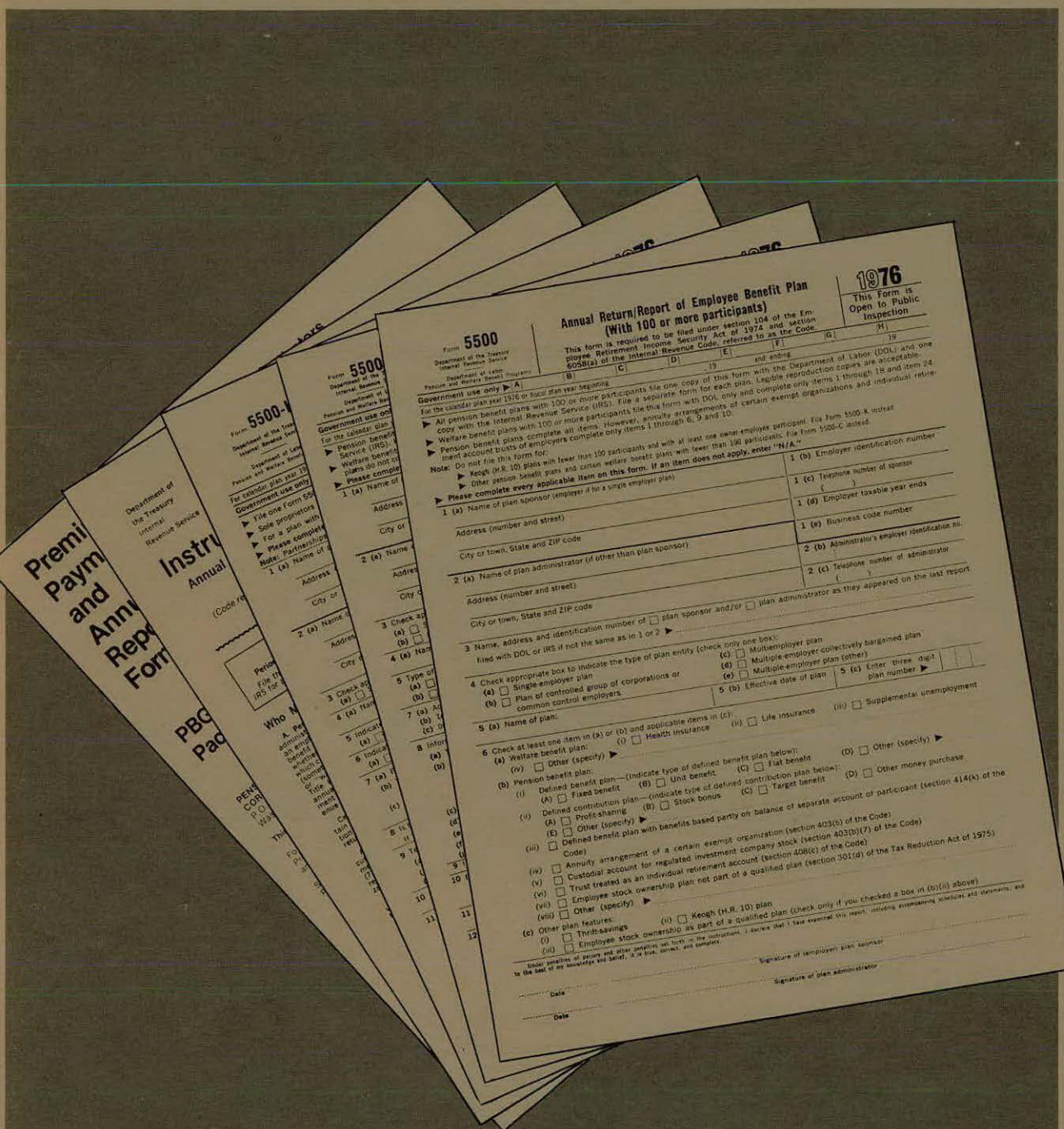
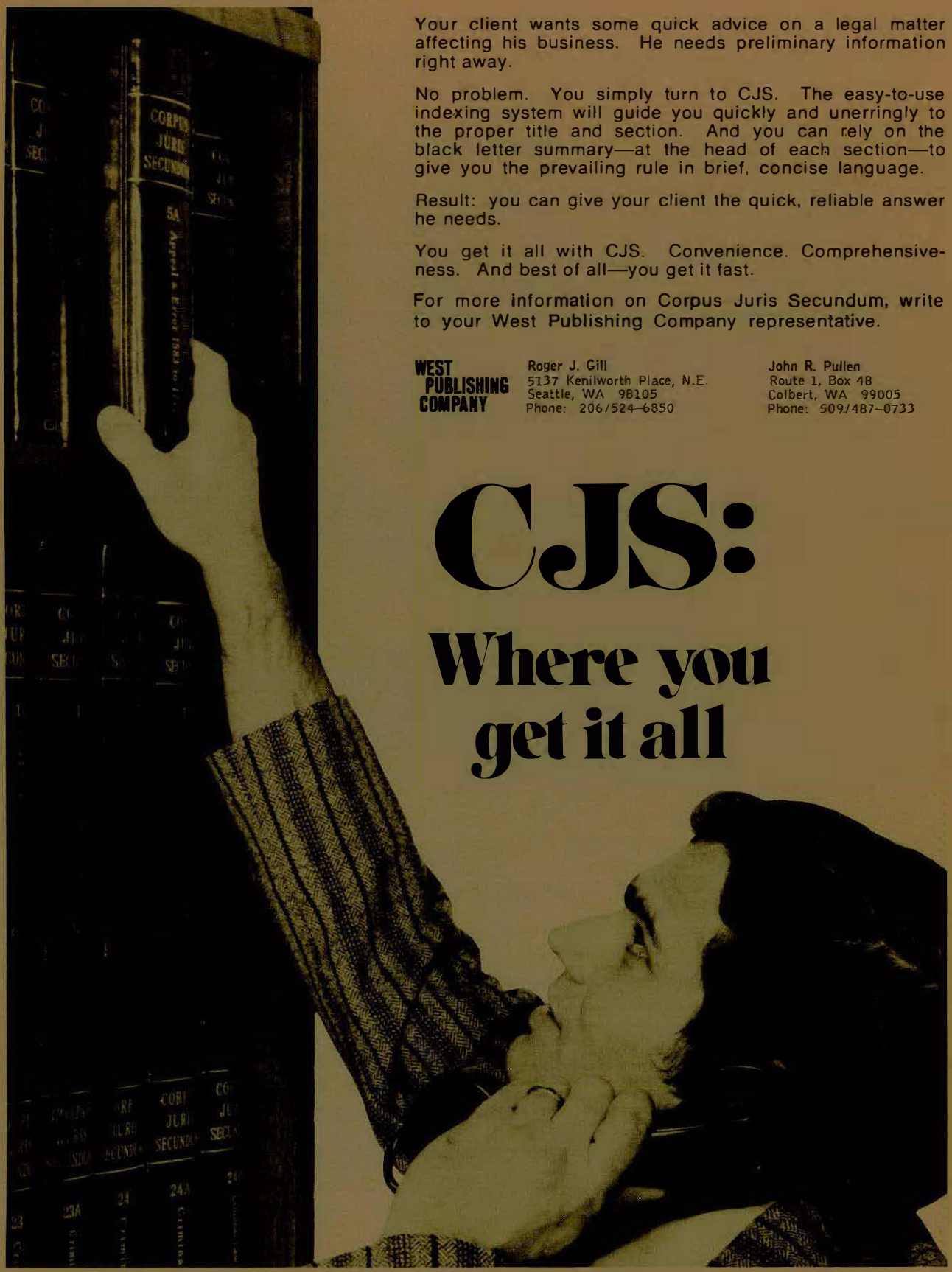
Volume 31, Number 4
April, 1977

WASHINGTON STATE BAR NEWS



REPORTING AND DISCLOSURE UNDER ERISA



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Our Cover

The cover features Form 5500 which might be regarded as the keystone to recording and disclosure requirements under the Employee Retirement Income Security Act of 1974 (ERISA). Paul C. Jaenicke reviews the required reports to the Internal Revenue Service, Department of Labor, and to participants and beneficiaries of pension and welfare plans subject to ERISA, commencing at page 10.

Letters

Make Admission Standards Tougher

Editor:

I have read the article co-authored by C. James Judson, et. al., in the February 1977 *Washington State Bar News* and will submit my comment as solicited in the concluding paragraph of the article.

First of all, I would say that the bar exam should be made more difficult, not less difficult. The statement on page 11: "inasmuch as the legal profession is obligated to serve all constituencies within the state, a screening process should allow representation within the legal profession of all significant constituencies (geographic, racial, age, etc.) in the state." is absolutely ridiculous. If certain ages, races, etc. cannot pass the bar that is just plain too bad. They are not qualified and therefore there should be absolutely no additional measures taken to allow them to become practicing attorneys. It is mentioned that of 17 blacks who took the July 1976 bar examination, only 2 passed. It seems to me that the fault undoubtedly lies in the fact that they probably got into a law school under some program allowing them to get in while under-qualified there. It seems that "the buck is going to have to stop" and it is going to stop at the bar exam. If the universities want to let people through while being under-qualified that is fine. We know that they are subject to certain pressure groups but I do not believe the Bar of this state should be subject to such pressure groups and I know for a fact that I as a practicing attorney am not going to sit still and allow the examining process to be degraded just to allow certain persons or "groups" to become practicing attorneys just because they are members of some minority.

If the bar exam tests the examinees' facility with words and expression that is fine. It should.

My comment on the Wisconsin system is that such a system is ridiculous. It allows the law schools to determine who should become practicing attorneys and as I have mentioned before the schools are subject to certain pressure from certain special interest groups to basically allow persons who are under-qualified to graduate.

As far as the additional educational programs go, I believe that a practicing attorney will learn these skills when he goes to work as an attorney since an extremely small minority of attorneys actually set up their own practice after graduation.

Perhaps we should read the letter to the editor by Walter Scott Acheson, page 6, January 1977 *Washington State Bar News,* as I agree with his comments 100% and will be watching very closely developments in this area. I am extremely interested in seeing that the standards for admission to the Washington Bar are made more difficult, not less difficult.

Thank you very much.

JUDSON T. HINES, JR.
Seattle

A Gentle Chiding from Over the Sea

Editor:

We have this date received our February issue of the *State Bar News*. Please note that today's date is March 10, 1977. In the past we have also noticed receipt of the *Bar News* approximately 1 month late. While San Juan County is often considered a foreign country, last time we checked we were still required to pay dues to the Washington State Bar Association and therefore would request that our issue of the *State Bar News* be mailed coincidentally with the issues for all other attorneys residing in counties located on the continent.

JOHN O. LINDE
Friday Harbor

There was no February issue. There were two March issues, one of which inadvertently was designated "February." Hereafter, we are returning to our former practice of publishing only one issue per month, the practice and printer permitting. All copies of the Bar News, *including those destined for foreign countries, are mailed at the same time no matter what time it is. –Ed.*

Eliminate the *Bar News*

Editor:

It was refreshing to read President Riddell's very concise and direct Report to the Membership of February 8, explaining essential Bar activities to the members.

Is there a possibility that great saving could be made by terminating the monthly *State Bar News?* Occasional reports from the President as and when appropriate would be a superior method of communication.

LIONEL E. WOLFF
Spokane □

THE SPRING SEASON

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

As per custom, the calendar in the back of this issue of the *Bar News* lists up and coming CLE programs sponsored by your Bar Association. In addition to that listing, I would like to offer a few notes on some spring programs.

In June, and at locations across the state, the CLE Committee will present what, in the view of many, is one of the major and most important continuing legal education activities in the history of the State Bar Association. For the first time, a program is being presented on the most pervasive aspect of the law in this state: *Washington Community Property.* This all day program will focus on a number of the most important problems in the area. The seminar itself will feature as its text what is believed to be the most complete exposition or treatise on the community property law in any jurisdiction. The *Washington Community Property Deskbook* is the product of five years of effort by a blue ribbon panel of judges, scholars and practitioners. Practice oriented, complete with Tables and Index, hardbound in a convenient 3-ring binder, this approximately 700 page book should be an important reference book for years to come.

June will also feature the return of a form of programming pioneered by this Bar Association. *Management of a Lawyers Life II* will be held at Sunriver Lodge, Bend, Oregon, on June 17-19. For those unfamiliar with the concept, *Management of a Lawyers Life* is a program specifically designed for lawyers *and* their spouses. Its focus is not on substantive law but on the everyday aspects of living with the "jealous mistress" — the human problems, pressures and rewards of practicing law.

Management of a Lawyers Life I, in the spring of 1975, has served as the model for similar programs in Arizona, Michigan, Texas and other states. Because of the nature of the program, attendance must be limited. Announcing brochures are in the mail and those interested in this program should register early.

Among non-WSBA programs, your attention is directed to:

Construction Contracts 1977: Claims and Litigation. Sponsored by the Practising Law Institute, this program will be presented on June 23-24 at the Downtown Hilton Hotel in Seattle. For further information contact PLI at 810 Seventh Avenue, New York, N.Y. 10019. Tel: (212) 765-5700.

ABA Regional Roundup on Law Office Management. Sponsored by the General Practice and Economics of Law Practice Sections of the ABA, this seminar will be held at the Olympic Hotel in Seattle on May 7, 1977. For further information contact Reed, McClure, Moceri & Thonn, 1701 Bank of California Center, Seattle, WA 98164.

Representing Publicly Traded Corporations: Protecting Corporations, Insiders and Advisors. Sponsored by the Practising Law Institute, this program will be presented at the Benson Hotel in Portland, Oregon, on June 13-14. For further information, contact PLI at the address or phone number noted above.

Public Contract Law. Sponsored by the ABA Section of Public Contract Law, this ABA National Institute will be held at the Beverly Hilton Hotel in Los Angeles on May 11-12. For further information write the ABA National Institute office, 1155 East 60th Street, Chicago, Illinois 60637.

Energy and the Law: Problems and Challenges of the Late 70's. Scheduled for San Francisco on May 5-7, this program is sponsored by the ALI-ABA Committee on Continuing Professional Education, 4025 Chestnut Street, Philadelphia, PA 19104. Telephone: (215) 387-3000. □

Editor's Page

Where's the Fire, Mr. Attorney General?

