Volume 34, Number 8
August 1980

WASHINGTON STATE BAR NEWS

THE CHANGING FACE OF TORT LAW

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Volume 34, Number 8
August 1980

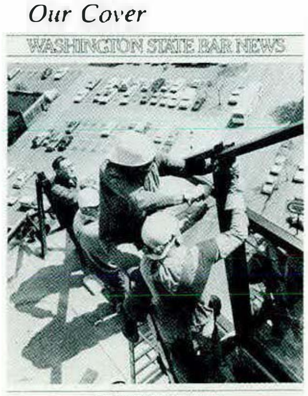
WASHINGTON STATE BAR NEWS

FEATURES

IN THE NEWS

DEPARTMENTS

Our Cover



Our cover photo, courtesy of the Howard S. Wright Construction Co., depicts one of the many situations in daily life which may give rise to tort liability. This theme issue of the Bar News, developed by coordinating editor Maryalice Norman of the Editorial Advisory Board, contains articles offering contrasting viewpoints on some of the major themes which mark "the changing face of tort law."

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Jay V. White, *Editor*

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Two Cents More On Bankruptcy Exemptions

Editor:

I read with interest Larry Feinstein's article "Can Debtors Take Advantage of the New Exemptions?" in the April 1980 issue of the *Washington State Bar News*. As the prevailing trustee in both the *Cluck* and the *Kovalenko* cases that Mr. Feinstein cites in the article, I would like to add my two cents worth to the controversy.

The Ninth Circuit Court of Appeals has ruled three times that a bankrupt cannot claim the additional exemption rights if he or she has a debt of any size which predates the amendment to a *state* exemption statute. As Mr. Feinstein points out, the rationale of these decisions is that creditors rely on state exemption statutes when they extend credit and that granting greater exemptions under the circumstances would be prohibited by the Contracts Clause of the Federal Constitution. This doctrine is a reincarnation of the doctrine of *Moore v. Bay*, 284 U.S. 4 (1931).

Besides the *England* case that Mr. Feinstein cites, the Ninth Circuit has also reached this result in the cases of *Towers v. Curry*, 247 F. 2d 738 (9th Cir. 1957) (affirming the decision below that Mr. Feinstein cites) and *Miguel v. Walsh*, 447 F.2d 724 (9th Cir. 1971). As a matter of *stare decisis*, the local bankruptcy judges have followed these decisions. And, as Judge Steiner found in his opinion in the *Cluck* case, a series of older decisions of the Washington Supreme Court buttress the *England* doctrine.

These decisions are not isolated ones; courts in other jurisdictions have ruled similarly. These rulings make some sense. Many creditors extend credit with a keen eye on sources for repayment.

Mr. Feinstein also mentions the *Lewis* case, but I believe it should also be mentioned that the facts of the *Lewis* case involved only a hypothetical creditor—not an existing creditor (whose rights concerned the Ninth Circuit in the *England* and its progeny). Two other cases Mr. Feinstein cites, the *Burks* and the *Crane Towing* decisions (as well as the *Lewis* case), do not reach the issue at hand. The issue is the extent to which the prohibition against impairment of contract rights limits the reach of recently amended state exemption statutes at the time of bankruptcy.

In any event, help may be at hand. This issue is being appealed once again in the case of *In re William D. Macumber* (W. D. Wa. 1979). However, until such time as the Ninth Circuit reverses itself or is reversed by the United States Supreme Court, the *England* doctrine retains its precedential value in this circuit.

A. STEVENS QUIGLEY
Seattle

On Why the *Bar News* Needs a New Editor

Editor White to Chairman Broom: "Sure, we can extend the deadline, but what if nobody notices?" Williams Brothers Photographers, Ltd.

Observant members of the captive audience which read this magazine will recall that we are looking for someone else to edit this magazine.

This tedious subject comes up again this month because last month's issue — which contained a reminder that applications for the editorship must be postmarked July 21 — did not arrive at any lawyer's office until *after* July 21.

The Editorial Advisory Board's plan was that there would be an announcement of my resignation in the June issue, followed by a *timely* reminder in July. True, there was an announcement on this page in June, but most lawyers did not read the column because they thought it was a descriptive travelogue about the eruption of Mount St. Helens. The July reminder was duly published but because it was late, it served no purpose but to remind everyone that we need a new editor who can get this magazine out on time.

Anyway, I had an emergency conference with David Broom, who chairs the Editorial Advisory Board, and he directed that the deadline be extended until September 1, 1980, and that this be announced in this column this month based upon the rather naive assumption that the August *Bar News* would reach this state's lawyers sometime during August. Interested attorneys should contact Broom at 1215 Washington Mutual Building, West 601 Main Avenue, Spokane, Washington 99201, or *somebody* prior to September 1.

* * *

Another reason we need a new editor is that I am running out of topics for this column. This month I thought I would write about the Board of Governors' annual long-range planning session which this year was a day-long meeting on July 17. This meeting was dedicated to some pretty highfalutin stuff. I say that because I've always wanted to use the word "highfalutin" in a column. Having used the word, I must say it's the wrong word because I am told that "highfalutin" means "pompous; haughty; pretentious" and it wasn't that kind of stuff at all. This was a meeting at which the Board, together with new members of the Board, two past presidents of the bar, two judges and assorted other groupies sat around to ponder imponderables such as how to get better lawyers; how to get better judges; how do we serve the public better? Would mandatory internship help? Does governmental regulation serve the public? How can we provide better and less expensive services? What can we do about court congestion and delay?

Then I got back to Seattle and read the letter to the editor of the *Seattle Times* from a guy in Seattle who complains: "There are now more attorneys per capita than at any time in the history of the country. The primary reason for becoming an attorney is the possibility of being in a profession that could be very lucrative. If we, the people, would work at seeing that becoming an attorney could be a frustrating and not very lucrative profession, there would be fewer attorneys, fewer judges to hear their cases, and no need for additional space for courtroom games."

The letter writer goes on: "I use the expression 'courtroom games' because that is exactly what occurs in our courtrooms. Two or more attorneys perform in front of a group of people, one hoping to be more clever than the other, overseen by a judge, and at the expense of we pawns."

"I feel that '41 months to get a civil lawsuit to trial in King County Superior Court' is not nearly long enough. If our politicians would not ease the burden for the attorneys and judges by appropriating more taxpayer money, we would then see an end to the growing legal monster."

It's enough to drive a lawyer to drink. Anyway, I decided to write about something else.

* * *

Speaking of drinking lawyers who are something else, I am reminded of Tom Bucknell and Art Butler. In recent months, when I have been un-

Zwei Nasen don't make it right.

able to think of anything else to write about, I have resorted to alienating a friend. For example, you'll remember that David Mainland's electric car got us through the April column.

This month I draw attention to the illegal winery of Butler and Bucknell located on Queen Anne Hill in Seattle and known as "Zwei Nasen" which I am told is German for "Two Noses".

Their wine isn't much good, but the label is descriptive so I am publishing a copy of it as a public service so that lovers of wine will never experience hate.

I am really publishing it because B&B swore I would never get ahold of one of their wine labels. They should have known better. I have a nose for news, and I never reveal my sources.

Actually, to give the *Bar News*' first wine review (and to illustrate why it's never been done before), their Semillon is sensational, their Riesling rough, and their Rose rusty.

Four more columns. Four more friends.

JVW

The President's Corner

I have often heard the remark, "I know nothing about criminal law," implying that it is somewhat beneath the speaker's dignity to engage in a criminal defense. This is unfortunate, for now many lawyers are constantly confronted with criminal statutes that they have very little, if any, knowledge of, and perhaps they have no knowledge of the practical aspects of such legislation.

In this era, it is not uncommon for lawyers to be in close contact with their clients and become associated with them in the clients' business. There lies a real danger when suddenly the friendly business associate client becomes the principal in a Grand Jury investigation. The attorney-client privilege may be substantially jeopardized, there is suddenly a taint, and, worst of all, there may be cause to make the lawyer a possible suspect.

Some prosecutors become very zealous in ferreting out the facts, and as a result may believe they are duty-bound to demand that the lawyer testify or "cooperate" or in some way respond to their will. Should this be the case, the lawyer is immediately confronted with the privilege, his or her duty to his or her client, and in no small way his or her duty to society, to the profession and to himself or herself.

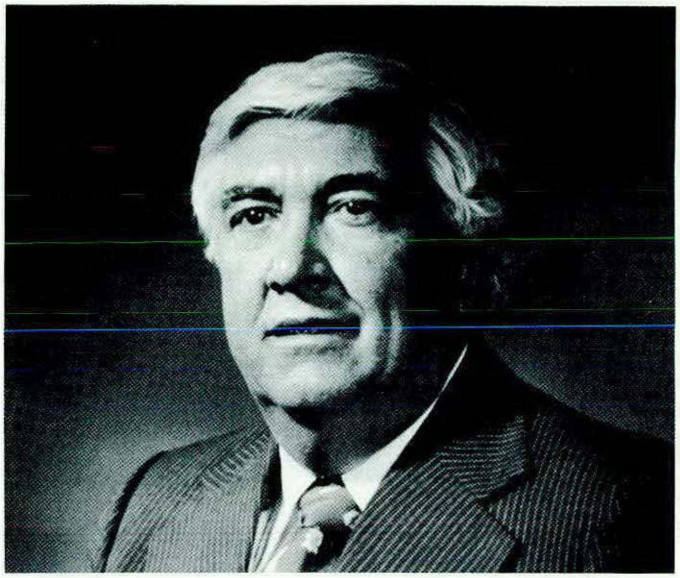
There is a definite attempt by the courts to erode the privilege, and presently there is before the American Bar Association the Kutak Code that would in effect make all lawyers who are engaged in corporate practice an informant for the governmental agencies. Considering these possibilities, we must look to our relations with our clients.

There is nothing new about a lawyer's duty when his or her client is about to commit or is in the commission of any crime. The rub comes in when the lawyer faces the con man who has fooled the lawyer as well as the public that he may be bilking.

The lawyer is placed in an awkward position because he or she is, on the one hand, a lawyer representing his or her client, and on the other hand, a businessman or woman who is susceptible to being charged — the natural instinct of self-preservation surely takes hold and the finger pointing begins.

The question of duty to the client becomes blurred or extinct, and the Code, as far as this lawyer is concerned, is just another Bylaw.

It is very difficult to ignore the age-old doctrine that ignorance of the law is no excuse. Any grand juror, or for that matter, any lawyer who has never engaged in the private practice, as in the case with many who are employed by the government, believes that a lawyer is bound by his or her own conduct, that a lawyer knows *all* facets of the law and that a lawyer is generally regarded as being ultimately responsible for the conduct of his or her business associates. We lawyers know that this approach is unfair; however, we are not so naive that we



believe that "fair" has a hell of a lot to do with a criminal investigation.

Under these circumstances, just what is the lawyer supposed to do?

The answer may lie in a basic tenet of our profession, in that the professional responsibility of all lawyers is that every person they represent should have *independent* professional services from the lawyer. This would seem to discourage a business association.

For those of you who are engaged in business relationships with your clients, I suggest that great care be taken in reviewing the Code of Professional Responsibility. The Code points out the way "to the aspiring and provides standards by which to judge the transgressor. Each lawyer must find, within his own conscience, the touchstone against which to test the extent to which his actions should rise above minimum standards."

If we apply these standards, then the answer may be simple. We just do not engage in a business and represent that business at the same time. Carrying that proposition one step further, perhaps we ought not, under any circumstances, engage in *any* business and practice law at the same time. This last theory may be harsh, but with the ever-complicated problems of the law, it would seem almost a direct conflict to do otherwise.

The profession demands our total time and energy. I submit that we cannot serve our clients and protect society in any other manner than total commitment; therefore, there may be no room for the businessman-lawyer in our profession.

What Have They Done to the Tort Law?

by **Maryalice Norman**

Twenty years ago automobile manufacturers were protected from claims by injured purchasers because of exclusionary warranties, automobile insurers by guest-host statutes and intrafamily immunity, cities by sovereign immunity, and makers, distributors and sellers of products by privity.

All that changed. In 1960 the New Jersey Supreme Court allowed recovery to Mrs. Henningsen for injuries she suffered when the steering failed in her husband's new car, even though the printed warranty explicitly excluded such damages. (*Henningsen v. Bloomfield Motors, Inc.* 61 A2d 69, 1960). Dean Prosser wrote, "What followed was the most rapid and altogether spectacular overturn of an established rule in the law of torts."

That was only the beginning. Justice Traynor wrote a new constitution for consumers in *Greenman v. Yuba Power Products, Inc.*, 377 P2d 897 (1963) followed soon by §402A of the Restatement of Torts, Second (1965), now adopted by case law in at least two-thirds of the states, including Washington. (*Ulmer v. Ford Motor Co.*, 75 Wn2d 522, 1969).

Meanwhile, back at City Hall, sovereign immunity was falling down. The Congress had partially destroyed it in the 1946 Federal Tort Claims Act (28 U.S.C.A. §§2671), followed by some of the states, including Washington in 1963 (RCW Title 4.92).

