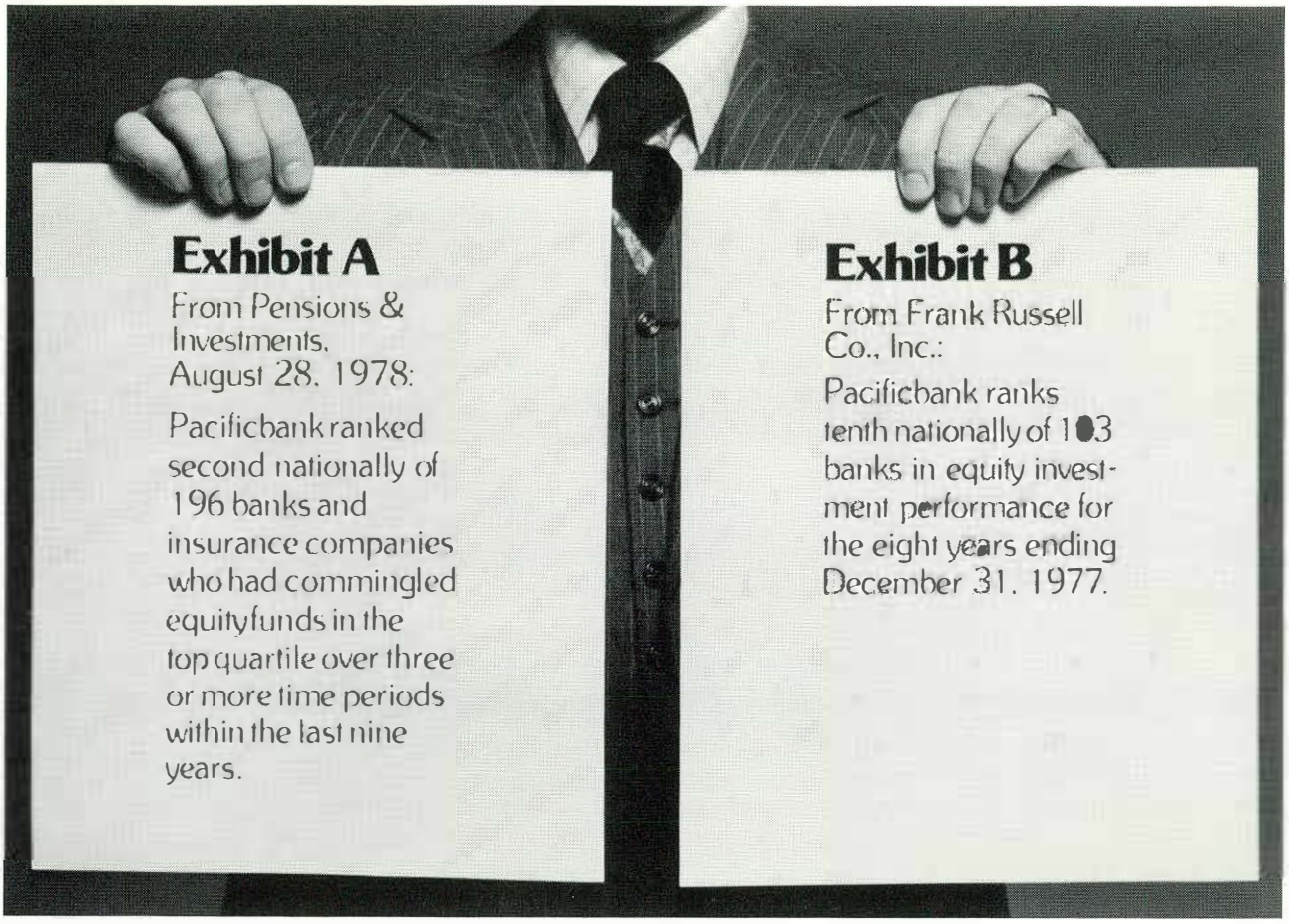
Volume 33, Number 2
February 1979

WASHINGTON STATE BAR NEWS

LAWYERS IN THE LEGISLATURE



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Volume 33, Number 2
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WASHINGTON STATE BAR NEWS

Published by

WASHINGTON STATE BAR ASSOCIATION
505 Madison Street Seattle, Washington 98104

Jay V. White, *Editor*

All editorial material, including editorial comment, appearing herein represents the views of the respective authors and does not necessarily carry the endorsement of the Association or of the Board of Governors.

Published monthly on the first day of the month. Deadline for editorial and classified advertising materials: 25th day of second preceding month.

Direct all correspondence and editorial copy to Washington State Bar News, State Bar Office, 505 Madison, Seattle 98104. Telephone: (206) 622-6054

Subscription price is $12.00 a year, $1.00 a copy. Subscription included with active membership. Back issues $1.00 per issue

Printed by United Graphics, Seattle

FEATURES

IN THE NEWS

DEPARTMENTS

Our Cover

The role of lawyers in the legislative process is the general subject of several articles in this issue. Pictured on the cover are the eight lawyers who serve in the state legislature. They are Sen. Philip A. Talmadge, Seattle, center right; Sen. Gordon L. Walgren, Bremerton, center left; and clockwise from upper left, Sen. George W. Clarke, Mercer Island; Sen. Daniel G. Marsh, Vancouver; Sen. Jeannette Hayner, Walla Walla; Sen. R. Ted Bottiger, Graham; Rep. Walt O. Knowles, Spokane; and Rep. Rick Smith, Silverdale.

Do Higher Salaries Really Inspire Judicial Competence?

Editor:

With all due respect to our President (President's Corner, *Bar News*, December, 1978) I am satisfied that his comment regarding judicial salaries merely constitutes an unfortunate repetition of an empirical assumption without scientific or statistical justification.

Actually, nothing in my experience would cause me to believe the higher salaries has any relation to judicial competence. The opposite may be closer to the truth.

It takes greater incentive than salary to make a good judge. Reduced to its essence, I believe it takes an individual who wants and believes himself capable of becoming a good judge for the satisfaction and reward inherent in that position notwithstanding limitations and sacrifices, including financial.

Unfortunately, I believe I have observed some tendency on the part of the less qualified lawyers to seek judicial appointment for financial reward—alone. The latest economic study of which I am aware (WSBA, 1974) indicated that few lawyers, whether categorized by average, median, average after 15 years of practice or average, over 35 years of age, earned any significant amount more than the then superior court judges salary.

I would, therefore, suspect that even today and assuming a reasonable inflationary factor (to which I can't personally attest) the great majority of experienced lawyers are probably earning less than $45,000.00. A salary reduction to $39,000.00 with a specific pension format could, therefore, look vary attractive to many harried lawyers.

In view of the political nature of our judicial appointments, I therefore question whether increased judicial salary is even capable of producing the result which is urged in justification.

Frankly—in whimsey—I am inclined to offer less—and get the best.

LAWRENCE M. ROSS

Tacoma

Re Supreme Court Issue Summaries

Editor:

In format and content, the listing of issues pending in the Supreme Court is somewhat more useful than those previously published in the *Bar News*. Making full use of the information contained in the listing presents several practical problems. If such a list is a good idea for issues pending in the Supreme Court, why not similar lists of issues pending in the Courts of Appeal?

Even if a lawyer would scan the lists as published, he may or may not remember the cases in which he is interested. But what about issues pending in which he later becomes interested?

To attempt to solve this problem in connection with the former lists we cut and pasted and filed each listing first by Supreme Court Docket number. As the advance sheets were received we would then check the case off as a decision was handed down. This required considerable time and was frustrating because some of the cases were never decided; so the cutting and pasting was discontinued.

Later we tried filing the cases under subject matters, but this made it difficult to follow up later to discover whether the case had been decided.

Obviously no legal research should be considered complete until a check has been made of decisions filed but awaiting publication, but also should include a check of issues pending in our appellate courts.

I suggest that the *Bar News* listing is helpful, but full information will not be available until the clerk's office provides a computer retrieval system for all issues pending in our appellate courts.

DAN REAUGH

Seattle

Editor's Page

The Vanishing Lawyer Legislator

One of the most moving portraits of North American Indian life photographed by Edward S. Curtis in the early 1900s is entitled, "The Vanishing Race." It depicts a line of Navahos on horseback who — in Curtis' words — "already shorn of their tribal strength and stripped of their primitive dress, are passing into the darkness of an unknown future."

If Curtis were alive today to photograph the vanishing lawyer legislator, what would be his vision? A line of cars driven by lawyers at 55 mph, passing north of Olympia on I-5 into the darkness of Tacoma?

In the July, 1974, *Bar News,* then Senator Martin J. Durkan wrote, "The number of attorneys serving in the legislature has been declining, and their collective professional influence on the decision making process has declined commensurately." At that time, there were 17 lawyers in the Senate and 10 in the House. Today, there are 6 in the Senate and 2 in the House.

* * *

Let me pause a moment with that fact in mind—and add a page or two to the Editor's Page — in order to give you brief portraits of who in the Legislature happens to be a lawyer.

First, the House:

Rep. Walt O. Knowles. Democrat, Spokane, elected in 1970, and now serving his fifth term. Graduate of Eastern Washington State College and Gonzaga Law School. Practiced law for many years in Spokane. A member of the House Judiciary

Rep. Walt O. Knowles

Committee, he served six years as chairman. Democratic Whip. Member of Judicial Council, Statute Law Committee, and the Rules and Financial Institutions committees.

Rep. Rick Smith. Democrat, Silverdale, elected in 1972. Graduate of University of Washington and American University Law School. Former legislative assistant to then Congressman Floyd V. Hicks. Law practice: Smith, Redman & O'Hare.

Rep. Rick Smith

Serves on the House Judiciary Committee and also is a member of the Natural Resources and Revenue committees.

And now the Senate.

Sen. Gordon Walgren. Democrat, Bremerton, elected to the House in 1966 and the Senate in 1968. Graduate of the University of Washington and of that university's law school. Law clerk to then Chief Justice Matthew W. Hill, state Supreme Court (1957). Kitsap County Pros-

Sen. Gordon Walgren

ecuting Attorney (1958-62). Bremerton City Attorney since 1969. Law practice: Walgren, Sexton & McCluskey, Inc. P.S. Senate Majority Leader. Vice Chairman, National Conference of State Legislators Committee on Financial Institutions. Member, Washington Municipal Research Council. (In this issue of the *Bar News,* Senator Walgren offers his views on the role — and need — for lawyer legislators.)

Sen. Daniel G. Marsh. Democrat, Vancouver, elected to the House in

1964 and the Senate in 1972. Graduate of Willamette University and

Sen. Daniel G. Marsh

the University of Oregon Law School. Law practice: Landerholm, Memovich, Lansverk, Whitesides, Marsh, Morse and Wilkinson. Chairman, Senate Judiciary Committee. Chairman, Judiciary Committee, Western Council of State Governments. Member, Ways and Means and Constitution and Elections committees.

Sen. R. Ted Bottiger. Democrat, Graham, elected to House in 1964 and the Senate in 1972. Graduate of University of Washington Law School. Assistant Attorney General (1960-64), and now practices law in Tacoma. Chairman, Ad Hoc Com-

Sen. R. Ted Bottiger

mittee for Pacific Northwest Energy. Member, National Conference of State Legislators Energy Committee. Chairman, Western Conference of the Council of State Governments. Chairman, Senate Energy and Utilities Committee. Member Judiciary and Constitution and Elections committees.

