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# WASHINGTON STATE BAR NEWS

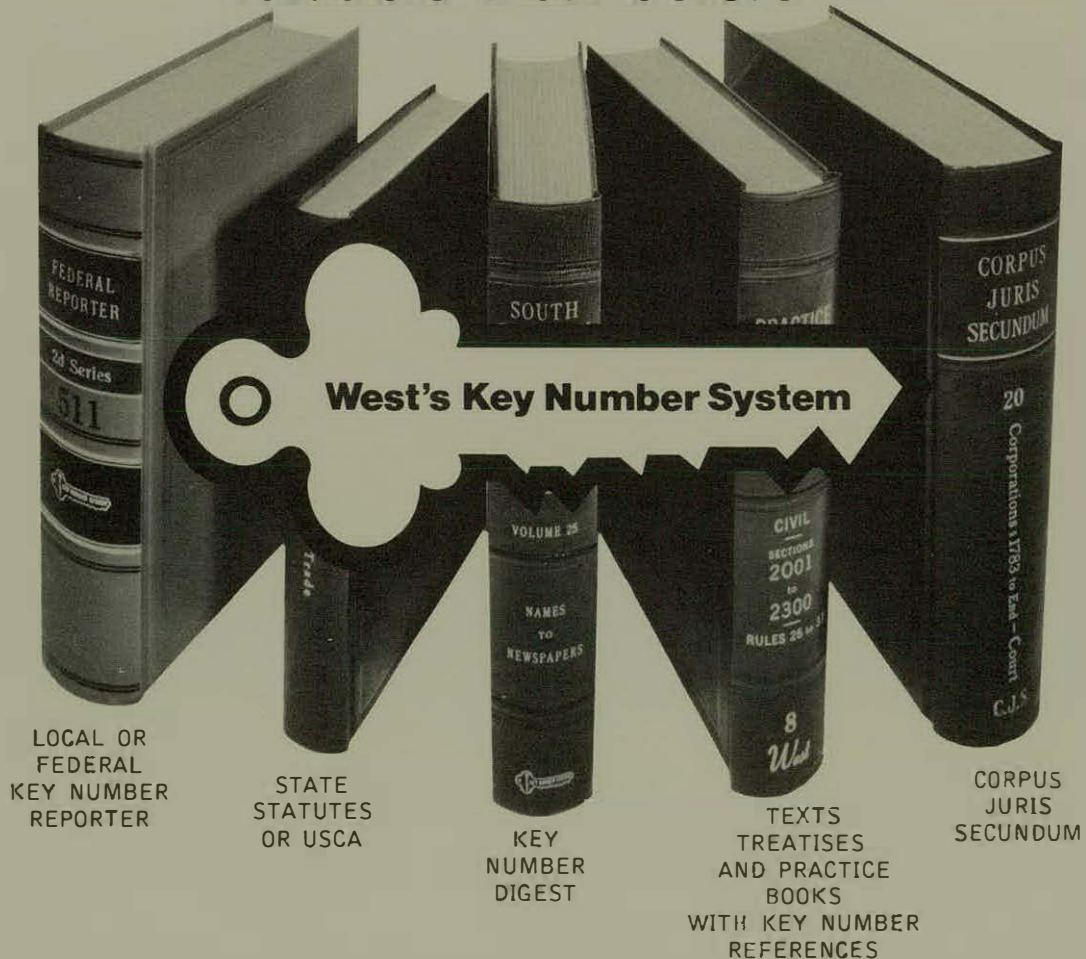
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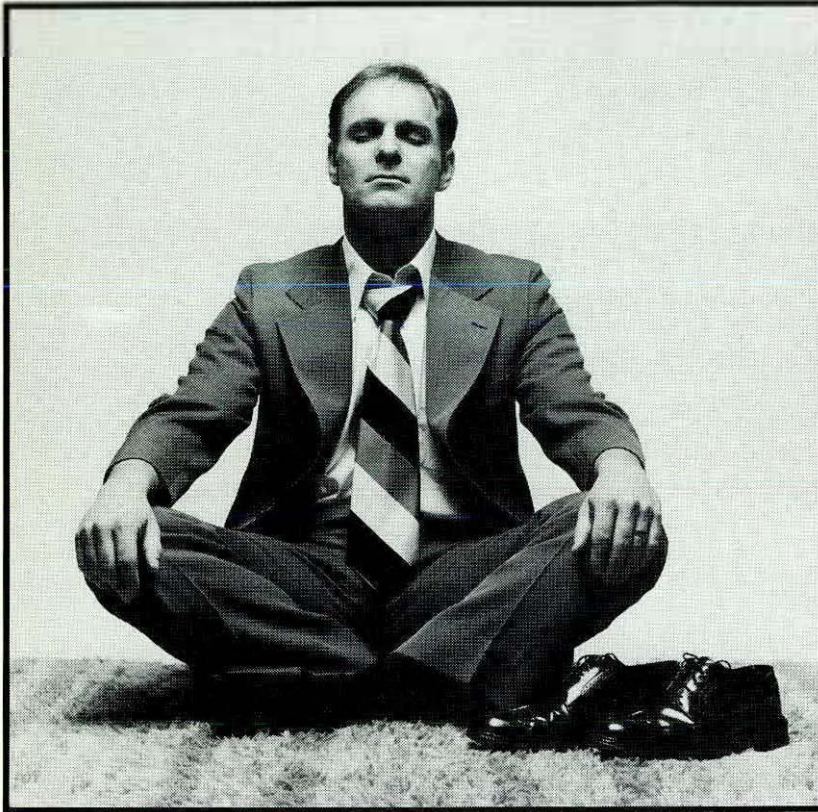
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Published by

WASHINGTON STATE BAR ASSOCIATION  
505 Madison Street Seattle, Washington 98104

Jay V. White, *Editor*

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

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Published monthly. Subscription price is \$5.00 a year, 50¢ a copy. Subscription included with active membership. Back issues \$1 per issue.

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#### Our Cover



A set of swings and a basketball hoop mark a play area behind the buildings of the King County Juvenile Court and Youth Service Center in Seattle. This issue features four articles relating to the state juvenile justice system. See Editor's Page.

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## O'Neill's Response on Contingent Fees

Editor:

I submitted an article entitled "Should the Courts be Allowed to Award Substantial Attorneys' Fees?" to the editor which article was published in the September *Bar News*. The article was shortened by the editor to omit the proposed legislation relative to court powers to award attorneys' fees in the interest of conserving space. The responses elicited accordingly were not germane to the proposal itself but were a defense of the contingent fee system.

As I stated in my article, the contingent fee does serve a good purpose in our system. However, it does tend to foster litigation and my proposal is aimed at counterbalancing that tendency, as well as at reducing the caseload of our courts by fostering settlements.

The trend toward a heavier caseload on the courts becomes more marked every day. Bill Gates' comment in his article on Lawyers' Malpractice Insurance in the November issue of the Seattle-King County Bar Association Bulletin demonstrates another effect of the trend:

"We lawyers have helped to make American society the most claim-conscious society in history. As was inevitable, this claim-making propensity is taking in lawyers along with all other classes of defendants. It remains to be seen whether a system of private insurance for lawyers will survive the threat . . ."

I believe the Bar should consider seriously legislation along the lines of the legislative proposal which I submitted with my article which was as follows:

"BE IT ENACTED BY  
THE LEGISLATURE OF  
THE STATE OF WASH-  
INGTON:

"Section 1. Section 374, page 202, Laws of 1854 as last amended by Section 512, Code of 1881 and RCW 4.84.080, are each repealed.

"*New Section.* Section 2. There is added to RCW 4.84, a new section to read as follows:

"Costs to be called the attorney's fee shall be allowed as follows unless the court, in its discretion, otherwise directs:

"(a) When judgment is recovered for a money judgment, a fee shall be allowed in accordance with the following formula to the party whose best offer in settlement made with the clerk at least two days prior to the scheduled trial date is arithmetically closer to the actual judgment. The amount awarded by the court as a reasonable attorney's fee in such case shall be not more than twenty-five (25%) percent of the difference between the opposing party's such offer and the actual judgment. If no offer in settlement has been filed before that time by the defendant, the figure "zero" shall be used as the best settlement offer of the defendant. If no offer in set-

tlement has been filed before the trial by the plaintiff, the figure prayed for in the complaint shall be used as the best settlement offer of the plaintiff.

"(b) When no money judgment is recovered or a money judgment is not an accurate measure to determine the fee to be allowed to the prevailing party, the court may allow a reasonable attorney's fee to the prevailing party.

"(c) The fee allowed for by this section shall not be allowed where there is other provision for fixing an attorney's fee, either statutory or contractual, in which event the fee should be fixed in accordance with the applicable statutory or contractual provision.

"(d) The allowance of an attorney's fee as costs in an action is not to be construed as fixing the fee between attorney and client.

"(e) To assist the court in the exercise of its discretion relative to fixing such attorney's fees, the Supreme Court may make appropriate rules which may provide that the determination of a pre-trial fact finding board or panel as to probable cause or lack thereof may be considered by the court, and may provide that the trial court establish a cost bond for the party asserting the claim if there has been a pre-trial determination that there is a lack of probable cause."

**ROBERT A. O'NEILL**

Seattle

## Office Protocol

Editor:

After 29 odd years practicing law mostly by telephone I must express my frustration at the usual answer when calling a fellow lawyer — “He’s in conference”, or “He’s with a client”.

Now I recognize the necessities for attorneys to have calls held because of important conferences. But I doubt that many of them are of such dire emergency that the contacted lawyer can’t accept the call — if briefly.

The time of the caller is valuable and usually is dictated by the need for immediate contact. Many times secretaries will mark the call and by the time her employer gets around to the answer, the caller is on to something else or away from his office. When

the new call is put through there is often another “can’t be disturbed” response.

Only in unusual situations does my office not put a fellow lawyer’s call through. We figure he must have a priority that needs more than correspondence and he may be trying to shortstop litigation.

If, upon answer, it appears that more than a short exchange is expected we tell the attorney the exact time we can get back so he can be available.

I’ve heard many other lawyers complain of this problem and some admit that after repeated “tied up” responses they start the dictation and go the hard way — costly for all concerned.

The young lawyer should be conscious of this. Potential clients often have a telephone

book in their hands and they dial someone else when they can’t get through.

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## Bar Examination Standards

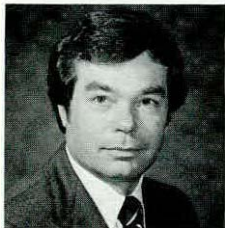
Editor:

I read an article in the *Seattle Times* of December 2, 1976 in which it is stated that a group known as the Coalition for Justice in the Legal System is urging that the Bar ease the requirements of its entrance examination so as to enable minority students to pass the same. I am shocked at the position taken by this organization and the attorneys connected therewith. They seem to have forgotten entirely that the purpose of the Bar examination is to make certain that the person applying for membership in the Bar is thoroughly qualified.

The statement of Juan Soliz of the Legal Aid Society that the examinations are geared towards the white culture would indicate that he has no concept of the duties of the Bar Association to the public. I sincerely hope that the Bar Association will maintain its standards and in the examination require each and every applicant to be thoroughly and completely qualified before giving that person the right to practice law in the State of Washington.

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## Children (Under 18) In Court

The most conspicuous defendants appearing in juvenile court are those accused of violent crime. In the view of some, juvenile courts encourage recidivism among this class of offenders because the sanctions are not seen to be as harsh as they are in "adult court" and a young offender, usually with the assistance of a private attorney or public defender, quickly "learns the ropes". Reflective of this view is an editorial entitled "Juvenile Justice" published December 20, 1976, in *The Seattle Post-Intelligencer* which stated in part: "These violent young offenders rely on the juvenile courts to protect them from severe punishment. They receive too many second and third chances to prey upon the community . . . In Washington state, juvenile courts increasingly are turning these cases over to the regular court system. And rightly. But, this doesn't mean that standards for judgment should be left to individual courts. Clearcut guidelines should be developed to determine which cases demand harsher treatment."

The paper does not say who should develop standards or clearcut guidelines, if not individual courts, but we presume it is the state legislature that is being addressed. In any event, we have never thought much of the idea of "clearcutting" and we always had the idea that a concept such as "justice" involved individual decisions by individual courts in individual cases: due process. Moreover, although perhaps not "clearcut", the United States Supreme Court has announced "determinative factors" consistent with due process for evaluating whether the juvenile court should decline jurisdiction over a juvenile offender, *Kent v. United States*, 383 U.S. 541 (1966), and these criteria have been approved by the Washington court, *State v. Williams*, 75 Wn. 2d 604, 453 P. 2d 418 (1969).

The less conspicuous children in court are the majority; these are "dependent" children — those who have been abandoned, neglected or otherwise abused, or who are "incorrigible" — and "delinquent" children who are neither repeaters nor guilty of violent crime. But maybe we need some clearcutting for them too. The point is that if there were any clearcut guidelines

to resolve the problems faced daily by the juvenile courts in this state — which are not limited to declination hearings — they would have been implemented long ago.

The articles this month are illustrative. Edward D. Seeberger, practicing attorney and juvenile public defender in Yakima, presents "A Practitioner's Guide to Juvenile Court" (page 33), which describes a number of basic juvenile procedures including an outline of the *Kent* criteria for declination. Esther Schmeising, probation counselor at King County Juvenile Court, and Ronald H. Clark, senior King County deputy prosecutor, juvenile section, present contrasting views as to the proper disposition of juvenile cases (pages 13, 17). Finally, Marjorie Anne McDiarmid (page 10), supervising attorney, juvenile division, Seattle-King County Public Defender, presents her views as to the realities and dangers which would confront the state legislature in balancing the public's right to protection and the young person's right to due process if the legislature were to consider proposals to amend juvenile practice statutes which basically have remained unchanged since 1913.

**ALSO IN THIS ISSUE:** Of great importance to all attorneys in this state is the Supreme Court's adoption of a compulsory continuing legal education rule. Only three other states — Iowa, Minnesota and Wisconsin — have such a mandatory rule. A report by John Michalik, Director of Continuing Legal Education for the bar association, including the full text of the new rule, commences at page 41 . . . Robert R. Redman, chairman of the Attorneys Professional Insurance Committee, presents an update on the subject of malpractice insurance, page 21 . . . The Board of Governors has approved the creation of a credit union for members of the bar and related groups, and the Supreme Court has approved amendments to Rule 9 less restrictive than those proposed by the Board, see *The Board's Work*, page 25.

**COMING UP:** The midyear meeting of the American Bar Association convenes in Seattle for the first time since 1948, February 9-15.

— J.V.W.

# Professional Liability Insurance

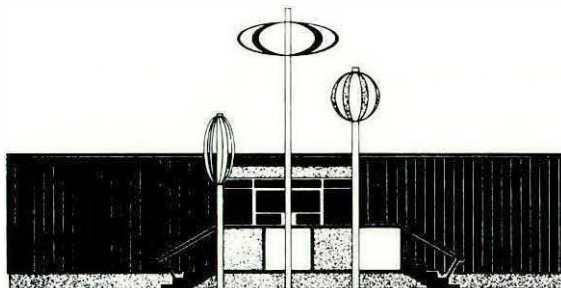
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The Supreme Court is in the process of republishing and seeking comments on the proposed new rules providing for audit of lawyers' trust accounts. We anticipate that the new rules will be adopted in the Spring. They were approved in principle at our September convention in Spokane by a substantial majority of those attending the business meeting.

These new rules will be administered by the Disciplinary Board and will have a direct relationship with the operation of our Clients' Security Fund. That fund is financed from our annual dues. In the past it has indemnified clients whose funds have been embezzled by their lawyer, up to a limit of \$25,000 per lawyer. The Board of Governors has recently increased that limit to \$50,000 per lawyer, in stages of \$5,000 per year (\$30,000 in 1977, \$35,000 in 1978, etc.).