Throughout the country, state court and legislatures hacked away at guest-host statutes, devised a "family car" doctrine to protect injured citizens from teenage drivers, blew away privity in one nationwide windstorm and trimmed the fat, along with most of the muscle, from intrafamily immunity.

In two decades plaintiffs' lawyers changed an entire body of law. But now defendants' lawyers cry havoc. The Congress may soon vote on a federal bill to set limits on and pre-empt products liability law. Many states have enacted limiting products liability legislation and new statutes of limitation for medical malpractice claims. Insurance companies and plaintiffs' lawyers are slugging it out toe to toe over insurance company claims of foul.

The Washington State Bar Association, through a Tort Reform Task Force, is mulling over the situation and will soon make public its recommendations. The committee members (John Gavin of Yakima, Ernest L. Meyer of Olympia, Richard H. Riddell of Seattle, David A. Welts of Mount Vernon and Cleary Cone of Ellensburg) had held ten days of meetings by June 10, devoted substantial individual time to study and review of past and current legislative proposals, contacted both opponents and proponents of various bills, and had representatives attend each session of Senator Phil Talmadge's Select Committee on Tort Reform.

The Task Force is focusing on municipal and products liability. In the field of municipal liability only general recommendations will likely be made, whereas specific legislation will probably be proposed in the field of product liability. These will be presented to the Board of Governors and eventually made public.

So what's happening? Has the tide of tort law change slowed? If so, should it?

For those of you not engaged actively in tort law, we present a compendium of explanations, descriptions and arguments from all sides, or as many as we could find, about recent and projected tort law changes, for your summer reading pleasure. □

Seattle attorney Maryalice Norman, a member of the Advisory Board, is coordinating editor of this issue of the Bar News.

Work-A-Day Considerations

by **Dick Marquardt**

Several work-a-day considerations come to my mind when I think of my office's relationship with Washington attorneys.

Process Service on Insurers

To serve a domestic insurance company, the summons is delivered to any licensed agent authorized to sell that company's insurance or, if no agent is available, to the company's home office. The Insurance Commissioner is not statutory attorney for domestic insurers. RCW 28.28.060(6).

To serve foreign or alien insurance companies, deliver the papers to my office, plus two copies and $2 for filing, and we will forward them to the proper person, usually on the day received. The papers must be sent to us by registered or certified mail, or in person, or they will not be accepted. RCW 48.05.200 & .210.

Service on foreign and alien insurers can be had only by service on the commissioner, except for contractor's bonds which must be served on the Department of Labor & Industries. RCW 18.27.040.

Service on surplus line companies is the same as on foreign insurers, except the fee is $10. RCW 48.15.150.

Our office cannot accept service on a group of companies, like Farmers Insurance Group of the Kemper Companies. You must serve the individual company. It must be the correct company in the group; the general headquarters won't do.

The Unfair Claims Settlements Practice Regulation

One of the things I'm most proud of is this regulation. It provides the people of Washington with a level of protection they never had before, by setting standards for insurers to meet in dealing with claimants. The regulations establish unfair methods of competition, and unfair or deceptive acts and practices, along with standards for prompt, fair settlement of claims.

If we see a pattern of failure by a company in any of these areas, we set a timetable for the company to turn around its practices. If it doesn't measure up, the company may be fined, suspended from doing business in Washington, or their license revoked.

However, unlike California, we have no provision for private action against an insurance company.

The regulation has been challenged in court, and survived.

New Auto Insurance Laws Effective September 1, 1980

Washington drivers must meet new financial responsibility limits of at least $25,000 for bodily injury or death of one person and $50,000 for two or more persons in any one accident, plus $10,000 for property damage. In addition, every new and renewed auto policy covering a vehicle principally garaged in Washington will have to provide coverage for underinsured motor vehicles. The coverage must be in the same amount as the insured's third-party liability coverage, unless the insured rejects all or part of the coverage.

The AG's office tells me this law is mandatory so that any insurer who doesn't offer the coverage will have to pay off as if it had been offered and accepted.

Dick Marquardt is the Washington State Insurance Commissioner.

A Final Note

Our research at this time reveals no case authority of value regarding volcano claims under auto and home-owners policies. □

Underinsured Uncertainties

by **Sam Franklin**

For the first time "uninsured" and "underinsured" vehicles are defined: underinsured includes both. However, some uncertainties remain.

"'Underinsured motor vehicle' means a motor vehicle with respect to the ownership, maintenance, or use of which either no bodily injury liability bond or insurance policy applies at the time of an accident, or with respect to which the sum of the limits of liability under all bodily injury liability bonds and insurance policies *applicable* to *a covered person* after an accident is less than the damages which the covered person is *legally entitled to recover*". (emphasis added) §1(1).

1. *What are "policies applicable"*? Does this include all policies of any kind available to the insured person or only auto liability policies held by the driver or owner of the at-fault vehicle? Arguably the legislature intended the latter narrower application.

2. *What is a "covered person"*? Does this refer to a person covered by an applicable UDM policy or does it have a broader application? Presumably, the broader application would be the legislative intent.

3. *What does "legally entitled to recover" mean*? From whom? The owner, driver or maintainer of the at-fault vehicle? Third parties who may have contributed to the injury, i.e. any one with real or theoretical liability? Presumably, this language refers only to the driver or owner or maintainer of the at-fault vehicle(s) since most other situations would not directly involve insurance required by RCW 48.22 or RCW 46.

The Washington statute does not explicitly require or authorize reduction of the UDM coverage to the extent of payments made because of bodily injury by or on behalf of persons who may be legally responsible. Following the logic of *Touchett v. Northwest Mutual*, 80 Wash.2d 327, and *Cammel v. State Farm*, 86 Wash.2d 264, it would appear that the statute may create a floating layer of UDM coverage regardless of the underlying coverage subject only to the prohibition against double recovery (*State Farm v. Bafus*, 77 Wash.2d 720).

Sam Franklin was admitted to the Washington State Bar Association in 1967 and practices in Seattle.

A major 1980 amendment allows insurers to prohibit "stacking". This refers both to internal stacking, [multiplication of coverage within a single premium by reason of number of covered persons, claims made, vehicles or separate premiums shown on a single policy, RCW 48.22.030(5)] and "external stacking" [multiple policies available, RCW 48.22.030(6)]. This prohibition against stacking must be stated in the policy to be effective.

RCW 48.22.030(2) allows insurance companies to exclude automobiles owned by or furnished for the regular use of the insured which are not insured under the liability coverage of the policy. This previously had not been allowed by the Supreme Court with respect to uninsured motorist coverage.

The only other substantial change allows companies to exclude any person "while operating or occupying a motorcycle or motor driven cycle . . . which is not insured under the liability coverage of the policy." RCW 48.22.030(2). ☐

Who Sues Whom?

by **William P. Fite**

Facts: Johnny is in the back seat of the family stationwagon driven by his Dad, with the assistance of Mom in the front seat. It's late, the junior high dance Johnny was attending didn't end until 1:00 a.m. Mom doses off and Dad is tired from having worked with Mom all day at the family business. However, it isn't so much his being tired as his concern about paying for the children's education that results in his running a red light and having an accident. Mom and Johnny are seriously injured, but the other eight children are OK since they stayed home watching the late show on TV. The family car was insured, but the policy has a provision commonly known as the "family or household exclusion clause".

Seattle attorney William P. Fite is a partner in the firm of Betts, Patterson & Mines. He graduated from the University of Washington School of Law in 1962 and practices primarily in the area of civil litigation.

Question: Who can sue whom and for what, and who pays?

Answer: Dad and his auto insurance company are in trouble, but it could be worse.

Johnny can sue his dad. The Supreme Court in *Merrick v. Sutterlin*, 93 Wn.2d 411 (1980) said, "A minor child injured by the negligence of a parent in an automobile accident has a cause of action against that parent". If it's any consolation to Dad, the court did state that "An absolute abrogation of the parent-child immunity is not before the Court"; the Court said that they are "simply holding" what's quoted above. It may be a little naive to think we won't hear more about this.

Dad's not too concerned. He has nothing against his son being the recipient of a just award especially if it's enough for the boy's college education, assuming that this amount is within policy limits.

Dad's lack of concern is justified because there is insurance coverage if the decision in *Mutual of Enumclaw v. Wiscomb*, 25 Wn.App. 841, (Motion for Reconsideration filed May 27, 1980) is followed. In that case, Division I of the Court of Appeals decided that the exclusion for bodily injury to the insured, or any member of his family, is not good for policy holders, i.e. it's against public policy. Therefore, the provision in Dad's insurance policy known as the "family or household exclusion clause" will probably be found void and not worth the insurance policy paper on which it was so clearly written.

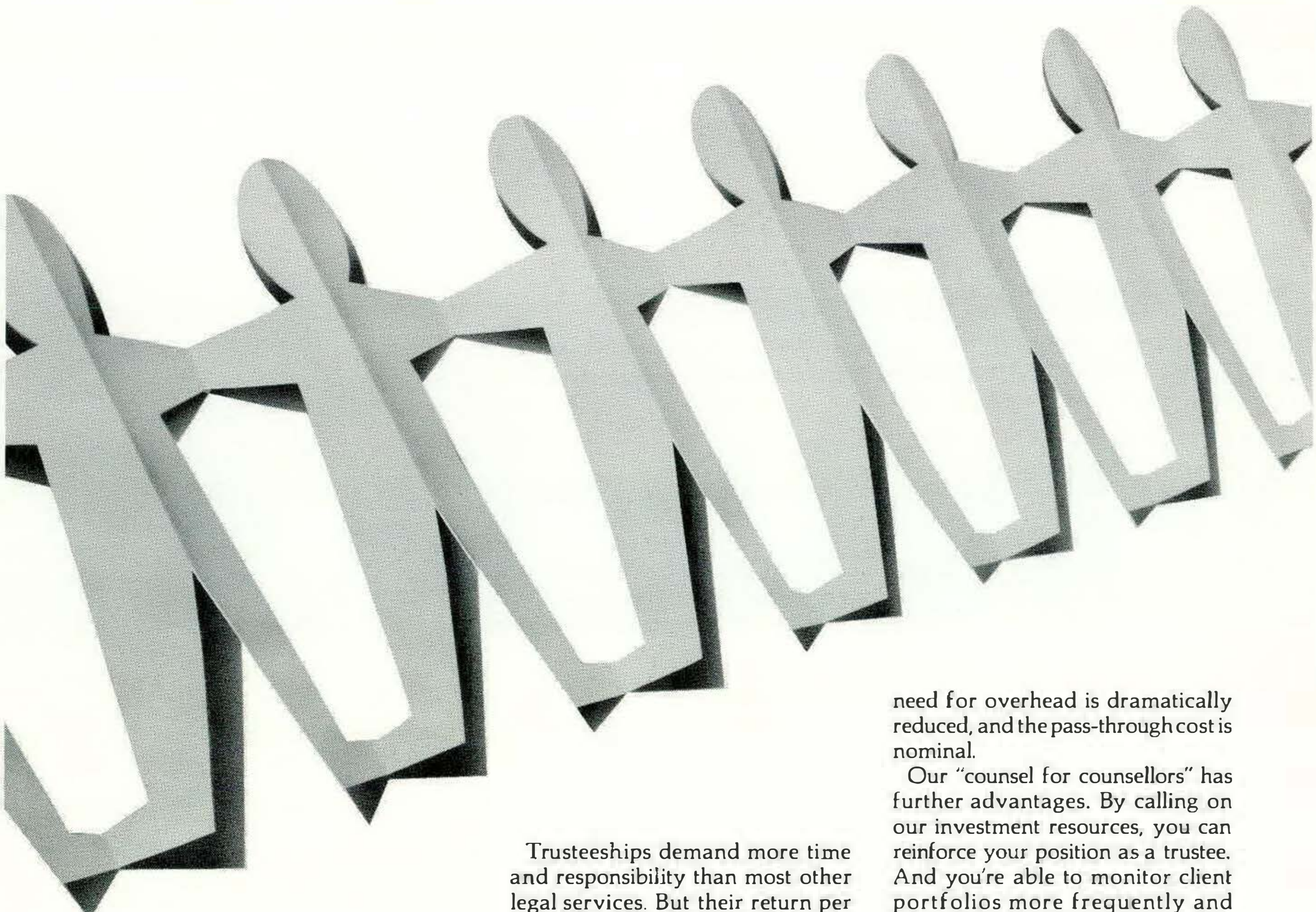
A grisly accident for the Highway Patrol to investigate. Was this vehicle insured, uninsured, underinsured? Was it a "family car?" Did the driver-host carry a guest passenger?

Photo by J. D. Richards, courtesy of the Washington State Patrol.

It has also been decided, not by the courts, but by the 1980 Legislature (HB*1983*) that minimum limits of lia-

Trustee paperwork can make little sense...

and a lot less money.



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Another grisly job for the Highway Patrol to investigate. Which is the at-fault vehicle? Is it insured? Uninsured? Underinsured?
Photo by the Washington State Patrol.

bility coverage shall, effective September 1, 1980, be raised from 15/30/5 to $25,000 for bodily injury to one person, $50,000 for each accident and $10,000 for property damage. We don't know whether Dad had only minimum coverage or whether his coverage will be adequate to pay Johnny's award without liquidating Dad's and the community's interest in the family business.

