
WASHINGTON STATE BAR NEWS



INSIDE THE COURT OF APPEALS



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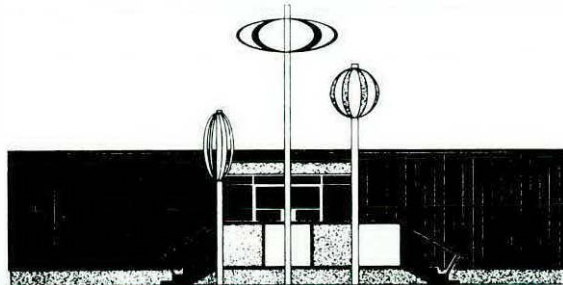
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Exhibit A

From Pensions & Investments,
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Exhibit B

From Frank Russell Co., Inc.:

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Jay V. White, *Editor*

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WASHINGTON STATE BAR NEWS

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Our Cover



This is the view from the bench in the new building for the Court of Appeals, Division III, in Spokane. For an "inside" report on all three divisions of the court written by an "outsider" at the court's request, see Robert A. Leftar's study and recommendations concerning the court's internal operation and performance, commencing at page 10.

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**WESTLAW Costs
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Editor:

I would like to comment on the Office Practice Tips Column contained in the November, 1977, issue [*Bar News* 31:10:45] which stated that costs prohibit including a small state like Washington in a computerized legal research system. The WESTLAW system, developed by West Publishing Company, includes case materials from all fifty states and has been installed in the Washington Supreme Court Library. As to cost, the cost of the WESTLAW system has been reduced in the last year while the data base has greatly expanded.

**FRANK ALAN
WESTLAW Representative**
Bellevue

**Cost Savings Possible
For Hawaiian CLE**

Editor:

Following receipt of the brochure describing the upcoming Pacific Rim Federal Tax Conference in Hawaii sponsored, in part, by our CLE Committee, I undertook some competitive price shopping and discovered that hotel/flight/fringes packages can be obtained at a substantial savings if one is willing to stay at less commodious accommodations. This might be of interest to those who had considered attending the program but who have been deterred by the cost of the accommodations recommended by the travel agency which the Bar recommends that we use.

If we are going to continue to

participate with other State Bar Associations in Pacific Rim seminars, then it might help attendance if alternative accommodation packages were offered with first rate and frugal options available to the membership. It would also be nice to have the contents of these presentations available in the form of transcripts, cassettes or video tapes for those who desire the benefit of the presentation but who can not afford the money or the time to attend.

MICHAEL C. REDMAN
Olympia

Free Gas for Lawyers?

Editor:

Thank you for asking me to edit, on a once a month basis, "Statute of the Month" feature. I accept. With this dynamic new column, we will inform the readers not what they want to know, but what we know they should know.

This month's statute is RCW, I mean Our C. W., 80.28.080 which provides inter alia,

No gas company, electrical company or water company shall charge a greater or less compensation for any service rendered the rates filed, nor refund or remit directly or indirectly any rates or charges, or furnish its product free ...except to its employees, families, officers, attorneys and agents...

(Liberally but accurately condensed.)

This excellent law has been around for many years and continued its vitality through its

latest amendment in 1973.

Next month, we will discuss excavations.

DON M. GULLIFORD
Seattle

**WWL Restate Position
on Bar Exam**

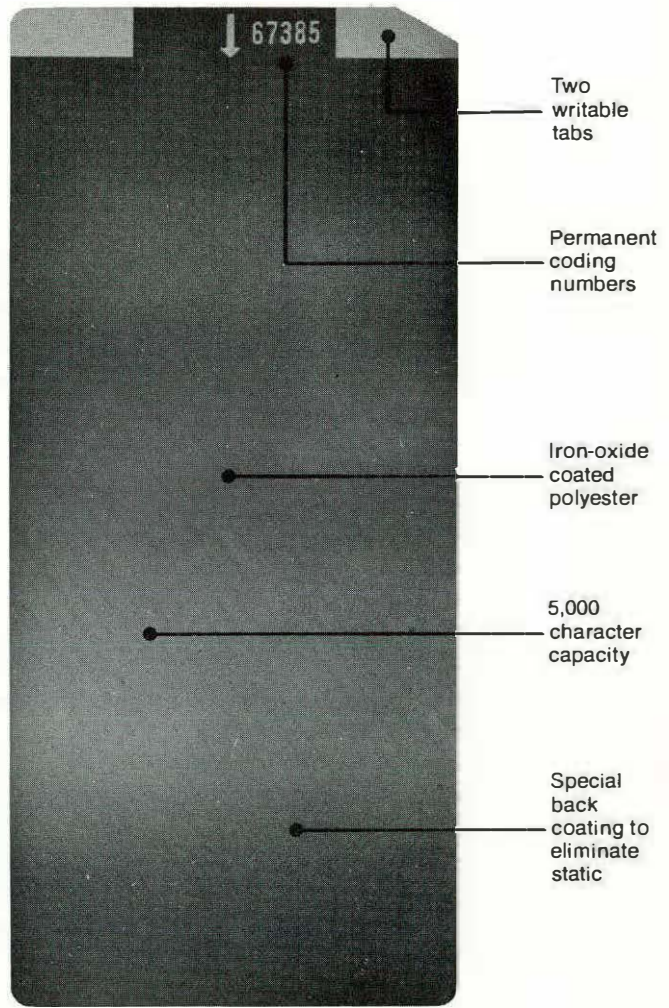
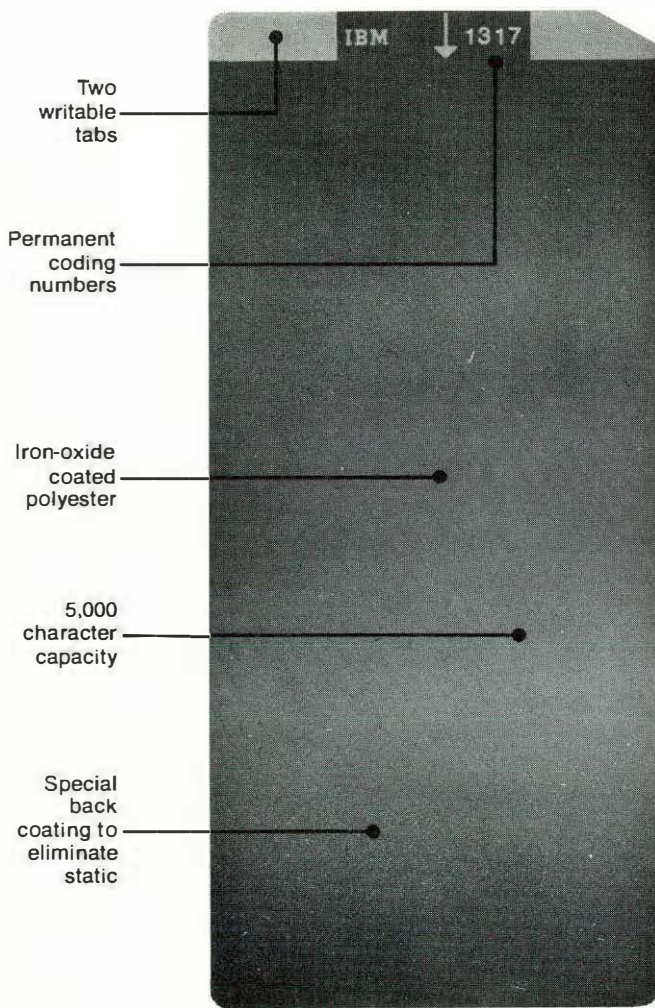
Editor:

The undersigned are members of the Washington Women Lawyers Bar Examination Committee. We are responsible for the report discussed in the May 1978 issue of the *Bar News*. Judging from recent letters to the Editor, it seems that clarification of our position is necessary to prevent misunderstanding.

Our report is not a criticism of the bar exam per se. We do not pretend to have the professional expertise to evaluate such an exam. However, we were — and are — concerned about the disproportionately large failure rate of minority applicants (many of whom receive high ratings from lawyers with whom they have worked as interns). We believe that the Washington State Bar Association has a duty to discover the reasons for such a high failure rate. To date that obligation remains unfulfilled.

The Bar Association has studied and reported on some collateral issues: an analysis of the University of Washington's minority admissions program (the Zilly Committee Report, August 1, 1977), and a response to specific procedural questions raised by minority law organizations (the Grim Committee Report, July 19, 1977). While these subjects are certainly of interest and are certainly related to the problem, they are not the same as

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the problem. Our report was an evaluation of the work of those two committees. Our conclusion was that we still have not solved the problem which stimulated both bar studies: why do so many apparently qualified minority applicants fail the bar exam?

We urge all members of the bar to read with care the WWL report itself or the excerpts printed in the May 1978 *Bar News*. Tom Zilly's statement in his letter carried in the July 1978 *Bar News* that our conclusion was "factually unfounded" is curious since most of the basic facts came from his report. Our major criticism of the Zilly Report was that that committee allowed the conclusions reached about the fate of those students admitted to the University of Washington Special Admissions Program to be substituted for the answer to a very different question: why a disproportionate number of minorities (whether they are from the University of Washington Special Admissions Program or the regular University of Washington program, whether they are from Washington or other states, whether they have practiced as lawyers in other states or are newly graduated bar applicants) fail the Washington State Bar Exam.

The Zilly Committee did turn its attention to the bar exam and concluded essentially that the exam is biased, but necessary. The "necessity" for the exam as presently given is not explored but only asserted, based apparently on the collective beliefs of the Zilly Committee members. That the exam is biased against members of minority groups is admitted by the Zilly Committee — but the existence of bias is

excused by the Committee on grounds that it is only one of a long line of biased tests. No State Bar Committee has sought to determine whether the exam could be changed so as to eliminate bias while maintaining high standards for admission to the bar. Indications are that the minority applicants "screened out" by the exam are often highly competent. Surely we have a responsibility to insure that those "screened out" are excluded on justifiable grounds related solely to competence in the practice of law. If we are to retain the bar exam as a method of determining who is competent and who is incompetent to practice law, we must have as fair an exam as can possibly be devised. To that end, we must study the exam itself.

