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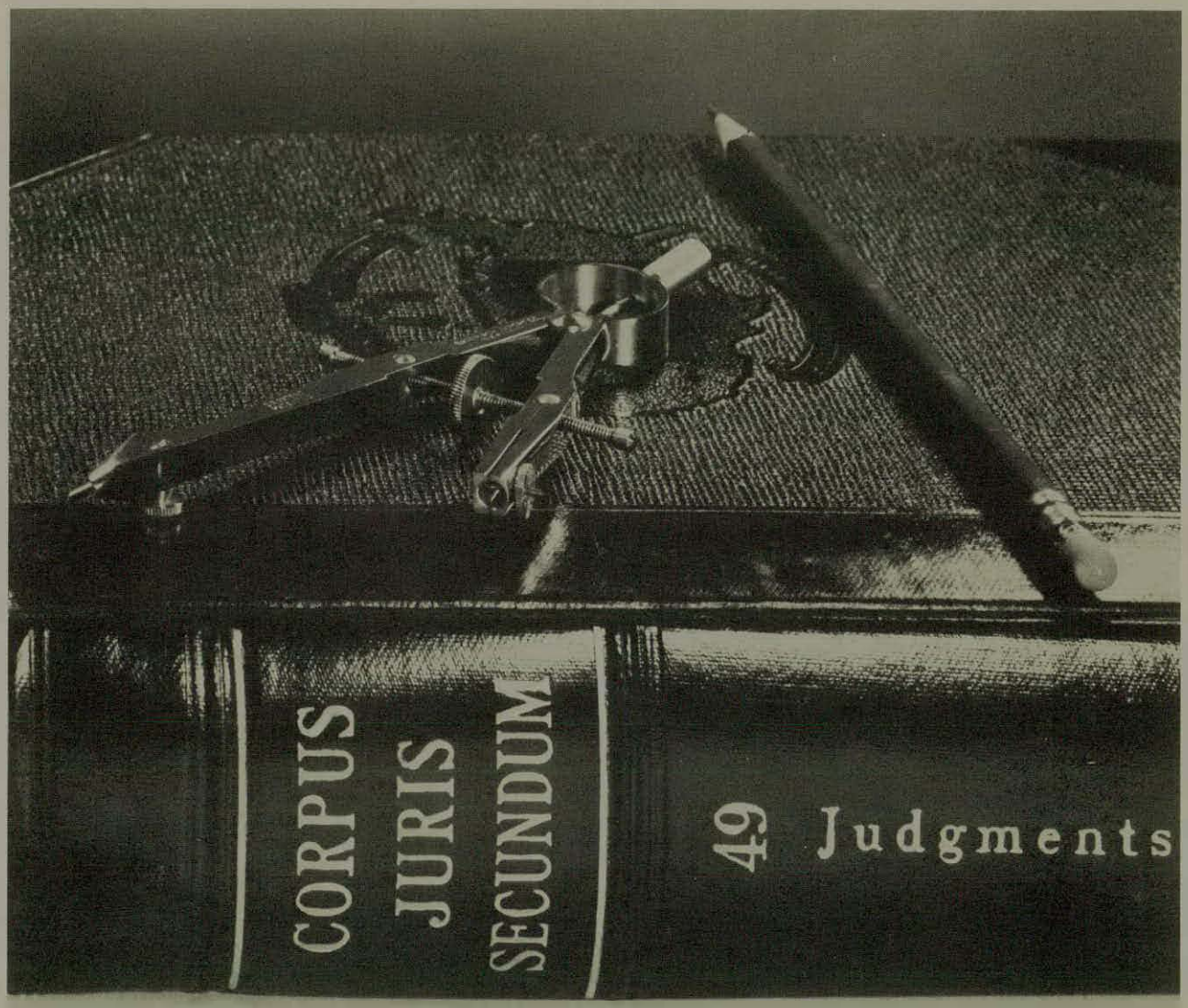
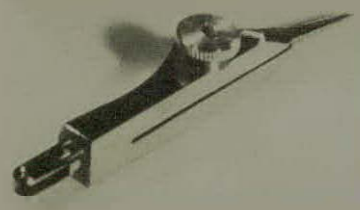
September, 1976

WASHINGTON STATE BAR NEWS

RICHARD H. RIDDELL, PRESIDENT 1976-77





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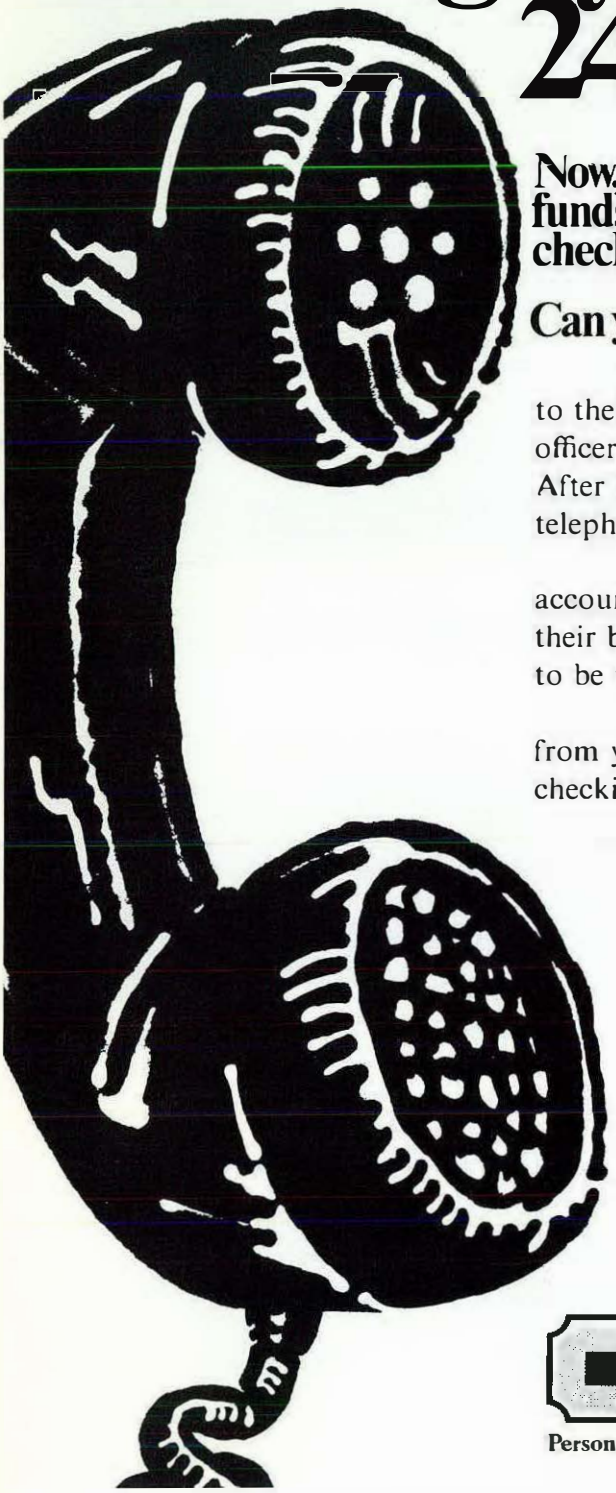

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Volume 30, Number 9
September, 1976

WASHINGTON STATE BAR NEWS

FEATURES

8 Long Range Planning by the State Bar

16 Should the Courts Be Allowed to Award Substantial Attorneys' Fees?
Comments on the Contingent Fee

31 Ultra Vires in Atlanta
Report on the 1976 ABA Meeting in Atlanta

33 The Divorce Client Coordinator
Resolution of a Dilemma for the Dissolution lawyer

39 The Great Lawyer Surplus and Legal Services to the Poor
One Solution to an Increasing Problem

IN THE NEWS

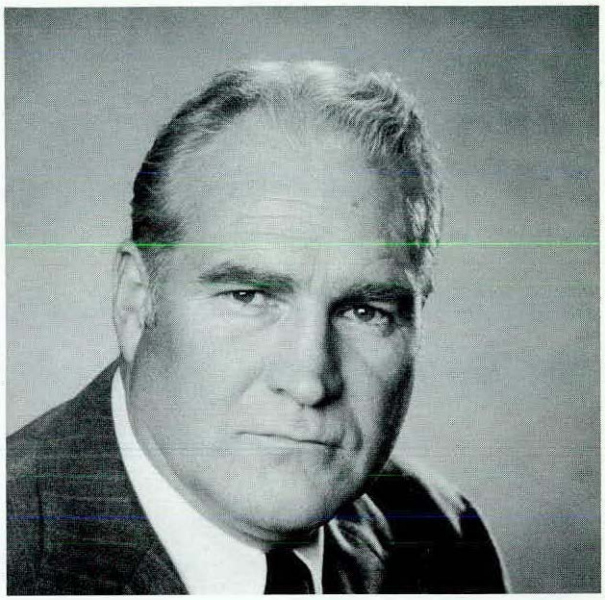
18, 46-47 McLauchlan-at-Large

19 Richard H. Riddell Elected President 1976-77

DEPARTMENTS

5 President's Corner
7 CLE Clearinghouse
20 The Board's Work
22 Briefly Noted
23 In Memoriam
24 Around the State
30 Office Practice Tips
44 Law School News
44 The Courts
45 Sections
48 Notices
49 Calendar
49 Lawyer Placement

Thanks and Accolades



At the time this issue of the *Bar News* reaches you, I will have turned over the gavel as President of the Bar Association to my most worthy successor, Richard Riddell, and I will have joined a very illustrious group — former Presidents of the Bar.

If I have had any success in my year as President, I would say that it was in avoiding the pervasive, provincial factionalism that from time to time threatens to destroy the unity of our Bar.

I have had a year of hard work as your President. In keeping track of my time, I find I have been gone from my office about half of the time and a great deal of time in my office is necessarily devoted to work of the Bar. This is not a complaint. Far from it! I knew the job entailed time and work when I undertook it and I did it with full dedication to the job and with no illusions that it would be all play and no work. Work there was, but on the other hand, there was play. As your representative, I have had the marvelous opportunity to visit many parts of the country, to attend meetings and conferences and to stay at some very beautiful resorts and to meet all kinds of lawyers. I have met and associated with lawyers from all over the nation — from those who can cite the Supreme Court decisions for the last 20 years by rote to those who think that ALI ABA is a Moslem Potentate.

I have had an opportunity to see first hand the programs, functions and activities of many and varied Bar Associations in the Western United States and I can state with absolute candor that our Bar Association need take a back seat to none. We are in the forefront in bar programs designed for the betterment of the practice of law both for lawyers and for the Public. This is due to unselfish work by many unnamed and unsung lawyers who work tirelessly and anonymously as committee and section members to formulate programs and to do all the things that make an association of this size function. I want to thank each of you who as section or committee members or as members of special task forces have contributed so much to the profession during my tenure. You have made my job much easier.

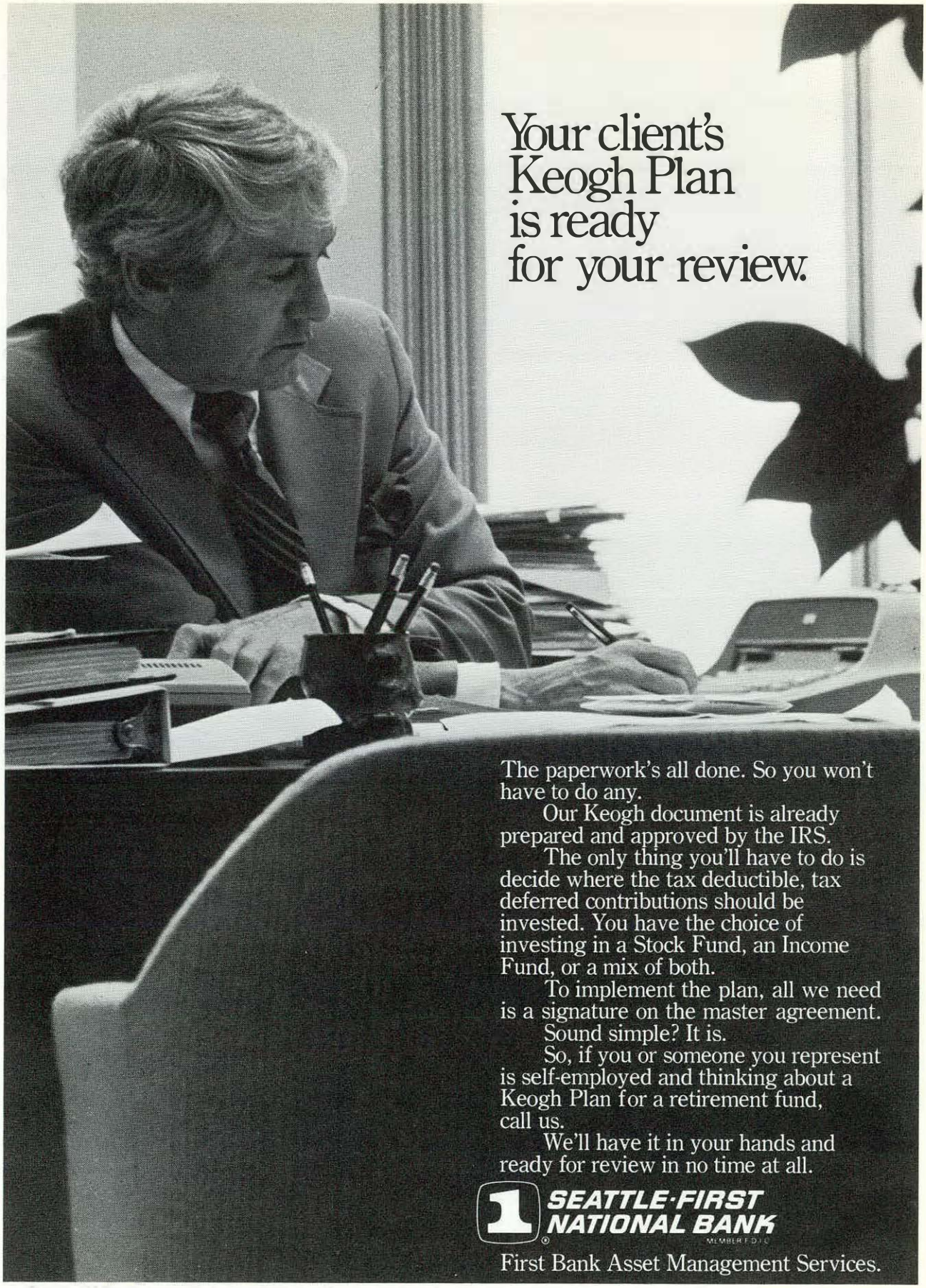
The success of our Bar Association is also due of course to the totally dedicated, continuing work of your Board of Governors and to the magnificent organizational abilities of our Executive Director, G. Edward Friar. The contributions in time, ideas and ability made by the "little hustler" (as he is known on the golf course) are immeasurable.