If Division I of the Court of Appeals has its way, neither Johnny nor the other eight children can sue Dad for the loss of their mother's companionship that may have resulted from the injuries. In *Roth v. Bell*, 28 Wn.App. 92 (1979), the Court denied the claim of minor children for the loss of their mother's companionship (headnoted as "parental consortium") against a drug company and two doctors who allegedly caused the mother serious injury by taking birth control pills. The Court said,

> "We conclude that if the right of action is to be granted to a minor child for injury to a parent, such a decision should follow after all of the voices have been heard and the legislative process has done its work".

Talking about "consortium", Washington State Supreme Court heard argument in May on a case which should decide whether or not either spouse has a claim for loss of consortium where there was injury to the other spouse by a third party's negligence.

We know from earlier decisions (*Freehe v. Freehe*, 81 Wn.2d, 183 [1972]) that Mom can sue Dad; now Johnny can sue Dad, but we'll have to wait and see to be sure just who can sue whom if there is some consortium that got lost in this accident. ☐

Rebuilding the Citadel

If the citadel protecting consumers was knocked down in the 1960's by plaintiffs' attorneys, it has been reconstructed in part, at least, in the last couple of years by defendants' attorneys.

By October, 1979 at least 20 states had enacted some kind of product liability legislation, and legislation is pending in most of the rest. Some of the bills require product liability insurers to disclose information about their claims and income. Others set new, more stringent statutes of limitation or enact "state of the art" as a defense.

Most alarming to the consumer, however, is the Model Products Liability Act (44 Fed. Reg. 62714, Oct. 31, 1979) which provides for federal preemption of product liability (H.R. 7000) by statute.

Plaintiffs' attorneys are steadfastly opposed to this kind of legislation. Theodore I. Koskoff, out-going American Trial Lawyer Association president, wrote in the October, 1979 Washington *Trial News*,

"On September 27, ATLA testified that the product liability crisis, or problem, or non-problem, has been consistently described as one of 'availability' or 'affordability' of product liability insurance. ATLA has consistently suggested that there was only a crisis created by the casualty insurance industry, a crisis of no real cause, serving only the insurance industry's political goals and a maneuver that made unwitting pawns and victims of manufacturers, sellers and consumers."

When testifying before the Washington State Senate Select Committee on Products Liability, H. Frank Stubbs, president of the Washington Trial Lawyers, said,

"The alleged need for an indepth legislative modification of existing products liability law appears to be entirely based upon the premise that the insurance carriers of this state have *justifiably* raised products liability insurance premiums to manufacturers and sellers, thereby creating a need for relief to the insurance carriers and their insureds, the products manufacturers and sellers.

"This committee commendably has called for information from the insurance industry based on hard facts to demonstrate that their increases in products liability premiums are justified.

"I have been advised that the insurance industry has only minimally complied with this committee's request to produce justification for their increase in premiums.

"At a prior hearing, a representative of the Insurance Commissioner testified that no showing had been made to the Insurance Commissioner's Office to justify the need for increased rates based upon any increase in judgments or settlements to plaintiffs in products liability cases in Washington state. The same representative stated that to his knowledge, there were no employers in Washington at the present time who were unable to secure products liability insurance at reasonable rates. He also stated that the Insurance Marketing Assistance Program (MAPS) instituted by their office, had not had any inquiries for assistance from manufacturers or sellers of products for more than a year.

"It is clear that the products liability crisis is misleading, and in fact does not exist. I refer to the insurance industry's widely-publicized allegation that there were one million products liability claims per year as of 1976 when, in fact, the correct figures were 60,000 to 80,000 claims annually. This misinformation was circulated nationally by the insurance industry and by certain insurance carriers in paid ads in national magazines and was accepted as fact until the Interagency Task Force of the U.S. Department of Commerce exposed the true figures, later verified by the insurance industry."

What's in that bucket? Did the manufacturer of the ingredient warn adequately of its dangers (if any)?

Photo courtesy of Howard S. Wright Construction Company.

Professor Aaron D. Twerski of the Hofstra University School of Law wrote in the November, 1979 issue of *Trial*,

"The common law of products liability is under heavy attack. Two decades ago Dean Prosser spoke of the 'Assault on the Citadel' in describing the elimination of privity and other technical defenses as a barrier to a products action. The citadel is now once again under construction. The statutory building blocks are being put together so that plaintiffs with legitimate claims will face rigid rules rather than flexible doctrine which is fact-sensitive. The law of torts, however, does not lend itself to simplistic statutory definition. The citadel, upon completion, will not be a very pleasing structure." □

The Need for Legislative Reform of Tort and Product Liability Law

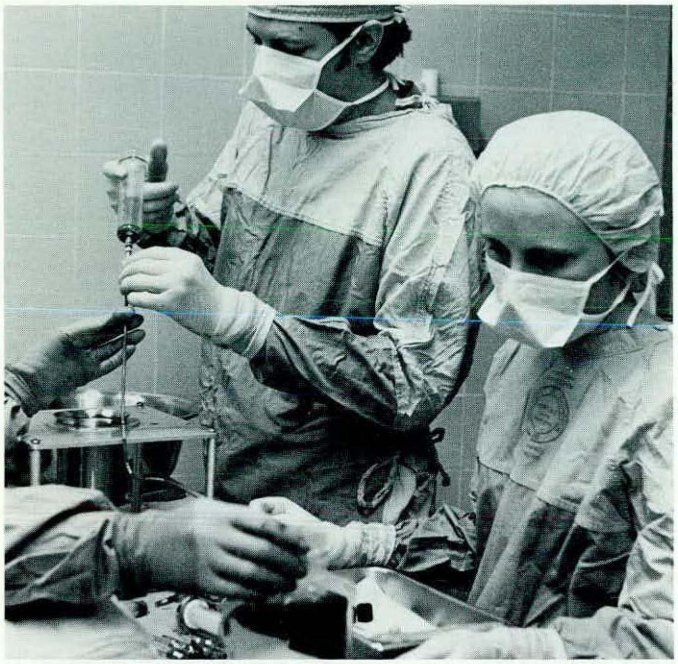
by **Thomas J. McLaughlin**

The Washington State Supreme Court recently commented that it "has been at the forefront in adopting new remedies and expanding tort liability." While doubtless intended by the court as a boast rather than an apology, members of the bar and the general public are increasingly of the view that some balance needs to be restored to the law in the tort and product liability areas. In both the 1977 and 1979 sessions, the state legislature had an opportunity to do just that; however, in both years reform bills died when a single powerful legislator-attorney blocked a committee vote as the session ended. Most recently, in 1979, Senate Majority Leader Walgren's refusal to hold a meeting of the Rules Committee prevented enactment of a bill that had already been passed (in slightly differing forms) by both houses. Legislative and bar association committees have continued to study the issues, and one or more bills will undoubtedly be presented to the 1981 legislature.

This article examines a few of the tort and product liability areas that require legislative action. It also looks at how these areas are addressed by the 1979 bill as amended ("2333"), by the Department of Commerce's Uniform Product Liability Act ("UPLA"), and by the Uniform Comparative Fault Act ("UCFA") promulgated by the National Conference of Commissioners on Uniform State Laws. Because of space limitations many other important reform proposals, e.g., liability of non-manufacturing sellers, statutes of limitations and repose, and unforeseeable product misuse or alteration have been omitted from this discussion.

Plaintiff's Careless Product Use

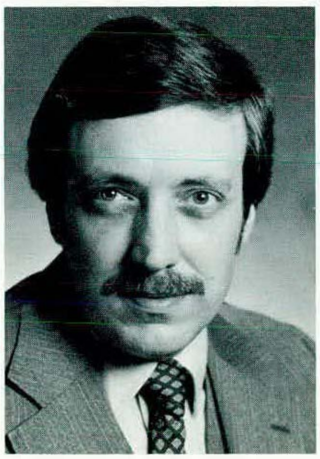
One of the matters on which opponents and proponents of 2333 agreed was that comparative principles should apply to make the plaintiff's contributory negligence a damage-reducing defense to a strict product liability action. In fact, both houses passed identical provisions to implement this principle. (Ironically, the death of 2333, which occurred because of other, controversial provisions, was recently cited by the Supreme Court in holding that the plaintiff's contributory negligence is no defense in a strict product liability action.) The UFCA, the UPLA and nearly every jurisdiction that has recently considered the issue have concluded, in the words of the Ninth Circuit, that the "all-or-nothing" defenses to strict product liability



There's many a slip 'twixt the cup and the lip - but who's to blame if there is?
Photo courtesy of the University of Washington.

". . . are inequitable in their operation because they fail to distribute responsibility in proportion to fault and place upon one party the entire burden of a loss for which two are, by hypothesis, responsible. If, for example, the user's conduct in failing to discover or guard against the product's defect is highly irresponsible and the product's defect slight, it offends our sense of justice and fair play to impose the whole loss on the manufacturer in the name of imposing the burden of defective products on manufacturers as one of the costs of doing business. There is no reason why other consumers and society in general should bear that portion of the burden attributable to the plaintiff's own blameworthy conduct."

Thomas J. McLaughlin is associated with Perkins, Coie, Stone, Olsen and Williams. He is a 1975 graduate of the Harvard Law School. In both the 1977 and 1979 legislative sessions, he was involved in the efforts of the Association of Washington Business to have tort and product liability reform legislation enacted.



Multiple Defendants

Joint and several liability of multiple tortfeasors is generally justified on the basis that it is the "guilty" defendant, rather than the "innocent" plaintiff, who should bear the risk that damages will not be collectable from one or more of the contributing tortfeasors. However, under the comparative negligence system the plaintiff is no longer necessarily innocent; indeed the "deep pocket" defendant may be less at fault than the plaintiff (e.g., P 30%, "deep pocket" D1 10%, insolvent D2 60%). Should the no-longer-innocent plaintiff be able to collect his entire award from the less-guilty defendant?

Several methods of dealing with this situation are possible. Under 2333 joint and several liability would have been modified when the plaintiff was partially at fault. Opponents of 2333 would have retained joint and several liability but added comparative fault contribution among tortfeasors. Of course, as long as each defendant can pay his full share of the liability either system assures that the liability will ultimately be fairly distributed. Thus, the real test of whether a system is equitable is how it allocates the liability when all or part of one wrongdoer's share is not collectible.

1. *Reallocation of Uncollectible Amounts:* If D2, the 60%-at-fault defendant in the above example, did not have sufficient assets and insurance to pay his share of the

judgment, 2333 (as well as the UPLA and the UCFA) would reallocate his liability among all the other parties, including the plaintiff, in proportion to their relative fault. Thus, D2's 60% share would be reallocated on a 30-10 ratio (i.e., 45% to P and 15% to D1), and the 10%-at-fault D1 would only have to pay 25% of P's damages. In contrast, the contribution solution proposed by 2333's opponents would cast upon D1 the entire burden of D2's share being uncollectible even though D1 was less at fault than P.

2. *Settlement:* Under 2333 (as well as the UPLA and the UCFA), the liability of the nonsettling defendant would be reduced by the settling wrongdoer's percentage of fault, not just the dollar amount of the settlement. Opponents of 2333 argued that this percentage-reduction rule would deter partial settlements because a plaintiff would be unwilling to run the risk that a jury will assess the settling defendant with a higher percentage of fault than the plaintiff expected. However, in a comparative fault system this is the risk the plaintiff must necessarily take when he elects to seize the bird in hand by settling with one of the wrongdoers. Furthermore, while the law favors settlements, it favors complete settlements which end litigation, not inequitable, partial settlements.

3. *Workers' Compensation:* In the above 30-10-60 example, if D2 were P's employer, then under existing law D2's 60% share would be uncollectible because of workers' compensation immunity, and P could collect 70% of his damages from D1 (assuming that P's fault is a comparative defense). In addition, the state's workers' compensation fund or the self-insured employer would be reimbursed for the workers' compensation benefits paid and payable. Not only is this result grossly unfair, as the Supreme Court has recognized, but it also distorts the incentives for safe workplaces.

To eliminate this inequity, the Senate version of 2333 would have reduced the plaintiff's recovery by his employer's percentage of fault (and abolished the lien except for benefits in excess of the employer's share). In the House 2333 was changed so that the plaintiff's recovery would be reduced only by the dollar amount of benefits paid and payable. The UPLA incorporates both of these schemes, utilizing a percentage reduction for more serious forms of employer fault and a dollar reduction in other cases.

Conclusion

The inequities in our existing tort and product liability law described above are just a few of the problems which need to be addressed by the 1981 legislature. Contrary to the assertions of its critics, 2333 provided a comprehensive and fair solution to these problems. In fact, many of the provisions of 2333 which have acquired the label "controversial" have counterparts in the UPLA and UCFA recently promulgated by prestigious, nationwide committees. □

Resolving Medical-Legal Disputes Without a Lawsuit

by **H. Graham Gaiser**

Professional relationships between doctors and lawyers have been the concern of the Joint Medical-Legal Committee of the Seattle-King County Bar Association and the King County Medical Society. In 1972, the Committee developed an Inter-Professional Code for Physicians and Attorneys, which was revised in 1979 and distributed to each member of the local bar association and medical society in a Medical/Legal Liaison pamphlet. The Code offers suggested rules of conduct governing professional contact between physicians and attorneys in specific situations, with due regard to legal and medical ethics and principles.