Sen. George W. Clarke. Republican, Mercer Island, elected to House in 1966 and the Senate in 1970. Graduate of University of Washington Law School. Served as General Manager, Washington Surveying and Rating Bureau (1957-71). Law practice: Clarke & Bovingdon, Seattle. Chairman, House Judiciary Committee, 1969-70. Minority Floor Leader. Serves on Rules, Ways & Means, Judiciary, and Financial

Sen. George W. Clarke

Institutions committees. Member, Legislative Budget Committee, Statute Law Committee, and Judicial Council.

Sen. Jeannette Hayner. Republican, Walla Walla, elected to House in 1972 and the Senate in 1976. Graduate University of Oregon Law School. Member Oregon State Bar Association. Staff attorney, Bonneville Power Administration, 1943-46. Elected to Board of Directors of Standard Insurance Company, 1974. Active civic leader; received Award of Merit, Walla Walla Chamber of Commerce, 1970. Member Judicial Council, Nuclear Energy Council, Washington State Conservation Commission, and four Senate committees.

Sen. Jeannette Hayner

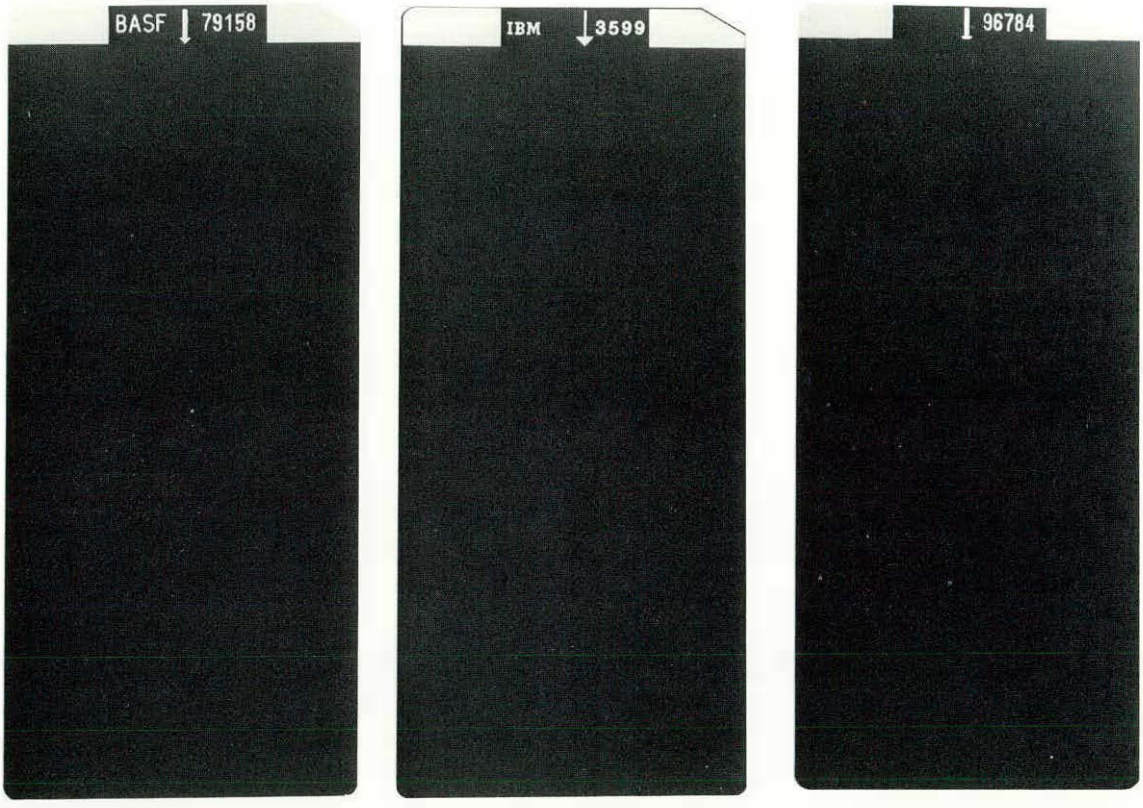
Sen. Phil Talmadge. Democrat, Seattle, elected to Senate in 1978. Graduate of Yale University (magna cum laude) and University of Washington Law School. Active in Common Cause, the Citizen's Legislative Reform Convention, and other civic groups. Author of articles on legisla-

Sen. Phil Talmadge

tive reform; recently cited for his writing by the Smithsonian Institution. Law practice: Karr, Tuttle, Koch, Campbell, Mawer & Morrow.

* * *

In an article published in last month's *Seattle Business* magazine (reprinted in this issue of the *Bar*



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News), reporter David Horsey highlights the sharp decline in the number of lawyer legislators over the past two decades and comments about the changing "mix" of people serving in the legislature: "Changes in the mix have a subtle, yet profound, effect on the way the state is run."

My own reading of Horsey's article is that the phenomenon of the vanishing lawyer legislator has a significance far beyond its impact upon any "special interest" that an individual lawyer legislator might represent. Aside from the impact of public disclosure requirements and what Durkan in 1974 called the "lessening of the 'mystique' of the legal profession ... the idea that an attorney is especially equipped to be a legislator" (Watergate didn't help), lawyers have been leaving the legislature for the same reasons that a lot of other people have left: low pay, long hours, and a decline in the prestige associated with legislative service. What is at stake is the whole idea of what Horsey describes as the "part-time, citizen legislature as the most democratic way of doing the government's business." In this regard, Senator Walgren's article in this issue is especially pertinent.

Why is it so important that lawyers be part of this "citizen legislature"? After all, as then Bar Association President Edward J. Novack wrote in the *Bar News* in December, 1977, "The fact is, however, that the legislature has operated for several years with lawyers a minority part of the membership, and state government has not yet ground to a halt."

Nevertheless, Novack offered these reasons for lawyer participation in the legislative process:

"It has to follow that in the conduct of a government of laws, the involvement of more legally trained minds will produce more pertinent, more understandable, more efficient, more workable and less ambiguous legislation for the public good. Lawyers are needed not to make the legislative process work, but to make it work *better*.

"Lawyers are needed badly in the legislature also due to the sweeping pressures for social change that have become a vital part of every legislative session recently. We can and should become involved in these important decisions; they are setting precedents that will affect the lifestyle of every citizen dramatically in the future."

Horsey's article suggests that the departure of lawyers from the legislature has resulted in an increased dependence by many legislators upon a professional staff. This may be seen as part of the trend away from the "citizen legislature": although some on the legislative staff are lawyers, they do not face the voters.

Elsewhere in this issue, the bar association's legislative representative, William A. Gissberg — who served as a state Senator for 21 years — describes "official positions" taken by the Board of Governors on proposed legislation. He also criticizes legislative efforts to regulate the legal profession as not necessary to serve the public interest, emphasizing the "diligent and uncompromising regulation of our profession by the Supreme Court and the bar association."

One may hope that the majority of lawyer and non-lawyer legislators will continue to view legislative intervention into the regulation of lawyers as being, in Gissberg's words, "contrary to the basic philosophy that government should do only the things which people cannot do for themselves." At the same time, however, lawyer legislators — just as non-lawyer legislators — cannot be expected to vote as a "bloc" in favor of the bar association's "official positions" on other matters.

It should come as no surprise that eight lawyers, albeit legislators, cannot agree on everything. Many of the "official positions" are controversial. They do not all have the unanimous support of the Board of Governors, any more than they enjoy the unanimous support of this state's 9,000 lawyers. They do, however, represent the considered opinion of the bar's elected representatives. And, as President Hoff observed in last month's *Bar News:*

"The record shows that an overwhelming majority of the legislation sponsored and supported by the Washington State Bar Association in previous legislative sessions has not been directed towards the self-interest of lawyers ... but has rather been directed towards law reform and changes in the law and the legal system to benefit the public generally."

The merit of bar association "official positions", however, is not the important point. What is basic to our system of government is citizen participation in the legislative process, by lawyers and non-lawyers alike. It would be ironic if lawyers — who by training represent the interests of others — were to drop out of our system of representative government because it is inconvenient.

Lawyers have always been on the cutting edge of change, the messengers of rights in conflict. In a broad sense, every legislator is a lawyer — up front, a common target for pundits, poets, preachers, and the public in general. As legislators, lawyers can bring a unique perspective born of their daily experience with the effect of public laws upon private lives. If we are to have a citizen legislature, then participation by lawyers as legislators is no less important than participation by other citizens with different, but equally unique, perspectives.

All legislators deserve our support and our criticism. If we as citizens ignore them, then lawyer legislators will not be the only type of legislators who will vanish.

JVW

State Bar Members to Receive 28% Discount On Avis Car Rentals

As a special service to the members of the Washington State Bar Association, an arrangement has been concluded between the WSBA and the Avis Rental Car Company under which all State Bar members will receive a 28% discount on all Avis Normal Time and Mileage rates.

The discount applies in all 50 states and 100 countries around the world, wherever Avis has rental facilities. The Avis system serves over 3,300 locations in 1,700 cities throughout the world, including approximately 1,250 airport locations. Avis offices are fully staffed 24 hours a day, seven days a week.

Every active member of the WSBA will be receiving (or should have just received) a mailing explaining the details and an identification sticker to be placed on a major credit card or your State Bar membership card. This sticker will entitle you to the 28% discount, immediate qualification for rental, waiver of a cash deposit, and direct billing to either your office or home.

The State Bar takes pleasure in providing this exclusive, added service to its membership.

Attorneys' Fees to the Prevailing Party?

All of us who try cases are well aware of the common dilemma of the successful litigant who finds the fruits of success seriously eroded by the costs of achieving that success. There are three basic situations which currently exist under Washington law that enable a successful litigant to collect attorneys' fees as part of the damage award. Those situations are basically:

1. When it is provided for by contract;
2. When it is specifically provided by statute; and
3. When the act of the defendant has caused the plaintiff to become involved in litigation with a third party.

Senator Phil Talmadge (one of our few lawyer legislators) has proposed Senate Bill No. 2043 which would have the effect of changing the existing law by providing in part as follows:

> "Notwithstanding any other provision of Chapter 4.84 RCW and RCW 12.20.060, in any action for damages a reasonable amount to be fixed by the Court as attorneys' fees shall be taxed and allowed to the prevailing party, as defined in RCW 4.84.260 and 4.84.270, as a part of the costs of the action".

The whole concept of allowing attorneys' fees in all actions for damages would certainly have a substantial effect on the way we lawyers would advise clients contemplating litigation. The net effect is that if the plaintiff wins, he wins "big", but if he loses, he has paid a much higher price for his day in court. It is an open question as to whether such a statute would encourage or discourage litigation and I am sure that there is no dearth of opinions on either side of that issue. There is also a considerable body of legal opinion to the effect that such legislation encourages settlement and another substantial body of legal opinion to the effect that such legislation discourages settlement.

I suppose that the "bottom line" is that the clients who are risk-takers will be more inclined to take the risks of litigation and the clients who are more conservative will be more frightened to take the risks of litigation.

At some point in the legislative process, the Bar Association will be asked for its opinion on this legislation. It would be helpful to the members of the Board of Governors to have the benefit of your thoughts.

Are We Heading for a Lawyer-Less Legislature?

The Lawyer Legislator- Requiem or Resurgence

By **GORDON L. WALGREN**

The convening of the 46th Regular Session of the Washington State Legislature on January 8, 1979 was accompanied by considerable concern on the part of the Bar and the public generally over the diminishing population of lawyers elected to serve in the Legislature, and the effect this loss must have on the quality of the legislation which will be enacted.