I also want to thank my law partners for their support during this year. It was their willingness to spend the extra hours necessary in filling in for me and to accept the financial loss my year as Bar President required which made the whole thing possible for me. They too have made a real contribution.

Last of all, I want to thank each of you. I was proud to be President of the Washington State Bar Association because I was proud of the people I represented — Washington lawyers.

If the last year has been a success for our Bar, the thanks in great part belongs to those mentioned above and not to me. If it has not been a success then I make no apologies. I did my best.

Robert S. Day



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Continuing Professional Competence

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

Although the stated purpose of the CLE Clearinghouse is to pass on information about continuing legal education programs and activities available to the members of the Washington Bar, a recent phone call raised a more basic issue which I can't avoid commenting upon.

The caller, whose name I never did get but who identified himself as a member of the Bar Association, was somewhat indignant over the growing emphasis on formal continuing legal education. Observing that he had been in practice for over 20 years and had never been the subject of a malpractice claim, he pointed out that he had achieved that record without ever having attended a CLE seminar of any type and by devoting only a small amount of time to keeping abreast of statutory changes and recent decisions. I hope I am stating his position fairly in summarizing his argument as based on the general theme of "experience is the greatest teacher" and the proposition that an attorney gains that experience through handling cases and not by sacrificing billable time to study and attendance at "costly" seminars.

As a CLE Director whose primary function is to present and administer programs for the benefit of the Bar, I was naturally taken aback by some of these comments. In particular, and because the tuition structure for Bar Association seminars is among the lowest in the country, and intentionally so to make those seminars as affordable as possible, I felt that some of the comments were based on pure misinformation.

On the other hand, and viewing the remarks in question as both a CLE Director and a lawyer, I was even more distressed at what I felt was a misconception of the essential purposes of continuing legal education. Those purposes have been discussed and rehashed over the years to such an extent that it seems unnecessary to list them all here. What they boil down to is the public's right to competence.

This is not just a high-sounding ideal but a standard which forms the very basis of the way we practice our chosen profession. Experience may be the greatest teacher, but I don't think anyone would seriously argue that a lawyer, physician or surgeon, or the members of any one of a number of other professions, is free to plod along and rely on his or her own formal schooling and day to day experience as the sole means of acquiring and mastering the tools of his or her trade, at, potentially, the expense of those members of the public who present him or her with problems he or she may not have dealt with before. The argument that experience is the greatest teacher is also self-defeating if one is not willing to take advantage of the experience of others. None of us knows "everything about everything," and more practical, expedient and better ways of handling the problems that cross our desks aren't always found in the statutes and advance sheets. Indeed, I doubt if there are many lawyers who haven't availed themselves of the counsel of others — and that, of course, is the very essence of continuing legal education.

This is not to say that the statutes and advance sheets are not valuable resources in the struggle to stay abreast, but they quite clearly are not the only way of doing so and, I would submit, the public has an unquestioned right to expect that every attorney will avail himself or herself of every opportunity, in whatever form, be it formal CLE programming or otherwise, to learn and, consequently, to discharge his or her obligation to provide the most competent service possible. In that respect, it seems to me to be an odd argument indeed to point to a record of never having been the subject of a malpractice claim as apparent justification for not making a greater effort at maintaining competence; such a record is something to be proud of, but it may be the result of pure luck and, certainly, is no guarantee for the future. I should hasten to add that continuing education is not, in whatever form, the conclusive answer to the malpractice problem — to the best of my knowledge, no one has suggested that it is.

In the final analysis, the question is, again, the public's right to competence. Do we do all we can to discharge that obligation or do we sit back admiring our experience while the world goes by? □

Long Range Planning by the State Bar

By **EDMUND B. RAFTIS**

Long range planning is a phenomenon which is occurring in Bar Associations across the country. The State Bars of Florida, California, Illinois, and Georgia have all been engaged in long range planning. The Board of Governors of the Washington State Bar spent eight hours on July 15, 1976, examining the subject.

Groundwork for the meeting was provided through letters from Bar leaders around the state, which set forth those subjects which the writers believed were proper subjects for long range planning. Lawyers, who wrote the Board, included: Dave Andrews, Fred Velikanje, Alfred McBee, Paul Ashley, John Huneke, Bob Beresford, Ned Lange, Tom Keefe, Murray Guterson, Bob Beezer, Claude Pearson, Michael Green, Don Chisum, Paul Bastine, Winslow Whitman, Jack Nelson, and Greg Dallaire.

Bar leaders from other states who responded to the Board's request for ideas, included former ABA President Chesterfield Smith from Florida, immediate past president of the Arizona State Bar Mark Harrison, Chief Counsel of the U. S. Senate Judiciary Committee Jane L. Frank, Dean Dorothy Nelson of the UCLA Law School, and the Executive Directors of the Illinois, Missouri, Massachusetts, Arizona and Indiana State Bars.

John H. Dickason, Executive Director of the Illinois State Bar, had some sound advice: "I think one of the main problems that you will encounter in long range planning is to have those who are attempting this exercise get specific. Resolutions such as, 'The Washington State Bar Association should do all within its power to improve the administration of justice' just doesn't do the job."

The problems and goals identified by the Board were specific. Some were short range, while others were long range. Further refinement obviously will occur in the ongoing long range planning process.

Integration by Court Rule for the Washington State Bar Association?

The recent opinion in the case of the *Graham v. State Bar Association,* 86 Wn.2d 624 (1976), raises the question whether the State Bar should be integrated by court rule, rather than under the 1933 state statute. Chapter 2.48 RCW.

Arizona has had recent experience in this area. About forty years ago the Bar of that state was integrated by statute. On January 23, 1973, the State Bar of Arizona was integrated

by court rule. The effect of integration by court rule was evident in a recent case. *Bridegroom v. State Bar of Arizona,* (Ct. of App. Div. II, June 9, 1976). The court held that constitutional statutory constraints on corporations were inapplicable to the State Bar.

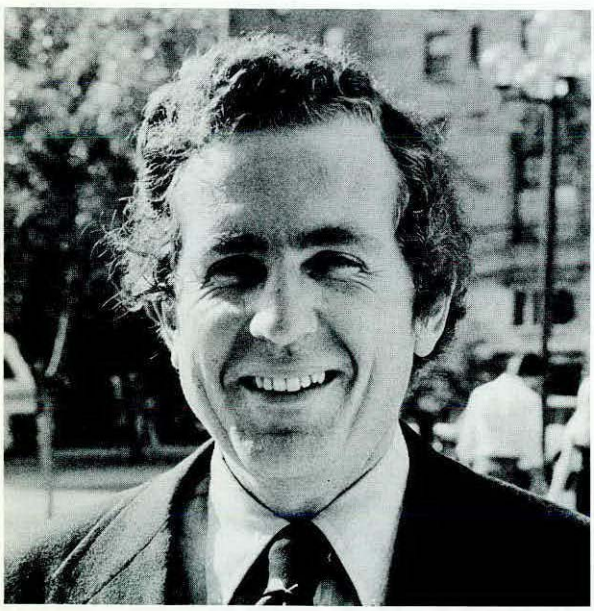
The Board of Governors has approved in principle the idea of integration through court rule. The president of the State Bar, Bob Day, appointed a committee to draft a proposed rule for integration of the State Bar Association by court rule. Committee members are: Richard H. Riddell, Alfred J. Schweppe, John Gavin, Edmund B. Raftis, and Charles R. Olson. The first meeting was held on August 13, 1976. When the rule is finally approved by the Board, it will be submitted to the Supreme Court.

Lawyer Participation in the State Bar

It is contemplated that the court rule for integration of the Bar at a future time will provide that members of the Board of Governors will be elected not from congressional districts, but from districts which represent a community of interest. For example, Vancouver might be more logically grouped with Longview, Chehalis, Centralia and Olympia rather than with Yakima; Walla Walla might be grouped with the Tri-Cities and Yakima, rather than Spokane. This change would be made only after consultation with local bar associations representing the lawyers affected. There is no movement at this time to restructure the Board on a one-lawyer, one-vote concept.

The concept of a house of delegates was discussed. Rather than moving immediately in that direction, it was the consensus of the Board that the meeting of the Local Bar Presidents at the annual meeting should be organized to provide a better means for the Board to determine the needs and opinions of the membership.

As to State Bar Committees, the Board will ask the Committees to reduce to writing their goals for the year. A tracking system of the committees' activities will become a part of the Board's monthly agenda book. There are 28 committees, and 12 task forces.



Edmund B. Raftis is a King-County-At-Large representative on the Board of Governors of the Washington State Bar Association. He is General Attorney for Pacific Northwest Bell. A 1962 graduate of Georgetown Law Center, he is a member of the Seattle-King County Bar Association and has served the State and Seattle-King County Bar Associations on numerous committees and projects. He is a former editor of the *Washington State Bar News.*

Lay Persons Participation in the State Bar

A general discussion was held on whether two lay persons should be added as members of the Board of Governors. No immediate action was taken on this proposal. A subcommittee of the Board was appointed to consider the possibility of sponsoring and arranging a Board conference with perhaps a dozen selected lay persons to explore this proposal and matters of interest to the participants. Robert Redman, Betty Fletcher and Willard Walker were named to the subcommittee.

The Need for a Judicial Article

Senator Pete Francis, Chairman of the State Senate Judiciary Committee, has established a Judicial Article Task Force, which held its first meeting on April 23, 1976. The State Bar was allocated three memberships on the task force. Fred Velikanje, Rush Stouffer, and Russ

Hokanson have been named. Several members of the legislature and judiciary are on the task force. There are two representatives from the Citizen Committee on Courts and one representative from each of the following: Office of Administration for the Courts, Judicial Council, Governor's Office, Prosecuting Attorneys Association, Association of Washington Counties, Association of Washington Cities, Washington State Labor Council, Association of Washington Business, League of Women Voters and the Press.

The Board is following closely the work of the task force, which hopes to finish drafting a judicial article by December 1, 1976. The current draft contemplates the following: There would be no less than five Supreme Court Judges and no more than nine with the Chief Justice to be elected by a majority vote of the court. The Supreme Court will have authority to adopt rules for procedure of all courts. Superior Courts and District Courts would have concurrent jurisdiction with a limitation of jurisdiction in the District Courts. A motion to make the District Courts courts of record and do away with the trial *de novo* was defeated by a vote of ten to nine. However, it was recommended that there be submitted some statutory authority to provide that selected cases be of record from which one appeal would be granted. Also, the suggestion has been made that the authority of the District Court be increased to $5,000.

As to judicial selection, the present process of election would be retained. On the question of filling judicial vacancies, a proposal to have a judicial selection committee which would provide a selection list to the Governor failed by a vote of ten to nine. The current procedure of having the Governor make his or her own selection would continue. Procedures for discipline and removal of judges would be included. All judicial offices would be for a period of six years.

It should be made clear that all of these proposals are presently in draft form and that the Bar Association does not necessarily support any specific part of the present draft.

Judicial Campaign Code

Moving to another subject, a Judicial Campaign Conduct Code was considered extensively by the Board at its July meeting. The Board decided to recommend to the Supreme Court that the provisions of the present Canon 7 of the Judicial Conduct Code and a set of guidelines, which have been drafted by a State Bar Committee, become a part of the Code of Professional Responsibility.

On the general subject of the judiciary, it is recognized that judges are not permitted to defend themselves against criticism made of them by the media. County Bar Presidents are going to be encouraged to write letters in defense of the judiciary when unjust criticism arises. The availability of the State Bar Staff to help draft these letters will be brought to the attention of the County Bar Presidents.

Group Insurance

One of the most valuable services that the State Bar can offer to its members is group insurance. As to lawyers' professional liability insurance, the State Bar has retained an actuary to make a report in September as to the feasibility of a State Bar administered self-insurance program. The actuary has indicated that the self-insurance concept may not be viable unless participation is mandatory in order to obtain a large enough group.

A comprehensive review of the State Bar sponsored life, health, and disability insurance programs has just been completed. A new broker, Johnson & Higgins, and plan administrator, United Administrations Inc., have been retained. Details on the programs will be disseminated to the membership shortly. A new permanent committee has been formed to oversee the programs.