I called up the Senior Assistant Attorney General Robert F. Hauth on March 23 and told him that I had attended the Board of Governors meeting in Victoria, B.C., where I had watched a unanimous Board (including *both* Willard Walker and Betty Fletcher) state its opposition to HJR 21 which I gathered is a proposed constitutional amendment designed to permit the State Auditor to audit the bar association. I also learned about *Graham v. State Bar Association,* 86 Wn. 2d 624, 548 P. 2d 310 (1976) in which the court (7-2) held that the state legislature did not intend to make the bar association a "state agency" or "state department" under the auditing statutes (although it called the bar association an "agency of the state" in the State Bar Act of 1933), and even if the legislature did intend "to so extend its powers, such an attempt is an unwarranted and unconstitutional interference with the power of this separate branch of government to make necessary rules and regulations governing the conduct of the bar." 86 Wn. 2d at 633. In other words, the court held "that the doctrine of separation of powers forbids the exercise by the state legislature of the power to audit funds collected by the bar." 86 Wn. 2d at 625. *See the Board's Work, pp. 19-23.*

I told Mr. Hauth that I understood that he was the draftsman of HJR 21 which would provide that " . . . all courts and all other agencies of the judicial branch, however denominated [read: bar association?], are and shall be subject to audit as the legislature may prescribe." I told Mr. Hauth that the Board felt that the Attorney General should not be trying to change the constitution to undermine the *Graham* decision, and that I was inclined to agree that HJR 21 is a bad idea.

He said that he may not have drafted HJR 21, but that he approved it, and that he was just representing his client both in *Graham* and in the legislature. He sent me copies of the Attorney General's briefs in *Graham,* including a copy of a 1969 informal opinion he wrote to State Auditor Graham advising the auditor that he could audit the bar association.

Essentially, the Attorney General argues that because applicable statutes permit audit of any "agency of the state . . . supported . . . wholly or in part . . . by the levy, assessment, collection, or receipt of . . . fees, licenses . . . or other income provided by law, . . ." (RCW 43.09.290), and because the bar association receives fees prescribed by the State Bar Act of 1933, the bar association is subject to state audit.

The basic problem which makes the Attorney General's argument possible is that our state bar was integrated by legislation rather than court rule. The result is that the Supreme Court in *Graham* had to adopt rather strained reasoning to explain why the bar association is "an agency of the state" which is not a "state agency" or "state department" for auditing purposes. The court touched on the problem in 86 Wn. 2d at 632:

> By 1971 eight states had integrated their bars by a Supreme Court rule acting under the inherent power to regulate the practice of law, and by necessary inference, the conduct and activities of the bar as an entity . . . Nothing in our constitution prohibits this court from the exercise of its inherent power in this manner as well. It was not necessary, therefore, for the legislature to act to accomplish the purposes achieved by the 1933 legislation. The power to accomplish the integration of the bar, its supervision and regulation is found first in this court, not the legislature.

The Supreme Court has acted to forestall a constitutional confrontation by acquiescing to the State Bar Act of 1933 and interpreting it in *Graham* in a manner designed to preserve the court's underlying (but unexercised) power to integrate the bar under the doctrine of separation of powers. The Attorney General failed in his attempt to bring the confrontation to a head in *Graham* and now seeks to use HJR 21 to change the rules.

The simple issue is who will oversee the expenditure of bar dues and other bar income: the members of the bar whose money is involved or the state which would deny bar membership to those who refuse to pay bar fees prescribed by statute. In the meantime, nobody has disputed the integrity of the bar's audit or alleged any statutory violation by the bar association. The Attorney General says the state auditor should check to see if the bar's expenditures comply with applicable laws and any which may be written in the future. But where's the fire?

JVW

Should We Have Lay Members on the Board of Governors?

The idea of our State Bar Association being run by non-lawyers causes an instantaneous adverse reaction from all of us. But suppose our Board of Governors were expanded from its present ten members to twelve by the addition of two lay members?

We can all agree that our public image as lawyers (taken collectively) is not all we would like. Suppose we had two respected publishers or editors serving on the Board of Governors? They could cast light on our problems from a different perspective. And as they get enmeshed in our profession's problems (and they are many), they can't help but be impressed with the Bar's earnest effort to find solutions that will benefit the public as well as our profession. If the lay members selected have the confidence of the journalistic fraternity, isn't that a very effective way to improve our press relations?

Just before I joined the Board of Governors some three and one-half years ago, the Board decided to seek the Supreme Court's approval adding two lay members to our Disciplinary Board. This was a first among bar associations in this country. The experiment worked out well. The two lay members are now a permanent part of our disciplinary process. The Supreme Court has appointed top notch lay people in those positions (currently, they are Tom Bostic of Yakima and Edith Lobe of Seattle). Not only do Tom and Edith make a positive contribution to the process, but they can now be numbered among the Bar's strongest supporters. And even more important, their presence on the Disciplinary Board and their personal stature lend credence to the whole process. This step has been praised by the press.

In 1976, the California legislature passed a statute giving their Governor power to add six lay members to the 15 lawyers on the Board of Governors of the California State Bar. Jerry Brown appointed six consumer advocates. The number of lawyers in our own legislature is dwindling. There are a number of the non-lawyer legislators who are not friendly toward lawyers. Only last month some legislators were advocating that the legislature assume more direct control over your

Bar Association. The decision in *Graham v. State Bar Association,* 86 Wn.2d 624 (1976) gives us some comfort in this regard. Yet we know that the Supreme Court, and rightly so, would like to avoid a major constitutional confrontation with the legislature.

In this climate and in this consumer oriented society of ours, does it not make sense for our State Bar to initiate the change to add lay members to our Board of Governors? If we initiate it, rather than having it forced on us, we are more likely to (1) be able to limit the number of lay members, (2) have the Supreme Court rather than the Governor be the appointive power, and (3) be able to have input in the appointive process. And logically, where we collectively have a monopoly on the practice of law, is it not appropriate that the public be represented on our governing board?

Your Board of Governors is divided on this issue with "strong views, strongly held." The views of the membership, by plebescite or at the state convention, would doubtless be obtained before any move is taken in this direction. Meanwhile, the views you may care to express by letter or in person to me or to the Governor from your legislative district would be helpful to us as we consider this problem. The interim views you express may well determine whether this proposal dies a-bornin' or whether it at least proceeds to a vote of the membership.

Richard L. Kuhl

Employee Retirement Income Security Act of 1974

A Survey of Current Reporting and Disclosure Requirements

By **PAUL C. JAENICKE**

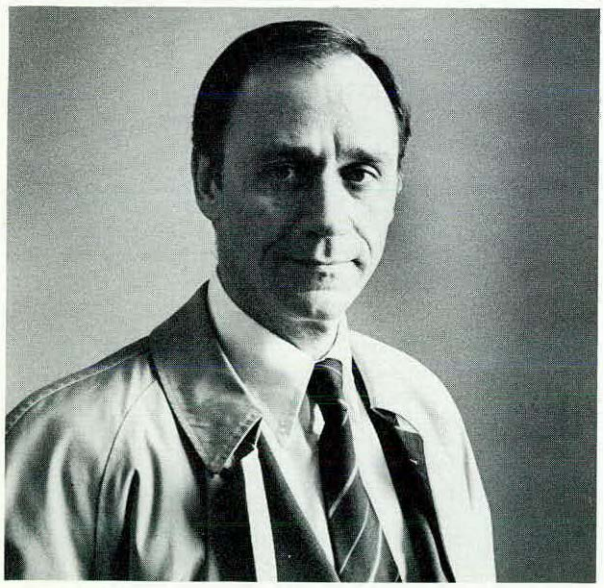
The President was puzzled at his first Cabinet meeting when members started talking about ERISA, acronym for Employee Retirement Income Security Act, the pension-reform law. When Carter asked what ERISA was all about, Treasury Secretary Blumenthal replied that businessmen call it "Every Ridiculous Idea Since Adam."

U.S. News & World Report, Feb. 7, 1977

The above note is an example of the humor that has been generated by the Employee Retirement Income Security Act (ERISA), 29 U.S.C. 1001, et seq.[1] It also says something about the Act in that it was a topic of conversation at a Cabinet meeting and, perhaps surprisingly, something about which the President was not informed. Such an absence of information seems surprising because the number of private pension benefit plans (not including private welfare benefit plans) in the nation has been estimated at upwards of 470,000 and estimates of the number of employees covered by such plans range well into the tens of millions. The existence of humorous references to the Act has its serious aspect in that some practitioners feel that such references are, in part, a result of the confusion in the area of employee pension and welfare plans that has been the aftermath of the legislation and the related regulations issued to date.

[1]The Act, with certain limited exclusions, covers all employee welfare plans and employee pension plans (including profit-sharing plans) maintained by any employer, any employee organization, or both, engaged in commerce or in any industry or activity affecting commerce except: a governmental plan; a church plan that has not made an election to be covered by the Act under section 410(d) of the Internal Revenue Code of 1954; a plan maintained solely for the purpose of complying with applicable workmen's compensation, unemployment or disability insurance laws; a plan maintained outside the United States primarily for the benefit of persons substantially all of whom are nonresident aliens; or an unfunded excess benefit plan. The scope of this article is limited to the effect of the Act's reporting and disclosure requirements on single employer pension plans (including profit-sharing plans) and welfare plans and therefore, does not treat the special requirements that may exist for multi-employer plans.

As the reader may know, in addition to pre-empting state laws governing employee pension and welfare plans, ERISA extensively governs such matters as the reporting and disclosure of plan information; the fiduciary responsibility of those who control plan design and administration or the management of plan assets; and the availability of administrative and civil enforcement proceedings. Moreover, with respect to pension plans, ERISA imposes minimum standards for participation, vesting, benefit accrual, benefit payment and (in the case of defined benefit plans) funding. It also regulates plan mergers and terminations and, with respect to defined benefit plans, it imposes contingent employer liability for improperly funded plans. Although an early summary of ERISA reported the new statute as amending, adding, or repealing some 187 sections and subsections of the Internal Revenue Code of 1954, the jurisdiction of the Internal Revenue Service is not exclusive because certain parts of ERISA come under the jurisdiction of the Department of Labor and still others are subject to the jurisdiction of the newly created Pension Benefit Guaranty Corporation.



Paul C. Jaenicke is a member of the firm of Donaldson & Kiel, P.S. The firm limits its practice to employee benefit plan law. He is a graduate of Princeton University and obtained his law degree in 1962 from DePaul University. Prior to entering private practice, he was employed as Vice President and Manager of the Pension & Profit Sharing Department in the Trust Division of Seattle-First National Bank.

When the ERISA was enacted, on September 2, 1974, it introduced many new reporting and disclosure requirements for employee pension and welfare plans subject to the Act. During the two and one-half years since enactment, these requirements have been the subject of many regulations; both temporary and final; deadlines for reports and notices have been proposed, established, postponed, and re-established; forms have been proposed, modified, issued, and reissued; and compliance requirements have been determined, only to be followed by "alternative" compliance procedures. In short, the past 30 months has been a difficult time period for administrators of employee pension and welfare plans and for those professionals and non-professionals who provide services to such plans.

Summary of Requirements

The reporting and disclosure requirements generally involve filing reports and making information available to two government agencies (the Department of Labor and Internal Revenue Service); a government corporation (the Pension Benefit Guaranty Corporation, newly created under title IV of ERISA); and to plan participants and (for pension plans) beneficiaries receiving benefit payments. As prescribed in various sections of ERISA, these requirements are to be met by the administrator of the plan. Thus, section 3(16) (A) provides that the term "administrator" means the person specifically so designated by the terms of the instrument under which the plan is operated. In the absence of such a designation, the plan sponsor is held to be the administrator. The "plan sponsor," under section 3(16) (B), means:

- The employer in the case of a plan established or maintained by a single employer;
- The employee organization in the case of a plan established or maintained by an employee organization; or
- In the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the par-

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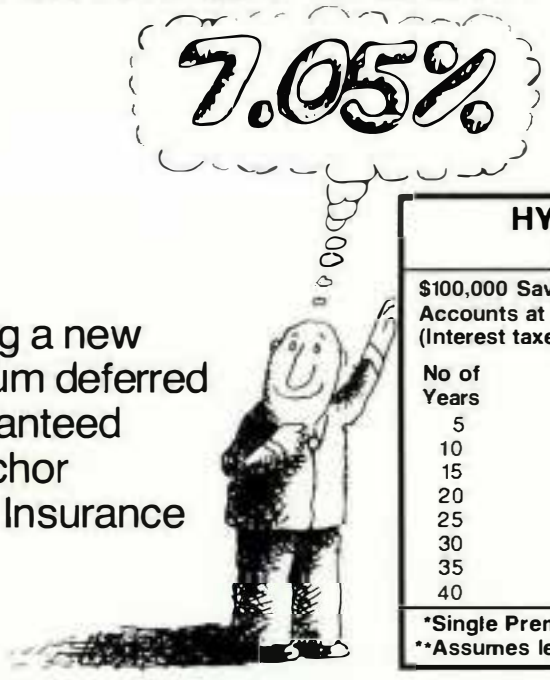

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5	$11,593	$12,284	$ 14,026
10	13,439	15,090	19,672
15	15,580	18,536	27,590
20	18,061	22,770	38,697
25	20,938	29,970	54,274
30	24,273	34,358	76,123
35	38,139	42,206	106,766
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ties who establish or maintain the plan.

The main elements of the reporting and disclosure requirements, as we now know them, may be summarized as follows:

Reports To Department Of Labor

Plan Description (EBS-1 Form) — to be filed by pension and welfare plans except unfunded or insured welfare plans covering fewer than 100 participants. May 30, 1976, was the initial filing date for plans subject to the Act as of January 31, 1976. The initial filing date for plans coming under the Act after January 31, 1976, is by 120 days after becoming subject to the Act. Amended filings are required within 60 days of a plan amendment, plan termination, or transfer of plan assets or liabilities to another plan. Amended filings are also required within 60 days of the occurrence of a change in any item of material information required to be contained in this Form.

Summary Plan Description (no form specified but contents prescribed by regulation) — to be filed by pension and welfare plans except unfunded or insured welfare plans covering fewer than 100 participants. May 30, 1976, was the initial filing date unless the "ERISA Notice" alternative was used. If the "ERISA Notice" was used, the initial filing date is the later of May 31, 1977, or (for pension plans) 90 days after a determination letter is issued by the Internal Revenue Service. Material modifications to the plan and changes in the information required to be included in this report are to be filed within 60 days of when the changes are made. A new summary plan description is to be prepared every five years incorporating all plan amendments, if any, and every tenth year if there have been no plan amendments.

Annual Report (Form 5500) — to be filed by pension and welfare plans covering 100 or more participants (plans covering fewer than 100 participants file form 5500-C and Keogh plans covering an owner-employee file Form 5500-K). For plan years beginning in 1975, the initial filing date is the later of December 15, 1976, or 11½ months after the end of the plan year. The filing date for plan years beginning after 1975 is 7 months after the end of the plan year.

Reports To Internal Revenue Service

Annual Report (Form 5500) — to be filed by pension plans covering 100 or more participants (pension plans covering fewer than 100 participants file Form 5500-C and Keogh plans covering an owner-employee file Form 5500-K). For single employer plans, the initial filing date is 9½ months after the end of the employer's taxable year beginning in 1975, with subsequent filing dates 7 months after the end of the employer's taxable year or, upon the administrator's election, at the same time the report is filed with the Department of Labor.

Annual Registration Statement (Schedule SSA) — to be filed by pension plans in connection with a deferred vested benefit for participants who have terminated employment. Filing is to be made by attachment to the appropriate Form 5500 series.