Our request to the Board of Governors is that such a study be undertaken. Former board

member (now Judge) Charles Cone has submitted his report on this matter; he concludes by recommending continued study of the problem of minority failure of the examination. We should undertake such study without further delay.

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Since this letter was submitted, the Board of Governors decided (6-3) in Spokane, September 12 not to direct any further study of the bar exam.—Ed.

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Big Plans at UPS

The University of Puget Sound Law School, which only has been around for about six years, has big plans. If all goes well, the 800-student law school—and Division II of the state Court of Appeals—will be housed in a “Law Center” in downtown Tacoma to be created by an \$8.48 million renovation of the former Rhodes Department Store complex. The Law Center will include 45,000 square feet of office space for lease to private attorneys who will have access to the law school’s 140,000 volume library. Plans also provide room for a para-legal school, model legal clinic, and other law-related organizations.

The Law Center promises to be the most exciting thing which has happened in legal education since the invention of the bar bible. It was described enthusiastically (complete with slide show) by the law school’s dean, Wallace M. Rudolph, at the Board of Governors meeting in Port Ludlow. Rudolph also discussed the law school’s curriculum, lawyer placement (95% of the law school’s graduates have law or law

related jobs), and CLE programs. A brief description of any one of these would fill this page, so I will stick to the Law Center.

A feasibility study prepared by the Law Center’s architects, The Burr Associates, includes the following points which caught my eye:

- The entire law school will be an extension of the law library. Once a person is past checkpoints at two major entrances, books may be carried to all parts of the school.
- The Law Center will include a bookstore with a street entrance open to the public.
- There will be 800 study carrels with lockers (one for each student).
- There will be three 110-seat classrooms, divided by power-driven soundproof walls which can be opened to create an auditorium to seat 450, plus one classroom seating 125; one seating 75; a mock trial courtroom seating 40; five seminar rooms each seating 20; two “client counseling” rooms; and a reception area. The client counseling rooms will be equipped with closed circuit TV cameras permitting large-screen viewing in a 20-seat conference room, and small-screen viewing in special carrels.
- A physical exercise unit will include three racquet ball courts; two rooftop tennis courts and running track; and shower/locker facilities—all available to law students and staff (and Court of Appeals’ judges if they are lucky).
- The Court of Appeals will occupy the top two floors of one of the Law Center buildings. The judges’ chambers will have wide views of Commencement Bay and Brown’s Point.
- The Law Center will be within about two blocks of existing state and federal courthouses.

Financing for the project is well under way. The City of Tacoma recently received a \$1.5 million federal grant for the Law Center, and private gifts total about \$750,000. There will be a \$2.5 million fund-raising program, and substantial loans from private banks are anticipated. According to a recent UPS news release, two major hurdles remain: negotiations with owners of the downtown building sites are “extremely sensitive,” and the project also depends upon Tacoma’s receipt of \$3 million under a federal loan-guarantee program.

But it looks as if the project will go, with occupancy sometime in 1980 or 1981. The Law Center sounds so good, I almost wish I could go back to law school. Almost.

JVW





Compulsory Arbitration— A Possible Solution To Court Congestion

In February 1977, the Board of Governors appointed a Committee on Court Congestion and Delay under the Chairmanship of Bradley T. Jones. In June of 1977, the Committee reported to the Board of Governors several recommendations, the most controversial of which was compulsory arbitration as a means of adjudicating civil litigation when the remedy sought is one of monetary damages and the sum in controversy does not exceed \$10,000. Similar proposals were endorsed by Committees of the Seattle King County Bar Association and the Superior Court Judges Association.

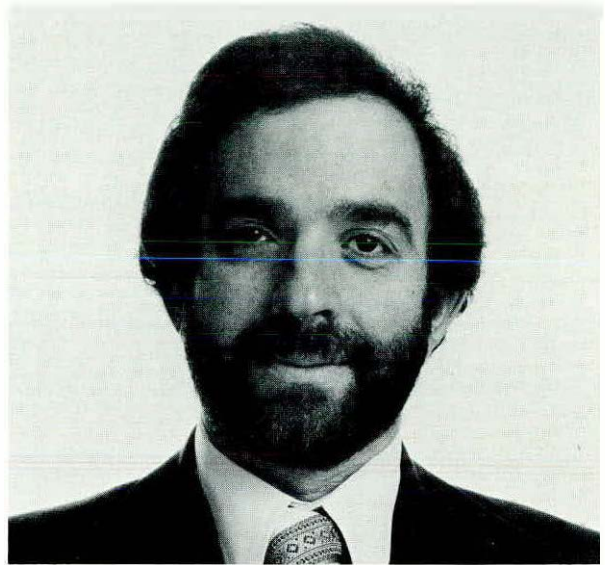
Presently, the Washington Arbitration Statute (R.C.W. 7.04) provides procedures for voluntary arbitration and when arbitration is contracted for. This process has not had any significant impact on case loads. It has been suggested that it is sometimes difficult for an attorney to advise a client to arbitrate since the losing party would be inclined to blame the lawyer for persuading him to give up his right to trial (even though the results might be the same).

Proponents of compulsory arbitration point out that trials in cases not exceeding \$10,000 in controversy are too expensive for the public, too expensive for the parties and are often times too time consuming. Conversely, arbitration results in speedy determinations that are substantially inexpensive to the litigants and involve hardly any costs to the public.

Opponents to compulsory arbitration point out that it amounts merely to a substitution of personnel from judges to arbitrators and the problems in delay and expense could more properly be addressed in the streamlining of the judicial system.

Several states already have compulsory arbitration, among them are Pennsylvania, Ohio, California and New York. In these states the appeal rates have been extremely low and a substantial number of cases have been taken out of the court system.

The proposal is that claims of \$1,000 or less would be heard by a single arbitrator and all other claims would be heard by a panel of three arbitrators unless otherwise stipulated by the par-



ties. Any single arbitrator or the chairman of the panel would be a lawyer with a minimum of five years of practice, unless the parties stipulated otherwise. The members of an arbitration panel would be appointed by the administrative officer who would compile a list of eligible arbitrators.

The Committee also recommended that the Civil Rules of Procedure pertaining to discovery would apply and that all pretrial motions would be determined by the court in which the action originated. The arbitrators would be paid the same amount as judges pro tempore of the Superior Court except that the chairman of the panel would receive an additional \$35. The litigants would have a right to a de novo appeal to the court in which the action was originally filed, including the right to trial by jury upon the payment of a filing fee of \$150. The fee would be recoverable as a taxable cost.

These proposals were made to the Board of Governors at the June 1978 meeting and were not endorsed at that time. There is continuing interest in a compulsory arbitration mechanism to help alleviate court congestion and the matter will undoubtedly come up before the Board again. I would appreciate hearing the views of the membership on this matter and would invite you to write to me with any comments you might have.

An "Outsider's" Appraisal

THE WASHINGTON COURT OF APPEALS

By ROBERT A. LEFLAR

[Robert A. Leflar, a former Arkansas Supreme Court Justice who was Director of Appellate Judges Seminars, New York University Law School 1955-76, and who has been Consulting Director since 1976, was asked by our state Court of Appeals to make a study of its internal operations and performance. The study was based on a review of the Court's constitutional and statutory background, its procedural rules, its earlier and recent opinions, and its internal practices. The study included a five-day period of interviews in November, 1977, with all the judges of the Court's three Divisions, with Court staff members, and with other knowledgeable persons. This article is the text of Leflar's report submitted to the Court, in December, 1977, in slightly abbreviated form but with no substantive changes. Although this report is now somewhat dated, it was featured at the joint meeting of members of the Court and the Board of Governors in July [Bar News 32:8:17], and it remains an unusual view of the nine-year-old appeals court. —Ed.]

Generally speaking, any appellate court whose decisions have such finality and precedential validity as do those of the Washington Court of Appeals serves its purpose best if there is a large measure of unity among all the panels. It is better for the Court to operate as one Court rather than as several separate courts of three judges each. Correlation of conclusions on substantive law is of genuine importance, and correlation of procedural methods is almost equally important.

The arrangement whereby one judge is named as the Presiding Judge for the entire Court constitutes a valuable move toward unity. Regular meetings of the judges of all Divisions, and agreement at such meetings upon procedural and administrative matters, advances the desired unity. An active executive committee consisting of the Chief Judges of all panels serves the same purpose. The areas of unification served by these useful meetings, however, largely are limited to matters of administrative management.

Unification in the handling of substantive legal

issues is of equal importance. En banc sessions of a 12- or 16-judge court are not practical or realistic. Rotation of judges between panels can serve to achieve unity of substantive law, however. The Court will better serve its function in respect to the precedential effect of its decisions if a more extensive system of rotation is established so that judges of each Division will sit more frequently with the judges of other Divisions. This does not suggest that rotation be planned for every sitting, but only that the extent of it be increased, as allowed by Washington law.

Advance exchange of draft opinions, in substantially final form when they are presumably ready to be handed down, could also be carried out among the judges of all three Divisions without much difficulty. A short period within which they must be read and returned to the original panel (perhaps ten days) could be prescribed. The value of eliminating differences within the Court concerning rules of law before rather than after they become embodied in formal opinions is obvious. This value would apply only to opinions for which official publication is tentatively planned.

Terms of Court

The separation of each year's work into short terms of court is unusual among appellate courts in the United States. Most appellate courts today operate on the basis of a single full-year term, normally running from early autumn through June or July of the following year, with a vacation (apart from official holidays) only in midsummer. The Washington arrangement for terms of court naturally gives rise to a question. The answer seems to be that the Court of Appeals has adjusted itself rather completely to the system of terms of court, and that no very bad results ensue from it. It would be simpler for cases to be set and other work to be done continuously throughout a 10- or 11-month period, without breaks between terms, but the pressure for completion of work within each term is a separate virtue. No recommendation is now made concerning any change in the division of the Court's year into terms.