Clients' Security Fund

A new structure and procedures for administration of the Clients' Security Fund have been established. Responsibility for investigation of claims has been assigned to the Bar Staff. The Staff report of an investigation will be completed for presentation to the Clients' Security Fund Committee within 90 days of the date a claim is received by the Bar Association.

The Board of Governors will continue to exercise exclusive authority over the payment of claims after recommendation from the Clients' Security Fund Committee. Payments by the Board are discretionary. The maximum payments from the Fund for claims against any one lawyer will be increased from $25,000 to $30,000 for the fiscal year 1976-77 on an occurrence basis and the maximum will be increased in increments of $5,000 each succeeding fiscal year until the limit of $50,000 is reached. When the claims against any one lawyer exceed the maximum set up for claims against any one lawyer, then the claims against the lawyer will be prorated on the basis of the amount of claims filed and approved.

The Board will explore with the Supreme Court the possibility of a special assessment for the support of the Fund in order to get the reserve to an acceptable level.

So far this year, about $70,000 has been paid by the State Bar from the general fund for defalcations of three lawyers.

The Judicial System

The longest discussion occurred in this area. Standards for sentencing were recognized as a major problem. The Board will keep in close contact with the Judicial Council Committee which is studying this subject.

It was agreed that the availability of small claims court to resolve disputes should be brought to the attention of the public. Consideration should be given to raising the dollar jurisdictional limits. The Court Rules and Procedure Committee has been asked to report to the Board on this subject.

Public Relations

The State Bar Public Affairs Department will be presenting a series of press seminars around the state over the next few months dealing with the "how to" aspects of news reporting about items concerning the legal community and the judicial process. The emphasis will be on the practical rather than the theoretical.

For a number of years, the State Bar has been distributing to members of the Bar a number of pamphlets regarding various information that

would be of use to clients. These are being updated, both in content and graphics. Their distribution to the public-at-large will be increased to a great extent.

The Influx of New Lawyers

The Task Force on Professional Utilization recently made a report to the Board. The number taking the Bar Exam has increased from 386 in 1970 to 917 in 1975. The Task Force was of the opinion that the number of persons seeking law or law-related pursuits in this State will not decrease. There will be an unacceptable number in the future who will not find satisfying pursuits in the profession after an arduous and expensive law school education. The Task Force recommends that the ABA request those who administer the LSAT and the law schools to communicate to applicants the statistical projections of those entering the legal profession.

The Board of Governors has asked the Bar Staff to conduct a survey of recently admitted attorneys to determine insofar as possible the nature and degree of employment by such recent admittees in the practice of law or in law-related activities.

Continuing Legal Education

The proposed mandatory CLE rule is under consideration by the State Supreme Court. If adopted, it is projected that the State Bar will increase its program offerings 30%. The Board is considering a general practice course as an admission requirement in addition to, or in lieu of, the Bar Exam.

Spot Audits

The spot audit rule is currently under consideration by the State Supreme Court. In addition to that proposed rule, there are other questions being raised in this area: Should the rule specifically state what funds should be deposited in a lawyer's trust account and how should it be kept, so that the bookkeeping for all lawyers' trust accounts would be uniform? Should the details of such trust account, the name of the bank in which it is kept, the account number, and the person or persons authorized to draw

checks against the same be registered with the State Bar, and no change thereof be allowed without advance notice to the Bar office? Should every depository bank of such a trust account be notified of its character and be made aware that it frequently contains money belonging to others than the lawyers?

Should every lawyer be required to have his or her trust account audited annually by a CPA, who would certify the amount of funds therein belonging to others, and that the account is or is not in order and in compliance with the Bar Association rules? Should it be required that these reports be filed in the Bar Association office on or before a certain day and that failure to file them suspends the right of the lawyers and all the members, and associates of the firm to practice?

The Board of Governors and the Office Practice Committee have taken the position in the past that a required CPA trust audit of every lawyer would be enormously expensive. Consequently, the spot audit procedure has been proposed.

Legislation

It has been suggested that because there are so few lawyer legislators left, each member of the Bar must take a more active part in our Bar legislative program. Should our Legislative Committee be restructured to include subcommittees so that every legislative representative can be and will be contacted by a lawyer who is a voting constituent? The approach would be not only to sell the State Bar's legislative program but to make the members of the Bar in the particular legislative district available for advice or consultation in respect to legislation which will come before the elected lay member of the state legislature. The Board is still considering this suggestion.

Discipline

It is recognized that the vast majority of our Bar is unaware of how the disciplinary machinery works and their obligations in respect thereto. Paul Steere, Chairman of the Disciplinary Board, has been asked to write an article for the *Bar News* on the subject.

The subject of when disciplinary proceedings against an attorney should cease to be confidential was discussed. The Oregon Supreme Court ruled in June that on the filing of a formal complaint the matter becomes public information. In Washington, DRA 11.7(d) provides that the disciplinary record of any attorney may be released when directed by the Board of Governors in the public interest. Generally the Board publishes reprimands in the *Bar News*, but does not release any information on recommended suspensions and disbarments until the State Supreme Court acts on the recommendation. The Board of Governors has asked the Disciplinary Board for its recommendations, after proper study, concerning the possible changing of the policy and procedures in connection with releasing information about pending discipline matters.

The Bar Exam

Keith Grim, Chairman of the Board of Bar Examiners, is heading a special committee which will be submitting to the Board of Gov-

ernors a comprehensive plan relating to admissions to the Bar. Some preliminary thoughts are that the number of Bar Examiners will be reduced to 20 and these lawyers will be paid an hourly fee of about $30 to prepare and correct the exam questions. The multiple choice multistate bar exam may be eliminated; there might be two or two and a half days of essay exams and a half day ethics exam. It is probable that passing the ethics portion of the exam will be mandatory.

A special committee is also examining a formal procedure to rule on the character of applicants to law school, who have existing criminal records, rather than facing the question for the first time when a law school graduate applies to take the Bar Exam.

Specialization and Advertising

At its August meeting, the Board of Governors considered a two-tier plan for recognition of specialty areas in which lawyers practice. Both plans would be administered by a single Specialization Board.

The first tier plan is known as the "Designation of Practice Plan." It was approved in principle by a five to four vote. However, by a five to five vote, the Board declined to implement this plan until the membership has had a chance to comment on the plan. The plan drafted by the Specialization Committee would authorize lawyers who have practiced a minimum of three years to designate the specialty areas in which they are qualified and intend to practice. This plan is similar to the Florida self-designation plan. However, unlike the Florida Plan, it would not require completion of approved continuing legal education courses each three years in order that a lawyer could continue to designate an area of practice.

Any lawyer having permission to designate areas of practice would be entitled to list in a reputable law list, legal directory or a directory published or approved by the state bar association, and on his or her business card, the permitted areas of practice, for example: "John H. Doe, Taxation, Criminal Law and Real Estate Practice."

In order to be eligible to designate an area of practice, the lawyer must have been in actual practice of law for at least three years and must file an affidavit certifying that no less than 150 hours or 15% of his or her time spent in actual law practice, whichever is greater, has been devoted to that area for each year of the last two years immediately preceeding the application. No more than three areas may be selected for designation by a lawyer. There are a total of 33 approved areas of designation. In addition, a lawyer may designate the area of general practice, even if he or she has been in practice for only one day.

The second tier, the "Certification of Specialists Plan" was approved by the Board of Governors a couple of years ago. It provides an apparatus whereby a lawyer can be certified as qualified to practice in a certain specialty area. The implementation of this plan depends on the various sections coming up with the standards for determining a specialist within that area of practice. Three sections have either finished or nearly finished their plans. The Specialization Board is expected to take action on the plans of the Criminal Law, Taxation and Family Law Sections within the next year. Under the rules approved by the Board of Governors, a section's plan *may* require testing of a lawyer's ability within the specialty area and will require of the lawyer more rigid standards for initial qualification and for periodic re-qualification than the first tier plan.

Any lawyer certified as a specialist would be entitled to list in the same publications specified for the first tier plan the fact that he or she is certified, for example: "Certified Specialist, Taxation". In addition, the certified specialist could circulate among lawyers only a brief, dignified notice that he or she is rendering a specialized legal service.

Another step, which the Board of Governors is contemplating, is to compile a master directory of lawyers at the State Bar Office. This master directory would contain considerable information provided *at the option of the lawyer,* to include: name, address, information from Tiers One and Two of the Specialization Plan, date and place of birth, date and place of admission, schools attended, public or quasi-

public offices, military service, posts of honor, legal authorships, legal teaching positions, memberships, foreign language ability, references, whether credit cards and other credit arrangements are accepted, and office and other hours of availability. This information would be available to the public. A written schedule of fees would not be included in the directory. The Board of Governors is considering having toll free lines around the state, which would be listed in the Yellow Pages. Members of the public could call the Bar Office and ask for this information about specific lawyers by name. The Bar Office would also xerox and mail out the information listed for each lawyer when requested to do so by a member of the public.

The Board is soliciting the views of the members of the Bar on these proposals and the proposal that the State Bar publicize an abbreviated version of the master directory of lawyers for distribution and sale.

Bar Headquarters Facilities

The trend among Bar Associations around the country in recent years has been the construction of a headquarters building for the Bar Association or the purchase of an existing building for the Bar Association's use. Two years ago the Bar's Board of Governors appointed a special headquarters facilities committee composed of Ed Rauscher, Paul Cressman and Gerald Tuttle to explore all of the possibilities for the Bar's headquarters and to make a recommendation to the Board. This committee concluded that the best possible arrangement for the Bar Association would be a long term lease with expanded space in the present College Club Building in Seattle. This committee under the direction of the Board of Governors negotiated such a lease extending over an eleven year period with an option to renew. The space which the Bar Association is not presently using is subleased on the basis of the Bar Association's projected needs in the future. The Board considers this lease and these facilities to be very favorable for the Bar Association and the lease does solve the problem of the Bar's headquarters facilities for a considerable period in the future.

Other Programs

There are several other programs which merit discussion but to do so would unduly extend the length of this article. Brief mention will merely be made of the following: As to provision of legal services to the poor, the Board endorses the creation of a statewide legal services board to make this service more efficient. As to prepaid group legal services (Washington Lawyers Service), the first client group is still being sought; forty closed panel contracts have been filed with the State Bar Office, which represent 60,000 client participants. Monitoring of legislative proposals in the medical malpractice field has a high priority. The problem of alcoholic lawyers is receiving special attention through the creation of a new committee. The Board is also moving ahead to establish a State Bar Credit Union for use by lawyers and their employees.

The programs of the Board are ambitious. They require the attention of not only Board members but attention and comments of the membership as well. □

Comments on the Contingent Fee

Should the Courts Be Allowed to Award Substantial Attorneys' Fees?

By **Robert A. O'Neill**

Under the Washington Statutes relative to attorneys' fees as costs, a litigant can recover only a nominal attorney's fee unless there is some specific authorization, either of a contractual nature, or, in certain types of cases, where a specific statute has authorized substantial fees for public policy reasons (e.g. antitrust and consumer protection matters). Our basic statute (R.C.W. 4.84.080) was adopted in 1881 and is indeed an anachronism.

In recent years many states have by statute or court rule adopted a policy which permits the allowance of substantial attorneys fees to the prevailing litigant following a trial. Such a policy has several beneficial aspects:

1. The deterrence of litigants from pursuing relatively ill-founded claims under the philosophy that they have everything to win and nothing to lose.
2. The fostering of settlements.
3. The resulting substantial reduction in caseload of our courts.
4. A better image of our legal system in producing true justice in making the prevailing party "whole" after a trial.

A particular reason for the allowance of such fees arises from the ever increasing number of claims which the contingent fee system has brought into the judicial arena, and particularly the so-called "long-shot" cases. While the contingent fee does serve a good purpose in our system, it does tend to foster litigation. The original idea was to apply contingent fees in only those hardship situations where the plaintiff was unable to pay a fee based upon the normal time, responsibility and result basis. However, contingent fees have become so accepted in legal practice that they are now used almost universally as to tort claims. The pendulum has swung too far. The contingent fee tendency to foster litigation needs curtailment.

One hundred years ago, any contingent fee arrangement would have been declared illegal and void. However, about that time the industrial revolution began and the resulting industrialization produced thousands of injured workmen who needed redress at law and could not afford the expenses and lawyer's fees to obtain same. At the same time, under the pressure of a new era creating a new demand in the field of business and corporation law, the best law offices gave up the general practice charity work which had always been a part of the practice of law. Since there was no way to fill the gap in helping the injured workmen, the contingent fee resulted as a matter of necessity. It was better than nothing. The man whose leg or arm had been cut off would prefer to accept half the amount awarded him by a jury rather than receive nothing through inability to have his day in court. Many honorable lawyers took cases on a contingent basis. However, the system as a whole has been, and is a great blot on the history of the American Bar.

The contingent fee area of application has been removed from the industrial scene by the adoption of the Workmen's Compensation Acts

in many states. However, it has carried over into the many other fields of tort law and particularly into the automobile and medical malpractice fields.

The Bar did not sanction the contingent fee agreement without a struggle. Stripped of verbiage, and in actual practice, the system is one whereby the lawyer gambles on the outcome of litigation. As a result, if he loses his investment in one case, he must recoup out of his winnings in the next. It is obviously inconsistent with any theory that the lawyer is a minister of justice. He is an interested party to the litigation because he is betting on its outcome. However much it might be glossed over, this truth must be judicially admitted.