Actuarial Statement for Plan Mergers, etc. — to be filed by pension plans in connection with benefits accrued prior to merger, etc. and the effect the merger, etc. will have on such benefits. Filing date is no later than 30 days before such a merger, consolidation, or transfer of plan assets or liabilities.

Notification of Change in Status — to be filed by pension plans in connection with a change of name of the plan, change of name or address of plan administrator, plan termination, or plan merger or consolidation. Filing dates will be prescribed by regulation. At this time, such regulation has not been issued.

Reports to Pension Benefit Guaranty Corporation

Premium and Annual Report (Form PBGC-1) — to be filed by defined benefit pension plans. Premium payment is due 30 days after the beginning of the plan year, and Annual Report is due 6 months after the end of the plan year. Schedule A of this report is also to be completed if any of the specified "reportable" events occurred during the plan year for which the report is filed.

Notice of Intent to Terminate — to be filed by defined benefit pension plans. Filing date is no later than 10 days before the proposed termination date.

Notice of Reportable Event — to be filed by de-

fined benefit pension plans. Filing to be made by 30 days after Plan Administrator has knowledge that a reportable event has occurred.

Reports to Participants and Beneficiaries

Summary Plan Description (No form specified but contents prescribed by regulation) — to be provided by pension and welfare plans. Copies of this report were to be initially provided by May 30, 1976, unless the alternative compliance method (the "ERISA Notice") was used. If the "ERISA Notice" was used, copies are to be provided on the later of May 31, 1977, or (for pension plans) 90 days after a determination letter is issued by the Internal Revenue Service. Also, copies are to be provided to new participants or (for pension plans) beneficiaries 90 days after participation begins or benefits are first received. If a plan amendment is executed or a change occurs in any item of material information to be included in the summary plan description, a copy of the modification or change is to be provided by 210 days after the plan year in which such amendment or change occurs. An updated report is to be provided every fifth year incorporating all plan amendments, if any, and if none, every tenth year.

Summary Annual Report — to be provided by pension and welfare plans except unfunded or insured welfare plans covering fewer than 100 participants. The initial report date for plan years beginning in 1975 is the later of February 15, 1977, or 13½ months after the end of the plan year. For plan years beginning after 1975, the report date is 9 months after the end of the plan year.

Personal Statement of Accrued and Vested Benefit — to be provided by pension plans within 30 days of written request by the participant but not more frequently than once every 12 months.

Personal Statement of Deferred Vested Benefit — to be provided by pension plans. Regulations will prescribe when it is to be furnished.

Plan Description (EBS-1 Form) and Annual Report (Form 5500) — to be made available for inspection and copying by pension and welfare plans, except unfunded or insured welfare plans covering fewer than 100 participants. These reports are to be furnished on written request or made available for convenient viewing as soon as they are filed with the Secretary of Labor.

Plan Documents — to be made available by pension and welfare plans. Copies are to be furnished on written request and made available for convenient viewing as soon as the documents are available.

Although a detailed discussion of all the requirements summarized above is beyond the scope of this article, one of the items — the summary annual report — deserves further examination in view of the importance of the document, together with the fact that the initial filing date has occurred for calendar year plans and will be occurring over the coming months for non-calendar year plans, and the fact that this requirement is being met now for the first time by many plan administrators. The summary annual report can be viewed as one of the main informational reports to plan participants because it serves the purpose of providing the participants with a summary of the plan's financial activity. Summary annual reports are currently being filed under temporary and proposed DOL regulation 2520.104b-10 (41 FR 23251, August 3, 1976).

Summary Annual Report

The initial summary annual report under the Act is to be prepared for plan years beginning in 1975, and participants and (for pension plans) beneficiaries receiving payments are to receive the reports by the later of February 15, 1977, or 13½ months after the end of the plan year. For plan years beginning after 1975, this report is to be distributed by 9 months after the end of the plan year.

Plans Covering 100 or More Participants

Temporary and proposed DOL regulation 2520.104b-10 sets forth the required contents of the summary annual report. Under 2520.104b-10(c)(1), plans required to file DOL/IRS Form 5500 (plans covering 100 or more participants) are to include the following in the summary annual report:

(1) The name of the plan and, if different, the name by which the plan is commonly known to its participants and beneficiaries;

(2) The name and address of any employer having employees covered by the plan; the name and address of any labor organization maintaining the plan, or in the case of a plan established or maintained by two or more employers or by one or more employers and one or more employee organizations, the name and address of the association, committee, joint board of trustees, parent, or most significant employer of a group of employers contributing to the same plan;

(3) The name, business address, and business telephone number of the plan administrator;

(4) A statement of assets and liabilities at current value presented in comparative form for the beginning and end of the year (if a plan's financial statements did not reflect assets and liabilities at current value for the beginning of the 1975 plan year, that information shall be omitted in the summary annual report under DOL regulation 2520.103-7), a statement of all plan income and expenses and of changes in net assets;

(5) Notes to the financial statements as prescribed by DOL regulation 2520.103-1(b)(3) as follows:

- A description of the accounting principles and practices reflected in the financial statements, and, if applicable, variances from generally accepted accounting principles;
- A description of the plan including any significant changes in the plan made during the period and the impact of such changes on benefits;
- The funding policy (including policy with respect to prior service cost), and any changes in such policies during the year;
- A description of material lease commitments, other commitments, and contingent liabilities;
- A description of agreements and transactions with persons known to be parties in interest;
- A general description of priorities upon termination of the plan;
- Information concerning whether or not a tax ruling or determination letter has been obtained; and
- Any other matters necessary to fully and fairly present the financial statements of the plan.

(6) Items 5, 6, and 7 of Schedule A (Insurance Information) of Form 5500 for pension plans funded in part or in whole through insurance contracts and items 9 and 10 of Schedule A for welfare plans funded in part or in whole through insurance contracts; and

(7) A notice which reads as follows: "Plan participants and beneficiaries may obtain copies of the following more detailed annual report information for a reasonable charge, or inspect it without charge: The latest full annual report, or any parts of the report, including a list of any assets held for investment; a list of certain party-in-interest transactions; a list of any loans or obligations in default; a list of any leases in default; and a list of transactions involving more than 3 percent of plan assets. To ob-

tain a copy of any documents listed, write to the administrator asking for what you want. The administrator will state the charge for specific documents on request, so that you can find out the cost before ordering. All the documents listed can be examined at [state locations where documents may be examined]."

In addition to the above specified information, 2520.104b-10(d)(1) provides that explanatory text or other relevant information may be added, but care must be exercised to ensure that the format of the summary annual report is not misleading or misinforming. The additional information is to be written in a manner calculated to be understood by the average plan participant, considering the education level of the average participant and the complexity of the information presented.

Also, in the event a certain portion of the plan participants are literate only in the same non-English language, 2520.104b-10(d)(2) requires that a notice in the language common to those participants be prominently displayed in the summary annual report. The notice shall offer assistance to the participants, and the assistance shall be provided in the same non-English language common to the participants. The assistance, however, does not have to involve written materials. Such a notice is required in the case of either:

- A plan which covers fewer than 100 participants at the beginning of a plan year in which 25 percent or more of all plan participants are literate only in the same non-English language; or
- A plan which covers 100 or more participants in which 500 or more participants or 10 percent or more of all plan participants, whichever is less, are literate only in the same non-English language.

Plans Covering Fewer than 100 Participants or an Owner-Employee

Although the initial and subsequent filing dates for the summary annual report for plans required to file DOL/IRS Form 5500-C (plans covering fewer than 100 participants) or Form 5500-K (plans covering an owner-employee) are the same as for plans required to file Form 5500, the specifically required contents of reports for the former are more modest than those for the latter. The information required to be included in the summary annual report is set forth in temporary and proposed DOL regulation 2520.104b-10 (c)(2) and (3) as follows:

(1) A copy of Form 5500-C or Form 5500-K, whichever is required to be filed by the plan with the Department of Labor and Internal Revenue Service; and

(2) A notice which reads as follows: "Plan participants and beneficiaries may obtain copies of the following more detailed annual report information for a reasonable charge or inspect without charge: the latest full annual report, including a list of certain party-in-interest transactions. To obtain a copy of any documents listed, write to the administrator asking for what you want. The administrator will state the charge for specific documents on request, so that you can find out the cost before ordering. All the documents listed can be examined at the [state locations where documents may be examined]."

In addition to the two items set forth above, pension and welfare plans filing Form 5500-C and Form 5500-K that are funded in part or in whole by insurance contracts are required to include in the summary annual report the appropriate information from Schedule A (items 5, 6, and 7 for pension plans and items 9 and 10 for welfare plans) covering insurance information for the Form 5500 report series. Finally, the foreign language notice discussed above is also required if, under the plan, the number of participants literate only in the same non-English language meets the standard that would activate the required notice.

Current Development — Summary Plan Description

At the time this article was prepared, the summary plan description and the requirements relating thereto were also going to be examined in some detail. The summary plan description may be viewed as another of the Act's significant informational devices because it will provide participants and (for pension plans) beneficiaries receiving payments with the substance of plan provisions and the methods of establishing eligi-

bility, accruing benefits, and vesting in benefits under the plan.

It was also believed to be a timely topic for discussion because under DOL regulation 2520.104-5 and 6 (41 FR 16957, April 23, 1976), the May 31, 1976, initial filing date for summary plan descriptions could be deferred by plan administrators. By providing a prescribed "ERISA Notice," welfare plans could defer the initial filing of the summary plan description until March 31, 1977. By use of the "ERISA Notice," pension plans could also defer the initial filing requirement until the later of March 31, 1977, a date 90 days after the plan's request for a determination letter is finally disposed of, or the time prescribed by law for filing the employer's tax return (including extensions thereof), depending upon whether or not a request for a determination letter is made to the Internal Revenue Service.

On January 25, 1977, the Department of Labor released an announcement extending the deadline for distribution of the summary plan description of both pension plans and welfare plans from March 31, 1977, until May 31, 1977. For pension plans, the announcement also stated that the distribution deadline could continue to be determined by reference to whether or not the plan had requested a determination letter. Finally, the announcement went on to state that final regulations on the content, format, and distribution requirements for summary plan descriptions would be issued by February 4, 1977. At the time of this writing, the February 4th publication date has not been met and, consequently, such regulations are not available to be incorporated into this article.

Conclusion

Although compliance with ERISA's reporting and disclosure requirements may be viewed by plan sponsors and plan administrators as difficult and perhaps burdensome, practitioners must bear in mind when advising their clients the possible penalties provided under the Act for failure to meet these requirements. Criminal penalties are provided under section 501 for a willful violation of any of the reporting and disclosure requirements of part 1 of title 1 and civil penalties under section 502 may include personal liability (up to $100 per day) of plan administrators who fail to provide required information to plan participants if the participants request such information. The Internal Revenue Service may also assess penalties for late filings of various returns and the Pension Benefit Guaranty Corporation may assess charges in connection with late payment of required premiums for defined benefit pension plans.

To date, there have been many proposed, temporary, and final regulations issued under the Act and it is certain that many more will follow in the future. Also, as pointed out at the beginning of this article, the reporting and disclosure requirements represent only one of the areas extensively governed by ERISA. Shortly after passage of the Act in 1974, the local office of the Internal Revenue Service estimated there were about 6,700 employee pension plans (not including employee welfare plans) in this state. In light of the above, it appears clear that the members of the Bar will be able to provide their clients with the needed assistance in this area only through a continued strong effort to remain abreast of the many changes that will be taking place under ERISA. □

All you need to know about Professional Liability insurance.

A program of professional liability insurance for Washington attorneys, underwritten by the American Bankers Insurance Company of Florida, is available through three authorized brokerage firms. One of them is Alexander & Alexander.

Professional liability insurance is a highly specialized form of coverage, usually hard to get and often costly. But since Alexander & Alexander is the oldest and largest brokerage firm in the nation with expertise in this important coverage, we can make it easier for you to get the protection you need.

Is there anything else you need to know?

Alexander & Alexander

For further information, call or write Harrison P. Sargent, C.P.C.U., Alexander & Alexander, Inc.; IBM Building, Seattle, WA, 98101; Telephone: (206) 623-7070.

Our Professional Liability Plan has received the endorsement of the state bar associations in New York, Virginia, Ohio, Texas, Wisconsin, Mississippi, Utah, District of Columbia, Montana, Nebraska, Pennsylvannia, West Virginia and others.

PROPOSED CONSTITUTIONAL AMENDMENT

By **JAY V. WHITE**

VICTORIA, B.C., March 19-19 — Without taking any formal action, a united Board of Governors devoted part of its meeting here to a discussion of strategy designed to block a proposed constitutional amendment designed to permit the state auditor to audit the bar association.

The Board met with state Senator Pete Francis and state Representative Walter Knowles, chairmen of the Senate and House Judiciary committees respectively, to assess the status of the measure — HJR 21 — which is under consideration by the Senate Rules Committee. *Details below; for editorial comment, see Editor's Page.*

In other action, the Board approved and agreed to subsidize partially a pilot project known as "Tel-Law" — a program which makes tape recorded legal information available to laymen by telephone. The pilot project will be implemented in Pierce County by the Pierce County Young Lawyers under the general supervision of the Young Lawyer's Section.

The Board also took action on a report by a Young Lawyers Section Committee, proposing a "Skills Training" or "General Practice" course as a requirement for admission to the bar in addition to the bar exam.

In addition, the Board voted to require "attorney applicants" for admission to the Washington bar to sit for the full three days of the bar exam, rather than continuing the present "one day exam" requirement.

Finally, of interest to all of those planning to attend the Annual Meeting in Vancouver this September 14-17 in Vancouver, B.C., the Board voted an immediate increase in the registration fee from the present $15 to $50 for all members of the bar except those admitted less than five years for whom the fee will be $25.

Background: Audit by State

Annual audits of the bar association are performed by private certified public accountants. A summary of the most recent audit, for fiscal year 1975-76, was published in the *Bar News* last month and supporting records are available at the bar association office in Seattle.

The issue presented which led to HJR 21 is whether the bar association is subject to annual audit by the *state* auditor under existing laws. Determinative of this issue are the answers to the questions whether the bar association is a *state* agency for purposes of the audit statutes and whether bar dues and other funds received by the bar association constitute *public* funds.

Also necessary to an understanding of this issue is recognition of the distinction between a *performance audit* and a *postaudit*. In the context of audits by the state auditor, a performance audit is one in which the auditor determines whether the audited agency or officer has efficiently and effectively carried out statutory responsibilities, whereas a postaudit merely involves the auditor's determination as to whether the audited entity has expended funds in accordance with existing state laws.

In August, 1968, the state auditor conducted a postaudit of the bar association. The report was issued in March, 1970, and no impropriety was discovered nor was any challenge made to bar expenditures. In November, 1974, the auditor attempted a second postaudit which was resisted by the bar association through its Executive Director, G. Edward Friar.