Selection of Chief Judges

The method of selecting Chief Judges in each of the Divisions is copied from the method prescribed by Washington law for the Supreme

Court. Under this method, the Chief Judge is the elected member of the Court who has the least time left in his term. He is thus the one who normally will soonest run for reelection. The only virtue of this system is that it gives a helping hand to the judge in his race for reelection, or carries over a nice honor into his old age if he retires. The system has nothing to do with basic qualifications, and the several Divisions of the Court have so far been fortunate in that their Chief Judges have performed well. This cannot always be the case if the present method of selection is continued. The chief judge of any court, or of any division, ought to be one who is specially interested in judicial administration and who has a special competence in that area. Chief judges ought to be selected by the whole membership of their court, preferably with the aid of a Court-appointed advisory committee, with that test solely in mind. Because the present basis for selection in the Court of Appeals derives from a court rule only, and not from a statute or constitutional provision, it ought to be abandoned, presumably as of some future date that will not affect present arrangements or expectations.

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Clerks' Offices

The clerk's office in any appellate court is likely to be responsible for the business management of the Court's internal operations. The efficiency of the Court depends to a large extent upon the efficiency of the clerk's office.

It is important that a complete on-going record of all appeals, minutely up-to-date, be kept in each clerk's office, so that the status of any appealed case can be exactly determined at any moment. This necessity applies to all cases on which notice of appeal has been filed, from the moment that it is filed. Because the appeal-taking process is now centered in the appellate rather than in the trial courts, it is possible for the clerks' offices to maintain constantly updated records.

The function of such records is not only to keep the Court itself abreast of what it is doing, but also to make certain that counsel involved in appeals perform the appellate steps allocated to them promptly. It appears that the tickler system now maintained in the clerks' offices serves this purpose. It is important that this be continued, and improved if possible.

As electronic record keeping becomes increas-

ingly possible and computerization of records in the clerks' offices is achieved, complete and constantly up-to-date records will be easier to maintain. The move toward this end has already been initiated in the Washington Court of Appeals, and it is only possible to express the hope that it will be carried forward speedily and successfully.

One small matter that could save a little clerical effort is elimination of the custom of printing docket schedules in advance. These docket schedules are invariably changed after they are printed, for many reasons. They could be typed and photo copied, and then retyped as changes are made. This arrangement would not only be less expensive, but also would better serve the informal function of a docket schedule both for the judges and the lawyers who are concerned with it.

Control of the Taking of Appeals

It appears that until recently control over the process of taking appeals rested largely in the trial courts and in counsel, to such extent as it rested anywhere. Control did not rest in the appellate court until after the taking of an appeal was substantially completed. The result was that fre-

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quently there were long and unnecessary delays in the completion of appeals before appellate courts took over any responsibility for the appealed cases. The delays so caused were quite understandably a basis for criticism of the appellate process generally.

It is my understanding that now appeal-taking procedures in Washington have been changed so that control over the process is largely in the appellate courts. This has eliminated a large part of the grounds for criticizing delay in the appellate process in the state. It is quite true that there is no advantage in hurrying cases up to appeal if an appellate backlog causes the cases to be held indefinitely before disposition in the appellate courts. It may be that the recent elimination of delays during the appeal-taking period has itself contributed to a current increase in filings in the Court of Appeals. If that be so, it represents a one-time period of increase, which can be overcome once the appellate backlog is cut down.

One relatively unimportant remnant of the old system persists. This is the procedure whereby notice of appeal and payment of the appeal filing fee are still in the trial court, from which they are transmitted with brief delay to the appellate court. There appears to be no good reason why the filing of appeal and payment of the fee should not be directly to the appellate court, with notice of appeal sent from the appellate court to the trial court. In most cases this would be handled by mail. This may have little substantive importance, but it would properly emphasize the fact that the taking of appeals is now a matter controlled by and in the appellate courts.

Relations to Bar and Public

A question that arose naturally was whether the Bar and citizenry of Washington had developed adverse reactions to the procedures employed by the Court of Appeals in its efforts to catch up with the increased caseload that has developed in recent years. The question was a double one, as to whether there were objections to the procedures that are being used and whether there are current suggestions from the Bar and the public as to wanted changes in the Court's procedures.

It seems that this is not a matter for major concern. The Bar and the public appreciate the need for eliminating backlog and keeping substan-

tially current with the caseload. It is felt that this problem is primarily up to the Court, though the cooperation of the Bar is recognizedly essential. There has been worry about the use of staff attorneys as aides to the Court and its judges, and as to the use of pro tempore judges on the Court, but most of this worry apparently has occurred within the Court rather than among the Bar and citizenry. It largely has been a matter of the judges criticizing themselves, in their effort to evaluate the performance of their own Court. This is a healthy situation.

It might be useful if the Court could prepare and publish a description of its internal operating procedures in pamphlet form for distribution to the Bar and to other interested persons and groups. There is much in the internal operating procedures of any court, including the Washington Court of Appeals, that is not covered by the formal statutes and rules of court. There is no secret about these internal operating procedures, and individual judges explain them to anyone who asks. These explanations do not reach a large number of people who are quite properly interested in them, including members of the Bar. Several courts

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throughout the United States have published descriptive statements of their internal operating procedures, and have reported good public reaction.

Cooperation with the news media is probably not a major problem with this Court. Nevertheless, there are decisions which attract public interest and which the media are anxious to cover. Accurate coverage is highly desirable. Assignment of a staff member to see to it that accurate information concerning such decisions is made available to the media, perhaps by pre-prepared summaries, could in some cases avoid undesirable inaccuracies.

Another minor possibility that has proved interesting, and probably useful, in some other courts has been the preparation of a statistical statement (by hours in the week) on how the judges spend their work time. There might be a temptation on the part of some judges to exaggerate in this connection, but this temptation could be held down by mutual agreement. Such a statistical statement surely would rebut any popular idea that judges have an easy job that enables them to spend much of their time on the golf course.

Pro Tempore Judges

It is said that the use of pro tempore judges brought up from the trial courts may have produced some criticism of the Court. Their employment has been a necessary result of the effort to deal with backlog and to turn out a maximum number of decisions, especially in Divisions which have had only three judges. The addition of new judges in 1978 may cut down on the need for bringing in temporary judges. It would be unwise, however, for the Court to commit itself to the elimination of temporary judges. The statutes authorize their use, and there probably will continue to be situations in which they can be used advantageously.

A more careful check on the publication of opinions written by temporary judges, and regular warnings to such judges against excessive length of opinions, may minimize objections to their employment.

Effective Use of Staff Assistants

The value of staff assistants providing research

and analysis to an appellate court is now everywhere recognized. Most appellate courts today, including the Washington Court of Appeals, could not perform their work adequately without such assistants. Whatever objection has been raised in the past to staff assistance has now been overcome, or at least must be disregarded because of the practical necessities of appellate judicial life.

A screening process is essential to the efficient operation of any appellate court with a large caseload. Complete responsibility for screening cannot be left with staff members, but they can do the preliminary parts of the screening process, subject always to judicial supervision of the screening and to judicial decision of every case in the end. It is, of course, not suggested that either staff attorneys or law clerks should participate in decisional conferences.

The Court of Appeals has heretofore relied upon "commissioners" and law clerks for this work. The increasing caseload — or the caseload as it has already increased — make further staff assistance desirable. The employment of a senior research attorney in each Division, with staff attorneys under him, is the ultimate answer. It is unfortunate that other needs in the Third Division are delaying the employment of such additional staff there. Undoubtedly there will have to be some experimentation before maximum use of central staff in all three Divisions is achieved, but the objectives and the values to be achieved by it are clear.

Reasonable correlation of the work of central staff and of the judges' law clerks is necessary. Duplication of their work can be wasteful. There can be a value in having memoranda on difficult cases prepared by more than one person, so that the judges can have memoranda presenting possibly different analyses. The value of such double memoranda, very real in complex cases, does not extend to the mass of cases. All that this suggests is that the allocation of work to central staff attorneys and to law clerks should be carefully considered. It does not mean that law clerks should come under control of a senior staff attorney, because their function primarily is to serve the individual judge by whom they are employed. Nevertheless cooperation is possible and desirable.

The use of law student interns in Division III to some extent serves the purpose of central staff, and it seems that similar interns could render useful help as members of central staff in Divisions I and II. Their availability could increase central staff output and thus increase total court output.

It is an excellent practice, as at present, for every judge sitting on a case to receive, in advance of argument and decision, copies of all memoranda on the case whether prepared by central staff or by judges' law clerks.

Both central staff and law clerks can be aided in their work, especially as new young lawyers begin in these jobs, if a research manual is prepared and given to them when they are hired. New law clerks and staff members in most courts waste time and energy at the beginning of their employment because they do not know authoritatively what they are supposed to do. They always look for information and advice, but sometimes get it unreliably from the wrong sources. A research manual could be prepared under the direction of senior staff attorneys and the judges themselves, so as to give new staff members sound sugges-

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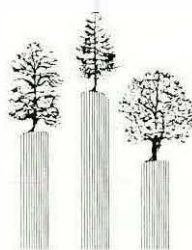
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tions concerning their work. Differences among Divisions and individual judges can be noted, if differing types of work are desired.

Another valuable research aid, useful both to judges and staff, would be a permanent index of all research material accumulated in all Divisions. Supreme Court research also could be included. The index could be kept up-to-date and constantly available in each Division and in the Supreme Court as well. Research that has previously been done in one Court could be available to another Court on a day's notice.

As the electronic computerization planned for the Washington court system is developed, the index eventually could be computerized and made even more speedily available. In the meantime, however, an index kept on cards can be almost as useful, and can enable staff members and law clerks to complete much more research work, both more quickly and more thoroughly than otherwise would be the case.

Settlement Conferences

In Divisions I and II, the use of settlement conferences has not only produced satisfactory conclusions in a large number of appealed cases, but also it has decreased the number of unsettled cases left on the docket for final hearing, thus cutting down on backlog. The experience with settlement conferences in these two Divisions indicates that the technique is a desirable one that should be continued.