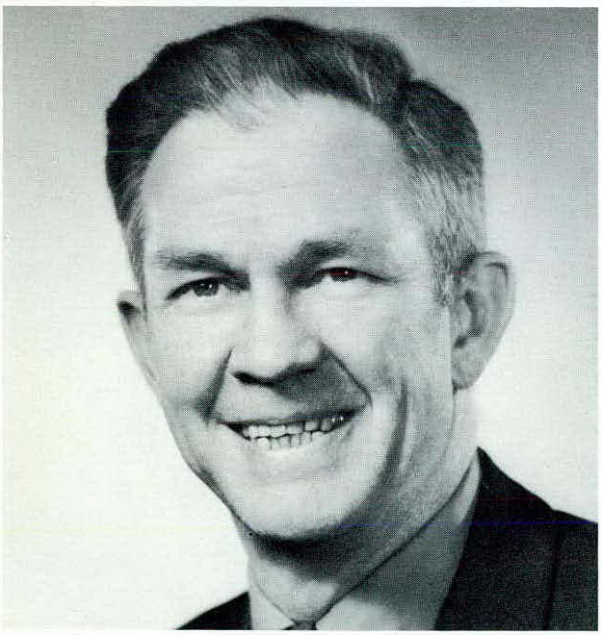
The contingent fee system has brought about many abuses. It tends to foster litigation and champertous practices by attorneys, because the stakes are high and the players essentially gamblers.

In recent years, the pressures of cases brought under contingent fee arrangements against doctors and other professionals has reached an alarming proportion. The number of such cases and the number of judgments awarded in such cases in the last five years have increased by many times. When one considers that the doctors practicing today are in large part the same ones who were practicing five years ago, it cannot be said that they have become that much more negligent in the practice of their profession. On the contrary, I believe it would be admitted that they have basically improved their skills and are providing a much higher degree of competent medical care than they were five years ago. Nevertheless, the pressures brought to bear upon them by malpractice claims have become unduly onerous. It is my belief that much of this is due to the contingent fee system and its uses in the highly lucrative medical malpractice field.

It will be admitted by all that there are many bona fide medical malpractice claims for which the patient should be compensated in accordance with standard tort policies. However, there are many claims which have been and are being pursued by attorneys merely on the gambler's theory that "you lose one, and you win one." They are not brought on the basis of the inherent merits of the claim. Due to the complexity of medical science at this point and the uncertainties inherent in the jury system (even though it is by far the best devised by man), many lawyers will undertake the gamble in cases as to which probable cause does not exist for taking same into the legal system.

While the contingent fee system does serve a good purpose, it needs some counterbalancing force. The pendulum has indeed swung too far. The system has encouraged a proliferation of claims, many of which are relatively ill-founded. It is strongly recommended that the courts should be granted significant authority to award substantial attorneys' fees and costs as a balancing factor to the attribute of the contingent fee system to foster litigation.

It is believed that our present statutory schedule of attorneys fees should be repealed and replaced with appropriate statutory authority for the trial judge to award substantial attorney's fees within certain defined limitations. □



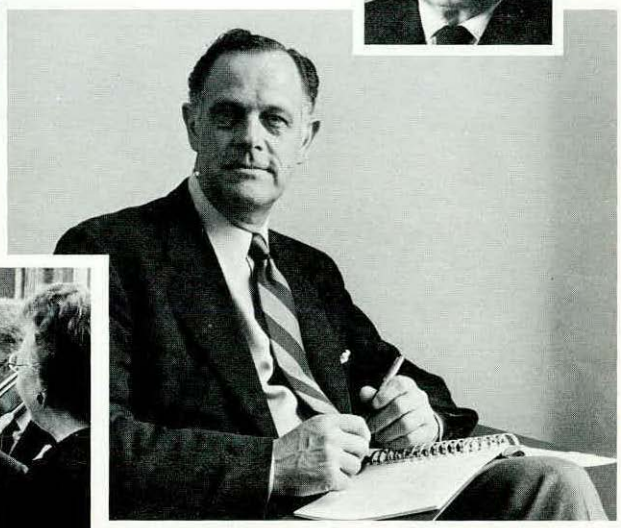
Robert A. O'Neill has practiced law with the firm of Cartano, Botzer and Chapman since 1950 and has been a partner in that firm since 1955. He is active in Bar matters and was chairman of the Seattle-King County Legislation Committee in 1974-75 and attorney for the Republican Caucus of the State House of Representatives during the 1967, 1969, and 1970 sessions.

McLauchlan-at-Large

Jack Ketcham, Concrete, and Gary Gayton, Seattle

John D. McLauchlan

Larry Hennings, Seattle



Burr Anderson, Seattle

Ted Clarke's Birthday Party

Richard H. Riddell Elected President 1976–77

A man with a reputation for hard work and long productive hours has been elected by the Board of Governors to serve as State Bar president for the up-coming twelve months.

Richard H. Riddell, a Seattle attorney and 35 year member of the Bar, is the senior partner in the 17 member firm of Riddell, Williams, Ivie, Bullitt & Walkinshaw.

Dick Riddell was born in Seattle in 1916. He completed his legal training at Harvard University in 1941, where he was a member of the Board of Editors of the *Harvard Law Review* for two years. After returning to his home city and passing the bar exam in 1941, he joined forces with his father, the late C. F. Riddell, in the practice of law.

Dick has for many years been an active member of both local and state-level bar associations. He is a past president of the Seattle-King County Bar (1963-64) and since 1973 has been a member of the Board of Governors and Treasurer of the Washington State Bar Association.

Our new president attacks not only his law practice with gusto; he's also an avid tennis player and an inveterate gin player. Among friends, however, he is perhaps best known (envied?) for his annual 10-day bachelor fishing cruise into Canadian and Alaskan waters. (He says it's written into his marriage contract!)

We look forward to the positive leadership in State Bar affairs that Dick has demonstrated in so many other capacities in the past.

REPORT OF BOARD OF GOVERNORS MEETING SUN MOUNTAIN RANCH AUGUST 20-21, 1976

By **David L. Broom**
Editorial Advisory Board

Any observer, this substitute ink-stained wretch included, cannot help but be impressed by the number and importance of issues currently being grappled with by our BOARD OF GOVERNORS. In the tedious day and one-half meeting, part of which was in joint session with the Young Lawyers Section, these were some of the subjects covered: Advertising, Specialization and Legal Directory; Limited Clinical Admission to the Bar; Statewide Legal Services; Integration of the Bar by Court Rule; Proliferation of Lawyers; Spot Audits; Legal Malpractice Insurance; Mandatory CLE and Prepaid Legal Services.

Advertising, Specialization and Legal Directories were generally discussed together with the major votes (all close) going as follows: *Against* any type of yellow page designation beyond what is permitted now; *in favor* of self-designation of areas of practice; but *against* the submitted self-designation "plan", as such.

Advertising

There is a clear philosophical split on the Board. The conservative position is, in addition to protection of traditional practice, that advertising will ultimately place us in the stream of commerce and subject us to more direct Federal regulation. The liberal view holds that the overriding consideration should be education of the public as to lawyer availability and fields of practice.

Specialization

Donald Cable of Seattle presented a "2-tier" plan including self-designation of areas of practice and, for approved fields, certification of specialists. The latter was approved several years ago and a Specialization Board constituted. The principle of self-designation was approved by a one vote margin but the "plan" was not approved pending more input from the Bar.

Legal Directories

The Board approved DR 2-102 (A) (6) as modified. The rule would, inter alia, permit legal directories published or approved by the State Bar. The directory in turn may include designation of areas of practice as authorized by the Bar. The issue of how best to accomplish the purposes of a directory will be placed before the convention. One suggestion is to have a WATTS line listed in the yellow pages with a master directory and phone operator in Seattle.

Code of Professional Responsibility

In addition to the immediately foregoing, the Board completed its work on updating the CPR by approving numerous ABA proposals. A question debated at length in connection with passage of DR 7-102 (B) (1) had to do with a lawyer's duty to reveal client fraud to the Court. Some case law indicates that the lawyer-client privilege may extend to communications revealing a fraud on the court. The CPR committee under the direction of Ron Groshong will do further work on the privilege question.

Clinical Education

Although in December, 1975 the Board seemed to favor clinical education in principle, the rule presented by the Clinical Education Committee failed of passage. Essentially the proposed new Rule 8 (Rule 9 having been made permanent at a prior meeting) would permit law students to engage in a limited practice under the supervision of a professor on no greater ratio than 10 to 1. The chief objections to the rule were: that the whole concept of internship is a subject not sufficiently explored; that the plan prematurely inflicts non-lawyers on the public; and that there is no guarantee of the experience of the supervising professor.

The Board, with appreciation and instructions to further pursue the matter, unanimously retained Larry Longfelder of Seattle as chairman of the committee.

Legal Services

Gale Barbee of Seattle presented the proposal of the Task Force on Statewide Legal Services. The Board narrowly passed the Task Force recommendation which calls for consolidation of all Washington State Legal Services under a single corporation, presumably headquartered in King County. Local offices and boards would be retained but the boards would have only "concurrence" power over appointments, and certain other limited authority. The Spokane and Tacoma Boards registered opposition to the consolidation and therefore passage of the recommendation contained the proviso that problems with Spokane and Tacoma be worked out to avoid non-participation by those cities.

Integration by Court Rule

A plan presented by president-elect Richard Riddell was passed although Court-rule integration was rejected three times in the 30's and 40's. It was felt that the current climate for adoption by the Supreme Court is good. The Board rejected one portion of the proposal which would add two lay members to the Board of Governors. Integration by court rule will supercede the State Bar Act.

Joint Session with Young Lawyers Section

Seven members of the Young Lawyers Section in addition to Chairperson Larry Bailey of Seattle and Chairperson-elect Bill Burns of Spokane met with the Board of Governors to discuss issues and exchange information. Lengthy discussion was had on the problem of lawyer proliferation. Bill Burns asked the Board to study and consider exertion of some influence and control over law schools, tougher protection of traditional areas of practice, advertising in the "educational" sense, possible change in concept to permit lawyers to solve "today's problem" for clients without the absolute necessity of expensive follow-up, and the concept of a lawyers credit union. □

Briefly Noted

Greater Seattle Legal Secretaries Sponsor Seminar

All legal secretaries, law office personnel and students are invited to attend the **Look-See '76** seminar sponsored by the greater Seattle legal secretaries association to be held on Saturday, October 9 from 8:30 a.m. to 4:00 p.m. at the Quality Inn/ Sherwood, 400 NE 45th, Seattle. Cost of the seminar, which includes a fashion show-luncheon, is $15 for non-members and $10 for members. The latest in office equipment will be displayed. Persons wishing to attend should contact Janet Friberg, 284-6538 (home) or Margaret Foote, 622-6767 Ext. 498 (office) or return the registration form before the October 4th deadline. Program speakers and topics will include:

Troy Bussey, Motivator, Communicator and Editor — *The Courageous Angel Rides Again*
Judge Keith M. Callow — *Our American Legal Heritage*
John F. Aslin, Attorney—*What Labor Law Is All About*
Mareatha Counts, Consumer Education Specialist — *Consumer Protection*
State Senator Nancy Buffington—*The State the State's In*
Sidney S. Rodabough, Attorney—*A Look At the Parentage Act*

Relocation of Secretary of State's Office Announced

The Office of the Secretary of State will operate on a *limited* basis on October 7, 8, and 11. Structural improvements have been made on the Legislative Building and we are returning there to our permanent quarters.

We are sorry for any inconvenience. Requests will be answered as soon as our files are relocated.

ABA Publishes Inaugural Issue of Mental Disability Law Reporter

The American Bar Association has published the first bimonthly issue of a topical law reporter designed to keep attorneys, judges, treatment professionals, and consumers informed of developments in the fast-moving field of mental disability law.

The periodical, titled the *Mental Disability Law Reporter,* represents a major effort by the ABA's Commission on the Mentally Disabled to encourage wider understanding and implementation of law-related reforms in the mental disability area.

Jerome J. Shestack, chairman of the ABA Commision, emphasized the value of the *Reporter* to providers and consumers of mental disability services, as well as to lawyers with general practices and those who specialize in mental disability issues. "This continually updated, high-quality compendium of legal developments and materials," said Shestack, "should help lawyers and non-lawyers alike to function more effectively when they confront the complex and difficult issues of mental disability law."

Subscription rates for the *Mental Disability Law Reporter* are $25 per year for Public Defenders and Legal Services (poverty law) attorneys and $35 per year for all others. The *Reporter* is available from the Mental Disability Legal Resource Center, 1800 M Street, N. W., Washington, D. C. 20036. Subscription requests should be accompanied by a check or money order payable to "ABA Fund for Public Education."

Conference to be Held on Freedom of Information Act

A conference on FOIA litigation will be held in Seattle November 12, 1976. It is sponsored by the American Civil Liberties Union Foundation and the Freedom of Information Clearinghouse.

The passage of the Washington State Public Records Act, RCW 42.17, in 1972 and tough new amendments effective last year to the federal Freedom of Information Act, Title 5, U. S. Code Section 552, gave the public the right to see virtually all state and federal (executive branch) records except those within narrowly defined exemptions, along with a judicially enforceable means to guarantee that right. Any person now has an enforceable right to government reports, regulations, policy decisions and documents dealing with the endless ways the state and federal government affect business concerns, taxpayers, and the public in general. The conference will address these concerns.

Conference Outline

I. OVERVIEW AND INTRODUCTION — A brief

history of the FOIA; congressional intent; the need for the amended federal Act; similarities and differences in the state Act; the administrative process and statutory time limits governing government response to requests for information.

