 1976 edition of the Revised Code of Washington is now available for distribution.

The 1976 edition consists of 9 volumes in the style and format of the 1974 code, incorporating the material contained in the 1975 supplement and the 1976 session laws. It also contains the new Rules of Appellate Procedure and other recent amendments to the Rules of Court, a consolidated and updated index, and updates and refinements of the copious cross-

reference notes contained in the former edition.

The Revised Code of Washington is edited and published by the Statute Law Committee and is distributed by Book Publishing Company. The price is \$125.00 (plus sales tax) for the 1976 edition. The 1976 code will be sent automatically to all owners of the 1974 code. New or additional orders should be directed to Book Publishing Company, 2518 Western Avenue, Seattle, Washington 98121; telephone (206) 623-1440.

Workshops for Legal Secretaries

The Greater Seattle Legal Secretaries Association has scheduled the following work-

shops for 1977. An invitation is extended to all interested persons.

No. 2 - JAN 8 — EFFECTIVE COMMUNICATIONS with emphasis on improving human behavior

No. 3 - JAN 22 — BANKRUPTCY/CHAPTER XI and GARNISHMENTS (and other areas of execution)

No. 4 - FEB 19 — LITIGATION REVIEW

No. 5 - MAR 5 — REAL ESTATE and FORECLOSURES

No. 6 - APR 23 — REVIEW OF 1976 TAX LAW ADOPTION/possibly CHANGES IN PROBATE

Also, a session is being planned with regard to the problems on word processing in the law office. This workshop is tentatively scheduled for March, either on a Saturday or following a work day.

All workshops will be held at the Washington Natural Gas Company, 815 Mercer Street, Seattle, from 10:00 a.m. to 1:00 p.m. Interested persons may contact Margaret Foote (622-6767, ext. 498) or Janet Friberg (284-6538/home) for more information. The cost to nonmembers will be \$4.00.

In Memoriam

Patrick H. Shea, 63, of Seattle, died August 18. He was admitted to the Bar in 1946.

Hiram E. Washburn, 89, of Tacoma, died October 26. He was admitted to the Bar in 1913.



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For Sale: Rabkin & Johnson, Current Legal forms w. Tax Analysis, complete and current with paid ahead supplements for six months. Call 733-8191, Bellingham.

For Sale: Complete set of RCW, Appellate Reports (Vols. 1-13), Wash. 2d (Vols. 1-85). New January 1976; half price for equity, assume payments of \$47.50. Bellingham, 676-9922; after 4 pm 733-0275.

For Sale: IBM Models 213 and 233 Recorder and Transcriber; and Models 271 and 272 Recorder and Transcriber. Contact Gary W. East. 367-0600, 17723-15th Avenue N.E., Seattle, WA 98155.

For Sale: CJS. Current to 1971. Cost approx. \$350 to bring current to date. Excellent shape. \$400 as is. 246-8772.

For Sale: USCA, current. \$600.00. Contact Loren Howe, W. 707 5th Ave., Spokane, WA 99204. Tel: (509) 747-3182.

For Sale: Law practice in Southeast Washington, established 1936, includes excellent up-to-date library. With or without building which includes 2 furnished apartments and 1 other office. For further details write P.O. Box 146, Clarkston, WA 99403 or call 509-758-8281.

For Sale: Olivetti S-14, complete with 6 cartridges, new 1975. Covered by current maintenance contract. Low usage hours. \$5,995.00. Bellingham 733-9520.

For Sale: American Federal Tax Reports, Volumes 21-37 (1968-1976) \$50.00. Telephone (206) 753-5528 Olympia.

For Sale: 8 Vols. of Collier Bankruptcy Manual (with forms), all current & complete. Like new. Richard Mah, 1200 - 112th N.E., Bellevue, Washington, (206) 454-7277.

Will Sought: The will of John N. Amstutz of 224 South Sam Street, Monroe, Washington, is being sought. Date of death, April 24, 1975. Please contact Charles H. Amstutz at 616 West First Street, Wapato, Washington, 98951. Phone: (509) 877-2446.

Space Available: A full service Seattle law firm with special emphasis in public interest and family law is presently being organized with offices to be located at the Bank of California Center. Persons with some existing private practice will have the opportunity to own a proprietary interest in the new firm. Please send inquiry or resume to Robert C. Mussehl, 3737 Bank of California Center, Seattle, Washington 98164.

Space Available: Small firm in The Logan Building has single office space available. Telephone, receptionist, secretarial services available. Furnished or unfurnished. Phone 622-3740.

Space Available: Two attorney partnership officed in professional building in Lakewood has space available for one attorney. Telephone, reception, some secretarial and office equipment included. Call 582-7454 Tacoma.