The Committee, composed of six lawyers and six doctors, meets monthly to consider and dispose of complaints lodged by individual lawyers and doctors. Experience suggests the most frequent complaints by lawyers is that the doctor charged too much for a medical-legal service, by doctors that the lawyer has not paid the bill. While neither a disciplinary board nor a collection agency, the Committee, by investigation and peer review, has proved successful in resolving inter-professional disputes on an informal basis.

An additional function of the Medical-Legal Committee is to maintain professional liability panels to hear and decide medical malpractice matters. Each of two panels is composed of doctor and lawyer non-voting co-chairmen (the lawyer writes the panel's opinion) and five physicians. Less formal than arbitration, the panel hearings are conducted to determine whether an "accused" physician's treatment was a deviation from the applicable standard of medical care. Issues of credibility and damages are not decided. Matters of informed consent are considered (if credibility is not an issue), notwithstanding the state supreme court's apparent position that *it* will decide the scope of informed consent on a case-by-case basis. *See Gates v. Jensen*, 92 Wn.2d 246 (1979).

Submission of matters for panel consideration is voluntary and must be by agreement of both patient and physician. The proceedings are privileged, and the panel's opinion is not binding. It is hoped the panel's opinion will discourage lawsuits without merit and encourage settlement of meritorious claims without litigation. □

Seattle attorney H. Graham Gaiser is a member of the Medical-Legal Liaison Committee.

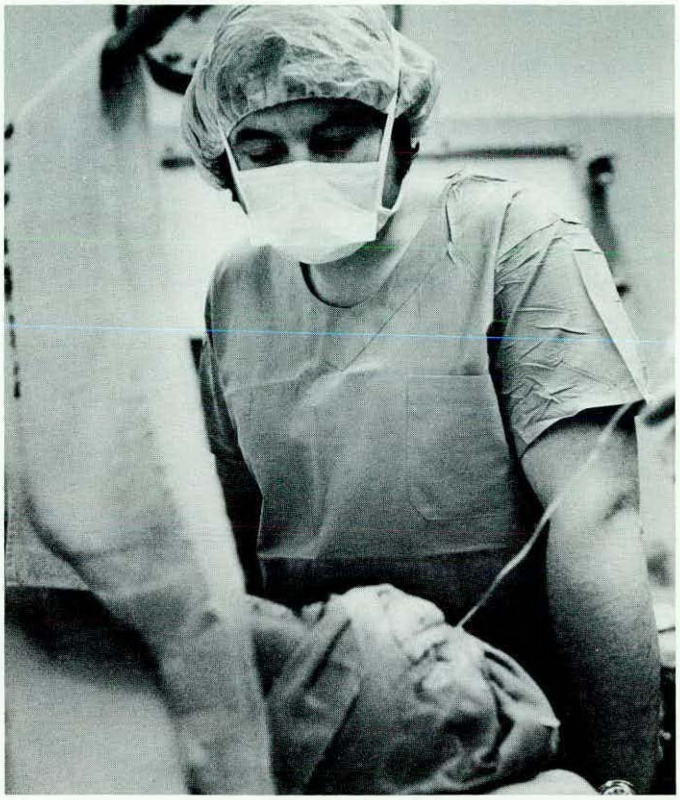


Photo courtesy of the University of Washington.

Medical Negligence—the 70's and 80's: From the Perspective of a Lawyer for the Patient

by **Daniel F. Sullivan**

The winds of change have indeed had a dramatic effect on medical negligence law during the 70's. A number of archaic legal doctrines designed to afford special protection to a special group—the health-care professions—are no longer a viable part of Washington law. Victims of the battlefields of the 70's number amongst them such venerable doctrines as "the respectable minority rule," "it was only a mistake of judgment rule," and "the standard of care as established by the profession itself rule." With the demise of these protective rules of law and the adoption of new and innovative doctrines designed to protect the patient, the effectiveness of the "conspiracy of silence" has certainly been diminished if not destroyed. Today doctors and other health-care professionals are judged in accordance with the same rules of law which control the conduct and behavior of other citizens of our state. The health-care professional is no longer permitted to avoid liability by establishing some amorphous artificial standard set by the profession itself.

The doctrines of "informed consent" and "res ipsa loquitur" are new weapons available to patients in their attack on the once invulnerable citadel of medicine. No single rule of law has been more misunderstood by lawyers and judges and more despised by the medical profession than "informed consent." No rule of law, however, has served to provide the patient with better medical care or enabled him to actively participate in and understand—thereby demystifying—his medical care and treatment. Interestingly enough, the Washington State Medical Association, in a brochure designed to be given

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to all of its physician/members' patients, states: "*You* (the patient) *have the ultimate responsibility for making decisions concerning medical procedures which directly affect you. You have the right to withhold your consent to any proposed treatment. Only you can make this decision.*" Unfortunately, the doctors' brochure fails to inform the patient that it is the doctors' duty to make available to the patient all material facts necessary for the patient to reach an informed decision as to his or her medical treatment. The duty is measured by the patient's right to know rather than by some standard set by the doctors. Despite this rather obvious attempt to shift the legal duty and the responsibility of consent to treatment to the patient, in the real world of the doctor's office *informed consent* continues to have a positive affect in humanizing the physician/patient relationship.

The most significant change in the evolution and development of the law of medical negligence has been the repudiation of the former "standard of the profession" test, and the application of the "reasonably prudent person" standard. In 1975 the legislature, by way of RCW 4.24.290, adopted the rule of *Helling v. Carey*, 83 Wn. 2d 514, which was interpreted by our Supreme Court in *Gates v. Jensen*, 92 Wn. 2d 246 (1979). Justice Dolliver made it clear in his separate opinion in *Gates* that the court had abandoned the traditional "standard of the profession" rule for the test applied in most negligence actions, that is "the standard of care to which the defendant must conform is that degree of care which, in the jury's view, a reasonable person of ordinary prudence would have exercised in the defendant's place in the same or similar circumstances."

Photo courtesy of the University of Washington.

The years 1975 and 1976 are best remembered as the "medical negligence crisis years." A crisis best de-

scribed as fiction rather than fact, manufactured and fueled by the insurance industry. In response to the crisis the Washington state legislature passed the Medical Malpractice Act of 1976. As a practical matter the much heralded Malpractice Act merely codified existing common law with a few minor changes. It codified the negligence standard by requiring the patient to prove that "the health-care provider failed to exercise that degree of care, skill and learning *expected of a reasonably prudent health care provider* in the profession or class to which he belongs, in the State of Washington, acting in the same or similar circumstances."

The decade of the 70's was a vintage one for patients. The changes in the law led a number of hospitals to form an independent, self-insuring group.

Statistics available from the independent hospital group and Group Health indicate that under the self-insurance plan their costs have been cut dramatically. Patient care has improved, resulting in less malpractice, fewer lawsuits and dollar savings. Another example of the tort system at work—its objective being not merely to fully compensate injured patients, but to reduce the number of injuries, thereby contributing to the overall social good and the welfare of the commonwealth.

A Look in the Crystal Ball of the 80's

In general the 80's will most probably be a decade of relative stability in terms of the development and evolution of the law of medical negligence.

The liability of hospitals and clinics will increase in direct correlation with the increasing tendency of patients to seek the assistance of the institution on the basis of its reputation rather than its individual physicians. The administrative agency of the state responsible for the licensing and supervising of the health-care professions may expect to be held liable for its failure to adequately and properly ascertain the qualifications of individuals applying for a license to practice, and failing to establish criteria and/or withdraw the licenses of such health-care providers who have demonstrated themselves to be incompetent and a threat to the public. The same will hold true as to the various medical associations and hospital boards.

As the practice of medicine evolves with continuing complicated technological advances, we can expect to see an increasing specialization by lawyers representing both the injured patients and the health-care providers.

Better medicine, fewer bad results, fewer claims, and prompt and fair resolution of just claims are all achievable goals for the 80's—but only if there continues to be mutual respect, cooperation and dialogue between lawyers, physicians and their representatives to include insurance carriers. □

Risk Management: Improving Patient Care, Reducing Malpractice Claims, Controlling the Cost Crisis

by **Donald M. Keith, M.D.**

During the past year, the Washington State Medical Association and its professional liability insurer, the Aetna Life & Casualty Company, have jointly sponsored an extensive study of the relationship of quality patient care to malpractice and the sharply increasing costs of claims.

As a result of those findings, the WSMA has entered into a partnership program for Risk Management with the Aetna.

A principle feature of the Risk Management Program includes establishing a comprehensive "data bank" to support both a new education program and the work of a new WSMA professional review committee.

An expanded claims review process will permit faster evaluation of claims, and a procedure to encourage early reporting of incidents that could result in claims is intended to identify and resolve situations where potential physician liability exists. Finally, the WSMA/Aetna professional liability program will include policy endorsements that require participation in the Risk Management Program to assure continued coverage.

The claims review panel process will be expanded to include three or more groups representative of physicians in practice throughout the State.

This effort is expected to provide review, on request of the physician, the insurer or the WSMA, within a substantially reduced time frame. There appears to be a correlation between the period of time required to reach a disposition decision in a claim of malpractice and the cost of a given claim.

Reduced processing time will also result in more equitable relief for patients and reduced time and stress for the physician.

Data collected in the design phase of the Risk Management Program will be expanded to provide continuous monitoring of all statistical aspects of malpractice claims experience, in the aggregate and by policy year.

Maintained under the auspices of WSMA the data bank will provide information used in the education program, and will assist the professional review committee in assessing the potential of risk.

All insured physicians will participate at least annually in a risk management education program in each county of the state. Using statistical material, audiovisual teaching aids, case discussions and expert speakers, the education program will treat a wide variety of issues related to improvement of standards of patient care, identification of procedures which present a higher potential risk of malpractice, record-keeping requirements, legal interpretations, and other critical factors impacting the incidence of malpractice in Washington State.

Because nearly 85% of malpractice incidents occur in the hospital setting, the education program will include sessions for hospital medical staff as well as specialty societies.

The full effects of the new Risk Management Program in patient care improvements, risk reduction, and cost savings will not be realized in the first year or two of implementation.

A professional review committee will review and assess all new applications for professional liability coverage as well as currently insured physicians who are identified as presenting a higher than normal risk of a malpractice claim.

The professional review committee is empowered to recommend rate sanctions, renewal restrictions, impaired physician coverage, nonrenewal and/or referral to disciplinary bodies.

The recommendation of the professional review committee is advisory; however, past experience with the Aetna indicates that, except in extraordinary circumstances, the insurer will accept and act on the committee's recommendations.

An appeals procedure will insure "due process" for all physicians with regard to the decisions of the professional review committee and of the claims review panels.

This program, similar to but more comprehensive than those successfully operating in other states, is designed to meet the need to improve standards of patient care, reduce malpractice incidents, and control the drastically increasing costs of claims and concomitant liability insurance premiums.

The WSMA's objective is to reduce both the human and economic costs of malpractice. □

Donald M. Keith, M.D., is Secretary-Treasurer of the Washington State Medical Association.

FOCUS: WORKMEN'S COMPENSATION

From Loggers to Office Workers

Washington enacted a Workman's Compensation law in 1911, one of the first in the nation. For many years the act protected only workers in ultra-hazardous occupations, such as loggers, miners and dock workers. The act rescued workers from the Catch-22 that prevented them from recovering for injuries caused by the negligence of a fellow servant, and provided income to the families of injured workers no matter who was negligent.

But this no-fault recovery for injury was a trade-off: no longer could a worker sue an employer, even if the employer was negligent. The worker traded a certain, although limited recovery, for the occasional large recovery possible when the boss was at fault.

Photographs of the early days of logging give us chills today: a tree topper whipsawed against the trunk, fellers and truckers dodging a falling giant with bandanas on their heads, not hard hats, and steam locomotives chugging across a slender log bridge a hundred feet above a gorge.

Now nearly all workers are or can be covered by industrial insurance, including typists and stockbrokers as well as loggers and construction workers, because public policy expressed through the legislature declares it good to maintain workers who are injured on the job, and their families, with a broad, insured financial support. □

Photo courtesy of Howard S. Wright Construction Company.

How Workmen's Compensation Law Should Be Changed

by **William C. Jacobs**

For too long workers' compensation reform in this state has come about piecemeal. It has been the rope in an endless tug-of-war between management and labor. As a result, heat-of-the-battle decisions have shaped many of the provisions in the current law — especially those affecting the benefit delivery system.

In the past, legislative changes in workers' compensation have occurred in one of two ways. Often the political muscle of a special interest group has succeeded in amending the law despite much opposition. Just as often changes have resulted from tradeoffs. Neither method can serve the best interests of all those affected by today's massive program.