The state auditor subsequently sought a subpoena under the audit statutes to compel pro-

duction of bar association records, but on April 3, 1975, King County Superior Court Judge James J. Dore refused to issue the subpoena. Judge Dore's decision was affirmed by the state Supreme Court (7-2) in *Graham v. State Bar Association,* 86 Wn. 2d 624, 548 P. 2d 310 (1976).

The majority in the *Graham* case rested its opinion on the conclusion that the audit statutes do not reflect a legislative intent to treat the bar association as a state agency within the meaning of those statutes, notwithstanding the designation of the bar association as an "agency of the state" in the State Bar Act of 1933, RCW 2.48.010 *et seq.* The court's conclusion was based in part on the state auditor's concession that the bar association is not subject to a performance audit and the court's corresponding interpretation of the performance audit statutes to the effect that any agency subject to performance audit is also subject to postaudit, and therefore "to exclude an organization from performance audit is to exclude it from postaudit as well." 86 Wn. 2d at 628.

More importantly, the majority held, as had Judge Dore, that "the doctrine of separation of powers forbids the exercise by the state legislature of the power to audit funds collected by the bar." 86 Wn. 2d at 625.

The apparent by-product of the *Graham* decision is HJR 21 which would amend Article IV of the state constitution by adding a new section to provide:

> The financial transactions, records, and accounts of all courts and all other agencies of the judicial branch, however denominated, are and shall be subject to audit as the legislature may prescribe.

As reported last month, the Board of Governors at its February meeting in Seattle, acting on the assumption that the language "all other agencies of the judicial branch, however denominated" would include the bar association, voted unanimously to oppose HJR 21.

Informal Action on HJR 21

Among the matters discussed here in Victoria during the Board's meeting with Senator Francis and Representative Knowles was the status of

HJR 21. Senator Francis reported that the measure is now under consideration by the Senate Rules Committee and that there is a possibility that the committee will refer the matter to the full Senate for a vote. A two-thirds majority of the Senate is necessary to place HJR 21 on the November ballot. It generally was felt that the public would support the measure (only a simple majority would be necessary for the proposed amendment to be enacted) if it were to reach the ballot.

G. Edward Friar, the bar association's Executive Director, summarized some of the association's concerns if HJR 21 were to be approved. He pointed out that some $76,000 was paid last year by the bar association from lawyers' contributions to the Client Security Fund and suggested that if the bar association is considered to be part of the state for auditing purposes, it might be concluded that payments from the Client Security Fund are an unconstitutional lending of the state's credit to individuals.

Other questions raised by Friar which might arise in the event the bar association is subject to state audit included whether public disclosure laws might apply to the bar association; whether bar association employees are subject to civil service laws; and whether the state could prohibit the bar association from holding its annual meeting out of state, such as in Vancouver, B.C., as planned this year, or Hawaii, as planned for 1980.

Friar emphasized that the annual audit conducted by private certified accountants is of unquestionable integrity and that audit is fully available to members of the bar and to the public.

Board Member Bradley T. Jones, who represented the bar association in the *Graham* case, stated that the simplest way to resolve the issue of whether the state auditor should audit the bar association is to recognize that bar association funds, comprised of bar dues and income from bar activities supported by the membership, are not public funds and therefore the expenditure of those funds is not a public matter, but a matter of concern only to the members of the bar.

Thereafter the Board, under the leadership of President Richard H. Riddell, discussed steps to be taken to contact each member of the Senate Rules Committee and all other members of the state Senate to inform them of the Board's opposition to HJR 21 in light of the *Graham* decision and related factors.

The Board also had a general discussion with Senator Francis and Representative Knowles of other pending legislative matters and of the problems involved in encouraging more lawyers to seek election to the legislature.

Pilot "Tel-Law" Project

Robert Burns, ex officio member of the Board and chairman of the Young Lawyers section; Michael Smith, Young Lawyers Sixth District Trustee; Marc T. Christianson, project chairman; and Terry Lumsden, chairman of the Pierce County Young Lawyers Association, presented to the Board a proposed pilot project for Pierce County to be known as "Tel-Law." "Tel-Law" is a public informational service under which tape recordings providing information about legal rights are made available to the public by telephone.

A similar program involving medical information is in operation in King County.

"Tel-Law" is in operation in California under the sponsorship of the San Bernardino-Riverside County Bar Associations. The pilot project for Pierce County involves purchasing the "Tel-Law" tapes and editing them to reflect Washington variations in legal procedures.

The Pierce County Young Lawyers Association plans to implement the project under the general supervision of the Young Lawyers Section.

Approximately 50 to 75 tape recordings will be available to residents of Pierce County under such titles as "Rights and Duties of Landlords"; "How Can I Dissolve My Marriage?"; "What Should I Do If I Am Arrested?"; and "Should I Have A Will?" A "trailer" at the end of each tape will advise the caller that the tapes are not to be construed as legal advice and that if further information is needed, the caller should call his attorney or contact the Pierce County Lawyer Referral Service.

It is anticipated that there will be an increase in the number of persons contacting the referral service and that the pilot project will generate sufficient data to permit a determination of whether a statewide "Tel-Law" program would be successful.

The Board listened to two "Tel-Law" tapes, and subsequently agreed to approve the pilot proj-

ect and underwrite any over-budget expenditures by the Young Lawyers Section for the "Tel-Law" project up to $3,500.

"Skills Training" Course

C. James Judson of Seattle, a member of a Young Lawyers Section committee which has been studying alternatives or supplements to the bar exam, presented the committee's report to the Board recommending creation of a "Skills Training" course as a requirement for admission to the bar in addition to the bar exam.

Some of the committee's work is reflected in the article, "Is the Bar Exam Good Enough?", authored by Judson and other committee members, which was published in the February *Bar News.*

The Board decided to refer the committee's report to the Continuing Legal Education Committee; the Board of Bar Examiners; and the Legal Internship Committee for review, comments and recommendations. The Board also directed that the report be submitted to the deans of the state's three law schools for comment.

The Board will request preliminary reports from those groups and persons within 60 days, preferably in time for consideration at the Board's meeting in May.

B & O Tax Audits

The Board considered a memorandum prepared by C. James Judson on behalf of the committee which has been studying the question of the taxability under B & O tax regulations of certain items advanced by law firms, pending reimbursement by clients, which have been the subject of audits by the state Department of Revenue. See *Bar News,* December, 1976, p. 20.

The Board voted 6-3 to request the committee to arrange an appointment with appropriate state officials to discuss the questions raised in this area in order to determine the possibility of formulating a set of rules and guidelines for the use of the legal profession in complying with B & O tax provision. President Riddell, joined by Board Members Willard Walker and Michael Hemovich, opposed this action. Board Member Paul Cressman, who was not present due to a schedule conflict, did not vote.

Proposed CPR Amendment Rejected

The Board considered the recommendation of the Code of Professional Responsibility Committee to amend DR 7-102 (B-1) to correspond to an amendment recently adopted by the American Bar Association.

The Washington provision states:

> A lawyer who receives information clearly establishing that:
>
> (1) His client has, in the course of the representation, perpetrated a fraud upon a person or tribunal, shall promptly call upon his client to rectify the same, and if his client refuses or is unable to do so, he shall reveal the fraud to the affected tribunal and may reveal the fraud to the affected person.

The amendment would add this qualification:

> . . . except when the information is protected as a privileged communication.

The CPR committee advised that the principle of privileged communications must control the situation so as not to deter clients from confiding in their attorneys.

Board Member Walker expressed the view, adopted by the Board in rejecting the amendment 9-1, that "client confidence should not override justice" in a particular case once the matter is in court. Hemovich was the sole dissenter, expressing the view that the recommendation of the CPR committee should be approved.

"Fee-Splitting" Opinion Requested

The CPR Committee, in response to an inquiry, has recommended that the present language of DR 2-107(A) relating to the division of fees by lawyers be retained, but offered to clarify the practical operation of the rule.

The Board unanimously requested a formal opinion from the CPR Committee regarding this rule and directed that the opinion be published in the *Bar News* as soon as it is available.

Malpractice Insurance

The Board, as in past meetings, discussed at length the problem of attorneys' malpractice insurance. The Board agreed to authorize President Riddell and Board Member Robert Redman, chairman of the Attorneys Professional Insurance Committee, to appoint an additional person or persons to that committee. The Board also agreed to support a bill ("title only" at present) pending in the legislature to authorize the bar association to administer a self-insurance program should the Board decide to adopt such a program in the future.

Miscellaneous Topics

In other action, the Board:

- Met with representatives of West Publishing Company to discuss the possibility of publication of Washington appellate court opinions in the event the state decides to discontinue publication of official reports.
- Deferred until April action on funding for the National Legal Services Board.
- Approved the CLE Committee's proposed schedule for the Annual Meeting, and the CLE schedule for fiscal 1977-78.
- Deferred until April action on a proposal to admit members of the judiciary to CLE seminars without charge. □

Around the State

SEATTLE - KING COUNTY REPORT
By JOHN SOLTYS

Robert H. Gibbs, a 1974 graduate of the University of Washington, and **James A. Douglas,** a 1973 graduate of Yale Law School, announce the opening of their law office under the firm name of Gibbs & Douglas. Their office is located at 1617 Smith Tower, 506 Second Avenue, Seattle, Washington 98104, 623-0900.

Douglas W. McQuaid and **Wallace E. Skidmore, Jr.** have become partners with the firm of Aiken, St. Louis & Siljeg, 1215 Norton Building, Seattle, Washington 98104, 624-2650.

Douglas N. Jewett and **Philip Mortenson** announce the formation of a partnership for the general practice of law under the firm name of Mortenson & Jewett, 608 United Pacific Building, 1000 2nd Avenue, Seattle, Washington 98104, 682-6916.

Bangs & Castle announce the association of **Gretchen M. Newman** with their law firm at 1700 Westlake Avenue North, Suite 420, Seattle, Washington 98109, 285-3900.

John Bright, formerly head of the Attorney General's consumer protection division in Seattle, has joined the firm of Keller, Rohrback, Waldo & Hiscock located at 1220 IBM Building, Seattle, Washington 98101, 623-1900.

Kenneth E. Kanev announces the opening of his office for the general practice of law at Suite 380, Grand Central On The Park, 216 First Avenue South, Seattle, Washington 98104, 624-0861.

Doug Albright has become a partner with the firm of Ogden, Ogden & Murphy, 1015, 1411 Fourth Avenue Building, Seattle, Washington 98101, 622-2991.

Donaldson & Kiel, P.S., 2819 First Avenue, Seattle, Washington 98121, 682-5261, announces the association of **Paul C. Jaenicke,** a former manager of the Pension and Profit Sharing Department of Seattle-First National Bank.

LeSourd, Patten, Fleming & Hartung announce that **Bruce G. Hanson** has joined the firm as a partner.

Mary Ann Ottinger announces the opening of her office for the general practice of law, Suite 224, Pioneer Building, 600 First Avenue, Seattle, Washington 98104, (206) 624-2013.

J. Carl Mundt, William Paul MacGregor, Henry Howard Happel and **James C. Falconer** announce formation of a partnership under the firm name of Mundt, MacGregor, Happel & Falconer, 1230 Bank of California Center, Seattle, Washington 98164, 624-5950.

EAST KING REPORT
By BARRY J. HASSON

The East King County legal community continues to expand with some movement within. The following has been reported to this writer:

William Graves, formerly officing with East King County Bar Association president **Chuck Diesen,** is now Assistant City Attorney in the civil division for the city of Bellevue. That position was previously held by **Ruth Darden,** who has taken over the position for the city of Bellevue previously held by **Leo Poort,** who has taken a position with the city of Seattle, previously held by now King County Superior Court Judge **H. Joseph Coleman.** The next question is: When will Leo run for Superior Court judge?

Other movements include **Roger Barbee,** now a partner of Ken Cole, **Dillon Jackson** is now a partner of Fred Phillips and Les Wahlstrom; **John Rassier** is now a partner and **Jerome D. Carpenter** and **William J. Lindberg, Jr.** are associates of the firm of Inslee, Best, Chapin & Doezie; **Barbara L. Johnson** is an associate with Knedlik and Goddard; **John W. Martin, Jr.** has become a partner of Arthur P. Kearney.

Other "newcomers" **Gordon Dowrey** and **Harry Cross, Jr.** with offices in Seattle, are opening an additional office in Bellevue specializing in patent, trademark copyright law.

The Honorable **Francis E. Holman,** Judge of the King County Superior Court, discussed the Judicial Article during the February luncheon of the East King County Bar Association.

Duffers and others will be delighted to know that notwithstanding some lingering doubts to the contrary, there *will* be an East King County Bar Association golf tournament this summer. The event will be chaired by the Honorable **Charles C. Ralls** of Northeast

District Court. If **Scott East** gets someone to challenge him, there may even be a tennis tournament. **Doug Cowan,** the apparently perennial chairman of the event, has retired from that position although he was heard to boast he would receive this year's "low gross" award, the reporter of the conversation being not sure if he was referring to golf at the time.

SKAGIT REPORT

By **DAVID A. WELTS**

This column is dedicated to love and glory. First, the love.

There's my client, see, who has all the shots. Pretty, intelligent, good stock, farm girl — you know how it goes. **Bonnie** is her name. Then she got a job with **Paul Luvera** as a secre . . . uh, "Legal Assistant," which was fine because it got her into the legal community.

Well, now she is *really* into the legal community, as **Mrs. Gil Mullen.** Congratulations are definitely in order.

And now the glory. As the circus barker said, "It's the most amazing phenomenon known to mankind; it (does this n' that) . . ." *It* is the Legal Eagles! It's our basketball team. And it's ridiculous.

The team doesn't look that good. In fact we look kinda silly. But how we do win! Thirteen and zip and winter league champions.

The Skagit Bar is becoming city-educated under president **Ken St. Clair's** speaker-a-month program. **Murray Guterson** and **Leon Wolfstone** have been the most recent. We were very impressed, but not dissuaded from our country practice of law.

SOUTH KING REPORT

By **JAMES L. VARNELL**

The "good ole boys" of the South King County Bar Association were treated to chicken cacciatore at Vitale's Italian Restaurant and to a discussion by **Claude M. Pearson** of the Washington Lawyers Service, a pre-paid legal services plan. This union benefit plan is being administered by Northwest administrators, Inc. **James Baker,** Northwest Administrators account manager, and **Michael M. Sander,** house counsel, explained the benefits available under this open panel plan. A Teamsters local in Clarkston, Washington, and Lewiston, Idaho, is the first union to avail itself of the pre-paid legal services under this plan. The enrollment fee for each attorney is $100.00.

Robert A. Rabine, a 1976 graduate of the University of Puget Sound law school is now associated with **Doug Albert** in Federal Way. **Frank Loomos** and **Pete Giere** are now associated with offices in Auburn.

This correspondent is informed that **Paul Codd** and Judge **Gary Utigard** are now in the throes of a rigorous training program for the May 14 Seattle-King County Bar Association tennis tournament. Each of them had different partners last year, but each of those associations suffered an irretrievable breakdown after respective first round shellackings.