If we increase our exposure in this manner—and most of us agree we should—it is imperative that we give the Disciplinary Board the tools with which to minimize our losses. In the past, there has been a time lag of a year or more between commencement of a disciplinary investigation of an embezzling lawyer and his ultimate suspension or disbarment. During the interval, experience has shown, that the embezzler has often been busy robbing Peter to pay Paul and getting more and more deeply involved. Under the new rule, when the client complains to the bar that although his case has been settled for three months his lawyer won't settle up with him, the Disciplinary Board can immediately dispatch the bar's staff auditor to the lawyer's office to inspect the lawyer's trust account records. If those records are awry, the Chairman of the Disciplinary Board can authorize such further immediate investigation as is indicated and, where appropriate, can move swiftly to seek interim suspension of the lawyer under DRA 9.2. Due process for the lawyer and the confidentiality of the client's records are both fully protected under the provisions of the proposed rules.

Those lawyers who violate their trust constitute only a miniscule percentage of our membership. Yet the damage they do to the public image of lawyers is substantial. If we are to assume our full responsibility to the public for these defalcations,



we must have the tools to cut our losses and to keep our Client's Trust Account viable. These new rules won't make saints out of sinners, but they will permit your state bar to limit the damage the sinner may do—to the public and to you. Hopefully, the mere existence of the rules may also help a few well intentioned but weak lawyers to avoid the pitfalls to which sloppy handling of trust funds can lead.

# Realities and Danger Points

“To impose a regulated mandatory sentence on a child of twelve which is not proportionate to his degree of culpability is not only cruel, but also destined to failure because it will be recognized by the child as illegitimate.”

By MARJORIE ANNE McDIARMID

The basic statutory scheme which still controls juvenile practice in the State of Washington was enacted in 1913.<sup>1</sup> The additions thereto since that time have been responsive to the availability of federal funding for various programs<sup>2</sup> or to the needs of the Division of Institutions to better define its role in the incarceration of juveniles.<sup>3</sup> Much of the change in juvenile law which has occurred through case interpretation has not been codified.<sup>4</sup>

Many books and articles<sup>5</sup> contain careful analysis of the changing perceptions of the juvenile justice system and I will not attempt to replicate them. It is sufficient to say, as has the United States Supreme Court,<sup>6</sup> that the original hope that juvenile systems through the use of social science expertise would be able to remold young lives for the better has proved largely illu-

sory. The reasons for this failure lie partly in lack of resources to apply what is known about rehabilitation and partly in the limits of such knowledge.

The result of this failure of expectation has been twofold. Critics concerned with the fact that many children are being punished without regard to proof that they have engaged in criminal conduct have insisted that the reality of punishment be recognized and adequate procedural safeguards insured. Similarly, critics who feel that emphasis on rehabilitation has obscured the right of the community to protection demand that the punishment objective of the court be made specific. Work is now underway in the legislature to draft a bill which hopefully will be responsive to both these concerns.<sup>7</sup>

<sup>1</sup>RCW 13.04.010 et seq.

<sup>2</sup>RCW 13.06.010 et seq. These are provisions for the use of so called subsidy funds to augment community based probationary programs.

<sup>3</sup>RCW 13.04.190 et seq. The most recent provision requires that as of July, 1977, juveniles who have been adjudicated incorrigible as opposed to delinquent may not be incarcerated for longer than 30 days in the Department of Institutions.

<sup>4</sup>The key United States Supreme Court cases in the field are of course: *In re Gault*, 387 U.S. 1 (1967) (right to due process in juvenile hearings) and *In re Winship*, 397 U.S. 358 (1970) (the standard of proof is to be beyond a reasonable doubt).

<sup>5</sup>See, e.g., Handler, *The Juvenile Court and the Adversary System: Problems of Function and Form*, 1965 Wis.L.Rev. 7; Young, *Social Treatment in Probation and Delinquency* (1937) p. xxvii (Forword); 1965 Report of the United States Commission on Civil Rights, "Law Enforcement—A Report on Equal Protection in the South" pp. 80-83; Lehman, *A Juvenile's Right to Counsel in a Delinquency Hearing*, 17 *Juvenile Court Judges Journal* 53, 54 (1966); Naon, *Responding to Youthful Offenders: An Overview and Critique of the Juvenile Justice and Corrections System*, Office of Program Research, House of Representatives, June 11, 1976.

<sup>6</sup>*In re Gault*, *supra* at 17-31.

<sup>7</sup>*Youth Services Act*, proposed by Rep. Ron Hanna and the Subcommittee on Corrections; this bill is still in the early stages of formation.

It does not follow, however, that because the original dream of the juvenile court as a social instrument has not and, perhaps, cannot be achieved, there is no place for a separate juvenile system. The fact remains that the bulk of juveniles are children or adolescents, in the common understanding of those terms, and a court with a specialized understanding of how children behave and what degree of punishment is appropriate to childish behavior has a place in any society which does not consider itself draconian.

The question confronting the legislature, then, is to develop a juvenile system which recognizes several realities. First, the majority of children appearing before the court will be charged with criminal activity and will be subject to sanctions including loss of liberty. This reality carries with it the recognition that they are entitled to the constitutional and legal protections extended to any person charged with crime.<sup>8</sup>

Second, many juveniles come into the courts

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<sup>8</sup>If anything, the insistence on a punishment objective carries with it the requirement that greater recognition of due process rights be accorded in the juvenile system. As long as rehabilitation remains the announced objective of juvenile proceedings, the courts are willing to withhold certain criminal law protections. See *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971).



Marjorie Anne McDiarmid is Supervising Attorney for the Juvenile Division, Seattle-King County Public Defender.

with very real problems which are not of their own making. Appearing every day in juvenile court are the disturbed child, the uneducated child, and the child deprived of a stable home structure. We do have expertise to deal with these discrete problems and, in so far as these contribute to criminal conduct, it makes sense for us to apply our expertise in the context of the juvenile court. This does not mean programs for the sake of programs nor does it mean subjecting every child coming before the court to a complex structure of requirements which will in all likelihood be the prelude to failure.<sup>9</sup> But it does mean the commitment of resources—money—to those problem solving programs which are necessary.

Third, there is the reality alluded to above that the persons appearing before the court are children or adolescents. The recognition of their immaturity carries several corollaries. First, the offenses with which they are charged frequently sound more heinous than in fact they are. Robbery in the juvenile context may be nothing more than one child's taking another's candy money, and assault may be the schoolyard fight. This does not mean that the conduct should be ignored, but a proper sense of proportion must prevail. Second, children cannot be expected to behave with the same degree of responsibility toward the formal structure of the court that adults can reasonably be expected to demonstrate. All too frequently, a child ends up subject to severe sanctions not because of the nature of the child's offense, but because of his or her failure to be in the proper place at the proper time to deal with probation officers and the court. As any parent should know, it requires patience and a willingness to deal with incidents one at a time to discipline children appropriately.

Finally, because the juvenile court by definition spans such a wide range in the maturity of those appearing before it, it is impossible to develop a neat system of sanctions which will be responsive to the degree of culpability of all children appear-

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<sup>9</sup>There have been studies indicating that for the child without a discrete problem, the absence of probationary intervention is sometimes the best way to produce a positive behavioral change. See, e.g., Lipton, Martinson, Wilks, *The Effectiveness of Correctional Treatment: A Survey of Treatment Evaluation Studies*, Praeger Publishers (1975); Vinter, Sarri, *Time Out, A National Study of Juvenile Correctional Programs*, University of Michigan (1976).

ing before it. Given the identical crime and the identical history of past behavior there is still a wide gap between the understanding, the willfulness, and the prospects for preventing future misbehavior between different youth. Even chronological age does not provide an infallible index as to the maturity and corresponding culpability of the child.

Any comprehensive juvenile legislation responsive to the realities mentioned must seek to provide procedural regularity and safeguards together with a system which will provide services and make allowances for the need for flexibility in disposition. There are some danger points: First, while responding to the legitimate demands of the community for sanctions and protection, there are those who fail to see that a demand for punishment carries with it the necessary right to full due process protection. We have sanctioned a modified due process for juveniles on the theory that the purpose of the court was correction rather than punishment.<sup>10</sup> If, as current legislation proposes, we move to a more punishment oriented ap-

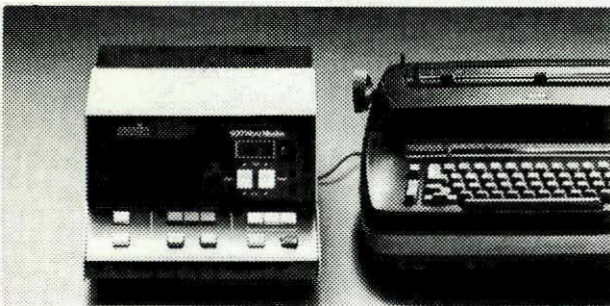
proach, we are required to go beyond current case law in the assurance that punishment will not be visited on those who the state cannot prove are guilty. The fact that juveniles require flexibility in that punishment does not change this requirement.

There are some who equate flexibility with a denial of due process guarantees. To do so confuses the two separate features of any criminal or quasi-criminal adjudication: the fact-finding and the disposition. These people succumb to the temptation to down-play the rights of the child in the first stage so that an "appropriate" solution to the child's underlying problem may be found. I suggest that this approach not only flies in the face of our basic freedoms, but it is also counter-productive. In the work I have done, with children it is my experience that whenever sanctions are imposed a child's first response is "that's not fair." If we build a justice system in such a way that the issue of guilt becomes submerged, children will perceive it. Particularly if punishment becomes the object of the court, juvenile offenders will have just ground for complaint.

A second danger point is the failure to recognize that children, even more so than adults, are individuals who must be dealt with individually if we are to have anything other than an ineffective, punitive system. This does not mean that sanctions are not appropriate, but if they are to be effective they must be understood and to be understood they must be responsive to the child's ability to understand. To impose a regulated mandatory sentence on a child of twelve which is not proportionate to his degree of culpability is not only cruel, but also destined to failure because it will be recognized by the child as illegitimate. Again "it's not fair."

The current draft bill pending in the legislature still has not found its resting place on several of these critical issues. If we are to have legislation which properly recognizes the community's right to sanctions, there must be a concomitant right to due process protection. Similarly, the desire for sanctions cannot be permitted to tie us into an unworkable structure of compulsory responses to what may be very different kinds of conduct. As members of the bar, our commentary on this proposed legislation is needed to insure that the necessary balance will be achieved. □

<sup>10</sup>See above, note 8.



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# A Probation Officer's View of the Juvenile Justice System

By ESTHER SCHMEISING

This article is an expression of some long restrained observations on a system of dealing with children which is not only generally inept, but sometimes downright destructive to those whom it purports to "serve." The blame for this deplorable state of affairs rests not just with the juvenile justice system itself, but with a society whose structures and values are increasingly hostile to the dependent child and his family.

The legal system alone cannot bring about the changes necessary to begin making an impact on the problem; but an increased awareness on the part of the legal profession to the dimensions of the "war on children" may at least suggest directions in which we all must move if we hope to curtail some of the damage that is being done in the name of "justice".

## Background

Few would dispute the assertion that *In re Gault*, 387 US 1 (1967) has had a sweeping impact on the administration of the juvenile justice system. While the rights established in that decision were significant in themselves, they have had the added effect of introducing into a closed juvenile system substantial numbers of attorneys whose views on due process have altered the role of the probation officer. In general, this has worked to the child's benefit, by freeing the probation officer

from the responsibility of prosecuting the state's interest, and by providing the child with an adult spokesman who keeps the probation officer's treatment plans honest.

Historically, the juvenile court was established to deal with children whose delinquencies were assumed to arise from their dependency; i.e., orphans who stole to feed themselves, or young Oliver Twists who were victimized by morally decrepit Fagins. The court-employed social worker/probation officer was assigned the task of identifying the corrupting influence in the child's life and prescribing an appropriate remedy for it. The connection between cause and cure was fairly direct and simplistic: for orphans, adoptive homes; for children of morally corrupt parents, appropriate foster parents; for children whose behavior resisted this sort of modification, "retraining" in the State Training School. All of these treatments, of course, turned out to be more "appropriate" for the children of the poor than for any other segment of the population. The children of the middle class and the affluent seldom appeared in Juvenile Court; but, if they did, they generally were represented by an attorney, and seldom underwent the "treatments" provided by the state, because their parents could afford the private counseling which the courts so firmly believed would change the direction of their young lives.

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In spite of the obvious class bias in this structure, the role of the social worker/probation officer was not inherently compromised if he chose to act as an advocate for the child. As long as society as a whole was benevolently disposed toward children, and had confidence in the agencies chosen to work with those children, there was opportunity for the probation officer to present meaningful alternatives to children who had run afoul of the law.

## The Politics of the Present

Unfortunately, society is no longer kindly disposed towards children. Since the rebellion of the middle class students during the 60's, America's disenchantment with young people has deepened, increased in bitterness, and expressed itself most frighteningly in what some have called genocidal attempts to eliminate the children of the poor entirely. As parents, we are disillusioned by the unremitting demands that children make of us; we are bewildered and guilty about our inability to help our children develop a morality that is sensible to them and also acceptable to us; in short, we need scapegoats, and the juvenile justice system is providing them for us in large numbers. In King County last year it is estimated that there were 22,000 "referrals" to Juvenile Court. More than half of these were diverted out of the system to community agencies (whose numbers and financial ability to deal with children are dwindling.) The remainder were funneled through the processes which Edward D. Seeberger describes elsewhere in this issue of the *Bar News*. The result, in King County, has been approximately 1000 adjudicated delinquent wards on supervised probation at any given time.

In reading Mr. Seeberger's article, one is struck by the orderly, deliberative nature of this legal process. "The focus is on the child, not the crime," he observes. Perhaps that is true in the court in which he practices. In the King County Juvenile Court, the focus is on the politics of juvenile delinquency. During the recent election, public officials fell all over each other offering their solutions to the problems of juvenile crime, and each solution seemed more punitive than the last. Declines of jurisdiction have become more frequent, and contrary to Mr. Seeberger's obser-

vation, the adult courts do *not* view the child coming directly from juvenile court as a first offender, nor do they treat him more leniently. A recent study by Juvenile Parole Services indicated that juveniles appearing in adult court after a decline of jurisdiction are much more likely to receive a prison or jail sentence than an adult first offender. The only time I would ever recommend a decline of jurisdiction as a *strategic* move, given the public outcry to punish juveniles as adult offenders, is if the evidence is so weak that it will not pass the test of sufficiency in adult court.

To function as an advocate and act in the "best interest of the child" in such an emotionally charged political atmosphere is almost always difficult and sometimes downright impossible. The social worker/probation officer in this system is the person in the middle: sneered at by defense attorneys who see us "doing the legwork" for the prosecutor, and castigated by the newspapers as "bleeding hearts" who mollicoddle criminals.

Indeed, the "best interest of the child" is becoming increasingly less important as a basis of juvenile court action, giving way to such concepts as "the right of the victim to be made whole" (used as justification for assigning \$1500 restitution to an unemployed youth who had been unable to finish high school.) When used by the state to justify frankly punitive measures, "the best interest of the child" can lead to some strange recommendations. For example, I recall a deputy prosecuting attorney arguing that 1500 hours of community service should be required of a 14 year old boy on the grounds that it would give him a better opportunity to work through his remorse than would the 300 hours suggested by the probation officer!

It appears that the King County prosecutor's office has abandoned the "best interest" concept entirely. That office now operates solely on the basis of a "matrix" which mindlessly assigns community service hours and days in detention without any reference whatsoever to the needs of the child. This frankly adversarial stance does have its advantages, however. It forces the child's attorney and the probation officer to work together as advocates for the child: the one represents what the child perceives as his interest, and the other represents the child's interest from the standpoint of the best social treatment for him.

## Is There Hope for Probation?

It must be frankly recognized, however, that the concept of supervised probation for the child may well go the way of "community treatment" for mental patients: sometimes the least damaging alternative is simple neglect. The number of foster homes, group homes, and intensive treatment facilities has grown smaller as the rising tide of public indignation has permitted funding sources to run dry. The better private agencies have all the children they can handle; the poorer ones are sometimes so bad that a child is literally better off on the street. Often the social worker finds it necessary to recommend commitment to an institution simply because there is no appropriate non-institutional resource. Even when a showplace public institution like Echo Glen might represent an appropriate placement, one wonders about the quality of care when cottages designed to house sixteen children actually hold twenty-two.