It is natural that the Court should hope that the settlement conference procedure can be improved. This raises a question as to the time at which such conferences can be most effective. It is possible to hold them at any time after the civil appeal statement is filed. Holding them soon thereafter will save work in the Clerk's office as well as time and expense for litigants and counsel. On the other hand, some cases may be ripe for settlement only after briefs are filed. A system whereby settlement conferences can be arranged on the basis of advice, perhaps from a competent staff member, as to when each particular case is most likely to be ripe for settlement is probably best. Tentative inquiries directed to counsel could also be helpful.

Settlement conferences in Division III on the whole have not been very successful. Perhaps

they are less necessary because of local conditions in the eastern area. It would be unfortunate, however, if Division III abandoned the idea of settlement conferences altogether. There are undoubtedly some cases which could be settled before hearing even though counsel have not asked for a settlement conference. An effort to identify these cases could be useful. The geographical situation makes it difficult to require counsel to travel the long distances that prevail in the eastern area, but this difficulty could be minimized by holding settlement conferences at the time the Court meets in the different towns throughout the area. Conferences could be held in the mornings before the Court sits on hearings, or in the late afternoons, so that there would be a minimum of interference with regular hearings and so that the judge holding settlement conferences would not be precluded from sitting on the bench. Different judges could conduct such occasional settlement conferences.

Preargument Conferences

Preargument conferences are held formally in Division II and informally in Division III of the



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Court of Appeals. They appear to serve a useful purpose, as they do in many other appellate courts throughout the country. They make certain that the judges hearing oral argument understand in advance their colleagues' analysis of issues in the case, and enable the judges to plan and allocate among themselves questions to be asked of counsel. They also enable the Court to indicate to counsel at the beginning of the argument what issues need to be developed and what may be passed by. The net effect can be to shorten and at the same time improve oral argument and facilitate quick and fair decisions.

The objection has been raised that preargument conferences tend to set some judges' minds on how a case should be decided before argument is heard. Though this is a possibility, it probably can be avoided by the Chief Judge's control of the session to prevent the discussion from going beyond the identification of issues and allocation of responsibility for questions. The thought is that preargument conferences can save the Court's time, improve the quality of oral argument, and facilitate sound judgment in the ultimate decisional process.

Oral Argument

Court rules allow an hour for oral argument in every case, but only a fraction of cases justify that amount of time and Counsel frequently do not need the full hour. It would be helpful if a system were in effect whereby shorter periods for oral argument regularly would be assigned in advance on the basis of what is needed for each case. Waiver of oral argument altogether could well be further encouraged without any loss of sound judicial analysis and judgment.

In Division I, some 90 specially selected cases have been set for the next term with an allocation of ten minutes to a side for oral argument. Counsel have been so notified, with an understanding that more time can be allowed if asked for and, conversely, that argument may be waived altogether at counsel's request. It will be interesting to see how this arrangement works out and, if it works satisfactorily, it promises not only Division I, but also the other Divisions a fair and efficient time-saving device. The system might be extended to other types of cases as well, perhaps with slightly longer periods of oral argument suggested by the Court, but with the same alternatives available to counsel.

Many judges in other appellate courts feel that oral argument adds little to what is contained in briefs prepared beforehand and, indeed, sometimes encourages counsel to turn in poorer briefs than they would if no oral argument were to be held. Whether that is true or not, it clearly is true that careful limitation of oral argument can save court time and permit the hearing of more cases without any loss of real values. Comparable values inhere in the controlled direction of oral argument which can be exerted after a preargument conference of the court.

Case Assignments

There is no apparent dissatisfaction with the present methods of case assignment in any of the three Divisions. It appears that the procedure for assignment is one under which the Chief Judges determine the number of cases to be assigned, perhaps after consultation with their associates, and then leave it to the clerks to make the assignments to individual judges by an unpredictable rotation system with equalized work loads attempted. This system is fair to all judges.



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A common question among modern appellate courts is whether cases should be assigned prior to tentative decision. It is contended that pre-assignment produces a tendency toward one-judge opinions, in the sense that judges to whom a particular case is not assigned tend to leave the prehearing study of the case largely to the judge to whom it was assigned. Though there is no evidence that this is a major problem in the Washington Court of Appeals, it may be worthwhile to consider an alternative system such as has been developed in Tennessee and subsequently adopted in some other states. Under this system no case is assigned to a particular judge until after submission, oral argument if any, and decision conference. At the close of the decision conference, assignments are made by lot to judges in the majority on each case. To administer this system, only one drawing is necessary, this being for the first case assigned, the others following in rotation thereafter. If pre-assignment of cases should be discontinued, this system of assignment might be fairer than the alternative of assignment by the Chief Judge, as in the United States Supreme Court and some other courts. It could be so planned as to equalize work loads by separating the random assignments according to types of cases being assigned.

Preparation of Opinions

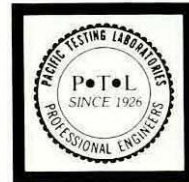
The preparation of appellate judicial opinions is essentially a personal matter with each judge. No exact rules can be laid down to govern this work. Each judge does it in his own fashion.

It is, of course, important that opinions in the end be the product of the entire court and not that of a single judge. Assurance of this character for opinions depends not only upon advance preparation by *each* judge prior to decision, but also upon the method of circulation of drafts and the way in which opinion conferences are conducted. The best assurance is for judges to have their offices close together so that they can, and will, consult personally concerning drafts of opinions circulated at once after they are written and before they take on permanent form. The ideal in this context would call for judges to work in their offices daily, rather than taking material away from their offices for long stays at home or elsewhere to write opinions which then cannot be

circulated promptly. This ideal arrangement is not always possible, but the prompt circulation of drafts and ready discussion of them with colleagues by telephone or otherwise is basic to the avoidance of one-judge opinions.

One of the matters which I was asked to check on was whether the quality of the Court's published opinions has suffered by reason of the great increase in the Court's workload and the resultant increases in the number of opinions written by the Court and by each judge. No such decrease in quality was observable. It is true that opinions written by different judges have different qualities, and there are judges on the Court who were not there during the Court's early years. Other judges have been on the Court from the beginning. I am inclined to believe that the quality of opinions written by the long-term judges has actually improved, and there is no reason to believe that the work of the newer judges is not as good as it would be if they were writing somewhat fewer opinions. The standard of opinion writing in published opinions has been well maintained.

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usefully may be considered. Some judges have found it to be helpful to prepare headnotes for their own opinions before releasing them, with the idea that this requires the judge to check carefully on the substantive content of his opinion.

There is always a possibility that irrelevant material, especially long excerpts from transcripts, long quotations from earlier cases, and long quotations from statutes or regulations only part of which are relevant (both in text and in footnotes) can be eliminated before an opinion becomes final. A judge often will find it easier to make such deletions if he lays his draft opinion aside and then goes over it a few days or a week after first writing it. This is important principally as to opinions that may be selected for publication.

Announcement of decisions with oral opinions rendered from the bench in easy cases is an increasing practice among some appellate courts today. If the oral opinions are transcribed and typed up, they satisfy any requirement that may exist for written opinions. There can be a slight saving of time by using this device, though the appearance of collegiality and of having given weight to oral argument requires that there be an actual consultation before the oral opinion is announced. If the opinion were to be dictated after a subsequent conference, and then handed down in written form, not much more if any additional time would be used.

With respect to cases scheduled for summary disposition, it is entirely possible that draft opinions could be prepared by staff attorneys. These would not be publishable opinions because they would be used only for cases that do not present issues of precedential significance. Even with these, however, the staff-written opinion should be prepared after panel consultation and decision on the case, rather than beforehand. The earlier staff memorandum could contain a recommendation, but the opinion would be written only after a judicial decision was arrived at and as ordered by the Court itself.

Publication of Opinions

The Court wisely has established a policy of nonpublication and noncitation of its less significant opinions. The soundness of this policy is based on practical necessity, and the harm done

by nonpublication is minimal when the nonpublished opinions truly lack precedential value.

Administration of the nonpublication policy in Washington, however, seems erratic. I have read all of the Court's published opinions for the period January 1, 1977 through June 30, 1977, and wide divergencies were observed in them. A number of the published opinions appeared to be of negligible importance, and parts of other long opinions appeared to have little precedential value. The judgment of a reader who is not well acquainted with Washington law could obviously be incorrect on this matter, but the impression was nevertheless a definite one.

One fact observed was that the decisions on publication varied as applied to the opinions of different divisions and different judges. For the six-month period there were the same number of published opinions in Division II, with only three judges (63), as there were in Division I, with six judges. Division III in the same period, with only three judges, published almost as many opinions (52) as did Division I. The number of published opinions from individual judges (omitting the Chief Judge of Division I who had other duties) varied from 8 to 23.

It appears that the practice is that each panel defers to the judgment of the writing judge on publishability, though the rules require the entire panel to make the judgment. This practice is perhaps inevitable as long as the decision is left to each panel. What is needed is a committee representing the entire Court in all its Divisions to review all proposed published opinions. This would not interfere with the time-saving which comes from advance knowledge that an opinion in a particular case will not be published when the issues are insignificant. These cases can be identified beforehand. It is for the doubtful cases that committee review is needed. This procedure would result in uniformity of application of the standards for publishability and, at the same time, probably would decrease the number of published opinions.

Another minor change in publication procedures would be to limit publication to those parts of long opinions which actually have precedential value. This would require a careful selection among factual and legal parts of the opinion to achieve clarity, but could avoid publication of a

good many not-very-useful pages of long opinions. A few other appellate courts have found that this device is workable.

Liaison With Supreme Court

It is clear that excellent relations are currently being maintained between the Supreme Court and the Court of Appeals. The Supreme Court's Liaison Committee, however, largely is being ignored by the Court of Appeals. This is apparently because there are no real problems at present. The Supreme Court is accepting all cases that are certified to it by the Court of Appeals; and the number of cases first decided by the Court of Appeals and then taken up for review by the Supreme Court is comparatively small. It must be suggested, however, that the continuance of this happy relationship might be better assured if there were more contact between the Court of Appeals and the members of the Supreme Court's Liaison Committee.