Counsel who practice in the

field of domestic relations might wish to review the case of *Lynn v. Lynn*, 4 Wn. App. 171, 480 P. 2d 789 (1971) as to reasonable attorney fees. In *Lynn* the trial court, in effect, had taken judicial notice that an attorney's fee of $100.00 or $125.00 for a contested divorce which involved property of approximately $500,000.00 was "unbelievable." On appeal this ruling was not disturbed by the Division II panel.

SPOKANE REPORT

By **ROBERT H. HUNEKE** *and* **BRYAN P. HARNETIAUX**

Neil Cronin, a sole practitioner with offices in Spokane and Deer Park, was recently selected by the Spokane County Superior Court Judges as the new court commissioner. Neil was selected from among some 26 attorney applicants, and will be dividing his time between juvenile and family court matters.

Richard J. Ennis, retired Superior Court Judge from Lincoln County, now resides in the Spokane area and will be serving with regularity as *pro tempore* Judge in our County. Welcome aboard!

David A. MacCulloch, Clerk to Division III of the Court of Appeals since its inception, retired as of March 1st. Dave's big shoes (reported to be 11 D's) are being filled by **Leonard J. (Jack) Nelson, III,** a 1974 Gonzaga law school grad (and former instructor at same) and former Clerk for Justice **Charles Stafford.** Early reports are that Jack is as easy going and helpful as his predecessor was. Also of note in Division III was the meeting held on March 11, 1977 at the Court between the Court and its personnel, and representatives of the county bar associations within the Court's jurisdiction. Chief Judge **Ray Munson** presided over the conference, which was designed to educate the lawyers on the new appellate rules and their operations, and also to educate the Court on how the bar perceived their performance of their judicial functions.

Transitions: (A Paulsen renaissance?!?) **Jeff Morris,** formerly a principle in the firm of Morrison, Huppin, Ewing, Anderson & Morris, P.S. has recently left that firm and set up shop in the Paulsen Building. The Paulsen Building also now houses the only all women, multiple member law firm of O'Conner & Shaw, composed of **D. Jean Shaw** and **Kathleen M. O'Connor. Thomas Cooney, Jr.** and **William Tombari, Jr.** have just opened their doors and are sharing office space in the Paulsen Building, too!

The Gonzaga Annual Heidelberg was held in March at the Sheraton-Hilton. This was the first year that spouses and dates were invited. Rumors that this was the result of injunctive relief granted by Judge **Willard Roe** are entirely false. Local observers rated the affair a great success, even though there was no guest "lecturer" offering her interpretations of *Miller v. California* this year.

YAKIMA REPORT

By **GARY G. McGLOTHLEN**

Yakima Attorneys are finding it easier and easier to get along

with their landlords, especially when the attorneys own the office building. **Ron Skala** became a partner of Weeks, Dietzen and Skala as of the first of March and are holding forth in the Metropolitan Building 417 East Chestnut which is owned by the partnership. Two working associates will join the firm this summer to fill the vacancies left by **Neil Buren** who has left the practice of law to assume the presidency of the family business, Buren Metal Industries, Inc.

The Great Western Building is also becoming the new Legal Center of the downtown area and is doing battle with the Miller Building for attorney tenants. So far, the Great Western Building has succeeded in the battle by obtaining **David Thorner** and **James Kennedy** as new tenants who will be opening up their new partnership as soon as remodeling can be done. **Ed Seeberger** has moved into the Great Western Building right next to **James Stephen "Allo-wish-us" Hogan.** Ed advises he can keep a closer eye on his "Sugar futures" and make the practice of law even sweeter than it is.

Lawyers are still attempting to continue with their advertising campaign in that **Jim Gavin** was announced in big bold advertisement in the local paper that he was no longer the coach of the Lawyer's Basketball team, **Paul Edmondson** has been appointed by the Governor to be chairman of the Board of Trustees of Yakima Valley College, **Randy Marquis** has his name all over town on posters advertising Yakima Little Theatre's production of "Harvey".

In Memoriam

Leo N. Cashatt, 66, of Spokane, died February 19. He was admitted to the Bar in 1936.

John F. Chesterly, 92, of Yakima, died September 25. He was admitted to the Bar in 1912.

Byron E. Congdon, 69, of Highland, California, died September 29. He was admitted to the Bar in 1933.

Glen W. Halvorson, 66, of Bend, Oregon, died in March. He was admitted to the Bar in 1933.

Robert Karr, 62, of Seattle, died February 26. He was admitted to the Bar in 1946.

Francis J. McKevitt, 86, of Spokane, died March 7. He was admitted to the Bar in 1916.

William W. Montgomery, 96, of Seattle, died February 6. He was admitted to the Bar in 1912.

Edwin James Nicholson, 63, of Seattle, died December 7. He was admitted to the Bar in 1938.

Herbert L. Onstad, 75, of Seattle, died January 27. He was admitted to the Bar in 1927.

Martin L. Potter, 63, of Tacoma, died March 8. He was admitted to the Bar in 1936.

Patrick C. Shine, 69, of Spokane, died January 29. He was admitted to the Bar in 1931.

Maurice W. Simmonds, 89, of Seattle, died in February. He was admitted to the Bar in 1945.

J.T. Trullinger, 76, of Olympia, died November 21. He was admitted to the Bar in 1930.

Section Reports

CREDITOR-DEBTOR SECTION

By **DAN P. HUNGATE**

The section's principal mid-year efforts have been directed toward the preparation of a CLE program designed for practitioners representing business creditors and debtors. Program chairman, Charles Ekberg, organized the program for presentation in Seattle on March 25, 1977, and in Spokane on April 8, 1977, with the following topics and speakers:

Dave Oesting: Utilization of Self-help Processes in Recovering Secured Property

Leon Uziel: Unsecured Creditors: Prejudgment Remedies in Receivership

John Strasburger: Recognizing and Protecting Lien Rights

James C. (Pete) Middlebrooks: Problems Facing Officers, Directors and other Controlling Persons

Thomas Glover: Opportunities Available to Businesses for Resolving Debts out of Court

Charles Ekberg: Recovering Property from the Bankruptcy Court

The section has also devoted substantial time to other projects, most of which are primarily concerned with proposed revisions in Washington statutes affecting creditor and debtor rights. Presently the executive committee is working with proposed revisions to the private construction lien law, the garnishment statute, the receivership rules and the various personal exemption statutes.

The section's executive committee meetings are always open to all members of the section and attendance or other input from members regarding the section's activities is encouraged. The executive committee's monthly meetings are generally held on the third Saturday between 9:00 a.m. and noon. Tom Dreiling, Chair of the section, or Steve Pond, Chair-elect, or any other member of the executive committee would be glad to respond to any inquiries from members.

CORPORATIONS, BUSINESS AND BANKING LAW

By **DENNIS SEINFELD**

The 1977 Mid-Year Meeting is entirely sold out with the first mailing of the brochure. We are maintaining a waiting list with 50 to 60 names. I consider this to be evidence of the high quality of the past two years' seminars, as well as indicative of the high expectations for this year's outstanding program.

Elvin Vandeberg announced that the initial program on Friday, May 20th, "General Business and Tax Problems Confronting the Business Lawyer," — will feature a review of the Washington Uniform Partnership and Limited Partnership Acts, including the latest case law developments and the application of the State Securities Act to the formation and operation of general and limited partnerships involving the development of real estate. The panel members include Robert E. Giles, Robert Kaplan and Richard LeMaster.

Saturday, May 21st, will feature Charles Osborn on the business enterprise in estate planning, followed by a segment on Income Tax Changes for the Business Enterprise under the Tax Reform Act of 1976, by Richard B. Dodd, and an afternoon program made up of outstanding panel on some fundamentals of Securities Law Practice, with a panel consisting of James E. Newton, Professor Robert S. Hunt, Robert S. Ivie and Jerome D. Whalen.

Starting Saturday noon and running through Sunday noon, there will be three specialty programs running simultaneously: (1) SEC and State Securities Seminar: (2) Banking and Thrift Institution Seminar; (3) Agricultural Law Practice Seminar.

At the Section's annual meeting, scheduled for 8:30 A.M. Saturday, May 21, 1977, Robert Kiesz will propose revisions to the by-laws of the Section.

Tom Alberg, the Section Chairperson, has produced a membership directory of all members of the Section of Corporation, Business and Banking, which will be distributed to existing mem-

bers of the Section and to new members who join the section.

Any section member who has registered for the Richland Seminar and finds out that he or she will not be able to attend please immediately call Cassie Cole at the State Bar Office and report the cancellation, so that a member on the waiting list will have the advantage of attending the Seminar. See you all at Richland for another outstanding opportunity to increase our knowledge, soak up sunshine, sharpen our tennis and golf and what have you!

TAXATION

By **DONALD W. HANFORD**

Federal Estate and Gift Taxation

As a result of the Congressional desire to alleviate liquidity problems for estates whose principal asset is a farm or other closely held business, the new estate and gift tax provisions have provided tax relief for qualifying estates. In order to qualify for special treatment, an estate must meet certain percentage requirements designed to insure that the closely held interest is, in fact, the major asset of the estate. Therefore, when analyzing an estate for purposes of determining the most favorable assets for gifts, consideration should be given to the advantages which would result from a gift of non-closely held assets in order to qualify for special treatment by increasing the percentage of the estate attributable to the closely held assets.

§303 Redemptions. If the requirements of §303 are satisfied, a redemption of all or part of the stock held by an estate is entitled to capital gain treatment even though such redemption would otherwise be subject to ordinary income treatment as a dividend. For all estates of decedents dying after December 31, 1976, the stock held must exceed 50% of the adjusted gross estate for capital gain treatment upon redemption. For §303 purposes, the "adjusted gross estate" means the gross estate less allowable deductions for expenses, indebtedness, taxes and losses. If an estate has made an election for the deferred payment of estate taxes (see below), the period of redemption under §303 may be similarly extended.

Special Use Valuation. Prior to 1977, the value of real estate for estate tax purposes was based on its "highest and best use." For estates of decedents dying after December 31, 1976, real property (including permanent improvements) used in a farm or other closely held business may be valued according to its actual or "current" use, provided, among other qualifications, the adjusted value of real and personal property used in the closely held business constitutes 50%, and the adjusted value of the qualifying real property constitutes 25% of the adjusted value of the gross estate. §2032A. This special valuation method may not be used to decrease the value of the gross estate by more than $500,000. It should also be noted that the provision is not automatic, and the executor must affirmatively elect special use valuation at the time for filing the estate tax return.

Estate Tax Installment Payment Elections. If more than 65% of the decedent's gross estate (less deductible expenses, indebtedness, taxes and losses) constitutes an interest in a farm or other closely held business, the executor may elect to defer all payments of estate tax attributable to such closely held business for 5 years (paying interest only) and thereafter pay the tax in equal installments over the following 10 years. §6166. Significantly, interest is payable at a mere 4% on the estate tax attributable to the first $1 million of closely held property. An "interest in a closely held business" includes a sole proprietorship, or a partnership and corporation, provided such partnership or corporation has 15 or fewer partners or stockholders, *or* 20% of the total capital interest or voting stock is included in the gross estate.

If the value of the closely held business exceeds 35% of the gross estate or 50% of the taxable estate, the executor may elect to pay that portion of the estate tax attributable to such closely held business in equal installments over a period of up to 10 years. §6166A. Interest on the deferred payments is payable at the rate of 7%. □

Part II: The Right of Individuals to Assert Privileges Resisting Subpoena *Duces Tecum* for Business Papers, Records and Documents

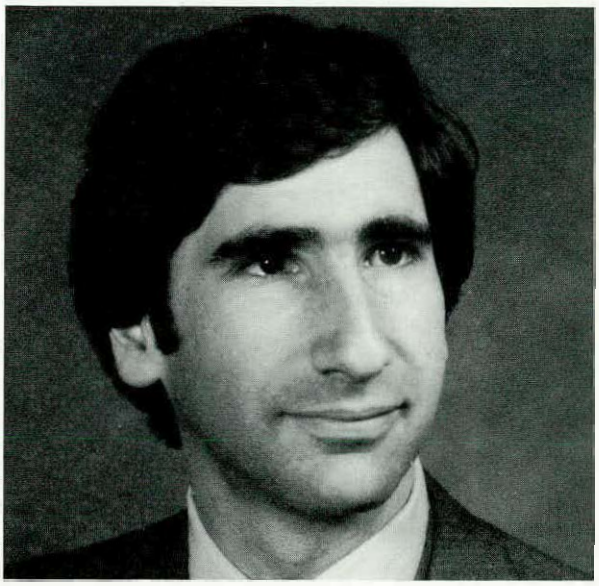
CRIMINAL INVESTIGATORY PROCEEDINGS IN WASHINGTON

By **MICHAEL L. COHEN**

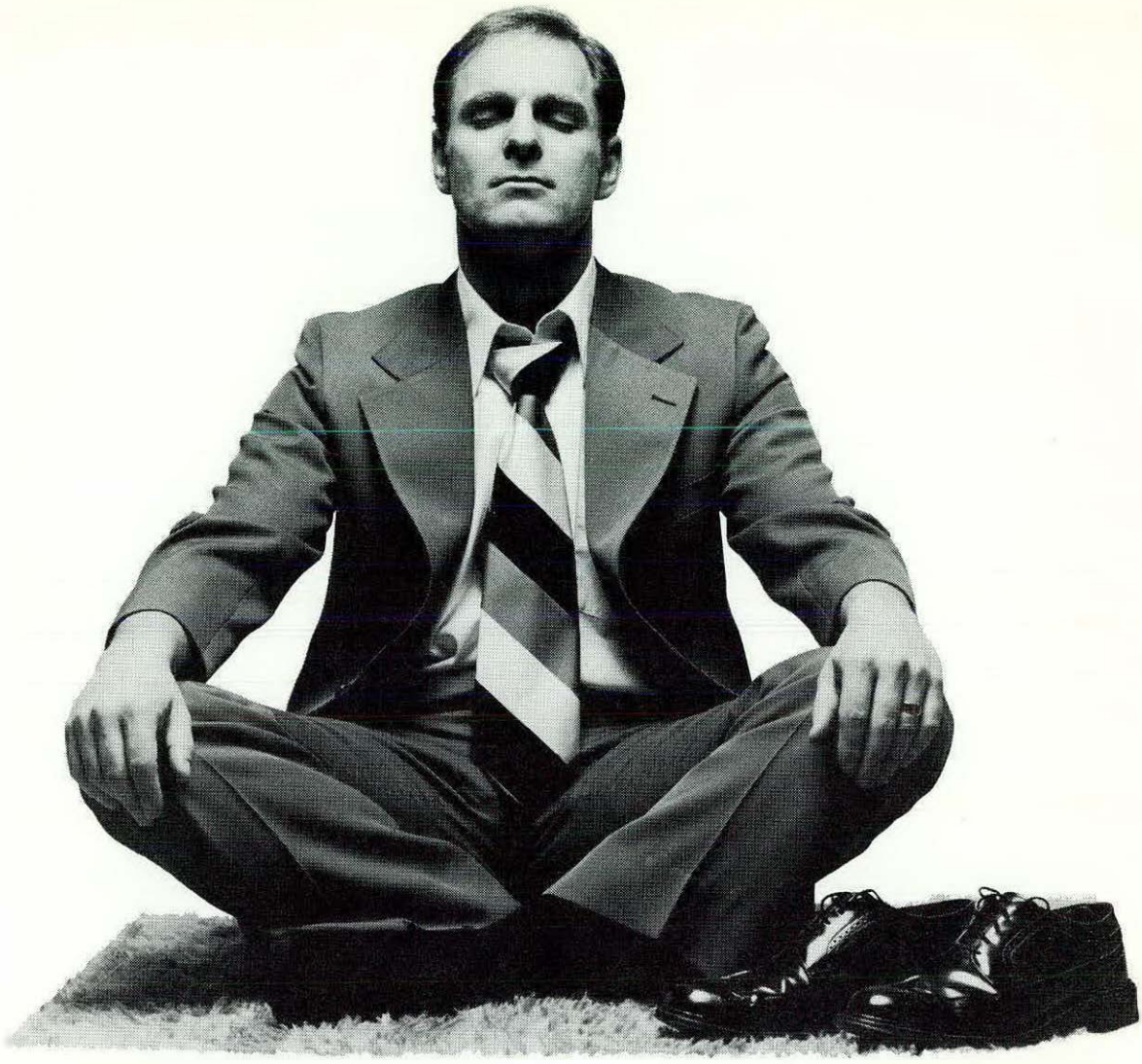
In the first part of this article, published in the February, 1977 issue of the *Bar News*, I outlined in general fashion the nature of the inquiry judge proceeding in Washington, its limits, and the rights of persons appearing before the inquiry judge. In this part, I discuss the application of criminal investigatory subpoenas to business papers, records, and documents and their efficacy in light of, (1) limits imposed by the Fourth and Fifth Amendments to the United States Constitution, and (2) the assertion of professional privileges by persons whose documents, papers and records are in the hands of third persons.