But the program was relatively small before 1971 so the legislature got by with those methods and merely tinkered with the workers' compensation law — understandably so. Its modest premium rates and benefit levels did not substantially affect employers or employees. As a result, the legislature did little more than boost benefits occasionally or redefine risk classifications.

All that changed in 1971. As a result of a last-minute compromise by special interest groups, a one-day lobbying effort mustered the votes needed to pass amendments that virtually rewrote the former law. Those changes, voted hurriedly into law before the midnight deadline, were based on little solid research or national experience.

Now, nearly a decade later, employees and employers are paying the price — a high one — for those hasty changes. Premium costs have escalated far out of proportion to the rest of our economy: from $82.4 million in

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1971 to nearly $500 million a year today. But in spite of this heavy investment, the program is failing to meet the many needs of the people it was designed to serve.

The time has come for all interest groups to join forces to evaluate our law by some objective and valid criteria. Fortunately such criteria exist. The National Commission of State Workers' Compensation Laws (made up of top-level labor, management, and government representatives) drafted five objectives for a modern workers' compensation program:

1. Broad coverage of employees and work-related injuries and diseases;
2. Substantial protection against interruption of income;
3. Sufficient medical care and rehabilitation services;
4. Encouragement of safety; and
5. An effective system for delivery of the benefits and services.

Those who know the history of workers' compensation in this state will agree that nearly all reform efforts have aimed to upgrade the law under the first four objectives. The revision in 1971 illustrates this. It extended coverage to virtually all employment, from about 48,000 employers in 1971 to some 85,000 in 1972. It raised benefits an average of 75 percent — in fact, the former maximums became the minimums. It tied benefits to wages, ensuring automatic increases to keep pace with the cost of living. It modernized the experience rating system to increase the safety incentive for employers. All these improvements relate directly to objectives one through four.

Unfortunately, the delivery system — that which ensures that all the benefits and services reach recipients — remains just as bureaucracy-bound as it was before workers' compensation grew into today's expensive program. The old vehicle does not work well in delivering the new product. Yet more than 100,000 employers and their employees must depend on the old vehicle, the exclusive state fund, to deliver the new benefits and services. As a result, those benefits and services often fail to reach recipients in a timely and helpful manner.

For years the fear of private insurance carriers has permitted the state fund to operate without any "watchdog" to judge its performance. But is this fear of private insurance carriers justified? No, according to the nation's foremost workers' compensation scholar and former Undersecretary of Labor, Arthur Larson,

> "Can [workers' compensation] financing be handled by private enterprise? Yes. The risk of industrial injury can be made the subject of accurate actuarial calculations, and private insurers are willing to issue policies against the risk. This being so, we [in most states] have turned over the great bulk of workmens' compensation to private insurance, with the administration and dispute-settling being handled by the most local possible public agency — the individual state government."

We believe the existing law should be modernized as follows:

1. A workers' compensation agency to regulate the separate state fund, all private carriers, and self-insured employers.

2. Permit employers and employees in Washington to benefit from the experience of company experts who have proven their ability to deliver benefits and services in other states. Safety engineering and rehabilitation are among the services these companies will bring into our state.

3. Require carriers to accept application for coverage from any employer. This provision prevents the state fund from receiving all the bad risks by default. Permit reinsurance to help equalize the liabilities carriers assume.

4. Permit the regulatory agency to set rates by using a bona fide rating bureau, regionally established.

5. Maintain the Board of Appeals as a separate agency, but eliminate the jury trial as a step beyond the Board decision. Allow appeals to move from the Board to the courts only on questions of law.

This, we believe, represents a new and creative proposal for reforming the workers' compensation law in Washington State. □

For the Benefit of the Worker

by **Eugene Arron**

Employer groups seeking changes in the Workers' Compensation Act must be admired for their persistence and single-minded approach to changes in the Workers' Compensation Act. An observation over twenty-seven years of practice in this field shows the twin objective of employer's groups to be three-way coverage and the abolishment of Superior Court appeals from Board of Industrial Insurance Appeals' decisions. They have succeeded so far only in extending coverage to self-insurance. The overall battle strategy remains the same; only the tactics change.

The employers have been willing over the years to concede increases in disability awards, usually in exchange for concessions to the employers that limit the worker's benefits and rights. A new tactic is to emphasize vocational rehabilitation for the injured worker. Still active, however, is extension of coverage to private insurance carriers and elimination of the jury trial.

Self-insurance

The purpose of the Workers' Compensation Act is to provide proper and necessary coverage to injured workers and their dependents. Any change in the Act should be evaluated in terms of the benefit to the worker and his family. How bringing private insurance carriers into the picture will benefit the injured worker escapes me.

Many benefits were promised the workers by permitting employers to self-insure. Self-insurance has been authorized since 1971 and we defy the proponents to point out one increased benefit passed on to the injured worker as a result of self-insurance.

With few exceptions, the self-insured employers have hired outside insurance adjusting firms (called "service organizations") to handle their self-insurance programs. To qualify as self-insured an employer must:

> "(5) He or she has submitted to the Department a description of the administrative organization *to be maintained by him* or her to manage industrial insurance matters including:
> a. The reporting of injuries;
> b. The authorization of medical care;
> c. The payment of compensation;
> d. The handling of claims for compensation;
> e. The name and location of each business location of

Eugene Arron has been a member of the Seattle law firm of Walthew, Warner, Keefe, Arron, Costello & Thompson since 1953. The bulk of his trial practice has been in Worker's Compensation representing claimants only. He is a former member of the uniform instruction and Court Rules and Procedures Committees.

the employer; and

f. *The qualifications of the personnel of the employer to perform this service.*" (Emphasis added RCW 51.14.030)

The statute seems to require the employer to run his own self-insured program. "Maintain" hardly means "to hire." What verbal gymnastics permit the hiring of outside insurance adjusting agencies to run the self-insurers' programs?

The self-insurance amendment requires the Department of Labor and Industries to supervise self-insurers, an impossible task for the Department, even with sufficient personnel. The self-insurance section of the DLI is too undermanned to perform even a semblance of the task.

Purpose of Workmens' Compensation

It is not the purpose of this article to document a "tale of horrors" but rather to discuss the purposes of the Workers' Compensation Act and what effect self-insurance or private insurance coverage has upon such purposes.

The fundamental purpose was to eliminate the so-called master-servant controversy between the employer and his injured employee. The worker gave up his right to sue his employer for negligently-caused injuries and the employer, in exchange for immunity from such suit, paid premiums into a trust fund to provide benefits for injuries received on the job regardless of fault. An independent and disinterested third party, the Department of Labor and Industries (DLI), was established to collect and disburse these funds in accordance with the purpose of the Act. A return to the master-servant relationship, exemplified by self-insurance, reinstated the controversy between employer and employee and the contest is simply not fair. To now bring in the private insurance carriers with their vast trained army of adjusters, investigators, and negotiators would only lead to further controversy, the worker again at a serious disadvantage.

How would the worker benefit by the intrusion of the independent insurance companies? The old myth about private insurance company efficiency vs. bureaucratic inefficiency is no more than that, a myth. Benefits would be withheld or denied the injured worker in order to enhance the profits of the insurance company.

Appeals

The present appeals procedure works. It does take time, as does almost any judicial or quasi-judicial process. We have a rule that requires speedy trials in criminal cases. If the time factor is compelling, then the speedy trial rule should be extended to workers' compensation appeals.

The Board of Industrial Insurance Appeals does a good job in disposing of most of its appeals. I believe the

Photo courtesy of Howard S. Wright Construction Company.

Board's decisions are tempered by its consideration of Court review. An administrative agency not subject to judicial review has the tendency to become complacent, arrogant and nonobjective in evaluating factual issues.

The DLI handles approximately 200,000 claims a year. About one percent of its determinations are appealed to the Board of Industrial Insurance Appeals. About 10% of those, or approximately 200 of the Board's decisions, are appealed annually to the Superior Court by the injured workman or the employer. Although these 200 cases have little impact on the Superior Court trial docket, they have a significant impact on the decisions of the Board of Industrial Insurance Appeals.

Once again, it must be pointed out that the Act is for the benefit of the injured worker who is not the one asking for elimination of the Court review.

Category Rating System

In 1971 the legislature directed the DLI "in order to reduce litigation and establish more certainty and uniformity in the rating of unspecified permanent partial disabilities [to] enact rules having the force of law classifying such disabilities in a proportion which the Department shall determine, such disabilities reasonably bear to total bodily impairment." (RCW 51.32.080.) The result was the "category rating system", effective October, 1974. The stated legislative purpose was to reduce litigation and establish more certainty and uniformity in the ratings of disabilities. The result of the category system has been to reduce drastically the disability awards allowed injured workers and to establish standards which are unintelligible and meaningless.

Summary

At the present time the principal problems with the Workers' Compensation Act are the category rating system and the self-insured employer. The elimination of these two features will enhance rather than reduce workers' benefits.

Any changes in the Workers' Compensation Act must be in accordance with the purpose of the Act: to provide benefits for injured workers and their dependents. Allowing employers to self-insure has not enhanced the benefits to the injured worker. Permitting private insurance carriers into the field will not enhance benefits. Eliminating judicial review de novo or orders of the Board of Industrial Insurance Appeals would remove the safety feature built into a quasi-judicial system and would not enhance benefits of the worker. I suggest that the changes recommended and requested by the employers' groups are designed specifically to save the employer money at the expense of the injured worker. □

FOCUS: MUNICIPAL LIABILITY

View from City Hall
(Changes in Municipal Liability Law)

by **Douglas N. Jewett**

Twenty years ago governmental tort liability in Washington was a relatively narrow and clear-cut issue limited by the common law doctrine of sovereign immunity. During the 1960s, however, the legislature and courts struck down sovereign immunity exposing the state and its political subdivisions to liability "to the same extent as if they were a private person or corporation." (RCW 4.92.090 and RCW 4.96.010).

Clearly the reform was needed. Few could argue that a citizen struck by a city car, or injured by a cornice falling from a county courthouse, should be denied full recovery for his/her injuries. As intended, government responded to the exposure with insurance and risk management programs that protect the general public. What then is the difficulty that has created pressures for legislation limiting governmental liability?

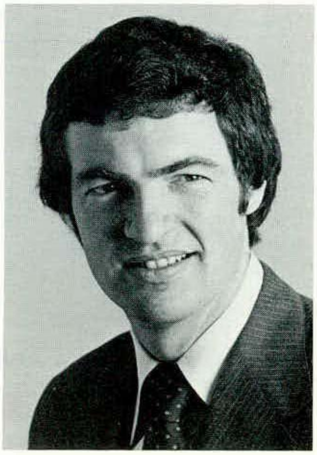
The problems arise in areas where governments exercise powers or provide facilities that have no real equivalent in the private sector: land use regulation; safety inspections; and public streets and highways. As evidenced by its opinion in *Evangelical United Brethren Church v. State*, 67 Wn. 2nd, 246 (1965), the Washington Supreme Court was reluctant to extend full governmental liability to areas where "orthodox tort liability stops and the act of governing begins . . ." Yet, during the 1970s, our Supreme Court has clouded the limited protection afforded by *United Brethren*. Such cases as *Haslund v. Seattle*, 86 Wn. 2nd 607 (1976) (building permit issuance), *Halvorsen v. Dahl*, 89 Wn. 2nd 673 (1978) (fire code inspection), *Boeing v. State and Auburn*, 89 Wn. 2d 443 (1978) and *Stewart v. State*, 92 Wn. 2d 285 (1979) (highway signing and design) have made it difficult, if not impossible, to advise governmental clients as to what actions may or may not create governmental liability. I believe this uncertainty has, in turn, produced side effects that are contrary to the public interest.

Land Use. Government today is heavily involved in land use planning and permits. As local councils and officials make difficult decisions denying or conditioning development permits, they are aware that multi-million dollar damage actions may be threatened against their jurisdictions. The result can be a perceptible "chilling effect" on their exercise of legitimate police powers. When a permit is negligently issued, and the recipient is harmed by acting in good faith and in reliance upon that permit, government should be held to a defined legal standard. But where a permit is denied or conditioned, and redress is available through administrative appeal and the courts, damages should not be permitted.

Inspections. If local or state governments are going to become involved in litigation whenever non-compliance with a government regulation causes an injury, the potential governmental liability is staggering. In response, many governmental units may consider reducing the protections they attempt to extend to their citizens in order to reduce exposure. While less regulation and inspection may sound desirable to some, liability considerations should not be the factor that forces the decision. The primary responsibility for redressing such injuries should rest with the owners or operators who profit from the regulated or inspected activity, and government's responsibility should be limited to following its own rules and immediately notifying the responsible party when it is aware of a serious violation. See *Campbell v. Bellevue*, 85 Wn. 2d 1 (1975).

Streets and Highways. Governmental jurisdictions today are caught in a bind between aging road systems and declining road construction funds. With nearly one quarter of a million uninsured motorists driving the roads of our state (a seemingly unacceptable fact), there are great pressures to find solvent defendants in serious auto accidents. Since road design seems well on its way to being a jury question (*State v. Stewart*, supra), government may be reluctant to identify and carefully sign hazardous road features for fear that the signing and documentation will act as an admission, while the fact that no money exists to improve the antiquated or poor design feature does not constitute a defense. The law could grant design immunity, but proscribe a strict signing responsibility that would remain as a jury question. Maintenance standards should, of course, remain unchanged.