I am pleased that, in this issue, the *Bar News* is devoting considerable space to the subject of the Legislature, and I welcome this opportunity to convey my perspective on some basic directions the Legislature as an institution of government is taking and my thoughts on the ramifications of the apparently fading presence of the lawyer legislator.

In 1969, during my first term in the State Senate, 17 out of the 49 members of the Senate and 16 of the 98 members of the House listed their occupation as lawyer. When the 46th Regular Session of the Legislature convened 10 years later, six lawyers remained in the Senate, while only two lawyer legislators remained in the House. The composition of the Judiciary Committees in the House and Senate illustrate even more dramatically the demise of the lawyer legislator. Today, the Senate is able to count only four lawyers among the nine-member Senate Judiciary Committee, including the Chairman and Vice-Chairman. In the House, however, lawyer membership on their eight-member committee has dwindled to two. As a result of the 49-49 party split in House membership, Representative Irving Newhouse (R-Yakima), a non-lawyer, has been designated Chairman. In saying this, I certainly do not intend to denigrate the experience and qualifications of those elected to the Legislature who come from occupational backgrounds not characterized by legal training. I wish only to assert that a certain amount of expertise in the law, which can only be provided by those trained in the law, is essential to protect the public interest in the enactment of complex bills affecting criminal and civil laws and the operation of the judicial branch.

Nor, do I wish to sound the alarm too loudly by looking back ten years. There was, in the past, valid criticism which cited domination of the Legislature by members of the legal profession. Nonetheless, there are clear advantages to having the legal profession well-represented in the Legislature. Such advantages cannot be obtained by relying on the technical assistance of legislative staff counsel, lawyer-lobbyists, or on the input of the organized Bar. Reliance on these other sources of legal expertise can only partially compensate for the absence of sufficient numbers of lawyers participating as voting members in the preparation, amendment, and final passage of many of the complex bills which come before the State Legislature.

The report to members of the Bar issued by the Senate Judiciary Committee at the close of the 1977 session enumerated 40 chapter laws of significance to legal practitioners, ranging in complexity from relatively minor amendments of existing civil and criminal statutes to enactment of a new death penalty law, a new juvenile code, and numerous probate code amendments.

State Senator Gordon Walgren, a member of the legislature since his election to the House in 1966, is Senate Majority Leader. He is a member of the Washington Bar, practising in Bremerton.

Obviously, the participation of lawyers in the legislative process has importance far beyond the immediate impact on the practice of law. The careful scrutiny by those best trained and best able to understand what is being contemplated by a bill, because of their legal training and experience, is simply an indispensable ingredient in the legislative process if technically sound legislation is to be enacted and bad legislation ferreted out.

With such realizations in mind I am somewhat uneasy over the prospect that this session will witness statutes relating to such technical legal subjects as the corporation act, probate code, inheritance, products liability, and others relating to the daily lives of our residents being prepared and enacted with minimal participation by members trained in the law.

To explain this unfortunate circumstance, I think one can look primarily to two causes. First, but not foremost, I believe numerous lawyer legislators and lawyers contemplating legislative races have been discouraged by the stringent requirements of the Public Disclosure Laws. In larger firms particularly, senior partners have found the requirement for disclosure of the firm's clients sufficiently troublesome that other members of the firm simply have not been able to contemplate running for public office. Although disclosure requirements may constitute a real dampening factor, I should also say that I believe this argument is frequently overemphasized.

The principal reason I would cite for decreasing participation by members of the Bar in the legislative process is the escalating demands legislative service has placed on members over the last ten years. With the exception of 1978, annual sessions have been the rule since 1969, and they seem to have become progressively longer in duration.

Together with annual sessions, the legislature has been wrestling with what has been called "the continuing legislature" concept. In 1972, the State Supreme Court ruled in *State ex rel Distilled Spirits Institute v. Kinnear,* 80 Wn. 2d 175, that the 60 day limitation on sessions of the legislature contained in Section 12 of the state constitution does not limit special sessions. This opened the way for the concept of the continuing legislature, and special sessions lengthened because of the opportunity to recess special sessions and reconvene them throughout the biennium until the next regular session was authorized.

Among the other changes effected by the House and Senate leadership during these years were the elimination of the Interim Committees under which the Legislature had previously functioned when out of session and the continuation of the standing committees of both houses into the interim. A practice also evolved, more so in the House than in the Senate, of holding regular weekend meetings of the legislative committees in Olympia every other month during the interim. The total effect of this "continuing legislature" concept has been to increase the responsibilities of legislative members, not only during the more frequent and longer sessions, but throughout the entire calendar year. For practicing attorneys, the effects of the "continuing legislature" concept have been pronounced, especially on the sole practitioner or small partnership. Extended absences from the law office on legislative business necessarily detract from the practice and create a source of conflict between the lawyer legislator and other firm members.

Since being elected Majority Leader in 1975, I have attempted, insofar as the Senate is concerned, to promote a method of operation which permits retention of the citizen legislature, as opposed to the full-time professional legislature which Washington has appeared headed for. Although proposals to go to a full-time professional legislature, reduced in membership, appeared to be gaining public acceptance in recent years — because of the theory that a more efficient and less expensive legislative forum might result — I now believe that the tide has turned against such proposals.

Even with fewer legislators, higher salaries would result in higher costs, as has been the case in other states which have authorized full-time legislatures. Increases

would not be limited to members but would also involve considerable additional expense for staff compensation. More importantly, I believe making the Legislature full-time would eliminate some of our better legislators, who simply would find themselves unable to embrace a truly full-time commitment, even if paid a reasonable salary for their services. In addition, reducing the size of the Legislature would tend to concentrate legislative power in such a manner as to deprive some rural and small urban areas of effective representation. For all these reasons, I do not regard creating a full-time legislature as good public policy.

In order to continue to make the citizen legislature concept workable, the Senate has cut back on the number of weekend meetings in Olympia. Regular weekend meetings have tended to result in meetings whether there was a necessity for them or not. Meetings should not only be held when they are needed, but also where they are needed. For many subjects of legislative interest, locales other than Olympia better fulfill the purpose of the meeting and increase public participation in the proceedings. The Senate, therefore, has encouraged chairpersons to hold meetings as needed and where needed, rather than on a regular weekend schedule in Olympia.

A further improvement I am hopeful for is a constitutional amendment authorizing limited annual sessions, which I have again introduced in this session. Should such an amendment ultimately pass, annual sessions would be required in odd-numbered years but would be limited to 120 days. In even-numbered years, a session would be convened only upon the affirmative vote of a majority of the membership in each house and would then be limited to 60 days. Special sessions, strictly limited to 30 days could only be convened under the amendment by a two-thirds vote of each house.

I should also note that increased reliance on professional legislative staff has ameliorated the impact of annual legislative sessions and a more active interim Legislature. Such staff has enhanced the efficiency of the legislative process and the quality of legislative enactments.

Taken in their entirety, these methods of maintaining the viability of the citizen legislature, if followed, should minimize the hardship to the practicing attorney of service in the State Legislature. Assuming that service in the Legislature can be made more manageable, I am hopeful for a resurgence in interest and a renewed commitment from members of the Bar to public service in the State Legislature. Such participation is one of the cornerstones of our democracy and lawyer legislators are a crucial ingredient in the diverse representation necessary to successful representative government. □

Your Involvement Is Needed

Legislative Proposals of Interest to the Bar

By **WILLIAM A. GISSBERG**

WSBA Legislative Representative

The first reference point for any lawyer practicing law in our state should be a search for statutory treatment of any given subject in the Revised Code of Washington. Obviously, then, the Bar will have a substantial interest in the product of the 46th Session of the Washington State Legislature which convened on January 8. That interest is reflected in the policy of the Board of Governors of taking "official positions" upon certain pending legislative proposals and bills and thus directing my efforts as the Bar lobbyist.

In taking positions upon legislation, the Board usually is guided by the recommendations of its Legislative Committee and/or one of the other standing committees or sections of the Bar.

As of December, 1978, the Bar's lobbyist had been instructed to work toward the accomplishment of the following positions:

1. Support the increase of inheritance and gift tax exemptions and revisions of those statutes.
2. Sponsor comprehensive technical revisions in the corporate code.
3. Sponsor and support increases in the jurisdictional amounts of District Courts to $3,000 in 1979; $5,000 in 1981; and $7,500 in 1983.
4. Support the requirement that District Courts create a record for purposes of appeal and limit the right of appeal to Superior Court with further appeal to the Court of Appeals by discretionary writ only.
5. Support an increase of the jurisdictional amount for small claims departments of District Courts to $500.
6. Support compulsory arbitration of Superior Court civil cases under $10,000 in those counties opting for such.
7. Support an increase in the appropriation of state funds to pay attorney fees in the representation of indigent criminal appeals.
8. Sponsor "housekeeping" amendments to the criminal code in such areas as excusable homicide, assault, malicious mischief, trespass and unlawful issuance of bank checks.
9. Sponsor a constitutional amendment removing the present limitation of three court commissioners in each county and clarify, by statute, their authority to hear and determine ex parte and uncontested civil matters of any nature.
10. Sponsor legislation allowing professional associations to become self-insurers against malpractice claims against its members.
11. Oppose no-fault insurance.
12. Oppose extension of sales tax to services not now covered, i.e., attorney fees.

13. Oppose proposed executive request legislation which would require Washington to issue an occupational or professional license to any person so licensed by a foreign state.
14. Oppose the state auditor's proposed constitutional amendment which would subject the Washington State Bar Association to state audit for compliance with constitutional, legal and accounting standards as to all accounts maintained and all funds received, disbursed or in its possession.
15. Oppose extending immunity for malpractice to representatives of indigents.
16. Oppose lay persons on the Board of Governors of the Washington State Bar Association.
17. Support or oppose products liability and related tort legislation proposals as reported in the December, 1978 issue of the *Bar News*.
18. Oppose amendments proposed by the health care industry to reduce the statute of limitations for health care malpractice actions in all cases from three to two years except: (a) in the case of a child under age six, in which event the action must be commenced before the child reaches the age of eight; (b) for foreign objects left in the body, one year from the time of discovery.
19. Oppose health care industry proposal which would bar any health care malpractice suit in which the plaintiff has not first served on the defendant a 90-day notice of intent to file the action.
20. Oppose health care industry proposal which requires that the court shall, in any health care malpractice action, determine that a contingency fee shall in no event exceed 50% of the first $1,000 of the "net amount" settled or recovered; 40% of the next $2,000; 33⅓% of the next $47,000; 20% of the next $50,000 and 10% of any amount over $100,000.
21. Oppose health care industry proposal which would amend the statutory collateral source rule of RCW 7.70.080 so as to also allow the defendant to present evidence that the patient "can reasonably expect compensation in the future."
22. Oppose health care industry proposal requiring that agreements between plaintiff and one or more defendants regarding damages in any civil action, including covenants not to execute or enforce judgments, be approved by the court and the jury informed thereof.

William A. Gissberg is the bar association's legislative representative. He was a state Senator for 21 years (1952-72), serving terms as Chairman, Senate Judiciary Committee; President Pro-Tem of the Senate; member of the Statute Law Committee; and Vice Chairman, Legislative Council. He is a 1949 graduate of the University of Washington Law School and actively practiced law for 24 years (1949-73) in Everett and Marysville.