1. Records Which May Be Subpoenaed from Individuals Despite Assertion of Fourth and Fifth Amendment Privileges.

In no other area has there been a greater limitation of the Fifth Amendment than in the extent to which individuals and businesses may prevent government inspection of business papers, records and documents in the hands of the individual. A series of recent cases have obliterated the application of the privilege to all but the most personal documents in the individual's possession. These rulings will be discussed as they apply to particular records.



Michael Cohen is a 1969 graduate of Georgetown Law Center in Washington, D.C. Mr. Cohen served as a law clerk to Justices Frank Weaver and Morrell Sharp of the Washington Supreme Court. From 1971 through 1976, Mr. Cohen was a deputy in the Fraud and Civil Divisions of the King County Prosecutor's Office and served as assistant chief of the latter. He is presently a partner in the Seattle firm of Logerwell & Cohen which specializes in trial practice.



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A. Corporate Records

The United States Supreme Court has long regarded corporate records as being beyond the pale of the Fifth Amendment. In *Coucio Vs. United States*, 354 U.S. 118 (1957), the court stated:

> It is settled that a corporation is not protected by the Constitutional privilege against self-incrimination. A corporate officer may not withhold testimony or documents on the grounds that his corporation would be incriminated, [citation omitted]. Nor may the custodian of corporate books or records withhold them on the ground that he personally might be incriminated by their production.

United States v. White, 322 U.S. 694 (1944); *United States V. Kordel*, 397 U.S. 1 (1970). This rule is also adhered to by the state of Washington, *State V. Mecca Twin Theatre*, 82 Wn.2d 87, 507 P.2d 1165 (1973).

B. Partnership Records

In any business entity the records of the business are subject to subpoena over an assertion of the Fifth Amendment privilege, so long as the business has an institutional nature and it does not *solely* represent the private or personal interests of its constituents. In *Bellis v. United States*, 417 U.S. 85 (1974), the Supreme Court concluded that a partner in a small law firm could not invoke his personal privilege against self-incrimination to justify his refusal to comply with a subpoena requiring production of the partnership's financial records. In the majority opinion, the court stated:

> We think it is similarly clear that partnerships may and frequently do represent organized institutional activity so as to preclude any claim of Fifth Amendment privilege with respect to the partnership's financial records.

417 U.S. at 93.

In passing on its holding the court did limit its application:

> This might be a different case if it involved a small family partnership, [citations omitted], or, . . . if there were some other pre-existing relationship of confidentiality among the partners.

417 U.S. at 101.

In deciding *Bellis* the Supreme Court found that there existed an entity, i.e. a partnership, which had an identity separate from that of the individual to whom the subpoena was directed. It found that the petitioner in that case held the partnership records in a representative capacity, not in a personal capacity and it noted certain factors which compelled the court to conclude that the records were those of an entity, and not those of Bellis. It noted that the partnership existed for 15 years, had bank accounts in the partners' names and that the partnership dealt with other persons as an entity in its use of the firm name on the letterhead of its stationery. The court noted that the partnership in question filed separate partnership returns and that the partnership designated the place of business and *not the home of the petitioner* as the place where the books and records of the firm were to be kept. If these factors had not been present, the court in *Bellis* may very well have concluded that the character of the partnership was not that of a separate entity, but in fact simply a business *alter ego* of the person subpoenaed and would have reached a different conclusion.

C. Records Kept Pursuant to Legal Requirements.

In instances where businesses keep records or individuals keep business records, pursuant to a valid governmental regulatory scheme, the courts have held that such records have no personal character and therefore the custodian can claim no Fifth Amendment privilege with respect to the records themselves.

In *Shapiro vs. United States*, 335 U.S. 1 (1947), the court held:

> Business records kept under requirement of law by private individuals in unincorporated enterprises were 'public documents' which the defendant was required to keep, not for his private uses, but for the benefit of the public and for public inspection.

335 U.S. at 17.

Records which would fall within the required records doctrine have been held to include med-

ical records relating to the acquisition and disposition of drugs, *United States v. Warren,* 453 F.2d 738 (2d Cir. 1972); a securities broker's records, *United States v. Kaufman,* 429 F.2d 240 (2d Cir. 1970). Other records which logically fit within the required records rule may include trust account records kept by real estate brokers, banks, escrow companies and *perhaps attorneys*. Indeed the logic of the required records document would extend to any record which is required to be kept under public law, regardless of whether the person keeping the record does business in the corporate form or whether the person does business in a personal capacity. Cf. *Wilson v. United States,* 221 U.S. 361 (1911).

2. Records in the Hands of a Third Person Pertaining to the Business Affairs of Another.

As a practical matter, grand juries, inquiry judges or regulatory agencies, both state and federal, who wish to obtain business records that may inculpate the business's principals, need not subpoena these records directly from the individual because such records frequently are kept in the hands of attorneys, accountants, bookkeepers and, in some instances, banks. The courts have held that subpoenas directed to such individuals for the delivery of records not relating to their personal activities do not give rise to a violation of the privilege against self-incrimination because the person directed to deliver the records is not the person who is incriminated thereby.

A threshhold issue presented in cases involving challenges to such subpoenas is whether or not a person whose records in the hands of another have been subpoenaed by a governmental agent has standing to exercise a privilege by intervening in the investigative proceeding and seeking to quash the subpoena. In *Donaldson v. United States,* 400 U.S. 517 (1971), the Supreme Court held that a taxpayer may not intervene in an investigatory proceeding in which a subpoena has been directed to the taxpayer's accountant, despite the fact that the subpoena might lead to criminal charges. A crucial fact found by the court in *Donaldson* was that the records subject to the subpoena were not the property of the taxpayer:

> Each of the summonses here, we repeat, was directed to a third person with respect to

whom no established legal privilege, such as that of attorney and client, exists, and had to do with records in which the taxpayer has no proprietary interest of any kind, which are owned by the third person, which are in his hands, and which relate to the third person's business transactions with the taxpayer.

400 U.S. at 523.

The court went on to hold:

We therefore hold that the taxpayer's interest is not enough and is not of sufficient magnitude for us to conclude that he is to be allowed to intervene.

400 U.S. at 531.

Therefore the court clearly has indicated that a person being investigated may not intervene in the investigative proceeding unless he can show that (1) the records which are being kept are his *personal* property, or (2) that a legally recognized privilege has attached to the records.

A. Subpoenas to Accountants for Tax Records Belonging to Their Clients.

Although certain business records of a private personal character cannot be obtained by subpoena while in possession of the individual, tax records, financial statements, and work papers prepared by accountants from examination of those very same papers are subject to subpoena *duces tecum*. In *Couch v. United States,* 409 U.S. 322 (1973), the petitioner sought to prevent the enforcement of an Internal Revenue summons directed to her accountant for the accountant's records by asserting the Fifth Amendment privilege:

The question is whether the taxpayer may invoke her Fifth Amendment privilege against compulsory self-incrimination to prevent the production of her business and tax records in the possession of her accountant.

409 U.S. at 323.

In ruling that the privilege does not apply to records in the hands of an accountant, the court focused on the fact that where records are in the hands of a third party the state is not compelling someone to incriminate themselves:

It is extortion of information from the accused himself that offends our sense of justice. In the case before us the ingredient of personal compulsion against an accused is lacking.

409 U.S. at 329.

. . . We hold today that no Fourth or Fifth Amendment claim can prevail where, as in this case, there exists no legitimate expectation of privacy and no semblance of governmental compulsion against the person of the accused.

409 U.S. at 336.

B. Subpoenas *duces tecum* to Attorneys for Clients' Records.

A client's right to raise Fifth Amendment objections to a subpoena directed to one's attorney is no different than when a subpoena is sent to his accountant. In *Fisher v. United States,* 48 L. Ed. 2d 39 (21 April 1976), the Supreme Court ruled

on the right of a client to assert the Fifth Amendment privilege as to documents he has placed in the hands of his attorney. The court held:

> The taxpayer's Fifth Amendment privilege is therefore not violated by enforcement of the summonses directed toward their attorneys. This is true whether or not the amendment would have barred a subpoena directing the taxpayer to produce the documents while they were in his hands. . .
>
> As was true in *Couch v. United States,* the documents sought were obtainable without personal compulsion on the accused. . .
>
> We adhere to the view that the Fifth Amendment protects against compelled testimony, not the disclosure of private information.

48 L. Ed. 2d at 47.

C. Application of the Fourth Amendment to Business Records.

As a general principle the fourth amendment to the United States Constitution protects individuals from unreasonable searches and seizures within the personal zone of privacy. In the landmark case of *Boyd v. United States,* 116 U.S. 616 (1886), this zone of privacy was held to protect business records held by an individual, even when subject to subpoena *duces tecum* as opposed to a search by police officers; however, this zone of privacy as defined in the *Boyd* case, has undergone a remarkable shrinkage in the past year. In *United States v. Miller,* 48 L. Ed. 2d 71 (21 April 1976), the Supreme Court overruled *Boyd* insofar as it deemed the individual zone of privacy to include records in the hands of bank officers reflecting transactions the individual had conducted with banks. In *Miller,* the respondent had sought to suppress evidence obtained by the issuance of grand jury subpoenas to the respondent's bank. The Court of Appeals reversed Miller's conviction and suppressed the evidence. The Supreme Court, however, reversed the Court of Appeals and re-instated Miller's conviction.

In concluding that the evidence against Miller had not been obtained in violation of the Fourth Amendment, the court first found that the "documents subpoenaed here are not respondent's 'private papers'," and then stated that the checks drawn on the account and deposit slips and financial statements "contain only information voluntarily conveyed to the banks and exposed to their employees in the ordinary course of business and therefore are beyond the zone of privacy protected by the Fourth Amendment." 48 L. Ed. 2d at 79.

The court also noted that, pursuant to the Bank Secrecy Act, banks are required to keep such copies of records "because they have a high degree of usefulness in criminal tax and regulatory investigations and proceedings." 48 L. Ed. 2d at 79. The clear holding of the court in *Miller* is that bank records are beyond that zone of privacy to which the individual is entitled, and therefore cannot be suppressed on the grounds of violation of the Fourth Amendment.

Consistent with the *Miller* case is the decision in *State v. McCray,* 15 Wn. App. 810, 551 P.2d 1376 (1976), in which the Court of Appeals held *prior* to the Supreme Court's decision in *Miller* that a police officer's gathering of information about the defendant's bank account from the bank did not violate the Fourth Amendment.

D. The Assertion of Confidential Communications and Privileges to Quash Subpoenas.

In those instances where a suspect's records in the hands of another are subpoenaed, the suspect may seek to quash the subpoena on the grounds that the records constitute confidential communications to the custodian and therefore cannot be discovered. The scope of this assertion of privilege, however, is severely limited to those records which constitute privileged communications; for instance, between an accountant and a taxpayer no privilege exists:

> Although not in itself controlling, we note that no confidential accountant/client privilege exists under federal law, and no state created privilege has been recognized in federal cases.

Couch v. United States, 409 U.S. 322, 335 (1973). Nor does the Bank Secrecy Act create a privileged communications relationship between a bank and its customers, *United States v. Miller, supra; California Bankers Association v. Shultz,* 416 U.S. 21 (1974).

The sole area in which assertion of privilege has been found to constitute a valid basis for objecting to a subpoena *duces tecum* is in the relationship between attorneys and clients; where such a relationship exists the documents subpoenaed from attorneys may involve privileged communications. The Supreme Court has held in *Fisher v. United States,* 48 L. Ed. 2d 39 (21 April 1976) that the privilege will prevail where documents, if in the hands of the client, could not have been obtained by subpoena over the assertion of the Fifth Amendment claim:

> This court and the lower courts have thus uniformly held that pre-existing documents which could have been obtained by court process from the client when he was in possession may also be obtained from the attorney by similar process following transfer by the client in order to obtain more informed legal advice . . . It is otherwise if the documents are not obtainable by subpoena *duces tecum* or summons while in the exclusive possession of the client, for the client will then be reluctant to transfer possession to the lawyer unless the documents are also privileged in the latter's hands.

48 L. Ed. 2d at 51-52.

The court went on to quote from Wigmore as follows:

> It follows, then, that when the client himself would be privileged from the production of the document, either as a party at common law . . . or as exempt from self-incrimination, the attorney having possession of the document is not bound to produce.

48 L. Ed. at 52.

There are clearly records in the hands of the attorney which do not constitute privileged communications. They include trust account records maintained by an attorney for the benefit of his clients. Although never specifically addressed by a Washington State court, such records have been held by other courts to not constitute privileged communications, *S.E.C. v. First Security Bank of Utah,* 447 F.2d 166 (10th Cir. 1971); *Harris v. United States,* 413 F.2d 316 (9th Cir. 1969); *United States v. Judson,* 322 F.2d 460 (9th Cir. 1963). Thus, the attorney/client privilege which may be asserted to quash summons or subpoenas *duces tecum* pertain only to documents in the hands of an attorney which:

(1) Could not be subpoenaed from the client over Fifth Amendment objection and

(2) Were conveyed to the attorney for purposes of legal advice.