The greatest problem confronting the probation officer who is supervising a child on probation often is the difficulty in convincing the child of his



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increased vulnerability once wardship is established. Impressed by the fact that he has a lawyer to "get him off," many juveniles have no idea of the implications of probation. A child who simply runs away from home, for example, cannot be committed to a state institution as a dependent child; if, however, that child commits a shoplifting offense and is placed on probation, he then may find himself sitting in detention for the same act of running away. Recent statistical analyses of reappearances (violations of probation) by children in the state special supervision program showed that nearly half these violations were for dependency or status offenses. It is particularly true that girls are likely to be committed to state institutions for status offenses if they were wards of the court at the time they committed the offense.

Parents can pose a particular threat to the child who is on probation because they can render the child homeless simply by notifying the probation officer that the child is out of their control. Unless the probation officer can dream up a resource quickly, the child may be "sheltered" in deten-

tion for weeks at a time, just because there is no other place for him to live. Although essentially a dependency situation, the protective legislation which prohibits detention of dependent children will not apply to these youngsters because they are adjudicated delinquents.

An additional burden placed on the child by wardship is the impossibly high standard for social emancipation, and an absence of a legal emancipation procedure where it might be appropriate. It would be helpful if there could be a no-fault dissolution of the parent-child relationship when either party could show that the child would benefit from it. We might then place children in room and board situations where they could become self-supporting. Children who are not wards of the court often live independently with parental permission (or because parents threw them out) and many survival skills are learned in this way. But the court will seldom allow such a marginal arrangement for a child under its supervision.

School attendance beyond the age of 16 is also required of some children under wardship, and truancy can become the basis for a probation violation. Yet few school districts have the specialized programs that can provide for the needs of this reluctant group of students. Again, the child is placed in peril of loss of liberty by forces which are really beyond his control.

### Summary

The flaw in the concept of treatment through punishment as it is being applied to juveniles is that responsibility to society is learned, and the teaching of it requires considerable investment of adult time and interest. Punishment does not teach responsibility; it only seeks to extinguish undesirable behavior, and that extinction may be only temporary unless the punishment is repeated over and over. In an adversary system which seeks to punish juveniles, the probation officer may well find himself in conflict with the agency which employs him. If the present trend toward the adult standard of punishment in juvenile court continues, the probation officer may have to choose between leaving the system entirely, or abandoning his ethical commitment to the best interest of the child. □



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# A Prosecutor's View: Justice for Juvenile Offenders

By RONALD H. CLARK

Traditionally, the formal juvenile court process has focused upon "helping" juvenile offenders and has almost exclusively utilized the treatment-rehabilitation model. The participants in the formal court process (judges, probation officers, defense attorneys and prosecutors) have seldom acknowledged other purposes in sentencing juvenile offenders. This approach has proved itself to be incomplete and inadequate. The credibility of the juvenile court has suffered. Dispositions entered by the court have been in many instances disproportionate and disparate. The general deterrent value of the criminal law has been seriously undermined. Furthermore, this method of dealing with juvenile offenders has failed to provide an effective means of controlling juvenile crime.

## The Goal

The theory that the objective of the juvenile justice system is to "help children" who commit crimes had its genesis in the late 19th century. The reformers of that period placed great trust in social workers and their ability to alter or modify behavior and conditions which caused it, and, thereby, to protect society from lawbreakers. Concepts attendant to the criminal justice system, such as guilt or innocence, crime and punishment, rules of evidence, and the like, were to be abandoned in favor of a purely clinical model designed to help inherently good but sick children.

The inadequacy of this clinical approach is reflected in its results. No matter what method of evaluation is used, it is apparent that juveniles are responsible for a major portion of today's crime problem. It is estimated that persons under the age of 18 are responsible for 45 percent of all serious

crime. Recent research established that approximately 70 percent of all burglaries in the Seattle area were attributable to juveniles. Between 1960 and 1970, total juvenile arrests increased about seven times faster than adult arrests.<sup>1</sup> Equally alarming are the types of crimes committed by today's youthful offenders: the juvenile court currently is sentencing armed robbers, rapists, murderers, professional burglars and forgers.

Over the past decade, many persons concerned with the juvenile justice system have addressed the question of community protection and have reevaluated the effectiveness of the system in dealing with that problem. The President's Task Force in 1967 declared that "... the guiding consideration for a court of law that deals with threatening conduct is none the less protection of the community."<sup>2</sup> After spending five years studying the juvenile justice system as the chairman of the joint American Bar Association — Institute of Judicial Administration Commission on Juvenile Justice Standards, Judge Irving R. Kaufman stated:

It has become increasingly apparent that our traditional system of juvenile justice is a failure. It neither safeguards society from violent juveniles nor provides adequate protection for the alarmingly large numbers of children reared in brutal environments.<sup>3</sup>

<sup>1</sup>R. J. Gemagni, *Diversion of Juvenile Offenders from the Juvenile Justice System, Criminal Justice Monograph: New Approaches to Diversion and Treatment of Juvenile Offenders*, (LEAA, 1973), p. 9 and City of Seattle Criminal Justice Plan for 1977, p. 80.

<sup>2</sup>Task Force on Juvenile Delinquency, *Task Force Report: Juvenile Delinquency and Youth Crime*, (Washington D.C.) The President's Commission on Law Enforcement and Administration of Justice, (1967), at p. 9.

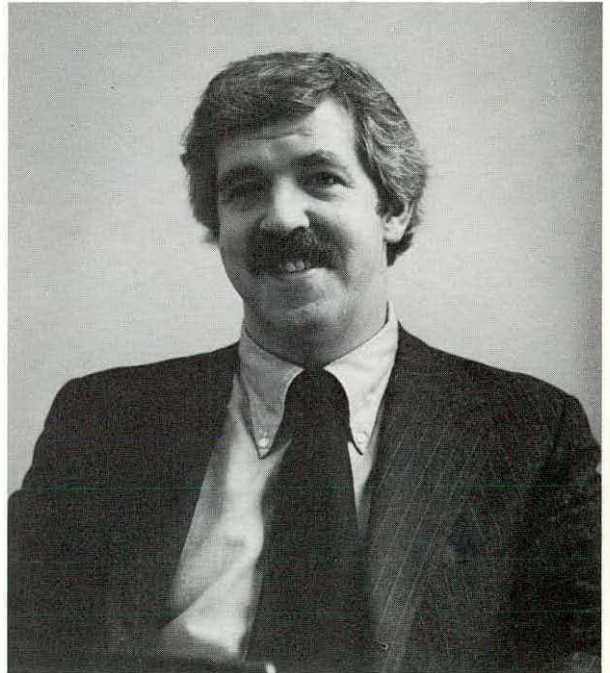
<sup>3</sup>Judge Irving R. Kaufman, "Of Juvenile Justice and Injustice", *American Bar Association Journal*, Vol. 62, p. 60.

During 1976, both New York and California have reformed their juvenile codes by requiring that the court in a juvenile offender case take into account the need for the protection of the community.

In this jurisdiction, protection of the public ought to be an explicitly acknowledged goal of the juvenile court. The goal of "helping children" need not be completely eschewed but ought to be properly relegated to a less exclusive position.

### The Model

There are many arguments against the traditional clinical model and in favor of a justice or accountability model. First, coercive treatment has the potential of being punishment. Whether the place of incarceration is termed a "prison" or a "juvenile correctional facility", or "special programs", the fact is that the perceived effect is that of punishment or incapacitation. This fact was recognized in the landmark *Gault* case when the Supreme Court afforded due process rights to juveniles who faced a potential loss of liberty. Understandably, the court is reluctant to impose harsh punishment on youths, but that is all the



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more reason for demanding honesty in the labeling of the nature of the disposition. For if it is admitted that punishment or incapacitation is being imposed, then the tests of proportionality and fairness as limits on the state's power to coerce can be applied.

Another problem with sentencing juveniles on the basis of a diagnosed social need is the disparity it creates in dispositions among offenders committing similar crimes. When the basis for the sentence is to be found in an examination of the law breaker's needs and background rather than the crime which brought him before the court, it is only natural to expect that an offender who comes from an unstable family, is unemployed, and uneducated will be in need of more drastic treatment and intervention than someone who has a family, job and education even though both people may have committed the same crime and have similar criminal records. A related problem is the sentencing of juveniles to institutions not because of their crimes but because there is no suitable community resource to meet the diagnosed social

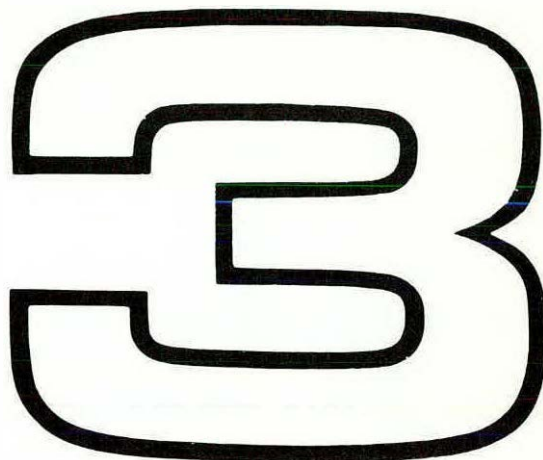
need. It would be unwise to design a sentencing system which inflexibly assigned punishments to crimes. Discretion is a necessary element of justice, but it should be subject to guidelines. Otherwise, the participants in the juvenile system may find themselves inadvertently punishing youths unfairly and irrationally on the basis of their race and economic status rather than for their antisocial conduct. Certainly, we have an obligation to treat children as well as adults with some degree of "objectivity, equity, and consistency".

The King County Prosecuting Attorney's office has adopted a set of guidelines which requires that the severity of what is clearly a sanction (community service, detention and commitment to a state institution) be determined by the age of the offender, seriousness of offense and criminal record. A discretionary variance from the normal recommendation must be based on aggravating or mitigating factors (race, sex, and the like are not to be considered), stated in writing and approved in writing.

The most crushing blow to the clinical model has been delivered, not by the civil libertarians who point out the injustice and potential dangers of the system, but by the very sociologists and criminologist who were once its most ardent supporters. Their attempts to measure and document the effectiveness of programs designed to deal with crime by treating the problems of individual offenders indicate consistently that we simply do not know how to effect criminal behavior through treatment. The most famous of these is Robert Martinson, who, after reviewing over 200 studies measuring recidivism rates of various treatment programs announced that "with few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism".<sup>4</sup> It should be noted that about half of the studies Martinson analyzed dealt with programs involving juveniles.

Another argument against a sentencing system which focuses primarily on the rehabilitative needs of the offender, is that it necessarily undermines the general deterrent effect of the criminal law. The notion of deterrence has, until recently, been extremely unpopular among authorities in

<sup>4</sup>Robert Martinson. What Works?—Questions and Answers About Prison Reform, 35 *The Public Interest* at p. 25.



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the criminal justice field. In the last ten years, however, a growing body of research has emerged which provides impressive evidence for the proposition that general deterrence (the effects of threatened punishment) is effective and that it is a proper goal of the criminal justice system.<sup>5</sup>

### Some Results

During the past couple of years, there has been an increasing concern in the King County juvenile justice system with the need to protect the public and to hold juveniles accountable for their crimes. Restitution ordered to be paid to victims has gone from \$87.50 in 1973 to approximately \$19,000.00 in 1975. The number of delinquency petitions filed in 1975 almost doubles the number of petitions filed in 1973. More serious or chronic offenders have been committed to state institutions.

<sup>5</sup>Barnes and Teeters, *New Horizons in Criminology*, at p. 337 (2nd ed. 1954); see also F. Tannenbaum, *Crime and the Community* at p. 478 (1938); W. Reckless, *The Crime Problem* at p. 508 (4th ed. 1967). J. Andenaes, *General Prevention Revisited*; 66 *J. of Crim. L. and Crimin.*, at 341 (1975). I. Ehrlich, "Participation in Illegitimate Activities: A Theoretical Investigation," *The Journal of Political Economy* (May/June 1975), 545.

The total number of commitments to institutions entered in 1975 almost triples the number of commitments in 1973. While cause and effect is difficult to establish, it seems more than mere coincidence that the juvenile crime rate is now decreasing in Seattle. For the first 6 months of 1976, compared to the same period in 1975, burglaries were down 21 percent, robbery 27 percent, auto theft 37 percent and vandalism 22 percent.<sup>6</sup>

Rather than focusing solely upon the best interests of the juvenile offender and utilizing a strictly treatment approach, the juvenile justice system should pursue the goal of protecting the public from juvenile crime. As a court of law and an agency of the criminal justice system, the juvenile court should provide fairness, general deterrence, certainty of punishment and proportionality in sentencing. The goal of rehabilitation should not be rejected but should be relegated to its proper place. □

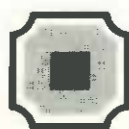
<sup>6</sup>Tim Burgess, *Do We Finally Have a Handle on Juvenile Crime? Maybe.* *S.P.D. Journal*, July-August 1976.

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## Professional Liability Insurance: A Status Report

By **ROBERT R. REDMAN**

After thorough investigation of the market and extensive negotiations, a program of professional liability insurance for Washington lawyers will be offered through the American Bankers Insurance Company of Florida. The coverage is available to Washington lawyers through the American Banker's authorized brokerage firms of (a) Alexander and Alexander, (b) Marsh-McLennan and Mercer and (c) Quinan-Pickering.

The policy is a claims made form, but "prior acts" coverage for up to three years is available on a 30% basic premium per year surcharge. Various limits are available starting with a \$100,000 limit to a \$5,000,000 limit policy, and various deductibles are offered ranging from \$1,000 to \$50,000. By way of example, assuming no prior claims, a \$1,000,000 policy with a \$1,000 deductible will carry a premium of \$393. Increasing the deductible or decreasing the limit will reduce the premium. Unlike the previous Affiliated FM policy, American Bankers does not offer a first dollar coverage.

The basic policy does *not* provide securities law coverage. However, American Bankers may on an individual basis place such coverage through Lloyds at an additional premium for those attorneys or firms who might be engaged in securities type work.

Defense costs are *not included* in determining the limit on the American Bankers' policy but are considered in the SEC coverage that is offered through Lloyds.

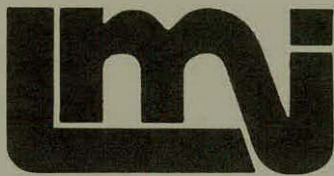
There is no extra charge for attorneys added to the policy after the first 30 days of the policy's existence. On the other hand there is no pro rata rebate for an attorney leaving a firm during the course of the policy period.

"Tail" coverage for lawyers who are retiring or leaving practice is available at 60% of the basic premium for the first year of coverage and 40% of the basic premium for each year thereafter.

American Bankers has indicated that a form of policy will be available to governmental lawyers and of counsel. However, this special policy will cover only claims that would be unconnected with the business of their employer. In other words, it will cover only any private practice done outside the scope of their employment.

Policies will be written naming, when applicable, the firm as the named insured and not the individuals who comprise the firm. This, again, is a variation from the Affiliated FM policy, which insured the individual lawyer.

The foregoing are comments on the major features of the new policy as compared with the existing policy written by Affiliated FM. How-



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ever, if further details are desired by individual practitioners or firms, they may be attained by contacting any of the brokers mentioned above.

The Insurance Committee is advised that there are at this time very few professional liability carriers authorized to write in Washington and actively (in some cases only passively) undertaking new business. The American Bankers program, outlined above, at this time seemed to the Insurance Committee to clearly be the most acceptable, all factors considered.

The problem of obtaining professional liability insurance for lawyers at a reasonable cost is now, and for at least the near future will remain, a vexatious one. There are some small but hopeful signs that the worst of the crisis may be over. The Insurance Committee is advised that some carriers, who have in past years either entirely left the market or who have placed a moratorium on any new business, may be considering coming back into the field. It is conceivable that another year may find an entirely different attitude for professional liability insurance for lawyers. However, that simply remains to be seen. It should be emphasized that this is only a hope and not a prediction!

It was and is apparent to the Insurance Commit-



Robert R. Redman is the Board of Governors member from the Fourth Congressional District. He is chairman of the State Bar Attorneys Professional Insurance Committee.

tee that the past few years have seen almost chaotic conditions in the field of professional liability insurance. Some comments about the past history and reasons for these chaotic conditions might be of assistance in understanding the problems that the Insurance Committee has been grappling with in dealing with the present market.