In addition, the legislative committee of the Bar has recommended that the Board of Governors oppose a potential executive request bill which would grant immunity to the state, municipal corporations and their governmental employees on claims for damages arising out of: (a) the issuance or denial of any permit, license, variance, zoning or similar authorization; (b) inspections which are made for the purpose of determining compliance with any statute, ordinance or rule; (c) the design of highways, roads, streets and sidewalks.

There will be many other bills introduced which will not only affect the practice of law in this state but also seek to regulate lawyers and the Bar Association as such. The lobbying effort both for and against such regulatory proposals will be vigorous by all interested parties. Too few in the legislature, however, are aware of the diligent and uncompromising regulation of our profession by the Supreme Court and the Bar Association. Most legislators are not aware of the fact that the Bar Association, at no expense to the state, performs a valuable and necessary public service in administering sophisticated programs in the areas of admission, licensing and discipline of lawyers, continuing legal education and the client indemnity fund.

In order to successfully defeat attacks before the legislature upon the integrated Bar of this state it is absolutely imperative that lawyers make known to their legislators not only the effective regulatory activities of our association, but also the fact that governmental intervention in these matters would be contrary to the basic philosophy that government should do only the things which people cannot do for themselves. At a time when all of us seem to bemoan the fact that too many state agencies have been created and that an expanding bureaucracy stifles self-improvement and creates an unwarranted expenditure of public funds, your effort to extoll the effectiveness of the Bar programs would be most helpful and vital when communicated to the representatives and senator of your legislative district. Simply stated, it is not enough, nor is it reasonable, to expect that the Bar's lobbyist can be successful alone.

With your help we can succeed; without it, the issue is in doubt. □

Same Pot. Different Cooks.

Another Legislative Session

Back in New York in 1866, a wise old fox shrewdly noted that "no man's life, liberty or property are safe while the legislature is in session." That may be truer now than ever, as Washington's nearly lawyer-less band of part-time, citizen legislators gears up for the state's 46th go at the business of government.

by **DAVID HORSEY**

Imagine the Washington State Legislature as a simmering pot of hot beef stew.

You've got hefty chunks of beef, hunks of potatoes, slices of carrots and celery, a few tasty onions, salt, pepper, an assortment of spices—all the elements that should add up to a good meal. But depending on how much of which ingredient you toss in the bucket, you can come up with a gastronomical delight or a culinary disaster.

With the legislature, your carrot and onions and other morsels become lawyers and doctors, teachers and governmental workers, housewives and farmers, businessmen and labor leaders. Since 1889, the types of people tossed in the Olympia stew have not changed that much. But the particular mix has been altered every two years as voters cast about for the right recipe.

Changes in the mix have a subtle, yet profound, effect on the way the state is run. The changes from the 45th to this year's 46th legislature continue a pattern that has been developing for a decade, a pattern that is giving more than a few legislative observers a bad case of heartburn.

A study of shifts in the professional makeup of the House and Senate and interviews with legislative experts indicate:

- Lawyers are continuing to drop out of the legislature, meaning the lawmakers are less and less able to assess the shortcomings of the laws they pass.
- New members are, more often than not, coming from the business world, particularly from large corporations.
- The professional staff of lawyers and researchers which backs up the lawmakers continues to grow in size and influence, much to the chagrin of those who distrust the wisdom of nonelected experts.

Those who look on the bright side of the issue see the exit of attorneys as a sign that a more socially diverse legislature has developed. They consider the growth in staff to be an indication that lawmakers are now able to stand on an equal footing with the executive branch of government.

Those with a dim outlook say the lack of legal expertise leads to bad law and increased reliance on a gang of young staffers whose allegiance is not to the folks back home but to the perpetuation of their own jobs.

The collective wisdom of those who voted on Nov. 7 gave us a House and Senate significantly different from those of the 1960s. The trends were the same in both houses:

- Attorneys, who in 1963 accounted for 20 of the 49 senators, today number just six. In the House, the ratio is even more dramatic. Where in 1963 there were 16 lawyers, today there are just two out of 98 members—and one of them is retired.
- Legislators who could be generally described as citizens of the business world now make up more than a third of all lawmakers. Though that share is only a few seats larger than in many past years, there has been a significant shift within the business grouping. Fewer small-business owners are running for office while many

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This article was first published in the January, 1979 issue of ***Seattle Business*** *magazine. It has been reprinted with permission.*

more legislators are employees of major corporations, such as **Boeing** and **Pacific Northwest Bell.** Eight lawmakers, seven in the House and one in the Senate, are on the Boeing payroll.

- Lawmakers who are labor union officials number only five in the House, a drop of one from the last roster. The Senate has none, though **Larry Vognild,** the retired firefighter who toppled former **Sen. August Mardesich** in the Everett Democratic primary, is a former union leader.
- Despite much talk about the growing horde of teachers and public employees in office, their share of votes is still modest and is not significantly greater than before the election. There is one more educator in the House, for a total of 12 members in education-related fields, and two in the Senate. Only five of the 14 are classroom teachers. There are little more than a half dozen other public employees in the legislature.
- There are more homemakers than before; five in the Senate, up from zero last time.
- Farmers, including agribusinessmen, have remained stable at 11.

When **Martin Durkan** looks at this new mix, he is less than delighted. Even in the days when he was master of the state budget—before he bailed out of the Senate in 1974—he was decrying the loss of legal expertise in Olympia.

In a July 1974 article in the *Washington State Bar News,* Durkan pleaded with his fellow lawyers to encourage members of their profession to get back into the legislature. That was when there were still 17 lawyers in the Senate and 10 in the House.

Now, though he shuns the role of legislative critic, he says the nearly lawyer-less legislature has become inept at drafting legislation. *"It's a lawyer's dream,"* Durkan says. *"There is a 1,000 percent better chance to challenge the constitutionality of a bill."*

The new juvenile code drafted by the last legislature is a mess, says Durkan, and a new nursing homes fraud bill is filled with unconstitutional quirks.

David Horsey is the state government reporter for the Longview Publishing Co. newspapers; the *Daily Journal-American* (Bellevue), the *Daily News* (Longview) and the *Daily News* (Port Angeles). He also syndicates a weekly column and political cartoon.

Aberdeen attorney **Bob Charette,** one of the last, best legal minds in the House, finally threw in the towel this year after 16 years in the legislature. Trying to be kind to his former colleagues, he prefers to refer to the current legislative product as *"less good law"* rather than bad law.

Axel Julin, a Bellevue attorney who pulled out of the House in 1975, was Democratic Charette's counterpart—in terms of legal wit and wisdom—in the Republican Caucus. He shares Charette and Durkan's assessment that bill drafting is becoming a lost art.

Lacking legal expertise, the present legislators allow too many half-baked amendments to be tacked onto bills and let subtle and ultimately troublesome sections of bills slip by unchallenged, Julin says. Since lobbyists now are often the only ones who notice the little details that are likely to cause problems, the lobbyists' role in Olympia has become much more important and influential, he says.

Current members of the House and Senate, as might be expected, are not as worried about the laws they are churning out. Though aware of the criticisms, they insist their legislation is really no worse than in the past when lawyers ran the show.

But, though he, too, disagrees with critics of the current legislature, **Democratic House Speaker John Bagnariol** believes two lawyers in the House is too few. *"When Julin and Charette were there and they could agree on what a bill said, you knew it was alright,"* Bagnariol says. *"I'd like to see more lawyers around to read bills."*

Where have all the lawyers gone?

FACT SHEET

WHO:	Gonzaga University Student Bar Association
WHAT:	Sponsoring a Public Sector Labor Law Conference
WHERE:	The Davenport Hotel, Spokane, Washington
WHEN:	March 9-10, 1979
HOW:	With the cooperation and support of the Gonzaga University School of Law and the American Bar Association/Law School Division.
WHY:	To bring to the Pacific Northwest legal community a familiarization with the legal aspects of organized public employment.

For additional information and brochure, contact:

Public Sector Labor Law Conference
Gonzaga Student Bar Association
Gonzaga University School of Law
P.O. Box 3528
Spokane, Washington 99220
(509) 326-5310

New public disclosure requirements that meant attorneys in the legislature had to tell the names of their clients and their partners' clients drove some out. Even more, however, the longer and longer sessions became an increasing burden on men who were trying to maintain successful practices.

Durkan says a changing attitude in many law firms contributed to the exodus, as well. Service in the legislature started to mean more headaches while the prestige of having a lawyer-legislator in a firm diminished. Clients became less enamored of lawyer-legislators, too, as they found their names dragged into political controversies.

Now, a young lawyer should keep any intentions of jumping into politics secret if he hopes to get a job with a good law office, Durkan says.

Charette adds that when the lawyers left—largely men from small firms scattered around the state—a key voice for small-business interests went silent. *"Lawyers from small firms are the true small-business men,"* Charette says. In their place, and in the place of other small-business men who have left the legislative ranks, are a number of corporate employees.

"Corporate business people just don't have the same outlook as the small-business man," Charette says. *"They don't balance the voice of the teachers and public employees in the same way."*

Mercer Island legislator **Bill Polk,** chairman of the House Republican Caucus, agrees. *"The people from corporations have a different understanding of business that is widely divergent from the small-business view,"* he says. *"The corporate outlook is not that different from a governmental outlook."*

So far, the rise of the corporate minds—who look much more favorably upon expert advice and sophisticated systems to solve problems than do small entrepreneurs—apparently has had little effect on the kind of legislation passed. In fact, most legislative observers seem to agree that all the changes in the professional mix of the legislature have not significantly altered the substance of legislation considered and passed in Olympia.

The big change to which nearly everyone alludes is the growth of the legislative bureaucracy.

"The most significant story of the last 10 years is how the legislature has become bureaucratized," says **State Supreme Court Judge James Dolliver.** Dolliver has observed this development, both from the court, and as a former Governor Dan Evans' chief aide for 12 years.

The growth in staff has made the legislative process more complex, Dolliver says. In his early years with Evans, Dolliver remembers appearing alone before legislative committees to give the governor's views. By Evans' third term, however, the governor's staff had learned to take along their own batch of experts to match the savvy staff employed by the committees.

Washington State Senate

Full-time Occupations	1957-63	1963-67	1967-71	1971-75	1977-79	1979-81* Preliminary
Attorney	17	20	18	17	8	6
Health Sciences	2	2	1	2	4	4
Education	0	0	3	5	2	2
Other Professions	1	2	2	1	1	2
Real Estate/Insurance	4	3	3	3	2	3
Owner/Manager	8	7	7	4	3	4
Other Business	6	4	5	4	12	12
Agriculture	4	4	4	5	4	5
Labor	1	2	1	2	1	0
Homemaker	1	1	1	0	0	5
Media	2	2	2	2	3	0
Government	1	2	1	3	3	3
Retired	1	1	1	1	3	3

Washington State House of Representatives

Full-time Occupations	1957-63	1963-67	1967-71	1971-75	1977-79	1979-81* Preliminary
Attorney	21	16	17	10	5	2
Health Sciences	3	6	7	8	2	3
Education	7	7	9	13	11	12
Other Professions	4	2	3	7	6	6
Real Estate/Insurance	7	7	10	10	6	3
Owner/Manager	13	15	16	14	14	18
Other Business	5	10	10	9	16	16
Agriculture	17	13	12	11	7	9
Labor	10	8	7	4	6	2
Homemaker	6	7	5	4	3	12
Media	2	3	3	3	3	6
Government	1	3	0	3	4	4
Retired	2	0	1	1	7	4
Student	1	0	1	2	1	1

Durkan puts it this way: *"You no longer deal with legislators, you deal with staff. The Senate Ways and Means Committee is the last barony down there and that's because the guy who runs it* (**Sen. Hubert Donohue**) *sat next to me. But on the other committees, it's the staff that understands the problem. When I wrote the budget, I had six full-time guys. Now it's either doubled or tripled."*

The growth in staff has gone hand in hand with the changing professional mix of the legislature. Staff began to gain more importance in the late '60s and early '70s when the sessions became longer and it was decided to make the legislature's research capabilities equal to that of the governor and the state departments and agencies.