Absent either of these criteria, an assertion of the privilege will not be cause for the quashing of a subpoena *duces tecum.*

Conclusion

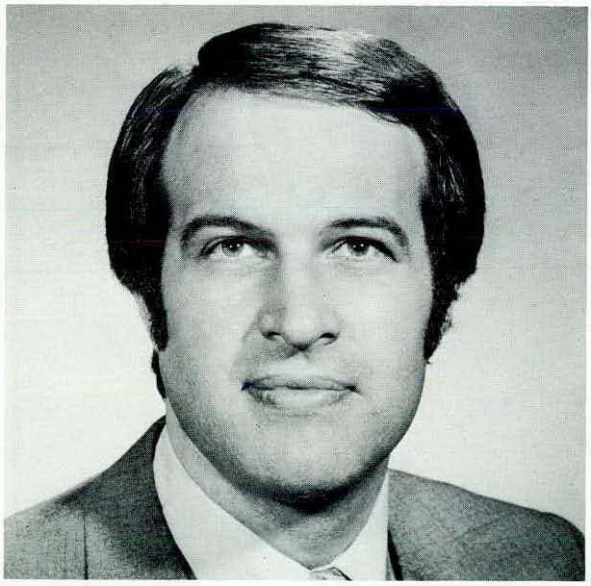
As this article has demonstrated, the Supreme Court has dramatically limited the ability of the individual to resist subpoenae *duces tecum* for business papers, particularly those in the hands of others. This does not mean that successful arguments cannot be made to seek the quashing of such subpoenae. An attorney representing a client who is being investigated in a criminal inquiry proceeding or who is subpoenaed to deliver documents, may find the materials set forth herein to be of assistance in determining an appropriate course of action. □

Failed Does Not Mean Finished

"Fight One More Round"

By **PAUL N. LUVERA, JR.**

Lawyers, particularly those engaged in litigation, face the challenge of failure and defeat on a regular basis. Many people have difficulty in dealing with failure and defeat in their daily life, yet the total human experience of attempting something and failing to accomplish it should be regarded by us as relatively unimportant. Man's greatest progress has been achieved through trial and error by those who dared to try and failed and then tried again. Failure and mistakes are not an indication of weakness, but they are an essential part of an individual's learning process. A healthy attitude about failure is that it is an inevitable part of life. It is an opportunity for growth and maturing. History has revealed that all of the accomplishments in the field of science, arts or humanities have been made by someone who first made a mistake, adjusted and then tried again.



Paul N. Luvera, Jr., is a 1959 graduate of Gonzaga Law School. He was a Deputy Prosecuting Attorney for Skagit County from 1959 through 1962, and is now in private practice in Mount Vernon. His practice is limited to trial work, 90% of which is personal injury. In a one lawyer office, he has four legal assistants and one investigator. He was President of both the Skagit County Bar Association and the Washington State Trial Lawyers Association.

The inability to deal with failure causes tension. Tension is the number one problem in the world today. In America each day 19 million sleeping pills are swallowed and 11 million pounds of aspirin are consumed each year.

Shakespeare wrote: "Our doubts are traitors, and make us lose the good we oft might win by fearing to attempt." You should be happy for every past experience you have ever had whether it appeared good or bad at the time. Your memories of the past serve as a guide to you as to what you should or should not do in the future. A learning process is that of trying, failing, adjusting and trying again. A sure fire formula for individual growth would be to cram 50 years of failure into 15 years of life.

Although most people are aware of the fact that Babe Ruth set a record for total home runs during his baseball career, few are aware of the fact that during that same period of time he also struck out more than any other player in history. He failed 1,330 times at bat while setting the record. In 1915, Ty Cobb set the astonishing all time record of stealing 96 bases, but he also set a record for attempts at stealing and failing. Thomas Edison had 10,000 failures before he invented the incandescent bulb.

Someone has pointed out that the historical success of the Christian movement did not occur within Jesus's historical lifetime. It was not part of his personal experience. The historical experience of Jesus was one of deep personal failure.

The success of the Christian movement was based upon the overwhelming faith, experience and interpretation of the results of that historical failure.

Jack London was such a failure in his early years of writing that he had to make his living by ironing shirts in a San Francisco laundry. He had faith and kept writing stories with little material compensation until he wrote *The Call Of The Wild* and became famous and wealthy.

Two important facts of life stand out boldly. One is that defeat in some form inevitably overtakes each of us at one time or another. The other is that every adversity brings the seed of an equivalent benefit, often in some hidden form. Winston Churchill has expressed the lesson to be learned in this regard: "Never give in — never, never, never — in nothing great or small, large or petty — never give in except to convictions of honor or good taste."

It is the determination to continue to try in the face of failure that brings success to our efforts. The famous fighter James J. Corbet expressed this thought in describing the technique of success in the boxing arena:

> When your feet are so tired that you have to shuffle back to the center of the ring, fight one more round. When your arms are so tired that you can hardly lift your hands to come on guard, fight one more round. When your nose is bleeding and your eyes are black and you are so tired that you wish your opponent would crack you one on the jaw and put you to sleep, fight one more round — remembering that the man who always fights one more round is never whipped.

It is better to attempt to do something great and fail than it is to attempt to do nothing and succeed. Today's mistakes are the price that you pay for tomorrow's success. It is only through failure that we learn to adjust so we can succeed. Theodore Roosevelt expressed the thought best when he said:

> Far greater it is to dare mighty things, to win glorious triumphs even though checkered by failure, than to take rank with those poor spirits who neither enjoy much nor suffer much because they live in the great twilight that knows neither victory nor defeat. ☐

The Courts

SUPERIOR COURT NEWS
By **JUDGE JAMES A. NOE**

Forms Management Advisory Committee

The Board of Trustees for the Washington State Superior Court Judges' Association met in Seattle March 12. The trustees appointed a committee to advise the court administrator's project in connection with the state-wide study of court forms. Selected were Judges **George Shields** (Spokane), **William Goodloe** (King), **Herbert E. Wieland** (Wahkiakum).

Bench Book Committee

The trustees also established a standing Bench Book Committee to maintain and keep current the bench book developed by the committee under the chairmanship of Judge Shields. Also serving the committee are Judges **Robert Doran** (Thurston-Mason), **Blaine Hopp** (Yakima), **Robert Bryan** (Kitsap), and **William Goodloe** (King).

Spring Conference to be held in Richland

Judge **Albert Yencopal's** (Benton-Franklin) spring conference committee has completed the program for the Superior Court judges spring conference in Richland April 19-22. Judge **Robert Bryan** (Kitsap) has announced the following discussion items and the participants:

Code of Judicial Conduct — Polls, Campaigning and Fund Raising — Judge **George H. Revelle** (King)

Judicial Article — Progress Report and Recommendations — Judge **Francis E. Holman** (King)

Legislation — Report and Recommendations — Judge **Frank Baker** (Mason-Thurston)

Use of Criminal Bench Book — Judge **George Shields** (Spokane)

Criminal Court Rules — Proposed Changes — Judge **William C. Goodloe** (King)

Standards for Judicial Education — Judge **Robert Bryan** (Kitsap)

Fair Trial and Free Press — Recommended Court Procedures — Judge **James A. Noe** (King).

Judge **Willard Roe** (Spokane), President-Judge, will preside at the business sessions.

Judicial Council Representatives to Be Selected

Judge **George Shields** (Spokane) and Judge **Francis Holman** (King) currently represent the Superior Court judges on the Washington State Judicial Council. Their terms will expire at the conclusion of the spring conference meeting. A nominating committee will present candidates for election at the business session of the spring conference. Two representatives will be elected to serve terms ending in January 1981.

Recent LEAA News

$432,751.00 has been awarded to the National Center for State Courts to continue assisting state courts in developing plans. Also $159,389.00 has been awarded to the American Bar Association to support a complete updating of its standards for criminal justice.

In addition, LEAA's research center, the National Institute of Law Enforcement and Criminal Justice, is funding a program of jury reform in 18 state and local court systems. Reducing the number of persons summoned for jury duty is the key element in the program. 1.8 million dollars has been allocated for the project.

DISTRICT COURTS
By **JUDGE JAMES R. COOK**

District court and municipal court judges from throughout the state gathered together in Yakima during the week of March 21-25 for two outstand-

ing judicial training seminars. Both seminars were jointly sponsored by the Washington State Magistrates Association, the Washington State Criminal Justice Training Commission and the Office of the Administrator for the Courts, and qualified toward the requirement of continuing judicial education.

The first seminar dealt with the ever-increasing general subject of Indian treaties and rights. The specific topics and respective speakers were as follows: treaty interpretation, including power to abrogate, Professor Charles Wilkinson, University of Oregon School of Law; tribal sovereignty, Michael Taylor, attorney for the Quinault Nation; criminal jurisdiction, Al Ziontz and Barry Ernstoff, Seattle attorneys; hunting and fishing rights, on and off the reservation, Jim Hovis, a Yakima attorney, Mason Morisset, a Seattle attorney, James Waldo, an assistant U.S. attorney, and James Johnson, deputy state attorney general; water rights, Charles Roe, deputy state attorney general and Bob Dellwo, a Spokane attorney; and the Indian Civil Rights Act, Russell Busch, attorney for the Small Tribes Organization of Western Washington.

The second seminar dealt with the broad subject of sentencing traffic and misdemeanant defendants, and was conducted by the National College of the State Judiciary. Dean Ernest John Watts of the National College gave a fine welcoming address which was followed by three days of excellent format. The specific subjects covered and the respective speakers were as follows: the sentencing process and the judge's role in sentencing decisions, Judge V. Robert Payant, District Court, Iron Mountain, Michigan, and past president of the Michigan District Judges Association; the criminal justice framework of sentencing, probation and diversion, Judge Rodger A. Golston, Chief Presiding Judge of Municipal Court of Phoenix, Arizona; sentence bargaining, Judge John C. Cratsley, Special Justice for the Municipal Court of Roxbury, Mass., and also a lecturer at Harvard Law School; sentencing alternatives, Judge Payant; pre-sentence information and offender evaluation, Judge Cratsley and Alex L. Moschella, Jr., Director of the Basics, Specialized Training and Advocacy Program of the Massachusetts Bar Association; role of the judge and probation officer in implementing pro-

bation, Judge Cratsley and Mr. Moschella; community involvement in sentencing, Judge Payant; legal framework of revocation of sentence, Judge Golston; and the giving of the sentence, Judge Golston. If you've read this far you can well appreciate the weighty substance of the contents of this program. After each lecture the attendees broke off into small groups for purposes of discussion and further digesting of the material covered.

A special note of thanks to the above speakers for all the preparation and work they put into making this one of the best programs ever conducted. Also a special note of thanks to our educational chairman, Judge Donald A. Eide, Aukeen District Court, for arranging such an outstanding program.

Judge George T. Mattson, Renton District Court and President of the Washington State Magistrates Association, announced that our annual meeting will be held at Rosario on September 28, 29 and 30. Judges Leslie A. Lee and David Rhea, Whatcom County District Court, are co-chairmen and are planning a worthwhile program and agenda for all concerned.

JUDICIAL COUNCIL REPORT

By **KARL TEGLAND**
Judicial Council Attorney

Long-Arm Jurisdiction in Matrimonial Litigation

The effective exercise of a state's judicial power depends largely upon the ability to assert personal jurisdiction over the defendant. In modern law, the bases for the assertion of personal jurisdiction have become: (1) physical presence in the state; (2) domicile in the state; (3) consent to jurisdiction; and (4) acts which, as a matter of law, submit the defendant to the jurisdiction of the state. 2 Orland, *Washington Practice,* §7 (3rd Ed. 1972) (hereinafter "Orland"). The first three bases are nearly universal. The scope of the fourth

category varies according to state law and is limited only by the constitutional requirement that the "defendant [must have] . . . certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

A judgment rendered in the absence of such minimum contacts violates the due process clause of the Fourteenth Amendment, and is subject to dismissal or collateral attack in the forum state and elsewhere. Restatement (Second, Conflict of Laws §24 (hereinafter cited as Restatement (Second)).

In Washington, the acts which submit a defendant to the jurisdiction of state courts are set forth in RCW 4.28.185. This statute and RCW 4.28.180 are generally referred to collectively as the long-arm statute. If personal jurisdiction exists on the basis of domicile or the long-arm statute, personal service of process may be made outside the state with the same force and effect as personal service within the state. RCW 4.28.180; 4.28.185 (2).

These Washington statutes make no reference to matrimonial problems and by the terms of RCW 4.28.185 (3), have little utility in an action for the dissolution of a marriage and related matters. The implications of this omission are complex and not entirely clear. For two recent cases in which the court discusses the scope of personal jurisdiction in domestic relations cases, see *In re Miller,* 86 Wn.2d 712 (1976) and *In re the Marriage of Dunkley,* 15 Wn.App. 775 (1976).

Generally, in matrimonial litigation, a distinction is made between judgments affecting status and judgments determining financial obligations. A court lacking personal jurisdiction over the defendant may dissolve a marriage, but its orders relating to maintenance, child support, custody, and visitation are vulnerable to dismissal or collateral attack. Orland, §§29, 127.

A number of commentators have argued that the inability to acquire personal jurisdiction over a nonresident in matrimonial litigation causes confusing and inequitable results. *See Comment, Long-Arm Jurisdiction in Alimony and Custody Cases,* 73 Colum. Law Rev. 289 (1973) (hereinafter cited as *Comment).*

It has been suggested that an effective solution to this problem is to amend the long-arm statute to make matrimonial domicile a basis for the assertion of personal jurisdiction over a nonresident defendant in matrimonial litigation. That is, the state in which the parties were domiciled when they last lived together as husband and wife may, assuming procedural due process, assert personal jurisdiction over a spouse who, upon separation, establishes residence in another state.

Twelve states have now amended their long-arm statutes to give specific authority to their courts to exercise personal jurisdiction over nonresident spouses who formerly maintained a "matrimonial domicile" within the state. Although the United States Supreme Court has not spoken on the constitutionality of these statutes, they have generally been upheld by state courts as consistent with the "fair play and substantial justice" required by *International Shoe Co. v. Washington,* 326 U.S. 310 (1945). *Comment,* pp. 295-302; Restatement (Second) §§77,79.

House Bill 180 sponsored by the Judicial Council during the last legislative session and reintroduced during the 1977 session, amends the long-arm statute to extend its applicability to domestic relations actions under RCW Ch. 26.09.

The amendment provides that the petitioning party must continue to reside in the state or be a member of the armed forces stationed in this state. This provision conforms to RCW 26.09.030 and 26.09.040 and assures that the state has an interest in controlling the marital status sufficient to exercise jurisdiction.