A few short years ago, the professional liability carriers began to see an adverse situation developing in terms of their loss ratios. At about the same time, the insurance carriers sustained rather heavy losses in their investment portfolios so that they were no longer able to sustain underwriting losses through investment income. Again at about the same time, the medical malpractice crises sprang nearly full blown upon the scene, and the reverberations from this situation undoubtedly influenced the carriers in their attitude towards other lines of professional liability insurance. Also, the carriers, in examining their claims data, determined that in an occurrence type policy the claims history indicated that during the first few years of the life of the policy few claims were noted, but as the years increased so did the number of claims. This information, coupled with recent decisions around the country that substantially increased the period of limitation, sounded the death knell of the occurrence type policy. At the present time, nationwide there appears to be little, if any, lawyers professional liability insurance written on an occurrence basis. If an occurrence form is used in order to cover the losses that might occur throughout the potential life of the policy, companies tend to charge extremely high premiums.

On the other hand, the claims made policy, while perhaps not as satisfactory from the insured's position, does afford a carrier an opportunity to know what its loss position is within a definite period of time. This factor of certainty permits the companies to offer coverage for a premium that does not have to take into account a long "tail" potential liability and loss.

It should be noted again that the uncertain situation of professional liability coverage is not peculiar to Washington. It is a nationwide problem that practically every bar association in the country is attempting to deal with. It at least is some small comfort to know that Washington enjoyed one of

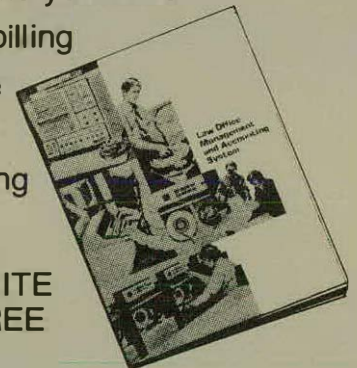
the lowest rates in the country during the past two years, and even with the increased premium of the American Bankers policy as compared to the previous Affiliated FM program, Washington still enjoys a rate on comparable coverage that is substantially closer to the bottom of the country-wide quotations than the top.

The Insurance Committee has been charged with a dual mission by the Board of Governors. The first responsibility was to find the best available replacement for the Affiliated FM policy that expires on January 31, 1977, and then to examine available alternatives to the present system of obtaining professional liability insurance for Washington lawyers. Having accomplished the first order of business, the Insurance Committee can now turn to the second phase, which involves essentially looking to the future. If the market continues in its unsettled and uncertain state, it is apparent that the Washington State Bar Association may be better served by some other medium than simply going out into the marketplace and taking the best available program at the prevailing rate. The Insurance Committee has and will con-

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tinue to study and analyze available alternatives. The alternatives studied thus far include (a) forming an insurance company, either of a mutual or reciprocal type, (b) hiring or renting an insurance company to "manage" a program of the Washington State Bar Association, (c) setting up an insurance company in Bermuda for the purpose of writing insurance for the Washington State Bar Association, (d) setting up an insurance-reinsurance type program, and (e) others. It should be noted at this point that all of the specific possibilities mentioned above are being studied and in some cases implemented by other bar associations or other groups of professionals for the same reasons that we are studying them. Of the alternatives mentioned above, perhaps the insurance-reinsurance approach seems the most practical and attractive at the present time. It will be of interest to the Bar that this type program has been used for some seven or eight years in our northern neighbor, the Law Society of British Columbia. A similar program has recently been put into effect by the lawyers of another province of Canada.

Each of the above mentioned alternatives has attractive features and at the same time disadvantages. If we could come up with an alternative that had all of the attractive features and no disadvantages, our problems would be negligible. The Insurance Committee is doing its best to make sure that it will have considered all of the alternatives, with their advantages and disadvantages, before making any recommendations to the Board of Governors for any change. It may very well be that the market will again stabilize to the point where it will not be necessary to implement one of the alternatives. However, it is the feeling of the Insurance Committee and the Board of Governors that because of the demonstrated uncertainty of the market in the past, an alternative or alternatives should be on the "launch pad" ready to go. The purpose of the Committee under its charge from the Board of Governors is to be sure that the lawyers of this state have available to them professional liability insurance with the best terms available and at a reasonable cost. We invite your comments and suggestions as to how we might best accomplish this purpose. □

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## Credit Union Approved

By JAY V. WHITE

JANTZEN BEACH, Ore., December 10-11—The Board of Governors unanimously has authorized the creation of a federally chartered credit union for bar association members, their families, employees and other related groups.

In addition, the Board took positions with regard to a number of legislative proposals which will face the upcoming legislature and continued progress in other areas, including further action on a proposed malpractice insurance plan.

At noon Friday, the Board joined a well attended luncheon meeting of the Clark County Bar Association which featured remarks by President Richard H. Riddell concerning matters of current interest, including the amendments to Rule 9 and the implementation of the compulsory continuing legal education rule.

Scheduling conflicts prevented the attendance of Board member Betty B. Fletcher during the entire session and Board member Bradley T. Jones during the Saturday morning session. All other members were present, including ex officio member Robert W. Burns, representing the Young Lawyers Section.

### Credit Union Questionnaire

The Board considered the results as of November 17 of a recent questionnaire circulated by the Credit Union Task Force which drew 1322 responses as follows:

1. Would you be interested in having a credit union for yourself and your employees? Yes: 1208; No: 114

2. If "yes", how many people in your office are interested? 1649.

3. Would your office offer payroll deductions as a benefit? Yes: 555; No: 299; Unknown, Maybe, or Possibly: 162.

4. Would you be interested in serving on the Board of Directors? Yes: 375.

### Action by the Board

Following a report by Board member David D. Hoff, chairman of the Credit Union Task Force, the Board approved creation of a credit union, and designated Robert S. Day of Pasco; Edward Novack of Everett; Robert Phillips of Spokane; Jack P. Scholfield and Miles McAtee, both of Seattle, to be initial members of Credit Union Board of Directors. That Board was requested to prepare a specific plan for operation of the credit union and, after some debate, the Board agreed that although it did not desire to approve indefinite bar association support for the credit union, assistance would be given in the form of office space and staff support for a reasonable initial period provided the credit union ultimately reimburses the association for such services.

The Board determined that the credit union should be chartered under federal law based in part upon the Task Force's recommendation reflected in the minutes of its December 8 meeting indicating that federal law, in contrast to state law, is more permissive regarding IRA accounts and in allowing drafts on accounts; has no limits on the percentage of deposits by members; and allows lawyers' employees to be members.

### 1977 Legislative Proposals

Terrence Schmalz, chairman of the Legislative Committee, and William L. Stephens, the committee's representative to the legislature, met with the Board to discuss matters likely to come before the 1977 Washington State Legislature. The Board voted to sponsor the following legislation:

- Certain technical amendments to the Probate Code introduced in 1976 in House Bill 1341
- Revision of Ch. 83.56 RCW relating to gift taxes introduced in 1976 as House Bill 1123
- Revision of RCW 6.32.010 relating to

## Action on Federal Judgeships

*President Riddell and all Board members present at the December 10-11 meeting signed the following letter to each member and member-elect of the Washington State Congressional Delegation urging immediate filling of the vacancy on the federal bench occasioned by the death of Judge William Goodwin, together with creation of two additional federal judgeships for this state:*

Inability to get civil cases tried in the federal district courts of our state is at the crisis stage. Litigants simply cannot get their day in court. The fault is not with the judges. The three full-time federal judges in the Western District (McGovern, Sharp and Voorhees) and the one in the Eastern District (Neill) are all working hard—very hard.

Since Judge William Goodwin's death, no civil cases from Southwestern Washington have been tried. His death increased the criminal case load of the four remaining federal judges. Judges McGovern and Sharp are spending 90% of their time and Judge Voorhees 80% of his time on the criminal calendar. It is almost as bad for Judge Neill. Next year, it has been agreed that Judge Sharp will try the Boise Cascade (a Section 10(b)5 securities fraud case) and the Kingdome lawsuit, each of which is estimated to take six months of trial time. That means that the criminal case load of the other three judges will become monumental. Civil litigants just will not get their day in federal court.

From 1974 to 1975, the number of cases filed in

the Western District increased by 23% and in the Eastern District by 18.6%. There were a total of 1,738 filings in 1975 in the Western District. With Judge Goodwin working in 1975 and dividing his time between the Eastern and Western Districts, this meant that total filings in 1975 *per judge* in the Western District (with three and one-half judges) was 497 and in the Eastern District (with one and one-half judges) was 344. In 1975, Western Washington had the third heaviest case load in the Ninth Circuit and Eastern Washington (where travel time to Yakima and Walla Walla is not reflected in the statistics, but is an important factor) had the 8th heaviest case load. Now, without Judge Goodwin, and with substantially increased filings in 1976 over 1975, both the Eastern and Western Districts have impossible case loads—probably the worst in the Ninth Circuit.

We need more federal judges and we need them now. And obviously, we need able judges. Judge Goodwin's vacancy needs filling immediately. The omnibus bill for federal courts will be introduced early in the up-coming session. The National Judicial Conference has recommended two additional new federal judgeships for the State of Washington (after Judge Goodwin's vacancy is filled). That is an absolute minimum. We think three are required and will be absolutely essential long before the next omnibus bill (every four years) comes around.

We are counting on your support. We will help in any way you suggest, including coming to the Capitol to testify. The need is critical.

writs of execution as previously sponsored in 1976

- Revision of the law as presented in 1974 in House Bill 1397 to provide that contractually authorized fees and costs be allowed prevailing parties in litigation even if not designated by the contract

The Board also agreed that a Judicial Council proposal relating to contributions and apportionment among joint tortfeasors should be referred to the Court Rules and Procedure Committee and to

the Trial Practice Section for evaluation. Finally, following an appearance by Kimbrough Street, chairperson of a subcommittee of the Real Property, Probate and Trust Section, the Board approved in principle proposed amendments to guardianship statutes with the specific language of such proposals subject to approval by the Legislative Committee.

Although the Board took no formal action in other areas, Legislative Committee Representative Stephens reported on possible legislation relating to medical malpractice; escrow; sentencing;

representation of indigent criminal accused; personal services taxation; the Uniform Land Transactions Act; and jail standards.

### **Malpractice Insurance**

Board member Robert R. Redman, chairman of the Attorneys Professional Insurance Committee, reported on the work of that committee, some of which is detailed in Redman's article appearing on page 21 of this issue of the *Bar News*. Thereupon the Board:

- Authorized the committee to approve the present proposal by the American Bankers Insurance Company of Florida;
- Authorized termination of the exclusive broker of record status of Marsh & McLennan, Inc.;
- Instructed the Committee to continue with all possible vigor to secure claims information to the greatest possible degree from carriers writing lawyers malpractice insurance in this state.

### **Board District Boundaries**

Following Board approval, President Riddell appointed a committee to investigate the desirability of realignment of the geographic districts from which Board members are elected. Charles R. Olson of the Second District was designated chairman of the committee consisting of Board members Michael J. Hemovich, Robert R. Redman, and Willard Walker.

### **Nomination of Bar President**

President Riddell designated Board members Hoff, Jones and Walker to be members of a Nominating Committee to report with reference to selection of the bar association president for fiscal year 1977-78.

### **Rule 7B: Indigent Representation**

Board member Walker presented his draft of a proposed amendment to APR 7B which governs the admission of out of state attorneys to practice

on behalf of indigents. The amendment would limit substantially the period of time in which a lawyer could practice without passing the state bar examination. The Board decided to defer action pending the advice of identifiable interested parties, including legal services offices; the Benjamin Franklin Law Society; and local bar presidents.

### **Miscellaneous Topics**

In other actions, the Board:

- Authorized the President and Secretary-Treasurer to sign a proposed indemnification agreement for the Insurance Trust Fund Board of Trustees;
- Upon nomination by Robert H. Peterson of the Sixth District, elected Neil J. Hoff of Tacoma as one of the association's delegates to the ABA House of Delegates for a term expiring in 1978;
- Authorized the President to appoint a committee to consider a proposed lawyer placement program to be implemented by the association;
- Approved an amendment to the By-Laws of the Corporation, Business and Banking Law Section relating to that Section's annual meeting;
- Authorized the Creditor-Debtor Section to contact the state's congressional delegation regarding its support of pending bankruptcy legislation;
- Approved for one year the appropriation of \$500 to be awarded as a scholarship to the winner of a Law Day Speech Contest involving high school juniors and seniors throughout the state;
- Upon recommendation of the Bar Examination Review Board, approved re-evaluations of bar exam scores of 21 persons adjudging them to have passed the July exam and therefore eligible for admission to practice.
- Approved one year's advanced standing for an applicant to the Law Clerk Program. □

## Justice Rosellini Dissents

### SUPREME COURT ACTS ON RULE 9

The Supreme Court (8-1) has approved amendments to Rule 9 (legal interns) which are less restrictive than those recommended by a divided Board of Governors, and has extended the rule at least two more years to December 31, 1978.

The new amendments tighten the admissions procedure; clearly subject legal interns to the provisions of the Code of Professional Responsibility and Disciplinary Rules; impose new limits upon unsupervised trial practice by legal interns; and permit supervised practice before the Court of Appeals. The amended rule limits the time of practice as a legal intern to 17 months, rather than the 24 months possible under the former rule, and bars from practice as a legal intern any person who has failed the bar examination.

The amended rule approved by the Supreme Court permits a legal intern to try jury cases where there is trial de novo relief, but requires as a minimum that the supervising attorney be present for the legal intern's first two trials, one of which must be a jury trial. The supervising attorney must be present for Superior Court and Court of Appeals proceedings. The key provisions are Rule 9C(4)-(6) which state:

(4) A legal intern may participate in Superior Court and Court of Appeals proceedings, including depositions, provided the supervising attorney or another attorney from the same office is present. Ex parte and agreed orders may be presented to the court by a legal intern without the presence of his or her supervising attorney or another attorney from the same office.

(5) After a reasonable period of in-court supervision, which shall be not less than one occasion in both jury and nonjury trials, a legal intern may, without the presence of the supervising attorney, participate in proceedings in courts from the judgment of which there is a right of trial de novo, except as otherwise provided in Rule 9C(6).

(6) Either the supervising attorney or an attorney from the same office shall be present in the representation of a defendant in all preliminary criminal hearings.

Justice Hugh J. Rosellini offered the only dissent to the order adopting the amended Rule 9; the text of his opinion follows:

ROSELLINI, J. (dissenting) — I have voted against the adoption of the amendment to Rule 9 — Legal Interns.

I have been in favor of the legal intern rule since its inception. It was my thought that it would be a great educational tool, providing the vehicle for law school students to translate theories taught in law school into the actual practice of law. It was to bridge the gap between the academic and the real world of the practice of law. It has served its purpose in many ways. However, the excesses from the use of the rule have brought several problems which I perceive to lessen the assurance of the public to the best and highest degree of legal competence.

I am in favor of the rule as proposed by the Board of Governors of the Washington State Bar Association, as it is more restrictive and corrected what I consider some of the abuses of the rule.

Rule 9, as adopted by the majority, permits legal interns to try jury cases in district and superior courts; it permits legal interns to argue appeals in the appellate courts. I am of the opinion that a second-year law student does not have the skill and ability for this level of court practice. The art of advocacy is one which requires the greatest skill to marshal facts and to present them in the most convincing manner to the trier of the facts. I am concerned that the litigant will not receive that degree of skill and competency which should be available to guarantee justice under the law.

If a legal intern has the competency to represent clients on trials and matters of argument before the appellate courts, it belies the necessity for further legal education or for having to take the Bar examination.

The rule has resulted in public bodies having a cheap labor force, whose competency is not equal to the licensed lawyer; and this cheap labor force has in turn deprived more competent licensed lawyers from being employed by public bodies. Again, I am concerned that the public bodies may not be receiving the highest degree of competency by the use of legal interns.

The rule as proposed by the Board of Governors would remedy these problems. Therefore, I have found myself forced to dissent to the adoption of the amendment to Rule 9.



**COWLITZ REPORT**

By **ODINE H. HUSEMOEN**

After a few months' absence from reporting to the *Washington State Bar News*, this reporter is back at it again, having been prompted by some dissident members of the bar association to remove the author from his position. This minority, but vocal, group has seen fit to appoint a pseudo-reporter going by the pseudonym of **Ken Cowsert**. Obviously no one by that name would exist and give a Cowlitz Report. Apparently the heated debate at last month's bar meeting was prompted by **George Hanigan's** most recent report on the "Wahkiakum County Bar Association".