II. USE OF THE FOIA — To obtain disclosure of "secret law"; to discover evidentiary basis for agency rulemaking, or evidence for use in agency adjudicatory proceeding; to determine whether grounds for a lawsuit exist; to obtain different or additional discovery in a court proceeding; to enjoin agency proceedings; to obtain personal files; to gain information on the workings of government.

III. COVERAGE AND EXEMPTIONS — Access to all administrative opinions, orders, policy, interpretations, instructions to staff; access to all other records upon request unless exempt; scope of exemptions narrowly defined; leading cases.

IV. TRIAL STRATEGY — Drawing a complaint; *Vaughn* showing (agency indexing and justification); interrogatories/depositions; affidavits, counteraffidavits, and using rule 56 (f) affidavit; when agency says records non-existent; motions for summary judgment; asking for sanctions.

V. ATTORNEY FEES — The statute provides that agencies pay court costs and attorney's fees where the plaintiff prevails; discussion and relevant cases.

A 200-page handbook will be included.

Preregistration fee will be $50.00. The fee for those registering at the door will be $60.00 For full information, contact David Harrison, ACLU, 2101 Smith Tower, Seattle 98104 (206) 624-2180.

In Memoriam

Willard W. Jones, 64, of Spokane, died August 9. Mr. Jones was admitted to the Bar in 1952.

Herschel C. Atherton, 71 of Seattle, died August 25. He was admitted to the Bar in 1932.

Around the State

SEATTLE-KING COUNTY REPORT

By **JOHN J. SOLTYS**

The King County professionals' baseball season has come to an end with the firm of Williams, Lanza, Kastner & Gibbs capturing the perpetual trophy with Perkins, Coie, Stone, Olsen & Williams taking second place and the firms of Roberts, Shefelman, Lawrence, Gay & Moch and Short, Cressman & Cable tying for third. Runners up have requested that their names not be mentioned. Balloting is underway to pick the all-star team which is already scheduled to compete with the Pierce County all-star team.

Stephen J. Crane, formerly Executive Administrator, Washington State Council on Environmental Policy, announces the opening of an office for the general practice of law at 260 Grand Central Park, 216 First Avenue South, Seattle, Washington 98104, 622-0925.

The firm of Scholfield & Stafford, formerly Guttormsen, Scholfield & Stafford, announces the relocation of its offices to 400 Union Street, Seattle, Washington 98101, 623-9900.

Roger Hawkes announced the relocation of his office to 216 First Avenue South, Suite 204, Seattle, Washington 98104, 623-4382.

James N. O'Connor has opened an office for the general practice of law at 910 Bank of California Center, Seattle, Washington 98164, 682-1780.

Howard Ratner announced the opening of his offices at a new location, 2410 Seattle First National Bank Building, Seattle, Washington 98154, 622-9050.

Malcolm S. Harris and **Jackie L. Ashurst** have announced the formation of a new partnership entitled Harris & Ashurst which has its offices at 2900 Smith Tower, Seattle, Washington 98104, 622-5100.

Peter J. Glase announces the relocation of his office for the general practice of law to Suite 315 Seattle Trust Building, 10655 NE 4th, Bellevue, Washington 98004, 453-0300.

Bert H. Weinrich, Carl P. Gilmore and **Robert J. Adolph** have opened their offices for the general practice of law at 1020 Bank of California Center, Seattle, Washington 98164, 623-9100, as a new firm under the name of Weinrich, Gilmore & Adolph, P.S.

Officers for the forthcoming year of the Young Lawyers Section of the Seattle-King County Bar Association will be **Bruce Pym**, Chairperson, **Paul**

Silver, Vice-Chairperson, **Lish Whitson,** Secretary, and **Timothy Bradbury,** Treasurer.

James Madison Kennedy III, formerly of Seattle, has been appointed an administrative law judge for the National Labor Relations Board at its San Francisco Office of the Division of Judges.

James L. Vonasch announces the relocation of his office to the Colman Building, 811 First Avenue, Seattle, Washington 98104, 624-7810.

YAKIMA REPORT

By **GARY M. McGLOTHLEN**

The beautiful Yakima Valley summer weather has caused most of the attorneys to vacate their air-conditioned luxury offices and disappear over the sunset of appropriately scheduled legal training seminars, fishing excursions, sailboating and golf course sunbathing. **John Gavin** has just completed his third year as the Delegate to the American Bar Association and will report on the Annual Convention shortly after his return, when the organized Bar once again commences its weekly meetings on Wednesday noon at the Golden Wheel Restaurant in Yakima.

Gordon Blechschmidt of Grandview reports his junior partner is acting like a commercial fisherman for the month of July up in Alaska. **Art Bingman** has his own commercial fishing rig and has been gone for the entire month of July. Gordon reports he will probably make more money in July than he has so far this year. As a safeguard Art has ten acres of concord grapes sitting in his backyard just in case the fishing season is not as profitable as it has been in years past.

Tony Arntson has finally decided to bring in a young attorney in the form of **Earl Bladow** to practice with him at 313 South 11th Avenue, Suite B in Yakima so Tony can take more flyfishing trips up into the Rattlesnake Creek area. It is reported that Tony has fished so much up in the Rattlesnake Creek Canyon that when he sees a rattler, he bites them instead of having them bite him. Rattlesnake steak is a poor second to a fresh fried mountain trout.

Bill McArdle, Tom Dohn, Jerry Talbott and Alan Campbell have moved out of the old stand-by building for lawyers, the Miller Building and into the high-rent district at 307 North Third Street. That entire building now is filled with law offices without a real estate salesman anywhere around except the owner of the building.

The Superior Court Judges have appointed **Phil Noon** of

Grandview as the Superior Court Commissioner to hold forth in the Lower Valley. Beginning September 1, 1976, Phil will be available in his office at 109 West Second, Grandview, telephone 882-1446 to sign x-party orders, issue show cause orders and perhaps take care of any other related matters that the Lower Valley advocates can agree to have heard in front of him. Phil reports the Municipal Court Room (?) of Grandview is available for hearing some of the arguments.

District Court Judge **John Nicholson** reported to the Yakima Police that between 2:30 in the morning and 3:00 in the morning somebody snuck into his bedroom and stole two $50 bills out of his billfold. Judge John volunteered to make a suspect list consisting of everybody who had had to pay a $100.00 fine the day before. The table talk among the lawyers is: "What would happen if he would put somebody in jail?"

Phil Noon, Grandview, recently appointed Court Commissioner for Lower Yakima Valley, and **Ray Reid**, Toppenish, have applied for the new judgeship starting January 1, 1977, in Yakima County District Court. Appointment should be in October by the County Commissioner. Ex-Judge, civilian type, **Les Vannice**, has also been suggested by one of the County Commissioners. It should be interesting to see what develops.

Randy Marquis, off on holiday to England and Israel, has been appointed District Court Commissioner replacing **Jim Scott**, who now has the time to win in the Elks Father-Son Golf Match. I hear Jim's son actually carried the score for good old dad.

TACOMA-PIERCE REPORT

By **MICHAEL J. TURNER**

In the July issue of the *Bar News*, the King County lawyers

issued a challenge to all comers for a baseball game and the Pierce County Lawyers have accepted the challenge. Early discussions indicate the game will be held in early September, although King County is attempting to avoid us at the time of this writing.

Now for the monthly report on rearrangements. The front page headline for the month belongs to **Stan Burkey** and **George Marsico,** who started practicing together 27 years ago. After the trials and tribulations of a growing firm under their guidance, they have returned to their two man partnership, having left **Bob Rovai, Keith McGoffin, Mike Turner** and **Jim Mason. Jim Caraher** announced the opening of his sole practice after leaving his companionship with **George Dixon. Dave Johnson** left **Carl Conrad** to join into partnership with **Don Kelley.** Don's vacancy led to the announcement that **Bob Hutchins, Everett Plumb** and **Ed Wheeler** have hired **Christopher M. Huss** as their associate. **Pat Comfort** has started his own practice, having left Comfort, Hansler & Billett.

News that Pat Comfort is no longer practicing with his brother Bob came as welcome news to this reporter. Pierce County now has more brother combinations practicing in different offices than it does practicing together. Of those who are practicing apart, we have **Mike** and **Frank Johnson, Frank** and **John Ladenburg, Mike** and **Dick Turner, Bob** and **Pat Comfort,** and, of course, the trio of **Don, George** and **Richard Kelley,** who are all in separate offices. Under the asterisks, you can include Judge **Don** and **Ron Thompson.** We should also know that despite the similarities, **Frank** and **Ross Burgess** are not brothers. Those who are practicing together include **George** and **Tom Gagliardi, Frank** and **Jim Witt, Jim** and **Pat Healy,** and **Mike** and **Pete Sterbick.**

The Pierce County Bar Association wishes to commend each of the 10 members of the

CLE Sessions for Fiscal 1976-77

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

Superior Court Bench for their excellent capabilities. This became most evident when no challenge was made to a single member of the 10 Judges in the upcoming election. It may very well be that this is also a sign of the increasing intelligence of the members of the Pierce County Bar. To listen to attorneys arguing for attorney's fees, it has become obvious that the members of the Bar have no campaign funds available to prospective challengers. Do you think the Judges will be a little more lenient now in their award of attorney's fees?

Lawyers from out of the county are again encouraged to commence litigation in Pierce County. It has become obvious that out of town lawyers are becoming more successful in Pierce County. Questions in this regard may be referred to **Paul Luvera** of Mount Vernon and Fort Knox, who will be happy to respond to those inquiries as soon as the smile wears off his face.

BENTON-FRANKLIN REPORT

By **ANDREW C. BOHRNSEN**

The annual Bar Association Golf Tournament, more commonly known as the Duane Taber Memorial, was held this past month. The alleged winner was **Judge Richard Patrick.** A post-tournament motion for reconsideration has been filed based on the rumor that the firm of the defending champion, coincidentally your author, was surreptitiously convinced to send him out of town on depositions. **Mike Larsen** was the recipient of the covenanted highest gross score award, posting a card of 140. Runner-up **Ed Shea** vowed not to touch a club for the entire year in preparation for a rematch.

The Kennewick firm of Hurson and Felsted have announced the association of **Chris Nickola**. Other new additions include **Arthur J. Bieker** who has hung his shingle in Richland and **Mike Larsen** who is practicing in Pasco. Finally, the Richland firm of Gladstone and Stancik have announced the association of **Robert Swisher.**

The law firm of Peterson, Taylor, Day and Shea recently announced the retirement of their senior partner, **Theodore D. Peterson.** While none of us who have practiced with Pete can picture him relaxing, we all wish he and Dorothy the very best in their second childhood.

SOUTH KING REPORT

By **JAMES L. VARNELL**

Bill Levinson combined power off of the tee with a steady putter on the greens to claim a two-stroke victory over **Don Mirk** for the annual South King County Bar Association golf tournament championship. Levinson also was the winner of the longest drive award. **Eugene**

G. Cushing, a frequent judge pro-tem in the King County Superior Court, was the winner of the Judges Division. **Deborah Shore** won the Calloway Division for attorneys. Members of the judiciary who took their turn on the tricky Enumclaw Golf and Country Club course included the following: **Chief Justice Charles F. Stafford** of the Supreme Court, **Herbert A. Swanson** of the Court of Appeals, Division I, and King County Superior Court **Judges Eberharter, Dore, Hunter, Chan, Roberts, Goodloe,** and **Bever.** Guests at the post-tourney festivities included **Justice James Dolliver** of the Supreme Court and Walla Walla **Prosecuting Attorney Arthur Eggers. Bob Rockman** and **Larry Colingham** from the King County clerk's office were reported to be pleased with their 18-hole totals.

Paul Cressman continued his mastery over his associate, **Bob Jaffe,** who suffered from numerous distractions including this correspondent's game and that of **Dave Koopmans.**

Bar President **Pete Curran** and **Phil Biege** should be complimented for the well-organized tournament this year. Not to be left out are **Dick Conrad** and **Mort Hardwick,** who provided refreshments along with pleasing distractions.

Dan Farr has announced recently that he has opened his own law office in Enumclaw.

Omitted from the list of best dressed attorneys in last month's issue were **Ernest B. Vogel, Bill Levinson, Kameron C. Cayce,** and **Jim Short,** all of whom have been known to favor three-piece suits.

SAN JUAN REPORT

by **MICHAEL C. REDMAN**

Hark, brethren and sistern of the mainland Bar to the inhumanity of large corporations. The last meeting of the local association, called by the president, was attended by all the membership (except **Harry Greer,** who knows there's no such thing as a free lunch, and **George Moseley,** harvesting his free lunch from the shores and waters of British Columbia) to relax in the middle of the day with a representative of a large financial institution's trust department. (The institution shall go nameless on the assumption that settlement negotiations will commence shortly.) Notwithstanding our anticipation that the tab would be picked up by our host, no lavish preparations were made — domestic rather than imported caviar was specified and only one magnum per member was iced. A splendid meeting ensued, marred only by the absence of the host and the presentment of the checks. An ad hoc subcommittee retired to draft a spiffy codicil form to be used when the testator desires to change corporate trustees, and the legislative action committee has drafted a letter outlining the terrible problem created when corporations are allowed to act as fiduciaries. Oh, tempura, oh, Morey's. And so it goes.

Office Practice Tips

Covering Old Ground

When I was visiting with Ed Huneke, former Editor of the *Washington Bar News*, recently on the occasion of his talk to the Spokane County Bar Association, he mentioned that he frequently published letters that are sent to him.