For one thing, it would be good if more of the cases now taken up for review after Court of Appeals decision could be identified in advance for certification to the Supreme Court. Perhaps



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other cases now being certified need not be sent up. This is an area where intangible values and possibilities predominate, but that does not mean that it is unimportant.

The system under which the Washington appellate caseload is divided between the Supreme Court and the Court of Appeals seems to be working satisfactorily. The statute specifies types of cases which go directly to the Supreme Court, and it appears that these specifications are sufficiently clear that few cases are improperly taken directly to the Supreme Court only to be sent back to the Court of Appeals. Even when this happens, no great harm is done.

The bulk of the Supreme Court docket consists of cases certified to the Supreme Court by the Court of Appeals. The standards for certification, though not exact, are fairly definite. The fact that a few cases kept in the Court of Appeals are subsequently taken up for review in the Supreme Court indicates that some of these cases might have been certified in the first place. The Supreme Court in recent practice has accepted all or practically all of the cases certified to it, even though some judges felt that a few of the cases

certified need not have been sent up. Though this situation is substantially satisfactory as it stands, there is no reason why greater attention should not be paid to it.

The Backlog Problem

The National Center for State Courts report in 1975 stated that there was then in the Court of Appeals a 16-month lapse from notice of appeal to opinion in civil cases, and a shorter but serious delay in criminal cases. It was also stated that the constant increase in appellate filings threatened a constantly longer delay as time went on. The increase in filings has not been quite as great as was then anticipated, but the increase has been persistent and the backlog of undecided cases would have been embarrassing had the Court not taken rigorous steps to increase its production.

Despite these steps, the Supreme Court Administrator states that at the present rate of filings and dispositions, even with four new judges added to the Court in 1978, the backlog will increase to 8,000 cases by 1985. The figure seems exaggerated, but at any rate this must not be allowed to happen. If it does happen, then the Court and its judges will go down in history as failures. The prospect is made doubly harsh by the fact that there is no real likelihood of new authorization for additional judges in the near future.

Current efforts by the Court to decide and hand down a greater number of cases each term promise that the current backlog will not only be cleared up, but also that the increase in filings need not create a new and larger backlog. A statement given on November 14, 1977 by the Clerk of Division I to Chief Judge Farris indicates that this Division then had 311 cases pending in the category of "ready but not set". The Court will be setting 209 of these cases for the January, 1978 session, leaving a balance of 102 cases "ready but not set". The conclusion stated is that "approximately 25 civil cases are perfected each month. With this in mind, the Court would have a 4-month backlog."

A 4-month backlog is practically no backlog at all. If this Court, in all its Divisions, can hold to the decision and production rate indicated by the Clerk's statement, then the Court should be able to eliminate its present backlog and remain substantially current within and for the foreseeable

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future. This can only be done by accepting the heavy production schedule which is planned, but performance according to the plan is feasible and not unreasonable.

The number of major opinions that can be well-writtin in a year by any judge is limited. A total of 36 to 45 publishable opinions is the most that any judge can be expected to prepare.

This total, of course, does not include memorandum and per curiam opinions, especially because these can be prepared at the Court's direction by staff members. Nor does it include most nonpublished opinions prepared by the judges themselves. It is true that some nonpublished opinions do require substantial time in writing, but most do not. They at least do not require the rewriting that a published opinion calls for, and the first draft of most of them can be dictated and then revised without great loss of time. If each judge writes as many as 36 published opinions each year, he ordinarily will have time to take care of his unpublished opinions and check on those prepared by staff attorneys without being unduly burdened. This is the sort of schedule which the judges of the Washington Court of Appeals can and must maintain if they are to eliminate their present backlog and make certain that no improper backlog will develop in the near future.

Generalizations

A principal function of any appellate court is to decide and announce its decisions promptly in all the cases that are appealed to it. If a large backlog develops, so that there is substantial delay in decisions, then justice is being denied to the litigants. The first duty of any court is to see that justice is achieved in the cases that are brought before it.

With an appellate court, a law-making (precedent-establishing) function is also present. The law-making function is more apparent in the Supreme Court than in the Court of Appeals, but nevertheless it is present and many Court of Appeals' decisions have precedential effect. The justice-achieving function, however, is primary, and it can never be subordinated to the law-making function. A court fails in its total functioning if great delay in deciding cases occurs.

It follows that any appellate court must decide

all cases appealed to it with reasonable promptness if it is to perform its proper functions. At the same time it should achieve the highest possible quality in its law-making opinions. It must not concentrate on opinion quality, however, at the expense of its dispute-deciding function.

One special warning should be noted. This is that no appellate court should take on a trial court's duties. A multi-judge appellate court is not suited to the receiving of evidence, the hearing of witnesses, and the like. Its activity should be limited to the correction of error below and the laying down of precedents. It is not suited for rehearing of cases from "justice courts" or other agencies in which the reviewing court must rehear the witnesses and evidence de novo. Suggestions have been heard that certain functions of the Washington Superior Courts, in reviewing de novo the decisions of lower tribunals or agencies, should be conferred on the Court of Appeals. This not only would involve a contradiction of the basic functions of a true appellate court, but also might defeat the Court's efforts to keep current on all proper appeals. This should not happen. □



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Board to Study "Bare Bones" Institutional Advertising

By Jay V. White

PORT LUDLOW, October 13-14—The Board of Governors has voted to explore the means by which the bar association could embark upon a program of "institutional advertising" to inform the public about when to get a lawyer, how to get one, the role of the legal profession in general, and legal rights.

"We should see what we could accomplish on a 'bare bones' budget," Board Member Lowell K. Halverson said. The Board agreed that Halverson and Board Member Cressman will identify persons who could be named to a special committee on institutional advertising and what purposes such a committee might serve. (Hemovich and Wesselhoeft absent).

The Board's action followed a presentation by the association's Director of Public Affairs, Wayne Wilson, who reported on the costs and experiences of other states with institutional advertising and presented a videotape of representative television advertisements created by state bar associations in Florida, Illinois, Missouri, New York, Ohio and Oklahoma.

The messages conveyed by the television advertisements ranged from public service announcements describing a lawyer referral service to "you should consult your lawyer" when buying a house, writing a will, etc. One Ohio ad depicts a lawyer visiting a friend who announces, "I did my own wiring," and then tells the lawyer, "I also wrote my own will." While the lawyer is starting to point out inadequacies in the will, the wiring bursts into flames and the lights go out. As the friend strikes a match, the lawyer is saying, "Come see me at the office."

Wilson said that there is a division of opinion among bar associations as to whether institutional advertising should take the form of free public service announcements or paid advertising. Radio and television stations will broadcast public service announcements without charge, but only rarely in prime time. For that reason, Wilson said, many bar associations "lean toward paid advertising, but that can be very

expensive."

For example, Wilson said that this year the Ohio bar developed three television spots and two newspaper ads, and circulated them statewide. "They are assessing their membership \$550,000 for a two-year, paid advertising campaign," Wilson noted. He said that the Illinois bar spent approximately \$50,000 in 1977 to produce 5 television spots, together with radio and newspaper advertising, which were circulated in two areas of the state. Studies in one of the Illinois markets showed that public awareness of the three-week advertising campaign dissipated after about four months. The Illinois bar felt that initial public reaction was good and expects to expand its budget to \$100,000 for the program, and estimates that it would cost \$300,-\$350,000 to conduct a statewide, year-long campaign.

[The current issue of the ABA publication, *Bar Leader*, quotes Stanley Balbach of Urbana, Illinois, chairman of the public relations committee of the ABA Section on Real Property, Probate and Trust Law, as stating that it is "fiscally irresponsible" for the ABA to stay out of institutional advertising and leave the cost to be borne by state and local bars. He said that it would cost ten times as much per viewer for state and local bars to conduct institutional ad campaigns as it would for the ABA to do it, suggesting that the ABA increase its membership dues by \$10 to produce an "inadequate starting budget of \$2 million" to finance an institutional advertising project.

Bar Leader also reports: "However institutional advertising is approached, Dr. Paul Wagner, president of Non-Profit Organizations Task Force Inc. of New York advised that it not end up as an attempt at image building.

"One large petroleum firm spent \$10 million to improve its image with the public, emphasizing its public service projects and other campaigns, said Wagner. After the campaign was ended, the percentage of persons who viewed the firm as 'ripping off the public' had dropped only one point."]

Wilson estimated that it would cost about \$250,000 to produce a statewide, continuing, paid advertising program in this state. But he also stated that the production costs for an individual public service announcement which could be made available for free broadcast would range between \$2,000 and \$5,000. He stated that it will be helpful to learn more about the results of institutional advertising in other states and that the "scope of topics covered may be too broad in other states" and that a "more limited campaign" might be more effective. For example, he said, a continuing advertising program in Washington state might focus upon lawyer referral services or Tel-Law projects. (Tel-Law is a public information service under way in Tacoma, and being developed elsewhere in the state, through which tape recorded information about legal rights is made available to the public by telephone.)

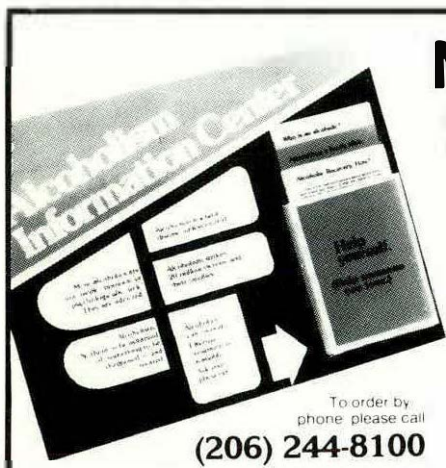
Following Wilson's remarks, the Board engaged in a general discussion which resulted in the decision to identify low-cost options available to this bar association in the field of institutional advertising.

OTHER BOARD ACTIONS...