**Wayne Roethler** of **Roethler & McCulloch** is semi-retiring from the active practice of law to take a position (apparently lucrative) with a local corporation. To cover Wayne's frequent absences from the office, the firm has hired two associates, **Miles C. Dillon** and **Edward J. Putka**. All of this new activity in hiring associates is not all brought about by Wayne's absence, but also by **Phil Hickey's** moving to greener pastures in Seattle.

**Kirk Portmann** is now an associate with the firm of **Walker & Dowell**.

**James Billberg** was the proud father recently, as **Patrick Billberg** was sworn in as a new member for the state bar association.

Kelso lost one of its long-time practitioners, when **Arthur Reed** passed away recently. Art was a former Prosecuting At-

torney, traveler and philosopher, as well as carrying on a general practice.

**GRAYS HARBOR REPORT**

By **TOM BROWN**

The bulk of the population in Grays Harbor County resides in two cities — Aberdeen and Hoquiam. Although these cities are only separated by a single street, the difference between them is as great as day and night. (Which is more than a simple analogy, since it is always night in Hoquiam.)

Now, to the point. Since the superiority of Aberdeen lawyers over Hoquiam lawyers is legendary, the villagers in Hoquiam were murmuring with wonder when they heard last month that

a Hoquiam lawyer — young **Michael Misner** — was joining one of the many great Aberdeen firms — **Ingram, Zelasko & Goodwin**. As the village chief-tain of Hoquiam remarked: "By Golly, I sure knowed one of our boys was gonna' make the big leagues!"

Well, as you can imagine, this development sent the rest of the Hoquiam lawyers into a frenzy, thinking that perhaps total acceptance by the Aberdeen bar might be next. **Parker & Johnson** bought dictating equipment; **Paul Bitar** had his building painted; **Bill Morgan** bought another brown corduroy suit; **Chuck Hyndman** expanded his office hours to two days per week; and **Paul Stritmatter** signed up for a trip to Egypt (to appear prosperous, obviously).

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The Aberdeen lawyers watched all this hubbub with quiet amusement, and felt the Hoquiam boys deserved some encouragement. So the Aberdeen lawyers, out of the goodness of their hearts, designated an emissary to go to the HUB Cafe last Thursday morning at 10:00 a. m. , and tell the Hoquiam lawyers about no-fault divorces and comparative negligence.

Well, the Hoquiam boys were just overjoyed to get these practice tips, and the quality of their work increased dramatically. In fact, over in Hoquiam now you can hear them talking about maybe sending another lawyer to Aberdeen in twenty years or so. (If they keep up the good work, next year we're going to tell them about the new appellate rules.)

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### PEND OREILLE REPORT

By RICHARD C. ADAMSON

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Noting the recent domination of the *Washington State Bar News* by Wahkiakum County, it was moved, seconded and passed at a recent County Bar Meeting that the opposite corner of the State should receive equal coverage.

Prosecuting Attorney **James P. McNally** recently returned from a pilgrimage to his native Ireland. Jim and his wife made the initial crossing on the Queen Elizabeth II, with a stopover in Paris, before going on to the Land of Leprechauns. Persistent rumors that Jim has received a commission as a commandant in the IRA are totally unfounded.

The most recent addition to the

Pend Oreille County Bar is **Dennis Scott**, a harried refugee from Spokane Legal Services. Dennis, who comes to Newport by way of the Texas Bar Association, has settled into a more sedate private practice, associating with **James F. Brigham**.

A recent move has found **Douglas Lambarth** and **Monte Smith** in redecorated surroundings next door to the Roxy Theater. Time will only tell which door leads to the best show.

Inasmuch as the remuneration for the County Bar's corresponding secretary is equivalent to the annual dues, the next such report from the northeastern corner of the State cannot be expected until the spring thaw hits the secretary's typewriter.

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### SAN JUAN REPORT

By MICHAEL C. REDMAN

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**George Moseley** has returned to us from the Bellingham Hospital, battered but unbowed, after a stay inflicted by an inherently dangerous instrumentality — we're damn glad to have him back and came too close to losing him. In his absence, **John O. (Hanging John) Linde** presided as District Court Judge Pro Tem, and graciously allowed ye scribe to continue cases involving clients who had chosen John (The Darrow of the Islands) Linde as their attorney.

The emergence of a Wahkiakum County Report by that upstart **George Hanigan** caused little concern with the local association which is contemplating funding a trip to Hawaii for all members of the local Bar with

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the proceeds of that soon-to-be-released publication "Contributory Negligence — The Perfect Defense." And so it goes . . .

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### SEATTLE-KING REPORT

By JOHN J. SOLTYS

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**James R. Dickens** went to the Northwest Hospital to hopefully await the birth of a son and was surprisingly awarded with identical twin boys. Soon thereafter, he and **Paul M. Silver** became the newest partners at **Karr, Tuttle, Koch, Campbell, Mawer & Morrow**, 2600 Seattle-First National Bank Building, Seattle Washington, 98154, 223-1313.

**Peter W. Rule, C. Richard George** and **Dan G. Denton** have joined the Legal Department of Pacific National Bank of Washington, which includes **David L. Williams**.

Judge **Donald J. Horowitz** of the King County Superior Court will be joining the firm of **Levinson, Friedman, Vhugen, Duggan & Bland, P.S.**, 1602 Seattle Tower, Seattle, Washington, 98101, 624-8844, as a partner upon the completion of his present judicial term, which ends on January 10, 1977. The firm will then be known as **Levinson, Friedman, Vhugen, Duggan, Bland & Horowitz**.

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### SKAGIT REPORT

By DAVID WELTS

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**Earl Angevine**, the Skagit correspondent, is taking a temporary leave of absence this month because I volunteered to write this article. Earl is tied up

in a jury case involving a criminal charge over an (alleged) act that occurred more than fifteen months ago. Someone that dilatory could never get out an article on time.

Moreover, and although this is the first trial, the case has already acquired some legally recognizable plumage such as a contested remand, a decision of the Court of Appeals, a Petition for Rehearing, a Petition for Review, an application for Writ of Habeas Corpus, a Motion for Discretionary Review, and a personal restraint petition. Accordingly, I felt that, at least this month, Angevine could not even write an intelligible article.

(If you don't think fifteen months is a long time, consider that Earl has been through a trial

and won an acquittal for the same defendant on a subsequent but unrelated felony charge.)

For those of you who didn't read last month's Skagit Report, you should. (And add **Ken Evans'** name to the list of proud papas.)

**Nancy Gillick**, secretary to Prosecutor **Pat McMullen** (and boss of the office) up and quit her job. We always thought that she got along well with her boss and apparently she did because now she's his boss as Mrs. Pat McMullen.

Speaking of bosses, **George McIntosh** was accorded BOSS OF THE YEAR honors by our county Legal Secretaries' As-

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sociation. He won because he is not bossy.

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### WHATCOM REPORT

By MICK MOYNIHAN

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The following is the irregular semi-occasional report from Whatcom County, and recapping the past few months, it is interesting to note that, after threatening to do so for several years, **Einar Simonarson** has retired. However, it must be like trying to break old habits, as Einar is still seen coming and going from the office with a sheaf of papers under his arm. **Phil Brandt**, UW '72 & **Dan Zender**, Gonzaga '76, who have recently joined the firm of LeCocq, Simonarson,

Visser & Johnson are taking up some of the slack left by Einar's departure. Another newsworthy item out of Lynden is that **Jake Smith** has purchased an interest in the Ice Arena. Well, the elections are over and our three Superior Court Judges, the **Hons. Marshall Forrest**, **By Swedberg** and **Jack Kurtz** ran unopposed and were, of course, re-elected, with Jack Kurtz polling the most votes.

Whether it was in celebration of his victory or just coincidental timing, **Marshall Forrest** entered into the bonds of holy matrimony on Friday November 5th.

**Marty Gross**, wife of deputy prosecutor **Chuck Tull**, a recent member of the local bar, took her oath in Island County like the

other Tulls and is presently doing legal research for various firms here in the area. **Joe Dunne** is also a new member of the bar, but I don't know what he's doing, and **Phil Sharpe**, Colorado '76 is now with Flynn & Adelstein.

And while the normal news is that of new attorneys coming into the area and starting up practice, contrariwise **Treb Scott** has quit the practice of law and has left the area (possibly to return) and **Mike Fitch**, formerly of Legal Services has taken a position teaching at Edmonds Community College. And, doing their best to add to the population explosion are the wives of **Bob Beaty**, **Jon Ostlund**, **Steve Adelstein**, **Dave McEachran**, **Chet Lackey**, **Jim Bell** and **Ed Simmers**. □

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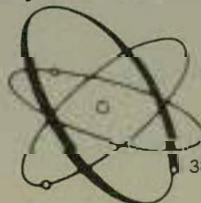
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# A Practitioner's Guide to Juvenile Court

By EDWARD D. SEEBERGER

This article is intended for the general practitioner who is called upon to represent a child, parent, or other relative at a juvenile hearing. The number of attorneys who are appearing in juvenile court has increased greatly during the past several years. Decisions such as *In re Myricks*, 85 W.2d 252, 533 P.2d841 (1975), which held that parents are entitled to legal counsel at dependency as well as delinquency hearings, are likely to fuel this trend.

It is no longer unusual to attend a juvenile hearing at which there is a deputy prosecuting attorney, an attorney for the juvenile, an attorney for the father, an attorney for the mother, and an attorney for one or more other members of the family. If there is more than one child and their positions are different, each may have his or her own attorney. I attended a hearing recently where, in addition to most of the above, there was also a deputy attorney general present.

Here is an overview of the juvenile system, including practice tips I have found to be useful, organized by type of judicial proceeding. Naturally, not all juveniles will go through all these hearings.

## The Pre-Detention Hearing

There are a variety of ways that a juvenile may come to the attention of the court. He may be accused of a crime. He may himself be the victim

of neglect or cruelty by his parent or guardian. He may run away from home. He may even turn himself in seeking shelter and protection.

Many times, the matter will be "informally adjusted" by working problems out within the family, through the school, or by some other means short of filing a formal charge. Where such informal adjustments are impossible, a juvenile case is brought before the court by the filing of a petition, which is closely akin to the criminal information. If the child is arrested, a petition must be filed within seventy-two (72) hours of the arrest stating the cause of action.<sup>1</sup> The child must be released within another seventy-two (72) hours after the filing of the petition or a pre-detention hearing (PDH) may be held, and will routinely be scheduled by the probation officer (P.O.).

The attorney who becomes involved while the child is still in detention should immediately call to the PO at the juvenile court who is handling the case. In that way, the circumstances of the arrest can be determined and alternatives to detention can be explored. It is also useful to become acquainted with the PO, who looms very large in the entire system, as will be discussed.

Juvenile court rules are somewhat ambiguous on detention rights. JuCR 3.4 sets out definite

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<sup>1</sup>This area is covered by JuCR 3.1 et seq.

time limitations, but JuCR 3.5 requires the child to request a court hearing after being told he is entitled to one. If retained while the child is still in detention, the attorney should request a hearing through the probation officer whether there has already been one or not.

Notice of the PDH, as is true for all juvenile court hearings, must be given to parents or guardians.

The sole purpose of the PDH is to determine where the child will remain until the fact-finding hearing on the petition. There are four alternatives available: continued detention, or release to a receiving home, the child's own home, or the home of a responsible relative. The court uses two criteria to make its decision: whether the child will appear for the next court hearing and the risk to the child and/or the public of the placement.

The court's decision at the PDH may have far-reaching consequences, particularly if a young child is involved, because of the court's reluctance to move children around. The interval between the PDH and the forthcoming hearing also presents a good "trial period" to see if a particular

placement will work into something more long-range.

PDH's are rather informal and hearsay is allowed. Testimony may be taken, but should be circumscribed carefully and limited to a single issue. It may be necessary at times to go into the circumstances of the child's detention, but private attorneys should not hesitate to object when the prosecuting attorney goes beyond the minimum necessary to acquaint the court with sufficient facts to make a determination. If too much incriminating evidence is brought out at the PDH involving a delinquency petition, it may be necessary to file an affidavit of prejudice and get a fresh judge for the fact-finding hearing.

If the court decides to hold the child at the PDH, the attorney should request that the fact-finding hearing be held at the earliest possible date consistent with thorough preparation. No matter what heinous crime the child may be accused of, the court still is bound to act in the best interest of the child and a prolonged detention is just "dead time." The attorney may also ask the court to schedule another PDH within two or three days of the first one to allow counsel to explore more alternatives to detention. There is no limit on the number of PDH's the court may have before fact-finding. JuCR 3.8 specifically provides that the court or the juvenile probation officer may release a child from detention at any time.

### The Declination Hearing

The Declination of Jurisdiction Hearing (sometimes called "Transfer Hearing") is limited to the determination of whether a child should be tried, and, if found guilty, punished as a juvenile or as an adult.<sup>2</sup> It occurs only where the child has been charged in the petition with a crime (the commission of any crime is a delinquency) and it must be held within seven days of the filing of the petition unless continued by the court.

The juvenile probation officer is required to investigate the child's social situation and submit a written report to the court. This report should contain a recommendation to the court based upon the eight criteria set forth in *Kent v. United States*, 383 US 541 (1966), adopted for Washington in *State v. Williams*, 75 W.2d 604, 453 P.2d 418

<sup>2</sup>Declination Hearing Procedure is covered by JuCR 6.1 et seq.



Edward D. Seeberger practices law and serves as a Juvenile Public Defender in Yakima. As a member of the state House of Representatives, he was one of the architects of the proposed Juvenile Justice Act of 1975 which passed the House, but died for lack of action in the Senate Judiciary Committee.

(1969). The *Kent* criteria are: (1) seriousness of the alleged offense; (2) whether the alleged offense was committed in an aggressive, violent, premeditated, or wilful manner; (3) whether the offense was against persons or property; (4) the prosecutive merit of the case; (5) whether there were others involved in the alleged offense and whether they were juveniles or adults; (6) the sophistication of the juvenile; (7) the juvenile's record and previous history; (8) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation within the juvenile system.

It has been my experience that the last criterion is the most important. If counsel is arguing for retention of jurisdiction by the juvenile court, no better case can be made than that there are still resources within the juvenile system as yet untried and which offer a prospect of rehabilitation of the young offender. The most difficult case is one where the child has already tried and failed at the variety of juvenile resources available.

The recent decisions of *In re Harbert*, 85 W.2d 719, 538 P.2d 1212 (1975) and *In re Hernandez*,

15 Wn App 205, 548 P.2d 340 (1976) have made clear that the declination hearing is not to be prosecutorial in nature and should not be an adversary proceeding. The focus is on the child, not the crime. Rules of evidence are greatly relaxed, so that hearsay is allowed and statements of the child himself which may be objectionable at the fact-finding hearing, are admissible since the prohibition against self-incrimination is unavailable. The only criteria is relevance. Counsel may inspect all written material and subpoena and cross-examine witnesses, including social workers and probation officers who prepare the court reports.

Private counsel will want to consider carefully what position he should take at the declination hearing on behalf of his client, whether a parent or child. The main advantages to the child in remaining in juvenile court are that no adult criminal record attaches upon conviction; the variety of resources aimed at reformation rather than punishment is far greater in the juvenile system than outside of it; and the length of possible confinement is limited by the juvenile's age. The advantages to the child in having his case heard in



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adult court are that it would be a first offense upon conviction; the court likely will treat a young first offender leniently; and the child would be entitled to a jury trial.

Normally, the advantages of juvenile court outweigh those of the adult system; however, where the child has an extensive juvenile record and the main concern is to keep him or her out of an institution, it may be better to opt for a transfer and urge the juvenile court to decline jurisdiction.

### The Fact-Finding Hearing

There are two types of petitions resulting in fact-finding hearings: dependency and delinquency. Both are equivalent to trial in criminal court except that juveniles are not entitled to jury trials.