At the same time, the lawyers were leaving and the new legislators, with no legal background, became dependent on staff lawyers and researchers.

Dolliver will not judge whether this development is good or bad, but he hopes the legislators maintain the upper hand: *"The visceral reaction of a legislator is probably better than the wisdom of a young lawyer right out of school."*

Rep. Alan Thompson, the Kelso Democrat who is co-chairman of the House Appropriations Committee, believes that even if there were more lawyer-legislators, the hired experts and attorneys would still be needed because the issues facing the legislature are simply more complex than they used to be.

Thompson and Charette both say the growth in staff has enabled junior lawmakers to gather information on their own, thus reducing their dependence on—and the implied control of—old-time wheeler-dealers. Now, instead of worrying so much about tough power-brokers in the House and Senate, says Thompson, *"We've got to protect ourselves from the staff."*

What may the future hold?

Dolliver points to the election of **Phil Talmadge,** an attorney in the Seattle law firm of **Karr Tuttle Koch Campbell Mawer & Morrow,** as a sign of a possible new wave. Talmadge has the enthusiastic backing of his large law office and Dolliver thinks other big law firms, following the lead of big corporations, may start sending their men to Olympia. The corporate businessman will be joined by the corporate lawyers.

Thompson thinks the legislature is in the middle of a long transition period leading to a full-time House and Senate. The mixed bag of professions will disappear and a crop of professional politicians, mostly lawyers as in the old days, will spring up.

If so, critics of the current batch of lawmakers have something to look forward to. But those who accept a part-time, citizen legislature as the most democratic way of doing the government's business, had better enjoy the motley crew now toiling under the capitol dome while they still can. □

About Those CLE Brochures...

John J. Michalik
Director of Continuing Legal Education

Most of you are familiar with the format of State Bar Association CLE announcing brochures. Easily recognizable by their bright colors and uniform size, and containing basic information on the Scope and Purpose of the particular seminar, a detailed program schedule, faculty and course credit information, and a registration form, the basic brochure format was developed approximately three years ago with an eye to distinguishing our brochures from those of other organizations and with a view to making our seminar announcements highly visible in the mass of mail that crosses all of our desks every day.

Until recently, this particular brochure format or style was unique, at least in this state. It has, however, been drawn to my attention that certain other organizations have recently been using a brochure format identical to the State Bar's. Imitation may be the sincerest form of flattery but it creates some problems. For example, all of us are to a greater or lesser extent creatures of habit and when a seminar brochure comes across our desk that looks for all the world like a State Bar seminar brochure there is a tendency to make the assumption that it is and to send it in to the State Bar Office. Also of course there is a tendency in such cases to proceed from the initial assumption to full belief that the program involved is sponsored by the State Bar and, ergo, to assume that the program being advertised will meet the standards of State Bar CLE programs: even though the State Bar itself has nothing to do with the program involved. Perhaps the crux of the problem is best illustrated or explained by the comment of a recent telephone caller who, rather heatedly, told me that in his view the use of such brochures by other organizations constituted "...intentional deception..." and an "...ill disguised attempt to sell a product by making it look like a State Bar program."

Whether or not that is true is a matter I cannot, of course, comment upon. I do think, however, that a word of caution is in order. Briefly stated, examine those brochures coming across your desk carefully—and if the program being advertised is not stated as specifically being sponsored by the Continuing Legal Education Committee of the Washington State Bar Association be fully aware that it is not a State Bar seminar, any similarities in brochure design and format notwithstanding. That, of course, does not mean that the program being advertised is not worth your attention: it does however mean that you should carefully scrutinize the program and the sponsor with a view to making your own determination as to whether the program merits your registration and attendance. The bottom line, I suppose, is that it is the program and recognized quality of the program sponsor that should be determinitive in deciding whether to attend; not the format or style of the brochure.

Approved Continuing Legal Education Activities

ACCREDITED SPONSORS

MINNESOTA CONTINUING LEGAL EDUCATION/MINNESOTA STATE BAR ASSOCIATION

COURSES APPROVED

ALI-ABA

Advanced Tax Planning for Real Estate Transactions
Feb. 4 5, 1979: Los Angeles 10.00

Basic Estate & Gift Tax
Feb. 11-16, 1979: Phoenix 28.25

AMERICAN SOCIETY OF LAW AND MEDICINE

Controversies in Law, Medicine And Health Care
Feb. 22 24, 1979: Vancouver, BC 12.00

GONZAGA UNIVERSITY SCHOOL OF LAW

Public Sector Labor Law
March 9-10, 1979: Spokane 12.25

HARCOURT BRACE JOVANICH

Bankruptcy Reform Act
Feb. 14-15, 1979: San Fran. 12.00

KYODAI

Current Japanese Banking
Feb. 16, 1979: Olympia 6.00

NEW YORK LAW JOURNAL

National Energy Act
Mar. 1-2, 1979: Los Angeles 12.75

PRACTISING LAW INSTITUTE

Current Problems in Federal Civil Practice
Feb. 22-23, 1979: Los Angeles 13.50

Tender Offers
Feb. 15-16, 1979: San Fran. 11.50

TULANE UNIVERSITY SCHOOL OF LAW

Admiralty Law Institute
Mar. 14-16, 1979: New Orleans 15.00

WASHINGTON STATE BAR ASSOCIATION

Evaluating & Proving Damages
Feb. 2, 1979: Bellingham 6.50
Feb. 9, 1979: Spokane 6.50
Feb. 16, 1979: Seattle 6.50

Pacific Rim Federal Tax Conference
Feb. 17-21, 1979: Honolulu 15.00

Issues Pending In Supreme Court, January Term

Court Commissioner Joan Smith Lawrence has advised the Bar News *that the following issues are presented in cases set for hearing during the January term of the state Supreme Court. She states that this summary of issues has been presented for informational purposes only and does not purport to state the precise legal issues in each case. Subject headings generally are those suggested by the Commissioner, but we have abbreviated case names and deleted other identifying information. Ed.*

APPEAL AND ERROR

REVIEW OF SUMMARY JUDGEMENTS—RECORD ON REVIEW, SPECIFICITY

■ Where the portion of the record considered by the trial court in granting summary judgment was not specified in the order nor identified with specificity in the verbatim transcript, should the appeal be dismissed? *Millikan v. Board of Directors of Everett School District No. 2*, No. 45771.

ATTORNEYS

LEGAL MALPRACTICE—STANDARD OF CARE

■ In a legal malpractice case, is a lawyer who is not a member of the Washington State Bar permitted to offer testimony to establish the standard of care applicable to a lawyer representing a client in Federal District Court? *Walker v. Bangs*, No. 44936.

CIVIL RIGHTS

EMPLOYMENT DISCRIMINATION

■ Are certain promotions in the Seattle Fire Department, which admittedly resulted from special preferences given qualified individuals solely because they are members of minority groups, permitted under Title VII of the Civil Rights Act and the state and federal constitutions as a means of promoting integration and undoing the effects of past discrimination in supervisory positions in the Seattle Fire Department? *Maehren v. City of Seattle*, No. 44975.

■ (1) Are the admissions policies of the University of Washington School of Medicine violative of an applicant's constitutional rights?

(2) Is there such consideration of race in the admissions process as to be impermissible in view of the decision in *Regents of the Univ. of Calif. v. Bakke*, ___U.S.___, ___L.Ed. 2d___, 98 S. Ct. 2733 (1978)? *McDonald v. Hogness*, No. 45864.

COMMUNITY PROPERTY

ANTENUPTIAL DEBTS

■ Is the provisions of RCW 26.16.200 requiring an antenuptial creditor to reduce the claim to judgment within 3 years of the marriage of the debtor a statute of limitations which is tolled by partial payment of the debtor spouse under RCW 4.16.270? *Waters v. Doud*, No. 45547.

CONSTITUTIONAL LAW

BILLBOARD REMOVAL ORDINANCE

■ Are those portions of a Seattle ordinance which require the removal of certain outdoor advertising signs without compensation to the sign owners unconstitutional? *Ackerley Communications, Inc. v. City of Seattle*, No. 45281.

FIRST AMENDMENT—PROFESSIONAL ADVERTISING

■ Are RCW 18.26.030 and the regulations adopted pursuant thereto, which strictly regulate advertising by chiropractors, unconstitutional infringements on their First Amendment right of free speech? *United Chiropractors v. Chiropractic Disciplinary Board*, No. 45282.

OBSCENITY—ORDINANCE REGULATING—VALIDITY

■ Does the enactment of a state statute regulating the sale, display, etc. of obscene material preempt by implication the authority of a municipality to adopt ordinances on the same subject? *City of Spokane v. Portch*, No. 45668.

COURT RULES

MOTION FOR NEW TRIAL (CR59(f))

■ Where a trial judge, in granting a motion for a new trial, has failed to state *in the order* definite reasons of law and fact for the order as required by CR 59(f), should the order be vacated and a judgment entered on the verdict? *Sutten v. Shellgren*, No. 45821.

SPEEDY TRIAL (CrR 3.3)—RETRIAL AFTER MISTRIAL

■ Should the holding in *State v. Aleshire*, 89 Wn.2d 67, 568P.2d799 (1977) that the speedy trial time period of CrR3.3 applies to retrials after a mistrial be applied retroactively? *State v. Barton*, No. 45539.

CR 60(e), VACATION OF JUDGMENT—REQUIREMENT OF AFFIDAVIT

■ Where a party moves for vacation of a default judgment under CR60, must facts constituting a defense to the action be supported by an affadavit of the moving party or attorney? *Griggs v. Averbeck Realty, Inc.* No. 45766.

CR 60(b)—VACATION OF JUDGMENT—APPLICATION IN CRIMINAL CASES

■ Does CR60(b) apply to both civil and criminal cases, so that a trial court has discretion to vacate a criminal judgment and sentence under CR60(b)(11), "any other reason justifying relief from the operation of the judgment"? *State v. Scott*, No. 45770.

CRIMINAL LAW

INSANITY DEFENSE—COMMITMENT PROCEDURES

■ Is Washington's statutory scheme which provides for the commitment of persons found not guilty of a crime by reason of insanity unconstitutional for failing to define which party has the burden of proof on the issue of the individual's present dangerousness and need of controls and/or for vagueness for failing to

establish a standard of proof with respect to these issues? *State v. Wilcox*, No. 45751.

NONSUPPORT—PRESUMPTION OF WILLFULNESS

■ In a criminal prosecution for desertion/nonsupport pursuant to RCW26.20.030(1)(b), are instructions which set forth a presumption of willfulness based on the fact of omission to furnish food, clothing, shelter, or medical attention to one's minor children, violative of defendant's due process rights? *State v. Bauer*, No. 45261.