■ **PROFESSIONAL LIABILITY INSURANCE**—Jack Quinan of Quinan-Pickering, inc., and JoAnn Felix of Shand, Morahan & Company, Inc., appeared before the Board to discuss the experience of companies which have offered malpractice insurance to lawyers in this state. They explained how insurance premiums are established, and discussed claims data. A detailed report, including an update on the work of the Attorneys Professional Insurance Committee, will appear in a future issue of the *Bar News*.

■ **UPS LAW CENTER**—Wallace M. Rudolph, dean of the University of Puget Sound School of Law, met with the Board to describe programs underway at that school, including plans to create a Law Center in downtown Tacoma which would house the law school; Division II of the state Court of Appeals; and would include office space for private attorneys. See *Editor's Page*.

■ **ETHICS OPINIONS**—The Board approved two formal opinions of the Code of Professional Responsibility Committee, the full text of which will be published in a future issue of the *Bar News*. One involves the obligations of court-appointed counsel who learns that his or her client is no longer indigent, holding in part that counsel must advise the court of the change in circumstances and advise the client that the client may seek other retained counsel. The other opinion amends DRA 1.1(h) to make it clear that an attorney may not



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employ a disbarred attorney in any capacity involved with the practice of law.

■ **BAR NEWS**—Stephen E. DeForest of the Editorial Advisory Board described steps taken by that Board at the request of the Editor to improve the quality and format of the *Bar News*. He also discussed the impact upon the *Bar News* of the budget cut occasioned by last year's referendum rescinding the dues increase previously authorized by the Board of Governors: the *Bar News* was cut from 52 to 40 pages per month and a number of regular features were eliminated or published on a space-available basis. He requested on behalf of the Editorial Advisory Board a \$5,000 increase in the *Bar News* budget to cover increased costs (e.g., as new lawyers are admitted to the bar, more copies of the *Bar News* must be published) and to restore features. The Board of Governors unanimously approved this request (Hemovich and Wesselhoeft absent).

■ **YOUNG LAWYERS SECTION**—The Board (4-3) voted to refer a budget request by the Young Lawyers Section to the Budget Committee, and to defer taking any action on a proposed amendment to that Section's by-laws which essentially would make lawyers under age 36 or admitted to practice less than 5 years, whichever is later, automatic members of the Section. Opposed: Bingham, Halverson, Holm. Absent: Hemovich, Wesselhoeft.

■ **"PUBLIC INTEREST" FUND**—The Board formally adopted a definition of "public interest law" which will be

reflected on the annual dues statement as a basis for soliciting lawyers' voluntary contributions to the "Public Interest" Fund. Based upon a 1975 resolution of the ABA House of Delegates (see *Bar News* 32:1:6, 19), the Board's definition provides that appropriations from the fund will go to support firms, individuals, organizations or causes which promote (A) the provision of legal services without fee or at substantially reduced fees (1) to individuals who cannot afford counsel; (2) in cases seeking vindication of a fundamental civil right; (3) for interests belonging to a significant segment of the public; (4) to charitable organizations when payment of customary fees would significantly deplete the organizations resources or be otherwise inappropriate; and/or (B) an increase in the availability of legal services or otherwise improve the administration of justice.

■ **FEE FOR CRIMINAL INDIGENCY APPEALS**—After minor amendments, the Board approved the following resolution proposed by the Committee on Criminal Indigency Appeals regarding attorneys fees:

WHEREAS, indigent criminal defendants have a constitutional right to competent legal representation in the defense of their criminal cases; and the State of Washington is responsible to reimburse counsel for a reasonable fee based on the following factors: The amount of time and effort expended, the nature and extent of the services rendered, the fee paid for similar services in other jurisdictions; the prevailing legal fees, and the traditional responsibilities of the legal profession; and that the Bar Association has a professional responsibility to provide competent representation in such cases; and recognizing that where compensation is unreasonably low the quality of representation suffers [see: *Washington State Bar Association report cited in State v. McKenney*, 20 Wn. App. 797 (1978)] and recognizing that the delivery of competent representation will be enhanced by paying appointed counsel reasonable fees; it is hereby RESOLVED that the Bar Association seek additional funds to insure that reasonable fees can be paid to appointed counsel in criminal cases in order that competent legal representation be delivered to indigent criminal defendants.

■ **BOARD MEETING SITES**—After discussion as to whether the Board should discontinue holding some of its monthly meetings outside of the state, the Board and President Hoff voted 5-4 to approve the following schedule of dates and locations through September, 1979:

November 10-11
December 8-9
January 19-20
February 16-17
March 17-18
April 20-21
May 18-19
June 14-16
July 20-21
August 24-25
September 11-15

Vancouver, Wash.
Seattle
Olympia
Tacoma
La Conner
Wapato Point
Victoria, B.C.
Salishan (Ore.)
Rosario (Orcas Island)
Sun River, Ore.
Vancouver, B.C.
(Annual Meeting)

Opposed: Cressman, Halverson, Holm, Jones. Absent: Wesselhoeft.



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Letters from Dean Gellhorn

HIGH PERCENTAGE OF UW LAW GRADUATES (INCLUDING MINORITIES) PASS BAR EXAM

The May issue of the Bar News provoked considerable comment from some quarters because it brought attention to a critique by the Washington Women Lawyers of two bar association committee reports ("Zilly" and "Grim-Blom") directed to the question of why a disproportionate number of minority applicants have failed the bar examination in recent years. The Zilly Report, in part, recommended changes in the University of Washington Law School's Special Admissions Program, including the admissions process, suggesting that the passing rate of minorities would improve if the committee's recommendations were implemented. In September, the Board of Governors endorsed the substance of the Zilly Report and declined to order any further study of the bar exam. (Bar News, 32:10:17) Last month, the results of the July bar exam revealed that a high percentage of minorities passed, at least among those who graduated from the University of Washington law school (89% compared to the 68% passing rate for all applicants). On October 12, as we were going to press, Dean Ernest Gellhorn of the UW law school sent the Bar News the following letters addressed to the Board of Governors and to the President of the University of Washington.—Ed.

To Board of Governors:

In light of the Board's past concern with the bar examination passage rate by minority students graduating from the University of Washington Law School, I thought you would be interested in the results of the July 1978 examination. They are summarized in the enclosed letter I sent to President Hogness.

One item I did not note but which should also be known to you, particularly because of some recommendations made by the Zilly Report, is that 100% (5 of 5) of the June 1978 Law Class who were specially admitted passed the July 1978 Washington State Bar Examination.

In light of the past publicity given less favorable results, I would be most appreciative of your efforts to assure widespread notice of these results in the bar. For this reason I am also sending a copy of this letter and its enclosure to the editor of the Washington State Bar News.

On behalf of the Law School I also want to express our thanks to the bar and the Board of Governors for their continued support of the Law School and its efforts to increase the number of minority persons who are members of the bar.

Ernest Gellhorn

To Dr. John R. Hogness
President, University of Washington

The July 1978 Washington State Bar Examination results were released recently and I thought you would be interested in them, particularly since they are so encouraging and you may not have heard the good news. (Had the results been otherwise, I am sure you would have been advised already.)

The results are easily summarized. Of the 133 March and June 1978 UW Law School graduates certified to take the bar for the first time, 118 or 89 percent passed. This compares with a 68 per cent passage rate for candidates from all schools (including UW) taking the bar. Of special note is the performance of minority students from this class. Here the passage rate was identical. That is, of those minority March and June 1978 graduates of the UW Law School certified to take the bar for the first time, 89 per cent passed. These figures are particularly heartening since two years ago only 4 of 20 minority students from the UW Law School received passing marks on the bar exam, and this led to the formation of a special bar association study committee and ultimately the Zilly Report.

I am sure that I speak for the Faculty in saying how pleased we are with the performance of these 1978 Law School graduates. Statistics from one examination should not, of course, be viewed as conclusive. Indeed, I would question the reliability of the bar exam as a measure of a law school's quality. But having been measured by that standard in the past, I think we can rightly point to these results with some pride and satisfaction. I am therefore seeking to secure some public notice of them.

We will also make every effort to assure that similar examination statistics are achieved in the future. For the moment, at least, we are celebrating this achievement.

Sincerely Yours,

Ernest Gellhorn



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Pacific Rim

By Terry Noble Foster
Associate Director of
Continuing Legal Education

Make room on your calendar for the Pacific Rim Federal Tax Conference, February 17-21, 1979. The Hyatt Regency Waikiki in Honolulu is the site of this multi-faceted tax program.

Saturday, February 17 begins at noon with registration at the Hyatt. Saturday evening features a welcome reception and buffet at poolside for registrants and their friends. Sunday is largely free to allow time to become acclimated and the famous Pearl Harbor Tour is available during the day.

The program begins at 8:00 a.m. sharp on Monday, February 19. Topics for this day include: *Handling Tax Controversies, Real Property Transactions, Separation and Divorce, and Gifts, Wills, Trusts and Probate.*

The Tuesday session is scheduled from 1:00 p.m. to 5:00 p.m. and focuses exclusively on the tax considerations of *Small Businesses and Corporations.*

On Wednesday, the program format becomes a cluster of workshops. Registrants may attend *Tax Controversies, Business Problems and Estate and Gift* workshops in the first morning session. The second session workshops include *Community Property* and a repeat of the *Business Problems and Estate and Gift* workshops. The conference concludes at 12:00 noon on Wednesday. 15.00 hours of CLE credit are provided.

A number of optional post-conference tours to neighboring islands are available through the travel agent should registrants wish to continue their stay in the sun. I am advised, however, that no CLE credit will be awarded for tennis, golf, snorkling or sailing. For a complete brochure, and information about travel and accommodations, please call or write the CLE Department.

**PROBLEMS OF CORPORATE COUNSEL
and DEVELOPMENTS IN FEDERAL AND
STATE SECURITIES REGULATION January
19 and 20, 1979.**

The Corporation, Business and Banking Law Section and the CLE Committee are presenting a

back-to-back seminar package to begin the 1979 season. *Problems of Corporate Counsel*, chaired by Robert A. Dowdy, is scheduled for January 19, 1:00 p.m. to 6:00 p.m. at the Washington Plaza Hotel, Seattle. The panelists will explore the Role of Corporate Counsel, the Attorney-Client Privilege and the Confidentiality of Corporate Records. Other topics include: Counseling Management in Compliance Programs, Auditors and the Corporate Counsel, Duties and Liabilities of the Board of Directors and Discrimination, Affirmative Action and the Corporate Employee.