The dependency/incorrigibility petition is the most common. This is one that alleges an unfit home, or no parent or guardian capable of controlling the child or some other type of incorrigibility (beyond the power and control of parents). If "incorrigibility" is alleged, the child is eligible for a stay at a juvenile diagnostic center, possibly

far from home. Without the allegation of "incorrigibility", the state is limited to local resources such as relatives, foster homes, or local group homes. The standard of proof in a dependency hearing is a preponderance of the evidence (JuCR 4.4(B)). If, by the time of the fact-finding hearing, the parents have decided they want the child back home, then the attorney need only advise the prosecutor that the parents have decided not to testify. This position is supported by *In re Walker*, 43 Wn.2d 710, 715, 263 P.2d 956 (1953), which held that an existing ability of parents to care properly for their children is inconsistent with the status of dependency.

A delinquency petition alleges that a juvenile committed a crime. The petition must conform to the rules and standards of an Information and the juvenile is entitled to all the constitutional rights and guarantees of an adult criminal trial, except a jury. Proof, of course, must be beyond a reasonable doubt.

### Disposition Hearing

The juvenile disposition hearing is the equivalent of a sentencing hearing. See JuCR 5.1, et seq. The procedure is generally as follows: a child is declared a ward of the court either as a dependent or a delinquent child. The court will then ask for the "social study," a report prepared by the probation officer, often with the assistance of a social worker from the Department of Social and Health Services. The attorneys representing parents and child are entitled to receive a copy of this social summary beforehand and, if necessary, to prepare their own written social summaries.

Social Summaries usually contain brief paragraphs explaining the purpose of the hearing, the child's previous record (including referrals, informal adjustments, and other actions taken by law enforcement or juvenile officials short of court action), a family history, character outlines of parents and child, and most importantly, a recommendation to the court. It is this social summary that makes the juvenile probation officer so important.

Counsel should not wait until the disposition hearing to find out what the social summary will contain. Counsel must work closely with the PO before the report is written. Because there is a natural tendency by courts to follow the PO's

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written recommendations, counsel should do all possible to make them acceptable to his client. If it appears that the social summary will contain a recommendation unacceptable to your client, there are a number of things that can be done. The attorney may call witnesses to testify; he may prepare his own social summary; or he may have his own "home study" prepared for presentation to the court to show his clients are fit and proper persons to have custody. The PO can advise the attorney whom to contact to have a home study done.

It is important for counsel to have in mind the full range of options open to the court so that he may go over these with his client beforehand and then present one or more at the dispositional hearing. The first and most common disposition is to return the child to the home of his parent or guardian on formal or informal probation. This is usually done in the case of a first delinquency. It is also common in a dependency situation, often together with a condition that one or more parties receive counseling. In the case of a second delinquency or a particularly serious first delinquency, some courts may require the child to "serve" some time in juvenile detention before returning home.

A second possibility is placement in the home of a relative. Surprisingly enough, I have spent more time in court arguing over this type of placement than any other. Many parents seem to resent interference from other family members more than from the state. In any case, family placements are favored by the courts for several obvious reasons and the prospects for such placement should be explored before placing the child elsewhere.

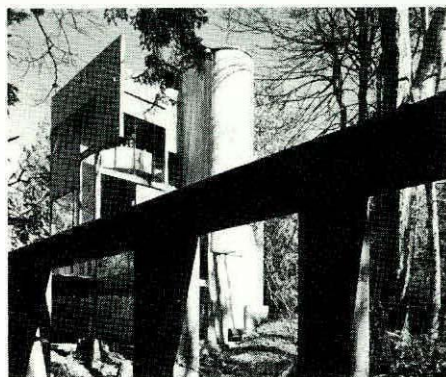
Next in order of severity would be placement of the child in a foster home in the community, but away from the specific site where problems had occurred. It is hard to generalize about foster homes since they vary so much, but they are a resource that may fit particular circumstances.

Group homes are similar to foster homes in that they may also be a local resource, but slightly higher in order of severity because they tend to be more structured and disciplined and less flexible than foster homes. Group homes range in type from ranches run by churches through homes for

unwed mothers to a home for juvenile homosexuals.

The attorney should see that all the placement resources mentioned are exhausted before agreeing to the child moving on to the next step, which is some form of institutionalization. If the child has failed in all the local resources and the court seems determined to send him away, counsel can argue that the commitment to an institution should be suspended on good behavior. While there is no practical difference between this and probation because both require another hearing prior to commitment, the youngster hopefully will be impressed by how close he came and mend his ways.

The next step in the ladder is a 4-week commitment to Cascadia Diagnostic Center near Tacoma. At present, Cascadia is a collection point for juveniles sent by courts throughout the state into juvenile institutions; however, there are local diagnostic centers in Clark, Kitsap, and Benton-Franklin, and one is in the planning stages in Yakima. Cascadia is also a diagnostic center where social workers and psychologists seek to determine the cause of a child's problem and offer correctional plans. Following four weeks at Cas-



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cadia, the child is returned to the committing court which makes the final dispositional decision.

This brings us to the harshest step of the ladder of placement options which is commitment to Cascadia for institutional placement without review by the committing court. The same procedure is followed in terms of the diagnosis at Cascadia, with the exception that the recommendation after the thirty days is followed without any more input from other parties or further order of the court.

### Deprivation Hearing

The deprivation hearing is the most serious of all juvenile proceedings because a deprivation permanently severs the bond between parent and child. If a child commits a crime and is sent to an institution, or if a child runs away and is found to be dependant/incorrigible, the legal relationship of parent and child continues despite the fact that the child is a ward of the court. *In re Martin*, 3 Wn. App. 405, 476 P.2d 134 (1970). The deprivation hearing is the final act, radical surgery, the termination of the closest of all bonds, that between parent and child.

Most deprivations are completed short of an adversary hearing through what is termed a "relinquishment." This is simply a legal document whereby parents agree voluntarily and knowingly to give up their parental rights. There have been some interesting trial cases recently whereby one or the other parents has attempted to relinquish his or her parental rights as a means of avoiding a support obligation for a child already out of the home. Thus far, these attempts have failed and the relinquishment has remained a device for the parent who has utterly failed and has come to recognize that the child is better off elsewhere on a permanent basis.

A parent may be permanently deprived of a child only when substantial evidence has been presented to support such a move that is clear, cogent, and convincing. *In re May*, 14 Wn. App. 765, 545 P.2d 25 (1976). The facts must show that there has been neglect or brutality of such a nature that the physical health and well-being of the child is seriously threatened. *In re Sego*, 82 Wn.2d 736, 513 P.2d 831 (1973). It is not enough merely to show that the home life of the child would be improved by adoption; such a comparison test is insufficient. *In re Hendrickson*, 7 Wn. App. 485, 499 P.2d 908 (1972). While the dominant concern of the court is the welfare of the child, *In re Price*, 13 Wn. App. 437, 535 P.2d 475 (1975), it really is the parents who are on trial. A parent has no constitutional right to refuse to testify, *In re Green*, 14 Wn. App. 939, 546 P.2d 1230 (1976), even though there is no question that the rules of evidence apply at deprivation hearings. *In re Ross*, 45 Wn.2d 654, 277 P.2d 335 (1954).

Counsel retained to represent one or both parents in a situation where the facts are strongly against his client either by reason of neglect or cruelty may have to settle for less than a full loaf. One of the most useful techniques is to get the parent into a structured program of mental health, homemaking skills or parenting skills before the hearing. Then, at the hearing, argue for a temporary dependency as an alternative to the permanent deprivation. Ask the court to give the parent six months to show his or her determination to improve, with gradually increasing visits with the child, and placement in the parent's home if all works well at the end of the six month's period.

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A very recent case, *In re Becker*, 87 W.2d 470, — P.2d—(1976), must be mentioned in the context of parents' rights-to-custody versus a child's right-to-protection, which is the essence of a deprivation hearing. The court noted the lack of criteria for establishing what is meant by "the best interests of the child," but decided that whatever it means, it definitely takes precedence over any custodial rights of parents. The practical lesson for the private attorney who finds himself representing a parent at a deprivation is clear—avoid arguments directed at the exercise of parental rights, for they are not the main concern of the court.

### **Extension Hearing**

RCW 13.04.260 allows courts to retain jurisdiction of a juvenile past his eighteenth birthday, but, in no case, past his twenty-first. The only criteria established for this extension are that the child previously be adjudicated to be a delinquent and that the court set forth its reasons for the extension in writing. Presumably, the action must be based on the best interest of the child rather than the protection of society, but the statute does not specify this.

Actually, the legislature intended this provision to allow a child who is making progress at one of the state institutions to remain there for such things as the completion of his schooling or vocational training. Testimony before the House Judiciary Committee was that this would allow the state to complete rehabilitation or at least pay for the effort. It generally was thought that an extension proceeding would be one where all the parties were in agreement rather than an adversary proceeding where the juvenile is sentenced to serve three more years. Unfortunately, the statute does not spell this out, so counsel should be prepared to advocate his client's position.

### **Reviews and Appeals**

In some counties, juvenile cases are heard by court commissioners. If this happens, parties are entitled to a revision hearing under RCW 2.24.050 before a judge of the Superior Court. If the case is originally heard before a Superior Court judge, or has been through the revision hearing, the normal appeal is to the Court of Appeals CAROA 57(b) (3).

Appeals may, at times, be appropriate and desirable, but there is another method available to change the outcome in juvenile court and that is by petition for review supported by motion and affidavit. This allows the party to get back into court and review the current placement of the child with an eye to changing it to something more acceptable. It will suit a large number of situations that the attorney may be faced with. For example, a parent may have lost custody of a child for one reason or another, but subsequently the circumstances have improved. What to do? Simply file a petition for review (almost automatically granted), get a court date, and marshal your evidence.

Reviews also can have the affect of bringing about desirable changes in clients. For example, if the client is unhappy with the disposition of the court, counsel may suggest remedial measures the client can take to improve his position such as mental health counseling, an alcohol program, classes in homemaking skills, or whatever suits the deficiency. After a reasonable period of time passes, with corresponding improvements shown, it is time for the petition for review.



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## HEARINGS IN JUVENILE COURT

Type of Hearing	Purpose	Evidence/ Burden of Proof
Pre-Detention Hearing	To determine physical placement of child from time of hearing until next Court Appearance.	Hearsay allowed
Declination (AKA Transfer) Hearing	To determine whether alleged criminal act will be tried in juvenile or adult court	Based on <i>Kent</i> criteria/hearsay allowed
Dependency Hearing	To determine whether facts alleged in dependency petition are true.	Most Rules of Evidence apply/ Proof by Preponderance of evidence
Delinquency Petition	To determine whether child is guilty of crime alleged in delinquency petition	Rules of evidence apply/Proof beyond reasonable doubt
Dispositional Hearing	To determine placement of child after he has been declared ward of court at dependency or delinquency hearing (similar to sentencing)	Hearsay allowed
Extension Hearing	Whether to extend juvenile jurisdiction beyond age eighteen	Determined by best interests of child
Deprivation Hearing	Whether to permanently sever the parent-child relationship	Clear, cogent and convincing evidence of physical abuse or neglect <span style="float: right;">□</span>

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## MANDATORY CLE — THE TIME IS NOW!

By **JOHN J. MICHALIK**  
*Director of Continuing  
Legal Education*

By order dated November 29, 1976, the Supreme Court of Washington unanimously adopted Admission To Practice Rule 11 (APR 11)—The Continuing Legal Education Rule. Washington thereby joined Minnesota, Iowa and Wisconsin in requiring some form of mandatory continuing legal education as a requisite to the retention of the license to practice law.

APR 11 is reprinted in its entirety following these comments. However, a brief overview of the Rule and a synopsis of some of its provisions may be of interest. I also thought you might be interested in a little information on the practical impact of the Rule.

*APR 11: An Overview:* In essence, APR 11 requires, with limited exceptions, each *active* member of the State Bar Association to complete a minimum of 15 credit hours of approved or accredited continuing legal education during each calendar year after 1976. While, therefore, having an effective date of January 1, 1977, the Rule also provides that such education completed between September 1, 1976 and December 31, 1976, shall be credited as though completed during 1977. In effect, then, the first year's requirement under the Rule may be satisfied through attendance at approved or accredited educational activities over a sixteen month period—September 1, 1976 to December 31, 1977.

What constitutes an "approved or accredited" legal education activity under the Rule? What constitutes a "credit hour?" These and other questions will be some of the first concerns of the recently appointed Board of Continuing Legal Education. The membership of this Board, as appointed by the Court, consists of six outstanding attorneys and a lay member of recognized ability and experience as an educator and administrator. The lay member, and Board Chairperson, is Dr. Charles E. Odegaard, President Emeritus of the University of Washington. The attorney

members of the Board are John E. Heath, Jr., of Spokane; Edward J. Novack, Everett; William G. Pusch, Seattle; Edward F. Shea, Pasco; Paul R. White, Ephrata; and Judith M. Zuberbuhler, Seattle.

The tasks facing this Board are considerable. They are charged with approving and accrediting courses and establishing standards for such approval and accreditation. They are required by the Rule to discover and encourage course and program offerings which will satisfy the requirements of the Rule. They must—within the framework of APR 11.6—establish the mechanism for enforcement of the requirement and for dealing with cases of non-compliance—including the question of the procedure for reinstatement to active status for those who have been transferred to the inactive rolls for non-compliance with the Rule.

The Board has begun its work in these and other areas and such regulations as shall be adopted by the Board—and approved by the Supreme Court—will be distributed to all members of the Bar Association. Hopefully, this initial work will be completed in the next few months.

A couple of final points. First, while I, of course, do not presume to speak for the Board on this matter, it would appear that credit will be awarded on the basis of one hour for each 60 minutes actually spent in attendance at "approved or accredited" continuing legal education courses—at least this is the measure used in those other states having a mandatory CLE program in effect. Second, the Rule applies to *all* active members of the Bar Association—with the ultimate sanction for non-compliance being transfer to inactive status. Third, I am sure that the Board of Continuing Legal Education will be most receptive to comments and input from members of

the Bar. Correspondence should be addressed to the Washington State Board of Continuing Legal Education, c/o Washington State Bar Association, 505 Madison Street, Seattle, Washington, 98104.

*The Practical Impact:* Each of you is, I am sure, concerned about the availability of CLE programming to fill the individual needs imposed by APR 11. That concern is shared by the CLE Committee of the State Bar Association and yours truly. Our present estimates indicate the need to at least double the number of seminars offered by the Bar Association each year. It is also clear that our seminars will have to be offered in more locations throughout the state and that new avenues of program presentation, for example the use of videotape programs, will have to be considered.

Those measures, however, will not be enough to fill the need of every attorney subject to APR 11. Nor, in the final analysis, and however paradoxical it may seem, should they. The CLE Rule was not designed to promote the CLE program of the State Bar Association and it does not require the Bar Association to provide enough programming to fill the needs of every attorney. APR 11.4 requires the Board of Continuing Legal Education to "discover and encourage" the offering of courses and programs by "established" organizations, and I, for one, would hope that such organizations, be they the law schools, local bar associations or groups such as the Washington State Trial Lawyers Association, will become more active in the field and apply to the Board for course approval. Naturally, we will continue our efforts to attract high quality national CLE programs to the state. The participation by other organizations is important not only because of the need for more program offerings but also because of an even greater need: that of a diversity of programs with appeal to all segments of the bar. It should, ultimately if not immediately, be possible to fill that need to the extent that an attorney subject to the provisions of the Rule will not be forced to attend courses and seminars having little or no application to his or her practice.

An obvious impact of APR 11 will be increased attendance at seminars. In the November issue of

the *Bar News* it was noted that during the past year attendance at State Bar CLE seminars was among the highest in the country on an attorney population basis. In many instances we have come very close to the physical capacity of the facilities available to us. The impact on attendance is perhaps best illustrated by the experience in Minnesota, which has a total bar population nearly identical to Washington's and where the State Bar Association had reported attendance figures similar to our own under a voluntary system. In the first year under the mandatory rule in that state, total attendance at Minnesota State Bar seminars showed an increase of approximately 100%—and that under a system which was phased in by requiring only one-third of the attorneys in the state to report their attendance for that first year. Clearly, the increase in attendance will be even greater here; and that fact is of importance not only to program sponsors but also to individual attorneys. At the present time, roughly 90% of those attending State Bar seminars do so on the basis of advance registration through the use of the announcing brochures mailed prior to each program. Hopefully, but as limited by the physical facilities available, we will continue to be able to honor all registrations made in this manner. On the other hand, the practice of accepting door registrations on the day of a seminar may become a thing of the past, and I hope you will keep the realities of the situation in mind if you should attempt to register at the door and find there is no space available. The solution, of course, is to keep an eye out for upcoming seminars and take advantage of the advance registration procedure.