PROBATION—REVOCATION

■ Did the trial court properly dismiss the revocation proceedings and terminate the individual's probation on the ground that it no longer had jurisdiction to revoke probation under *State v. Mortrud*, 89Wn.2d720, 575P.2d227 (1978) because the execution of sentence had been deferred and the probationary period had expired? *State v. Ludwig*, No. 45400.

SEXUAL PSYCHOPATHS—DETERMINATION

■ Are the provisions of RCW 71.06.060, which state that the court shall determine whether or not a defendant is a sexual psychopath, and if so adjudged, shall commit him for treatment as a sexual psychopath, mandatory or discretionary? *State v. Huntzinger*, No. 45631.

CONTROLLED SUBSTANCES—AUTHORITY OF ADMINISTRATIVE AGENCY PERSONAL RESTRAINT PETITION

■ (1) Does the filing and promulgation of emergency regulations by the State Board of Pharmacy after the decision in *State v. Dougall*, 89Wn.2d118, 570P.2d135 (1977) meet due process standards?

(2) Do the rule-making powers of the State Board of Pharmacy under RCW69.50.201(a) constitute an unconstitutional delegation of legislative power prohibited by article 2, section 1 of the Washington State Constitution? *In re Powell*, No. 45891.

CRIMINAL PROCEDURE

DEATH PENALTY—CONSTITUTIONALITY

■ Are Washington's statutory procedures for imposition of the death penalty after a conviction of premeditated first-degree murder constitutional? *State v. Marr*, No. 45634.

■ Are Washington's statutory procedures for imposition of the death penalty after a conviction of premeditated first-degree murder constitutional? *State v. Frampton*, No.45570.

DISSOLUTIONS

CHILD CUSTODY AND SUPPORT—JURISDICTION

■ May a Washington court in a dissolution action exercise jurisdiction over a custody dispute where one of the parties' children is currently residing in Washington following removal by the Washington parent from a sister state and refuse full faith and credit to a prior divorce decree of the sister state awarding custody of the children to the sister state parent? *Verbin v. Verbin*, No.45302.

■ (1) Does the Washington Superior Court have jurisdiction to decide issues of child custody, support, and visitation in the context of a dissolution action when the parties have maintained a marital domicile within the state and the children were born here, but upon separation and prior to the commencement of the action, one of the parties removes the children from the state, residing with them in another jurisdiction thereafter?

(2) Did the Washington legislature, by recent amendment to the long-arm statute, RCW4.28.185(1)(3) and (f), providing for extra-territorial jurisdiction over a local parent or spouse, intend to abolish the application of the "domicile rule" in actions under those sections? *Myers v. Myers*, No.45517.

ENVIRONMENTAL LAW

ENVIRONMENTAL IMPACT STATEMENT—AIR POLLUTION VARIANCE APPEALS PROCEDURE

■ (1) Does the Pollution Control Hearings Board have jurisdiction under RCW70.94, *et seq.*, RCW43.21, *et seq.*, or RCW43.21C, *et seq.*, to decide appeals of variance decisions by the Puget Sound Air Pollution Authority made pursuant to RCW43.21C?

(2) Do the Environmental Impact Statement requirements of the State Environmental Policy Act apply to the action of the Puget Sound Air Pollution Control Authority board of directors in granting the variance in issue of this case? *ASARCO, Inc. v. Air Quality Coalition*, No. 45508

SHORELINE MANAGEMENT— DEVELOPMENT PERMIT—AUTHORITY OF COUNTY TO DENY

■ (1) Where the Shorelines Hearings Board has approved a proposed development, having considered the effect of the development on eagle perching sites, can a board of county commissioners deny to issue a substantial development permit and to approve a preliminary plat on environmental grounds that were considered by the Shorelines Hearings Board?

(2) Is the "public interest" clause of the county ordinance and RCW58.17.110 unconstitutional as violative of due process? *State v. Thurston County*, No.45816.

INDIANS

CRIMINAL LAW—ILLEGAL FISHING—BURDEN OF PROOF—INDIAN FISHING RIGHTS

■ (1) In a prosecution for illegal fishing in an area closed for fishing by state regulation, does the state have the burden to prove as a part of its case in chief that the regulation was issued for valid conservation purposes?

(2) Do members of one tribe of Indians have rights to fish in the usual and accustomed fishing areas of another tribe of Indians? *State v. Reed*, No.45912.

STATE JURISDICTION—CONSTITUTIONALITY

■ Is RCW37.12.010, which gives the State criminal and civil jurisdiction over Indians and Indian territory, reservations and lands not held in trust or subject to restrictions on alienation imposed by the United States, unconstitutional in that it denies equal protection under the law? *State v. Charlie*, No.45490.

JURY

RIGHT TO TRIAL BY JURY—UNAUTHORIZED COMMUNICATION BY BAILIFF

■ Where a bailiff has made an unauthorized statement to jurors (that there was no lodging available and the jury would be required to remain in deliberation until a verdict was reached), does such communication require the granting of a new trial? *State v. Crowell*, No. 45746.

LABOR LAW

ATTORNEY FEES—AWARD BY ADMINISTRATIVE AGENCY

■ Does RCW41.56.150, which authorizes the Higher Education Personnel Board to prevent unfair labor practices, authorize the Board to award attorney fees to a party in an unfair labor practice administrative hearing? *State ex rel. Washington Federation of State Employees, AFL-CIO, v. Board of Trustees of Central Washington University*, No. 45360.

LANDLORD-TENANT

COVENANT OF QUIET ENJOYMENT

■ Is the existence of a prior leasehold necessarily inconsistent with finding a landlord to have breached the covenant of quiet enjoyment where the landlord had agreed to negotiate promptly for termination of the prior lease and the new tenant had negotiated a partial termination agreement which the landlord refused to sign? *Esmieu v. Sheih*, No. 45753.

MANDAMUS

WATER PERMITS, ISSUANCE OF

■ Did the trial court properly issue a writ of mandamus directing the Department of Ecology to issue a permit to an individual to appropriate public (ground) water where the Pollution Control Hearings Board had found that there was no shortage of ground water in the area? *Peterson v. Department of Ecology*, No. 45471.

NEGLIGENCE

STANDARD OF CARE—MINOR

■ Should a minor child who is operating a snowmobile be subject to the same standard of care in its operation as an adult? *Robinson v. Lindsay*, No. 45685.

PENSIONS

LAW ENFORCEMENT OFFICERS—ELIGIBILITY OF EMPLOYEES OF MUNICIPAL CORPORATIONS

■ Are law enforcement officers employed by municipal corporations eligible for membership in the Washington Law Enforcement Officers and Firefighters Retirement System? *Automobile Drivers & Demonstrators Union Local No. 882 v. Department of Retirement Systems*, No. 45706.

PERJURY

EVIDENCE

■ May a perjury prosecution be based upon a statement which is literally true as measured by precise grammatical usage? *State v. Olson*, No. 45641.

PHYSICIANS AND SURGEONS

MALPRACTICE—AGGRAVATION

■ May a doctor be held liable for the aggravation of a patient's condition due to subsequent medical treatment by another physician who has assumed care of the patient? *Lindquist v. Dengel*, No. 45737.

MALPRACTICE—STANDARD OF CARE—INFORMED CONSENT

■ (1) In enacting RCW4.24.290, did the legislature nullify the holding in *Helling v. Carey*, 83Wn.2d514, 519P.2d981 (1974) that a physician may be negligent even though he adheres to the standard of care expected of an average person in the same profession?

(2) Does the doctrine of informed consent apply to a situation where a physician has made an allegedly mistaken diagnosis that no further treatment is necessary? *Gates v. Jensen*, No. 45727.

PORT DISTRICTS

TRANSPORTATION SERVICES—REGULATION

■ May the Port of Seattle, by concession agreements with independent airporter services, provide for airporter service to and from Seattle-Tacoma Airport, and, if so, are such services, rates, and operations subject to control by the Washington Utilities and Transportation Commission? *Port of Seattle v. Washington Utilities and Transportation Commission*, No.45133.

PRINCIPAL AND SURETY

DISCHARGE—COMMUNITY OBLIGATION

■ (1) Was a surety entitled to a discharge of liability due to the failure of the creditor bank to apply payments made by the principal to the account upon which the surety was obligated, despite the principal's directions to the contrary?

(2) Must a surety bear the burden of overcoming a presumption of community benefit by clear and convincing evidence in order to escape community liability for a suretyship obligation? *Warren v. Washington Trust Bank*, No.45600.

PRODUCTS LIABILITY

WARNING

■ In a products liability suit based exclusively on the adequacy of warnings to users of an inherently dangerous product, is it error to permit trial only under a strict liability theory, denying submission to the jury on negligence theory where the trial court found that the plaintiff had not introduced substantial evidence that the manufacturer knew or should have known of the hazard and that inadequate warning was given? *Little v. PPG Industries, Inc.*, No.45629.

COMMENCEMENT OF ACTION

■ Should the rule that an action must be commenced within a period of time after discovery of facts giving rise to a cause of action, or within a period of time after the plaintiff should have discovered such facts, apply in a products liability action? *Ohler v. Tacoma General Hospital*, No.45247.

COMPARATIVE FAULT—STANDING TO SUE

■ (1) Is RCW4.22.010, the comparative negligence statute, applicable in a products liability action?

(2) Does a cause of action in products liability arise in favor of a party who is not the *ultimate* user or consumer of the product? *Seay v. Chrysler Corporation*, No.45005.

PUBLIC ASSISTANCE

AID TO DEPENDENT CHILDREN—ELIGIBILITY REQUIREMENTS

■ Does WAC 388-24-135(8) (a), which sets forth a work-quarters requirement for a father of an applicant for aid to dependent children, deny equal protection of the law in a situation where the father was disabled and unable to obtain work during the three years prior to the application? *Fast v. Department of Social and Health Services*, No.44857.

UNIT COMPOSITION—CONSTITUTIONALITY

■ Is WAC 388-24-050(4)(a), which provides that when a child is living with both of his parents who are unmarried, only one parent can be included in the public assistance unit, unconstitutional as a denial of equal protection to the other parent? *Willard v. Department of Social and Health Services*, No.45933.

SEARCH AND SEIZURE

AUTOMOBILES—STANDING TO OBJECT

■ (1) Does a person in unlawful possession of a stolen vehicle have standing to object to the validity of a search of that vehicle?

(2) Does an inspection of a motor vehicle to obtain the vehicle identification number constitute a search within the purview of the constitutional prohibitions against unlawful searches and seizures? *State v. Simpson*, No.45931.

WARRANTLESS ARREST—MOTOR VEHICLE ACCIDENT

■ Does RCW46.64.017 permit an officer, who has investigated a motor accident scene and who has probable cause to arrest for a traffic violation, to make such arrest at a place other than the actual physical scene of the accident? *State ex rel. McDonald v. Whatcom County District Court*, No.45541.

SECURED TRANSACTIONS

FARM PRODUCTS—WAIVER

■ Does a course of performance on the part of a lender which is inconsistent with an express requirement of a security agreement covering farm products and proceeds that the farmer/debtor not sell or dispose of the crops without prior written authorization of the lender constitute a waiver of the lender's security interest in the crops? *Southwest Washington Production Credit Association v. Seattle-First National Bank*, No.45534.