It is impossible in the space allotted to touch more than the surface of this issue. It is my intention to work closely with the Washington State Bar Association's Task Force



Douglas N. Jewett is the Seattle City Attorney.

on Tort Reform, and Cleary Cone, its chairman, to see if responsible changes can be made through legislative action. We seek clarification more than change. If the public policy justifications are not persuasive, and the Board of Governors of the Washington State Bar Association are not convinced of the wisdom of such changes, I am prepared to accept their conclusion. □

View from the Street (Changes in Municipal Liability Law)

by **Paul L. Stritmatter**

Local government entities have recently sought to make sweeping changes in their tort liability through proposed legislative action. House Bill 1859, introduced in the 1980 session, sought to repeal RCW 4.96.010, the statute which makes local governments liable for tortious conduct as if they were private persons or corporations. The proposed legislation would have immunized local government from liability for tortious conduct arising from strictly governmental activities by confining liability to acts performed only by persons and entities in the private sector. In addition, the bill proposed to grant complete immunity for phases of inspections, for compliance with building codes, for design of all features of roadways and for the negligent issuance of developmental permits. While this proposed legislation was successfully defeated in the 1980 legislative session, it may be presented again during the 1981 legislative session.

The Government Should Not Be Immune

Governments are seeking relief from recent increases in insurance rates and are proposing to gain it by an emasculation of the tort system. This kind of solution will leave injured parties to their own means to pay their medical bills and property damage, to recover for wage losses and will leave them uncompensated for their permanent disabilities. And when the injured party cannot pay, as is most likely, undoubtedly the government social service budget will end up absorbing the loss.

Paul L. Stritmatter practices law in Hoquiam and is a member of the Washington Trial Lawyers Association.

This solid barrier put up by the city of Aberdeen (13 inches from this curved roadway) to protect a *breakaway* light pole caused two deaths and a $214,000 verdict against The City, *Breivo v. Aberdeen*, 15 Wn App 520 (1976).

Photo by Jones Photo Co., Aberdeen.

Governmental entities should not be allowed to avoid the consequences of their acts. Immunity will result in a failure to guard against injuries to others. One of the most compelling aspects of tort liability is that it makes us all conscious of our duty to others and the reasonable obligation to see that we don't harm others. To suggest that governments should be excused from their responsibilities to the people is ridiculous. If anyone should assume the full measure of responsibility for its actions it seems that it ought to be government, which is all of us.

Insurance Rates

Further, I am not convinced there is a justification for the increase in insurance rates. The "Study of Local Government Liability Insurance Costs in the State of Washington" done by Senator Al Williams in 1979 presents some interesting conclusions about the so-called insurance crisis. (1) Total dollar premiums for all liability insurance increased 135% from 1975 to 1977. (2) Total dollar losses decreased 25% from 1975 to 1977. This study does not begin to address the all-too-well-known fact that premiums are being charged for anticipated future losses which bear no relationship to actual losses and which may never materialize. The so-called Okanogan County case is the rallying cry for the immunity proponents. That single large verdict was after the insurance carrier refused to settle the permanent lifetime paralysis claim of the plaintiff within policy limits. This isolated case should not furnish the basis for a drastic reduction in the rights of all of us to be compensated for negligently inflicted injuries by governmental entities and their employees.

Automobile Insurance Increased

More appropriate relief has already been legislatively enacted, and further legislation can be effective to solve the problem without destroying the tort system. Passage of engrossed substitute House Bill 1983 raising minimum insurance policy limits to 25-50-10 with the automatic offering of underinsured coverage on top of all policies has diffused the argument that injured parties are looking to local government as defendants because low insurance policy limits have left injured parties uncompensated. Passage of proposed mandatory insurance coverage as a condition of licensing in the next session should totally eliminate this argument. Allowing contribution among joint tortfeasors will allow local governments to recover a portion of their loss without barring the injured party's right of recovery. In addition, excluding the payment of tort judgments from the 106% spending limitation law will avoid the problem of paying unanticipated tort judgments from general budgets of local government entities.

Primitive Roads Act

The Washington State Bar Association and the Washington State Trial Lawyers Association supported requested relief by local governments from highway design liability with the enactment of the "primitive roads bill" in the 1980 session. Substitute House Bill 1575 allows counties to designate county roads which have gravel or earth surfaces with average annual daily traffic of under one hundred vehicles as primitive roads. If properly posted with signs, the design and other signing of these roads cannot be considered in any damage action against a county.

Continued opposition should be maintained against requests for immunity by local governments. Passage of such legislation would revert us to the archaic system of the "divine right of kings" which centuries of progress has finally overcome.

Non-Claim Statutes

One other aspect of municipal liability law should be mentioned. The practicing lawyer should be aware of the status of nonclaim statutes.

Hunter v. North Mason School District, 85 Wn.2d 810 (1975) struck down as violative of the equal protection clauses of the state and federal constitutions nonclaim statutes requiring persons suing the government to give notice of their claims within a short period of time after they arise. Many attorneys apparently felt that this abolished nonclaim statutes entirely and they quit filing claims against governments.

Coulter v. State, 93 Wn.2d 205 (1980) has ruled that those nonclaim statutes are not altogether abolished. The filing of a claim, as well as a complaint, within the applicable statute of limitations is still a prerequisite to a suit against a government. See also *Peterick v. State*, 22 Wn. App. 163 (1977). Failure to file such a claim will result in the subsequent defense of an action by your malpractice carrier. □

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Board Approves Limited Court Practice for Legal Interns Without De Novo Review

by **JAY V. WHITE**

GLENEDEN BEACH, Oregon, July 17-19 — The Board of Governors has voted to recommend to the Supreme Court that APR 9 be amended to permit Rule 9 legal interns to continue to practice in municipal and district courts without supervision even after the scheduled end to the trial de novo review of judgments entered in such courts.

Under the present rule, Rule 9 interns are permitted to practice in courts where there is a right of trial de novo in both jury and non-jury cases without the presence of a supervising attorney provided that the intern previously has participated in both a jury and non-jury case with a supervising attorney.

Earlier this year, however, legislation was enacted to provide that superior courts will hear appeals from district and municipal court decisions primarily on the basis of claimed legal error, rather than by trial de novo, after January 1, 1981. (See *Bar News*, 34:6:40.)

This change has been a matter of immediate concern to some county prosecutors, public defenders and private law firms who employ legal interns to appear in courts of limited jurisdiction.

Accordingly, King County Prosecuting Attorney Norm Maleng and one of his deputies, Douglas Whalley, appeared before the Board to support an amendment to Rule 9 to permit legal interns to continue to appear in district and municipal courts after de novo trials are eliminated. The Board also reviewed letters in support of or related to such an amendment from Jeffrey C. Sullivan, president of the Washington State Association of Prosecuting Attorneys; Jerry N. Parks, director, Eastside Defender Association; Renton District Court Judge George T. Mattson; Spokane County Prosecuting Attorney Donald C. Brockett; Spokane City Prosecutor Richard C. Robinson; Snohomish County Prosecuting Attorney Russ Juckett; and Franklin County Prosecuting Attorney C. J. Rabideau.

Conceding that the use of legal interns is "a critical program to our office" from an economic standpoint, Maleng told the Board that the primary reason to amend Rule 9 to preserve the program is its importance as a training ground for lawyers. He and Whalley, who has primary responsibility for the training of legal interns, described King County's extensive training program for legal interns which includes several weeks of observing trials; mock trials; and classroom instruction, in addition to the direct supervision in court required before legal interns can practice without supervision.

Spokane District Court Judge John Schultheis, who regularly attends Board meetings as a representative of the Washington State Magistrates Association, spoke in favor of Maleng's proposal, stating that he would "sooner have a Rule 9 intern in my court than a new lawyer."

The Board approved the proposed amendment and also voted to recommend that Rule 9 be amended to provide that a legal intern may hold a limited license to practice under the rule for 24 months, rather than the present period of 18 months, to avoid the "hiatus" which has occurred in the past when bar exam results are delayed. Under both the present rule and the proposed amendment, a legal intern's license is revoked if he or she fails the bar examination.

The Board's actions came on a 7-1 vote. *Opposed:* Holm; *Absent:* Steere. The state Supreme Court must approve the amendments to Rule 9 in order for them to be effective, and the Court may make additional changes on its own motion.

OTHER BOARD ACTIONS . . .

■ **AMICUS BRIEF—The Board voted to file an amicus curiae brief in *Hahn et al. v. The Boeing Company*, et al., No. 47005-7, as requested by the state Supreme Court in a commissioner's ruling dated June 9, 1980. The case is before the Court on discretionary review of orders entered by King County Superior Court Presiding Judge Corbett relating to the procedures to be followed when out-of-state attorneys representing plaintiffs and seeking admission to practice the case under APR 7 are challenged with allegations of unethical solicitation in obtaining the plaintiffs in this aircraft litigation as clients. The Board decided (8-1) that the bar association should take the position that (a) the initial examination of the questions raised be in accordance with the three criteria set out in APR 7(A) ((out-of-state attorney may be admitted in association with Washington attorney if (1) member in good standing of bar of another state who is (2) resident of and (3) maintains practice in such state)); (b) the trial court will have discretion to consider the "right" or "capacity" to practice in this state; (c) the challenging attorney will have burden of proof to prove the lack of "right" or "capacity"; and (d) the out-of-state attorney will be judged under the same standards as a challenged Washington attorney would be.**

■ **ATTORNEY RESIDENCY REQUIREMENTS—The Board agreed that President Hemovich will appoint a three-person subcommittee to study the existing requirements of state "residency" and "domicile" which must be met to obtain and maintain active membership in the Washington State Bar Association. The Board's action followed review of a memorandum prepared by Senior Staff Counsel Robert T. Farrell indicating possible bases for legal challenge to the existing requirements under the Equal Protection and Privileges and Immunities clauses of the federal constitution.**

■ **LAWYER COMPETENCE—The Board authorized President Hemovich to appoint a special committee or task force of up to five members to study law school admission policies, including the reliance placed upon the LSAT, in relation to the proliferation of lawyers and lawyer competence.**

■ **BIDS FOR LEGAL SERVICES—The Board referred to the CPR Committee a proposed King County ordinance relating to the taking of bids for legal services, and authorized President Hemovich to appoint a special committee to consider the subject of bids for legal services.**

■ **UNIFORM DEPOSIT ACCOUNT STATUTES—The Board agreed to support legislation drafted by the Real Property, Probate and Trust Section on the subject of uniform deposit accounts which is expected to be introduced at the next session of the Legislature.**

NEW ISSUE FEBRUARY 1980

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COURT OF APPEALS

By **JOSEPH A. THIBODEAU**

Attorney's Fees

RAP 18.1 grants the appellate court the discretionary power to award reasonable attorney's fees to the prevailing party in those cases where such a fee is authorized either by contract or by law. For purposes of this rule, the party who has substantially prevailed is entitled to attorney's fees. *Cf. Kiessling v. Northwest Greyhound Lines, Inc.*, 38 Wn.2d 289, 229 P.2d 335 (1951). Counsel must comply with all of the procedural steps set forth in this rule in order to recover attorney's fees. However, special attention should be paid to sections (b) and (c) of RAP 18.1, which require that counsel (1) present argument in the brief in support of an award of reasonable attorney's fees, and (2) file an affidavit detailing expenses incurred and services rendered. Although RAP 1.2(a) indicates that the Rules of Appellate Procedure "will be liberally interpreted to promote justice and facilitate the decision of cases on the merits," this court has denied a request for attorney's fees incurred on appeal where the procedural steps were not strictly followed. *Davis v. Pennington*, 24 Wn. App. 802, 604 P.2d 987 (1979).

Since RAP 18.1 itself is self-explanatory, the discussion here will be limited to RAP 18.1(b) and (c), which provide:

> (b) Argument in Brief. The party should devote a section of the brief to the request for the fee or expenses. The request should not be made in the cost bill.
>
> (c) Affidavit. Seven days prior to oral argument, the party should serve and file an affidavit in the appellate court detailing the expenses incurred and the services performed by counsel.

Joseph A. Thibodeau is a Court Commissioner for the State Court of Appeals, Division I.

Nothing contained in the comments to the appellate rules indicates the nature of the argument that should be contained in the brief or the amount of detail that counsel's affidavit should set forth. However, failure to sufficiently detail services and expenses on appeal may result "in a more modest fee than would have been allowed if [counsel] had expended any unusual amount of effort and so advised this court." *Ranta v. German*, 1 Wn. App. 104, 108, 459 P.2d 961 (1969). Although the court in *Ranta* did not refer to it, an affidavit is most important, for without it the court is unable to determine the amount of time and effort expended on the case and, therefore, the reasonableness of the fees requested.