A column of this length cannot, of course, provide a complete overview of APR 11 or its impact. I would personally urge each attorney to study the Rule and become familiar with its provisions and, later, the implementing regulations, as they are adopted by the Board of Continuing Legal Education and the Supreme Court. I would also, again, urge you to communicate your thoughts and comments to the Board. APR 11 was adopted after extensive consideration and review of a number of factors, including the comments and reactions of the members of the Bar. That sort of input should continue as the process of implementation goes forward.

## FULL TEXT

### Rule 11: Requirements for Mandatory Continuing Legal Education

#### 11.1

##### *Purpose*

It is of primary importance to the members of the Bar and to the public that attorneys continue their legal education throughout the period of their active practice of law. These rules will establish the minimum requirements for continuing legal education.

#### 11.2

##### *Educational Requirement*

A. Minimum Requirement. Each active member of the Bar Association shall complete a minimum of 15 credit hours of approved or accredited legal education (as provided in Rule 11.4 hereof) during each calendar year after 1976. If a member completes more than 15 such hours in a given calendar year after 1976, the excess credit may be carried forward and applied to such member's education requirement for either or both of the next two succeeding calendar years. Such legal education completed between September 1, 1976, and December 31, 1976, shall be credited as though it had been completed in 1977.

B. New Admission. An attorney shall not be required to comply with this rule during the calendar year in which he or she is admitted nor for the following full calendar year.

#### 11.3

##### *Board of Continuing Legal Education*

There is hereby established a Board of Continuing Legal Education (referred to herein as the Board) consisting of seven members. Six of the members of the Board must be active members of the Washington State Bar Association (referred to herein as the Bar Association). The seventh member shall not be a member of the Bar Association. The Supreme Court shall designate a chairperson of the Board, who shall serve at the pleasure of the Court. The members of the Board shall be nominated by the Bar Association and appointed by the Supreme Court. Of the members first appointed, two shall be appointed for 1 year, three for 2 years, and two for 3 years. Thereafter, appointments shall be for a 3-year term. No member may serve more than two consecutive terms. Terms shall end on September 30 of the applicable year, except that no term shall end prior to September 30, 1977.

#### 11.4

##### *Powers of the Board*

The Board shall approve individual courses and may accredit all or portions of the entire legal educational program of a given organiza-

tion which, in the Board's judgment, will satisfy the education requirements of these rules. It shall determine the number of credit hours to be allowed for each such course. It shall discover and encourage the offering of such courses and programs by established organizations, whether offered within or outside of this state. The Board may adopt regulations pertinent to these powers subject to the approval of the Bar Association and the Supreme Court. Individual compliance with the educational or time requirements of these rules may be waived or modified by the Board upon a showing of undue hardship, age or infirmity.

#### 11.5

##### *Expenses of the Board*

Members of the Board shall not be compensated for their services. For their actual and necessary expenses incurred in the performance of their duties, they shall be reimbursed by the Bar Association in a manner consistent with the Association's reimbursement of its committee members. The Bar Association shall furnish the Board with the necessary staff and clerical help to carry out its duties and shall pay all expenses reasonably and necessarily incurred by the Board, pursuant to a budget for the Board which the Board shall submit annually to the Bar Association, subject to approval by the Association.

#### 11.6

##### *Reports and Enforcement*

A. Compliance Report. On or before each January 31st hereafter, commencing January 31, 1978, each active member shall file a report with the Bar Association in such form as the Bar Association shall prescribe concerning such member's completion of accredited legal education during the preceding calendar year. If such member has not completed the minimum education requirement for the preceding year, compliance may still be accomplished by making up the deficiency within the first 4 months of the next succeeding calendar year, filing a supplemental report with the Bar Association by May 1 of such year evidencing such compliance in such form as the Bar Association shall prescribe and by paying a special \$50.00 filing fee therefor.

B. Delinquency. Any member who has not so complied by May 1 of each year hereafter, commencing with May 1, 1978, may be removed (or conditionally removed) from the roll of active members of the Bar and transferred to inactive status pending such member's compliance with Section A above. To effect such removal the Board shall by written notice to the non-complying member advise of the

pendency of removal proceedings unless within 10 days of receipt of such notice such member shall complete and return to the Board an accompanying form of petition which may be accompanied by affidavit(s) in support of request for extension of time for or exemption from compliance with Section A above or for a ruling by the Board of substantial compliance therewith.

1. Unless such petition be so filed, the Board shall report such fact to the Supreme Court with its recommendations for appropriate action. The Supreme Court shall enter such order or conditional order as it deems appropriate.

2. If such petition be so filed, the Board may, in its discretion, approve the same without hearing, or may enter into agreement on terms with such member as to time and requirements for achieving compliance with the provisions of Section A.

3. If the Board does not so approve such petition or enter into such agreement with terms, the Board shall hold a hearing upon the petition and shall give the member at least 10 days' notice of the time and place thereof. Testimony taken at the hearing shall be under oath and the oath shall be administered by the chairperson of the Board. For good cause shown the Board may rule that the member has substantially complied with these rules for the year in question or, if he or she has not done so, it may grant the member an extension of time within which to comply and may do so upon terms as it may deem appropriate. As to each such application the Board shall enter written findings of fact and an appropriate order, a copy of which shall be mailed forthwith to the member at the address on file with the Bar Association. Any such order shall be final unless within 10 days from the date thereof the member shall file with the Bar Association at its office a written appeal to the Board of Governors of the Bar Association.

4. In its consideration of petitions for relief hereunder, the Board shall consider factors of hardship such as age or disability, or of restricted practice.

C. Appeal to Board of Governors. Any such appeal shall be considered by the Board of Governors at its next regular meeting (unless that meeting takes place less than 5 days following the perfection of the appeal, in which event it shall be the second meeting following thereafter). To perfect such appeal the member shall, at the member's expense, within 15 days of the filing of the notice of such appeal, cause to be transcribed and filed with the Bar Association a narrative report of proceedings in compliance with RAP 9.3. The Board chairperson shall certify that the narrative report of proceedings contains a fair and accurate report of the occurrences in and evidence introduced in the cause. Upon the filing of any such notice of appeal to the Board of Governors, the Bar Association shall prepare a transcript of all orders, findings, and other documents pertinent to the proceeding, which transcript shall be certified by the Board chairperson. The Board of Governors may require the member to submit his or her argument in writing and it may, but shall not be obligated to, permit the member or his or her counsel to appear in person before it. The Board of Governors may affirm, reverse or modify the ruling of the Board of Continuing Legal Education as it deems appropriate. The decision of the Board of Governors shall be reduced to writing and a copy thereof shall be mailed forthwith to the member at the member's address. The decision of the Board of Governors shall be final, unless within 10 days from the date thereof, the member shall file with the Bar Association at its office a written notice of appeal to the Supreme Court.

D. Appeal to the Supreme Court. To perfect such appeal to the Supreme Court, the member shall at the member's expense, if testimony was taken before the Board of Governors, cause to be transcribed and filed with the Bar Association as to proceedings before the Board of Governors, a narrative report of proceedings in compliance with RAP 9.3. The President of the Bar Association shall certify that any such narrative report of proceedings contains a fair and accurate report of the occurrences in and evidence introduced in the cause. The Bar Association shall prepare a transcript of all orders and other documents pertinent to the proceeding before the Board of Governors, which transcript shall be certified by the President of the Bar Association. The Bar Association shall then file promptly with the Clerk of the Supreme Court said narrative report of proceedings and the transcripts pertinent to the proceedings before the Board and the Board of Governors. The matter shall be heard in the Supreme Court on the motion calendar and the provisions of RAP 17.4 and RAP 17.5 shall be applicable thereto.

E. Time. The times set forth in this rule for filing notices of appeal are jurisdictional. The Board of Governors or the Supreme Court, as to appeals pending before each such body respectively, may, for good cause shown:

1. extend the time for the filing or certification of said statement of facts, or

2. dismiss the appeal for failure to prosecute the same diligently.

F. Costs. If the member prevails in his or her appeal before the Board of Governors or in his or her appeal to the Supreme Court, the member shall be awarded costs against the Bar Association in an amount equal to his or her reasonable expenditures for the preparation of the statement or statements of facts.

G. Change of Status. Once an attorney has been transferred to inactive membership status for non-compliance with these Rules, the attorney affected must comply with the then applicable regulations of the Board for transfer from inactive to active status.

## 11.7

### *Confidentiality*

The files and records of the Bar Association, as they may relate to or arise out of any failure of a member of the Association to satisfy these continuing legal education requirements, shall be deemed confidential and shall not be disclosed except in furtherance of its duties, or upon request of the attorney affected, or pursuant to a proper subpoena duces tecum, or as directed by this Court. □




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**ENVIRONMENTAL LAW**

By **LEE KRAFT**

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The Environmental Law Section announces the availability of a packet of reproductions of all past issues of the Environmental Law Newsletter. The Newsletter includes case analysis as well as updated information on environmental and land use issues. A complete set of past issues can serve as a basis for the state of the law in Washington at the present time. The packet is three ring punched for insertion into a binder and addition of future newsletter volumes. The packet can be ordered for \$3.00 from

Ms. Cassie Cole  
Washington State Bar Association  
505 Madison Street  
Seattle, Washington 98104  
(206) 622-6054

The following article is a continuation from last month's *Bar News* of an article by Lee Kraft regarding the "environmental significance" issue under SEPA.

The Supreme Court recognized that "judgments in this area are particularly subjective — what to one person may constitute a significant or adverse effect on the quality of the environment may be of little or no consequence to another." In *Norway Hill v. King County Council*, 87 Wn.2d 267 at p. 277, the Court attempted to give further meaning to the word significantly.<sup>1</sup>

In a unanimous decision with Justice Dolliver not participating in the disposition of the case, the Court in *Norway Hill* at pages 277 and 278 set forth the following guideline relying on the policy statements of the legislature in Chapter 43.21C RCW:

" . . . it is clear that the legislature intended that environmental values be given full consideration in government decision making, and it implemented this policy through the procedural provisions of SEPA which specify the nature and extent of the information that must be provided, and which require its consideration, before a decision is made.

(Cases omitted)

Consistent with this policy it would seem appropriate to state a general guideline rather than attempt a value-laden definition of 'significantly'. Generally, the procedural requirements of SEPA, which are merely designed to provide full environmental information, should be invoked wherever more than a *moderate effect on the quality of the environment is a reasonable probability.*" See *City of Davis v. Coleman*, 521 F.2d 661 673-74 & n.16 (9th Cir. 1975). (emphasis added)

Significantly affecting the quality of the environment is now defined as a "reasonable probability" of a "moderate effect on the quality of the environment." Query: What does "moderate" mean?

<sup>1</sup>The guidelines adopted by the Council on Environmental Policy were not in effect when the controversy in *Norway Hill* arose, thus the Court did not consider their validity.

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**TAXATION**

By **DONALD W. HANFORD**

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**Federal Estate and Gift Taxation**

The Tax Reform Act of 1976 contains the first comprehensive revision of the Federal estate and gift tax provisions in over 30 years. The amendments result in fundamental changes to the present estate and gift tax structure, and were designed to accomplish the following reforms: (1) provide tax relief for small and moderate estates (less than \$500,000); (2) eliminate loopholes and avoidance devices not justified on policy grounds (i.e. generation-skipping trusts); (3) alleviate liquidity problems for estates whose major asset is a farm or other closely held business, and; (4) increase slightly the present level of estate and gift tax revenues.

The specific amendments summarized below are not exhaustive, but are merely intended to highlight and provide an introduction to the more significant changes. Close study should be made of the amended Code provisions,

committee reports and explanatory literature when reviewing existing estate plans.

*Unification of Estate and Gift Tax Rates.* In an effort to substantially reduce the tax incentives favoring transfers during life over transfers effective at death, the Act has eliminated the separate gift tax rate structure, which is 25% less than the estate tax rates for corresponding brackets. For all decedents dying after December 31, 1976, and for all gifts made after December 31, 1976, there will be a single unified rate structure for both estate and gift taxes, which will be progressive on the basis of *cumulative* lifetime and deathtime transfers. Generally, the new unified rates will be slightly higher than the present estate tax rates at corresponding brackets.

*Unified Credit In Lieu of Estate and Gift Tax Exemptions.* Under present law, each donor is entitled to a lifetime exemption of \$30,000 for gift tax purposes, and each decedent is entitled to an exemption of \$60,000 for estate tax purposes. For all decedents dying after December 31, 1976, and for all gifts completed after December 31, 1976, a unified estate and gift tax *credit*, providing a dollar for dollar offset against tax liability, is substituted for the present *exemptions*, which merely reduce the taxable estate or gift against which the tax rates are applied. Any part of the credit used to offset gift taxes will no longer be available to offset the donor's ultimate estate tax liability.

The unified tax credit will be phased-in over a five-year period, so that the amount of the credit will be \$30,000 for gifts made in, and decedents dying in 1977, \$34,000 in 1978, \$38,000 in 1979, \$42,500 in 1980 and \$47,000 in 1981. The exemption equivalent for the \$47,000 credit applicable in 1981 and subsequent years is \$175,625.

A donor who makes gifts after September 9, 1976 and before January 1, 1977 in an effort to exhaust his unused portion of the \$30,000 gift tax exemption before it is eliminated under the new law will cause a reduction of the unified credit allowable by an amount equal to 20% of the exemption claimed. There is no reduction for any amount allowed as a specific exemption for gifts made before September 9, 1976.

Only \$6,000 of the unified credit may be applied against gifts made after December 31, 1976, but prior to July 1, 1977.

*Gifts Within Three Years of Death.* Presently, transfers made within three years of death are presumed to be made in contemplation of death and are returned to the donor's estate for estate tax purposes, unless the executor can rebut the presumption with evidence that the gift was not death motivated. If the executor does not meet his burden, the entire amount of the gift, without reduction for the \$3,000 per donee exclusion, is brought back into the estate. However, the gift taxes paid on such gifts remain outside of the estate, which has served to encourage so-called "death-bed" gifts.

For all gifts made after December 31, 1976, the Act eliminates the contemplation of death rebuttable presumption and provides for the inclusion in the decedent's estate of *all* gifts (in excess of the \$3,000 annual per donee exclusion) made within the three year period prior to death, irrespective of the motive behind the gift. Further, in order to eliminate the death-bed loophole, all gift taxes paid at the time of the gift will be "grossed-up" or brought back into the decedent's estate for all gifts made within three years of death.

*Carryover Basis for Inherited Property.* A familiar concept to most practitioners is that the tax basis of property acquired or passing from a decedent is "stepped-up" to its fair market value at the date of decedent's death. Thus, upon the sale of inherited property by the estate or ultimate beneficiary, no income tax is paid on the appreciation occurring prior to decedent's death.

Unfortunately, for all decedents dying after December 31, 1976, the stepped-up basis rule is eliminated, and the decedent's basis will "carry-over" to the estate or ultimate beneficiary, and no portion of the appreciation will go untaxed. However, the carryover principal is ameliorated somewhat by the "fresh start" provisions, which step-up the basis of inherited property held on December 31, 1976 to its fair market value on that date. For all property other than securities for which market quotations are readily available, a special formula is provided to compute each asset's step-up in basis to reflect pre-1977 appreciation.

In addition, the Act imposes an obligation, under threat of penalty for noncompliance, on the executor to provide basis information to the Ser-

vice and ultimate beneficiary.

*Generation-Skipping Transfers.* Under present law, it is popular for persons of substantial wealth to suspend the imposition of estate taxes for a considerable length of time by transferring property in trust for the life of successive generations. Since each generation had only a life interest in the corpus of the trust, nothing would be includable in their estates at death. The only limitation on this generation-skipping device was the common law Rule against Perpetuities.

After April 30, 1976, the Act severely limits, though not eliminating entirely, the tax attractiveness of such transfers by exacting a tax substantially equivalent to the estate tax which would have been imposed had the property been transferred outright to each successive generation. The provisions outlining the applicability and timing of the generation-skipping tax are quite complex, and careful consideration should be given them before implementing such a transfer.