SECURITIES REGULATION

DUTY TO ENFORCE

■ Does the State Securities Division owe a duty of care to holders of debenture bonds to enforce known violations of securities regulations by a securities issuer, so as to give rise to a negligence action based on damages allegedly sustained by the investors as a result of the issuer's failure to comply with such regulations or directives? *Baerlein v. State*, No.45321.

SECURITY—WHAT CONSTITUTES

■ For purposes of application of the Securities Act of Washington (Ch.21.20RCW), should the "risk capital" test be applied in determining what constitutes a "security"? *Sauve v. K.C., Inc.*, No.45678.

STATE—ACTIONS AGAINST

BY NATIONAL GUARD MEMBER

■ May a discharged member of the Washington Air National Guard maintain an action against the State, pursuant to RCW4.92.090, for arbitrary and capricious conduct, intentional infliction of emotional distress, invasion of privacy, and deprivation of civil rights under color of law in violation of 42 U.S.C. §1983? *Edgar v. State*, No.45921.

COST BOND REQUIREMENT

■ Is the cost bond requirement of RCW4.92.010, which prevents an indigent plaintiff from prosecuting an action against the state, violative of the equal protection clause? *Scheffield v. State*, No.45920.

STATUTES

UNIFORM BUILDING CODE—"GRADE"

■ Should the method of determining "grade" as used in the Uniform Building Code be based on measurements that take into consideration irregular levels of land adjacent to a building? *Knappett v. Locke*, No.45774.

TAXATION

BUSINESS AND OCCUPATION—FINANCIAL INSTITUTIONS

■ Where a financial institution derives funds through offices in other states and invests these funds from its headquarters in Washington, is the income from such investments taxable in Washington on an apportioned basis pursuant to RCW82.04.460? *Pacific First Federal Savings and Loan Association v. State*, No.45561.

INHERITANCE TAX—VALUATION ADJUSTMENT

■ (1) Under RCW83.16.010 should the fair market value of an asset which constitutes income in respect of a decedent under section 691 of the Internal Revenue Code be reduced as a valuation adjustment to reflect the federal income taxes which will be or have been borne by the recipient of that asset?

(2) What is the correct method of determining the amount of the valuation adjustment for federal income taxes which will be or have been borne by the recipient of such an asset? *In re Estate of Phillips*, No. 45586.

INHERITANCE TAX—LIABILITY—EFFECT OF SETTLEMENT AGREEMENT

■ Where a legatee has waived all claim under a will pursuant to a will contest settlement agreement, is the inheritance tax computed on the amount the legatee would have taken under the will the personal obligation of the legatee? *In re Estate of Rendsland*, No.45352.

TORTS

CRIME VICTIMS COMPENSATION ACT—REDUCTION OF BENEFITS

■ Is RCW7.68.130 unconstitutional as a violation of equal protection in that it provides that benefits payable to a claimant under the Crime Victims Compensation Act must be reduced by the amount of insurance (or medical and disability benefits) available, but does not provide for a reduction on account of other assets available to the claimant? *Standing v. Department of Labor and Industries*, No.45913.

WATER AND WATER COURSES

BOATING—PROHIBITION

■ Is a county ordinance which prohibits the operation of motor boats on certain lakes (nonnavigable) invalid as being an unreasonable exercise of the police power and also invalid as being in conflict with state law? Does such an ordinance amount to an impermissible taking or damaging of private property for public use without just compensation? *State ex rel. Schillberg v. Everett District Justice Court*, No.45673.

HYDRAULIC PERMITS

■ Does RCW75.20.100, which provides for the issuance of permits for hydraulic projects, constitute an unconstitutional delegation of authority for failure to provide adequate standards and procedural safeguards and by allowing employees of the Department of Fisheries and Game to exercise discretion as to establishing standards to ensure the protection of fish life? *State v. Crown Zellerbach Corp.*, No.45353.

WORKMEN'S COMPENSATION

EMPLOYER'S IMMUNITY—DAMAGES—LOSS OF CONSORTIUM

■ (1) Where a county employee was injured during the course of his employment, is he entitled to sue the employer on the basis of the "dual capacity doctrine" as an exception to the employer's immunity from suit under the Industrial Insurance Act?

(2) Does a spouse have a cause of action for loss of consortium in Washington? *Thompson v. Lewis County*, No.45663.

OCCUPATIONAL DISEASE—CAUSATION

■ Where there is expert medical testimony that a person in petitioner's occupation is more likely to contract a specific contagious disease than members of the general public, but no testimony that there were actual cases of that disease at petitioner's place of employment, is there sufficient evidence to establish the element of proximate cause in RCW51.08.140? *Sacred Heart Medical Center v. Department of Labor and Industry*, No. 45681. □

CODE OF PROFESSIONAL RESPONSIBILITY COMMITTEE

Formal Opinion No. 167; Ethics Opinion No. 79 is Withdrawn

The Code of Professional Responsibility Committee has been asked to reconsider the Opinion #79, issued by the Washington State Bar Association in 1960. That Opinion, in pertinent part, held that a city councilman would not violate the Canons of Professional Ethics, in particular Canon 6, by representing clients in police court.

> The enforcement of the city ordinances in the police court is purely a judicial matter. This involves the prosecution of those who violate the ordinances. It is true these ordinances are passed by the Council of which the attorney is a member. In such capacity, however, he is purely a legislative officer. While it would be improper for him to be employed by the city as hereinbefore outlined, it is the opinion of this committee that there is no conflict of interest in the councilman or his partner either appearing in defense of persons charged with violations of the city ordinances. While it may be bad public relations for the councilman to appear and defend such person, we do not believe that such defense in a police court constitutes a conflict of interest of such attorney under Canon 6 of the Canons of Professional Ethics.

The present inquirer, asks for reconsideration based upon the following concerns:

> In view of the potential problems involved in any plea bargaining that might go on between the City Attorney and the Council member, I'm wondering if the public could feel secure that the City Attorney had not succumbed to pressure from the Council Member. Particularly, since the Council member votes on the City Attorney's salary. Further, could the public have confidence that any attempts by the attorney Council member to reduce the police budget were not based on a vendetta as a result of participating in courtroom situations where police officers were adverse witnesses. Moreover, sometimes defense strategy, as you know, involves protracting a trial. Is this not inconsistent with the Council member's duty to reduce City expenditures? Another problem area is the argument by a defendant that he has been both prosecuted and defended by the City. Additionally, there is the question of whether a member can attack the constitutionality of an ordinance on behalf of a client, when the Council member has either participated in the enactment of it or could have introduced a modification to make it pass constitutional muster.

It would appear that the prevailing concern must be the appearance of fairness. There are no ABA opinions, either formal or informal, which are directly on point. The ABA opinions which discuss Canon 6, conflict of interest situations, as they apply to attorneys in public employment, stress the need for the appearance of fairness, as perceived by the public. Formal Opinion 34 (March 3, 1931) allows representation, in his private capacity, by the City Attorney of persons charged with crime only if his official duties are purely civil. This Opinion was overruled by Formal Opinion 186 (July 24, 1938) which held that a county attorney who represents the county in civil matters only, may not represent a defendant in a criminal case. Formal Opinion 118 (December 14, 1934) holds that a county attorney, whose duty it is to prosecute crimes committed within the county, may not accept employment to obtain a pardon or parole for one convicted of a crime in another county.

The rationale therein was that "[f]or one county attorney to engage in undoing the work of another would present an appearance of confusion and pulling at cross purposes that would tend to diminish the public's confidence in and respect for law enforcement."

ABA Informal Opinion 1045 (May 15, 1968), holds that a city attorney may represent persons in the District Court who are charged with criminal acts not involving the city or its ordinances. This was viewed as permissible because the attorney "is not in a position where it would be his duty, on behalf of either the city or his private clients, to contend for something which his duty to the other would require him to oppose." However, ABA Informal Opinion 1111 (June 18, 1969) holds that if the city attorney has any duties which relate to investigation or filing of criminal charges, he cannot be assigned as defense counsel in the District Court where such charges are brought. He can serve as defense counsel in another District Court. ABA Informal Opinion 1285 (January 21, 1974), reaffirms the rationale of the earlier opinion under the Code of Professional Responsibility, EC5-14 and DR5-105. "It would not be improper for a municipal attorney to represent criminal defendants... in situations in which no municipal police officers from the municipality are involved, the criminal charges are based solely on alleged violations of state law, and the municipality is not otherwise directly or indirectly involved or affected.

The reasoning of the above cited opinions would tend to argue for a revision of Opinion #79. There are circumstances in the role of the city councilman which tend to make him less than completely disassociated from the ordinances which his defense clients are charged with violating, or from the responsibilities of the police officers who might be called upon to testify, or from the city attorney who would be adversary counsel. The appearance of a conflict of interest and the suggestion of undue pressure exist, and, as such, should not be allowed. It is the opinion of the Code of Professional Responsibility Committee that a city council person should not represent criminal defendants in a municipal court of the same city. □

Section Reports

CORPORATION, BUSINESS AND BANKING LAW SECTION

By **DENNIS G. SEINFELD**

The Fifth Annual Meeting of our Section will be held on May 4 through 6 of 1979, again at the Hanford House Thunderbird in Richland. I am sure all who have attended in the past will agree that this is consistently one of the best educational programs held in this state. In addition, the site offers warm weather, convenient recreational activities, and an informal and congenial atmosphere.

The 1979 meeting and seminar was the primary topic discussed at the December 2, 1978 Executive Committee meeting. Jerome Whalen reported on the format, topics and speakers. The 1979 seminar clearly will meet the high standards established by its predecessors!

The seminar will focus on representing close corporations, and will have discussions of solving specific problems, executive compensation, recapitalization, corporate/estate planning, and fiduciary relationships. There will be, as in the past, specialty programs on taxation (divisive reorganizations), securities (professional responsibilities of attorneys in securities transactions), banking (commercial loans to close corporations) and agricultural law (recapitalizing the farming enterprises).

The executive committee confirmed the appointments of Paul Larson and Leonard Cockrill, both of Yakima, as at-large representatives to the executive committee.

The Committee approved the establishment of a committee on the revision of the non-profit corporation act. The committee will be appointed in the near future.

The Banking Law subsection, under the leadership of Jim Gallagher (Tacoma), plans to conduct in the fall or winter of 1979 a seminar aimed at lawyers representing banks. Karl Ege (Seattle) and Kevin McMahon (Seattle) are putting together a business law reference book to include the various statutes and regulations (indexed) most frequently used by business lawyers. It will be available to members of the section, and, most likely, members of the bar generally.

In other business, the executive committee approved the proposed budget and reaffirmed that the 1980 annual meeting and seminar will be held in Richland on May 16 through 18.

Chairperson Elvin Vandeberg (Tacoma) announced that the nominating committee for 1979-80 officers will consist of Karl Ege (chairperson elect), Claude Pearson (Tacoma) and Elvin. □

Discipline

Court Disbars Richard S. Cary

Bellevue attorney, Richard S. Cary, was ordered disbarred by the Washington State Supreme Court on October 26, 1978. Cary had taken money belonging to his sisters which he held as trustee in his attorney's trust account. The money was lost after Cary invested it in a mining venture in which he was the principal shareholder. This notice is published pursuant to DRA 11.7(c)(1).

Kenneth C. Hawkins Disbarred

Kenneth C. Hawkins was disbarred by the Washington Supreme Court on January 5, 1979, upon findings that he neglected an estate and converted its assets.