In deciding the nature and extent of the argument to be included in the brief and the details of the affidavit, counsel should bear in mind that in determining whether to award reasonable attorney's fees, the court will give consideration to the factual and legal questions involved, the time necessary to prepare and present the case, and the results obtained and all other factors bearing thereon. *See Rentel v. Rentel*, 39 Wn.2d 729, 238 P.2d 389 (1951); *Abel v. Abel*, 47 Wn.2d 816, 289 P.2d 724 (1955). In addition, the court will consider the various indicia of the reasonableness of attorney's fees set forth in (CPR) DR 2-106, including the following:

> (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.
>
> . . .
>
> (3) The fee customarily charged in the locality for similar legal services.
>
> (4) The amount involved and the results obtained.

See also Annot., 56 A.L.R.2d 13 (1957).

In summary, good practice dictates that counsel should (1) file a detailed affidavit of expenses and services prior to oral argument, and (2) devote a section of the brief to argument showing not merely that the case is one where a fee may be awarded, but more importantly detailing to the court the basis for the fee, giving consideration to DR 2-106 of the Code of Professional Responsibility and the guidelines contained in *Rentel v. Rentel*, *supra* and *Abel v. Abel*, *supra*. □

CLE Clearinghouse

The 1980 State Bar Convention: CLE Preview—Part II

In last month's edition of the *Bar News*, we began a preview of CLE seminars to be presented at the 1980 State Bar Convention in Honolulu during Convention Week, Tuesday, November 4th through Saturday, November 8th. All Convention seminars will run from 8:00 a.m. to 12:00 noon, and all, of course, carry credit under the mandatory CLE Rule. There will be a total of nine separate and distinct seminars and in this column we look at three of those programs.

On the morning of Wednesday, November 5, 1980, the Bar Association's Corporation, Business and Banking Law Section will act as primary sponsor of a seminar covering a general *Update-Including Amendments To The Business Corporations Act* and a more in-depth treatment of *Business Workouts*. This outstanding seminar is chaired by Paul Larson of Yakima. Joining Paul on the panel are Seattle attorneys C. Kent Carlson and D. Gordon Willhite, David H. Wright, Vice-President and Manager of Seattle-First Bank's Special Credits Department, and Bellevue CPA and Management Consultant K. Peter Zech.

Moving a little further along in Convention Week, the morning of Friday, November 7th features a unique program of general interest to all lawyers and, perhaps, their spouses. Sponsored by the CLE Committee, this program on *Recent Developments in Constitutional Law*, will provide a real potpourri of topical matters, including current issues in education, environmental law (covering local zoning, for example), alienage matters, attorney solicitation and advertising, freedom of the press and the First Amendment, and a current view of the U.S. Supreme Court—where it's been and where it's going. This outstanding seminar is chaired by Seattle attorney Ken MacDonald with supporting faculty of Professor Vern Countryman of Harvard, Marvin Durning (Washington D.C.), and Seattle attorneys Cam Hall, John Strait, and Jim Wilson.

Another program that is really noteworthy will be presented on the morning of Saturday, November 8th by the Antitrust Section and the Intellectual and Industrial Property Law Section. Dealing with *Intellectual and Industrial Property Licensing/Rights And Their Interface With Antitrust Remedies and Litigation*, this program features Seattle attorneys Dave Garrison (chairman), Larry Gangnes, Bernie Donahue, Tom Boeder, and Jim Magee. This program, of course, presents a unique approach to an interrelated set of legal problems. ☐

YOUNG LAWYERS SECTION

Law-Related Education Project

A short woman has applied for a job in a factory and is told by the company's employment office that she will not be hired because she could not do the work required. Was the employer justified in concluding that she could not do the work? Is short stature a handicap within the meaning of Washington's anti-discrimination laws? These are issues which will be argued by high school students in the Spokane area in a law-related education program sponsored by Spokane area schools and the Young Lawyers' Section.

Patricia Williams, a member of the Young Lawyers Section Board of Trustees from Spokane, has taken the initiative to contact schools in the area to encourage their participation and she is preparing all of the materials for this pilot project. Lauralee Bauer of St. George's School in Spokane has also been actively involved in planning this project. According to Ms. Williams, all of the high school debate programs in the area will participate and a number of high school social studies classes are also expected to take part in the program. While planning and preparation of materials is already under way, the program itself will be conducted in April of 1981.

There will be six to eight competitions, each involving two teams of at least five students each. The competitive oral arguments will be the culmination of the four week program. Two weeks will be devoted to legal research and members of the legal fraternity Phi Alpha Delta at Gonzaga University will assist the teams in this aspect of the program. The following week will be devoted to brief writing, again with the assistance of PAD members. In the final week, a Young Lawyer will meet with each team to help them in preparing their witnesses and their oral argument. It is hoped that judges of the Spokane County Superior Courts and District Courts will hear the students' arguments.

The teams will be composed of high school sophomores and juniors: two students will make the oral presentation for each team; two students will do the legal research and write the brief; and one student will act as a judge's clerk. This student will receive the briefs from opposing teams and critique them for the judge.

The oral presentation itself will take the form of a trial with high school students acting as witnesses. In addition to the parties themselves, the witnesses will include opposing experts and a former employer of the plaintiff. The witnesses' oral testimony will be based on affidavits which Ms. Williams is now preparing. The trial will be conducted according to the ABA's Simplified Model Rules of Evidence. Widely used in mock trials, these rules forbid introduction of any evidence inconsistent with the written materials.

Mt. St. Helens Legal Aid

Young Lawyers from around the state have taken an active role in providing legal assistance to victims of the Mt. St. Helens eruptions, according to Chris Huss, a Young Lawyer from Tacoma. Mr. Huss is the Region X chairperson for the ABA/Young Lawyers Division's Disaster Legal Assistance Program. He coordinated the statewide effort with the assistance of other Young Lawyers who served as local coordinators.

The legal assistance was provided under the terms of a contract between the ABA/YLD and the Federal Emergency Management Agency. Young Lawyers participated either by accepting telephone referrals or by meeting directly with the victims at the Disaster Relief Centers. The Young Lawyers effort at the Longview and Kelso Centers was coordinated by C.C. Bridgwater, Jr. and Mr. Huss indicated that at least 35 people received assistance at these Centers alone. Patricia Williams coordinated the work of Young Lawyers at the Spokane and Ritzville Centers and Paul Larson of Yakima was the local coordinator for the Centers in Yakima and Moses Lake. Preliminary indications are that fewer people sought legal assistance in those areas due to the different nature of the legal problems involved.

The legal assistance provided through the Centers was limited to problems arising directly from the disaster and fee-generating cases were screened out. The Young Lawyers participating in this project volunteered their time and were reimbursed only for their out-of-pocket expenses. The volunteer attorneys were encouraged to represent people who contacted them through the Centers and appropriate referrals were made for people who lacked resources to hire an attorney. □

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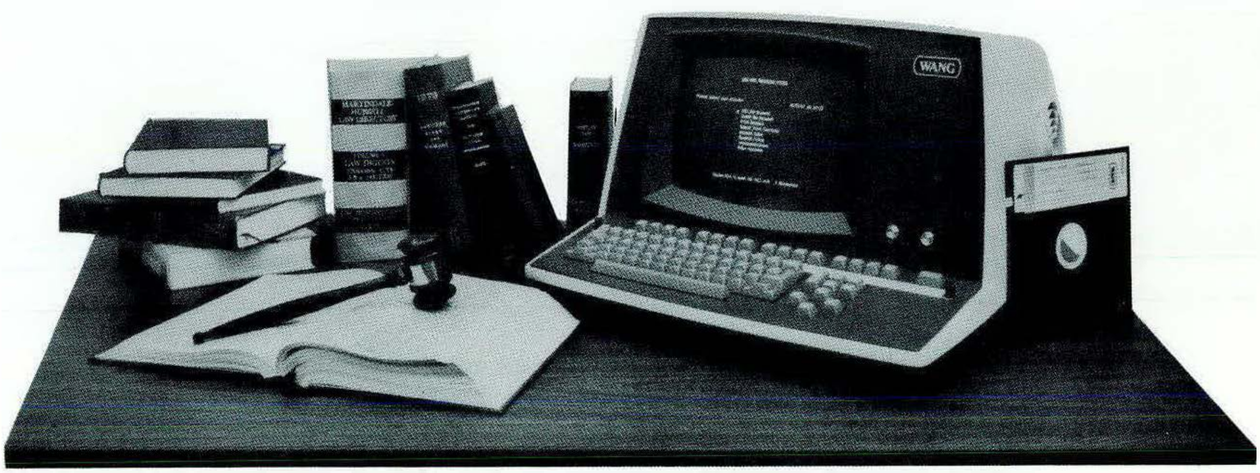

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Read, Beezer and Dewell Elected to Board of Governors

Three new members of the Board of Governors have been elected for three-year terms beginning in November. Dale W. Read, Vancouver, Robert R. Beezer, Seattle, and Julian C. Dewell, Everett, will take office at the close of the 1980 Annual Meeting in Hawaii.

Vancouver attorney Dale W. Read has been elected to represent the lawyers of the Fourth Congressional District.

Read is a partner in the Vancouver law firm of Read, Wolfe, Hannan and Mercer. A graduate of the University of Washington Law School, he was admitted to the Washington State Bar and has been in practice in Vancouver since 1939, including a term as Deputy Prosecuting Attorney.

Commissioned as a second lieutenant, Read served with the Army during World War II in antiaircraft artillery and in the Judge Advocate General Corps. His active service in the Army Reserve included six years as Staff Judge Advocate, and nine years as a Legal Officer. He holds the present rank of Colonel, retired.

Read has been a member of the State Bar Client Security Fund, Law School Liaison, and Judicial Selection Committees. He is past President of the Clark-Skamania County Bar Association and of the University of Washington Law School Alumni Association.

Read will succeed James M. Danielson as the Fourth Congressional District representative on the Board.

Seattle attorney Robert R. Beezer is the newly elected representative of lawyers in the Seventh Congressional District.

Beezer is a partner in the firm of Schweppe, Krug, Tausend and Beezer. A Seattle-area native, he graduated from the University of Virginia Law School in 1956, after military service with the U.S. Marine Corps, and holds the present rank of Lt. Colonel, retired. He was admitted to practice in Washington in 1956.

Beezer served 17 years as Judge, pro tem, of the Seattle Municipal Court. Active in service to the profession, he is a past President of the Seattle-King County Bar Association. His State Bar activities have included membership on the Real Property, Probate and Trust Law Committee during the revision of the Probate Code, and appearances on several CLE programs as a speaker. He is a fellow of the American College of Probate Counsel.

Beezer will succeed Lowell K. Halverson as the Seventh Congressional District representative on the Board.

Everett attorney Julian C. Dewell has been elected to represent the lawyers of the Second Congressional District. Dewell is a partner in the Everett law firm of Anderson, Hunter, Dewell, Baker and Collins. He was admitted to the Washington State Bar in 1957. His law career has included practice in San Francisco with the U.S. Department of Justice, Antitrust Division, and in Seattle with the firm of Howe, Davis, Riese and Jones. He has practiced in Everett since 1963.

Dewell has been involved in many State Bar activities, as a member of the initial Legal Intern Committee, the Young Lawyers Committee, the Disciplinary Board, and currently the Judicial Selection Committee. While in Seattle, he helped develop a "bridge the gap" program for young lawyers, and was on the Seattle-King County Young Lawyers Committee which organized an exchange program between Canadian and Washington lawyers.

He has also served on the Board of Directors of the Washington Association of Trial Attorneys, one year as Chairman, and on the Board of Directors of the Washington Association of Defense Counsel.

Dewell will succeed David A. Welts as the Second Congressional District representative on the Board.

Dale W. Read

Robert R. Beezer

Julian C. Dewell

New Federal Court Librarian

On June 13, William W. Barrows retired at age 70 as Chief Librarian of the United States Court of Appeals library in the Federal Courthouse in Seattle. He had held the position for more than nine years. He is succeeded by Deborah Norwood. She will provide the same service to members of the bar, including any references to recent Ninth Circuit opinions, court rules and procedures.

New Officers for GSLSA

New officers for the year 1980 - 81 have been elected and installed for Greater Seattle Legal Secretaries Association. They are: President, Judy Everett, PLS; Vice President, Marge Burglund; Recording Secretary, Diane Parisien; Corresponding Secretary, Jule Crowe; Treasurer, Marilyn Brion, PLS; and State Governor, Marilyn Tiano. The new Bar Liaison Chairman is Jodi Harlowe, and PLS (Professional Legal Secretary) chairman is Claudia Welch.

Municipal Attorneys Elections

The following persons were elected to the offices indicated and the WSAMA Executive Board at the Twenty-fourth Annual Meeting of the Washington State Association of Municipal Attorneys (WSAMA) on June 20, 1980, at Tumwater: Robert F. Patrick, President, Town Attorney of Uniontown; Douglas D. Peters, First Vice President, City Attorney of Selah and Naches; H. John Hall, Second Vice President, City Attorney of Chehalis, Napavine, Winlock and Pe Ell; Ronald C. Dickinson, Representing cities of 2,500 or more population, City Attorney of Mercer Island, Beaux Arts Village, and Yarrow Point; William L. Cameron, Representing cities of between 2,500 and 50,000 population, City Attorney of Kennewick; Larry D. Winner, "At Large," Chief Assistant Corporation Counsel of Spokane; Ernest H. Campbell, Secretary, Municipal Law Specialist, Municipal Research and Services Center of Washington; and Robert W. McKisson, Immediate Past President, City Attorney of Winslow and Poulsbo.