I too receive a good many letters and recently they have been reflecting the fact that we have many new members of the Bar who need grass roots information relative to office practice. In order to get the pulse of these new members, I propose to publish their letters and my answers to them as they come in. In this connection my answers are most frequently a reference to an article which has been formerly published in the *Bar News* on the subject in which they are interested. Either the Bar Office or my office will zerox a requested article for a fee of $1.00. The following is a list of past articles for which we have had the most frequent requests. They should be identified by name and date:

Designing the Lawyer's desk	WBN Nov. 1968
Multiple Folders-File Record Sheet-Client's Card	WBN Jan. 1969
Law Specialists	WBN Mar. 1969
The Night Shift	WBN May 1969
Double or Triple your Library Space	WBN Oct. 1969
Dictation Machines-Typewriters	WBN Nov. 1969
Personalized Form File	WBN Dec. 1969
The Grease Pencil Log	WBN Feb. 1970
Malpractice Insurance	WBN July 1970
Personal Injury Diary-Marvels of the Computer-Uniforms for Secretaries	WBN Nov. 1970
Divorce, Annulment, Separate Maintenance Fee Agreement	WBN Jan. 1971
Office Manual-Name Index	WBN April 1971
The Realities of Billing	WBN June 1971
Stock Transfer Forms by Al King	WBN Dec. 1971
Training a Probate Administrator	WBN Mar. 1972
Divorce Conditioning Letter	WBN June 1972
Will Letter	WBN May 1973
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Prepared by the Office Practice Committee, Harry E. Hennessey, Editor, Spokane, Washington.

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

Report on the 1976 ABA Meeting in Atlanta

ULTRA VIRES IN ATLANTA

By **WILLIAM H. GATES**

When was the last time you had an argument about whether a party's action was ultra vires? Believe it or not, this old question was the common thread in the principal issues settled by the House of Delegates of the ABA at its annual meeting in Atlanta in August.

First some brief statistics. About 7,800 lawyers registered for the convention (at $100 each) out of a membership of 210,000. It is estimated that there are 350,000 lawyers in the United States. The House of Delegates membership present for its meeting was 361. Your state delegation consisted of Dave Andrews, Grant Armstrong, Cleary Cone, John Gavin, Joe Gordon, Llew Pritchard, Dee Williams, and the writer.

The first item before the House that raised the ultra vires question was a resolution introduced by the Law Student Division asking that the ABA oppose attempts by Constitutional amendment or legislation to limit the availability of abortion beyond the guidelines set by the U. S. Supreme Court in *Roe v. Wade*. When the resolution was moved a member of the House raised a point of order that the subject of the resolution was ultra vires — not germane to the purposes of the Association. On the basis of the language of the ABA Constitution* the Chairman ruled that the point of order was well taken and invited an appeal. The appeal was taken and the ruling of the Chair sustained by a vote of 198 to 78.

One of the most important actions of the House was the election of the President-elect of the ABA. Here too, the question of what the ABA is organized to do was an issue. LeRoy Jeffers of Texas, one of the candidates, campaigned on the platform that the ABA should get out of general social and political issues and focus on working directly for the lawyers of the country. Jeffers did not do well, as William Spann (rhymes with scan) of Georgia was elected by a vote of 260 to 59. The vote however cannot be taken as the sentiment of the House about Mr. Jeffers' platform issue. Spann, who was the single nominee of the regular nominating committee procedure, is a well-liked, long time, able worker in the ABA vineyards and was generally regarded by the delegates as having earned the presidency.

The third and really close issue on ultra vires came on a resolution of the Section on Individual Rights and Responsibilities that the ABA indicate its support of legal prohibition of discrimination against homosexuals. Again, as in the case of the abortion resolution, a point of order was made that the issue was not germane to the pur-

*Section 1.2 *Purposes*. The purposes of the Association are to uphold and defend the Constitution of the United States and maintain representative government; to advance the science of jurisprudence; to promote throughout the nation the administration of justice and the uniformity of legislation and of judicial decisions; to uphold the honor of the profession of law; to apply the knowledge and experience of the profession to the promotion of the public good; to encourage cordial intercourse among the members of the American bar; and to correlate and promote the activities of the bar organizations in the nation within these purposes and in the interests of the profession and of the public.

poses of the Association. Again the chair ruled that the point of order was well taken and invited an appeal. The issue turned on the following language in the ABA Constitution:

> "The purposes of the Association are to uphold and defend the Constitution of the United States . . . to apply the knowledge and experience of the profession to the promotion of the public good . . ."

The debate was extended and of high quality. The vote on the appeal overturned the chair's ruling by the close margin of 134 to 124. This vote was really based on the arguments for the proper legal interpretation of the Association's purposes. Probably the most telling argument was that made by such distinguished lawyers as Francis Plimpton of New York and Barnabas Sears of Chicago (whose views would not coincide on many issues) that the ruling of the chair would tend to preclude consideration by the House of Delegates of any civil rights issue. That the vote to overrule the chair did not represent majority support of the resolution to protect homosexuals was clearly demonstrated in the next event which was a resounding vote of 158 to 97 to table the resolution.

Mr. Gates is the elected State Delegate from the state of Washington to the ABA House of Delegates with a three year term commencing with the midyear meeting held February 16 and 17 in Philadelphia. He indicates that he would be pleased to have your comments or to answer any questions you might have after reading this report.

Other items of note: Notwithstanding the prestigious support of the Commissioners on Uniform State Laws, action on the proposed Uniform Land Transaction Act (ULTA), which would establish a uniform system for land transactions, was deferred. A significant element in this result was an excellent speech by John Gose of Seattle opposing some of the concepts of the ULTA. There was nothing on the agenda of the House concerning advertising but there was the clear feeling, generated by the retiring President, Mr. Lawrence Walsh of New York and by the incoming President Mr. Justin Stanley of Chicago, that the ABA would have to litigate to conclusion the suit brought by the Department of Justice challenging the provisions of the Code of Professional Responsibility preventing advertising.

Finally, a reminder that the ABA has its midyear meeting, much smaller than the annual meeting, here in Seattle in February next year. □

Resolution of a Dilemma for the Dissolution Lawyer

The Divorce Client Coordinator

By **LEONE KAUFMAN, RODERICK A. CAMERON** *and* **WOLFGANG R. ANDERSON**

Editor's Note: Many attorneys find a divorce practice baffling and unpleasant. The client demands time and services the lawyer cannot easily supply. The result is either an unprofitable practice, unsatisfied clients or both. Yet the burgeoning demand for legal assistance in connection with dissolutions can be an important source of income for a firm. One of the most constructive solutions to this problem may lie in the concept of the Divorce Client Coordinator described below.

Divorce* has become one of the remarkable social phenomena of the latter-half of the 20th Century. Its prevalence has caused extensive comment and its significance to our lives and well-being is a matter of much conjecture and concern. For the lawyer the phenomenon presents both opportunities and problems.

The opportunities reside in the fact that the demand for legal services associated with divorce is enormous. Further, the contacts established in a skillfully conducted divorce practice can lead to significant other business.

The problems lie in conducting the practice in such a way that it is both profitable to the attorney and satisfying to the client who often needs more attention than his or her purely legal problems merit.

A divorce practice, in the minds of many attorneys, is messy. It conjures up images of

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*The word "divorce" is not used here in preference to the word "dissolution." The two words are used differently. "Divorce" refers to the entire social psychological and legal process by which a couple severs the web of marriage relationships. "Divorce" is a layman's term, is of long standing, and is commonly a painful, personal crisis for those caught up in it.

"Dissolution," while not new even in its application to the domestic law scene, has been given new currency through its use in the reformed, no-fault laws by which some states now govern the termination of marriage, *e.g.*, RCW, Chapter 26.09. Thus, as used here, "dissolution" is a narrow, technical and neutral label for the judicial process through which "divorce" is given legal sanction and official finality.

By this definitional footwork it is hoped that the word "dissolution" can be kept free, as the legislature intended, of the heavy emotional freight attaching to the word "divorce." That emotional freight and all the negative and painful aspects of divorce, however, are real and should not be de-emphasized or ignored by a pretty new word like "dissolution." For that purpose the word "divorce" is retained and used.

clients who are angry, weeping, obnoxious, perverse, hysterical or unrealistic. The lawyer may see himself serving as an unwilling tool of vengeance or as a hapless go-between for a warring couple.

As commonly conducted a divorce practice carries hazards for the spill-over of emotional trauma into the attorney's professional and sometimes his private life. Too often the choice seems to be between, on the one hand, spending profitless time holding the client's hand, and listening to legal irrelevancies, or on the other, becoming impersonal, unavailable or expensive to the client. The one alternative produces an unhappy lawyer, the other an unhappy client.

A promising solution to this dilemma has emerged from the experience of a firm specializing in divorce problems. A constructive role can be played in a law office handling substantial numbers of divorce clients by a person functioning in a manner similar to that of a paralegal person. There are significant differences between this position and that of a paralegal person, however, and so we denominate this specialized position as that of a "Divorce Client Coordinator." The position may well reflect an emerging profession or career.

Qualifications for such a position include a working knowledge of the dissolution laws and of the available options offered in the local area by the therapeutic and counseling professions. The Coordinator needs a mature, sympathetic, perceptive and non-judgmental personality.

The Coordinator's role is to serve the client as an accessible listening post and guide within the lawyer's office. By being attentive to the client's problems, by being sympathetic and yet tempering the sympathy with a measure of hardheadedness, the Coordinator can save a law office innumerable headaches. He or she extracts the legal problems for the laywers' attention while solving or mitigating the myriad practical, personal, trivial and psychological problems without more than brief professional level discussions with the laywer.

The stabilizing guidance which the Coordinator can give to the client throughout the awkward, stormy and anxiety-ridden course of the divorce process can relieve much of the pres-

sure on the lawyer. As a result of the close contact which the Coordinator maintains with the client the lawyer can be kept informed of the client's progress with a minimal expenditure of time. Because his office is in closer contact with the client, the lawyer learns quickly about the appearance of problems which might effect the course of the legal proceeding. By giving constant feedback to the Coordinator, the lawyer can practice preventative law, nipping problems in the bud before they become legally damaging and expensive, often far beyond the client's means.

The close contact maintained by the Coordinator operates at an even more basic "preventative medicine" level. Legal problems in a divorce practice, perhaps more often than not, arise from emotional problems between the divorcing couple. Each party may have a "hidden agenda" and unconscious motivations. Usually the lawyer is neither equipped for nor desirous of coping with such matters. The perceptive Coordinator can often manage these problems and keep them from becoming serious impediments to either the dissolution process, which the lawyer is handling, or to the psychological and social uncoupling process going on between the former husband and wife. Thus, the Coordinator function not only eases the life of the lawyer, it provides an even greater service to the client.

A critical function of the Divorce Client Coordinator is to recognize the existence or emergence of emotional problems too serious to be handled other than by a competent and suitably trained therapeutic professional, such as a psychiatrist. Sensitive and sympathetic guidance by the Coordinator can ease a client's acceptance of professional help. A law office is often the only contact a troubled client has that can recognize the client's need for, and guide the client toward, competent professional counseling. Sometimes the client is the last person to recognize such a need. Much human skill and sympathy may be required to assist the client to such recognition. An important part of the Coordinator's task, in such a situation, is to find the best available therapy within the means of the client.

A Divorce Client Coordinator could either participate in the initial client interview with the lawyer or conduct the interview alone without the lawyer. In either case, the idea is to serve to some extent as a go-between for the lawyer and the client. The Coordinator can survey and summarize both the legal and non-legal terrain for the problems which will affect the relationship between the office and the client. The Coordinator replaces the lawyer in the relationship but only to the extent that the Coordinator will handle the non-legal problems. This will occur, of course, under the guidance of the lawyer.

It is the lawyer's task to structure the initial interview in such a way that he or she is given

LEONE M. KAUFMAN created and organized the position of "Divorce Client Coordinator" in a law office specializing in domestic problems. She now does consulting work in this new field. In 1975 she presented a paper on the position at the national meeting, in Toronto, of the American Trial Lawyers' Association . . . RODERICK A. CAMERON is a lawyer in the Seattle firm of Schroeter, Goldmark & Bender. He received his J.D. degree from the University of California at Berkeley in 1967. Formerly he was Executive Director of the Environmental Defense Fund in Washington, D.C. He has organized Trustees for Alaska in Anchorage, Alaska, a public interest law firm . . . WOLFGANG R. ANDERSON has been since 1970 a member of the law firm of Jonson & Jonson in Seattle, where he specializes in dissolutions. He has lectured on dissolution proceedings in seminars sponsored by the Washington State Bar Association and the Washington State Trial Lawyers Association, as well as on Seattle's Channel 9.

full opportunity to discern all the potential legal problems which may be present. While this is by no means a trivial problem, it is far from insoluble. A Coordinator can handle the bulk of divorce client relations without inhibiting in any way the discovery or perception of legal problems.

Many lawyers feel it is important to conduct the initial interview themselves. This may be appropriate to some lawyers and to some situations, as where, for example, the lawyer knows the client personally, or represents him on other matters. Conducting the initial interview, however, causes the lawyer to become the central figure in the client's mind and this may have a drawback which the lawyer should consider. Divorce clients often call or drop in with trivial problems. When the lawyer is the central figure in the client's mind, it is the lawyer with whom the client will often want to talk. This is part of the problem which led to the concept of the Divorce Client Coordinator.

By taking the initial interview, or playing a prominent role in it, the Divorce Client Coordinator is likely to become an important fixture in the client's mind with respect to the office. The client is more likely to call the Coordinator with all problems, permitting the Coordinator to funnel those requiring the lawyer's attention to the lawyer while solving those that do not. The Coordinator becomes not only a source of human warmth from within the office, but becomes the client's contact point and source of information. The lawyer can then control the amount of contact he has with the client to those matters which, in his discretion, require his attention. Time, which is a lawyer's stock in trade, can be utilized more efficiently while expanding service to the client.