DEVELOPMENTS IN FEDERAL AND STATE SECURITIES REGULATION is the companion program, scheduled for Saturday, January 20, 9 a.m. to 12:00 noon, at the Plaza. Chairman Kevin C. McMahon and his crew will cover a wide range of securities problems including private subpoena power, the changing definition of a security and damages under the Federal Securities Acts.

A joint brochure will be issued for these two programs. Registrants may elect to attend either, or both, by making the appropriate entry on the registration form. Attendance at both programs will provide 8:00 hours of CLE credit.

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Dec. 14-16, 1978: Seattle 15.00

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Nov. 11, 1978: Seattle 7.00

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Nov. 16-17, 1978: Seattle 11.50

Legal Problems of the Disabled
Nov. 21, 1978: Spokane 5.00
Dec. 1, 1978: Seattle 5.00

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Around the State

BENTON-FRANKLIN REPORT

By STEPHEN T. OSBORNE

The Bar was saddened with the recent passing of **Hugh B. Horton** of Kennewick and **George C. Butler** of Richland. Both had practiced in this area for many years.

The annual Bar golf tournament was held at the Tri-City Country Club. **Andy Bohrsen** took the honors for the low net for the second time, despite forgetting his golf shoes. Andy allowed as how playing barefoot for 16 holes was quite a feat. **Stanley D. Taylor** whose handicap is so high as to defy calculation won low net and the trophy with a score of 62. It is reported that **Mike Johnston** who had given Taylor many strokes is looking for help preparing a forma pauperous petition for wage earner plan in order to pay off his losses. The longest drive and putt competition were won by yours truly and **John Lindsey**, recently with Peterson, Taylor & Shea, respectively.

The assumption of office by the Benton-Franklin Counties Bar Association officers is traditionally held in conjunction with the tournament. The aforementioned **Mike Johnston** was elected president; **Diehl R. Rettig**, vice-president; and **Allen Brecke**, secretary-go-fer.

Sibling rivalry will be at its best with the opening of a new firm in Kennewick. **John** and **Craig Matheson** have opened shop in the Clearwater West Complex. There also is the new firm of **Jack Evans** and **Lee Kerr**. Jack is a recent convert to private practice from W.P.P.S. Lee was recently a partner with Horton, Wilkins, Faurholt & Kerr.

Not to be forgotten is the annual Bar fishing derby at Westport. Rookie **Fran Forgette** assumed

the role as "Chumner of the Year" singlehandedly feeding enough fish to ensure a record catch next year. There is no truth to the rumor that **Gene Schuster**, perennial member of the group had to miss the trip so that he could entertain his wife's relatives. And finally, **Phil "The King" Raekes** was awarded "Troller of the Year"

EAST KING REPORT

by BARRY J. HASSON

It is reliably reported that there are approximately 250 attorneys practicing in East King County which runs from Mercer Island on the west to North Bend on the east and Bellevue on the south to Bothell on the north. The East King County Bar Association has somewhat more than one-half of the total as paid up members. EKCBA treasurer, **Ray Dunlap**, will try to find any interested person a seat at the regular Monday afternoon luncheon meetings which are held at the Thunderbird in Bellevue. Call Ray for details.

There have been a number of moves into and around the Eastside as yet unreported herein. New faces include the following: **Nathan Neiman** in **Chuck Diesen's** office in Redmond; **Jenny Rydberg** with **Rick Carrithers** in Bellevue; **Jerry Bopp** with the "Livengood Firm" in Kirkland; **Walt Krueger** officing with **Beaudry & Herman** in Bellevue; **W. Gregg Home** in Factoria; and last, but likely not least, **John Martin** now in Bellevue.

In the category of moves here and there: **Powell & Powell**, father and son, are practicing in Kirkland; **Gamroth & Wiese** are now in the Business Center Building in Bellevue and **Fred Phillips** and

Dillon Jackson have moved to new space in Bellevue and are sharing office space with **Dick Quirk**; **Nick Marshall** is "doing his thing" elsewhere while **Doug Cowan**, late and near great of the Bellevue Attorney's office, has started practicing on behalf of the good guys and is with Nick's old firm consisting of **Paul Acheson** and **Bill Kinzel**.

Further, reporter sayeth not.

SOUTH KING REPORT

By PETE CURRAN

Annual meetings now heave with credit-shy lawyers.

Milling, mulling, grouching CLE voyeurs, Taxes and probate, torts dissolution, Impatiently seeking the yearly abluition, then toasting their totals at soires on foyers.

South King County was no different. Attorneys who had not surfaced in years stumbled out of the back woods clutching old maps and journeyed to Spokane. Grizzled old timers like **Jim Curran** mumbling about demurrers and writing furiously. Entire firms came—**Kuvara** and **Levinson** driving all the way on their twin Harley golf carts finally found downtown Spokane on Saturday. South King President **Jim Varnell** in attendance maligned badly by the thirsty Enumclaw crowd who recalled legendary non-stop parties of years past in the President's suite in the basement of the old Coeur d'Alene Hotel.



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It's not like it used to be. Remember the days when the resolutions committee emerged at the business meeting battered and haggard having spent 48 consecutive hours readying to fight the young lawyers who wanted the right to cast votes before they were 35? No more. The winner was on the way to Hawaii by 10:00 a.m., the room abandoned in numbing harmony.

Discipline

Notice of Suspension

Spokane attorney Michael F. Lavery was suspended from the practice of law for 90 days commencing September 7, 1978, by order of the Washington Supreme Court.

Notice of Disbarment

Tolmon Gibson, Jr., was disbarred by order of the Supreme Court on August 31, 1978.

Shea and Neukom Elected ABA Delegates By ABA Young Lawyers Division

In August at the Annual Meeting of the ABA, the Young Lawyers Division of the ABA elected Edward F. Shea of Pasco, Washington to a one-year term as one of its delegates to the ABA House of Delegates and also elected William H. Neukom of Seattle, Washington to a two-year term as one of its delegates to the ABA House of Delegates.

Mr. Shea, a past Chairman of the Washington State Bar As-

sociation Young Lawyers Section, has served on the Executive Council of the ABA/Young Lawyers Division and is currently Chairman of the Board of Editors of *Barrister*. Mr. Neukom is the immediate past Chairman of the ABA/Young Lawyers Division and has served on its Executive Council, as well as the Executive Council of the Washington State Bar Association Young Lawyers Section.

Andrews Named to Fourth Term as Treasurer of American Bar Association

J. David Andrews, Seattle, has been elected to his fourth term as treasurer of the American Bar Association.

Andrews was named to another term by the 365-member policy-making House of Delegates during sessions of the Centennial meeting in New York City. He had been nominated during the mid-winter meeting in New Orleans by the 52 State Delegates to the House.

A native of Mattoon, Ill., Andrews received B.A. and J.D. degrees from the University of Illinois before moving to Seattle in 1960 where he joined the law firm of Perkins, Coie, Stone, Olsen and Williams.

Andrews, who has long been active in city and state bar work, served in the ABA's House of Delegates from 1967 to 1969 and became assistant treasurer in 1973, a post he held until moving up to treasurer in 1975.

As treasurer he monitors the ABA budget which totals more

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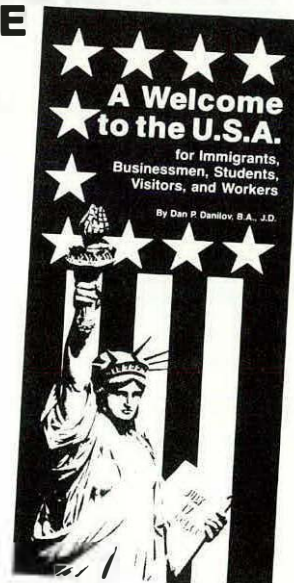
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than \$29 million annually.

He is on the ABA's 22-member Board of Governors, which acts for the House when it is not in session. Andrews is also on the boards of the ABA Fund for Public Education, American Bar Foundation, American Bar Journal, American Bar Retirement Association and the A-E-F Pension Plan.

Andrews is a Fellow of the American Bar Foundation and a member of the American Judicature Society and the ABA's Section of Labor Law. He was a member of the ABA Young Lawyers Section Executive Council in 1965-66.

Also active in civic and community affairs, Andrews is vice president of the Comish Institute and a member of the University of Puget Sound Law School Board of Visitors.

Seattle Attorney Named Chairperson of ABA Section of Individual Rights and Responsibilities

CHICAGO, Aug. 10 — Llewelyn G. Pritchard, Bellevue, has been named chairperson of the American Bar Association's Section of Individual Rights and Responsibilities.

The purpose of the section is to stimulate the legal profession's interest in timely issues and promote the public's understanding of individual rights.

Pritchard, who has been involved with ABA activities since 1967, is a partner in the Seattle law firm of Karr, Tuttle, Koch, Campbell, Mawer and Morrow.

Pritchard was a trustee of the

Seattle Public Defender Corporation from 1969 to 1971; a governor of the Washington State Bar Association from 1972-1975; chairperson of the association's Young Lawyer's Committee from 1970-1971, and a member of the association's Committee on Government and Structure from 1971-1972.

Peter W. Rule Appointed Pacificbank General Counsel

Peter W. Rule, vice president and legal counsel and head of Pacific National Bank of Washington's Law Department has been appointed general counsel, according to James A. Egly, senior vice president, Corporate Services.

C. Richard George was named senior counsel and David L. Williams, Daniel G. Denton, and Joan E. Robinson, counsel.

Seattle Attorney Appointed Chairman of ABA Committee on Legal Assistants

CHICAGO, Aug. 10 — Robert S. Mucklestone, Seattle, has been appointed chairman of the American Bar Association's Standing Committee on Legal Assistants.