Space Available: United Pacific Bldg., has space available for 3 attorneys. The price is \$365 per month without library and \$450 with library. The offices are practically furnished and sound equipment can be made available for a sound deposition room. The lease is good for 22 months. Contact: Edgar R. Rombauer, United Pacific Bldg., 2nd & Madison (622-6827).

Space Available: Attorney to share office space with five other attorneys engaged in general practice. Completely furnished office, receptionist, library-conference room, telephone, secretarial equipment and bookkeeping service available. Arrangements negotiable. Loucks & Lamb, Logan Building, 5th and Union. Call Dan Oros, 622-3280.

Space Available: For one attorney, Maynard Bldg., Pioneer Square, Seattle. Three suite office with conference room and library, currently shared by patent agent and attorney in the general practice of law. Secretarial service negotiable as part of rent; MT/ST, photo-copy, and mimeo. \$250.00 per month. Telephone: 624-6766.

Trying to Locate: Josephine Maroen, who married John Arnesen Maroen in 1929 at Petersburg, Alaska. Josephine Maroen would be about seventy-five (75) years of age, if alive; she did have red hair and her height was about 5'7" tall. Would anyone having information concerning Josephine Maroen please contact Myrtle R. Kvangnes, 1714 Hewitt Ave., Everett, WA 98201 252-2520.



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- 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, Series. 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
- Jan. 25 CLE Seminar: **Federal Tax Aspects — Real Estate Part III**, 6:30-9:00 p.m., Downtown Hilton Hotel, Seattle
- Jan. 28 CLE Seminar: **Federal Tax Aspects — Real Estate Parts I-III**, 9-4 p.m., \$35, Sheraton Hotel, Spokane
- Feb. 25 CLE Seminar: **Creditor-Debtor Rights & Remedies**, 1-6 p.m., \$25, Sheraton Hotel, Spokane
- Mar. 4 CLE Seminar: **Creditor-Debtor Rights & Remedies**, 1-6 p.m., \$25, Washington Plaza Hotel, Seattle
- Mar. 24 thru 27 Eighth National Conference, **Women and the Law**. Univ. of Wisconsin Law School, Madison, Wisconsin 53706 (608) 263-2100

Lawyer Placement

1. Five man Seattle law firm with primary practice in pension and employee benefit plan field seeks lawyer with some IRS experience, preferably in this field. Immediate opening. Confidential application. Reply care of Box 18. Washington State Bar Association, 505 Madison Street, Seattle, Washington 98104.
2. Major corporation with headquarters in Western Washington seeks assistant general counsel. Superior academic qualifications and two to three years legal experience required. Attorney to work in government regulation and commercial areas. Salary: \$18,000. Send resumes to Box 16, WSBA, 505 Madison Street, Seattle, Washington 98104.
3. Contract research organization seeks attorney interested in policy analysis and legal research on energy and environmental policy issues. Desirable qualifications include any of the following: training in economics, policy analysis, or related field; experience in contract research; experience with energy or environmental issues; demonstrated quantitative skills and interest. Send resume to Science & Government Study Center; Battelle Human Affairs Research Centers; P.O. Box 5395; Seattle, Washington 98105.

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Now, Seattle Trust customers can transfer funds from their savings accounts to their checking accounts by phone.

Can you?

During banking hours, all it takes is a call to their Person-to-Person Banker, the Seattle Trust officer who supervises all their banking activities. After hours, they just call our 24-hour emergency telephone number.

Either way, they get cash in their checking accounts *immediately*, without trekking down to their banking office. (Quite a trek if they happen to be vacationing in Mexico.)

If you can't get this kind of 24-hour service from your bank, it's time you transferred your checking and savings accounts to ours.

Naturally, you can start the process by phone. Just call our Thelma Gray at 223-2000.



Seattle Trust
SEATTLE TRUST & SAVINGS BANK EST. 1905

Person-to-Person Banking. Every service you'll ever want from a bank.

Member Federal Reserve Bank: FDIC.

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

Handling a portfolio can be a real headache. Unless your client has a Living Trust at Rainier National Bank.

A Living Trust is a planning tool that can save you a lot of time and frustration. And give your client the kind of professional money management he needs.

It means we handle the day-to-day management of your client's personal holdings. We make sound investment decisions. Keep accurate records. And provide security for important papers.

How involved you and your client become in the trust's management is up to you. You can be in on every decision or leave everything up to us. And if there's ever any kind of problem, a trust administrator will be on hand to talk things over.

The money isn't tied up forever, either. Your client can cancel the trust at any time. Or set up a program to provide the children with the same money management later on.

Call John James at (206) 587-7010. A Living Trust could be worth more than you think.

RAINIER BANK

Trust Division

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