There is another important benefit to the Coordinator's function. A Coordinator can prepare the client for contact with the lawyer. He or she tells the client what to expect from the lawyer. He or she can make it clear that the lawyer's time is a valuable commodity to the client, a resource which should be used with care. The result is that the client is more apt to listen carefully to the lawyer's words and follow his recommendations more conscientiously. Thus, the Coordinator can have the effect of enhancing the lawyer's control of the legal aspects of the client's situation.

A topic related to that of the lawyer's time is the matter of fees. The Coordinator can inform the client of the lawyer's fees, telling him what to expect in terms of total fees, other costs, billing procedures, alternatives and how the fees and costs can be paid. Such a discussion can often be conducted more comfortably and effectively by the Coordinator, who appears less self-serving, than by the lawyer himself. This again reduces lawyer time, leaving the lawyer to give advice and answer questions the client may still have.

The Coordinator can often "soften up" a client who has unrealistic notions or demands he or she wants the lawyer to advance. The Coordinator's more realistic view of what is possible lowers the client's resistance to the lawyer's judgments about the client's optimal posture. The Coordinator and the lawyer can often work as a team to bring the client within a realistic framework of the case's legal possibilities. As any divorce lawyer knows, the demands of an emotionally upset client often create severe com-

plications to the resolution of legal problems. Worse, even the best attorney may become involved in a client's psychological frustrations, the end result being emotional trauma for all.

The Coordinator's time can be billed either through a surcharge on the attorney's time or separately at a lower rate. The separate method is probably preferable because of the greater control over costs it gives to both the office and the client. Under either procedure the result is less attorney time per client with no diminution in service. The lawyer is able to serve more clients and is more apt to derive incidental business from clients well satisfied with the total service they receive from the office. Such a client contrasts sharply with those for whom, in the absence of a Coordinator, the entire divorce process, including contact with their lawyer, is painful.

In a given situation, it is not possible to say whether the total cost to the client with a Coordinator would be greater or less than the total cost without the Coordinator. In some instances the reduced attorney time may be more than compensated for by increased Coordinator time which, though cheaper than the lawyer's time per hour, may add considerably to the total bill. In most instances however the result is lower total cost to the client because the Coordinator time does not overbalance the reduced attorney time. This is true despite the increased total time afforded the client by both the lawyer and the Coordinator. The lawyer, by using his time wisely, can produce more and earn more even if the cost to the client is the same by having more time to give to other paying endeavors.

After the dissolution proceedings are complete, a client's needs for guidance both of a legal and personal nature may continue. Again, the Coordinator's availability saves the lawyer time while increasing client satisfaction. This positive relationship between office and client is apt to lead to other business from either the client or his associates.

Indeed, in the conventional adversary divorce, without benefit of a Coordinator, much bitter wrangling over modification of support and maintenance levels, custody arrangements, and other matters may continue to clog the dockets of courts and lawyers long after the final decree has been filed. The Coordinator can often ease the post-divorce struggle by serving in a peace maintenance capacity, helping clients to focus on the real "games" they are playing, helping them to resolve and bury their disputes with their former spouses.

Divorce is only in small part a legal proposition. The legal aspect, of course, is very visible and has traditionally played an apparently substantial part in divorce. Still, we believe that the process has always been primarily of psychological significance. Legal proceedings have always been merely the tools by which these realities have manifested themselves.

The legal process is simplified when these underlying realities are exposed and dealt with consciously and honestly. The Divorce Client Coordinator facilitates this process, easing the divorce for both the attorney and the clients. The clients emerge with a positive feeling toward the office. Divorce can be a time of growth and inner penetration. It need not continue to be the source of bitter emotions, scarred children, depleted finances.

APPENDIX

DIVORCE CLIENT COORDINATOR
Job Description Outline

1. *Qualifications*

Interviewing skills. Mature, warm non-judgmental personality. Thorough lay knowledge of dissolution law. Familiarity with nature, availability, and cost of counselling and therapeutic services in community.

2. *Function*

Serve as a communication link between divorce client and law office. Maintain frequent contact with client during stressful or eventful periods. Maintain sufficient contact at all times to discern, and anticipate where possible, developments that will affect the dissolution or the welfare of client or children. Keep lawyer apprised of developments, needs and status of case. Subject to lawyer's guidance, assist client to cope constructively with difficulties of divorce.

3. *Specific Tasks*

A. Initial interview (with or without lawyer).
NOTE: The initial interview is a critically important function and should be handled with care.
(1) Permit client to vent feelings.
(2) History of marriage and marital difficulties.
(3) Help client clarify issues relating to both reconciliation and divorce.
(4) Explanation of office procedure and general outline of dissolution process.
(5) Arrange interview with attorney (if attorney not present). Refer client to attorney where not already done. If appropriate, refer client to outside attorney or agency.
(6) If appropriate, refer client to counselling or therapeutic service. Perhaps to vocational advisor.

B. Information gathering. At initial interview and thereafter, gather information concerning:
(1) Financial resources and needs.
(2) Medical problems of children and parents.
(3) Psychological problems, attitudes.

C. Supportive counselling and trouble-shooting. Continue to be available to client for:
(1) Guidance in stressful times.
(2) Referrals to needed services.
(3) Liaison to attorney.
(4) Referral to other attorneys when emergencies arise and primary attorney not available.
(5) Resolution of non-legal problems.
(6) Clarify problems.

D. Always strive to convey to client an impression, on behalf of entire office, of warmth and concern.

E. Be alert to other legal problems of which the client may or may not be aware and apprise client of such problems and of availability of services for such problems. □

One Solution to a Growing Problem

The Great Lawyer Surplus and Legal Services to the Poor

By **NORMAN ROSENBERG**

A topic we have all expressed concern over lately is that of the rapidly increasing size of the State Bar Association and its effect upon the practice of law in the State of Washington. This phenomenon coupled with the startling realization that approximately 50,000 people in the State of Washington have no access whatsoever to legal services, requires consideration of a scheme that will, to some extent at least, make inroads upon two substantial problems: That of the increasing numbers of lawyers and the concomitant diminishing employment opportunities, and that of the substantial number of persons to whom lawyers services are unavailable.

The figures are interesting, if not startling. In 1973 there were 6,174 members of the Washington State Bar Association. Since that time the numbers have increased to 7,354, or approximately 550 new lawyers per year.[1] Of these, 100 presently work for legal aid programs rendering civil legal assistance to low income persons. This figure has remained approximately the same since 1972.

The population of the state provides the perspective in which to consider our growing profession. There are approximately 3,547,000 persons in the State of Washington[2]. Of these, approximately 9.8% or 349,600 are below poverty level and cannot, presumably, afford to retain a private attorney[3].

The federal government, the primary sponsor, spends $1,465,109 for legal aid in the State of Washington. Local and state governments, private foundations and organizations, bar associations, etc. contribute another $1,233,463 for a total of $2,698,572 per year spent in the State of Washington for legal services to low income persons. This amount equals approximately $7.72 for each poor person in the state and translates into 100 attorneys at a cost of approximately $26,985 each[4].

The above facts tell us this: Nearly 10% of the population of the State of Washington is considered, by federal standards, to be living below poverty level. These persons have only 100 lawyers, 1.4% of the lawyers in the State, to serve

[1]It appears that the trend is increasing. For example, in 1974, Gonzaga Law School graduated 166 graduates; in 1975, 247 graduates were produced. Already there have been 256 graduates in 1976, without considering the number that will finally exit the hallowed halls in the December graduating class.

[2]U. S. Department of Commerce, Bureau of the Census Series P 25 No. 624, May, 1976, entitled "Population Estimates and Projections".

[3]Precise figures for the number of poverty level persons in the State of Washington are not available as of 1975. Accordingly this estimate is based upon the poverty percentage in the State of Washington as of the 1970 census, extrapolated to the population figures of 1975. It is assumed that the percentage remained constant, although this is doubtful in light of the rampant inflation of the past few years.

[4]This figure includes the attorney's salary, support and clerical personnel, rent, supplies, and every cost necessary to support an attorney's activities for one year.

them. Stated another way, if it could be divided equitably, each private attorney would serve 453 potential clients. Compared to that, each legal services attorney must serve 3,496 potential clients. Roughly eight times as many persons are dependent upon legal services attorneys for their legal needs as are dependent upon private attorneys. This imbalance is aggravated by the fact that many "legal problems" are poverty specific and low income persons frequently have more than their share of the need for legal services.

The lawyer surplus makes the disparity increasingly inevitable and obvious. While the number of lawyers is growing, the number of poor persons who cannot afford private counsel is also growing. At some point, it becomes incumbent upon the bar to realistically attempt to solve these two problems.

The time has come. The bar is in a unique position to move toward a resolution of the disparity, and, by exercising some individual and collective initiative, can realize a benefit as a result of the lawyer surplus: Increased employment oppor-

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tunities for lawyers, and increased services to the poor.

Can the great lawyer surplus alone correct the imbalance and impact the serious need felt by the low income community of the State of Washington? It probably cannot. However, the secondary pressures on the profession caused by the surplus could, if capitalized upon, have some effect.

Obviously, the immediate product of the surplus is an increase in the size of the graduate pool from which both private and legal aid firms draw their attorneys. The effects, however, are clearly different. Within certain limits, a private firm is able to project an expansion of practice and hire additional attorneys to meet the needs of the additional clients generated by expansion. In this respect, additional lawyers in the firm will be at least self sustaining and, it is hoped, generative of increased firm revenue. Legal aid programs, with finite and heretofore static incomes, cannot usually plan to expand, even along limited lines, unless their income is increased by the source funding them. Because legal aid programs cannot charge for their services, adding staff does not add revenue.

At some point both the private firm and the legal aid program reach a saturation point. The private firm because there are too many lawyers and too few clients; the legal aid program because there are too many clients and too few lawyers; one has too rich a mixture and the other too lean. Clearly, the increase in numbers is at least potentially beneficial to existing private firms while it has no affect on legal aid firms.

Another product of the surplus is to give potential employer firms a better choice of employees and the capacity to use better people to increase practice. This benefits the private firm and the legal aid firm as well. Legal aid programs have, long ago, shown an unwillingness to hire unqualified or poorly motivated attorneys, and now there is no reason or need to do so.

The dilemma faced by a private firm and that faced by a legal services firm are obviously not susceptible to the same solution. To become more efficient and effective, the private firm must *reduce* its number of lawyers. To become more effective, the legal aid firm must do just the oppo-

site. (A reduction in the number of poor persons cannot reasonably be expected soon).

The solution to the legal aid firm's problems suggests, however, one solution that the organized bar might embrace to realistically deal with the lawyer surplus. By making more attorneys available for legal services to the poor, the bar will be creating more job opportunities and more effectively discharging its ethical responsibility to its client community.

Figures quoted earlier show that, in relation to the client population to be served, private practitioners outnumber legal aid lawyers by a factor of nearly 8 to 1. Is it immodest to propose that the number of legal aid lawyers be increased by a factor of eight? Perhaps only doubled? There would still be four times as many lawyers serving the general population as there would be serving the poor; only 200 lawyers to serve 349,592 persons. There are no apologies for this proposal.

Can it be done? The average cost per legal aid lawyer in the State of Washington is $26,985 per year[4]. The cost of hiring an additional 100 lawyers therefore would be approximately $2,698,500. Add the money already being spent for legal services in the state and we approximate a figure that more closely resembles an amount necessary to adequately serve the population, as well as to expand into areas of the state that are wholly uncovered by legal services in which low income persons are utterly disenfranchised.

Clearly, a concerted and sincere effort by the bar in this endeavor would serve both interests. Far from being a "make work" project, such an enterprise would serve to meet part of the bar's obligation to provide legal assistance to the poor and along the way another 100 lawyers would become employed.

What is the resolution? What must the bar do to respond to the problem that is occurring? There are some obvious recommendations:

(1) THE BAR MUST RECOGNIZE MORE FULLY THE INCOME OPPORTUNITIES THAT ARE AVAILABLE AND BE MORE WILLING TO ACCEPT HIGH RISK OR LOW YIELD CONTINGENT FEE CASES.

[4]This figure includes the attorney's salary, support and clerical personnel, rent, supplies, and every cost necessary to support an attorney's activities for one year.

Washington's Landlord Tenant Act, the Federal Truth and Lending Act, and the statute authorizing appeals from many administrative determinations all contain attorney fee provisions. The recovery in such cases is usually small and legal aid programs now accept such cases as a last resort. Acceptance of more of these cases by the private bar would serve two purposes: An expanded practice for the private attorney and reduced client pressure on legal services programs.

(2) THE BAR SHOULD STRONGLY URGE THE NATIONAL LEGAL SERVICES CORPORATION, STATE AGENCIES, AND ALL COUNTY GOVERNMENTS TO PROVIDE AN APPROPRIATE LEVEL OF RESOURCES TO AFFECTIVELY MEET THE NEEDS OF THE POPULATION TO BE SERVED.

The amount of money spent at this time is clearly not adequate to the task. All of the governmental agencies with the responsibility to provide legal services should be urged, by the strong influence of the organized bar, to more effectively and realistically meet their responsibilities.

(3) THE ORGANIZED BAR CAN VERY EFFECTIVELY ENCOURAGE AND PROMOTE LEGISLATION AND PROGRAMS THAT WILL MAKE LEGAL SERVICES AVAILABLE TO MORE PEOPLE.