For generation-skipping transfers set up by a will or trust in existence on April 30, 1976, the Act's transitional rules should be consulted.

*Miscellaneous Provisions.* In addition to the above changes, the Act has liberalized the estate and gift marital deductions, provisions relating to extensions of time for payment of estate taxes, and the method of valuation of farms payment of estate taxes, and the method of valuation of farms or other closely held businesses.

Definitive rules are also provided with respect to disclaimers for estate and gift tax purposes, the deductibility of selling expenses of an estate and the retention of voting rights in stock transferred by a decedent during life.

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## CORPORATION, BUSINESS & BANKING

By DENNIS G. SEINFELD

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Section CLE plans and programs are in full swing. All were reviewed at the Section Executive Committee meeting on December 4, 1976.

On January 14, 1977 the Audit Letter Seminar is being given at the Olympic Hotel in Seattle.

Elvin Vandeberg, Midyear Meeting Chairperson announced the proposed schedule for that meeting at Richland, May 20-22, 1977, as follows:

Friday—May 20

1:00- General Business Seminar (Vandeberg):

4:30 General and Limited Partnerships

6:00- Hosted Cocktails

Saturday—May 21

8:30- Corporate Section Business Meeting

9:00

9:00- General Business Seminar (Vandeberg):

12:00 Tax Reform Act of 1976

1:00- General Business Seminar (Jerry

3:00 Whalen): Introductory Securities Law

3:00- Recreation Break (swimming, tennis, golf)

6:00- Hosted Wine Tasting

Sunday—May 22

9:00- Specialty Seminars:

12:00 (a) Agricultural Law (Roger Underwood)

(b) Banking Law (Gordon Willhite)

(c) Securities Law (Jerry Whalen)

Section Chairperson Tom Alberg and past Chairperson Bert Weinrich announced that a very satisfactory working relationship has been developed with the State Bar's CLE committee through conferences and meetings with Mike Green and John Michalik. Close liaison with the CLE Committee is essential to the Section in providing the State Bar with timely and effective programs.

The Corporation Code Revision Committee, under the leadership of P. Cameron DeVore, is rapidly progressing with its first report and recommendations for statutory changes in our long neglected Code. These should be ready for study by the Section Executive Committee about February 20, 1977.

Jerry Whalen reported that proposed revisions in the Washington Securities Act are now in the drafting stage and will be ready for review in the near future.

Richard Bangert reported that a directory of corporate law department attorneys will be ready for publication about April 15, 1977.

Tom A. Alberg announced that two new members have been added to the Section Executive Committee: P. Cameron DeVore, who is chairperson of the Committee on Revision of Corporate Laws, and Robert A. Kiesz, member at large

from Wenatchee, who is assigned to produce a re-draft of this Section's By-Laws.

Karl Ege, editor of the Section Newsletter, announced that a Section Newsletter will be published and mailed in January, April and September of 1977. There is a need for articles in synopsis form. All Section members are invited to contribute. Contributors should contact Karl for assignment and confirmation of subject matter.

Finally, Tom Alberg has asked me to encourage you to join the Section. For the \$5.00 annual fee you will receive three Newsletters with important information on new legal developments in the corporate and business field and a valuable bibliography of new articles. Mail your membership request and annual fee to the Sections Administrator, % the Washington State Bar Association.

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### TRIAL PRACTICE SECTION

By MICHAEL W. DUNDY

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Good things are coming from the Trial Practice Section in 1977. Early in the year, the Section will

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publish an excellent trial practice manual entitled "Evidence Manual—Voir Dire to Verdict." The manual is not meant to be a treatise or a research tool but a device which can be used by the civil practitioner during the course of trial to quickly locate applicable Washington rules and cases on evidence. It is designed to aid the trial performance of the bar generally and will be an extremely useful tool for every attorney from the trial specialist to the newly admitted lawyer. The manual will be published in loose leaf form and will be periodically updated to keep current with new evidentiary developments. It has references to the Federal Rules of Evidence and is designed so that it can be adapted to the format of those rules if (when?) they are adopted by Washington.

The manual is the result of a substantial amount of work by the Trial Practice Manual Committee headed by its Chairman, Leo A. Anderson. The authorship of the manual was undertaken by George Bassett of Seattle who, together with other members of the Committee, have done an excellent job in preparing this welcomed new resource for the trial practitioner. Information on price and ordering will be forthcoming shortly, but persons interested in reserving their copy now may write to George Bassett, 3825 Seattle-First National Bank Building, Seattle, Washington 98154.

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### YOUNG LAWYERS

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#### Young Lawyers Section Board Vacancies

Two vacancies on the Young Lawyers Section Board of Trustees need to be filled—one in the First Congressional District and one in the Third Congressional District. If you reside in one of these districts and wish to run for election, file a notice of intention to stand for election to such office, together with a resume of qualifications and statement of position with the Bar Office no later than March 1, 1977. □




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**SUPREME COURT PRACTICE**

By JOHN J. CHAMPAGNE

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**Summary of Cases Set for  
January, 1977 Session**

(continued from December 1976 Bar News)

No. 44523 — *Moran v. State Parks & Recreation Commission*

Is RCW 43.51.063 which relates to the determination of the value of leases and the period thereof on television station leases an unconstitutional abridgment of the separation of powers of the state government and the privileges and immunities clause of the state constitution and equal protection clause of the federal constitution.

No. 44332 — *State v. Mriglot*

Is it error for the trial court to refuse to instruct on the defense theory of involuntary intoxication?

No. 44325 — *Ruggles v. Seattle-First Nat.*

When the child of a testatrix is deceased at the time the will is made and the testatrix neither names nor provides for the deceased child or one of the descendants of the deceased child, does RCW 11.12.090 (intestacy as to pretermitted children) require that the testatrix be deemed to have died intestate as to the deceased child?

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**Attention! Former Law Clerks**

Professor Charles H. Sheldon of Washington State University is presently engaged in research preparatory to compiling a comprehensive history of the Washington Supreme Court. As a part of that project, Professor Sheldon is interviewing, among others, former Supreme Court Law Clerks. The Supreme Court Clerk's Office is contemporaneously compiling a Law Clerk register in which, insofar as possible, all Law Clerks who have served members of the Court will be listed,

with appropriate biographical data, etc. Records prior to mid 1955 are especially sparse.

Former Supreme Court Law Clerks are requested to write to Professor Sheldon, c/o Department of Political Science, Washington State University, Pullman, Washington 99163, giving information as to Law Clerk service, dates, Justice for whom clerked, other Clerks with whom you served, your predecessor and successor, when appropriate, etc.

A copy of your letter should be forwarded to the Supreme Court Clerk, John J. Champagne, Temple of Justice, Olympia, Washington 98504.

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**SUPERIOR COURT NEWS**

By JUDGE JAMES A. NOE

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**ABA Mid-Year Meetings in Seattle**

The ABA mid-year meetings will be held in Seattle during the week of February 9 through 15, 1977. In conjunction with the meetings of the ABA House of Delegates, Board of Governors, sections and divisions, the Judicial Administration Division will meet including the National Conference of State Trial Judges and other judicial conferences. The JAD meetings will also take place in the Olympic Hotel February 10 through 13.

On February 12, 1977, the local judges' host committee and the Washington State Superior Court Judges' Association are cosponsoring a reception in the owners' lounge of the Kingdome Stadium. All judges of the state are invited to participate and the judges attending the JAD meetings will be invited as special guests.

Chief Justice Warren E. Burger is expected to attend the Kingdome event. The Chief Justice has accepted the invitation. He will be in town to speak at the Opera House at 2 p.m., February 13. After his address, there will be a reception in honor of the judiciary in the Pacific Science Center.

All Washington State judges are invited to the two events on February 13, also.

The judges' host committee members are **Judge Eugene A. Wright**, U.S. Court of Appeals, **Judge Morell E. Sharp**, U.S. District

Court, **Judge George H. Revelle** (King), **Judge Warren Chan** (King), **Judge W. R. Cole** (Kittitas), and **Judge James A. Noe** (King).

### Law Day 1977

The Courts and Community Committee has been authorized to order the ABA Program and Planning Manual for distribution to all local courts. The committee will urge that the presiding judge pass the manual to a judge who will take responsibility for planning a meaningful Law Day program for the court in each community.

Also in conjunction with Law Day the Courts and Community Committee has approved a state-wide Law Day speech contest. Each local bench will be requested to cooperate by providing judges to evaluate the speeches of contestants from local high schools. The state is divided up into four regions and two regional winners will go to Olympia for the final contest next April. Regional chairpersons are **Judge Harold Clarke** (Spokane), **Judge Carl Loy** (Yakima), **Judge Gerry Alexander** (Mason-Thurston), and **Judge Francis Holman** (King).

### Unjust Criticism Followup

President-Judge **Willard Roe** and **Richard Riddell**, President of the Washington State Bar Association, are forwarding a joint letter to every local bar president and every presiding judge in the state. The letter encourages local benches and bars to consider adopting a written policy to meet unjust or inaccurate criticism of judges and courts. The letter encloses the program recently adopted by the Washington State Bar Association and the program adopted by the Washington State Superior Court Judges' Association last April.

### Personal Items

Judge **David W. Soukup** (King) attended a conference on juvenile justice in Denver, Colorado, during the week of December 13-17.

Judge **Donald J. Horowitz** concluded his service as a King County Superior Court judge earlier this month and has become a partner in the law firm of Levinson and Friedman. Judge **Solie M. Ringold** concluded his 16 years on the King County Superior Court earlier this month and has announced no specific long-term plans. Judge

Ringold will serve as a judge pro tem for the Court of Appeals and will also be available to the King County Superior Court to serve as a judge pro tem. Both Judge Horowitz and Judge Ringold were honored by their colleagues at a retirement party in early December.

### "Open (Court) House" For Legislators

The King County Superior Court sponsored an "open house" for legislators and councilpersons on November 30, 1976. King County judges invited the law makers to tour the King County Court House, observe the administration of justice in action and to engage in dialog on common issues. The effort was aimed at informing the lawmakers about current court problems which may require legislative action.

### Election Results

The election results are in and eight new Superior Court Judges took office on January 10, 1977. Those new jurists elected for the first time are: **Norman W. Quinn** (King), **T. Patrick Corbett** (King), **Barbara Durham** (King), **H. Joseph Coleman** (King), **Eugene G. Cushing** (King), **Willard Zellmer** (Lincoln), **Herbert Wieland** (Pacific-Wahkiakum), **Dean Morgan** (Clark).

### New Judge Orientation

The Washington Judicial College provided an orientation for newly elected judges. The five-day session was held at the University Towers Hotel in Seattle, from January 3 through 7, 1977, and featured Chief Justice **Charles Stafford** and other judges teaching classes on subjects of interest to new members of the court.

### More Judges Needed

Litigation has continued to increase in most counties during the past biennium. More judges will be needed to keep pace with the expanding and more complicated caseloads. King County will request five new judges. Spokane will ask for two additional judges and Island and Chelan Counties will most likely request one each. □



## Notices

**For Sale:** One set of current Corpus Juris Secundum. Contact Charles S. Helm, White Henry Stuart Building, Seattle. MA 4-4030.

**For Sale:** Mertens, Laws of Federal Income Taxation, complete set including commentary, regulations and rulings with current supplements to August, 1976. Further supplements available. \$200. Contact John Peick at 624-7272.

**For Sale:** Complete set of ALR including ALR First with side books; ALR Second with side books; ALR Third with Quick Index and Supplements; and ALR Federal, Vol. 1-9. Complete CJS Second; Complete UCC Reporting Service; Complete Federal Income Gift and Estate Taxation-Rabkin & Johnson; and two volumes Lawyers Guide to Medical Proof-Matthew Bender. Also IBM Executive typewriter, Executive Model, used two years, excellent condition. If interested contact Philip Noon, Box 188, Grandview, Washington 98930, phone 509-882-1446.

**For Sale:** Corpus Juris Secundum, \$750 or best offer, (206) 624-3600.

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**Office Space:** Attorney with personal injury trial experience and some personal injury practice preferred, to share space with five attorneys in law office. Share office space, library-conference room, secretarial-receptionist equipment and services. Terms negotiable. Attorney to assist with or handle personal injury claims and trials for members of the firm. Please send inquiry to Nicolai, Sorrel, Binns & Beck, 1300 Alaska Building, Second and Cherry, Seattle 98104. Phone: 624-1414.

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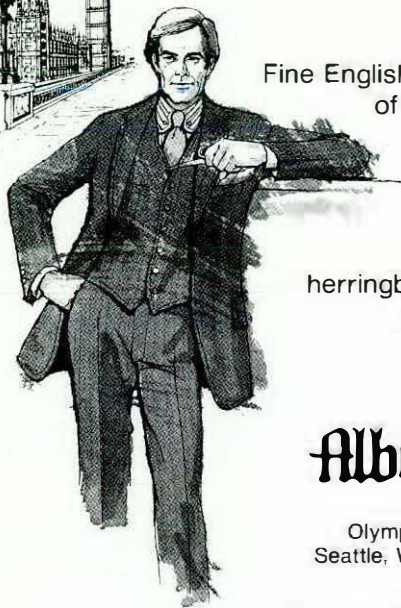
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**Will Sought:** Mildred Helgeson, Grandview WA, date of death 5/15/76. Contact Salvini, Corless, Shoemaker & Hart, Box 210, Sunnyside WA 98944.

**Will Sought:** Anyone having knowledge of a Will drawn for Mr. Perry Andrew Fulmer, 1928 "F" Street, Vancouver, Clark County, Washington, please contact Charles E. Gallup, 214 Adams Bldg., 1105 Broadway, Vancouver, WA 98660, (206) 694-7551 or 696-0241.

**Computer Billing Service:** Attorneys interested in participating in a pooled computer-assisted billing and financial accounting program contact Lowell Halverson, 650 Colman Building, Seattle, WA 98104 (623-1590). Estimated cost is \$80.00 per month per lawyer.

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# Calendar

- Feb. 9      ABA Mid Year Meeting, Olympic Hotel, Seattle  
thru 15
- Feb. 18     National College of Criminal Defense Lawyers and Public  
thru 20     Defenders Seminar: **Advanced Evidence Problems and  
Cross-Examination**, \$100, Los Angeles Bonaventure Hotel,  
Los Angeles, CA. For additional information contact the  
Registrar (AC 713/749-2283).
- Mar. 17     CLE Seminar: **Comparative Law Institute**, Victoria, B.C.  
thru 18
- Mar. 18     CLE Seminar: **Administrative Aspects of Practice**, 9-4 p.m.,  
\$40, Ridpath Hotel, Spokane
- Mar. 25     CLE Seminar: **Administrative Aspects of Practice**, 9-4 p.m.,  
\$40, Sea-Tac Motor Inn, Seattle
- Aug. 21     Manila Conference on Law of the World, Manila, The  
thru 26     Philippines. For further information contact John G. Sarpa,  
(AC 202/347-7992).

## LAWYER PLACEMENT

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2. Small Seattle firm looking for associate. Preference 1-3 years experience, but not required. Initial screening by resume only. Send to Box 21, WSBA, 505 Madison St., Seattle, WA 98104.
3. UPS School of Law is seeking a Director of Continuing Legal Ed. Applicants must have a Juris Doctor degree or equivalent experience in professional education. Salary: negotiable. Send resumes by March 1, 1977 to: UPS, P.O. Box 7297, Tacoma, WA 98407.
4. Litigation Chief: Position available for Assistant Regional Director, Seattle Regional Office, Federal Trade Commission. Qualifications: strong analytical skills and at least three years intensive trial experience. Antitrust and economics background desirable but not required. Salary: \$29,000-\$34,000 depending upon experience. Resumes should be sent to: William C. Erxleben, Regional Director, Federal Trade Commission, 2840 Federal Building, Seattle, Washington 98174.
5. Lawyer admitted Washington May, 1974, desires arrangement, preferably with Seattle area small to medium sized firm or solo practitioner to exchange available time for overhead and facilities. Reply care of Box 14, Washington State Bar Association, 505 Madison Street, Seattle, Washington 98104.
6. Associate position — specializing in tax and probate in an office located in downtown Seattle. Address inquiries to P.O. Box 332, Medina, WA 98039.



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