The Standing Committee on Legal Assistants monitors all matters relating to the education, training and use of legal assist-

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- Department of Labor and Internal Revenue Service investigations
- Contested benefit claims

ants or paraprofessionals.

Mucklestone is a graduate of the University of Washington, from which he received an undergraduate degree in 1953 and a law degree in 1954. He is a member of the Seattle law firm of Perkins, Coie, Stone, Olsen and Williams.

Active in professional organizations, Mucklestone was chairman of the ABA Young Lawyers Section in 1964-1965, chairman of the ABA Committee on Economics of Law Practice in 1972-1974, and chairman of the Section of Economics of Law Practice in 1974-1975. He is a member of the Association's policy-making House of Delegates.

Half-Day Workshop on Interviewing Distraught Clients

Four hours C.L.E. credit will be given for a workshop led by counselors from Family and Child Service. Dawn Simon and Joe Kahle will lead a workshop to teach more effective skills for interviewing withdrawn, hostile, or volatile clients.

This seminar is for attorneys who work with adults and children in domestic disputes. It will focus on how to interview the client who is emotionally distraught, when the distress interferes with the attorney's ability to work in the client's best interest.

The workshop will be held in Room 2466 of the new Federal Office Building, 915-2nd Avenue, from 1 to 5 p.m. on Thursday, November 9th. The fee will

be \$25. To register call Family and Child Service, (206) 447-3883.

Reynolds Appointed Traffic Commissioner

Robert M. Reynolds, of Tacoma, has been appointed as Traffic Commissioner for District Court No. One, Pierce County, effective September 1, 1978.

This appointment is effected under grant funding provided by the Washington Traffic Safety Commission. The Commissioner's chambers will be located on the first floor of the County-City Building in conjunction with District Court No. One's Traffic Violations Bureau located in Rooms 137 and 138.

In Memoriam

Lawrence R. Bonneville Jr., 58, of Tacoma, died August 17. He was admitted to the Bar in 1947.

Hobart S. Dawson, 81, of Bellingham, died August 22. He was admitted to the Bar in 1928.

Guy Thomas Elliott, 33, of Tacoma, died September 16. He was admitted to the Bar in 1971.

Daniel Raymond Nolan, 38, of Seattle, died September 15. He was admitted to the Bar in 1970.

Jack W. Reynolds, 82, of Tacoma, died September 16. He was admitted to the Bar in 1921.

Marion Hay Weaver, 32, of Forks, died September 17. He was admitted to the Bar in 1972.



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CONTACT:

Ronald D. Flansburg, Esq.
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Olympia, Washington 98507
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D. Bruce Gardiner is available for advise and assistance to attorneys whose clients have legislative problems.

Mr. Gardiner has been a practicing lobbyist for 10 years, representing a wide variety of interests before local and state governments and is a member of the Washington Bar.

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John O. Durkan announces his availability to assist lawyers to guide clients through civil or fraud tax audits, to negotiate settlements or to prepare and try federal tax cases before the U.S. District Court or the U.S. Tax Court.

Mr. Durkan served seventeen years with the IRS as corporate auditor, review and trial attorney and as Assistant Appellate Counsel of the Seattle District. Member of Washington and Montana Bars.

John O. Durkan, Esq.

155 N.E. 100th, Suite 403
Seattle, Washington 98125
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Roger B. Ley announces that he wishes to associate with other lawyers and assist in the defense of OSHA, WISHA, MSHA and similar cases.

Mr. Ley was formerly an attorney with the Solicitor's Office, Department of the Interior, where he was assigned to MESA (now MSHA), the Federal agency which enforces laws related to occupational health and safety in mines. He was involved in the defense of litigation and in advising the Administrator on many legal issues which faced the agency.

Mr. Ley is now in private practice in Seattle, Washington.

Roger B. Ley, Esq.

715 Hoge Building
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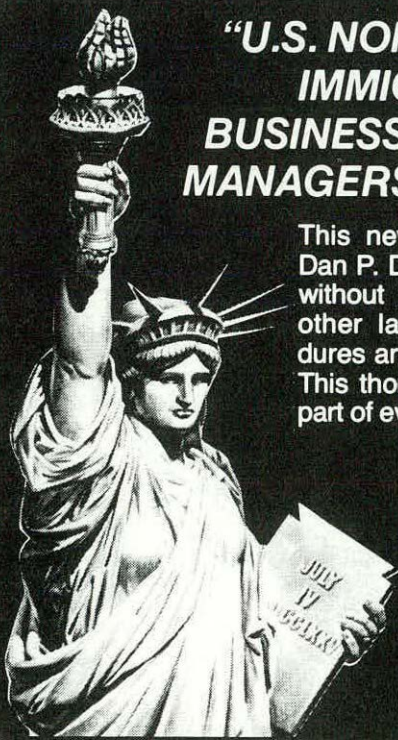
Wanted: Large Seattle law firm seeks attorney for Anchorage office presently staffed by three attorneys. Candidates must have excellent academic records, less than three years of experience, and a willingness to work initially on a variety of civil litigation and business law matters. Salary is negotiable, depending upon experience. All responses kept confidential. Send resumes to Box 13, WSBA.

Position Available: Spokane law firm has opening for associate attorney, emphasis on liti-

gation, experience preferred, salary negotiable. Submit resume to Underwood, Campbell, Brock & Cerutti, P.S., 820 Lincoln Building, Spokane, Washington 99201.

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- Nov. 16-17 **CLE Seminar: 23rd Estate Planning Seminar**, Seattle, Seattle Center, Two days, \$65.00
- Nov. 17 **CLE Seminar: Law for New Lawyers, Seattle Chapter, National Lawyers Guild**, Full day, Place as yet undetermined. Contact: Guild Office, 1206 Smith Tower, Seattle 98104 or call 624-5144
- Nov. 21 **CLE Seminar: Legal Problems of the Handicapped**, Davenport Hotel, Spokane, Washington, half day, \$25.00

Position Available: June 1979 with 4 man law firm, for June 1979 graduate or attorney with 1 to 3 years trial experience. P.O. Box 1967, Wenatchee, WA 98801.

Position Available: Applicants sought for position of Assistant Executive Director, Seattle-King County Bar Association — prospect of becoming Executive Director. Legal background preferred. Send resumes, Box HG, 320 Central Building, Seattle 98104.

Wanted: Staff attorney for recreational products manufacturer. Two to three years experience in products liability and general corporate practice required. Forward resumes to Box 17 % WSBA.

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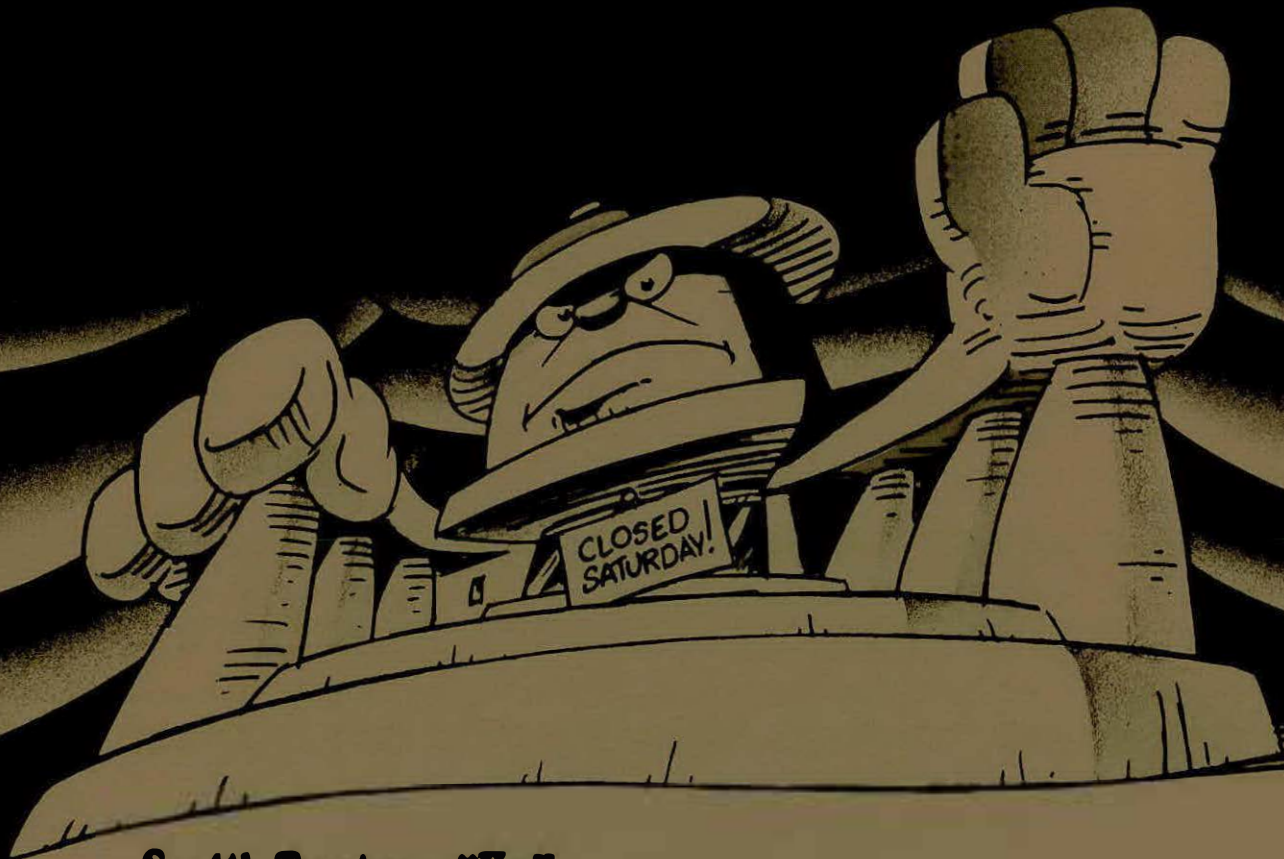
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