Update on BAR-PAC

On October 1979, the state-wide bipartisan Bar Political Action Committee (BAR PAC), was formed to facilitate effective lawyer participation in the state political process. Historically, favorable consideration of lawyer-related issues in the state legislature is difficult to obtain. It is more difficult these days than ever because when all we want is an opportunity for a fair and impartial hearing on matters that concern us or the public which we serve, we often must struggle for even this opportunity. The purpose of BAR PAC is twofold:

(1) "raise campaign funds among lawyers, and (2) contribute the funds to legislators and legislative candidates who support or at least will consider positions endorsed by the Washington State Bar Association relative to legislative issues." BAR PAC will operate independently of the State Bar Association since the State Bar Association cannot be active in politics. It is hoped that BAR PAC activity will also encourage lawyers to be candidates for the legislature.

Accomplishment of our goal necessitates that BAR PAC raise $50,000 in the 1980 election year. Consequently, early campaign contributions are sought. Contributions may be used to encourage qualified persons to become candidates for the legislature. BAR PAC needs a contribution from all members of the Bar.

Paul R. Cressman, Sr., and Raymond W. Haman are co-chairmen of the BAR PAC committee. Following committee meetings, BAR PAC Constitution and By-Laws were adopted. The Constitution and By-Laws are available for review by interested lawyers. Interested persons who would enjoy working on the committee are urged to contact the chairmen at Post Office Box No. 838, Seattle, WA 98111.

Notice of Petition for Reinstatement of Richard Hart

A hearing before the Board of Governors will be conducted September 5 or 6, 1980 at 8:00A.M., to consider the petition of Richard Hart, for reinstatement as a member of this Association after disbarment. Pursuant to Discipline Rules for Attorneys DRA 8.5, on or prior to the date of the hearing, anyone wishing to do so may file with the Board of Governors a written statement for or against reinstatement.

Letters or written statements should be directed to the Board of Governors, Washington State Bar Association, 505 Madison, Seattle, Washington 98104.

In Memoriam

William Elsner Zwink, 37, of Bellevue, died June 5. He was admitted to the Bar in 1969.

Discipline

Archie M. Greenlee Censured

Seattle attorney Archie M. Greenlee has been issued a Letter of Censure for his violation of (CPR) DR 6-101(A)(3). The ethical violation was incurred in connection with Greenlee's neglect in the administration of an estate.

Greenlee was censured pursuant to a stipulation entered into between himself, his attorney and state bar counsel, which was adopted by the Disciplinary Board.

This notice is published pursuant to DRA 11.7(c)(2).

YAKIMA REPORT

By CRAIG L. SMITH

Newly elected Yakima County Bar Association officers are as follows: **Leo Kendrick,** President; **Ron Whitaker,** Vice-President; **Michael Lynch,** Treasurer; **Terry Abeyta,** Secretary.

Adam Moore was named as "Boss of the Year" by the Yakima County Legal Secretaries Association at their banquet in April.

Bob Rowley and **Steve Wilgers** have left Sunnyside to join forces with **Fred Porter, Mike Schwab** and **Bob Royal,** with the firm to be known as Porter, Schwab, Royal, Rowley & Wilgers.

Steve Winfree has chosen to remain in Sunnyside with **Charles Shoemaker** and **Paul Hart,** with the firm to be known as Shoemaker, Hart & Winfree.

Tom Carrato is now associated with Powers & Therrien.

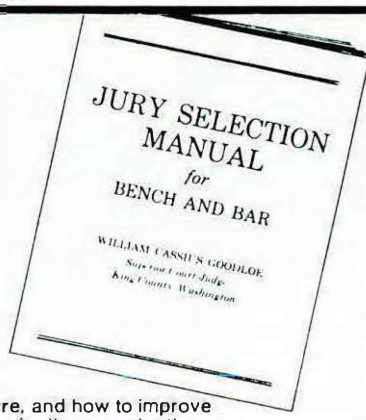
Dan Fessler has left the Prosecutors office and gone into private practice at Brown's Skylight Square at 16 North Second Street.

JURY SELECTION MANUAL
for Bench and Bar

by

William C. Goodloe

Superior Court Judge
King County, Washington



"Jury Selection Manual for Bench and Bar" by Judge William Cassius Goodloe of the Superior Court of King County, Washington is a booklet containing a wealth of information concerning the voir dire, and how to improve your voir dire examinations and evaluations. A must for the attorney who desires to improve his courtroom practices. "Jury Selection Manual for Bench and Bar" is available at a cost of $7.00.

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Computer Searches

We access the following law-oriented data bases online: LEGAL RESOURCE INDEX 660 law journals and newspapers, National Law Journal, Legal Times of Washington, American Lawyer and the New York Law Journal. CONGRESSIONAL INFORMATION SERVICE, FEDERAL REGISTER, FEDERAL INDEX, rules, regulations, bills, hearings, executive orders, and the Washington Post, LABORDOC, publications of the International Labor Office, and NCJRS, the data base of the National Criminal Justice Reference Service.

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Dan P. Danilov, Esq.
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CLASSIFIED

For Sale: Complete set of USCA (1978 pocket supplements). Contact Gary Jacobson at Tensler Library, 6300 Wildaire Road S.W., Tacoma. (206) 582-6040.

For Sale: Complete up-to-date set of U.S.C.A. $800.00 (includes shipping). (206) 457-8525.

IBM Electronic 60 Memory Typewriter. New in March, 1980. Replaced by computer. Save $250 and 12-week delivery. $1300 (509) 765-8811.

For Sale: Revised Code Washington Annotated with 1979 (for use in 1980) pocket parts. Call W. Beard (208) 523-5171.

Seeking Will: Any Seattle attorney who prepared a will for Peter Hoogstins please contact Thomas J. Majhan, Attorney at Law, (206) 385-4399.

Seeking attorney of Arlie Chappell deceased May 23rd regarding will. Please respond to Box 94, WSBA.

Searching for a Will of Blair W. Barkley executed after 19 October, 1960. If any information, please write P.O. Box 308, Shelton, Washington 98584.

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Attractive office space for 1 attorney, includes receptionist, complete library, conference room, copy machine. Contact Alan Alhadeff. Third & Blanchard Bldg., Seattle, (206) 682-9192.

Office Space: Prestige space on 32nd floor of new Howard S. Wright Building, 1111 Third Ave., Seattle, opening late September; spectacular northwesterly view; space for one or two attorneys and their secretaries on space sharing arrangement with small firm oriented to commercial practice; complete library, conference room, kitchen and other amenities; available on lease or month-to-month; call (206) 622-5100 or (206) 682-6703.

Office space for 1 to 3 attorneys. New offices, western view from 21st floor of Fourth and Blanchard Building. All services available. Contact Steve Hale, (206) 464-1900.

Bellevue Offices Available: Small building adjacent to freeway. Space for three attorneys plus conference/library or four attorneys. Call (206) 455-1110.

Office Sharing: Attorney with modest but expanding practice in tax, business and real estate seeks Bellevue office sharing or association with growing Bellevue firm. Credentials: LL.M. Taxation (N.Y.U.); C.P.A.; 13 years varied business and tax experience. Box 88, WSBA.

Professionally Designed Office: View office and interior office available on top floor of Norton Building. Secretarial service, memory typewriter, copier and telephone included. Telephone (206) 622-9645.

Office space for experienced lawyer in 5 lawyer office. Pioneer Building. Secretary, library, copy and other services available. (206) 682-9580.

Pioneer Building office space available to share. Three lawyers with general practices seek fourth to share secretarial, library, and general expenses. Tastefully renovated building; newly-carpeted offices with conference room. Close to courthouse. Call Adam Kline or Jerry Joshua, (206) 625-0800.

Eastside office space available for one attorney, includes receptionist, complete library, conference room, copy machine and secretarial services as needed. Arrangements negotiable depending on use of facilities. Contact Jack Burns, (206) 828-3636.

Tacoma Office Sharing Available: Established (Tacoma) lawyer seeks one or two attorneys to share fully equipped office overhead in American Federal Building. Call: (206) 383-3816.

POSITIONS

Position Available: 2 person Seattle firm with growing practice seeks attorney with 2-4 years of experience in business law and litigation. Confidential. Send resumes to Box 96, Washington State Bar Assoc.

Position Available: Growing Seattle firm with emphasis on tax, estate planning, pension and profit sharing, ERISA, business and corporate law, and international taxation, seeks associate. Applicants must have **pension** background. LLM in taxation preferred but not required. CPA useful. High academic record and ability to work without supervision required. (206) 625-1790. Michael O. Murphy or Mary M. Welk.

Wanted: Capable attorney with experience in private practice. Contact Box 98, WSBA.

Position Wanted: Attorney with experience in taxation and general practice, as well as several years' business experience, seeks position with law firm. LL.M. (Taxation), 1975; Washington Bar 1974. Reply Box 97, WSBA.

Position Wanted: Ambitious, hardworking attorney seeks position in Greater Seattle area with law firm or corporation. Phi Beta Kappa. Graduated top 6%. 2½ years experience. Please reply to Box 95, WSBA.

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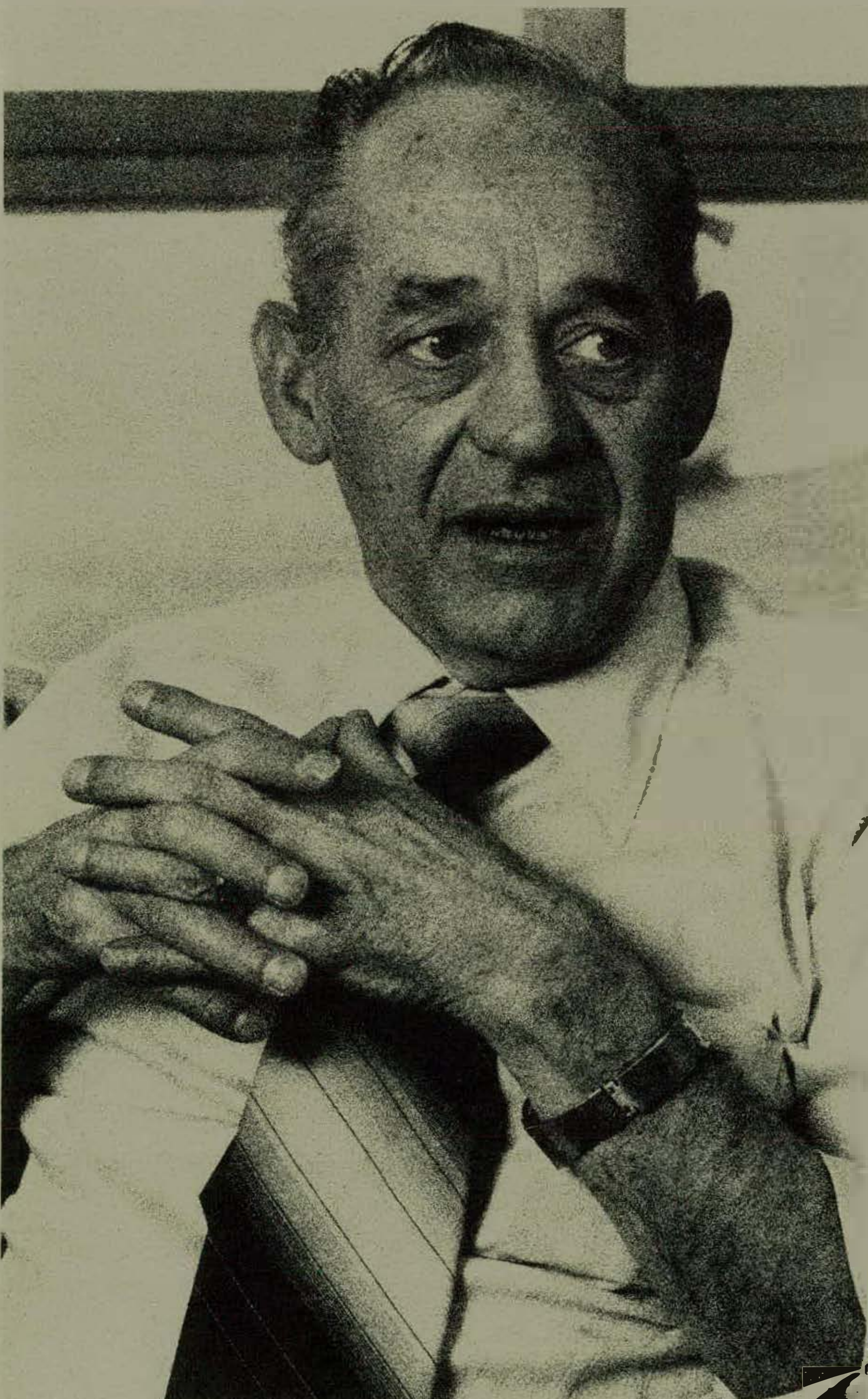

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