Court Disbars Alfred J. Kucklick

Alfred J. Kucklick has been ordered disbarred by the State Supreme Court. Kucklick was disbarred pursuant to a stipulation entered into between himself, his counsel, and state bar counsel, which was adopted by the Disciplinary Board and approved by the Court. This notice is published pursuant to DRA 11.7(c)(1).

William O. Kumbera Suspended

Ocean Shores Attorney William O. Kumbera has been suspended from the practice of law for a period of one year beginning January 5, 1979.

Kumbera was suspended for violation of DR 9-102(A) and (B).

Notice Of Suspension For Failure To Meet CLE Requirements

The following attorneys were suspended from the practice of law on November 17, 1978, by order of the Washington Supreme Court, for failure to meet the continuing legal education requirements of APR 11: Stanley B. Allper, William R. Anderson, Robert G. Austin, Stuart Douglas Barker, Jr., Larry Boyd Bolin, John McVay Clarke, Harold C. Church, Jr., Robert A. Dootson, Joe Keith Dysart, Theodore L. Franco, F. Stuart Foster, Yoshihiko Ito, John F. Karp, Flora R. Meyerson, Stephen W. Miller, Robert Salvesen, James F. Sanders, Joseph F. Swontkoski, Terry Paul Watkins.

Board Elections Due

Lawyers residing in the First and Fifth Congressional Districts and in King County, 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 Bradley T. Jones, First District, Michael J. Hemovich, Fifth District and, Paul R. Cressman, King County at Large representative.

The State Bar Association By-Laws (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., Thursday, May 31, 1979.

Symposium on Washington's New Juvenile Code to Appear In *Gonzaga Law Review*

On July 1, 1978, the new Washington Juvenile Code went into effect. It codifies a significant philosophical shift in the treatment of Washington juveniles. Whereas the juvenile courts have traditionally attempted to protect the welfare of youthful offenders, the courts now hold the juvenile offenders accountable to society.

The *Gonzaga Law Review* Juvenile Symposium, scheduled for publication in late February, addresses the new Code and provides an in-depth analysis of the issues it raises. Diversion agreements, speedy trials, procedural changes, and jury trials—among other issues—are discussed in detail.

This special symposium issue may be obtained by writing: *Gonzaga Law Review,* Gonzaga University, School of Law, Spokane, WA 99202. Symposium issue, $5.50. Full year subscription, $12.50.

Legal Secretaries Seminar

The Washington Association of Legal Secretaries will hold a seminar on Saturday, February 17, 1979 at the Sea-Tac Hilton Inn.

Topics and speakers scheduled include: Paul Luvera, on "Planning and Developing Systems for the Law Office"; Donald Skinner on "Litigation"; and a speaker on the "New Juvenile Code".

The cost of the seminar is $15 for nonmembers, $12 for members and $12 for students, and includes lunch. For further information and registration, contact Joyce Waddell, (206) 623-1031, or 109—182nd S. W., Bothell, 98011.

In Memoriam

John R. Cook, 64, of Missoula, Montana, died during December. He was admitted to the Bar in 1938.

Maurice W. Kinzel, 74, of Bellevue, died December 25. He was admitted to the Bar in 1928.

Around the State

SNOHOMISH REPORT

By **CURTIS P. THOMSON**

The long silence is broken. Yes, the Snohomish County Bar Association is alive and well and, indeed, growing. It is currently estimated that there are in excess of 250 lawyers practicing in the county now, and that figure is probably very conservative. At last check in excess of 200 were dues paid members of the bar association. The 1978 board of the association consists of the following: President, **Don Lyderson;** Vice-President, **Faye Collier Kennedy;** Secretary, **Curtis P. Thomson;** and Treasurer, **Henry Chapman.** Election of new officers will be conducted during the January general membership meeting, and the new officers will be installed at the annual bar banquet now set for February 17, 1979 at the Everett Golf and Country Club.

Part of the noise you are hearing from our direction is the rustle of old files and shuffling of chairs that is going on at the time of this writing as a result of this fall's general election. Several new faces will be seen in 1979 perched atop judicial robes and, yes, even a new prosecutor. **Bob Schillberg,** after 14 some odd years of service, was pushed out of office by **Russ Juckett** (J.D. Vanderbilt University '72) after a lively campaign. Bob won the respect of a lot of lawyers during those years and we collectively extend to him our best regards as he starts on a new path. New members of the judiciary include: South District Court, **Tom Wynne** (from the Prosecutor's Office, beating out incumbent **Bill Atwell**); Everett District Court, **Roger Fisher** (from private practice, filling the position vacated by retiring Judge **Arnold Zempel**); Evergreen District Court, **Steve Clough** (coming out of private practice from the town of Monroe, into the position vacated by retiring Judge **Thomas Gable**).

Notices

PROFESSIONAL

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.

D. Bruce Gardiner, Esq.
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Douglass A. North, recently Clerk to Judge Keith M. Callow of the Washington State Court of Appeals, announces his availability for referral or consultation on appellate arguments and briefs.

Douglass A. North, Esq.
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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
Telephone (206) 523-5783

Ronald D. Flansburg of the Washington State Bar announces his availability for appellate consultation or association in matters of notices, motions, evaluation and development of appellate arguments and briefs or client referrals.

CONTACT:

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For Sale: Complete set of Pacific Reports, 1st and 2d (to current volume), excellent condition, Daniel J. Riviera, 4400 Sea-First Bldg., Seattle (206) 447-4400.

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Will Sought: Anyone with information about a Will for Vernon E. Callaway please contact Robert A. Berst, Attorney, 1518 IBM Building, Seattle, WA 98101, Telephone (206) 624-4220.

POSITIONS

Court Commissioner Position Available: The position of the Commissioner/Senior Research Assistant for the Washington State Supreme Court is vacant as of February 28, 1979. Salary is negotiable. The current Commissioner is receiving $36,400.00 after five years of service. The minimum requirement is five years of admission to a state bar. Inquiries should be directed to: John J. Champagne, Clerk, Washington State Supreme Court, Temple of Justice, Olympia, WA 98504.

Position Available: Medium sized Seattle firm with commercial practice seeking associate with 1 to 3 years experience. Academic background important. Law Review, Appellate or Federal clerkship or equivalent helpful. Salary negotiable. Submit resume to Box 22, WSBA.

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Position Available: Outstanding Spokane, Washington general practice firm (11 Attorneys) has opening for tax attorney (LLM preferred) with minimum 1 year experience. This is

Calendar

Feb. 9	WSBA CLE Seminar: **Evaluating & Proving Damages,** Davenport Hotel, Spokane. $45.00.
Feb. 16	WSBA CLE Seminar: **Evaluating & Proving Damages,** Olympic Hotel, Seattle. $45.00.
Feb. 17-21	**WSBA Pacific Rim Federal Tax Conference,** Hyatt Regency Waikiki, Honolulu, Hawaii. $150.00

an associate position with principal career potential. Will be responsible for organization and development of tax and related areas of practice. Compensation commensurate with experience. Submit Resume c/o Box 15, WSBA.

Position Available: Regional corporation headquartered in Seattle seeking Assistant General Counsel. One to five years general law practice experience required. Commercial, copyright, administrative and communications law experience preferred. Reply Box 3, WSBA.

Position Available: Para legal, King County office, general practice. Respond to Box 20, WSBA.

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Patent Attorney Wanted: Battelle Memorial Institute is seeking an Associate for the Patent Department of its Pacific Northwest Laboratories to assist in a wide variety of intellectual property matters. The Laboratories are located in a technically oriented medium sized community with excellent schools and shopping facilities. The position requires a Science or Engineering degree, membership in State and Patent Bars, and at least two years of Patent practice. Reply in confidence with detailed resume and salary requirements to: E.P. Galbraith, Battelle Northwest, P.O. Box 999, Richland, WA 99352. equal opportunity employer m/f/hc

Position Available: Thriving two man Bellevue law firm seeks association with attorney with five or more years experience and some background in tax, securities and real estate. Respond to Box 5, WSBA.

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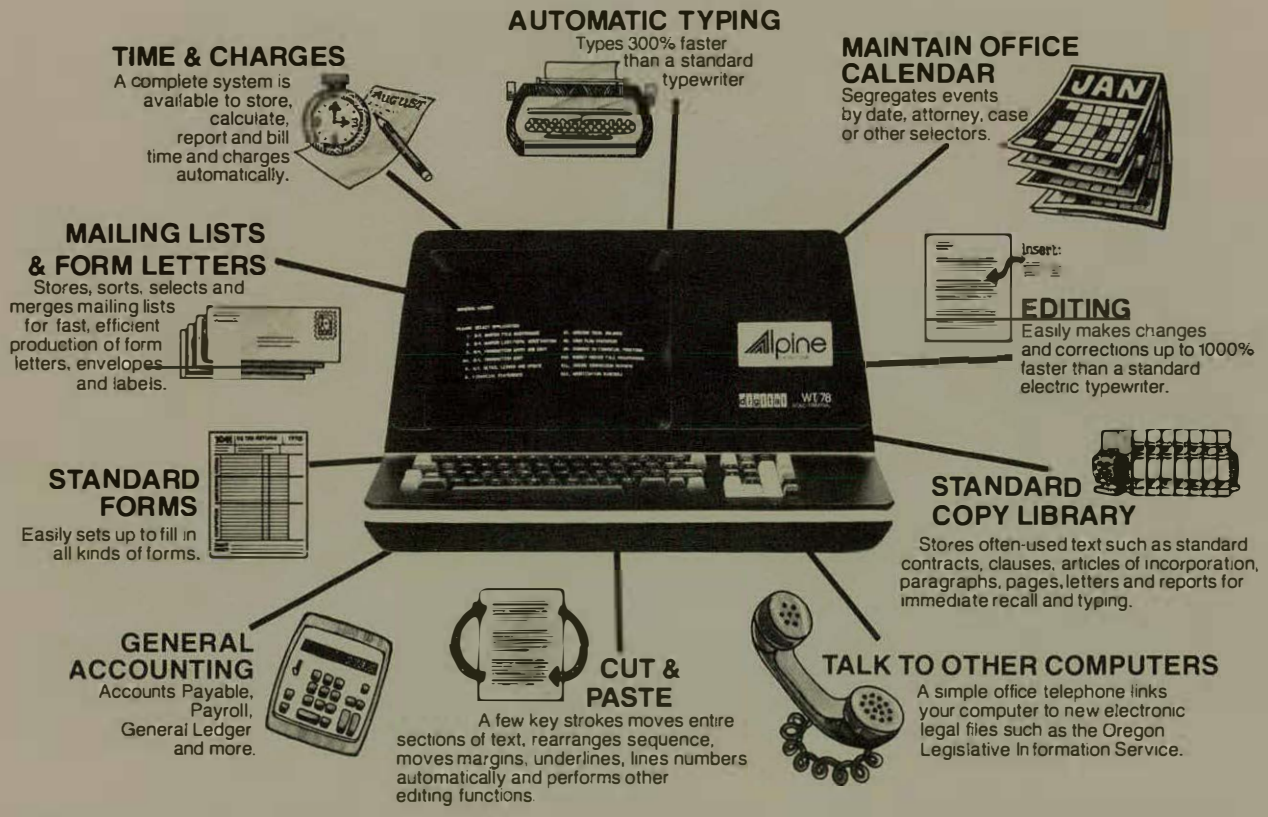

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