For example, the State of Washington could very justifiably be approached to place a portion of its general revenue funds into legal services as one important aspect of the social services provided to the general population. While county governments bear, in varying degrees, the burden of providing criminal representation, very few, if any, provide assistance to the low income population with regard to civil matters, much of which is as critical and as important as a minor criminal action would be.

(4) THE ORGANIZED BAR, AND ITS MEMBERS, MUST TAKE A MORE ACTIVE AND PERSONAL INVOLVEMENT IN THE PROVISION OF SERVICES TO THE LOW INCOME PERSONS IN THE STATE OF WASHINGTON.

Individual practitioners and county bar associations should become closely involved with their local legal services program by, if nothing else, volunteering a substantial amount of time to handle cases in which the legal services program represents one party to the conflict, but cannot represent the other equally indigent party. The Spokane County Bar Association might be contacted in this regard as it has a very satisfactory system for accomplishing this purpose.

In summary, it appears that the impact of the great lawyer surplus upon the practice of legal aid lawyers will be slight unless the bar takes an active interest in the mutual problem presented. The organized bar is in a unique position to wield influence and political muscle to convince local and state governments to increase funding for legal aid, thus allowing the hiring of more attorneys to serve more low income persons. If this occurs, the surplus will be reduced and there will be considerable beneficial effect on the legal profession, the practice of law, and upon the client community as well. □

Law School News

The Gonzaga Law School Student Bar Association has been selected as the nation's outstanding student bar association for the 1975-1976 school year. The award was announced on August 10, 1976, at the annual American Bar Association convention in Atlanta. Richard Eymann, of Springfield, Oregon, national first vice president of the Law Student Division of the American Bar Association, and Patrick Morganelli, of Port Jefferson Station, New York, Gonzaga's representative to the Law Student Division of the American Bar Association, received the award on behalf of the student bar association.

The Gonzaga student bar association received two first place awards last year for the most outstanding law student project — an Environmental Law Seminar. The selection as the outstanding student bar association in the nation this year, was based upon an overall evaluation of the projects and activities during the year. Greg Huckabee, of Sacramento, California, was student bar president during the first semester of the 1975-1976 school year, and Carl Butkus, of Washington, D.C., was president during the second semester. □

The Courts

SUPERIOR COURT NEWS

By **JUDGE JAMES A. NOE**

As previously reported, many Washington State Superior Court judges attended the annual meeting of the National Conference of State Trial Judges in Atlanta, Georgia, early in August. The National Conference of State Trial Judges meets in conjunction with the American Bar Association and is a conference of the Judicial Administration Division of the ABA.

The key issue before the judges and the Judicial Administration Division was the relationship with the ABA. ABA President Justin Stanley pledged to the Executive Committees of the five conferences that make up the JAD, that he would appoint a high-level task force to discuss the concerns presented to the ABA in a study by the Oversight and Goals Committee of the JAD. The future vitality of the various judicial conferences may well depend on the negotiations with the ABA over the next few months.

Other action at the annual meeting: Judge George Revelle (King) concluded his year as chairman of the National Conference and was elected to serve as conference delegate on the Judicial Administration Division Council (Executive Committee) for the coming year. The judges from Alaska, Washington, Oregon, Idaho and Montana elected Judge Warren Chan (King) to serve a one-year term as representative for Region 13 on the National Conference Executive Committee. Judge James A. Noe was elected to serve as the National Conference delegate in the American Bar Association House of Delegates. All three judges will have responsibilities during the ABA mid-year meeting which is scheduled to be held in Seattle in February 1977.

Judge Stanley C. Soderland (King) was honored by the Washington State Trial Lawyers Association recently. The lawyers' group presented Judge Soderland with the first annual "Trial Judge of the Year" award.

Judge Chan was also honored in July, when he was named as one of 36 outstanding Chinese-Americans in the United States who have made important contributions to their communities. □

CRIMINAL LAW SECTION

By **EDWARD G. HOLM**

In 1975, a report was produced by the Legal Aid Committee of the Washington State Bar Association called : "Methods of Providing Representation for Indigent Criminals Accused". This report was funded and published by the Law and Justice Planning Office of the Office of Community Development, and was based on in-depth studies of 14 different counties conducted by Legal Aid Committee members. Each basic type of system used in the state was evaluated. Major recommendations were made by the study:

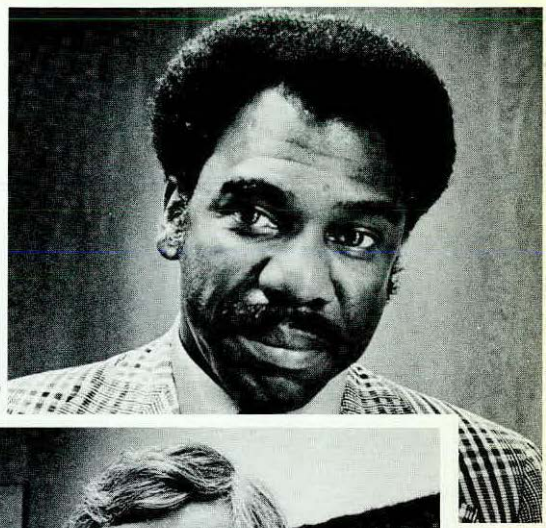
1. The best overall system was a combination of coordinated assigned counsel and public defender system.
2. The contract system used in a few counties is inadequate and should be replaced.
3. Appointed defense counsel should be independent of the county, judiciary and prosecution.
4. The determination of indigency should be made by an administrator separate from the court or the attorney providing the service.
5. Recoupment could not be practiced under the current status of the law. There should be an enabling statute which provides adequate safeguards before recoupment could be practiced.
6. Partial payment of the costs should be sought from the defendant who cannot afford all of the costs, but can afford some payment.
7. Compensation of attorneys representing indigent criminal accused should be on a par with compensation for other legal work in the county.
8. A regular review of all systems providing counsel for indigents should be conducted in each county.

A follow-up report, for the year 1976 will be published about the same time as this *Bar News*. The committee attempted to (1) help counties improve their methods of providing representation, (2) collect further information, (3) analyze and refine information collected in the past and (4) prepare a status report on defense services in Washington State as of June, 1976. The report is based on statistical information and an attempt has been made to rate the different counties in respect to the rest of the State. A summary is included for each county summarizing the type of system and how it works with statistical information grouping the counties by population and showing the annual superior court filings.

The annual filings are set out, listing criminal, juvenile and mental illness filings for the years 1972, 1973, 1974 and 1975, trials, commitments to adult corrections and admissions to adult probation as a percentage of criminal filings. Also the Superior Court criminal, juvenile and mental illness filings and trials, commitments to adult corrections, and admissions to probation per 10,000 population are set forth for each county, with juvenile and mental illness commitments as percentages of their respective filings for 1974 and 1975.

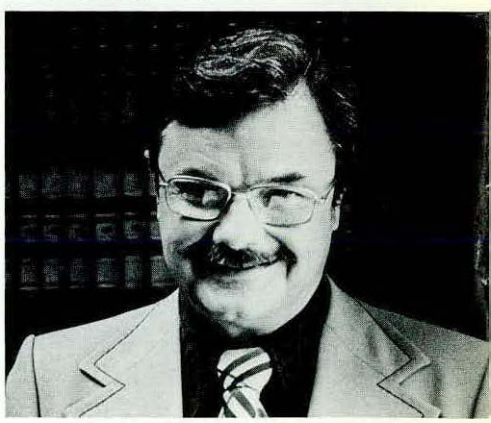
These figures are set forth for the first time. It is my feeling that the judges and practitioners in each county can learn something about their county and their systems by looking at these comparisons with the rest of the state. We hope that those involved in criminal law will take a look at this report. A copy will be provided to each of the judges and one can be obtained from the Law and Justice Planning Office. □

More McLauchlan



Judge Charles Johnson, Seattle

Vance Wolfe, Seattle



Judge Harry Follman, Mt. Vernon

Judge Barbara Yanick, Seattle

Judges Betty Howard and Frank Sullivan, Seattle

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Space Available: Next to Old City Hall for one attorney in a 5 attorney suite. Use of library-conference room, telephone, receptionist-secretary, copier, reception area - $600/mn. Tacoma, (206) 572-2600.

For Sale: Mertens, Law of Federal Income Taxation, 12 vols. plus Commentary, Regulations and Rulings with current supplements. $600 but negotiable. Contact John Peick, Seattle, (206) 624-7272.

For Sale: Amjur Legal Forms II with 1976 Supplements; AmJur Pleading and Practice Forms, Revised with 1976 supplements; ALR Federal, Volumes 1 through 27; Jones On Evidence, 6th Edition. Ritzville, (509) 659-0600.

For Sale: Model S-14 Olivetti typewriter with Mag Form Legal and Record Systems. Assume balance of contract of $10,342.70 with monthly payments of $244.75. This is an unused machine and above contract price amounts to a 30% discount. Call Azalea Streubel; Bellingham, (206) 734-2000.

For Sale: A limited supply of the three volume Washington Lawyer Practice Manuals and current supplements is now available. A complete set of Manuals and supplements - $60.00; supplements only - $10.00. Call or write the Seattle King County Bar Association, 320 Central Building, Seattle, WA 98104, (206) 623-2552.

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

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

For Sale: 14 Vols. of *Remington on Bankruptcy*, 1961 Edition with 1975 pocket parts and 1970 Rules & Statutes. Contact the librarian at Paine, Lowe, Coffin, Herman and O'Kelly, 1400 Washington Trust Bank Building, Spokane, Washington, 99204, (509) 455-6000.

Office Space: Attorneys interested in forming a space-sharing group in a Bellevue office suite please call (206) 232-1101.

For Sale: 1-11 ROW, as is, $35.00. Misc. tax reports, copy machine and other office equipment, 1899 law books, misc. law books and shelves. Mrs. Ralph Zoller, 3801 Franklin St., Vancouver, Wash. 98660, (206) 693-3893.

For Sale: ALR, ALR 2d, ALR 3d — all volumes, digests and indexes complete through 1975 — $1,500. Call Dale Riveland, Seattle, 623-1031.

For Sale: Complete set of R.C.W.; good condition; $900.00. Call Christy at (206) 623-6616.

Office Space Available: Two person firm desires third person to share space and expenses in the Maynard Building. Reception, secretarial and library services are included. Call 622-1471. Seattle.

For Sale: Executive desk and chair; steno machines; Complete American Jurisprudence, 60 volumes and miscellaneous equipment. 27th Floor, Smith Tower, Seattle, 623-3882.

For Sale: USCA, current; CJS, current; $800 each or best offer. Loren Howe; W. 707-5th, Spokane, WA. (509) 747-3182.

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

For Sale: Wn 2d and Wn App Reports up to date; misc. non-supplemented — Am. Jur. Legal Forms and Am. Jur. Pl. and Prac. Forms (1961), Wash. Digest, Am. Jur. (1st), etc. Call Bill Stephens, 943-6747, Olympia.

Will Sought: Anyone knowing the whereabouts of a recent last will of the late Hazel E. Bishop please contact Wm. R. Carper at 723-3387.

Oct. 1	CLE Seminar: *The New Rules of Appellate Procedure.* 1-6 p.m.. Ridpath Motor Inn. Spokane. Karl Tegland, Seattle, Chairman.
Oct. 8	CLE Seminar: *The New Rules of Appellate Procedure.* 1-6 p.m., Olympic Hotel. Seattle.
Oct. 15-16	ALI-ABA Seminars: *Federal Criminal Practice & Procedure and Practice Under the Federal Rules of Evidence:* Washington Plaza Hotel. Seattle. Information: Write Donald M. Maclay. Director. Courses of Study. ALI-ABA. 4025 Chestnut Street. Philadelphia, PA 19104. or telephone (215) 387-3000.
Oct.21-22	CLE Seminar: *Twenty-First Estate Planning Seminar.* Olympic Hotel. Seattle. Co-sponsored by the Estate Planning Council of Seattle. Seminar Chairman: Dell R. Call. Seattle.
Oct. 29	CLE Seminar: *The New Rules of Appellate Procedure.* 1-6 p.m., Sherwood Inn. Tacoma.

LAWYER PLACEMENT

1. Northwest Washington Legal Services will have an opening in the fall (after Sept.) for a managing attorney in the Bellingham office. Qualifications include: a minimum of 3 years experience in legal services and have been engaged in complex litigation, as well as, the range of problems commonly experienced by legal services clients. Salary: minimum — $13,000. If interested in further details contact Stephen M. Randels, Director, Northwest Washington Legal Services, 1712 1/2 Hewitt Ave., Everett, Wash. 98201, (206) 258-2681.

2. 3 attorneys wanted: Seattle national tax shelter oil and gas firm seeks securities attorney and attorney with commercial law background for newly created staff counsel positions, and an attorney to work in research and product development department. Call Mrs. Watson at (206) 223-4307 for appointment.

3. Middle-sized law firm with general practice seeks two attorneys with one to three years of general practice experience, one attorney to be in Olympia-Tacoma area, and the other attorney to be in Seattle. Contact Herbert H. Fuller, Fuller and Fuller, 114 West 10th, Olympia, Washington, (206) 357-8000.

4. Tax attorney with considerable experience in governmental and private practice in civil and criminal fields desires association with solid firm in Puget Sound area. Call John O. Durkan, Attorney at Law, (509) 775-3319.

5. Experienced ten year practice New York City attorney wishes to relocate; partner in small firm dealing in general practice and litigation; commercial matters, human (EEO) rights, admiralty, matrimonial and criminal experience. Kindly respond to Box 2 WSBA, 505 Madison St., Seattle, Wash., 98104.

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