The amendment only defines a means of acquiring personal jurisdiction over a nonresident respondent. It does not set forth the implications of acquiring personal jurisdiction. For example, suppose that H and child reside in Idaho. W petitions in Washington for dissolution and acquires personal jurisdiction over H pursuant to the amended statute. The court may decline to decide the custody issue on the grounds that an Idaho court is better suited under the circumstances to decide this issue. *See In re the Marriage of Dunkley,* above, and Restatement (Second) §79, Comment (a).

The amendment has passed both Houses of the Legislature and has been signed into law by the Governor. □

Discipline

Elmira T.H. Conley Receives Reprimand

Seattle Attorney Elmira T.H. Conley has been reprimanded for her violation of DR 1-102(A)(4), and DR 7-102(A)(5) of the Code of Professional Responsibility. The Board of Governors issued the reprimand to Ms. Conley at its meeting on September 15, 1976.

Conley was reprimanded for notarizing a client's signature on legal documents filed with a Superior Court, when she had knowledge that her client had not signed those documents. □

Board Elections Due

Lawyers residing in the Second, Fourth and Seventh Congressional Districts, please note:

Members of the Board of Governors of the State Bar to represent those districts are due to be elected this year. Expiring in September are the three-year Board terms of Charles R. Olson, Second District, Robert R. Redman, Fourth District, and David D. Hoff, Seventh District.

The State Bar Association Bylaws (Article II) provide that any active member in good standing may be nominated for the office of Governor from the district in which the member resides upon petition signed by at least twenty but not more than thirty active members also residing in the district.

Nominating petitions may be obtained from the Bar Office, 505 Madison Street, Seattle, WA 98104.

The petition must be filed in the Bar Office by 5 p.m., Tuesday, May 31, 1977.

Hoff Elected Delegate to ABA

Neil J. Hoff, Tacoma, has been elected by the Board of Governors to represent the State Bar as a delegate to the House of Delegates of the American Bar Association. He was elected to a term which will expire at the end of the annual meeting of the ABA in 1978.

Neil J. Hoff

Hoff was graduated from law school at the University of Washington and was admitted to the State Bar in 1949. He has served the legal profession and the State Bar in numerous capacities including two terms as a member of the Board of Governors representing the Sixth District, 1969-75.

Five Graduate Tax Courses to be Offered

Golden Gate University's Graduate School of Taxation will offer five courses in Seattle in the Summer Semester which begins June 6 and ends September 15, 1977.

The courses are open to students wanting to earn the M.S. degree in Taxation and to non-degree students interested in specific courses. Classes are limited to 24 students. Most of the students are accountants or attorneys. CPAs and LPAs can earn up to 45 hours of continuing education credit for each course.

Each of the following classes will meet once a week from 6:15 to 9:00 p.m.: Federal Income Taxation of Individuals, Tuesdays, Lloyd W. Born, CPA; Advanced Federal Income Taxation of Corporations and Shareholders, Tuesdays, John W. Flynn, LLM (Tax), Attorney at Law; Estate and Gift Taxation, Wednesdays, Marion V. Larson, LLM (Tax), Attorney at Law; Tax Research and Decision Making, Wednesdays, Darrell D. Hallett, J.D., Senior Trial Attorney, Regional Counsel's Office, Internal Revenue Service; Taxation of Capital Assets, Thursdays, William M. Resler, LLM (Tax), Attorney at Law.

Registration will begin May 9. For further information, write or phone Golden Gate University, 310 Skinner Building, 1326 Fifth Avenue, Seattle, Washington 98101; telephone (206) 622-9996.

WALS 13th Annual Convention

The Seattle Chapter hosts the 13th Annual Convention of the Washington Association of Legal Secretaries at the **Seattle Hilton Hotel,** May 20-22, 1977, and welcomes as its special guest **Teresa B. Hartzog,** Treasurer of the National Association of Legal Secretaries, who will speak on **Professionalism for Legal Secretaries** and conduct the installation of new officers at the banquet on Saturday evening.

Cost of the seminar and luncheon is $15 for non-members and $10 for members. Cost of the entire convention, including cocktail reception Friday eve-

ning, seminar and lunch on Saturday and no-host cocktail hour followed by banquet on Saturday evening with Hon. Keith M. Callow as master of ceremonies is $25 to members and $30 to nonmembers.

Information can be obtained from M. Foote, 622-6767 ext 470 and J. Watson 722-5790 (evg).

Ninth Circuit Criminal Appeals Symposium

The Federal Public Defender's Office will sponsor the Ninth Circuit Criminal Appeals Symposium entitled New Procedures, Brief Writing and Oral Argument, on May 6, from 3-6 p.m. in the Pacific Evergreen Room of the Olympic Hotel, Seattle. The cost is $10 (payable to Federal Appeals Symposium), which includes Syllabus, complete with forms. Mail checks to: Federal Public Defender, 305 U.S. Court House, Seattle, WA 98104. For further information call: (206) 442-1100.

Law Office Management Session to be Held in May

The General Practice Section and the Economics of Law Practice Section of the American Bar Association will present the ABA Regional Roundup one-day seminar on law office management Saturday, May 7, 1977, at the Olympic Hotel, Seattle, Washington.

Guest speakers will be J. Harris Morgan of Greenville, Texas, Bernard Sternin of Brooklyn, New York, Roberta C. Ramo of Albuquerque, New Mexico, and Samuel S. Smith of Miami Beach, Florida.

Exhibitors will offer displays and demonstrations of office equipment available for use in practical and affordable developments in office technology and service.

For further information, please contact Dick Reed, (206) 292-4900.

Opinion of the Code of Professional Responsibility Committee

The Code of Professional Responsibility Committee has recently been asked to analyze the propriety of an attorney being represented by a partner or associate in his or her dissolution.

It is the committee's opinion that DR 5-101(B) prohibits an attorney from representing a partner or associate in a contemplated dissolution. That provision provides as follows:

> A lawyer shall not accept employment in contemplated or pending litigation if he knows or it is obvious that he or a lawyer in his firm ought to be called as a witness, except that he may undertake the employment and he or a lawyer in his firm may testify:
>
> (1) If the testimony will relate solely to an uncontested matter.
>
> (2) If the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony.
>
> (3) If the testimony will relate solely to the nature and value of legal services rendered in the case by the lawyer or his firm to the client.
>
> (4) As to any matter, if refusal would work a substantial hardship on the client because of the distinctive value of the lawyer or his firm as counsel in the particular case.

The committee believes that none of the enumerated exceptions to the general rule established in DR 5-101(B) apply to this situation. A substantial hardship under DR 5-101(B) (4) does not exist if the interest in having a partner or associate represent the attorney in his or her dissolution is based on financial convenience only.

Legal Assistants Convention

The second annual convention of the Washington Legal Assistants Association will be held on

May 13 and 14, 1977 at the Seattle Hilton.

Simultaneous workshops will be presented in the areas of litigation, probate and estate planning, corporations and real estate.

For further information and registration, contact Shirley Yapachino, 682-8770 (Seattle), or write WLAA, P.O. Box 2114, Seattle 98111.

First Annual Young Lawyers Salmon Derby

The State Young Lawyers Section is sponsoring the First Annual Young Lawyers Salmon Derby on July 30, 1977, in Grays Harbor, Washington.

The *Neddie Rose* has been reserved for derby participants. Spouses are invited and encouraged to participate. The cost is $31.00 per person.

Reservations must be made by May 1, 1977, through Robert Whaley, Fifth Floor, Spokane and Eastern Building, Spokane, Washington, 99201. A deposit of $31.00 should accompany the reservation. The deposit is nonrefundable.

Reservations are also available through Bob Whaley for the Islander Motel. The cost is $15.00 per night, per person, double occupancy.

There will also be an open meeting of the State Young Lawyers Section Board of Trustees on the evening of July 29, 1977. Everyone is invited to attend the meeting.

Classified Advertising Rates Per-Issue

25 words — $5 (minimum charge). Each additional word — 50¢. Confidential reply service — $2. Advance payment required. Accepted only from members of the WSBA.

Space Available: Seattle Tower Offices. Separate entrance offices available, consisting of good reception area and two offices. Use of adjoining law library included. Reasonable rent. Call 624-8844.

Space Available: Sole practitioner seeks attorney to share renovated Pioneer Square office; space for time arrangement possible. All services available. Contact Box #20 c/o WSBA 505 Madison St. WA 98104.

Space Available: Two man firm with third office. Downtown location, library, secretarial services available. 622-0232.

For Sale: U.S.C.A. up-to-date with all pocket parts. $500.00 cash or $600.00 on monthly terms. Telephone James T. Johnson, 625-2832.

For Sale: American Digest, 2nd-7th Decennial Digest, inclusive, and the General Digest to date including advanced sheets. Please contact Bev Hake at (509) 925-3191.

For Sale: USCA, full set current through 1977, $650. Terms available. Call 885-5000, Ext. 242 Dorothy.

For Sale: Wash. Reports, Appellate Reports, Wash. Digest, RCW Annotated, Session Laws, U.S. Supreme Court Reports (Lawyers Ed.) and Digest, Misc. Law Books, Office furniture, 206-759-1334 — Tacoma.

For Sale: Large contemporary walnut office desk with reclining chair and matching credenza. Excellent condition. $600. Also two matching chairs available. $100 (509) 925-4128.

Will Trade: or sell ALR 2nd & ALR 3rd series up to date with digests, etc. Will trade for First Series of Washington Report. Call (206) 932-2434.

Wanted: Complete set of RCWA, Mathew Bender's Current Legal Forms With Tax Analysis or Am Jur Legal Forms 2d. Call 624-4184, Spokane.

Will Sought: Anyone knowing location of Last Will and Testament of Mike Dozer, please contact Helen M. Johansen, #95 Yesler Way, Seattle, 622-8953.

Space Available: For one attorney in the Olympic Nat'l Bank Bldg. with secretarial services and a small library at a negotiable amount. Call Richard Harris — 624-5010.

Office Space: For one attorney, Seattle Tower Building, Third & University, Downtown Seattle. Library and receptionist service available. Telephone: 682-1931.

Apr. 29	CLE Seminar: **Land Use and Environmental Practice,** $35, Holiday Inn, Yakima
May 6	CLE Seminar: **Products Warranty: Magnuson-Moss,** $25, Holiday Inn West, Spokane
May 13	CLE Seminar: **Products Warranty: Magnuson-Moss,** $25, Washington Plaza, Seattle
May 20 thru 22	CLE Seminar: **Corporation, Business & Banking Law Seminars,** $50, Hanford House, Richland (Co-sponsored by Corporation Business and Banking Law Section and CLE Committee)
May 20	CLE Seminar: **Landlord & Tenant,** $25, Tyee Inn, Olympia
May 27	CLE Seminar: **Landlord & Tenant,** $25, Ridpath Motor Inn, Spokane
June 3	CLE Seminar: **Landlord & Tenant,** $25, Olympic Hotel, Seattle

LAWYER PLACEMENT

Due to space limitation, we are able to list only **job openings** in the *Bar News*.

1. Two man law firm with general practice located in Greater Seattle seeks association with experienced attorney to share reasonable overhead and build firm. Respond with resume c/o Box 29, WSBA, 505 Madison, Seattle, WA 98104.

2. Opening for attorney with or without patent experience to specialize entirely in patents, trademarks and copyrights. Educational requirements include an engineering, physics and chemistry degree, or equivalent, and strong technical patent law background. Salary — $10,000 on up. Contact Bob Hughes, 988-2061.

3. Three man general practice firm in Kitsap County looking for an associate whose interests lean to business and trial work. Salary open. Send resumes to Box 27 c/o WSBA, 505 Madison, Seattle, WA 98104.

4. The firm of Brown & Tuai looking for attorney admitted to the Washington State Bar with business and tax background. No experience necessary. Call 682-8850.

5. Tacoma firm seeks two associates, one as trial attorney; the other to practice corporate, business and commercial law. Ideal candidates will have earned academic recognition, and completed one year or more of practice. Salary and advancement commensurate with demonstrated ability. Submit resumes in confidence to P.O. Box 12 c/o WSBA, 505 Madison St., Seattle, WA 98104.

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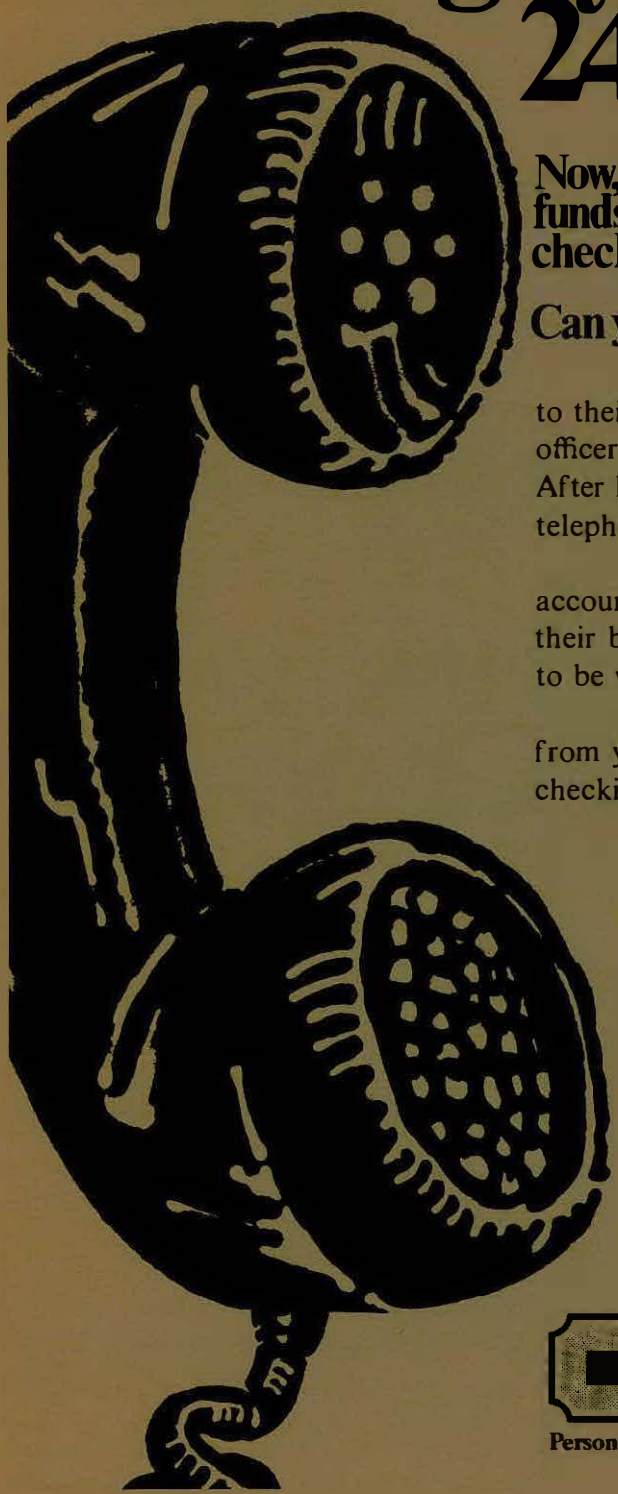

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